

CITY OF IRWINDALE

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



AMENDED

NOTICE AND AGENDA FOR THE SPECIAL AND REGULAR MEETING OF THE

CITY COUNCIL

SUCCESSOR AGENCY TO THE IRWINDALE COMMUNITY REDEVELOPMENT AGENCY

HOUSING AUTHORITY

RECLAMATION AUTHORITY

SEPTEMBER 13, 2023

SPECIAL MEETING – 6:00 P.M.

REGULAR MEETING - 6:30 P.M.

IRWINDALE CITY COUNCIL CHAMBER

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 – 6:00 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
 - 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
 - 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
2. Liability Claims
Pursuant to Government Code Section 54956.95

Claimant: Calmat Co. d.b.a. Vulcan Materials Company
Agency claimed against: City of Irwindale
3. Conference with Legal Counsel – Existing Litigation
[Pursuant to Government Code Sections 54954.5(c), 54956.9(d)(1)]

Case Name: Eddie Arteaga vs. State of California, City of Irwindale, et al.
Case Number: 22STCV13949

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

*Special meeting agenda amended on Tuesday, September 12, 2023 at 4:09 p.m. to correct Item No. 3, highlighted above.

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;

AB 2449 DISCLOSURES

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

CHANGES TO THE AGENDA

COUNCIL MEMBER TRAVEL REPORTS

COUNCILMEMBER COMMENTS

INTRODUCTION OF NEW EMPLOYEES/PROMOTIONS

Introduction of Irwindale Police Officer Alberto Penaloza

PROCLAMATIONS / PRESENTATIONS / COMMENDATIONS

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 meeting held July 31, 2023
- B) Regular meeting held August 23, 2023
- C) Regular meeting held August 23, 2023

2. Warrants/Demands/Payroll**Department: Finance**

Recommendation: Approve

3. Approve the Out of State Travel to the 59th Annual California Narcotic Officers Association (CNOA) Training Institute and Law Enforcement Expo for Detective Sergeant Greg Gomez, Detective Leonard Garza, and an additional (confidential) Detective**Department: Police**

Recommendation: **Adopt Resolution No. 2023-64-3442** entitled, "A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF IRWINDALE APPROVING THE OUT-OF-STATE TRAVEL TO THE CALIFORNIA NARCOTIC OFFICERS ASSOCIATION (CNOA) TRAINING INSTITUTE AND LAW ENFORCEMENT EXPO FOR DETECTIVE SERGEANT GREG GOMZE, DETECTIVE LEONARD GARZA, AND AN ADDITION (CONFIDENTIAL) DETECTIVE, AND APPROPRIATING FUNDS".

4. Amendment No. 1 to Contract Services Agreement with CWE for Professional Environmental Services for the National Pollutant Discharge Elimination System (NPDES) and other related services**Department: Engineering**

Recommendation: Authorize the City Manager to execute Amendment No. 1 to Contract Services Agreement with CWE for Professional Environmental Services for the National Pollutant Discharge Elimination System (NPDES) and other related services.

5. Approval of Third Tolling Agreement between BKK Working Group and City of Irwindale Related to the BKK Landfills**Department: Legal Counsel**

Recommendation: Authorize the City Manager to execute the Third Tolling Agreement between BKK Working Group and City of Irwindale that will extend the statute of limitations period to September 2026 for lawsuits related to cleanup of the BKK Landfill in West Covina.

6. Approval of Safe Streets and Roads for All (SS4A) Grant Agreement between City of Irwindale and U.S. Department of Transportation Federal Highway Administration in the Amount of \$184,000**Department: Engineering**

Recommendation:(1) Approve the grant agreement with the U.S. Department of Transportation Federal Highway Administration (FHWA) for the Safe Streets and Roads for All (SS4A) Grant Award; and (2) authorize the City Manager to execute the agreement upon approval as to form by the City Attorney.

7. Cost Sharing Agreement Renewal with the Los Angeles Gateway Region Integrated Regional Water Management Joint Power Authority to Continue Operating, Monitoring, and Performing Equipment Maintenance Pursuant to the Harbor Toxic Pollutants Total Maximum Daily Load

Department: Engineering

Recommendation: (1) Authorize the City Manager to enter into an agreement with the Los Angeles Gateway Region Integrated Regional Water Management Joint Powers Authority to continue operating, monitoring, and performing equipment maintenance pursuant to the Harbor Toxic Pollutants Total Maximum Daily Load.

8. Acceptance of the 2022-2023 Resurfacing Program: Residential Resurfacing Project – Phase II; P-1043

Department: Engineering

Recommendation: (1) Ratify changes to the original scope of work and accept the improvements and maintenance responsibilities for the constructed improvements of the 2022-2023 Resurfacing Program: Residential Resurfacing Project – Phase II; (2) approve the final construction project amount of \$399,561.59 under the construction contract with Vance Corporation; (3) approve final construction management and inspection services contract with FCG Consultants in the amount of \$76,266.06; (4) authorize the City Clerk to record the Notice of Completion; and (5) authorize the Finance Director to release the 5% retention amount for the construction project.

9. Request to Approve a Project Reimbursement Agreement between the City and RIF III-Irwindale LLC (“Applicant”) for the reimbursement of costs associated with processing and negotiating permits, entitlements, and proposed Conditions of Approval, including CEQA, City Attorney, and contract planning costs associated with a proposed industrial building to be located at 15715 Arrow Highway (APN: 8619-001-059)

Department: Community Development

Recommendation: Approve the Project Reimbursement Agreement with RIF III-Irwindale LLC for the reimbursement of costs associated with processing and negotiating permits, entitlements, and proposed Conditions of Approval of the Project, including all CEQA work conducted and all necessary CEQA documents prepared by the CEQA consultant selected by the City as Lead Agency and costs incurred by the City’s Attorney’s office and contract planning services.

10. Request to Approve a Project Reimbursement Agreement between the City and Rexford Industrial – 14005 Live Oak, LLC (“Applicant”) for the reimbursement of costs associated with processing and negotiating permits, entitlements and proposed Conditions of Approval, including CEQA, City Attorney, and contract planning costs associated with a proposed industrial building to be located at 14005 Live Oak Ave (APNs: 8535-001-033)

Department: Community Development

Recommendation: Approve the Project Reimbursement Agreement with Rexford Industrial – 14005 Live Oak, LLC for the reimbursement of costs associated with processing and negotiating permits, entitlements, and proposed conditions of approval of the Project, including all CEQA work conducted and all necessary CEQA documents prepared by the CEQA consultant selected by the City as Lead Agency and costs incurred by the City’s Attorney’s office and contract planning services.

11. Request to approve Amendment No. 2 to the Professional Consulting Contract with Interwest Consulting Group and Resolution No. 2023-68-3446 approving an appropriation adjustment for the use of state grant funds for the Comprehensive Zoning Ordinance Update

Department: Community Development

Recommendation: (1) Approve the contract Amendment No. 2 with Interwest Consulting Group for the preparation of the Comprehensive Zoning Ordinance Update; and (2) Approve **Resolution No. 2023-68-3446** entitled, “A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF IRWINDALE, APPROVING APPROPRIATION ADJUSTMENTS FOR THE USE OF STATE GRANT FUNDS FOR THE COMPREHENSIVE ZONING ORDINANCE UPDATE”.

12. Request to Approve a Professional Contract Services Agreement with Kimley-Horn and Associates, Inc for the preparation of CEQA documents for the construction of a ±102,400 square foot speculative industrial building with associated standard and trailer parking for the property located at 14005 Live Oak Ave (APN: 8535-001-033)

Department: Community Development

Recommendation: Approve the contract with Kimley-Horn and Associates, Inc. for the preparation of an Initial Study with a Mitigated Negative Declaration and/or an Environmental Impact Report to be prepared in association with land use entitlement applications for property located at 14005 Live Oak Ave, Irwindale, CA 91706.

13. Request to Approve a Professional Contract Services Agreement with ECORP Consulting, Inc for the preparation of CEQA documents for the construction of a ±105,000 square foot speculative industrial building with associated parking for the property located at 15715 Arrow Highway (APN: 5619-001-059).

Department: Community Development

Recommendation: Approve the contract with ECORP Consulting, Inc. for the preparation of an Initial Study with a Mitigated Negative Declaration and/or an Environmental Impact Report to be prepared in association with land use entitlement applications for property located at 15715 Arrow Highway, Irwindale, CA 91706.

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.

14. Introduction and First Reading of Ordinance No. 772 Pertaining to Adoption of Chapter 9.18 of Title 9 of the Irwindale Municipal Code Related to the Regulation of Unmanned Aircraft Systems and Drones

Department: Legal Counsel

Recommendation: It is recommended that the Irwindale City Council **introduce for first reading by title only with further reading waived Ordinance No. 772**, AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF IRWINDALE ADDING CHAPTER 9.18 ("DRONES AND UNMANNED AIRCRAFT SYSTEMS") TO TITLE 9 ("PUBLIC PEACE, MORALS AND WELFARE") TO THE IRWINDALE MUNICIPAL CODE RELATED TO THE OPERATION OF DRONES AND UNMANNED AIRCRAFT WITHIN THE CITY OF IRWINDALE AND ADOPTING CALIFORNIA CIVIL CODE SECTION 1708.8, CALIFORNIA PENAL CODE SECTION 402, SECTION 44809 OF UNITED STATES CODE TITLE 49, AND PART 107 OF UNITED STATES CODE OF FEDERAL REGULATIONS TITLE 14 BY REFERENCE"

15. Amendments to City Donation Policy

Department: Administration

Recommendation: Discuss and provide direction to staff relating to possible amendments to the City's Donation Policy.

16. Library Project Update – Verbal

17. Meridian Traffic Calming Measures - Verbal

18. Grant Status Update – Verbal

19. Veteran's Memorial Project Update – Verbal

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

The Consent Calendar contains matters of routine business and is to be approved with one motion unless a member of the governing body 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.

20. Minutes

Department: Administration / City Clerk

Recommendation: Approve the following minutes:

A) Regular meeting held August 23, 2023

21. Warrants

Department: Finance

Recommendation: Approve

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

The Consent Calendar contains matters of routine business and is to be approved with one motion unless a member of the governing body 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.

22. Minutes

Department: Administration / City Clerk

Recommendation: Approve the following minutes:

A. Regular meeting held August 23, 2023

23. Consideration of Approval of Amendment No. 1 to Affordable Housing Agreement, Option to Purchase and Declaration of Covenants Running with Land for 16124 Calle de Paseo to Implement Equity Sharing Policy

Department: Community Development / Housing

Recommendation: (1) Approve Amendment No. 1 to Affordable Housing Agreement, Option to Purchase and Declaration of Covenants Running with Land between Irwindale Housing Authority

and Kenneth Aguayo, Leonard Aguayo, and Valerie Sanchez; and (2) Authorize the Executive Director to execute Amendment No. 1 subject to Authority Counsel approval as to form.

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

RECLAMATION AUTHORITY

As required by Government Code section 54954.3, members of the City Council are also members of the Reclamation Authority, which is concurrently convening with the City Council this evening and each Council Member is paid an additional stipend of \$300 for attending the Reclamation Authority meeting

CONSENT CALENDAR

24. Minutes

Department: Administration / City Clerk

Recommendation: Approve the following minutes:

A. Regular meeting held June 5, 2023

25. 2023 3rd Quarter Mining Report of Nine (9) SMARA Pits

Department: Public Works Engineering

Recommendation: Receive and file the report.

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

Department: Finance

Recommendation: Receive and file the Investment Quarterly Report for the fiscal quarter ending June 30, 2023.

NEW BUSINESS

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

PUBLIC HEARING

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, Housing and Reclamation Authorities, to be held on September 13, 2023, be posted at the City Hall, Library, and Post Office on September 7, 2023.

Laura M. Nieto, MMC

Laura M. Nieto, MMC
Chief Deputy City Clerk

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

**JULY 31, 2023
WEDNESDAY
5:00 P.M.**

The Irwindale **CITY COUNCIL** met in special 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; Kambiz Borhani, Director of Finance / City Treasurer; Jeanette Duran, Finance Manager; and Laura Nieto, Chief Deputy City Clerk

AB 2449 DISCLOSURES None.

STRAWS DRAWN

After drawing straws, it was determined that Mayor Ortiz would be allowed to participate in discussing the matter at hand. Councilmembers Breceda and Garcia left the meeting at 5:12 p.m.

**SPONTANEOUS
COMMUNICATIONS**

None.

NEW BUSINESS

**ITEM NO. 1
PUBLIC HEARING
FOR IRWINDALE
BUSINESS CENTER
SEWER AND
STREET LIGHTING AND
MAINTENANCE
ASSESSMENT
DISTRICTS**

**PUBLIC HEARING FOR IRWINDALE BUSINESS CENTER SEWER
AND STREET LIGHTING MAINTENANCE ASSESSMENT
DISTRICTS**

**FINANCE MANAGER
DURAN**

Finance Manager Duran presented the report.

**OPEN
PUBLIC HEARING**

At 5:16 p.m., Mayor Ortiz opened the public hearing,

**COUNCILMEMBER
BURROLA**

Councilmember Burrola asked clarifying questions, which Manager Duran and Director Borhani explained.

**CLOSE
PUBLIC HEARING**

There being no additional speakers, Mayor Ortiz closed the public hearing at 5:19 p.m.

RESOLUTION NO.
2023-58-3436
ADOPTED

Resolution No. 2023-58-3436, entitled:

"A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF IRWINDALE, CALIFORNIA, ORDERING THE LEVY AND COLLECTION OF ASSESSMENTS FOR THE FISCAL YEAR 2023-2024, BEGINNING JULY 1, 2023, AND ENDING JUNE 30, 2024, FOR MAINTENANCE, OPERATION, AND CAPITAL REPLACEMENT OF THE CITY'S SANITATION AND SEWAGE SYSTEMS WITHIN THE SEWER MAINTENANCE DISTRICT LOCATED WITHIN THE IRWINDALE BUSINESS CENTER," and

RESOLUTION NO.
2023-59-3437
ADOPTED

Resolution No. 2023-59-3437, entitled:

"A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF IRWINDALE, CALIFORNIA, ORDERING THE LEVY AND COLLECTION OF ASSESSMENTS FOR THE FISCAL YEAR 2023-2024, BEGINNING JULY 1, 2023, AND ENDING JUNE 30, 2024, FOR MAINTENANCE OF STREET LIGHTING LOCATED WITHIN THE EXISTING IRWINDALE BUSINESS CENTER STREET LIGHTING MAINTENANCE DISTRICT," were adopted, on the motion of Mayor Pro Tem Ambriz, seconded by Councilmember Burrola, and unanimously approved; Councilmembers Breceda and Garcia absent.

ADJOURNMENT

There being no further business to conduct, the meeting was adjourned at 5:19 p.m.

Laura M. Nieto, MMC
Chief Deputy City Clerk

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

AUGUST 23, 2023
WEDNESDAY
5:30 P.M.

The Irwindale **CITY COUNCIL** met in special 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

Absent: Mayor H. Manuel Ortiz

Also Present: Julian A. Miranda, City Manager; Adrian Guerra, City Attorney; and Laura Nieto, Chief Deputy City Clerk

AB 2449 DISCLOSURES None.

**SPONTANEOUS
COMMUNICATIONS**

None.

**RECESS TO
CLOSED SESSION**

At 5:34 p.m., the City Council met in Closed Session to discuss the following:

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: Discussed, update provided, direction provided to City Attorney; no reportable action taken (Councilmember Breceda did not participate due to a conflict of interest).

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

Number of Cases: 1

ACTION: Discussed, information provided to the City Council; no reportable action taken (Councilmember Breceda did not participate due to a conflict of interest).

Conference with Labor Negotiator
Pursuant to California Government Code Section 54957.6

Agency Designated Representatives: Julian A. Miranda, City Manager; Adrian Guerra, Legal Counsel; Mary Hull, Human Resources Manager

Employee Organizations: Irwindale Police Officers Association

ACTION: Discussed, information provided to the City Council; no reportable action taken.

Liability Claims

Pursuant to Government Code Section 54956.95

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

ACTION: Discussion held, update provided; no reportable action taken (Councilmember Breceda did not participate due to a conflict of interest).

**RECONVENE IN
OPEN SESSION**

At 6:32 p.m., the City Council reconvened in Open Session.

