

CITY OF IRWINDALE

5050 N. IRWINDALE AVE., IRWINDALE CA 91706 • PHONE: (626) 430-2200 • FACSIMILE: 962-4209



NOTICE AND AGENDA FOR THE
AMENDED
SPECIAL AND REGULAR MEETING OF THE
CITY COUNCIL

SUCCESSOR AGENCY TO THE
IRWINDALE COMMUNITY REDEVELOPMENT AGENCY
HOUSING AUTHORITY

JULY 26, 2023

**SPECIAL MEETING – 5:00 P.M.
REGULAR MEETING - 6:30 P.M.**

IRWINDALE CITY COUNCIL CHAMBER

H. MANUEL ORTIZ
MAYOR

ALBERT F. AMBRIZ
MAYOR PRO TEM

MARK A. BRECEDA
COUNCILMEMBER

LARRY G. BURROLA
COUNCILMEMBER

MANUEL R. GARCIA
COUNCILMEMBER

Via Zoom Webinar at <https://us02web.zoom.us/j/87104592389>

Webinar ID: 871 0459 2389

Spontaneous Communications: The public is encouraged to address the City Council on any matter listed on the agenda or on any other matter within its jurisdiction. The City Council will hear public comments on items listed on the agenda during discussion of the matter and prior to a vote. The City Council will hear public comments on matters not listed on the agenda during the Spontaneous Communications period.

Pursuant to provisions of the **Brown Act**, no action may be taken on a matter unless it is listed on the agenda, or unless certain emergency or special circumstances exist. The City Council may direct staff to investigate and/or schedule certain matters for consideration at a future City Council meeting.

Americans with Disabilities Act: In compliance with the ADA and Government Code section 54953(g), the City Council has adopted a reasonable accommodation policy to swiftly resolve accommodation requests. The policy can be found on the City's website: <https://www.irwindaleca.gov/DocumentCenter/View/8075/AB-2449-Reasonable-Accommodation-Policy>. If you need special assistance to participate in a City Council or Commission meeting or other services offered by this City, including an electronic or printed copy of the City's reasonable accommodation policy, please contact City Hall at (626) 430-2200. Notification of at least 48 hours prior to the meeting or time when services are needed will assist the City staff in assuring that reasonable arrangements can be made to provide accessibility to the meeting or service. **Note:** Staff reports are available for inspection at the office of the Chief Deputy City Clerk, City Hall, 5050 N. Irwindale Avenue, during regular business hours (8:00 a.m. to 6:00 p.m., Monday through Thursday).

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Code of Ethics

As City of Irwindale Council Members, our fundamental duty is to serve the public good. We are committed to the principle of an efficient and professional local government. We will be exemplary in obeying the letter and spirit of Local, State and Federal laws and City policies affecting the operation of the government and in our private life. We will be independent and impartial in our judgment and actions.

We will work for the common good of the City of Irwindale community and not for any private or personal interest. We will endeavor to treat all people with respect and civility. We will commit to observe the highest standards of morality and integrity, and to faithfully discharge the duties of our office regardless of personal consideration. We shall refrain from abusive conduct, personal charges or verbal attacks upon the character or motives of others.

We will inform ourselves on public issues, listen attentively to public discussions before the body, and focus on the business at hand. We will base our decisions on the merit and substance of that business. We will be fair and equitable in all actions, claims or transactions. We shall not use our official position to influence government decisions in which we have a financial interest or where we have a personal relationship that could present a conflict of interest, or create a perception of a conflict of interest.

We shall not take advantage of services or opportunities for personal gain by virtue of our public office that are not available to the public in general. We shall refrain from accepting gifts, favors or promises of future benefit that might compromise our independence of judgment or action or give the appearance of being compromised.

We will behave in a manner that does not bring discredit or embarrassment to the City of Irwindale. We will be honest in thought and deed in both our personal and official lives.

Ultimate responsibility for complying with this Code of Ethics rests with the individual elected official. In addition to any other penalty as provided by law, violation of this Code of Ethics may be used as a basis for disciplinary action or censure of a Council Member.

These things we hereby pledge to do in the interest and purposes for which our government has been established.

IRWINDALE CITY COUNCIL



SPECIAL MEETING– 5:00 P.M.

CALL TO ORDER

ROLL CALL: Councilmembers:, Mark A. Breceda, Larry G. Burrola, Manuel R. Garcia;
Mayor Pro Tem Albert F. Ambriz; Mayor H. Manuel Ortiz

AB 2449 DISCLOSURES

Remote participation by a member of the legislative body for just cause or emergency circumstances

SPONTANEOUS COMMUNICATIONS

Spontaneous communications are limited to the special meeting agenda items only.

RECESS TO CLOSED SESSION

1. Conference with Real Property Negotiator
Pursuant to California Government Code Section 54956.8

Property: Olive Pit (APN 8415-001-906, 908)
Agency negotiator: Julian A. Miranda, City Manager and Eddie Chan, Director of Engineering /
Building Official
Negotiating Parties: United Rock Products Corp.
Under negotiation: Sublease Price and Terms

2. Conference with Legal Counsel – Existing Litigation
Pursuant to California Government Code Section 54956.9

Name of Case: Five Points, LP vs. City of Irwindale
Case Number: 22STCV01394

3. Conference with Labor Negotiators
Pursuant to Government Code Section 54957.6

Agency Designated Representative: Julian A. Miranda, City Manager
Unrepresented Employee: Adrian Guerra, City Attorney

4. *Liability Claims
Pursuant to Government Code Section 54956.95

Claimant: Calmat Co. d.b.a. Vulcan Materials Company
Agency claimed against: City of Irwindale

**RECONVENE IN OPEN SESSION
REPORT FROM CLOSED SESSION
ADJOURNMENT**

***Agenda amended on Tuesday, July 25, 2023, at 10:50 a.m. to add Item No. 4 to the Closed Session agenda and to remove Milah Butler as Pledge of Allegiance Leader**

OPEN SESSION – 6:30 P.M.

CALL TO ORDER

PLEDGE OF ALLEGIANCE

INVOCATION

ROLL CALL: Councilmembers; Mark A. Breceda, Larry G. Burrola, Manuel R. Garcia;
Mayor Pro Tem Albert F. Ambriz; Mayor H. Manuel Ortiz

CHANGES TO THE AGENDA

COUNCIL MEMBER TRAVEL REPORTS

COUNCILMEMBER COMMENTS

INTRODUCTION OF NEW EMPLOYEES/PROMOTIONS

PROCLAMATIONS / PRESENTATIONS / COMMENDATIONS

Irwindale Chamber of Commerce Business of the Month – Opportunities for Learning

Recognition of Irwindale Police Officer James Armstrong for his graduation from the Los Angeles County Sheriff's Special Enforcement Bureau (SEB) SWAT School

Presentation by the San Gabriel Valley Water Quality Authority

CONSENT CALENDAR

The Consent Calendar contains matters of routine business and is to be approved with one motion unless a member of the City Council requests separate action on a specific item. At this time, members of the audience may ask to be heard regarding an item on the Consent Calendar.

1. Minutes

Department: Administration / City Clerk

Recommendation: Approve the following minutes:

- A. Special joint meeting held June 28, 2023
- B. Regular meeting held June 28, 2023
- C. Special joint meeting held July 12, 2023
- D. Regular meeting held July 12, 2023

2. Warrants/Demands/Payroll

Department: Finance

Recommendation: Approve

3. Investment Quarterly Report for Fiscal Quarter Ending June 30, 2023 (Joint Item with Successor Agency and Housing Authority)

Department: Finance

Recommendation: That the City Council, Successor Agency Board, and Housing Authority Board receive and file the Investment Quarterly Report for the fiscal quarter ending June 30, 2023.

4. Authorize City Manager to Execute Contract Service Agreements with Royal Coaches Auto Body and Towing and Jan's Towing Inc., for Towing Services

Department: Police

Recommendation: **Adopt Resolution No. 2023-33-3411** entitled, "A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF IRWINDALE AWARDING NON-EXCLUSIVE FRANCHISES AND AUTHORIZING THE CITY MANAGER TO EXECUTE CONTRACT SERVICE AGREEMENTS WITH ROYAL COACHES AUTO BODY AND TOWING AND JAN'S TOWING INC., FOR TOWING SERVICES".

5. 2nd Reading – Ordinance No. 771

Department: Community Development

Recommendation: **Adopt on second reading Ordinance No. 771** entitled: "AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF IRWINDALE APPROVING DEVELOPMENT AGREEMENT NO. 01-2022 BETWEEN CITY OF IRWINDALE AND KBS HOLDCO LLC, DBA REGENCY OUTDOOR ADVERTISING, TO ALLOW FOR THE DIGITAL CONVERSION OF AN EXISTING STATIC BILLBOARD LOCATED AT THE INTERSECTION OF THE I-605 (NORTHBOUND) AND THE I-210 (EASTBOUND) FREEWAYS (APN: 8533-009-014) IN THE M-2 (HEAVY MANUFACTURING) ZONE SUBJECT TO THE CONDITIONS AS SET FORTH HEREIN AND MAKING FINDINGS IN SUPPORT THEREOF; AND FINDING THE PROJECT EXEMPT FROM THE PROVISIONS OF THE CALIFORNIA ENVIRONMENTAL QUALITY ACT"

6. Renewal of Contract Agreement with the City of Santa Fe Springs for City-Wide Traffic Signal Maintenance Services

Department: Engineering

Recommendation: Authorize the City Manager to execute an agreement with the City of Santa Fe Springs for city-wide traffic signal maintenance services.

7. Approval of Contract Agreement with San Bernardino County Sheriff's Department for Firing Range Use

Department: Police

Recommendation: Authorize the Chief of Police to enter into an agreement with the San Bernardino County Sheriff Department allowing for the periodic use of their firing range.

8. Approval of Tolling Agreement with Calmat Co., d.b.a. Vulcan Materials Company regarding the Protest of Development Impact Fees for 15990 East Foothill Boulevard

Department: City Attorney

Recommendation: Approve the proposed Tolling Agreement with Calmat Co., d.b.a. Vulcan Materials Company regarding the protest of development impact fees for 15990 East Foothill Boulevard.

9. Approve the Purchase of a Reel Mower

Department: Public Services

Recommendation: **Adopt Resolution No. 2023-63-3441** entitled, "A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF IRWINDALE WAIVING THE FORMAL BIDDING PROCEDURES PURSUANT TO IRWINDALE MUNICIPAL CODE SECTION 3.44.080€, AUTHORIZING THE ISSUANCE OF A PURCHASE ORDER AND AUTHORIZING THE CITY MANAGER TO ENTER INTO A PURCHASE AGREEMENT FOR THE PURCHASE OF A REEL MOWER FOR THE PUBLIC SERVICES MAINTENANCE DIVISION".

10. Award of Contract for Construction of the Traffic Signal Modifications Project at Arrow Highway and Vincent Avenue; P-980

Department: Engineering

Recommendation: (1) **Adopt Resolution No. 2023-62-3440**; (2) authorize the City Manager to enter into an agreement with MSL Electric Inc, in the amount of \$90,000.00 for the Traffic Signal Modifications Project at Arrow Highway and Vincent Avenue, subject to City Attorney approval as to form; and (3) approve a 20% project contingency in the amount of \$18,000.00 to cover any unforeseeable conditions that may arise during construction.

SPONTANEOUS COMMUNICATIONS

This is the time set aside for members of the audience to speak on items not on this agenda. State law prohibits any Council discussion or action on such communications unless 1) the Council by majority vote finds that a catastrophe or emergency exists; or 2) the Council by at least four votes finds that the matter (and need for action thereon) arose within the last five days. Since the Council cannot (except as stated) participate it is requested that all such communications be made in writing so as to be included on the next agenda for full discussion and action.

Any public member addressing the Board shall limit his or her address to three (3) minutes regarding the subject under discussion. If a member of the public wishes to donate their time to another speaker, both persons must be physically present and in attendance of the meeting. In no event shall any donations of time exceed six minutes of total speaking time per person on any one item. The Presiding Officer may, in his or her discretion, extend the 3-minute time limitation for the particular subject under discussion for all speakers. In no event shall the total amount of speaking time exceed 6 minutes per person for the subject under discussion. Organized group of persons wishing to address the Board on the same subject matter, should select a spokesperson to represent the group, so as to avoid unnecessary repetition. The City Council may regulate a speaker who is speaking too long, being unduly repetitious, or extending discussion of irrelevancies.

In the hybrid format, both in-person and hybrid audience members will participate in the following order:

Tier 1: In-person attendees

Tier 2: Teleconference attendees

Tier 3: In-person and teleconference attendees who have not previously provide comments on the matter(s) being discussed by the legislative body

NEW BUSINESS

At this time, members of the audience may ask to be heard regarding an item on New Business.

11. Review of Draft Ordinances for the Proposed Regulation of Unmanned Aircraft Systems and Drones

Department: Legal Counsel

Recommendation: Review and comment on proposed ordinances and provide further direction to staff regarding the proposed ordinances.

PUBLIC HEARINGS

At this time, members of the audience may ask to be heard regarding an item on Public Hearings.

CITY MANAGER'S REPORT**REQUESTS BY COUNCILMEMBERS FOR FUTURE AGENDA ITEMS****ADJOURN**

**SUCCESSOR AGENCY TO THE IRWINDALE
COMMUNITY REDEVELOPMENT AGENCY**

AB 2449 DISCLOSURES

Remote participation by a member of the legislative body for just cause or emergency circumstances

CONSENT CALENDAR

12. Minutes

Recommendation: Approve the following minutes:

A. Regular meeting held June 28, 2023

B. Regular meeting held July 12, 2023

13. Warrants

Recommendation: Approve

14. Investment Quarterly Report for Fiscal Quarter Ending June 30, 2023 (Joint Item with City Council and Housing Authority)

Department: Finance

Recommendation: Recommendation: That the City Council, Successor Agency Board, and Housing Authority Board receive and file the Investment Quarterly Report for the fiscal quarter ending June 30, 2023.

SPONTANEOUS COMMUNICATIONS

This is the time set aside for members of the audience to speak on items not on this agenda. Spontaneous Communications for the Successor Agency are subject to the same State prohibitions and City guidelines as cited on the City Council agenda.

NEW BUSINESS

At this time, members of the audience may ask to be heard regarding an item on New Business.

PUBLIC HEARINGS

At this time, members of the audience may ask to be heard regarding an item on Public Hearings.

ADJOURN

HOUSING AUTHORITY

AB 2449 DISCLOSURES

Remote participation by a member of the legislative body for just cause or emergency circumstances

CONSENT CALENDAR

15. Minutes

Department: Administration / City Clerk

Recommendation: Approve the following minutes:

- A. Special joint meeting held June 28, 2023
- B. Regular meeting held June 28, 2023
- C. Special joint meeting held July 12, 2023

16. Investment Quarterly Report for Fiscal Quarter Ending June 30, 2023 (Joint Item with City Council and Successor Agency)

Department: Finance

Recommendation: Recommendation: That the City Council, Successor Agency Board, and Housing Authority Board receive and file the Investment Quarterly Report for the fiscal quarter ending June 30, 2023.

SPONTANEOUS COMMUNICATIONS

This is the time set aside for members of the audience to speak on items not on this agenda. Spontaneous Communications for the Housing Authority are subject to the same State prohibitions and City guidelines as cited on the City Council agenda.

NEW BUSINESS

At this time, members of the audience may ask to be heard regarding an item on New Business.

PUBLIC HEARINGS

At this time, members of the audience may ask to be heard regarding an item on Public Hearings.

ADJOURNMENT

AFFIDAVIT OF POSTING

I, Laura M. Nieto, Chief Deputy City Clerk, certify that I caused the agenda for the regular meeting of the City Council, Irwindale Successor Agency to the Irwindale Community Redevelopment Agency, and Housing Authority, to be held on July 26, 2023, be posted at the City Hall, Library, and Post Office on July 20, 2023.

Laura M. Nieto, MMC

Laura M. Nieto, MMC
Chief Deputy City Clerk

IRWINDALE CITY COUNCIL CHAMBERS
5050 N. IRWINDALE AVENUE
IRWINDALE, CALIFORNIA 91706

CC Item 1A
HA Item 15A

JUNE 28, 2023
WEDNESDAY
5:00 P.M.

The Irwindale **CITY COUNCIL and HOUSING AUTHORITY** met in special joint session at the above time and place.

ROLL CALL:

Present: Council / Board members Mark A. Breceda, Larry G. Burrola, Manuel R. Garcia; Mayor Pro Tem Albert F. Ambriz; Mayor H. Manuel Ortiz

Also Present: Julian A. Miranda, City Manager / Executive Director; Adrian Guerra, City Attorney / General Counsel; and Laura Nieto, Chief Deputy City Clerk / Chief Assistant Authority Secretary

AB 2449 DISCLOSURES None.

**SPONTANEOUS
COMMUNICATIONS**

None.

**RECESS TO
CLOSED SESSION**

At 5:02 p.m., the City Council met in Closed Session to discuss the following:

Conference with Legal Counsel – Anticipated Litigation
Significant Exposure to Litigation (Pursuant to Government Code Sections 54956.9(c), (d)(2), e (5))

A point has been reached where, in the opinion of the City Council, upon the advice of its legal counsel based on existing facts and circumstances, that there is significant exposure to litigation against the City. The existing facts and circumstances consist of a Second Tolling Agreement between the City of Irwindale and BKK Working Agreement effective September 25, 2020, for a term of three years whereby BKK Working Group has notified the City that it may allegedly have liability based upon, according to the BKK Working Group, alleged disposal of waste material in connection with the BKK Landfills in West Covina. The Second Tolling Agreement tolls any applicable statute of limitations governing claims that BKK Working Group could assert against the City that may result in litigation against the City. A copy of the Second Tolling Agreement is included in this agenda package for public review and available for review in the City Clerk's office upon request.

Number of Cases: One

ACTION: Update provided; direction given; no reportable action

Conference with Legal Counsel – Existing Litigation

Pursuant to Government Code Sections 54954.5(c), 54956.9(d)(1)

- A) Name of Case: Five Points, LP vs. City of Irwindale
Case Number: 22STCV01394

ACTION: Update provided; no direction or action taken

- B) Name of Case: City of Long Beach, et al. v. Monsanto Company, et al.
Case Number: 2:16-cv-03493-FMO-AS (United States District Court, Central District of California – Western Division)
Note: City is a Settlement Class Member in this Class Action Lawsuit

ACTION: Update provided; no direction or action taken

Conference with Real Property Negotiators

Pursuant to California Government Code Section 54956.8

- A) Property: 16154 Arrow Highway (APNS 8417-029-024 and 025)
Agency negotiator: Marilyn Simpson, Community Development Director
Negotiating Parties: Rudolfo A. Dominguez, Trustee
Under Negotiation: Price and terms of payment
Note: This is a Housing Authority Item

ACTION: Update provided; no direction or action taken

- B) Property: 14905 Los Angeles Street, Irwindale, CA
Agency negotiator: Julian Miranda, City Manager
Negotiating Parties: Marianna Diaz
Under negotiation: Price and terms of payment
Note: This is a Housing Authority Item

ACTION: Direction provided to staff; no reportable action taken

- C) Property: Olive Pit (APN 8415-001-906, 908)
Agency negotiator: Julian A. Miranda, City Manager and Eddie Chan, Director of Engineering / Building Official
Negotiating Parties: United Rock Products Corp.
Under negotiation: Sublease Price and Terms

ACTION: Update provided; direction provided to staff; no reportable action taken

Conference with Legal Counsel – Anticipated Litigation
Initiation of Litigation (Pursuant to Government Code Section
54956.9 (d)(4))

Number of Cases: One

ACTION: Information provided, no direction or action taken

Conference with Labor Negotiators
Pursuant to Government Code 54957.6

Agency Designated Representative: Julian A. Miranda, City
Manager

Unrepresented Employee: Adrian Guerra, City Attorney

ACTION: Discussed; direction provided to City Manager

RECONVENE IN
OPEN SESSION

At 6:33 p.m., the City Council reconvened in Open Session with all
members present.

ADJOURNMENT

There being no further business to conduct, the meeting was
adjourned at 6:35 p.m.

Laura M. Nieto, MMC
Chief Deputy City Clerk

**IRWINDALE CITY COUNCIL CHAMBERS
5050 N. IRWINDALE AVENUE
IRWINDALE, CALIFORNIA 91706**

CC Item 1B

**JUNE 28, 2023
WEDNESDAY
6:35 P.M.**

The Irwindale **CITY COUNCIL** met in regular session at the above time and place.

ROLL CALL:

Present: Councilmembers Mark A. Breceda, Larry G. Burrola, Manuel R. Garcia; Mayor Pro Tem Albert F. Ambriz; Mayor H. Manuel Ortiz

Also Present: Julian A. Miranda, City Manager; Adrian Guerra, City Attorney; Christopher Hofford, Chief of Police; Theresa Olivares, Assistant City Manager; Kambiz Borhani, Director of Finance / City Treasurer; Marilyn Simpson, Community Development Director; Eddie Chan, Director of Engineering / Building Official; Mary Hull, Human Resources Manager, and Laura Nieto, Chief Deputy City Clerk

**PLEDGE OF
ALLEGIANCE**

The Pledge of Allegiance was led by Ella Burrola.

AB 2449 DISCLOSURES None.

**CHANGES TO THE
AGENDA**

**CITY MANAGER
MIRANDA**

City Manager Miranda noted that the update from the San Gabriel Valley Water Quality Authority will be moved to the meeting of July 26, and noted a correction to Consent Calendar Item No. 7.

**COUNCILMEMBER
TRAVEL REPORTS**

**MAYOR PRO TEM
AMBRIZ**

Mayor Pro Tem Ambriz reported on his attendance at a recent Gold Line meeting and provided an update on the project. He also commended staff from the Senior Center for the recent Father's Day Picnic and congratulated Senior Commissioner Pat Gonzales on being crowned the Senior Prom Queen.

**COUNCILMEMBER
COMMENTS**

**MAYOR PRO TEM
AMBRIZ**

Mayor Pro Tem Ambriz requested that a letter of recognition be prepared to recognize the volunteers and participants of the West Covina National Little League and requested that they be recognized at the next meeting.

MAYOR ORTIZ

Mayor Ortiz indicated that he recently toured the new Cancer Medical Center at the Emanate Queen of the Valley Hospital in West Covina and advised that the new facility would likely open in September. He also spoke on his attendance at the First Responders and Military

Legislative Breakfast sponsored by Congresswoman Napolitano, where Irwindale Sergeant Diego Cornejo was recognized.

**INTRODUCTION OF
NEW EMPLOYEES /
PROMOTIONS**

None.

**PROCLAMATIONS /
PRESENTATIONS /
COMMENDATIONS**

PROCLAMATION -
PARKS MAKE LIFE
BETTER

PROCLAMATION – PARKS MAKE LIFE BETTER

The proclamation was made.

UPDATE FROM THE
SGVWQA

UPDATE FROM THE SAN GABRIEL VALLEY WATER QUALITY
AUTHORITY

The update was continued to the meeting of July 26.

PUBLIC HEARINGS

ITEM NO. 1
ADOPTION OF THE
FY 23/24 BUDGET

ADOPTION OF THE FISCAL YEAR 2023-24 BUDGET

CITY MANAGER
MIRANDA

City Manager Miranda presented the staff report.

OPEN
PUBLIC HEARING

At 6:51 p.m., Mayor Ortiz opened the public hearing.

NICOLE SHAHANIAN

Nicole Shahanian, CEO of the Irwindale Chamber of Commerce, thanked the Council for considering its contract at tonight's meeting and informed that she would be moving on to work for another Chamber of Commerce.

CLAUDIA LINN

Claudia Linn, the Chair of the Irwindale Chamber of Commerce, advised that they would be searching for a replacement CEO.

CLOSE
PUBLIC HEARING

There being no additional speakers, Mayor Ortiz closed the public hearing at 6:54 p.m.

ORDINANCE NO. 770
ADOPTED ON
SECOND READING

Ordinance No. 770, entitled:

“AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF IRWINDALE ADOPTING THE BUDGET FOR FISCAL YEAR 2023-2024,” was passed, approved, and adopted, reading by title only and waiving further reading thereof, on the motion of Mayor Pro Tem

Ambriz, seconded by Councilmember Breceda, and unanimously approved.

CONSENT CALENDAR

MOTION

A motion was made by Mayor Pro Tem Ambriz, seconded by Councilmember Burrola, to approve the Consent Calendar. The motion was unanimously approved; Councilmember Breceda and Garcia abstaining on Item No. 12.

ITEM NO. 2
MINUTES

MINUTES

The following minutes were approved:

A) Special meeting held June 5, 2023

ITEM NO. 3
WARRANTS /
DEMANDS / PAYROLL

WARRANTS / DEMANDS / PAYROLL

The warrants were approved.

ITEM NO. 4
IRWINDALE CHAMBER
OF COMMERCE
SERVICES

IRWINDALE CHAMBER OF COMMERCE SERVICES

The services agreement between the City of Irwindale and the Irwindale Chamber of Commerce beginning July 1, 2023, and expiring on June 30, 2024, was approved, and the City Manager was authorized to execute same.

ITEM NO. 5
ACCEPTING AND
APPROVING THE
APPROPRIATION OF
DONATED FUNDS
FROM THE
IRWINDALE
COMMUNITY
FOUNDATION

ACCEPTING AND APPROVING THE APPROPRIATION OF
DONATED FUNDS FROM THE IRWINDALE COMMUNITY
FOUNDATION

RESOLUTION NO.
2023-37-3415
ADOPTED

Resolution No. 2023-37-3415, entitled:

“A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF IRWINDALE ACCEPTING AND APPROVING THE APPROPRIATION OF DONATED FUNDS FROM THE IRWINDALE COMMUNITY FOR FISCAL YEAR 2023-2024,” was adopted.

ITEM NO. 6
AWARD AND
RENEW DEBTBOOK
CONTRACT FOR
ACCESS TO
APPLICATION,

AWARD AND RENEW DEBTBOOK CONTRACT FOR ACCESS TO
APPLICATION, IMPLEMENTATION, AND SUPPORT SERVICES

Pursuant to Irwindale Municipal Code Section 3.44.080(c), formal bidding procedure was waived and the agreement with Fifth Asset, Inc. d/b/a Debtbook was approved for renewal access to the Application

IMPLEMENTATION,
AND SUPPORT
SERVICES

Services, which includes debt and lease management software, onboarding process and services, implementation, and support services, and the City Manager was authorized to execute the same.

ITEM NO. 7
PROPOSED END-OF-
YEAR CLOSURE OF
CITY FACILITIES FOR
2023

PROPOSED END-OF-YEAR CLOSURE OF CITY FACILITIES FOR
2023

The closure of some City facilities was approved during the period of Monday, December 25, 2023, through and including Sunday, January 7, 2024, was approved, and the City Manager was authorized to implement said closure.

ITEM NO. 8
CANCELLATION OF
AUGUST 9, 2023,
NOVEMBER 22, 2023,
AND DECEMBER 27,
2023, CITY COUNCIL
MEETINGS

CANCELLATION OF AUGUST 9, 2023, NOVEMBER 22, 2023, AND
DECEMBER 27, 2023, CITY COUNCIL MEETINGS

RESOLUTION NO.
2023-52-3430
ADOPTED

Resolution No. 2023-52-3430, entitled:

"A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF IRWINDALE, CALIFORNIA, CANCELING REGULAR MEETINGS OF THE CITY COUNCIL SCHEDULED FOR AUGUST 9, 2023, NOVEMBER 22, 2023, AND DECEMBER 27, 2023," was adopted.

ITEM NO. 9
APPROVAL OF
RESOLUTIONS
RELATING TO
COMPENSATION FOR
CITY EMPLOYEES AND
APPROVAL OF NEW
JOB CLASSIFICATION
AND ASSOCIATED
JOB SPECIFICATION

APPROVAL OF RESOLUTIONS RELATING TO COMPENSATION
FOR CITY EMPLOYEES AND APPROVAL OF NEW JOB
CLASSIFICATION AND ASSOCIATED JOB SPECIFICATION

RESOLUTION NO.
2023-44-3422
ADOPTED

Resolution No. 2023-44-3422, entitled:

"A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF IRWINDALE APPROVING A NEW JOB CLASSIFICATION AND ASSOCIATED JOB SPECIFICATION," was adopted, and

RESOLUTION NO.
2023-45-3423
ADOPTED

Resolution No. 2023-45-3423, entitled:

"A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF IRWINDALE REPEALING AND REPLACING RESOLUTION NO. 2023-30-3408, AND ESTABLISHING THE NUMBER OF

POSITIONS, SCHEDULE OF CLASSES, AND COMPENSATION FOR CITY EMPLOYEES," were adopted.

ITEM NO. 10
APPROVE A FEE
WAIVER FOR
IRWINDALE SISTER
CITY

APPROVE A FEE WAIVER FOR IRWINDALE SISTER CITY

RESOLUTION NO.
2023-53-3431
ADOPTED

Resolution No. 2023-53-3431, entitled:

"A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF IRWINDALE, CALIFORNIA, APPROVING A FEE WAIVER FOR IRWINDALE SISTER CITY, A 501(C)(3) NONPROFIT ORGANIZATION, WAIVING CITY FACILITY RENTAL FEES," was adopted.

ITEM NO. 11
RETROACTIVELY
APPROVE A FEE
WAIVER FOR
IRWINDALE LIONS
CLUB

RETROACTIVELY APPROVE A FEE WAIVER FOR IRWINDALE LIONS CLUB

RESOLUTION NO.
2023-54-3432
ADOPTED

Resolution No. 2023-54-3432, entitled:

"A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF IRWINDALE, CALIFORNIA, RETROACTIVELY APPROVING A FEE WAIVER FOR IRWINDALE LIONS CLUB, A 501(C)(3) NONPROFIT ORGANIZATION, WAIVING CITY FACILITY RENTAL FEES FOR MONTHLY MEETINGS BEGINNING MAY 2023 THROUGH AND INCLUDING DECEMBER 2023," was adopted.

ITEM NO. 12
AWARD OF
CONTRACTS FOR
CONSTRUCTION AND
CONSTRUCTION /
PROJECT
MANAGEMENT,
INSPECTION, AND
CONSTRUCTION
SURVEYING
SERVICES FOR THE
IRWINDALE PARK
IMPROVEMENTS
PROJECT PHASES IV
AND V

AWARD OF CONTRACTS FOR CONSTRUCTION AND CONSTRUCTION / PROJECT MANAGEMENT, INSPECTION, AND CONSTRUCTION SURVEYING SERVICES FOR THE IRWINDALE PARK IMPROVEMENTS PROJECT PHASES IV AND V; P-1011

1) The Assistant City Manager was authorized to enter into an agreement with Simgel Co., Inc. in the amount of \$4,720,000.00 for the Irwindale Park Improvements Project Phases IV and V; 2) a 20% project contingency in the amount of \$944,000.00 was approved to cover any unforeseeable conditions that may arise during construction; 3) the Assistant City Manager was authorized to enter into an agreement with Z&K Consultants in the amount of \$242,405.00 for Construction / Project Management, Inspection, and Construction Surveying Services; 4) a 15% contingency for consultant services in the amount of \$36,361.00 was approved to cover any unforeseeable conditions that may arise during construction, and 5)

RESOLUTION NO.
2023-57-3435
ADOPTED

Resolution No. 2023-57-3435, entitled

"A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF IRWINDALE APPROVING THE TRANSFER OF CAPITAL IMPROVEMENT FUNDS, AND APPROPRIATING \$2,650,000 FROM THE GENERAL FUND RESERVES FOR THE IRWINDALE PARK IMPROVEMENTS PROJECT PHASE IV & V; P-1011," was adopted.

ITEM NO. 13
ADOPTION OF
RESOLUTIONS TO
FILE APPLICATIONS
FOR THE LAND AND
WATER
CONSERVATION
FUND GRANT

ADOPTION OF RESOLUTION NOS. 2023-55-3433 AND 2023-56-3434 TO FILE APPLICATIONS FOR THE LAND AND WATER CONSERVATION FUND GRANT

RESOLUTION NO.
2023-55-3433
ADOPTED

Resolution No. 2023-55-3433, entitled:

"A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF IRWINDALE APPROVING THE APPLICATION FOR THE LAND AND WATER CONSERVATION FUND FOR THE JARDIN DE ROCA PARK IMPROVEMENT PROJECT," and

RESOLUTION NO.
2023-56-3434
ADOPTED

Resolution No. 2023-56-3434, entitled:

"A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF IRWINDALE APPROVING THE APPLICATION FOR THE LAND AND WATER CONSERVATION FUND FOR THE SWIMMING POOL IMPROVEMENT PROJECT PHASE II," were adopted.

END OF CONSENT CALENDAR

SPONTANEOUS COMMUNICATIONS

MAYOR PRO TEM
AMBRIZ

Mayor Pro Tem Ambriz expressed his appreciation of Irwindale Chamber of Commerce CEO Nicole Shahanian's hard work and requested that she be recognized at the next Council meeting.

ERIC ORTIZ

Eric Ortiz, with the Healing and Justice Center, provided information regarding the work that his organization provides and requested a letter be prepared to the County Board of Supervisors to investigate and stop discriminatory practices of internet providers.

BATTALION CHIEF
DARREN WALKER

Battalion Chief Darren Walker provided information regarding firework safety.

ANNE AMBRIZ

Anne Ambriz submitted an emailed statement requesting that Melissa Marez and Delfina Osterheim in the Recreation Department be recognized for purchasing lunch for her and for providing popcorn to the rest of the individuals in line while they waited for tickets to the Tina Turner musical.

NEW BUSINESS

ITEM NO. 14
VALLEY COUNTY
WATER DISTRICT
UPDATE – NORA /
FRAIJO

VALLEY COUNTY WATER DISTRICT UPDATE – NORA / FRAIJO

CITY MANAGER
MIRANDA

City Manager Miranda indicated that residents living along Nora / Fraijo have previously reported discolored water at their residences. As such, Mr. Jose Martinez, General Manager of the Valley County Water District, was in attendance to provide information regarding the incidents as well as insight on plans to mitigate the concern.

JOSE MARTINEZ

Mr. Jose Martinez made his presentation. He noted that some type of disturbance seems to have occurred in the water distribution system that has broken up mineral products that have built up in the pipeline. He advised that, though the District has moved away from flushing water pipelines with water from hydrants due to the drought, the District will flush the area in concern to mitigate discolored water. He added that the District tends to alert customers regarding upcoming pipeline flushings via social media alerts.

MAYOR PRO TEM
AMBRIZ

Mayor Pro Tem Ambriz requested that the information be relayed to residents.

CLAUDIA LINN

Responding to a question by Claudia Linn, Mr. Martinez advised that the flushings will occur according to the District schedule.

ITEM NO. 15
LINKAGE FEE /
USER FEE UPDATE

LINKAGE FEE / USER FEE UPDATE – PRESENTATION BY
WILDAN

DIRECTOR SIMPSON

Director Simpson presented the staff report Mr. James Edison with Wildan, which is the firm that prepared the study.

JAMES EDISON

Mr. James Edison presented information on development impact fees, affordable housing impact fees, and commercial linkage fees, as well as how these are calculated.

COUNCILMEMBER
BURROLA

Councilmember Burrola excused himself from the meeting and exited the Council Chambers at 7:33 p.m.

MAYOR ORTIZ	Responding to a question by Mayor Ortiz, Mr. Edison advised that his firm has prepared linkage fees for cities such as Santa Monica, Los Angeles, and Pomona.
DIRECTOR SIMPSON	Director Simpson indicated that, should the Council wish to proceed, the next step would be to prepare an ordinance to establish a linkage fee policy.
MAYOR PRO TEM AMBRIZ	Mayor Pro Tem Ambriz stated that the topic needs to be discussed more thoroughly before taking action.
MAYOR ORTIZ	Mayor Ortiz concurred with Mayor Pro Tem Ambriz.
<u>ITEM NO. 16</u> MARIACHIFEST CONCERT SERIES DAY	MARIACHIFEST CONCERT SERIES DAY
DIRECTOR RODRIGUEZ	Director Rodriguez presented the staff report.
COUNCILMEMBER BRECEDA	Councilmember Breceda agreed with the recommendation of the Parks & Recreation Commission to change the days of the concerts from Fridays to Thursdays.
MAYOR PRO TEM AMBRIZ	Mayor Pro Tem Ambriz concurred.
MAYOR ORTIZ	Responding to a question by Mayor Ortiz, Director Rodriguez indicated that the band lineup for the concerts can include a Latin band if the Council wishes.
LINDA MAREZ	Linda Marez spoke very highly of the MariachiFest concerts, though she requested that the youth mariachi group not be used, or be used sparingly, since they are not on the same level as the adult mariachi band.
MAYOR ORTIZ	Mayor Ortiz suggested that, since a total of five concerts were funded, and since there are only four Thursdays in the upcoming month of September, that a concert be scheduled for the first Friday, followed by four concerts on the subsequent Thursdays.
MAYOR PRO TEM AMBRIZ	Mayor Pro Tem Ambriz spoke in favor of having the young mariachis perform since this is how they could improve.
MOTION	A motion was made by Councilmember Breceda, seconded by Mayor Pro Tem Ambriz, to approve the recommendation from the Parks & Recreation Commission to change the day of MariachiFest Concert series from Fridays to Thursdays during the month of September. The motion was unanimously approved; Councilmember Burrola absent.

**CITY MANAGER'S
REPORT**

CITY MANAGER
MIRANDA

City Manager Miranda reported the following:

- 1) Foothill Transit is currently offering ½ price fair passes. Additional information can be found at its website.
- 2) The City Council and Planning Commission will hold a joint meeting on July 19 to discuss changes to the zoning code. Flyers were sent to all residents with additional details on June 19.
- 3) He also provided details on upcoming programs and activities for the Library, Recreation, and Senior Center departments, and informed the Council on Public Works Services activities.
- 4) Street parking is prohibited on street-sweeping days.
- 5) Chief Hofford also provided updates on the Police Department's arrangements for the 4th of July celebrations. He stated that he anticipates about 18-20 officers will be patrolling the community.

MAYOR PRO TEM
AMBRIZ

Mayor Pro Tem Ambriz asked Chief Hofford about the Police Department's drone operator, to which Chief Hofford advised that he has one drone operator but would like to train another. The drone would be deployed with three Police representatives.

PAT GONZALES

Responding to a question by Pat Gonzales, Chief Hofford advised that the Police Department would be enforcing parking restrictions in red zones.

**REQUESTS BY
COUNCIL MEMBERS
FOR FUTURE AGENDA
ITEMS**

REQUEST BY
MAYOR ORTIZ
REGARDING
BUSINESS
OPERATIONS AT
15601 CYPRESS ST.

REQUEST BY MAYOR ORTIZ REGARDING BUSINESS
OPERATIONS AT 15601 CYPRESS STREET (Seaboard Envelope
Company)

DIRECTOR SIMPSON

Director Simpson introduced the item.

CITY ATTORNEY
GUERRA

City Attorney Guerra noted that this matter was being presented strictly as an informational item.

- DIRECTOR SIMPSON** Director Simpson provided background information on the subject site and stated that the location's Site Plan and Design Review requires for the site to be free and clear of debris and makes provisions regarding inoperable vehicles and outdoor storage. The Council also added landscaping conditions. The businesses currently operating at the site, which do not include Seaboard Envelope, are developing a landscaping plan that complies with city ordinances. Other code enforcement issues have come up; the companies have addressed some and are working on others. She also noted that neither the Site Plan and Design Review nor the Development Agreement contain any noise conditions, and that the companies merely need to comply with existing noise ordinances.
- COUNCILMEMBER BRECEDA** Councilmember Breceda reported that he has heard complaints from residents regarding the operations taking place at the site in the middle of the night. He added that some truck drivers are able to peer over the walls of neighborhood residences and that workers make too much noise at night, to which Director Simpson indicated that staff attempts to gain voluntary compliance from the businesses.
- MAYOR ORTIZ** Mayor Ortiz asked about the businesses' hours of operation, to which Director Simpson indicated that they are permitted to operate 24 hours per day, 7 days per week, since there are no restrictions on their hours of operation. She added that new businesses operating at the site would operate under the same criteria and stipulations found in the Disposition and Development Agreement.
- Mayor Ortiz asked about parking at the facility, to which Director Simpson indicated that businesses must provide parking site plans at the time of application for a business license and an occupancy permit, and that parking capacity is calculated at that time.
- Mayor Ortiz reported that the number of truck trailers parking in front and to the side of the facility probably exceeds permissible amounts, to which Director Simpson advised that Code Enforcement staff is addressing the concern with the business owners.
- MAYOR PRO TEM AMBRIZ** Mayor Pro Tem Ambriz reported a business with overgrown weeds near the Arrow Highway / Vincent intersection.
- COUNCILMEMBER BRECEDA** Councilmember Breceda reported inoperable vehicles at an adjacent business.
- ADJOURNMENT** There being no further business to conduct, the meeting was adjourned at 8:08 p.m.

IRWINDALE CITY COUNCIL CHAMBERS
5050 N. IRWINDALE AVENUE
IRWINDALE, CALIFORNIA 91706

CC Item 1C
HA Item 15C

JULY 12, 2023
WEDNESDAY
5:45 P.M.

The Irwindale **CITY COUNCIL** and **HOUSING AUTHORITY** met in special joint session at the above time and place.

ROLL CALL:

Present: Council / Board members Mark A. Breceda, Larry G. Burrola, Mayor Pro Tem Albert F. Ambriz

Absent: Council / Board member Manuel R. Garcia;
Mayor / Chair H. Manuel Ortiz

Also Present: Julian A. Miranda, City Manager / Executive Director;
Adrian Guerra, City Attorney / General Counsel; and Armando Hegdahl, Management Analyst

AB 2449 DISCLOSURES None.

SPONTANEOUS
COMMUNICATIONS

None.

RECESS TO
CLOSED SESSION

At 6:03 p.m., the City Council met in Closed Session to discuss the following:

Conference with Real Property Negotiator

Pursuant to California Government Code Section 54956.8

- A) Property: 14905 Los Angeles Street, Irwindale CA
Agency Negotiator: Julian Miranda, City Manager
Negotiating Parties: Marianna Diaz
Under Negotiation: Price and terms of payment
Note: This is a Housing Authority Item

ACTION: Update provided, discussed; direction provided. No reportable action.

- B) Property: 16154 Arrow Highway (APNS 8417-029-024 and 025)
Agency Negotiator: Marilyn Simpson, Community Development Director
Negotiating Parties: Rudolfo A. Domingues Trustee
Under Negotiation: Price and terms of payment

ACTION: Due to conflicts of interest / lack of quorum, this item was not discussed

Conference with Legal Counsel – Existing Litigation
Pursuant to California Government Code Section 54956.9

Name of Case: Five Points, LP vs. City of Irwindale
Case Number: 22STCV01394

ACTION: Due to conflicts of interest / lack of quorum, this item was not discussed

**RECONVENE IN
OPEN SESSION**

At 6:30 p.m., the City Council reconvened in Open Session.

ADJOURNMENT

There being no further business to conduct, the meeting was adjourned at 6:31 p.m.

Laura M. Nieto, MMC
Chief Deputy City Clerk

**IRWINDALE CITY COUNCIL CHAMBERS
5050 N. IRWINDALE AVENUE
IRWINDALE, CALIFORNIA 91706**

**JULY 12, 2023
WEDNESDAY
6:35 P.M.**

The Irwindale **CITY COUNCIL** met in regular session at the above time and place.

ROLL CALL:

Present: Councilmembers Mark A. Breceda, Larry G. Burrola;
Mayor Pro Tem Albert F. Ambriz;

Absent: Councilmember Manuel R. Garcia; Mayor H. Manuel Ortiz

Also Present: Julian A. Miranda, City Manager; Adrian Guerra, City Attorney; Christopher Hofford, Chief of Police; Theresa Olivares, Assistant City Manager; Kambiz Borhani, Director of Finance / City Treasurer; Marilyn Simpson, Community Development Director; Eddie Chan, Director of Engineering / Building Official; Mary Hull, Human Resources Manager, and Laura Nieto, Chief Deputy City Clerk

**PLEDGE OF
ALLEGIANCE**

Pledge Leader Ed Quinones not in attendance.

AB 2449 DISCLOSURES

None.

**CHANGES TO THE
AGENDA**

**CITY MANAGER
MIRANDA**

City Manager Miranda advised that Item No. 6 on the agenda will not be addressed tonight and will be carried over to a future meeting. He also noted revisions to Ordinance No. 771 included in Item No. 7.

**COUNCILMEMBER
TRAVEL REPORTS**

None.

**COUNCILMEMBER
COMMENTS**

**COUNCILMEMBER
BURROLA**

Councilmember Burrola thanked all staff involved in the Red, White, and You BBQ and requested that City Manager Miranda speak on the difficulties experienced during the 4th of July Fireworks Show, to which City Manager Miranda advised that he would provide a brief report during the City Manager's Report portion of the agenda, and that Chief Hofford would provide details regarding the Police Department's activities that day.

Councilmember Burrola also requested that Code Enforcement staff follow-up with the property owner of the Carl's Jr. property on Arrow Highway due to the overgrown vegetation at the site.

COUNCILMEMBER
BRECEDA

Councilmember Breceda requested that Code Enforcement staff also follow-up with the property owner of the Absolute Security International building at the corner of Arrow Highway and Irwindale Avenue due to overgrown vegetation at the site.

**INTRODUCTION OF
NEW EMPLOYEES /
PROMOTIONS**

INTRODUCTION
IRWINDALE POLICE
DEPARTMENT CSO
JESSICA ORTIZ

INTRODUCTION OF IRWINDALE POLICE DEPARTMENT CSO
JESSICA ORTIZ

The introduction was made.

**PROCLAMATIONS /
PRESENTATIONS /
COMMENDATIONS**

IRWINDALE CHAMBER
OF COMMERCE
BUSINESS OF THE
MONTH – KEARNY
REAL ESTATE

IRWINDALE CHAMBER OF COMMERCE BUSINESS OF THE
MONTH – KEARNY REAL ESTATE

The presentation was made.

IRWINDALE CHAMBER
OF COMMERCE -
OUTGOING PRESIDENT
/ CEO NICOLE
SHAHENIAN

IRWINDALE CHAMBER OF COMMERCE – OUTGOING
PRESIDENT / CEO NICOLE SHAHENIAN

The presentation was made.

RECOGNITION OF
WEST COVINA
NATIONAL LITTLE
LEAGUE PARTICIPANTS

RECOGNITION OF WEST COVINA NATIONAL LITTLE LEAGUE
PARTICIPANTS

The recognition was made.

RECESS

The Council recessed for a short break at 6:53 p.m.

RECONVENE

The Council reconvened in Open Session at 7:00 p.m.

CONSENT CALENDAR

MOTION

A motion was made by Councilmember Breceda, seconded by Councilmember Burrola, to approve the Consent Calendar. The motion was unanimously approved; Councilmember Garcia and Mayor Ortiz absent.

ITEM NO. 1
MINUTES

MINUTES

None for approval

ITEM NO. 2

WARRANTS /
DEMANDS /
PAYROLL

WARRANTS / DEMANDS / PAYROLL

The warrants / demands / payroll were approved.

ITEM NO. 3

REJECTION OF CLAIM:
KYLE TAYLOR VS.
CITY OF IRWINDALE

REJECTION OF CLAIM: KYLE TAYLOR VS. CITY OF IRWINDALE

The claim of Kyle Taylor vs. City of Irwindale was rejected and staff was directed to send a letter of rejection.

END OF CONSENT CALENDAR

**SPONTANEOUS
COMMUNICATIONS**

DENA ZEPEDA

Dena Zepeda asked about Irwindale starting its own little league, requested batting cages in the park, stated her opinion that vendors were unable to make a profit at the Red, White, and You BBQ, and stated that more non-residents than residents attended the event.

KATHY NAVARRO

Kathy Navarro of Project 2911 spoke on her organization's fundraising and charity work.

HECTOR ROJERO

Hector Rojero, also of Project 2911, provided additional information on the organization's fundraising and charity work.

ESTHER TAPIA

Esther Tapia stated that she saw more residents at the Red, White, and You BBQ than at the 4th of July Fireworks Show. She spoke very highly of the BBQ and thanked city staff for organizing the event.

LINDA MAREZ

Linda Marez agreed that the Red, White, and You BBQ brought out residents and complimented staff for including fun events such as pie eating contests, chili cookoffs, and other activities. She stated that the problems during the fireworks show was nobody's fault and that these types of things happen.

KHALALAH TODD

Khalalah Todd, owner of Magic Happens Market, spoke with fondness of her memories of past 4th of July activities and stated that this year's event had something for people of all ages. She expressed her hope in partnering with the City for future events.

NEW BUSINESS

ITEM NO. 4

VERBAL UPDATE –
VETERANS MONUMENT
PROJECT

VERBAL UPDATE – VETERANS MONUMENT PROJECT

ASSISTANT CITY MANAGER OLIVARES	Assistant City Manager Olivares presented the verbal update and made a PowerPoint presentation, wherein she demonstrated the project's conceptual plan and discussed the project parameters, including the flag display design, flagpole height, and improvements to lighting and landscaping. She advised that, if the Council is amenable, staff could move forward with the concept and can discuss lighting and placing of palm trees, after which a Request for Proposal could be drafted and circulated. Staff's goal is to complete the project by November 11.
DISCUSSION HELD	Discussion was held regarding the proposed expansion of the existing concrete pad to accommodate the flagpoles, new hedging, and landscaping.
COUNCILMEMBER BRECEDA	Councilmember Breceda requested that spotlights be included to illuminate the queen palms that are being proposed for installation, to which Assistant City Manager Olivares advised that staff could work with the architect to look into illuminating the palm trees.
SUZANNE GOMEZ	Suzanne Gomez requested that at least one bench be included so that visitors could sit while contemplating the monument, and that a shade structure be included.
COUNCIL CONSENSUS	Council consensus was reached to continue moving forward with the project, incorporating the comments made by the Councilmembers.
COUNCILMEMBER BURROLA	Responding to a question by Councilmember Burrola, Assistant City Manager Olivares advised that the Request for Proposal would include staff's desired completion date for the project.
<u>ITEM NO. 5</u> LEGISLATIVE UPDATE	LEGISLATIVE UPDATE
ASSISTANT CITY MANAGER OLIVARES	Assistant City Manager Olivares presented the verbal update, wherein she highlighted the fact that over 2,600 new bills have been introduced this year, many of which relate to housing, homelessness, behavioral health, revenue and taxation, transportation, and the environment. She advised that the City supports the bill for funding for the Gold Line Foothill Extension project, but opposes Initiative 21-0042A1, SB 4 (unless amended), and SB 423.

PUBLIC HEARINGS

<u>ITEM NO. 6</u> PUBLIC HEARING FOR IRWINDALE BUSINESS CENTER SEWER AND STREET LIGHTING MAINTENANCE	PUBLIC HEARING FOR IRWINDALE BUSINESS CENTER SEWER AND STREET LIGHTING MAINTENANCE ASSESSMENT DISTRICTS This item was not discussed and will be placed on a future agenda.

ASSESSMENT
DISTRICTS

ITEM NO. 7
DEVELOPMENT
AGREEMENT FOR A
DIGITAL DISPLAY
BILLBOARD

THE APPLICANT IS REQUESTING A DEVELOPMENT AGREEMENT FOR THE CONVERSION OF AN EXISTING STATIC BILLBOARD INTO A DIGITAL DISPLAY BILLBOARD LOCATED AT THE INTERSECTION OF THE I-605 (NORTHBOUND) AND I-210 (EASTBOUND) FREEWAYS; (APN: 8533-009-014)

PLANNING
TECHNICIAN ROMERO

Planning Technician Martin Romero presented the staff report.

CITY ATTORNEY
GUERRA

City Attorney Guerra read the revisions to the ordinance into the record.

ANDY GOODMAN

Andy Goodman of Regency Outdoor Advertising introduced himself and stated that he was available to answer any questions that the Council may have.

OPEN
PUBLIC HEARING

At 7:42 p.m., Mayor Pro Tem Ambriz opened the public hearing.

CLOSE
PUBLIC HEARING

There being no speakers, Mayor Pro Tem Ambriz closed the public hearing at 7:43 p.m.

COUNCILMEMBER
BURROLA

Councilmember Burrola asked about distancing requirements between billboards, to which Mr. Goodman indicated that, per regulations, two static billboards could be placed 500 feet apart; though digital billboards must be placed 1000 feet apart. He also provided the locations of billboards surrounding Irwindale.

ORDINANCE NO. 771
INTRODUCED FOR
FIRST READING

Ordinance No. 771, entitled:

"AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF IRWINDALE APPROVING DEVELOPMENT AGREEMENT NO. 01-2022 BETWEEN CITY OF IRWINDALE AND KBS HOLDCO LLC, DBA REGENCY OUTDOOR ADVERTISING, TO ALLOW FOR THE DIGITAL CONVERSION OF AN EXISTING STATIC BILLBOARD LOCATED AT THE INTERSECTION OF THE I-605 (NORTHBOUND) AND THE I-210 (EASTBOUND) FREEWAYS (APN: 8533-009-014) IN THE M-2 (HEAVY MANUFACTURING) ZONE SUBJECT TO THE CONDITIONS AS SET FORTH HEREIN AND MAKING FINDINGS IN SUPPORT THEREOF; AND FINDING THE PROJECT EXEMPT FROM THE PROVISIONS OF THE CALIFORNIA ENVIRONMENTAL QUALITY ACT," was introduced for first reading, reading by title only and waiving further reading thereof, including the revision that City Attorney Guerra read, on the motion of Councilmember Burrola, seconded by Councilmember Breceda, and unanimously approved; Councilmember Garcia and Mayor Ortiz absent.

**CITY MANAGER'S
REPORT**

CITY MANAGER
MIRANDA

City Manager Miranda reported the following:

- 1) The Irwindale Educational Foundation will hold a Casino Night fundraiser at the Irwindale Brew yard on July 28.
- 2) A Blood Drive will be hosted in front of City Hall on August 8.
- 3) He also discussed upcoming events and activities for the Aquatics, Community Development, Recreation, and Senior Center Departments.
- 4) A joint City Council / Planning Commission meeting will be held on July 19 to discuss zoning code updates.
- 5) July is "Parks Make Life Better" month.
- 6) He also recognized Garrett Rivelli, who has been interning over the summer and will leave the City tomorrow.

MAYOR PRO TEM
AMBRIZ

Mayor Pro Tem Ambriz presented a Certificate of Recognition to Garrett Rivelli in recognition of his contributions to the City during his tenure as Intern.

COUNCILMEMBER
BURROLA

Responding to a question by Councilmember Burrola, Director Rodriguez advised that interested individuals may purchase an additional waste bin from Athens. She also noted that, beginning January 1, 2024, households will be fined if they do not separate their waste properly. Staff will meet with Athens Services representatives to see about potentially providing a 4th waste bin free of charge to those residents that request one.

Councilmember Burrola requested that a second postcard be sent to residents to determine who needs a 4th waste bin.

CITY MANAGER
MIRANDA

City Manager Miranda spoke on the difficulties experienced during the 4th of July Fireworks show as well as their causes. He praised Director Rodriguez and Recreation Manager Zepeda for working quickly to mitigate the problems and for keeping him and the Council members informed and stated that staff will work to prevent these issues from reoccurring at future shows.

MAYOR PRO TEM
AMBRIZ

Mayor Pro Tem Ambriz stated that, although many were disappointed by the fireworks show, these types of incidents occur. He also commended Director Rodriguez and Manager Zepeda for their quick work.

COUNCILMEMBER
BRECEDA

Councilmember Breceda thanked City Manager Miranda for keeping him informed of the occurrences and stated that, although some were blaming staff for the incidents, unforeseen situations can and do occur.

COUNCILMEMBER BURROLA	Councilmember Burrola thanked City Manager Miranda and all staff involved in mitigating the issues that caused the delay in the fireworks show.
CHIEF HOFFORD	Chief Hofford briefly discussed and provided statistics on the Police Department's efforts to curb use of illegal fireworks during the 4 th of July, including the use of a drone.
COUNCILMEMBER BURROLA	Responding to several questions by Councilmember Burrola, Chief Hofford advised that: 1) some 911 calls were routed to the Fire Department for their aid, 2) drones could be dispatched to locations where illegal fireworks have been reported and remain there until a ground unit arrives, and 3) the late-night hour that calls with reports of illegal fireworks usage were being made to the Police Department.
CITY MANAGER MIRANDA	City Manager Miranda praised Chief Hofford and the Police Department for their hard work in deterring the use of illegal fireworks.
COUNCILMEMBER BURROLA	As requested by Councilmember Burrola, Director Rodriguez discussed staff's efforts in clearing dry vegetation and watering the housing-owned property to reduce the likelihood of fires caused by falling fireworks. She noted that the Fire Marshal was unable to determine whether the fire that started at the privately-owned portion of the pit was caused by a firework used at the show or by illegal fireworks lit by individuals close by.

**REQUESTS BY
COUNCILMEMBERS
FOR FUTURE AGENDA
ITEMS**

None.

ADJOURNMENT

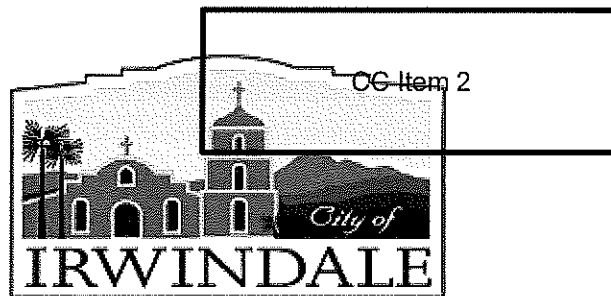
There being no further business to conduct, the meeting was adjourned at 8:18 p.m.

Laura M. Nieto, MMC
Chief Deputy City Clerk

Accounts Payable

Checks by Date - Summary by Check Number

User: imarin
Printed: 7/20/2023 4:42 PM



Check No	Vendor No	Vendor Name	Check Date	Check Amount
80205	FONTT01	Bazyle Fonttenaus	07/06/2023	2,000.00
80206	MAD01	Mad Science of Orange County	07/06/2023	340.00
80207	NIETO02	Carlos Nieto III	07/06/2023	350.00
80208	WONDER02	Wonders of Wildlife	07/06/2023	350.00
80209	AMBRIZ05	Albert Ambriz	07/06/2023	20.00
80210	AT&T06	AT & T	07/06/2023	59.86
80211	BRECED04	Mark A. Breceda	07/06/2023	1,647.77
80212	CONCE01	Concentra	07/06/2023	191.00
80213	CORNEJOD	Diego Cornejo	07/06/2023	2,187.00
80214	ESPINO09	Juan Espino	07/06/2023	151.97
80215	FRAIJO01	Paula Fraijo	07/06/2023	15.00
80216	FRONT01	Frontier Communications	07/06/2023	987.34
80217	GARCIA03	Manuel Garcia	07/06/2023	969.77
80218	IRWIND21	Irwindale Hand Wash & Auto Detail	07/06/2023	1,565.47
80219	OPTUM01	OptumRx, Inc.	07/06/2023	47,323.44
80220	SCFUELS	SC Fuels	07/06/2023	12,757.16
80221	SMART&	Smart & Final	07/06/2023	1,301.21
80222	verizonw	Verizon Wireless	07/06/2023	3,353.93
80223	VISION01	Vision Service Plan - (CA)	07/06/2023	2,710.01
80224	ALLIAN	Alliant Insurance Services, Inc.	07/13/2023	3,584.00
80225	ARTEAG02	Maria de Jesus Arteaga	07/13/2023	75.00
80226	AT&T06	AT & T	07/13/2023	3,367.81
80227	Ayala01	Leonor Ayala	07/13/2023	459.00
80228	AZUSALW	Azusa Light & Water	07/13/2023	657.22
80229	BARA02	Frank Barajas	07/13/2023	300.00
80230	OROSCO05	Rebecca Bardales	07/13/2023	466.34
80231	BOCA01	Geraldine Bocanegra	07/13/2023	75.00
80232	BURROL13	Enoch Burrola	07/13/2023	97.35
80233	CALE01	Jeannette Caleron	07/13/2023	75.00
80234	CALIFO02	California American Water	07/13/2023	1,485.65
80235	CAMPOS03	Manuel Campos	07/13/2023	386.07
80236	CARDE01	Maria Cardenas	07/13/2023	75.00
80237	CHARTE01	Charter Communications	07/13/2023	591.29
80238	CHEN04	Catherine Chen	07/13/2023	25.00
80239	CHICOB	Bernie Chico	07/13/2023	75.00
80240	CHICOJ	John Chico	07/13/2023	75.00
80241	DF01	D.F. Polygraph	07/13/2023	200.00
80242	DOMIN12	Gilbert Dominguez	07/13/2023	75.00
80243	ESPINO10	Iris Espino	07/13/2023	150.52
80244	EVANS02	Gloria Evans	07/13/2023	300.00
80245	FLORE01	Karla Flores	07/13/2023	650.00
80246	FRAIJO02	John Fraijo	07/13/2023	398.94
80247	GALAV01	Susana Galaviz	07/13/2023	75.00
80248	GARC11	Miriam Garcia	07/13/2023	75.00
80249	SOUTHE17	Golden State Water Company	07/13/2023	1,972.17
80250	GUEVA01	Maria Evelia Guevara	07/13/2023	75.00
80251	GUZM01	Bryan Guzman	07/13/2023	75.00

Check No	Vendor No	Vendor Name	Check Date	Check Amount
80252	JOVEL01	Mandy Jovel	07/13/2023	75.00
80253	LOPE03	Amanda Lopez	07/13/2023	405.00
80254	LOPEZ25	Nicholas Lopez	07/13/2023	689.83
80255	MAREZL	Linda S. Marez	07/13/2023	75.00
80256	MIRAND25	Blanche V. Miranda	07/13/2023	390.00
80257	MUNO02	Susana Ortuno Munoz	07/13/2023	75.00
80258	NARAN01	Vaibhav Narang	07/13/2023	75.00
80259	NUNEZA	Alyne Nunez	07/13/2023	300.00
80260	PACHE01	Alvaro Pacheco	07/13/2023	40.00
80261	PARR01	Edlin Parra	07/13/2023	75.00
80262	PURCHA	Purchase Power	07/13/2023	2,030.00
80263	ROMANC	Carmen M. Roman	07/13/2023	101.00
80264	ROME03	Natali Romero	07/13/2023	75.00
80265	RUIZ07	Veronica Ruiz	07/13/2023	75.00
80266	SILV02	Maria Silva	07/13/2023	75.00
80267	GASCOM	SoCalGas	07/13/2023	4,264.24
80268	SORI01	Carmina Soria	07/13/2023	22.00
80269	SCE02	Southern California Edison	07/13/2023	27,118.90
80270	SCE02	Southern California Edison	07/13/2023	15,380.84
80271	SCE02	Southern California Edison	07/13/2023	39,801.76
80272	SCE02	Southern California Edison	07/13/2023	13,578.05
80273	SCE02	Southern California Edison	07/13/2023	15,109.36
80274	SCE02	Southern California Edison	07/13/2023	24,239.19
80275	SCE02	Southern California Edison	07/13/2023	18,072.33
80276	SCE02	Southern California Edison	07/13/2023	20,506.62
80277	SCE02	Southern California Edison	07/13/2023	20,042.87
80278	SREE01	Suijth Sreekkumar	07/13/2023	150.00
80279	TORR04	Roxxane Torres	07/13/2023	75.00
80280	TPX 01	TPX Communications	07/13/2023	5,098.28
80281	TREJ01	Rose Trejo	07/13/2023	10.00
80282	TUIA01	Venise Tuiasosopo	07/13/2023	75.00
80283	VALE01	Sarah Valerio	07/13/2023	75.00
80284	VARGAS03	Jose Vargas	07/13/2023	15.00
80285	verizonw	Verizon Wireless	07/13/2023	2,485.92
80286	VIDA01	Michael Vidal	07/13/2023	200.00
80287	WAGONER	Pamela Wagoner	07/13/2023	500.00
80288	WILL01	April Williams	07/13/2023	180.00
80289	YOUM01	Veronica Youman	07/13/2023	75.00
80290	ALLIAN02	Alliant Insurance Services, Inc.- Irvine Mai	07/13/2023	1,516.00
80291	AMERIFID	American Fidelity Assurance	07/13/2023	8,693.50
80292	AMERIC34	American Fidelity Assurance Co	07/13/2023	4,447.34
80293	OROSCO05	Rebecca Bardales	07/13/2023	196.46
80294	BELTRA	Eloise Beltran	07/13/2023	82.00
80295	BURGUA01	Rene Burguan	07/13/2023	2,000.00
80296	CHAC02	Steven Chacon	07/13/2023	500.00
80297	COLDDU	Cold Duck Prod. Inc.	07/13/2023	2,000.00
80298	CUDE 01	Lynn Cude	07/13/2023	3,000.00
80299	DOMING04	Alva Dominguez	07/13/2023	20.00
80300	FONTT01	Bazyle Fonttenaus	07/13/2023	2,500.00
80301	FRONT01	Frontier Communications	07/13/2023	324.49
80302	MAD01	Mad Science of Orange County	07/13/2023	340.00
80303	OSTERH01	Delfina Osterheim	07/13/2023	55.05
80304	PURCHA	Purchase Power	07/13/2023	2,030.00
80305	SPEC01	Special Needs Coffee, LLC	07/13/2023	300.00
80306	TULL01	Bob Tullio	07/13/2023	500.00
80307	TULLIO01	Jim Tullio	07/13/2023	500.00
80308	CALIFO56	California State Disbursement Unit	07/13/2023	604.15

Check No	Vendor No	Vendor Name	Check Date	Check Amount
80309	CALIFO57	California State Disbursement Unit	07/13/2023	143.07
Report Total (105 checks):				335,580.54

Accounts Payable

Checks by Date - Summary by Check Number

User: imarin
Printed: 7/20/2023 4:42 PM



Check No	Vendor No	Vendor Name	Check Date	Check Amount
80312	BAKER01	Baker & Taylor Books	07/26/2023	140.00
80313	BAKER10	Bakers Man Production	07/26/2023	900.00
80314	BARB02	Ray A. Barba	07/26/2023	268.29
80315	CALIFO42	California Building Standards	07/26/2023	684.00
80316	Cat Spec	Cat Specialities Inc	07/26/2023	64.02
80317	CDW01	CDW Government	07/26/2023	8,185.95
80318	CITYOF18	City of Santa Fe Springs	07/26/2023	88,064.77
80319	LOSANG33	County of Los Angeles	07/26/2023	84,336.93
80320	CRAFT01	Craftwater Engineering, Inc.	07/26/2023	5,210.00
80321	CWA01	CWA AIA, Inc	07/26/2023	40,807.20
80322	DELONG	Delong Unlimited	07/26/2023	876.66
80323	DICKER01	Dickerson, McCulloch & Associates, LLC	07/26/2023	6,301.50
80324	DIVISI01	Division of the State Architect	07/26/2023	322.09
80325	BATE01	Elior Inc.	07/26/2023	4,029.30
80326	FCG01	FCG Consultants Inc.	07/26/2023	62,504.10
80327	GEOLOG	Geologic Associates	07/26/2023	18,430.30
80328	HDL01	Hdl Software, LLC	07/26/2023	33.26
80329	INTELL01	Intelli-tech, Inc.	07/26/2023	1,803.26
80330	IRWIND03	Irwindale Tire Shop	07/26/2023	10.00
80331	JCL01	JCL Traffic	07/26/2023	509.53
80332	COORYE	Samir M. Khoury	07/26/2023	4,806.00
80333	KJSERV01	KJ Services Enviromental Consulting LLC	07/26/2023	1,190.00
80334	LAKESH01	Lakeshore Learning Materials,LLC	07/26/2023	3,190.90
80335	LEXISN	LexisNexis Risk Solutions	07/26/2023	151.50
80336	MARIPO	Mariposa Landscapes, Inc.	07/26/2023	8,796.00
80337	MAVE01	Maverick Networks, Inc	07/26/2023	4,995.00
80338	MERCUR	Mercury Fence Co., Inc.	07/26/2023	725.00
80339	MOR01	Jimore Morgan	07/26/2023	2,505.50
80340	MOTOR01	Motorola Solutions, Inc.	07/26/2023	595.35
80341	OFFICE03	ODP Business Solutions, LLC	07/26/2023	3,699.20
80342	PHASEII	PARS	07/26/2023	1,750.00
80343	PERF03	Performance Elevator Contractors, Inc.	07/26/2023	360.00
80344	PLACE01	PlaceWorks, Inc.	07/26/2023	20,030.26
80345	R&RM01	R & R Metal Fabricators, Inc.	07/26/2023	375.00
80346	RIOHON01	Rio Hondo College	07/26/2023	25.00
80347	ROSENO	Rosenow Spevacek Group Inc	07/26/2023	555.00
80348	SOUTH09	Southern Computer Warehouse Inc,	07/26/2023	2,945.79
80349	SWANK01	Swank Motion Pictures, Inc.	07/26/2023	480.00
80350	PENWOR	The Penworthy Company	07/26/2023	267.29
80351	THEP01	The Pin Center	07/26/2023	1,445.00
80352	V&V01	V & V Manufacturing, Inc.	07/26/2023	255.67
80353	VANCE01	Vance Corporation	07/26/2023	351,174.14
80354	WESTCO05	West Coast Arborists, Inc.	07/26/2023	8,189.01
80355	HDSUP01	WHITE CAP, L.P.	07/26/2023	286.27
80356	WILLDAN	Willdan Financial Services	07/26/2023	5,610.00
80357	ARCH02	ArchiveSocial, Inc.	07/26/2023	5,988.00
80358	AZBUS01	A-Z Bus Sales	07/26/2023	176.36

Check No	Vendor No	Vendor Name	Check Date	Check Amount
80359	MIJACA	Balcon Holdings, Inc.	07/26/2023	135.00
80360	BILLST	Bill's Truck Repair, Inc.	07/26/2023	175.00
80361	DUDE01	Brightly Software, Inc.	07/26/2023	4,619.00
80362	CACE	California Association of	07/26/2023	60.00
80363	CALIFO26	California Police Chiefs	07/26/2023	155.00
80364	CALI22	CAPIO	07/26/2023	30.00
80365	CINTAS	Cintas Corporation #693	07/26/2023	300.80
80366	CITYOF11	City of Azusa	07/26/2023	3,150.00
80367	COM01	COM-Net	07/26/2023	40,987.76
80368	DEMCOI	Demco, Inc.	07/26/2023	285.88
80369	GARVEY	Garvey Equipment Co	07/26/2023	133.94
80370	HASA01	Hasa Inc.	07/26/2023	1,380.94
80371	IRWIND03	Irwindale Tire Shop	07/26/2023	75.00
80372	LANDSC	Landscape Warehouse III Inc.	07/26/2023	237.06
80373	MIDAS	Manuel C Muratalla	07/26/2023	633.30
80374	MATA02	Francisco Mata	07/26/2023	4,547.81
80375	MOBI02	Mobile Citizen, LLC	07/26/2023	1,200.00
80376	MOR01	Jimore Morgan	07/26/2023	320.00
80377	PITNEY06	Pitney Bowes, Inc	07/26/2023	137.25
80378	PROPRINT	Pro Printing, Inc.	07/26/2023	60.16
80379	QUINN02	Quinn Company	07/26/2023	1,911.21
80380	PACIFI13	Rene David LTD	07/26/2023	407.00
80381	SANGAB13	San Gabriel Valley Council	07/26/2023	17,589.59
80382	SIERRA01	Sierra Chevrolet	07/26/2023	97.43
80383	SWANK01	Swank Motion Pictures, Inc.	07/26/2023	530.00
80384	NORTHR	The Northridge Group, Inc.	07/26/2023	4,420.42
80385	UNITED11	United Site Services of CA Inc	07/26/2023	589.50
80386	HDSUP01	WHITE CAP, L.P.	07/26/2023	115.96
Report Total (75 checks):				838,333.41

- ☒ City Council
- ☒ Successor Agency
- ☒ Housing Authority
- ☐ Reclamation Authority
- ☐ Joint Powers Authority

City of
IRWINDALE
AGENDA REPORT

Date: July 26, 2023

To: Honorable Mayor and Members of the City Council
Honorable Chair and Members of the Successor Agency Board
Honorable Chair and Members of the Housing Authority Board

From: Julian A. Miranda, City Manager/Executive Director

Issue: Investment Quarterly Report for Fiscal Quarter Ending June 30, 2023.

City Manager/Executive Director's Recommendation:

That the City Council, Successor Agency Board, and Housing Authority Board receive and file the Investment Quarterly Report for the fiscal quarter ending June 30, 2023.

Administrative Action:

Submitted & prepared by:

Kambiz Borhani, Finance Director / City Treasurer
(626) 430-2221

K. Borhani

Reviewed by:

Adrian R. Guerra, City Attorney/General Counsel

Electronically Approved

Kambiz Borhani, Finance Director / City Treasurer

K. Borhani

Approved by:

Julian A. Miranda, City Manager/Executive Director

Julian A. Miranda

Background and Analysis:

California Government Code Section 53646 requires that the City Treasurer submit a quarterly report of investments (Investment Report) to the City Council/Board Members for review and compliance with the City's adopted investment policy (City's Investment Policy).

The attached Investment Report summarizes the cash balances and investments as of June 30, 2023, for each agency. The City of Irwindale's balances include investments of all funds of the City and its agencies, which are pooled to maximize the interest yield. The cash balances in the general and money market accounts also include all funds of the City and its agencies, which also earn interest on the pooled cash balances. All investments comply with the City's Investment Policy.

As previously noted, all funds held by the City, Successor Agency, Housing Authority, and Reclamation Authority are pooled to maximize interest yields. The Reclamation Authority Board is not scheduled to meet again until September 13, 2023. Therefore, this same Investment Report will be included in the Reclamation Authority's Agenda for that meeting for review by the Reclamation Authority Board as well.

Fiscal Impact:

There is no fiscal impact to receive and file this report.

Attachment:

City of Irwindale Investment Report – June 30, 2023

**CITY OF IRWINDALE
INVESTMENT REPORT
June 30, 2023**

SECURITY DESCRIPTION	PAR VALUE / ORIGINAL COST	CURRENT YIELD TO MATURITY	PURCHASE DATE	MATURITY DATE	MKT VALUE / ENDING BALANCE	INVESTMENT RATINGS
CITY OF IRWINDALE (POOLED - ALL FUNDS, INCLUDING RECLAMATION AUTHORITY)						
BANK OF THE WEST GENERAL ACCOUNT	\$ 366,906	0.36%			\$ 366,906	
WELLS FARGO BANK MONEY MARKET ACCOUNT	\$ 615,452	5.01%			\$ 615,452	
LOCAL AGENCY INVESTMENT FUND (LAIF)	\$ 50,470,273	3.36%			\$ 49,789,446	
US GOVERNMENT AGENCIES						
FEDERAL HOME LN BKS CONS BD (FHLB)	\$ 5,000,000	0.52%	07/28/21	01/28/25	\$ 4,641,527	Aaa / AA+
FEDERAL FARM CR BKS CONS SYSTEMWIDE (FFCB)	5,000,000	0.58%	06/23/21	05/23/25	4,573,620	Aaa / AA+
FEDERAL FARM CR BKS CONS SYSTEMWIDE (FFCB)	3,000,000	0.90%	06/15/21	06/15/26	2,684,957	Aaa / AA+
FEDERAL HOME LN BKS CONS BD (FHLB)	5,000,000	1.00%	06/30/21	06/26/26	4,484,637	Aaa / AA+
FEDERAL HOME LN BKS CONS BD (FHLB)	5,000,000	0.50%	06/30/21	06/30/26	4,449,407	Aaa / AA+
FEDERAL FARM CR BKS CONS SYSTEMWIDE (FFCB)	5,000,000	0.87%	07/28/21	07/28/26	4,459,023	Aaa / AA+
FEDERAL HOME LN BKS (FHLB)	5,000,000	0.50%	07/29/21	07/29/26	4,492,364	Aaa / AA+
FEDERAL HOME LN BKS CONS BD (FHLB)	1,000,000	3.42%	08/29/22	11/15/24	941,595	Aaa / AA+
FEDERAL HOME LN BKS CONS BD (FHLB)	1,000,000	3.45%	08/29/22	12/27/24	940,521	Aaa / AA+
FEDERAL HOME LN BKS CONS BD (FHLB)	1,000,000	3.28%	08/29/22	02/22/27	910,512	Aaa / AA+
Sub-Total US Government Agencies:	\$ 36,000,000				\$ 32,578,163	
MUNICIPAL BONDS						
CALIFORNIA STATE TAXABLE	\$ 1,000,000	3.35%	08/30/22	04/01/24	\$ 980,491	Aa2 / AA-
BAY AREA CALIFORNIA TOLL AUTHORITY	1,000,000	3.50%	08/30/22	04/01/25	948,658	Aa3 / AA
CALIFORNIA STATE TAXABLE	1,000,000	4.30%	01/09/23	10/01/26	1,020,992	Aa2 / AA-
COAST COMMUNITY COLLEGE DISTRICT CALIFORNIA	1,000,000	4.22%	02/09/23	08/01/26	928,606	Aa1/AA+
CALIFORNIA STATE TAXABLE	1,000,000	4.00%	04/26/23	04/01/28	949,262.8	Aa2 / AA-
UNIVERSITY OF CALIFORNIA	1,000,000	3.90%	05/17/23	05/15/27	879,274	Aa2 / AA
Sub-Total Municipal Bonds:	\$ 6,000,000				\$ 5,707,284	
CORPORATE BONDS						
WELLS FARGO & COMPANY	\$ 2,000,000	6.25%	10/21/22	10/21/27	\$ 2,004,137	A1 / BBB+
TOYOTA MOTOR CREDIT CORPORATION	1,000,000	5.00%	11/10/22	10/16/25	905,619	A1 / A+
	\$ 3,000,000				\$ 2,909,756	
CERTIFICATES OF DEPOSIT						
BANK OF CHINA	\$ 245,000	3.159 %	08/31/22	02/28/24	\$ 241,484	FDIC Insured
JP MORGAN CHASE BANK	245,000	3.40 %	08/31/22	08/30/24	239,267	FDIC Insured
APEX BANK	245,000	3.153 %	08/31/22	08/30/24	238,583	FDIC Insured
UBS BANK USA	245,000	3.40 %	08/31/22	09/02/25	234,885	FDIC Insured
AMERICAN EXPRESS NATIONAL BANK	245,000	3.35 %	08/31/22	09/02/25	234,717	FDIC Insured
COMMUNITY BANK OF THE BAY	245,000	3.50 %	08/31/22	08/31/27	228,478	FDIC Insured
CAPITAL ONE BANK USA	245,000	3.45 %	08/31/22	08/31/27	228,119	FDIC Insured
CAPITAL ONE NATIONAL ASSN VA	245,000	3.45 %	08/31/22	08/31/27	228,119	FDIC Insured
ALLY BANK	245,000	3.35 %	09/01/22	09/01/26	230,638	FDIC Insured
SYNCHRONY BANK	245,000	3.45 %	09/02/22	09/02/27	228,101	FDIC Insured
CUSTOMERS BANK	245,000	3.00 %	09/06/22	09/06/23	243,896	FDIC Insured
MEDALLION BANK	245,000	3.25 %	09/07/22	09/08/25	234,069	FDIC Insured
BMO HARRIS BANK	245,000	3.15 %	09/09/22	03/11/24	241,332	FDIC Insured
DR BANK	245,000	3.60 %	09/09/22	09/09/26	232,240	FDIC Insured
SAFRA NATIONAL BANK	245,000	3.05 %	09/09/22	10/10/23	243,464	FDIC Insured
MORGAN STANLEY BANK	245,000	3.45 %	09/09/22	09/09/27	228,085	FDIC Insured
MORGAN STANLEY BANK	245,000	3.45 %	09/09/22	09/09/27	228,085	FDIC Insured
TRADITIONAL CAPITAL BANK	245,000	3.30 %	09/14/22	03/13/26	232,101	FDIC Insured
PONCE BANK	245,000	3.35 %	09/14/22	09/14/27	226,940	FDIC Insured
FIRST NATIONAL BANK	245,000	3.45 %	09/19/22	09/20/27	227,863	FDIC Insured
FIRSTWESTERN TRUST BANK	245,000	4.55 %	01/06/23	01/06/28	237,769	FDIC Insured
Sub-Total Certificates of Deposit:	\$ 5,145,000				\$ 4,908,233	
Total City of Irwindale Investments (Pooled Funds):	\$101,597,631				\$ 96,875,240	
HOUSING AUTHORITY (Funds 11 & 12)						
BANK OF THE WEST GENERAL ACCOUNT	\$ 466,008	0.36%			\$ 466,008	
LOCAL AGENCY INVESTMENT FUND (LAIF)	5,727,040	3.36%			5,649,784	
	\$ 6,193,048				\$ 6,115,792	
SUCCESSOR AGENCY (Funds 50-66)						
BANK OF THE WEST MONEY MARKET ACCOUNT	\$ 259,876	0.36%			\$ 259,876	
LOCAL AGENCY INVESTMENT FUND (LAIF)	5,930,290	3.36%			5,850,292	
	\$ 6,190,166				\$ 6,110,168	
GRAND TOTAL OF INVESTMENTS	\$113,980,845				\$ 109,101,200	

This investment portfolio is in conformity with the City of Irwindale's Investment Policy which was approved by City Council on June 5, 2023. The City Treasurer's cash management program and cash flow analysis indicates that sufficient liquidity is on hand to meet estimated future expenditures for a period of six months. The weighted average of maturity of the City's pooled investment portfolio is 1.21 years, and the weighted average yield of the City's pooled investments at cost is 2.26%. Market prices of securities are obtained directly through Bank Statements. Due to timing, Bank of the West General Account balances are pre-reconciled and yield rates are based on the prior month's account analysis statement.

Approved by K. Borhani

Kambiz Borhani, Finance Director / City Treasurer

- ☒ City Council
- ☐ Successor Agency
- ☐ Housing Authority
- ☐ Reclamation Authority
- ☐ Joint Powers Authority

City of
IRWINDALE
AGENDA REPORT

Date: July 26, 2023
To: Honorable Mayor and Members of the City Council
From: Julian A. Miranda, City Manager
Issue: Authorize City Manager to execute Contract Service Agreements with Royal Coaches Auto Body and Towing and Jan's Towing Inc., for Towing Services

City Manager's Recommendation:

Adopt **Resolution No. 2023-33-3411** entitled: **"A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF IRWINDALE AWARDED NON-EXCLUSIVE FRANCHISES AND AUTHORIZING THE CITY MANAGER TO EXECUTE CONTRACT SERVICE AGREEMENTS WITH ROYAL COACHES AUTO BODY AND TOWING AND JAN'S TOWING INC., FOR TOWING SERVICES"**

Administrative Action:

Submitted by:

Christopher Hafford, Chief of Police
(626) 430-2200

ELECTRONICALLY APPROVED

Prepared by:

John Fraijo, Police Captain

ELECTRONICALLY APPROVED

Reviewed by:

Adrian R. Guerra, City Attorney

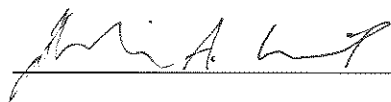
ELECTRONICALLY APPROVED

Kambiz Borhani, Finance Director / City Treasurer



Approved by:

Julian A. Miranda, City Manager



Background and Analysis:

Towing vehicles from the roadway is part of any police department's routine or normal operation. For example, disabled vehicles must be quickly removed from the street to minimize traffic hazard. Towing is also required for DUI and other instances of traffic violations. In this regard, the Irwindale Police Department is no different than other law enforcement agencies.

Currently, two tow companies provide tow service to Irwindale and do so on a rotational basis which equally divides tow requests between the two companies. The agreement with the two existing companies was established in 2017 and expired on January 2, 2023. We have been operating on a month to month agreement with our tow service providers until the new contract is in place.

Section 608 of the City's Charter, which states that "franchises shall be granted by the City Council only in the time and manner, and for such purposes, as may be prescribed or authorized by the Constitution or by applicable laws of this State." On December 14, 2022, at the regular City Council Meeting, the Irwindale City Council approved the authorization to solicit formal bids by way of Requests for Proposals (RFP) for towing services in accordance with Section 3.44.090 of the Irwindale Municipal Code.

The formal bid process was announced and opened on December 15, 2022, and was published in the San Gabriel Valley Tribune and on the city's webpage through our City Clerk's Office. The final submission date for completed proposals was January 17, 2023 at 10:00am – three companies responded to the request.

The RFP required detailed information on personnel, equipment, processes, experience, company profile, liability and the ability to meet various state regulations and training.

Selection Process:

A professional panel was assembled to review and critique each proposal. The panel consisted of Captain John Fraijo, Finance Clerk Isabel Marin and Lieutenant Jose Vargas. The proposals were carefully evaluated based on the needs of the city, scope of work, response time, customer service, expertise, references, and quality. The panel also evaluated each company on their experience working with other law enforcement agencies and if they have adequate equipment and personnel to provide a quality service to our residents.

A snapshot of each company below;

Company	Date Incorporated	Miles from PD	Tow Truck Class	Agency Count
Royal Coaches	1987	1.6	A B C D	8
Foothill Towing	1981	6.0	A D	2
Jan's	1994	.8	A B C D	6

Each proposer was invited to do a presentation and was personally interviewed on March 9, 2023. The panel scored the companies accordingly using a scoring system of 1 to 7 (lowest to high) in specific areas.

After careful consideration and review, Royal Coaches Auto Body and Towing and Jan's Towing Inc., scored the highest and were chosen as the most responsive to the city's needs by the professional panel. These companies excelled in the areas of equipment, service delivery, locality, and most importantly, the customer experience.

Royal Coaches Auto Body and Towing and Jan's Towing Inc., demonstrated a high regard in areas of employee training, response time, variety of fleet, and overall service to our community.

Discussion:

It is recommended that Contract Service Agreements for Tow Services be awarded to Royal Coaches Auto Body and Towing and Jan's Towing Inc., who were selected as a result of the review process. It is anticipated that the new agreement will begin August 1, 2023.

Fiscal Impact:

The Contract Service Agreements will establish a three year contract, requiring each company to pay a monthly Contract Fee of \$2,250. In accordance with Vehicle Code section 12110, the fee represents the parties' best estimate of the amount necessary to reimburse the City for its actual and reasonable costs incurred in connection with the towing program.

Attachments:

Resolution No. 2023-33-3411

Contract Service Agreement – Royal Coaches Auto Body and Towing

Contract Service Agreement – Jan's Towing Inc.

Exhibit A - Scope of Services

Exhibit B – Special Requirements

Exhibit C – Schedule of Compensation

Exhibit D – Schedule of Performance

RESOLUTION NO. 2023-33-3411

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF IRWINDALE AWARDED NON-EXCLUSIVE FRANCHISES AND AUTHORIZING THE CITY MANAGER TO EXECUTE CONTRACT SERVICE AGREEMENTS WITH ROYAL COACHES AUTO BODY AND TOWING AND JAN'S TOWING INC., FOR TOWING SERVICES

WHEREAS, Section 3.44.090 of the Irwindale Municipal Code provides for a formal bidding process when a purchase of supplies, services and equipment with an estimated value greater than the maximum amount set by the Purchasing Resolution or more shall be made; and

WHEREAS, On December 14, 2022, the City of Irwindale issued a Request For Proposals for official towing and storage service of vehicles (RFP); and

WHEREAS, Three tow companies responded to the request and were interviewed by a professional panel on March 9, 2023; and

WHEREAS, The professional panel evaluated each company based on the needs of the city, scope of work, response time, customer service, expertise, references, and quality; and

WHEREAS, After careful consideration and review, Royal Coaches Auto Body and Towing and Jan's Towing Inc., scored the highest and were chosen as the most responsive to the city's needs by the professional panel; and

WHEREAS, The City is authorized to enter into non-exclusive tow franchise agreements pursuant to Section 608 of the City's Charter, which states that "franchises shall be granted by the City Council only in the time and manner, and for such purposes, as may be prescribed or authorized by the Constitution or by applicable laws of this State."

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF IRWINDALE, CALIFORNIA, RESOLVES, DETERMINES AND ORDERS AS FOLLOWS:

SECTION 1. In accordance with section 608 of the City Charter and section 3.44.090 of the Irwindale Municipal Code, the City Council hereby awards non-exclusive tow franchises for vehicle towing and storage services to Royal Coaches Auto Body and Towing and Jan's Towing Inc.

SECTION 2. The City Council hereby approves the Agreement for Contract Services by and between the City of Irwindale and Royal Coaches Auto Body and Towing, attached hereto as Exhibit "A." The City Manager is hereby authorized to execute the final agreement, subject to final approval as to form by the City Attorney.

SECTION 3. The City Council hereby approves the Agreement for Contract Services by and between the City of Irwindale and Jan's Towing Inc., attached hereto as Exhibit "B." The

City Manager is hereby authorized to execute the final agreement, subject to final approval as to form by the City Attorney.

SECTION 4. The Deputy City Clerk shall attest to the adoption of this resolution which shall, in turn, have immediate effect.

PASSED, APPROVED AND ADOPTED this 26th day of July, 2023.

H. Manuel Ortiz, Mayor

ATTEST:

Laura Nieto
Chief Deputy City Clerk

STATE OF CALIFORNIA }
COUNTY OF LOS ANGELES } ss.
CITY OF IRWINDALE }

I, Laura Nieto, Chief Deputy City Clerk of the City of Irwindale, do hereby certify that the foregoing Resolution No. 2023-33-3411 was duly and regularly passed and adopted by the City Council of the City of Irwindale at its regular meeting held on the 26th day of July, 2023, by the following vote:

AYES: Councilmembers:

NOES: Councilmembers:

ABSENT: Councilmembers:

ABSTAIN: Councilmembers:

Laura Nieto
Chief Deputy City Clerk

AGREEMENT FOR CONTRACT SERVICES

By and Between

CITY OF IRWINDALE

and

Jan's Towing Inc.

**AGREEMENT FOR CONTRACT SERVICES
BY AND BETWEEN THE CITY OF IRWINDALE AND**

THIS AGREEMENT FOR CONTRACT SERVICES (herein "Agreement") is made and entered into this ____ day of _____, 2023 by and between the City of Irwindale, a California municipal corporation ("City") and Jan's Towing Inc. ("Contractor"). City and Contractor are sometimes hereinafter individually referred to as "Party" and hereinafter collectively referred to as the "Parties".