ADJOURNMENT

There being no further business to conduct, the meeting was adjourned at 6:33 p.m.

Laura M. Nieto, MMC
Chief Deputy City Clerk

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

AUGUST 23, 2023
WEDNESDAY
6:33 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

Absent: 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 Milah Butler.

AB 2449 DISCLOSURES

None.

CHANGES TO THE AGENDA

**CITY MANAGER
MIRANDA**

City Manager Miranda advised that Item No. 9 would be moved to a meeting in September.

COUNCILMEMBER TRAVEL REPORTS

None.

COUNCILMEMBER COMMENTS

**MAYOR PRO TEM
AMBRIZ**

Mayor Pro Tem Ambriz spoke on his attendance at a recent luncheon for Assemblymember Blanca Rubio and thanked her for the funding she helped provide for the City's new library project.

INTRODUCTION OF NEW EMPLOYEES / PROMOTIONS

**INTRODUCTION OF
IT TECHNICIAN
JONAMHAE CUCAL**

INTRODUCTION OF IT TECHNICIAN JONAMHAE CUCAL

The introduction was made.

**PROCLAMATIONS /
PRESENTATIONS /
COMMENDATIONS**

CERTIFICATE OF
RECOGNITION TO
IGNACIO S. "NACHO"
MIRANDA

CERTIFICATE OF RECOGNITION TO IGNACIO S. "NACHO"
MIRANDA

The certificate of recognition was presented.

IRWINDALE CHAMBER
OF COMMERCE
BUSINESS OF THE
MONTH – TRILOGY
FINANCIAL

IRWINDALE CHAMBER OF COMMERCE BUSINESS OF THE
MONTH – TRILOGY FINANCIAL

The presentation was made.

CERTIFICATE OF
RECOGNITION –
IRWINDALE AQUATICS

CERTIFICATE OF RECOGNITION – IRWINDALE AQUATICS

The certificate was presented.

CERTIFICATES OF
RECOGNITION TO
IRWINDALE AQUATICS
LIFEGUARD TRAVIS
BRECEDA AND
ASST. POOL MGR.
VANESSA YANEZ

CERTIFICATES OF RECOGNITION TO IRWINDALE AQUATICS
LIFEGUARD TRAVIS BRECEDA AND ASSISTANT POOL
MANAGER VANESSA YANEZ

The certificates were presented.

CONSENT CALENDAR

MOTION

A motion was made by Councilmember Breceda, seconded by Councilmember Burrola, to approve the Consent Calendar, with the exception of Item No. 7, which was pulled for separate consideration, and Item No. 9, which will come forward at a meeting in September, reading ordinances by title only and waiving further reading thereof. The motion was unanimously approved; Mayor Ortiz absent.

ITEM NO. 1
MINUTES

MINUTES

The following minutes were approved:

- A) Special joint meeting held July 19, 2023
- B) Special meeting held July 26, 2023
- C) Regular meeting held July 26, 2023

ITEM NO. 2
WARRANTS /
DEMANDS /
PAYROLL

WARRANTS / DEMANDS / PAYROLL

The warrants / demands / payroll were approved.

ITEM NO. 3
APPROVE PURCHASE
AGREEMENT TO
REPLACE AND
UPGRADE POLICE
DEPARTMENT'S
DISPATCH RADIO
CONSOLES

APPROVE PURCHASE AGREEMENT TO REPLACE AND
UPGRADE POLICE DEPARTMENT'S DISPATCH RADIO
CONSOLES

The City Manager was authorized to sign the Communications System and Services Agreement with Motorola Solutions dated June 13, 2023; the sole source purchase of 2 Motorola MCC7500E Dispatch Radio Consoles offered through a Los Angeles County contract in an amount not to exceed \$423,519 was approved, and

RESOLUTION NO.
2023-60-3438
ADOPTED

Resolution No. 2023-60-3438, entitled:

"A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF IRWINDALE APPROVING THE CITY MANAGER TO ENTER INTO A PURCHASE AGREEMENT WITH MOTOROLA SOLUTIONS FOR THE PURCHASE AND INSTALLATION OF 2 NEW POLICE DEPARTMENT RADIO CONSOLES," was adopted.

ITEM NO. 4
AMENDMENT NO. 3
TO THE REGIONAL
FOOD RECOVERY
PROGRAM MOA –
IRWINDALE AND THE
SGVCOG

AMENDMENT NO. 3 TO THE REGIONAL FOOD RECOVERY
PROGRAM MEMORANDUM OF AGREEMENT BETWEEN THE
CITY OF IRWINDALE AND THE SAN GABRIEL VALLEY COUNCIL
OF GOVERNMENTS

RESOLUTION NO.
2023-61-3439
ADOPTED

Resolution No. 2023-61-3439, entitled:

"A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF IRWINDALE APPROVING AMENDMENT NO. 3 TO THE MEMORANDUM OF AGREEMENT BETWEEN THE SAN GABRIEL VALLEY COUNCIL OF GOVERNMENTS AND THE CITY OF IRWINDALE FOR PARTICIPATION IN THE SAN GABRIEL REGIONAL FOOD RECOVERY PROGRAM AND AUTHORIZING THE CITY MANAGER TO EXECUTE AMENDMENT NO. 3 TO THE MEMORANDUM OF AGREEMENT FOR THE REGIONAL FOOD RECOVERY PROGRAM AS REQUIRED BY SENATE BILL 1383 (LARA) AND CAL RECYCLE REGULATIONS," was adopted.

ITEM NO. 5
APPROVE A
CONTRACT WITH CA
CONSULTING, INC.
FOR GRANT WRITING
MANAGEMENT
SERVICES ON A
MONTH TO MONTH,
RETAINER BASIS

APPROVE A CONTRACT WITH CALIFORNIA CONSULTING, INC.
FOR GRANT WRITING MANAGEMENT SERVICES ON A MONTH
TO MONTH, RETAINER BASIS

RESOLUTION NO.
2023-69-3447
ADOPTED

Resolution No. 2023-69-3447, entitled:

"A RESOLUTION OF THE CITY OF IRWINDALE, WAIVING THE FORMAL BIDDING REQUIREMENTS, AND APPROVING AND AUTHORIZING THE CITY MANAGER TO EXECUTE A PROFESSIONAL SERVICE AGREEMENT WITH CALIFORNIA CONSULTING, INC. FOR GRANT WRITING MANAGEMENT SERVICES," was adopted.

ITEM NO. 6
APPROVE A
CONTRACT WITH
JOE A. GONSALVES
& SON FOR LOBBYING
SERVICES

APPROVE A CONTRACT WITH JOE A. GONSALVES & SON FOR LOBBYING SERVICES

RESOLUTION NO.
2023-70-3448
ADOPTED

Resolution No. 2023-70-3448, entitled:

"A RESOLUTION OF THE CITY OF IRWINDALE, WAIVING THE FORMAL BIDDING REQUIREMENTS AND APPROVING AND AUTHORIZING THE CITY MANAGER TO EXECUTE A PROFESSIONAL SERVICE AGREEMENT WITH JOE A. GONSALVES AND SON FOR LOBBYING SERVICES," was adopted.

ITEM NO. 8
FIRST AMENDMENT
TO THE MOU – CITY
OF IRWINDALE AND
THE IPOA – JULY 1,
2020 – JUNE 30, 2024

CONSIDERATION OF FIRST AMENDMENT TO THE MEMORANDUM OF UNDERSTANDING BY AND BETWEEN THE CITY OF IRWINDALE AND THE IRWINDALE POLICE OFFICERS' ASSOCIATION JULY 1, 2020 – JUNE 30, 2024

The First Amendment to the Memorandum of Understanding by and between the City of Irwindale and the Irwindale Police Officers' Association July 1, 2020 – June 30, 2024, was approved.

END OF CONSENT CALENDAR

ITEM NO. 7
APPROVAL OF
RESOLUTIONS
RELATING TO JOB
CLASSIFICATIONS
AND COMPENSATIONS
FOR CITY EMPLOYEES

APPROVAL OF RESOLUTIONS RELATING TO JOB CLASSIFICATIONS AND COMPENSATIONS FOR CITY EMPLOYEES

COUNCILMEMBER
GARCIA

As requested by Councilmember Garcia, City Manager Miranda discussed the staff report and the job classification for the proposed Inclusion Specialist position.

Councilmember Garcia also asked about funding for the proposed position, to which Director Borhani elaborated on the position's costs.

Councilmember Garcia requested that staff look into future opportunities for funding for this position, to which Director Rodriguez indicated that staff is working with California Consulting to determine whether there are funding opportunities available. She also spoke on the importance of this position and advised that the employee would assist various city departments with training on how to assist individuals with disabilities and / or behavioral issues.

Councilmember Garcia noted that the city already partners with the California Joint Powers Insurance Authority for training, to which Director Rodriguez advised that this type of training is not available through the CA JPIA.

COUNCILMEMBER BRECEDA Responding to a question by Councilmember Breceda, City Manager Miranda indicated that the position would be cost neutral this year due to the defunding of a position in the Engineering Department.

DIRECTOR RODRIGUEZ Director Rodriguez stressed the importance of the position and stated that it would be a detriment to the community if the position is only offered temporarily.

COUNCILMEMBER BURROLA Councilmember Burrola concurred that different individuals have different needs and requested that staff continue to seek funding for the proposed position. He then acknowledged and thanked Recreation Manager Zepeda for bringing this position to the forefront.

RESOLUTION NO. 2023-65-3443
ADOPTED **Resolution No. 2023-65-3443**, entitled: "A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF IRWINDALE APPROVING A NEW JOB CLASSIFICATION FOR AN INCLUSION SPECIALIST ASSOCIATED JOB SPECIFICATION AND ELIMINATING THE POLICE CORPORAL CLASSIFICATION," and

RESOLUTION NO. 2023-66-3444
ADOPTED **Resolution No. 2023-66-3444**, entitled: "A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF IRWINDALE REPEALING AND REPLACING RESOLUTION NO. 2023-45-3423, AND ESTABLISHING THE NUMBER OF POSITIONS, SCHEDULE OF CLASSES, AND COMPENSATION FOR CITY EMPLOYEES," were adopted, provided that staff continue searching for funding opportunities, on the motion of Councilmember Burrola, seconded by Councilmember Garcia, and unanimously approved; Mayor Ortiz absent.

ITEM NO. 9
ACCEPTANCE OF
THE 2022-2023
RESURFACING
PROGRAM –
RESIDENTIAL
RESURFACING
PROJECT – PHASE II

ACCEPTANCE OF THE 2022-2023 RESURFACING PROGRAM – RESIDENTIAL RESURFACING PROJECT – PHASE II; P-1043

This item was continued to a meeting in September.

**SPONTANEOUS
COMMUNICATIONS**

BECKY BARBOSA	An email submitted by Becky Barbosa was read into the record wherein she commended the lifeguards and Assistant Pool Manager on duty during a recent incident at the pool.
LUIS FARIAS	Luis Farias, representing AMAROK Electrified Security Fence, read from a letter from their client, Old Dominion Freight Line, which is interested in protecting its assets through the use of electrified fencing.
TONY NARANJO	Tony Naranjo spoke on a recent accident at Morada / Arrow Highway and requested that the City Engineer look into implementing traffic control measures at the intersection to increase safety.
ANDREW BLANSETT, JC QUINTERO, AND RAY MARTINEZ	Andrew Blansett, JC Quintero, and Ray Martinez all spoke in favor of allowing 626 Youth Athletics participants continue playing football in the City park, noting the many benefits that such a program provides to community youths.
LINDA MAREZ	Linda Marez concurred with the gentlemen and agreed that participating youths should be able to play various sports at the park.

NEW BUSINESS

**ITEM NO. 10
LEGISLATIVE
UPDATE BY
GONSALVES & SON**

LEGISLATIVE UPDATE BY GONSALVES & SON (Verbal)

JASON GONSALVES

Jason Gonsalves provided a verbal update.

COUNCILMEMBER
BRECEDA

Councilmember Breceda thanked the Gonsalves family for the work they have accomplished for the City.

COUNCILMEMBER
BURROLA

Councilmember Burrola also thanked the Gonsalves family for their work and the update provided.

Responding to a comment by Councilmember Burrola, Mr. Gonsalves invited the Council to visit them in Sacramento, possibly in January or February, and meet with legislators and others.

**ITEM NO. 11
VETERAN'S
MONUMENT – OPTION
TO APPROVE OR DENY
NAME OF VETERAN**

VETERAN'S MONUMENT – OPTION TO APPROVE OR DENY
NAME OF VETERAN

ASSISTANT CITY
MANAGER OLIVARES

Assistant City Manager Olivares presented the staff report.

MAYOR PRO TEM
AMBRIZ

Mayor Pro Tem Ambriz stated that these types of matters should be handled administratively, and that the Council should decide whether non-residents should be included in the monument.

ASSISTANT CITY
MANAGER OLIVARES

Assistant City Manager Olivares presented background information on previous staff procedures and explained why the matter was before the Council for consideration.

MOTION

A motion was made by Councilmember Breceda, seconded by Councilmember Burrola, to approve adding applicant Jesse Marquez's name to the Veterans Monument, and that future applications from residents and / or former employees be verified and approved administratively, while applications from volunteers be brought to the Council for consideration. The motion was unanimously approved; Mayor Ortiz absent.

ITEM NO. 12
DISCUSSION AND
DIRECTION FOR
TRANSLATION
SERVICES

DISCUSSION AND DIRECTION FOR TRANSLATION SERVICES

ASSISTANT CITY
MANAGER OLIVARES

Assistant City Manager Olivares presented the staff report.

MOTION

A motion was made by Councilmember Garcia, seconded by Councilmember Breceda, to continue the current practice of only translating important citywide documents such as meetings / workshops by city staff. The motion was unanimously approved; Mayor Ortiz absent.

ITEM NO. 13
CONSIDERATION TO
EXTEND THE HOURS
OF OPERATION FOR
TRANSPORTATION OF
EXCAVATED
AGGREGATES FROM
THE OLIVE PIT TO
UNITED ROCK
PRODUCTS PIT NO. 2
UNTIL SEPTEMBER 30,
2023

CONSIDERATION TO EXTEND THE HOURS OF OPERATION FOR
TRANSPORTATION OF EXCAVATED AGGREGATES FROM THE
OLIVE PIT TO UNITED ROCK PRODUCTS PIT NO. 2 UNTIL
SEPTEMBER 30, 2023

DIRECTOR CHAN

Director Chan presented the report.

COUNCILMEMBER BURROLA Councilmember Burrola thanked United Rock staff for working hard on the construction of the traffic signal.

MOTION A motion was made by Councilmember Burrola, seconded by Councilmember Breceda, to allow United Rock Products, Inc. to continue the current hours of operation for transportation of excavated aggregates from the Olive Pit to United Rock Products Pit No. 2 (URP-2) until September 30, 2023. The current hours of operation are Monday to Friday, 7 a.m. to 3 p.m. and Saturday, 7 a.m. to 5 p.m. (only on the 2nd and 4th Saturday of each month). The motion was unanimously approved; Mayor Ortiz absent.

PUBLIC HEARINGS None.

**CITY MANAGER'S
REPORT**

CITY MANAGER MIRANDA City Manager Miranda presented his report.

- 1) City offices will be closed for Labor Day.
- 2) The comment deadline for the comprehensive zoning code update was extended to August 14. No additional comments were received. The consultant is compiling answers to questions received and will post the information on the city website.
- 3) He provided an update on upcoming Library and Recreation activities.
- 4) The Police Department has received \$20,970 to acquire body-worn cameras.
- 5) LA County Public Works has finalized traffic signal improvements at the intersection on Irwindale and Cypress. City Engineering staff contacted County representatives to return and update the signal timing.
- 6) He provided a brief update on Phases IV and V of the Park Improvement Project.

COUNCILMEMBER BURROLA In response to a request by Councilmember Burrola, Director Rodriguez provided an update on the upcoming Park Improvement Project Phases IV and V and the type of work and upgrades that would be performed. Councilmember Burrola asked about the potential removal of shrubbery, to which Director Rodriguez stated that staff would work with a qualified arborist who would make recommendations on whether to keep or remove shrubs and trees. Councilmember Burrola also noted a dry area of greenery near the Recreation Center's front entrance, to which Director Rodriguez advised that staff would follow up on the concern. She added, however, that this area is not part of the upcoming project phases she referenced.