RECITALS

A. The City desires to provide its residents and businesses with the highest quality of vehicle towing and storage services when requested by the City of Irwindale Police Department ("IPD"); and

B. The City finds vehicle towing and storage services is best achieved by the granting of nonexclusive franchises to no more than two (2) vehicle towing and storage service providers since such nonexclusive franchises maximize the City's ability to regulate and oversee the quality of vehicle towing and storage services and to maintain uniform and consistent levels of services throughout the City, thus furthering the public health, safety, and well-being; and

C. Pursuant to Irwindale Municipal Code ("IMC") Chapter 3.44.090, City staff issued a Request for Proposals to identify the best qualified tow service vendors and Contractor, following submission of a proposal or bid for the performance of the services defined and described particularly in Article 1 of this Agreement, was selected by the City to perform those services; and

D. The IPD conducts the Rotation Tow Program in the City of Irwindale, whereby each Contractor who enters into a towing services agreement with the City is placed on a rotation tow listing with the IPD ("Rotational Tow Program"); and

E. This Agreement contains terms and conditions with which Contractor agrees to comply in order to participate in the Rotation Tow Program and be placed on the rotation tow listing with the IPD; and

F. Participation in the IPD Rotation Tow Program is voluntary; however, compliance with all terms and conditions of the Agreement is mandatory for all tow companies participating in the IPD Rotation Tow Program. Contractor, by agreeing to participate in the program, does not establish a contractual relationship with the IPD and is not acting as an agent for the IPD or the City when performing services under this Agreement; and

G. The City is authorized to enter into this Agreement pursuant to Section 608 of the City's Charter, which states that "franchises shall be granted by the City Council only in the time and manner, and for such purposes, as may be prescribed or authorized by the Constitution or by applicable laws of this State."

OPERATIVE PROVISIONS

NOW, THEREFORE, in consideration of the mutual promises and covenants made by the Parties and contained herein and other consideration, the value and adequacy of which are hereby acknowledged, the parties agree as follows:

ARTICLE 1. SERVICES OF CONTRACTOR

1.1 Scope of Services.

In compliance with all terms and conditions of this Agreement, the Contractor shall provide those services specified in the "Scope of Services" attached hereto as Exhibit "A" and incorporated herein by this reference, which may be referred to herein as the "services" or "work" hereunder. As a material inducement to the City entering into this Agreement, Contractor represents and warrants that it has the qualifications, experience, and facilities necessary to properly perform the services required under this Agreement in a thorough, competent, and professional manner, and is experienced in performing the work and services contemplated herein. Contractor shall at all times faithfully, competently and to the best of its ability, experience and talent, perform all services described herein. Contractor covenants that it shall follow the highest professional standards in performing the work and services required hereunder and that all materials will be both of good quality as well as fit for the purpose intended. For purposes of this Agreement, the phrase "highest professional standards" shall mean those standards of practice recognized by one or more first-class firms performing similar work under similar circumstances.

1.2 Contractor's Proposal.

The Scope of Service shall include the Contractor's scope of work or bid which shall be incorporated herein by this reference as though fully set forth herein. In the event of any inconsistency between the terms of such proposal and this Agreement, the terms of this Agreement shall govern.

1.3 Compliance with Law.

Contractor shall keep itself informed concerning, and shall render all services hereunder in accordance with, all ordinances, resolutions, statutes, rules, and regulations of the City and any Federal, State or local governmental entity having jurisdiction in effect at the time service is rendered.

1.4 Licenses, Permits, Fees and Assessments.

Contractor shall obtain at its sole cost and expense such licenses, permits and approvals as may be required by law for the performance of the services required by this Agreement. Contractor shall have the sole obligation to pay for any fees, assessments and taxes, plus applicable penalties and interest, which may be imposed by law and arise from or are necessary for the Contractor's performance of the services required by this Agreement, and shall indemnify, defend and hold harmless City, its officers, employees or agents of City, against any such fees, assessments, taxes, penalties or interest levied, assessed or imposed against City hereunder.

1.5 Familiarity with Work.

By executing this Agreement, Contractor warrants that Contractor (i) has thoroughly investigated and considered the scope of services to be performed, (ii) has carefully considered how the services should be performed, and (iii) fully understands the facilities, difficulties and restrictions attending performance of the services under this Agreement. If the services involve work upon any site, Contractor warrants that Contractor has or will investigate the site and is or will be fully acquainted with the conditions there existing, prior to commencement of services hereunder. Should the Contractor discover any latent or unknown conditions, which will materially affect the performance of the services hereunder, Contractor shall immediately inform the City of such fact and shall not proceed except at Contractor's risk until written instructions are received from the Contract Officer.

1.6 Care of Work.

The Contractor shall adopt reasonable methods during the life of the Agreement to furnish continuous protection to the work, and the equipment, materials, papers, documents, plans, studies and/or other components thereof to prevent losses or damages, and shall be responsible for all such damages, to persons or property, until acceptance of the work by City, except such losses or damages as may be caused by City's own negligence.

1.7 Further Responsibilities of Parties.

Both parties agree to use reasonable care and diligence to perform their respective obligations under this Agreement. Both parties agree to act in good faith to execute all instruments, prepare all documents and take all actions as may be reasonably necessary to carry out the purposes of this Agreement. Unless hereafter specified, neither party shall be responsible for the service of the other.

1.8 Additional Services.

City shall have the right at any time during the performance of the services, without invalidating this Agreement, to order extra work beyond that specified in the Scope of Services or make changes by altering, adding to or deducting from said work. No such extra work may be undertaken unless a written order is first given by the Contract Officer to the Contractor, incorporating therein any adjustment in (i) the Contract Sum for the actual costs of the extra work, and/or (ii) the time to perform this Agreement, which said adjustments are subject to the written approval of the Contractor. Any increase in compensation of up to ten percent (10%) of the Contract Sum or \$25,000, whichever is less; or, in the time to perform of up to one hundred eighty (180) days, may be approved by the Contract Officer. Any greater increases, taken either separately or cumulatively, must be approved by the City Council. It is expressly understood by Contractor that the provisions of this Section shall not apply to services specifically set forth in the Scope of Services. Contractor hereby acknowledges that it accepts the risk that the services to be provided pursuant to the Scope of Services may be more costly or time consuming than Contractor anticipates and that Contractor shall not be entitled to additional compensation therefor. City may in its sole and absolute discretion have similar work done by other contractors. No claims for an increase in the Contract Sum or time for performance shall be valid unless the procedures established in this Section are followed.

1.9 Special Requirements.

Additional terms and conditions of this Agreement, if any, which are made a part hereof are set forth in the "Special Requirements" attached hereto as Exhibit "B" and incorporated herein by this reference. In the event of a conflict between the provisions of Exhibit "B" and any other provisions of this Agreement, the provisions of Exhibit "B" shall govern.

ARTICLE 2. COMPENSATION AND METHOD OF PAYMENT.

2.1 Contract Sum.

Subject to any limitations set forth in this Agreement, City agrees to pay Contractor the amounts specified in the "Schedule of Compensation" attached hereto as Exhibit "C" and incorporated herein by this reference. The total compensation, including reimbursement for actual expenses, shall not exceed NOT APPLICABLE Dollars (\$N/A) (the "Contract Sum"), unless additional compensation is approved pursuant to Section 1.8.

2.2 Method of Compensation.

The method of compensation may include: (i) a lump sum payment upon completion; (ii) payment in accordance with specified tasks or the percentage of completion of the services, less contract retention; (iii) payment for time and materials based upon the Contractor's rates as specified in the Schedule of Compensation, provided that (a) time estimates are provided for the performance of sub tasks, (b) contract retention is maintained, and (c) the Contract Sum is not exceeded; or (iv) such other methods as may be specified in the Schedule of Compensation.

2.3 Reimbursable Expenses.

Compensation may include reimbursement for actual and necessary expenditures for reproduction costs, telephone expenses, and travel expenses approved by the Contract Officer in advance, or actual subcontractor expenses of an approved subcontractor pursuant to Section 4.5, and only if specified in the Schedule of Compensation. The Contract Sum shall include the attendance of Contractor at all project meetings reasonably deemed necessary by the City. Coordination of the performance of the work with City is a critical component of the services. If Contractor is required to attend additional meetings to facilitate such coordination, Contractor shall not be entitled to any additional compensation for attending said meetings.

2.4 Invoices.

Each month Contractor shall furnish to City an original invoice for all work performed and expenses incurred during the preceding month in a form approved by City's Director of Finance. By submitting an invoice for payment under this Agreement, Contractor is certifying compliance with all provisions of the Agreement. The invoice shall detail charges for all necessary and actual expenses by the following categories: labor (by sub-category), travel, materials, equipment, supplies, and sub-contractor contracts. Sub-contractor charges shall also be detailed by such categories. Contractor shall not invoice City for any duplicate services performed by more than one person.

City shall independently review each invoice submitted by the Contractor to determine whether the work performed and expenses incurred are in compliance with the provisions of this

Agreement. Except as to any charges for work performed or expenses incurred by Contractor which are disputed by City, or as provided in Section 7.3, City will use its best efforts to cause Contractor to be paid within forty-five (45) days of receipt of Contractor's correct and undisputed invoice; however, Contractor acknowledges and agrees that due to City warrant run procedures, the City cannot guarantee that payment will occur within this time period. In the event any charges or expenses are disputed by City, the original invoice shall be returned by City to Contractor for correction and resubmission. Review and payment by City for any invoice provided by the Contractor shall not constitute a waiver of any rights or remedies provided herein or any applicable law.

- 2.5 Waiver. Payment to Contractor for work performed pursuant to this Agreement shall not be deemed to waive any defects in work performed by Contractor.

ARTICLE 3. PERFORMANCE SCHEDULE

- 3.1 Time of Essence.

Time is of the essence in the performance of this Agreement.

- 3.2 Schedule of Performance.

Contractor shall commence the services pursuant to this Agreement upon receipt of a written notice to proceed and shall perform all services within the time period(s) established in the "Schedule of Performance" attached hereto as Exhibit "D" and incorporated herein by this reference. When requested by the Contractor, extensions to the time period(s) specified in the Schedule of Performance may be approved in writing by the Contract Officer but not exceeding one hundred eighty (180) days cumulatively.

- 3.3 Force Majeure.

The time period(s) specified in the Schedule of Performance for performance of the services rendered pursuant to this Agreement shall be extended because of any delays due to unforeseeable causes beyond the control and without the fault or negligence of the Contractor, including, but not restricted to, acts of God or of the public enemy, unusually severe weather, fires, earthquakes, floods, epidemics, quarantine restrictions, riots, strikes, freight embargoes, wars, litigation, and/or acts of any governmental agency, including the City, if the Contractor shall within ten (10) days of the commencement of such delay notify the Contract Officer in writing of the causes of the delay. The Contract Officer shall ascertain the facts and the extent of delay, and extend the time for performing the services for the period of the enforced delay when and if in the judgment of the Contract Officer such delay is justified. The Contract Officer's determination shall be final and conclusive upon the parties to this Agreement. In no event shall Contractor be entitled to recover damages against the City for any delay in the performance of this Agreement, however caused, Contractor's sole remedy being extension of the Agreement pursuant to this Section.

- 3.4 Term.

Unless earlier terminated in accordance with Article 7 of this Agreement, this Agreement shall continue in full force and effect until completion of the services but not exceeding three (3)

years from the date hereof, except as otherwise provided in the Schedule of Performance (Exhibit "D").

ARTICLE 4. COORDINATION OF WORK

4.1 Representatives and Personnel of Contractor.

The following principals of Contractor ("Principals") are hereby designated as being the principals and representatives of Contractor authorized to act in its behalf with respect to the work specified herein and make all decisions in connection therewith:

(Name)

(Title)

(Name)

(Title)

(Name)

(Title)

It is expressly understood that the experience, knowledge, capability and reputation of the foregoing principals were a substantial inducement for City to enter into this Agreement. Therefore, the foregoing principals shall be responsible during the term of this Agreement for directing all activities of Contractor and devoting sufficient time to personally supervise the services hereunder. All personnel of Contractor, and any authorized agents, shall at all times be under the exclusive direction and control of the Principals. For purposes of this Agreement, the foregoing Principals may not be replaced nor may their responsibilities be substantially reduced by Contractor without the express written approval of City. Additionally, Contractor shall utilize only competent personnel to perform services pursuant to this Agreement. Contractor shall make every reasonable effort to maintain the stability and continuity of Contractor's staff and subcontractors, if any, assigned to perform the services required under this Agreement. Contractor shall notify City of any changes in Contractor's staff and subcontractors, if any, assigned to perform the services required under this Agreement, prior to and during any such performance.

4.2 Status of Contractor.

Contractor shall have no authority to bind City in any manner, or to incur any obligation, debt or liability of any kind on behalf of or against City, whether by contract or otherwise, unless such authority is expressly conferred under this Agreement or is otherwise expressly conferred in writing by City. Contractor shall not at any time or in any manner represent that Contractor or any of Contractor's officers, employees, or agents are in any manner officials, officers, employees or agents of City. Neither Contractor, nor any of Contractor's officers, employees or agents, shall obtain any rights to retirement, health care or any other benefits which may otherwise accrue to City's employees. Contractor expressly waives any claim Contractor may have to any such rights.

4.3 Contract Officer.

The Contract Officer shall be the **City's Chief of Police** or such person as may be designated by the City Manager. It shall be the Contractor's responsibility to assure that the Contract Officer is kept informed of the progress of the performance of the services and the Contractor shall refer any decisions which must be made by City to the Contract Officer. Unless otherwise specified herein, any approval of City required hereunder shall mean the approval of the Contract Officer. The Contract Officer shall have authority, if specified in writing by the City Manager, to sign all documents on behalf of the City required hereunder to carry out the terms of this Agreement.

4.4 Independent Contractor.

Neither the City nor any of its employees shall have any control over the manner, mode or means by which Contractor, its agents or employees, perform the services required herein, except as otherwise set forth herein. City shall have no voice in the selection, discharge, supervision or control of Contractor's employees, servants, representatives or agents, or in fixing their number, compensation or hours of service. Contractor shall perform all services required herein as an independent contractor of City and shall remain at all times as to City a wholly independent contractor with only such obligations as are consistent with that role. Contractor shall not at any time or in any manner represent that it or any of its agents or employees are agents or employees of City. City shall not in any way or for any purpose become or be deemed to be a partner of Contractor in its business or otherwise or a joint venturer or a member of any joint enterprise with Contractor.

4.5 Prohibition Against Subcontracting or Assignment.

The experience, knowledge, capability and reputation of Contractor, its principals and employees were a substantial inducement for the City to enter into this Agreement. Therefore, Contractor shall not contract with any other entity to perform in whole or in part the services required hereunder without the express written approval of the City. In addition, neither this Agreement nor any interest herein may be transferred, assigned, conveyed, hypothecated or encumbered voluntarily or by operation of law, whether for the benefit of creditors or otherwise, without the prior written approval of City. Transfers restricted hereunder shall include the transfer to any person or group of persons acting in concert of more than twenty five percent (25%) of the present ownership and/or control of Contractor, taking all transfers into account on a cumulative basis. In the event of any such unapproved transfer, including any bankruptcy proceeding, this Agreement shall be void. No approved transfer shall release the Contractor or any surety of Contractor of any liability hereunder without the express consent of City.

ARTICLE 5. INSURANCE AND INDEMNIFICATION

5.1 Insurance Coverages.

The Contractor shall procure and maintain, at its sole cost and expense, in a form and content satisfactory to City, during the entire term of this Agreement including any extension thereof, the following policies of insurance which shall cover all elected and appointed officers, employees and agents of City:

- (a) Commercial General Liability Insurance (Occurrence Form CG0001 or equivalent). A policy of comprehensive general liability insurance written on a per occurrence basis for bodily injury, personal injury and property damage. The policy of insurance shall be in an amount not less than \$2,000,000.00 per occurrence or if a general aggregate limit is used, then the general aggregate limit shall be twice the occurrence limit.
- (b) Worker's Compensation Insurance. A policy of worker's compensation insurance in such amount as will fully comply with the laws of the State of California and which shall indemnify, insure and provide legal defense for the Contractor against any loss, claim or damage arising from any injuries or occupational diseases occurring to any worker employed by or any persons retained by the Contractor in the course of carrying out the work or services contemplated in this Agreement.
- (c) Automotive Insurance (Form CA 0001 (Ed 1/87) including "any auto" and endorsement CA 0025 or equivalent). A policy of comprehensive automobile liability insurance written on a per occurrence for bodily injury and property damage in an amount not less than either (i) bodily injury liability limits of \$100,000 per person and \$300,000 per occurrence and property damage liability limits of \$150,000 per occurrence or (ii) combined single limit liability of \$1,000,000. Said policy shall include coverage for owned, non-owned, leased, hired cars, and any other automobile.
- (d) Professional Liability. Professional liability insurance appropriate to the Contractor's profession. This coverage may be written on a "claims made" basis, and must include coverage for contractual liability. The professional liability insurance required by this Agreement must be endorsed to be applicable to claims based upon, arising out of or related to services performed under this Agreement. The insurance must be maintained for at least 5 consecutive years following the completion of Contractor's services or the termination of this Agreement. During this additional 5-year period, Contractor shall annually and upon request of the City submit written evidence of this continuous coverage.
- (e) Subcontractors. Contractor shall include all subcontractors as insureds under its policies or shall furnish separate certificates and certified endorsements for each subcontractor. All coverages for subcontractors shall include all of the requirements stated herein.
- (f) Additional Insurance. Policies of such other insurance, as may be required in the Special Requirements in Exhibit "B".

5.2 General Insurance Requirements.

All of the above policies of insurance shall be primary insurance and shall name the City, its elected and appointed officers, employees and agents as additional insureds and any insurance maintained by City or its officers, employees or agents may apply in excess of, and not contribute with Contractor's insurance. The insurer is deemed hereof to waive all rights of subrogation and contribution it may have against the City, its officers, employees and agents and their respective insurers. Moreover, the insurance policy must specify that where the primary insured does not satisfy the self-insured retention, any additional insured may satisfy the self-insured retention.

All of said policies of insurance shall provide that said insurance may not be amended or cancelled by the insurer or any party hereto without providing ninety (90) days prior written notice by certified mail return receipt requested to the City. In the event any of said policies of insurance

are cancelled, the Contractor shall, prior to the cancellation date, submit new evidence of insurance in conformance with Section 5.1 to the Contract Officer.

No work or services under this Agreement shall commence until the Contractor has provided the City with Certificates of Insurance, additional insured endorsement forms or appropriate insurance binders evidencing the above insurance coverages and said Certificates of Insurance or binders are approved by the City. City reserves the right to inspect complete, certified copies of and endorsements to all required insurance policies at any time. Any failure to comply with the reporting or other provisions of the policies including breaches or warranties shall not affect coverage provided to City.

All certificates shall name the City as additional insured (providing the appropriate endorsement) and shall conform to the following "cancellation" notice:

CANCELLATION:

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATED THEREOF, THE ISSUING COMPANY SHALL MAIL NINETY (90)-DAY ADVANCE WRITTEN NOTICE TO CERTIFICATE HOLDER NAMED HEREIN.

[to be initialed]

Contractor Initials

City, its respective elected and appointed officers, directors, officials, employees, agents and volunteers are to be covered as additional insureds as respects: liability arising out of activities Contractor performs; products and completed operations of Contractor; premises owned, occupied or used by Contractor; or any automobiles owned, leased, hired or borrowed by Contractor. The coverage shall contain no special limitations on the scope of protection afforded to City, and their respective elected and appointed officers, officials, employees or volunteers. Contractor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

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 as respects City or its respective elected or appointed officers, officials, employees and volunteers or the Contractor shall procure a bond guaranteeing payment of losses and related investigations, claim administration, defense expenses and claims. The Contractor agrees that the requirement to provide insurance shall not be construed as limiting in any way the extent to which the Contractor may be held responsible for the payment of damages to any persons or property resulting from the Contractor's activities or the activities of any person or persons for which the Contractor is otherwise responsible nor shall it limit the Contractor's indemnification liabilities as provided in Section 5.3.

In the event the Contractor subcontracts any portion of the work in compliance with Section 4.5 of this Agreement, the contract between the Contractor and such subcontractor shall require the subcontractor to maintain the same policies of insurance that the Contractor is required to maintain pursuant to Section 5.1, and such certificates and endorsements shall be provided to City.

5.3 Indemnification.

To the full extent permitted by law, Contractor agrees to indemnify, defend and hold harmless the City, its officers, employees and agents ("Indemnified Parties") against, and will hold and save them and each of them harmless from, any and all actions, either judicial, administrative, arbitration or regulatory claims, damages to persons or property, losses, costs, penalties, obligations, errors, omissions or liabilities whether actual or threatened (herein "claims or liabilities") that may be asserted or claimed by any person, firm or entity arising out of or in connection with the negligent performance of the work, operations or activities provided herein of Contractor, its officers, employees, agents, subcontractors, or invitees, or any individual or entity for which Contractor is legally liable ("indemnitors"), or arising from Contractor's or indemnitors' reckless or willful misconduct, or arising from Contractor's or indemnitors' negligent performance of or failure to perform any term, provision, covenant or condition of this Agreement, and in connection therewith:

- (a) Contractor will defend any action or actions filed in connection with any of said claims or liabilities and will pay all costs and expenses, including legal costs and attorneys' fees incurred in connection therewith;
- (b) Contractor will promptly pay any judgment rendered against the City, its officers, agents or employees for any such claims or liabilities arising out of or in connection with the negligent performance of or failure to perform such work, operations or activities of Contractor hereunder; and Contractor agrees to save and hold the City, its officers, agents, and employees harmless therefrom;
- (c) In the event the City, its officers, agents or employees is made a party to any action or proceeding filed or prosecuted against Contractor for such damages or other claims arising out of or in connection with the negligent performance of or failure to perform the work, operation or activities of Contractor hereunder, Contractor agrees to pay to the City, its officers, agents or employees, any and all costs and expenses incurred by the City, its officers, agents or employees in such action or proceeding, including but not limited to, legal costs and attorneys' fees.

Contractor shall incorporate similar indemnity agreements with its subcontractors and if it fails to do so Contractor shall be fully responsible to indemnify City hereunder therefore, and failure of City to monitor compliance with these provisions shall not be a waiver hereof. This indemnification includes claims or liabilities arising from any negligent or wrongful act, error or omission, or reckless or willful misconduct of Contractor in the performance of professional services hereunder. The provisions of this Section do not apply to claims or liabilities occurring as a result of City's sole negligence or willful acts or omissions, but, to the fullest extent permitted by law, shall apply to claims and liabilities resulting in part from City's negligence, except that design professionals' indemnity hereunder shall be limited to claims and liabilities arising out of the negligence, recklessness or willful misconduct of the design professional. The indemnity obligation shall be binding on successors and assigns of Contractor and shall survive termination of this Agreement.

5.4 Sufficiency of Insurer.

Insurance required by this Agreement shall be satisfactory only if issued by companies qualified to do business in California, rated "A" or better in the most recent edition of Best Rating

Guide, The Key Rating Guide or in the Federal Register, and only if they are of a financial category Class VII or better, unless such requirements are waived by the Risk Manager of the City ("Risk Manager") due to unique circumstances. If this Agreement continues for more than 3 years duration, or in the event the risk manager determines that the work or services to be performed under this Agreement creates an increased or decreased risk of loss to the City, the Contractor agrees that the minimum limits of the insurance policies may be changed accordingly upon receipt of written notice from the Risk Manager.

ARTICLE 6. RECORDS, REPORTS, AND RELEASE OF INFORMATION

6.1 Records.

Contractor shall keep, and require subcontractors to keep, such ledgers, books of accounts, invoices, vouchers, canceled checks, reports, studies or other documents relating to the disbursements charged to City and services performed hereunder (the "books and records"), as shall be necessary to perform the services required by this Agreement and enable the Contract Officer to evaluate the performance of such services. Any and all such documents shall be maintained in accordance with generally accepted accounting principles and shall be complete and detailed. The Contract Officer shall have full and free access to such books and records at all times during normal business hours of City, including the right to inspect, copy, audit and make records and transcripts from such records. Such records shall be maintained for a period of three (3) years following completion of the services hereunder, and the City shall have access to such records in the event any audit is required. In the event of dissolution of Contractor's business, custody of the books and records may be given to City, and access shall be provided by Contractor's successor in interest. Notwithstanding the above, the Contractor shall fully cooperate with the City in providing access to the books and records if a public records request is made and disclosure is required by law including but not limited to the California Public Records Act.

6.2 Reports.

Contractor shall periodically prepare and submit to the Contract Officer such reports concerning the performance of the services required by this Agreement as the Contract Officer shall require. Contractor hereby acknowledges that the City is greatly concerned about the cost of work and services to be performed pursuant to this Agreement. For this reason, Contractor agrees that if Contractor becomes aware of any facts, circumstances, techniques, or events that may or will materially increase or decrease the cost of the work or services contemplated herein or, if Contractor is providing design services, the cost of the project being designed, Contractor shall promptly notify the Contract Officer of said fact, circumstance, technique or event and the estimated increased or decreased cost related thereto and, if Contractor is providing design services, the estimated increased or decreased cost estimate for the project being designed.

6.3 Ownership of Documents.

All drawings, specifications, maps, designs, photographs, studies, surveys, data, notes, computer files, reports, records, documents and other materials (the "documents and materials") prepared by Contractor, its employees, subcontractors and agents in the performance of this Agreement shall be the property of City and shall be delivered to City upon request of the Contract Officer or upon the termination of this Agreement, and Contractor shall have no claim for further employment or additional compensation as a result of the exercise by City of its full rights of ownership use, reuse, or assignment of the documents and materials hereunder. Any use, reuse or

assignment of such completed documents for other projects and/or use of uncompleted documents without specific written authorization by the Contractor will be at the City's sole risk and without liability to Contractor, and Contractor's guarantee and warranties shall not extend to such use, reuse or assignment. Contractor may retain copies of such documents for its own use. Contractor shall have the right to use the concepts embodied therein. All subcontractors shall provide for assignment to City of any documents or materials prepared by them, and in the event Contractor fails to secure such assignment, Contractor shall indemnify City for all damages resulting therefrom. Moreover, Contractor with respect to any documents and materials that may qualify as "works made for hire" as defined in 17 U.S.C. § 101, such documents and materials are hereby deemed "works made for hire" for the City.

6.4 Confidentiality and Release of Information.

(a) All information gained or work product produced by Contractor in performance of this Agreement shall be considered confidential, unless such information is in the public domain or already known to Contractor. Contractor shall not release or disclose any such information or work product to persons or entities other than City without prior written authorization from the Contract Officer.

(b) Contractor, its officers, employees, agents or subcontractors, shall not, without prior written authorization from the Contract Officer or unless requested by the City Attorney, voluntarily provide documents, declarations, letters of support, testimony at depositions, response to interrogatories or other information concerning the work performed under this Agreement. Response to a subpoena or court order shall not be considered "voluntary" provided Contractor gives City notice of such court order or subpoena.

(c) If Contractor, or any officer, employee, agent or subcontractor of Contractor, provides any information or work product in violation of this Agreement, then City shall have the right to reimbursement and indemnity from Contractor for any damages, costs and fees, including attorneys fees, caused by or incurred as a result of Contractor's conduct.

(d) Contractor shall promptly notify City should Contractor, its officers, employees, agents or subcontractors be served with any summons, complaint, subpoena, notice of deposition, request for documents, interrogatories, request for admissions or other discovery request, court order or subpoena from any party regarding this Agreement and the work performed there under. City retains the right, but has no obligation, to represent Contractor or be present at any deposition, hearing or similar proceeding. Contractor agrees to cooperate fully with City and to provide City with the opportunity to review any response to discovery requests provided by Contractor. However, this right to

review any such response does not imply or mean the right by City to control, direct, or rewrite said response.

ARTICLE 7. ENFORCEMENT OF AGREEMENT AND TERMINATION

7.1 California Law.

This Agreement shall be interpreted, construed and governed both as to validity and to performance of the parties in accordance with the laws of the State of California. Legal actions concerning any dispute, claim or matter arising out of or in relation to this Agreement shall be instituted in the Superior Court of the County of Los Angeles, State of California, or any other appropriate court in such county, and Contractor covenants and agrees to submit to the personal jurisdiction of such court in the event of such action. In the event of litigation in a U.S. District Court, venue shall lie exclusively in the Central District of California, in the County of Los Angeles, State of California.

7.2 Disputes; Default.

In the event that Contractor is in default under the terms of this Agreement, the City shall not have any obligation or duty to continue compensating Contractor for any work performed after the date of default. Instead, the City may give notice to Contractor of the default and the reasons for the default. The notice shall include the timeframe in which Contractor may cure the default. This timeframe is presumptively thirty (30) days, but may be extended, though not reduced, if circumstances warrant. During the period of time that Contractor is in default, the City shall hold all invoices and shall, when the default is cured, proceed with payment on the invoices. In the alternative, the City may, in its sole discretion, elect to pay some or all of the outstanding invoices during the period of default. If Contractor does not cure the default, the City may take necessary steps to terminate this Agreement under this Article. Any failure on the part of the City to give notice of the Contractor's default shall not be deemed to result in a waiver of the City's legal rights or any rights arising out of any provision of this Agreement.

7.3 Retention of Funds.

Contractor hereby authorizes City to deduct from any amount payable to Contractor (whether or not arising out of this Agreement) (i) any amounts the payment of which may be in dispute hereunder or which are necessary to compensate City for any losses, costs, liabilities, or damages suffered by City, and (ii) all amounts for which City may be liable to third parties, by reason of Contractor's acts or omissions in performing or failing to perform Contractor's obligation under this Agreement. In the event that any claim is made by a third party, the amount or validity of which is disputed by Contractor, or any indebtedness shall exist which shall appear to be the basis for a claim of lien, City may withhold from any payment due, without liability for interest because of such withholding, an amount sufficient to cover such claim. The failure of City to exercise such right to deduct or to withhold shall not, however, affect the obligations of the Contractor to insure, indemnify, and protect City as elsewhere provided herein.

7.4 Waiver.

Waiver by any party to this Agreement of any term, condition, or covenant of this Agreement shall not constitute a waiver of any other term, condition, or covenant. Waiver by any party of any breach of the provisions of this Agreement shall not constitute a waiver of any other

provision or a waiver of any subsequent breach or violation of any provision of this Agreement. Acceptance by City of any work or services by Contractor shall not constitute a waiver of any of the provisions of this Agreement. No delay or omission in the exercise of any right or remedy by a non-defaulting party on any default shall impair such right or remedy or be construed as a waiver. Any waiver by either party of any default must be in writing and shall not be a waiver of any other default concerning the same or any other provision of this Agreement.

7.5 Rights and Remedies are Cumulative.

Except with respect to rights and remedies expressly declared to be exclusive in this Agreement, the rights and remedies of the parties are cumulative and the exercise by either party 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 other party.

7.6 Legal Action.

In addition to any other rights or remedies, either party may take legal action, in law or in equity, to cure, correct or remedy any default, to recover damages for any default, to compel specific performance of this Agreement, to obtain declaratory or injunctive relief, or to obtain any other remedy consistent with the purposes of this Agreement. Notwithstanding any contrary provision herein, Contractor shall file a statutory claim pursuant to Government Code Sections 905 et seq. and 910 et seq., in order to pursue a legal action under this Agreement.

7.7 Termination Prior to Expiration of Term.

This Section shall govern any termination of this Contract except as specifically provided in the following Section for termination for cause. The City reserves the right to terminate this Contract at any time, with or without cause, upon thirty (30) days' written notice to Contractor, except that where termination is due to the fault of the Contractor, the period of notice may be such shorter time as may be determined by the Contract Officer. In addition, the Contractor reserves the right to terminate this Contract at any time, with or without cause, upon sixty (60) days' written notice to City, except that where termination is due to the fault of the City, the period of notice may be such shorter time as the Contractor may determine. Upon receipt of any notice of termination, Contractor shall immediately cease all services hereunder except such as may be specifically approved by the Contract Officer. Except where the Contractor has initiated termination, the Contractor shall be entitled to compensation for all services rendered prior to the effective date of the notice of termination and for any services authorized by the Contract Officer thereafter in accordance with the Schedule of Compensation or such as may be approved by the Contract Officer, except as provided in Section 7.3. In the event the Contractor has initiated termination, the Contractor shall be entitled to compensation only for the reasonable value of the work product actually produced hereunder. In the event of termination without cause pursuant to this Section, the terminating party need not provide the non-terminating party with the opportunity to cure pursuant to Section 7.2.

7.8 Termination for Default of Contractor.

If termination is due to the failure of the Contractor to fulfill its obligations under this Agreement, City may, after compliance with the provisions of Section 7.2, take over the work and prosecute the same to completion by contract or otherwise, and the Contractor shall be liable to

the extent that the total cost for completion of the services required hereunder exceeds the compensation herein stipulated (provided that the City shall use reasonable efforts to mitigate such damages), and City may withhold any payments to the Contractor for the purpose of set-off or partial payment of the amounts owed the City as previously stated.

7.9 Attorneys' Fees.

If either party to this Agreement is required to initiate or defend or made a party to any action or proceeding in any way connected with this Agreement, the prevailing party in such action or proceeding, in addition to any other relief which may be granted, whether legal or equitable, shall be entitled to reasonable attorney's fees. Attorney's fees shall include attorney's fees on any appeal, and in addition a party entitled to attorney's fees shall be entitled to all other reasonable costs for investigating such action, taking depositions and discovery and all other necessary costs the court allows which are incurred in such litigation. All such fees shall be deemed to have accrued on commencement of such action and shall be enforceable whether or not such action is prosecuted to judgment.

ARTICLE 8. CITY OFFICERS AND EMPLOYEES: NON-DISCRIMINATION

8.1 Non-liability of City Officers and Employees.

No officer or employee of the City shall be personally liable to the Contractor, or any successor in interest, in the event of any default or breach by the City or for any amount which may become due to the Contractor or to its successor, or for breach of any obligation of the terms of this Agreement.

8.2 Conflict of Interest.

Contractor covenants that neither it, nor any officer or principal of its firm, has or shall acquire any interest, directly or indirectly, which would conflict in any manner with the interests of City or which would in any way hinder Contractor's performance of services under this Agreement. Contractor further covenants that in the performance of this Agreement, no person having any such interest shall be employed by it as an officer, employee, agent or subcontractor without the express written consent of the Contract Officer. Contractor agrees to at all times avoid conflicts of interest or the appearance of any conflicts of interest with the interests of City in the performance of this Agreement.

No officer or employee of the City shall have any financial interest, direct or indirect, in this Agreement nor shall any such officer or employee participate in any decision relating to the Agreement which affects her/his financial interest or the financial interest of any corporation, partnership or association in which (s)he is, directly or indirectly, interested, in violation of any State statute or regulation. The Contractor warrants that it has not paid or given and will not pay or give any third party any money or other consideration for obtaining this Agreement.

8.3 Covenant Against Discrimination.

Contractor covenants that, by and for itself, its heirs, executors, assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of race, color, creed, religion, sex, gender, sexual

orientation, marital status, national origin, ancestry or other protected class in the performance of this Agreement. Contractor shall take affirmative action to insure that applicants are employed and that employees are treated during employment without regard to their race, color, creed, religion, sex, gender, sexual orientation, marital status, national origin, ancestry or other protected class.

8.4 Unauthorized Aliens.

Contractor hereby promises and agrees to comply with all of the provisions of the Federal Immigration and Nationality Act, 8 U.S.C.A. §§ 1101, *et seq.*, as amended, and in connection therewith, shall not employ unauthorized aliens as defined therein. Should Contractor so employ such unauthorized aliens for the performance of work and/or services covered by this Agreement, and should any liability or sanctions be imposed against City for such use of unauthorized aliens, Contractor hereby agrees to and shall reimburse City for the cost of all such liabilities or sanctions imposed, together with any and all costs, including attorneys' fees, incurred by City.

ARTICLE 9. MISCELLANEOUS PROVISIONS

9.1 Notices.

Any notice, demand, request, document, consent, approval, or communication either party desires or is required to give to the other party or any other person shall be in writing and either served personally or sent by prepaid, first-class mail, in the case of the City, to the City Manager and to the attention of the Contract Officer (with her/his name and City title), City of Irwindale, 5050 N. Irwindale Avenue, Irwindale, CA 91706 and in the case of the Contractor, to the person(s) at the address designated on the execution page of this Agreement. Either party may change its address by notifying the other party of the change of address in writing. Notice shall be deemed communicated at the time personally delivered or in seventy-two (72) hours from the time of mailing if mailed as provided in this Section.

9.2 Interpretation.

The terms of this Agreement shall be construed in accordance with the meaning of the language used and shall not be construed for or against either party by reason of the authorship of this Agreement or any other rule of construction which might otherwise apply.

9.3 Counterparts.

This Agreement may be executed in counterparts, each of which shall be deemed to be an original, and such counterparts shall constitute one and the same instrument.

9.4 Integration; Amendment.

This Agreement including the attachments hereto is the entire, complete and exclusive expression of the understanding of the parties. It is understood that there are no oral agreements between the parties hereto affecting this Agreement and this Agreement supersedes and cancels any and all previous negotiations, arrangements, agreements and understandings, if any, between the parties, and none shall be used to interpret this Agreement. No amendment to or modification of this Agreement shall be valid unless made in writing and approved by the Contractor and by the

City Council. The parties agree that this requirement for written modifications cannot be waived and that any attempted waiver shall be void.

9.5 Severability.

In the event that any one or more of the phrases, sentences, clauses, paragraphs, or sections contained in this Agreement shall be declared invalid or unenforceable by a valid judgment or decree of a court of competent jurisdiction, such invalidity or unenforceability shall not affect any of the remaining phrases, sentences, clauses, paragraphs, or sections of this Agreement which are hereby declared as severable and shall be interpreted to carry out the intent of the parties hereunder unless the invalid provision is so material that its invalidity deprives either party of the basic benefit of their bargain or renders this Agreement meaningless.

9.6 Warranty & Representation of Non-Collusion.

No official, officer, or employee of City has any financial interest, direct or indirect, in this Agreement, nor shall any official, officer, or employee of City participate in any decision relating to this Agreement which may affect his/her financial interest or the financial interest of any corporation, partnership, or association in which (s)he is directly or indirectly interested, or in violation of any corporation, partnership, or association in which (s)he is directly or indirectly interested, or in violation of any State or municipal statute or regulation. The determination of "financial interest" shall be consistent with State law and shall not include interests found to be "remote" or "noninterests" pursuant to Government Code Sections 1091 or 1091.5. Contractor warrants and represents that it has not paid or given, and will not pay or give, to any third party including, but not limited to, any City official, officer, or employee, any money, consideration, or other thing of value as a result or consequence of obtaining or being awarded any agreement. Contractor further warrants and represents that (s)he/it has not engaged in any act(s), omission(s), or other conduct or collusion that would result in the payment of any money, consideration, or other thing of value to any third party including, but not limited to, any City official, officer, or employee, as a result of consequence of obtaining or being awarded any agreement. Contractor is aware of and understands that any such act(s), omission(s) or other conduct resulting in such payment of money, consideration, or other thing of value will render this Agreement void and of no force or effect.

Contractor's Authorized Initials _____

9.7 Corporate Authority.

The persons executing this Agreement on behalf of the parties hereto warrant that (i) such party is duly organized and existing, (ii) they are duly authorized to execute and deliver this Agreement on behalf of said party, (iii) by so executing this Agreement, such party is formally bound to the provisions of this Agreement, and (iv) that entering into this Agreement does not violate any provision of any other Agreement to which said party is bound. This Agreement shall be binding upon the heirs, executors, administrators, successors and assigns of the parties.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date and year first-above written.

CITY:

CITY OF IRWINDALE

Julian A. Miranda
City Manager

ATTEST:

Laura Nieto
Chief Deputy City Clerk

APPROVED AS TO FORM:
ALESHIRE & WYNDER, LLP

Adrian Guerra
City Attorney

CONTRACTOR:

Jan's Towing Inc.

By: _____
Name:
Title:
Address:

By: _____
Name:
Title:
Address:

Two corporate officer signatures required when Contractor is a corporation, with one signature required from each of the following groups: 1) Chairman of the Board, President or any Vice President; and 2) Secretary, any Assistant Secretary, Chief Financial Officer or any Assistant Treasurer. **CONTRACTOR'S SIGNATURES SHALL BE DULY NOTARIZED, AND APPROPRIATE ATTESTATIONS SHALL BE INCLUDED AS MAY BE REQUIRED BY THE BYLAWS, ARTICLES OF INCORPORATION, OR OTHER RULES OR REGULATIONS APPLICABLE TO CONTRACTOR'S BUSINESS ENTITY.**

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

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

STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

On _____, 2023 before me, _____, personally appeared _____, proved to me on the basis of satisfactory evidence to be the person(s) whose names(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: _____

OPTIONAL

Though the data below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent reattachment of this form

CAPACITY CLAIMED BY SIGNER

DESCRIPTION OF ATTACHED DOCUMENT

☐ INDIVIDUAL
☐ CORPORATE OFFICER

TITLE(S)

TITLE OR TYPE OF DOCUMENT

☐ PARTNER(S) ☐ LIMITED
☐ ATTORNEY-IN-FACT ☐ GENERAL
☐ TRUSTEE(S)
☐ GUARDIAN/CONSERVATOR
☐ OTHER _____

NUMBER OF PAGES

DATE OF DOCUMENT

SIGNER IS REPRESENTING:

(NAME OF PERSON(S) OR ENTITY(IES))

SIGNER(S) OTHER THAN NAMED ABOVE

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

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

STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

On _____, 2023 before me, _____, personally appeared _____, proved to me on the basis of satisfactory evidence to be the person(s) whose names(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: _____

OPTIONAL

Though the data below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent reattachment of this form.

CAPACITY CLAIMED BY SIGNER		DESCRIPTION OF ATTACHED DOCUMENT
☐ INDIVIDUAL		_____
☐ CORPORATE OFFICER		TITLE OR TYPE OF DOCUMENT
_____	TITLE(S)	
☐ PARTNER(S)	☐ LIMITED	_____
	☐ GENERAL	NUMBER OF PAGES
☐ ATTORNEY-IN-FACT		_____
☐ TRUSTEE(S)		DATE OF DOCUMENT
☐ GUARDIAN/CONSERVATOR		
☐ OTHER _____		

SIGNER IS REPRESENTING:

(NAME OF PERSON(S) OR ENTITY(IES))

SIGNER(S) OTHER THAN NAMED ABOVE

EXHIBIT "A"

SCOPE OF SERVICES

I. SERVICES.

Pursuant to this Agreement, it shall be Contractor's responsibility to respond to all Irwindale Police Department (IPD) calls for services to tow, impound, store and recover vehicles as requested by IPD, including, but not limited to the following: vehicles involved in crimes, traffic accidents, operated in a manner that violate applicable laws; vehicles impounded for evidence or taken into custody by IPD; vehicles involved in accidents or disabled for other causes (when alternative towing is either not appropriate or not requested by the owner or Contractor of the vehicle); abandoned vehicles; and vehicles which are within the jurisdiction of IPD. Contractor shall further be responsible for the removal of debris resulting from accidents and the necessary work preliminary to towing, such as removal of vehicles from ditches, righting said vehicles, separating entangled vehicles, disconnecting drive shafts, and other such work as shall be required in connection with the towing operations. This Agreement does not apply to, nor does it authorize, tows at the request of the public in either emergency or non-emergency situations. Those requests made to IPD by a private citizen for undesignated towing services will be referred to the appropriate tow provider. Contractor recognizes there will be no charge for the towing of City vehicles either to the IPD, City Yard, or to a suitable local place of repair.

Contractor shall respond to calls generated by or through the IPD, 24 hours a day, seven days a week, within the maximum response time of 15 minutes. At the time of notification, Contractor will advise dispatch when Contractor(s) are unable to respond or meet the maximum response time. IPD will refer tow services to the Contractor, on the condition that the Contractor is available to perform the services set forth in its agreement within the City. This Agreement applies to calls originating from or generated by or through IPD (collectively referred to as "calls" or "response calls"). If the Contractor is not available at the time of the request or is unable to respond within the required time, the handling officer or field supervisor may request another towing service.

In providing these services in the field, Contractor, including its agents and employees, shall conduct themselves in a safe manner and shall never, in any circumstance, act in a manner that may cause a danger to themselves or those at the scene. In no way shall the Contractor, including its agents and employees, be in any relation of dependence upon officers in performing under this Agreement and takes special note that, pursuant to *Minch v. Department of California Highway Patrol* (2006) 140 Cal.App.4th 895, the City and its officers owe no duty of care to Contractor, or its agents and employees.

II. TOW TRUCK CLASSIFICATIONS.

A. Contractor shall equip, repair, and maintain all tow trucks covered under this Agreement in accordance with the provisions set forth in the California Vehicle Code; Title 13 of the California Code of Regulations, and consistent with industry standards and practices.

- 1) Notwithstanding Vehicle Code § 615, all tow trucks shall have recovery capabilities, wheel lift capabilities, and a boom meeting the specifications contained in this Agreement. For the purpose of this Agreement, a trailer for hire that is being used to transport a vehicle shall not qualify as a primary tow truck for rotation tow lists.
- 2) To the extent Contractor has a car carrier, such truck(s) is/are exempted from the recovery, wheel lift, and boom capability requirements.

B. A violation of the Gross Vehicle Weight Rating (GVWR), front axle weight rating, rear axle weight rating, maximum tire weight ratings, not maintaining 50% of the tow truck's unladen weight on the front axle when lifting/carrying a load or safe loading requirements of a tow truck shall be cause for suspension of a truck used in performing under this Agreement, and may be cause for termination of this Agreement.

C. There are four classes of tow trucks covered under this Agreement. In no case shall any tow truck be rated less than one-ton capacity. (The equipment specifications for each Class of tow truck are further described in Exhibit "A-1".)

- 1) Class A - Light Duty. Class A tow trucks shall have a manufacturer's GVWR of at least 14,000 to 19,500 pounds with wheel lift capabilities. In addition, the Contractor may have a car carrier. Class A equipment specifications are those established by the California Highway Patrol, as amended from time to time, and are available through the Traffic Office at the IPD.
- 2) Class B - Medium Duty. Class B tow trucks shall have a GVWR of at least 26,000 to 33,000 pounds. The truck shall be capable of providing air to the towed vehicle. Class B equipment specifications are those established by the California Highway Patrol, as amended from time to time, and are available at the Traffic Office of the IPD. Contractor may have a carrier, but the carrier must be an additional unit.
- 3) Class C - Heavy Duty. Class C tow trucks with three axles and a GVWR of at least 48,000 pounds. The truck shall be equipped with air brakes and must be capable of providing and maintaining continuous air to the towed vehicle. Class C equipment specifications are those established by the California Highway Patrol, as amended from time to time, and are available at the Traffic Office of the IPD.

- 4) Class D - Super Heavy Duty. Class D tow trucks with three axles and a GVWR of at least 54,000 pounds. The truck shall be equipped with air brakes and must be capable of providing and maintaining continuous air to the towed vehicle. If this class of tow truck is used exclusively for salvage and recovery operations, there is no requirement for providing and maintaining continuous air to the towed vehicle. Class D equipment specifications are those established by the California Highway Patrol, as amended from time to time, and are available at the Traffic Office of the IPD.
- 5) Contractor shall provide sufficient tow trucks in each of the foregoing classes of sufficient higher weight class tow truck substitutions to ensure that the Contractor responds to each call for service within the 15-minute maximum response time. It is understood that the response time for heavy-duty tow vehicles may reasonably exceed the maximum response time.

III. TOW TRUCK DRIVERS.

A. Minimum licensing. Contractor shall ensure that tow truck drivers ("Drivers") responding to calls initiated by IPD are qualified and competent employees of Contractor. Contractor shall ensure that the tow truck drivers are trained and proficient in the use of the tow truck and related equipment, including, but not limited to, the procedures necessary for the safe towing and recovery of the various types of vehicles serviced through IPD rotation. Tow truck drivers shall be at least 18 years old and possess the following minimum class driver license:

- 1) Class A tow truck - A valid Class C license, or a valid Class A license with valid medical certificate.
- 2) Class B tow truck - A valid Class C license for non-regulated vehicles, or a valid Class A license with valid medical certificate for regulated vehicles pursuant to Vehicle Code Section 34500.
- 3) Class C and D tow trucks - A valid Class A license with valid medical certificate.

B. Licensing. The Class A license must be endorsed to allow operation of special vehicle configurations and/or special cargoes as described in Exhibit "A-1" attached hereto and incorporated herein by reference.

C. Current Driver Listing. Contractor shall maintain a current list of drivers. Contractor shall provide a current list of his/her drivers to IPD upon implementation of this Agreement and not less than monthly thereafter. Contractor shall enroll/participate in the Department of Motor Vehicle's Pull Notice Program. Current and new employees shall submit their California driver's license numbers to the Contractor for input into Department of Motor Vehicle's Pull Notice Program. Contractor shall notify IPD upon any change in driver status, including the addition of any new driver(s), or the deletion of any driver(s) and revocation or

suspension of a driver's license. An updated list shall be provided IPD within seven (7) calendar days of any change in driver status. Contractor shall, at a minimum, maintain the following information for each employee, and provide the same to the Police Chief not less than monthly:

- a. Full name.
- b. Date of Birth.
- c. California driver license number and expiration date.
- d. Copy of valid medical certificate (if required).
- e. Job title/description.
- f. Current home address.
- g. Current home phone number.
- h. Type(s) of truck(s) driver has been trained and instructed to operate.
- i. Certificate showing driver is California Tow Truck Association (CTTA) trained.

D. Drivers' Appearance. Drivers must maintain a neat, clean, and professional appearance at all times. Drivers must wear a distinctive uniform bearing the Contractor's name clearly visible with shirttails tucked into the waistband of their pants.

E. Screening of Drivers. Prior to utilizing any driver to perform services under this Agreement, Contractor shall provide to the City's Chief of Police a confidential screening application for that prospective driver containing information requested by the Police Chief. The Chief of Police shall screen the prospective driver and approve or deny that driver for service under this Agreement. The Police Chief shall deny that driver if the Police Chief determines, in his sole discretion, that the prospective driver: a) provided false or misleading information on the application, b) has been convicted of any felony or any theft-related crime, or c) has failed or refused a drug test. Utilizing any driver before the Police Chief has completed the screening, or utilizing any driver who has been disapproved under this paragraph shall be grounds for suspending Contractor's participation in the tow rotation. If Contractor becomes aware of any driver being arrested or convicted for any felony or theft-related crime after approval by Police Chief, Contractor shall notify the City within 24 hours of such fact. The Chief of Police shall, in his sole discretion, require DOJ Live Scans for all drivers towing in the City. Contractor agrees to be responsible for all associated fees.

F. Removal of Drivers. At any time during the term of this Agreement, the Police Chief, in his or her sole discretion and with or without cause, may direct Contractor to no longer utilize a particular driver to perform services for the City under this Agreement. Such direction

shall be given by written notice to Contractor. Upon receipt of such notice, Contractor shall immediately discontinue use of the driver to perform services under this Agreement. Upon request by Contractor, the Police Chief may, in his or her sole discretion, provide written notice reinstituting the driver's eligibility to perform services for City.

IV. STORAGE OPERATIONS.

A. Contractor Responsibilities.

- 1) Contractor shall be responsible for all vehicles stored by Contractor, together with all accessories and equipment on each vehicle and all personal property in each vehicle. It shall be Contractor's responsibility to protect the stored equipment and property against loss or damage by fire, theft, weather or other causes. In the event of loss or damage to a stored vehicle, its accessories or equipment, or personal property contained in the vehicle, Contractor shall be responsible to the owner for all losses or damages. Personal property in vehicles stored by Contractor shall not be disposed of to defray any charges for the towing or storing of a vehicle; and, if not called for by the owner within thirty (30) days after date of notice by IPD of impound or storage, all such property shall be disposed of in accordance with all State, County and Municipal laws, statutes, ordinances and regulations, including without limitation, Vehicle Code § 10652 (reporting storage of vehicles over thirty (30) days).
- 2) Contractor shall take all reasonable precautions as directed by IPD to avoid damage to any evidence, such as fingerprints or stains. Vehicles taken into custody that involve evidence shall be stored in a secured, locked area which is inside a structure protected against entry by unauthorized persons. Contractor shall park all stored or impounded vehicles in such a manner as to prevent any damage while other vehicles are being moved or parked in the vicinity of said vehicles. Vehicles held for thirty (30) days shall be secured in an inside storage area.
- 3) Contractor must maintain a locked and secured storage area for vehicles held for police investigation or preservation of evidence ("Police Hold Vehicles"). Police Hold Vehicles shall be placed in a secured, enclosed, inside storage area ("Inside Storage Area"). The Police Hold Vehicles Inside Storage Area shall be capable of being secured in a manner acceptable by the Police Chief, or his/her designee, so as to assure the integrity and chain of custody of evidence or other information derived from a vehicle, which is subject to a police hold. Vehicles so stored shall not be moved, relocated, or physically touched by employees of Contractor except as authorized by the Police Chief, or his/her designee, and upon written authorization of City.

B. Storage Facilities.

- 1) Contractor shall maintain a vehicle storage area to impound towed vehicles large enough to accommodate all vehicles stored less than thirty (30) days. The primary vehicle storage area must have the legal storage capacity for eighty (80) vehicles.
- 2) All vehicles impounded or taken into custody by IPD must be stored by Contractor in areas that are enclosed by substantial wire fences or walls that have gates or doors which lock. Such fences or wall enclosures shall be not less than six (6) feet in height and shall have not less than one (1) gate or door of adequate width and height. A fence or wall enclosures shall be maintained and repaired in good condition throughout the term of this Agreement. Such fences or walls shall be repaired within twenty-four (24) hours of the time of any damage thereto to insure proper protection of the stored vehicles. The storage area must be paved with concrete or asphalt and maintained in good condition. The Police Chief, or his/her designee, may modify security requirements necessary to coincide with local conditions.
- 3) The storage facility shall be open and attended from 8:00 a.m. to 5:00 p.m., Monday through Friday, and shall have a responsible person on call on a twenty-four (24) hour basis, seven (7) days a week. The designated on-call person(s) shall be available to release vehicles between 5:00 p.m. and 8:00 a.m., Monday through Friday and a twenty-four (24) hour basis on Saturday, Sunday and holidays.

C. Location And Maintenance Of Storage Facility.

- 1) Contractor shall maintain and provide at least one place of business which is also the location of the storage facility for the vehicles stored under this Agreement within seven (10) miles from the boundaries of City, as may be modified from time to time. The business address and primary storage facility shall be located reasonably close to the police station, as determined by the Police Chief in his/her sole opinion.
- 2) The primary storage facility shall be at the same location as the business address. The vehicle and personal property shall be released at a primary storage facility upon request of the owner. Except with respect to Police Hold Vehicles, upon proper identification or proof of authority, the owner or his designated representative shall be permitted to remove personal effects from a stored vehicle without reference to any costs or charges pending because of towing or storage of said vehicle. Police Hold Vehicles shall not be released without the presentation of a fully executed property release form issued by the IPD, and upon compliance with this paragraph.

- 3) Contractor shall furnish the Police Chief, or his/her designee, with the addresses of all storage facilities whenever there is a change.
- 4) All storage facilities shall comply with all land use and zoning ordinances of the applicable jurisdiction in which they are located and all requirements and specifications described in this Agreement. All landscaped and paved areas of Contractor's premises shall be maintained in a neat and orderly condition with the landscape in a healthy condition and free of weeds and litter.
- 5) Any storage space shall be kept free of weeds, litter, debris, and any other materials or substances or any automotive parts unless said parts are stored as evidence for the Police Department. Contractor shall take all reasonable steps to prevent contamination of soil by gasoline, oil, grease, or any other hazardous substances as specified by Federal, State, County or Municipal regulations.
- 6) Contractor shall post not less than one outdoor sign at each storage facility, at or near the entrance thereof, identifying Contractor's name, telephone number, and the business telephone number of IPD.
- 7) Unless the vehicle is subject to a police hold, as described in Section (C)(1)(c), above, Contractor shall be able to properly conduct a lien sale as outlined in Vehicle Code § 22851.1.

V. INSPECTIONS.

IPD or, as authorized by IPD, the California Highway Patrol ("CHP") may conduct inspections at any time of all tow trucks to determine whether such tow trucks are safe and adequately equipped to perform the service required of such class level tow truck. IPD or CHP may also conduct inspections at any time of Contractor's business premises to determine whether the premises are secured and maintained according to the terms of this Agreement. IPD or CHP may conduct inspections without notice during normal business hours. Contractor shall not dispatch a tow truck (to a IPD call) that has not been inspected and approved by IPD or CHP. IPD or CHP shall inspect a tow truck within thirty (30) days of a request from Contractor. If Contractor fails an inspection for any reason (as determined in the reasonable discretion of IPD or CHP) is entitled to only one (1) re-inspection. Failure to pass the re-inspection may be cause for disqualification of the tow truck from use in performing this Agreement.

VI. BUSINESS RECORDS.

A. Contractor shall maintain records, at its place of business, relating to tow services furnished under this Agreement. At the request of IPD, Contractor shall furnish IPD a written list of all vehicles that have been towed by Contractor under this Agreement. Such list shall show the nature of service, description of vehicles, date of tow, tow truck drivers name, start time, end time, storage location of each vehicle, dates of storage, itemized costs of towing and storage, vehicle

make and model, license number and vehicle serial number. Upon request, Contractor shall furnish IPD with an itemized list of all charges incurred.

B. Contractor shall also maintain business records relating to personnel, insurance, personnel taxes, payroll, applicable operating authorities, local operating authorities, lien sale actions, auctions, FCC and any other necessary licensing (if any), and non-IPD tows.

C. IPD may inspect all Contractor records without notice during normal business hours. Contractor shall permit IPD to make copies of business records at their place of business, or to remove business records for the purpose of reproduction. IPD shall provide a receipt for any (original) records removed from the place of business. Records shall be maintained and available for inspection for a period of two years plus the current term of this Agreement. Failure of Contractor to comply with the records requirement shall be cause for termination of this Agreement.

D. For purposes of audit by the City, Contractor shall also keep accurate records of all gross receipts earned as a result of the business conducted under the Agreement, excepting therefrom all sales and excise taxes. Receipts shall be issued to all customers. The records must be supported by source documents such as receipt slips, cash register tapes, invoices or other pertinent information. Contractor shall read and record the totals at the beginning and end of each calendar day. Such records must be available at all times and shall be subject to inspection, review and audit during the entire Agreement period by the Police Chief, or his/her designee, or City Finance Director or his representative. Such audits may be conducted at the discretion of the Police Chief, or his/her designee, or the Finance Director, either unannounced or by appointment. Contractor's failure to have records of all gross receipts immediately available for audit shall be cause for termination of this Agreement by City.

VII. CONDUCT AND DEMEANOR.

A. While involved in IPD requested tow operations, Contractor and/or its employees shall refrain from any act(s) of misconduct, to include, but not limited to, any of the following:

- 1) Rude or discourteous behavior.
- 2) Lack of service, selective service, or refusal to provide service which Contractor is/should be capable of performing.
- 3) Any act of sexual harassment or sexual impropriety.
- 4) Unsafe driving practices.
- 5) Exhibiting any objective symptoms of alcohol and/or drug use.
- 6) Appearing at the scene of a IPD tow call with the odor of an alcoholic beverage emitting from his/her breath. Contractor/tow truck driver shall submit to a preliminary alcohol-screening test upon demand of IPD.

B. Contractor shall not leave any tow site without cleaning the location sufficient to restore normal traffic patterns.

C. All complaints related to services under this Agreement received by IPD against Contractor (or its employees) will be accepted and investigated in a fair and impartial manner by IPD with the full cooperation of Contractor. Contractor will be notified of the results of any investigation before any action is taken.

VIII. COMPLIANCE WITH LAW.

A. Contractor, and its employees, shall, at all times, be knowledgeable of, and comply with, all Federal, State, and local laws and ordinances, which include, but are not limited to, those laws which are applicable to Contractor as promulgated by the California Department of Transportation, the California Highway Patrol, and industry practices endorsed by the California Tow Truck Association. Contractor shall retain an adequate number of trained and properly licensed and permitted (as required by Vehicle Code § 12520) personnel assigned to perform the work described in this Agreement.

- 1) In the event of a traffic violation of any kind by Contractor's tow truck driver(s) which is/are known by IPD, Contractor shall be advised of the violation(s) by IPD. Except as provided below, Contractor will be granted the opportunity to take necessary steps to ensure that the same or similar violation does not reoccur. Any subsequent traffic violation(s) may be cause for termination of this Agreement.
- b) Any traffic violation(s) chargeable as a felony, or a traffic violation involving drugs or alcohol (e.g., driving under the influence of drugs or alcohol) or driving on a suspended or revoked license, shall be cause for termination of this Agreement.

B. The provisions contained herein do not preclude IPD from taking appropriate enforcement or administrative action for any violations of law.

C. Any conviction of Contractor, or any of its agents, employees or officers, involving a stolen or embezzled vehicle, fraud related to the towing business, stolen or embezzled property, a crime of violence, a drug related offense, felony or misdemeanor driving while under the influence of alcohol and/or a drug, whether or not in connection with the performance of this Agreement or not, shall be cause for termination of this Agreement.

IX. INVENTORY OF VEHICLE CONTENTS.

A detailed written inventory of all personal property in any vehicle which is towed and stored or towed and impounded will be completed by the Police Department employee requesting Contractor's services, and the tow Contractor shall complete the appropriate section on the Police Department's form and shall sign said form. A copy of said signed form shall be given to the tow truck driver and shall be retained by Contractor. Whenever any item is removed from a stored

vehicle and taken to another place of storage, Contractor shall provide a receipt, with a copy placed in the stored vehicle and a copy given to the Police Department.

X. SERVICE COMPLAINTS.

Contractor shall post a notice in a conspicuous place at Contractor's place of business of a size which is at least 8 1/2" x 11" informing the public of the right to make complaints regarding service provided by Contractor, and shall include the name and location where complaints can be made to City. Contractor shall notify IPD, in writing, within seventy-two (72) hours of any complaints made to Contractor regarding the performance of service in connection with towing or storage, or concerning rates, charges of fees, or any claims, or any legal actions filed, delivered or served upon or instituted against Contractor or any of its agents, officers or employees.

XI. ADVERTISING.

Contractor shall not display any sign or engage in any advertisement indicating an official or unofficial connection with IPD or the Department of Motor Vehicles. Examples of prohibited signage include, without limitation, "Official IPD Tow," "Approved by IPD," "IPD Tow." The provisions under this Section shall not preclude the Police Chief, or his/her designee, from implementing a system to mark and identify particular tow trucks as having passed IPD inspection.

EXHIBIT "A-1"

EQUIPMENT SPECIFICATIONS AND USE REQUIREMENTS

I. GENERAL EQUIPMENT SPECIFICATIONS AND USE EQUIPMENT

- A. Tow Truck and Car Carrier Classifications: Tow truck and car carrier classifications are based on the truck chassis GVWR, and the classification system used by the American Trucking Association (ATA) and truck manufacturers.

ATA and Manufacturers Classification

- a. Class 3 - 10,000-14,000 lbs. GVWR
- b. Class 4 - 14,001-16,000 lbs. GVWR
- c. Class 5 - 16,001-19,500 lbs. GVWR
- d. Class 6 - 19,501-26,000 lbs. GVWR
- e. Class 7 - 26,001-33,000 lbs. GVWR
- f. Class 8 - 33,001 lbs.-or more GVWR

CHP Classification

- (Class A Tow Trucks)
- (Class A Tow Trucks)
- (Class A Tow Trucks)
- (Class B Tow Trucks)
- (Class B Tow Trucks)
- (Class B Tow Trucks)

- B. Equipment Limitations. All towing equipment, recovery equipment, and carrier ratings are based on structural factors only. Actual towing, carrying, and recovery capacity may be limited by the capacity of the chassis and the optional equipment selected.

C. Towing Limitations

- 1) The total weight of the truck, including the lifted load, shall fall within the GVWR and not exceed either the front axle weight ratings (FAWR) or rear axle weight ratings (RAWR).
- 2) The truck must meet all applicable state and/or federal standards.
- 3) The front axle load must be at least 50% of its normal or unladen weight after the load is lifted.

- D. Identification Labels. Each piece of towing equipment shall have a label or identification tag permanently affixed to the equipment in a prominent location to identify the manufacturer, serial number, model, and rated capacity.

- E. Recovery Equipment Rating. The basic performance rating of the recovery equipment is the weight the equipment can lift in a winching mode, when the boom is static at a 30 degree elevation with the load lines vertical and the lifting cables sharing the load equally, measured with a live load (weight or load cell).

- 1) The structural design of the recovery equipment must have a higher load capacity than the performance rating(s).

- 2) Winches shall conform to or exceed the specifications set forth by the Society of Automotive Engineers (SAE) Handbook, SAE J706.
 - 3) All ratings for cable and chain assemblies are for the undamaged assembly condition. All cable and chain assemblies should be the same type, construction, and rating as specified by the original equipment manufacturer (OEM) for the equipment.
- F. Safety Chains. Safety chains shall be rated at no less than the rating specified by the OEM.
- 1) Two safety chains shall be used for vehicles being towed. The safety chains shall be securely affixed to the truck bed frame or wrecker boom, independent of the towing sling, bar or hitch, wheel lift, or underlift towing equipment. The towed vehicle shall be secured to the towing equipment independent of the safety chains by either two chains or two straps.
 - 2) Vehicles being transported on slide back carriers shall be secured by four tie-down chains or straps independent of the winch or loading cable.
 - 3) All safety connections and attachments shall have a positive means of sufficient strength, to ensure that the safety connection or attachment cannot become disengaged while in transit.
- G. Control/Safety Labels. All controls shall be clearly marked to indicate proper operations, as well as any special warnings or cautions.
- H. Signs. All tow trucks shall display signs on both sides containing Contractor's company name, business address, and telephone number. The signs shall be permanently affixed and in compliance with the requirements of Section 27907 of the Vehicle Code.
- I. Wire Rope (Cable). Wire rope shall be maintained in good condition. Only wire rope with swaged ends, wedge locks, or braided ends, with metal sleeves in the loops, shall be approved for use as approved by the CHP. Wire rope is not in good condition when it is stranded, knotted, crushed, excessively rusty, kinked, badly worn, when there are 12 or more wires broken in lay length, or where there is other visible evidence of loss of strength.

II. TOW TRUCK CLASSIFICATIONS AND EQUIPMENT SPECIFICATIONS

A. Class A Tow Truck Minimum Equipment Specifications:

- 1) 10,000 pound GVWR chassis.
- 2) 4-ton recovery equipment rating.
- 3) Hydraulic or mechanical winch(es).

- 4) 100 ft. 3/8" x 19 cable or original equipment manufacturer's (OEM) specifications.
- 5) Tow chains, 5/16" alloy or OEM specifications, J/T hook assembly.
- 6) Safety chains, 5/16" alloy or OEM specifications.
- 7) Tow sling rating 3,000 pounds, when equipped.
- 8) Wheel lift safety straps or equivalent mechanical device.
- 9) All required wheel safety straps, or equivalent wheel retention device, tie-down straps, and safety chains shall be used during towing operations.
- 10) Tow dolly.
- 11) One 3-ton snatch block.
- 12) Wheel lift rating – retracted 3,000 pounds.

B. Class A Car Carrier - One Car Minimum Equipment Specifications

- 1) 10,000 pound GVWR chassis.
- 2) Hydraulic or mechanical winch.
- 3) 50 ft. 3/8" 6 x 19 cable or OEM specifications.
- 4) J/T hook loading bridle/chains.
- 5) Safety chains, 5/16" alloy or OEM specifications; four safety chains for the vehicle being transported.
- 6) All required tie-down straps and safety chains shall be used as required during towing operations.

C. Class A Car Carrier - Two Cars Minimum Equipment Specifications

- 1) 16,001 pound GVWR chassis.
- 2) Hydraulic or mechanical winch.
- 3) 50 ft. 3/8" 6 x 19 cable or OEM specifications.
- 4) J/T hook loading bridle/chains.
- 5) Safety chains 5/16" alloy or OEM specifications; four safety chains for the vehicle being transported and two safety chains for the vehicle being towed.
- 6) All required tie-down straps and safety chains shall be used during towing operations.

D. Class B Tow Truck Minimum Equipment Specifications

- 1) 19,501 pound GVWR chassis.
- 2) Air brakes or hydraulic w/air hookup package.
- 3) 14-ton recovery equipment rating.
- 4) Hydraulic or mechanical winch(es).
- 5) 150 ft. 7/16" 6 x 10 cable or OEM specifications.
- 6) Tow chains, 1/2" alloy or OEM specifications.
- 7) Safety chains, 1/2" alloy or OEM specifications.
- 8) Tow sling rating 7,000 pounds.
- 9) Two 8-ton snatch blocks.
- 10) Wheel lift safety straps or equivalent mechanical device.

- 11) All required wheel safety straps, or equivalent wheel retention device, tie-down straps, and safety chains shall be used during towing operations.
- 12) Wheel lift or under lift rating – retracted, 10,000 pounds.

E. Class B Car Carrier Minimum Equipment Specifications

- 1) 19,501 pound GVWR chassis.
- 2) Hydraulic or mechanical winch.
- 3) 50 ft. 3/8" 6 19 cable or OEM specifications.
- 4) J/T hook loading bridle/chains.
- 5) Safety chains, 5/16" alloy or OEM specifications; four safety chains for each vehicle being transported and two safety chains for the vehicle being towed.
- 6) All required tie-down straps and safety chains shall be used during towing operations.

F. Class C Tow Truck Minimum Equipment Specifications

- 1) 33,000 pound GVWR chassis.
- 2) Air brakes w/air hookup package and single control compressor.
- 3) 25-ton recovery equipment rating.
- 4) Hydraulic or mechanical winch(es).
- 5) 200 ft. 5/8" 6 x 19 cable or OEM specifications.
- 6) Tow chains, 5/8" alloy or OEM specifications.
- 7) Safety chains, 5/8" alloy or OEM specifications.
- 8) Tow sling rating 12,000 pounds.
- 9) Two 12 ton snatch blocks.
- 10) Under lift rating – retracted, 25,000 pounds.

G. Class D Tow Truck Minimum Equipment Specifications

- 1) 50,000 pound GVWR chassis.
- 2) Air brakes w/air hookup package.
- 3) 30-ton recovery equipment rating.
- 4) Hydraulic or mechanical winch(es).
- 5) 250 ft. 3/4" 6 x 19 cable or OEM specifications.
- 6) Tow chains, 5/8" alloy or OEM specifications.
- 7) Safety chains, 5/8" alloy or OEM specifications.
- 8) Tow sling rating 20,000 pounds.
- 9) Two 12-ton snatch blocks.
- 10) Under lift rating – retracted, 32,000 pounds.

III. AUXILIARY EQUIPMENT

A. Required Equipment All Classes

- 1) Extension - Brake and tail lamps.
- 2) Fire Extinguisher (Approved 4-B, C rating or better).
- 3) Flashlight.
- 4) Broom.
- 5) Shovel.
- 6) Wrecking bar (large pry bar).
- 7) Reflective triangles.
- 8) Equivalent of six 30-minute flares.
- 9) Covered trans can(s) with absorbent.
- 10) Shop rags and/or paper towels.
- 11) Shop to truck communications (C/B and cellular phones excluded).

B. Service and Other Equipment (For service calls, each tow truck shall be equipped with the following service equipment):

- 1) Adequate emergency supply of fuel in an approved container.
- 2) Booster battery or hot box starting system.
- 3) Hydraulic jack capable of handling passenger cars and light trucks.
- 4) Metric and standard lug wrenches.
- 5) Rubber mallet/hub cap tool.
- 6) Lockout tools.
- 7) Motorcycle straps (Class A only).
- 8) Sledge hammer.
- 9) Tool kit may include:
 - (a) Assorted open end wrenches; standard 1/4" - 7/8" and Metric, 6-19mm.
 - (b) Assorted screwdrivers; Straight blade, Phillips and Torx.
 - (c) Crescent wrench.
 - (d) Ball peen hammer.
 - (e) Pliers.
 - (f) Battery and terminal cleaning tools.
 - (g) Mechanic's wire.
 - (h) Plastic electrical tape/duct tape.
 - (i) Tire valve core tool.
 - (j) Miscellaneous fuses.
 - (k) Small pry bar.
 - (l) Socket Sets; 1/4" - 1" and 6-19 mm.
 - (m) Ratchet and extensions.

C. Class A Required Equipment

- 1) One 3-ton rated snatch block.
- 2) Towing sling - J/T hook tow chain assembly, a 4" x 4" x 48" and a 4" x 4" x 60" wooden crossbeam, a pair of spacer blocks, a steering wheel clamp, a towing dolly, and safety chains.
- 3) Wheel lift - Wheel safety straps or equivalent mechanical device, steering wheel clamp, towing dolly, and safety chains.
- 4) Car carrier - J/T Hook loading bridle, a 4" x 4" x 48" and 4" x 4" x 60" wooden crossbeam, a pair of spacer blocks, and two pairs of safety chains.

D. Class B Required Equipment

- 1) Towing sling - J/T hook tow chain assembly, a 4" x 4" x 48" and a 4" x 4" x 60" wooden crossbeam, a pair of spacer blocks, a steering wheel clamp, a towing dolly, and safety chains.
- 2) Wheel lift - Wheel safety straps or equivalent mechanical device, steering wheel clamp, towing dolly, and safety chains.
- 3) Truck hitch - Tow chain assembly, 4" x 4" x 60" and 6" x 6" x 60" wooden crossbeams (as necessary), aluminum tow angle(s), and safety chains.
- 4) Under lift - Assortment of lift forks/adapters, safety tie-down chains, and safety chains.
 - (a) Two 8-ton rated snatch blocks.
 - (b) Air hoses and necessary fittings to provide air to the towed vehicle.

E. Classes C and D Required Equipment

- 1) Towing sling - Tow chain assembly, 4" x 4" x 60" and 6" x 6" x 60" wooden crossbeam, a pair of spacer blocks, a steering wheel clamp, and safety chains.
- 2) Truck hitch - Tow chain assembly, 4" x 4" x 60" and 6" x 6" x 60" wooden crossbeams (as necessary), aluminum tow angle(s), and safety chains.
- 3) Under reach - Assortment of lift forks/adapters, safety tie-down chain(s), and safety chains.
 - (a) Steering wheel clamp.
 - (b) Two 12-ton rated snatch blocks.
 - (c) Air hoses and necessary fittings to provide air to the towed vehicle.

EXHIBIT "B"

SPECIAL REQUIREMENTS (Superseding Contract Boilerplate)

I. Section 2.1, "Contract Sum," is hereby amended and shall now read as follows:

"2.1 Contract Sum. Contractor shall receive no compensation from the City in connection with this Agreement. For the Services rendered pursuant to this Agreement, the Contractor shall be permitted to participate in the City's Rotation Tow Program, for which Contractor may become eligible to collect certain charges and fees for services rendered from the persons who receive those services. In no event shall Contractor be paid by, or become eligible for payment directly from, the City. The schedule of fees and charges, including those charges that must be collected by Contractor for the benefit of the City, are included in the "Schedule of Compensation" attached hereto as Exhibit "C" and incorporated herein by this reference. This Agreement further requires that Contractor shall attend all project meetings reasonably deemed necessary by the City, and Contractor shall not be entitled to any additional compensation for attending said meetings."

II. Section 2.2, "Method of Payment," is hereby amended and shall now read as follows:

"2.2 Method of Payment. Contractor understands and accepts that it is Contractor's obligation and sole responsibility to collect any of Contractor's fees for towing and storage including but not limited to, vehicles stored or impounded for State law violations, and any other fees provided for under this Agreement. Contractor shall not charge any fees in excess of the fees approved by the City Council. Contractor shall not collect or be entitled to any City vehicle release fees imposed by the City."

III. Section 2.3, "Reimbursable Expenses," is hereby deleted and is hereby replaced with the following section entitled "Franchise Fees" which shall read as follows:

"2.3 Franchise Fees. The Contractor shall pay a fee to the City in consideration for its permitting Contractor to participate in the Rotation Tow Program. Contractor shall pay City a monthly franchise fee ("Franchise Fee") of TWO THOUSAND TWO HUNDRED AND FIFTY DOLLARS (\$2,250) as compensation to provide services for the Rotational Tow Program. Payment of the Franchise Fee must be submitted to City within 15 days following the previous month. Failure to remit the fees in a timely manner is grounds for suspension and/or revocation of any award of Contract by City in its sole discretion. The purpose of the fee is to offset the City costs to monitor the Tow Rotation Program, periodically audit and inspect records, administrate complaints, and other administrative duties that otherwise would be borne entirely by the City. The amount of the Franchise Fee has been determined to not exceed the amount reasonably necessary to reimburse the City for its actual and reasonable costs incurred in connection with the

program. (Reference California Vehicle Code section 12110.) The Franchise Fee may be renegotiated annually between the City and the Contractor in good faith, as the City determines that adjustments of the fee are necessary, if actual costs for administration of the towing program exceeds or otherwise varies from the estimated costs upon which this Agreement is based.

IV. Section 2.4, "Invoices," is hereby deleted.

V. Section 2.5, "Waiver," is hereby deleted.

VI. Subsection d, "Professional Liability," of Section 5.1, "Insurance Coverages," is hereby deleted.

VII. Section 5.5, "Additional Insurance Requirements" is hereby added and shall read as follows:

"5.5 Additional Insurance Requirements. In addition to the requirements in Section 5.0 of this Agreement, Contractor shall maintain at least the following minimum levels of insurance from an insurance carrier admitted in California, in a form and content satisfactory to City:

(a) Commercial Business Automobile Liability as required by Vehicle Code § 16500.5. Bodily injury and property damage with a combined single limit of not less than \$1,000,000 for each class of tow trucks. These minimum standards are to include non-owned and hired auto coverage.

(b) On-Hook Coverage/Garage Keepers Legal Liability. Insuring the vehicle in tow with limits based on the size of the tow truck.

Class A tow truck	\$50,000
Class B tow truck	\$75,000
Class C tow truck	\$150,000
Class D tow truck	\$150,000

(c) Garage Liability insurance, including premises and operations coverage for bodily injury and property damage with a combined single limit of not less than \$1,000,000."

VIII. Section 7.3, "Retention of Funds," is hereby deleted.

IX. Section 7.8, "Termination for Default of Contractor," is hereby amended and shall now read as follows:

"7.8 Termination of Contractor With Cause or Removal from Rotation List. Contractor may be terminated/removed from the rotation list at any time with or without

cause by the City. If the Agreement is terminated with cause, the following provisions shall apply:

(a) The Police Chief, or his/her designee, shall be authorized to take action against Contractor for violations of this Agreement investigated and confirmed or sustained up to and including termination of this Agreement.

(b) Overcharging by Contractor shall be cause for termination of this Agreement in the sole discretion of the Police Chief, or his/her designee.

(c) Failure by Contractor to respond to calls as required, meet the Maximum Response Time requirements, meet the Average Response Time on a regular basis, or perform the required towing or service as required by this Agreement shall be cause for termination of this Agreement in the sole discretion of the Police Chief, or his/her designee.

(d) Failure of Contractor to maintain the minimum insurance requirements as set forth in the Agreement shall be cause for termination of this Agreement in the sole discretion of the Police Chief, or his/her designee.

(e) A violation of the Biennial Inspection of Terminals (BIT) Program requirements shall be cause for termination of this Agreement.

(f) Failure of Contractor, its employees, or its agents to maintain professional conduct becoming of a representative of the City, in the sole discretion of the Police Chief, shall be cause for termination of this Agreement.”

EXHIBIT "C"

SCHEDULE OF COMPENSATION

I. The approved rate structure for all towing, storage and related services requested by IPD as described under Section 2.3 Additional Services or for eligible requested services is described herein. Contractor agrees to perform the services described herein to become eligible to receive, as full payment for services rendered, the fees described herein. If Contractor charges rates above those approved by the City, Contractor shall be in violation of the Agreement and subject to termination.

A. RATES.

The towing and storage rates charged by Contractor shall not exceed the rates charged by the California Highway Patrol ("CHP") in Los Angeles County. Should there be a dispute regarding the fees and charges for towing and/or storage of vehicles or other charges, said dispute shall be decided by the Police Chief or his/her designee. Such decision by the Police Chief or his/her designee shall be final and binding upon Contractor; and Contractor shall not make any demand upon the owner of the vehicle for a sum in excess of the amount determined by the Police Chief or his/her designee. Contractor may request a rate increase if such increase is consistent with and does not exceed the rates charged in the CHP in Los Angeles County, however, any rate increase shall be subject to the approval of the City's Police Chief who may, in his sole discretion, approve or deny any request.

Owners of vehicles towed by order or request of the IPD are responsible for all services, whether regular or special, associated with the towing service. Contractor shall provide itemized bills, distinctively showing charges for all classifications of services, including the charges for late payment. Neither City nor IPD will be responsible or liable for any costs of towing services in the event that the vehicle owner refuses or is unable to pay for the services.

The following rate structure shall apply for all towing and storage services requested by City through IPD and shall be applicable for the term of the Agreement:

- 1) LIGHT DUTY TOWING RATE: \$175.00 PER HOUR
(1 Hour Minimum)

The base rate per tow shall apply to all towed passenger vehicles and trucks rated at less than 10,000 lbs. gross vehicle weight. This rate also applies to difficult removal work involving the removal of vehicles from deep ditches or flood control channels or burning apart of two entangled vehicles.

- 2) MEDIUM DUTY TOWING RATE: \$175.00 PER HOUR
(1 Hour Minimum)

The two (2) axle category shall apply to all towed vehicles with a rate capacity of 10,000 lbs. gross vehicle weight to, but not including, vehicles with 30,000 lbs. gross vehicle weight.

- 3) HEAVY DUTY TOWING RATE: \$175.00 PER HOUR
(1 Hour Minimum)

The three (3) axle hourly rate shall apply to all towed vehicles with a rate capacity of 30,000 pounds gross vehicle weight or more.

The hourly rate for medium and heavy duty towing (two and three axle) shall commence when the tow truck arrives on the scene and includes difficult removal work involving the removal of vehicles from deep ditches or flood control channels, burning apart two entangled vehicles, uprighting overturned vehicles, and the use of special equipment and preparation prior to towing.

- 4) CITY VEHICLE: NO CHARGE

Contractor agrees that it shall, at no charge, tow such City vehicles as may be requested by IPD from time to time.

- 5) STORAGE: (Per Day)
- | | |
|-------------------------------------|----------------------------------|
| (a) Automobiles | \$55.00 Per Day/Per Unit |
| (b) Motorcycles | \$55.00 Per Day/Per Unit |
| (c) Trucks, under twenty feet (20') | \$55.00 Per Day/Per Unit |
| (d) Trucks, over twenty feet (20') | \$45.00 - 55.00 Per Day/Per Unit |

The above standard rates apply per vehicle for storage per twenty-four hour period, or any portion thereof. Contractor shall free of charge tow all vehicles designated for sale in connection with an asset forfeiture proceeding.

- 6) LOCK-OUTS.

When requested by IPD to assist with a lock-out (e.g., with the use of a "slimjim" or similar device), Contractor may charge up to \$ 45.00 where no towing services are provided.

- 7) ADDITIONAL CONDITIONS:

(a) Above towing charges shall apply regardless of the location from which the tow is made or the location of the storage area or garage where the vehicle is delivered. Such towing charges shall include clearing and cleanup of accident site, as required by IPD.

(b) There shall be no additional charge for righting an overturned passenger car or light pickup truck, if towing is involved.

(c) There shall be no additional charge for disconnecting a drive shaft where required for towing.

(d) The service of reconnecting the drive shaft, in the event such reconnecting is necessary, shall be performed without additional charge.

B. POSTING RATE SCHEDULE.

1) POSTING RATE SCHEDULES: Contractor shall post and maintain a sign or signs which have received the approval of the Police Chief, or his/her designee, in a conspicuous place or places on Contractor's premises, in a location designated by the Police Chief, or his designee, which gives notice of:

(a) The approved Rate Schedule for towing and storage services under this Agreement, and

(b) The method of payment(s) which are acceptable, which include credit cards and U. S. currency, and

(c) The requirement stating that a written receipt shall be supplied by Contractor for amount of payment received, and

(d) The telephone number and address of the Police Chief, or his/her designee.

EXHIBIT "D"

SCHEDULE OF PERFORMANCE

I. TERM.

In accordance with Section 3.4 of this Agreement, and unless earlier terminated in accordance with Section 7.8 of this Agreement, this Agreement shall continue in full force and effect for a period of three (3) years from the date of this Agreement. The City shall have the option to extend this Agreement on or before the expiration, for up to two (2) one year periods, or any portion thereof. In the event the City exercises the option to extend, all terms shall remain the same, except that (i) the service charges (Exhibit "B") may be renegotiated between the City and Contractor in good faith, and (ii) the City may impose any additional conditions necessary to improve service to the public. If the City exercises its option(s) under this provision, Contractor understands and agrees that any additional conditions must be approved in writing by the City Council.

II. ROTATING CALL LIST.

A. City shall use its best efforts to assign requests for towing services to Contractor on a rotating basis between Contractor and all other towing companies holding tow franchises with the City. Each call for service will be considered one turn on the rotation, regardless of the number of vehicles towed from the scene, and the Contractor shall be moved to the bottom of the list. The Contractor will send the appropriate number of trucks to handle the call for service, unless unable to do so, in which case Section II.A.2 of this Exhibit "D" below shall apply. City, in its sole and absolute discretion, reserves the right to place a request for towing or storage services out of rotation under any of the following circumstances:

- 1) At the sole discretion of the Contract Administrator for Contractor's failure to perform or in the Contract Administrator's opinion that Contractor is unable to perform;
- 2) There is a multiple vehicle accident that exceeds the capacity of Contractor on-call at such time;
- 3) Contractor is unable to respond in a timely manner as set forth in Section III of this Exhibit "A" below;
- 4) Failure of Contractor to make any payments as required by this Agreement;
and/or
- 5) Failure of Contractor to remove an employee from his/her service of City calls after City requests the removal of said employee from servicing City's tow and/or storage requests.

B. City shall use its best efforts to assign requests for towing services in connection with the abandoned vehicle abatement program to Contractor on a rotating basis between Contractor and all other towing companies holding tow franchises with the City. Each call for

service will be considered one turn on the rotation and will be limited to one (1) towed vehicle per call. Upon completion of said towing services, Contractor shall be moved to the bottom of the list.

C. Subject to the power and authority of City, as provided by law and in accordance with this Agreement, City shall in all cases, in its sole and absolute discretion, determine the quantity, quality, and acceptability of the services provided under this Agreement. City shall, in its sole and absolute discretion, decide any questions that might arise relative to the fulfillment of this Agreement or to the obligations of the Contractor hereunder.

III. RESPONSE TIMES.

All services shall be performed in a timely manner, and in no event shall the level of service or response time fail to meet the following requirements.

A. MAXIMUM RESPONSE TIME FOR CRITICAL TOWS: Contractor shall respond to IPD calls for Critical tow circumstances (traffic collisions, impounds, hazards, road blockages) within fifteen (15) minutes from the time the Contractor receives the request to the time the tow vehicle arrives at the location from which the critical tow is to be made. In no event shall the response time exceed fifteen (15) minutes for a critical tow.

B. MAXIMUM RESPONSE TIME FOR NON-CRITICAL TOWS: In no event shall the response time exceed twenty (20) minutes for a non-critical tow. Notwithstanding the foregoing, if Contractor's dispatcher, at the time the call is placed, notifies IPD that a tow unit cannot respond within the maximum response time and gives, in the sole and absolute discretion of the Police Chief, or his/her designee, a reasonable cause therefore, which is beyond the control and without the fault or negligence of Contractor, then Contractor will not be deemed to have failed to respond to a call for service and the Police Chief, or his/her designee, shall have the right to contact another tow truck services company, and cancel the call for service.

C. AVERAGE RESPONSE TIME: The Contractor's response to calls from IPD for towing service shall not exceed an average of fifteen (15) minutes (for both critical and non-critical calls combined) from the time the Contractor received the request from IPD to the time the tow vehicle arrives at the location from which the tow is to be made. Said fifteen (15) minute average response time shall be computed based upon any randomly selected fifty (50) instances of calls for service. Contractor shall record pertinent times on calls received and dispatches to each tow unit by time clock method approved by the Police Chief, or his/her designee.

D. EXCUSED RESPONSE: The response time specified in this Agreement shall be extended because of any delays due to unforeseen causes beyond the control and without the fault or negligence of Contractor, including, but not restricted to, unusually severe weather, fires, earthquakes, floods, and/or acts of any governmental agency, including the City, if Contractor shall, within fifteen (15) minutes of the commencement of such delay, notify the Police Chief, or his/her designee, via telephone of the cause(s) of the delay.

The Police Chief, or his/her designee, shall ascertain the facts and the extent of the delay, and extend the time for performing the services for the period of the enforced delay when and if in the judgment of the Police Chief, or his/her designee, such delay is justified, and the

Police Chief's, or his/her designee's, determination shall be final and conclusive upon the parties to this Agreement.

E. FAILURE TO MEET RESPONSE TIMES. Failure to maintain, at all times, the Average Response Time or failure to meet the Maximum Response Time for Non-Critical Tows or the Critical Tow Time, on three or more occasions within any 365 day period, shall be a material default, constituting grounds for termination of this Agreement.

In addition, since the determination of actual damages for any such failure would be extremely difficult or impractical to determine, in the event of any such failure to meet the maximum response time for non-critical tows or the critical tow time, Contractor and its sureties shall be liable for and shall pay to the City the sum of Three Hundred Dollars (\$300) as liquidated damages for each fifteen (15) minutes of delay. Contractor shall be liable for \$300 in damages for any delay less than fifteen (15) minutes.

IV. CONTRACTOR RESPONSE TO CALLS.

A. Contractor shall respond to IPD calls 24 hours a day, seven (7) days a week, within the applicable maximum response time, as described above.

B. In responding to a IPD call, Contractor shall perform the towing or service required for which Contractor was called. This requirement may be waived by the IPD officer in charge, if the requested equipment is inadequate for the service to be performed.

C. Any failure(s) to (a) respond as required; (b) meet the maximum response time requirements; or (c) perform the required towing or service, shall constitute a default under this Agreement subject to termination.

AGREEMENT FOR CONTRACT SERVICES

By and Between

CITY OF IRWINDALE

and

Royal Coaches Auto Body and Towing

**AGREEMENT FOR CONTRACT SERVICES
BY AND BETWEEN THE CITY OF IRWINDALE AND**

THIS AGREEMENT FOR CONTRACT SERVICES (herein "Agreement") is made and entered into this ___ day of _____, 2023 by and between the City of Irwindale, a California municipal corporation ("City") and Royal Coaches Auto Body and Towing ("Contractor"). City and Contractor are sometimes hereinafter individually referred to as "Party" and hereinafter collectively referred to as the "Parties".

RECITALS

A. The City desires to provide its residents and businesses with the highest quality of vehicle towing and storage services when requested by the City of Irwindale Police Department ("IPD"); and

B. The City finds vehicle towing and storage services is best achieved by the granting of nonexclusive franchises to no more than two (2) vehicle towing and storage service providers since such nonexclusive franchises maximize the City's ability to regulate and oversee the quality of vehicle towing and storage services and to maintain uniform and consistent levels of services throughout the City, thus furthering the public health, safety, and well-being; and

C. Pursuant to Irwindale Municipal Code ("IMC") Chapter 3.44.090, City staff issued a Request for Proposals to identify the best qualified tow service vendors and Contractor, following submission of a proposal or bid for the performance of the services defined and described particularly in Article 1 of this Agreement, was selected by the City to perform those services; and

D. The IPD conducts the Rotation Tow Program in the City of Irwindale, whereby each Contractor who enters into a towing services agreement with the City is placed on a rotation tow listing with the IPD ("Rotational Tow Program"); and

E. This Agreement contains terms and conditions with which Contractor agrees to comply in order to participate in the Rotation Tow Program and be placed on the rotation tow listing with the IPD; and

F. Participation in the IPD Rotation Tow Program is voluntary; however, compliance with all terms and conditions of the Agreement is mandatory for all tow companies participating in the IPD Rotation Tow Program. Contractor, by agreeing to participate in the program, does not establish a contractual relationship with the IPD and is not acting as an agent for the IPD or the City when performing services under this Agreement; and

G. The City is authorized to enter into this Agreement pursuant to Section 608 of the City's Charter, which states that "franchises shall be granted by the City Council only in the time and manner, and for such purposes, as may be prescribed or authorized by the Constitution or by applicable laws of this State."

OPERATIVE PROVISIONS

NOW, THEREFORE, in consideration of the mutual promises and covenants made by the Parties and contained herein and other consideration, the value and adequacy of which are hereby acknowledged, the parties agree as follows:

ARTICLE 1. SERVICES OF CONTRACTOR

1.1 Scope of Services.

In compliance with all terms and conditions of this Agreement, the Contractor shall provide those services specified in the "Scope of Services" attached hereto as Exhibit "A" and incorporated herein by this reference, which may be referred to herein as the "services" or "work" hereunder. As a material inducement to the City entering into this Agreement, Contractor represents and warrants that it has the qualifications, experience, and facilities necessary to properly perform the services required under this Agreement in a thorough, competent, and professional manner, and is experienced in performing the work and services contemplated herein. Contractor shall at all times faithfully, competently and to the best of its ability, experience and talent, perform all services described herein. Contractor covenants that it shall follow the highest professional standards in performing the work and services required hereunder and that all materials will be both of good quality as well as fit for the purpose intended. For purposes of this Agreement, the phrase "highest professional standards" shall mean those standards of practice recognized by one or more first-class firms performing similar work under similar circumstances.

1.2 Contractor's Proposal.

The Scope of Service shall include the Contractor's scope of work or bid which shall be incorporated herein by this reference as though fully set forth herein. In the event of any inconsistency between the terms of such proposal and this Agreement, the terms of this Agreement shall govern.

1.3 Compliance with Law.

Contractor shall keep itself informed concerning, and shall render all services hereunder in accordance with, all ordinances, resolutions, statutes, rules, and regulations of the City and any Federal, State or local governmental entity having jurisdiction in effect at the time service is rendered.

1.4 Licenses, Permits, Fees and Assessments.

Contractor shall obtain at its sole cost and expense such licenses, permits and approvals as may be required by law for the performance of the services required by this Agreement. Contractor shall have the sole obligation to pay for any fees, assessments and taxes, plus applicable penalties and interest, which may be imposed by law and arise from or are necessary for the Contractor's performance of the services required by this Agreement, and shall indemnify, defend and hold harmless City, its officers, employees or agents of City, against any such fees, assessments, taxes, penalties or interest levied, assessed or imposed against City hereunder.

1.5 Familiarity with Work.

By executing this Agreement, Contractor warrants that Contractor (i) has thoroughly investigated and considered the scope of services to be performed, (ii) has carefully considered how the services should be performed, and (iii) fully understands the facilities, difficulties and restrictions attending performance of the services under this Agreement. If the services involve work upon any site, Contractor warrants that Contractor has or will investigate the site and is or will be fully acquainted with the conditions there existing, prior to commencement of services hereunder. Should the Contractor discover any latent or unknown conditions, which will materially affect the performance of the services hereunder, Contractor shall immediately inform the City of such fact and shall not proceed except at Contractor's risk until written instructions are received from the Contract Officer.

1.6 Care of Work.

The Contractor shall adopt reasonable methods during the life of the Agreement to furnish continuous protection to the work, and the equipment, materials, papers, documents, plans, studies and/or other components thereof to prevent losses or damages, and shall be responsible for all such damages, to persons or property, until acceptance of the work by City, except such losses or damages as may be caused by City's own negligence.

1.7 Further Responsibilities of Parties.

Both parties agree to use reasonable care and diligence to perform their respective obligations under this Agreement. Both parties agree to act in good faith to execute all instruments, prepare all documents and take all actions as may be reasonably necessary to carry out the purposes of this Agreement. Unless hereafter specified, neither party shall be responsible for the service of the other.

1.8 Additional Services.

City shall have the right at any time during the performance of the services, without invalidating this Agreement, to order extra work beyond that specified in the Scope of Services or make changes by altering, adding to or deducting from said work. No such extra work may be undertaken unless a written order is first given by the Contract Officer to the Contractor, incorporating therein any adjustment in (i) the Contract Sum for the actual costs of the extra work, and/or (ii) the time to perform this Agreement, which said adjustments are subject to the written approval of the Contractor. Any increase in compensation of up to ten percent (10%) of the Contract Sum or \$25,000, whichever is less; or, in the time to perform of up to one hundred eighty (180) days, may be approved by the Contract Officer. Any greater increases, taken either separately or cumulatively, must be approved by the City Council. It is expressly understood by Contractor that the provisions of this Section shall not apply to services specifically set forth in the Scope of Services. Contractor hereby acknowledges that it accepts the risk that the services to be provided pursuant to the Scope of Services may be more costly or time consuming than Contractor anticipates and that Contractor shall not be entitled to additional compensation therefor. City may in its sole and absolute discretion have similar work done by other contractors. No claims for an increase in the Contract Sum or time for performance shall be valid unless the procedures established in this Section are followed.

1.9 Special Requirements.

Additional terms and conditions of this Agreement, if any, which are made a part hereof are set forth in the "Special Requirements" attached hereto as Exhibit "B" and incorporated herein by this reference. In the event of a conflict between the provisions of Exhibit "B" and any other provisions of this Agreement, the provisions of Exhibit "B" shall govern.

ARTICLE 2. COMPENSATION AND METHOD OF PAYMENT.

2.1 Contract Sum.

Subject to any limitations set forth in this Agreement, City agrees to pay Contractor the amounts specified in the "Schedule of Compensation" attached hereto as Exhibit "C" and incorporated herein by this reference. The total compensation, including reimbursement for actual expenses, shall not exceed NOT APPLICABLE Dollars (\$N/A) (the "Contract Sum"), unless additional compensation is approved pursuant to Section 1.8.

2.2 Method of Compensation.

The method of compensation may include: (i) a lump sum payment upon completion; (ii) payment in accordance with specified tasks or the percentage of completion of the services, less contract retention; (iii) payment for time and materials based upon the Contractor's rates as specified in the Schedule of Compensation, provided that (a) time estimates are provided for the performance of sub tasks, (b) contract retention is maintained, and (c) the Contract Sum is not exceeded; or (iv) such other methods as may be specified in the Schedule of Compensation.

2.3 Reimbursable Expenses.

Compensation may include reimbursement for actual and necessary expenditures for reproduction costs, telephone expenses, and travel expenses approved by the Contract Officer in advance, or actual subcontractor expenses of an approved subcontractor pursuant to Section 4.5, and only if specified in the Schedule of Compensation. The Contract Sum shall include the attendance of Contractor at all project meetings reasonably deemed necessary by the City. Coordination of the performance of the work with City is a critical component of the services. If Contractor is required to attend additional meetings to facilitate such coordination, Contractor shall not be entitled to any additional compensation for attending said meetings.

2.4 Invoices.

Each month Contractor shall furnish to City an original invoice for all work performed and expenses incurred during the preceding month in a form approved by City's Director of Finance. By submitting an invoice for payment under this Agreement, Contractor is certifying compliance with all provisions of the Agreement. The invoice shall detail charges for all necessary and actual expenses by the following categories: labor (by sub-category), travel, materials, equipment, supplies, and sub-contractor contracts. Sub-contractor charges shall also be detailed by such categories. Contractor shall not invoice City for any duplicate services performed by more than one person.

City shall independently review each invoice submitted by the Contractor to determine whether the work performed and expenses incurred are in compliance with the provisions of this

Agreement. Except as to any charges for work performed or expenses incurred by Contractor which are disputed by City, or as provided in Section 7.3, City will use its best efforts to cause Contractor to be paid within forty-five (45) days of receipt of Contractor's correct and undisputed invoice; however, Contractor acknowledges and agrees that due to City warrant run procedures, the City cannot guarantee that payment will occur within this time period. In the event any charges or expenses are disputed by City, the original invoice shall be returned by City to Contractor for correction and resubmission. Review and payment by City for any invoice provided by the Contractor shall not constitute a waiver of any rights or remedies provided herein or any applicable law.

- 2.5 Waiver. Payment to Contractor for work performed pursuant to this Agreement shall not be deemed to waive any defects in work performed by Contractor.

ARTICLE 3. PERFORMANCE SCHEDULE

- 3.1 Time of Essence.

Time is of the essence in the performance of this Agreement.

- 3.2 Schedule of Performance.

Contractor shall commence the services pursuant to this Agreement upon receipt of a written notice to proceed and shall perform all services within the time period(s) established in the "Schedule of Performance" attached hereto as Exhibit "D" and incorporated herein by this reference. When requested by the Contractor, extensions to the time period(s) specified in the Schedule of Performance may be approved in writing by the Contract Officer but not exceeding one hundred eighty (180) days cumulatively.

- 3.3 Force Majeure.

The time period(s) specified in the Schedule of Performance for performance of the services rendered pursuant to this Agreement shall be extended because of any delays due to unforeseeable causes beyond the control and without the fault or negligence of the Contractor, including, but not restricted to, acts of God or of the public enemy, unusually severe weather, fires, earthquakes, floods, epidemics, quarantine restrictions, riots, strikes, freight embargoes, wars, litigation, and/or acts of any governmental agency, including the City, if the Contractor shall within ten (10) days of the commencement of such delay notify the Contract Officer in writing of the causes of the delay. The Contract Officer shall ascertain the facts and the extent of delay, and extend the time for performing the services for the period of the enforced delay when and if in the judgment of the Contract Officer such delay is justified. The Contract Officer's determination shall be final and conclusive upon the parties to this Agreement. In no event shall Contractor be entitled to recover damages against the City for any delay in the performance of this Agreement, however caused, Contractor's sole remedy being extension of the Agreement pursuant to this Section.

- 3.4 Term.

Unless earlier terminated in accordance with Article 7 of this Agreement, this Agreement shall continue in full force and effect until completion of the services but not exceeding three (3)

years from the date hereof, except as otherwise provided in the Schedule of Performance (Exhibit "D").

ARTICLE 4. COORDINATION OF WORK

4.1 Representatives and Personnel of Contractor.

The following principals of Contractor ("Principals") are hereby designated as being the principals and representatives of Contractor authorized to act in its behalf with respect to the work specified herein and make all decisions in connection therewith:

(Name)

(Title)

(Name)

(Title)

(Name)

(Title)

It is expressly understood that the experience, knowledge, capability and reputation of the foregoing principals were a substantial inducement for City to enter into this Agreement. Therefore, the foregoing principals shall be responsible during the term of this Agreement for directing all activities of Contractor and devoting sufficient time to personally supervise the services hereunder. All personnel of Contractor, and any authorized agents, shall at all times be under the exclusive direction and control of the Principals. For purposes of this Agreement, the foregoing Principals may not be replaced nor may their responsibilities be substantially reduced by Contractor without the express written approval of City. Additionally, Contractor shall utilize only competent personnel to perform services pursuant to this Agreement. Contractor shall make every reasonable effort to maintain the stability and continuity of Contractor's staff and subcontractors, if any, assigned to perform the services required under this Agreement. Contractor shall notify City of any changes in Contractor's staff and subcontractors, if any, assigned to perform the services required under this Agreement, prior to and during any such performance.

4.2 Status of Contractor.

Contractor shall have no authority to bind City in any manner, or to incur any obligation, debt or liability of any kind on behalf of or against City, whether by contract or otherwise, unless such authority is expressly conferred under this Agreement or is otherwise expressly conferred in writing by City. Contractor shall not at any time or in any manner represent that Contractor or any of Contractor's officers, employees, or agents are in any manner officials, officers, employees or agents of City. Neither Contractor, nor any of Contractor's officers, employees or agents, shall obtain any rights to retirement, health care or any other benefits which may otherwise accrue to City's employees. Contractor expressly waives any claim Contractor may have to any such rights.

4.3 Contract Officer.

The Contract Officer shall be the **City's Chief of Police** or such person as may be designated by the City Manager. It shall be the Contractor's responsibility to assure that the Contract Officer is kept informed of the progress of the performance of the services and the Contractor shall refer any decisions which must be made by City to the Contract Officer. Unless otherwise specified herein, any approval of City required hereunder shall mean the approval of the Contract Officer. The Contract Officer shall have authority, if specified in writing by the City Manager, to sign all documents on behalf of the City required hereunder to carry out the terms of this Agreement.

4.4 Independent Contractor.

Neither the City nor any of its employees shall have any control over the manner, mode or means by which Contractor, its agents or employees, perform the services required herein, except as otherwise set forth herein. City shall have no voice in the selection, discharge, supervision or control of Contractor's employees, servants, representatives or agents, or in fixing their number, compensation or hours of service. Contractor shall perform all services required herein as an independent contractor of City and shall remain at all times as to City a wholly independent contractor with only such obligations as are consistent with that role. Contractor shall not at any time or in any manner represent that it or any of its agents or employees are agents or employees of City. City shall not in any way or for any purpose become or be deemed to be a partner of Contractor in its business or otherwise or a joint venturer or a member of any joint enterprise with Contractor.

4.5 Prohibition Against Subcontracting or Assignment.

The experience, knowledge, capability and reputation of Contractor, its principals and employees were a substantial inducement for the City to enter into this Agreement. Therefore, Contractor shall not contract with any other entity to perform in whole or in part the services required hereunder without the express written approval of the City. In addition, neither this Agreement nor any interest herein may be transferred, assigned, conveyed, hypothecated or encumbered voluntarily or by operation of law, whether for the benefit of creditors or otherwise, without the prior written approval of City. Transfers restricted hereunder shall include the transfer to any person or group of persons acting in concert of more than twenty five percent (25%) of the present ownership and/or control of Contractor, taking all transfers into account on a cumulative basis. In the event of any such unapproved transfer, including any bankruptcy proceeding, this Agreement shall be void. No approved transfer shall release the Contractor or any surety of Contractor of any liability hereunder without the express consent of City.

ARTICLE 5. INSURANCE AND INDEMNIFICATION

5.1 Insurance Coverages.

The Contractor shall procure and maintain, at its sole cost and expense, in a form and content satisfactory to City, during the entire term of this Agreement including any extension thereof, the following policies of insurance which shall cover all elected and appointed officers, employees and agents of City:

- (a) Commercial General Liability Insurance (Occurrence Form CG0001 or equivalent). A policy of comprehensive general liability insurance written on a per occurrence basis for bodily injury, personal injury and property damage. The policy of insurance shall be in an amount not less than \$2,000,000.00 per occurrence or if a general aggregate limit is used, then the general aggregate limit shall be twice the occurrence limit.
- (b) Worker's Compensation Insurance. A policy of worker's compensation insurance in such amount as will fully comply with the laws of the State of California and which shall indemnify, insure and provide legal defense for the Contractor against any loss, claim or damage arising from any injuries or occupational diseases occurring to any worker employed by or any persons retained by the Contractor in the course of carrying out the work or services contemplated in this Agreement.
- (c) Automotive Insurance (Form CA 0001 (Ed 1/87) including "any auto" and endorsement CA 0025 or equivalent). A policy of comprehensive automobile liability insurance written on a per occurrence for bodily injury and property damage in an amount not less than either (i) bodily injury liability limits of \$100,000 per person and \$300,000 per occurrence and property damage liability limits of \$150,000 per occurrence or (ii) combined single limit liability of \$1,000,000. Said policy shall include coverage for owned, non-owned, leased, hired cars, and any other automobile.
- (d) Professional Liability. Professional liability insurance appropriate to the Contractor's profession. This coverage may be written on a "claims made" basis, and must include coverage for contractual liability. The professional liability insurance required by this Agreement must be endorsed to be applicable to claims based upon, arising out of or related to services performed under this Agreement. The insurance must be maintained for at least 5 consecutive years following the completion of Contractor's services or the termination of this Agreement. During this additional 5-year period, Contractor shall annually and upon request of the City submit written evidence of this continuous coverage.
- (e) Subcontractors. Contractor shall include all subcontractors as insureds under its policies or shall furnish separate certificates and certified endorsements for each subcontractor. All coverages for subcontractors shall include all of the requirements stated herein.
- (f) Additional Insurance. Policies of such other insurance, as may be required in the Special Requirements in Exhibit "B".

5.2 General Insurance Requirements.

All of the above policies of insurance shall be primary insurance and shall name the City, its elected and appointed officers, employees and agents as additional insureds and any insurance maintained by City or its officers, employees or agents may apply in excess of, and not contribute with Contractor's insurance. The insurer is deemed hereof to waive all rights of subrogation and contribution it may have against the City, its officers, employees and agents and their respective insurers. Moreover, the insurance policy must specify that where the primary insured does not satisfy the self-insured retention, any additional insured may satisfy the self-insured retention.

All of said policies of insurance shall provide that said insurance may not be amended or cancelled by the insurer or any party hereto without providing ninety (90) days prior written notice by certified mail return receipt requested to the City. In the event any of said policies of insurance

are cancelled, the Contractor shall, prior to the cancellation date, submit new evidence of insurance in conformance with Section 5.1 to the Contract Officer.

No work or services under this Agreement shall commence until the Contractor has provided the City with Certificates of Insurance, additional insured endorsement forms or appropriate insurance binders evidencing the above insurance coverages and said Certificates of Insurance or binders are approved by the City. City reserves the right to inspect complete, certified copies of and endorsements to all required insurance policies at any time. Any failure to comply with the reporting or other provisions of the policies including breaches or warranties shall not affect coverage provided to City.

All certificates shall name the City as additional insured (providing the appropriate endorsement) and shall conform to the following "cancellation" notice:

CANCELLATION:

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATED THEREOF, THE ISSUING COMPANY SHALL MAIL NINETY (90)-DAY ADVANCE WRITTEN NOTICE TO CERTIFICATE HOLDER NAMED HEREIN.

[to be initialed]

Contractor Initials

City, its respective elected and appointed officers, directors, officials, employees, agents and volunteers are to be covered as additional insureds as respects: liability arising out of activities Contractor performs; products and completed operations of Contractor; premises owned, occupied or used by Contractor; or any automobiles owned, leased, hired or borrowed by Contractor. The coverage shall contain no special limitations on the scope of protection afforded to City, and their respective elected and appointed officers, officials, employees or volunteers. Contractor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

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 as respects City or its respective elected or appointed officers, officials, employees and volunteers or the Contractor shall procure a bond guaranteeing payment of losses and related investigations, claim administration, defense expenses and claims. The Contractor agrees that the requirement to provide insurance shall not be construed as limiting in any way the extent to which the Contractor may be held responsible for the payment of damages to any persons or property resulting from the Contractor's activities or the activities of any person or persons for which the Contractor is otherwise responsible nor shall it limit the Contractor's indemnification liabilities as provided in Section 5.3.

In the event the Contractor subcontracts any portion of the work in compliance with Section 4.5 of this Agreement, the contract between the Contractor and such subcontractor shall require the subcontractor to maintain the same policies of insurance that the Contractor is required to maintain pursuant to Section 5.1, and such certificates and endorsements shall be provided to City.

5.3 Indemnification.

To the full extent permitted by law, Contractor agrees to indemnify, defend and hold harmless the City, its officers, employees and agents ("Indemnified Parties") against, and will hold and save them and each of them harmless from, any and all actions, either judicial, administrative, arbitration or regulatory claims, damages to persons or property, losses, costs, penalties, obligations, errors, omissions or liabilities whether actual or threatened (herein "claims or liabilities") that may be asserted or claimed by any person, firm or entity arising out of or in connection with the negligent performance of the work, operations or activities provided herein of Contractor, its officers, employees, agents, subcontractors, or invitees, or any individual or entity for which Contractor is legally liable ("indemnitors"), or arising from Contractor's or indemnitors' reckless or willful misconduct, or arising from Contractor's or indemnitors' negligent performance of or failure to perform any term, provision, covenant or condition of this Agreement, and in connection therewith:

- (a) Contractor will defend any action or actions filed in connection with any of said claims or liabilities and will pay all costs and expenses, including legal costs and attorneys' fees incurred in connection therewith;
- (b) Contractor will promptly pay any judgment rendered against the City, its officers, agents or employees for any such claims or liabilities arising out of or in connection with the negligent performance of or failure to perform such work, operations or activities of Contractor hereunder; and Contractor agrees to save and hold the City, its officers, agents, and employees harmless therefrom;
- (c) In the event the City, its officers, agents or employees is made a party to any action or proceeding filed or prosecuted against Contractor for such damages or other claims arising out of or in connection with the negligent performance of or failure to perform the work, operation or activities of Contractor hereunder, Contractor agrees to pay to the City, its officers, agents or employees, any and all costs and expenses incurred by the City, its officers, agents or employees in such action or proceeding, including but not limited to, legal costs and attorneys' fees.

Contractor shall incorporate similar indemnity agreements with its subcontractors and if it fails to do so Contractor shall be fully responsible to indemnify City hereunder therefore, and failure of City to monitor compliance with these provisions shall not be a waiver hereof. This indemnification includes claims or liabilities arising from any negligent or wrongful act, error or omission, or reckless or willful misconduct of Contractor in the performance of professional services hereunder. The provisions of this Section do not apply to claims or liabilities occurring as a result of City's sole negligence or willful acts or omissions, but, to the fullest extent permitted by law, shall apply to claims and liabilities resulting in part from City's negligence, except that design professionals' indemnity hereunder shall be limited to claims and liabilities arising out of the negligence, recklessness or willful misconduct of the design professional. The indemnity obligation shall be binding on successors and assigns of Contractor and shall survive termination of this Agreement.

5.4 Sufficiency of Insurer.

Insurance required by this Agreement shall be satisfactory only if issued by companies qualified to do business in California, rated "A" or better in the most recent edition of Best Rating

Guide, The Key Rating Guide or in the Federal Register, and only if they are of a financial category Class VII or better, unless such requirements are waived by the Risk Manager of the City ("Risk Manager") due to unique circumstances. If this Agreement continues for more than 3 years duration, or in the event the risk manager determines that the work or services to be performed under this Agreement creates an increased or decreased risk of loss to the City, the Contractor agrees that the minimum limits of the insurance policies may be changed accordingly upon receipt of written notice from the Risk Manager.

ARTICLE 6. RECORDS, REPORTS, AND RELEASE OF INFORMATION

6.1 Records.

Contractor shall keep, and require subcontractors to keep, such ledgers, books of accounts, invoices, vouchers, canceled checks, reports, studies or other documents relating to the disbursements charged to City and services performed hereunder (the "books and records"), as shall be necessary to perform the services required by this Agreement and enable the Contract Officer to evaluate the performance of such services. Any and all such documents shall be maintained in accordance with generally accepted accounting principles and shall be complete and detailed. The Contract Officer shall have full and free access to such books and records at all times during normal business hours of City, including the right to inspect, copy, audit and make records and transcripts from such records. Such records shall be maintained for a period of three (3) years following completion of the services hereunder, and the City shall have access to such records in the event any audit is required. In the event of dissolution of Contractor's business, custody of the books and records may be given to City, and access shall be provided by Contractor's successor in interest. Notwithstanding the above, the Contractor shall fully cooperate with the City in providing access to the books and records if a public records request is made and disclosure is required by law including but not limited to the California Public Records Act.

6.2 Reports.

Contractor shall periodically prepare and submit to the Contract Officer such reports concerning the performance of the services required by this Agreement as the Contract Officer shall require. Contractor hereby acknowledges that the City is greatly concerned about the cost of work and services to be performed pursuant to this Agreement. For this reason, Contractor agrees that if Contractor becomes aware of any facts, circumstances, techniques, or events that may or will materially increase or decrease the cost of the work or services contemplated herein or, if Contractor is providing design services, the cost of the project being designed, Contractor shall promptly notify the Contract Officer of said fact, circumstance, technique or event and the estimated increased or decreased cost related thereto and, if Contractor is providing design services, the estimated increased or decreased cost estimate for the project being designed.

6.3 Ownership of Documents.

All drawings, specifications, maps, designs, photographs, studies, surveys, data, notes, computer files, reports, records, documents and other materials (the "documents and materials") prepared by Contractor, its employees, subcontractors and agents in the performance of this Agreement shall be the property of City and shall be delivered to City upon request of the Contract Officer or upon the termination of this Agreement, and Contractor shall have no claim for further employment or additional compensation as a result of the exercise by City of its full rights of ownership use, reuse, or assignment of the documents and materials hereunder. Any use, reuse or

assignment of such completed documents for other projects and/or use of uncompleted documents without specific written authorization by the Contractor will be at the City's sole risk and without liability to Contractor, and Contractor's guarantee and warranties shall not extend to such use, reuse or assignment. Contractor may retain copies of such documents for its own use. Contractor shall have the right to use the concepts embodied therein. All subcontractors shall provide for assignment to City of any documents or materials prepared by them, and in the event Contractor fails to secure such assignment, Contractor shall indemnify City for all damages resulting therefrom. Moreover, Contractor with respect to any documents and materials that may qualify as "works made for hire" as defined in 17 U.S.C. § 101, such documents and materials are hereby deemed "works made for hire" for the City.

6.4 Confidentiality and Release of Information.

(a) All information gained or work product produced by Contractor in performance of this Agreement shall be considered confidential, unless such information is in the public domain or already known to Contractor. Contractor shall not release or disclose any such information or work product to persons or entities other than City without prior written authorization from the Contract Officer.

(b) Contractor, its officers, employees, agents or subcontractors, shall not, without prior written authorization from the Contract Officer or unless requested by the City Attorney, voluntarily provide documents, declarations, letters of support, testimony at depositions, response to interrogatories or other information concerning the work performed under this Agreement. Response to a subpoena or court order shall not be considered "voluntary" provided Contractor gives City notice of such court order or subpoena.

(c) If Contractor, or any officer, employee, agent or subcontractor of Contractor, provides any information or work product in violation of this Agreement, then City shall have the right to reimbursement and indemnity from Contractor for any damages, costs and fees, including attorneys fees, caused by or incurred as a result of Contractor's conduct.

(d) Contractor shall promptly notify City should Contractor, its officers, employees, agents or subcontractors be served with any summons, complaint, subpoena, notice of deposition, request for documents, interrogatories, request for admissions or other discovery request, court order or subpoena from any party regarding this Agreement and the work performed there under. City retains the right, but has no obligation, to represent Contractor or be present at any deposition, hearing or similar proceeding. Contractor agrees to cooperate fully with City and to provide City with the opportunity to review any response to discovery requests provided by Contractor. However, this right to

review any such response does not imply or mean the right by City to control, direct, or rewrite said response.

ARTICLE 7. ENFORCEMENT OF AGREEMENT AND TERMINATION

7.1 California Law.

This Agreement shall be interpreted, construed and governed both as to validity and to performance of the parties in accordance with the laws of the State of California. Legal actions concerning any dispute, claim or matter arising out of or in relation to this Agreement shall be instituted in the Superior Court of the County of Los Angeles, State of California, or any other appropriate court in such county, and Contractor covenants and agrees to submit to the personal jurisdiction of such court in the event of such action. In the event of litigation in a U.S. District Court, venue shall lie exclusively in the Central District of California, in the County of Los Angeles, State of California.

7.2 Disputes; Default.

In the event that Contractor is in default under the terms of this Agreement, the City shall not have any obligation or duty to continue compensating Contractor for any work performed after the date of default. Instead, the City may give notice to Contractor of the default and the reasons for the default. The notice shall include the timeframe in which Contractor may cure the default. This timeframe is presumptively thirty (30) days, but may be extended, though not reduced, if circumstances warrant. During the period of time that Contractor is in default, the City shall hold all invoices and shall, when the default is cured, proceed with payment on the invoices. In the alternative, the City may, in its sole discretion, elect to pay some or all of the outstanding invoices during the period of default. If Contractor does not cure the default, the City may take necessary steps to terminate this Agreement under this Article. Any failure on the part of the City to give notice of the Contractor's default shall not be deemed to result in a waiver of the City's legal rights or any rights arising out of any provision of this Agreement.

7.3 Retention of Funds.

Contractor hereby authorizes City to deduct from any amount payable to Contractor (whether or not arising out of this Agreement) (i) any amounts the payment of which may be in dispute hereunder or which are necessary to compensate City for any losses, costs, liabilities, or damages suffered by City, and (ii) all amounts for which City may be liable to third parties, by reason of Contractor's acts or omissions in performing or failing to perform Contractor's obligation under this Agreement. In the event that any claim is made by a third party, the amount or validity of which is disputed by Contractor, or any indebtedness shall exist which shall appear to be the basis for a claim of lien, City may withhold from any payment due, without liability for interest because of such withholding, an amount sufficient to cover such claim. The failure of City to exercise such right to deduct or to withhold shall not, however, affect the obligations of the Contractor to insure, indemnify, and protect City as elsewhere provided herein.

7.4 Waiver.

Waiver by any party to this Agreement of any term, condition, or covenant of this Agreement shall not constitute a waiver of any other term, condition, or covenant. Waiver by any party of any breach of the provisions of this Agreement shall not constitute a waiver of any other

provision or a waiver of any subsequent breach or violation of any provision of this Agreement. Acceptance by City of any work or services by Contractor shall not constitute a waiver of any of the provisions of this Agreement. No delay or omission in the exercise of any right or remedy by a non-defaulting party on any default shall impair such right or remedy or be construed as a waiver. Any waiver by either party of any default must be in writing and shall not be a waiver of any other default concerning the same or any other provision of this Agreement.

7.5 Rights and Remedies are Cumulative.

Except with respect to rights and remedies expressly declared to be exclusive in this Agreement, the rights and remedies of the parties are cumulative and the exercise by either party 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 other party.

7.6 Legal Action.

In addition to any other rights or remedies, either party may take legal action, in law or in equity, to cure, correct or remedy any default, to recover damages for any default, to compel specific performance of this Agreement, to obtain declaratory or injunctive relief, or to obtain any other remedy consistent with the purposes of this Agreement. Notwithstanding any contrary provision herein, Contractor shall file a statutory claim pursuant to Government Code Sections 905 et seq. and 910 et seq., in order to pursue a legal action under this Agreement.

7.7 Termination Prior to Expiration of Term.

This Section shall govern any termination of this Contract except as specifically provided in the following Section for termination for cause. The City reserves the right to terminate this Contract at any time, with or without cause, upon thirty (30) days' written notice to Contractor, except that where termination is due to the fault of the Contractor, the period of notice may be such shorter time as may be determined by the Contract Officer. In addition, the Contractor reserves the right to terminate this Contract at any time, with or without cause, upon sixty (60) days' written notice to City, except that where termination is due to the fault of the City, the period of notice may be such shorter time as the Contractor may determine. Upon receipt of any notice of termination, Contractor shall immediately cease all services hereunder except such as may be specifically approved by the Contract Officer. Except where the Contractor has initiated termination, the Contractor shall be entitled to compensation for all services rendered prior to the effective date of the notice of termination and for any services authorized by the Contract Officer thereafter in accordance with the Schedule of Compensation or such as may be approved by the Contract Officer, except as provided in Section 7.3. In the event the Contractor has initiated termination, the Contractor shall be entitled to compensation only for the reasonable value of the work product actually produced hereunder. In the event of termination without cause pursuant to this Section, the terminating party need not provide the non-terminating party with the opportunity to cure pursuant to Section 7.2.

7.8 Termination for Default of Contractor.

If termination is due to the failure of the Contractor to fulfill its obligations under this Agreement, City may, after compliance with the provisions of Section 7.2, take over the work and prosecute the same to completion by contract or otherwise, and the Contractor shall be liable to

the extent that the total cost for completion of the services required hereunder exceeds the compensation herein stipulated (provided that the City shall use reasonable efforts to mitigate such damages), and City may withhold any payments to the Contractor for the purpose of set-off or partial payment of the amounts owed the City as previously stated.

7.9 Attorneys' Fees.

If either party to this Agreement is required to initiate or defend or made a party to any action or proceeding in any way connected with this Agreement, the prevailing party in such action or proceeding, in addition to any other relief which may be granted, whether legal or equitable, shall be entitled to reasonable attorney's fees. Attorney's fees shall include attorney's fees on any appeal, and in addition a party entitled to attorney's fees shall be entitled to all other reasonable costs for investigating such action, taking depositions and discovery and all other necessary costs the court allows which are incurred in such litigation. All such fees shall be deemed to have accrued on commencement of such action and shall be enforceable whether or not such action is prosecuted to judgment.

ARTICLE 8. CITY OFFICERS AND EMPLOYEES: NON-DISCRIMINATION

8.1 Non-liability of City Officers and Employees.

No officer or employee of the City shall be personally liable to the Contractor, or any successor in interest, in the event of any default or breach by the City or for any amount which may become due to the Contractor or to its successor, or for breach of any obligation of the terms of this Agreement.

8.2 Conflict of Interest.

Contractor covenants that neither it, nor any officer or principal of its firm, has or shall acquire any interest, directly or indirectly, which would conflict in any manner with the interests of City or which would in any way hinder Contractor's performance of services under this Agreement. Contractor further covenants that in the performance of this Agreement, no person having any such interest shall be employed by it as an officer, employee, agent or subcontractor without the express written consent of the Contract Officer. Contractor agrees to at all times avoid conflicts of interest or the appearance of any conflicts of interest with the interests of City in the performance of this Agreement.

No officer or employee of the City shall have any financial interest, direct or indirect, in this Agreement nor shall any such officer or employee participate in any decision relating to the Agreement which affects her/his financial interest or the financial interest of any corporation, partnership or association in which (s)he is, directly or indirectly, interested, in violation of any State statute or regulation. The Contractor warrants that it has not paid or given and will not pay or give any third party any money or other consideration for obtaining this Agreement.

8.3 Covenant Against Discrimination.

Contractor covenants that, by and for itself, its heirs, executors, assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of race, color, creed, religion, sex, gender, sexual

orientation, marital status, national origin, ancestry or other protected class in the performance of this Agreement. Contractor shall take affirmative action to insure that applicants are employed and that employees are treated during employment without regard to their race, color, creed, religion, sex, gender, sexual orientation, marital status, national origin, ancestry or other protected class.

8.4 Unauthorized Aliens.

Contractor hereby promises and agrees to comply with all of the provisions of the Federal Immigration and Nationality Act, 8 U.S.C.A. §§ 1101, *et seq.*, as amended, and in connection therewith, shall not employ unauthorized aliens as defined therein. Should Contractor so employ such unauthorized aliens for the performance of work and/or services covered by this Agreement, and should any liability or sanctions be imposed against City for such use of unauthorized aliens, Contractor hereby agrees to and shall reimburse City for the cost of all such liabilities or sanctions imposed, together with any and all costs, including attorneys' fees, incurred by City.

ARTICLE 9. MISCELLANEOUS PROVISIONS

9.1 Notices.

Any notice, demand, request, document, consent, approval, or communication either party desires or is required to give to the other party or any other person shall be in writing and either served personally or sent by prepaid, first-class mail, in the case of the City, to the City Manager and to the attention of the Contract Officer (with her/his name and City title), City of Irwindale, 5050 N. Irwindale Avenue, Irwindale, CA 91706 and in the case of the Contractor, to the person(s) at the address designated on the execution page of this Agreement. Either party may change its address by notifying the other party of the change of address in writing. Notice shall be deemed communicated at the time personally delivered or in seventy-two (72) hours from the time of mailing if mailed as provided in this Section.

9.2 Interpretation.

The terms of this Agreement shall be construed in accordance with the meaning of the language used and shall not be construed for or against either party by reason of the authorship of this Agreement or any other rule of construction which might otherwise apply.

9.3 Counterparts.

This Agreement may be executed in counterparts, each of which shall be deemed to be an original, and such counterparts shall constitute one and the same instrument.

9.4 Integration; Amendment.

This Agreement including the attachments hereto is the entire, complete and exclusive expression of the understanding of the parties. It is understood that there are no oral agreements between the parties hereto affecting this Agreement and this Agreement supersedes and cancels any and all previous negotiations, arrangements, agreements and understandings, if any, between the parties, and none shall be used to interpret this Agreement. No amendment to or modification of this Agreement shall be valid unless made in writing and approved by the Contractor and by the

City Council. The parties agree that this requirement for written modifications cannot be waived and that any attempted waiver shall be void.

9.5 Severability.

In the event that any one or more of the phrases, sentences, clauses, paragraphs, or sections contained in this Agreement shall be declared invalid or unenforceable by a valid judgment or decree of a court of competent jurisdiction, such invalidity or unenforceability shall not affect any of the remaining phrases, sentences, clauses, paragraphs, or sections of this Agreement which are hereby declared as severable and shall be interpreted to carry out the intent of the parties hereunder unless the invalid provision is so material that its invalidity deprives either party of the basic benefit of their bargain or renders this Agreement meaningless.

9.6 Warranty & Representation of Non-Collusion.

No official, officer, or employee of City has any financial interest, direct or indirect, in this Agreement, nor shall any official, officer, or employee of City participate in any decision relating to this Agreement which may affect his/her financial interest or the financial interest of any corporation, partnership, or association in which (s)he is directly or indirectly interested, or in violation of any corporation, partnership, or association in which (s)he is directly or indirectly interested, or in violation of any State or municipal statute or regulation. The determination of "financial interest" shall be consistent with State law and shall not include interests found to be "remote" or "noninterests" pursuant to Government Code Sections 1091 or 1091.5. Contractor warrants and represents that it has not paid or given, and will not pay or give, to any third party including, but not limited to, any City official, officer, or employee, any money, consideration, or other thing of value as a result or consequence of obtaining or being awarded any agreement. Contractor further warrants and represents that (s)he/it has not engaged in any act(s), omission(s), or other conduct or collusion that would result in the payment of any money, consideration, or other thing of value to any third party including, but not limited to, any City official, officer, or employee, as a result of consequence of obtaining or being awarded any agreement. Contractor is aware of and understands that any such act(s), omission(s) or other conduct resulting in such payment of money, consideration, or other thing of value will render this Agreement void and of no force or effect.

Contractor's Authorized Initials _____

9.7 Corporate Authority.

The persons executing this Agreement on behalf of the parties hereto warrant that (i) such party is duly organized and existing, (ii) they are duly authorized to execute and deliver this Agreement on behalf of said party, (iii) by so executing this Agreement, such party is formally bound to the provisions of this Agreement, and (iv) that entering into this Agreement does not violate any provision of any other Agreement to which said party is bound. This Agreement shall be binding upon the heirs, executors, administrators, successors and assigns of the parties.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date and year first-above written.

CITY:

CITY OF IRWINDALE

Julian A. Miranda
City Manager

ATTEST:

Laura Nieto
Chief Deputy City Clerk

APPROVED AS TO FORM:
ALESHIRE & WYNDER, LLP

Adrian Guerra
City Attorney

CONTRACTOR:

Royal Coaches Auto Body and Towing

By: _____
Name:
Title:
Address:

By: _____
Name:
Title:
Address:

Two corporate officer signatures required when Contractor is a corporation, with one signature required from each of the following groups: 1) Chairman of the Board, President or any Vice President; and 2) Secretary, any Assistant Secretary, Chief Financial Officer or any Assistant Treasurer. **CONTRACTOR'S SIGNATURES SHALL BE DULY NOTARIZED, AND APPROPRIATE ATTESTATIONS SHALL BE INCLUDED AS MAY BE REQUIRED BY THE BYLAWS, ARTICLES OF INCORPORATION, OR OTHER RULES OR REGULATIONS APPLICABLE TO CONTRACTOR'S BUSINESS ENTITY.**

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

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

STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

On _____, 2023 before me, _____, personally appeared _____, proved to me on the basis of satisfactory evidence to be the person(s) whose names(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: _____

OPTIONAL

Though the data below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent reattachment of this form

CAPACITY CLAIMED BY SIGNER

DESCRIPTION OF ATTACHED DOCUMENT

☐ INDIVIDUAL
☐ CORPORATE OFFICER

TITLE(S)

TITLE OR TYPE OF DOCUMENT

☐ PARTNER(S) ☐ LIMITED
☐ GENERAL
☐ ATTORNEY-IN-FACT
☐ TRUSTEE(S)
☐ GUARDIAN/CONSERVATOR
☐ OTHER _____

NUMBER OF PAGES

DATE OF DOCUMENT

SIGNER IS REPRESENTING:

(NAME OF PERSON(S) OR ENTITY(IES))

SIGNER(S) OTHER THAN NAMED ABOVE

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

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

STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

On _____, 2023 before me, _____, personally appeared _____, proved to me on the basis of satisfactory evidence to be the person(s) whose names(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: _____

OPTIONAL

Though the data below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent reattachment of this form.

CAPACITY CLAIMED BY SIGNER

DESCRIPTION OF ATTACHED DOCUMENT

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NUMBER OF PAGES

☐ ATTORNEY-IN-FACT
☐ TRUSTEE(S)
☐ GUARDIAN/CONSERVATOR
☐ OTHER _____

DATE OF DOCUMENT

SIGNER IS REPRESENTING:

(NAME OF PERSON(S) OR ENTITY(IES))

SIGNER(S) OTHER THAN NAMED ABOVE

EXHIBIT "A"

SCOPE OF SERVICES

I. SERVICES.

Pursuant to this Agreement, it shall be Contractor's responsibility to respond to all Irwindale Police Department (IPD) calls for services to tow, impound, store and recover vehicles as requested by IPD, including, but not limited to the following: vehicles involved in crimes, traffic accidents, operated in a manner that violate applicable laws; vehicles impounded for evidence or taken into custody by IPD; vehicles involved in accidents or disabled for other causes (when alternative towing is either not appropriate or not requested by the owner or Contractor of the vehicle); abandoned vehicles; and vehicles which are within the jurisdiction of IPD. Contractor shall further be responsible for the removal of debris resulting from accidents and the necessary work preliminary to towing, such as removal of vehicles from ditches, righting said vehicles, separating entangled vehicles, disconnecting drive shafts, and other such work as shall be required in connection with the towing operations. This Agreement does not apply to, nor does it authorize, tows at the request of the public in either emergency or non-emergency situations. Those requests made to IPD by a private citizen for undesignated towing services will be referred to the appropriate tow provider. Contractor recognizes there will be no charge for the towing of City vehicles either to the IPD, City Yard, or to a suitable local place of repair.

Contractor shall respond to calls generated by or through the IPD, 24 hours a day, seven days a week, within the maximum response time of 15 minutes. At the time of notification, Contractor will advise dispatch when Contractor(s) are unable to respond or meet the maximum response time. IPD will refer tow services to the Contractor, on the condition that the Contractor is available to perform the services set forth in its agreement within the City. This Agreement applies to calls originating from or generated by or through IPD (collectively referred to as "calls" or "response calls"). If the Contractor is not available at the time of the request or is unable to respond within the required time, the handling officer or field supervisor may request another towing service.

In providing these services in the field, Contractor, including its agents and employees, shall conduct themselves in a safe manner and shall never, in any circumstance, act in a manner that may cause a danger to themselves or those at the scene. In no way shall the Contractor, including its agents and employees, be in any relation of dependence upon officers in performing under this Agreement and takes special note that, pursuant to *Minch v. Department of California Highway Patrol* (2006) 140 Cal.App.4th 895, the City and its officers owe no duty of care to Contractor, or its agents and employees.

II. TOW TRUCK CLASSIFICATIONS.

A. Contractor shall equip, repair, and maintain all tow trucks covered under this Agreement in accordance with the provisions set forth in the California Vehicle Code; Title 13 of the California Code of Regulations, and consistent with industry standards and practices.

- 1) Notwithstanding Vehicle Code § 615, all tow trucks shall have recovery capabilities, wheel lift capabilities, and a boom meeting the specifications contained in this Agreement. For the purpose of this Agreement, a trailer for hire that is being used to transport a vehicle shall not qualify as a primary tow truck for rotation tow lists.
- 2) To the extent Contractor has a car carrier, such truck(s) is/are exempted from the recovery, wheel lift, and boom capability requirements.

B. A violation of the Gross Vehicle Weight Rating (GVWR), front axle weight rating, rear axle weight rating, maximum tire weight ratings, not maintaining 50% of the tow truck's unladen weight on the front axle when lifting/carrying a load or safe loading requirements of a tow truck shall be cause for suspension of a truck used in performing under this Agreement, and may be cause for termination of this Agreement.

C. There are four classes of tow trucks covered under this Agreement. In no case shall any tow truck be rated less than one-ton capacity. (The equipment specifications for each Class of tow truck are further described in Exhibit "A-1".)

- 1) Class A - Light Duty. Class A tow trucks shall have a manufacturer's GVWR of at least 14,000 to 19,500 pounds with wheel lift capabilities. In addition, the Contractor may have a car carrier. Class A equipment specifications are those established by the California Highway Patrol, as amended from time to time, and are available through the Traffic Office at the IPD.
- 2) Class B - Medium Duty. Class B tow trucks shall have a GVWR of at least 26,000 to 33,000 pounds. The truck shall be capable of providing air to the towed vehicle. Class B equipment specifications are those established by the California Highway Patrol, as amended from time to time, and are available at the Traffic Office of the IPD. Contractor may have a carrier, but the carrier must be an additional unit.
- 3) Class C - Heavy Duty. Class C tow trucks with three axles and a GVWR of at least 48,000 pounds. The truck shall be equipped with air brakes and must be capable of providing and maintaining continuous air to the towed vehicle. Class C equipment specifications are those established by the California Highway Patrol, as amended from time to time, and are available at the Traffic Office of the IPD.

- 4) Class D - Super Heavy Duty. Class D tow trucks with three axles and a GVWR of at least 54,000 pounds. The truck shall be equipped with air brakes and must be capable of providing and maintaining continuous air to the towed vehicle. If this class of tow truck is used exclusively for salvage and recovery operations, there is no requirement for providing and maintaining continuous air to the towed vehicle. Class D equipment specifications are those established by the California Highway Patrol, as amended from time to time, and are available at the Traffic Office of the IPD.
- 5) Contractor shall provide sufficient tow trucks in each of the foregoing classes of sufficient higher weight class tow truck substitutions to ensure that the Contractor responds to each call for service within the 15-minute maximum response time. It is understood that the response time for heavy-duty tow vehicles may reasonably exceed the maximum response time.

III. TOW TRUCK DRIVERS.

A. Minimum licensing. Contractor shall ensure that tow truck drivers ("Drivers") responding to calls initiated by IPD are qualified and competent employees of Contractor. Contractor shall ensure that the tow truck drivers are trained and proficient in the use of the tow truck and related equipment, including, but not limited to, the procedures necessary for the safe towing and recovery of the various types of vehicles serviced through IPD rotation. Tow truck drivers shall be at least 18 years old and possess the following minimum class driver license:

- 1) Class A tow truck - A valid Class C license, or a valid Class A license with valid medical certificate.
- 2) Class B tow truck - A valid Class C license for non-regulated vehicles, or a valid Class A license with valid medical certificate for regulated vehicles pursuant to Vehicle Code Section 34500.
- 3) Class C and D tow trucks - A valid Class A license with valid medical certificate.

B. Licensing. The Class A license must be endorsed to allow operation of special vehicle configurations and/or special cargoes as described in Exhibit "A-1" attached hereto and incorporated herein by reference.

C. Current Driver Listing. Contractor shall maintain a current list of drivers. Contractor shall provide a current list of his/her drivers to IPD upon implementation of this Agreement and not less than monthly thereafter. Contractor shall enroll/participate in the Department of Motor Vehicle's Pull Notice Program. Current and new employees shall submit their California driver's license numbers to the Contractor for input into Department of Motor Vehicle's Pull Notice Program. Contractor shall notify IPD upon any change in driver status, including the addition of any new driver(s), or the deletion of any driver(s) and revocation or

suspension of a driver's license. An updated list shall be provided IPD within seven (7) calendar days of any change in driver status. Contractor shall, at a minimum, maintain the following information for each employee, and provide the same to the Police Chief not less than monthly:

- a. Full name.
- b. Date of Birth.
- c. California driver license number and expiration date.
- d. Copy of valid medical certificate (if required).
- e. Job title/description.
- f. Current home address.
- g. Current home phone number.
- h. Type(s) of truck(s) driver has been trained and instructed to operate.
- i. Certificate showing driver is California Tow Truck Association (CTTA) trained.

D. Drivers' Appearance. Drivers must maintain a neat, clean, and professional appearance at all times. Drivers must wear a distinctive uniform bearing the Contractor's name clearly visible with shirttails tucked into the waistband of their pants.

E. Screening of Drivers. Prior to utilizing any driver to perform services under this Agreement, Contractor shall provide to the City's Chief of Police a confidential screening application for that prospective driver containing information requested by the Police Chief. The Chief of Police shall screen the prospective driver and approve or deny that driver for service under this Agreement. The Police Chief shall deny that driver if the Police Chief determines, in his sole discretion, that the prospective driver: a) provided false or misleading information on the application, b) has been convicted of any felony or any theft-related crime, or c) has failed or refused a drug test. Utilizing any driver before the Police Chief has completed the screening, or utilizing any driver who has been disapproved under this paragraph shall be grounds for suspending Contractor's participation in the tow rotation. If Contractor becomes aware of any driver being arrested or convicted for any felony or theft-related crime after approval by Police Chief, Contractor shall notify the City within 24 hours of such fact. The Chief of Police shall, in his sole discretion, require DOJ Live Scans for all drivers towing in the City. Contractor agrees to be responsible for all associated fees.

F. Removal of Drivers. At any time during the term of this Agreement, the Police Chief, in his or her sole discretion and with or without cause, may direct Contractor to no longer utilize a particular driver to perform services for the City under this Agreement. Such direction

shall be given by written notice to Contractor. Upon receipt of such notice, Contractor shall immediately discontinue use of the driver to perform services under this Agreement. Upon request by Contractor, the Police Chief may, in his or her sole discretion, provide written notice reinstituting the driver's eligibility to perform services for City.

IV. STORAGE OPERATIONS.

A. Contractor Responsibilities.

- 1) Contractor shall be responsible for all vehicles stored by Contractor, together with all accessories and equipment on each vehicle and all personal property in each vehicle. It shall be Contractor's responsibility to protect the stored equipment and property against loss or damage by fire, theft, weather or other causes. In the event of loss or damage to a stored vehicle, its accessories or equipment, or personal property contained in the vehicle, Contractor shall be responsible to the owner for all losses or damages. Personal property in vehicles stored by Contractor shall not be disposed of to defray any charges for the towing or storing of a vehicle; and, if not called for by the owner within thirty (30) days after date of notice by IPD of impound or storage, all such property shall be disposed of in accordance with all State, County and Municipal laws, statutes, ordinances and regulations, including without limitation, Vehicle Code § 10652 (reporting storage of vehicles over thirty (30) days).
- 2) Contractor shall take all reasonable precautions as directed by IPD to avoid damage to any evidence, such as fingerprints or stains. Vehicles taken into custody that involve evidence shall be stored in a secured, locked area which is inside a structure protected against entry by unauthorized persons. Contractor shall park all stored or impounded vehicles in such a manner as to prevent any damage while other vehicles are being moved or parked in the vicinity of said vehicles. Vehicles held for thirty (30) days shall be secured in an inside storage area.
- 3) Contractor must maintain a locked and secured storage area for vehicles held for police investigation or preservation of evidence ("Police Hold Vehicles"). Police Hold Vehicles shall be placed in a secured, enclosed, inside storage area ("Inside Storage Area"). The Police Hold Vehicles Inside Storage Area shall be capable of being secured in a manner acceptable by the Police Chief, or his/her designee, so as to assure the integrity and chain of custody of evidence or other information derived from a vehicle, which is subject to a police hold. Vehicles so stored shall not be moved, relocated, or physically touched by employees of Contractor except as authorized by the Police Chief, or his/her designee, and upon written authorization of City.

B. Storage Facilities.

- 1) Contractor shall maintain a vehicle storage area to impound towed vehicles large enough to accommodate all vehicles stored less than thirty (30) days. The primary vehicle storage area must have the legal storage capacity for eighty (80) vehicles.
- 2) All vehicles impounded or taken into custody by IPD must be stored by Contractor in areas that are enclosed by substantial wire fences or walls that have gates or doors which lock. Such fences or wall enclosures shall be not less than six (6) feet in height and shall have not less than one (1) gate or door of adequate width and height. A fence or wall enclosures shall be maintained and repaired in good condition throughout the term of this Agreement. Such fences or walls shall be repaired within twenty-four (24) hours of the time of any damage thereto to insure proper protection of the stored vehicles. The storage area must be paved with concrete or asphalt and maintained in good condition. The Police Chief, or his/her designee, may modify security requirements necessary to coincide with local conditions.
- 3) The storage facility shall be open and attended from 8:00 a.m. to 5:00 p.m., Monday through Friday, and shall have a responsible person on call on a twenty-four (24) hour basis, seven (7) days a week. The designated on-call person(s) shall be available to release vehicles between 5:00 p.m. and 8:00 a.m., Monday through Friday and a twenty-four (24) hour basis on Saturday, Sunday and holidays.

C. Location And Maintenance Of Storage Facility.

- 1) Contractor shall maintain and provide at least one place of business which is also the location of the storage facility for the vehicles stored under this Agreement within seven (10) miles from the boundaries of City, as may be modified from time to time. The business address and primary storage facility shall be located reasonably close to the police station, as determined by the Police Chief in his/her sole opinion.
- 2) The primary storage facility shall be at the same location as the business address. The vehicle and personal property shall be released at a primary storage facility upon request of the owner. Except with respect to Police Hold Vehicles, upon proper identification or proof of authority, the owner or his designated representative shall be permitted to remove personal effects from a stored vehicle without reference to any costs or charges pending because of towing or storage of said vehicle. Police Hold Vehicles shall not be released without the presentation of a fully executed property release form issued by the IPD, and upon compliance with this paragraph.

- 3) Contractor shall furnish the Police Chief, or his/her designee, with the addresses of all storage facilities whenever there is a change.
- 4) All storage facilities shall comply with all land use and zoning ordinances of the applicable jurisdiction in which they are located and all requirements and specifications described in this Agreement. All landscaped and paved areas of Contractor's premises shall be maintained in a neat and orderly condition with the landscape in a healthy condition and free of weeds and litter.
- 5) Any storage space shall be kept free of weeds, litter, debris, and any other materials or substances or any automotive parts unless said parts are stored as evidence for the Police Department. Contractor shall take all reasonable steps to prevent contamination of soil by gasoline, oil, grease, or any other hazardous substances as specified by Federal, State, County or Municipal regulations.
- 6) Contractor shall post not less than one outdoor sign at each storage facility, at or near the entrance thereof, identifying Contractor's name, telephone number, and the business telephone number of IPD.
- 7) Unless the vehicle is subject to a police hold, as described in Section (C)(1)(c), above, Contractor shall be able to properly conduct a lien sale as outlined in Vehicle Code § 22851.1.

V. INSPECTIONS.

IPD or, as authorized by IPD, the California Highway Patrol ("CHP") may conduct inspections at any time of all tow trucks to determine whether such tow trucks are safe and adequately equipped to perform the service required of such class level tow truck. IPD or CHP may also conduct inspections at any time of Contractor's business premises to determine whether the premises are secured and maintained according to the terms of this Agreement. IPD or CHP may conduct inspections without notice during normal business hours. Contractor shall not dispatch a tow truck (to a IPD call) that has not been inspected and approved by IPD or CHP. IPD or CHP shall inspect a tow truck within thirty (30) days of a request from Contractor. If Contractor fails an inspection for any reason (as determined in the reasonable discretion of IPD or CHP) is entitled to only one (1) re-inspection. Failure to pass the re-inspection may be cause for disqualification of the tow truck from use in performing this Agreement.

VI. BUSINESS RECORDS.

A. Contractor shall maintain records, at its place of business, relating to tow services furnished under this Agreement. At the request of IPD, Contractor shall furnish IPD a written list of all vehicles that have been towed by Contractor under this Agreement. Such list shall show the nature of service, description of vehicles, date of tow, tow truck drivers name, start time, end time, storage location of each vehicle, dates of storage, itemized costs of towing and storage, vehicle

make and model, license number and vehicle serial number. Upon request, Contractor shall furnish IPD with an itemized list of all charges incurred.

B. Contractor shall also maintain business records relating to personnel, insurance, personnel taxes, payroll, applicable operating authorities, local operating authorities, lien sale actions, auctions, FCC and any other necessary licensing (if any), and non-IPD tows.

C. IPD may inspect all Contractor records without notice during normal business hours. Contractor shall permit IPD to make copies of business records at their place of business, or to remove business records for the purpose of reproduction. IPD shall provide a receipt for any (original) records removed from the place of business. Records shall be maintained and available for inspection for a period of two years plus the current term of this Agreement. Failure of Contractor to comply with the records requirement shall be cause for termination of this Agreement.

D. For purposes of audit by the City, Contractor shall also keep accurate records of all gross receipts earned as a result of the business conducted under the Agreement, excepting therefrom all sales and excise taxes. Receipts shall be issued to all customers. The records must be supported by source documents such as receipt slips, cash register tapes, invoices or other pertinent information. Contractor shall read and record the totals at the beginning and end of each calendar day. Such records must be available at all times and shall be subject to inspection, review and audit during the entire Agreement period by the Police Chief, or his/her designee, or City Finance Director or his representative. Such audits may be conducted at the discretion of the Police Chief, or his/her designee, or the Finance Director, either unannounced or by appointment. Contractor's failure to have records of all gross receipts immediately available for audit shall be cause for termination of this Agreement by City.

VII. CONDUCT AND DEMEANOR.

A. While involved in IPD requested tow operations, Contractor and/or its employees shall refrain from any act(s) of misconduct, to include, but not limited to, any of the following:

- 1) Rude or discourteous behavior.
- 2) Lack of service, selective service, or refusal to provide service which Contractor is/should be capable of performing.
- 3) Any act of sexual harassment or sexual impropriety.
- 4) Unsafe driving practices.
- 5) Exhibiting any objective symptoms of alcohol and/or drug use.
- 6) Appearing at the scene of a IPD tow call with the odor of an alcoholic beverage emitting from his/her breath. Contractor/tow truck driver shall submit to a preliminary alcohol-screening test upon demand of IPD.

B. Contractor shall not leave any tow site without cleaning the location sufficient to restore normal traffic patterns.

C. All complaints related to services under this Agreement received by IPD against Contractor (or its employees) will be accepted and investigated in a fair and impartial manner by IPD with the full cooperation of Contractor. Contractor will be notified of the results of any investigation before any action is taken.

VIII. COMPLIANCE WITH LAW.

A. Contractor, and its employees, shall, at all times, be knowledgeable of, and comply with, all Federal, State, and local laws and ordinances, which include, but are not limited to, those laws which are applicable to Contractor as promulgated by the California Department of Transportation, the California Highway Patrol, and industry practices endorsed by the California Tow Truck Association. Contractor shall retain an adequate number of trained and properly licensed and permitted (as required by Vehicle Code § 12520) personnel assigned to perform the work described in this Agreement.

- 1) In the event of a traffic violation of any kind by Contractor's tow truck driver(s) which is/are known by IPD, Contractor shall be advised of the violation(s) by IPD. Except as provided below, Contractor will be granted the opportunity to take necessary steps to ensure that the same or similar violation does not reoccur. Any subsequent traffic violation(s) may be cause for termination of this Agreement.
- b) Any traffic violation(s) chargeable as a felony, or a traffic violation involving drugs or alcohol (e.g., driving under the influence of drugs or alcohol) or driving on a suspended or revoked license, shall be cause for termination of this Agreement.

B. The provisions contained herein do not preclude IPD from taking appropriate enforcement or administrative action for any violations of law.

C. Any conviction of Contractor, or any of its agents, employees or officers, involving a stolen or embezzled vehicle, fraud related to the towing business, stolen or embezzled property, a crime of violence, a drug related offense, felony or misdemeanor driving while under the influence of alcohol and/or a drug, whether or not in connection with the performance of this Agreement or not, shall be cause for termination of this Agreement.

IX. INVENTORY OF VEHICLE CONTENTS.

A detailed written inventory of all personal property in any vehicle which is towed and stored or towed and impounded will be completed by the Police Department employee requesting Contractor's services, and the tow Contractor shall complete the appropriate section on the Police Department's form and shall sign said form. A copy of said signed form shall be given to the tow truck driver and shall be retained by Contractor. Whenever any item is removed from a stored

vehicle and taken to another place of storage, Contractor shall provide a receipt, with a copy placed in the stored vehicle and a copy given to the Police Department.

X. SERVICE COMPLAINTS.

Contractor shall post a notice in a conspicuous place at Contractor's place of business of a size which is at least 8 1/2" x 11" informing the public of the right to make complaints regarding service provided by Contractor, and shall include the name and location where complaints can be made to City. Contractor shall notify IPD, in writing, within seventy-two (72) hours of any complaints made to Contractor regarding the performance of service in connection with towing or storage, or concerning rates, charges of fees, or any claims, or any legal actions filed, delivered or served upon or instituted against Contractor or any of its agents, officers or employees.

XI. ADVERTISING.

Contractor shall not display any sign or engage in any advertisement indicating an official or unofficial connection with IPD or the Department of Motor Vehicles. Examples of prohibited signage include, without limitation, "Official IPD Tow," "Approved by IPD," "IPD Tow." The provisions under this Section shall not preclude the Police Chief, or his/her designee, from implementing a system to mark and identify particular tow trucks as having passed IPD inspection.

EXHIBIT "A-1"

EQUIPMENT SPECIFICATIONS AND USE REQUIREMENTS

I. GENERAL EQUIPMENT SPECIFICATIONS AND USE EQUIPMENT

- A. Tow Truck and Car Carrier Classifications: Tow truck and car carrier classifications are based on the truck chassis GVWR, and the classification system used by the American Trucking Association (ATA) and truck manufacturers.

ATA and Manufacturers Classification

- a. Class 3 - 10,000-14,000 lbs. GVWR
- b. Class 4 - 14,001-16,000 lbs. GVWR
- c. Class 5 - 16,001-19,500 lbs. GVWR
- d. Class 6 - 19,501-26,000 lbs. GVWR
- e. Class 7 - 26,001-33,000 lbs. GVWR
- f. Class 8 - 33,001 lbs.-or more GVWR

CHP Classification

- (Class A Tow Trucks)
- (Class A Tow Trucks)
- (Class A Tow Trucks)
- (Class B Tow Trucks)
- (Class B Tow Trucks)
- (Class B Tow Trucks)

- B. Equipment Limitations. All towing equipment, recovery equipment, and carrier ratings are based on structural factors only. Actual towing, carrying, and recovery capacity may be limited by the capacity of the chassis and the optional equipment selected.

C. Towing Limitations

- 1) The total weight of the truck, including the lifted load, shall fall within the GVWR and not exceed either the front axle weight ratings (FAWR) or rear axle weight ratings (RAWR).
- 2) The truck must meet all applicable state and/or federal standards.
- 3) The front axle load must be at least 50% of its normal or unladen weight after the load is lifted.

- D. Identification Labels. Each piece of towing equipment shall have a label or identification tag permanently affixed to the equipment in a prominent location to identify the manufacturer, serial number, model, and rated capacity.

- E. Recovery Equipment Rating. The basic performance rating of the recovery equipment is the weight the equipment can lift in a winching mode, when the boom is static at a 30 degree elevation with the load lines vertical and the lifting cables sharing the load equally, measured with a live load (weight or load cell).

- 1) The structural design of the recovery equipment must have a higher load capacity than the performance rating(s).

- 2) Winches shall conform to or exceed the specifications set forth by the Society of Automotive Engineers (SAE) Handbook, SAE J706.
 - 3) All ratings for cable and chain assemblies are for the undamaged assembly condition. All cable and chain assemblies should be the same type, construction, and rating as specified by the original equipment manufacturer (OEM) for the equipment.
- F. Safety Chains. Safety chains shall be rated at no less than the rating specified by the OEM.
- 1) Two safety chains shall be used for vehicles being towed. The safety chains shall be securely affixed to the truck bed frame or wrecker boom, independent of the towing sling, bar or hitch, wheel lift, or underlift towing equipment. The towed vehicle shall be secured to the towing equipment independent of the safety chains by either two chains or two straps.
 - 2) Vehicles being transported on slide back carriers shall be secured by four tie-down chains or straps independent of the winch or loading cable.
 - 3) All safety connections and attachments shall have a positive means of sufficient strength, to ensure that the safety connection or attachment cannot become disengaged while in transit.
- G. Control/Safety Labels. All controls shall be clearly marked to indicate proper operations, as well as any special warnings or cautions.
- H. Signs. All tow trucks shall display signs on both sides containing Contractor's company name, business address, and telephone number. The signs shall be permanently affixed and in compliance with the requirements of Section 27907 of the Vehicle Code.
- I. Wire Rope (Cable). Wire rope shall be maintained in good condition. Only wire rope with swaged ends, wedge locks, or braided ends, with metal sleeves in the loops, shall be approved for use as approved by the CHP. Wire rope is not in good condition when it is stranded, knotted, crushed, excessively rusty, kinked, badly worn, when there are 12 or more wires broken in lay length, or where there is other visible evidence of loss of strength.

II. TOW TRUCK CLASSIFICATIONS AND EQUIPMENT SPECIFICATIONS

- A. Class A Tow Truck Minimum Equipment Specifications:
- 1) 10,000 pound GVWR chassis.
 - 2) 4-ton recovery equipment rating.
 - 3) Hydraulic or mechanical winch(es).

- 4) 100 ft. 3/8" x 19 cable or original equipment manufacturer's (OEM) specifications.
- 5) Tow chains, 5/16" alloy or OEM specifications, J/T hook assembly.
- 6) Safety chains, 5/16" alloy or OEM specifications.
- 7) Tow sling rating 3,000 pounds, when equipped.
- 8) Wheel lift safety straps or equivalent mechanical device.
- 9) All required wheel safety straps, or equivalent wheel retention device, tie-down straps, and safety chains shall be used during towing operations.
- 10) Tow dolly.
- 11) One 3-ton snatch block.
- 12) Wheel lift rating – retracted 3,000 pounds.

B. Class A Car Carrier - One Car Minimum Equipment Specifications

- 1) 10,000 pound GVWR chassis.
- 2) Hydraulic or mechanical winch.
- 3) 50 ft. 3/8" 6 x 19 cable or OEM specifications.
- 4) J/T hook loading bridle/chains.
- 5) Safety chains, 5/16" alloy or OEM specifications; four safety chains for the vehicle being transported.
- 6) All required tie-down straps and safety chains shall be used as required during towing operations.

C. Class A Car Carrier - Two Cars Minimum Equipment Specifications

- 1) 16,001 pound GVWR chassis.
- 2) Hydraulic or mechanical winch.
- 3) 50 ft. 3/8" 6 x 19 cable or OEM specifications.
- 4) J/T hook loading bridle/chains.
- 5) Safety chains 5/16" alloy or OEM specifications; four safety chains for the vehicle being transported and two safety chains for the vehicle being towed.
- 6) All required tie-down straps and safety chains shall be used during towing operations.

D. Class B Tow Truck Minimum Equipment Specifications

- 1) 19,501 pound GVWR chassis.
- 2) Air brakes or hydraulic w/air hookup package.
- 3) 14-ton recovery equipment rating.
- 4) Hydraulic or mechanical winch(es).
- 5) 150 ft. 7/16" 6 x 10 cable or OEM specifications.
- 6) Tow chains, 1/2" alloy or OEM specifications.
- 7) Safety chains, 1/2" alloy or OEM specifications.
- 8) Tow sling rating 7,000 pounds.
- 9) Two 8-ton snatch blocks.
- 10) Wheel lift safety straps or equivalent mechanical device.

- 11) All required wheel safety straps, or equivalent wheel retention device, tie-down straps, and safety chains shall be used during towing operations.
- 12) Wheel lift or under lift rating – retracted, 10,000 pounds.

E. Class B Car Carrier Minimum Equipment Specifications

- 1) 19,501 pound GVWR chassis.
- 2) Hydraulic or mechanical winch.
- 3) 50 ft. 3/8" 6 19 cable or OEM specifications.
- 4) J/T hook loading bridle/chains.
- 5) Safety chains, 5/16" alloy or OEM specifications; four safety chains for each vehicle being transported and two safety chains for the vehicle being towed.
- 6) All required tie-down straps and safety chains shall be used during towing operations.

F. Class C Tow Truck Minimum Equipment Specifications

- 1) 33,000 pound GVWR chassis.
- 2) Air brakes w/air hookup package and single control compressor.
- 3) 25-ton recovery equipment rating.
- 4) Hydraulic or mechanical winch(es).
- 5) 200 ft. 5/8" 6 x 19 cable or OEM specifications.
- 6) Tow chains, 5/8" alloy or OEM specifications.
- 7) Safety chains, 5/8" alloy or OEM specifications.
- 8) Tow sling rating 12,000 pounds.
- 9) Two 12 ton snatch blocks.
- 10) Under lift rating – retracted, 25,000 pounds.

G. Class D Tow Truck Minimum Equipment Specifications

- 1) 50,000 pound GVWR chassis.
- 2) Air brakes w/air hookup package.
- 3) 30-ton recovery equipment rating.
- 4) Hydraulic or mechanical winch(es).
- 5) 250 ft. 3/4" 6 x 19 cable or OEM specifications.
- 6) Tow chains, 5/8" alloy or OEM specifications.
- 7) Safety chains, 5/8" alloy or OEM specifications.
- 8) Tow sling rating 20,000 pounds.
- 9) Two 12-ton snatch blocks.
- 10) Under lift rating – retracted, 32,000 pounds.

III. AUXILIARY EQUIPMENT

A. Required Equipment All Classes

- 1) Extension - Brake and tail lamps.
- 2) Fire Extinguisher (Approved 4-B, C rating or better).
- 3) Flashlight.
- 4) Broom.
- 5) Shovel.
- 6) Wrecking bar (large pry bar).
- 7) Reflective triangles.
- 8) Equivalent of six 30-minute flares.
- 9) Covered trans can(s) with absorbent.
- 10) Shop rags and/or paper towels.
- 11) Shop to truck communications (C/B and cellular phones excluded).

B. Service and Other Equipment (For service calls, each tow truck shall be equipped with the following service equipment):

- 1) Adequate emergency supply of fuel in an approved container.
- 2) Booster battery or hot box starting system.
- 3) Hydraulic jack capable of handling passenger cars and light trucks.
- 4) Metric and standard lug wrenches.
- 5) Rubber mallet/hub cap tool.
- 6) Lockout tools.
- 7) Motorcycle straps (Class A only).
- 8) Sledge hammer.
- 9) Tool kit may include:
 - (a) Assorted open end wrenches; standard 1/4" - 7/8" and Metric, 6-19mm.
 - (b) Assorted screwdrivers; Straight blade, Phillips and Torx.
 - (c) Crescent wrench.
 - (d) Ball peen hammer.
 - (e) Pliers.
 - (f) Battery and terminal cleaning tools.
 - (g) Mechanic's wire.
 - (h) Plastic electrical tape/duct tape.
 - (i) Tire valve core tool.
 - (j) Miscellaneous fuses.
 - (k) Small pry bar.
 - (l) Socket Sets; 1/4" - 1" and 6-19 mm.
 - (m) Ratchet and extensions.

C. Class A Required Equipment

- 1) One 3-ton rated snatch block.
- 2) Towing sling - J/T hook tow chain assembly, a 4" x 4" x 48" and a 4" x 4" x 60" wooden crossbeam, a pair of spacer blocks, a steering wheel clamp, a towing dolly, and safety chains.
- 3) Wheel lift - Wheel safety straps or equivalent mechanical device, steering wheel clamp, towing dolly, and safety chains.
- 4) Car carrier - J/T Hook loading bridle, a 4" x 4" x 48" and 4" x 4" x 60" wooden crossbeam, a pair of spacer blocks, and two pairs of safety chains.

D. Class B Required Equipment

- 1) Towing sling - J/T hook tow chain assembly, a 4" x 4" x 48" and a 4" x 4" x 60" wooden crossbeam, a pair of spacer blocks, a steering wheel clamp, a towing dolly, and safety chains.
- 2) Wheel lift - Wheel safety straps or equivalent mechanical device, steering wheel clamp, towing dolly, and safety chains.
- 3) Truck hitch - Tow chain assembly, 4" x 4" x 60" and 6" x 6" x 60" wooden crossbeams (as necessary), aluminum tow angle(s), and safety chains.
- 4) Under lift - Assortment of lift forks/adapters, safety tie-down chains, and safety chains.
 - (a) Two 8-ton rated snatch blocks.
 - (b) Air hoses and necessary fittings to provide air to the towed vehicle.

E. Classes C and D Required Equipment

- 1) Towing sling - Tow chain assembly, 4" x 4" x 60" and 6" x 6" x 60" wooden crossbeam, a pair of spacer blocks, a steering wheel clamp, and safety chains.
- 2) Truck hitch - Tow chain assembly, 4" x 4" x 60" and 6" x 6" x 60" wooden crossbeams (as necessary), aluminum tow angle(s), and safety chains.
- 3) Under reach - Assortment of lift forks/adapters, safety tie-down chain(s), and safety chains.
 - (a) Steering wheel clamp.
 - (b) Two 12-ton rated snatch blocks.
 - (c) Air hoses and necessary fittings to provide air to the towed vehicle.

EXHIBIT "B"

SPECIAL REQUIREMENTS (Superseding Contract Boilerplate)

I. Section 2.1, "Contract Sum," is hereby amended and shall now read as follows:

"2.1 Contract Sum. Contractor shall receive no compensation from the City in connection with this Agreement. For the Services rendered pursuant to this Agreement, the Contractor shall be permitted to participate in the City's Rotation Tow Program, for which Contractor may become eligible to collect certain charges and fees for services rendered from the persons who receive those services. In no event shall Contractor be paid by, or become eligible for payment directly from, the City. The schedule of fees and charges, including those charges that must be collected by Contractor for the benefit of the City, are included in the "Schedule of Compensation" attached hereto as Exhibit "C" and incorporated herein by this reference. This Agreement further requires that Contractor shall attend all project meetings reasonably deemed necessary by the City, and Contractor shall not be entitled to any additional compensation for attending said meetings."

II. Section 2.2, "Method of Payment," is hereby amended and shall now read as follows:

"2.2 Method of Payment. Contractor understands and accepts that it is Contractor's obligation and sole responsibility to collect any of Contractor's fees for towing and storage including but not limited to, vehicles stored or impounded for State law violations, and any other fees provided for under this Agreement. Contractor shall not charge any fees in excess of the fees approved by the City Council. Contractor shall not collect or be entitled to any City vehicle release fees imposed by the City."

III. Section 2.3, "Reimbursable Expenses," is hereby deleted and is hereby replaced with the following section entitled "Franchise Fees" which shall read as follows:

"2.3 Franchise Fees. The Contractor shall pay a fee to the City in consideration for its permitting Contractor to participate in the Rotation Tow Program. Contractor shall pay City a monthly franchise fee ("Franchise Fee") of TWO THOUSAND TWO HUNDRED AND FIFTY DOLLARS (\$2,250) as compensation to provide services for the Rotational Tow Program. Payment of the Franchise Fee must be submitted to City within 15 days following the previous month. Failure to remit the fees in a timely manner is grounds for suspension and/or revocation of any award of Contract by City in its sole discretion. The purpose of the fee is to offset the City costs to monitor the Tow Rotation Program, periodically audit and inspect records, administrate complaints, and other administrative duties that otherwise would be borne entirely by the City. The amount of the Franchise Fee has been determined to not exceed the amount reasonably necessary to reimburse the City for its actual and reasonable costs incurred in connection with the

program. (Reference California Vehicle Code section 12110.) The Franchise Fee may be renegotiated annually between the City and the Contractor in good faith, as the City determines that adjustments of the fee are necessary, if actual costs for administration of the towing program exceeds or otherwise varies from the estimated costs upon which this Agreement is based.

IV. Section 2.4, "Invoices," is hereby deleted.

V. Section 2.5, "Waiver," is hereby deleted.

VI. Subsection d, "Professional Liability," of Section 5.1, "Insurance Coverages," is hereby deleted.

VII. Section 5.5, "Additional Insurance Requirements" is hereby added and shall read as follows:

"5.5 Additional Insurance Requirements. In addition to the requirements in Section 5.0 of this Agreement, Contractor shall maintain at least the following minimum levels of insurance from an insurance carrier admitted in California, in a form and content satisfactory to City:

(a) Commercial Business Automobile Liability as required by Vehicle Code § 16500.5. Bodily injury and property damage with a combined single limit of not less than \$1,000,000 for each class of tow trucks. These minimum standards are to include non-owned and hired auto coverage.

(b) On-Hook Coverage/Garage Keepers Legal Liability. Insuring the vehicle in tow with limits based on the size of the tow truck.

Class A tow truck	\$50,000
Class B tow truck	\$75,000
Class C tow truck	\$150,000
Class D tow truck	\$150,000

(c) Garage Liability insurance, including premises and operations coverage for bodily injury and property damage with a combined single limit of not less than \$1,000,000."

VIII. Section 7.3, "Retention of Funds," is hereby deleted.

IX. Section 7.8, "Termination for Default of Contractor," is hereby amended and shall now read as follows:

"7.8 Termination of Contractor With Cause or Removal from Rotation List.
Contractor may be terminated/removed from the rotation list at any time with or without

cause by the City. If the Agreement is terminated with cause, the following provisions shall apply:

(a) The Police Chief, or his/her designee, shall be authorized to take action against Contractor for violations of this Agreement investigated and confirmed or sustained up to and including termination of this Agreement.

(b) Overcharging by Contractor shall be cause for termination of this Agreement in the sole discretion of the Police Chief, or his/her designee.

(c) Failure by Contractor to respond to calls as required, meet the Maximum Response Time requirements, meet the Average Response Time on a regular basis, or perform the required towing or service as required by this Agreement shall be cause for termination of this Agreement in the sole discretion of the Police Chief, or his/her designee.

(d) Failure of Contractor to maintain the minimum insurance requirements as set forth in the Agreement shall be cause for termination of this Agreement in the sole discretion of the Police Chief, or his/her designee.

(e) A violation of the Biennial Inspection of Terminals (BIT) Program requirements shall be cause for termination of this Agreement.

(f) Failure of Contractor, its employees, or its agents to maintain professional conduct becoming of a representative of the City, in the sole discretion of the Police Chief, shall be cause for termination of this Agreement.”

EXHIBIT "C"

SCHEDULE OF COMPENSATION

I. The approved rate structure for all towing, storage and related services requested by IPD as described under Section 2.3 Additional Services or for eligible requested services is described herein. Contractor agrees to perform the services described herein to become eligible to receive, as full payment for services rendered, the fees described herein. If Contractor charges rates above those approved by the City, Contractor shall be in violation of the Agreement and subject to termination.

A. RATES.

The towing and storage rates charged by Contractor shall not exceed the rates charged by the California Highway Patrol ("CHP") in Los Angeles County. Should there be a dispute regarding the fees and charges for towing and/or storage of vehicles or other charges, said dispute shall be decided by the Police Chief or his/her designee. Such decision by the Police Chief or his/her designee shall be final and binding upon Contractor; and Contractor shall not make any demand upon the owner of the vehicle for a sum in excess of the amount determined by the Police Chief or his/her designee. Contractor may request a rate increase if such increase is consistent with and does not exceed the rates charged in the CHP in Los Angeles County, however, any rate increase shall be subject to the approval of the City's Police Chief who may, in his sole discretion, approve or deny any request.

Owners of vehicles towed by order or request of the IPD are responsible for all services, whether regular or special, associated with the towing service. Contractor shall provide itemized bills, distinctively showing charges for all classifications of services, including the charges for late payment. Neither City nor IPD will be responsible or liable for any costs of towing services in the event that the vehicle owner refuses or is unable to pay for the services.

The following rate structure shall apply for all towing and storage services requested by City through IPD and shall be applicable for the term of the Agreement:

1)	LIGHT DUTY TOWING RATE:	\$175.00 PER HOUR
		(1 Hour Minimum)

The base rate per tow shall apply to all towed passenger vehicles and trucks rated at less than 10,000 lbs. gross vehicle weight. This rate also applies to difficult removal work involving the removal of vehicles from deep ditches or flood control channels or burning apart of two entangled vehicles.

2)	MEDIUM DUTY TOWING RATE:	\$175.00 PER HOUR
		(1 Hour Minimum)

The two (2) axle category shall apply to all towed vehicles with a rate capacity of 10,000 lbs. gross vehicle weight to, but not including, vehicles with 30,000 lbs. gross vehicle weight.

- 3) HEAVY DUTY TOWING RATE: \$175.00 PER HOUR
(1 Hour Minimum)

The three (3) axle hourly rate shall apply to all towed vehicles with a rate capacity of 30,000 pounds gross vehicle weight or more.

The hourly rate for medium and heavy duty towing (two and three axle) shall commence when the tow truck arrives on the scene and includes difficult removal work involving the removal of vehicles from deep ditches or flood control channels, burning apart two entangled vehicles, uprighting overturned vehicles, and the use of special equipment and preparation prior to towing.

- 4) CITY VEHICLE: NO CHARGE

Contractor agrees that it shall, at no charge, tow such City vehicles as may be requested by IPD from time to time.

- 5) STORAGE: (Per Day)
- | | |
|-------------------------------------|----------------------------------|
| (a) Automobiles | \$55.00 Per Day/Per Unit |
| (b) Motorcycles | \$55.00 Per Day/Per Unit |
| (c) Trucks, under twenty feet (20') | \$55.00 Per Day/Per Unit |
| (d) Trucks, over twenty feet (20') | \$45.00 - 55.00 Per Day/Per Unit |

The above standard rates apply per vehicle for storage per twenty-four hour period, or any portion thereof. Contractor shall free of charge tow all vehicles designated for sale in connection with an asset forfeiture proceeding.

- 6) LOCK-OUTS.

When requested by IPD to assist with a lock-out (e.g., with the use of a "slimjim" or similar device), Contractor may charge up to \$ 45.00 where no towing services are provided.

- 7) ADDITIONAL CONDITIONS:

(a) Above towing charges shall apply regardless of the location from which the tow is made or the location of the storage area or garage where the vehicle is delivered. Such towing charges shall include clearing and cleanup of accident site, as required by IPD.

(b) There shall be no additional charge for righting an overturned passenger car or light pickup truck, if towing is involved.

(c) There shall be no additional charge for disconnecting a drive shaft where required for towing.

(d) The service of reconnecting the drive shaft, in the event such reconnecting is necessary, shall be performed without additional charge.

B. POSTING RATE SCHEDULE.

1) POSTING RATE SCHEDULES: Contractor shall post and maintain a sign or signs which have received the approval of the Police Chief, or his/her designee, in a conspicuous place or places on Contractor's premises, in a location designated by the Police Chief, or his designee, which gives notice of:

(a) The approved Rate Schedule for towing and storage services under this Agreement, and

(b) The method of payment(s) which are acceptable, which include credit cards and U. S. currency, and

(c) The requirement stating that a written receipt shall be supplied by Contractor for amount of payment received, and

(d) The telephone number and address of the Police Chief, or his/her designee.

EXHIBIT "D"

SCHEDULE OF PERFORMANCE

I. TERM.

In accordance with Section 3.4 of this Agreement, and unless earlier terminated in accordance with Section 7.8 of this Agreement, this Agreement shall continue in full force and effect for a period of three (3) years from the date of this Agreement. The City shall have the option to extend this Agreement on or before the expiration, for up to two (2) one year periods, or any portion thereof. In the event the City exercises the option to extend, all terms shall remain the same, except that (i) the service charges (Exhibit "B") may be renegotiated between the City and Contractor in good faith, and (ii) the City may impose any additional conditions necessary to improve service to the public. If the City exercises its option(s) under this provision, Contractor understands and agrees that any additional conditions must be approved in writing by the City Council.

II. ROTATING CALL LIST.

A. City shall use its best efforts to assign requests for towing services to Contractor on a rotating basis between Contractor and all other towing companies holding tow franchises with the City. Each call for service will be considered one turn on the rotation, regardless of the number of vehicles towed from the scene, and the Contractor shall be moved to the bottom of the list. The Contractor will send the appropriate number of trucks to handle the call for service, unless unable to do so, in which case Section II.A.2 of this Exhibit "D" below shall apply. City, in its sole and absolute discretion, reserves the right to place a request for towing or storage services out of rotation under any of the following circumstances:

- 1) At the sole discretion of the Contract Administrator for Contractor's failure to perform or in the Contract Administrator's opinion that Contractor is unable to perform;
- 2) There is a multiple vehicle accident that exceeds the capacity of Contractor on-call at such time;
- 3) Contractor is unable to respond in a timely manner as set forth in Section III of this Exhibit "A" below;
- 4) Failure of Contractor to make any payments as required by this Agreement;
and/or
- 5) Failure of Contractor to remove an employee from his/her service of City calls after City requests the removal of said employee from servicing City's tow and/or storage requests.

B. City shall use its best efforts to assign requests for towing services in connection with the abandoned vehicle abatement program to Contractor on a rotating basis between Contractor and all other towing companies holding tow franchises with the City. Each call for

service will be considered one turn on the rotation and will be limited to one (1) towed vehicle per call. Upon completion of said towing services, Contractor shall be moved to the bottom of the list.

C. Subject to the power and authority of City, as provided by law and in accordance with this Agreement, City shall in all cases, in its sole and absolute discretion, determine the quantity, quality, and acceptability of the services provided under this Agreement. City shall, in its sole and absolute discretion, decide any questions that might arise relative to the fulfillment of this Agreement or to the obligations of the Contractor hereunder.

III. RESPONSE TIMES.

All services shall be performed in a timely manner, and in no event shall the level of service or response time fail to meet the following requirements.

A. MAXIMUM RESPONSE TIME FOR CRITICAL TOWS: Contractor shall respond to IPD calls for Critical tow circumstances (traffic collisions, impounds, hazards, road blockages) within fifteen (15) minutes from the time the Contractor receives the request to the time the tow vehicle arrives at the location from which the critical tow is to be made. In no event shall the response time exceed fifteen (15) minutes for a critical tow.

B. MAXIMUM RESPONSE TIME FOR NON-CRITICAL TOWS: In no event shall the response time exceed twenty (20) minutes for a non-critical tow. Notwithstanding the foregoing, if Contractor's dispatcher, at the time the call is placed, notifies IPD that a tow unit cannot respond within the maximum response time and gives, in the sole and absolute discretion of the Police Chief, or his/her designee, a reasonable cause therefore, which is beyond the control and without the fault or negligence of Contractor, then Contractor will not be deemed to have failed to respond to a call for service and the Police Chief, or his/her designee, shall have the right to contact another tow truck services company, and cancel the call for service.

C. AVERAGE RESPONSE TIME: The Contractor's response to calls from IPD for towing service shall not exceed an average of fifteen (15) minutes (for both critical and non-critical calls combined) from the time the Contractor received the request from IPD to the time the tow vehicle arrives at the location from which the tow is to be made. Said fifteen (15) minute average response time shall be computed based upon any randomly selected fifty (50) instances of calls for service. Contractor shall record pertinent times on calls received and dispatches to each tow unit by time clock method approved by the Police Chief, or his/her designee.

D. EXCUSED RESPONSE: The response time specified in this Agreement shall be extended because of any delays due to unforeseen causes beyond the control and without the fault or negligence of Contractor, including, but not restricted to, unusually severe weather, fires, earthquakes, floods, and/or acts of any governmental agency, including the City, if Contractor shall, within fifteen (15) minutes of the commencement of such delay, notify the Police Chief, or his/her designee, via telephone of the cause(s) of the delay.

The Police Chief, or his/her designee, shall ascertain the facts and the extent of the delay, and extend the time for performing the services for the period of the enforced delay when and if in the judgment of the Police Chief, or his/her designee, such delay is justified, and the

Police Chief's, or his/her designee's, determination shall be final and conclusive upon the parties to this Agreement.

E. FAILURE TO MEET RESPONSE TIMES. Failure to maintain, at all times, the Average Response Time or failure to meet the Maximum Response Time for Non-Critical Tows or the Critical Tow Time, on three or more occasions within any 365 day period, shall be a material default, constituting grounds for termination of this Agreement.

In addition, since the determination of actual damages for any such failure would be extremely difficult or impractical to determine, in the event of any such failure to meet the maximum response time for non-critical tows or the critical tow time, Contractor and its sureties shall be liable for and shall pay to the City the sum of Three Hundred Dollars (\$300) as liquidated damages for each fifteen (15) minutes of delay. Contractor shall be liable for \$300 in damages for any delay less than fifteen (15) minutes.

IV. CONTRACTOR RESPONSE TO CALLS.

A. Contractor shall respond to IPD calls 24 hours a day, seven (7) days a week, within the applicable maximum response time, as described above.

B. In responding to a IPD call, Contractor shall perform the towing or service required for which Contractor was called. This requirement may be waived by the IPD officer in charge, if the requested equipment is inadequate for the service to be performed.

C. Any failure(s) to (a) respond as required; (b) meet the maximum response time requirements; or (c) perform the required towing or service, shall constitute a default under this Agreement subject to termination.