COUNCILMEMBER GARCIA Councilmember Garcia suggested additional parking in light of increased park usage, to which Director Rodriguez stated that she

would follow up with Engineering staff.

**REQUESTS BY
COUNCILMEMBERS
FOR FUTURE AGENDA
ITEMS**

COUNCILMEMBER
BRECEDA

Councilmember Breceda noted the concerns raised over the use of the park for various sports and indicated that he and City Manager Miranda have discussed ways to monitor the park's use and mitigate damage to the turf.

CITY MANAGER
MIRANDA

City Manager Miranda added that the next course of action would be discussed by the Parks & Recreation Commission, which would then make a recommendation to the Council.

ADJOURNMENT

There being no further business to conduct, the meeting was adjourned at 8:31 p.m., in memory of Dakota Grijalva and Robert Castro.

Laura M. Nieto, MMC
Chief Deputy City Clerk

CITY OF IRWINDALE
PAYROLL WARRANT REGISTER
August 2023

Payroll Batch DATE OF ISSUE 8/10/23	405-08-23, 406-08-23 DEPARTMENT	AMOUNT
	11 City Council	1,731.15
	13 City Administrative Office	54,361.75
	14 Finance Department	27,081.36
	15 Summer Youth	2,433.50
	35 Police Department	209,250.07
	40 Recreation Department	32,151.60
	41 Aquatics Department	25,946.17
	42 Senior Citizens' Center	16,875.57
	44 Library	13,996.98
	51 Planning & Community Development	34,154.27
	52 Public Works - Engineering	28,645.45
	57 Public Works - Services	54,839.77
	Gross Payroll	501,467.64
	Required Deductions	(139,050.33)
	Voluntary Deductions	(19,882.64)
	Net Payroll	342,534.67
Payroll Batch DATE OF ISSUE 8/24/23	419-08-23, 420-08-23, 422-08-23 DEPARTMENT	AMOUNT
	11 City Council	5,529.62
	13 City Administrative Office	55,641.06
	14 Finance Department	27,099.56
	15 Summer Youth	
	35 Police Department	206,141.99
	40 Recreation Department	27,641.18
	41 Aquatics Department	28,436.36
	42 Senior Citizens' Center	16,020.01
	44 Library	13,716.51
	51 Planning & Community Development	35,371.93
	52 Public Works - Engineering	28,376.71
	57 Public Works - Services	54,751.88
	Gross Payroll	498,726.81
	Required Deductions	(136,779.96)
	Voluntary Deductions	(21,535.66)
	Net Payroll	340,411.19

Accounts Payable

Checks by Date - Summary by Check Number

User: imarin
Printed: 9/7/2023 12:04 PM



Check No	Vendor No	Vendor Name	Check Date	Check Amount
80607	CINTAS	Cintas Corporation #693	08/24/2023	358.40
80608	HOMEDE	Home Depot Credit Services	08/24/2023	5,279.07
80609	MULTI02	Multi W Systems	08/24/2023	1,950.00
80610	OPPEN01	Oppenheimer Investigations Group LLP	08/24/2023	3,765.50
80611	WALT01	Walters Wholesale Electric Co.	08/24/2023	741.36
80612	CALIFO56	California State Disbursement Unit	08/24/2023	604.15
80613	CALIFO57	California State Disbursement Unit	08/24/2023	143.07
80614	CITY01	City of Hope	08/24/2023	54.00
80615	ICEA	Irwindale City Employee Assoc.	08/24/2023	803.00
80616	IMEA	Irwindale Mgmt Employee Assoc.	08/24/2023	500.00
80617	IRWIND02	Irwindale Police Officers Assoc.	08/24/2023	2,828.00
80618	ALCO04	Paloma Alcocer	08/24/2023	34.00
80619	ALLIAN02	Alliant Insurance Services, Inc.- Irvine Mai	08/24/2023	198.00
80620	AT&T06	AT & T	08/24/2023	1,684.05
80621	AZUSALW	Azusa Light & Water	08/24/2023	705.91
80622	BAKER10	Bakers Man Production	08/24/2023	900.00
80623	NEST01	Blue Triton Brands, Inc.	08/24/2023	1,014.05
80624	CALIFO02	California American Water	08/24/2023	1,834.54
80625	CMRTA01	City of Carson CMRTA	08/24/2023	40.00
80626	FRAER01	Laura Fraer Snyder	08/24/2023	1,150.00
80627	HART02	Robert Hartman	08/24/2023	400.00
80628	LOPE25	Celia Lopez	08/24/2023	34.00
80629	LUNAAM	Amelia Luna	08/24/2023	300.00
80630	LUU01	Miriam Luu	08/24/2023	77.00
80631	OPTUM01	OptumRx, Inc.	08/24/2023	38,076.50
80632	PART01	Party Pronto, Inc	08/24/2023	418.00
80633	PITNEY06	Pitney Bowes, Inc	08/24/2023	238.14
80634	RODRIG07	Maria Rodriguez	08/24/2023	300.00
80635	RUBIOI	Daniel Rubio	08/24/2023	75.00
80636	GASCOM	SoCalGas	08/24/2023	2,721.44
80637	SCE02	Southern California Edison	08/24/2023	78,922.34
80638	TPX 01	TPX Communications	08/24/2023	2,612.95
80639	VALENC	Laura Valencia	08/24/2023	300.00
80640	VALLEY01	Valley County Water District	08/24/2023	14,720.39
80641	ZHAN02	Jiangtao Zhang	08/24/2023	34.00
80642	TAGLE01	Cynthia Tagle	08/24/2023	20.00
80643	ZEPEDA04	Dena Zepeda	08/24/2023	75.00
80644	AMBRIZ05	Albert Ambriz	08/28/2023	50.30
80645	BOONE01	Vanessa Darlene Boone	08/28/2023	75.00
80646	BURROL08	Larry Burrola	08/28/2023	600.15
80647	BUSTA10	Joanna Bustamante	08/28/2023	75.00
80648	CARLO10	Mariela Carlos	08/28/2023	75.00
80649	CASI01	Jasmine Casillas	08/28/2023	20.00
80650	COLM01	Annette Colmenerio	08/28/2023	300.00
80651	COX01	Grace Cox	08/28/2023	300.00
80652	EVAN02	Theresa Evans	08/28/2023	20.00
80653	FLORE10	Anabel Flores	08/28/2023	75.00

Check No	Vendor No	Vendor Name	Check Date	Check Amount
80654	GARC14	Karen Garcia	08/28/2023	20.00
80655	GONZAL21	Angel Gonzalez	08/28/2023	87.00
80656	INQU01	Stephanie Inquez	08/28/2023	37.00
80657	ISLAS10	Angelica Islas	08/28/2023	75.00
80658	LLANEZ01	Josie Llanez	08/28/2023	75.00
80659	MORAL01	Sylvia Morales	08/28/2023	75.00
80660	PAD01	Octavio Padilla	08/28/2023	75.00
80661	REINOS01	Javier Reinos	08/28/2023	75.00
80662	RODR10	Darlene Rodriguez	08/28/2023	300.00
80663	TREJ01	Rose Trejo	08/28/2023	5.00
80664	VARE01	Ruth Varela	08/28/2023	75.00
80665	VARGAS01	Yvonne Vargas	08/28/2023	75.00
80666	VILLA11	Raul Villa	08/28/2023	300.00
80667	BARB10	Rebecca Garcia Barbosa	08/28/2023	176.00
80668	ARIAS01	Michael Arias	08/31/2023	4,074.00
80669	CORNEJOD	Diego Cornejo	08/31/2023	2,187.00
80670	DOMIN12	Gilbert Dominguez	08/31/2023	75.00
80671	GONZAL07	Raymond Gonzales	08/31/2023	3,121.02
80672	LUND01	Esperanza Lund	08/31/2023	10.00
80673	PETTYC05	City of Irwindale Petty Cash	08/31/2023	59.49
80674	PACIFI13	Rene David LTD	08/31/2023	675.28
80675	ALLK01	All Kinds of BBQ	08/31/2023	1,265.12
80676	AMERIFID	American Fidelity Assurance	08/31/2023	8,693.50
80677	AMERIC34	American Fidelity Assurance Co	08/31/2023	4,447.34
80678	AVILA06	Denise Avila	08/31/2023	75.00
80679	Ayala01	Leonor Ayala	08/31/2023	231.00
80680	BARA01	Frank Barajas	08/31/2023	300.00
80681	OROSCO05	Rebecca Bardales	08/31/2023	52.85
80682	BARRAG03	Martha Barragan	08/31/2023	75.00
80683	WOOD02	Nathaniel Burrola-Woodard	08/31/2023	75.00
80684	CALIFO01	California Contract Cities	08/31/2023	725.00
80685	PMIDEN	Delta Dental Insurance Company	08/31/2023	897.44
80686	PMIDEN01	Delta Dental of California	08/31/2023	12,057.56
80687	ESPINO05	Ernesto Espino	08/31/2023	1,500.00
80688	EVANS02	Gloria Evans	08/31/2023	300.00
80689	FLORE01	Karla Flores	08/31/2023	840.00
80690	FONSEC02	Lydia Fonseca	08/31/2023	75.00
80691	GALLA01	Magdalena Gallardo	08/31/2023	75.00
80692	GARCIA03	Manuel Garcia	08/31/2023	1,559.25
80693	GONZAL31	Angelica Gonzales	08/31/2023	75.00
80694	HIPO01	Alma Hipolito	08/31/2023	75.00
80695	HOMED	Home Depot Credit Services	08/31/2023	1,523.05
80696	LLANEZ01	Josie Llanez	08/31/2023	75.00
80697	PAIK01	Sumako Paik	08/31/2023	240.00
80698	PETTYC05	City of Irwindale Petty Cash	08/31/2023	349.41
80699	RODR110	Gisela Rodriguez	08/31/2023	75.00
80700	Rodrigue	Rodolfo Rodriguez	08/31/2023	300.00
80701	SMART&	Smart & Final	08/31/2023	326.94
80702	STANDA01	Standard Insurance Co. RV	08/31/2023	475.45
80703	STROBE03	Gary Strobehn	08/31/2023	75.00
80704	VISION01	Vision Service Plan - (CA)	08/31/2023	6,380.10
80705	WAGONER	Pamela Wagoner	08/31/2023	815.00
80706	WILL01	April Williams	08/31/2023	765.00
80707	ALTE01	Alternative Hose Incorporated	09/13/2023	29.69
80708	COMPLE01	Complete Paperless Solutions, LLC	09/13/2023	4,576.81
80709	COUNTY04	County of Los Angeles	09/13/2023	16,462.30
80710	CROSS01	Crosstown Elecrical & Data Ic.	09/13/2023	2,520.00

Check No	Vendor No	Vendor Name	Check Date	Check Amount
80711	ITERIS	Iteris, Inc.	09/13/2023	14,411.37
80712	COORYE	Samir M. Khoury	09/13/2023	3,458.50
80713	LINN01	Deborah Linn	09/13/2023	1,426.63
80714	SOUTH09	Southern Computer Warehouse Inc,	09/13/2023	909.78
80715	UNITED05	United Rentals, Inc.	09/13/2023	169.04
80716	VARI01	Vari Sales Corporation	09/13/2023	4,903.37
80717	ALLIAN02	Alliant Insurance Services, Inc.- Irvine Mai	09/13/2023	1,663.00
80718	AMAZON1	Amazon Capital Services, Inc.	09/13/2023	1,356.57
80719	ARAM01	Aramark Uniform & Career Apparel Group	09/13/2023	16.95
80720	AZUSAP01	Azusa Plumbing Supply	09/13/2023	460.72
80721	B&BTIR	B & B Tires Service	09/13/2023	125.00
80722	BAKER01	Baker & Taylor Books	09/13/2023	715.91
80723	BAKER10	Bakers Man Production	09/13/2023	2,700.00
80724	MIJACA	Balcon Holdings, Inc.	09/13/2023	184.00
80725	BARNEY	Barney's Locksmith Service	09/13/2023	132.30
80726	BILLST	Bill's Truck Repair, Inc.	09/13/2023	1,291.62
80727	BURGUA01	Rene Burguan	09/13/2023	500.00
80728	CACE	California Association of	09/13/2023	114.00
80729	SANGAB11	California Newspapers Partnership	09/13/2023	1,130.74
80730	CINTAS	Cintas Corporation #693	09/13/2023	439.47
80731	CIVIC02	CivicPlus, LLC	09/13/2023	4,691.25
80732	DEPART06	Department Of Animal Care	09/13/2023	5,108.22
80733	EBSCOS	EBSCO Subscription Services	09/13/2023	2,324.20
80734	ENVIRO05	Environmental Science Associates (ESA)	09/13/2023	9,710.25
80735	ESRI01	Esri, Inc.	09/13/2023	1,870.00
80736	GARVEY	Garvey Equipment Co	09/13/2023	797.94
80737	GPS01	GPS Vehicle Tracking Solutions LLC	09/13/2023	499.00
80738	GRAING	Grainger	09/13/2023	82.72
80739	HASA01	Hasa Inc.	09/13/2023	1,380.94
80740	HINDER	Hinderliter, De Llamas & Assoc	09/13/2023	8,898.48
80741	JEEPER01	Jeepers Creepers Exterminating Inc.	09/13/2023	230.00
80742	JOHNNY02	Johnny's Pool Service	09/13/2023	139.54
80743	KEYSER	Keyser Marston Associates, Inc	09/13/2023	1,697.50
80744	KEYSTO	Keystone Uniform Depot	09/13/2023	334.72
80745	LAKESH01	Lakeshore Learning Materials,LLC	09/13/2023	1,360.03
80746	LANDSC	Landscape Warehouse III Inc.	09/13/2023	56.87
80747	LAWEO1	Law Enforcement Medical Services, Inc.	09/13/2023	90.00
80748	LEWISE	Lewis Engraving, Inc.	09/13/2023	33.08
80749	LINN01	Deborah Linn	09/13/2023	2,948.37
80750	LSA01	LSA Associates, Inc.	09/13/2023	10,456.25
80751	MIDAS	Manuel C Muratalla	09/13/2023	7,031.25
80752	MARIPO	Mariposa Landscapes, Inc.	09/13/2023	8,796.00
80753	MERCUR	Mercury Fence Co., Inc.	09/13/2023	1,375.00
80754	MOR01	Jimore Morgan	09/13/2023	2,100.00
80755	MOTOR01	Motorola Solutions, Inc.	09/13/2023	1,146.60
80756	PEARSO01	NCS Pearson, Inc	09/13/2023	66.00
80757	OFFICE03	ODP Business Solutions, LLC	09/13/2023	64.32
80758	ORKINP	Orkin Pest Control	09/13/2023	2,349.96
80759	PROPRINT	Pro Printing, Inc.	09/13/2023	60.16
80760	SAFARI	Safariland Ltd. Inc.	09/13/2023	4,847.46
80761	SANGAB13	San Gabriel Valley Council	09/13/2023	14,000.00
80762	NORTH	The Northridge Group, Inc.	09/13/2023	4,304.86
80763	TRIANG01	Triangle Truck Parts	09/13/2023	80.45
80764	UNITED15	United Refrigeration Inc	09/13/2023	188.42
80765	UNITED11	United Site Services of CA Inc	09/13/2023	589.50
80766	HDSUP01	WHITE CAP, L.P.	09/13/2023	76.09
80767	YTIRE	Y Tire Sales	09/13/2023	995.93

Check No	Vendor No	Vendor Name	Check Date	Check Amount
Report Total (161 checks):				382,427.24

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

City of
IRWINDALE
AGENDA REPORT

CC Item 3

Date: September 13, 2023

To: Honorable Mayor and Members of the City Council

From: Julian A. Miranda, City Manager

Issue: *Approve the Out of State Travel to the 59th Annual California Narcotic Officers Association (CNOA) Training Institute and Law Enforcement Expo for Detective Sergeant Greg Gomez, Detective Leonard Garza, and an additional (confidential) Detective.*

City Manager's Recommendation:

Adopt Resolution No. 2023-64-3442 entitled: "A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF IRWINDALE APPROVING THE OUT-OF-STATE TRAVEL TO THE CALIFORNIA NARCOTIC OFFICERS ASSOCIATION (CNOA) TRAINING INSTITUTE AND LAW ENFORCEMENT EXPO FOR DETECTIVE SERGEANT GREG GOMEZ, DETECTIVE LEONARD GARZA, AND AN ADDITIONAL (CONFIDENTIAL) DETECTIVE, AND APPROPRIATING FUNDS."