- ☒ City Council
- ☐ Successor Agency
- ☐ Housing Authority
- ☐ Reclamation Authority
- ☐ Joint Powers Authority

City of
IRWINDALE
AGENDA REPORT

Date: July 26, 2023
To: Honorable Mayor and Members of the City Council
From: Julian A. Miranda, City Manager
Issue: Second Reading for the following Ordinances:
Ordinance No. 771

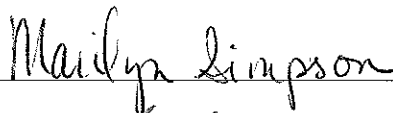
City Manager's Recommendation:

That the City Council adopt on second reading Ordinance No. 771 entitled: **"AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF IRWINDALE APPROVING DEVELOPMENT AGREEMENT NO. 01-2022 BETWEEN CITY OF IRWINDALE AND KBS HOLDCO LLC, DBA REGENCY OUTDOOR ADVERTISING, TO ALLOW FOR THE DIGITAL CONVERSION OF AN EXISTING STATIC BILLBOARD LOCATED AT THE INTERSECTION OF THE I-605 (NORTHBOUND) AND THE I-210 (EASTBOUND) FREEWAYS (APN: 8533-009-014) IN THE M-2 (HEAVY MANUFACTURING) ZONE SUBJECT TO THE CONDITIONS AS SET FORTH HEREIN AND MAKING FINDINGS IN SUPPORT THEREOF; AND FINDING THE PROJECT EXEMPT FROM THE PROVISIONS OF THE CALIFORNIA ENVIRONMENTAL QUALITY ACT"**

Administrative Actions:

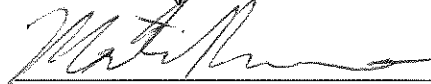
Submitted by:

Marilyn Simpson, Community Development Director
(626) 430-2209



Prepared by:

Martin Romero, Planning Technician



Reviewed by:

Adrian R. Guerra, City Attorney

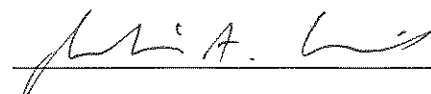
Electronically Approved

Kambiz Borhani, Finance Director / City Treasurer

Electronically Approved

Approved by:

Julian A. Miranda, City Manager



BACKGROUND AND ANALYSIS:

At its meeting of July 12, 2023, the City Council introduced the above ordinance for first reading. The ordinance is attached and it would be in order to adopt Ordinance No. 771 on second reading for Development Agreement No. 01-2022.

FISCAL IMPACT

The Development Agreement application is deposit-based and therefore does not have a negative impact on the City's General Fund. An annual development fee has been made part of the agreement that will generate Seventy Thousand Dollars (\$70,000) to the City of Irwindale per year (representing \$35,000 per digital display).

ATTACHMENTS

Attachment A: Ordinance No. 771

ATTACHMENT "A"

ORDINANCE NO. 771

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF IRWINDALE APPROVING DEVELOPMENT AGREEMENT NO. 01-2022 BETWEEN CITY OF IRWINDALE AND KBS HOLDCO LLC, DBA REGENCY OUTDOOR ADVERTISING, TO ALLOW FOR THE DIGITAL CONVERSION OF AN EXISTING STATIC BILLBOARD LOCATED AT THE INTERSECTION OF THE I-605 (NORTHBOUND) AND THE I-210 (EASTBOUND) FREEWAYS (APN: 8533-009-014) IN THE M-2 (HEAVY MANUFACTURING) ZONE SUBJECT TO THE CONDITIONS AS SET FORTH HEREIN AND MAKING FINDINGS IN SUPPORT THEREOF; AND FINDING THE PROJECT EXEMPT FROM THE PROVISIONS OF THE CALIFORNIA ENVIRONMENTAL QUALITY ACT

A. RECITALS.

WHEREAS, Andrew Goodman, on behalf of KBS Holdco, LLC, dba Regency Outdoor Advertising (the "Applicant"), has made a request for approval of a Development Agreement (Exhibit A) to allow the conversion of an existing static billboard into a digital display billboard along Interstate 210 (I-210) Freeway just east of the intersection with Interstate 605 (I-605) Freeway in Irwindale, APN: 8533-009-014 ("Subject Property"). The proposed Development Agreement allows the applicant to either keep the parallel panel configuration or to rearrange the panel configuration into a "V" shaped panel configuration. If structurally feasible, the digital billboard panels will be placed on the existing support structure, otherwise, the existing structure will be demolished and a new support structure will be installed. Any new support structure will not increase the height of the existing structure. The digital billboard will have a total height of 85 feet from the ground and will stand no more than 65 feet above the freeway grade, due to a grade difference; and

WHEREAS, the Subject Property is zoned M-2 (Heavy Manufacturing). Per Irwindale Municipal Code (IMC) section 17.72.030, the repair, replacement, or new installation of a static or digital billboard requires the approval of a Development Agreement with appropriate standards and public benefits to be negotiated with the City and complying with all other standards imposed by the IMC; and

WHEREAS, pursuant to the authority and criteria contained in the California Environmental Quality Act (CEQA) of 1970, as amended, and the City of Irwindale environmental guidelines, the City, as the Lead Agency, has analyzed the project and has determined that the Project is Categorically Exempt from the provisions of CEQA pursuant to Section 15303 (Class 3; New Construction or Conversion of Small Structures) and no further review is required. Also, the City has determined that this project will not have, either individually or cumulatively, an adverse impact on fish and wildlife resources. Subject to approval of the project by the City Council based on a recommendation by the Planning Commission, a Notice of Exemption will be filed with the office of the Registrar-Recorder/County Clerk, County of Los Angeles; and

WHEREAS, on June 21, 2023, the Planning Commission conducted a duly noticed

public hearing, at which time they received a presentation from staff; opened the public hearing and heard testimony from the Applicant and the public; closed the public hearing; and discussed the Proposed Project; and, after discussion and consideration of substantial evidence including the testimony, staff report, and all attachments thereto, approved and adopted Resolution No. 818(22) recommending that the City Council approve Development Agreement No. 01-2022; and

WHEREAS, on July 12, 2023, the project was scheduled before the City Council as a duly noticed public hearing, at which time they received input from staff, the City Attorney, and Applicant; heard public testimony; discussed the Proposed Project; closed the public hearing; and, after discussion, conducted a first reading of this Ordinance approving Development Agreement No. 01-2022; and

WHEREAS, on July 26, 2023, the City Council duly approved and adopted on second reading, Ordinance No. 711; and

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

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

SECTION 1. The City Council finds that all of the facts set forth in Recitals, Part A, of this Ordinance are true and correct, and incorporated herein by this reference.

SECTION 2. The City Council finds as follows:

- a. Development Agreement No. 01-2022 is consistent with the provisions of the Development Agreement statutes, at Government Code section 65867.5.
- b. The proposed digital billboard conversion per Development Agreement No. 01-2022 is consistent with the General Plan, including the General Plan Land Use and Economic Development policies in the Community Development Element. These policies provide for comprehensive land use planning to preserve the overall mix of land uses and development in the community, which includes digital billboards, and provides for the pursuit and promotion of economic development to provide revenue to the City.
- c. Development Agreement No. 01-2022 contains a provision for annual review of Developer's compliance with its terms, is limited in duration for thirty (30) years following final permit approvals unless duly extended following negotiations between the City and KBS Holdco, LLC, dba Regency Outdoor Advertising, and specifies the permitted use of the site related to the billboards and provisions for City access to the site when necessary.

- d. The project, as proposed, is exempt from the provisions of the California Environmental Quality Act (CEQA), pursuant to 15303 (Class 3; New Construction or Conversion of Small Structures).

SECTION 3. Based upon substantial evidence presented to this City Council during the public hearing conducted with regard to the Application and set forth herein above, this City Council hereby approves Development Agreement No. 01-2022, attached hereto and by this reference incorporated herein. The Development Agreement is necessary to protect the public health, safety and general welfare and is reasonable and proper in accordance with the intent and purposes of Title 17 of the Irwindale Municipal Code. Therefore, the City Council hereby approves Development Agreement No. 01-2022 and authorizes its execution and all actions necessary to comply with its terms.

SECTION 4. The City Council hereby authorizes and directs the Mayor, Chief Deputy City Clerk to execute this Ordinance on behalf of the City of Irwindale forthwith upon its adoption.

SECTION 5. The Chief Deputy City Clerk Shall:

- a. Certify to the adoption of this Ordinance and shall cause the same to be published and/or posted at the designated locations in the City of Irwindale; and
- b. Forthwith transmit a certified copy of this Ordinance, by certified mail to the Applicant at the address of record set forth in the Application.

PASSED, APPROVED, AND ADOPTED this 26th day of July 2023.

H. Manuel Ortiz, Mayor

ATTEST:

Laura M. Nieto, MMC
Chief Deputy City Clerk
STATE OF CALIFORNIA }
COUNTY OF LOS ANGELES } ss.
CITY OF IRWINDALE }

I, Laura M. Nieto, Chief Deputy City Clerk of the City of Irwindale, do hereby certify that the foregoing Ordinance No. 771 was duly introduced by the City Council of the City of Irwindale, at a regular meeting held on the 12th day of July 2023, and was duly approved and adopted on second reading at its regular meeting held on the 26th day of July 2023, by the following vote of the Council:

AYES: Councilmembers:

NOES: Councilmembers:

ABSENT: Councilmembers:

ABSTAIN: Councilmembers:

Laura M. Nieto, MMC
Chief Deputy City Clerk

Recording Requested by And When
Recorded Return To:
CITY OF IRWINDALE
5050 N. Irwindale Avenue
Irwindale, CA 91707
Attn: City Clerk

DEVELOPMENT AGREEMENT NO. 01-2022

This Development Agreement (the "Agreement") is entered into this 26th day of July, 2023 (the "Effective Date"), by and between the City of Irwindale, California municipal corporation (the "City"), and KBS Holdco, LLC, a California limited liability company dba Regency Outdoor Advertising (the "Developer").

RECITALS

A. California Government Code Sections 65864 *et seq.* ("Development Agreement Law") authorizes cities to enter into binding development agreements with persons having a legal or equitable interest in real property for the development of such property, all for the purposes of strengthening the public planning process, encouraging private participation and comprehensive planning and identifying the economic costs of such development.

B. Developer is owner of the Out of Home Advertising Display, a lawfully permitted double-sided printed billboard ("Printed Billboard Structure") and real property, located adjacent to the 210 Freeway in the City of Irwindale, Assessor Parcel Number Numbers 8533-009-014, as more specifically described in **Exhibit A** and depicted at **Exhibit C**, attached hereto and incorporated herein (the "Site"), upon which it seeks to install a new lawfully permitted double-sided 14 x 48 or larger foot digital outdoor advertising billboard which is oriented toward the east and west bound 210 Freeway.

C. Pursuant to the terms of this Agreement, Developer seeks to replace the Printed Billboard Structure with one double-faced digital billboard (such digital billboard is referred to herein as the "Landmark Message Center"), having a Back to Back or V-shaped design with one face oriented towards westbound traffic and the other face oriented toward eastbound bound traffic off the 210 Freeway, using either the same billboard structure or a new billboard foundation and pole structure in generally the same location where the Printed Billboard Structure is currently located. The Landmark Message Center will have two faces, of approximately 14 feet by 48 feet, or approximately 672 square feet (each referred to individually herein as a "Digital Display Face"). The Landmark Message Center will be supported by a single post.

D. As owner of the Site, Developer has a legal and/or equitable interest in the Site and thus qualifies to enter into this Agreement in accordance with Development Agreement Law.

E. In exchange for the City approvals sought by Developer for installation of the Landmark Message Center as provided herein, Developer has offered to:

1. Pay to the City an annual Development Fee as defined and provided in Section 2.5 below, for the cost to the City to mitigate the impact of the installation of the Landmark Message Center; and
2. Provide advertising time on the Landmark Message Center on a space-available basis to the City for public service, civic causes, *or emergency notifications at the discretion of the Irwindale Chief of Police.*

F. The Site is zoned M-2 and designated by the General Plan land use map as Industrial/Business Park.

G. Developer and the City agree that a development agreement should be approved and adopted to memorialize the property expectations of the City and Developer, as more particularly described herein.

H. On June 21, 2023, at a duly noticed public hearing, the Planning Commission adopted Resolution No. 818(23), recommending approval of this Agreement including development of the Landmark Message Center as proposed in this Agreement, Ordinance No. 771 to the City Council and the filing of a Notice of Exemption pursuant to Section 15061(b)(3) of the California Environmental Quality Act ("**CEQA**") Guidelines.

I. On July 12, 2023, the City Council of the City, at a duly noticed hearing to consider the approval of this Agreement including development of the Landmark Message Center as proposed in this Agreement, considered the proposal, heard testimony, and introduced Ordinance No. 771 and the filing of a Notice of Exemption pursuant to Section 15061(b)(3) of the CEQA Guidelines..

J. The City Council has found that this Agreement is in the best public interest of the City and its residents, adopting this Agreement constitutes a present exercise of the City's police power, and this Agreement is consistent with the City's General Plan. This Agreement and the proposed Development (as hereinafter defined) will achieve a number of City objectives, including utilizing the Site for a revenue-generating use. Upon any termination of the Term (as defined below) of this Agreement, Developer will remove the digital displays if an extension of this Agreement is not negotiated with City and shall have the right with City approval to convert the Landmark Message Center to a printed billboard with two facings.

K. On July 26, 2023, the City Council held the second reading on, and adopted Ordinance No. 771, thereby approving this Agreement.

L. The City finds and determines that all actions required of the City precedent to approval of this Agreement by Ordinance No.771 of the City Council have been duly and regularly taken.

M. The purpose of this Agreement is to set forth the rules and regulations applicable to the Development, which shall be accomplished in accordance with this Agreement, including the Scope of Development (Exhibit B) which sets forth a description of the Development and the Schedule of Performance (Exhibit D).

COVENANTS

NOW, THEREFORE, in consideration of the above recitals and of the mutual covenants hereinafter contained and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. DEFINITIONS AND EXHIBITS.

1.1 Definitions. This Agreement uses a number of terms having specific meanings, as defined below. These specially defined terms are distinguished by having the initial letter capitalized, when used in the Agreement. In addition to the terms defined in the Recitals above, the defined terms include the following:

1.1.1 "Agreement" means this Development Agreement and all attachments and exhibits hereto.

1.1.2 "City" means the City of Irwindale, a California municipal corporation.

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

1.1.4 "Developer" means KBS Holdco LLC, California limited liability company, duly existing and operating, and its successors and assigns, doing business as Regency Outdoor Advertising at 9201 Sunset Blvd, West Hollywood, CA 90069.

1.1.5 "Development" means the installation, operation, improvement, replacement, upgrade, and maintenance of the Landmark Message Center on the Site and the undergrounding of all utilities from Southern California Edison's electrical source or an electrical source located elsewhere on Developer's property (e.g., from an electrical panel on a building situated on Developer's property) to the Landmark Message Center and all appurtenances thereto and all modifications and improvements placed by it, or with its authority, upon the Site, all in accordance with the Development Approvals and this Agreement, including the Scope of Development attached hereto as Exhibit B, Schedule of Performance attached hereto as Exhibit D, and all conditions of approval, and consistent with the approval from the California Department of Transportation Outdoor Advertising Division. The Developer is and shall remain the owner of the Development as a trade fixture and Developer is the owner of all of the sign permits to the Development.

1.1.6 "Development Approvals" means any and all permits or approvals necessary to carry out and complete the Development, including, but not limited to Ordinance No. 771, and as further described in Section 3.3 herein.

1.1.7 "Development Fee" shall have the definition given in Section 2.5 of

this Agreement.

1.1.8 “Digital Display Face” shall have the meaning ascribed in the Recitals above.

1.1.9 “Effective Date” means the date inserted into the preamble of this Agreement, which is 30 days following approval of this Agreement by ordinance of the City Council, provided this Agreement is signed by Developer and the City.

1.1.10 “Fee Commencement Date” shall have the definition given in Section 2.5 of this Agreement.

1.1.11 “Final Permits” shall mean the final approval from the applicable governmental authorities and all required third party approvals, after the expiration of all applicable appeal periods, for any and all required permits to maintain and operate the Landmark Message Center as contemplated under this Agreement. .

1.1.12 “Land Use Regulations” means all ordinances, resolutions, codes, rules, regulations and official policies of the City, including, but not limited to, the City’s General Plan, Municipal Code and Zoning Code, which govern development and use of the Site, including, without limitation, the permitted use of land, the density or intensity of use, subdivision requirements, the maximum height and size of the Landmark Message Center, and the design, improvement and construction standards and specifications applicable to the Development of the Site which are in full force and effect as of the Effective Date of this Agreement, subject to the terms of this Agreement. Land Use Regulations shall also include the federal National Pollutant Discharge Elimination System (“NPDES”) regulations and approvals from the California Department of Transportation Outdoor Advertising Division, to the extent applicable.

1.1.13 “Landmark Message Center” shall have the meaning ascribed in the Recitals above.

1.1.14 “Mortgagee” means a mortgagee of a mortgage, a beneficiary under a deed of trust or any other security-device, a lender or each of their respective successors and assigns.

1.1.15 “Schedule of Performance” means the Schedule of Performance attached hereto as **Exhibit D** and incorporated herein.

1.1.16 “Scope of Development” means the Scope of Development attached hereto as **Exhibit B** and incorporated herein.

1.1.17 “Site” refers to the site described in Recital B and more specifically described and depicted on **Exhibit A** and **Exhibit C** attached hereto and incorporated herein.

1.1.18 “Subsequent Development Approvals” means any Development

Approvals issued subsequent to the Effective Date in connection with development of the Development, which shall include, without limitation, any changes to the Development Approvals.

1.1.19 "Subsequent Land Use Regulations" means any Land Use Regulations effective after the Effective Date of this Agreement (whether adopted prior to or after the Effective Date of this Agreement) which govern development and use of the Site.

1.1.20 "Term" shall have the meaning provided in Section 2.3, unless earlier terminated as provided in this Agreement.

1.1.21 **Exhibits.** The following documents are attached to, and by this reference made a part of, this Agreement: **Exhibit A** (Legal Description of Site), **Exhibit B** (Scope of Development), **Exhibit C** (the Site and Landmark Message Center pictorial), **Exhibit D** (Schedule of Performance).

2. GENERAL PROVISIONS.

2.1 Binding Effect of Agreement. From and following the Effective Date, actions by the City and Developer with respect to the Development, including actions by the City on applications for Subsequent Development Approvals affecting the Site, shall be subject to the terms and provisions of this Agreement.

2.2 Interest in Site. The City and Developer acknowledge and agree that Developer has a legal or equitable interest in the Site and thus is qualified to enter into and be a party to this Agreement under the Development Agreement Law.

2.3 Term of Agreement. Unless earlier terminated as provided in this Agreement, the term of this Agreement shall commence on the Effective Date and continue in full force and effect until the earlier of: (i) 30 years after the Fee Commencement Date; or (ii) the permanent removal of the Landmark Message Center constructed pursuant to the terms hereof, other than its removal for repair or replacement, or (iii) if one digital face is removed permanently and replaced with a static face, then this Agreement shall remain in effect for the remaining digital face ("Term"). If only one Digital Display Face is permanently removed from the Landmark Message Center and replaced with a printed billboard, the then-current Development Fee will be reduced by fifty percent (50%) and the Agreement will remain in full force and effect as to the remaining Digital Display Face. In such case, the replacement of one digital face with a static face shall require an amendment to this Agreement. Within thirty (30) days after the expiration or termination of this Agreement, the parties shall execute a written cancellation of this Agreement which shall be recorded with the County Recorder pursuant to Section 9.1 below. If no extension or renewal of this Agreement is agreed to following its termination, then the digital displays shall come down but the static displays may remain.

2.4 Processing Fee. Developer has paid to City a processing fee ("Processing Fee") in the total amount of \$16,857.60, which includes (1) the Development Agreement

application fee of \$2,000.00 (2) Environmental Documentation fee of \$250.00; (3) Development Agreement deposit of \$10,000.00, as an initial deposit for the City Attorney costs of preparation (4) Public Hearing Notices deposit of \$800.00; (5) a Noticing fee of \$120.00; and (6) a 28% Administrative and Overhead fee of \$3,687.60. The City shall retain and use the Processing Fee, or any part thereof, for any public purpose within the City's discretion. In addition to the Processing Fee, any additional City Attorney fees incurred by City in the preparation and negotiation of the Development Agreement and processing of Project Development Approvals at a rate not to exceed \$400.00 per hour, plus the actual amount of the costs of the Public Hearing Notice ads, shall be Developer's responsibility to pay. The Processing Fee shall be separate from all fees which are standard and uniformly applied to similar projects in the City, including, but not limited to, business **license** fees (due by Developer to City annually), a one-time plan check fee and building permit fee, and any other fees imposed by the City as may be applicable. Additionally, within 30 days of the City providing Developer with a final invoice of legal fees (subject to the above cap) or fees incurred by City related to the negotiation and preparation of this Agreement and Public Hearing Notice ads, Developer shall pay City any outstanding balance of such fees.

2.5 Development Fee. The potential impacts including those based on aesthetics of the Development on the City and surrounding community are difficult to identify and calculate. Developer and the City agree that an annual development fee paid by Developer to the City would adequately mitigate all such potential impacts, because that fee will provide City resources to install and maintain other aesthetic improvements throughout the community, including, but not limited to, landscaping, street medians, signs in public parks, street sweeping, street signs and street lighting. To that end, Developer and City agree that Developer shall pay an annual development fee paid per Digital Display Face to the City ("Development Fee") which would adequately mitigate all such potential impacts. The parties therefore agree that, subject to the obligations of Section 2.7 below, Developer shall pay an annual development fee to City of \$35,000 per Digital Display Face, increased by twelve and one half percent (12.5%) at the 6th, 11th, 16th, 21st, and 26th payments ("Development Fee"). For ease of reference, the Development Fees shall equal the following amounts during the Term:

Payment Number	Fee per Digital Display Face	Fee for Landmark Message Center (Development)
1 through 5	\$35,000	\$70,000
6 through 10	\$39,375	\$78,750
11 through 15	\$44,297	\$88,594
16 through 20	\$49,834	\$99,668
21 through 25	\$56,063	\$112,126
26 through 30	\$63,071	\$126,142

The first Development Fee payment for the Project shall be due no later than one (1) year after the Landmark Message Center becomes fully operational or within thirty (30) days after Developer receives any income from the use of the Landmark Message

Center, whichever occurs first ("**Fee Commencement Date**"). On the one year anniversary of the Fee Commencement Date, Developer shall make the second Development Fee payment and then annually thereafter in accordance with the above pay schedule. Developer shall notify City within five (5) days after the Landmark Message Center becomes fully operational or within five (5) days of its receipt of any income received from use of the Landmark Message Center, whichever occurs first, for the purpose of determining the Fee Commencement Date. Nothing herein relieves the City from its contractual duty to issue all municipal building permits that are associated with the Project if Developer is in compliance with the terms of this Agreement. In compliance with the provisions of Government Code section 65865(e), City shall maintain the Development Fee it receives pursuant to this Agreement and other similar agreements in a separate capital facilities account to be expended for the purpose of enhancing and/or improving the aesthetics of the community within the City of Irwindale, such as through new street signs, street lighting, increased landscaping, heightened landscape maintenance, removal of code violations that impact the aesthetics of the community, and other related aesthetic uses.

2.5.1 Late Payment

(a) Penalty. The City may notify the Developer if the Development Fee is not received within ten (10) business days after the due date ("**Late Notice**"); there shall be no penalty if payment is made within ten (10) business days following the Late Notice. The date of the Late Notice shall mean the date that it is received by the Developer after it has been placed by the City in the U.S. Mail, certified mail with return receipt. Failure to sign the return receipt shall not affect the date Late Notice is given. If City does not issue a Late Notice, penalties will begin to accrue if payment is not made within thirty (30) calendar days of the Due Date.

Late payment penalties shall be calculated as follows: 5% of the Development Fee due and payable for the current year shall be added to the Development Fee for that year for failure to make the full payment within ten (10) business days of the Late Notice. As an example, the Development Fee for Year 5 is \$70,000. A 5% penalty would result in a total amount due of \$73,500 (\$70,000 + \$3,500). Thereafter, for each additional ten (10) calendar days that the full Development Fee is not paid, including the penalty, the Developer shall incur an additional penalty of 5% of that year's Development Fee, for a maximum penalty of 15% of that year's Development Fee.

(b) Termination. Notwithstanding anything to the contrary in Article 6 of this Agreement, failure by Developer to pay the Development Fee to the City within thirty (30) days following the due date of each year during the Term of this Agreement is considered a material breach of this Agreement, and if not paid in full to the City, including all late penalties, within ten (10) business days after written notice to Developer of such material breach, City may begin termination proceedings in accordance with Article 6 of Agreement.

2.6 Prohibited Use. Developer shall not utilize any of the displays on the Landmark Message Center to advertise tobacco, marijuana, hashish, "gentlemen's clubs," adult entertainment businesses, sexually oriented materials, or use sexually oriented images or language, including, but not limited to, ads such as "Adult Con", vulgar or obscene images or language, or as may be prohibited by any City ordinance existing as of the Effective Date of this Agreement, or as may be amended or implemented from time-to-time after the Effective Date and equally-applicable to all outdoor advertising structures by any duly adopted and valid City ordinance.

2.7 Community Benefits. Developer shall also provide free of charge to City on a space-available basis, advertising space on the Landmark Message Center. Such advertising space shall only be made available for the use of City-related events or agencies, and shall be provided regardless of availability for emergency notifications at the discretion of the Chief of Police. City will be responsible for creating the design of any displays, subject to review and approval of a suggested copy from City by Developer, with such Developer approval not to be unreasonably withheld, conditioned or delayed. Developer agrees to install, at no cost to the City, an unlit City emblem (the "City Logo") on the sign column of each Digital Display Face prior to project final. Said logo shall be provided to the Developer by the City, as further detailed in **Exhibit B** attached hereto.

2.8 Discount Advertising. Developer shall offer a twenty percent (20%) discount off its applicable rates for display of advertising on the Development to any business that is a member of the Irwindale Chamber of Commerce.

2.9 Assignment. Developer may assign or otherwise transfer this Agreement, or any part of this Agreement, to any other entity, upon presentation to the City of an assignment and assumption agreement in a form reasonably acceptable to the City Attorney and the City's written approval of such assignment or transfer by the City Manager, which shall not be unreasonably withheld if the assignee is able to demonstrate sufficient financial assets and experience in undertaking the obligations under this Agreement. However, Developer may, from time to time and one or more times, assign this Agreement, to another entity without City approval, but with written notice to the City, as long as (1) Developer has and maintains at least a twenty-five percent (25%) ownership interest in the assignee(s) or transferee(s); and (2) any assignee(s) or transferee(s) executes an assumption agreement assuming all of Developer's duties and obligations hereunder to the extent of the interest assigned or transferred. After a transfer or assignment as permitted by this Section, the City shall look solely to such assignee or transferee for compliance with the provisions of this Agreement which have been assigned or transferred.

2.10 Purpose. The purpose of this Agreement is to set forth the rules and regulations applicable to the Development, which shall be accomplished in accordance with this Agreement, including the Scope of Development (**Exhibit B**) which sets forth a

description of the Development and the Schedule of Performance (**Exhibit D**).

3. DEVELOPMENT AND IMPLEMENTATION OF THE DEVELOPMENT.

3.1 Rights to Develop. Subject to and during the Term of this Agreement, Developer shall have the right to develop, operate and maintain the Site in accordance with, and to the extent of, the Development Approvals, the Land Use Regulations, and this Agreement, provided that nothing in this Agreement shall be deemed to modify or amend any of the pre-existing Land Use Regulations, as more particularly set forth in Section 3.2 below.

3.2 Effect of Agreement on Land Use Regulations. Except as otherwise provided under the terms of this Agreement, the rules, regulations and official policies governing permitted uses of the Site, the density and intensity of use of the Site, the maximum height and size of proposed structures on the Site, and the design, improvement and construction standards and specifications applicable to the Site, shall be as set forth in the Land Use Regulations which are in full force and effect as of the Effective Date of this Agreement, subject to the terms of this Agreement.

3.3 Development Approvals. Developer shall, at its own expense and before commencement of demolition, construction or development of any structures or other work of improvement upon the Site, secure or cause to be secured any applicable Development Approvals, which shall include and any and all permits and approvals which may be required by City or any other governmental agency or utility affected by such construction, development or work to be performed by Developer pursuant to the Scope of Development, including but not limited to, necessary building permits and all approvals required under the California Environmental Quality Act ("CEQA"). Not by way of limiting the foregoing, in developing and constructing the Development, Developer shall comply with all: (1) applicable development standards in the City's Municipal Code, (2) applicable NPDES requirements pertaining to the Development, and (3) all applicable building codes, except as may be permitted through approved variances and modifications. Developer shall pay all normal and customary fees and charges applicable to such permits, and any fees and charges hereafter imposed by the City in connection with the Development which are standard and uniformly-applied to similar projects in the City. Nothing herein relieves the City from its contractual duty to issue all municipal building permits that are associated with the Development if Developer is in compliance with the terms of this Agreement.

3.4 Timing of Development; Scope of Development. Developer shall comply with all time requirements set forth in the Schedule of Performance, attached hereto as **Exhibit D**. Developer shall convert the Printed Billboard Structure to the Landmark Message Center and such Landmark Message Center and both Digital Display Faces shall be fully operational not later than one (1) year after the issuance of Final Permits for the Landmark Message Center, or two (2) years after the Effective Date, whichever occurs first. If the Landmark Message Center is not fully operational within such time, and after compliance with Section 5.4, City may terminate this Agreement and shall have no

further obligation hereunder. However, City may allow for extensions of time for the conversions based on Developer's showing, and City's finding, of good cause for such delay, which extension shall be confirmed in writing by City to Developer. However, if circumstances within the scope of Section 9.10 delay the commencement or completion of the Development, then such delays shall not constitute grounds for any termination rights found within this Agreement. In such case, the timeline to commence or complete the relevant task shall be extended in the manner set forth at Section 9.10. Notwithstanding the above, Developer shall, at all times, comply with all other obligations set forth in this Agreement regarding the construction or improvement of the Landmark Message Center. Developer shall also maintain the Landmark Message Center at all times during the Term in accordance with the maintenance provisions set forth in Section 3 of the Scope of Development, attached as **Exhibit B** herein.

3.5 Changes and Amendments. Developer may determine that changes to the Development Approvals are appropriate and desirable. In the event Developer makes such a determination, Developer may apply in writing for an amendment to the Development Approvals to effectuate such change(s). The parties acknowledge that the City shall be permitted to use its inherent land use authority in deciding whether to approve or deny any such amendment request; provided, however, that in exercising the foregoing reasonable discretion, the City shall not apply a standard different than that used in evaluating requests of other developers, developing the same or similar development as that contemplated under this Agreement. Accordingly, under no circumstance shall the City be obligated in any manner to approve any amendment to the Development Approvals, however approvals will not be unreasonably withheld provided that Developer has complied with all requirements then and effect and consistent with the requirements of any other similar developments. The City Manager shall be authorized to approve any non-substantive amendment to the Development Approvals without processing an amendment to this Agreement. The parties acknowledge that any extension of the Term for no more than twenty-four (24) months total is an example of a non-substantive change, which the City Manager, in his or her reasonable discretion, may approve in writing. All other amendments shall require the approval of the City Council. No approvals or amendment is necessary for Developer to upgrade the digital displays installed pursuant to this Agreement during the Term of this Agreement to incorporate newer technology; provided Developer shall secure all applicable ministerial permits to do so and such upgrade is consistent with the dimensions and standards for the displays, as provided under this Agreement, Land Use Regulations and Subsequent Land Use Approvals.

3.6 Reservation of Authority.

3.6.1 Limitations, Reservations and Exceptions. Notwithstanding any other provision of this Agreement, the following Subsequent Land Use Regulations shall apply to the Development:

(a) Processing fees and charges of every kind and nature imposed by the City to cover the estimated actual costs to the City of processing

applications for Subsequent Development Approvals.

(b) Procedural regulations consistent with this Agreement relating to hearing bodies, petitions, applications, notices, findings, records, hearings, reports, recommendations, appeals and any other matter of procedure. Notwithstanding the foregoing, if such change materially changes Developer's costs or otherwise materially impacts its performance hereunder, Developer may terminate this Agreement upon ninety (90) days prior written notice to the City.

(c) Changes adopted by the International Conference of Building Officials, or other similar body, as part of the then most current versions of the Uniform Building Code, Uniform Fire Code, Uniform Plumbing Code, Uniform Mechanical Code, or National Electrical Code, as adopted by the City as Subsequent Land Use Regulations, if adopted prior to the issuance of a building permit for development of the Landmark Message Center. Notwithstanding the foregoing, if such change materially changes Developer's costs or otherwise materially impacts its performance hereunder, Developer may terminate this Agreement upon ninety (90) days prior written notice to the City.

(d) Regulations that are not in conflict with the Development Approvals or this Agreement.

(e) Regulations that are in conflict with the Development Approvals or this Agreement, provided Developer has given written consent to the application of such regulations to the Development.

(f) Applicable federal, state, county and multi-jurisdictional laws and regulations which the City is required to enforce against the Site or the Development, and that do not have an exception for existing signs or legal nonconforming uses.

3.6.2 *Future Discretion of the City.* This Agreement shall not prevent the City from denying or conditionally approving any application for a Subsequent Development Approval on the basis of the Land Use Regulations.

3.6.3 *Modification or Suspension by Federal, State, County, or Multi-Jurisdictional Law.* In the event that applicable federal, state, county or multi-jurisdictional laws or regulations, enacted after the Effective Date of this Agreement, prevent or preclude compliance with one or more of the provisions of this Agreement, and there is no exception for the legal nonconforming use, such provisions of this Agreement shall be modified or suspended as may be necessary to comply with such federal, state, county or multi-jurisdictional laws or regulations, and 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 provision impractical to enforce. Notwithstanding the foregoing, if such change materially changes Developer's costs or otherwise materially impacts its performance hereunder, Developer may terminate this Agreement upon ninety (90) days prior written notice to the City.

3.7 Regulation by Other Public Agencies. It is acknowledged by the parties

that other public agencies not subject to control by the City may possess authority to regulate aspects of the Development as contemplated herein, and this Agreement does not limit the authority of such other public agencies. Developer acknowledges and represents that, in addition to the Land Use Regulations, Developer shall, at all times, comply with all applicable federal, state and local laws and regulations applicable to the Development and the Site and that do not have an exception for a legal nonconforming use including but not limited to the Outdoor Advertising Act (Bus. & Prof. Code, Section 5200 et. seq.). To the extent such other public agencies preclude development or maintenance of the Development and do not have an exception for a legal nonconforming use, Developer shall not be further obligated under this Agreement except as provided in Section 4.1. Notwithstanding the foregoing, if such action by another public agency materially changes Developer's costs or otherwise materially impacts its performance hereunder, Developer may terminate this Agreement upon ninety (90) days prior written notice to the City.

3.8 Conflicts Between Subsequent Land Use Regulations and Agreement.

If any Subsequent Land Use Regulations prevents or precludes compliance with one or more provisions of this Agreement, then the provisions of this Agreement may, to the extent feasible, be modified as may be necessary to comply with such Subsequent Land Use Regulations. Immediately after enactment or promulgation of any such new Subsequent Land Use Regulations, City and Developer shall meet and confer in good faith to determine the feasibility of any such modification based on the effect such modification would have on the purposes and intent of this Agreement. If any Subsequent Land Use Regulations is passed prohibiting new or existing billboards, the City shall reasonably cooperate with Developer in any effort to find a resolution to bring this Agreement into compliance and preserve all the rights and benefits enjoyed by Developer. Developer and City shall have the right but are not obligated, to challenge the new Subsequent Land Use Regulations preventing compliance with the terms of this Agreement, and in the event such challenge is successful, this Agreement shall remain unmodified and in full force and effect. The City shall not directly or indirectly interfere with Developer's performance under the terms of this Agreement, and shall take no unreasonable action to delay, impede or restrict Developer's performance under the terms of this Agreement.

3.9 Public Improvements. Notwithstanding any provision herein to the contrary, the City shall retain the right to condition any Subsequent Development Approvals to require Developer to pay subsequently required development fees, and/or construct certain subsequently required public infrastructure ("Exactions") at such time as the City shall determine, subject to the following conditions:

3.9.1 The payment or construction must be to alleviate an impact caused by the Development or be of benefit to the Development; and

3.9.2 The timing of the Exaction should be reasonably related to the development of the Development, and said public improvements shall be phased to be commensurate with the logical progression of the development of the Development, as

well as the reasonable needs of the public.

3.9.3 It is understood, however, that if there is a material increase in cost to Developer, or such action by the City otherwise materially impacts Developer or its performance hereunder, Developer may terminate this Agreement upon ninety (90) days prior written notice to the City.

3.10 Fees, Taxes and Assessments. During the Term of this Agreement, the City shall not, without the prior written consent of Developer, impose any additional fees, taxes or assessments on all or any portion of the Development, except such fees, taxes and assessments as are described in or required by this Agreement and/or the Development Approvals. However, this Agreement shall not prohibit the application of fees, taxes or assessments upon the Site or Developer directly, including the following:

3.10.1 Developer shall be obligated to pay those fees, taxes or City assessments that existed as of the Effective Date and relate to the Landmark Message Center or are included in the Development Approvals;

3.10.2 Developer shall be obligated to pay any fees or taxes, and increases thereof, imposed on a City-wide basis such as, but not limited to, business license fees or taxes or utility taxes;

3.10.3 Developer shall be obligated to pay all fees applicable to a permit application as charged by the City at the time such application is filed by Developer;

3.10.4 Developer shall be obligated to pay any fees imposed pursuant to any Uniform Code that existed when the permit application is filed by Developer or that exists when Developer applies for any Subsequent Development Approval.

3.11 Changes. Notwithstanding anything to the contrary herein, if there is a change in such fees as compared to those fees in effect as of the Effective Date, or if any additional fees are charged and such additional or increased fees materially change Developer's costs or otherwise materially impacts its performance hereunder, Developer may terminate this Agreement upon ninety (90) days prior written notice to the City.

4. REMOVAL OF DIGITAL DISPLAY FACES

4.1 Removal by Developer. Developer has the right to negotiate an extension of the Term as an amendment to this Agreement. If the extension of the Term is not granted by the City, the Digital Display Faces shall be removed and said displays may be converted back to printed displays upon Developer's determination, subject to obtaining any required permits, for example, electrical or similar permits. Should City be required to enforce the terms of this Agreement and removal of the Digital Display Faces, Developer shall reimburse City its reasonable City staff, consultant, and attorneys' fees and costs incurred in securing such removal.

4.2 City's Right to Removal. Provided Developer is not in material breach

hereof past any applicable notice and cure period, City will not have the right to remove the Landmark Message Center. Should such a breach occur, City may only require removal of the Digital Display Faces within ninety (90) days of City's notice to Developer of such breach and Developer may convert said displays back to printed displays upon Developer's determination, subject to obtaining any required permits, for example, electrical or similar permits.

4.3 Relocation. The Development approved under this section and after the Development is installed and/or becomes nonconforming may be relocated by mutual agreement between the display owner and the City on whatever terms are agreeable to both parties under the authority of California Business and Professions Code section 5412. "Relocation" as used in this section, includes removal of an advertising structure and construction of a new advertising structure to substitute for the advertising structure removed. The purpose of this subsection is to allow the City to continue to develop in a planned manner without expenditure of public funds while allowing the continued maintenance of private investment and a medium of public communication established in outdoor advertising.

5. REVIEW FOR COMPLIANCE.

5.1 Annual Review. The City Council shall have the right to review this Agreement annually at the Developer's sole cost, on or before the anniversary of the Effective Date, to ascertain the good faith compliance by Developer with the terms of this Agreement ("Annual Review"). However, no failure on the part of the City to conduct or complete an Annual Review as provided herein shall have any impact on the validity of this Agreement. Upon receipt of written request from the City, Developer shall cooperate with the City in the conduct of such an Annual Review and provide the following information and documentation to the City at least thirty (30) days before the anniversary of the Effective Date: (1) description of all complaints from Caltrans or the City regarding the Landmark Message Center, (2) description of all complaints from the public regarding the display unrelated to any content of the message displayed, (3) any updates to Developer's contact information related to complaints concerning the billboards, as required in the conditions at **Exhibit B**, Section 6(q), herein, (4) status and amount of all payment obligations to the City required under this Agreement for the year in question and cumulatively for the entire Term of the Agreement, (5) any easement or lease changes that could in any way materially impact the City or the obligations under this Agreement, (6) any utility changes that could in any way materially impact the City or the obligations under this Agreement, (7) any maintenance issues addressed or needing to be addressed per the requirements of **Exhibit B**, and (8) whether any City messages per Section 2.6 have been displayed during the preceding year of the Term and a description of the duration of such displays.

5.2 Special Review. The City Council may, in its sole and absolute discretion, order a special review of compliance with this Agreement at any time at the City's sole cost ("Special Review"). Developer shall cooperate with the City in the conduct of such

any Special Review.

5.3 City Rights of Access. Subject to the City's execution of a permit to enter in a form reasonably acceptable to Developer, the City and its officers, employees, agents and contractors shall have the right, at their sole risk and expense, to enter the Site without interfering with any railroad or other right-of-way, and at all reasonable times with as little interference as possible, for the purpose of conducting the review under this Article 5, inspection, construction, reconstruction, relocation, maintenance, repair or service of any public improvements or public facilities located on the Site, or to perform any rights of the City under Section 4.2 above. Prior to any such entry by City, City will deliver Developer twenty-four (24) hour written notice of its intention to enter. This notice shall be delivered to Developer's office at 9201 Sunset Blvd., West Hollywood, CA 90069 (which serves as the mailing address for Developer's address identified in Section 1.1.4), during business hours. Any damage or injury to the Site or to the improvements constructed thereon resulting from such entry shall be promptly repaired at the sole expense of the City. Notwithstanding the foregoing or any other provision in this Agreement (including without limitation Section 4.2 above) to the contrary, the City shall have no right whatsoever to enter the Site unless and until the City executes and delivers to Developer a permit to enter in a form reasonably acceptable to Developer (except that this provision is not intended to interfere with the City's police powers to address any nuisance, dangerous condition, or other condition pursuant to the City's ordinances); provided Developer shall not unreasonably delay the approval of the permit to enter. Notwithstanding anything to the contrary herein, in no event will the City's representatives ever climb up the pole of the Landmark Message Center during any inspection.

5.4 Procedure. Each party shall have a reasonable opportunity to assert matters which it believes have not been undertaken in accordance with this Agreement, to explain the basis for such assertion, and to receive from the other party a justification of its position on such matters. If, on the basis of the parties' review of any terms of this Agreement, either party concludes that the other party has not complied in good faith with the terms of this Agreement, then such party may issue a written "Notice of Non-Compliance" specifying the grounds therefor and all facts demonstrating such non-compliance. The party receiving a Notice of Non-Compliance shall have thirty (30) days to cure or remedy the non-compliance identified in the Notice of Non-Compliance, but if such cure or remedy is not reasonably capable of being cured or remedied within such thirty (30) day period, then the party receiving a Notice of Non-Compliance shall commence to cure or remedy the non-compliance within such thirty (30) day period and thereafter diligently and in good faith prosecute such cure or remedy to completion. If the party receiving the Notice of Non-Compliance does not believe it is out of compliance and contests the Notice of Non-Compliance, it shall do so by responding in writing to said Notice of Non-Compliance within thirty (30) days after receipt of the Notice of Non-Compliance. If the response to the Notice of Non-Compliance has not been received in the office of the party alleging the non-compliance within the prescribed time period and the cure or remedy is not timely completed, the Notice of Non-Compliance shall be conclusively presumed to be valid and then either party can seek a judicial determination of all legal or equitable claims alleged and remedies sought. If a Notice of Non-

Compliance is contested, the parties shall, for a period of not less than fifteen (15) days following receipt of the response, seek to arrive at a mutually acceptable resolution of the matter(s) occasioning the Notice of Non-Compliance. If the Notice of Non-Compliance is contested and the parties are not able to arrive at a mutually acceptable resolution of the matter(s) by the end of the fifteen (15) day period, the party alleging the non-compliance may thereupon pursue the remedies provided in Article 6. Neither party hereto shall be deemed in breach if the reason for non-compliance is due to "force majeure" as defined in, and subject to the provisions of, Section 9.10.

5.5 Certificate of Agreement Compliance. If, at the conclusion of an Annual Review or a Special Review, Developer is found to be in compliance with this Agreement, the City shall, upon request by Developer, issue a written confirmation ("Certificate") to Developer stating that, after the most recent Annual Review or Special Review, and based upon the information known or made known to the City Manager and the City Council, that (1) this Agreement remains in effect, and (2) Developer is in compliance. The Certificate, whether issued after an Annual Review or Special Review, shall be in recordable form and shall contain information necessary to communicate constructive record notice of the finding of compliance. Developer may record the Certificate with the County Recorder. Additionally, Developer may, at any time, request from the City a Certificate stating, in addition to the foregoing, which specific obligations under this Agreement have been fully satisfied with respect to the Site and City shall respond within Ten (10) days of receipt of the request. If the City fails to respond to a Developer's request pursuant to this Section 4.5, the Developer is presumed to be in compliance with this Agreement or any obligation that is the subject of the Developer's request.

6. DEFAULT AND REMEDIES.

6.1 Termination of Agreement.

6.1.1 Termination of Agreement for Material Default of Developer. The City, in its discretion, may terminate this Agreement for any material failure of Developer to perform any material duty or obligation of Developer hereunder or to comply in good faith with the terms of this Agreement (hereinafter referred to as "default" or "breach"); provided, however, the City may terminate this Agreement pursuant to this Section only after following the procedures set forth in Section 5.4. In the event of a termination by the City under this Section 6.1.1, Developer acknowledges and agrees that the City may retain all fees accrued up to the date of the termination, including the Processing Fee and Development Fee paid up to the date of termination, and Developer shall pay the prorated amount of the Development Fee within sixty (60) days after the date of termination and removal of the Landmark Message Center to one foot below grade unless otherwise required in the City's Municipal Code that equates to the percentage of time elapsed in the year of the Term at the time of termination.

6.1.2 Termination of Agreement for Material Default of City. Developer, in its discretion, may terminate this Agreement for any material failure of City to perform any material duty or obligation of City hereunder or to comply in good faith with the term of

this Agreement; provided, however, Developer may terminate this Agreement pursuant to this Section only after following the procedure set forth in Section 5.4. In addition, Developer may terminate this Agreement if, despite Developer's good faith efforts, it is unable to secure the necessary permits and/or compliance with requirements under laws necessary to effectuate the Development. In the event of a termination by Developer under this Section 6.1.2, Developer acknowledges and agrees that City may retain all fees, including the Processing Fee and the Development Fee paid up to the date of termination, and Developer shall pay the prorated amount of the Development Fee within sixty (60) days after the date of termination and removal of the Landmark Message Center that equates to the percentage of time elapsed in the year of the Term at the time of termination.

6.1.3 *Rights and Duties Following Termination.* Upon the termination of this Agreement, neither party shall have any further right or obligation hereunder except with respect to (i) any obligations to have been performed prior to said termination, (ii) any default in the performance of the provisions of this Agreement which has occurred prior to said termination, (iii) Developer's obligation to remove the Landmark Message Center pursuant to Section 4.1, or (iv) any continuing obligations to indemnify, defend and hold harmless the other party.

6.1.4 *No Damages.* Notwithstanding anything else in this Agreement to the contrary, Developer acknowledges that the City would not have entered into this Agreement had it been exposed to damage claims from Developer for any breach hereof. As such, the parties agree that in no event shall Developer be entitled to recover damages of any kind whatsoever against City or any of its officials, officers, agents or employees for breach of this Agreement.

7. INSURANCE, INDEMNIFICATION AND WAIVERS.

7.1 Insurance.

7.1.1 Types of Insurance.

(a) *Liability Insurance.* Beginning on the Effective Date hereof and until completion of the Term, Developer shall, at its sole cost and expense, keep or cause to be kept in force for the mutual benefit of City, as additional insured, and Developer, comprehensive broad form general liability insurance against claims and liabilities covered by the indemnification provisions of Section 7.2. Developer has agreed to indemnify the City hereunder with respect to its use, occupancy, disuse or condition of the Site, improvements or adjoining areas or ways, affected by such use of the Site or for property damage, providing protection of at least Two Million Dollars (\$2,000,000) for any one accident or occurrence for bodily injury or death and property damage. Developer shall also furnish or cause to be furnished to the City evidence that any contractors with whom Developer has contracted for the performance of any work for which Developer is responsible maintains the same coverage required of Developer.

(b) *Worker's Compensation.* Developer shall also furnish or

cause to be furnished to the City evidence that any contractor with whom Developer has contracted for the performance of any work for which Developer is responsible hereunder carries worker's compensation insurance as required by law.

(c) *Insurance Policy Form, Sufficiency, Content and Insurer.* All insurance required by express provisions hereof shall be carried only by responsible insurance companies qualified to do business by California with an AM Best Rating of no less than "A". All such policies shall be non-assignable and shall contain language, to the extent obtainable, to the effect that (i) the insurer waives the right of subrogation against the City and against the City's agents and representatives except as provided in this Section; (ii) the policies are primary and noncontributing with any insurance that may be carried by the City, but only with respect to the liabilities assumed by Developer under this Agreement; and (iii) the policies cannot be canceled or materially changed except after written notice by the insurer to the City or the City's designated representative as expeditiously as the insurance company agrees to provide such notice. Developer shall furnish the City with certificates and endorsements evidencing the insurance required in this Section 7.1. City shall be named as an additional insured on all liability policies of insurance required to be procured by the terms of this Agreement.

7.1.2 *Failure to Maintain Insurance and Proof of Compliance.* Developer shall deliver to the City, in the manner required for notices, copies of certificates and endorsements of all insurance policies required of each policy within the following time limits:

(a) For insurance required above, within seven (7) days after the Effective Date or consistent with the requirements of **Exhibit D** (Schedule of Performance), Item No. 5, whichever is earlier.

(b) The City can request to see updated copies of the current certificates and endorsements of all insurance policies required at any time.

If Developer fails or refuses to procure or maintain insurance as required hereby or fails or refuses to furnish the City with required proof that the insurance has been procured and is in force and paid for, the City, after complying with the requirements of Section 5.4, may view such failure or refusal to be a default hereunder.

7.2 Indemnification.

7.2.1 *General.* Developer shall indemnify the City, and its officers, employees, and agents against, and will hold and save them and each of them harmless from, any and all actions, suits, claims, damages to persons or property, losses, costs, penalties, obligations, errors, omissions, or liabilities (herein "claims or liabilities") that may be asserted or claimed by any person, firm, or entity arising out of or in connection with the work, operations, or activities of Developer, its agents, employees, contractors, subcontractors, or invitees, hereunder, upon the Site or to attack, set aside, void or annul, any approval of the City, its advisory agencies, appeal boards, or legislative body concerning this Agreement and related Resolutions or Ordinance approving this

Agreement. The City will promptly notify Developer of any such claim, action, or proceeding against the City and will cooperate fully in the defense. To this end,

(a) Developer will defend any action or actions filed in connection with any of said claims or liabilities covered by the indemnification provisions herein and will pay all costs and expenses, including reasonable legal costs and attorneys' fees incurred in connection therewith.

(b) Developer will promptly pay any judgment rendered against the City or its officers, agents, or employees for any such claims or liabilities arising out of or in connection with such work, operations, or activities of Developer hereunder, and Developer agrees to save and hold the City and its officers, agents, and employees harmless therefrom.

7.2.2 Exceptions. The foregoing indemnity shall not include claims or liabilities arising from the sole negligence or willful misconduct of the City, or its officers, agents or employees who are directly responsible for the City.

7.2.3 Additional Coverage. Without limiting the generality of the foregoing, Developer's indemnity, defense, and hold harmless obligations shall include any liability arising by reason of:

(a) Any accident or other occurrence in or on the Site causing injury to any person or property whatsoever caused by Developer, its agents, employees, contractors, subcontractors, or invitees;

(b) Any failure of Developer to comply with performance of any of the provisions of this Agreement;

(c) Any harm, delays, injuries or other damages incurred by any party as a result of any subsurface conditions on the Site caused by Developer, its agents, employees, contractors, subcontractors, or invitees, including but not limited to, the presence of buried debris, hazardous materials, hydrocarbons, or any form of soil contamination.

7.2.4 Loss and Damage. Except as set forth below, the City shall not be liable for any damage to property of Developer or others located on the Site, nor for the loss of or damage to any property of Developer or others by theft or otherwise. Except as set forth below, the City shall not be liable for any injury or damage to persons or property resulting from fire, explosion, steam, gas, electricity, water, rain, dampness or leaks from any part of the Site or from the pipes or plumbing, or from the street, or from any environmental or soil contamination or hazard, or from any other latent or patent defect in the soil, subsurface or physical condition of the Site, or by any other cause of whatsoever nature. The foregoing two (2) sentences shall not apply (i) to the extent the City or its agents, employees, subcontractors, invitees or representatives causes such injury or damage when accessing the Site, or to the extent they cause any damage to any improvements thereon, or (ii) under the circumstances set forth in Section 6.2.2 above.

7.2.5 *Period of Indemnification.* The obligations to indemnify, defend, and hold harmless under this Section 7.2 shall begin upon the Effective Date and shall survive expiration or sooner termination of this Agreement.

7.3 Waiver of Subrogation. Developer and the City mutually agree that neither shall make any claim against, nor seek to recover from the other or its agents, servants, or employees, for any loss or damage to Developer or the City or to any person or property relating to this Agreement, except as specifically provided hereunder, which include but is not limited to a claim or liability to the extent arising from the sole negligence or willful misconduct of the City, its officers, agents, or employees who are directly responsible for the City.

8. MORTGAGEE PROTECTION.

The parties hereto agree that this Agreement shall not prevent or limit Developer, in any manner, at Developer's sole discretion, from encumbering the Site or any portion thereof or any improvement thereon or the Development, by any mortgage, deed of trust or other security device securing financing with respect to the Site. The City acknowledges that the lenders providing such financing may require certain Agreement interpretations and modifications and the City agrees upon request, from time to time, to meet with Developer and representatives of such lenders to negotiate in good faith any such request for interpretation or modification. Subject to compliance with applicable laws, the City will not unreasonably withhold its consent to any such requested interpretation or modification, provided the City determines such interpretation or modification is consistent with the intent and purposes of this Agreement. Any Mortgagee of the Site shall be entitled to the following rights and privileges:

(a) Neither entering into this Agreement nor a breach of this Agreement shall defeat, render invalid, diminish or impair the lien of any mortgage on the Development or Site made in good faith and for value, unless otherwise required by law.

(b) The Mortgagee of any mortgage or deed of trust encumbering the Development or Site, or any part thereof, which Mortgagee has submitted a request in writing to the City in the manner specified herein for giving notices, shall be entitled to receive written notification from the City of any default by Developer in the performance of Developer's obligations under this Agreement.

(c) If the City timely receives a request from a Mortgagee requesting a copy of any Notice of Non-Compliance given to Developer under the terms of this Agreement, the City shall make a good faith effort to provide a copy of that Notice of Non-Compliance to the Mortgagee within ten (10) days of sending the Notice of Non-Compliance to Developer. The Mortgagee shall have the right, but not the obligation, to cure the non-compliance during the period that is the longer of (i) the remaining cure period allowed Developer under this Agreement, or (ii) sixty (60) days.

(d) Any Mortgagee who comes into possession of the Development or the Site, or any part thereof, pursuant to foreclosure of the mortgage or deed of trust, or deed in lieu of such foreclosure, shall take the Development or the Site, or part thereof, subject to the terms of this Agreement. Notwithstanding any other provision of this Agreement to the contrary, no Mortgagee shall have an obligation or duty under this Agreement to perform any of Developer's obligations or other affirmative covenants of Developer hereunder, or to guarantee such performance; except that (i) to the extent that any covenant to be performed by Developer is a condition precedent to the performance of a covenant by the City, the performance thereof shall continue to be a condition precedent to the City's performance hereunder, and (ii) in the event any Mortgagee seeks to develop or use any portion of the Development or the Site acquired by such Mortgagee by foreclosure, deed of trust, or deed in lieu of foreclosure, such Mortgagee shall strictly comply with all of the terms, conditions and requirements of this Agreement and the Development Approvals applicable to the Development or the Site or such part thereof so acquired by the Mortgagee.

9. MISCELLANEOUS PROVISIONS.

9.1 Recordation of Agreement. This Agreement shall be recorded with the County Recorder by the City Clerk within 10 days of execution, as required by Government Code Section 65868.5. Amendments approved by the parties, and any cancellation, shall be similarly recorded.

9.2 Entire Agreement. This Agreement sets forth and contains the entire understanding and agreement of the parties with respect to the subject matter set forth herein, and there are no oral or written representations, understandings or ancillary covenants, undertakings or agreements which are not contained or expressly referred to herein. No testimony or evidence of any such representations, understandings or covenants shall be admissible in any proceeding of any kind or nature to interpret or determine the terms or conditions of this Agreement.

9.3 Severability. If any term, provision, covenant or condition of this Agreement shall be determined invalid, void or unenforceable, then that term, provision, covenant or condition of this Agreement shall be stricken and the remaining portion of this Agreement shall remain valid and enforceable if that stricken term, provision, covenant or condition is not material to the main purpose of this Agreement, which is to allow the Development to be permitted and operated and to provide the Development Fee to the City; otherwise, this Agreement shall terminate in its entirety, unless the parties otherwise agree in writing, which agreement shall not be unreasonably withheld.

9.4 Interpretation and Governing Law. This Agreement and any dispute arising hereunder shall be governed and interpreted in accordance with the laws of the State of California. This Agreement shall be construed as a whole according to its fair language and common meaning, to achieve the objectives and purposes of the parties hereto. The rule of construction, to the effect that ambiguities are to be resolved against the drafting party or in favor of the non-drafting party, shall not be employed in interpreting

this Agreement, all parties having been represented by counsel in the negotiation and preparation hereof.

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

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

9.7 Time of Essence. Time is of the essence in the performance of the provisions of this Agreement as to which time is an element.

9.8 Waiver. Failure of a party to insist upon the strict performance of any of the provisions of this Agreement by the other party, or the failure by a party to exercise its rights upon the default of the other party, shall not constitute a waiver of such party's right to insist and demand strict compliance by the other party with the terms of this Agreement thereafter.

9.9 No Third Party Beneficiaries. This Agreement is made and entered into for the sole protection and benefit of the parties and their respective successors and assigns. No other person shall have any right of action based upon any provision of this Agreement.

9.10 Force Majeure. Notwithstanding any provision to the contrary herein, neither party shall be deemed to be in default where failure or delay in performance of any of its obligations under this Agreement is caused by earthquakes, other acts of God, fires, rains, winds, wars, terrorism, riots or similar hostilities, strikes and other labor difficulties beyond the party's control (including the party's employment force), government actions and regulations (other than those of the City), court actions (such as restraining orders or injunctions), or other causes beyond the party's reasonable control. If any such events shall occur the term of this Agreement then the time for performance shall be extended for the duration of each such event, provided that the Term of this Agreement shall not be extended under any circumstances for more than five (5) years beyond the date it would have otherwise expired, and further provided that if such delay is longer than six (6) months, Developer may terminate this Agreement upon written notice to City and City shall return to Developer any portion of the Development Fee paid for any period after the effective date of such termination.

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

9.12 Counterparts. This Agreement may be executed by the parties in counterparts, which counterparts shall be construed together and have the same effect as if all of the parties had executed the same instrument.

9.13 Litigation. Any action at law or in equity arising under this Agreement or

brought by any party hereto for the purpose of enforcing, construing or determining the validity of any provision of this Agreement shall be filed and tried in the Superior Court of the County of Los Angeles, State of California, or such other appropriate court in said county. Service of process on the City shall be made in accordance with California law. Service of process on Developer shall be made in any manner permitted by California law and shall be effective whether served inside or outside California. In the event of any action between the City and Developer seeking enforcement of any of the terms and conditions to this Agreement, the prevailing party in such action shall be awarded, in addition to such relief to which such party is entitled under this Agreement, its reasonable litigation costs and expenses, including without limitation its expert witness fees and reasonable attorneys' fees.

9.14 Covenant Not To Sue. The parties to this Agreement, and each of them, agree that this Agreement and each term hereof is legal, valid, binding, and enforceable. The parties to this Agreement, and each of them, hereby covenant and agree that each of them will not commence, maintain, or prosecute any claim, demand, cause of action, suit, or other proceeding against any other party to this Agreement, in law or in equity, which is based on an allegation, or assert in any such action, that this Agreement or any term hereof is void, invalid, or unenforceable.

9.15 Development as a Private Undertaking. It is specifically understood and agreed by and between the parties hereto that the Development is a private development, that neither party is acting as the agent of the other in any respect hereunder, and that each party is an independent contracting entity with respect to the terms, covenants and conditions contained in this Agreement. No partnership, joint venture or other association of any kind is formed by this Agreement. The only relationship between the City and Developer is that of a government entity regulating the development of private property, on the one hand, and the holder of a legal or equitable interest in such private property on the other hand. The City agrees that by its approval of, and entering into, this Agreement, that it is not taking any action which would transform this private development into a "public work" development, and that nothing herein shall be interpreted to convey upon Developer any benefit which would transform Developer's private development into a public work project, it being understood that this Agreement is entered into by the City and Developer upon the exchange of consideration described in this Agreement, including the Recitals to this Agreement which are incorporated into this Agreement and made a part hereof, and that the City is receiving by and through this Agreement the full measure of benefit in exchange for the burdens placed on Developer by this Agreement.

9.16 Further Actions and Instruments. Each of the parties shall cooperate with and provide reasonable assistance to the other to the extent contemplated hereunder in the performance of all obligations under this Agreement and the satisfaction of the conditions of this Agreement. Upon the request of either party at any time, the other party shall promptly execute, with acknowledgment or affidavit if reasonably required, and file or record such required instruments and writings and take any actions as may be reasonably necessary under the terms of this Agreement to carry out the intent and to fulfill the provisions of this Agreement or to evidence or consummate the transactions

contemplated by this Agreement.

9.17 Eminent Domain. No provision of this Agreement shall be construed to limit or restrict the exercise by the City of its power of eminent domain or Developer's right to seek and collect just compensation or any other remedy available to it.

9.18 Amendments in Writing/Cooperation. This Agreement may be amended only by written consent of both parties specifically approving the amendment and in accordance with the Government Code provisions for the amendment of development agreements. The parties shall cooperate in good faith with respect to any amendment proposed in order to clarify the intent and application of this Agreement, and shall treat any such proposal on its own merits, and not as a basis for the introduction of unrelated matters. Minor, non-material modifications may be approved on behalf of the City by the City Manager upon reasonable approval by the City Attorney.

9.19 Corporate Authority. The person(s) executing this Agreement on behalf of each of the parties hereto represent and warrant that (i) such party, if not an individual, is duly organized and existing, (ii) they are duly authorized to execute and deliver this Agreement on behalf of said party, (iii) by so executing this Agreement such party is formally bound to the provisions of this Agreement, and (iv) the entering into this Agreement does not violate any provision of any other agreement to which such party is bound.

9.20 Notices. All notices under this Agreement shall be effective when delivered by United States Postal Service mail, registered or certified, postage prepaid return receipt requested, and addressed to the respective parties as set forth below, or to such other address as either party may from time to time designate in writing by providing notice to the other party:

To the City: City of Irwindale
5050 N. Irwindale Ave.
Irwindale, CA 91706
Attn: Julian A. Miranda, City Manager

With Copy to: Aleshire & Wynder, LLP
18881 Von Karman Ave., #1700
Irvine, CA 92612
Attn: Adrian R. Guerra, City Attorney

If to Developer: KBS Holdco, LLC, dba Regency Outdoor Advertising
9201 Sunset Blvd
West Hollywood, CA 90069
Attn: Philip Berardi

9.21 Nonliability of City Officials. No officer, official, member, employee, agent, or representatives of the City shall be liable for any amounts due hereunder, and

no judgment or execution thereon entered in any action hereon shall be personally enforced against any such officer, official, member, employee, agent, or representative.

9.22 No Brokers. The City and Developer each represent and warrant to the other that it has not employed any broker and/or finder to represent its interest in this transaction. Each party agrees to indemnify and hold the other free and harmless from and against any and all liability, loss, cost, or expense (including court costs and reasonable attorneys' fees) in any manner connected with a claim asserted by any individual or entity for any commission or finder's fee in connection with this Agreement or arising out of agreements by the indemnifying party to pay any commission or finder's fee.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year first set forth above.

CITY OF IRWINDALE

By:

H. Manuel Ortiz, Mayor

ATTEST:

By: _____
Laura M. Nieto, MMC,
Chief Deputy City Clerk

APPROVED AS TO FORM:

By: _____
Adrian R. Guerra, City Attorney

KBS HOLDCO, LLC, A CALIFORNIA
LIMITED LIABILITY COMPANY DBA
REGENCY OUTDOOR ADVERTISING

By: _____

Name: _____

Title: _____

By: _____

Name: _____

Title: _____

[End of signatures]

STATE OF CALIFORNIA)
) ss
COUNTY OF LOS ANGELES)

On _____, 2023, before me,
_____, a Notary Public, personally appeared
_____, who proved to me on the basis of satisfactory
evidence to be the person(s) whose name(s) is/are subscribed to the within instrument
and acknowledged to me that he/she/they executed the same in his/her/their authorized
capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the
entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY of PERJURY under the laws of the State of California
that the foregoing paragraph is true and correct.

Witness my hand and official seal.

Notary Public

[SEAL]

30

STATE OF CALIFORNIA)
) ss
COUNTY OF LOS ANGELES)

On _____, 2023, before me,
_____, a Notary Public, personally appeared
_____, who proved to me on the basis of satisfactory
evidence to be the person(s) whose name(s) is/are subscribed to the within instrument
and acknowledged to me that he/she/they executed the same in his/her/their authorized
capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the
entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY of PERJURY under the laws of the State of California
that the foregoing paragraph is true and correct.

Witness my hand and official seal.

Notary Public

[SEAL]

EXHIBIT A

LEGAL DESCRIPTION OF SITE

Real property in the City of Irwindale, County of Los Angeles, State of California, described as follows:

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF IRWINDALE, IN THE COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

THOSE PORTIONS OF THOSE PARCELS OF LAND IN SECTION 32, TOWNSHIP 1 NORTH, RANGE 10 WEST, OF THE SUBDIVISION OF THE RANCHO AZUSA DE DUARTE, IN THE CITY OF IRWINDALE, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 6, PAGES 80 TO 82 INCLUSIVE, OF MISCELLANEOUS RECORDS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, ACQUIRED BY THE STATE OF CALIFORNIA BY QUITCLAIM DEED B5709 RECORDED IN BOOK D4556, PAGE 126, OF OFFICIAL RECORDS, IN SAID OFFICE; BY PARCEL 6 OF THE FINAL ORDER OF CONDEMNATION FILED IN SUPERIOR COURT CASE NO. 889802, IN AND FOR SAID COUNTY, A CERTIFIED COPY OF SAID FINAL ORDER BEING RECORDED IN BOOK D3863, PAGE 36 OF SAID OFFICIAL RECORDS; AND BY PARCEL 1A OF THE FINAL ORDER OF CONDEMNATION FILED IN SUPERIOR COURT CASE NO. 893840, IN AND FOR SAID COUNTY, A CERTIFIED COPY OF LAST SAID FINAL ORDER BEING RECORDED IN BOOK D3831, PAGE 442 OF SAID OFFICIAL RECORDS, DESCRIBED AS A WHOLE AS FOLLOWS:

BEGINNING AT THE SOUTHWESTERLY CORNER OF THE LAND SO ACQUIRED BY QUITCLAIM DEED B5709; THENCE ALONG THE WESTERLY LINE OF SAID LAND N 0° 10' 23" W, 105.63 FEET TO A CURVE CONCAVE SOUTHERLY AND HAVING A RADIUS OF 2,000.00 FEET; THENCE FROM A TANGENT BEARING N 86° 23' 12" E, EASTERLY ALONG SAID CURVE THROUGH AN ANGLE OF 19° 00' 08", AN ARC DISTANCE OF 863.30 FEET TO THE NORTHWESTERLY CURVED LINE OF THAT CERTAIN EASEMENT OF ACCESS FOR RAILROAD SPUR TRACK PURPOSES, 20.00 FEET WIDE, AS DESCRIBED IN THE EXCEPTION FROM SAID PARCEL 1A; THENCE SOUTHWESTERLY ALONG SAID NORTHWESTERLY CURVED LINE TO THE WESTERLY LINE OF THE LAND DESCRIBED IN SAID PARCEL 1A; THENCE SOUTHERLY ALONG LAST SAID WESTERLY LINE TO THE NORTHERLY LINE OF THAT 50-FOOT-WIDE STRIP OF LAND SHOWN AS "ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY" ON MAP OF TRACT NO. 13436, RECORDED IN BOOK 294, PAGES 20 AND 21, OF MAPS, IN SAID OFFICE; THENCE WESTERLY ALONG SAID NORTHERLY LINE TO THE POINT OF BEGINNING.

ALSO SUBJECT TO THE EXCEPTION AND RESERVATION THEREFROM, ALL OIL, MINERALS, NATURAL GAS, AND OTHER HYDROCARBONS BY WHATSOEVER NAME KNOWN THAT MAY BE WITHIN OR UNDER THE HEREIN CONVEYED PARCEL OF LAND, AND THE RIGHTS THERETO, TOGETHER WITH CERTAIN OTHER CONDITIONS, AS EXCEPTED AND RESERVED IN QUITCLAIM DEED B5709 RECORDED IN BOOK D4556, PAGE 126, OF SAID OFFICIAL RECORDS.

APN: 8533-009-014

EXHIBIT B

SCOPE OF DEVELOPMENT

Developer and the City agree that the Development shall be undertaken in accordance with the terms of the Agreement, which include the following:

1. The Development. This Agreement allows for conversion of one Printed Billboard Structure to one Landmark Message Center in accordance with the terms of this Agreement. The existing Printed Billboard Structure has double-sided printed displays. The Landmark Message Center is a billboard with Digital Display Faces that uses digital technology to change the messages on the sign faces electronically. This type of display shall not contain video, animation, movement, flashing, or the appearance of movement. The Digital Display Faces contain messages that are static for eight (8) seconds at a time and then change to the next message. To this end, Developer shall replace the existing Printed Billboard Structure with a 14 x 48 foot double-sided Back to Back or V-display Landmark Message Center, with Digital Display Faces facing east and west, at the same general location as the existing Printed Billboard Structure. Before the issuance of final inspection of the Final Permits, Developer shall underground all utilities necessary for the Landmark Message Center and the Site shall be maintained in accordance with the conditions at Paragraph 3 below. Developer shall operate and maintain the Landmark Message Center on the Site in accordance with the Development Approvals and this Agreement and all conditions of approval and consistent with the approval from the California Department of Transportation Outdoor Advertising Division.

The Landmark Message Center shall comply with Section 17.72.050, General Standards, of the Irwindale Municipal Code. Specifically, the area of the sign face shall not exceed six hundred seventy-two (672) square feet, excluding border, trim, cutouts and other special advertising features or additions and base or apron supports and other structural members. The building height may not exceed sixty-five (65) feet, exclusive of cutouts or special additions, measured from the higher of either: 1) the finished grade of the roadway adjacent to the lot on which the structure is located and from which the advertising display is to be viewed; or 2) the finished grade of the base of the sign. Developer shall underground all utilities necessary for the Landmark Message Center. The Landmark Message Center shall be constructed in the location shown therefor on Exhibit C. In addition, Developer agrees to install, at no cost to the City, an unlit City emblem (the "**City Logo**") on the sign column of the Landmark Message Center.

2. Processing Fees. Developer shall pay all applicable City Processing Fees, as described in Section 2.4 of this Agreement, prior to the time that a building permit is issued for the installation of the Landmark Message Center on the Site.

3. Building Fees. Developer shall pay all applicable City building fees at the time that a building permit is issued for the installation of the Landmark Message Center.

4. Maintenance and Access. Developer, for itself and its successors and assigns, hereby covenants and agrees to be responsible for the following:

(a) Maintenance and repair of the Landmark Message Center (where authorized pursuant to the Agreement, and including but not limited to, the Digital Display Faces installed thereon, and all related on-site improvements and, if applicable, easements and rights-of-way, at its sole cost and expense), including, without limitation, landscaping, poles, lighting, signs and walls (as they relate to the Development) in good repair, free of graffiti, rubbish, debris and other hazards to persons using the same, and in accordance with all applicable laws, rules, ordinances and regulations of all federal, state, and local bodies and agencies having jurisdiction over the Site, unless those federal, state, and local bodies have an exception for a legal nonconforming use. Such maintenance and repair shall include, but not be limited to, the following: (i) sweeping and trash removal related to the Development; (ii) the care and replacement of all shrubbery, plantings, and other landscaping or the painted backing in a healthy condition if damaged by the Development; (iii) the ongoing maintenance by Developer of any access road to the Landmark Message Center to minimize dust caused by the Development; (iv) the repair, replacement and repainting of the Landmark Message Center's structures and displays as necessary to maintain such outdoor advertising structure in good condition and repair; and (v) the adequate and complete removal or painting over of all graffiti within 48 hours of notice of such graffiti being affixed on the Landmark Message Center. In addition, Developer has the explicit right to change the Light Emitting Diode ("LED") displays from time to time as determined necessary in Developer's sole discretion, subject to obtaining any required permits.

(b) Maintenance of the Landmark Message Center and surrounding portion of the Site in such a manner as to avoid the reasonable determination of a duly authorized official of the City that a public nuisance has been created by the absence of adequate maintenance of the Development such as to be detrimental to the public health, safety or general welfare, or that such a condition of deterioration or disrepair causes appreciable harm or is materially detrimental to property or improvements within three hundred (300) feet of the Site.

(c) Developer shall reasonably coordinate with any neighboring property owners who share utilities or access roads to their separate respective outdoor advertising structure. The City may designate alternative access for planning purposes so long as such alternative access allows Developer to access its outdoor advertising structure and related utilities.

5. Other Rights of the City. In the event of any violation or threatened violation of any of the provisions of this **Exhibit B**, then in addition to, but not in lieu of, any of the rights or remedies the City may have to enforce the provisions of the Agreement, the City shall have the right, after complying with Section 5.4 of the Agreement, (i) to enforce the provisions hereof by undertaking any maintenance or repairs required by Developer under Paragraph 3 above and charging Developer for any actual maintenance costs incurred in performing same, and (ii) to withhold or revoke until compliance by the

Developer, after giving written notice of said violation, any building permits, occupancy permits, certificates of occupancy, business licenses and similar matters or approvals pertaining to the Development or any part thereof or interests therein as to the violating person or one threatening violation.

6. No City Liability. The granting of a right of enforcement to the City does not create a mandatory duty on the part of the City to enforce any provision of the Agreement. The failure of the City to enforce the Agreement shall not give rise to a cause of action on the part of any person. No officer or employee of the City shall be personally liable to Developer, its successors, transferees or assigns, for any default or breach by the City under the Agreement.

7. Conditions of Approval. The following additional conditions shall apply to the installation of the Landmark Message Center and, where stated, landscaping adjacent to Landmark Message Center, which outdoor advertising structure and landscaping or painted backing adjacent to the outdoor advertising structure, respectively, shall conform to all applicable provisions of the Development Approvals, the City's Municipal Code, including but not limited to the Outdoor Advertising provisions of Section 17.72.030, and the following conditions, in a manner subject to the approval of the Community Development Director or his or her designee:

(a) Conditions to be met before Final Permits. Prior to the issuance of a business license, occupancy permit, final inspection by the Community Development Department, and Final Permits, all applicable conditions of approval (except those involving construction permits) shall be completed to the reasonable satisfaction of the City.

(a) Building Permit. A building permit from the Building and Safety Division will be required, and structural calculations shall be prepared by a licensed civil engineer and approved by the City Building Official. All construction shall be in compliance with the Irwindale Building Code and all applicable regulations including Caltrans Advertising Department.

(b) Plans. The use and improvements authorized by this Agreement shall conform to the plans as finally approved by the City (date stamped) as conditioned herein, and any appreciable modification of the plans or mode of operation, as determined by the Director of Community Development, shall require the prior approval of the Planning Commission.

(c) The Landmark Message Center shall be located in the portion of the Site shown on Exhibit C, and shall be of the dimensions described in Section 1, above.

(d) Digital Display Face Dimensions. The size of each Digital Display Face of the Landmark Message Center shall not exceed a maximum area of 672 square feet, with no more than 128 total feet of extensions or borders, and the Landmark Message Center shall not exceed a maximum height of 65 feet, as measured per Section

17.72.050 standards, including all extensions, and shall be consistent with the Elevations at **Exhibit C** approved by the City as part of the Development Approvals.

(e) Plan Check. Plans and specifications for the proposed installation of the Landmark Message Center, including plans for all utilities, shall be submitted to the City Community Development and Building Departments for plan check and approval prior to the issuance of building permits. Per the requirements of the County of Los Angeles Building and Safety Division, serving as the City's contract building department, the building plans must contain the following items to be submitted for plan check, as such requirements may be revised before final approval of such plans:

- (1) Site Plan: Lot size, locations and dimensions of property lines, adjacent streets, setbacks from property lines, locations of other structures, easements, north arrow, scale, contours/drainage pattern.
- (2) General Notes: Applicable codes, occupancy classification, type of construction, allowable area analysis, and occupant load analysis, description of work, material specifications.
- (3) Exterior Elevations: Wall covering material, plate and building heights, finish grade lines, veneers.
- (4) Foundation Plan: Locations of all new footings, anchor bolt and hold-down schedules, complete foundation details.
- (5) Framing Plan: Size, spacing, and span of all floor and ceiling joists, roof rafters, valleys and hips, beams and headers. All lateral force resisting elements, including shear wall locations and schedule, and diaphragm construction specifications.
- (6) Structural Analysis: Calculations shall be provided to substantiate the structural plans where new structural elements are proposed or existing structural elements are altered. The structural calculations shall address both vertical and lateral forces, and shall be wet stamped and signed by a licensed engineer or architect registered in the state of California.
- (7) Schedules: exterior/interior finish.
- (8) Details: Complete framing and foundation details for all new structural elements, complete accessible path of travel details, required fire rated assembly details.

(f) Prior to the approval of the final inspection, all applicable conditions of approval and all mandatory improvements shall be completed to the reasonable satisfaction of the City.

(g) Developer shall maintain the Landmark Message Center and use thereof in full compliance with all applicable codes, standards, policies and regulations imposed by the City, county, state and federal agencies , unless the Development is exempted as a legal nonconforming use.

(h) Caltrans Approvals. Developer shall, at all times, comply with the approval for the Landmark Message Center from the California Department of Transportation Outdoor Advertising Division that may be necessary in order to allow for the construction and installation of the Landmark Message Center pursuant to the California Outdoor Advertising Act, and shall maintain acceptable clearance between the Landmark Message Center and utility distribution lines, include those of Southern California Edison.

(i) Fees. Developer shall pay any and all applicable fees due to any public agency prior to the final issuance of the applicable building or electrical permits.

(j) Use Within Site. The activities proposed in the Agreement shall be conducted completely upon the Site and shall not use or encroach on any public right-of-way.

(k) Access Roads. Developer shall ensure that all access to the Landmark Message Center is kept restricted to the general public to the extent permitted under local laws and by the Development Approvals.

(l) Landscaping. If any portion of the landscaping or painted backing installed adjacent to the Landmark Message Center is damaged by the Development or becomes damaged, unhealthy or otherwise in need of replacement, as determined by the City's Community Development Department Director or his or her designee, Developer shall ensure that the replacement is accomplished within fourteen (14) days of notification by the City, unless such time is extended by the City's Community Development Director or his or her designee if Developer shows unusual circumstances requiring more time to accomplish such replacement. Developer may trim such landscaping so as not to block the Landmark Message Center or with the reasonable consent of the City's Community Development Director, the Developer at the Developer's own cost, may remove and relocate any landscaping.

(m) Utilities. Developer shall be required to install all utilities underground in connection with the Landmark Message Center. Developer shall coordinate its work with the requirements of Southern California Edison to achieve the undergrounding of all utilities.

(n) All onsite equipment used in the operation of the digital display billboard shall be screened from sight and maintained for aesthetic and safety purposes.

(o) Developer shall comply with all necessary federal National Pollutant Discharge Elimination System (NPDES) requirements pertaining to the proposed use, to the extent applicable.

(p) All graffiti shall be adequately and completely removed or painted over within 48 hours of notice to Developer of such graffiti being affixed on the Development.

(q) Prior to final sign off of the building permit for the Landmark Message Center, the applicable landscaping or painted backing shall be installed at the Site.

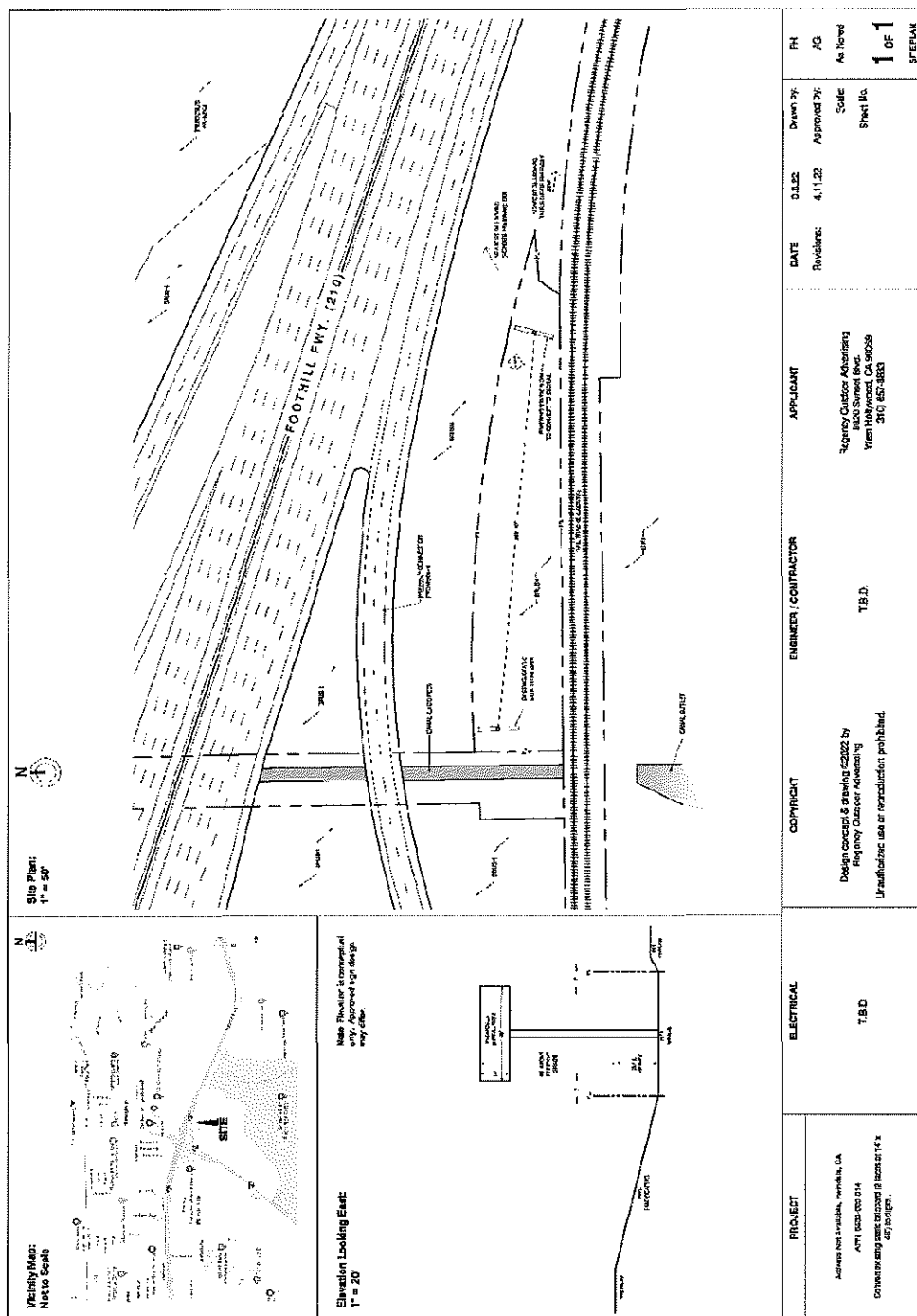
(r) Light/Glare. Developer shall comply with State law regarding the limitation of light or glare or such other standards as adopted by the Outdoor Advertising Association of America, Inc. ("OAAA"), including but not limited to, the 0.3 foot-candles limitation over ambient light levels and ensuring additional flexibility in reducing such maximum light level standard given the lighting environment upon request by the City's Development Services Director or designee, the obligation to have automatic dimming capabilities, as well as providing the City's Development Services Director or his or her designee with a designated Developer employee's phone number and/or email address for emergencies or complaints that will be monitored 24 hours a day/7 days per week. Upon any reasonable complaint by the City's Development Services Director or designee, Developer shall dim the display to meet these guidelines and further perform a brightness measurement of the display using OAAA standards, or such lower level given the lighting environment, and provide the City with the results of same within 5 days of the City's complaint. Developer shall dim the display to the appropriate setting immediately upon the conclusion of any such measurement that concluded that the light standards were exceeded.

(s) Public Works:

NPDES. Developer shall comply with all necessary NPDES requirements pertaining to the proposed use, to the extent applicable.

ROW. Separate permits are required for all work within the public right-of-way. Developer shall be responsible for all fees for the necessary permits and construction inspections for work within the public-right-of-way.

SITE AND LANDMARK MESSAGE CENTER PICTORIAL







C-9

Development Agreement No. 01-2022
Ordinance No. 771

EXHIBIT D

SCHEDULE OF PERFORMANCE

ITEM OF PERFORMANCE	TIME FOR PERFORMANCE	REFERENCE
1. Effective Date of this Agreement.	30 days following City Council's second reading of Ordinance.	1.1.9
2. Developer prepares and submits to City working drawings, specifications, and engineering for the Landmark Message Center; City commences approval process.	Within 180 days of the Effective Date	Ex. B(6)(e)
3. Developer to provide copy of Caltrans approval to City.	Prior to commencing any inspections and work on the Development.	Ex. B(6)(h)
4. Developer to submit proof of insurance to City.	Prior to commencing any inspections and work on the Development.	7.1.2
5. The Landmark Message Center shall be fully operational.	Not later than one (1) year after the issuance of Final Permits for the Landmark Message Center, or two (2) years after the Effective Date, whichever occurs first.	3.4
6. Developer pays City first installment of Development Fee if Developer receives Final Permits.	Within 1 year after the Landmark Message Center becomes fully operational or within 30 days after Developer receives any income from the use of the Landmark Message Center, whichever occurs first.	2.5
7. Developer pays City second installment and subsequent	Upon each anniversary date of the Fee Commencement	2.5

ITEM OF PERFORMANCE	TIME FOR PERFORMANCE	REFERENCE
annual installments of the Development Fee if Developer receives Final Permits.	Date, as defined in Section 2.5 of this Agreement, for the Landmark Message Center.	

It is understood that this Schedule of Performance is subject to all of the terms and conditions of the text of the Agreement. The summary of the items of performance in this Schedule of Performance is not intended to supersede or modify the more complete description in the text; in the event of any conflict or inconsistency between this Schedule of Performance and the text of the Agreement, the text shall govern.

The time periods set forth in this Schedule of Performance may be altered or amended only by written agreement signed by both Developer and the City. Notwithstanding any extension of the Term in the manner described in, and subject to the provisions of Section 3.5 of the Agreement, the City Manager shall have the authority to approve extensions of time set forth in this Schedule of Performance without action of the City Council, not to exceed a cumulative total of 180 days.

- ☒ City Council
- ☐ Successor Agency
- ☐ Housing Authority
- ☐ Reclamation Authority
- ☐ Joint Powers Authority

City of
IRWINDALE
AGENDA REPORT

Date: July 26, 2023

To: Honorable Mayor and Members of the City Council

From: Julian Miranda, City Manager

Issue: Renewal of Contract Agreement with the City of Santa Fe Springs for City-Wide Traffic Signal Maintenance Services

City Manager's Recommendation:

That the City Council authorize the City Manager to execute an agreement with the City of Santa Fe Springs for city-wide traffic signal maintenance services.

Administrative Action:

Submitted by:

Eddie Chan,
Director of Engineering / Building Official

Prepared by:

Luis Pimentel, Associate Engineer
(626) 430-2296

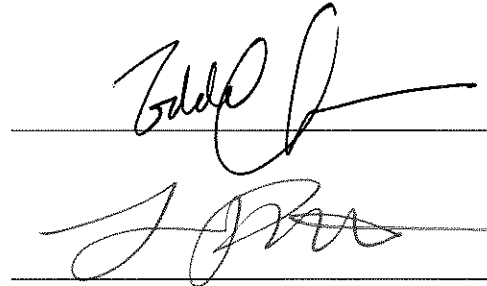
Reviewed by:

Adrian R. Guerra, City Attorney

Kambiz Borhani, Finance Director / City Treasurer

Approved by:

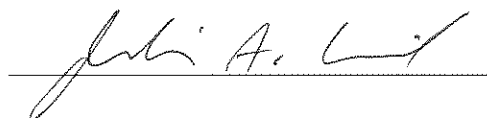
Julian A. Miranda, City Manager



Two handwritten signatures are shown, each on a horizontal line. The top signature is in cursive and appears to be 'Eddie Chan'. The bottom signature is also in cursive and appears to be 'Luis Pimentel'.

Electronically Approved

Electronically Approved



A handwritten signature in cursive, 'Julian A. Miranda', is shown on a horizontal line.

Background and Analysis:

Currently, the City has a total of 43 signalized intersections (including two flashing beacons and 17 signalized intersections shared with other agencies). These traffic signals and flashing beacons must be maintained in a safe and efficient manner to support regional traffic flow and safety.

There are two categories of signal maintenance activity: (1) routine preventive maintenance and (2) extraordinary services. Routine maintenance is performed on a pre-set schedule to reduce the incidence of malfunctions, reduce complaints, and extend the useful life of the signal equipment. Extraordinary services include repair of damage resulting from traffic collisions, acts of God (i.e., excessive winds, rain, floods, earthquakes, etc.), and vandalism. Extraordinary services may also entail simple signal modifications to improve traffic signal operation, reduce congestion, and upgrading of traffic signal controllers and control cabinets.

The City of Santa Fe Springs has maintained and operated all City-owned traffic signals (currently 24 signalized intersections and 2 flashing beacons) since October 1995. In 2009, Council approved a five-year contract agreement for traffic signal maintenance services and granted a five-year agreement extension in 2014. The agreement expired in 2019 without renewal. However; the City of Santa Fe Springs has continued to provide routine and extraordinary traffic signal maintenance service without an official contract in place.

Based on the outstanding performances by the City of Santa Fe Springs in maintaining our traffic signals, staff recommends renewal of their contract agreement. The agreement term will commence upon Council approval and continue subject to a 90 day written notice of termination by either City of Irwindale or City of Santa Fe Springs.

The scope of work (see Exhibit "B") will remain the same as in the previous agreements. The monthly charges will also remain at current levels which are:

Routine maintenance:

Per signal/month	\$70.00
Per flashing beacon/month	\$35.00

Extraordinary maintenance:

Materials	Cost plus 15% markup
Labor	Cost plus 17% overhead
Equipment	Cost

The proposed agreement will also allow for the Cities to annually adjust the base rates to ensure an equitable annual cost to provide the services. The agreement has been reviewed and approved as to form by the City Attorney's office.