Administrative Action:

Submitted by:

Chris Hofford, Chief of Police
(626) 430-2200

Prepared by:

Greg Gomez , Detective Sergeant

Reviewed by:

Kambiz Borhani, Finance Director / City Treasurer

Approved by:

Julian A. Miranda, City Manager

The block contains four handwritten signatures, each on a horizontal line. From top to bottom: 1. Chris Hofford's signature. 2. Greg Gomez's signature with 'HGM' written next to it. 3. Kambiz Borhani's signature. 4. Julian A. Miranda's signature.

Background and Analysis:

In years past, the City Council of the City of Irwindale passed a resolution to limit travel to conferences and training to in-state travel due to budgetary limitations. This agenda item is seeking an exception to the restriction for Police Detective Sergeant Greg Gomez, Detective Leonard Garza, and an additional (confidential) Detective to attend an out-of-state conference in Sparks, Nevada, in November 2023.

Each year the California Narcotic Officers Association (CNOA) holds a conference to discuss law enforcement emerging trends and technology and provide preparation of unexpected law enforcement situations. Now, more than ever, police detectives are embroiled in keeping up with organized drug trafficking organizations and finding a safe and viable way to keep their narcotics, weapons and ruthless tactics from the public at large. Drug trafficking organizations are constantly training and using some of the same technology as law enforcement to get their narcotics and weapons on our streets and ensuring their money makes it south of our border. The CNOA Conference provides innovative, comprehensive training and discussions on narcotics among police detectives and federal agents from around the country. It also provides insight from members of drug trafficking organization members that have been apprehended and now want to educate law enforcement on how the drug trafficking organizations operate and the tactics these organizations use.

In the past, investigative operations that the Irwindale Police Department has participated in has generated thousands of dollars in asset forfeiture money. The money seized from various drug trafficking organizations can be used for training and law enforcement operations under federal law.

The training from the CNOA Conference is not only beneficial to personal development for the detectives attending the conference, but more importantly, to the organization and the community the Irwindale Police Department serves. The CNOA Conference is a transitory event and the upcoming CNOA Conference is being hosted in Sparks, Nevada. The Irwindale Police Department Detective Bureau has attended the CNOA Conference annually and would represent the Irwindale Police Department this year if approved.

Fiscal Impact:

There will be no fiscal impact to the General Fund. Funding for the CNOA Conference will be facilitated by using Federal Asset Forfeiture funds in the amount not to exceed \$7,500. The total cost for this conference is for all three detectives and sufficient funds exist in our asset forfeiture account.

Attachment: Resolution No. 2023-64-3442

RESOLUTION NO. 2023-64-3442

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF IRWINDALE APPROVING
THE OUT-OF-STATE TRAVEL TO THE CNOA TRAINING INSTITUTE
AND LAW ENFORCEMENT EXPO IN SPARKS, NEVADA FOR DETECTIVE
SERGEANT GREG GOMEZ, DETECTIVE LEONARD GARZA, AND AN ADDITIONAL
(CONFIDENTIAL) DETECTIVE**

WHEREAS, the Irwindale Police Department wishes to enhance the quality of service to the community by attending the California Narcotic Officers Association (CNOA) 59th Annual Training Institute and Law Enforcement Exposition; and

WHEREAS, the CNOA conference will discuss emerging law enforcement tactics, training, trends, and technology, and the latest training and intelligence pertaining to drug trafficking organizations; and

WHEREAS, the CNOA conference provides innovative and comprehensive training for investigative personnel, and facilitates discussions among law enforcement detectives and federal agents from around the world; and

WHEREAS, the Irwindale Police Department's Detective Bureau has attended the CNOA conference annually and desires to represent Irwindale Police Department in the upcoming CNOA conference in Sparks, Nevada by sending three (3) detectives; and

WHEREAS, the detectives' attendance at the CNOA conference will benefit the police organization and the community the Irwindale Police Department serves.

NOW, THEREFORE, the City Council of the City of Irwindale, California, resolves, determines and orders as follows:

SECTION 1. Authorize the Irwindale Police Department Detective Bureau, consisting of Detective Sergeant Greg Gomez, Detective Leonard Garza, and an additional (confidential) Detective to attend the CNOA out-of-state conference in Sparks, Nevada in November 2023.

SECTION 2. The funding for the CNOA conference will be facilitated by using Federal Asset Forfeiture funds in the amount not to exceed \$7,500 with no impact to the General Fund.

SECTION 3. 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 13th day of September, 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 Nieto, Chief Deputy City Clerk of the City of Irwindale, do hereby certify that the foregoing Resolution No. 2023-64-3442 was duly adopted by the City Council of the City of Irwindale at a regular meeting thereof held on the 13th day of September, 2023, by the following vote:

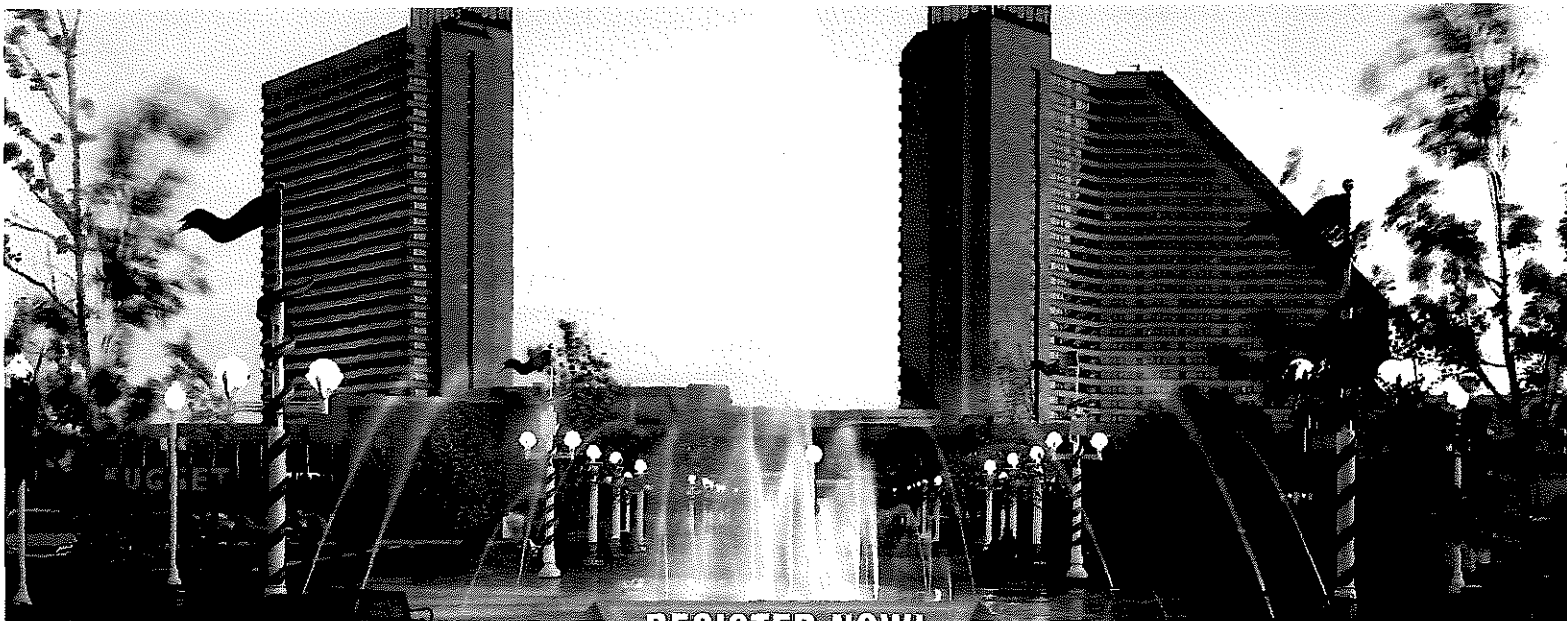
AYES: Councilmembers:

NOES: Councilmembers:

ABSENT: Councilmembers:

ABSTAIN: Councilmembers:

Laura M. Nieto, MMC
Chief Deputy City Clerk



REGISTER NOW!

THE CALIFORNIA NARCOTIC OFFICERS' ASSOCIATION
59TH ANNUAL
**TRAINING INSTITUTE & LAW
ENFORCEMENT EXPOSITION**

NOVEMBER 17–21, 2023
NUGGET CASINO RESORT | SPARKS, NEVADA

Pre-registration: \$675

(postmarked by October 15)

Door and late registration: \$715

(after October 15)

*Registration includes CNOA membership dues for 2024.
Life members may deduct \$100.*

- › Over 32 workshops
- › POST-certified under Plan NA-24 Hours
- › Community college credit available
- › STC work-related credit available
- › MCLE credit available

HOTEL INFORMATION

Nugget Casino Resort

1100 Nugget Ave., Sparks, NV 89431

(800) 648-1177

Group room rate: \$113 + applicable taxes.

Use code "GCNOA23." Reservation cutoff date is October 23.

To book rooms, visit CNOA.org.



For more information about the 2023 Training Institute, visit CNOA.org or call CNOA at (661) 775-6960.

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

City of
IRWINDALE
AGENDA REPORT

Date: September 13, 2023

To: Honorable Mayor and Members of the City Council

From: Julian A. Miranda, City Manager

Issue: Amendment No. 1 to Contract Services Agreement with CWE for Professional Environmental Services for the National Pollutant Discharge Elimination System (NPDES) and other related services

City Manager's Recommendation:

That the City Council authorize the City Manager to execute Amendment No. 1 to Contract Services Agreement with CWE for Professional Environmental Services for the National Pollutant Discharge Elimination System (NPDES) and other related services.

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

Background and Analysis:

The City of Inwindale is subject to the Los Angeles Countywide National Pollutant Discharge Elimination System (NPDES) Municipal Separate Storm Water Sewer Permit (MS4 Permit), Order No. R4-2021-0175, from the California Regional Water Quality Board. The MS4 Permit requires permittees to develop and implement water quality control programs (ie. BMPs) within their jurisdictions. These include NPDES storm water inspections at commercial and industrial facilities, public education, assisting property and business owners with applicable MS4 Permit(s) compliance, County and State storm water regulations, and appropriate document compliance requirements for existing and new development.

On September 14, 2022, the City Council approved a contract service agreement with CWE for Professional Environmental Services to provide National Pollutant Discharge Elimination System (NPDES) and other related services for the City in the amount of \$132,122. CWE is reaching the end of their initial first year contract, and has been delivering excellent service to the City. Staff has requested CWE to submit a revised proposal that includes additional scope of work for the two-year contract extension. CWE's proposal is included in the Attachments.

The contract service agreement allows for two (2) additional extended terms of two (2) years each, for a maximum contract term of five (5) years. Pursuant to Section 2.3 of the agreement, the City has the right to request extra work during the performance of the contract beyond what is specified in the Scope of Services of the contract. Additionally, amendments to the contract sum no greater than \$19, 818.30 may be approved by the City Manager. Any amendments to the contract sum greater than \$19, 818.30 must be approved by the City Council.

In general, the additional scope of work added to the original contract for this contract extension includes the following:

- CWE will review the inventory of City-owned facilities and identify up to three (3) retrofit opportunities to include stormwater BMPs in accordance of the Measure W Funding Requirement.
- CWE will perform a stormwater diversion and treatment BMP feasibility analysis for the proposed City Library.
- CWE will provide catch basin retrofit design plans to install Full Capture System (FCS) for the unprotected catch basins within the City.

CWE has submitted a proposal indicating a cost of \$221,919 for the first year and \$182,349 for the second year of this contract extension. The proposal reflects that as tasks being completed in the first year, the second year of this contract extension is anticipated to cost less than the first year.

The attached contract agreement amendment has been reviewed and approved the City Attorney's office.

Fiscal Impact:

The adopted budget for FY 2023-2024 includes sufficient amounts for this professional service contract. The total contract amount will be \$221,919 for the first year of this two-year extension. Of this amount, \$114,919 will be funded through General Fund (Account No. 01-52-523-42381-0000); and \$107,000 will be funded through Measure W Fund (Account No. 30-52-555-42381-0000) for a combined total approved budget of \$221,919. Public Works/Engineering Department will work with Finance Department during next year's budget preparation to include the cost for the second year of this two-year extension.

Attachments:

- Amendment No. 1 to Contract Agreement for Professional Environmental Services
- CWE's proposal.

**AMENDMENT NO. 1 TO CONTRACT SERVICES AGREEMENT FOR
ENVIRONMENTAL SERVICES FOR THE NATIONAL POLLUTANT DISCHARGE
ELIMINATION SYSTEM (NPDES) AND OTHER RELATED SERVICES**

THIS AMENDMENT NO. 1 TO CONTRACT SERVICES AGREEMENT FOR ENVIRONMENTAL SERVICES FOR THE NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES) AND OTHER RELATED SERVICES ("Amendment No. 1") is dated September 13, 2023, by and between the CITY OF IRWINDALE, a California Charter city and municipal corporation ("City") and CWE, 1561 E. Orangethorpe Ave Suite 240, Fullerton, CA 92831-5202 ("Consultant") is effective as of the 23rd day of August, 2023.

RECITALS

A. City and Consultant entered into that certain Agreement for Contractual Services dated September 14, 2022 ("Agreement") whereby Consultant agreed to provide professional environmental services for the National Pollutant Discharge Elimination System (NPDES) and other related services ("Services").

B. Pursuant to Section 2.3 of the Agreement, the City is requesting additional work beyond the specified Scope of Service be done by CWE exceeding the maximum contract sum of One Hundred Thirty Two Thousand One Hundred Twenty Two and 00/100 Dollars (\$132,122).

C. Pursuant to Section 2.3 of the Agreement, any increase in compensation up to fifteen percent (15%) of the Contract Sum, but not exceeding \$19,818.30, may be approved by the Contract Officer. Any increase in compensation exceeding \$19,818.30 must be approved by the City Council.

D. City and Consultant now desire to amend the Agreement to reflect the additional work outlined in Exhibit "A" Scope of Services and Exhibit "C" Schedule of Compensation that exceed the original maximum contract sum.

E. City and Consultant desire to amend the Agreement to reflect the change in contract terms outlined in Exhibit "D".

F. The City Council has approved and authorized this amendment to the Agreement pursuant to Section 2.3.

TERMS

1. **Contract Changes.** The Agreement is amended as provided herein (deletions shown in ~~strike through~~ and additions shown in ***bold italics***).

A. Section 2.1 Contract Sum, is hereby amended to read in its entirety as follows:

For the services rendered pursuant to this Agreement, Consultant shall be compensated in accordance with the "Schedule of Compensation" attached hereto as Exhibit "C" and incorporated herein by this reference, but not exceeding the maximum contract amount of ***Two Hundred Twenty One***

~~Thousand Nine Hundred Nineteen and 00/100 Dollars (\$221,919) One Hundred Thirty Two Thousand One Hundred Twenty Two and 00/100 Dollars (\$132,122)~~ (“Contract Sum”), unless additional compensation is approved pursuant to Section 2.3.

- B. Exhibit “D” Schedule of Performance, is hereby amended to read in its entirety as follows:

Unless earlier terminated in accordance with Article 7 of this Agreement, this Agreement shall continue in full force and effect for the initial contract term of one (1) year with an option to extend the contract for two (2) additional extended terms of two (2) years each. The total maximum contract term will be five (5) years. Contract term extension is contingent upon the Director of Engineering/Building Official approval. Contract term extension will be exercised based upon the level of satisfaction with services provided by the Consultant.

2. **Continuing Effect of Agreement.** Except as amended by this Amendment, all provisions of the Agreement shall remain unchanged and in full force and effect. From and after the date of this Amendment, whenever the term “Agreement” appears in the Agreement, it shall mean the Agreement, as amended by this Amendment to the Agreement.

3. **Affirmation of Agreement; Warranty Re Absence of Defaults.** City and Consultant each ratify and reaffirm each and every one of the respective rights and obligations arising under the Agreement. Each party represents and warrants to the other that there have been no written or oral modifications to the Agreement other than as provided herein. Each party represents and warrants to the other that the Agreement is currently an effective, valid, and binding obligation.

Consultant represents and warrants to City that, as of the date of this Amendment, City is not in default of any material term of the Agreement and that there have been no events that, with the passing of time or the giving of notice, or both, would constitute a material default under the Agreement.