Fiscal Impact:

Funding for this contract is included in the FY 2023-2024 Public Works Engineering Departmental Budget.

Attachment(s):

- Contract agreement

**CITY OF IRWINDALE
AGREEMENT**

**WITH SANTA FE SPRINGS
FOR TRAFFIC SIGNAL MAINTENANCE**

THIS AGREEMENT is made and entered into this **26th** day of **July, 2023** by and between the City of Irwindale, a Charter City ("Irwindale") and the City of Santa Fe Springs, a municipal corporation ("Contractor"). Contractor and Irwindale are sometimes collectively referred to as ("Parties").

WITNESS

WHEREAS, on October 23, 2014, Parties entered into Agreement for traffic signal, illuminated street name sign and highway intersection lighting maintenance (the "2014 Agreement"); and

WHEREAS, Parties desire for this Agreement to supersede and replace the 2014 Agreement; and

WHEREAS, Irwindale has twenty-four (24) signalized intersections at various locations shared with other agencies, and from time to time, may signalize other intersections; and

WHEREAS, Irwindale has two (2) yellow flashing beacon locations 100% owned by Irwindale; and

WHEREAS, Irwindale seeks 24-hour maintenance of Irwindale's traffic signals; and

WHEREAS, Contractor has specialized knowledge, training, and experience in the routine preventative and extraordinary maintenance services of traffic signals; and

WHEREAS, Contractor desires to perform the maintenance services for Irwindale under this Agreement; and

WHEREAS, Irwindale desires Contractor provide such services, subject to the terms and conditions set forth in this Agreement; and

WHEREAS, the purpose of this Agreement is to provide routine preventative and extraordinary maintenance services for existing traffic signals, and those new traffic signals that from time to time may be installed by Irwindale during the life of this Agreement.

Now, therefore, in consideration of the mutual covenants and conditions set forth herein, the Parties agree as follows:

1. CONTRACT TERM

This Agreement is effective as of date first listed above and upon execution by both Parties and may be terminated at any time in accordance with Section 5 of this Agreement.

2. MANAGEMENT

Irwindale's Director of Engineering / Building Official shall represent Irwindale in all matters pertaining to the administration of this Agreement, review and approval of all products submitted by Contractor, but not including the authority to expand the tasks to be performed or change the compensation due to Contractor. Irwindale's City Manager shall be authorized to act on Irwindale's behalf and to execute all necessary documents which enlarge the tasks to be performed or change Contractor's compensation, subject to Section 4 hereof. Contractor's Director of Engineering / Building Official, or his/her designee, shall represent Contractor in all matters pertaining to the administration of this Agreement for Contractor, but not including the authority to expand the tasks to be performed. Contractor's City Manager, or his/her designee, shall be authorized to act on Contractor's behalf and to execute all necessary documents which enlarge the tasks to be performed or change Contractor's compensation.

3. SERVICES

Contractor shall perform the tasks described and set forth in Exhibit B, attached hereto and incorporated herein as though set forth in full. Contractor shall complete the tasks according to the Scope of Work which is also set forth in Exhibit B.

4. PAYMENT

(a) Irwindale agrees to pay Contractor a flat monthly rate of \$75.00 per signal (24 signals) for routine maintenance and \$40.00 per flasher (2 flashers) per month based upon actual signals inspected and maintained, which represents the parties' reasonable estimate of the actual costs of inspection and maintenance for the signal. Those monthly rates shall be used for billing through June 30, 2024. Thereafter, to ensure an equitable annual cost, the rates may be revised and adjusted based on the most recent Consumer Price Index (CPI) for the Los Angeles area for each fiscal year upon 60 days written notice and written approval by Irwindale. In no event shall the rates be revised or adjusted to an amount that exceeds a 6% increase from the previous fiscal year.

(b) Contractor shall not be compensated for any services, including extraordinary maintenance, ("additional services") rendered in connection with its performance of this Agreement which are in addition to routine maintenance, unless the additional services are authorized in advance and in writing by Irwindale's Director of Engineering / Building Official or her/his designee. Contractor shall be compensated for any additional services in the amounts and in the manner as agreed to by Irwindale's Director of Engineering / Building Official or her/his designee and Contractor at the time

Irwindale's written authorization has been given to Contractor for the performance of those services. Irwindale's City Manager may approve amendments to this Agreement for additional work up to the amount authorized pursuant to the most recent Irwindale Council-approved administrative policies relating to Irwindale's City Manager's authority to enter into new agreements. Any additional services in excess of that amount shall be approved by Irwindale's City Council.

(c) Contractor will submit invoices monthly for actual routine maintenance, extraordinary maintenance and additional services satisfactorily performed. Invoices shall be submitted on or about the tenth business day of each month, or as soon thereafter as practical, for services provided in the previous month. Payment shall be made within thirty days (30 days) after receipt of each invoice as to all non-disputed fees. If Irwindale disputes any of Contractor's fees, then it shall give written notice to Contractor within thirty days (30 days) after receipt of an invoice of any disputed fees set forth on the invoice.

(d) The first bill in each fiscal year for routine maintenance shall show the itemization of salaries and wages, material equipment, and appropriate overheads upon which the flat rates referred to in Section 4a, are based. Materials shall include miscellaneous items of service and expense. All bills for extraordinary maintenance and additional services shall show the itemization specified above.

(e) Payment for extraordinary maintenance and additional services shall include actual salaries, wages, parts and equipment costs and may include an additional 17% added to salaries and wages for overhead and to equipment for depreciation and that 17% shall be shown as separate line items in the invoices for extraordinary maintenance. The cost of parts or supplies is based on actual costs plus a 15% markup. In addition, Contractor's services will be billed on an actual invoice plus a 10% markup.

5. TERMINATION OF AGREEMENT WITHOUT CAUSE

(a) Irwindale or Contractor may at any time, for any reason, with or without cause, terminate this Agreement, or any portion hereof, by serving upon the other party at least ninety days' (90 days') prior written notice. Upon receipt of said notice, Contractor shall immediately cease all work under the Agreement, unless notice provides otherwise. If Irwindale terminates a portion of the Agreement, then such termination shall not make void or invalidate the remainder of this Agreement.

(b) In the event this Agreement is terminated pursuant to this Section, Irwindale shall pay to Contractor the actual value of the work satisfactorily performed up to the time of termination. Upon termination of the Agreement pursuant to this Section, Contractor will submit an invoice to Irwindale pursuant to Section 4.

6. DEFAULT OF CONTRACTOR

(a) Contractor's failure to comply with the provisions of this Agreement shall constitute a default. In the event Contractor is in default for cause under the terms of this Agreement, Irwindale shall have no obligation or duty to continue compensating Contractor for any work performed after the date of default and can terminate this Agreement immediately by written notice to Contractor following notice of default and an opportunity to cure, as set forth in subsection (b) of this Section. If such failure by Contractor to make progress in the performance of work hereunder arises out of causes beyond Contractor's control, and without fault or negligence of Contractor, then it shall not be considered a default.

(b) If Irwindale's City Manager or his/her delegate determines Contractor is in default in the performance of any of the terms of this Agreement, then he/she shall cause to be served upon Contractor a written notice of the default. Contractor shall have ten days (10 days) after service upon it of said notice in which to cure the default by rendering a satisfactory performance. In the event that Contractor fails to cure its default within such period of time, Irwindale shall have the right, notwithstanding any other provision of this Agreement, to terminate this Agreement without further notice and without prejudice to any other remedy to which it may be entitled at law, in equity or under this Agreement.

7. OWNERSHIP OF DOCUMENTS

(a) Contractor shall maintain complete and accurate records with respect to sales, costs, expenses, receipts, and other such information required by Irwindale that relates to the performance of services under this Agreement. Contractor shall maintain adequate records of services provided in sufficient detail to permit an evaluation of services. All such records shall be maintained and shall be clearly identified and readily accessible. Contractor shall provide free access to the representatives of Irwindale or its designees at reasonable times to such books and records; shall permit Irwindale to make transcripts therefrom as necessary; and shall allow inspection of all work, data, documents, proceedings, and activities related to this Agreement. Such records, together with supporting documents, shall be maintained for a period of three (3) years after receipt of final payment.

(b) Upon completion of, or in the event of termination of this Agreement, all original documents, designs, drawings, maps, models, computer files, surveys, notes, and other documents prepared in the course of providing the services to be performed pursuant to this Agreement shall become the sole property of Irwindale and may be used, reused, or otherwise disposed of by Irwindale without the permission of Contractor. With respect to computer files, Contractor shall make available to Irwindale, at Contractor's office and upon reasonable written request by Irwindale, the necessary computer software and hardware for purposes of accessing, compiling, transferring, and printing computer files.

8. INDEMNIFICATION

(a) Neither Irwindale nor any officer or employee of Irwindale shall be responsible for any damage or liability occurring by reason of any acts or omissions on the part of Contractor under or in connection with any work, authority, or jurisdiction delegated to or determined to be the responsibility of Contractor under this Agreement. It is also understood and agreed, pursuant to Government Code, Section 895.4, Irwindale shall fully indemnify, defend, and hold harmless Contractor from any liability imposed for injury (as defined by Government Code, Section 810.8) occurring by reason of any acts or omissions on the part of Irwindale under or in connection with any work, authority, or jurisdiction delegated to or determined to be the responsibility of Irwindale under this Agreement.

(b) Neither Contractor nor any officer or employee of Contractor shall be responsible for any damage or liability occurring by reason of any acts or omissions on the part of Irwindale under or in connection with any work, authority, or jurisdiction delegated to or determined to be the responsibility of Irwindale under this Agreement. It is also understood and agreed, pursuant to Government Code, Section 895.4, Contractor shall fully indemnify, defend, and hold harmless Irwindale from any liability imposed for injury (as defined by Government Code, Section 810.8) occurring by reason of any acts or omissions on the part of Contractor under or in connection with any work, authority, or jurisdiction delegated to or determined to be the responsibility of Contractor under this Agreement.

9. INDEPENDENT CONTRACTOR

(a) Contractor is and shall at all times remain as to Irwindale a wholly independent Contractor. The personnel performing the services under this Agreement on behalf of Contractor shall at all times be under Contractor's exclusive direction and control. Neither Irwindale nor any of its officers, employees, or agents shall have control over the conduct of Contractor or any of Contractor's officers, employees or agents, except as set forth in this Agreement. Contractor shall not at any time or in any manner represent it or any of its officers, employees, or agents in any manner officers, employees, or agents of Irwindale. Contractor shall not incur or have the power to incur any debt, obligation, or liability whatever against Irwindale, or bind Irwindale in any manner.

(b) No employee benefits shall be available to Contractor in connection with the performance of this Agreement. Except for the fees paid to Consultant as provided in the Agreement, Irwindale shall not pay salaries, wages, or other compensation to Contractor for performing services hereunder for Irwindale. Irwindale shall not be liable for compensation or indemnification to Contractor for injury or sickness arising out of performing services hereunder.

10. LEGAL RESPONSIBILITIES

Contractor shall keep itself informed of State and Federal laws and regulations which in any manner affect those employed by it or in any way affect the performance of its service pursuant to this Agreement. Contractor shall at all times observe and comply with all such laws and regulations. Irwindale, and its officers and employees, shall not be liable at law or in equity occasioned by failure of Contractor to comply with the Section.

11. NO BENEFIT TO ARISE TO LOCAL EMPLOYEES

No member, officer, or employee of Irwindale or Contractor, or their designees or agents, and no public official who exercises authority over responsibilities with respect to the services performed under this Agreement during his/her tenure or for one year thereafter, shall have any interest, direct or indirect, in any agreement or sub-agreement, or the proceeds thereof, for work to be performed in connection with this Agreement.

12. RELEASE OF INFORMATION/CONFLICTS OF INTEREST

(a) All information gained by Contractor in performance of this Agreement shall be considered confidential and shall not be released by Contractor without Irwindale's prior written authorization. Contractor, its officers, employees, agents, or subcontractors, shall not without written authorization from the Irwindale's City Manager or unless requested by the Irwindale's City Attorney, voluntarily provide declarations, letters of support, testimony at depositions, response to interrogatories, or other information concerning the work performed under this Agreement. Response to a public records request, subpoena, or court order shall not be considered "voluntary" provided Contractor gives Irwindale notice of such request, court order or subpoena.

(b) Contractor shall promptly notify Irwindale should Contractor, its officers, agents, or subcontractors be served with any summons, complaint, subpoena, notice of deposition, request for documents, interrogatories, request for admissions, or other discovery request, court order, or subpoena from any person or party regarding this Agreement and the work performed thereunder. Irwindale retains the right, but has no obligation, to represent Contractor (with Contractor consent) and/or be present at any deposition, hearing, or similar proceeding. Contractor agrees to cooperate fully with Irwindale and to provide the opportunity to review any response to discovery requests provided by Contractor. However, Irwindale's right to review any such response does not imply or mean the right by Irwindale to control, direct, or rewrite said response.

13. NOTICES

Any notices which either party may desire to give to the other party under this Agreement must be in writing and may be given either by 1) personal service; 2) delivery by a reputable document delivery service, such as, but not limited to, Federal Express, which provides a receipt showing date and time of delivery; or 3) mailing in the United States Mail, certified mail, postage prepaid, return receipt requested, addressed to the address of the party as set forth below or at any other address as the party may later designate by notice.

To Irwindale: City of Irwindale
 Attention: City Manager
 5050 N. Irwindale Drive
 Irwindale, CA 91706

To Contractor: City of Santa Fe Springs
 Attention: City Manager
 11710 Telegraph Road
 Santa Fe Springs, CA 90670

14. ASSIGNMENT

Contractor shall, under no circumstances, assign this Agreement, in whole or in part, to another party without the express written consent of the City Council of Irwindale. On occasion, Contractor is allowed to use subcontractors for specialty items, such as installation of loop detectors, crane work, boring for underground conduits, etc.; provided, that Contractor has notified Irwindale's Director of Engineering / Building Official of such work.

15. GOVERNING LAW

Irwindale and Contractor understand and agree that the laws of the State of California shall govern the rights, obligations, duties, and liabilities of the parties to this Agreement and also govern the interpretation of this Agreement. Any litigation concerning this Agreement shall take place in the State or Federal district court with jurisdiction over Irwindale.

16. ENTIRE AGREEMENT

This Agreement contains the entire understanding between Parties relating to the obligations of Parties described in this Agreement. All prior or previous agreements, including, but not limited to, the 2014 Agreement, understandings, representations, and statements, oral or written, are replaced and superseded by this Agreement and shall be of no further force or effect. Parties are entering into this Agreement based solely upon the representations set forth herein and upon each party's own independent investigation of any and all facts such party deems material. Subsequent modifications to this

Agreement shall be effective only if in writing and signed by authorized representatives of Parties.

IN WITNESS WHEREOF, Parties have caused this Agreement to be executed the day and year first above written.

CITY OF Irwindale,
a Charter City

CITY OF SANTA FE SPRINGS,
a General Law City

By: _____
Julian A. Miranda, City Manager

By: _____
Tom Hatch, Interim City Manager

ATTEST:

ATTEST:

By: _____
Laura M Nieto, Chief Deputy City Clerk

By: _____
Janet Martinez, City Clerk

Approved As To Form:

Approved As To Form:

Adrian R. Guerra, City Attorney

Ivy M. Tsai, City Attorney

ATTACHMENTS:

Exhibit A: Locations for Maintenance of Traffic Control Devices

Exhibit B: Scope of Work

**CITY OF IRWINDALE
EXHIBIT "A"
LOCATIONS FOR MAINTENANCE OF TRAFFIC CONTROL DEVICES**

	LOCATION	INTERSECTION LIGHT	ILLUMINATED STREET LIGHT
01	Arrow Highway (E) at Live Oak Avenue	7	2
02	Arrow Highway (W) at Live Oak Avenue	9	2
03	Arrow Highway at 4th Street	7	4
04	Arrow Highway at Avenida Barbosa	6	2
05	Arrow Highway at Azusa Canyon Road	4	4
06	Arrow Highway at Irwindale Avenue	8	4
07	Arrow Highway at Morada Street	2	2
08	Arrow Highway at Rivergrade Road	6	3
09	Arrow Highway at Santa Fe Dam (Bike Trail - Eastbound)	Flashing Beacon	-
10	Arrow Highway at Santa Fe Dam (Bike Trail - Westbound)	Flashing Beacon	-
11	Buena Vista Street at Avenida Barbosa - Bateman Avenue	2	0
12	Azusa Canyon Road at Cypress Street	7	4
13	Commerce Drive at Rivergrade Road	4	2
14	Irwindale Avenue at Calle De Paseo	2	0
15	Irwindale Avenue at Calle Del Norte	6	4
16	Irwindale Avenue at Foothill Boulevard	2	2
17	Irwindale Avenue at / Gateway Business Drive	4	4
18	Irwindale Avenue at Martinez Street / Tapia Street	4	0
19	Irwindale Avenue at Ornelas Avenue	7	4
20	Live Oak Avenue at Irwindale Speedway	4	2
21	Live Oak Avenue at Longden Avenue	4	2
22	Myrtle Avenue at Longden Avenue	6	2
23	Stewart Avenue at Rivergrade Road	8	4
24	Arrow Highway at Santa Fe Dam (Ped-Bike Crossing)	2	0
25	Irwindale Avenue at Jardin De Roca/Irwindale Road		
26	Los Angeles Street at Home Depot Distribution Dwy		

**CITY OF IRWINDALE
AGREEMENT – EXHIBIT “B”**

SCOPE OF WORK

The work to be done, in general, consists of furnishing all labor, materials, tools, equipment and incidentals (unless otherwise specified), to maintain Irwindale's twenty-four (24) signalized intersections, and two (2) flashing beacons 100% Irwindale owned as shown on Exhibit "A", in a safe, satisfactory and workmanlike manner.

Contractor shall employ, at a minimum, generally accepted standards and practices utilized by persons engaged in similar services, as are required by Contractor, in meeting its obligations under this Agreement. All services required under this Agreement will be performed by Contractor, and all personnel shall possess the qualifications, permits and licenses required by the State and local law to perform such services.

A. Permits and Licenses

Contractor shall procure all permits and licenses, and give all notices necessary and incidental to the due and lawful prosecution of the Agreement.

B. Patents

Contractor shall assume all responsibilities arising from the use of patented materials, equipment, devices, or processes used on or incorporated in the work.

C. Equipment Required

Contractor shall be equipped with spare parts sufficient to return a defective signal to operation following ordinary trouble calls. In those cases where a complex controller or component has to be repaired, Contractor shall install a substitute controller or component of its own, while it is repairing the defective controller or component.

D. Records

Contractor shall maintain a record of all service calls and work performed upon the signal equipment, listing dates, arrival time to location, hour of day, description of service work performed, and the certified technician's name who completed the work. A copy of such record shall be maintained at all times within the controller cabinet of each signal location.

A log sheet giving a brief description of all routine and extraordinary maintenance activities shall be attached to each monthly invoice. Each invoice, including attachments, shall have a minimum of the following but not limited to:

1. Location of intersection
2. Technician Name

3. Detailed breakdown of work performed
4. Date of invoice and date of work performed
5. Technician arrival time
6. Requestor's name and call back number
7. Description of damaged work and work performed
8. Invoice number
9. Purchase Order Number

E. Shutdowns

Contractor shall request the assistance from Irwindale's Public Works Department at (626) 430-2259 or (626) 430-2210 and notify Irwindale's Director of Engineering / Building Official or her/his authorized representative or designee at (626) 430-2259 or (626) 430-2210, of any signal turn-offs or turn-ons, if traffic is very heavy and Contractor feels it cannot safely bring up the signal.

F. Compliance

Contractor shall comply with all applicable codes, ordinances, laws, rules, regulations.

G. Labor Strike

It shall be the responsibility of Contractor to provide continuous maintenance services, without any interruption, of all traffic signals in Irwindale. In case of a labor strike, Contractor shall provide other means, at his own cost, to provide comparable continuous service as if there were no strike. Failing to do so will cause Irwindale to take whatever action is deemed necessary to provide such service, and the cost will be borne by Contractor.

H. Failure to Perform

If Contractor neglects to perform any of the work properly, or fails to perform any provision of this contract, then Irwindale, within three (3) days after written notice to Contractor, may, without prejudice to any other remedy it may have, make good on such deficiencies, and may deduct the cost thereof from the payment then or thereafter due Contractor; provided, however, that Irwindale's Director of Engineering / Building Official shall approve such action, and certify the amount thereof to be charged to Contractor.

I. Measurement and Payment

Payment shall be made on a monthly basis for all work satisfactorily completed the prior month. A single invoice that itemizes as follows is required:

- Routine Maintenance work; and
- Extraordinary Maintenance work

J. Routine Maintenance

The price for Routine Maintenance shall include the following services, and any other service not specified in this subsection shall fall under the category of "Extraordinary Maintenance."

(1) Coordination Timing

For non-interconnected pre-timed systems of pre-timed controllers, Contractor shall check coordination timing not less than once each month.

(2) Monthly Inspections

Contractor shall perform monthly inspections of each signalized intersection as follows:

- (a) Walk the intersection and visually inspect all signal heads for proper operation, alignment, broken lenses, and missing or damaged parts.

During the walk around, depress all pedestrian push buttons, and observe for proper timing operation and display. As soon as possible, replace broken parts, or change parts and align signal heads, adjust all vehicle or pedestrian signals as necessary. Such repairs would be payable under Section K (Extraordinary Maintenance of this Agreement).

- (b) Closely examine the functioning of the traffic controller in relation to the approaching traffic, and compare the timing chart to the intervals that are timed by the traffic controller. Correct the time of intervals, if necessary, as per the timing card and note any changes on the P.M. sheet.
- (c) Observe traffic as it approaches the intersection, in order to determine if the detector loops, detector loop cables, and amplifiers are operating properly. Adjust or re-tune detect amplifiers, if necessary.
- (d) Inspect all load switches, ground-level photo-cells, dials, controller cabinet switches, relays, clocks, cabinet locks, cabinet mechanisms, cooling fans, etc., and make routine adjustments or minor repairs, if necessary.
- (e) Clean the controller cabinet; vacuum if necessary; remove any foreign material. Look for water or excessive dampness inside the cabinet. Determine the cause, and remedy the condition. Check the filter, and replace it if necessary.

- (f) Maintain a clear and accurate record of the field inspection in the controller cabinet. This record will include the monthly inspection summary showing the date and time checked, and who checked it. If a controller needs to be replaced due to malfunctioning and needs repair, then Contractor shall notify Irwindale's Public Works Department within 24 hours of controller replacement. Any replacement controller shall be adjusted to reflect the timing and settings according to the timing chart.
- (g) Replace the air filter elements in all cabinets so equipped, every twelve (12) months during the term of this Agreement.
- (h) A nighttime survey (Night Tour) shall be conducted quarterly to inspect and identify any inoperable intersection lighting, street lighting, soffit lighting, and illuminated street name signing. A report of all findings and actions from such survey shall be sent to Irwindale's Director of Engineering / Building Official for review.
- (i) Notify Irwindale's Public Works Department when the visibility of traffic signal indications or intersection lighting is impaired by trees, shrubbery, or other obstacles.

K. Extraordinary Maintenance

Extraordinary Maintenance shall consist of the following:

- Repair of failure or malfunction of the signal system if caused by vehicle collision, vandalism, civil disorder, windstorm, natural disasters, street construction, replacement or excavation; or
- Minor upgrading or installation as directed by Irwindale.
- Repair of broken lenses, missing or damaged parts, burned-out indications, etc. that are found during the monthly Routine Maintenance and Night Tour inspections.
-

(1) Repair

Contractor shall repair any and all defective parts of the signal system that cause the signal failure or malfunction, as the occasion arises, such as the signal controller, pedestrian timers, timing dial, master controllers, coordinating units, (State of California) synchronizer and interconnect, flashers, all kinds of burnouts, detector loops, push buttons, sensing units, communication hardware, and wiring systems, etc., unless the failure or malfunction falls in the category of "Routine Maintenance" as defined in this Agreement.

(2) Loop Detector Replacement

Once it is determined by Irwindale a loop detector has so deteriorated that applying more epoxy is insufficient, the loop detector shall be replaced upon receiving approval from Irwindale's Director of Engineering / Building Official. Contractor shall provide a schedule for installation of any loop detectors with an estimated completion date.

(3) Lamp Replacement

Contractor shall replace all lamps and Light Emitting Diodes (LED's) in all signals on an 80% depletion curve, in accordance with the time schedule contained in the specifications. All traffic signal lamps must conform to the standards of the N.E.M.A., U.L., E.I.A., A.S.T.M., A.N.S.I., and any local ordinance that may apply.

If incandescent lamps are present and are in need of replacement based upon the above criteria, Contractor shall replace the lamp to an approved manufacturer LED.

Contractor agrees and acknowledges Irwindale's traffic signals contain LED's, which include red, amber and green balls and arrows.

(4) LED Replacement

Contractor agrees to use only standard traffic signal LED's equivalent in performance, reliability and durability to those manufactured to California Department Transportation's (Caltrans) standards. Contractor agrees to supply all labor and equipment to perform the re-lamping function, with the cost of the LED's and associated installation labor to be invoiced to Irwindale. Contractor shall clean, polish and inspect all lenses and reflectors at the time the traffic signals are re-lamped. At this time, all broken or deteriorated parts will be replaced or changed, as necessary, signal heads aligned, mast arm mounted, street name signs adjusted, and optically programmed signal heads adjusted.

(5) Pedestrian Signals and Street Name Signs

Contractor shall replace pedestrian signal modules and internally illuminated street name sign lamps, as they become dim or inoperative. Contractor shall also replace ballasts and transformers for these units as required.

(6) Lighting at Intersections

Intersection lighting at signalized intersections are to be replaced as they become inoperative, or when directed by Irwindale. High pressure sodium lamps are to be used for replacement.

(7) Emergency Service

Contractor shall maintain a 24-hour per day emergency service for the replacement of burned-out lamps or LED's, turned heads and controller malfunctions, or any damage creating a public hazard. The intersections where said traffic signals are located shall be monitored during monthly inspection and quarterly night tours by Contractor or his representatives. Contractor shall repair parts, replace parts and lamps or LED's, and otherwise keep the traffic signals in good working condition. Contractor shall maintain a local telephone number where representatives of Contractor can be reached 24 hours per day. This telephone number is to be made available to all persons designated by Irwindale.

Contractor shall make immediate service calls on an emergency basis, responding within two (2) hours in the event of malfunctions of the controller or signal system, or turned head.

(8) Notification

Contractor shall contact Irwindale's Director of Engineering / Building Official regarding any Extraordinary Maintenance work (except that necessary to maintain operation) that exceeds \$1000 in cost and seek approval from Irwindale's Director of Engineering / Building Official before the work is scheduled or commenced.

(9) Emergencies

When directed by Irwindale, Contractor shall respond immediately to emergency calls such as a total blackout, and dispatch the qualified personnel and equipment to reach the site within two (2) hours of Irwindale's direction under normal circumstances.

For an emergency repair of a signal that requires the turning off of power to the signal, the following procedure of traffic control shall apply.

- (a) Contractor shall dispatch qualified personnel and equipment to reach the site within two (2) hours of Irwindale's direction.

Contractor's vehicle shall carry stop signs, traffic cones and other equipment that shall be used when directing traffic during an emergency and/or when deemed necessary by the signal technician, Irwindale's Director of Engineering / Building Official, or her/his designated representative.

(10) Materials

Materials used in Extraordinary Maintenance shall be paid at Contractor's actual cost from the supplier, plus a 15% markup. All materials and parts shall be new or have the approval of Irwindale's Director of Engineering / Building Official, if otherwise not new. Irwindale has the right to inspect Contractor's records to verify any material costs used for work relating to Extraordinary Maintenance.

(11) Direct Labor

As part of its monthly invoice, Contractor shall present a record of hours spent on Extraordinary Maintenance of traffic signals and appurtenances per intersection. Irwindale shall pay Contractor's direct cost for such hours of Extraordinary Maintenance as stated below:

Regular time rates will be charged to Irwindale for labor between 6:00 am to 5:00 pm, Monday through Friday. Overtime rates will be charged to Irwindale for labor between 5:00 pm and 6:00 am on weekdays, and 24 hours on Saturdays, Sundays and holidays. Under this Agreement, holidays mean New Year's Day, Martin Luther King Jr.'s Birthday, Lincoln's Birthday, President's Day, Cesar Chavez's Birthday, Memorial Day, Independence Day, Labor Day, Veteran's Day, Thanksgiving Day, Day after Thanksgiving Day, the day before Christmas from 12 noon to 5:00 pm, if Christmas falls on a day other than Saturday, Sunday or Monday, Christmas Day, the day after Christmas, in those years in which Christmas falls on a Thursday and every day appointed by the President or Governor for a public fast, thanksgiving, or holiday.

(12) Equipment

Irwindale shall pay Contractor's direct cost for equipment used in Extraordinary Maintenance. All salvaged or damaged materials that cannot be repaired or reused shall be delivered by Contractor to a location designated by Irwindale's Engineer. All damaged materials that can be repaired for re-use in Contractor's signal shop, shall be removed to the shop for such repairs, and shall be reinstalled when repaired

(13) Painting

Contractor shall provide a cost to Irwindale to repaint all, signal heads, back plates and visors, unless directed otherwise by Irwindale, at least once during the term of this Agreement. Repainting shall be conducted by a method mutually agreed to by both parties.

(14) Maintenance and Inspections

Contractor shall provide intersection lighting and/or street lighting maintenance and inspections in the City of Irwindale.

(15) Conflict Monitor Testing

Contractor shall provide conflict monitor testing. If Contractor determines a conflict monitor unit is defective or malfunctioning, then Contractor shall conduct repairs in accordance with Sections K.(1) and K.(8) above.

L. Protection and Traffic Control

(1) Protection

Contractor shall be responsible for, and shall provide and maintain all required barricades, railings, lights and warning signs, and shall take all necessary precautions to avoid injury or damage to any person or property, and shall, at its own cost and expense, defend, protect and indemnify Irwindale against any claim or liability arising from, or based on the lack of proper safeguards or negligence, whether by himself or his agents, employees or subcontractors.

Contractor shall protect all work, materials and equipment from damage from any cause whatsoever, and provide adequate and proper storage facilities during the progress of the work. It shall provide for the safety and good condition of all work, and replace all damaged or defective work, materials and equipment.

Contractor shall exercise diligence to avoid damage to sprinkler piping, valves, trees, planting, turf, etc., in addition to buildings, structures, pavement, fences and footings. Any required tree branch trimming or removal shall be brought to the attention of Irwindale promptly, and shall be performed by Irwindale personnel.

M. Traffic Control

Traffic control shall conform to the California Manual on Uniform Traffic Control Devices (California MUTCD), latest edition, and must be approved by Irwindale's Director of Engineering / Building Official or his/her designee.

Contractor shall conduct his operation as to cause the least possible obstruction and inconvenience to vehicular and pedestrian traffic.

Contractor shall furnish, erect and maintain such fences, barriers, lights, warning devices and signs in compliance with the California MUTCD, latest edition, or as may be deemed necessary by Irwindale's Director of Engineering / Building Official, to give adequate warning to the public at all times the road or street is obstructed, and of any abnormal conditions to be encountered as a result thereof.

(1) Payment for Traffic Control

Payment for barricading, protection and vehicular and pedestrian traffic control shall be included in the cost estimate for extraordinary maintenance to adequately perform the work involved to the satisfaction of Irwindale's Director of Engineering / Building Official.

N. Guarantee

Contractor hereby guarantees the entire work performed by it under this Agreement will meet fully all requirements thereof as to quality of workmanship and materials furnished by it.

Contractor hereby agrees to make, as its own expense, any repairs or replacements made necessary by defects in materials or workmanship supplied by it that become known within one (1) year of the repair or replacement and upon notice to Contractor regarding said defects.

O. Record Requests

At the request of Irwindale's Director of Engineering / Building Official or her/his designee, Contractor shall provide timing chart information, cost account information or any other documentation related to services provided by Contractor. All third party requests for records shall be routed through the City of Irwindale's Director of Engineering / Building Official and all requested records will be routed to the Director of Engineering / Building Official for release to the third party. Contractor shall be entitled to compensation for such requests on a time and materials basis in accordance with Section 4.(e) of the Agreement.

- ☒ City Council
- ☐ Successor Agency
- ☐ Housing Authority
- ☐ Reclamation Authority
- ☐ Joint Powers Authority

City of
IRWINDALE
AGENDA REPORT

Date: July 26, 2023

To: Honorable Mayor and Members of the City Council

From: Julian A. Miranda, City Manager

Issue: Approval of Contract Agreement with San Bernardino County Sheriff's
Department for Firing Range Use

City Manager's Recommendation:

The City Manager recommends City Council authorize the Chief of Police to enter into an agreement with the San Bernardino County Sheriff Department allowing for the periodic use of their firing range.

Administrative Action:

Submitted by:

Christopher Hofford, Police Chief
(626) 430-2200

Electronically Approved

Prepared by:

John Fraijo, Police Captain

Electronically Approved

Reviewed by:

Adrian R. Guerra, City Attorney

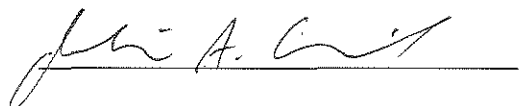
Electronically Approved

Kambiz Borhani, Finance Director / City Treasurer

Electronically Approved

Approved by:

Julian A. Miranda, City Manager



Background and Analysis:

In November 2022, the Irwindale Police Department and the Azusa Police Department combined efforts to create a mutual Special Weapons and Tactics (SWAT) team between both agencies. Five Irwindale Police Officers were selected during a testing and interview process. Once selected, Irwindale Police Administration agreed to mirror the Azusa Police Department's SWAT monthly training session in accordance with Police Officers Standards and Training (POST) recommendations. This joint training requires Irwindale Police officers to join Azusa Police SWAT members in combined training requiring monthly firearms marksmanship training, live firehouse exercises, tactical training house exercises with simmunitions, and the deployment of chemical agent exercises.

Currently, the Azusa Police Department has an Agreement for the use of Weapons Firing Range Facilities with the San Bernardino County Sheriff's Department (SBSD), which offers such facilities. In order to continue our combined efforts with Azusa Police SWAT team, SBSD prepared the attached agreement, which will provide the same services and fees to the Irwindale Police Department (Refer to Schedule B of attached MOU).

Fiscal Impact:

As indicated in Schedule B, monthly billing will be incurred for the use of the facility by Irwindale Police members only. There will be some provisions of adjustment each fiscal year as described in Schedule B. Irwindale Police Department Training Budget will be utilized to meet this agreement.

The estimated yearly cost will be approximately \$2,684.00.

Attachment: SBSD Range Agreement



Contract Number
SHR - 23- 0160

SAP Number
N/A

Sheriff/Coroner/Public Administrator

Department Contract Representative	Kelly Welty, Chief Deputy Director of Sheriff's Administration
Telephone Number	(909) 387-0640
Contractor	Irwindale Police Department
Contractor Representative	Christopher Hofford
Telephone Number	(626)430-2242
Contract Term	XX-XX-2022 through 06-30-2027
Original Contract Amount	Fee per Service
Amendment Amount	
Total Contract Amount	
Cost Center	

IT IS HEREBY AGREED AS FOLLOWS:

AGREEMENT FOR USE OF SAN BERNARDINO COUNTY SHERIFF/CORONER/PUBLIC ADMINISTRATOR WEAPONS FIRING RANGE FACILITIES

WHEREAS, the County, through the Sheriff/Coroner/Public Administrator, hereinafter referred to as "Sheriff", operates a Weapons Firing Range (Range), a Live Fire House (LFH), a Tactical Training House (TACH); and a Chemical Agents Facility (CAF) located at the Frank Bland Regional Training Center (Training Center); **AND**

WHEREAS, the Contractor desires to enter into an Agreement for the use of said Range for the purpose of firearms training; or of said CAF for periodic chemical agent (tear gas) training; or of said LFH and/or TACH for the purpose of periodic firearms qualification shoots and/or firearms training;

NOW, THEREFORE, the parties agree as follows:

A. SCOPE OF SERVICES

- A.1 The Contractor shall make use of the Range, CAF, LFH, or TACH at approximately quarterly intervals during each contractual year. Contractor shall be provided access to the Range as many times as required to ensure that all Contractor's law enforcement personnel and/or students have successfully completed qualifying shoots and/or training sessions. Use of the Range shall take place during normal Range operating hours, at times and dates specified by the Sheriff's Range

Master and/or Range Safety Officer. Available Range facilities shall include, but are not limited to, the following: pistol range, rifle range, and classroom facilities.

- A.2 The Contractor shall coordinate with a designated County Range Safety Officer regarding the proper use of the Range, CAF, LFH and TACH facilities. Contractor shall ensure that all Contractor's personnel and students utilizing the Range, CAF, LFH, or TACH are knowledgeable regarding proper use of the Range, CAF, LFH and/or TACH facilities.
- A.3 The LFH and TACH are limited to use by Special Weapons and Tactics (SWAT) teams and must be approved by the Sheriff's Range Master, or designee, to assure proper training and qualification.
- A.4 Instructors must consult with the Sheriff's Range Safety Officer for an update of LFH and TACH procedures if a 12-month period of non-use has occurred.
- A.5 The Contractor shall supply, at no cost to the County, a qualified Range Master, who has successfully completed a California Peace Officer Standards of Training (P.O.S.T.) approved (or equivalent) firearms instructor course, who shall personally supervise and control the course of training of Contractor's personnel and students at the Range, CAF, LFH and TACH subject to oversight and approval of the Sheriff's Range Master and Range Safety Officer. Contractor shall always have at least two safety persons (approved by Sheriff Department's staff) per scenario on site at the LFH and/or TACH during any training activity. Depending upon the nature of the training activity, Sheriff's Range Master or Range Safety Officer, or equivalent Range/CAF/LFH/TACH personnel, reserves the right to take direct control of the course of training of Contractor's personnel and students with the assistance of Contractor's Range Master.
 - A.5.1 Contractor shall supply copies of all related certifications of all instructors/safety officers.
 - A.5.2 All participants shall conduct themselves in accordance with Range Rules and Regulations, as detailed in Exhibit A; Live Fire House Regulations and Safety Rules, as detailed in Exhibit B; Chemical Agents Facility Regulations and Safety Rules, as detailed in Exhibit C; and Tactical Training House Regulations and Safety Rules, as detailed in Exhibit D, attached hereto and incorporated herein by reference.
 - A.5.3 Violations of the above-mentioned rules and regulations may result in immediate termination of Contractor's Range, LFH, CAF and TACH privileges.
- A.6 The Contractor shall limit the use of the Sheriff Department's Range, CAF, LFH, and TACH facilities to those personnel and students currently employed or enrolled with Contractor at the time the Range, CAF, LFH, and/or TACH are used.
- A.7 The Contractor shall supply and bear the cost of all supplies or equipment necessary for shoots or training, above those detailed in the Schedule A, attached hereto and incorporated herein by reference. Contractor shall supply all necessary ammunition and weapons. All expended shell casings shall become the sole property of the County.
- A.8 The Contractor shall submit a course of fire to the Sheriff's Range Master or Range Safety Officer prior to Contractor's initial use of the Range, LFH, and/or TACH facilities. Contractor shall submit a new course of fire prior to making any change in use of the Range, LFH, and/or TACH facilities.
- A.9 The Contractor shall supply the Sheriff's Range Master or Range Safety Officer with contact information for Contractor's lead instructor/Range Master.
- A.10 It shall be the sole responsibility of the Contractor to ensure that all shooters arrive for all shoots and/or training sessions. Contractor is required to submit a roster of individuals in attendance at the Training Center.

B. TERM AND TERMINATION

The term of this Agreement shall be for a period commencing on August 1, 2022, or upon the date of approval by the Sheriff, whichever is later, and ending on June 30, 2027. Notwithstanding the foregoing, this contract may be terminated at any time with or without cause by Contractor or by Sheriff upon written notice given to the other party at least thirty (30) days prior to the date specified for such termination. Any

such termination date shall coincide with the end of a calendar month. In the event of such termination, each party shall fully pay and discharge all obligations in favor of the other accruing prior to the date of such termination, and each party shall be released from all obligations or performance which would otherwise accrue subsequent to the date of termination. Neither party shall incur any liability to the other by reason of termination.

C. FISCAL PROVISIONS

- C.1** The Contractor shall compensate the County at the rates set forth and attached hereto as Schedule B, per agency, based upon the actual number of shooters or per facility fee, per session. Sessions up to four hours will be considered a half-day session with a limit of twenty (20) shooters in four hours. Sessions more than four hours (or more than twenty (20) shooters) will be considered a whole day session.
- C.2** Each Contractor agency is responsible for its per shooter/facility/session charges. If multiple Contractor Agencies train together, the charges cannot be combined and will be billed separately.
- C.3** Contractor shall be billed in arrears on a quarterly basis. Contractor will submit payment to the Sheriff Department's Bureau of Administration for the costs billed within forty-five (45) days of invoice.
- C.4** Schedule B reflects the rates in effect at the execution of this Agreement. County shall have the right to adjust the rates provided under this Agreement at the end of each fiscal year for the ensuing fiscal year. Any subsequent cost change(s) shall become effective on July 1 of the County fiscal year (July 1 through June 30). Such rate change(s) can include changes to Memoranda of Understanding approved by the County Board of Supervisors for County employees and other inflationary costs. Sheriff shall provide notice to Contractor of pending rate change(s) by providing Contractor with a revised Schedule B reflecting such rate change(s).
- C.5** CANCELLATION POLICY: Contractor agrees to pay the full cost of any scheduled facility session according to the Schedule B charges for the specific shooter/time booked unless the reserved time has been cancelled, at a minimum, twenty-four (24) hours prior to the scheduled session time. Contractor may cancel scheduled sessions by calling the Sheriff's Range office at (909) 473-2549 or by e-mail to: sheriffsrangerange@sbcisd.org.

D. INDEMNIFICATION AND INSURANCE REQUIREMENTS

D.1 Indemnification

The Contractor agrees to indemnify, defend (with counsel reasonably approved by County) and hold harmless the County and its authorized officers, employees, agents and volunteers ("Indemnitees") from any and all direct claims, actions, losses, damages and/or liability arising out of this Agreement from any cause whatsoever, including the acts, errors or omissions of any person and for any costs or expenses incurred by the County on account of any claim except where such indemnification is prohibited by law. This indemnification provision shall apply regardless of the existence or degree of fault of Indemnitees. The Contractor indemnification obligation does not apply to the County's "sole negligence" or "willful misconduct" within the meaning of Civil Code section 2782. Provided, however, that this indemnity does not extend to any environmental hazards or risks.

D.2 Additional Insured

All policies, except for Worker's Compensation, Errors and Omissions and Professional Liability policies shall contain additional endorsements naming the County and its officers, employees, agents and volunteers as additional named insured with respect to liabilities arising out of the performance of services hereunder. The additional insured endorsements shall not limit the scope of coverage for the County to vicarious liability but shall allow coverage for the County to the full extent provided by the policy. Such additional insured coverage shall be at least as broad as Additional Insured (Form B) endorsement form ISO, CG 2010.11 85.

D.3 Waiver of Subrogation Rights

The Contractor shall require the carriers of the above required coverages to waive all rights of subrogation against the County, its officers, employees, agents, volunteers, contractors, and subcontractors. All general or auto liability insurance coverage provided shall not prohibit the Contractor and Contractor's employees or agents from waiving the right of subrogation prior to a loss or claim. The Contractor hereby waives all rights of subrogation against the County.

D.4 Policies Primary and Non-Contributory

All policies required above are to be primary and non-contributory with any insurance or self-insurance programs carried or administered by the County.

D.5 Severability of Interests

The Contractor agrees to ensure that coverage provided to meet these requirements is applicable separately to each insured and there will be no cross liability exclusions that preclude coverage for suits between the Contractor and the County or between the County and any other insured or additional insured under the policy.

D.6 Proof of Coverage

The Contractor shall furnish Certificates of Insurance to the Sheriff's Department to the address referenced in Paragraph F, evidencing the insurance coverage at the time the Agreement is executed, additional endorsements, as required shall be provided prior to the commencement of performance of services hereunder, which certificates shall provide that such insurance shall not be terminated or expire without thirty (30) days written notice to the Department, and Contractor shall maintain such insurance from the time Contractor commences performance of services hereunder until the completion of such services. Within fifteen (15) days of the commencement of this contract, the Contractor shall furnish a copy of the Declaration page for all applicable policies and will provide complete certified copies of the policies and endorsements immediately upon request.

D.7 Acceptability of Insurance Carrier

Unless otherwise approved by Risk Management, insurance shall be written by insurers authorized to do business in the State of California and with a minimum "Best" Insurance Guide rating of "A-VII".

D.8 Deductibles and Self-Insured Retention

Any and all deductibles or self-insured retentions in excess of \$10,000 shall be declared to and approved by Risk Management.

D.9 Failure to Procure Coverage

In the event that any policy of insurance required under this Agreement does not comply with the requirements, is not procured, or is canceled and not replaced, the County has the right but not the obligation or duty to cancel the Agreement or obtain insurance if it deems necessary and any premiums paid by the County will be promptly reimbursed by the Contractor or County invoices to the Contractor will be increased to pay for County purchased insurance.

D.10 Insurance Review

Insurance requirements are subject to periodic review by the County. The Director of Risk Management or designee is authorized, but not required, to reduce, waive or suspend any insurance requirements whenever Risk Management determines that any of the required insurance is not available, is unreasonably priced, or is not needed to protect the interests of the County. In addition, if the Department of Risk Management determines that heretofore unreasonably priced or unavailable types of insurance coverage or coverage limits become reasonably priced or available, the Director of Risk Management or designee is authorized, but not required, to change the above insurance requirements to require additional types of insurance coverage or higher coverage limits, provided that any such change is reasonable in light of past claims against the County, inflation, or any other item reasonably related to the County's risk.

Any change requiring additional types of insurance coverage or higher coverage limits must be made by amendment to this Agreement. Contractor agrees to execute any such amendment within thirty (30) days of receipt.

Any failure, actual or alleged, on the part of the County to monitor or enforce compliance with any of the insurance and indemnification requirements will not be deemed as a waiver of any rights on the part of the County.

- D.11** The Contractor agrees to provide insurance set forth in accordance with the requirements herein. If the Contractor uses existing coverage to comply with these requirements and that coverage does not meet the specified requirements, the Contractor agrees to amend, supplement or endorse the existing coverage to do so.

For contractors which are considered self-insured public entities: Both Contractor and County are authorized self-insured public entities for purposes of Professional Liability, General Liability, Automobile Liability, and Workers' Compensation. Contractor and County warrant that through their respective program of self-insurance, they have adequate coverage or resources to protect against liabilities arising out of the performance of the terms, conditions or obligations of this agreement.

For contractors which are not considered self-insured public entities: Without in anyway affecting the indemnity herein provided and in addition thereto, the Contractor shall secure and maintain throughout the Agreement the following types of insurance with limits as shown:

D.11.1 Workers' Compensation Liability - A program of Workers' Compensation insurance or a state-approved self-insurance program in an amount and form to meet all applicable requirements of the Labor Code of the State of California, including Employer's Liability with \$250,000 limits, covering all persons including volunteers providing services on behalf of the Contractor and all risks to such persons under this Agreement.

D.11.2 Commercial/General Liability Insurance - The Contractor shall carry General Liability Insurance covering all operations performed by or on behalf of the Contractor providing coverage for bodily injury and property damage with a combined single limit of not less than one million dollars (\$1,000,000), per occurrence. The policy coverage shall include:

- a. Premises operations and mobile equipment.
- b. Products and completed operations.
- c. Broad form property damage (including completed operations).
- d. Explosion, collapse and underground hazards.
- e. Personal injury.
- f. Contractual liability.
- g. \$2,000,000 general aggregate limit.

D.11.3 Automobile Liability Insurance - Primary insurance coverage shall be written on ISO Business Auto coverage form for all owned, hired and non-owned automobiles or symbol 1 (any auto). The policy shall have a combined single limit of not less than one million dollars (\$1,000,000) for bodily injury and property damage, per occurrence.

If the Contractor is transporting one or more non-employee passengers in performance of contract services, the automobile liability policy shall have a combined single limit of two million dollars (\$2,000,000) for bodily injury and property damage per occurrence.

If the Contractor owns no autos, a non-owned auto endorsement to the General Liability policy described above is acceptable.

D.11.4 Umbrella Liability Insurance - An umbrella (over primary) or excess policy may be used to comply with limits or other primary coverage requirements. When used, the umbrella policy shall apply to bodily injury/property damage, personal injury/advertising injury and shall include a "dropdown" provision providing primary coverage for any liability not covered by the primary policy. The coverage shall also apply to automobile liability.

D.11.5 Abuse/Molestation Insurance – Contractor shall have abuse or molestation insurance providing coverage for all employees for the actual or threatened abuse or molestation by anyone of any person in the care, custody, or control of any insured, including negligent employment, investigation and supervision. The policy shall provide coverage for both defense and indemnity with liability limits of not less than one million dollars (\$1,000,000) with a two million dollars (\$2,000,000) aggregate limit.

D.12 Any such reduction or waiver for the entire term of the agreement and any change requiring additional types of insurance coverage or higher coverage limits must be made by amendment to this agreement. Contractor agrees to execute any such amendment within thirty (30) days of receipt.

E. NOTICES

All written notices provided for in this Agreement or which either party desires to give to the other shall be deemed fully given, when made in writing and either served personally, or by facsimile, or deposited in the United States mail, postage prepaid, and addressed to the other party as follows:

San Bernardino County Sheriff's Department	Irwindale Police Department
Bureau of Administration, Contracts Unit	5050 N. Irwindale Avenue
655 East Third Street	Irwindale, CA 91706
San Bernardino, CA 92415-0061	

Notice shall be deemed communicated two (2) County working days from the time of mailing if mailed as provided in this paragraph.

F. AUTHORITY

The Sheriff/Coroner/Public Administrator of San Bernardino County, or designee, shall have the right to exercise the County's authority under this Agreement including the right to give notice of termination on behalf of the County at his sole discretion.

G. AGREEMENT AUTHORIZATION

The Contractor warrants and represents that the individual signing this Agreement is a properly authorized representative of the Contractor and has the full power and authority to enter into this Agreement on the Contractor's behalf.

H. ENTIRE AGREEMENT

This Agreement, including all Exhibits and Schedules, which are attached hereto and incorporated by reference, represents the final, complete and exclusive agreement between the parties hereto. Any prior agreement, promises, negotiations or representations relating to the subject matter of this Agreement not expressly set forth herein are of no force or effect. This Agreement is executed without reliance upon any promise, warranty or representation by any party or any representative of any party other than those expressly contained herein.

This Agreement may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, and such counterparts shall together constitute one and the same Agreement. The parties shall be entitled to sign and transmit an electronic signature of this Agreement (whether by facsimile, PDF or other mail transmission), which signature shall be binding on the party whose name is contained therein. Each party providing an electronic signature agrees to promptly execute and deliver to the other party an original signed Agreement upon request.

IN WITNESS WHEREOF, the San Bernardino County and the Contractor have each caused this Contract to be subscribed by its respective duly authorized officers and delivered this Agreement on the Execution Date on its behalf.

Approved as to Legal Form

Name, Title

Dated:

Agency Name

Signature

Irwindale Police Department
(Print or type name of agency/department)

By  _____
(Authorized signature - sign in blue ink)

Name
(Print or type name of person signing contract)

Title
(Print or Type)

Dated:

Address 5050 N. Irwindale Avenue

Irwindale, CA 91706

FOR SAN BERNARDINO COUNTY SHERIFF'S USE ONLY

Approved as to Legal Form


Richard D. Luczak, Deputy County Counsel

Date

Reviewed/Approved by Sheriff-Coroner
Authorized Signature


Kelly Welty, Chief Deputy Director of Sheriff
Administration

Date

SCHEDULE A

SUPPLIES AND SERVICES PROVIDED BY THE SAN BERNARDINO COUNTY SHERIFF'S DEPARTMENT FOR USE OF THE RANGE FACILITIES:

1. Target backing.
2. Target frames (stands).
3. Gun cleaning supplies and a designated area for gun cleaning.

ADDITIONAL INFORMATION:

- CONTRACTOR will provide targets, staple guns and staples. Additional imported targets (steel, windshields, etc.) need the approval of the Rangemaster or Designee.
- Inmate assistance for range set up and target maintenance is available on a limited basis and is not guaranteed.
- Nighttime use of the range facilities is available on a limited basis and must be approved by the Sheriff's Rangemaster or Designee.

SCHEDULE B

SAN BERNARDINO COUNTY SHERIFF'S DEPARTMENT

USE OF WEAPONS FIRING RANGE FACILITIES FEE SCHEDULE 2022-27 *

FACILITY (Per Session)	HALF DAY UP TO FOUR (4) HOURS/DAY (UP TO 20 SHOOTERS)	FULL DAY MORE THAN FOUR (4) HOURS/DAY (MORE THAN 20 SHOOTERS)
Shooting Range	\$23 per Shooter	
Live Fire House	\$460	\$920
Gas House	\$220	\$440
RAC House / Simmunition House / TAC House	\$460	\$920
Mat Room **	\$220	
Classroom **	\$220	

* The rates on this page are for the fiscal year 2022-23 only and may be adjusted each fiscal year.

** Charged when no other exercise is being conducted by an agency on the same day.

EXHIBIT A

NOTICE

RANGE SAFETY ADVISORY

THE FOLLOWING SAFETY PROCEDURES WILL BE STRICTLY ENFORCED:

1. Upon arrival, all weapons are to remain holstered until participants are instructed to report to the firing line and given commands for the course of fire.
2. All shooters must wear proper ear and eye protection as approved by the Sheriff's Range.
3. Weapons are to be loaded or down loaded at the firing line, or as otherwise instructed by the Range Safety Officer.
4. Only magazines and speed loaders may be down loaded and replaced with live ammunition in the staging area.
5. After completing the course of fire, weapons are to be re-holstered upon leaving the firing line.
6. Weapons may be un-holstered in the cleaning room and rendered safe for cleaning by using the bullet containment system located in the cleaning room.
7. A duty round may only be re-chambered at the firing line or by using the bullet containment system located in the cleaning room.
8. Violation of any safety rule will result in removal of the violator from the Range. Flagrant safety violations could lead to suspension of future range privileges to the violator and/or the agency or organization the violator represents.
9. Eating, open toed shoes, and shorts are not permitted on the firing ranges

IF THERE ARE ANY QUESTIONS, PLEASE CONSULT THE RANGE SAFETY OFFICER OR RANGEMASTER

EXHIBIT B

San Bernardino Sheriff's Department Live Fire House Regulations and Safety Rules

1. Approval for use of the Live Fire House must be made by the or the Rangemaster or his/her Designee; authorized firearms instructors must be present during use; the primary (lead) instructor is responsible for the safe operation and maintenance of the Live Fire House; all training, presentation, or demonstrations, whether live fire or not, will be under the direct supervision of an instructor; the primary instructor will ensure that all participants involved in live fire training are qualified to do so; all instructors must have satisfactorily completed a "Live Fire House Operations-Instructor Development Course", as offered by either San Bernardino County Sheriff's Department (or equivalent subject to the approval of the Sheriff's Rangemaster); the primary instructor will ensure that all participants involved in Live Fire House training receive a safety briefing that includes basic firearms safety, and the safe operating procedures for the Live Fire House; all loading and unloading of weapons will be under the direct supervision of a firearms instructor; the primary instructor will ensure that the following safety equipment is on-hand prior to "Live Firearms Training", these include, first aid trauma kit, radio or other form of communication, that fire extinguishers are present and charged, and the approach gate to the LFH remains clear of obstruction at all times.
2. Under most circumstances, the student to authorized instructor ratio will not exceed 3 to 1; body armor, eye and hearing protection must be worn by everyone who enters the Live Fire House; prior to live fire exercises, all rooms will be checked to ensure that no personnel are present; firearm instructors will ensure that targets are placed so that, when engaged, rounds will hit the proper backstop and rounds will not exit the building; authorized/approved frangible ammunition shall only be used, if your ammunition is not on the approved list a test must be conducted by the Range Staff to verify that the ammunition is appropriate for the facility; no metal targets will be allowed; instructors shall review all targets and angles of deflections before beginning live fire; if during any training a safety whistle is blown or a command that is designated as a "Cease Fire" command is made, the shooter(s) shall freeze their movement, place trigger fingers outside of trigger guards, depress the weapons muzzles, repeat "Cease Fire" and wait for further commands from the instructor; students are required to follow the direction of the instructors and the safe operating procedures at all times, failure to do so is just cause for removal from training, all observers are required to follow the safety rules established for the Live Fire House at all times, failure to comply with these safety rules is just cause for removal from the Live Fire Facility; instructors shall ensure that no shots impact any containment wall closer than 18" from its upper edge; instructors shall monitor students to ensure that firing positions are not taken that may endanger other students or may allow fired round(s) from escaping the containment area.
3. The red range flag must be hoisted prior to use; at the conclusion of the training session the building shall be checked for damage, potential fire concerns and then secured; all damage not consistent with normal wear must be repaired, replaced and reported.
4. The entrance gates to the Live Fire House will be closed during all live fire exercises, with entry being approved only by the primary safety officer; no unauthorized persons shall be present in or around the Live Fire House without checking in with the safety officer and having his or her consent to be present; any injuries must be immediately reported to the Range Safety Officer or Rangemaster; a post operation inspection of the Live Fire House facility will be made by the primary instructor to ensure the following: all weapons, ammunition, diversionary devices, body armor, and other equipment used during the training period are accounted for, that brass has been collected

and that all other debris within the Live Fire House has been removed, that no student(s) has sustained any injuries during training, that no damage has been caused by the training; account for all personnel who used the Live Fire House.

5. All agencies seeking to use the Live Fire House must have a current contract with the County of San Bernardino for such use, and insurance document, on file; curriculum of exercises that are to be conducted in the Live Fire House must be submitted in advance to the Rangemaster for approval; specific safety policies and procedures of the San Bernardino County Sheriff's Department must be followed at all times; firearms shall not be handled by persons with a blood alcohol content in excess of .00% by weight or under the influence of drugs or medication that would impair their motor skills, judgment, or balance; and no chemical agents may be used in the Live Fire House.
6. All ammunition(s) used at the Live Fire House must be approved by the San Bernardino County Sheriff's Department and meet Department standards.

EXHIBIT C

San Bernardino County Sheriff's Department Chemical Agents Facility Regulations and Safety Rules

1. Approval for use of the Sheriff's Chemical Agents Facility (CAF) must be made by the Rangemaster or his/her designee; authorized chemical agents instructors must be present during use; the primary (lead) instructor is responsible for the safe operation and maintenance of the CAF; all training, presentation, or demonstrations, whether live training or not, will be under the direct supervision of an instructor; the primary instructor will ensure all participants involved in training are qualified to do so; all instructors must have satisfactorily completed a POST certified "Chemical Agents Instructor Course," as offered by either the San Bernardino County Sheriff's Department or equivalent, subject to the approval of the Sheriff's Rangemaster; the primary instructor will ensure the following safety equipment is on-hand prior to live training, these include, first aid trauma kit, radio or other form of communication, charged fire extinguisher(s), operable water source, "dud" container(s) with water.
2. No firearms and/or edged weapons shall be present by those involved in chemical agents training; chemical agents shall not be handled by persons with a blood alcohol content more than .00% by weight or under the influence of drugs or medication that would impair their motor skills, judgment, or balance; any injuries shall be immediately reported to the Rangemaster or readily available Range staff member; a post operation inspection of the CAF will be made by the primary instructor to ensure any related equipment utilized during the training period are accounted for and removed; damage to the CAF shall be immediately reported to the Rangemaster or his/her designee; if at any time, flagrant safety violations are observed, the Rangemaster or his/her designee shall assume control of the training session until its conclusion.
3. Chemical agents training shall adhere to the most current "POST Guidelines for Student Safety in Certified Courses" manual and section six (6) of the Sheriff's Training Division Safety Policy (available via the Range Office); all participants are required to follow the direction of the instructors and the safe operating procedures at all times, failure to do so is just cause for removal from training, all observers are required to follow the safety rules established for the CAF; the red notification flag must be hoisted prior to using the CAF; at the conclusion of the training session the CAF shall be checked for damage, potential fire concerns and then secured; all damage not consistent with normal wear must be repaired and/or replaced and reported.
4. Students/participants who are issued or using an air-purifying respirator (APR) when participating in chemical agents training must have completed any agency required medical examination, shall have met CAL/OSHA requirements for fit testing and use a NIOSH approved APR; the following staff-to-student ratios shall be used inside the CAF:

Verbal/Classroom Instruction	1:20
Application/Practical's	1:1

EXHIBIT D

San Bernardino Sheriff's Department Tac-House Regulations and Safety Rules

1. Approval for use of the Tac-House must be made by the Rangemaster or his/her designee; authorized firearms instructors must be present during use; the primary (lead) instructor is responsible for the safe operation and maintenance of the Tac-House; all training, presentations, demonstrations, and live training evolutions will be under the direct supervision of an instructor; the primary instructor will ensure all participants involved in training evolutions are qualified to do so; all instructors must have satisfactorily completed a "Live Fire House Operations-Instructor Development Course," as offered by either the San Bernardino County Sheriff's Department (or equivalent subject to the approval of the Sheriff's Rangemaster) or a certified "Active Shooter Instructor" course; the primary instructor will ensure all participants involved in training receive a safety briefing that includes basic firearms safety, and the safe operating procedures for the Tac-House; all loading and unloading of training weapons will be under the direct supervision of a firearms instructor; the primary instructor will ensure the following safety equipment is on-hand prior to live training evolutions, these include, first aid trauma kit, radio or other form of communication, that fire extinguishers are present and charged, and the Tac-House interior/exterior boundaries remains clear of obstruction(s) at all times; live firearms or live ammunition is not authorized inside the Tac-House, nor to be present during live training evolutions.
2. Under most circumstances, the student to authorized instructor ratio will not exceed 3 to 1; body armor, long sleeve clothing, pants, eye and hearing protection shall be worn by everyone who enters the Tac-House; prior to live training evolutions, all rooms will be checked to ensure no personnel are present other than role players; firearm instructors will ensure targets are placed so that, when engaged, rounds will impact the proper backstop and rounds will not exit the building; authorized/approved *"non-permanent marking simunition rounds"* shall only be used, if your simunition rounds are not on the approved list, a test must be conducted by the Range Staff to verify that simunition rounds are appropriate for the facility; instructors shall review all targets and angles of deflections before beginning live training evolutions; if during any training a safety whistle is blown or a command that is designated as a "Cease Fire" command is made, the shooter(s) shall freeze their movement, place trigger fingers outside of trigger guards, depress the weapons muzzles, engage the safety selector and repeat "Cease Fire" and wait for further commands from the instructor; students are required to follow the direction of the instructors and the safe operating procedures at all times, failure to do so is just cause for removal from training, all observers are required to follow the safety rules established for the Tac-House at all times, failure to comply with these safety rules is just cause for removal from the Tac-House and Training Center Campus; instructors shall ensure that no shots impact any containment wall closer than 18" from its upper edge or within 18" of any role player; instructors shall monitor students to ensure that firing positions are not taken that may endanger other students or may allow fired round(s) from escaping the containment area.
3. The red range flag must be hoisted prior to use; at the conclusion of the training session the Tac-House shall be checked for damage, potential fire concerns and then secured; all damage not consistent with normal wear must be repaired, replaced and reported.
4. With the exception of training evolution vehicles, the ingress/egress of the Tac-House shall be cordoned off during all live training evolutions, with entry being approved only by the primary safety officer; no unauthorized persons shall be present in or around the Tac-House without checking in

with the safety officer and having his or her consent to be present; any injuries must be immediately reported to the Range Office or Rangemaster; a pre and post operation inspection of the Tac-House facility will be made by the primary instructor to ensure the following: all weapons, munitions, body armor, and other equipment used during the training period are accounted for, that FCC's have been collected and that all other debris within the Tac-House has been removed, that no student(s) have sustained any injuries during training, that no damage has been caused by the training; account for all personnel who used the Tac-House.

5. All agencies seeking to use the Tac-House must have a current contract with the County of San Bernardino for such use, and insurance document, on file; curriculum of exercises that are to be conducted in the Tac-House must be submitted in advance to the Rangemaster for approval; specific safety policies and procedures of the San Bernardino County Sheriff's Department must be followed at all times; live or training firearms shall not be handled by persons with a blood alcohol content in excess of .00% by weight or under the influence of drugs or medication that would impair their motor skills, judgment, or balance; and no chemical agents or flammable/non-flammable incendiary devices may be used inside the Tac-House.
6. All simunition(s) used at the Tac-House must be approved by the San Bernardino County Sheriff's Department and meet Department standards

- ☒ City Council
- ☐ Successor Agency
- ☐ Housing Authority
- ☐ Reclamation Authority
- ☐ Joint Powers Authority

City of
IRWINDALE
AGENDA REPORT

CC Item 8

Date: July 26, 2023
To: Honorable Mayor and Members of the City Council
From: Julian A. Miranda, City Manager
Issue: Approval of Tolling Agreement with Calmat Co., d.b.a. Vulcan Materials Company regarding the protest of development impact fees for 15990 East Foothill Boulevard

City Manager's Recommendation:

It is recommended that the Irwindale City Council approve the proposed Tolling Agreement with Calmat Co., d.b.a. Vulcan Materials Company regarding the protest of development impact fees for 15990 East Foothill Boulevard.

Submitted & Prepared by:

Adrian R. Guerra, City Attorney

Electronically Approved

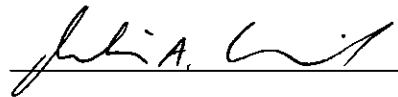
Reviewed by:

Adrian R. Guerra, City Attorney

Electronically Approved

Approved by:

Julian A. Miranda, City Manager



Background and Analysis:

Vulcan is the former owner of approximately 91 acres of real property located at 15990 East Foothill Boulevard in Irwindale, California, commonly referred to as Reliance II ("Property").

Vulcan sold the Property in fee to LIT Reliance II LP, a Delaware limited partnership, by and through a Purchase and Sale Agreement and Joint Escrow Instructions dated March 9, 2021.

LIT Reliance II LP submitted an application to the City for the construction of one new ± 432,557 square foot tilt-up industrial building, located on the Property ("Project").

On March 16, 2023, the City sent an Impact Fee Notice to LIT Reliance II LP, as the Project Applicant for the Project and owner of the Property, notifying it that the City was

imposing Development Impact Fees on the Project in the amount of \$3,106,191.82, pursuant to Irwindale Municipal Code § 3.50.010 et seq. ("Project DIF").

On June 8, 2023, LIT Reliance II LP executed an Assignment of Claims and Rights ("Assignment"), assigning and transferring to Vulcan any and all of LIT Reliance II LP's rights, inclusive of its successors and assigns, to bring a challenge to the Project DIF.

On June 12, 2023, Vulcan submitted to the City a protest of the Project DIF and application for fee adjustment or waiver, pursuant to, without limitation, Irwindale Municipal Code ("IMC") section 3.50.070 and Government Code § 66020 as incorporated and/or referenced by IMC § 3.50.050(B), and tendered the Project DIF amount to the City under protest in accordance with Government Code section 66020 ("DIF Protest").

IMC section 3.50.070(C) requires the City Council to consider the DIF Protest at a public hearing within sixty (60) days of the filing of the fee adjustment application.

Government Code section 66020 requires any party who files a DIF Protest to file an action to attack, review, set aside, or annul the imposition of the fees within 180 days after delivery of said notice.

Without waiver to either Party's rights or remedies, the Parties have drafted the proposed tolling agreement which suspends all applicable statutes of limitations and time limits arising out of the above-referenced DIF Protest. The purpose of the tolling agreement is to avail the parties of the opportunity to appropriately prepare for the DIF Protest hearing before the City Council, explore resolution, and also avoid incurring potentially unnecessary legal fees and expenses.

The agreement has been reviewed by Vulcan and its attorneys and approved for signatures. It is therefore recommended that the City Council approve the proposed tolling agreement.

FISCAL IMPACT

None.

Attachments:

Exhibit A- Tolling Agreement between City of Irwindale and Vulcan

AGREEMENT TOLLING STATUTES OF LIMITATION

This Agreement Tolling Statutes of Limitations ("Agreement"), effective July 26, 2023 ("Effective Date") is entered into between CalMat Co., a Delaware corporation, d.b.a. Vulcan Materials Company (referred to herein as, "Vulcan"), and the City of Irwindale, a municipal corporation and charter city ("City"). Each party may be referred to individually as a "Party" and all parties may be collectively referred to as the "Parties" below.

RECITALS

WHEREAS, Vulcan is the former owner of approximately 91 acres of real property located at 15990 East Foothill Boulevard in Irwindale, California, commonly referred to as Reliance II ("Property"); and

WHEREAS, Vulcan sold the Property in fee to LIT Reliance II LP, a Delaware limited partnership, by and through a Purchase and Sale Agreement and Joint Escrow Instructions dated March 9, 2021; and

WHEREAS, LIT Reliance II LP submitted an application to the City for the construction of one new ± 432,557 square foot tilt-up industrial building, located on the Property ("Project"); and

WHEREAS, on March 16, 2023, the City sent an Impact Fee Notice to LIT Reliance II LP, as the Project Applicant for the Project and owner of the Property, notifying it that the City was imposing Development Impact Fees on the Project in the amount of \$3,106,191.82, pursuant to Irwindale Municipal Code § 3.50.010 *et seq.* ("Project DIF"); and

WHEREAS, LIT Reliance II LP executed an Assignment of Claims and Rights ("Assignment"), assigning and transferring to Vulcan any and all of LIT Reliance II LP's rights, inclusive of its successors and assigns, to bring a challenge to the Project DIF; and

WHEREAS, on June 12, 2023, Vulcan submitted to the City a protest of the Project DIF and application for fee adjustment or waiver, pursuant to, without limitation, Irwindale Municipal Code ("IMC") section 3.50.070 and Government Code § 66020 as incorporated and/or referenced by IMC § 3.50.050(B), and tendered the Project DIF amount to the City under protest in accordance with Government Code section 66020 ("DIF Protest");

WHEREAS, IMC section 3.50.070(C) requires the City Council to consider the DIF Protest at a public hearing within sixty (60) days of the filing of the fee adjustment application; and

WHEREAS, Government Code section 66020 requires any party who files a DIF Protest to file an action to attack, review, set aside, or annul the imposition of the fees within 180 days after delivery of said notice; and

WHEREAS, without waiver to either Party's rights or remedies, the Parties wish to suspend all applicable statutes of limitations and time limits arising out of the above-referenced DIF Protest,

to avail themselves of the opportunity to appropriately prepare for the DIF Protest hearing before the City Council, explore resolution, and also avoid incurring potentially unnecessary legal fees and expenses.

NOW, THEREFORE, in consideration of the promises and mutual covenants contained herein and intending to be legally bound, the Parties agree as follows:

AGREEMENT

1. Recitals. The above-referenced Recitals are true and correct, and are hereby incorporated by reference as though set forth herein in full.

2. Claims. “Claim” or “Claims” shall mean any and all actual, intended, or potential claims, actions, causes of action, charges, arbitrations, complaints, rights, demands, disputes, controversies, defenses, rights of setoff, and/or any other statutory, common law, or equitable theory and/or cause of action of any kind, relating to the Project DIF or DIF Protest, and which may be properly brought or enforced in a court of competent jurisdiction.

3. Tolling Period. Without waiver to either Party’s rights or remedies, any and all statutes of limitations including but not limited to, those set forth in Government Code section 66020 and the Irwindale Municipal Code section 3.50.070, or other time-related defenses or limitations, whether statutory, contractual, or otherwise and whether at law, in equity, or otherwise (including the doctrines of waiver, laches, acquiescence or estoppel, and exhaustion of administrative remedies), in any jurisdiction, which are or may be applicable to any Claim (collectively, the “Time-Based Defenses”) and that may fix or limit the period within which a Claim may be brought, or any defenses asserted, are hereby tolled for the period (the “Tolling Period”) beginning as of the Effective Date of this Agreement and continuing until a final decision on the DIF Protest is issued by the City Council, pursuant to IMC section 3.50.070(C) (the “Expiration Date”). The parties further agree that any and all Claims shall be brought within ninety (90) days of the Expiration Date, including the 90th day, during which time all Claims shall be timely, and thereafter, shall be barred as a matter of law by the statute of limitations.

4. Effect of Agreement. By entering into this Tolling Agreement, the Parties agree that this Agreement does not revive any Claims already barred, whether by a statute of limitations or other time-related defense, or otherwise, as of the Effective Date of this Agreement and that nothing in this Agreement shall preclude either of the Parties from raising any statute of limitations or other time-related or other defense which may be applicable to the Claims prior to or after the Tolling Period.

5. Running of the Tolling Period. The Parties each agree not to assert, plead or raise in any fashion any Time-Based Defenses to the Claims, which Time-Based Defenses rely in whole or in part on time that passed during the Tolling Period.

4. Representation and Warranty This Agreement shall inure to the benefit of and be binding upon the Parties and all of their respective related entities, predecessors, successors, assigns, and/or assignees. Vulcan expressly represents and warrants to the City that Vulcan has been assigned any and all rights with respect to the Project DIF and LIT Reliance II has no further rights with respect to the Project DIF. Vulcan understands and acknowledges that by entering into this Agreement, the City is in good faith and materially relying on Vulcan’s representation and

warranty that Vulcan is the sole entity with rights to challenge the Project DIF. 6. Modification. This Agreement can be extended and/or modified only by a writing signed by both Parties.

7. Expiration of Agreement. This Agreement will terminate at 11:59 p.m. on the Expiration Date, except to the extent the Parties may agree in writing to extend the Tolling Period pursuant to Section 5, or terminate the Agreement pursuant to Section 15.

8. Attorneys' Fees and Legal Expenses. Should any of the Parties institute any action or proceeding in court to enforce any provision hereof or for damages by reason of any alleged breach of any provision of this Agreement or for any other judicial remedy, the prevailing party shall be entitled to receive from the losing party all reasonable attorneys' fees and all court costs in connection with said proceeding.

9. Entire Agreement. This Agreement contains the Parties' entire agreement and understanding concerning the subject matter of this Agreement, and supersedes all prior negotiations, representations, and agreements concerning the subject matter hereof.

10. Governing Law. This Agreement shall be construed, and the rights and obligations of the Parties determined, in accordance with and governed by the laws of the State of California.

11. Counterparts. This Agreement may be signed in counterparts and/or by PDF/facsimile, each of which shall be an original, but which shall together constitute one and the same instrument.

12. Consultation with Legal Counsel. The Parties acknowledge that they have had a reasonable opportunity to consult independent legal counsel prior to signing this Agreement to the extent each Party has deemed it advisable.

13. Interpretation. The Parties have each agreed to the use of the particular language of the provisions of this Agreement, and any question relating to intent, meaning or effect shall not be resolved by any rule of interpretation providing for interpretation against the Party or Parties who cause any uncertainty to exist and/or who drafted the provision(s) at issue.

14. Admissibility. This Agreement shall not be admissible as evidence for any purpose in any lawsuit, trial, mediation, arbitration or other proceeding involving the Parties, or their respective representatives, other than as is necessary to enforce its terms or to establish an appropriate statute of limitations or its expiration.

15. No Admission. Nothing contained herein shall constitute an admission or acknowledgement by either Party that the Claims, or any of them, of the other Party are valid or not.

16. Settlement Privilege. Any discussions and related communications regarding this Agreement, or resolution or settlement of the Claims shall be confidential and protected under California Evidence Code section 1152 and all federal statutes and common law providing that settlement-related communications are confidential and inadmissible in court or administrative proceedings.

17. Termination. The Parties agree not to initiate a suit or other proceeding concerning the Claims prior to the last day before the effective termination date of this Agreement, provided

that this Agreement can be terminated by either Party with 30 days advance written notice to the other Party through notice provided to its respective legal counsel.

18. Authority. The person signing below for each Party warrants and represents to the other Party that they are fully authorized to bind the Party for which they have signed on behalf of to all terms of this Agreement.

IN WITNESS THEREOF, the City and Vulcan hereby sign and agree to all terms of this Agreement on the dates indicated below.

[Signatures on Following Page]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the 26th of July, 2023.

CITY:

CITY OF IRWINDALE, a municipal corporation

Julian Miranda, City Manager

ATTEST:

Laura Nieto, City Clerk

APPROVED AS TO FORM:
ALESHIRE & WYNDER, LLP

Adrian R. Guerra, City Attorney

VULCAN:

By: _____
Name:
Title:

APPROVED AS TO FORM:
FENNEMORE LLP

J. Jackson Waste, Counsel for Vulcan

- ☒ City Council
- ☐ Successor Agency
- ☐ Housing Authority
- ☐ Reclamation Authority
- ☐ Joint Powers Authority

City of
IRWINDALE
AGENDA REPORT

Date: July 26, 2023
 To: Honorable Mayor and Members of the City Council
 From: Julian A. Miranda, City Manager
 Issue: Approve the Purchase of a Reel Mower

City Manager's Recommendation:

That the City Council 1) **Adopt Resolution No. 2023-63-3441** entitled: **"A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF IRWINDALE WAIVING THE FORMAL BIDDING PROCEDURES PURSUANT TO IRWINDALE MUNICIPAL CODE SECTION 3.44.080 (E), AUTHORIZING THE ISSUANCE OF A PURCHASE ORDER AND AUTHORIZING THE CITY MANAGER TO ENTER INTO A PURCHASE AGREEMENT FOR THE PURCHASE OF A REEL MOWER FOR THE PUBLIC SERVICES MAINTENANCE DIVISION"**

Administrative Action:

Submitted & Prepared by:

Elizabeth Rodriguez, Public Services Director



Reviewed by:

Adrian R. Guerra, City Attorney

Electronically Approved

Kambiz Borhani, Finance Director / City Treasurer

Electronically Approved

Approved by:

Julian A. Miranda, City Manager



Background and Analysis:

The approved Irwindale Park Improvement Project plans for all phases requires the planting of Bermuda Hybrid Grass. Once phases IV and V of the Irwindale Park Improvement Project are completed next year, all the grass in Irwindale Park will be

Bermuda grass including the Alfred F. Herrera Memorial Softball Field, which is not a part of this project; however, it currently has Bermuda Grass.

City Staff choose to go with this type of grass for a variety of reasons. Bermuda Grass has an exceptional tolerance for growing in high heat areas, is considered drought tolerant, and has a capacity to withstand heavy use and recuperate very quickly. The thickness of the grass makes it difficult for weeds to find space to grow but when weeds get through they are easy to identify.

Bermuda Grass does still require proper care and maintenance, including mowing regularly to maintain an ideal height of one-half to two-and-a-half inches, fertilization, annual aeration, and regular weed control. Using the wrong mower can cause damage to the grass. In order to ensure the grass is cut to meet these standards, a Reel Mower is recommended. A Reel Mower provides a clean and precise cut that helps Bermuda Grass maintain the ideal short cut. The suggested Toro Reelmaster 3100-D allows for a quality cut and is the only reel mower with Sidewinder technology that slides the cutting units side by side to reach turf that other mowers can't. Therefore, staff is requesting to purchase a Toro Reelmaster 3100-D.

Irwindale Municipal Code Section 3.44.080 (E) states that the city council can dispense with bidding when cooperative purchasing provides an advantage of large-scale buying may be obtained. Due to the purchasing power of a large entity, such as Sourcewell, local governments realize substantial discounts on purchases that apply to these contracts. The selection of The Toro Company and its Toro suppliers was made based on the quotes provided to staff and the award of contract #031121-TTC from Sourcewell on April 29, 2021, with an expiration date of April 30, 2025. For these reasons, waiving the formal bidding process is in the best interest of the city.

Upon approval by the City Council, a standard purchase agreement and purchase order will be prepared by the City's Purchasing Office and signed by the City Manager in order to complete the purchase of this mower. Once the mower is ordered, it will take 12 months to receive due to manufacturing delays and part demands.

Fiscal Impact:

The total cost for the mower, setup and delivery is \$53,358.50. Sufficient funding is available in Public Services Park Maintenance budget.

Attachments:

- (1) Turf Start Western Quote, a supplier representative of The Toro Company
- (2) Resolution No. 2023-63-3441

RESOLUTION NO. 2023-63-3441

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF IRWINDALE WAIVING THE FORMAL BIDDING PROCEDURES PURSUANT TO IRWINDALE MUNICIPAL CODE SECTION 3.44.080 (E), AUTHORIZING THE ISSUANCE OF A PURCHASE ORDER AND AUTHORIZING THE CITY MANAGER TO ENTER INTO A PURCHASE AGREEMENT FOR THE PURCHASE OF A REEL MOWER FOR THE PUBLIC SERVICES MAINTENANCE DIVISION

WHEREAS, Bermuda Hybrid grass will be the main grass planted throughout Irwindale Park with the completion of the Irwindale Park Improvement Project Phases IV & V in 2024; and

WHEREAS, Bermuda Hybrid grass was chosen as it has an exceptional tolerance for growing in high heat areas, is considered drought tolerant, and has a capacity to withstand heavy use and recuperate very quickly; and

WHEREAS, Bermuda Hybrid grass requires proper care, maintenance, and an ideal height of one-half to two-and-a-half inches, fertilization, annual aeration, and regular weed control; and

WHEREAS, using the wrong mower can cause damage; therefore, it is recommended to use a Reel Mower; and

WHEREAS, Irwindale Municipal Code Section 3.44.080 (E) states that the city council may dispense with bidding when, "through cooperative purchasing with the state, the county, and other public agencies, the advantages of large-scale buying may be obtained; and

WHEREAS, staff proposes to purchase a Toro Reelmaster 3100-D Reel Mower by a cooperative purchase through Sourcewell, a service cooperative created by the Minnesota legislature as a local unit of government (Minn. Const. art. XII, sec. 3); and

WHEREAS, education and government entities, as well as nonpublic schools and nonprofit organizations, may participate with Sourcewell as a participating agency for cooperative purchases; and

WHEREAS, the selection of Turf Star Western was made based on its selection as a certified dealer of The Toro Company and its award of contract #031121-TTC from Sourcewell on April 29, 2021 and quote obtained by staff; and

WHEREAS, the City Council now desires to dispense with formal bidding procedures pursuant to IMC section 3.44.080(E), authorize the issuance of a purchase order to, and execution of a purchase agreement with, Turf Star Western for the purchase of the Toro Reelmaster 3100-D Reel Mower.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF IRWINDALE
HEREBY RESOLVES, DETERMINES, AND ORDERS AS FOLLOWS:

SECTION 1. The City Council hereby finds the above Recitals true and correct and incorporates them herein by this reference.

SECTION 2. The City Council of the City of Irwindale hereby finds that a cooperative purchase through Sourcewell, a service cooperative created by the Minnesota legislature as a local unit of government (Minn. Const. art. XII, sec. 3), is authorized pursuant to Irwindale Municipal Code Section 3.44.080 (E) due to the advantage of large-scale buying, including substantial discounts on the purchase price that may be obtained.

SECTION 3. The City Council of the City of Irwindale hereby waives the formal bidding process for the purchase one (1) Toro Reelmaster 3100-D Reel Mower pursuant to Irwindale Municipal Code Section 3.44.080 (E), and authorizes the issuance of a purchase order for the same.

SECTION 4. The City Council of the City of Irwindale hereby authorizes the City Manager to enter into a purchase agreement with Turf Star Western, in the amount of \$53,358.50, for the purchase of a Toro Reelmaster 3100-D Reel Mower. City staff are hereby authorized to take all reasonable steps necessary to carry out the intent of this Resolution.

SECTION 5. If any section, subsection, sentence, clause, phrase, or portion of this Resolution, or the application thereof to any person or circumstances, is, for any reason, held invalid or unconstitutional by any court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the application of any other section, subsection, sentence, clause, phrase, or portion of this Resolution, and to this end the invalid or unconstitutional section, subsection, sentence, clause, phrase of this Resolution are declared to be severable. The City Council hereby declares that it would have adopted this Resolution and each section, subsection, sentence, clause, phrase, part or portion thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases, parts or portions thereof be declared invalid or unconstitutional.

SECTION 6. The Chief Deputy City Clerk shall attest to the adoption of this resolution which shall, in turn, have immediate effect.

PASSED, APPROVED and ADOPTED this 26TH day of July 2023.

H. Manuel Ortiz, Mayor

ATTEST:

Laura M. Nieto, MMC
Chief Deputy City Clerk

STATE OF CALIFORNIA }
COUNTY OF LOS ANGELES } ss.
CITY OF IRWINDALE }

I, Laura M. Nieto, Chief Deputy City Clerk of the City of Irwindale, do hereby certify that the foregoing Resolution No. 2023-63-3441 duly adopted by the City Council of the City of Irwindale, at a regular meeting held on the 26th day of July 2023, by the following vote:

AYES: Councilmembers:

NOES: Councilmembers:

ABSENT: Councilmembers:

ABSTAIN: Councilmembers:

Laura M. Nieto, MMC
Chief Deputy City Clerk



Date: July 5, 2023

Quotation for City of Irwindale

Quote No:3321478-00

Prepared For: **Pedro Rodriguez**
City of Irwindale
5050 N Irwindale Ave
Irwindale, CA 91706-2133

Quote No: **3321478-00**
iQuote No: 135803
Sales Person: Rick Danielson
rick.danielson@turfstar.com
(714) 475-8967

Sourcewell Toro Contract #031121-TTC 22% discount applied to this quote. City of Irwindale Sourcewell ID: 28712.
MSRP for the Toro Reelmaster quoted is \$59,663.71 not including sales tax and setup/delivery

Summary

Configuration Name	Qty	Unit Price	Sub Total	Sales Tax	Total
010-Reelmaster 3100-D	1	\$46,537.69	\$46,537.69	\$4,770.13	\$51,307.82
020-Setup	1	\$930.00	\$930.00	\$95.34	\$1,025.34
030-Delivery	1	\$930.00	\$930.00	\$95.34	\$1,025.34
Totals:			\$48,397.69	\$4,960.81	\$53,358.50



Date: July 5, 2023

Quotation for City of Irwindale

Quote No:3321478-00

Configuration Product Details 010-Reelmaster 3100-D

Model	Product Description	Qty	Unit Price	Extended	Sales Tax	Total
03170	Reelmaster 3100-D	1	\$27,710.28	\$27,710.28	\$2,840.31	\$30,550.59
108-6715	GAUGE BAR ASM	1	\$98.58	\$98.58	\$10.11	\$108.69
30629	Premium Seat-GM3500 RM3100	1	\$765.18	\$765.18	\$78.44	\$843.62
03190	RM3100 27in 11Bld ES (RR) DPA CU	3	\$4,644.12	\$13,932.36	\$1,428.07	\$15,360.43
03172	27" Lift Arm Kit-RM3100	1	\$1,265.94	\$1,265.94	\$129.75	\$1,395.69
30358	Bimini Canvas Sunshade	1	\$265.98	\$265.98	\$27.25	\$293.23
03244	RM3100 End Weight Kit (Set of 3)	1	\$275.34	\$275.34	\$28.23	\$303.57
119-0635	DPA ROLLER TIPPER KIT (R M3100)	1	\$70.45	\$70.45	\$7.23	\$77.68
03185	27in DPA Basket Kit RM3100	1	\$2,153.58	\$2,153.58	\$220.74	\$2,374.32
Totals:						\$51,307.82



Date: July 5, 2023

Quotation for City of Irwindale

Quote No:3321478-00

Configuration Product Details

020-Setup

Model	Product Description	Qty	Unit Price	Extended	Sales Tax	Total
FSD1	Setup	1	\$930.00	\$930.00	\$95.34	\$1,025.34
Totals:						\$1,025.34



Date: July 5, 2023

Quotation for City of Irwindale

Quote No:3321478-00

Configuration Product Details
030-Delivery

Model	Product Description	Qty	Unit Price	Extended	Sales Tax	Total
FSD2	Delivery	1	\$930.00	\$930.00	\$95.34	\$1,025.34
Totals:						\$1,025.34



Date: July 5, 2023

Quotation for City of Irwindale

Quote No:3321478-00

Standard Terms and Conditions

Prices including all finance options are subject to change based on Turf Star Western's receipt of product and estimated shipments. Currently, product availability is a minimum of 6-18 months. Your Final Price will be determined at time of shipment. Delivery is FOB point of origin unless otherwise stated.

Office Locations

Northern California:

3928 N.Blattela Lane
Fresno, CA 93727
Fax: (559) 277-7123

2438 Radley Court
Hayward, CA 94545
Fax: (510) 785-3576

11373 Sunrise Gold Circle
Rancho Cordova, CA 95742
Fax: (800) 241-1997

Southern California:

79-253 Country Club Drive
Bermuda Dunes, CA 92203
Fax: (760) 345-4297

955 Beacon Street
Brea, CA 92821
Fax: (800) 775-8873

2110 La Mirada Ste 100
Vista, CA 92083
Fax: (760) 734-4285

Pacific Northwest:

1750 Industrial Dr.NE
Salem, OR 97301
Ph: (503) 691-0250

5869 South 194th
Kent, WA 98032
Fax: (253) 872-6942

2824 East Garland
Spokane, WA 99207
Fax: (509) 483-7563



WARNING:

Cancer and Reproductive Harm-<http://www.P65Warnings.ca.gov>
For more information, please visit <http://www.ttcocalprop65.com>

CALIFORNIA SPARK ARRESTER WARNING

Operation of this equipment in the State of California may create sparks that can start fires around dry vegetation. A spark arrester may be required. The operator should contact local fire agencies for laws or regulations relating to fire prevention requirements.

The Toro logo is a red rounded rectangle with the word "TORO" in white, bold, sans-serif capital letters.

Reelmaster® 3100-D

SMALL AREA REEL MOWER

F E A T U R E S

- Kubota® 21.5 hp (16 kW) diesel engine
- Exclusive Sidewinder® cutting system
- 72" (183 cm) or 85" (216 cm) width of cut
- Series/Parallel™ 3WD

A must for any course.

When you need a reel trim mower whose cutting quality and versatility is second to none, the Toro® Reelmaster® 3100-D is the clear choice. It's the only reel mower with Sidewinder® technology that slides the cutting units side-to-side, on the fly, to reach turf that other mowers can't. It's perfect for mowing around greens and bunkers where precision control is a must. Add the legendary Toro cutting units and triplex configuration, and the 3100-D is the best reel trim mower on the market.