City represents and warrants to Consultant that, as of the date of this Amendment, Consultant is not in default of any material term of the Agreement and that there have been no events that, with the passing of time or the giving of notice, or both, would constitute a material default under the Agreement.

4. **Adequate Consideration.** The parties hereto irrevocably stipulate and agree that they have each received adequate and independent consideration for the performance of the obligations they have undertaken pursuant to this Amendment.

5. **Authority.** The persons executing this Amendment 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 Amendment on behalf of said party, (iii) by so executing this Amendment, such party is formally bound to the provisions of this Amendment, and (iv) the entering into this Amendment does not violate any provision of any other agreement to which said party is bound.

[SIGNATURES ON FOLLOWING PAGE]

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

CITY:

CITY OF IRWINDALE, a municipal corporation

Julian A. Miranda, City Manager

ATTEST:

Laura M. Nieto, Chief Deputy City Clerk

APPROVED AS TO FORM:
ALESHIRE & WYNDER, LLP

Adrian R. Guerra, City Attorney

CONSULTANT:

CWE

By: _____
Name:
Title:
Address: 1561 E. Orangethorpe Ave Suite 240
Fullerton, CA 92831-5202

Two corporate officer signatures required when Consultant 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. **CONSULTANT'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 CONSULTANT'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 _____, 2022 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	
☐ PARTNER(S) TITLE(S) _____ ☐ LIMITED ☐ GENERAL	TITLE OR TYPE OF DOCUMENT
☐ ATTORNEY-IN-FACT	
☐ TRUSTEE(S)	
☐ GUARDIAN/CONSERVATOR	NUMBER OF PAGES
☐ OTHER _____	
SIGNER IS REPRESENTING: (NAME OF PERSON(S) OR ENTITY(IES)) _____ _____	DATE OF DOCUMENT
	SIGNER(S) OTHER THAN NAMED ABOVE

EXHIBIT “A”

SCOPE OF SERVICES

I. Consultant will perform the following Services:

Consultant will provide the required National Pollutant Discharge Elimination System (NPDES) Program Management services, including, but not limited to, the following Tasks (herein after referred to collectively as “Services”):

Task 1 – NPDES and MS4 Permit Management and Oversight

Task 1.1 – Project Management Coordination and Meetings

Project management is critical for services to be completed on time and within budget. Project management efforts include administration and management of the contract, coordination and communication with the City, and participation in monthly project status update meetings. CWE will lead the project management task and provide guidance to contracted laboratories, conduct interagency coordination, perform task scheduling, budget tracking, and invoicing. CWE will proactively engage the City with timely and concise communications and anticipate feedback at various stages of implementation. CWE will schedule two (2) kickoff meetings and ten (10) progress update meetings (to be held virtually) for the contract period. In-person meetings are subject to additional costs associated with travel.

Task 1.2 – Annual Report and Semi-Annual Data Submittal

CWE will prepare receiving water and outfall monitoring results in California Environmental Data Exchange Network (CEDEN) format semi-annually no later than December 15th and June 15th for the preceding January 1st to June 30th and July 1st to December 31st reporting period. CWE will prepare an individual annual report, watershed annual report, and Trash TMDL annual report no later than December 15th for the preceding July 1st to June 30th reporting period. Reports will be provided to the City as an editable document to allow for easy commenting and revision tracking prior to finalizing the report and submission to the LARWQCB.

Based on the 2021 MS4 Permit, Permittees participating in a WMP are required to complete and submit a WMP Program Report semi-annually. However, the previously submitted IWMP was determined to be deficient in meeting the WMP requirements. The City has been implementing a baseline stormwater management program, instead of the IWMP. Therefore, it is assumed the City is not required to submit the semi-annual WMP progress report. However, if one is required by the LARWQCB, CWE can provide a not-to-exceed fee estimate for this additional task.

Task 2 – Integrated Monitoring Program Implementation

Task 2.1 – Receiving Water Monitoring Coordination

CWE understands the City coordinates with the Upper San Gabriel River (USGR) Coordinated Integrated Monitoring Program (CIMP) group and Los Angeles County Flood Control District (LACFCD) San Gabriel River Mass Emission Station (MES) to obtain receiving water monitoring data. CWE will assist the City with coordination efforts for the existing cost share agreement with the USGR CIMP group, and receiving water monitoring data request and reporting.

It is assumed that the City no longer needs to establish a cost share agreement with the Rio Hondo/San Gabriel River (RH/SGR) Water Quality Group (WQG), based on the revised Integrated Monitoring Program (IMP). If the LARWQCB requires the City to perform receiving water monitoring at Peck Road Park Lake, CWE can provide a not-to-exceed fee estimate for this additional task.

Task 2.2 – Stormwater Outfall-Based Monitoring

CWE will monitor and review National Weather Service (NWS) forecasts on a weekly basis between October 1st through April 15th. Weather forecasts for each sampling location will be tracked and saved to support decision making. Forecasts meeting the sampling trigger of 70% chance of over 0.25 inches of cumulative precipitation will be communicated to the City immediately for “go” or “no-go” concurrence. Upon written approval, CWE will initiate sampling preparation efforts, including preparing Chain-of-Custodies (CoCs), field observation forms, YSI field measurement device calibration, and sample bottle labels. A set of analyte-specific sample bottles for each monitoring station will be procured from the designated laboratories. Collected water samples will be immediately chilled on ice, returned to CWE in Fullerton under CoC, sorted by analytical laboratory, additional ice added when needed, and delivered to the corresponding laboratories. Following a wet-weather event, a post-event summary email will be sent to the City summarizing the following:

- Sampling start and end time
- Confirmation of sample delivery to laboratories
- Summary of issues that occurred during the sampling event and if the issues were successfully resolved
- Signed CoCs, completed field observation forms, and photo documentation

This task assumes no false starts. CWE encourages the City to include a contingency budget in the event an unforeseen false start occurs.

2023-24 Fiscal Year

The revised IMP was not approved prior to the start of 2023-24 season, on July 1, 2023. Therefore, CWE will continue to implement the City’s 2016 approved IMP during the 2023-24 fiscal year. The 2016 IMP identifies that stormwater outfall-based monitoring will be conducted three (3) times per year during wet-weather at the following locations:

- Sawpit Wash (SAWPW-074A)
- San Gabriel River (SGR-077)
- Big Dalton Wash (BDW-027A)

However, outfalls tributary to the San Gabriel River require four (4) wet-weather sampling events, due to requirements in the San Gabriel River and Impaired Tributaries Metals and Selenium TMDL. Unless instructed otherwise, CWE will perform four (4) monitoring events at SGR-077 and BDW-027A.

CWE will identify a constituent list for wet-weather events, based on regulatory requirements, including applicable TMDLs, Basin Plan, and California Toxics Rule. The cost estimate for laboratory analyses is based on the following assumptions:

- There were no exceedances of the Table E-2 constituents in the 2012 MS4 Permit.
- Suspended sediment sampling will be conducted at SAWPW-074A. Although the IMP Table VI indicated SGR Reach 3 is impaired for suspended sediment, there is no approved TMDL for suspended sediment in SGR Reach 3. Therefore, CWE does not plan to conduct suspended sediment sampling at SGR-077 and BDW-027A.
- The City's IMP does not include field Quality Assurance and Quality Control (QAQC) procedures. However, field QAQC samples collected in conjunction with environmental samples are essential to verify data quality. Therefore, CWE will collect field blank and field duplicate samples at a frequency of 5% of total samples collected, based on the Surface Water Ambient Monitoring Program (SWAMP) Quality Assurance Program Plan.
- There is insufficient time for CWE to obtain a LACFCD Access Permit to perform Stormwater Outfall-Based Monitoring prior to October 1, 2023. Stormwater Outfall-Based Monitoring will be performed at alternative monitoring locations identified in 2016 IMP.

2024-25 Fiscal Year

It is assumed that the revised IMP will be approved by the LARWQCB prior to July 1, 2024, and the revised IMP will be implemented during the 2024-25 fiscal year. Stormwater outfall-based monitoring will be performed at the following locations:

- Sawpit Wash (MTD-1595)
- San Gabriel River (SGR-077)
- Big Dalton Wash (BDW-027A)

The cost estimate for laboratory analyses is based on the following assumptions:

- CWE will coordinate with LACFCD to obtain an Access Permit to perform various tasks under the Stormwater Outfall-Based Monitoring and Non-Stormwater Outfall-Based Monitoring programs. It is assumed the City will be responsible for the permit application fee.
- In coordination with the USGR CIMP Group, the City proposed to change the monitoring frequency at outfalls tributary to the San Gabriel River from four (4) times to three (3) times per storm season. The laboratory cost for SGR-077 and BDW-027A is based on three (3) wet-weather events.

Task 2.3 – Non-Stormwater Outfall-Based Monitoring (2024-25 Fiscal Year)

CWE will develop and implement an outfall-based screening and monitoring program. Prior to the outfall screening, CWE will develop a written procedure explaining the screening criteria for outfalls with significant non-stormwater discharge, source investigation, and discharge elimination procedures. Three (3) screening events will be conducted in accordance with the developed procedures, a minimum of 72 hours after recorded precipitation, to inspect outfall characteristics and flow conditions. During the screening, photo documentation will be taken and a field observation form will be completed for each outfall to record observations, including but not limited to, GPS coordinates, outfall dimension, and approximate flow rate. A Geographic

Information System (GIS) database, per the 2021 MS4 Permit, Attachment E VIII, will be prepared to include outfalls with a diameter of 36-inches or greater. Up to five (5) source investigations will be conducted for outfalls identified as having a significant non-stormwater discharge. During the source investigation, water quality samples might be collected and submitted to laboratories to determine the composition of the discharge. The laboratory cost estimate is prepared based on five (5) samples within the Los Angeles River watershed.

Within 90 days after completing the outfall screening and source investigation for significant non-stormwater discharge, the 2021 MS4 Permit requires the City to perform monitoring at outfalls during dry-weather that are:

1. Comprised on conditionally exempt non-stormwater discharges
2. Continuing discharges attributed to illicit discharges
3. From unknown sources

It is unclear whether there are outfalls requiring non-stormwater outfall-based monitoring until the screening is complete. The required monitoring constituents vary based on the receiving water body the outfall discharges to. Due to the uncertainties, the cost estimate did not include non-stormwater outfall monitoring. CWE can prepare a separate scope and fee if the non-stormwater outfall-based monitoring is required.

Task 3 – Industrial and Commercial Facility Control Program

Task 3.1 – Update Industrial and Commercial (I/C) Facility Database

CWE will update the City's I/C facility database on CloudCompli annually, cross checking with the City provided business license database and the industrial facilities listed in the Stormwater Multiple Application and Report Tracking System (SMARTS). As required by the MS4 Permit, a GIS database of I/C facilities within the City will be created. Inspection frequency required in the 2021 MS4 Permit will be identified for the approximately 200 I/C facilities in the City. The I/C facility database will be updated following I/C facility inspections to identify closed, replaced, or new facilities. Based on the current CloudCompli database, there are 249 I/C facilities within the City. In 2022-23 fiscal year, CWE performed 150 mandatory inspections. We identified 43 facilities that are not an MS4 Permit defined I/C facility, 17 are out of business, and 48 industrial non-filers that require follow-up inspections.

Task 3.2 – I/C Facility Inspections

CWE's inspectors will utilize the CloudCompli software to create a new inspection report and fill in general site information prior to assessing site conditions. During the inspection, the CWE inspector will take note of BMPs implemented, assess BMP effectiveness, identify BMP deficiencies, document non-stormwater discharges and illicit connections, comment on missing BMPs that are identified in the facility's SWPPP, if applicable, and photograph areas of concern. The CWE inspector will also work with the facility manager and/or responsible party to identify deficiencies and provide examples of BMP solutions to implement and mitigate the deficient condition. Following the site assessment, the inspector will answer Inspection Parameter questions in CloudCompli and provide comments on BMP conditions. When deficiencies are identified, the inspector will add the deficiency, and provide detailed descriptions, photo documentation,

corrective actions, and a correction due date. Throughout the course of the facility inspection, the CWE inspector will keep the City informed of major findings, violations, and/or discharge violations. These findings will be immediately communicated to the City for appropriate steps and enforcement action.

CWE will conduct follow-up inspections at problematic I/C facilities observed with deficiencies that require corrective actions. Based on experience, approximately 15% of the facilities will require a follow-up inspection. During the follow-up inspection, the CWE inspector will inspect deficient areas and note whether deficiencies were corrected. CWE will perform enforcement actions, including distributing Notice of Corrections (NOCs) and Notice of Violations (NOVs) with associated fines, for non-compliant facilities after one (1) CWE follow-up inspection. Following the enforcement actions, the non-compliant facilities will be revisited to ensure that they continue to implement stormwater pollution prevention BMPs and illicit connections and/or discharges have been eliminated.

2023-24 Fiscal Year

There are 48 industrial non-filers, inspected during the 2022-23 fiscal year, that require follow-up inspections, if Permit coverage is not obtained after one month following the inspection. If the facility fails to obtain the Industrial General Permit coverage after one follow-up inspection, CWE will perform a NOV inspection. If after 60 days the subject facility does not obtain IGP coverage, CWE will assist by reporting non-filers to the LARWQCB. CWE will also perform inspections for approximately 30 facilities that are currently covered under IGP with a Notice of Intent (NOI).

2024-25 Fiscal Year

During the 2024-25 fiscal year, CWE will inspect approximately 150 commercial facilities, and perform up to 20 follow-up inspections.

Task 4 – Illicit Connections and Illicit Discharge (IC/ID) Program

Task 4.1 IC/ID Source Investigation

CWE will assist the City with the implementation of IC/ID Program Procedures and Spill Response Plan. Once an illicit discharge is reported, CWE staff will visit the site within 24 hours to record visual observations, identify the source, and coordinate with the City and the identified discharger to contain and/or stop the discharge. Clean up and source investigation procedures following the written guidelines will be initiated within 72 hours of the illicit discharge report. CWE staff will attempt to trace the illicit discharge upstream to identify potential sources. If the source of the illicit discharge is identified, CWE will coordinate with City Code Enforcement to notify the responsible party and issue necessary correction actions. Findings related to the reported illicit discharge will be documented and tracked for reporting purposes.

Task 5 – Public Agency Activities Programs

Task 5.1 City-Owned Facility Retrofit Opportunities

CWE will review the inventory of City-owned facilities and identify up to three (3) retrofit opportunities to include stormwater BMPs, in City parks, vacant lots, and rights-of-way. CWE will prepare a map overlaying parcels, land use, soil type, and existing storm drain system to identify up to three (3) potential locations suitable for retrofitting with regional stormwater capture and

treatment BMPs. A retrofit project concept TM will be prepared to summarize the preliminary regional project opportunities and provide discussion on stormwater benefits, cost-effectiveness, accessibility, potential permit requirements, implementation timeline, and practicality.

Task 5.2 City Library Stormwater BMP Feasibility Analysis

CWE understands that the City is planning to retrofit the City Library and would like to explore the possibility of including a stormwater diversion and treatment BMP. We have assumed that the stormwater collected will be treated and infiltrated on site. It is assumed that the City will perform the geotechnical exploration including infiltration tests, topographic survey, and utility search as a part of the project. A geotechnical report, topographic survey, and utility drawings will be provided to CWE for review and reference. CWE will perform a hydrology study, and preliminary BMP design calculations. An abbreviated feasibility analysis will be prepared to summarize the findings that will include sizing of the infiltration system, construction cost opinion, and a preliminary layout of the BMPs.

Safe, Clean Water Program (SCWP) has provided an opportunity for the Los Angeles County Community to enhance water quality, water supply and other tangible benefits. If the City selects to apply to the SCWP Technical Resource Program (TRP), CWE can provide a cost estimate for additional costs due to the extra SCWP requirements.

Task 6 – Post-Construction BMP Inspections

The 2021 MS4 Permit requires the post-construction BMPs to be inspected at least every two years to verify the proper functionality and maintenance activities. It is assumed that the City will provide the up-to-date post-construction BMP database. Prior to the field inspection, CWE will review the approved LID Plan to determine the post-construction structural BMP type(s) and location(s) onsite. It is assumed the City will provide the approved LID Plan, including the Operation and Maintenance (O&M) Plan and Maintenance Agreement, as a reference. The CWE inspector will verify general information of an LID site, as well as BMP type(s) and location(s) prior to the field inspection. CWE inspectors include licensed civil engineers, engineers-in-training, environmental scientists, and trained construction inspection professionals. Following the field assessment of post-construction BMPs, the CWE inspector will use the CloudCompli application on an iPad to upload photo documentation, record observations and comments, and indicate observed deficiencies. Throughout the course of the post-construction BMP inspection, the CWE inspector will keep the City project manager informed of major deficiencies, discharge violations, and actions that will require City enforcement. These findings will be immediately communicated to the City for appropriate steps and enforcement action. Enforcement actions will be incorporated into the CloudCompli inspection report after CWE receives City approval. Sixty (60) post-construction BMP inspections will be completed over the 2023-25 fiscal years.

Task 7 Public Information and Participation Program

CWE will participate in up to three (3) City organized community events annually to engage the public in stormwater planning and raise public awareness of stormwater program benefits and needs. CWE staff will provide EnviroScape demonstrations to children explaining the watershed concept and the importance of stormwater pollution prevention. It is assumed that the City will provide educational materials to be distributed during community events.

Task 8 – Conditional Waiver for Peck Road Park Lake

The LARWQCB adopted the Conditional Waiver of Waste Discharge Requirements for Discharges of Trash from Nonpoint Sources in Waterbodies Subject to TMDLs for Trash on September 10, 2020. CWE will coordinate with the RH/SGR WQG to meet the requirements of implementing BMPs and a Minimum Frequency of Assessment and Collection (MFAC) program, and submitting a new trash monitoring and reporting program (TMRP). Although the deadline for the Peck Road Park Lake TMRP passed in September 2021, CWE is fully committed to work diligently with the City to meet the Conditional Waiver requirements for the Peck Road Park Lake.

Task 9 – Trash TMDL Compliance

Task 9.1 DGR Study

CWE will conduct a Trash TMDL Daily Generation Rate (DGR) Study on behalf of the City. The DGR will be determined from direct measurement of trash deposited in the drainage area during a 30-day period between June 22nd to September 22nd. The recommended method for a DGR study provided in the Los Angeles River Trash TMDL Staff Report will be utilized. Several catch basins will be selected based on the land use, pedestrian traffic volume, and accessibility. Selected catch basins will be closed in a manner that prevents trash from being swept into the catch basins. Field staff will manually collect and quantify the amount of trash within the drainage area of selected catch basins prior to street sweeping each week during the 30-day period. The DGR will be calculated as the total amount of trash collected divided by a total of 30 days for each selected catch basin. A DGR report will be prepared to summarize the method, field observations, and results.

Task 9.2 Catch Basin Retrofit Design

CWE will provide catch basin retrofit design plans to install Full Capture System (FCS) for the unprotected catch basins within the Los Angeles River watershed. Based on the City provided catch basin records, the following table summarizes the catch basins that are within the Los Angeles River watershed and potentially require retrofit.

CB No.	Coordinates	CB Type	Ownership	Notes
CB326	34.118360, -117.983958	Side opening	LACFCD	Los Angeles County Storm Drain System indicates this catch basin is owned and maintained by the City.
CB335	34.118846, -117.989288	Grate inlet	City	Damaged grate (2018)
CB345	34.114936, -117.976176	Grate inlet	City	
CB346	34.114483, -117.980396	Grate inlet	City	Entirely filled with sediment (2018)
CB347	34.114673, -117.979067	Grate inlet	City	Entirely filled with sediment (2018)
CB348	34.114704, -117.980441	Grate inlet	City	Entirely filled with sediment (2018)
CB387	34.116412, -118.001591	Side opening	LACFCD	
CB391	34.113847, -118.003110	Side opening	LACFCD	Los Angeles County Storm Drain System indicates this catch basin is owned and maintained by the City.

CWE will prepare the LACFCD connection and construction permit applications. It is assumed that the City will pay for the permit application fees. The cost estimate is prepared for the retrofit/design compliance for eight (8) catch basins.

II. As part of the Services, Consultant will prepare and deliver the following tangible work products to the City:

TASK 1:

- i. Two (2) kickoff meetings and ten (10) progress update meetings.
- ii. Two (2) annual reports with associated watershed reports and four (4) semi-annual CEDEN submittals.

TASK 2:

FY 23-24

- i. USGR CIMP group and MES coordination and communication
- ii. Four (4) wet-weather sampling events and associated summary emails

FY 24-25

- i. Three (3) wet-weather sampling events and associated summary emails; LACFCD Access Permit
- ii. An updated GIS database of MS4 outfalls, Draft and Final Significant Discharge Identification and Elimination Procedures, and up to five (5) significant non-stormwater discharge source investigations.

TASK 3:

FY 23-24

- i. I/C facility database
- ii. 100 industrial inspections, including follow-ups and NOV, inspection forms and photo documentation, and associated enforcement actions

FY 24-25

- i. 150 commercial facilities inspection, up to 20 follow-up inspections, inspection forms and photo documentation, and associated enforcement actions

TASK 4:

IC/ID source investigations (up to five [5] incidents)

TASK 5:

- i. Retrofit project concept TM
- ii. City Library Stormwater BMP Feasibility Study

TASK 6:

Sixty (60) post construction BMP inspections, post-construction BMP inspection forms and photo documentation

TASK 7:

Six (6) outreach events

TASK 8:

Conditional Waiver Requirements for Peck Road Park Lake

TASK 9:

- i. DGR Reports
- ii. Catch Basin Retrofit Design Plans

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.

IV. Consultant will utilize the following personnel to accomplish the Services:

- a. Principal-in-Charge/QA-QC Manager – Jason Pereira, PE, CPSWQ, QSD/P, QISP, CGP/IGP-ToR
- b. Project Manager – Nan Jia, PE, QSD/P
- c. Assistant Project Manager– Ryan Kearns
- d. Technical Resources – Gerry Greene, DEnv, PE, QEP, QSD/P
- e. Technical Resources – Alexa Reasoner

EXHIBIT "C"

SCHEDULE OF COMPENSATION

In connection with the Services provided pursuant to the terms of this Agreement, Consultant shall provide the Services at the cost and hourly rate as provided below. Expenses not listed below will not be reimbursed by the City, and no hourly fees or mileage will be charged for travel to and from City Hall.

I. Consultant shall perform the following Services at the following rates:



2023 - 24 FY Rate Sheet

<u>Engineer/Scientist</u>	<u>Rate/Hour</u>
Principal	\$319
Senior Project Manager	\$306
Project Manager	\$274
Technical Manager	\$247
Task Leader	\$222
Principal Engineer	\$208
Senior Engineer	\$190
Project Engineer	\$178
Staff Engineer	\$157
Assistant Engineer	\$118
Senior Environmental Scientist	\$189
Environmental Scientist	\$145
Environmental Analyst	\$106
<u>Construction Services</u>	
Construction Manager	\$225
Senior Construction Inspector	\$165
Construction Inspector	\$156
<u>Field Survey</u>	
Licensed Surveyor	\$215
3-Person Survey Crew	\$411
2-Person Survey Crew	\$336
<u>Support Services</u>	
Landscape Architect	\$203
GIS Specialist	\$145
Senior Engineering Technician	\$116
Engineering Technician	\$102
CADD Designer	\$97
Project Coordinator	\$135
Graphic Designer	\$135
Administrative Assistant	\$128
<u>General</u>	
Direct Expenses	Cost + 10%
Subcontract Services	Cost + 10%
Specialized Computer Applications (per hour)	\$15
Mileage	Current IRS Rate
Field Vehicle – Hourly	\$12/hour
Field Vehicle – Daily	\$80/day
Field Vehicle – Monthly	\$1,500/month
B&W Photocopies (per page)	\$0.10
Color Photocopies (per page)	\$0.50

Rates will be adjusted annually based on the US Department of Labor, Bureau of Labor Statistics, Consumer Price Index for All Urban Consumers.

Rates for field equipment, health and safety equipment, and graphical supplies presented upon request.

Based on CWE maintaining General Liability Insurance for bodily injury and property damage with an aggregate limit of \$2,000,000 per occurrence. In the event the client desires additional coverage, CWE will, upon the client's written request, obtain additional insurance and adjust the above billing rates accordingly.



2024 - 25 FY Rate Sheet

<u>Engineer/Scientist</u>	<u>Rate/Hour</u>
Principal	\$337
Senior Project Manager	\$324
Project Manager	\$289
Technical Manager	\$260
Task Leader	\$235
Principal Engineer	\$220
Senior Engineer	\$201
Project Engineer	\$188
Staff Engineer	\$167
Assistant Engineer	\$125
Senior Environmental Scientist	\$199
Environmental Scientist	\$153
Environmental Analyst	\$112
<u>Construction Services</u>	
Construction Manager	\$234
Senior Construction Inspector	\$172
Construction Inspector	\$162
<u>Field Survey</u>	
Licensed Surveyor	\$224
3-Person Survey Crew	\$428
2-Person Survey Crew	\$349
<u>Support Services</u>	
Landscape Architect	\$214
GIS Specialist	\$153
Senior Engineering Technician	\$123
Engineering Technician	\$107
CADD Designer	\$102
Project Coordinator	\$143
Graphic Designer	\$142
Administrative Assistant	\$135
<u>General</u>	
Direct Expenses	Cost + 10%
Subcontract Services	Cost + 10%
Specialized Computer Applications (per hour)	\$15
Mileage	Current IRS Rate
Field Vehicle – Hourly	\$12/hour
Field Vehicle – Daily	\$80/day
Field Vehicle – Monthly	\$1,500/month
B&W Photocopies (per page)	\$0.10
Color Photocopies (per page)	\$0.50

Rates will be adjusted annually based on the US Department of Labor, Bureau of Labor Statistics, Consumer Price Index for All Urban Consumers.

Rates for field equipment, health and safety equipment, and graphical supplies presented upon request.

Based on CWE maintaining General Liability Insurance for bodily injury and property damage with an aggregate limit of \$2,000,000 per occurrence. In the event the client desires additional coverage, CWE will, upon the client's written request, obtain additional insurance and adjust the above billing rates accordingly.

II. The City will compensate Consultant for the Services performed upon submission of a valid invoice, in accordance with Section 2.2. Each invoice is to include:

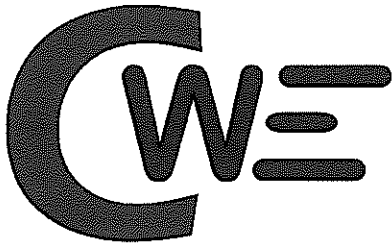
- A. Line items for all the work performed, the number of hours worked, and the hourly rate.
- B. Line items for all materials and equipment properly charged to the Services.

C. Line items for all other approved reimbursable expenses claimed, with supporting documentation.

D. Line items for all approved subcontractor labor, supplies, equipment, materials, and travel properly charged to the Services.

III. The total compensation for the Services shall not exceed \$221,919 for Fiscal Year 2023-24, and \$182,349 for Fiscal Year 2024-25 for a total Not-to-Exceed amount of \$404,268 for this two-year contract term, as provided in Section 2.1 of this Agreement.

Consultant's billing rates for all personnel are attached as Exhibit C-1 & C-2.

**CWE**

1561 E. ORANGETHORPE
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SUITE 240
FULLERTON, CA 92831-5202
(714) 526-7500 PHONE
(714) 526-7004 FAX
www.cwecorp.com

August 11, 2023

Sarah Rocha – Engineering Technician
City of Irwindale
Public Works Engineering Department
5050 North Irwindale Avenue
Irwindale, California 91706

Cover Letter**Proposal to Provide Environmental Management Services for the National Pollutant Discharge Elimination System (NPDES) and Other Related Services for 2023-25 Fiscal Years**

Dear Sarah,

For many firms, stormwater management is a side service line; however, CWE was founded specifically to provide specialized National Pollutant Discharge Elimination System (NPDES) services to public agencies. Our clients trust us to initiate and complete complex stormwater planning assessments, even when no precedent exists. We have developed and implemented comprehensive stormwater management programs for over 50 Southern California municipalities, many of whom are within Los Angeles County limits that require extensive coordination with the Los Angeles Regional Water Quality Control Board (RWQCB). Our extensive expertise in stormwater management and Municipal Separate Storm Sewer System (MS4) Permit compliance is the foundation upon which our civil, environmental, and water resource practices were built. CWE will be honored to serve the City of Irwindale (City) using our MS4 Permit compliance expertise, along with attending to and supporting the City's many industrial and commercial business owners and operators in complying with complex and confusing MS4 Permit regulatory and reporting requirements.

CWE is pleased to submit this proposal as a promise to provide the leadership, commitment, and proven successful track record assisting Southern California municipalities stay in compliance with the NPDES MS4 Permit. We look forward to building a solid relationship with you and welcome the opportunity to further discuss our environmental management qualifications. This proposal will remain valid for a period of ninety (90) days from the date of this letter. If you have any questions or require additional information, please contact me at (714) 526-7500 Ext. 212 or vbapna@cwecorp.com.

Respectfully submitted,

CWE

A handwritten signature in black ink that reads "V Bapna". The signature is written in a cursive, flowing style.

Vik Bapna, PE, ENV SP, CPSWQ, QSD
Principal



City of Irwindale

Environmental Management Services for NPDES and Other Related Services
2023-25 Fiscal Years



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Creating a Better Tomorrow, Today.™





City of Irwindale

Environmental Management Services for NPDES and Other Related Services
2023-25 Fiscal Years

Project Approach

CWE's proposed approach is described below for the two (2) fiscal year contract period:

Task 1 – NPDES and MS4 Permit Management and Oversight

Task 1.1 – Project Management Coordination and Meetings

Project management is critical for services to be completed on time and within budget. Project management efforts include administration and management of the contract, coordination and communication with the City, and participation in monthly project status update meetings. CWE will lead the project management task and provide guidance to contracted laboratories, conduct interagency coordination, perform task scheduling, budget tracking, and invoicing. CWE will proactively engage the City with timely and concise communications and anticipate feedback at various stages of implementation. CWE will schedule two (2) kickoff meetings and ten (10) progress update meetings (to be held virtually) for the contract period. In-person meetings are subject to additional costs associated with travel.

Deliverables: Two (2) kickoff meetings and ten (10) progress update meetings.

Task 1.2 – Annual Report and Semi-Annual Data Submittal

CWE will prepare receiving water and outfall monitoring results in California Environmental Data Exchange Network (CEDEN) format semi-annually no later than December 15th and June 15th for the preceding January 1st to June 30th and July 1st to December 31st reporting period. CWE will prepare an individual annual report, watershed annual report, and Trash TMDL annual report no later than December 15th for the preceding July 1st to June 30th reporting period. Reports will be provided to the City as an editable document to allow for easy commenting and revision tracking prior to finalizing the report and submission to the LARWQCB.

Based on the 2021 MS4 Permit, Permittees participating in a WMP are required to complete and submit a WMP Program Report semi-annually. However, the previously submitted IWMP was determined to be deficient in meeting the WMP requirements. The City has been implementing a baseline stormwater management program, instead of the IWMP. Therefore, it is assumed the City is not required to submit the semi-annual WMP progress report. However, if one is required by the LARWQCB, CWE can provide a not-to-exceed fee estimate for this additional task.

Deliverables: Two (2) annual reports with associated watershed reports and four (4) semi-annual CEDEN submittals.



City of Irwindale

Environmental Management Services for NPDES and Other Related Services
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Task 2 – Integrated Monitoring Program Implementation

Task 2.1 – Receiving Water Monitoring Coordination

CWE understands the City coordinates with the Upper San Gabriel River (USGR) Coordinated Integrated Monitoring Program (CIMP) group and Los Angeles County Flood Control District (LACFCD) San Gabriel River Mass Emission Station (MES) to obtain receiving water monitoring data. CWE will assist the City with coordination efforts for the existing cost share agreement with the USGR CIMP group, and receiving water monitoring data request and reporting.

It is assumed that the City no longer needs to establish a cost share agreement with the Rio Hondo/San Gabriel River (RH/SGR) Water Quality Group (WQG), based on the revised Integrated Monitoring Program (IMP). If the LARWQCB requires the City to perform receiving water monitoring at Peck Road Park Lake, CWE can provide a not-to-exceed fee estimate for this additional task.