4
TIER

EdgeSeries™ Reels

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Call your Toro distributor at 800-803-8676

Reelmaster® 3100-D Specifications

	REELMASTER 3100-D, MODEL 03170	REELMASTER 3100-D, MODEL 03171 w/SIDEWINDER®
ENGINE	Kubota® liquid-cooled diesel, 3-cylinder, 21.5 hp (16 kW) net @ 2500 RPM. High idle: 2,600 rpm, Low idle: 1,400 rpm (+/- 50 rpm). 68.5 cu. in. (1123 cm) displacement. Pressurized lubrication system with 3.5 U.S. qt. (3.3 liter) capacity. Heavy-duty, radial seal air cleaner. Fuel/water separator with visible bowl.	
CONFIGURATION	Rear mounted engine, front operator position. Rear mounted radiator. Two post ROPS and seat belt standard.	
FUEL CAPACITY	7.5 gallons (28 liters). Biodiesel-Ready for use up to B-20 (20% biodiesel and 80% petroleum blend).	
TRACTION DRIVE	Series/Parallel hydraulic traction circuit provides continuous 3-wheel drive, in mow and transport. Hydrostatic traction drive provides infinitely variable speed in forward and reverse. 6 gallon (23 liter) hydraulic system capacity.	
GROUND SPEED	Mow: 0-6 mph (0-10 km/h); Transport: 0-9 mph (0-14 km/h). Reverse: 0-4 mph. (0-6 km/h).	
CONTROLS	Forward and reverse traction control pedals, mow/transport lever, hand activated park brake, ignition key switch, tilt steering wheel lock, PTO switch, throttle, joystick control for cutting unit raise and lower (and for moving cutting units side-to-side on Sidewinder equipped models), cutting unit transport lock, reel speed and backlap control knob.	
GAUGES	Hour meter, fuel gauge, cluster gauge with glow plug and charge indicator lights, and low engine oil pressure and high coolant temperature warning lights (high temperature safety shut off).	
ELECTRICAL & INTERLOCKS	12-volt, 585 cold cranking amps at 0° F (-18° C), 40 amps with regulator/rectifier. Traction pedal, operator presence in seat, PTO engage or disengage, and cutting unit mow or transport safety interlock switches.	
TIRES	Front: 20 x 12-10, 4-ply Turf Tread. Rear: 20 x 10-10, 4-ply Turf Tread	
FRAME	Formed steel, welded steel and steel tubing.	
BRAKES	Hydrostatic service brake, hand-operated parking brake.	
STEERING	Power steering with tilt steering wheel.	
OVERALL DIMENSIONS	Track Width: 55" (140 cm) Wheel Base: 56" (142 cm) Overall Length: 93" (248 cm)	Overall Height: 71" (180 cm) with ROPS Transport Width: 80" (203 cm) in 72" (183 cm) WOC 92" (234 cm) in 85" (216 cm) WOC Approx. Weight with Cutting units: 1860 lbs. (844 kg)
CUTTING UNIT CONFIGURATION	Fixed position cutting units.	Operator controlled moveable cutting units travel ±12" (30 cm) left or right from center; total of 24" (61 cm) of infinite variability.
CUTTING UNIT OFFSET	3" (7.6 cm) in 72" (183 cm) width of cut 10" (25 cm) in 85" (216 cm) width of cut	Maximum 15" (38 cm) in 72" (183 cm) width of cut. Maximum 22" (56 cm) in 85" (216 cm) width of cut.
CERTIFICATION	This product complies with the American National Standards Institute (ANSI B71-4 – 2012) and European Community specifications (CE Certified). EN ISO 5395.	
WARRANTY	Two-year limited warranty, refer to operators manual for details.	

	27" CUTTING UNITS (03188, 03189, 03190) / 32" CUTTING UNITS (03191)
TYPE	Three hydraulically-driven, balanced, 7" (17.8 cm) diameter reels. Cutting units interchangeable to all three positions.
REEL BLADE OPTIONS	5, 8, and 11-blade reels available for 27" (68.6 cm) cutting unit. 8-blade reels available for 32" (81.3 cm) cutting unit.
HOC RANGE	Height of cut ranges .25" to 2" (.63 – 5.1 cm) standard in floating position, 1.5" to 2.5" (3.8 – 6.4 cm) in fixed position.
CUTTING WIDTH	72" (183 cm), or 85" (216 cm) width of cut dependent on cutting unit selection.
CLIP FREQUENCY/BACKLAPPING	Manually controlled variable reel speed for adjustment of clip frequency. Standard on-board backlapping.
BEDKNIFE-TO-REEL ADJUSTMENT	Dual point adjustment (DPA) of bedknife to reel.
ROLLERS	Full roller standard on rear of cutting unit and plastic front Wiehle roller.

*Specifications and design subject to change without notice. Products depicted in this literature are for demonstration purposes only.
Actual products offered for sale may vary in use, design, required attachments and safety features. See distributor for details on all warranties.





Reelmaster® 3100-D Accessories

CUTTING UNIT OPTIONS	
03188	27" (69 cm) 5-Blade DPA Cutting Unit
03189	27" (69 cm) 8-Blade DPA Cutting Unit
03190	27" (69 cm) 11-Blade DPA Cutting Unit
03203	27" (69 cm) Verticutter Cutting Unit
03191	32" (81 cm) 8-Blade DPA Cutting Unit

27" (69 CM) DPA CUTTING UNIT ACCESSORIES	
03240	Universal Groomer
03241	27" (69 cm) Groomer Cartridge
03242	27" (69 cm) Universal RRB Kit
03243	Rear Roller Brush Kit
03244	End Weight Kit
132-7125	Broomer Kit
03185	Grass Basket Kit
114-9368	Rear Roller Scraper Kit
114-9372-03	Wiehle Roller Scraper
114-9376	Comb/Scraper Kit
119-0630	Shoulder Roller Asm
114-9381-03	Shoulder Roller Scraper
114-9383	Full Front Roller
114-9386-03	Full Front Roller Scraper
119-4286	Short Rear Roller Asm
115-0838	High HOC Brush
119-0646-03	Fixed Plate (2 per cutting unit)
119-0649	Trim/HD Collar Kit (6 per roller)
119-0635	RM3100 Tipper Roller Kit
98-1852	Gauge Bar

TRACTION UNIT ACCESSORIES	
30358	Bimini Canvas Sunshade
115-4754	myTurf® Wireless Hour Meter Assembly
03614	Golf Ball Guard

32" (81 CM) DPA CUTTING UNIT ACCESSORIES	
03246	Rear Roller Brush Kit
03244	End Weight Kit
133-0193	5-Blade Service Reel
114-9369	Rear Roller Scraper Kit
114-9373-03	Wiehle Roller Scraper
114-9377	Comb/Scraper Kit
115-0849	High HOC Brush
114-9384	Full Front Roller
114-9387-03	Full Front Roller Scraper
119-0640	Shoulder Roller Asm
114-9382-03	Shoulder Roller Scraper
119-4288	Short Rear Roller Asm
119-0646-03	Fixed Plate (2 per cutting unit)
119-0649	Trim/HD Collar Kit (6 per roller)
119-0635	RM3100 Tipper Roller Kit
98-1852	Gauge Bar

BEDKNIFE OPTIONS	
114-9388	Standard (27") - Production
114-9389	Standard (32") - Production
114-9390	Heavy-Duty (27")
114-9391	Heavy-Duty (32")
120-1641	Extended Low-Cut (27")
120-1642	Extended Low-Cut (32")

*Specifications and design subject to change without notice. Products depicted in this literature are for demonstration purposes only.
Actual products offered for sale may vary in use, design, required attachments and safety features. See distributor for details on all warranties.



- ☒ City Council
☐ Successor Agency
☐ Housing Authority
☐ Reclamation Authority
☐ Joint Powers Authority

City of
IRWINDALE
AGENDA REPORT

Date: July 26, 2023
To: Honorable Mayor and Members of the City Council
From: Julian A. Miranda, City Manager
Issue: Award of Contract for Construction of the Traffic Signal Modifications Project at Arrow Highway and Vincent Avenue; P-980

City Manager's Recommendation:

That the City Council (1) adopt Resolution No. 2023-62-3440; (2) authorize the City Manager to enter into an agreement with MSL Electric Inc, in the amount of \$90,000.00 for the Traffic Signal Modifications Project at Arrow Highway and Vincent Avenue, subject to City Attorney approval as to form; and (3) approve a 20% project contingency in the amount of \$18,000.00 to cover any unforeseeable conditions that may arise during construction.

Administrative Action:

Submitted by:

Eddie Chan,
Director of Engineering / Building Official

Prepared by:

Luis Pimentel, Associate Engineer
(626) 430-2259

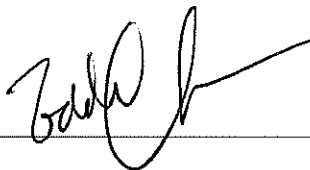
Reviewed by:

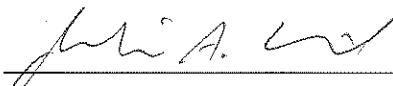
Adrian R. Guerra, City Attorney

Kambiz Borhani, Finance Director / City Treasurer

Approved by:

Julian A. Miranda, City Manager



Electronically Approved**Electronically Approved**

Background and Analysis:

The project for Traffic Signal Modifications at Arrow Highway and Vincent Avenue ("Project") is identified in the City's Capital Improvement Program. It includes installation of new left turn phasing for east/west/north/southbound directions, removal and replacement of outdated signal poles and equipment, and providing ADA accessibility and compliance.

On April 12, 2023, City Council approved the plans for an Interim Design for Traffic Signal Modifications at Arrow Highway and Vincent Avenue and authorized staff to solicit bids for construction of this project.

The intersection of Arrow Highway and Vincent Avenue is a shared jurisdiction between and among the City of Irwindale (50%), the City of Azusa (25%), and the County of Los Angeles (25%). Azusa and Los Angeles County have agreed to fund their respective portions of this interim Project provided Irwindale will perform the contract administration, construction, construction inspection and engineering, materials testing and construction surveying for the entire Project.

Staff received a proposal from our Traffic Signal Maintenance contractor, the City of Santa Fe Springs Traffic Signal Maintenance Division, for implementation of this Project. Based on the proposal received in the amount of \$177,000, staff recommended to move forward with construction utilizing the City's extraordinary traffic signal maintenance contract with Santa Fe Springs to implement this Project. However, Santa Fe Springs was not able to execute the contract with their subcontractor, MSL Electric Inc., on behalf of the City of Irwindale due to their city policy guidelines. Therefore, Irwindale would need to enter into a separate contract agreement with MSL Electric for their scope of work.

There have been several accidents at the intersection of Arrow Highway and Vincent Avenue resulting in the City of Irwindale, the City of Azusa, and Los Angeles County to immediately implement interim traffic signal modifications to protect the public's health. The traffic signal modifications will result in safe turning movements at this intersection. Therefore, it is a matter of urgency that the Irwindale City Council waive the formal bidding requirements so that the interim traffic measures may be implemented.

Section 3.44.080(H) of the Irwindale Municipal Code provides for the waiving of the formal bid procedure "when the city council determines by resolution it would be in the best interest of the city to dispense with bidding; provided, however, that the city council shall state the basis of its determination". It is imperative to implement the interim traffic signal modifications as soon as possible in order to protect public health, safety and welfare to allow safe turning movements at the intersection of Arrow Hwy and Vincent Ave.

Therefore, staff recommends awarding a construction contract with MSL Electric, Inc for the underground and miscellaneous electrical work in the amount of \$90,000 for the Project.

This Project is categorically exempt from CEQA as it consists of replacement or reconstruction of existing facilities, pursuant to Section 15302(c) of CCR, Title 14, Division 6, Chapter 3 "Guidelines for Implementation of the California Environmental Quality Act".

Fiscal Impact:

The City's share of this Project is currently estimated to be \$88,500. Funds in the amount of \$59,421.90 will be allocated from Athens Services' Development Agreement contribution for the Athens Maintenance Yard on Vincent Ave and a budget amendment in the amount of \$29,078.10 will be appropriated from the General Fund Reserve.

Attachment(s):

- Contract Agreement for Construction
- Resolution No. 2023-62-3440
- MSL Proposal

RESOLUTION NO. 2023-62-3440

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF IRWINDALE AMENDING
FY 23-24 ADOPTED BUDGET BY APPROPRIATING \$29,078.10 FROM THE
GENERAL FUND RESERVE, WAIVING FORMAL BIDDING PROCEDURES, AND
AUTHORIZING THE CITY MANAGER TO EXECUTE AN AGREEMENT WITH MSL
ELECTRIC INC FOR CONSTRUCTION OF THE TRAFFIC SIGNAL MODIFICATIONS
PROJECT AT ARROW HIGHWAY AND VINCENT AVENUE**

WHEREAS, the City Council approved the plans for an Interim Design for Traffic Signal Modifications at Arrow Highway and Vincent Avenue and authorized staff to solicit bids for construction of this project; and

WHEREAS, City staff requested a construction estimate from our Traffic Signal Maintenance contractor, the City of Santa Fe Springs Traffic Signal Maintenance Division, for implementation of the interim traffic signal modifications; and

WHEREAS, based on the construction estimate of \$177,000, staff recommended to move forward with construction utilizing the City's extraordinary traffic signal maintenance contract with Santa Fe Springs to implement the interim design; and

WHEREAS, the City of Santa Fe Springs was not able to execute the contract with their subcontractor, MSL Electric Inc., on behalf of the City of Irwindale due to their policy guidelines, thus requiring Irwindale enter into a contract agreement with MSL Electric for their scope of the work ; and

WHEREAS, several accidents have occurred at the intersection of Arrow Highway and Vincent Avenue, prompting the City of Irwindale, the City of Azusa, and Los Angeles County to immediately implement interim traffic signal modifications to protect the public's health, safety and welfare by implementing safe turning movements at the intersection of Arrow Hwy and Vincent Ave; and

WHEREAS, it is a matter of urgency that the Irwindale City Council waive the formal bidding requirements so that the interim traffic measures may be implemented; and

WHEREAS, Section 3.44.080(H) of the Irwindale Municipal Code provides for the waiving of the formal bid procedure "when the city council determines by resolution it would be in the best interest of the city to dispense with bidding; provided, however, that the city council shall state the basis of its determination"; and

WHEREAS, staff recommends waiving formal bidding procedures and awarding the construction contract to MSL Electric, Inc for the interim traffic signal modification work in the amount of \$90,000; and

WHEREAS, this Project is categorically exempt from CEQA as it consists of replacement or reconstruction of existing facilities, pursuant to Section 15302(c) of CCR, Title 14, Division 6, Chapter 3 "Guidelines for Implementation of the California Environmental Quality Act".

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF IRWINDALE DOES HEREBY RESOLVE, DETERMINE, AND ORDER AS FOLLOWS:

SECTION 1. That the City Council of the City of Irwindale waive the formal bidding procedures for the Traffic Signal Modifications Project at Arrow Highway and Vincent Avenue pursuant to IMC Section 3.44.080 Subsection H.

SECTION 2. That the City Council does hereby approve the budget amendment and the appropriation of \$29,078.10 from the General Fund Reserves into Capital Improvements Program Project 8306.

SECTION 3. That the City Council of the City of Irwindale awards the contract for the Traffic Signal Modifications Project at Arrow Highway and Vincent Avenue to MSL Electric Inc.

PASSED, APPROVED and ADOPTED this 26th day of July 2023.

H. Manuel Ortiz, Mayor

ATTEST:

Laura M. Nieto, MMC
Chief Deputy City Clerk

STATE OF CALIFORNIA }
COUNTY OF LOS ANGELES } ss.
CITY OF IRWINDALE }

I, Laura M. Nieto, Chief Deputy City Clerk of the City of Irwindale, do hereby certify that the foregoing Resolution No. 2023-62-3440 as duly adopted by the City Council of the

City of Irwindale, at a regular meeting held on the 26th day of July 2023, by the following vote:

AYES: Councilmembers:

NOES: Councilmembers:

ABSENT: Councilmembers:

ABSTAIN: Councilmembers:

Laura M. Nieto, MMC
Chief Deputy City Clerk

Project Name/No.: Traffic Signal Modification Project Arrow Hwy and Vincent Ave;P-980

Approved: _____

**PUBLIC WORKS CONSTRUCTION CONTRACT AGREEMENT
BETWEEN THE CITY OF IRWINDALE AND
MSL ELECTRIC INC.**

THIS PUBLIC WORKS AGREEMENT (“**Agreement**”) is made and entered into this 26th day of July, 2023, by and between the City of Irwindale, a California charter city (“**City**”) and MSL Electric Inc., 2918 E. La Jolla St, Anaheim, CA 928065 (“**Contractor**”). City and Contractor may be referred to, sometimes individually or collectively, as “**Party**” or “**Parties**.”

RECITALS

A. The City desires to retain Contractor, on an independent contractor basis, to perform services for public works, as more particularly described below.

B. Contractor represents that it is fully qualified to perform such services by virtue of its experience and the training, education and expertise of its principals and employees.

C. Pursuant to the City of Irwindale Municipal Code and California state law, City has authority to enter into and execute this Agreement.

D. The Parties desire to formalize the selection of Contractor for performance of the services and desire that the terms of that performance be as particularly defined and described herein.

NOW, THEREFORE, in consideration of the mutual promises and covenants made by the Parties and contained herein and other consideration, the value and adequacy of which are hereby acknowledged, the parties agree as follows:

AGREEMENT

ARTICLE 1. CONTRACTOR SERVICES

1.1 Scope of Work.

The Contractor shall perform all of the work, furnish all labor, materials, equipment, tools, utility services, and transportation, and comply with all of the specifications and requirements in the “Scope of Services” attached hereto as Exhibit “A” and incorporated herein by this reference. The Scope of Services shall include Contractor’s Proposal or Bid Documents submitted for the project entitled **Traffic Signal Modification Project Arrow Hwy and Vincent Ave;P-980** (“**Project**”). All such work shall be performed in a good and workmanlike manner, as reasonably determined by the City, and shall be performed in compliance with all local, state, and federal laws and regulations. As used herein, “**Proposal**” or “**Bid Documents**” refers to all of the documents included in the solicitation of bids for the Project, including but not limited to, the Invitation for Bids, Instructions to Bidders, Bid or Bid Proposal, Contract Documents, Special Provisions,

Technical Provisions, Construction Plans, Standard Plans, Drawings, Reference Specifications, all applicable permit requirements, any addenda, and any other documents included, referenced, or incorporated therein. The Bid Documents are incorporated into this Agreement and made part hereof. In the event of any conflict between the terms of the Bid Documents and this Agreement, the terms of this Agreement shall govern.

1.2 Incorporation of Green Book.

The provisions of the 2021 Edition of the Standard Specifications for Public Works Construction, as updated by errata, ("Greenbook") are incorporated herein, except as explicitly modified by the Bid Documents. In the event of any conflict between the provisions of the Greenbook and this Agreement, the terms of this Agreement shall govern.

1.3 Compliance with Labor and Wage Laws.

(a) Public Work. The Parties acknowledge that the work to be performed under this Agreement is a "public work" as defined in Labor Code Section 1720 and that this Agreement is therefore subject to the requirements of Division 2, Part 7, Chapter 1 (commencing with Section 1720) of the California Labor Code relating to public works contracts and the rules and regulations established by the Department of Industrial Relations ("**DIR**") implementing such statutes. The work performed under this Agreement is subject to compliance monitoring and enforcement by the DIR. Contractor shall post job site notices, as prescribed by regulation.

(b) Registration with DIR. Pursuant to Labor Code section 1771.1, Contractor and all subcontractors must be registered with, and pay an annual fee to, the DIR prior to and during the performance of any work under this Agreement.

(c) Prevailing Wages. Contractor shall pay prevailing wages to the extent required by Labor Code Section 1771. Pursuant to Labor Code Section 1773.2, copies of the prevailing rate of per diem wages are on file at City Hall and will be made available to any interested party on request. By initiating any work under this Agreement, Contractor acknowledges receipt of a copy of the DIR determination of the prevailing rate of per diem wages, and Contractor shall post a copy of the same at each job site where work is performed under this Agreement. If this Agreement is subject to the payment of federal prevailing wages under the Davis-Bacon Act (40 U.S.C. § 3141 *et seq.*), then Contractor shall pay the higher of either the state or federal prevailing wage applicable to each laborer.

(d) Penalty for Failure to Pay Prevailing Wages. Contractor shall comply with and be bound by the provisions of Labor Code Sections 1774 and 1775 concerning the payment of prevailing rates of wages to workers and the penalties for failure to pay prevailing wages. The Contractor shall, as a penalty to the City, forfeit two hundred dollars (\$200) for each calendar day, or portion thereof, for each worker paid less than the prevailing rates as determined by the DIR for the work or craft in which the worker is employed for any public work done pursuant to this Agreement by Contractor or by any subcontractor.

(e) Payroll Records. Contractor shall comply with and be bound by the provisions of Labor Code Section 1776, which requires Contractor and each subcontractor to: keep accurate payroll records and verify such records in writing under penalty of perjury, as specified

in Section 1776; certify and make such payroll records available for inspection as provided by Section 1776; and inform the City of the location of the records.

(f) Apprentices. Contractor shall comply with and be bound by the provisions of Labor Code Sections 1777.5, 1777.6, and 1777.7 and California Code of Regulations Title 8, Section 200 *et seq.* concerning the employment of apprentices on public works projects. Contractor shall be responsible for compliance with these aforementioned Sections for all apprenticeable occupations. Prior to commencing work under this Agreement, Contractor shall provide City with a copy of the information submitted to any applicable apprenticeship program. Within sixty (60) days after concluding work pursuant to this Agreement, Contractor and each of its subcontractors shall submit to the City a verified statement of the journeyman and apprentice hours performed under this Agreement.

(g) Eight-Hour Work Day. Contractor acknowledges that eight (8) hours labor constitutes a legal day's work. Contractor shall comply with and be bound by Labor Code Section 1810.

(h) Penalties for Excess Hours. Contractor shall comply with and be bound by the provisions of Labor Code Section 1813 concerning penalties for workers who work excess hours. The Contractor shall, as a penalty to the City, forfeit twenty-five dollars (\$25) for each worker employed in the performance of this Agreement by the Contractor or by any subcontractor for each calendar day during which such worker is required or permitted to work more than eight (8) hours in any one calendar day and forty (40) hours in any one calendar week in violation of the provisions of Division 2, Part 7, Chapter 1, Article 3 of the Labor Code. Pursuant to Labor Code section 1815, work performed by employees of Contractor in excess of eight (8) hours per day, and forty (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 one and one-half (1½) times the basic rate of pay.

(i) Workers' Compensation. California Labor Code Sections 1860 and 3700 provide that every employer will be required to secure the payment of compensation to its employees if it has employees. In accordance with the provisions of California Labor Code Section 1861, Contractor 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."

(j) Contractor's Responsibility for Subcontractors. For every subcontractor who will perform work under this Agreement, Contractor shall be responsible for such subcontractor's compliance with Division 2, Part 7, Chapter 1 (commencing with Section 1720) of the California Labor Code, and shall make such compliance a requirement in any contract with any subcontractor for work under this Agreement. Contractor shall be required to take all actions necessary to enforce such contractual provisions and ensure subcontractor's compliance, including without limitation, conducting a review of the certified payroll records of the subcontractor on a

periodic basis or upon becoming aware of the failure of the subcontractor to pay his or her workers the specified prevailing rate of wages. Contractor shall diligently take corrective action to halt or rectify any such failure by any subcontractor.

1.4 Licenses, Permits, Fees and Assessments.

Contractor shall obtain at its sole cost and expense such licenses, permits, registrations, and approvals as may be required by law for the performance of the services required by this Agreement. Contractor shall have the sole obligation to pay for any fees, assessments and taxes, plus applicable penalties and interest, which may be imposed by law and arise from or are necessary for the Contractor's performance of the services required by this Agreement, and shall indemnify, defend and hold harmless City, its officers, employees or agents of City, against any such fees, assessments, taxes, penalties or interest levied, assessed or imposed against City hereunder.

1.5 Familiarity with Work.

By executing this Agreement, Contractor warrants that Contractor (i) has thoroughly investigated and considered the scope of work to be performed, (ii) has carefully considered how the services should be performed, and (iii) fully understands the facilities, difficulties and restrictions attending performance of the services under this Agreement. If the services involve work upon any site, Contractor warrants that Contractor has or will investigate the site and is or will be fully acquainted with the conditions there existing, prior to commencement of services hereunder.

1.6 Discovery of Unknown Conditions.

(a) Pursuant to Public Contract Code section 7104, Contractor shall promptly, and before the following conditions are disturbed, notify the City, in writing, of any: (i) material Contractor believes may be hazardous waste as defined in Section 25117 of the Health & Safety Code required to be removed to a Class I, II, or III disposal site in accordance with existing law; (ii) subsurface or latent physical conditions at the site, materially different from those indicated by information about the site made available to bidders prior to the deadline for submitting bids on the project; or (iii) unknown physical conditions at the site of any unusual nature, different from those ordinarily encountered and generally recognized as inherent in work of the character provided for in this Agreement.

(b) City shall promptly investigate the conditions, and if it finds that the conditions do materially differ, or do involve hazardous waste, and cause a decrease or increase in Contractor's cost of, or the time required for, performance of any part of the work, shall issue a change order in accordance with this Agreement.

(c) In the event that a dispute arises between City and Contractor whether the conditions materially differ, or involve hazardous waste, or cause a decrease or increase in Contractor's cost of, or time required for, performance of any part of the work, Contractor shall not be excused from any scheduled completion date set, but shall proceed with all work to be performed under the Agreement. Contractor shall retain any and all rights provided either by

contract or by law, which pertain to the resolution of disputes and protests between the contracting parties.

1.7 Unidentified Utilities.

To the extent required by Government Code section 4215, City will compensate Contractor for the cost of locating, repairing damage not due to the failure of Contractor to exercise reasonable care, and removing or relocating utility facilities not identified by City in the Bid Documents with reasonable accuracy, and for equipment on the project necessarily idled during such work. Nothing herein shall be deemed to require City to indicate the presence of existing service laterals or appurtenances whenever the presence of such utilities on the project site can be inferred from the presence of other visible facilities, such as buildings, meters, and junction boxes, on or adjacent to the site of the construction; provided, however, nothing herein shall relieve City from identifying main or trunk lines in the plans and specifications. If Contractor, while performing the work, discovers utility facilities not identified by City in the plans or specifications, Contractor shall immediately notify City and the utility in writing. This Agreement is subject to Government Code sections 4126 through 4216.9. Contractor must notify utilities and obtain an identification number before excavation or be subject to liability for damages to subsurface installations.

1.8 Trench Excavation.

Pursuant to Labor Code section 6705, if this Agreement is for more than \$25,000 and requires the excavation of any trench or trenches five feet or more in depth, Contractor shall submit, in advance of such excavation, a detailed plan showing the design of shoring, bracing, sloping, or other provisions to be made for worker protection from the hazard of caving ground during the excavation of such trench or trenches. The plan shall be reviewed and accepted by the City, or a registered civil or structural engineer employed by the City to whom authority has been delegated, prior to the excavation. If the plan varies from the shoring system standards, the plan shall be prepared by a registered civil or structural engineer. This section shall not be deemed to allow the use of a shoring, sloping, or protective system less effective than that required by the Construction Safety Orders. This subsection shall not be construed to impose tort liability on the City or any of its employees. Full compensation for sheeting, shoring, bracing, sloping, and all other provisions required for worker protection shall be considered as included in the contract price shown in the appropriate Bid Item, and no additional compensation will be allowed therefor.

1.9 Protection and Care of Work and Materials.

The Contractor shall adopt reasonable methods, including providing and maintaining storage facilities, during the life of the Agreement to furnish continuous protection to the work, and the equipment, materials, papers, documents, plans, studies and/or other components thereof to prevent losses or damages, and shall be responsible for all such damages, to persons or property, until acceptance of the work by City, except such losses or damages as caused by City's own negligence. Stored materials shall be reasonably accessible for inspection. Contractor shall not, without City's consent, assign, sell, mortgage, hypothecate, or remove equipment or materials which have been installed or delivered and which may be necessary for the completion of the work.

1.10 Warranty.

Contractor warrants all work under the Agreement (which for purposes of this Section shall be deemed to include unauthorized work which has not been removed and any non-conforming materials incorporated into the work) to be of good quality and free from any defective or faulty material and workmanship. Contractor agrees that for a period of one year (or the period of time specified elsewhere in the Agreement or in any guarantee or warranty provided by any manufacturer or supplier of equipment or materials incorporated into the work, whichever is later) after the date of final acceptance, Contractor shall within ten (10) days after being notified in writing by the City of any defect in the work or non-conformance of the work to the Agreement, commence and prosecute with due diligence all work necessary to fulfill the terms of the warranty at its sole cost and expense. Contractor shall act as soon as requested by the City in response to an emergency. In addition, Contractor shall, at its sole cost and expense, repair, remove and replace any portions of the work (or work of other contractors) damaged by its defective work or which becomes damaged in the course of repairing or replacing defective work. For any work so corrected, Contractor's obligation hereunder to correct defective work shall be reinstated for an additional one year period, commencing with the date of acceptance of such corrected work. Contractor shall perform such tests as the City may require to verify that any corrective actions, including, without limitation, redesign, repairs, and replacements comply with the requirements of the Agreement. All costs associated with such corrective actions and testing, including the removal, replacement, and reinstitution of equipment and materials necessary to gain access, shall be the sole responsibility of the Contractor. All warranties and guarantees of subcontractors, suppliers and manufacturers with respect to any portion of the work, whether express or implied, are deemed to be obtained by Contractor for the benefit of the City, regardless of whether or not such warranties and guarantees have been transferred or assigned to the City by separate agreement and Contractor agrees to enforce such warranties and guarantees, if necessary, on behalf of the City. In the event that Contractor fails to perform its obligations under this Section, or under any other warranty or guaranty under this Agreement, to the reasonable satisfaction of the City, the City shall have the right to correct and replace any defective or non-conforming work and any work damaged by such work or the replacement or correction thereof at Contractor's sole expense. Contractor shall be obligated to fully reimburse the City for any expenses incurred hereunder upon demand.

1.11 Additional Work and Change Orders.

(a) City shall have the right at any time during the performance of the services, without invalidating this Agreement, to order extra work beyond that specified in the Scope of Work or make changes by altering, adding to or deducting from said work. No such extra work may be undertaken unless a written change order is first given by the City's Director of Public Works Engineering or City Engineer, or either of their designees, to the Contractor, incorporating therein any adjustment in (i) the Contract Sum, and/or (ii) the time to perform this Agreement, which said adjustments are subject to the written approval of the Contractor ("**Change Order**"). All Change Orders must be signed by the Contractor and City's Director of Public Works Engineering or City Engineer, or either of their designees, prior to commencing the extra work thereunder.

(b) Any increase in compensation of up to twenty percent (20%) of the Contract Sum or any increase in the time to perform of up to one hundred eighty (180) working days and which are not detrimental to the Work or to the interest of the City, may be approved by the City's Director of Public Works Engineering or City Engineer, or either of their designees. Any greater increases, taken either separately or cumulatively, must be approved by the City Council.

(c) Any adjustment in the Contract Sum for a Change Order must be in accordance with the rates set forth in the Contractor's Bid. If the rates in the Contractor's Bid do not cover the type of work in the Change Order, the cost of such work shall not exceed an amount agreed upon in writing and signed by Contractor and City's Director of Public Works Engineering or City Engineer, or either of their designees. If the cost of the Change Order cannot be agreed upon, the City will pay for actual work of the Change Order completed, to the satisfaction of the City, as follows:

(i) Labor: The cost of labor shall be the actual cost for wages of workers and subcontractors performing the work for the Change Order at the time such work is done. The use of labor classifications that would increase the cost of such work shall not be permitted.

(ii) Materials and Equipment: The cost of materials and equipment shall be at cost to Contractor or lowest current price which such materials and equipment are reasonably available at the time the work is done, whichever is lower.

(iii) If the cost of the extra work cannot be agreed upon, the Contractor must provide a daily report that includes invoices for labor, materials and equipment costs for the work under the Change Order. The daily report must include: list of names of workers, classifications, and hours worked; description and list of quantities of materials used; type of equipment, size, identification number, and hours of operation, including loading and transportation, if applicable; description of other City authorized services and expenditures in such detail as the City may require. Failure to submit a daily report by the close of the next working day may, at the City's sole and absolute discretion, waive the Contractor's rights for that day.

(d) It is expressly understood by Contractor that the provisions of this Section shall not apply to services specifically set forth in the Scope of Work. Contractor hereby acknowledges that it accepts the risk that the services to be provided pursuant to the Scope of Work may be more costly or time consuming than Contractor anticipates and that Contractor shall not be entitled to additional compensation therefor. City may in its sole and absolute discretion have similar work done by other contractors.

(e) No claim for an increase in the Contract Sum or time for performance shall be valid unless the procedures established in this Section are followed.

1.12 Special Requirements.

Additional terms and conditions of this Agreement, if any, which are made a part hereof are set forth in the "Special Requirements," attached hereto as Exhibit B and incorporated herein by this reference. In the event of a conflict between the provisions of Exhibit B and any other provisions of this Agreement, the provisions of Exhibit B shall govern.

ARTICLE 2. COMPENSATION AND METHOD OF PAYMENT.

2.1 Contract Sum.

Subject to any limitations set forth in this Agreement, City agrees to pay Contractor the amounts set forth in the "Schedule of Compensation," attached hereto as Exhibit C and incorporated herein by this reference. Subject to any additions or deductions that may be made by change order or amendment, and any penalties or damages that may be assessed against Contractor, Contractor shall receive total compensation, including reimbursement of Contractor's expenses, of an amount not to exceed Ninety Thousand Dollars (\$90,000.00) ("**Contract Sum**") for completion of the work. The Contract Sum shall constitute full compensation for furnishing all materials and for doing all the work contemplated and embraced in this Agreement; and also for all loss or damage arising out of the nature of the work, or from any unforeseen difficulties or obstructions which may arise or be encountered in the prosecution of the work until its acceptance by the City, and for all risks of every description connected with the work; also for all expenses incurred by or in consequence of the suspension or discontinuance of work and for well and faithfully completing the work, and the whole thereof, in the manner and according to the plans and specifications, and the requirements of the Bid Documents and this Agreement. The Contract Sum shall be made in the form of progress payments subject to retention pursuant to Section 2.4.

2.2 Invoices.

Each month Contractor shall furnish to City an original invoice for all work performed during the preceding month in a form approved by City's Director of Finance. By submitting an invoice for payment under this Agreement, Contractor is certifying compliance with all provisions of the Agreement.

All invoices shall include a copy of Contractor's Certified Payroll and proof that Certified Payroll has been submitted to the DIR. Contractor shall also submit a list of the prevailing wage rates (including federal prevailing wage rates, if applicable) for all employees and subcontractors providing services under this Agreement, as applicable, with Contractor's first invoice. If these rates change at any time during the term of the Agreement, Contractor shall submit a new list of rates to the City with its first invoice following the effective date of the rate change.

2.3 Payment.

(a) Payments Made by City. City shall independently review each invoice submitted by the Contractor to determine whether the work performed and expenses incurred are in compliance with the provisions of this Agreement. Except as to any charges for work performed or expenses incurred by Contractor which are disputed by City, City will cause Contractor to be paid any progress payment within thirty (30) days of receipt of Contractor's correct and undisputed invoice; however, Contractor acknowledges and agrees that due to City warrant run procedures, the City cannot guarantee that payment will occur within this time period. In the event that City does not cause Contractor to be paid any progress payment within thirty (30) days of receipt of an undisputed and properly submitted invoice and provided the Project is for construction, Contractor shall be entitled to the payment of interest to the extent allowed under Public Contract Code Section 20104.50. In the event any charges or expenses are disputed by City, the original invoice

shall be returned by City to Contractor, not later than seven (7) days after receipt by the City, for correction and resubmission. Returned invoices shall be accompanied by a document setting forth in writing the reasons why the payment request was rejected. Review and payment by the City of any invoice provided by the Contractor shall not constitute a waiver of any rights or remedies provided herein or any applicable law.

(b) Payments Made by Contractor to Subcontractors. Contractor shall remit payments owed to subcontractors within fifteen (15) calendar days after receiving payments by City if payments are owed by Contractor to any subcontractor qualifying as a small business enterprise, and within thirty (30) calendar days if payments are owed by Contractor to any subcontractor other than a small business enterprise.

2.4 Retention.

Pursuant to Section 9203 of the Public Contract Code, City will deduct a five percent (5%) retention from all progress payments, which shall be released to Contractor no later than sixty (60) days from completion of the work in accordance with Section 7107 of the Public Contract Code. In the event of a dispute between City and Contractor, City may withhold from the final payment an amount not to exceed one hundred fifty percent (150%) of the disputed amount.

2.5 Waiver.

Payment to Contractor for work performed pursuant to this Agreement shall not be deemed to waive any defects in work performed by Contractor.

2.6 Substitution of Securities.

(a) In conformance with the State of California Public Contract Code, Part 5, Section 22300, Contractor may substitute securities for any monies withheld by the City to ensure performance under this Agreement.

(b) At the request and expense of Contractor, Contractor has the option of establishing an escrow account with a state or federally chartered bank which shall serve as an escrow agent, for Contractor's direct deposit of securities as a substitute for retention earnings required to be withheld by the City. Upon Contractor's completion of its obligations hereunder, as evidenced by the City's acceptance of the work pursuant to Section 3.3 hereof, the escrow agent shall return the securities to Contractor. The escrow agent shall notify the City within ten (10) days after deposit of the securities. The market value of the securities at the time of the substitution shall be at least equal to the cash amount then required to be withheld as retention. Securities shall be held in the name of the City and shall designate Contractor as the beneficial owner. Alternatively, on written request of Contractor, the City shall make payments of the retention earnings directly to the escrow account.

ARTICLE 3. PERFORMANCE SCHEDULE

3.1 Schedule of Performance.

Contractor shall complete the Project by December 31, 2023, after receiving a "Notice to Proceed" from the City in accordance with any schedule contained in or required to be provided by the Proposal or Bid Documents, and any revisions thereof approved by the City in writing. Time is of the essence. If the work is not completed within said time period, liquidated damages shall apply. The term of this Agreement shall expire one (1) year following City's acceptance of the Project.

3.2 Liquidated Damages.

Since the determination of actual damages for any delay in performance of this Agreement would be extremely difficult or impractical to determine in the event of a breach of this Agreement, the Contractor and its sureties shall be liable for and shall pay to the City the sum of Four Hundred and Fifty Dollars (\$450.00) as liquidated damages for each working day of delay in the performance of any service required hereunder. The City may withhold any accrued liquidated damages from any monies payable on account of services performed by the Contractor. To the extent required by Government Code section 4215, Contractor shall not be assessed liquidated damages for delay in completion of the work when such delay was caused by the failure of the City or owner of the utility to provide for removal or relocation of utility facilities.

3.3 Force Majeure.

The time period(s) specified in the Schedule of Performance for performance of the services rendered pursuant to this Agreement shall be extended because of any delays due to unforeseeable causes beyond the control and without the fault or negligence of the Contractor, including, but not restricted to, acts of God or of the public enemy, unusually severe weather, fires, earthquakes, floods, epidemics, quarantine restrictions, riots, strikes, freight embargoes, wars, litigation, and/or acts of any governmental agency, including the City, if the Contractor shall within ten (10) days of the commencement of such delay notify the Project Manager in writing of the causes of the delay. The Project Manager shall ascertain the facts and the extent of delay, and extend the time for performing the services for the period of the enforced delay when and if in the judgment of the Project Manager such delay is justified. The Project Manager's determination shall be final and conclusive upon the Parties to this Agreement. In no event shall Contractor be entitled to recover damages against the City for any delay in the performance of this Agreement, however caused, Contractor's sole remedy being extension of the Agreement pursuant to this Section.

3.4 Final Acceptance.

Acceptance of the Project shall only be by action of the City Council. Neither the acceptance nor any prior inspections or failure to inspect shall constitute a waiver by City of any defects in the work. From and after acceptance, the Project shall be owned and operated by City. As a condition to acceptance, Contractor shall certify to City in writing that all of the work has been performed in strict conformity with the Agreement and that all costs have been paid or supplied to City for security required herein, satisfactory to City, guaranteeing such performance.

4.1 Representatives and Personnel of Contractor.

The following principals of Contractor ("Principals") are hereby designated as being the principals and representatives of Contractor authorized to act on its behalf with respect to the work specified herein and make all decisions in connection therewith:

The Principals shall be responsible during the term of this Agreement for directing all activities of Contractor and devoting sufficient time to personally supervise the services hereunder. All personnel of Contractor, and any authorized agents, shall at all times be under the exclusive direction and control of the Principals. For purposes of this Agreement, the Principals may not be replaced nor may their responsibilities be substantially reduced by Contractor without the express written approval of City. Additionally, Contractor shall make every reasonable effort to maintain the stability and continuity of Contractor's staff and subcontractors, if any, assigned to perform the services required under this Agreement. Contractor shall notify City of any changes in Contractor's staff and subcontractors, if any, assigned to perform the services required under this Agreement, prior to and during any such performance.

Contractor shall have no authority to bind City in any manner, or to incur any obligation, debt or liability of any kind on behalf of or against City, whether by contract or otherwise, unless such authority is expressly conferred under this Agreement or is otherwise expressly conferred in writing by City. Contractor shall not at any time or in any manner represent that Contractor or any of Contractor's officers, employees, or agents are in any manner officials, officers, employees or agents of City. Neither Contractor, nor any of Contractor's officers, employees or agents, shall obtain any rights to retirement, health care or any other benefits which may otherwise accrue to City's employees. Contractor expressly waives any claim Contractor may have to any such rights.

The Project Manager shall be Luis Pimentel or any other person as may be designated by the City's Director of Public Works Engineering or City Engineer. It shall be the Contractor's responsibility to assure that the Project Manager is kept informed of the progress of the performance of the services and the Contractor shall refer any decisions which must be made by City to the Project Manager. Unless otherwise specified herein, any approval of City required hereunder shall mean the approval of the Project Manager. The Project Manager shall have

authority, if specified in writing by the City's Director of Public Works Engineering or City Engineer, to sign all documents on behalf of the City required hereunder to carry out the terms of this Agreement.

4.4 Independent Contractor.

Neither the City nor any of its employees shall have any control over the manner, mode or means by which Contractor, its agents or employees, perform the services required herein, except as otherwise set forth herein. City shall have no voice in the selection, discharge, supervision or control of Contractor's employees, servants, representatives or agents, or in fixing their number, compensation or hours of service. Contractor shall perform all services required herein as an independent contractor of City and shall remain at all times as to City a wholly independent contractor with only such obligations as are consistent with that role. City shall not in any way or for any purpose become or be deemed to be a partner of Contractor in its business or otherwise or a joint venturer or a member of any joint enterprise with Contractor.

4.5 Prohibition Against Subcontracting or Assignment.

The experience, knowledge, capability and reputation of Contractor, its principals and employees were a substantial inducement for the City to enter into this Agreement. Therefore, Contractor shall not contract with any other entity to perform in whole or in part the services required hereunder without the express written approval of the City. All subcontractors shall obtain, at its or Contractor's expense, such licenses, permits, registrations and approvals (including from the City) as may be required by law for the performance of any services or work under this Agreement. In addition, neither this Agreement nor any interest herein may be transferred, assigned, conveyed, hypothecated or encumbered voluntarily or by operation of law, whether for the benefit of creditors or otherwise, without the prior written approval of City. Transfers restricted hereunder shall include the transfer to any person or group of persons acting in concert of more than twenty five percent (25%) of the present ownership and/or control of Contractor, taking all transfers into account on a cumulative basis. In the event of any such unapproved transfer, including any bankruptcy proceeding, this Agreement shall be void. No approved transfer shall release the Contractor or any surety of Contractor of any liability hereunder without the express consent of City.

ARTICLE 5. INSURANCE, INDEMNIFICATION AND BONDS

5.1 Insurance Coverages.

Without limiting Contractor's indemnification of City, and prior to commencement of any services under this Agreement, Contractor shall obtain, provide and maintain at its own expense during the term of this Agreement, policies of insurance of the type and amounts described below and in a form satisfactory to City.

(a) General liability insurance. Contractor shall maintain commercial general liability insurance with coverage at least as broad as Insurance Services Office form CG 00 01, in an amount not less than \$5,000,000 per occurrence, \$10,000,000 general aggregate, for bodily injury, personal injury, and property damage. The policy must include contractual liability that has

not been amended. Any endorsement restricting standard ISO "insured contract" language will not be accepted.

(b) Automobile liability insurance. Contractor shall maintain automobile insurance at least as broad as Insurance Services Office form CA 00 01 covering bodily injury and property damage for all activities of the Contractor arising out of or in connection with Services to be performed under this Agreement, including coverage for any owned, hired, non-owned or rented vehicles, in an amount not less than \$2,000,000 combined single limit for each accident.

(c) Workers' compensation insurance. Contractor shall maintain Workers' Compensation Insurance (Statutory Limits) and Employer's Liability Insurance (with limits of at least \$1,000,000).

(d) Builder's Risk Insurance. Contractor shall maintain Builder's Risk (Course of Construction) insurance utilizing an "All Risk" (Special Perils) coverage form, with limits equal to the completed value of the project and no coinsurance penalty provisions or provisional limit provisions. The policy must include: (1) coverage for any ensuing loss from faulty workmanship, nonconforming work, omission or deficiency in design or specifications; (2) coverage against machinery accidents and operational testing; (3) coverage for removal of debris, and insuring the buildings, structures, machinery, equipment, materials, facilities, fixtures and all other properties constituting a part of the project; (4) ordinance or law coverage for contingent rebuilding, demolition, and increased costs of construction; (5) transit coverage (unless insured by the supplier or receiving contractor), with sub-limits sufficient to insure the full replacement value of any key equipment item; (6) ocean marine cargo coverage insuring any project materials or supplies, if applicable; (7) coverage with sub-limits sufficient to insure the full replacement value of any property or equipment stored either on or off the project site or any staging area.

If the Project does not involve new or major reconstruction, then at the option of City, an Installation Floater may be acceptable. For such projects, a Property Installation Floater shall be obtained that provides for the improvement, remodel, modification, alteration, conversion or adjustment to existing buildings, structures, processes, machinery and equipment. The Property Installation Floater shall provide property damage coverage for any building, structure, machinery or equipment damaged, impaired, broken, or destroyed during the performance of the work, including during transit, installation, and testing at the Project site.

(e) Pollution Liability Insurance. Contractor shall maintain Environmental Impairment Liability insurance, written on a Contractor's Pollution Liability form or other form acceptable to City providing coverage for liability arising out of sudden, accidental, and gradual pollution and remediation. The policy limit shall be no less than \$1,000,000 per claim and in the aggregate. All activities contemplated in this Agreement shall be specifically scheduled on the policy as "covered operations." The policy shall provide coverage for the hauling of waste from the project site to the final disposal location, including non-owned disposal sites.

Products/completed operations coverage shall extend a minimum of three (3) years after project completion. Coverage shall be included on behalf of the insured for covered claims arising out of the actions of independent contractors. If the insured is using subcontractors, the policy must include work performed "by or on behalf" of the insured. Policy shall contain no language that would invalidate or remove the insurer's duty to defend or indemnify for claims or suits expressly

excluded from coverage. Policy shall specifically provide for a duty to defend on the part of the insurer.

If Contractor maintains broader coverage and/or higher limits than the minimums shown above, City requires and shall be entitled to the broader coverage and/or the higher limits maintained by Contractor. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to City.

5.2 General Insurance Requirements.

(a) Subcontractors. Contractor shall include all subcontractors as insureds under its policies or shall furnish separate certificates and certified endorsements for each subcontractor. All coverages for subcontractors shall include all of the requirements stated herein.

(b) Proof of Insurance. Contractor shall provide certificates of insurance and endorsements to City as evidence of the insurance coverages required herein, along with a waiver of subrogation endorsement for workers' compensation. Insurance certificates and endorsements must be approved by City's Risk Manager prior to commencement of performance. Current certification of insurance shall be kept on file with City at all times during the term of this Agreement. City reserves the right to require complete, certified copies of all required insurance policies, at any time.

(c) Duration of Coverage. Contractor shall procure and maintain for the duration of this Agreement insurance against claims for injuries to persons or damages to property, which may arise from or in connection with the performance of the Services hereunder by Contractor, its agents, representatives, employees or subcontractors.

(d) Primary/noncontributing. Coverage provided by Contractor shall be primary and any insurance or self-insurance procured or maintained by City shall not be required to contribute with it. The limits of insurance required herein may be satisfied by a combination of primary and umbrella or excess insurance. Any umbrella or excess insurance shall contain or be endorsed to contain a provision that such coverage shall also apply on a primary and non-contributory basis for the benefit of City before the City's own insurance or self-insurance shall be called upon to protect it as a named insured.

(e) City's Rights of Enforcement. In the event any policy of insurance required under this Agreement does not comply with these specifications or is canceled and not replaced, City has the right but not the duty to obtain the insurance it deems necessary and any premium paid by City will be promptly reimbursed by Contractor or City will withhold amounts sufficient to pay premium from Contractor payments. In the alternative, City may cancel this Agreement.

(f) Waiver of Subrogation. All insurance coverage maintained or procured pursuant to this agreement shall be endorsed to waive subrogation against City, its elected or appointed officers, agents, officials, employees and volunteers or shall specifically allow Contractor or others providing insurance evidence in compliance with these specifications to waive their right of recovery prior to a loss. Contractor hereby waives its own right of recovery against City, and shall require similar written express waivers and insurance clauses from each of its subcontractors.

(g) Enforcement of Contract Provisions (non-estoppel). Contractor acknowledges and agrees that any actual or alleged failure on the part of the City to inform Contractor of non-compliance with any requirement imposes no additional obligations on the City nor does it waive any rights hereunder.

(h) Requirements Not Limiting. Requirements of specific coverage features or limits contained in this section are not intended as a limitation on coverage, limits or other requirements, or a waiver of any coverage normally provided by any insurance. Specific reference to a given coverage feature is for purposes of clarification only as it pertains to a given issue and is not intended by any party or insured to be all inclusive, or to the exclusion of other coverage, or a waiver of any type. If the Contractor maintains higher limits than the minimums shown above, the City requires and shall be entitled to coverage for the higher limits maintained by the Contractor. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the City.

(i) Notice of Cancellation. Contractor agrees to oblige its insurance agent or broker and insurers to provide to City with a thirty (30) day notice of cancellation (except for nonpayment for which a ten (10) day notice is required) or nonrenewal of coverage for each required coverage.

(j) Additional Insured Status. General and auto liability policies shall provide or be endorsed to provide that City and its officers, officials, employees, and agents, and volunteers shall be additional insureds under such policies. This provision shall also apply to any excess/umbrella liability policies.

(k) Prohibition of Undisclosed Coverage Limitations. None of the coverages required herein will be in compliance with these requirements if they include any limiting endorsement of any kind that has not been first submitted to City and approved of in writing.

(l) Separation of Insureds. A severability of interests provision must apply for all additional insureds ensuring that Contractor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the insurer's limits of liability. The policy(ies) shall not contain any cross-liability exclusions.

(m) Pass Through Clause. Contractor agrees to ensure that its subconsultants, subcontractors, and any other party involved with the project who is brought onto or involved in the project by Contractor, provide the same minimum insurance coverage and endorsements required of Contractor. Contractor agrees to monitor and review all such coverage and assumes all responsibility for ensuring that such coverage is provided in conformity with the requirements of this section. Contractor agrees that upon request, all agreements with consultants, subcontractors, and others engaged in the project will be submitted to City for review.

(n) Agency's Right to Revise Specifications. The City reserves the right at any time during the term of the contract to change the amounts and types of insurance required by giving the Contractor ninety (90) days advance written notice of such change. If such change results in substantial additional cost to the Contractor, the City and Contractor may renegotiate Contractor's compensation.

(o) Self-Insured Retentions. Any self-insured retentions must be declared to and approved by City. City reserves the right to require that self-insured retentions be eliminated, lowered, or replaced by a deductible. Self-insurance will not be considered to comply with these specifications unless approved by City.

(p) Timely Notice of Claims. Contractor shall give City prompt and timely notice of claims made or suits instituted that arise out of or result from Contractor's performance under this Agreement, and that involve or may involve coverage under any of the required liability policies.

(q) Additional Insurance. Contractor shall also procure and maintain, at its own cost and expense, any additional kinds of insurance, which in its own judgment may be necessary for its proper protection and prosecution of the work.

5.3 Indemnification.

Contractor shall indemnify, defend with legal counsel approved by City, and hold harmless City, its officers, officials, employees and volunteers (each, an "Indemnatee") from and against all liability, loss, damage, expense, cost (including without limitation reasonable legal counsel fees, expert fees and all other costs and fees of litigation) of every nature arising out of or in connection with Contractor's performance of work under this Agreement or its failure to comply with any of its obligations contained in this Agreement, except such loss or damage which is caused by the sole or active negligence or willful misconduct of the City. Should conflict of interest principles preclude a single legal counsel from representing both City and Contractor, or should City otherwise find Contractor's legal counsel unacceptable, then Contractor shall reimburse the City its costs of defense, including without limitation reasonable legal counsels fees, expert fees and all other costs and fees of litigation. The Contractor shall promptly pay any final judgment rendered against the City (and its officers, officials, employees and volunteers) with respect to claims determined by a trier of fact to have been the result of the Contractor's negligent, reckless or wrongful performance. It is expressly understood and agreed that the foregoing provisions are intended to be as broad and inclusive as is permitted by the law of the State of California and will survive termination of this Agreement.

Contractor obligations under this section apply regardless of whether or not such claim, charge, damage, demand, action, proceeding, loss, stop notice, cost, expense, judgment, civil fine or penalty, or liability was caused in part or contributed to by an Indemnatee. However, without affecting the rights of City under any provision of this Agreement, Contractor shall not be required to indemnify and hold harmless City for liability attributable to the active negligence of City, provided such active negligence is determined by agreement between the parties or by the findings of a court of competent jurisdiction. In instances where City is shown to have been actively negligent and where City's active negligence accounts for only a percentage of the liability involved, the obligation of Contractor will be for that entire portion or percentage of liability not attributable to the active negligence of City.

5.4 Notification of Third-Party Claims.

City shall timely notify Contractor of the receipt of any third-party claim relating to the work under this Agreement. City shall be entitled to recover from Contractor its reasonable costs incurred in providing such notification.

5.5 Performance and Payment Bonds.

Concurrently with execution of this Agreement, Contractor shall deliver to the City all of the following bonds if the Contract Sum should exceed \$25,000:

(a) A performance bond securing the faithful performance of this Agreement, in an amount not less than 100% of the total compensation for this Agreement, as stated in Section 2.1.

(b) A payment bond, securing the payment of all persons furnishing labor and/or materials in connection with the work under this Agreement, in an amount not less than 100% of the total compensation for this Agreement, as stated in Section 2.1.

All bonds shall be on the applicable forms provided in Exhibit "D" and Exhibit "E" attached hereto and made part hereof. The bonds shall each contain the original notarized signature of an authorized officer of the surety and affixed thereto shall be a certified and current copy of his/her power of attorney. The bonds shall be unconditional and remain in force during the entire term of the Agreement until released pursuant to Section 5.7 hereof.

5.6 Sufficiency of Insurer or Surety.

Insurance and bonds required by this Agreement shall be satisfactory only if issued by companies qualified to do business in California, rated "A" or better in the most recent edition of Best's Rating Guide, The Key Rating Guide or in the Federal Register, and only if they are of a financial category Class VII or better. If the City determines that the work to be performed under this Agreement creates an increased or decreased risk of loss to the City, the Contractor agrees that the minimum limits of the insurance policies and the bonds may be changed accordingly upon receipt of written notice from the City's Risk Manager.

5.7 Release of Securities.

City shall release the performance bond and payment bond when the following have occurred:

(a) Contractor has made a written request for release and provided evidence of satisfaction of all other requirements under Article 5 of this Agreement;

(b) the Project has been accepted; and

(c) after passage of the time within which lien claims are required to be made pursuant to applicable laws; if lien claims have been timely filed, City shall hold the payment bond

until such claims have been resolved, Contractor has provided statutory bond, or otherwise as required by applicable law.

ARTICLE 6. RECORDS, REPORTS, AND RELEASE OF INFORMATION

6.1 Records.

Contractor shall keep, and require subcontractors to keep, such ledgers, books of accounts, invoices, vouchers, canceled checks, reports, studies, certified and accurate copies of payroll records in compliance with all applicable laws, or other documents relating to the disbursements charged to City and services performed hereunder (the "books and records"), as shall be necessary to perform the services required by this Agreement and enable the Project Manager to evaluate the performance of such services. Any and all such documents shall be maintained in accordance with generally accepted accounting principles and shall be complete and detailed. The Project Manager shall have full and free access to such books and records at all times during normal business hours of City, including the right to inspect, copy, audit and make records and transcripts from such records. Such records shall be maintained for a period of 3 years following completion of the services hereunder, and the City shall have access to such records in the event any audit is required. In the event of dissolution of Contractor's business, custody of the books and records may be given to City, and access shall be provided by Contractor's successor in interest. Notwithstanding the above, the Contractor shall fully cooperate with the City in providing access to the books and records if a public records request is made and disclosure is required by law including but not limited to the California Public Records Act.

6.2 Reports.

Contractor shall periodically prepare and submit to the Project Manager such reports concerning the performance of the services required by this Agreement as the Project Manager shall require. Contractor hereby acknowledges that the City is greatly concerned about the cost of work and services to be performed pursuant to this Agreement. For this reason, Contractor agrees that if Contractor becomes aware of any facts, circumstances, techniques, or events that may or will materially increase or decrease the cost of the work or services contemplated herein, Contractor shall promptly notify the Project Manager of said fact, circumstance, technique or event and the estimated increased or decreased cost related thereto.

6.3 Ownership of Documents.

All drawings, specifications, maps, designs, photographs, studies, surveys, data, notes, computer files, reports, records, documents and other materials (the "documents and materials") prepared by Contractor, its employees, subcontractors and agents in the performance of this Agreement shall be the property of City and shall be delivered to City upon request of the Project Manager or upon the termination of this Agreement, and Contractor shall have no claim for further employment or additional compensation as a result of the exercise by City of its full rights of ownership use, reuse, or assignment of the documents and materials hereunder. Any use, reuse or assignment of such completed documents for other projects and/or use of uncompleted documents without specific written authorization by the Contractor will be at the City's sole risk and without liability to Contractor, and Contractor's guarantee and warranties shall not extend to such use,

reuse or assignment. Contractor may retain copies of such documents for its own use. Contractor shall have an unrestricted right to use the concepts embodied therein. All subcontractors shall provide for assignment to City of any documents or materials prepared by them, and in the event Contractor fails to secure such assignment, Contractor shall indemnify City for all damages resulting therefrom. Moreover, Contractor with respect to any documents and materials that may qualify as "works made for hire" as defined in 17 U.S.C. § 101, such documents and materials are hereby deemed "works made for hire" for the City.

6.4 Confidentiality and Release of Information.

(a) Information gained or work product produced by Contractor in performance of this Agreement shall be considered confidential, unless such information is in the public domain or already known to Contractor. Contractor shall not release or disclose any such information or work product to persons or entities other than City without prior written authorization from the Project Manager.

(b) Contractor, its officers, employees, agents or subcontractors, shall not, without prior written authorization from the Project Manager or unless requested by the City Attorney, voluntarily provide documents, declarations, letters of support, testimony at depositions, response to interrogatories or other information concerning the work performed under this Agreement. Response to a subpoena or court order shall not be considered "voluntary" provided Contractor gives City notice of such court order or subpoena.

(c) If Contractor, or any officer, employee, agent or subcontractor of Contractor, provides any information or work product in violation of this Agreement, then City shall have the right to reimbursement and indemnity from Contractor for any damages, costs and fees, including attorneys' fees, caused by or incurred as a result of Contractor's conduct.

(d) Contractor shall promptly notify City should Contractor, its officers, employees, agents or subcontractors be served with any summons, complaint, subpoena, notice of deposition, request for documents, interrogatories, request for admissions or other discovery request, court order or subpoena from any party regarding this Agreement and the work performed there under. City retains the right, but has no obligation, to represent Contractor or be present at any deposition, hearing or similar proceeding. Contractor agrees to cooperate fully with City and to provide City with the opportunity to review any response to discovery requests provided by Contractor. However, this right to review any such response does not imply or mean the right by City to control, direct, or rewrite said response.

ARTICLE 7. ENFORCEMENT OF AGREEMENT; DEFAULT, SUSPENSION AND TERMINATION

7.1 California Law.

This Agreement shall be interpreted, construed and governed both as to validity and to performance of the parties in accordance with the laws of the State of California. Legal actions concerning any dispute, claim or matter arising out of or in relation to this Agreement shall be instituted in the Superior Court of the County of Los Angeles, State of California, or any other appropriate court in such county, and Contractor covenants and agrees to submit to the personal

jurisdiction of such court in the event of such action. In the event of litigation in a U.S. District Court, venue shall lie exclusively in the Eastern District of California, in the County of Los Angeles, State of California.

7.2 Default of Contractor.

Contractor's failure to comply with the provisions of this Agreement shall constitute a default. In the event that Contractor is in default for cause under the terms of this Agreement, City shall have no obligation or duty to continue compensating Contractor for any work performed after the date of default and can terminate or suspend this Agreement immediately by written notice to Contractor. If the Project Manager determines that Contractor is in default in the performance of any of the terms or conditions of this Agreement, the Project Manager shall cause to be served upon Contractor a written notice of the default. Contractor shall have ten (10) days after service upon it of said notice in which to cure the default by rendering a satisfactory performance. In the event that Contractor fails to cure its default within such period of time, the City shall have the right, notwithstanding any other provision of this Agreement, to terminate this Agreement without further notice and without prejudice to any other remedy to which it may be entitled at law, in equity or under this Agreement.

7.3 Suspension and Termination.

(a) The City may at any time, for any reason, with or without cause, suspend this Agreement, or any portion hereof, by serving upon Contractor at least ten (10) days prior written notice. Upon receipt of said notice, Contractor shall immediately cease all work under this Agreement, unless the notice provides otherwise. If the City suspends a portion of this Agreement such suspension shall not make void or invalidate the remainder of this Agreement.

(b) This Agreement may be terminated by either party for cause. The City may terminate this Agreement without cause upon thirty (30) days' written notice of termination. Upon termination, Contractor shall be entitled to compensation for completion of any portion of the Project accepted by City up to the effective date of termination unless any portion of the Project is accepted by City after termination in which event Contractor shall be paid for such completed portion.

7.4 Dispute Resolution Process.

Section 20104 *et seq.* of the California Public Contract Code prescribes a process utilizing informal conferences, non-binding judicial-supervised mediation, and judicial arbitration to resolve disputes on construction claims of \$375,000 or less. Section 9204 of the Public Contract Code prescribes a process for negotiation and mediation to resolve disputes on construction claims. The intent of this Section is to implement Sections 20104 *et seq.* and Section 9204 of the California Public Contract Code. This Section shall be construed to be consistent with said statutes.

For purposes of these procedures, "claim" means a separate demand by the Contractor, after the City has denied Contractor's timely and duly made request for payment for extra work and/or a time extension, for (A) a time extension, (B) payment of money or damages arising from work done by or on behalf of the Contractor pursuant to the Agreement and payment of which is

not otherwise expressly provided for or the Contractor is not otherwise entitled to, or (C) an amount the payment of which is disputed by the City.

The following requirements apply to all claims to which this section applies:

(a) Claim Submittal. The claim shall be in writing and include the documents necessary to substantiate the claim. Claims governed by this procedure must be filed on or before the date of final payment. Nothing in this section is intended to extend the time limit or supersede notice requirements otherwise provided in the Agreement for the filing of claims, including all requirements pertaining to compensation or payment for extra work, disputed work, and/or changed conditions. Failure to follow such contractual requirements shall bar any claims or subsequent lawsuits for compensation or payment thereon.

(b) Supporting Documentation. The Contractor shall submit all claims in the following format:

(i) Summary of the claim, including references to the specific Contract Document provisions upon which the claim is based.

(ii) List of documents relating to claim: (a) Specifications, (b) Drawings, (c) Clarifications (Requests for Information), (d) Schedules, and (e) Other.

(iii) Chronology of events and correspondence related to the claim.

(iv) Statement of grounds for the claim.

(v) Analysis of the claim's cost, if any.

(vi) Analysis of the claim's time/schedule impact, if any.

(c) City's Response. Upon receipt of a claim pursuant to this section, City shall conduct a reasonable review of the claim and, within a period not to exceed 45 days, shall provide the Contractor a written statement identifying what portion of the claim is disputed and what portion is undisputed. Any payment due on an undisputed portion of the claim will be processed and made within 60 days after the City issues its written statement.

(i) If the City needs approval from the City Council to provide the Contractor a written statement identifying the disputed portion and the undisputed portion of the claim, and the City Council 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 City shall have up to three days following the next duly publicly noticed meeting of the City Council after the 45-day period, or extension, expires to provide the Contractor a written statement identifying the disputed portion and the undisputed portion.

(ii) Within 30 days of receipt of a claim, the City may request in writing additional documentation supporting the claim or relating to defenses or claims the City may have against the Contractor. If additional information is thereafter required, it shall be requested and provided pursuant to this subdivision, upon mutual agreement of City and the Contractor.

(iii) The City's written response to the claim, as further documented, shall be submitted to the Contractor within 30 days (if the claim is less than \$50,000, within 15 days) after receipt of the further documentation, or within a period of time no greater than that taken by the Contractor in producing the additional information or requested documentation, whichever is greater.

(d) Meet and Confer. If the Contractor disputes the City's written response, or the City fails to respond within the time prescribed, the Contractor may so notify the City, in writing, either within 15 days of receipt of the City's response or within 15 days of the City's failure to respond within the time prescribed, respectively, and demand an informal conference to meet and confer for settlement of the issues in dispute. Upon receipt of a demand, the City shall schedule a meet and confer conference within 30 days for settlement of the dispute.

(e) Mediation. 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 City shall provide the Contractor 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 City 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 City and the Contractor sharing the associated costs equally. The City and Contractor shall mutually agree to a mediator within 10 business days after the disputed portion of the claim has been identified in writing, unless the parties agree to select a mediator at a later time.

(i) 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.

(ii) 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.

(iii) Unless otherwise agreed to by the City and the contractor in writing, the mediation conducted pursuant to this section shall excuse any further obligation under Public Contract Code Section 20104.4 to mediate after litigation has been commenced.

(iv) All unresolved claims shall be considered jointly in a single mediation, unless a new unrelated claim arises after mediation is completed.

(f) City's Responses. The City's failure to respond to a claim from the Contractor within the time periods described in this section 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 City'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 of qualifications of the Contractor. City's failure to

respond shall not waive City's rights to any subsequent procedures for the resolution of disputed claims.

(g) Government Code Claims. If following the mediation, the claim or any portion remains in dispute, the Contractor must comply with the claim procedures set forth in Government Code Section 900 *et seq.* prior to filing any lawsuit against the City. Such Government Code claims and any subsequent lawsuit based upon the Government Code claims shall be limited to those matters that remain unresolved after all procedures pertaining to extra work, disputed work, construction claims, and/or changed conditions, including any required mediation, have been followed by Contractor. If no such Government Code claim is submitted, or if the prerequisite contractual requirements are not satisfied, no action against the City may be filed. A Government Code claim must be filed no earlier than the date that Contractor completes all contractual prerequisites to filing a Government Code claim, including any required mediation. A Government Code claim shall be inclusive of all unresolved claims unless a new unrelated claim arises after the Government Code claim is submitted. For purposes of Government Code Section 900 *et seq.*, the running of the period of time within which a claim must be filed shall be tolled from the time the Contractor submits his or her written claim to the City until the time the claim is denied, including any period of time utilized by the meet and confer conference or mediation that does not result in a complete resolutions of all claims.

(h) Civil Actions for Claims of \$375,000 or Less. The following procedures are established for all civil actions filed to resolve claims totaling \$375,000 or less:

(i) Within 60 days, but no earlier than 30 days, following the filing or responsive pleadings, the court shall submit the matter to non-binding mediation unless waived by mutual stipulation of both parties or unless mediation was held prior to commencement of the action in accordance with Public Contract Code section 9204 and the procedures in this Section. The mediation process shall provide for the selection within 15 days by both parties of a disinterested third person as mediator, shall be commenced within 30 days of the submittal, and shall be concluded within 15 days from the commencement of the mediation unless a time requirement is extended upon a good cause showing to the court or by stipulation of both parties. If the parties fail to select a mediator within the 15-day period, either party may petition the court to appoint the mediator.

(ii) If the matter remains in dispute, the case shall be submitted to judicial arbitration pursuant to Chapter 2.5 (commencing with Section 1141.10) of Title 3 of Part 3 of the Code of Civil Procedure, notwithstanding Section 1141.11 of that code. The Civil Discovery Act (Title 4 (commencing with Section 2016.010) of Part 4 of the Code of Civil Procedure) shall apply to any proceeding brought under this subdivision consistent with the rules pertaining to judicial arbitration.

(iii) Upon stipulation of the parties, arbitrators appointed for these purposes shall be experienced in construction law, and, upon stipulation of the parties, mediators and arbitrators shall be paid necessary and reasonable hourly rates of pay not to exceed their customary rate, and such fees and expenses shall be paid equally by the parties, except in the case of arbitration where the arbitrator, for good cause, determines a different division.

(iv) In addition to Chapter 2.5 (commencing with Section 1141.10) of Title 3 of Part 3 of the Code of Civil Procedure, any party who after receiving an arbitration award requests a trial de novo but does not obtain a more favorable judgment shall, in addition to payment of costs and fees under that chapter, pay the attorney's fees of the other party arising out of the trial de novo.

7.5 Waiver.

Waiver by any party to this Agreement of any term, condition, or covenant of this Agreement shall not constitute a waiver of any other term, condition, or covenant. Waiver by any party of any breach of the provisions of this Agreement shall not constitute a waiver of any other provision or a waiver of any subsequent breach or violation of any provision of this Agreement. Acceptance by City of any work or services by Contractor shall not constitute a waiver of any of the provisions of this Agreement. No delay or omission in the exercise of any right or remedy by a non-defaulting party on any default shall impair such right or remedy or be construed as a waiver. Any waiver by either party of any default must be in writing and shall not be a waiver of any other default concerning the same or any other provision of this Agreement.

7.6 Rights and Remedies Are Cumulative.

Except with respect to rights and remedies expressly declared to be exclusive in this Agreement, the rights and remedies of the parties are cumulative and the exercise by either party 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 other party.

7.7 Unfair Business Practices Claims.

Pursuant to Public Contract Code section 7103.5, in entering into this Agreement, Contractor offers and agrees to assign to the City all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. § 15) or under the Cartwright Act (Chapter 2, (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, services or materials related to this Agreement. This assignment shall be made and become effective at the time the City tenders final payment to the Contractor without further acknowledgment by the Parties.

ARTICLE 8. CITY OFFICERS AND EMPLOYEES: NON-DISCRIMINATION

8.1 Non-liability of City Officers and Employees.

No officer or employee of the City shall be personally liable to the Contractor, or any successor in interest, in the event of any default or breach by the City or for any amount which may become due to the Contractor or to its successor, or for breach of any obligation of the terms of this Agreement.

8.2 Conflict of Interest.

Contractor covenants that neither it, nor any officer or principal of its firm, has or shall acquire any interest, directly or indirectly, which would conflict in any manner with the interests of City or which would in any way hinder Contractor's performance of services under this Agreement. Contractor further covenants that in the performance of this Agreement, no person having any such interest shall be employed by it as an officer, employee, agent or subcontractor without the express written consent of the Project Manager. Contractor agrees to at all times avoid conflicts of interest or the appearance of any conflicts of interest with the interests of City in the performance of this Agreement.

No officer or employee of the City shall have any financial interest, direct or indirect, in this Agreement nor shall any such officer or employee participate in any decision relating to the Agreement which affects his financial interest or the financial interest of any corporation, partnership or association in which he is, directly or indirectly, interested, in violation of any State statute or regulation. The Contractor warrants that it has not paid or given and will not pay or give any third party any money or other consideration for obtaining this Agreement.

8.3 Covenant Against Discrimination.

Contractor covenants that, by and for itself, its heirs, executors, assigns, and all persons claiming under or through them, there shall be no discrimination against or segregation of, any person or group of persons on account of race, color, creed, religion, sex, gender, sexual orientation, marital status, national origin, ancestry, or other protected class in the performance of this Agreement. Contractor shall take affirmative action to insure that applicants are employed and that employees are treated during employment without regard to their race, color, creed, religion, sex, gender, sexual orientation, marital status, national origin, ancestry, or other protected class.

8.4 Unauthorized Aliens.

Contractor hereby promises and agrees to comply with all of the provisions of the Federal Immigration and Nationality Act, 8 U.S.C. § 1101 *et seq.*, as amended, and in connection therewith, shall not employ unauthorized aliens as defined therein. Should Contractor so employ such unauthorized aliens for the performance of work and/or services covered by this Agreement, and should any liability or sanctions be imposed against City for such use of unauthorized aliens, Contractor hereby agrees to and shall reimburse City for the cost of all such liabilities or sanctions imposed, together with any and all costs, including attorneys' fees, incurred by City.

ARTICLE 9. MISCELLANEOUS PROVISIONS

9.1 Provisions Required By Law.

Each and every provision of law and clause required by law to be inserted in this Agreement shall be deemed to be inserted herein, and the Agreement shall be read and enforced as though it were included herein. If through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon application of either party, the contract shall forthwith be physically amended to make such insertion or correction.

9.2 Notices.

Any notice, demand, request, document, consent, approval, or communication either party desires or is required to give to the other party or any other person shall be in writing and either served personally or sent by prepaid, first-class mail, in the case of the City, to the City Manager and to the attention of the Project Manager (with her/his name and City title), City of Irwindale, 5050 N. Irwindale Ave, Irwindale, California 91706 and in the case of the Contractor, to the person(s) at the address designated on the execution page of this Agreement. Either party may change its address by notifying the other party of the change of address in writing. Notice shall be deemed communicated at the time personally delivered or in seventy-two (72) hours from the time of mailing if mailed as provided in this Section.

9.3 Interpretation.

The terms of this Agreement shall be construed in accordance with the meaning of the language used and shall not be construed for or against either party by reason of the authorship of this Agreement or any other rule of construction which might otherwise apply.

9.4 Counterparts.

This Agreement may be executed in counterparts, each of which shall be deemed to be an original, and such counterparts shall constitute one and the same instrument.

9.5 Integration; Amendment.

This Agreement including the attachments hereto is the entire, complete and exclusive expression of the understanding of the parties. It is understood that there are no oral agreements between the parties hereto affecting this Agreement and this Agreement supersedes and cancels any and all previous negotiations, arrangements, agreements and understandings, if any, between the parties, and none shall be used to interpret this Agreement. No amendment to or modification of this Agreement shall be valid unless made in writing and approved by the Contractor and by the City Council. The parties agree that this requirement for written modifications cannot be waived and that any attempted waiver shall be void.

9.6 Severability.

In the event that any one or more of the phrases, sentences, clauses, paragraphs, or sections contained in this Agreement shall be declared invalid or unenforceable by a valid judgment or decree of a court of competent jurisdiction, such invalidity or unenforceability shall not affect any of the remaining phrases, sentences, clauses, paragraphs, or sections of this Agreement which are hereby declared as severable and shall be interpreted to carry out the intent of the parties hereunder unless the invalid provision is so material that its invalidity deprives either party of the basic benefit of their bargain or renders this Agreement meaningless.

9.7 Warranty & Representation of Non-Collusion.

No official, officer, or employee of City has any financial interest, direct or indirect, in this Agreement, nor shall any official, officer, or employee of City participate in any decision relating

to this Agreement which may affect his/her financial interest or the financial interest of any corporation, partnership, or association in which (s)he is directly or indirectly interested, or in violation of any corporation, partnership, or association in which (s)he is directly or indirectly interested, or in violation of any State or municipal statute or regulation. The determination of "financial interest" shall be consistent with State law and shall not include interests found to be "remote" or "noninterests" pursuant to Government Code Sections 1091 or 1091.5. Contractor warrants and represents that it has not paid or given, and will not pay or give, to any third party including, but not limited to, any City official, officer, or employee, any money, consideration, or other thing of value as a result or consequence of obtaining or being awarded any agreement. Contractor further warrants and represents that (s)he/it has not engaged in any act(s), omission(s), or other conduct or collusion that would result in the payment of any money, consideration, or other thing of value to any third party including, but not limited to, any City official, officer, or employee, as a result of consequence of obtaining or being awarded any agreement. Contractor is aware of and understands that any such act(s), omission(s) or other conduct resulting in such payment of money, consideration, or other thing of value will render this Agreement void and of no force or effect.

Consultant's Authorized Initials _____

9.8 Corporate Authority.

The persons executing this Agreement on behalf of the parties hereto warrant that (i) such party is duly organized and existing, (ii) they are duly authorized to execute and deliver this Agreement on behalf of said party, (iii) by so executing this Agreement, such party is formally bound to the provisions of this Agreement, and (iv) the entering into this Agreement does not violate any provision of any other Agreement to which said party is bound. This Agreement shall be binding upon the heirs, executors, administrators, successors and assigns of the parties.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date and year first-above written.

CITY:

CITY OF IRWINDALE, a California
charter city

Julian A. Miranda, City Manager

ATTEST:

Laura M. Nieto, Chief Deputy City Clerk

APPROVED AS TO FORM:
ALESHIRE & WYNDER, LLP

Adrian Guerra, City Attorney

CONTRACTOR:

MSL Electric Inc.

*By: _____

Name: Warren Moore

Title: President

*By: _____

Name: _____

Title: _____

Address: MSL Electric Inc.
2918 E. La Jolla St.
Anaheim, CA 92806

***Two corporate officer signatures required when Contractor is a corporation, with one signature required from each of the following groups: 1) Chairman of the Board, President or any Vice President; and 2) Secretary, any Assistant Secretary, Chief Financial Officer or any Assistant Treasurer. CONTRACTOR'S SIGNATURES SHALL BE DULY NOTARIZED, AND APPROPRIATE ATTESTATIONS SHALL BE INCLUDED AS MAY BE REQUIRED BY THE BYLAWS, ARTICLES OF INCORPORATION, OR OTHER RULES OR REGULATIONS APPLICABLE TO CONTRACTOR'S BUSINESS ENTITY.**

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

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

STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

On _____, 2023 before me, _____, personally appeared _____, proved to me on the basis of satisfactory evidence to be the person(s) whose names(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: _____

OPTIONAL

Though the data below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent reattachment of this form

CAPACITY CLAIMED BY SIGNER

DESCRIPTION OF ATTACHED DOCUMENT

☐ INDIVIDUAL
☐ CORPORATE OFFICER

TITLE(S)

TITLE OR TYPE OF DOCUMENT

☐ PARTNER(S) ☐ LIMITED
☐ GENERAL

NUMBER OF PAGES

☐ ATTORNEY-IN-FACT
☐ TRUSTEE(S)
☐ GUARDIAN/CONSERVATOR
☐ OTHER _____

DATE OF DOCUMENT

SIGNER IS REPRESENTING:

(NAME OF PERSON(S) OR ENTITY(IES))

SIGNER(S) OTHER THAN NAMED ABOVE

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

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

STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

On _____, 2023 before me, _____, personally appeared _____, proved to me on the basis of satisfactory evidence to be the person(s) whose names(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: _____

OPTIONAL

Though the data below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent reattachment of this form

CAPACITY CLAIMED BY SIGNER

DESCRIPTION OF ATTACHED DOCUMENT

☐ INDIVIDUAL
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☐ GENERAL

NUMBER OF PAGES

☐ ATTORNEY-IN-FACT
☐ TRUSTEE(S)
☐ GUARDIAN/CONSERVATOR
☐ OTHER _____

DATE OF DOCUMENT

SIGNER IS REPRESENTING:

(NAME OF PERSON(S) OR ENTITY(IES))

SIGNER(S) OTHER THAN NAMED ABOVE

EXHIBIT A

SCOPE OF SERVICES

- I. Contractor will perform construction services related to the Traffic Signal Modification Project Arrow Hwy and Vincent Ave;P-980, which is identified in the City's Capital Improvement Program, including, but not limited to, the following (herein after referred to collectively as "Services"):**
- II. As part of the Construction Services, Contractor will deliver the following tangible work products to the City:**
 - A. Excavation and restoration for installation of electrical conduit, foundation and connection for traffic signal poles.**
- III. All work product is subject to review and acceptance by the City, and must be revised by the Consultant without additional charge to the City until found satisfactory and accepted by City.**

EXHIBIT B

SPECIAL REQUIREMENTS

(Superseding Contract Boilerplate)

If the Parties wish to revise provisions in the Agreement above (from page 1 through the signature page), then the revisions shall be presented in this Exhibit B, with deletions shown in ~~strike-through~~ and additions shown in ***bold and italics***.

EXHIBIT C

SCHEDULE OF COMPENSATION

- I. Contractor shall complete work for the Project in an amount not to exceed \$90,000.00 as shown below and as provided in Section 2.1 of this Agreement:**

Item #	Description of Work	Quantity	Unit	Unit Price	Extension
1	Traffic Signal Modification at Arrow Hwy & Vincent Per Attached Redlined Conceptual Interim TS Improvement Plan.	1	Ls	\$90,000.00	90,000.00
				Grand Total	\$ 90,000.00

- II. The City will compensate Contractor for work performed and expenses incurred toward completion of the Project upon submission of a valid invoice. In addition to what is required under Section 2.2 of the Agreement, each invoice is to include:**
- A. Line items for all personnel describing the work performed.
 - B. Line items for all materials and equipment properly charged to the Project.
 - C. Line items for the price and quantity of all materials, equipment and work.
 - D. Line items for all other approved reimbursable expenses claimed, with supporting documentation.
 - E. Line items for all approved subcontractor labor, supplies, equipment, materials, and travel properly charged to the Project.

EXHIBIT D

PERFORMANCE BOND

PROJECT NO. _____

We, _____, as Principal, and _____, as Surety, jointly and severally, firmly bind ourselves, our heirs, representatives, successors and assigns, as set forth herein, to the City of Irwindale ("City") for payment of the penal sum of _____ **U.S. Dollars and ____ Cents** (\$_____). City and Principal have entered into an agreement, or are about to enter into the agreement attached hereto and incorporated by reference herein, for completion of public works for the property(ies) referenced in said agreement. Surety herein approves of the terms and conditions of said agreement and binds itself to faithfully perform the obligations of Principal therein if Principal fails to so perform. Surety acknowledges that the agreement herein referenced shall be that document as executed by City and Principal.

THE CONDITION OF THIS OBLIGATION IS SUCH that if the Principal shall in all things stand to and abide by, and well and truly keep and perform all of the covenants, conditions, and provisions in said agreement, and any alteration thereof made as therein provided, on Principal's part to be kept and performed at the time and in the manner therein specified, and shall indemnify and save harmless the City, City's engineer, and their consultants, and each of their officials, directors, officers, employees and agents, as therein stipulated, then this obligation shall become null and void; otherwise, it shall be and remain in full force and effect.

Surety agrees that should it fail to take over and diligently perform the agreement upon Principal's default after notice and within the time specified in the agreement, Surety will promptly on demand deposit with City such amount as City may reasonably estimate as the cost of completing all of Principal's obligations. Surety's obligation for payment herein shall exist, notwithstanding any controversy between Principal and City regarding Principal's failure under the agreement, and payment by Surety should be conclusively presumed between the parties herein to relieve, as demanded, Surety's obligations herein and shall be deemed proper payment as between Principal and Surety.

Surety agrees that no change, extension of time, alteration, or addition to the terms of the agreement, or the work to be performed thereunder or the plans and specifications, or any matters unknown to Surety which may affect Surety's risk shall in any wise affect its obligation on this bond, and it does thereby waive notice thereof.

Principal and Surety agree that if the City is required to engage the services of an attorney in connection with the enforcement of this bond, each shall pay City's reasonable attorneys' fees incurred, with or without suit, in addition to the above sum.

Executed this _____ day of _____, _____.

Seal of Corporation _____

By: _____
Authorized Representative of Principal

Title: _____

(ATTACH ACKNOWLEDGEMENT OF AUTHORIZED REPRESENTATIVES)

Any claims under this bond may be addressed to: (check one)

Surety's agent for service
of process in California:

() _____
[name of surety company]

Name

Street Number

Street Number

City and State

City and State

Telephone Number

Telephone Number

By: _____
Attorney in Fact or other
Representative

(ATTACH ACKNOWLEDGEMENT OF AUTHORIZED REPRESENTATIVE)

Furnish the name, address and phone number of the company agent as well as the surety company.

Sureties must be authorized to do business in and have an agent for service of process in California and be on the accredited list of the United States Treasury Department (their bonds will be limited to such amounts as would be acceptable to the Treasury Department), and otherwise meet the requirements of the agreement.

EXHIBIT E

PAYMENT BOND

PROJECT NO. _____

We, _____, as Principal, and _____, as Surety, jointly and severally, firmly bind ourselves, our heirs, representatives, successors and assigns, as set forth herein, to the City of Irwindale ("City") and those for whose benefit this bond insures in the sum of _____ U.S. Dollars and _____ Cents (\$_____). City and Principal have entered into an agreement, or are about to enter into the agreement attached hereto and incorporated by reference herein, for completion of public works for the property(ies) referenced in said agreement. Surety herein approves of the terms and conditions of said agreement and binds itself to faithfully perform the obligations of Principal therein if Principal fails to so perform. Surety acknowledges that the agreement herein referenced shall be that document as executed by City and Principal. If Principal or any of Principal's contractors or subcontractors, fails to pay any of the persons named in Section 9000 *et seq.* of the California Civil Code employed in the performance of the agreement for materials furnished or for labor thereon of any kind, or for amounts due under the Unemployment Insurance Code with respect to such work or labor, then Surety shall pay the same in an amount not exceeding the sum specified above, and also shall pay, in case suit is brought upon this bond, such reasonable attorneys' fees as shall be fixed by the court.

Surety agrees that it shall pay the amounts due the persons above named and diligently perform the agreement upon Principal's default after notice and within the time specified in the agreement. If Surety fails to perform within the times specified in the agreement, Surety shall promptly on demand deposit with City such amount as City may reasonably estimate as the cost of completing all of Principal's obligations. Surety's obligation for payment herein shall extend, notwithstanding any controversy between Principal and City regarding Principal's failure under the agreement. Principal and Surety agree that any payment by Surety pursuant to this paragraph should be conclusively presumed between the parties herein to relieve, as demanded, Surety's obligation herein and shall be deemed proper payment as between Principal and Surety.

This bond shall insure to the benefit of any and all of the persons named in Section 9000 *et seq.* of the California Civil Code so as to give a right of action to them or their assigns in any suit brought upon this bond.

Surety agrees that no change, extension of time, alteration, or addition to the terms of the agreement, or the work to be performed thereunder, or the plans and specifications, or any matters unknown to Surety which might affect Surety's risk, shall in any way affect its obligation on this bond, and it does hereby waive notice thereof.

Principal and Surety agree that should City become a party to any action on this bond, that each will also pay City's reasonable attorneys' fees incurred therein in addition to the above sums.

Executed this _____ day of _____, _____.

Seal of Corporation _____

By: _____
Authorized Representative of Principal

Title: _____

(ATTACH ACKNOWLEDGEMENT OF AUTHORIZED REPRESENTATIVES)

Any claims under this bond may be addressed to: (check one)

Surety's agent for service
of process in California:

() _____
[name of surety]

Name

Street Number

Street Number

City and State

City and State

Telephone Number

Telephone Number

By: _____
Attorney in Fact or other
Representative

(ATTACH ACKNOWLEDGEMENT OF AUTHORIZED REPRESENTATIVE)

Furnish the name, address and phone number of the company agent as well as the surety company.

Sureties must be authorized to do business in and have an agent for service of process in California and be on the accredited list of the United States Treasury Department (their bonds will be limited to such amounts as would be acceptable to the Treasury Department), and otherwise meet the requirements of the agreement.



Lic # 822450, C10

PROJECT QUOTATION

Project Description:	Traffic Signal Modification Arrow Hwy & Vincent Ave
Owner/Contact:	City of Santa Fe Springs
Bid Date:	April 25, 2023

Item #	Description of Work	Quantity	Unit	Unit Price	Extension
1	Traffic Signal Modification at Arrow Hwy & Vincent Per Attached Redlined Conceptual Interim TS Improvement Plan.	1	Ls	\$90,000.00	90,000.00
				Grand Total	\$ 90,000.00

NOTE: Work to be performed during normal business hours (Monday-Friday 7am-4pm). Traffic gear to be provided by others.

EXCLUSIONS: Bond, survey, permits and fees, inspection fees, engineering fees, utility fees, signing, striping, traffic control plan, stamped concrete, rock blanket, street name signs, switch packs, intersection re-wiring, ped isolation module, ILD sensor, rock and/or hardpan demolition and removal.

Prepared by: **Bryan Ballachey**

- ☒ City Council
- ☐ Successor Agency
- ☐ Housing Authority
- ☐ Reclamation Authority
- ☐ Joint Powers Authority

City of
IRWINDALE
AGENDA REPORT

CC Item 11

Date: July 26, 2023
To: Honorable Mayor and Members of the City Council
From: Julian A. Miranda, City Manager
Issue: Review of Draft Ordinances for the Proposed Regulation of Unmanned Aircraft Systems and Drones

City Manager's Recommendation:

It is recommended that the Irwindale City Council review and comment on proposed ordinances and provide further direction to staff regarding the proposed ordinances.

Administrative Action:

Submitted & Prepared by:

Adrian R. Guerra, City Attorney

Electronically Approved

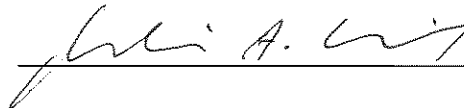
Reviewed by:

Adrian R. Guerra, City Attorney

Electronically Approved

Approved by:

Julian A. Miranda, City Manager



Background and Analysis:

Previously, the City Council requested that the City Attorney provide guidance and information as to the City's authority to regulate unmanned aircraft systems ("UAS"), better known as "drones," within City boundaries. This information was presented by the City Attorney's Office at the February 8, 2023 Council meeting. At the February 8th meeting, the City Council directed that staff and the City Attorney draft a proposed ordinance regulating drones within the City's limited authority.

At the March 9, 2023 Council meeting, staff and the City Attorney presented additional information regarding drone regulations adopted by other California cities and municipal agencies. This information was intended to further inform and guide the City Council in discerning what drone regulations, if any, would be appropriate for the City. The City Council directed staff and the City Attorney to draft a proposed ordinance regulating drones that modeled regulations in the cities of Calabasas, Chula Vista, Lake Forest, Oxnard, Yorba Linda and Barstow, considering allowing commercial uses. The Council

also directed that the proposed ordinance shall adopt existing state and federal drone regulations. These presentations, and the City Attorney's recommendations, are attached as Exhibit "A."