Deliverables: USGR CIMP group and MES coordination and communication

Task 2.2 – Stormwater Outfall-Based Monitoring

CWE will monitor and review National Weather Service (NWS) forecasts on a weekly basis between October 1st through April 15th. Weather forecasts for each sampling location will be tracked and saved to support decision making. Forecasts meeting the sampling trigger of 70% chance of over 0.25 inches of cumulative precipitation will be communicated to the City immediately for “go” or “no-go” concurrence. Upon written approval, CWE will initiate sampling preparation efforts, including preparing Chain-of-Custodies (CoCs), field observation forms, YSI field measurement device calibration, and sample bottle labels. A set of analyte-specific sample bottles for each monitoring station will be procured from the designated laboratories. Collected water samples will be immediately chilled on ice, returned to CWE in Fullerton under CoC, sorted by analytical laboratory, additional ice added when needed, and delivered to the corresponding laboratories. Following a wet-weather event, a post-event summary email will be sent to the City summarizing the following:

- Sampling start and end time
- Confirmation of sample delivery to laboratories
- Summary of issues that occurred during the sampling event and if the issues were successfully resolved
- Signed CoCs, completed field observation forms, and photo documentation

This task assumes no false starts. CWE encourages the City to include a contingency budget in the event an unforeseen false start occurs.

2023-24 Fiscal Year

The revised IMP was not approved prior to the start of 2023-24 season, on July 1, 2023. Therefore, CWE will continue to implement the City’s 2016 approved IMP during the 2023-24 fiscal year. The 2016 IMP



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identifies that stormwater outfall-based monitoring will be conducted three (3) times per year during wet-weather at the following locations:

- Sawpit Wash (SAWPW-074A)
- San Gabriel River (SGR-077)
- Big Dalton Wash (BDW-027A)

However, outfalls tributary to the San Gabriel River require four (4) wet-weather sampling events, due to requirements in the San Gabriel River and Impaired Tributaries Metals and Selenium TMDL. Unless instructed otherwise, CWE will perform four (4) monitoring events at SGR-077 and BDW-027A.

CWE will identify a constituent list for wet-weather events, based on regulatory requirements, including applicable TMDLs, Basin Plan, and California Toxics Rule. The cost estimate for laboratory analyses is based on the following assumptions:

- There were no exceedances of the Table E-2 constituents in the 2012 MS4 Permit.
- Suspended sediment sampling will be conducted at SAWPW-074A. Although the IMP Table VI indicated SGR Reach 3 is impaired for suspended sediment, there is no approved TMDL for suspended sediment in SGR Reach 3. Therefore, CWE does not plan to conduct suspended sediment sampling at SGR-077 and BDW-027A.
- The City's IMP does not include field Quality Assurance and Quality Control (QAQC) procedures. However, field QAQC samples collected in conjunction with environmental samples are essential to verify data quality. Therefore, CWE will collect field blank and field duplicate samples at a frequency of 5% of total samples collected, based on the Surface Water Ambient Monitoring Program (SWAMP) Quality Assurance Program Plan.
- There is insufficient time for CWE to obtain a LACFCD Access Permit to perform Stormwater Outfall-Based Monitoring prior to October 1, 2023. Stormwater Outfall-Based Monitoring will be performed at alternative monitoring locations identified in 2016 IMP.

Deliverables: Four (4) wet-weather sampling events and associated summary emails

2024-25 Fiscal Year

It is assumed that the revised IMP will be approved by the LARWQCB prior to July 1, 2024, and the revised IMP will be implemented during the 2024-25 fiscal year. Stormwater outfall-based monitoring will be performed at the following locations:

- Sawpit Wash (MTD-1595)
- San Gabriel River (SGR-077)
- Big Dalton Wash (BDW-027A)

The cost estimate for laboratory analyses is based on the following assumptions:



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- CWE will coordinate with LACFCD to obtain an Access Permit to perform various tasks under the Stormwater Outfall-Based Monitoring and Non-Stormwater Outfall-Based Monitoring programs. It is assumed the City will be responsible for the permit application fee.
- In coordination with the USGR CIMP Group, the City proposed to change the monitoring frequency at outfalls tributary to the San Gabriel River from four (4) times to three (3) times per storm season. The laboratory cost for SGR-077 and BDW-027A is based on three (3) wet-weather events.

Deliverables: Three (3) wet-weather sampling events and associated summary emails; LACFCD Access Permit

Task 2.3 – Non-Stormwater Outfall-Based Monitoring (2024-25 Fiscal Year)

CWE will develop and implement an outfall-based screening and monitoring program. Prior to the outfall screening, CWE will develop a written procedure explaining the screening criteria for outfalls with significant non-stormwater discharge, source investigation, and discharge elimination procedures. Three (3) screening events will be conducted in accordance with the developed procedures, a minimum of 72 hours after recorded precipitation, to inspect outfall characteristics and flow conditions. During the screening, photo documentation will be taken and a field observation form will be completed for each outfall to record observations, including but not limited to, GPS coordinates, outfall dimension, and approximate flow rate. A Geographic Information System (GIS) database, per the 2021 MS4 Permit, Attachment E VIII, will be prepared to include outfalls with a diameter of 36-inches or greater. Up to five (5) source investigations will be conducted for outfalls identified as having a significant non-stormwater discharge. During the source investigation, water quality samples might be collected and submitted to laboratories to determine the composition of the discharge. The laboratory cost estimate is prepared based on five (5) samples within the Los Angeles River watershed.

Within 90 days after completing the outfall screening and source investigation for significant non-stormwater discharge, the 2021 MS4 Permit requires the City to perform monitoring at outfalls during dry-weather that are:

1. Comprised on conditionally exempt non-stormwater discharges
2. Continuing discharges attributed to illicit discharges
3. From unknown sources

It is unclear whether there are outfalls requiring non-stormwater outfall-based monitoring until the screening is complete. The required monitoring constituents vary based on the receiving water body the outfall discharges to. Due to the uncertainties, the cost estimate did not include non-stormwater outfall monitoring. CWE can prepare a separate scope and fee if the non-stormwater outfall-based monitoring is required.

Deliverables: An updated GIS database of MS4 outfalls, Draft and Final Significant Discharge Identification and Elimination Procedures, and up to five (5) significant non-stormwater discharge source investigations.



City of Irwindale

Environmental Management Services for NPDES and Other Related Services
2023-25 Fiscal Years

Task 3 – Industrial and Commercial Facility Control Program

Task 3.1 – Update Industrial and Commercial (I/C) Facility Database

CWE will update the City's I/C facility database on CloudCompli annually, cross checking with the City provided business license database and the industrial facilities listed in the Stormwater Multiple Application and Report Tracking System (SMARTS). As required by the MS4 Permit, a GIS database of I/C facilities within the City will be created. Inspection frequency required in the 2021 MS4 Permit will be identified for the approximately 200 I/C facilities in the City. The I/C facility database will be updated following I/C facility inspections to identify closed, replaced, or new facilities. Based on the current CloudCompli database, there are 249 I/C facilities within the City. In 2022-23 fiscal year, CWE performed 150 mandatory inspections. We identified 43 facilities that are not an MS4 Permit defined I/C facility, 17 are out of business, and 48 industrial non-filers that require follow-up inspections.

Deliverables: I/C facility database

Task 3.2 – I/C Facility Inspections

CWE's inspectors will utilize the CloudCompli software to create a new inspection report and fill in general site information prior to assessing site conditions. During the inspection, the CWE inspector will take note of BMPs implemented, assess BMP effectiveness, identify BMP deficiencies, document non-stormwater discharges and illicit connections, comment on missing BMPs that are identified in the facility's SWPPP, if applicable, and photograph areas of concern. The CWE inspector will also work with the facility manager and/or responsible party to identify deficiencies and provide examples of BMP solutions to implement and mitigate the deficient condition. Following the site assessment, the inspector will answer Inspection Parameter questions in CloudCompli and provide comments on BMP conditions. When deficiencies are identified, the inspector will add the deficiency, and provide detailed descriptions, photo documentation, corrective actions, and a correction due date. Throughout the course of the facility inspection, the CWE inspector will keep the City informed of major findings, violations, and/or discharge violations. These findings will be immediately communicated to the City for appropriate steps and enforcement action.

CWE will conduct follow-up inspections at problematic I/C facilities observed with deficiencies that require corrective actions. Based on experience, approximately 15% of the facilities will require a follow-up inspection. During the follow-up inspection, the CWE inspector will inspect deficient areas and note whether deficiencies were corrected. CWE will perform enforcement actions, including distributing Notice of Corrections (NOCs) and Notice of Violations (NOVs) with associated fines, for non-compliant facilities after one (1) CWE follow-up inspection. Following the enforcement actions, the non-compliant facilities will be revisited to ensure that they continue to implement stormwater pollution prevention BMPs and illicit connections and/or discharges have been eliminated.

2023-24 Fiscal Year

There are 48 industrial non-filers, inspected during the 2022-23 fiscal year, that require follow-up inspections, if Permit coverage is not obtained after one month following the inspection. If the facility fails to obtain the Industrial General Permit coverage after one follow-up inspection, CWE will perform a



City of Irwindale

Environmental Management Services for NPDES and Other Related Services
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NOV inspection. If after 60 days the subject facility does not obtain IGP coverage, CWE will assist by reporting non-filers to the LARWQCB. CWE will also perform inspections for approximately 30 facilities that are currently covered under IGP with a Notice of Intent (NOI).

Deliverables: 100 industrial inspections, including follow-ups and NOV, inspection forms and photo documentation, and associated enforcement actions

2024-25 Fiscal Year

During the 2024-25 fiscal year, CWE will inspect approximately 150 commercial facilities, and perform up to 20 follow-up inspections.

Deliverables: 150 commercial facilities inspection, up to 20 follow-up inspections, inspection forms and photo documentation, and associated enforcement actions

Task 4 – Illicit Connections and Illicit Discharge (IC/ID) Program

Task 4.1 IC/ID Source Investigation

CWE will assist the City with the implementation of IC/ID Program Procedures and Spill Response Plan. Once an illicit discharge is reported, CWE staff will visit the site within 24 hours to record visual observations, identify the source, and coordinate with the City and the identified discharger to contain and/or stop the discharge. Clean up and source investigation procedures following the written guidelines will be initiated within 72 hours of the illicit discharge report. CWE staff will attempt to trace the illicit discharge upstream to identify potential sources. If the source of the illicit discharge is identified, CWE will coordinate with City Code Enforcement to notify the responsible party and issue necessary correction actions. Findings related to the reported illicit discharge will be documented and tracked for reporting purposes.

Deliverables: IC/ID source investigations (up to five [5] incidents)

Task 5 – Public Agency Activities Programs

Task 5.1 City-Owned Facility Retrofit Opportunities

CWE will review the inventory of City-owned facilities and identify up to three (3) retrofit opportunities to include stormwater BMPs, in City parks, vacant lots, and rights-of-way. CWE will prepare a map overlaying parcels, land use, soil type, and existing storm drain system to identify up to three (3) potential locations suitable for retrofitting with regional stormwater capture and treatment BMPs. A retrofit project concept TM will be prepared to summarize the preliminary regional project opportunities and provide discussion on stormwater benefits, cost-effectiveness, accessibility, potential permit requirements, implementation timeline, and practicality.

Deliverables: Retrofit project concept TM



City of Irwindale

Environmental Management Services for NPDES and Other Related Services
2023-25 Fiscal Years

Task 5.2 City Library Stormwater BMP Feasibility Analysis

CWE understands that the City is planning to retrofit the City Library and would like to explore the possibility of including a stormwater diversion and treatment BMP. We have assumed that the stormwater collected will be treated and infiltrated on site. It is assumed that the City will perform the geotechnical exploration including infiltration tests, topographic survey, and utility search as a part of the project. A geotechnical report, topographic survey, and utility drawings will be provided to CWE for review and reference. CWE will perform a hydrology study, and preliminary BMP design calculations. An abbreviated feasibility analysis will be prepared to summarize the findings that will include sizing of the infiltration system, construction cost opinion, and a preliminary layout of the BMPs.

Safe, Clean Water Program (SCWP) has provided an opportunity for the Los Angeles County Community to enhance water quality, water supply and other tangible benefits. If the City selects to apply to the SCWP Technical Resource Program (TRP), CWE can provide a cost estimate for additional costs due to the extra SCWP requirements.

Deliverables: City Library Stormwater BMP Feasibility Study

Task 6 – Post-Construction BMP Inspections

The 2021 MS4 Permit requires the post-construction BMPs to be inspected at least every two years to verify the proper functionality and maintenance activities. It is assumed that the City will provide the up-to-date post-construction BMP database. Prior to the field inspection, CWE will review the approved LID Plan to determine the post-construction structural BMP type(s) and location(s) onsite. It is assumed the City will provide the approved LID Plan, including the Operation and Maintenance (O&M) Plan and Maintenance Agreement, as a reference. The CWE inspector will verify general information of an LID site, as well as BMP type(s) and location(s) prior to the field inspection. CWE inspectors include licensed civil engineers, engineers-in-training, environmental scientists, and trained construction inspection professionals. Following the field assessment of post-construction BMPs, the CWE inspector will use the CloudCompli application on an iPad to upload photo documentation, record observations and comments, and indicate observed deficiencies. Throughout the course of the post-construction BMP inspection, the CWE inspector will keep the City project manager informed of major deficiencies, discharge violations, and actions that will require City enforcement. These findings will be immediately communicated to the City for appropriate steps and enforcement action. Enforcement actions will be incorporated into the CloudCompli inspection report after CWE receives City approval. Sixty (60) post-construction BMP inspections will be completed over the 2023-25 fiscal years.

Deliverables: Sixty (60) post construction BMP inspections, post-construction BMP inspection forms and photo documentation

Task 7 Public Information and Participation Program

CWE will participate in up to three (3) City organized community events annually to engage the public in stormwater planning and raise public awareness of stormwater program benefits and needs. CWE staff will provide EnviroScape demonstrations to children explaining the watershed concept and the



City of Irwindale

Environmental Management Services for NPDES and Other Related Services
2023-25 Fiscal Years

importance of stormwater pollution prevention. It is assumed that the City will provide educational materials to be distributed during community events.

Deliverables: Six (6) outreach events

Task 8 – Conditional Waiver for Peck Road Park Lake

The LARWQCB adopted the Conditional Waiver of Waste Discharge Requirements for Discharges of Trash from Nonpoint Sources in Waterbodies Subject to TMDLs for Trash on September 10, 2020. CWE will coordinate with the RH/SGR WQG to meet the requirements of implementing BMPs and a Minimum Frequency of Assessment and Collection (MFAC) program, and submitting a new trash monitoring and reporting program (TMRP). Although the deadline for the Peck Road Park Lake TMRP passed in September 2021, CWE is fully committed to work diligently with the City to meet the Conditional Waiver requirements for the Peck Road Park Lake.

Deliverables: Conditional Waiver Requirements for Peck Road Park Lake

Task 9 – Trash TMDL Compliance

Task 9.1 DGR Study

CWE will conduct a Trash TMDL Daily Generation Rate (DGR) Study on behalf of the City. The DGR will be determined from direct measurement of trash deposited in the drainage area during a 30-day period between June 22nd to September 22nd. The recommended method for a DGR study provided in the Los Angeles River Trash TMDL Staff Report will be utilized. Several catch basins will be selected based on the land use, pedestrian traffic volume, and accessibility. Selected catch basins will be closed in a manner that prevents trash from being swept into the catch basins. Field staff will manually collect and quantify the amount of trash within the drainage area of selected catch basins prior to street sweeping each week during the 30-day period. The DGR will be calculated as the total amount of trash collected divided by a total of 30 days for each selected catch basin. A DGR report will be prepared to summarize the method, field observations, and results.

Deliverables: DGR Reports

Task 9.2 Catch Basin Retrofit Design

CWE will provide catch basin retrofit design plans to install Full Capture System (FCS) for the unprotected catch basins within the Los Angeles River watershed. Based on the City provided catch basin records, the following table summarizes the catch basins that are within the Los Angeles River watershed and potentially require retrofit.