ANALYSIS

The proposed ordinance would add a chapter entitled "Drones and Unmanned Aircraft Systems" to the Irwindale Municipal Code. This chapter would define "unmanned aircraft system (UAS)" and regulate their operations within the City.

This ordinance would apply to drones used recreationally and for business uses, and those used with and without the ability to capture video and images. Common uses for drones beyond recreational flight include professional videography and photography, filming construction on a property, traffic and weather monitoring, and delivery services.

Specifically, the ordinance would forbid persons from operating UAS under the following circumstances:

- Outside of the person's visual line of sight.
- Within 25 feet of another individual, except the operator or the operator's designee.
- For Commercial Purposes in the City unless the operator has first obtained a City business license.
- On private property without the consent of the property owner.
- To capture or record images or video, or engage in the activity of filming, video taping, or producing images or video without a City film permit.
- To record or transmit any visual image or audio recording of any person or private real property when the person or owner has a reasonable expectation of privacy.
- To peek into a door or window of any inhabited building or structure without visible or lawful business with the owner or occupant.
- At any special event or temporary use without the approval of a temporary use permit by the City.
- Within any City park or recreation area except when authorized by City .
- That has any type of weapon attached to it.
- In violation of any any orders or directives issued by the FAA.

- In a careless or reckless manner so as to create a substantial risk of serious injury to any person or substantial risk of damage to the property of another.
- More than 400 feet above the earth's surface, unless within 400-foot radius of a structure and not more than 400 feet above the structure's uppermost limit.
- Within 500 feet of any active law enforcement or emergency response event, emergency vehicle operating with lights and/or sirens, and/or any law enforcement facilities.
- Within 200 feet of a school facility without prior authorization of school officials.
- Within 100 feet of any public building or facility without a City permit.
- On any property in the City official sunrise for local time and 10:00 P.M.

Some of these regulations are enumerated in the ordinance, while others reflect state and federal regulations that will be adopted by reference under the ordinance.

Any person who initially violates any provision of this chapter would be subject to a verbal or written warning by a peace officer. Subsequent violations of the Chapter would be a misdemeanor and/or a nuisance that may be abated, as applicable under the Irwindale Municipal Code. Additionally, staff is proposing that the Ordinance take effect 60 days after its adoption, in order to provide the City with opportunity to educate the public with respect to the new drone regulations prior to implementation.

Drones operated by any law enforcement agency for lawful purposes or by the City or city-contracted agent/agency engaging in City business would not be subject to this proposed ordinance.

Further, Staff requests that the City Council discuss and provide direction on whether any regulations should be imposed on other manners in which drones are used, such as private businesses filming construction, using a drone without capturing any recording or photos, strictly recreational purposes, etc.

It is therefore recommended that the City Council review the proposed draft Ordinance and provide further direction to Staff and the City Attorney's Office. Staff is providing the City Council with two versions of the ordinance – one which bans all drone flight within the City's residential zone, and one bans drone flight within 50 feet of a public right-of-way. Staff asks that the City Council consider both options and provide further direction. Once the Ordinance incorporates all changes and any further direction of the Council, the Ordinance will be presented to the City Council for formal introduction and first reading.

FISCAL IMPACT

None.

Attachments:

Exhibit A- Previous presentations by City Attorney's office on Drones

Proposed Chapter 9.XX "DRONES AND UNMANNED AIRCRAFT SYSTEMS" Version 1 and Version 2

EXHIBIT A

- ☒ City Council
- ☐ Successor Agency
- ☐ Housing Authority
- ☐ Reclamation Authority
- ☐ Joint Powers Authority

City of
IRWINDALE
AGENDA REPORT

Date: February 8, 2023
To: Honorable Mayor and Members of the City Council
From: Julian A. Miranda, City Manager
Issue: Regulation of Unmanned Aircraft Systems (UAS)/Drones

City Manager's Recommendation:

Discuss and provide direction regarding regulation of Unmanned Aircraft Systems (UAS)/Drones

Administrative Action:

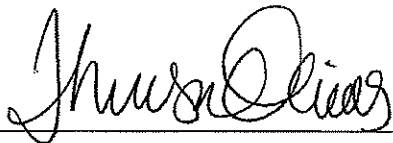
Prepared and Submitted by:

Adrian Guerra, City Attorney

Electronically Approved

Reviewed by:

Theresa Olivares, Assistant City Manager



Robert Castro, Chief of Police

Electronically Approved

Approved by:

Julian A. Miranda, City Manager

Electronically Approved

DISCUSSION:

Previously, the City Council requested that the City Attorney provide guidance and information as to the City's authority to regulate unmanned aircraft systems ("UAS"), better known as "drones," within City boundaries.

Federal Regulation

The Federal Aviation Administration ("FAA") is authorized by federal law to regulate the use of "navigable airspace" to ensure the safety of aircraft and the efficient use of airspace. (49 U.S.C. § 40103(b)(1).) In plain language, the FAA has stated that it is "responsible for air safety from the ground up." This authorization includes the ability to regulate drones.

The FAA takes the position that federal drone law preempts all local regulation of drones while in the air. The current extent of federal preemption of local regulation of drone operations is very unclear. Although no court has definitively decided the issue, most local regulation of drones while in the air is likely preempted.

State Regulation

Because the FAA asserts that it preempts all local regulations, lawmakers are currently grappling over the best way to balance federal and local control over drones. The State of California has regulated drones in areas concerning trespass, privacy, and interference with emergency vehicles/response.

Civil Code section 1708.8 makes it an invasion of privacy to knowingly enter the land or airspace above the land of another person without permission in order to capture any type of visual image, sound recording, or other physical impression of a person engaging in a private, personal, or familial activity, if the invasion occurs in a manner that is offensive to a reasonable person, including through the use of a drone.

The Peeping Tom law, Penal Code section 647(j)(1), makes it a misdemeanor to view someone with a camera, video recorder, or other instrumentality in the interior of any area (including a bedroom or bathroom) in which the person has a reasonable expectation of privacy, with the intent to invade the privacy of the person. This law explicitly extends to the use of an "unmanned aircraft system." Residents generally have a reasonable expectation of privacy while in their backyard, so long as the backyard is not visible from ground level (e.g., because of fences) or from neighboring homes or other vantages. However, whether a specific resident has a reasonable expectation of privacy is based on the specific facts of the case.

Penal Code section 402 makes it a misdemeanor for a person to impede emergency personnel or military personnel in the performance of their duties in coping with an emergency, unless it is part of that person's employment duties to view the scene or the activities. This law includes in the definition of "person" any person who is operating a drone, regardless of their location.

Civil Code section 43.101 makes emergency responders, public entities, and public employees immune from liability for damage to an unmanned aircraft if such person or entity was providing emergency services and the unmanned aircraft was interfering with the emergency services.

In addition to state law explicitly aimed at drone use, any state law prohibiting conduct that would endanger a person or property would also likely apply to conduct committed by using a drone. This may authorize law enforcement actions against drones and drone operators to prevent imminent loss of life, bodily injury, etc.

Finally, state civil trespass laws could also potentially apply to a trespass committed with a drone.

These provisions likely address the concerns that a city may have about privacy protections. Moreover, a local ordinance criminalizing an invasion of privacy would likely be preempted by the Penal Code.

Local Regulation

Cities have generally had very limited options for regulation of drones. The City may adopt regulations consistent with its police powers, which includes regulations aimed at promoting public health, public morals, and public safety, and includes land use regulations. Based on the Council's direction, Staff and the City Attorney's office have surveyed Southern California Cities¹ that have adopted an ordinance regulating drones and they all appear to be similar in nature and include prohibitions on the following:

- Prohibits operation in a manner that interferes with first responders, manned aircraft, and shall always give way to the same.
- Prohibits operation of drones beyond the natural visual line of sight of the person it.
- Prohibits operation other than during daylight hours, as defined.
- Prohibits operation more than 400 feet above the earth's surface.
- Prohibits operation closer than 25 feet to any individual, except the operator or the operator's helper(s).
- Prohibits any violation of state or federal regulations
- Prohibits operation in a careless or reckless manner so as to endanger the life or property of another.
- Prohibits operation within a certain amount of distance between an airport, school, or special or government event.
- Some cities require persons who desire to operate a drone within the city to first obtain a permit through the City and register the drone.
- Most exempt local government, emergency response, and/or military operation of drones from regulation.

It should be noted that that some of these regulations are likely preempted by, and/or conflict with, federal and state law and would likely be struck down if challenged in court. In order to avoid a challenge to any regulation of drones, the best option for local

¹ Staff was able to identify ordinances adopted by the cities of Los Alamitos, Yorba Linda, Calabasas, Hermosa Beach, Barstow, Beverly Hills, Los Angeles, and Pasadena

regulation is through the City's power to regulate land use. In light of these limitations, the best way for the City to regulate drones is as follows:

- (1) Do nothing and wait until the law is more settled in this area. Federal and state regulations, and existing City ordinances, will still apply including the above-mentioned areas of invasion of privacy, and trespass and interference with emergency vehicles/response.
- (2) Enact regulations limiting the times and locations in the City where drones can take off and land, as authorized by the City's broad powers to regulate land use.
 - (a) Specifically, the City could limit the times and locations within the City where drones can take off and land, just as airplanes are limited as to where they can take off and land. Such regulations would place a practical limit on the areas in the City where drones can fly since commercial and hobby drones can only be flown within the unaided visual line of sight of the drone operator (unless the operator has a waiver). (14 C.F.R. § 107.31; Public Law No. 112-95 § 336(c)(2).)
- (3) Collaborate with and support local law enforcement, including the Irwindale Police Department, in the enforcement of existing state laws that are applicable to drones, including laws prohibiting trespassing and invasion of privacy interference with emergency vehicles/response.

It is therefore recommended that the City Council discuss, and provide direction regarding any regulation of UAS/Drones.

FISCAL IMPACT

None.



**ALESHIRE &
WYNDER^{LLP}**
ATTORNEYS AT LAW

City of Irwindale

Existing Federal and State Regulations and the City's Power to Regulate Local Use of Drones

February 8, 2023



Overview:

› Purpose:

- To provide a summary of existing federal and state regulations regarding drones, as well as the City's local power to regulate, so that City Council may provide direction to staff regarding the regulation of UAS/drones in Irwindale.

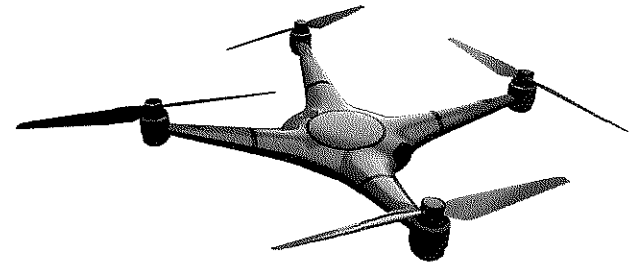
› Roadmap:

- How are Drones Regulated?
 - › Federal Regulations
 - › State Regulations
 - › Local Possibilities



What are Drones?

- Also called “Unmanned Aircraft Systems” or UAS
- An aircraft that is operated without the possibility of direct human intervention from within or on the aircraft
 - ex. by remote control, from a distance
 - Must weigh less than 55 lbs by FAA regulation
- Can be used for personal or commercial use
 - Recreational: personal, hobbyist, educational
 - Commercial: business, government, non-profit





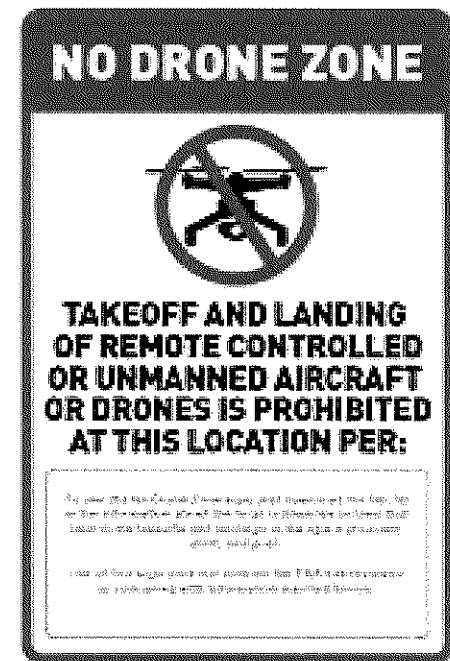
Federal Drone Regulations

- › Federal Aviation Administration (FAA)
 - › The FAA has stated that it is “responsible for air safety from the ground up” – this includes drones
 - › The FAA takes the position that federal drone law preempts the entire field of aviation, including local regulation of drones while in the air.
 - *The FAA cites safety and clarity issues that arise when local, state, and federal rules create a “patchwork” of airspace regulations.*
 - *The FAA also cites multiple federal cases in which various state and local airspace regulations were pre-empted or very strictly scrutinized, including aircraft noise restrictions*



What Can Cities Regulate Under Federal Law?

- › The FAA has stated that some local or state regulation of drones relating to land use and police power is permissible.
 - Very vague and unclear.
 - FAA has provided “no drone zone” signs for government use.
- › FAA has recommended that local governments consult with the agency when passing any ordinance/regulation related to restrictions on flight altitude, flight paths, operational bans, and any regulation of the navigable airspace.





State of California Drone Regulations:

- › Privacy: It is both a civil and a criminal offense to use a drone to invade someone's privacy. For example, taking video(s) or photo(s) of someone on their personal property, "Peeping Tom" rule.
 - › Civil Code § 1708.8
 - › Penal Code § 647
- › Emergency Response: It is a criminal offense to use a drone to interfere with an emergency, *i.e.* to record a scene of an accident, and there is no liability for any damage to the drone if the damage was caused during emergency response due to interference.
 - › Penal Code § 402
 - › Civil Code § 43.101



State of California Drone Regulations:

› Dangerous Conduct:

- In addition to state law explicitly aimed at drone use, *any* state law prohibiting conduct that would endanger a person or property would also likely apply to conduct committed by using a drone.

› Trespass:

- State trespass laws would also apply to a trespass committed with a drone. For example, a property owner may be able to seek the assistance of law enforcement if a drone actually takes off or lands on their property without prior approval of the owner.



Summary of City Power to Regulate:

- › The City likely can only regulate where drones may take off and land within the City boundaries.
- › The FAA (“Federal Aviation Administration”) claims that it has exclusive authority to regulate airspace/drones.
 - › At least one federal court has agreed.
- › The State has passed laws addressing the privacy and safety concerns with drones.
- › Additionally, general ordinances regarding nuisance, noise, or park regulations can be applied to drones with minor or no changes to the existing Municipal Code.



How Are Other Cities Approaching the Issue?



- › Many do not have any regulations in place.
 - Avoids the need to update ordinances as the law of drones continues to evolve.
- › Some cities have essentially made it a violation of local law to violate any federal law concerning drones.
 - Due to principals of federal preemption, this may be subject to legal challenge.
- › Other cities have adopted ordinances that prohibit use of drones in a reckless manner or in a manner that violates privacy rights.
 - Since these issues are already addressed by federal and state law, such ordinances are also likely preempted.



Examples of City Regulations Based on Survey

- › Prohibits operation in a manner that interferes with first responders, manned aircraft, and shall always give way to the same.
- › Prohibits operation of drones beyond the natural visual line of sight of the person operating.
- › Prohibits operation other than during daylight hours, as defined.
- › Prohibits operation more than 400 feet above the earth's surface.
- › Prohibits operation closer than 25 feet to any individual, except the operator or the operator's helper(s).
- › Prohibits any violation of state or federal regulations
- › Prohibits operation in a careless or reckless manner that endangers the life or property of another.
- › Prohibits operation within a certain amount of distance between an airport, school, or special or government event.
- › Some cities require persons who desire to operate a drone within the city to first obtain a permit through the City and register the drone.
- › Most exempt local government, emergency response, and/or military operation of drones from regulation.



Possibilities for Irwindale:

- › Do nothing and wait until the law is more settled in this area. Federal and state regulations, and existing local ordinances will still apply.
- › Limit any new regulations to time and place of takeoff/landing of drones.
 - The FAA has explicitly stated that this is a permissible form of local regulation.
- › Collaborate with and support local law enforcement, including the Irwindale Police Department, in the enforcement of existing state laws that are applicable to drones.

- ☒ City Council
☐ Successor Agency
☐ Housing Authority
☐ Reclamation Authority
☐ Joint Powers Authority

City of
IRWINDALE
AGENDA REPORT

CC Item N-4

Date: March 8, 2023
To: Honorable Mayor and Members of the City Council
From: Julian A. Miranda, City Manager
Issue: Regulation of Unmanned Aircraft Systems (UAS)/Drones in Other California Cities

City Manager's Recommendation:

Discuss and provide direction regarding regulation of Unmanned Aircraft Systems (UAS)/Drones

Administrative Action:

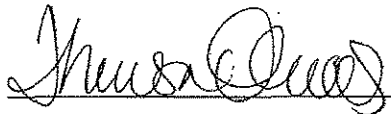
Prepared and Submitted by:

Adrian R. Guerra, City Attorney

Electronically Approved

Reviewed by:

Theresa Olivares, Assistant City Manager

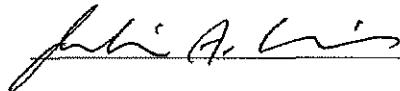


Robert Castro, Chief of Police

Electronically Approved

Approved by:

Julian A. Miranda, City Manager



DISCUSSION:

Previously, the City Council requested that the City Attorney provide guidance and information as to the City's authority to regulate unmanned aircraft systems ("UAS"), better known as "drones," within City boundaries. The City Attorney gave a presentation on federal and state regulation of UAS, which included a discussion of possible legal

grounds for local regulation of UAS, on February 8, 2023. Staff requested that the City Council discuss and provide direction regarding any regulation of UAS/Drones.

At its regular meeting on February 8, 2023, the City Council directed the City Attorney's Office to research and collect ordinances from other California cities regulating UAS/drones. City staff and the City Attorney's Office have collected the following ordinances for the City Council's review and consideration in determining whether to regulate drones:

- City of Anaheim effective August 14, 2018, attached as Exhibit "A".
- City of Barstow effective December 21, 2015, attached as Exhibit "B".
- City of Beverly Hills effective November 21, 2014, attached as Exhibit "C".
- City of Burbank effective June 10, 2016, attached as Exhibit "D".
- City of Calabasas effective December 13, 2017, attached as Exhibit "E".
- City of Ceres effective February 24, 2020, attached as Exhibit "F".
- City of Chula Vista effective 2014, attached as Exhibit "G".
- City of Del Mar effective May 18, 2020, attached as Exhibit "H".
- City of Garden Grove effective 2017, attached as Exhibit "I".
- City of Hermosa Beach effective 2016, attached as Exhibit "J".
- City of Indio effective March 7, 2018, attached as Exhibit "K".
- City of La Mesa effective September 27, 2005, attached as Exhibit "L".
- City of Lake Forest effective 2018, attached as Exhibit "M".
- City of Long Beach effective 1980, attached as Exhibit "N".
- City of Los Alamitos effective 2017, attached as Exhibit "O".
- City of Los Angeles effective December 2, 2015, attached as Exhibit "P".
- City of Manhattan Beach effective March 3, 2016, attached as Exhibit "Q".
- City of Napa effective 2022, attached as Exhibit "R".
- City of Oxnard, attached as Exhibit "S".
- City of Pacific Grove effective 2017, attached as Exhibit "T".

- City of Pasadena effective May 22, 2017, attached as Exhibit "U".
- City of Poway effective 2015, attached as Exhibit "V".
- City of Rancho Palos Verdes effective 1984, attached as Exhibit "W".
- City of Richmond effective May 18, 2017, attached as Exhibit "X".
- City of Riverside effective 2017, attached as Exhibit "Y".
- City of San Clemente effective May 2, 2017, attached as Exhibit "Z".
- City of San Francisco effective December 18, 1981, attached as Exhibit "AA".
- City of West Hollywood effective 2016, attached as Exhibit "BB".
- City of Yorba Linda effective 2017, attached as Exhibit "CC".

FISCAL IMPACT

None.

Exhibit "A"

Chapter 6.43**UNMANNED AIRCRAFT SYSTEMS (DRONES)**

Sections:

6.43.010 Definitions.**6.43.020 Operation of unmanned aircraft and unmanned aircraft systems.****6.43.010 DEFINITIONS.**

The following words and phrases, as used in this chapter, are defined as follows:

.010 "Unmanned Aircraft" or "UA" shall mean an aircraft, including, but not limited to, an aircraft commonly known as a "drone", that is operated without the possibility of direct human intervention from within or on the aircraft.

.020 "Unmanned Aircraft System" or "UAS" shall mean an Unmanned Aircraft and associated elements, including, but not limited to, any communication links and components that control the Unmanned Aircraft.

.030 "Civil UAS" shall mean an Unmanned Aircraft or Unmanned Aircraft System operated by any person for any purposes other than strictly hobby or recreational purposes, including, but not limited to, commercial purposes or in furtherance of, or incidental to, any business or media service or agency.

.040 "Commercial Purposes" shall have the same meaning as attributed to the phrase "Engaged in Business" in Section 3.04.010.060 of this Code.

.050 "Model Aircraft" shall mean an Unmanned Aircraft or Unmanned Aircraft System operated by any person strictly for hobby or recreational purposes.

.060 "Operate" shall mean to pilot, steer, direct, fly, guide, or manage an Unmanned Aircraft or Unmanned Aircraft System through the air remotely. The term "operate" includes, without limitation, managing or initiating an electronic control system that pilots, steers, directs, flies or manages an Unmanned Aircraft or Unmanned Aircraft System.

.070 "Person" shall have the same meaning as it is defined in Section 3.04.010.080 of this Code.

.080 "Public UAS" shall mean an Unmanned Aircraft or Unmanned Aircraft System operated by any public agency for government related purposes. (Ord. 6442 § 1 (part); August 14, 2018.)

6.43.020 OPERATION OF UNMANNED AIRCRAFT AND UNMANNED AIRCRAFT SYSTEMS.

.010 Unless otherwise authorized by federal law, the following shall apply to the operation of any Model Aircraft within the City of Anaheim:

.0101 It is unlawful to operate a Model Aircraft in a manner that interferes with police or fire operations including, but not limited to, efforts to control, contain, or extinguish a fire from the air. It is unlawful to operate a Model Aircraft over or within 500 feet measured horizontally of an active police or fire investigation, including a crime scene, traffic collision, or fire incident, or over or within 1,000 feet measured horizontally of a wildfire incident or operations.

.0102 It is unlawful to operate within 1,000 feet measured horizontally of or into a fireworks production.

.0103 It is unlawful to operate any Model Aircraft carrying or equipped with anything other than a camera, video camera, or related image or audio capturing equipment.

.0104 It is unlawful to hover in place over private property without first obtaining permission from the property owner and/or the property tenant.

.0105 It is unlawful to take pictures or videos or record sounds of individuals, homes, businesses, or property that are in an enclosed area from public view such as fenced backyards or the interior of any structure unless written expressed permission is obtained from the individual, property owner(s) or manager(s), or tenant(s) thereof.

.0106 It is unlawful to operate a Model Aircraft within 1,000 feet measured horizontally from the property line at Angel Stadium, the Honda Center, the Anaheim Convention Center, Disneyland, California Adventure Park, or any other public or private accommodation or venue where more than 1,000 people are reasonably estimated to be in attendance.

.020 Unless otherwise authorized by federal law, the following shall apply to the operation of any Model Aircraft or Civil UAS within the City of Anaheim:

.0201 It is unlawful to operate a Model Aircraft or Civil UAS in a manner that interferes with a manned aircraft, and Model Aircraft or Civil UAS shall always give way to a manned aircraft.

.0202 It is unlawful to operate a Model Aircraft or Civil UAS within the controlled airspace of any airport without the prior express authorization of the airport control tower.

.0203 It is unlawful to operate a Model Aircraft or Civil UAS higher than 400 feet above ground level.

.0204 Model Aircraft and Civil UAS, when operating outdoors, shall only fly during daylight hours, which are defined as between official sunrise and official sunset, local time.

.0205 It is unlawful to operate Model Aircraft or Civil UAS over moving vehicles or unprotected persons, or in any way which interferes with vehicle traffic, or across a street with more than two lanes. It is unlawful to operate a Model Aircraft or Civil UAS less than 100 feet away measured horizontally from any individual other than the operator or the operator's helper(s).

.0206 It is unlawful to operate Model Aircraft or Civil UAS within 1,000 feet measured horizontally of or in the airspace above any water delivery facility, reservoir, storage tank, pump station, treatment or intake facility, or any electric generating facility, substation or control center, or any electric transmission or distribution facility, or within 100 feet of any overhead wire, cable, conveyor, or similar equipment for the distribution of electricity or power, upon or along any public way or utility easement within the city, without the facility or equipment owner's consent, and subject to any restrictions that the facility or equipment owner may place on such operation.

.0207 It is unlawful to operate a Model Aircraft or Civil UAS while the operator is under the influence of alcohol or drugs.

.0208 It is unlawful to operate a Model Aircraft or Civil UAS beyond the visual line of sight of the operator. The operator must use his or her own natural vision without enhancement other than by corrective lenses prescribed for the operator. Individuals other than the operator may not be used in lieu of the operator for maintaining visual line of sight. Visual line of sight means the operator has an unobstructed view of the Model Aircraft or Civil UAS. The use of vision-enhancing devices, such as binoculars, night vision goggles, infra-red or low-light cameras, powered vision magnifying devices, and goggles or other devices designed to provide a "first-person view" from the Model Aircraft or Civil

UAS, do not constitute the visual line of sight of the operator. It is unlawful to operate a Model Aircraft or Civil UAS when the operator is on or in a moving vehicle.

.0209 It is unlawful to operate a Model Aircraft or Civil UAS in a manner that is reckless or careless and endangers the safety of other persons or their property. The standard for careless or reckless operation shall be the same as the standard set forth in federal statutes or regulations governing aeronautics including, but not limited to, Federal Aviation Rule 91.13.

.0210 It is unlawful to operate any Model Aircraft or Civil UAS in violation of any temporary flight restriction (TFR), Notice to Airmen (NOTAM), or any other flight restriction issued by the Federal Aviation Administration or any other federal or state statute or regulation governing aeronautics.

.0211 It is unlawful to operate a Civil UAS for Commercial Purposes in the City unless the operator has first obtained a City business license for such commercial flight operation purposes.

.030 It shall be unlawful for any person to violate or fail to comply with this chapter. Any Person violating the provisions of this section shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished as provided in Section 1.01.370 (Violations of Code – Penalty) of Chapter 1.01 (Code Adoption and Construction).

.040 Operations authorized by the FAA – Exception. Notwithstanding the prohibitions set forth in this section, nothing in this section shall be construed to prohibit, limit, or otherwise restrict any person or operator who is authorized by the Federal Aviation Administration to operate any Model Aircraft, Civil UAS, or Public UAS in City air space pursuant to Section 333 of the FAA Modernization and Reform Act of 2012 or a certificate of waiver, certificate of authorization, or airworthiness certificate under Section 44704 of Title 49 of the United States Code or other Federal Aviation Administration grant of authority for a specific flight operation(s), from conducting such operation(s) in accordance with the authority granted by the Federal Aviation Administration. (Ord. 6442 § 1 (part); August 14, 2018.)

CHAPTER 9.66. - UNMANNED AIRCRAFT

Sec. 9.66.010. - Definitions.

As used in this chapter, "unmanned aircraft" means a device that flies and is operated without the possibility of direct human intervention from within or on the aircraft.

(Ord. No. 942-2015, § 1, 12-21-2015)

Sec. 9.66.020. - Operation and recording.

- (a) No person shall operate an unmanned aircraft within 50 feet of a public right-of-way.
- (b) No person shall operate an unmanned aircraft in a manner that harasses, startles, or annoys pedestrians or vehicles, or threatens their safety and welfare.
- (c) No person shall operate an unmanned aircraft over any private real property located in the city in which the resident and/or owner of the subject real property has a reasonable expectation of privacy (including, but not limited to, a private residence or office, and its surrounding yard, parking lot, or landscaping).
- (d) No person shall use an unmanned aircraft to record or transmit any visual image or audio recording of any person or private real property located in the city under circumstances in which the subject person or owner of the subject real property has a reasonable expectation of privacy (including, but not limited to, inside a private residence or office, and inside an enclosed yard).
- (e) No person shall use an unmanned aircraft to peek in the door or window of any inhabited building or structure without visible or lawful business with the owner or occupant.

(Ord. No. 942-2015, § 1, 12-21-2015)

Sec. 9.66.030. - Model aircraft.

This chapter shall not prohibit the use of any model aircraft which is flown in compliance with section 336 of the Federal Aviation Administration Modernization and Reform Act of 2012 and which does not transmit or record visual images or audio recordings of any person or real property located in the city.

(Ord. No. 942-2015, § 1, 12-21-2015)

Sec. 9.66.040. - Use by public safety agencies.

This chapter shall not prohibit the use of any unmanned aircraft by law enforcement or public safety agencies:

- (a) If a warrant is issued authorizing the use of an unmanned aircraft; or
- (b) For the purpose of providing emergency management, fire, or police protection services in response to a life threatening emergency, or for surveying the condition of persons or property during a duly declared state of emergency; or
- (c) Under circumstances where a warrant would not otherwise be required by law.

(Ord. No. 942-2015, § 1, 12-21-2015)

Sec. 9.66.050. - Interference with emergency response.

No person shall, through use of an unmanned aircraft, interfere with the lawful efforts of a firefighter or other public safety officer to extinguish a fire or respond to a medical or other emergency.

(Ord. No. 942-2015, § 1, 12-21-2015)

Sec. 9.66.060. - City-owned unmanned aircraft.

Unmanned aircraft owned and operated by the city or by city-contracted agent/agency is exempt from the provisions of this chapter while lawfully operated by city employees or city-contracted agent/agency engaged in city business, including but not limited to surveying and mapping property, inspecting infrastructure, monitoring traffic, and recording local events. This section does not apply to use of unmanned aircraft by city public safety agencies, which must comply with section 9.66.040 of this Code.

(Ord. No. 942-2015, § 1, 12-21-2015)

Sec. 9.66.070. - Penalties.

Violation of any of the provisions of this chapter is a misdemeanor and shall be punishable as set forth in section 1.01.110 of this Code.

(Ord. No. 942-2015, § 1, 12-21-2015)

ORDINANCE NO. 942-2015

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BARSTOW, CALIFORNIA, ADDING A NEW CHAPTER 9.66 (UNMANNED AIRCRAFT) OF TITLE 9 (PEACE, MORALS AND SAFETY) OF THE BARSTOW MUNICIPAL CODE

WHEREAS, in order to protect the safety and privacy of Barstow residents regarding the use of unmanned aircraft within the corporate city limits; and

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF BARSTOW DOES HEREBY ORDAIN AS
FOLLOWS:**

Section 1. Municipal Code Amendment. Title 9 ("Peace, Morals and Safety") of the Barstow Municipal Code is hereby amended to add Chapter 9.66 ("Unmanned Aircraft") to read as follows:

Chapter 9.66 Unmanned Aircraft

9.66.010 – Definitions.

As used in this chapter, "unmanned aircraft" means a device that flies and is operated without the possibility of direct human intervention from within or on the aircraft.

9.66.020 – Operation and Recording.

A. No person shall operate an unmanned aircraft within 50 feet of a public right-of-way.

B. No person shall operate an unmanned aircraft in a manner that harasses, startles, or annoys pedestrians or vehicles, or threatens their safety and welfare.

C. No person shall operate an unmanned aircraft over any private real property located in the city in which the resident and/or owner of the subject real property has a reasonable expectation of privacy (including, but not limited to, a private residence or office, and its surrounding yard, parking lot, or landscaping).

D. No person shall use an unmanned aircraft to record or transmit any visual image or audio recording of any person or private real property located in the city under circumstances in which the subject person or owner of the subject real property has a reasonable expectation of privacy (including, but not limited to, inside a private residence or office, and inside an enclosed yard).

E. No person shall use an unmanned aircraft to peek in the door or window of any inhabited building or structure without visible or lawful business with the owner or occupant.

9.66.030 – Model aircraft.

This chapter shall not prohibit the use of any model aircraft which is flown in compliance with section 336 of the Federal Aviation Administration Modernization and Reform Act of 2012 and which does not transmit or record visual images or audio recordings of any person or real property located in the city.

9.66.040 – Use by public safety agencies.

This chapter shall not prohibit the use of any unmanned aircraft by law enforcement or public safety agencies:

- A. If a warrant is issued authorizing the use of an unmanned aircraft; or
- B. For the purpose of providing emergency management, fire, or police protection services in response to a life threatening emergency, or for surveying the condition of persons or property during a duly declared state of emergency; or
- C. Under circumstances where a warrant would not otherwise be required by law.

9.66.050 – Interference with emergency response.

No person shall, through use of an unmanned aircraft, interfere with the lawful efforts of a firefighter or other public safety officer to extinguish a fire or respond to a medical or other emergency.

9.66.060 – City-owned unmanned aircraft.

Unmanned aircraft owned and operated by the City or by City-contracted agent/agency is exempt from the provisions of this chapter while lawfully operated by city employees or City-contracted agent/agency engaged in city business, including but not limited to surveying and mapping property, inspecting infrastructure, monitoring traffic, and recording local events. This section does not apply to use of unmanned aircraft by city public safety agencies, which must comply with Section

9.66.040 of this code.

9.66.070 – Penalties.

Violation of any of the provisions of this chapter is a misdemeanor and shall be punishable as set forth in Section 1.01.110 of this code.

Section 2. Severability. If any section, subsection, paragraph, sentence, clause or phrase of this chapter is declared by a court of competent jurisdiction to be

unconstitutional or otherwise invalid, such decision shall not affect the validity of the remaining portions of this chapter. The city council declares that it would have adopted this chapter, and each section, subsection, sentence, clause, phrase or portion thereof, irrespective of the fact that any one or more sections, subsections, phrases, or portions be declared invalid or unconstitutional.

Section 3. Effective Date. This Ordinance was introduced on December 7, 2015 and was adopted by the City Council at its regular meeting held on December 21, 2015. Ordinance 942-2015 shall take effect on 30 days after adoption on January 20, 2016. This Ordinance and the City Clerk's certification, together with proof of publication, shall be entered in the Book of Ordinances of the City Council.

PASSED, APPROVED AND ADOPTED, this 21st day of December, 2015.

Julie Hackbarth-McIntyre, Mayor

ATTEST:

JoAnne V. Cousino, City Clerk

I, JoAnne V. Cousino, City Clerk for the City of Barstow, California and ex-officio Clerk of the City Council, do hereby certify, UNDER PENALTY OF PERJURY, that the foregoing is a true and correct copy of Ordinance No. 942-2015 which was introduced at the regular meeting of the City Council of the City of Barstow held on the 7th day of December, 2015, and adopted at the regular meeting of the City Council of the City of Barstow on the 21st day of December, 2015 by the following vote:

AYES: COUNCIL MEMBERS GRACEY, HARPOLE, HERNANDEZ; MAYOR PRO TEM SILVA;
MAYOR HACKBARTH-MCINTYRE

NOES: NONE

ABSENT: NONE

ABSTAINED: NONE

JoAnne V. Cousino, City Clerk

Article 6. Aircraft Operations

5-6-601: Landing Prohibited

5-6-602: Exemption

5-6-603: External Load Operations Prohibited

5-6-604: Prohibition Against Using An Unmanned Aircraft To Record Or Transmit Visual Or Audio Recordings

5-6-601: LANDING PROHIBITED:

No person shall land any aircraft, including a helicopter, within the city, except that the council may grant permission for such landing to protect the personal security of the president or vice president of the United States when visiting the city. (1962 Code § 4-1.01)

5-6-602: EXEMPTION:

Section 5-6-601 of this chapter, prohibiting the landing of helicopters, shall not apply to any helicopter operated by the federal government, or state, county or city agency engaged in law enforcement, emergency or disaster aid, fire suppression, or going to the aid of any person or the person's property thereof, so long as the same is operated in accordance with federal and state regulations and by authorized personnel of said federal, state, county or city agency. (Ord. 06-O-2496, eff. 3-9-2006)

5-6-603: EXTERNAL LOAD OPERATIONS PROHIBITED:

No person shall use any helicopter for external load operations within the city. For the purposes of this section, "external load operations" shall include any load which is carried or extends outside the aircraft fuselage. (1962 Code § 4-1.02; amd. Ord. 06-O-2496, eff. 3-9-2006)

5-6-604: PROHIBITION AGAINST USING AN UNMANNED AIRCRAFT TO RECORD OR TRANSMIT VISUAL OR AUDIO RECORDINGS:



- A. No person shall use an unmanned aircraft to record or transmit any visual image or audio recording of any person or private real property located in the city under circumstances in which the subject person or owner of the subject real property has a reasonable expectation of privacy (including, but not limited to, inside a private residence or office, and inside an enclosed yard).
- B. This section shall not prohibit the use of any model aircraft, which is flown in compliance with section 336 of the FAA modernization and reform act of 2012 and which does not transmit or record visual images or audio recordings of any person or real property located in the city.
- C. This section shall not prohibit the use of any unmanned aircraft by law enforcement or public safety agencies:

1. If a warrant is issued authorizing the use of an unmanned aircraft; or
 2. For the purpose of providing emergency management, fire, or police protection services in response to a life threatening emergency, or for surveying the condition of persons or property during a duly declared state of emergency; or
 3. Under circumstances where a warrant would not otherwise be required by law.
- D. For the purpose of this section, an "unmanned aircraft" is a device that flies and is operated without the possibility of direct human intervention from within or on the aircraft. (Ord. 14-O-2667, eff. 11-21-2014)

Burbank Municipal Code

5-3-1602: OPERATION OF UNMANNED AIRCRAFT AND UNMANNED AIRCRAFT SYSTEMS:

Unless otherwise authorized by federal law, the following shall apply to the operation of any Model Aircraft or Civil UAS within the City of Burbank:

- A. It is unlawful to operate in a manner that prevents or delays the extinguishment of a fire including, but not limited to, efforts to control, contain, or extinguish the fire from the air.
- B. It is unlawful to operate in a manner that interferes with police operations or activity.
- C. It is unlawful to operate within the airspace above or within 50 feet of a film studio or closed production set or other private production area without permission from the studio, producer, or director.
- D. It is unlawful to operate within 100 feet of or into a fireworks production.
- E. It is unlawful to operate within 500 feet measured horizontally of or in the airspace above any water delivery system, reservoir, treatment or intake facility or any electric generating facility, substation or control center, or any electric transmission facility, or within 60 feet of any overhead wire, cable, conveyor or similar equipment for the distribution of electricity or power, upon or along any public way within the city, without the facility or equipment owner's consent, and subject to any restrictions that the facility or equipment owner may place on such operation.
- F. It is unlawful to operate higher than 400 feet above ground level.
- G. Model Aircraft and Civil UAS, when operating outdoors, shall only fly during daylight hours, which are defined as between official sunrise and official sunset for local time.
- H. It is unlawful to operate any Model Aircraft or Civil UAS carrying or equipped with anything other than a camera, video camera, or related equipment.
- I. It is unlawful to operate over moving vehicles or unprotected persons, and it is unlawful to operate less than 25 feet away from any individual other than the operator or the operator's helper(s).
- J. It is unlawful to operate under the influence of alcohol or drugs.
- K. It is unlawful to operate beyond the visual line of sight of the operator. The operator must use their own natural vision without enhancement other than by corrective lenses prescribed for the operator. Individuals other than the operator may not be used in lieu of the operator for maintaining visual line of sight. Visual line of sight means the operator has an unobstructed view of the Model Aircraft or Civil UAS. The use of vision-enhancing devices, such as binoculars, night vision goggles, infra-red or low-light cameras, powered vision magnifying devices, and

goggles or other devices designed to provide a “first-person view” from the Model Aircraft or Civil UAS, do not constitute the visual line of sight of the operator.

L. It is unlawful to hover in place over private property without first obtaining permission from the property owner and/or the property tenant.

M. It is unlawful to take pictures or videos or record sounds of individuals, homes, businesses, or property that are in an enclosed area from public view such as fenced backyards or the interior of any structure unless written expressed permission is obtained from the individual property owner(s) or manager(s).

N. Operations authorized by the FAA – Exception. Notwithstanding the prohibitions set forth in this section, nothing in this section shall be construed to prohibit, limit or otherwise restrict any person who is authorized by the Federal Aviation Administration to operate in City air space, pursuant to Section 333 of the FAA Modernization and Reform Act of 2012 or a certificate of waiver, certificate of authorization or airworthiness certificate under Section 44704 of Title 49 of the United States Code or other Federal Aviation Administration grant of authority for a specific flight operation(s), from conducting such operation(s) in accordance with the authority granted by the Federal Aviation Administration. [Added by Ord. No. 16-3,878, eff. 6/10/16]

CALABASAS

Chapter 9.10 - DRONES AND UNMANNED AIRCRAFT SYSTEMS

9.10.010 - Purpose.

The purpose of this chapter is to regulate the operation of unmanned aircraft, commonly known as drones, which can at times pose a hazard to full-scale aircraft in flight and to persons on the ground. Imposing community-based safety requirements on the operation of model UAS and imposing restrictions on the operation of both model UAS's and civil UAS's consistent with Federal Aviation Administration rules is necessary to mitigate such risks and to protect the public from the hazards associated with the operation of unmanned aircraft.

(Ord. No. 2017-354, § 1, 12-13-2017)

9.10.020 - Definitions.

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

"Civil UAS" shall mean an unmanned aircraft or unmanned aircraft system operated by any person for any purposes other than strictly hobby or recreational purposes, including, but not limited to, commercial purposes or in the furtherance of, or incidental to, any business or media service or agency.

"Drone" refers to any UAS.

"FAA" means the Federal Aviation Administration.

"Model UAS" shall mean an unmanned aircraft or unmanned aircraft system operated by any person strictly for hobby or recreational purposes.

"Person" shall mean natural person, joint venture, joint stock company, partnership, association, club, company, corporation, business trust, organization, or the manager, lessee, agent, servant, officer or employee of any of them.

"Public UAS" shall mean an unmanned aircraft or unmanned aircraft system operated by any public agency for government related purposes.

"Unmanned aircraft" shall mean an aircraft without a human pilot onboard, that is controlled by an operator on the ground, and is operated without the possibility of direct human intervention from within or on the aircraft.

"Unmanned aircraft system (UAS)" shall mean an unmanned aircraft and associated elements, including, but not limited to, any communication links and components that control the unmanned aircraft.

"Visual line of sight" means that a person operating an unmanned aircraft has an unobstructed view of the unmanned aircraft. The operator must use his or her own natural vision (which includes vision corrected by standard eyeglasses or contact lenses) to observe the unmanned aircraft. People other than the operator may not be used in lieu of the operator for maintaining visual line of sight to the unmanned aircraft, except as otherwise permitted by federal law. The use of vision-enhancing devices, such as binoculars, night vision goggles, powered vision magnifying devices, and goggles or other devices designed to provide a "first-person view" from the unmanned aircraft do not constitute visual line of sight of the person operating the unmanned aircraft.

(Ord. No. 2017-354, § 1, 12-13-2017)

9.10.030 - Regulations

The following shall apply to the operation of any model UAS or civil UAS within the City of Calabasas:

CALABASAS

1. No person shall operate any model UAS or civil UAS within the City of Calabasas in a manner that is prohibited by any federal statute or regulation.
2. No person shall operate any model UAS or civil UAS within the City of Calabasas in a manner that interferes with manned aircraft, and any person operating a model UAS shall always give way to any manned aircraft.
3. No person shall takeoff, land or operate any model UAS or civil UAS within the City of Calabasas beyond the "visual line of sight" of the person operating the model UAS or civil UAS.
4. No person shall operate any model UAS or civil UAS within the City of Calabasas other than during daylight hours defined as between official sunrise and official sunset for local time, except that a person may operate a model UAS or civil UAS during periods of civil twilight if the UAS has lighted anti-collision lighting visible for at least three (3) statute miles. As used herein, "civil twilight" means a period of time that begins thirty (30) minutes before official sunrise and ends at official sunrise, and a period of time that begins at official sunset and ends thirty (30) minutes after official sunset.
5. No person shall operate any model UAS or civil UAS within the City of Calabasas more than four hundred (400) feet above the earth's surface, unless the UAS is both flown within a 400-foot radius of a structure and does not fly higher than four hundred (400) feet above the structure's immediate uppermost limit.
6. Excluding takeoff and landing, no person shall operate any model UAS or civil UAS within the City of Calabasas closer than twenty-five (25) feet to any individual, except the operator or the operator's helper(s).
7. No person shall takeoff or operate a model UAS or civil UAS on private property without the consent of the property owner.
8. No person shall takeoff, land or operate a model UAS or civil UAS over publicly permitted events without prior notification and authorization of the city.
9. No person shall takeoff, land or operate a model UAS or civil UAS within one thousand five hundred (1,500) horizontal feet of any manned or unmanned aircraft.
10. No person shall takeoff, land or operate a model UAS or civil UAS within five hundred (500) feet of any emergency vehicle that is operating with lights and/or sirens.
11. No person shall takeoff, land or operate a model UAS or civil UAS within five hundred (500) feet of any active law enforcement or emergency response incident.
12. No person shall takeoff, land or operate a model UAS or civil UAS within two hundred (200) feet of a school facility without prior notification and authorization of school officials.
13. No person shall takeoff, land or operate a model UAS or civil UAS within one hundred (100) feet of any public building or facility without prior notification, and authorization of the city.
14. No person shall operate a model UAS or civil UAS that has any type of weapon attached to it.
15. No person shall operate any model UAS or civil UAS within the City of Calabasas in violation of any temporary flight restriction (TFR) or notice to airmen (NOTAM) issued by the Federal Aviation Administration.
16. No person shall operate any model UAS or civil UAS within the City of Calabasas in a careless or reckless manner so as to endanger the life or property of another. The standard for what constitutes careless and reckless operation under this section shall be the same as the standard set forth in any federal statutes or regulations governing aeronautics including but not limited to Federal Aviation Rule 91.13.

(Ord. No. 2017-354, § 1, 12-13-2017)

CALABASAS

9.10.040 - Exemptions.

The provisions of this chapter shall not apply to any Public UAS, or UAS weighing less than 0.55 lbs.

(Ord. No. 2017-354, § 1, 12-13-2017)

9.10.050 - Violations; penalties.

Any person who violates any provision of this chapter is guilty of a misdemeanor punishable as provided in section 1.16.020A of this Code.

(Ord. No. 2017-354, § 1, 12-13-2017)

CHAPTER 20 - DRONE REGULATIONS

9.20.010 - Purpose and intent.

The purpose and intent of this chapter is to effectively regulate unmanned aircraft systems or drones within the City in order to promote the health, safety, and general welfare of City residents. The City seeks to implement appropriate regulations of drones pursuant to the City's police powers and its authority to issue regulations related to zoning, land use, privacy, trespass, and law enforcement operations. All regulations herein are intended to protect the health, safety, and welfare of the public and address specific areas of local municipal concern where a drone incident could cause harm and injury. It is not intended to restrict persons operating commercial drones in compliance with all applicable FAA rules and other applicable laws, or outside of prohibited areas. This chapter is not intended to preempt FAA rules, but to operate in conjunction with those rules to promote public safety and privacy while recognizing the limitations in the FAA's enforcement authority.

(Ord. No. 2020-1056, § 1, 2-24-2020)

9.20.020 - Definitions.

For purposes of this chapter, the following definitions shall apply, unless the context clearly indicates otherwise:

City Manager's designee means the City Manager or any agent of the City as designated by the City Manager.

Emergency responder shall mean any person engaged in providing emergency services who is an agent of the City, the County of Stanislaus, a public agency, a law enforcement agency, the fire department, or a public safety organization.

FAA means the Federal Aviation Administration.

Person shall mean and include any natural person, corporation, company, firm, association, organization, co-partnership, joint venture, trust, business trust, syndicate, estate, receiver, society, club, fraternal organization, any group or combination acting as a unit, and any officer, agent, employee, or servant of any of the foregoing.

Special event shall mean any event, assembly, or gathering held on public land or open-air facility, private property, or commercial or industrial facility that is open to the public and intended to attract people. This includes, but is not limited to, sporting events, concerts, festivals, farmer's markets, street faire, and other similar events.

Unmanned aircraft system or drone means an aircraft without a human pilot on board, that is controlled from an operator on the ground, and operates without the possibility of direct human intervention from within, or on, the aircraft.

Visual line of sight refers to the ability of a drone operator to have a direct, unaided, and unobstructed view of the operator's controlled drone. The use of vision-enhancing devices, such as binoculars, night vision goggles, powered vision magnifying devices, goggles, or other devices designed to provide a "first-person" view from the drone, do not constitute visual line of sight.

(Ord. No. 2020-1056, § 1, 2-24-2020)

9.20.030 - Operating requirements and restrictions.

No person shall operate any drone in a manner that is prohibited by any federal, State, or local regulations. The following shall apply to the operation of drones within the City:

- A. No person shall operate any drone in the City beyond the visual line of sight of the person operating the drone.
- B. No person shall operate any drone other than during daylight hours.
- C. No person shall operate any drone more than 400 feet above the earth's surface and no faster than 50 miles per hour unless written proof of authorization to do so is obtained from the FAA and is provided to the City and verified.
- D. Excluding takeoff and landing, no person shall operate any drone closer than 25 feet to any individual, except the operator or agents of the operator.
- E. No person shall operate any drone under the influence of alcohol, cannabis, or any other drug or intoxicating compound.
- F. No person shall operate any drone in a careless or reckless manner so as to endanger the life, safety, health, or welfare of another person or another person's property. The standard for what constitutes careless and reckless operation under this subsection shall be the same as the standard set forth in any federal statutes or regulations governing aeronautics including, but not limited to, Public Utilities Code section 21407 and Federal Aviation rule 91.13, 14 C.F.R. 91.13.
- G. No person shall operate any drone in a manner that violates an individual's reasonable expectation of privacy, as set forth by all applicable State laws, or record or transmit any visual image, sound recording, or other physical impression of any person or private real property located in the City under circumstances in which the subject person or owner of the subject real property has a reasonable expectation of privacy, including, but not limited to, inside the premises or curtilage of a private residence, office, or hotel room, or inside an enclosed yard or exterior deck.

- H. No person shall operate a drone in a manner that directly interferes with the lawful efforts of any emergency responder to respond to an emergency or to provide emergency services.
- I. No person shall operate any drone that contains, or has affixed or attached to it, hazardous materials, a weapon, a firearm, a bb device, an explosive, a device or container assembled for the purpose of causing an explosion, or any other item that may be used as a weapon.
- J. No person shall operate any drone in a way that interferes with manned aircraft, and the operator shall always yield to any manned aircraft.
- K. No person shall operate any drone within the City in violation of any temporary flight restriction or "Notice to Airmen" issued by the FAA.
- L. Excluding takeoff and landing, no person shall operate any drone less than 100 feet above any public street or sidewalk.
- M. No person shall operate any drone within 500 feet of any other privately-owned drone. No person shall operate any drone within 1,500 feet of any other publicly owned drone. Any person operating a drone shall remain clear of, and not interfere with, any manned aircraft operations. Any person operating a drone shall see and avoid other aircraft and obstacles at all times.
- N. No person shall operate any drone in a manner that interferes with a parade or motorcade.
- O. Any person who causes injury to another person while operating a drone shall comply with the following:
 - 1. The drone operator shall notify the City's Police Department of the injury within 24 hours of the incident.
 - 2. The drone operator shall give the operator's name and current residential address to the City's Police Department, and shall also present a valid and unexpired form of identification issued by a State government or the United States federal government.
 - 3. Each failure to report injury to another person as required by this Subsection shall constitute a separate violation of this chapter.
- P. Any person who causes damage to the property of another person while operating a drone shall comply with the following:
 - 1. The drone operator shall immediately locate and notify the owner or person in charge of the damaged property of the name and current residential address of the drone operator and of the owner of the drone involved. The drone operator shall also present a valid and unexpired form of identification issued by a State government or the

United States federal government.

2. In the event the owner or person in charge of the damaged property cannot reasonably be ascertained or located, the drone operator shall leave in a conspicuous place on the property damaged a written notice giving the name and current residential address of the drone operator and of the owner of the drone involved, as well as a statement of the circumstances of the incident resulting in the property damage. The drone operator must also provide this information to the City Police Department within 24 hours of the incident.
 3. Each failure to report an incident of property damage as required by this Subsection shall constitute a separate violation of this chapter.
- Q. The City Manager, the Chief of Police, the Fire Chief, or their respective designees may issue "No Fly" proclamations prohibiting drone operations as necessary to protect public safety. "No Fly" proclamations shall specify the locations, dates, and times that drone operations are prohibited and shall be posted on the City's website, at City Hall, and at the Police Department. drone operators are required to verify whether a "No Fly" proclamation is in effect prior to initiating drone operations. No fly proclamations may be imposed citywide or limited to certain areas and may be in effect for certain times or for certain dates in their entirety, as necessary to protect public safety. It is a violation to operate a drone during "No Fly" hours, or to fail to immediately cease drone operations after being notified by an agent of a public safety agency that a "No Fly" restriction is in effect.
- R. This chapter shall not prohibit the use of drones that both: (1) are flown in compliance with Section 336 of the federal Aviation Administration Modernization and Reform Act of 2012; and (2) do not transmit or record visual images or audio recordings of any person or real property located in the City without the person or property owner's written consent.

(Ord. No. 2020-1056, § 1, 2-24-2020)

9.20.040 - Protected sites.

- A. *Ports.* No person shall operate a drone within five miles of any airport or nautical facility, unless authorized by the chief administrator of the facility in writing.
- B. *Government buildings.* No person shall operate a drone within a 500-foot horizontal distance of any government building, unless authorized by the chief administrator of the building in writing.
- C. *City Hall.* No person shall operate a drone within a 500-foot horizontal distance of City Hall, unless authorized by the City Manager in writing.
- D. *Courts.* No person shall operate a drone within a 500-foot horizontal distance of any courthouse, unless authorized by the supervising judge of the courthouse in writing.

- E. *Jails*. No person shall operate a drone within a 500-foot horizontal distance of any jail or prison facility, unless authorized by the chief administrator of the jail or prison facility in writing.
- F. *Police station*. No person shall operate a drone within a 500-foot horizontal distance of any police station or structure, unless authorized by the Chief of Police in writing.
- G. *Sheriff station*. No person shall operate a drone within a 500-foot horizontal distance of any sheriff's station or structure, unless authorized by the Sheriff in writing.
- H. *Fire station*. No person shall operate a drone within a 500-foot horizontal distance of any fire station or structure, unless authorized by the Fire Chief in writing.
- I. *Schools*. No person shall operate a drone within a 500-foot horizontal distance of any school or school yard, while school is in session unless authorized by the principal or superintendent of the school in writing.
- J. *Public utility facilities*. No person shall operate a drone within the airspace above or within a 500-foot horizontal distance of any public utility facility, including, but not limited to, any water, sewage, or electric generating facility, without the authorization of the chief administrator of the facility in writing (and subject to any restrictions that the chief administrator of the facility may impose).
- K. *Communication and utility lines*. No person shall operate a drone within the airspace above, or within a 100-foot horizontal distance of any, cell tower, overhead wire, cable, conveyor, or similar equipment for the transmission of sounds, signal, heat, light, power, utility, or data, or upon or along any public way within the City, without the authorization of the owner or chief administrator of the equipment in writing (and subject to any restrictions that the owner or chief administrator of the equipment may impose).
- L. *Churches*. No person shall operate a drone within the airspace above any open-air assembly area, place of worship, or public building or facility, without the authorization of the chief administrator in (and subject to any restrictions that the chief administrator may impose).
- M. *Private property*. No person shall operate a drone within the airspace above any populated or developed private property, unless authorized by the property owner in writing. This Subsection shall not apply to persons on the premises who are engaging in activities protected by the Constitutions of the State of California or the United States of America, or to persons who are on the premises at the request of a resident or management and who are not loitering or otherwise violating any law or ordinance.
- N. *Special events*. No person shall operate a drone within a 500-foot horizontal distance of any Special Event in the City, unless authorized by the City Manager in writing.

(Ord. No. 2020-1056, § 1, 2-24-2020)

9.20.050 - Exemptions.

- A. The provisions of this chapter shall not apply to any drone that is used or operated by or on behalf of the City or any law enforcement, public safety, or government agency in compliance with all applicable federal, State, and local laws and policies.
- B. This chapter shall not apply to any drones used by the City or any City-contracted agent or agency engaging in City business, including, but not limited to: flight training, surveying and mapping property, inspecting infrastructure, monitoring traffic, or recording local events.

(Ord. No. 2020-1056, § 1, 2-24-2020)

9.20.060 - Commercial operations.

- A. In addition to the other requirements of this chapter, commercial drone operators must comply with all applicable FAA, federal, State, and local regulations while operating within the City.
- B. A business license must be obtained from the City before commencing any commercial drone activities within the City. If commercial drone activities involve operating in, or passing through, multiple jurisdictions, the commercial drone operator is responsible for paying the proportionate business license fees and taxes due to the City for the proportion of operations occurring within the limits of the City and its airspace.
- C. Commercial drone operators must submit a report to the City prior to commencing commercial drone operations. The report must include the intended flight plan, areas of operation, and the purpose of the commercial operations.

(Ord. No. 2020-1056, § 1, 2-24-2020)

9.20.070 - Enforcement.

- A. Any condition created, caused, committed, or maintained in violation of any provision of this chapter is hereby declared to be unlawful and a public nuisance.
- B. Any person who engages in a violation of this chapter, or who owns, possesses, manages, controls, or has charge of any drone in violation of this chapter, shall be subject to the penalties and remedies provided by this chapter.
- C. Any violation of this chapter shall constitute a separate offense for each and every day the violation occurs or persists.
- D. Any person in violation of any provision of this chapter may:
 - 1. Be guilty of a misdemeanor, punishable by imprisonment of up to six months in County jail, or by a fine not exceeding \$1,000.00, or by both; or
 - 2. Be punished by an administrative fine pursuant to title 19.

- E. Any intentional injury or property damage caused while operating a drone will be referred to the County District Attorney for criminal prosecution.
- F. Upon any violation of this chapter, the City Manager's Designee, any Emergency Responder, or any other law enforcement officer (collectively "Officer") shall be authorized to use reasonable force to cause the violating drone to land on the ground. Neither the City, nor the Officers involved, shall be liable for any damage to a drone caused by an Officer while enforcing this chapter.
- G. Neither the City, nor any Emergency Responders involved, shall be liable for any damage to a drone caused by the Emergency Responder while performing emergency services if such damage was reasonably necessary to ensure unhindered performance of emergency services.
- H. Any drone found to be operated in violation of this chapter may be impounded and held as evidence in any enforcement proceeding, including a proceeding brought under this chapter. Any impounded drone will be returned at the conclusion of any enforcement proceeding upon payment to the City of an impound fee established by City Council resolution.
- I. The expenses of seizing, eradicating, destroying, or taking remedial action with respect to any impounded drone shall be recoverable from the owner and operator of the drone. Proof of liability for any forfeiture petition under this chapter shall be by a preponderance of the evidence.
- J. These penalties and remedies are cumulative, and in addition to any other penalties and remedies available to the City.

(Ord. No. 2020-1056, § 1, 2-24-2020)

2.66.180 Operation of model airplanes and certain other vehicles prohibited.

Except in an area designated with signage by the Director of Public Works for that purpose, or authorized by permit from the Director of Recreation or their designees, it is unlawful to operate any model airplane, model car, go-cart, sky lanterns, fighting kites, drones or similar self-propelled device, toy or model within any City park or recreation area. (Ord. 3322 § 1, 2014; Ord. 2651 § 1, 1995; Ord. 1557 § 1, 1974; Ord. 1179 § 1 Art. 3; Ord. 857 § 2(L); prior code § 21.3.2(16)).

The Chula Vista Municipal Code is current through Ordinance 3539, passed December 6, 2022.

Disclaimer: The City Clerk's Office has the official version of the Chula Vista Municipal Code. Users should contact the City Clerk's office for ordinances passed subsequent to the ordinance cited above.

To be notified when additions, amendments, or revisions are made to the code, send your e-mail address to (be sure to add "Chula Vista Municipal Code" in the subject line) CPC@codepublishing.com.

City Website: www.chulavistaca.gov

Code Publishing Company

Chapter 9.40 - Regulation of Unmanned Aircraft Systems (UAS)

9.40.010 - Definitions.

For the purposes of this Chapter:

- A. "Unmanned Aircraft" shall mean an aircraft without a human pilot onboard, that is controlled by an operator on the ground, and is operated without the possibility of direct human intervention from within or on the aircraft.
- B. "Unmanned Aircraft System (UAS)" refers to any Unmanned Aircraft or drone and associated elements, including, but not limited to, any communication links and components that control the Unmanned Aircraft.
- C. "Civil UAS" refers to an Unmanned Aircraft or Unmanned Aircraft System operated for any purposes other than strictly hobby or recreational purpose, including, but not limited to, commercial purposes or in the furtherance of or incidental to, any business or media service or agency.
- D. "Model UAS" refers to any Unmanned Aircraft or Unmanned Aircraft System operated by any person for hobby or recreational purposes.
- E. "Public UAS" shall mean an Unmanned Aircraft or Unmanned Aircraft System operated by any public agency for government related purposes.
- F. "Operator" means the individual piloting the Unmanned Aircraft.
- G. "Operator's Assistants" means any individuals assisting with or piloting the Unmanned Aircraft with the Operator.
- H. "FAA" means the Federal Aviation Administration.
- I. "Emergency responder" means any first emergency responder including but not limited to law enforcement, firefighters, paramedics, or any emergency rescue service.
- J. "Animal" means any pet or wildlife.

(Ord. No. 963, §§ 1, 2, 5-18-2020)

9.40.020 - Operating Requirements.

The following shall apply to any Model UAS or Civil UAS operating in the City at a point lower than within 400 feet from ground level or 400 feet from the top of a structure:

No person shall operate (fly or launch) any UAS or Model Aircraft:

- A. No person shall operate any Model UAS or Civil UAS within the City in a manner that is prohibited by federal or state statute or regulation.

- B. No person shall operate any Civil UAS for commercial use within the City without a City-issued Operations Permit for Commercial Filming.
- C. No person shall takeoff, land or operate any Model UAS or Civil UAS within the airspace overlaying Seagrove Park, Powerhouse Park, Crest Ridge Park, the Scripps Bluffs Preserve, or a City beach (with the exception of over the ocean), without a City-issued Operations Permit.
- D. No person shall takeoff, land or operate any Model UAS or Civil UAS while under the influence of alcohol or any other drugs, intoxicating compound or any combination thereof.
- E. No person shall takeoff, land or operate any Model UAS or Civil UAS within four hundred (400) feet of any active law enforcement or emergency response incident in a manner that interferes with firefighting, police activity or other emergency response activity per California Penal Code Sections 148.2 and 402.
- F. Excluding takeoff and landing, no person shall operate any Model UAS or Civil UAS within 25 feet of any individual except the Operator and any of the Operator's Assistants.
- G. No person shall operate any Model UAS or Civil UAS in a careless or reckless manner that endangers the life or property of another.
- H. No person shall operate any Model UAS or Civil UAS in a manner that serves to harass, stalk, disturb, frighten, intimidate, injure, threaten, victimize or otherwise cause mental or emotional distress to any person or animal on public or private property, including the capturing, recording, or transmission of any images, audio recordings, or any live or recorded videos of any person with a reasonable expectation of privacy.
- I. No person shall operate any Model UAS or Civil UAS in the airspace above a school, during school hours or school events without prior written permission from school officials.
- J. Operation of any Model UAS or Civil UAS in the airspace of the Fairgrounds must adhere to the policies and regulations of the 22nd District Agricultural Association.
- K. No person shall operate any Model UAS or Civil UAS that contains, or has attached, any type of weapon or explosive device.
- L. No person shall operate any Model UAS or Civil UAS within the airspace of any City-owned facilities, including but not limited to, the Del Mar Civic Center, Public Works facilities and reservoirs, Powerhouse Community Center, Beach Safety Center, or any other public safety and/or law enforcement facility without prior written authorization from the City.
- M. No person shall takeoff, land, or operate any Model UAS or Civil UAS within four hundred (400) feet of any publicly permitted events without prior notification and authorization from the City.

9.40.030 - Exemptions.

- A. The provisions of section 9.40.020 do not apply to any UAS operated pursuant to and in compliance with the conditions of a valid film or special event permit issued by the City, or to any Public UAS.
- B. This chapter shall not apply to any Public UAS that is operated by the City in compliance with all federal laws, regulations and applicable City policies for purposes including, but not limited to:
 - 1. Search and rescue operations;
 - 2. Damage assessments;
 - 3. Law Enforcement purposes;
 - 4. Managing special events;
 - 5. Monitoring traffic;
 - 6. Situational awareness of critical incidents;
 - 7. Monitoring and managing wildfires;
 - 8. Training and support for all previously mentioned scenarios;
 - 9. Managing other City operations and Capital Investment Projects.

(Ord. No. 963, §§ 1, 2, 5-18-2020)

9.40.040 - Violations.

Enforcement of the provisions of this Title shall be accomplished in accordance with the procedures contained in Title 1 of this Code.

(Ord. No. 963, §§ 1, 2, 5-18-2020)

9.40.050 - Complaints of Violation.

Whenever a violation of this Chapter occurs or is alleged to have occurred, any person may file a complaint in regard thereto. All such complaints shall be in writing and signed by the complainant and shall fully state the location of the alleged violation, the cause of the complaint, and basis thereof. Upon receipt of a complaint, the enforcement officer shall cause an investigation of the alleged violation and take action thereon as provided by this Chapter.

(Ord. No. 963, §§ 1, 2, 5-18-2020)

Garden Grove, California Municipal Code

Title 8 PEACE, SAFETY AND MORALS

Chapter 8.90 DRONES AND UNMANNED AIRCRAFT SYSTEMS

8.90.010 Purpose and Findings

8.90.020 Definitions

8.90.030 Local Regulations of Unmanned Aircraft Systems

8.90.040 Prohibition Against Reckless Endangerment

8.90.050 Time, Place, and Manner Restrictions

8.90.060 Exemptions for Public UAS

8.90.010 Purpose and Findings

The operation of unmanned aircraft, commonly known as drones, can at times pose a hazard to full-scale aircraft in flight and to persons and property on the ground. Imposing community-based safety requirements and restrictions on the operation of unmanned aircraft that do not preempt federal aviation rules or authority, or state law, is necessary to mitigate such risks and to protect the public from the hazards associated with the operation of unmanned aircraft. (2879 § 1, 2017)

8.90.020 Definitions

For purposes of this chapter, the following definitions shall apply, unless another or a different meaning is clearly intended from the context in which the phrase or words are used:

"Unmanned Aircraft System (UAS)" means an aircraft without a human pilot onboard, that is controlled from an operator on the ground, and operates without the possibility of direct human intervention from within or on the aircraft.

"Drone" refers to any UAS.

"FAA" means the Federal Aviation Administration.

"Visual line of sight" means that the operator has an unobstructed view of the UAS. The operator must use his or her own natural vision (which includes vision corrected by standard eyeglasses or contact lenses) to observe the UAS. People other than the operator may not be used in lieu of the operator for maintaining visual line of sight. The use of vision-enhancing devices, such as binoculars, night vision goggles, powered vision magnifying devices, and goggles or other devices designed to provide a "first-person view" from the UAS do not constitute visual line of sight of the operator.

"Public UAS" means a UAS that is used or operated on behalf of any government agency that meets the qualifications as defined in Section 40102 of Title 49 of the United States Code to operate a public aircraft. (2879 § 1, 2017)

8.90.030 Local Regulations of Unmanned Aircraft Systems

- A. No person shall take off or land a UAS outside of the person's visual line of sight.
- B. No person shall take off or land a UAS within 25 feet of another individual, except the operator or the operator's designee.
- C. No person shall take off or operate a UAS on private property without the consent of the property owner.
- D. No person shall take off or land UAS over permitted public events unless granted written or electronic permission by the City.
- E. No person shall take off or land a UAS within 1500 horizontal feet of any aircraft.
- F. No person shall take off or land a UAS that has any type of weapon attached to it. (2879 § 1, 2017)

8.90.040 Prohibition Against Reckless Endangerment

No person shall take off or land a UAS in a reckless manner so as to create a substantial risk of serious physical injury to any person or substantial risk of damage to the property of another. (2879 § 1, 2017)

8.90.050 Time, Place, and Manner Restrictions

- A. No person shall take off or land a UAS within 500 feet of any emergency vehicle that is operating with lights and/or sirens.
- B. No person shall take off or land a UAS within 500 feet of any active law enforcement or emergency response incident.
- C. No person shall take off or land a UAS in violation of any Temporary Flight Restriction or Notice to Airmen issued by the FAA.
- D. No person shall take off or land a UAS within 100 feet of a school facility without prior notification and authorization of school officials.

E. No person shall take off or land a UAS within 500 feet of any county or city owned jails, holding facilities, law enforcement facility, or within 100 feet of any public building or facility without prior notification and authorization of the City. (2879 § 1, 2017)

8.90.060 Exemptions for Public UAS

The regulations in this chapter shall not apply to any public UAS or to any UAS weighing less than 0.55 lbs. (2879 § 1, 2017)

Contact:

City Clerk: 714-741-5040

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Chapter 9.38

DRONES, UNMANNED AIRCRAFT AND MODEL AIRCRAFT

Sections:

9.38.010 Purpose and findings.

9.38.020 Definitions.

9.38.030 Operating permit required.

9.38.040 Operating requirements and restrictions.

9.38.050 Violations.

9.38.060 Exemptions.

9.38.010 Purpose and findings. [SHARE](#)

The operation of unmanned aircraft such as model aircraft and civil unmanned aircraft systems ("UAS"), commonly known as drones, can at times pose a hazard to full-scale aircraft in flight and to persons and property on the ground. Imposing community-based safety requirements on the operation of model aircraft and imposing restrictions on the operation of both model aircraft and civil UASs consistent with federal aviation rules and state law is necessary to mitigate such risks and to protect the public from the hazards associated with the operation of unmanned aircraft. (Ord. 16-1363 §1 (part), 2016)

9.38.020 Definitions. [SHARE](#)

The following words, phrases and terms as used in this chapter shall have the meanings indicated as follows:

"Civil UAS" shall mean an unmanned aircraft or unmanned aircraft system operated by any person for any purposes other than strictly hobby or recreational purposes, including, but not limited to, commercial purposes or in furtherance of, or incidental to, any business or media service or agency.

"Model aircraft" shall mean an unmanned aircraft or unmanned aircraft system operated by any person strictly for hobby or recreational purposes.

"Person" shall mean any individual, partnership, corporation, or joint venture.

"Public UAS" shall mean an unmanned aircraft or unmanned aircraft system operated by any public agency for government related purposes.

"Unmanned aircraft" shall mean an aircraft, including, but not limited to, an aircraft commonly known as a drone, that is operated without the possibility of direct human intervention from within or on the aircraft.

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"Unmanned aircraft system" shall mean an unmanned aircraft and associated elements, including, but not limited to, any communication links and components that control the unmanned aircraft. (Ord. 16-1363 §1 (part), 2016)

9.38.030 Operating permit required. SHARE

A. Generally. An operating permit shall be required for every unmanned aircraft and unmanned aircraft system operated in the city. No person shall operate an unmanned aircraft or unmanned aircraft system in the city without first obtaining an operating permit and obtaining an identification number assigned by the city and submission of a copy of the certificate of aircraft registration/proof of ownership issued by the Federal Aviation Administration.

B. Applications. An application for a UAS operating permit shall be on a form provided by the city and show:

1. Name and phone number of the operator;
2. Make, model and serial or N-number of UAS to be permitted;
3. A description of proposed flight activity, including whether filming, taking of visual images and/or sound recording will occur;
4. Copy of certificate of aircraft registration/proof of ownership issued by the Federal Aviation Administration;
5. A signed statement certifying that the applicant knows how to operate the UAS and is aware of and agrees to operate it in full compliance with its operating instructions and with the provisions of this chapter and any other federal or state laws governing its operations;
6. A signed statement acknowledging that only the applicant may operate the UAS in the city;
7. A signed indemnification clause protecting the city from liability;
8. Such other information as may be requested by the city; and
9. Payment of an application filing fee in an amount as set forth in the city's master fee resolution. The filing fee for a UAS found to be operating in the city without a permit shall be tripled.

C. Placement. The permit sticker and identification number shall be placed on the body of the unmanned aircraft or unmanned aircraft system in a conspicuous location on the earth-facing surface of the device and in a manner clearly visible from the ground. Placement of stickers shall be subject to approval of the city or performed by the city.

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D. Issuance of Permit. The permit will include a copy of the operating rules set forth in this chapter. Permits will be issued for a period of one (1) year and may be renewed annually upon filing of a renewal application and payment of a renewal fee as set forth in the city's master fee resolution. A permit shall not be issued if the applicant is found to have operated the UAS in violation of Section 9.38.040 or renewed if grounds exist for revocation.

E. Assignment. The permit is not assignable. No person other than the applicant may operate the UAS within the city.

F. Revocation. The permit may be suspended or revoked if the city manager, or his/her designee finds based on a preponderance of the evidence, after the permittee is afforded notice and an opportunity to be heard, that the permittee has violated any provision of this chapter. A decision by the city manager may be appealed to the city council; the decision of the council shall be final. (Ord. 16-1363 §1 (part), 2016)

9.38.040 Operating requirements and restrictions. [SHARE](#)

A. No person shall operate any model aircraft or civil UAS within the city in a manner that interferes with manned aircraft, and model aircraft shall always give way to any manned aircraft.

B. No person shall operate any model aircraft within the city beyond the visual line of sight of the person operating the model aircraft. The operator must use his or her own natural vision (which includes vision corrected by standard eyeglasses or contact lenses) to observe the model aircraft. People other than the operator may not be used in lieu of the operator for maintaining visual line of sight. Visual line of sight means that the operator has an unobstructed view of the model aircraft. The use of vision-enhancing devices, such as binoculars, night vision goggles, powered vision magnifying devices, and goggles or other devices designed to provide a "first-person view" from the model, do not constitute the visual line of sight of the person operating the model aircraft.

C. No person shall operate any model aircraft or civil UAS within the city other than during daylight hours defined as between official sunrise and official sunset for local time, unless proof of authorization to do so by the Federal Aviation Administration is provided to the city.

D. No person shall operate any model aircraft within the city more than four hundred (400) feet above the earth's surface, unless proof of authorization to do so by the Federal Aviation Administration is provided to the city.

E. Excluding takeoff and landing, no person shall operate any model aircraft or civil UAS within the city closer than twenty-five (25) feet to any individual, except the operator or the operator's helper(s).

F. No person shall operate any model aircraft or civil UAS within the city in a manner that is prohibited by any federal or state statute or regulation governing aeronautics, including but not limited to Public Utilities Code Section 24107 and Federal Aviation Rule 91.13.

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G. No person shall operate any model aircraft or civil UAS within the city in violation of any temporary flight restriction or notice to airmen issued by the Federal Aviation Administration.

H. No person shall operate any model aircraft or civil UAS within the city to capture, record or transmit any visual image or audio recording of any person or private real property located in the city under circumstances in which the subject person or owner of the subject real property has a reasonable expectation of privacy (including, but not limited to, inside a private office and inside a hotel room). This provision is intended to supplement, rather than duplicate, the prohibition against trespassing into the air space above the land of another person in order to capture any type of visual image or sound recording of a person engaging in a private, personal, or familial activity in a manner that is offensive to a reasonable person, pursuant to California Civil Code Section 1708.8.

I. Unless authorized by federal law, no person shall knowingly and intentionally operate any model aircraft or civil UAS on the grounds of, or less than three hundred fifty (350) feet above ground level within the airspace overlaying, a public school in the city providing instruction in kindergarten or grades one (1) to twelve (12), inclusive, during school hours and without the written permission of the school principal or higher authority, or his or her designee, or equivalent school authority.

J. Unless authorized by federal law, no person shall knowingly and intentionally use any model aircraft or civil UAS to capture images of public school grounds in the city providing instruction in kindergarten or grades one (1) to twelve (12), inclusive, during school hours and without the written permission of the school principal or higher authority, or his or her designee, or equivalent school authority.

K. No person shall operate any model aircraft or civil UAS in a manner that interferes with firefighting, police activity or emergency response activity as detailed in California Penal Code Sections 148.2 and 402.

L. No person shall operate any model aircraft or civil UAS within the airspace overlaying the civic center complex or a city park or the beach during a scheduled special event unless authorized to do so in the special event permit.

M. No person shall operate any model aircraft or civil UAS within the city in a manner designed, intended or which serves to harass, stalk, vex, annoy, disturb, frighten, intimidate, injure, threaten, victimize or place in extreme mental or emotional distress any particular person, whether that person is located on public or private property. The conduct described in this subsection includes, but is not limited to, using a model aircraft or civil UAS to follow and film, video-record, live-stream or photograph a person who has not consented to such activity. (Ord. 16-1363 §1 (part), 2016)

9.38.050 Violations. SHARE

It shall be unlawful for any person to violate or fail to comply with this chapter. Any person violating the provisions of this chapter shall be guilty of a misdemeanor and subject to the

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provisions of Chapter 1.04. Any UAS or model aircraft found to be operated in violation of this chapter may be impounded and held as evidence in any enforcement proceeding brought under this chapter. An impounded UAS or model aircraft will be returned at the conclusion of any enforcement proceeding upon payment to the city of an impound fee as set forth in the city's master fee resolution. (Ord. 16-1363 §1 (part), 2016)

9.38.060 Exemptions. [SHARE](#)

The permit requirement set forth in Section 9.38.030 shall not apply to any civil UAS operated pursuant to and in compliance with the terms and conditions of a valid city-issued film permit or special event permit with Federal Aviation Administration authorization or any public UAS operated pursuant to, and in compliance with, the terms and conditions of any current and enforceable authorization granted by the Federal Aviation Administration. (Ord. 16-1363 §1 (part), 2016)

CHAPTER 105: DRONE REGULATIONS

Section

- 105.01 Purpose and Intent
- 105.02 Definitions
- 105.03 Operating Requirements and Restrictions
- 105.04 Protected Sites
- 105.05 Exemptions
- 105.06 Commercial Operations
- 105.07 Enforcement

§ 105.01 PURPOSE AND INTENT.

The purpose and intent of this Chapter is to effectively regulate Unmanned Aircraft Systems ("Drones") within the City in order to promote the health, safety, and general welfare of City residents. The City seeks to implement appropriate regulations of Drones pursuant to the City's police powers and its authority to issue regulations related to zoning, land use, privacy, trespass, and law enforcement operations. All regulations herein are intended to protect the health, safety, and welfare of the public and address specific areas of local municipal concern where a Drone incident could cause harm and injury. It is not intended to restrict persons operating commercial Drones in compliance with all applicable FAA rules and other applicable laws, or outside of prohibited areas. This Chapter is not intended to preempt FAA rules, but to operate in conjunction with those rules to promote public safety and privacy while recognizing the limitations in the FAA's enforcement authority.

(Ord. 1731, passed 3-7-18)

§ 105.02 DEFINITIONS.

For purposes of this Chapter, the following definitions shall apply, unless the context clearly indicates otherwise:

(A) "**CITY MANAGER'S DESIGNEE**" means the City Manager or any agent of the City as designated by the City Manager.

(B) "**EMERGENCY RESPONDER**" shall mean any person engaged in providing emergency services who is an agent of the City, the County of Riverside, a public agency, a law enforcement agency, the fire department, or a public safety organization.

(C) "**FAA**" means the Federal Aviation Administration.

(D) "**PERSON**" shall mean and include any natural person, corporation, company, firm, association, organization, co-partnership, joint venture, trust, business trust, syndicate, estate, receiver, society, club, fraternal organization, any group or combination acting as a unit, and any officer, agent, employee, or servant of any of the foregoing.

(E) "**SPECIAL EVENT**" shall mean any event, assembly, or gathering held on public land or open-air facility, private property, or commercial or industrial facility that is open to the public and intended to

attract people. This includes, but is not limited to, sporting events, concerts, festivals, farmer's markets, and other similar events.

(F) "**UNMANNED AIRCRAFT SYSTEM**" or "**DRONE**" means an aircraft without a human pilot on board, that is controlled from an operator on the ground, and operates without the possibility of direct human intervention from within, or on, the aircraft.

(G) "**VISUAL LINE OF SIGHT**" refers to the ability of a Drone operator to have a direct, unaided, and unobstructed view of the operator's controlled Drone. The use of vision-enhancing devices, such as binoculars, night vision goggles, powered vision magnifying devices, goggles, or other devices designed to provide a "first-person" view from the Drone, do not constitute Visual Line of Sight.

(Ord. 1731, passed 3-7-18)

§ 105.03 OPERATING REQUIREMENTS AND RESTRICTIONS.

No person shall operate any Drone in a manner that is prohibited by any federal, State, or local regulations. The following shall apply to the operation of Drones within the City:

(A) No person shall operate any Drone in the City beyond the Visual Line of Sight of the person operating the Drone.

(B) No person shall operate any Drone other than during daylight hours.

(C) No person shall operate any Drone more than 400 feet above the earth's surface and no faster than 50 miles per hour unless written proof of authorization to do so by the FAA is provided to the City and verified.

(D) Excluding takeoff and landing, no person shall operate any Drone closer than 25 feet to any individual, except the operator or agents of the operator.

(E) No person shall operate any Drone under the influence of alcohol, marijuana, or any other drug or intoxicating compound.

(F) No person shall operate any Drone in a careless or reckless manner so as to endanger the life, safety, health, or welfare of another person or another person's property. The standard for what constitutes careless and reckless operation under this Subsection shall be the same as the standard set forth in any federal statutes or regulations governing aeronautics including, but not limited to, Public Utilities Code section 21407 and Federal Aviation rule 91.13, 14 C.F.R. § 91.13.

(G) No person shall operate any Drone in a manner that violates an individual's reasonable expectation of privacy, as set forth by all applicable State laws, or record or transmit any visual image, sound recording, or other physical impression of any person or private real property located in the City under circumstances in which the subject person or owner of the subject real property has a reasonable expectation of privacy, including, but not limited to, inside the premises or curtilage of a private residence, office, or hotel room, or inside an enclosed yard or exterior deck.

(H) No person shall operate a Drone in a manner that directly interferes with the lawful efforts of any Emergency Responder to respond to or provide emergency services.

(I) No person shall operate any Drone that contains, or has affixed or attached to it, hazardous materials, a weapon, a firearm, a bb device, an explosive, a device or container assembled for the purpose of causing an explosion, or any other item that may be used as a weapon.

(J) No person shall operate any Drone in a way that interferes with manned aircraft, and the operator shall always yield to any manned aircraft.

(K) No person shall operate any Drone within the City in violation of any temporary flight restriction or "Notice to Airmen" issued by the FAA.

(L) No person shall operate any Drone less than 100 feet above any public street or sidewalk.

(M) No person shall operate any Drone within 500 feet of any other privately-owned Drone. No person shall operate any Drone within 1,500 feet of any other publicly-owned Drone. Any person operating a Drone shall remain clear of, and not interfere with, any manned aircraft operations. Any person operating a Drone shall see and avoid other aircraft and obstacles at all times.

(N) No person shall operate any Drone in a manner that interferes with a parade or motorcade.

(O) Any person who causes injury to another person while operating a Drone shall comply with the following:

(1) The operator shall notify the City's Police Department of the injury within 24 hours of the incident.

(2) The operator shall give the operator's name and current residential address to the City's Police Department, and shall also present a valid and unexpired form of identification issued by a State government or the United States federal government.

(3) The operator shall render to any person injured during the incident reasonable assistance, including transporting, or making arrangements for transporting, any injured person to a physician, surgeon, or hospital for medical or surgical treatment if it is apparent that treatment is necessary or if that transportation is requested by any injured person.

(4) Each failure to report injury to another person as required by this Subsection shall constitute a separate violation of this Chapter.

(P) Any person who causes damage to the property of another person while operating a Drone shall comply with the following:

(1) The operator shall immediately locate and notify the owner or person in charge of the damaged property of the name and current residential address of the operator and of the owner of the Drone involved. The operator shall also present a valid and unexpired form of identification issued by a State government or the United States federal government. The operator shall determine the value of the damage and pay restitution to the damaged party. If the value of the damage to the property involved exceeds \$1,000, the operator shall notify the City's Police Department within 24 hours of determining, or being informed of, the value of the damage.

(2) In the event the owner or person in charge of the damaged property cannot reasonably be ascertained or located, the operator shall leave in a conspicuous place on the property damaged a written notice giving the name and current residential address of the operator and of the owner of the Drone involved, as well as a statement of the circumstances of the incident resulting in the property damage. The operator must also provide this information to the City's Police Department within 24 hours of the incident.

(3) Each failure to report an incident of property damage as required by this Subsection shall constitute a separate violation of this Chapter.

(Q) The City Manager, the Chief of Police, the Fire Chief, or their respective designees may issue "No Fly" proclamations prohibiting Drone operations as necessary to protect public safety. No Fly proclamations shall specify the locations, dates, and times that Drone operations are prohibited and shall be posted on the City's website, at City Hall, and at the Police Department. Drone operators are required to verify whether a No Fly proclamation is in effect prior to initiating Drone operations. No Fly proclamations may be imposed citywide or limited to certain areas and may be in effect for certain times or for certain dates in their entirety, as necessary to protect public safety. It is a violation to operate a Drone during No Fly hours, or to fail to immediately cease Drone operations after being notified by an agent of a public safety agency that a No Fly restriction is in effect.

(R) This Chapter shall not prohibit the use of Drones that both: (1) are flown in compliance with Section 336 of the Federal Aviation Administration Modernization and Reform Act of 2012; and (2) do not transmit or record visual images or audio recordings of any person or real property located in the City without the person or property owner's written consent.

(Ord. 1731, passed 3-7-18)

§ 105.04 PROTECTED SITES.

(A) *Ports.* No person shall operate a Drone within 5 miles of any airport or nautical facility, unless authorized by the chief administrator of the facility in writing.

(B) *Government Buildings.* No person shall operate a Drone within a 500-foot horizontal distance of any government building, unless authorized by the chief administrator of the building in writing.

(C) *City Hall.* No person shall operate a Drone within a 500-foot horizontal distance of City Hall, unless authorized by the City Manager in writing.

(D) *Courts.* No person shall operate a Drone within a 500-foot horizontal distance of any courthouse, unless authorized by the supervising judge of the courthouse in writing.

(E) *Jails.* No person shall operate a Drone within a 500-foot horizontal distance of any jail or prison facility, unless authorized by the chief administrator of the jail or prison facility in writing.

(F) *Police Station.* No person shall operate a Drone within a 500-foot horizontal distance of any police station or structure, unless authorized by the Chief of Police in writing.

(G) *Sheriff Station.* No person shall operate a Drone within a 500-foot horizontal distance of any sheriff's station or structure, unless authorized by the Sheriff in writing.

(H) *Fire Station.* No person shall operate a Drone within a 500-foot horizontal distance of any fire station or structure, unless authorized by the Fire Chief in writing.

(I) *Schools.* No person shall operate a Drone within a 500-foot horizontal distance of any school or school yard, unless authorized by the principal or superintendent of the school in writing.

(J) *Public Utility Facilities.* No person shall operate a Drone within the airspace above or within a 500-foot horizontal distance of any public utility facility, including, but not limited to, any water, sewage, or electric generating facility, without the authorization of the chief administrator of the facility in writing (and subject to any restrictions that the chief administrator of the facility may impose).

(K) *Communication and Utility Lines.* No person shall operate a Drone within the airspace above, or within a 100-foot horizontal distance of any, cell tower, overhead wire, cable, conveyor, or similar equipment for the transmission of sounds, signal, heat, light, power, utility, or data, or upon or along any public way within the City, without the authorization of the owner or chief administrator of the equipment in writing (and subject to any restrictions that the owner or chief administrator of the equipment may impose).

(L) *Churches.* No person shall operate a Drone within the airspace above any open-air assembly area, place of worship, or public building or facility, without the authorization of the chief administrator in (and subject to any restrictions that the chief administrator may impose).

(M) *Private Property.* No person shall operate a Drone within the airspace above any populated or developed private property, unless authorized by the property owner in writing. This Subsection shall not apply to persons on the premises who are engaging in activities protected by the Constitutions of the State of California or the United States of America, or to persons who are on the premises at the request of a resident or management and who are not loitering or otherwise violating any law or ordinance.

(N) *Special Events*. No person shall operate a Drone within a 500-foot horizontal distance of any Special Event in the City, unless authorized by the City Manager in writing.

(Ord. 1731, passed 3-7-18)

§ 105.05 EXEMPTIONS.

(A) The provisions of this Chapter shall not apply to any Drone that is used or operated on behalf of the City or any law enforcement, public safety, or government agency in compliance with all applicable federal, State, and local laws and policies.

(B) This Chapter shall not apply to any Drones used by the City or any City-contracted agent or agency engaging in City business, including, but not limited to, surveying and mapping property, inspecting infrastructure, monitoring traffic, or recording local events.

(Ord. 1731, passed 3-7-18)

§ 105.06 COMMERCIAL OPERATIONS.

(A) In addition to the other requirements of this Chapter, commercial Drone operators must comply with all applicable FAA, federal, State, and local regulations while operating within the City.

(B) A business license must be obtained from the City before commencing any commercial Drone activities within the City. If commercial Drone activities involve operating in, or passing through, multiple jurisdictions, the commercial Drone operator is responsible for paying the proportionate business license fees and taxes due to the City for the proportion of operations occurring within the limits of the City and its airspace.

(C) Commercial Drone operators must submit a report to the City prior to commencing commercial Drone operations. The report must include the intended flight plan, areas of operation, and the purpose of the commercial operations.

(Ord. 1731, passed 3-7-18)

§ 105.07 ENFORCEMENT.

(A) Any condition created, caused, committed, or maintained in violation of any provision of this Chapter is hereby declared to be unlawful and a public nuisance.

(B) Any party who engages in a violation of this Chapter, or who owns, possesses, manages, controls, or has charge of any Drone in violation of this Chapter, shall be subject to the penalties and remedies provided by this Chapter.

(C) Any violation of this Chapter shall constitute a separate offense for each and every day the violation occurs or persists.

(D) Any person in violation of any provision of this Chapter shall be guilty of a misdemeanor and shall be punishable by a fine of up to \$1,000 and by imprisonment of up to six months per offense per day.

(E) Any person in violation of any provision of this Chapter shall be punishable by an administrative fine of up to \$1,000 per offense per day.

(F) Any intentional injury or property damage caused while operating a Drone shall constitute a crime.

(G) Upon any violation of this Chapter, the City Manager's Designee, any Emergency Responder, or any other law enforcement officer (collectively "Officer") shall be authorized to use reasonable force

to cause the violating Drone to land on the ground. Neither the City, nor the Officers involved, shall be liable for any damage to a Drone caused by an Officer while enforcing this Chapter.

(H) Neither the City, nor any Emergency Responders involved, shall be liable for any damage to a Drone caused by the Emergency Responder while performing emergency services if such damage was reasonably necessary to ensure unhindered performance of emergency services.

(I) Any Drone found to be operated in violation of this Chapter may be impounded and held as evidence in any enforcement proceeding, including a proceeding brought under this Chapter. Any impounded Drone will be returned at the conclusion of any enforcement proceeding upon payment to the City of an impound fee as set forth by separate resolution.

(J) The expenses of seizing, eradicating, destroying, or taking remedial action with respect to any impounded Drone shall be recoverable from the owner and operator of the Drone. Proof of liability for any forfeiture petition under this Chapter shall be by a preponderance of the evidence.

(K) These penalties and remedies are cumulative, and in addition to any other penalties and remedies available to the City.

(Ord. 1731, passed 3-7-18)

2/15/23, 11:09 AM

La Mesa, CA Code of Ordinances

9.08.150 - Model aircraft prohibited.

No individual or group of individuals shall fly or operate any type of model aircraft, including rockets, whether motorized or nonmotorized, with or without remote control in any city park, except for rubberband-powered aircraft, or a hand-launched, nonremote-controlled model glider, each weighing three ounces or less.

(Ord. 2005-2760 § 5 (Exh. 5); September 27, 2005)

9.08.160 - Penalty.

It shall be unlawful for any person to violate any provision of this chapter. A violation of any of the provisions or failing to comply with any mandatory requirements of this chapter shall constitute an infraction and shall be subject to the provisions of the general penalty clause as set out in Section 1.01.080 of the code of the city of La Mesa, except as provided in Section 1.01.130 of this code.

(Ord. 2005-2760 § 5 (Exh. 5); September 27, 2005)

Lake Forest, California Municipal Code

Title 11 PEACE AND SAFETY

Division IX. Unmanned Aircraft System

Chapter 11.68 UNMANNED AIRCRAFT SYSTEM

11.68.010 Purpose and findings.

11.68.020 Definitions.

11.68.030 Local regulations of UAS.

11.68.040 No reckless endangerment.

11.68.050 Time, place, and manner restrictions.

11.68.060 Exemptions.

11.68.010 Purpose and findings.

The operation of unmanned aircraft (UAS), commonly known as drones, can at times pose a hazard to full-scale aircraft in flight and to persons and property on the ground. Imposing community-based safety requirements and restrictions on the operation of UAS that do not preempt federal aviation rules or authority, or state law, is necessary to mitigate such risks and to protect the public from the hazards associated with the operation of UAS. (Ord. 303 § 3, 2018)

11.68.020 Definitions.

For the purposes of this chapter, the following words and phrases shall have the meaning set forth, unless another or different meaning is clearly intended from the context in which the phrase or words are used.

"Drone" refers to any UAS.

"FAA" means the Federal Aviation Administration.

"Person" means any individual, partnership, corporation, or joint venture.

"Public UAS" means a UAS that is used or operated on behalf of any government agency that meets the qualifications as defined in Section 40102 of Title 49 of the United States Code to operate a public aircraft.

"Unmanned aircraft system (UAS)" means an aircraft without a human pilot onboard, that is controlled from an operator on the ground, and operates without the possibility of direct human intervention from within or on the aircraft.

"Weapon" means any instrument, article or substance that, under the circumstances in which it is used, attempted to be used or threatened to be used, is readily capable of causing death or serious physical injury. (Ord. 303 § 3, 2018)

11.68.030 Local regulations of UAS.

A. No person shall takeoff or land a UAS within twenty-five (25) feet of another individual, except the operator or the operator's designee.

B. No person shall takeoff or land a UAS on private property without the consent of the property owner.

C. No person shall takeoff or land a UAS during permitted public events unless granted written or electronic permission by the City.

D. No person shall takeoff or land a UAS within one thousand five hundred (1,500) horizontal feet of any aircraft.

E. No person shall takeoff or land a UAS that has any type of weapon attached to it. (Ord. 303 § 3, 2018)

11.68.040 No reckless endangerment.

No person shall takeoff or land a UAS in a reckless manner so as to create a substantial risk of serious physical injury to any person or substantial risk of damage to the property of another. (Ord. 303 § 3, 2018)

11.68.050 Time, place, and manner restrictions.

A. No person shall takeoff or land a UAS within five hundred (500) feet of any emergency vehicle that is operating with lights and/or sirens.

B. No person shall takeoff or land a UAS within five hundred (500) feet of any active law enforcement or emergency response incident.

C. No person shall takeoff or land a UAS in violation of any temporary flight restriction or notice to airmen issued by the FAA.

D. No person shall takeoff or land a UAS within one hundred (100) feet of a school facility without prior notification and authorization of school officials.

E. No person shall takeoff or land a UAS within five hundred (500) feet of any county or city owned jails, holding facilities, law enforcement facility, or within one hundred (100) feet of any designated publicly owned building chosen by the city.

F. No person shall operate a UAS over any public school or its related facilities during school hours. UASs may only be operated over public schools or their related facilities before or after school hours, on weekends, and during school-recognized holidays and closures. During times when UASs are operated over public schools and their related facilities, UASs shall not be equipped with a camera or any video recording device. (Ord. 303 § 3, 2018)

11.68.060 Exemptions.

- A. This chapter shall not apply to any public UAS.
- B. This chapter shall not apply to any UAS weighing less than 0.55 lbs. (Ord. 303 § 3, 2018)

Contact:

City Clerk: 949-461-3420

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16.08.390 - Aircraft.

No person shall land, take off, or operate any aircraft on the waters of the marinas.

(Ord. C-5625 § 4 (part), 1980; prior code § 7222.4)

16.12.250 - Aircraft.

No person shall land on, take off from, or operate any aircraft on the waters of the near shore ocean area.

(Ord. C-5625 § 6 (part), 1980; prior code § 7231.13)

Los Alamitos, California Municipal Code

Title 8 HEALTH AND SAFETY

Chapter 8.52 UNMANNED AIRCRAFT SYSTEMS

8.52.010 Purpose.

8.52.020 Definitions.

8.52.030 Local regulations of UAS.

8.52.040 No reckless endangerment.

8.52.050 Time, place, and manner restrictions.

8.52.060 Exemptions.

8.52.070 Violations—Penalties.

8.52.010 Purpose.

The purpose of this chapter is to provide regulations which will maintain the quality of life to residents, businesses, and visitors, through education and enforcement of unmanned aircraft system (UAS) operation within the city limits. (Ord. 2017-11 § 1, 2017)

8.52.020 Definitions.

For the purpose of this chapter, the following words and phrases shall have the meanings set forth below, unless another or different meaning is clearly intended from the context in which the phrase or words are used.

"Drone" refers to any UAS.

"FAA" means the Federal Aviation Administration.

"Person" means any individual, partnership, corporation, or joint venture, including those set forth in Title 1, Chapter 1.24 of the Los Alamitos Municipal Code.

"Public UAS" means a UAS that is used or operated on behalf of any government agency that meets the qualifications as defined in Section 40102 of Title 49 of the United States Code to operate a public aircraft.

"Unmanned aircraft system (UAS)" shall mean an aircraft, without a human pilot on board, that is controlled from an operator on the ground, to include, but not be limited to, any communication links and components that control the UA, and operates without the possibility of direct human intervention from within or on the aircraft.

"Visual line of sight" means that the operator has an unobstructed view of the UAS. The operator must use his or her own natural vision (which includes vision corrected by standard eyeglasses or contact lenses) to observe the UAS. People other than the operator may not be used in lieu of the operator for maintaining visual line of sight. The use of vision-enhancing devices, such as binoculars, night vision goggles, powered vision magnifying devices, and goggles or other devices designed to provide a "first-person view" from the UAS do not constitute visual line of sight of the operator. (Ord. 2017-11 § 1, 2017)

8.52.030 Local regulations of UAS.

- A. No person shall takeoff or land a UAS outside of the person's visual line of sight.
- B. No person shall takeoff or land a UAS within twenty-five (25) feet of another individual, except the operator or the operator's designee.
- C. No person shall takeoff or land a UAS on private property without the consent of the property owner.
- D. No person shall takeoff or land a UAS during permitted public events unless granted written or electronic permission by the city.
- E. No person shall takeoff or land a UAS within one thousand five hundred (1,500) horizontal feet of any aircraft.
- F. No person shall takeoff or land a UAS that has any type of weapon attached to it. (Ord. 2017-11 § 1, 2017)

8.52.040 No reckless endangerment.

No person shall takeoff or land a UAS in a reckless manner so as to create a substantial risk of serious physical injury to any person or substantial risk of damage to the property of another. (Ord. 2017-11 § 1, 2017)

8.52.050 Time, place, and manner restrictions.

- A. No person shall takeoff or land a UAS within five hundred (500) feet of any emergency vehicle that is operating with lights and/or sirens.
- B. No person shall takeoff or land a UAS within five hundred (500) feet of any active law enforcement or emergency response incident.
- C. No person shall takeoff or land a UAS in violation of any temporary flight restriction or notice to airmen issued by the FAA.
- D. No person shall takeoff or land a UAS within one hundred (100) feet of a school facility without prior notification and authorization of school officials.
- E. No person shall takeoff or land a UAS within five hundred (500) feet of any county or city owned jails, holding facilities, law enforcement facility, or within one hundred (100) feet of any designated publicly owned building chosen by the city. (Ord. 2017-11 § 1, 2017)

8.52.060 Exemptions.

- A. This chapter shall not apply to any publicly owned UAS.
- B. This chapter shall not apply to any UAS weighing less than 0.55 pounds. (Ord. 2017-11 § 1, 2017)

8.52.070 Violations—Penalties.

- A. Any violation of the provisions of this chapter shall be a misdemeanor.
- B. All violations of the Code of Federal Regulations defined in Title 14 C.F.R. Part 101 and Title 14 C.F.R. Part 107 will be reported to the Federal Aviation Administration (FAA). (Ord. 2017-11 § 1, 2017)

Contact:

City Clerk: 562-431-3538

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SEC. 56.31. UNMANNED AIRCRAFT SYSTEMS.
(Added by Ord. No. 183,912, Eff. 12/2/15.)

(a) For purposes of this section:

1. **"Unmanned Aircraft"** shall mean an aircraft, including, but not limited to, an aircraft commonly known as a drone, that is operated without the possibility of direct human intervention from within or on the aircraft.
2. **"Unmanned Aircraft System"** shall mean an Unmanned Aircraft and associated elements, including, but not limited to, any communication links and components that control the Unmanned Aircraft.
3. **"Person"** shall have the same meaning as set forth in Subsection (a) of Section 11.01 of this Code.
4. **"Model Aircraft"** shall mean an Unmanned Aircraft or Unmanned Aircraft System operated by any Person strictly for hobby or recreational purposes.
5. **"Civil UAS"** shall mean an Unmanned Aircraft or Unmanned Aircraft System operated by any Person for any purposes other than strictly hobby or recreational purposes, including, but not limited to, commercial purposes or in furtherance of, or incidental to, any business or media service or agency.
6. **"Public UAS"** shall mean an Unmanned Aircraft or Unmanned Aircraft System operated by any public agency for government related purposes.

(b) The following shall apply to the operation of any Model Aircraft within the City of Los Angeles:

1. No Person shall operate any Model Aircraft within the City of Los Angeles and within 5 miles of an airport without the prior express authorization of the airport air traffic control tower.
2. No Person shall operate any Model Aircraft within the City of Los Angeles in a manner that interferes with manned aircraft, and shall always give way to any manned aircraft.
3. No Person shall operate any Model Aircraft within the City of Los Angeles beyond the visual line of sight of the person operating the Model Aircraft. The operator must use his or her own natural vision (which includes vision corrected by standard eyeglasses or contact lenses) to observe the Model Aircraft. People other than the operator may not be used in lieu of the operator for maintaining visual line of sight. Visual line of sight means that the operator has an unobstructed view of the Model Aircraft. The use of vision-enhancing devices, such as binoculars, night vision goggles, powered vision magnifying devices, and goggles or other devices designed to provide a "first-person view" from the model, do not constitute the visual line of sight of the person operating the Model Aircraft.
4. No Person shall operate any Model Aircraft within the City of Los Angeles other than during daylight hours defined as between official sunrise and official sunset for local time.
5. No Person shall operate any Model Aircraft within the City of Los Angeles more than 400 feet above the earth's surface.
6. Excluding takeoff and landing, no Person shall operate any Model Aircraft within the City of Los Angeles closer than 25 feet to any individual, except the operator or the operator's helper(s).

(c) The following shall apply to the operation of any Model Aircraft or Civil UAS within the City of Los Angeles:

1. No Person shall operate any Model Aircraft or Civil UAS within the City of Los Angeles in a manner that is prohibited by any federal statute or regulation governing aeronautics.

2. No Person shall operate any Model Aircraft or Civil UAS within the City of Los Angeles in violation of any temporary flight restriction (TFR) or notice to airmen (NOTAM) issued by the Federal Aviation Administration.

3. No Person shall operate any Model Aircraft or Civil UAS within the City of Los Angeles in a careless or reckless manner so as to endanger the life or property of another. The standard for what constitutes careless and reckless operation under this section shall be the same as the standard set forth in any federal statutes or regulations governing aeronautics including but not limited to Federal Aviation Rule 91.13.

(d) It shall be unlawful for any Person to violate or fail to comply with this section. Any Person violating the provisions of this section shall be guilty of a misdemeanor and subject to the provisions of Subsection (m) of Section 11.00 of this Code.

(e) This section shall not apply to any Public UAS operated pursuant to, and in compliance with, the terms and conditions of any current and enforceable authorization granted by the Federal Aviation Administration.

MANHATTAN BEACH

Chapter 3.70 - UNMANNED AIRCRAFT SYSTEMS.

3.70.010 - Definitions.

For purposes of this Chapter:

"Civil UAS" shall mean an unmanned aircraft or unmanned aircraft system operated by any person for any purposes other than strictly hobby or recreational purposes, including, but not limited to, commercial purposes or in furtherance of, or incidental to, any business or media service or agency.

"Model aircraft" shall mean an unmanned aircraft or unmanned aircraft system operated by any person strictly for hobby or recreational purposes.

"Person" shall have the same meaning as set forth in Section 1.08.130 of this Code.

"Public UAS" shall mean an unmanned aircraft or unmanned aircraft system operated by any public agency for government related purposes.

"Unmanned aircraft" shall mean an aircraft, including, but not limited to, an aircraft commonly known as a drone, that is operated without the possibility of direct human intervention from within or on the aircraft.

"Unmanned aircraft system" shall mean an unmanned aircraft and associated elements, including, but not limited to, any communication links and components that control the unmanned aircraft.

(§ 1, Ord. 16-0002, eff. March 3, 2016)

3.70.020 - Operation of model aircraft and unmanned aircraft systems.

- A. The following shall apply to the operation of any model aircraft within the City.
1. No person shall operate any model aircraft within the City and within five (5) miles of an airport without the prior express authorization of the airport air traffic control tower.
 2. No person shall operate any model aircraft within the City in a manner that interferes with manned aircraft, and shall always give way to any manned aircraft.
 3. No person shall operate any model aircraft within the City beyond the visual line of sight of the person operating the model aircraft. The operator must use his or her own natural vision (which includes vision corrected by standard eyeglasses, contact lenses or surgery) to observe the model aircraft. Persons other than the operator may not be used in lieu of the operator for maintaining visual line of sight. Visual line of sight means that the operator has an unobstructed view of the model aircraft. The use of vision-enhancing devices, such as binoculars, night vision goggles, powered vision magnifying devices, and goggles or other devices designed to provide a "first-person view" from the model, do not constitute the visual line of sight of the person operating the model aircraft.
 4. No person shall operate any model aircraft within the City other than during daylight hours defined as between official sunrise and official sunset for local time.
 5. No person shall operate any model aircraft within the City more than four hundred feet (400') above the earth's surface.
 6. Excluding takeoff and landing, no person shall operate any model aircraft within the City closer than twenty-five (25) feet to any individual, except the operator or the operator's helper(s).
- B. The following shall apply to the operation of any model aircraft or civil UAS within the City:
1. No person shall operate any model aircraft or civil UAS within the City in a manner that is prohibited by any federal statute or regulation governing aeronautics.

MANHATTAN BEACH

2. No person shall operate any model aircraft or civil UAS within the City in violation of any temporary flight restriction (TFR) or notice to airmen (NOTAM) issued by the Federal Aviation Administration.
 3. No person shall operate any model aircraft or civil UAS within the City in a careless or reckless manner so as to endanger the life or property of another. The standard for what constitutes careless and reckless operation under this Section shall be the same as the standard set forth in any federal statutes or regulations governing aeronautics including but not limited to Federal Aviation Rule 91.13.
 4. No person shall operate any model aircraft or civil UAS which contains, or has affixed or attached to it, a weapon, gun, firearm, handgun, rifle, bb device, assault weapon, bomb, grenade, rocket, rocket-propelled projectile, any device or container assembled for the purpose of causing an explosion, or any other weapon.
- C. It shall be unlawful for any person to violate or fail to comply with this Section. Any person violating the provisions of this Section shall be guilty of a misdemeanor.
- D. This Section shall not apply to any public UAS operated pursuant to, and in compliance with, the terms and conditions of any current and enforceable authorization granted by the Federal Aviation Administration.

(§ 1, Ord. 16-0002, eff. March 3, 2016)

3.70.030 - Prohibition against using an unmanned aircraft to record or transmit visual or audio recordings.

- A. No person shall use an unmanned aircraft to record or transmit any visual image or audio recording of any person or private real property located in the City under circumstances in which the subject person or owner of the subject real property has a reasonable expectation of privacy (including, but not limited to, inside a private residence or office, and inside an enclosed yard).
- B. This Section shall not prohibit the use of any model aircraft, which is flown in compliance with section 336 of the FAA Modernization and Reform Act of 2012 and which does not transmit or record visual images or audio recordings of any person or real property located in the City.
- C. This Section shall not prohibit the use of any unmanned aircraft by law enforcement or public safety agencies:
1. If a warrant is issued authorizing the use of an unmanned aircraft; or
 2. For the purpose of providing emergency management, fire, or police protection services in response to a life threatening emergency, or for surveying the condition of persons or property during a duly declared state of emergency; or
 3. Under circumstances where a warrant would not otherwise be required by law.

(§ 1, Ord. 16-0002, eff. March 3, 2016)

Napa, California Municipal Code

CITY OF NAPA MUNICIPAL CODE

Title 12 STREETS, SIDEWALKS AND PUBLIC PLACES

Chapter 12.36 PARK AND RECREATION AREA USE REGULATIONS

12.36.130 Operation of models.

- A. No person shall fly motorized model airplanes or operate motorized model boats or motorized model automobiles or motorized model craft of any kind or description on land or water owned, managed, controlled or operated as a city park, playground, tot lot or other park or playground facility, except in areas set aside for those specific activities and with authorization and permit issued by the Director of Community Resources.
- B. The Director of Community Resources shall be authorized to develop conditions of use or rules for the safe and orderly operation of models in those areas so designated. The Director of Community Resources shall have the right to prohibit violators of any rules established by the Director from operating any models on city maintained parks or facilities.
- C. Hours for operation of gas powered models shall be from 9:00 a.m. to 5:00 p.m. Monday through Saturday, 12:00 noon to 4:00 p.m. Sunday or as posted by the Director of Community Resources. (O93 022)

Contact:

City Clerk: 707-257-9503

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SEC. 7-301. PROHIBITED ACTIVITIES.

The following activities are prohibited at Ormond Beach:

(A) To bring, walk (whether leashed or unleashed), ride or release any domesticated animal including but not limited to cats, dogs, horses and pigs. This limitation shall not apply to a leashed dog being used as a service animal under the Americans with Disabilities Act.

(B) To bring or release any non-domesticated or exotic animal. This prohibition shall not apply to the legally permitted release of rehabilitated wildlife, subject to the permission of the property owners.

(C) To go within or interfere with any protected habitat area as designated by fencing, signage, or other method.

(D) To alter or remove any sand dune, plants or vegetation unless the activity is carried out pursuant to a validly issued permit and applicable legal requirements.

(E) To camp as defined below:

(1) CAMP - means one or more of the following activities: pitching or occupying camp facilities; or the use of camp paraphernalia. These activities constitute camping when it reasonably appears, in considering all the circumstances, that the individual, in conducting these activities, is in fact using the area as a living accommodation, regardless of the intent of the individual or the nature of any other activities in which they may be engaging.

(2) "Camp facilities" include, but are not limited to, tents, huts, temporary shelters, or other similar facilities.

(3) "Camp paraphernalia" includes, but is not limited to, tarpaulins, cots, beds, mattresses, sleeping bags, hammocks, cookware, cooking equipment, kitchen utensils, or other similar equipment.

(F) To make or kindle a fire for any purpose.

(G) To operate any motorized vehicle. This prohibition shall include and apply to remotely operated vehicles such as airplanes, helicopters, cars and drones. This prohibition shall not apply to public safety vehicles (including Coast Guard vehicles), military aerial vehicles, or vehicles used as part of a permitted program or operation to protect natural resources.

(H) To launch or fly a kite, kite board, or glider.

(Ord. No. 2906)

Pacific Grove Municipal Code

11.72.010 Launch or landing prohibited.

It is unlawful for any person to launch or land an aircraft, including a helicopter, drone, or other unmanned aircraft, without a permit. [Ord. 17-025 § 2, 2017; Ord. 1511 N.S. § 1, 1986].

11.72.020 Exceptions.

This chapter shall not apply if the following exceptions exist:

- (a) A permit is issued by the city manager, or their designee;
- (b) The landing of an emergency aircraft is authorized by the chief of police, or their designee. [Ord. 17-025 § 2, 2017].

PASADENA

Chapter 9.45 - UNMANNED AIRCRAFT SYSTEMS

9.45.010 - Short title.

This chapter shall be known as "the drone ordinance" and serves as the city's regulation over unmanned aircraft systems.

(Ord. No. 7303, § 1, 5-22-2017)

9.45.020 - Definitions.

For the purpose of this chapter, certain words and phrases are defined in this section, unless it is apparent from the context that a different meaning is intended:

- A. "Drone" means any unmanned aircraft or unmanned aircraft system that can fly under the control of a remote pilot or by global positioning system guided autopilot mechanism.
- B. "Filming permit" shall mean a filming permit issued through section 17.61.090 of this code.
- C. "Person" shall mean any individual, partnership, corporation, or joint venture.
- D. "Special event" shall mean any of the following: (1) any event, parade, exposition, fair or procession staged in or upon public places or sidewalks for which city services are required because of interference with normal vehicular traffic, pedestrian traffic or which will reasonably be expected to generate an extraordinary need for sanitation or other city services; (2) any event which has received a permit pursuant to Chapter 3.20 of this code; or (3) any sporting contest, any theatrical or musical performance or any exhibition held in any stadium, auditorium, sports area, playing field, theater, amphitheater, race track, skating rink or similar place pursuant to a valid license agreement, contract or permit which reserves said place for the event.

(Ord. No. 7303, § 1, 5-22-2017)

9.45.030 - Prohibitions.

Unless otherwise permitted under this chapter, persons are prohibited from taking off, operating, or landing a drone in any airspace or area within or over the following areas of the city:

- A. Flights over public streets and sidewalks, where a drone is operated in a careless or reckless manner so as to endanger the life or property of another, as these terms may be used by applicable Federal Aviation Administration regulations, including, but not limited to, 14 CFR Sections 91.13 and/or 107.23;
- B. Special event or filming permit locations (during the time period of the special event or filming permit), unless the property owner, event/permit applicant, and police department air operations section have all provided their approval to the special events office, in writing; or
- C. Glenarm Power Plant, police and fire stations, city hall, the city yards, water storage and electric transmission facilities, transit operations facilities, and light rail lines, facilities, and stations.

(Ord. No. 7303, § 1, 5-22-2017)

9.45.040 - Exemptions.

This chapter shall not apply to the use of a drone as follows:

- A. By any law enforcement agency for lawful purposes and in a lawful manner.

PASADENA

- B. By the city or city-contracted agent/agency engaging in city business, including, but not limited to, surveying and mapping property, inspecting infrastructure, monitoring traffic, and recording local events.

(Ord. No. 7303, § 1, 5-22-2017)

9.45.050 - Violation—Penalty.

It is unlawful for any person to violate or fail to comply with this chapter. Any person violating the provisions of this chapter shall be guilty of a misdemeanor and upon conviction thereof shall be punished as provided in Chapter 1.24 of this code.

(Ord. No. 7303, § 1, 5-22-2017)

Chapter 8.98 DRONE OPERATIONS DURING PERIODS OF EMERGENCY RESPONSE

Sections:

8.98.010 Purpose.

8.98.020 Definitions.

8.98.030 Geographical zones of activity.

8.98.040 Prohibited activity.

8.98.050 Civil liability for enforcement services.

8.98.060 Reimbursement for costs of enforcement services.

8.98.070 Violations.

8.98.080 Reservation of legal options.

8.98.010 Purpose.

The purpose of this chapter is to prohibit persons from launching into flight, operating, and landing following flight, drones (as defined herein) during such times that the City of Poway is experiencing an emergency response, as defined herein. (Ord. 780 § 1, 2015)

8.98.020 Definitions.

As used in this chapter:

A. "Director" is defined as the Director of Safety Services, or such person designated by the City Manager or Director of Safety Services to act in the capacity of Director.

B. "Drone" is defined as an unmanned aircraft system, or an unmanned aerial vehicle, also known as remotely piloted aerial systems, used for either recreational or commercial purposes; which carries a payload consisting of one or more cameras for still pictures, video recording, or video streaming purposes; which may be a fully-automated flying vehicle or in a communication link and responsive to operator control and direction; and is carrying its own source of power; and is in communication with the operator by way of external control, remote systems. For the purposes of this chapter any drone

operated by local, State or Federal law enforcement or emergency response personnel while acting in their official capacities shall not be included in this definition.

C. "Emergency response" means situations where a City, County, State, or Federal governmental agency, or any combination thereof, has initiated fire, paramedic, ambulance, or law enforcement services in response to an existing or threatened incident located within the City or within two miles of the City limits, involving a wildfire, structure fire, flooding, seismic activity, accident, or criminal activity, which could require the use of airplanes, helicopters, or drones to provide assessment of conditions or actual emergency services to aid victims, transport persons or animals, suppress fires, or investigate or intervene in criminal activity.

D. "Enforcement officer" means any officer or employee of the City, and any law enforcement officer employed by the San Diego County Sheriff's office, with the authority to enforce the Poway Municipal Code, including but not limited to a code compliance officer, inspector, deputy sheriff, and the Fire Marshal.

E. "Exempt drones" are defined as those drones owned or operated by (1) any local, State, or Federal agency while acting in their official capacities; and (2) any public utility as defined in this chapter, but only when used to assess and inspect the public utility's facilities during a period of emergency response and with the consent of the Director.

F. "Land" or "landing" means the controlled or uncontrolled return of a drone to the ground or to any structure, vehicle, or person located on the earth's surface. For the purpose of this definition a person is located on the earth's surface regardless of whether the person is in actual physical contact with the earth at the time of landing.

G. "Launch" means to set forth a drone into flight.

H. "Operation," for the purposes of this chapter, includes, but is not limited to, controlling a drone before, during, or after its flight into airspace. "Operation" can include active control of a drone in flight, controlling the flight of a drone based on pre-programmed instructions, or altering a pre-programmed flight of a drone, all handled remotely from the ground.

I. "Public utility" is defined as any gas corporation, electrical corporation, telephone corporation, telegraph corporation, water corporation, and sewer system corporation, each as defined in the Public Utilities Act of the State of California (Part 1 of Division 1 of the California Public Utilities Code, Section 201 et seq.).

J. "Quadrant" shall mean one of the four geographical zones in the City of Poway identified in PMC 8.98.030, each based upon public streets. Where a street that identifies a portion of a boundary of a quadrant terminates, its definition shall include all such property that would be included within the quadrant if the streets had extended in prolongations to the City limits.

K. "Restricted" shall mean that certain drone activity is temporarily prohibited by this chapter. (Ord. 780 § 1, 2015)

8.98.030 Geographical zones of activity.

For the purposes of this chapter, during those periods of emergency response designated by the Director, the City shall be divided into four quadrants as follows:

- A. Quadrant A: the northern portion of the City bounded by Espola Road and Green Valley Truck Trail to the south.
- B. Quadrant B: the eastern portion of the City bounded by the east- and west-bound portions of Green Valley Truck Trail to the north, the north- and south-bound portions of Espola Road and Poway Road to the west, and Garden Road and Sycamore Canyon Road to the south.
- C. Quadrant C: the southern portion of the City bounded by Poway Road and Garden Road to the north and Sycamore Canyon Road to the east.
- D. Quadrant D: the western portion of the City bounded by Poway Road to the south, the north- and south-bound portions of Poway Road and Espola Road to the east, and the east- and west-bound portions of Espola Road to the north. (Ord. 780 § 1, 2015)

8.98.040 Prohibited activity.

No person shall launch, land, or operate a drone while that person is located in any quadrant identified by the Director as a restricted quadrant during any period of emergency response. The Director may identify one or more, including all, quadrants as restricted during any emergency response. This prohibition shall not apply to the operator of any exempt drone. (Ord. 780 § 1, 2015)

8.98.050 Civil liability for enforcement services.

Whenever a person launches, operates, or lands a drone in a restricted quadrant and a peace officer or code enforcement officer is called to the scene, the person or persons having control of the drone shall be liable for the cost of providing enforcement services during the response by enforcement officers, and any follow-up response by enforcement officers. (Ord. 780 § 1, 2015)

8.98.060 Reimbursement for costs of enforcement services.

The actual cost of enforcement services described in PMC 8.98.050 shall be deemed a debt owed to the City, and if not paid, may be recoverable in a civil action, and shall be recoverable in a civil action, including reasonable attorneys' fees and costs. (Ord. 780 § 1, 2015)

8.98.070 Violations.

A violation of any provision of this chapter or a failure to comply with any mandatory requirement of this chapter is subject to prosecution in accordance with Chapter 1.08 PMC and may be enforced through injunctive relief. Penalties for violation of the provisions of this chapter may result in a misdemeanor citation, punishable by a maximum of six months in jail and a \$1,000 fine. In addition to any other remedies found in this code any person found to violate this chapter shall be subject to civil penalties in the amount of \$1,000 for each and every offense. (Ord. 780 § 1, 2015)

8.98.080 Reservation of legal options.

The City of Poway does not waive its right to seek reimbursement for actual costs of enforcement services through other legal remedies or procedures. The procedure provided for in this chapter is in addition to any other statute, ordinance or law, civil or criminal. This chapter in no way limits the authority of peace officers or private citizens to make arrests for any criminal offense arising out of conduct regulated by this chapter. (Ord. 780 § 1, 2015)

The Poway Municipal Code is current through Ordinance 858, passed December 6, 2022.

Disclaimer: The city clerk's office has the official version of the Poway Municipal Code. Users should contact the city clerk's office for ordinances passed subsequent to the ordinance cited above.

City Website: <https://www.poway.org/>

City Telephone: (858) 668-4530

Code Publishing Company

12.16.040 - Motorized or radio-controlled models.

No person shall operate any motorized or radio-controlled model in a park except in areas designated for such use, or upon written authorization from the city manager or the city manager's designee. In deciding whether to grant such authorization, the city manager or the city manager's designee shall consider time of day, relative crowding of the area requested, factors of public safety, availability of areas approved for such activities, and any other factor relevant to the welfare of those utilizing park or recreational facilities.

(Ord. 181 § 1 (part), 1984)

Chapter 11.46 - UNMANNED AIRCRAFT SYSTEMS (DRONES)

11.46.010 - Operating an unmanned aircraft system.

For the purpose of this section:

- (1) "Unmanned aircraft" is an aircraft, including but not limited to, an aircraft commonly known as a drone that is operated without possibility of direct human intervention from within or on the aircraft.
- (2) "Unmanned aircraft system" (UAS) is an unmanned aircraft and associated elements, including, but not limited to, any communication links and components that control the unmanned aircraft that carries an apparatus that captures still (photographs) or moving images (videos) or any other payload.
 - (A) Every UAS weighing between .55 lbs and 55 lbs, and operating in the City shall be registered in accordance with the FAA Part 107 Registration requirements. UAS operators who do not register their UAS in accordance with the FAA Part 107 Registration requirements are in violation of this section, and are subject to all applicable legal penalties enforced by the FAA.
 - (B) Every UAS that weighs over .55lbs, and operates in the City shall have the assigned FAA registration numbers affixed to the UAS as required by the FAA.
 - (C) No person shall operate a UAS to record or transmit any visual image or audio record of any person or private real property located in the City under circumstances in which the subject person or owner of the subject real property has a reasonable expectation of privacy or without their permission (including but not limited to, inside a private residence or office, inside an enclosed yard, rooftops, backyards and exterior decks),.
 - (D) No person shall operate a UAS within the City outside of daylight hours (between official local times from sunrise and sunset), no more than 400 feet above ground level and no faster than 20 mph.
 - (E) No person shall operate any UAS in the City beyond the visual line of sight of the person operating the UAS. The operator must use his or her own natural vision to observe the UAS. Visual line of sight means that the operator has an unobstructed view of the UAS. The use of vision-enhancing devices, such as binoculars, night vision goggles, powered vision magnifying devices, and goggles or other devices designed to provide a "first-person view" from the UAS, do not constitute the visual line of sight of the person operating the UAS.
 - (F)

No person shall operate the UAS within the City closer than 25 feet to any human being, except the operator and except during takeoff and landing.

- (G) No person shall operate a UAS while under the influence of alcohol or any other drugs, intoxicating compound or any combination thereof.
- (H) No person shall operate a UAS in a careless or reckless manner that would jeopardize the public.
- (I) No person shall operate a UAS that is equipped with hazardous materials or any weapons or items that may be considered to be weapons.
- (J) No person shall operate a UAS in violation of any temporary flight restriction or "Notice to Airmen" (NOTAM) issued by the Federal Aviation Administration (FAA).
- (K) No person shall operate a UAS in the path of any manned aircraft.
- (L) Operators may use a UAS to exercise their First Amendment right to observe and record governmental activities; however, no person shall operate a UAS in a manner that directly interferes with police activities, firefighting or emergency response activities that would jeopardize the integrity of such public safety activities.
- (M) This section shall not prohibit the use of any model aircraft as described in Section 336 of the FAA Modernization and Reform Act of 2012 and which does not transmit or record visual images or audio recordings of any person or real property located in the City.
- (N) This section shall not prohibit the use of any UAS by law enforcement or public safety agencies, provided that the law enforcement or public safety agency has a current Certificate of Authorization (COA) from the FAA to operate within the airspace of the City.
- (O) Any operator of a UAS who violates this section is subject to fines and confiscation of the UAS by the Richmond Police Department.

(Ord. No. 7-17 N.S., § 1, 4-18-2017, eff. 5-18-2017)

9.08.090 - Games; restrictions.

No person shall play or engage in model airplane flying, drones, unmanned aircraft systems, model rockets, driving of golf balls, archery, or any game of a hazardous nature within a park, except at such place as shall be especially set apart and authorized for such purpose.

(Ord. 7362 § 2, 2017; Ord. 6526 § 2, 2000; Prior code § 25.9)

9.08.120 - Facility reservation application and permit.

A. *Reservations for activities in parks and park facilities.* The Parks, Recreation and Community Services Director or designee shall be responsible for scheduling and controlling the use of parks and park facilities, or portions thereof, for the benefit and participation by interested public and private persons and groups. Any person 18 years or older desiring to reserve any athletic field, tennis court, swimming pool, picnic facility, open space area or other park facility, shall apply for a permit. Such application shall be in writing, giving the name of the facility, the proposed use, the date of its proposed use, and the person to whom the permit is to be granted. The person or group to whom the permit is to be granted shall abide by the policies and procedures of that facility. Any person not having a facility reservation permit for the use of a park facility shall surrender or turn over possession of said recreational facility to an individual or group in possession of a facility reservation permit for the use issued by the Parks, Recreation and Community Services Director of said facility. It shall be unlawful for any person not having a permit issued by the Parks, Recreation and Community Services Director to refuse or fail to surrender the use of any recreational facility, regardless of whether the facility is reserved for use.

1. *Activity requiring facility reservation application.* The following activities on park property shall require a facility reservation application.

- a. An event, that is held on a regular/re-occurring basis (i.e. weekly, bi-weekly or monthly) involving more than 50 individuals per day.
- b. The commercial sale of any good or service merchandise or article or thing;
- c. The sale or service of alcohol;
- d. Advertising or commercial activities;
- e. Activities involving use of more than one park;
- f. Creation or emission of any amplified sound, except from a radio, recorder or other device possessed and used by an individual for his/her own enjoyment and operated in such a manner so as not to interfere with the use and enjoyment of another person;
- g. Stationing or erecting any building, bandstand, stage, tower, tent, canopy, scaffold, sound stage, platform, rostrum or other structure;

- h. Use of any electrical or electronic device or equipment requiring outdoor auxiliary power;
 - i. Bringing, landing or causing to ascend or descend or alight within the park district, any airplane, helicopter, flying machine, drone, unmanned aircraft system, balloon, parachute or other apparatus for aviation;
 - j. Use of mechanical rides (which may be permitted only on hard surfaces);
 - k. Conducting any exhibit, music or dramatic performance, fair, circus, concert, play, radio or television broadcast, other than a news transmission;
 - l. Exhibiting or displaying any motion picture, television program, light or laser light display, or similar event;
 - m. Operating a vehicle, except upon a surface maintained and open to the public for purposes of vehicular travel or designated as temporary parking areas publicly;
 - n. Displaying, posting or distributing any placard, handbill, pamphlet, circular, book or other writing containing commercial advertising on park property; or
 - o. Bring onto park property a tame, non-domestic supervised and controlled or restrained animal for limited non-commercial or promotional purposes except for the specific animals under the specific conditions provided for in Section 9.08.030 of this chapter.
- B. *Exemptions from facility reservation permit.* A facility reservation permit shall not be required under this chapter for the below-listed activities:
- 1. Activities conducted by a government agency within the scope of its authority.
 - 2. Funeral processions by a licensed mortuary.
 - 3. An exempted activity is required to comply with the general regulations governing public health and safety.
- C. *Procedures for review.*
- 1. *Review and appeal.* An applicant for a facility reservation permit has the right to appeal the following:
 - a. The denial of a permit;
 - b. A permit condition;
 - c. The denial of a waiver of a certificate of insurance;
 - d. A determination that an applicant's insurance policy does not comply with the requirements specified in this chapter;
 - e. The requirement or amount of a cleanup deposit specified in this chapter; or
 - f.

The retention of an applicant's cleanup deposit (in full or in part) because of assessed damages or a fine pursuant to this chapter.

Within five working days of the service of notice of determination on any of the above listed items, an applicant may file a written appeal from such determination with the City Manager. The City Manager shall have five working days from the date on which the appeal was received in which to serve upon the applicant a notice that they have affirmed, modified or reversed the decision. Such notice shall be deemed served upon the applicant when it is personally delivered or when it is sent by United States mail, with proper postage prepaid, to the name and address set forth on the application for permit. If such notice is not served upon the applicant within five working days of the date upon which the appeal was filed, then the decision of the Parks, Recreation and Community Services Director shall be deemed reversed.

- D. *Form of appeal.* Any appeal filed pursuant to this chapter shall state succinctly the grounds upon which it is asserted that the determination should be modified or reversed and shall be accompanied by copies of the application for permit, the written notice of the determination of the Parks, Recreation and Community Services Department and any other papers that are material to the determination.
- E. *Other provisions of law.* The procedures or requirements of this chapter shall not affect or supersede the provisions of law or the issuance of fireworks, structural, electrical or other permits by City departments prescribed elsewhere in this Code, when such permits are otherwise required because of a particular condition or requirement of the event on park property.
- F. *Reservation procedure.* Groups desiring to use City parks, park facilities, or portions thereof, may request the Parks, Recreation and Community Services Director or his designee to reserve the same for such use. Persons or groups from within the City shall be given priority over persons or groups from outside the City if a conflict in scheduling arises. Requests for such use shall be submitted in writing to the City on the facility reservation application approved by the Parks, Recreation and Community Services Director not less than ten working days in advance and not more than 18 months of the intended use. The Parks, Recreation and Community Services Director may permit a shorter or longer advance request time for good cause shown. The facility reservation application is available at the Parks, Recreation and Community Services Department Office. Upon the written approval by the Parks, and Recreation and Community Services Director or his designee, the applicant must pay such fees as approved by ordinance or resolution of the City, not less than ten working days in advance of the intended use. If the Parks, Recreation and Community Services Director is not satisfied as to the reasonableness of the proposed activity in relation to the use of the park by

other persons, or as the effect such use might have upon the peace of the neighborhood, or if the Parks, Recreation and Community Services Director is unable to agree with the applicant as to the conditions to be imposed, the request for a reservation shall be processed as a special event permit.

G. *Permit conditions.* The Parks, Recreation and Community Services Director may condition the issuance of a park event permit by imposing reasonable requirements which are necessary to protect the safety of persons and property, and to provide for adequate control of traffic. These may include conditions concerning:

1. Alteration of the date, time, route or location of the event proposed on the application;
2. Requirements for the area of assembly and disbanding of events;
3. Provision of first aid, sanitary or emergency facilities;
4. Requirements for event monitors or other method for providing notice of permit conditions to event participants;
5. Restrictions on the number or type of vehicles or animals at the event;
6. Restrictions on the number and type of structures at the event and inspection and approval of the structures by fire safety by the Riverside Fire Department;
7. Compliance with animal protection ordinances and laws;
8. Requirements for use of garbage containers, cleanup and restoration of park property;
9. Restrictions on use of amplified sound;
10. Compliance with any relevant ordinance or law in obtaining any other legally required permit or license in addition to a park event permit; and
11. Security guards and/or plan.
12. Compliance with County Health requirements and regulations.

H. *Insurance.* The Parks, Recreation and Community Services Director may also require the applicant to provide such additional liability insurance, water, sanitary facilities and refuse receptacles as the Parks, Recreation and Community Services Director determines to be necessary for the protection of public health, safety, and welfare in connection with the intended use.

I. *Fees and deposits.* Fees and deposits required in respect to reservation permits may include, without limitation, such amounts as may be determined by ordinance or resolution of the City, to be necessary to compensate the City, for the administrative costs associated with the permit, as security for repair of damage to the park or to park facilities, for costs of cleanup, and for extra personnel to regulate conduct and traffic.

J. *Clean-up and repair expenses.* The Facility Reservation application form shall provide that the applicant shall reimburse the City for all unusual or extraordinary cleanup and repair expenses and for services provided by the City arising out of the activity authorized by the

permit.

- K. *Written denials.* With the exception of facility reservations for field allocation (i.e., baseball, softball, soccer), if no written denial or conditional approval is issued within 60 working days of the date on which a permit application is fully completed, executed and filed with the City, the application shall be deemed to have been granted a conditional approval pursuant to subsection B above. Provided, however, the Parks, Recreation and Community Services Director may extend the period of review for an additional ten working days by issuance of a written notice of extension. If, prior to the expiration of the extended review period, no written denial is issued, the application for permit shall be deemed to have been granted a conditional approval pursuant to subsection B above.

For facility reservations for field allocation, the Parks, Recreation and Community Services Director or his/her designee shall have information regarding the field allocation application and process at the Parks, Recreation and Community Services Department Office.

1. *Notice of extended review or denial or issuance of permit.* Written notice of denial or notice of extension shall be served on the applicant by personal delivery, e-mail, or by deposit in United States mail, with proper postage prepaid, to the name and address set forth on the application for permit.
2. *Contents of notice; grounds for denial.* Notice of denial of an application for a park event permit shall clearly set forth the grounds upon which the permit was denied and, where feasible, shall contain a proposal by the Park and Recreation Director, or his/her designee, for measures by which the applicant may cure and defects in the application for a park event permit or otherwise procure a park event permit. Where an application or permit has been denied because a fully executed prior application for the same time and place has been received, and a permit has been or will be granted to the prior applicant authorizing uses or activities which do not reasonable permit multiple occupancy of the particular area, the Park and Recreation Director shall propose an alternative place, if available for the same time, or an alternative time, if available for the same place. The Park and Recreation Director may deny an application for a park event permit if the applicant or the person on whose behalf the application for permit was made has on prior occasions made material misrepresentations regarding the nature or scope of an event or activity previously permitted or has violated the terms of prior permits issued to or on behalf of the applicant. The Park and Recreation Director may also deny an application for permit on any of the following grounds:
 - a. The application for permit (including any required attachments and submissions) is not fully completed and executed;
 - b.

The applicant has not tendered the required application fee with the application or has not tendered any required user fee, indemnification agreement, insurance certificate, or cleanup deposit within the times required under this chapter;

- c. The application for permit contains a material falsehood or misrepresentation;
- d. The applicant is legally incompetent to contract or to sue and be sued;
- e. The applicant or the person on whose behalf the application for permit was made has on prior occasions damaged park property and has not paid in full for such damage, or has other outstanding and unpaid debts to the Park and Recreation Department;
- f. A fully executed prior application for permit for the same time and place has been received, and a permit has been or will be granted to a prior applicant authorizing uses or activities which do not reasonably permit multiple occupancy of the particular park or part hereof;
- g. The use or activity intended by the applicant would conflict with previously planned programs organized and conducted by the City and previously scheduled for the same time and place;
- h. The use or activity intended by the applicant would present an unreasonable danger to the health or safety of the applicant, or other users of the park, or City employees or the public;
- i. The applicant has not complied or cannot comply with applicable licensure requirements, ordinances or regulations of the City concerning the sale or offering for sale of any goods or services; or
- j. The use or activity intended by the applicant is prohibited by law, including but not limited to the Riverside Municipal Code and the rules and regulations of the Park and Recreation Department.

L. *Amendment or revision of applications.* Any amendment or revision of an application for permit shall for purposes of determining the priority of the application for permit, relate back to the original filing thereof. However, the time in which the Park and Recreation Director shall grant or deny the application for permit and serve notice of such granting or denial shall be computed from the date of the amendment or revision.

(Ord. 7362 § 2, 2017; Ord. 7244 § 13, 2014; Ord. 6526 § 2, 2000; Ord. 3403 § 1, 1966; prior code § 25.12)

Chapter 8.82 - UNMANNED AIRCRAFT SYSTEMS

8.82.010 - Purpose and Intent.

The operation of unmanned aircraft ("UA") systems, commonly known as drones, can at times pose significant hazards to full-scale aircraft in flight and to persons and property on the ground. Imposing community-based safety requirements and restrictions on the operation of UAs that does not preempt federal aviation rules or authority, nor state law, is necessary to mitigate such risks and to protect the public from the hazards associated with the operation of UAs.

(Ord. No. 1641, § 3, 5-2-2017)

8.82.020 - Definitions.

The following words, terms, and phrases when used in this chapter shall have the meanings ascribed to them in this section, except where the context clearly indicates a differing meaning:

Drone refers to any unmanned aircraft ("UA").

FAA means the Federal Aviation Administration.

Operate means the actions taken by an operator of the UA. Any use of the term refers only to the actions of an operator on the ground and is not intended to regulate an unmanned aircraft flying in navigable airspace.

Person means any individual, partnership, corporation, or joint venture.

Public Drone or *Public UA* means a UA that is used or operated on behalf of any government agency that meets the qualifications as defined in Section 40102 of Title 49 of the United States Code to operate a public aircraft.

Unmanned Aircraft (UA) means an aircraft without a human pilot onboard, that is controlled from an operator on the ground, and operates without the possibility of direct human intervention from within, or on, the aircraft.

Visual Line of Sight means that the operator has an unobstructed view of the UA. The operator must use his or her own natural vision (which includes vision corrected by standard eyeglasses or contact lenses) to observe the UA. People other than the operator may not be used in lieu of the operator for maintaining visual line of sight. The use of vision-enhancing devices, such as binoculars, night vision goggles, powered vision magnifying devices, and goggles or other devices designed to provide a "first-person view" from the UA do not constitute visual line of sight of the operator.

(Ord. No. 1641, § 3, 5-2-2017)

8.82.030 - Prohibited Operations for UA.

- A. No person shall takeoff, land, or operate a UA outside of their visual-line-of-sight.
- B. No person shall takeoff, land, or operate a UA within 25 feet of another individual, except the operator or the operator's designee.
- C. No person shall takeoff, land, or operate a UA on or over private property without the written or electronic consent of the property owner, if the property owner is a person other than the UA operator. When consent to operate a UA is required to takeoff, land, or operate a UA on or over private property, UA operators must have on their possession a copy of the written or electronic consent from the owner of the property, or properties, over which they takeoff, land, or operate a UA.
- D. No person shall takeoff, land, or operate a UA over City-permitted events open to the public, unless granted written or electronic permission by the City. UA operators must have on their possession a copy of the written or electronic consent from the City while they takeoff, land, or operate a UA over City-permitted events open to the public.
- E. No person shall takeoff, land, or operate a UA within 1,500 horizontal feet of any aircraft, including any UA, operated by a public entity.
- F. No person shall takeoff, land, or operate a UA that has any type of weapon, or other device designed for inflicting bodily harm or physical damage, attached to it.
- G. No person shall takeoff, land, or operate a UA within a "no fly zone" that has been established by the City as outlined in Section 8.82.050, Reasonable Time, Place, Manner of this chapter.
- H. No person shall takeoff, land, or operate a UA between 30 minutes before the official sunset time and the official sunrise time.

(Ord. No. 1641, § 3, 5-2-2017)

8.82.040 - No Reckless Operation.

No person shall takeoff, land, or operate a UA so as to endanger or create substantial risk of serious injury for any person or property.

(Ord. No. 1641, § 3, 5-2-2017)

8.82.050 - Reasonable Time, Place, Manner.

- A. No person shall takeoff, land, or operate a UA within 500 feet of any emergency vehicle that is operating with lights and/or sirens.

- B. No person shall takeoff, land, or operate a UA within 500 feet of any active law enforcement or emergency response incident.
- C. No person shall takeoff, land, or operate a UA in violation of any Temporary Flight Restriction or Notice to Airmen issued by the FAA.
- D. No person shall takeoff, land, or operate a UA within 500 feet of a school facility without prior notification and authorization of school officials. When authorization to operate a UA is required to takeoff, land, or operate a UA on or over a school facility, UA operators must have on their possession a copy of the written or electronic authorization from the school's administration while they takeoff, land, or operate a UA within 500 feet of the school.
- E. No person shall takeoff, land, or operate a UA within 500 feet of any county or city owned jails, holding facilities, law enforcement facility, or within 500 feet of any designated publicly owned building chosen by the city. The designation of publicly-owned buildings applicable to this subsection shall be at the discretion of the City Manager. The addresses of all properties described in this subsection shall be available for viewing by the public at the City Clerk's Office and listed on the City of San Clemente website, on a page dedicated to information related to UA, or "drone," operations and requirements.

(Ord. No. 1641, § 3, 5-2-2017)

8.82.060 - Exemption.

This chapter shall not apply to any Public UA.

(Ord. No. 1641, § 3, 5-2-2017)

SEC. 3.09. AIRPLANES, HELICOPTERS, HOT AIR BALLOONS, ETC. PROHIBITED.

No person shall launch nor land any airplane, helicopter, parachute, hang glider, hot air balloon, nor any other machine or apparatus of aviation in any park, nor shall any person bring into any park any balloon with a diameter of more than six feet or a gas capacity of more than 115 cubic feet, without permission of the Recreation and Park Department. This Section shall not be applicable to a helicopter being used to transport persons or supplies because of an emergency situation.

(Added by Ord. 603-81, App. 12/18/81)

Title 9: Public Peace and Safety

Chapter 9.30 Drones, Unpiloted Aircraft and Model Aircraft

9.30.010 Purpose and Findings.

The operation of unpiloted aircraft such as model aircraft and civil unpiloted aircraft systems ("UASs"), commonly known as drones, can at times pose a hazard to full-scale aircraft in flight and to persons and property on the ground. Imposing community-based safety requirements on the operation of model aircraft and imposing restrictions on the operation of both model aircraft and civil UASs consistent with Federal Aviation Rules and state law is necessary to mitigate such risks and to protect the public from the hazards associated with the operation of unpiloted aircraft.

(Ord. 16-974 § 1, 2016)

9.30.020 Definitions.

The following words, phrases and terms as used in this chapter shall have the meanings indicated as follows:

1. "Unpiloted aircraft" shall mean an aircraft, including, but not limited to, an aircraft commonly known as a drone, that is operated without the possibility of direct human intervention from within or on the aircraft (and shall mean the equivalent of "unmanned aircraft" as that term is used in federal and state law and regulations).
2. "Unpiloted aircraft system" shall mean an unpiloted aircraft and associated elements, including, but not limited to, any communication links and components that control the unpiloted aircraft (and shall mean the equivalent of "unmanned aircraft system" as that term is used in federal and state law and regulations).
3. "Person" shall mean any individual, partnership, corporation, or joint-venture.
4. "Model aircraft" shall mean an unpiloted aircraft or unpiloted aircraft system operated by any person strictly for hobby or recreational purposes.
5. "Civil UAS" shall mean an unpiloted aircraft or unpiloted aircraft system operated by any person for any purposes other than strictly hobby or recreational purposes, including, but not limited to, commercial purposes or in furtherance of, or incidental to, any business or media service or agency.
6. "Public UAS" shall mean an unpiloted aircraft or unpiloted aircraft system operated by any public agency for government related purposes.

(Ord. 16-974 § 1, 2016)

9.30.030 Operating Permit and Registration Required.

- a. *Generally.* An operating permit shall be required for every unpiloted aircraft and unpiloted aircraft system operated in the city. No person shall operate an unpiloted aircraft or unpiloted aircraft system in the city without first obtaining a permit for the unpiloted aircraft or unpiloted aircraft system and obtaining an identification number assigned by the city.
- b. *Applications.* An application for a UAS operating permit shall be on a form provided by the city and show:
 1. Name and phone number of the operator;
 2. Make, model and serial or N-number of UAS to be registered;
 3. A description of proposed flight activity, including whether filming, taking of visual images and/or sound recording will occur;
 4. Signature of operator.
- c. *Issuance.* An operating permit shall be issued to persons meeting the requirements of this chapter upon payment of the fee required therefor and submission of a copy of the certificate of aircraft registration/proof of ownership issued by the Federal Aviation Administration.
- d. *Placement.* The permit sticker and identification number shall be placed on the body of the unpiloted aircraft or unpiloted aircraft system in a conspicuous location on the earth-facing surface of the device and in a manner clearly visible from the ground. Placement of stickers shall be subject to approval of the city or performed by the city.

(Ord. 16-974 § 1, 2016)

9.30.040 Operating Requirements and Restrictions.

a. No person shall operate any model aircraft or civil UAS within the city in a manner that interferes with piloted aircraft, and model aircraft shall always give way to any piloted aircraft.

b. No person shall operate any model aircraft within the city beyond the visual line of sight of the person operating the model aircraft. The operator must use his or her own natural vision (which includes vision corrected by standard eyeglasses or contact lenses) to observe the model aircraft. People other than the operator may not be used in lieu of the operator for maintaining visual line of sight. Visual line of sight means that the operator has an unobstructed view of the model aircraft. The use of vision-enhancing devices, such as binoculars, night vision goggles, powered vision magnifying devices, and goggles or other devices designed to provide a "first-person view" from the model, do not constitute the visual line of sight of the person operating the model aircraft.

c. No person shall operate any model aircraft or civil UAS within the city other than during daylight hours defined as between official sunrise and official sunset for local time, unless proof of authorization to do so by the Federal Aviation Administration is provided to the city.

d. No person shall operate any model aircraft within the city more than four hundred feet above the earth's surface, unless proof of authorization to do so by the Federal Aviation Administration is provided to the city.

e. Excluding takeoff and landing, no person shall operate any model aircraft or civil UAS within the city closer than twenty-five feet to any individual, except the operator or the operator's helper(s).

f. No person shall operate any model aircraft or civil UAS within the city in a manner that is prohibited by any federal or state statute or regulation governing aeronautics, including, but not limited to, Public Utilities Code Section 21407 and Federal Aviation Rule 91.13.

g. No person shall operate any model aircraft or civil UAS within the city in violation of any temporary flight restriction or "Notice to Airmen" issued by the Federal Aviation Administration.

h. No person shall operate any model aircraft or civil UAS within the city to capture, record or transmit any visual image or audio recording of any person or private real property located in the city under circumstances in which the subject person or owner of the subject real property has a reasonable expectation of privacy (including, but not limited to, inside a private office and inside a hotel room). This provision is intended to supplement, rather than duplicate, the prohibition against trespassing into the air space above the land of another person in order to capture any type of visual image or sound recording of a person engaging in a private, personal, or familial activity in a manner that is offensive to a reasonable person, pursuant to California Civil Code Section 1708.8.

i. Unless authorized by federal law, it shall be an infraction to knowingly and intentionally operate any model aircraft or civil UAS on the grounds of, or less than three hundred fifty feet above ground level within the airspace overlaying, a public or private school in the city providing instruction in kindergarten or grades 1 to 12, inclusive, during school hours and without the written permission of the school principal or higher authority, or designee, or equivalent school authority.

j. Unless authorized by federal law, it shall be an infraction to knowingly and intentionally use any model aircraft or civil UAS to capture images of public or private school grounds in the city providing instruction in kindergarten or grades 1 to 12, inclusive, during school hours and without the written permission of the school principal or higher authority, or designee, or equivalent school authority.

k. No person shall operate any model aircraft or civil UAS in a manner that interferes with firefighting, police activity or emergency response activity as detailed in California Penal Code Sections 148.2 and 402.

l. No person shall operate any model aircraft or civil UAS within the airspace overlaying a city park during a city-sponsored event in the park unless authorized to do so in the special event permit, City Hall, or a law enforcement or fire station within the city.

(Ord. 16-974 § 1, 2016)

9.30.050 Violations.

It is unlawful for any person to violate or fail to comply with this chapter. Any person violating the provisions of this chapter shall be guilty of a misdemeanor and subject to the provisions of Chapter 1.08 of this Code.

(Ord. 16-974 § 1, 2016)

9.30.060 Exemptions.

This chapter shall not apply to any civil UAS operated pursuant to and in compliance with the terms and conditions of a valid city-issued film permit with Federal Aviation Administration authorization or any public UAS operated pursuant to, and in compliance with, the terms and conditions of any current and enforceable authorization granted by the Federal Aviation Administration.

(Ord. 16-974 § 1, 2016)

Yorba Linda, California Municipal Code

Title 8 HEALTH AND SAFETY

Chapter 8.52 UNMANNED AIRCRAFT SYSTEMS

8.52.010 Purpose and findings.

8.52.020 Definitions.

8.52.030 Local regulations of UAS.

8.52.040 Exemptions.

8.52.010 Purpose and findings.

This chapter is intended to promote public health, safety and welfare of the public and public safety personnel through appropriate regulations pursuant to the city's police powers and its authority to issue regulations related to zoning, land use, privacy, trespass, and law enforcement operations. All regulations herein are intended to protect the health, safety, and welfare of the public and specific areas of local municipal concern where a drone incident would cause greater harm and risk of injury. It is not intended to restrict persons operating unmanned aircraft systems in compliance with all applicable FAA rules and any applicable laws, and outside of prohibited areas. This chapter is not intended to preempt FAA rules, but to operate in conjunction with those rules to promote public safety and privacy while recognizing the limitations in the FAA's enforcement capabilities. (Ord. 2017-1047, § 3, 2017)

8.52.020 Definitions.

For the purposes of this chapter, the following words and phrases shall have the meaning set forth, unless another or different meaning is clearly intended from the context in which the phrase or words are used.

- A. "Drone" means any unmanned aircraft system (UAS).
- B. "Emergency response" means any effort by first responders to save lives, reduce property damage, and/or reduce human suffering. Examples include, but are not limited to, fire-fighting activities, search and rescue activities, police and law enforcement activities, restoration of public utilities, and similar efforts.
- C. "FAA" means the United States Federal Aviation Administration.
- D. "Special event" means any event held in a public park or open-air facility, private property, or commercial/industrial facility that is open to the public and intended to attract people. This includes, but is not limited to, sporting events, concerts, festivals, farmer's markets, and other similar events.

E. "Unmanned aircraft system" or "UAS" means an aircraft without a human pilot onboard, that is controlled from an operator on the ground, and operates without the possibility of direct human intervention from within or on the aircraft.

F. "Visual line of sight" means that the operator or a visual observer in direct contact with the operator has an unobstructed view of the UAS. The operator or a visual observer in direct contact with the operator must use his or her own natural vision (which includes vision corrected by standard eyeglasses or contact lenses) to observe the UAS. The use of vision-enhancing devices, such as binoculars, night-vision goggles, powered vision magnifying devices, and goggles or other devices designed to provide a "first-person view" from or of the UAS do not constitute visual line of sight of the operator or a visual observer. (Ord. 2017-1047, § 3, 2017)

8.52.030 Local regulations of UAS.

A. No person shall takeoff or land a UAS under the following circumstances:

1. Outside of the person's visual line of sight.
2. Within 25 feet of another individual, except the operator or the operator's designee.
3. On private property without the consent of the property owner.
4. Within 500 feet of any special event or any emergency response without the approval of a temporary use permit by the Community Development Director.
5. That has any type of weapon attached to it.
6. In violation of any Temporary Flight Restriction or Notice to Airmen issued by the FAA.

B. No person shall takeoff or land a UAS in a reckless manner so as to create a substantial risk of serious injury to any person or substantial risk of damage to the property of another. (Ord. 2017-1047, § 3, 2017)

8.52.040 Exemptions.

This chapter shall not prohibit the use of UAS by any public safety agency for lawful purposes and in a lawful manner. (Ord. 2017-1047, § 3, 2017)

Contact:

City Clerk: 714-961-7150

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ORDINANCE NO. 2017-1047

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF YORBA LINDA, CALIFORNIA ADOPTING AN ORDINANCE RELATED TO THE OPERATION OF UNMANNED AIRCRAFT SYSTEMS

WHEREAS, the City of Yorba Linda has determined that it desires to consider potential amendments to the Yorba Linda Municipal Code pertaining to the operation of unmanned aircraft systems (UAS); and,

WHEREAS, the operation of UAS, commonly known as drones, can at times pose a hazard to full-scale aircraft in flight and to persons and property on the ground; and

WHEREAS, imposing community-based safety requirements and restrictions on the operation of UAS that do not preempt federal aviation rules or authority, or state law, is necessary to mitigate such risks and to protect the public from the hazards associated with the operation of UAS; and

WHEREAS, in accordance with Section 2.04.090 of the Yorba Linda Municipal Code, this Ordinance was presented to the City Council for its consideration on October 17, 2017.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF YORBA LINDA DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1: Recitals. The foregoing recitals are true and correct and are incorporated herein as though set forth in full.

SECTION 2: Authority. This Ordinance is adopted pursuant to the authority granted by the California Constitution and State law, including but not limited to Article XI, Section 7 of the California Constitution.

SECTION 3: Amendment. Chapter 8.52 of the Yorba Linda Municipal Code is hereby added to read as follows:

Chapter 8.52

UNMANNED AIRCRAFT SYSTEMS

8.52.010 Purpose and findings.

This chapter is intended to promote public health, safety and welfare of the public and public safety personnel through appropriate regulations pursuant to the city's police powers and its authority to issue regulations related to zoning, land use, privacy, trespass, and law enforcement operations. All regulations herein are intended to protect the health, safety, and welfare of the public and specific areas of local municipal concern where a

drone incident would cause greater harm and risk of injury. It is not intended to restrict persons operating unmanned aircraft systems in compliance with all applicable FAA rules and any applicable laws, and outside of prohibited areas. This chapter is not intended to preempt FAA rules, but to operate in conjunction with those rules to promote public safety and privacy while recognizing the limitations in the FAA's enforcement capabilities.

8.52.020 Definitions

For the purposes of this Chapter, the following words and phrases shall have the meaning set forth, unless another or different meaning is clearly intended from the context in which the phrase or words are used.

- A. "Drone" means any unmanned aircraft system (UAS).
- B. "Emergency Response" means any effort by first responders to save lives, reduce property damage, and/or reduce human suffering. Examples include, but are not limited to, fire-fighting activities, search and rescue activities, police and law enforcement activities, restoration of public utilities, and similar efforts.
- C. "FAA" means the United States Federal Aviation Administration.
- D. "Special Event" means any event held in a public park or open-air facility, private property, or commercial/industrial facility that is open to the public and intended to attract people. This includes, but it not limited to, sporting events, concerts, festivals, farmer's markets, and other similar events.
- E. "Unmanned Aircraft System" or "UAS" means an aircraft without a human pilot onboard, that is controlled from an operator on the ground, and operates without the possibility of direct human intervention from within or on the aircraft.
- F. "Visual Line of Sight" means that the operator or a visual observer in direct contact with the operator has an unobstructed view of the UAS. The operator or a visual observer in direct contact with the operator must use his or her own natural vision (which includes vision corrected by standard eyeglasses or contact lenses) to observe the UAS. The use of vision-enhancing devices, such as binoculars, night-vision goggles, powered vision magnifying devices, and goggles or other devices designed to provide a "first-person view" from or of the UAS do not constitute visual line of sight of the operator or a visual observer.

8.52.030 Local Regulations of UAS

- A. No person shall takeoff or land a UAS under the following circumstances:
 - a. Outside of the person's visual line of sight.
 - b. Within 25 feet of another individual, except the operator or the operator's designee.
 - c. On private property without the consent of the property owner.
 - d. Within five hundred (500) feet of any special event or any emergency response without the approval of a temporary use permit by the Community Development Director.
 - e. That has any type of weapon attached to it.

- f. In violation of any Temporary Flight Restriction or Notice to Airmen issued by the FAA.
- B. No person shall takeoff or land a UAS in a reckless manner so as to create a substantial risk of serious injury to any person or substantial risk of damage to the property of another.

8.52.040 Exemptions

- A. This Chapter shall not prohibit the use of UAS by any public safety agency for lawful purposes and in a lawful manner.

SECTION 4: CEQA Determination. In adopting this Ordinance, the City Council finds that the adoption of Ordinance is exempt from the California Environmental Quality Act ("CEQA") pursuant to Title 14 California Code of Regulations Sections 15061(b)(3), in that it can be seen with certainty that the adoption of the Ordinance is not a project, and further, that it proposes no activity that may have a significant effect on the environment and will not cause a direct physical change in the environment or a reasonably foreseeable indirect physical change in the environment.

SECTION 5: Severability. If any section, subsection, subdivision, sentence, clause, phrase, or portion of this Ordinance is, for any reason, held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have adopted this Ordinance and each and every section, subsection, subdivision, sentence, clause, phrase, or portion thereof, irrespective of the fact that any one or more section, subsections, subdivisions, sentences, clauses, phrases, or portions thereof be declared unconstitutional.

SECTION 6. Effective Date. This Ordinance shall become effective thirty (30) days after its passage and adoption. Within fifteen (15) days of the date of adoption of this Ordinance, the City Clerk shall post a copy of said Ordinance in places designated for such posting and shall certify to the same. The City Clerk shall certify the passage of this Ordinance and shall cause the same to be published as required by law.

Ordinance No. 2017-1047
Page 4

PASSED, APPROVED AND ADOPTED by the City Council of the City of Yorba Linda at a regular meeting held on the 7th day of November, 2017.

PEGGY HUANG, MAYOR
CITY OF YORBA LINDA

ATTEST:

MARCIA BROWN, CITY CLERK
CITY OF YORBA LINDA

APPROVED AS TO FORM:
RUTAN & TUCKER LLP

CITY ATTORNEY

Ordinance No. 2017-1047

Page 5

STATE OF CALIFORNIA)
) SS
COUNTY OF ORANGE)

I, MARCIA BROWN, City Clerk of the City of Yorba Linda, California, **DO HEREBY CERTIFY** that the foregoing Ordinance was duly adopted at a regular meeting of the City Council of the City of Yorba Linda, held at the 7th day of November, 2017, by the following vote:

AYES:	COUNCIL MEMBERS:
NOES:	COUNCIL MEMBERS:
ABSENT:	COUNCIL MEMBERS:

MARCIA BROWN, CITY CLERK
CITY OF YORBA LINDA

PROPOSED CHAPTER 9

VERSION 1

CHAPTER 9.X – DRONES AND UNMANNED AIRCRAFT SYSTEMS

- 09.X.010 – Purpose.
- 09.X.020 – Definitions.
- 09.X.030 – General Regulations.
- 09.X.040 – Invasion of Privacy.
- 09.X.050 – Emergency Responders.
- 09.X.060 – Limited Recreational Operations of Unmanned Aircraft.
- 09.X.070 – Small Unmanned Aircraft Systems.
- 09.X.080 – Exemptions.
- 09.X.090 – Use by Public Safety Agencies.
- 09.X.100 – Violations; Penalties.

9.X.010 - Purpose.

The purpose of this chapter is to regulate the operation of unmanned aircraft, commonly known as drones, which can at times pose a hazard to full-scale aircraft in flight and to persons on the ground. Imposing community-based safety requirements on the operation of model Unmanned Aircraft Systems (“UAS”) and imposing restrictions on the operation of both model UAS and civil UAS consistent with both Federal Aviation Administration (“FAA”) rules and state law is necessary to mitigate risks and to protect the public from the hazards associated with the operation of unmanned aircraft. All regulations herein are intended to protect the health, safety, and welfare of the public and specific areas of local municipal concern where a drone incident would cause greater harm and risk of injury. It is not intended to restrict persons operating unmanned aircraft systems in compliance with all applicable FAA rules and any applicable state or local laws, and outside of prohibited areas. This chapter is not intended to preempt FAA rules or applicable state or local laws, but to operate in conjunction with those rules to promote public safety and privacy while recognizing the limitations in the FAA’s and the state’s enforcement capabilities.

9.X.020 - Definitions.

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

“Civil UAS” shall mean an unmanned aircraft or unmanned aircraft system operated by any person for any purposes other than strictly hobby or recreational purposes, including, but not limited to, commercial purposes or in the furtherance of, or incidental to, any business or media service or agency.

“Commercial Purposes” shall mean the conducting, operating, managing or carrying on of a business, whether done as owner, or by means of an officer, agent, manager, employee, servant, lessee or otherwise, whether operating from a fixed location in the City or coming into the City from an outside location to engage in such activities.

“Drone” refers to any UAS.

“Emergency” shall mean a condition or situation involving injury to persons, damage to property, or peril to the safety of persons or property, which results from a fire, an explosion, an

airplane crash, flooding, windstorm damage, a railroad accident, a traffic accident, a powerplant accident, a toxic chemical or biological spill, or any other natural or human-caused event.

“Emergency response” shall mean any effort by first responders to save lives, reduce property damage, and/or reduce human suffering in response to an emergency.

“FAA” refers to the Federal Aviation Administration.

“Model UAS” shall mean an unmanned aircraft or unmanned aircraft system operated by any person strictly for hobby or recreational purposes.

“Operate” shall mean to fly, takeoff, land, hover, record with, photograph with, video with, or in any other way run or cause to function some part of any UAS.

“Person” shall mean natural person, joint venture, joint stock company, partnership, association, club, company, corporation, business trust, organization, or the manager, lessee, agent, servant, officer or employee of any of them.

“Public UAS” shall mean an unmanned aircraft or unmanned aircraft system operated by any public agency or city-contracted agent/agency for government related purposes.

“Unmanned aircraft” shall mean an aircraft without a human pilot onboard, that is controlled by an operator on the ground, and is operated without the possibility of direct human intervention from within or on the aircraft.

“Unmanned aircraft system (UAS)” shall mean an unmanned aircraft and associated elements, including, but not limited to, any communication links and components that control the unmanned aircraft.

“Visual line of sight” shall mean that a person operating an unmanned aircraft has an unobstructed view of the unmanned aircraft. The operator must use his or her own natural vision (which includes vision corrected by standard eyeglasses or contact lenses) to observe the unmanned aircraft. People other than the operator may not be used in lieu of the operator for maintaining visual line of sight to the unmanned aircraft, except as otherwise permitted by federal law. The use of vision-enhancing devices, such as binoculars, night vision goggles, powered vision magnifying devices, and goggles or other devices designed to provide a "first-person view" of the unmanned aircraft do not constitute visual line of sight of the person operating the unmanned aircraft.

“Weapon” shall mean any instrument, article or substance that, under the circumstances in which it is used, attempted to be used or threatened to be used, is readily capable of causing death or serious physical injury.

9.X.030 – General Regulations.

The following shall apply to the operation of any model UAS or civil UAS within the City of Irwindale:

- A. It is unlawful to operate a civil UAS for Commercial Purposes in the City unless the operator has first obtained a City business license under 5.04.020, for such commercial flight operation purposes.

- B. It is unlawful to operate a model UAS or civil UAS within the City of Irwindale to capture or record images or video, or engage in the activity of filming, video taping, or producing images or video for either Commercial Purposes or temporary use purposes as defined in Chapter 17.88, unless the operator has first obtained a City film permit as defined under Section 9.65.030 for such flight operation purposes.
- C. It is unlawful to operate a model UAS at a special event or temporary use permitted within the City of Irwindale pursuant to Chapter 17.88, unless the operator has first obtained a City temporary permit as defined under Section 17.88.030 for such flight operation purposes.
- D. It is unlawful to operate any model UAS or civil UAS within any City park or recreation area, except with a City authorized permit as set forth in this Chapter.
- E. No person shall operate any model UAS or civil UAS within the City of Irwindale other than during daylight hours defined as between official sunrise for local time and 10:00 PM.
- F. Excluding takeoff and landing, no person shall operate any model UAS or civil UAS within the City of Irwindale closer than twenty-five (25) feet to any individual, except the operator or the operator's helper(s).
- G. No person shall operate an unmanned aircraft within 50 feet of a public right-of-way.
- H. No person shall operate an unmanned aircraft in a manner that harasses, startles, or annoys pedestrians or vehicles, or threatens their safety and welfare.
- I. No person shall takeoff, land or operate a model UAS or civil UAS within one thousand five hundred (1,500) horizontal feet of any manned or unmanned aircraft.
- J. No person shall takeoff or land a model UAS or civil UAS within five hundred (500) feet of any county or city owned jails, holding facilities, or law enforcement facility. This prohibition does not apply to those operating public UAS, or law enforcement or public safety agencies.
- K. No person shall takeoff, land or operate a model UAS or civil UAS within two hundred (200) feet of a school facility without prior notification and authorization of school officials.
- L. No person shall takeoff, land or operate a model UAS or civil UAS within one hundred (100) feet of any public building or facility without a City film permit defined under Section 9.65.030, special event or temporary use permit defined under Section 17.88.030, or business license under Section 5.04.020, for such flight operation purposes.
- M. No person shall operate a model UAS or civil UAS that has any type of weapon attached to it.

- N. Any person operating a model UAS or civil UAS under a valid City business license, film permit, or special event permit shall keep the permit on their person at all times while operating said UAS, and present the license or permit to any peace officer immediately upon request.

9.X.040 – Invasion of Privacy.

California Civil Code § 1708.8, as amended from time to time, is adopted as section 9.X.040 of the Irwindale Municipal Code as though set forth in full. Three copies of the code section are on file in the office of the city clerk of the city.

9.X.050 – Emergency Responders.

California Penal Code § 402, as amended from time to time, is adopted as section 9.X.050 of the Irwindale Municipal Code as though set forth in full. Three copies of the code section are on file in the office of the city clerk of the city.

9.X.060 – Limited Recreational Operations of Unmanned Aircraft

49 U.S.C. § 44809 subsection (a) and subsection (g), as amended from time to time, are adopted as section 9.X.060 of the Irwindale Municipal Code as though set forth in full. Three copies of the code section are on file in the office of the city clerk of the city.

9.X.070 – Small Unmanned Aircraft Systems.

14 C.F.R. Part 107, as amended from time to time, is adopted as section 9.X.070 of the Irwindale Municipal Code as though set forth in full. Three copies of the code section are on file in the office of the city clerk of the city.

9.X.080 - Exemptions.

The provisions of this chapter shall not apply to any Public UAS flown by non-law enforcement agencies or non-public safety agencies, or UAS weighing less than 0.55 lbs.

9.X.090. - Use by Public Safety Agencies.

This chapter shall not prohibit the use of any unmanned aircraft by law enforcement or public safety agencies.

9.X.100 - Violations; Penalties.

Any person who initially violates any provision of this chapter will be subject to a verbal or written warning by a peace officer. Any person who subsequently violates any provision of this chapter is guilty of a misdemeanor and maintaining a nuisance, punishable as provided in sections 1.12.010 and 1.12.040 of this Code.

PROPOSED CHAPTER 9

VERSION 2

CHAPTER 9.X – DRONES AND UNMANNED AIRCRAFT SYSTEMS

- 09.X.010 – Purpose.
- 09.X.020 – Definitions.
- 09.X.030 – General Regulations.
- 09.X.040 – Invasion of Privacy.
- 09.X.050 – Emergency Responders.
- 09.X.060 – Limited Recreational Operations of Unmanned Aircraft.
- 09.X.070 – Small Unmanned Aircraft Systems.
- 09.X.080 – Exemptions.
- 09.X.090 – Use by Public Safety Agencies.
- 09.X.100 – Violations; Penalties.

9.X.010 - Purpose.

The purpose of this chapter is to regulate the operation of unmanned aircraft, commonly known as drones, which can at times pose a hazard to full-scale aircraft in flight and to persons on the ground. Imposing community-based safety requirements on the operation of model Unmanned Aircraft Systems (“UAS”) and imposing restrictions on the operation of both model UAS and civil UAS consistent with both Federal Aviation Administration (“FAA”) rules and state law is necessary to mitigate risks and to protect the public from the hazards associated with the operation of unmanned aircraft. All regulations herein are intended to protect the health, safety, and welfare of the public and specific areas of local municipal concern where a drone incident would cause greater harm and risk of injury. It is not intended to restrict persons operating unmanned aircraft systems in compliance with all applicable FAA rules and any applicable state or local laws, and outside of prohibited areas. This chapter is not intended to preempt FAA rules or applicable state or local laws, but to operate in conjunction with those rules to promote public safety and privacy while recognizing the limitations in the FAA’s and the state’s enforcement capabilities.

9.X.020 - Definitions.

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

“Civil UAS” shall mean an unmanned aircraft or unmanned aircraft system operated by any person for any purposes other than strictly hobby or recreational purposes, including, but not limited to, commercial purposes or in the furtherance of, or incidental to, any business or media service or agency.

“Commercial Purposes” shall mean the conducting, operating, managing or carrying on of a business, whether done as owner, or by means of an officer, agent, manager, employee, servant, lessee or otherwise, whether operating from a fixed location in the City or coming into the City from an outside location to engage in such activities.

“Drone” refers to any UAS.

“Emergency” shall mean a condition or situation involving injury to persons, damage to property, or peril to the safety of persons or property, which results from a fire, an explosion, an

airplane crash, flooding, windstorm damage, a railroad accident, a traffic accident, a powerplant accident, a toxic chemical or biological spill, or any other natural or human-caused event.

“Emergency response” shall mean any effort by first responders to save lives, reduce property damage, and/or reduce human suffering in response to an emergency.

“FAA” refers to the Federal Aviation Administration.

“Model UAS” shall mean an unmanned aircraft or unmanned aircraft system operated by any person strictly for hobby or recreational purposes.

“Operate” shall mean to fly, takeoff, land, hover, record with, photograph with, video with, or in any other way run or cause to function some part of any UAS.

“Person” shall mean natural person, joint venture, joint stock company, partnership, association, club, company, corporation, business trust, organization, or the manager, lessee, agent, servant, officer or employee of any of them.

“Public UAS” shall mean an unmanned aircraft or unmanned aircraft system operated by any public agency or city-contracted agent/agency for government related purposes.

“Unmanned aircraft” shall mean an aircraft without a human pilot onboard, that is controlled by an operator on the ground, and is operated without the possibility of direct human intervention from within or on the aircraft.

“Unmanned aircraft system (UAS)” shall mean an unmanned aircraft and associated elements, including, but not limited to, any communication links and components that control the unmanned aircraft.

“Visual line of sight” shall mean that a person operating an unmanned aircraft has an unobstructed view of the unmanned aircraft. The operator must use his or her own natural vision (which includes vision corrected by standard eyeglasses or contact lenses) to observe the unmanned aircraft. People other than the operator may not be used in lieu of the operator for maintaining visual line of sight to the unmanned aircraft, except as otherwise permitted by federal law. The use of vision-enhancing devices, such as binoculars, night vision goggles, powered vision magnifying devices, and goggles or other devices designed to provide a "first-person view" of the unmanned aircraft do not constitute visual line of sight of the person operating the unmanned aircraft.

“Weapon” shall mean any instrument, article or substance that, under the circumstances in which it is used, attempted to be used or threatened to be used, is readily capable of causing death or serious physical injury.

9.X.030 – General Regulations.

The following shall apply to the operation of any model UAS or civil UAS within the City of Irwindale:

- A. It is unlawful to operate a civil UAS for Commercial Purposes in the City unless the operator has first obtained a City business license under 5.04.020, for such commercial flight operation purposes.

- B. It is unlawful to operate a model UAS or civil UAS within the City of Irwindale to capture or record images or video, or engage in the activity of filming, video taping, or producing images or video for either Commercial Purposes or temporary use purposes as defined in Chapter 17.88, unless the operator has first obtained a City film permit as defined under Section 9.65.030 for such flight operation purposes.
- C. It is unlawful to operate a model UAS at a special event or temporary use permitted within the City of Irwindale pursuant to Chapter 17.88, unless the operator has first obtained a City temporary permit as defined under Section 17.88.030 for such flight operation purposes.
- D. It is unlawful to operate any model UAS or civil UAS within any City park or recreation area, except with a City authorized permit as set forth in this Chapter.
- E. No person shall operate any model UAS or civil UAS within the City of Irwindale other than during daylight hours defined as between official sunrise for local time and 10:00 PM.
- F. Excluding takeoff and landing, no person shall operate any model UAS or civil UAS within the City of Irwindale closer than twenty-five (25) feet to any individual, except the operator or the operator's helper(s).
- G. No person shall operate an unmanned aircraft within a residential zone in the City.
- H. No person shall operate an unmanned aircraft in a manner that harasses, startles, or annoys pedestrians or vehicles, or threatens their safety and welfare.
- I. No person shall takeoff, land or operate a model UAS or civil UAS within one thousand five hundred (1,500) horizontal feet of any manned or unmanned aircraft.
- J. No person shall takeoff or land a model UAS or civil UAS within five hundred (500) feet of any county or city owned jails, holding facilities, or law enforcement facility. This prohibition does not apply to those operating public UAS, or law enforcement or public safety agencies.
- K. No person shall takeoff, land or operate a model UAS or civil UAS within two hundred (200) feet of a school facility without prior notification and authorization of school officials.
- L. No person shall takeoff, land or operate a model UAS or civil UAS within one hundred (100) feet of any public building or facility without a City film permit defined under Section 9.65.030, special event or temporary use permit defined under Section 17.88.030, or business license under Section 5.04.020, for such flight operation purposes.
- M. No person shall operate a model UAS or civil UAS that has any type of weapon attached to it.

- N. Any person operating a model UAS or civil UAS under a valid City business license, film permit, or special event permit shall keep the permit on their person at all times while operating said UAS, and present the license or permit to any peace officer immediately upon request.

9.X.040 – Invasion of Privacy.

California Civil Code § 1708.8, as amended from time to time, is adopted as section 9.X.040 of the Irwindale Municipal Code as though set forth in full. Three copies of the code section are on file in the office of the city clerk of the city.

9.X.050 – Emergency Responders.

California Penal Code § 402, as amended from time to time, is adopted as section 9.X.050 of the Irwindale Municipal Code as though set forth in full. Three copies of the code section are on file in the office of the city clerk of the city.

9.X.060 – Limited Recreational Operations of Unmanned Aircraft

49 U.S.C. § 44809 subsection (a) and subsection (g), as amended from time to time, are adopted as section 9.X.060 of the Irwindale Municipal Code as though set forth in full. Three copies of the code section are on file in the office of the city clerk of the city.

9.X.070 – Small Unmanned Aircraft Systems.

14 C.F.R. Part 107, as amended from time to time, is adopted as section 9.X.070 of the Irwindale Municipal Code as though set forth in full. Three copies of the code section are on file in the office of the city clerk of the city.

9.X.080 - Exemptions.

The provisions of this chapter shall not apply to any Public UAS flown by non-law enforcement agencies or non-public safety agencies, or UAS weighing less than 0.55 lbs.

9.X.090. - Use by Public Safety Agencies.

This chapter shall not prohibit the use of any unmanned aircraft by law enforcement or public safety agencies.

9.X.100 - Violations; Penalties.

Any person who initially violates any provision of this chapter will be subject to a verbal or written warning by a peace officer. Any person who subsequently violates any provision of this chapter is guilty of a misdemeanor and maintaining a nuisance, punishable as provided in sections 1.12.010 and 1.12.040 of this Code.

IRWINDALE CITY COUNCIL CHAMBERS
5050 N. IRWINDALE AVENUE
IRWINDALE, CALIFORNIA 91706

JUNE 28, 2023
WEDNESDAY
8:08 P.M.

The Irwindale **SUCCESSOR AGENCY TO THE IRWINDALE COMMUNITY REDEVELOPMENT AGENCY** met in regular session at the above time and place.

ROLL CALL:

Present: Councilmembers Mark A. Breceda, Manuel R. Garcia;
Mayor Pro Tem Albert F. Ambriz; Mayor H. Manuel Ortiz

Absent: Councilmember Larry G. Burrola

Also Present: Julian A. Miranda, City Manager; Jamie Traxler, Assistant City Attorney; Theresa Olivares, Assistant City Manager; Christopher Hofford, Chief of Police; Kambiz Borhani, Director of Finance / City Treasurer; Marilyn Simpson, Community Development Director; Eddie Chan, Director of Engineering / Building Official; Elizabeth Rodriguez, Public Services Director; Mary Hull, Human Resources Manager, and Laura Nieto, Chief Deputy City Clerk

AB 2449 DISCLOSURES None.

CONSENT CALENDAR

MOTION

A motion was made by Councilmember Breceda, seconded by Councilmember Garcia, to approve the Consent Calendar. The motion was unanimously approved; Councilmember Burrola absent.

ITEM NO. 17
MINUTES

MINUTES

The following minutes were approved:

- 1) Special meeting held June 5, 2023

ITEM NO. 18
WARRANTS

WARRANTS

None for approval.

END OF CONSENT CALENDAR

SPONTANEOUS
COMMUNICATIONS

There were no speakers.

ADJOURNMENT

There being no further business to conduct, the meeting was adjourned at 8:09 p.m.

Laura M. Nieto, MMC
Chief Deputy City Clerk

**IRWINDALE CITY COUNCIL CHAMBERS
5050 N. IRWINDALE AVENUE
IRWINDALE, CALIFORNIA 91706**

**JULY 12, 2023
WEDNESDAY
8:18 P.M.**

The Irwindale **SUCCESSOR AGENCY TO THE IRWINDALE COMMUNITY REDEVELOPMENT AGENCY** met in regular session at the above time and place.

ROLL CALL:

Present: Councilmembers Mark A. Breceda, Larry G. Burrola;
Mayor Pro Tem Albert F. Ambriz

Absent: Councilmember Manuel R. Garcia; Mayor H. Manuel Ortiz

Also Present: Julian A. Miranda, City Manager; Adrian Guerra, City Attorney; Theresa Olivares, Assistant City Manager; Christopher Hofford, Chief of Police; Kambiz Borhani, Director of Finance / City Treasurer; Marilyn Simpson, Community Development Director; Eddie Chan, Director of Engineering / Building Official; Elizabeth Rodriguez, Public Services Director; Mary Hull, Human Resources Manager, and Laura Nieto, Chief Deputy City Clerk

AB 2449 DISCLOSURES None.

CONSENT CALENDAR

MOTION

A motion was made by Councilmember Breceda, seconded by Councilmember Burrola, to approve the Consent Calendar. The motion was unanimously approved; Councilmember Garcia and Mayor Ortiz absent.

ITEM NO. 17
MINUTES

MINUTES

None for approval

ITEM NO. 18
WARRANTS

WARRANTS

The warrants were approved.

END OF CONSENT CALENDAR

SPONTANEOUS
COMMUNICATIONS

There were no speakers.

ADJOURNMENT

There being no further business to conduct, the meeting was adjourned at 8:19 p.m.

Laura M. Nieto, MMC
Chief Deputy City Clerk

SA Item 13

Accounts Payable

Checks by Date - Summary by Check Number

**City of Irwindale as Successor Agency to the
Irwindale Community Redevelopment Agency**



Check No	Vendor No	Vendor Name	Check Date	Check Amount
80311	ROSENO	Rosenow Spevacek Group Inc	07/18/2023	68.75
Report Total (1 checks):				68.75

**IRWINDALE CITY COUNCIL CHAMBERS
5050 N. IRWINDALE AVENUE
IRWINDALE, CALIFORNIA 91706**

HA Item 15B

**JUNE 28, 2023
WEDNESDAY
8:09 P.M.**

The Irwindale **HOUSING AUTHORITY** met in regular session at the above time and place.

ROLL CALL:

Present: Board Members Mark A. Breceda, Manuel R. Garcia;
Vice Chair Albert F. Ambriz; Chair H. Manuel Ortiz

Absent: Board Member Larry G. Burrola

Also present: Julian A. Miranda, Executive Director; Adrian Guerra, General Counsel; Christopher Hofford, Chief of Police; Theresa Olivares, Assistant Executive Director; Kambiz Borhani, Director of Finance / City Treasurer; Marilyn Simpson, Community Development Director; Elizabeth Rodriguez, Public Services Director; Eddie Chan, Director of Engineering / Building Official; Mary Hull, Human Resources Manager, and Laura Nieto, Chief Assistant Authority Secretary

AB 2449 DISCLOSURES None.

CONSENT CALENDAR

MOTION

A motion was made by Board Member Breceda, seconded by Board Member Garcia, to approve the Consent Calendar. The motion was unanimously approved; Board Member Burrola absent.

ITEM NO. 19
MINUTES

MINUTES

The following minutes were approved:

A) Special meeting held June 5, 2023

END OF CONSENT CALENDAR

SPONTANEOUS
COMMUNICATIONS

There were no speakers.

ADJOURNMENT

There being no further business to conduct, the meeting was adjourned at 8:09 p.m.

Laura M. Nieto, MMC
Chief Assistant Authority Secretary