City of Irwindale

Environmental Management Services for NPDES and Other Related Services
2023-25 Fiscal Years

CB No.	Coordinates	CB Type	Ownership	Notes
CB326	34.118360, - 117.983958	Side opening	LACFCD	Los Angeles County Storm Drain System indicates this catch basin is owned and maintained by the City.
CB335	34.118846, - 117.989288	Grate inlet	City	Damaged grate (2018)
CB345	34.114936, - 117.976176	Grate inlet	City	
CB346	34.114483, - 117.980396	Grate inlet	City	Entirely filled with sediment (2018)
CB347	34.114673, - 117.979067	Grate inlet	City	Entirely filled with sediment (2018)
CB348	34.114704, - 117.980441	Grate inlet	City	Entirely filled with sediment (2018)
CB387	34.116412, - 118.001591	Side opening	LACFCD	
CB391	34.113847, - 118.003110	Side opening	LACFCD	Los Angeles County Storm Drain System indicates this catch basin is owned and maintained by the City.

CWE will prepare the LACFCD connection and construction permit applications. It is assumed that the City will pay for the permit application fees. The cost estimate is prepared for the retrofit/design compliance for eight (8) catch basins.

Deliverables: Catch Basin Retrofit Design Plans



City of Irwindale

Environmental Management Services for NPDES and Other Related Services
2023-25 Fiscal Years

Cost Proposal

Based on the scope of services described above, the total Not-to-Exceed fee for the 2023-25 fiscal years is \$404,268. Not-to-Exceed Amount of \$221,919 for fiscal year 2023-24, and Not-to-Exceed amount of \$182,349 for fiscal year 2024-25. The detailed cost estimation by task and fiscal year is included below.

Creating a Better Tomorrow, Today.™





City of Irwindale Environmental Management Services for the National Pollutant Discharge Elimination System (NPDES) and Other Related Services

2023-24 Fiscal Year

Professional Service Fee

Prepared by CWE on 8/11/2023

			Principal	Sr. Project Manager	Project Manager	Project Engineer	Staff Engineer	Senior Env Sci	Env Scientist	Env Analyst	GIS Specialist	Engineering Technician	ODCs	Sub consultant	
Task	Total		\$319	\$306	\$274	\$178	\$157	\$189	\$145	\$106	\$145	\$102		Enthalpy	
1	NPDES and MS4 Permit Management and Oversight														
1.1	Project Management Coordination and Meetings	\$6,126	3	3	15								\$ 140		
1.2	Annual Report and Semi-Annual Data Submittal	\$14,676	4	4	8			16	48						
	SUBTOTAL TASK 1	\$20,802													
2	Integrated Monitoring Program Implementation														
2.1	Receiving Water Monitoring Coordination	\$2,511	1		8										
2.2	Stormwater Outfall Based Monitoring	\$40,621	2		8				54	120		64	\$ 2,177	\$ 8,536	
	SUBTOTAL TASK 2	\$43,132													
3	Industrial and Commercial Facility Control Program														
3.1	Update Industrial and Commercial Facility Database	\$4,732			2			16			8				
3.2	Industrial Facility Inspections	\$17,154	2		8				56			56	\$ 491		
	SUBTOTAL TASK 3	\$21,886													
4	Illicit Connections and Illicit Discharge (IC/ID) Program														
4.1	IC/ID Source Investigation	\$ 13,681	1		4			60					\$ 926		
	SUBTOTAL TASK 4	\$13,681													
5	Public Agency Activities Programs														
5.1	City-Owned Facility Retrofit Opportunities	\$ 21,060	4	8	8	8	80				8				
5.2	City Library Stormwater BMP Feasibility Analysis	\$ 27,028	8		10	32	80				24				
	SUBTOTAL TASK 5	\$ 48,088													
6	Post-Construction BMP Inspections	\$ 5,877			4				32				\$ 140		
	SUBTOTAL TASK 6	\$ 5,877													
7	Public Information and Participation Program	\$ 7,706			4			16	24				\$ 105		
	SUBTOTAL TASK 7	\$ 7,706													
8	Conditional Waiver for Peck Road Park Lake	\$7,215	1	4	8				24						
	SUBTOTAL TASK 8	\$7,215													
9	Trash TMDL Compliance - DGR Trash Study														
9.1	DGR Study	\$11,204	4		8				24			40	\$ 176		
9.2	Catch Basin Retrofit Design	\$42,328	4		8	40	180		24						
	SUBTOTAL TASK 9	\$53,532													
Total Fee and Hours		Not-To-Exceed Amount	\$221,919	34	19	103	80	340	108	286	120	40	160	\$ 4,155	\$ 8,536



City of Irwindale Environmental Management Services for the National Pollutant Discharge Elimination System (NPDES) and Other Related Services

2024-25 Fiscal Year

Professional Service Fee

Prepared by CWE on 8/11/2023

Professional Service Fee
Prepared by CWE on 8/11/2023

			Principal	Sr. Project Manager	Project Manager	Project Engineer	Senior Env Sci	Env Scientist	Env Analyst	GIS Specialist	Engineering Technician	ODCs	Sub consultant	
Task		Total	\$337	\$324	\$289	\$188	\$199	\$153	\$112	\$153	\$107		Enthalpy	
1	NPDES and MS4 Permit Management and Oversight													
1.1	Project Management Coordination and Meetings	\$6,459	3	3	15							\$ 140		
1.2	Annual Report and Semi-Annual Data Submittal	\$15,484	4	4	8		16	48						
	SUBTOTAL TASK 1	\$21,943												
2	Integrated Monitoring Program Implementation													
2.1	Receiving Water Monitoring Coordination	\$2,649	1		8									
2.2	Stormwater Outfall Based Monitoring	\$40,019	2		8			54	120		64	\$ 2,177	\$ 6,306	
2.3	Non-stormwater Outfall Based Monitoring	\$35,364	2		12			128		8	48	\$ 1,678	\$ 3,600	
	SUBTOTAL TASK 2	\$78,032												
3	Industrial and Commercial Facility Control Program													
3.1	Update Industrial and Commercial (I/C) Facility Database	\$4,828			4			16		8				
3.2	Commercial Facility Inspections	\$29,471	2		16			90			90	\$ 772		
	SUBTOTAL TASK 3	\$34,299												
4	Illicit Connections and Illicit Discharge (IC/ID) Program													
4.1	IC/ID Source Investigation	\$ 14,359	1		4		60					\$ 926		
	SUBTOTAL TASK 4	\$ 14,359												
6	Post-Construction BMP Inspections	\$ 6,193			4			32				\$ 140		
	SUBTOTAL TASK 6	\$ 6,193												
7	Public Information and Participation Program	\$ 8,118			4		16	24				\$ 105		
	SUBTOTAL TASK 7	\$ 8,118												
8	Conditional Waiver for Peck Road Park Lake	\$7,617	1	4	8			24						
	SUBTOTAL TASK 8	\$7,617												
9	Trash TMDL Compliance													
9.1	DGR Study	\$11,788	4		8			24			40	\$ 176		
	SUBTOTAL TASK 9	\$11,788												
Total Fee and Hours		Not-To-Exceed Amount	\$182,349	20	11	99	0	92	440	120	16	242	\$ 6,113	\$ 9,906

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

City of
IRWINDALE
AGENDA REPORT

CC Item 5

Date: September 13, 2023
To: Honorable Mayor and Members of the City Council
From: Julian A. Miranda, City Manager
Issue: Approval of Third Tolling Agreement between BKK Working Group and City of Irwindale Related to the BKK Landfills

City Manager's Recommendation:

It is recommended that the Irwindale City Council authorize the City Manager to execute the Third Tolling Agreement between BKK Working Group and City of Irwindale that will extend the statute of limitations period to September 2026 for lawsuits related to cleanup of the BKK Landfill in West Covina.

Administrative Action:

Submitted & Prepared by:

Adrian R. Guerra, City Attorney

Electronically Approved

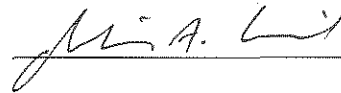
Reviewed by:

Adrian R. Guerra, City Attorney

Electronically Approved

Approved by:

Julian A. Miranda, City Manager



Background and Analysis:

The "BKK Working Group" is a group of entities, including Chevron, Dow, ExxonMobil, Lockheed Martin, Shell, Southern California Edison, and others that has incurred environmental response costs in connection with the BKK Landfills in West Covina, California. In 2017, the BKK Working Group alleged that the City of Irwindale ("City") may have disposed waste from 1962 to 1987 at the former BKK Landfill and may, therefore, be liable for some of the costs for clean-up of hazardous substance contamination at the Landfill under state and common law. Hundreds of other additional potentially responsible parties have also been identified, and the BKK Working Group wants to seek reimbursement of at least some of the cleanup costs spent by its members. The State Department of Toxic Substances Control is currently requiring the BKK Working Group to pay those clean-up costs, amounting to nearly \$250 million to date, but the BKK Working

Group may seek contribution in the future from other entities that disposed waste at the Landfill in the past, including the City of Irwindale. The City has continuously denied any liability for the clean-up or disposal of such waste.

However, all parties involved would like to avoid litigation, and the BKK Working Group does not yet know the total cost of the cleanup. As a result, in 2017, the BKK Working Group asked each potentially responsible party, including the City of Irwindale, to postpone the statute of limitations to file a lawsuit to September 2020 through a Tolling Agreement. In 2017, the BKK Working Group and the City entered into the first tolling agreement related to this potential liability ("First Tolling Agreement"). The First Tolling Agreement tolled any applicable statute of limitations governing claims that the BKK Working Group could assert against the City of Irwindale or vice versa relating to the Landfills from 2017 until 2020. The BKK Working Group and the City then entered into a second tolling agreement in 2020 to again toll any applicable statute of limitations related to potential claims against the City until 2023 ("Second Tolling Agreement"). During both the 2017 and 2020 Tolling Agreements, the BKK Working Group and the City agreed not to initiate any litigation concerning the investigation, remediation, or the recovery of costs relating to the Landfills against one another.

Now, the BKK Working Group is asking the City to execute another tolling agreement, the Third Tolling Agreement, to toll the running of the statute of limitations on claims related to the response activities at the Landfill to September 2026.

ANALYSIS:

Under the Third Tolling Agreement, the BKK Working Group and the City would again agree not to initiate any litigation concerning the investigation, remediation, or the recovery of costs relating to the Landfills, against one another for the duration of the Third Tolling Agreement. The Third Tolling Agreement would require that both the BKK Working Group and the City preserve and maintain legible copies of all documents and other materials subject to discovery related to waste disposal at the Landfills for the duration of the Third Tolling Agreement, plus 90 days after its expiration. Entering into the Third Tolling Agreement would not constitute an admission of fact or liability on the part of either party.

Entering into the Third Tolling Agreement would allow the City to continue to postpone the risk of litigation with the BKK Working Group, while permitting the City to investigate the BKK Working Group's claims. It also permits the BKK Working Group more time to better define the total cleanup costs and identify any additional potentially responsible parties to share in the allocation of cleanup costs.

FISCAL IMPACT:

None.

Attachments:

Exhibit A – Proposed Third Tolling Agreement

Exhibit B – Second Tolling Agreement

Exhibit C – First Tolling Agreement.

THIRD TOLLING AGREEMENT

This Third Tolling Agreement ("Agreement") is made and entered into by and between the BKK Working Group and City of Irwindale. The BKK Working Group is an unincorporated association of the entities identified in Exhibit A. Hereinafter, the BKK Working Group and City of Irwindale are singularly referred to as a "Party" and collectively referred to as the "Parties."

Recitals

A. The BKK Working Group has incurred environmental response costs in connection with the BKK Landfills in West Covina, California (the "Facility") pursuant to three judicially-approved Consent Decrees and six Interim Settlement Agreements between the BKK Working Group and the California Department of Toxic Substances Control ("DTSC").

B. The BKK Working Group has notified City of Irwindale that it may have legal liability based upon the disposal of waste material at the Facility under the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. §§ 9601, *et seq.*), the California Hazardous Substances Account Act (Cal. Health & Safety Code §§ 25300, *et seq.*), and/or common law. City of Irwindale denies such liability for purposes of this Agreement.

C. The Parties entered into a Tolling Agreement ("2017 Tolling Agreement") effective in 2017 that tolled any applicable statute of limitations governing claims that the BKK Working Group could assert against the City of Irwindale or vice versa relating to the Facility until 2020.

D. The Parties entered into a Second Tolling Agreement ("2020 Tolling Agreement") effective in 2020 that tolled any applicable statute of limitations governing claims that the BKK Working Group could assert against the City of Irwindale or vice versa relating to the Facility until 2023.

E. The Parties desire to toll any applicable statute of limitations governing claims that the Parties could assert against each other relating to the Facility in the manner set forth below.

F. This Third Agreement is a successor agreement to the 2017 Tolling Agreement and the 2020 Tolling Agreement.

Terms and Conditions

1. **Tolled Claims.** The Parties agree that all statutes of limitations and any other statute, law, rule or principle of equity of similar effect, including provisions under the California Government Claims Act, California Gov't Code §§ 900-960.8 (collectively, "Statute of Limitations") applicable to any rights, claims, causes of action, counterclaims, crossclaims defenses, and claims act presentation regarding, based upon, or arising out of the disposal of waste material at the Facility, or the ownership or operation of the Facility which the BKK Working Group could assert against City of Irwindale, or which City of Irwindale could assert against the BKK Working Group as of the Effective Date ("Claims"), shall be tolled for the period between the Effective Date and the Termination Date, and this tolling period shall be excluded from all computations of any applicable period of limitations.

2. **Waiver of Time-Related Defense.** The Parties agree that they shall waive and shall not plead, assert, or otherwise raise any Statute of Limitations or any other time-related defense otherwise applicable to the Claims, to the extent such limitations period or other time-related defense is tolled by this Agreement, as a bar to or other limitation on any Claim.

3. **Standstill.** The BKK Working Group and City of Irwindale agree not to initiate litigation concerning the investigation, remediation, or the recovery of costs relating to the Facility against the other Party between the Effective Date and the Termination Date. However, this provision shall not preclude any Party from seeking information pursuant to the California Public Records Act ("PRA"), California Gov't Code §§ 6250-6276.48 from another Party or a third Party relating to waste disposed at or liability associated with the Facility or from enforcing rights to such information under the PRA.

4. **Authorization.** Each of the undersigned certifies that he or she is fully authorized to enter into the terms and conditions of this Agreement and to legally bind such party to all terms and conditions of this document. This Agreement shall be binding upon the Parties, their successors and any additional entities who may join the BKK Working Group after execution of this Agreement.

5. **No Admission.** By entering into this Agreement, the Parties do not admit any fact nor assume any liability of any kind. Moreover, this Agreement may not be offered as evidence of an admission of such responsibility or liability in any court, administrative, alternative dispute resolution proceeding or legal proceeding, except as to enforce the standstill agreement and as to the issue of the tolling of any Statute of Limitations or any other time-related defense.

6. **No Resurrection of Claims.** The Parties agree that this Agreement shall not apply to any third party and shall not revive any rights, claims, causes of actions, counterclaims, crossclaims or defenses that are already barred by an applicable provision of law as of the Effective Date. Notwithstanding the above, this Agreement shall inure to the benefit of and be binding upon, any and all legal successors to or assigns of the Parties. Nothing expressed or implied in this Agreement is intended to confer on any person other than the Parties and their legal successors or assigns any rights or obligations under this Agreement.

7. **Counterparts.** This Agreement may be signed in counterparts by one or more of the Parties, and those counterparts when taken together shall have the same force and effect as if a single, original document had been signed by all the Parties.

8. **Termination.** The Termination Date of this Agreement shall be the earlier of: (a) three (3) years from the Effective Date or, (b) fifteen (15) days after any Party, in its sole discretion, gives written notification of termination to the other Party. Notwithstanding the termination of this Agreement, the Statute of Limitations shall remain tolled for an additional sixty (60) days following the Termination Date. This provision shall survive the termination of the Agreement.

9. **Preservation of Records.** The Parties shall preserve and maintain, during the term of the tolling period, and for a minimum of 90 days after termination of the tolling period, at least one legible copy of all documents and other materials subject to discovery under the

Federal Rules of Civil Procedure and relating to waste disposal at the Facility, regardless of any document retention policy to the contrary.

10. **Entire Agreement.** This Agreement contains the entire agreement between the Parties, and no statement, promise, or inducement made by any Party to this Agreement that is not set forth in this Agreement shall be valid or binding, nor shall it be used in construing the terms of the Agreement as set forth herein.

11. **Modifications.** Any modifications to this Agreement must be in writing and signed by all Parties. The Parties acknowledge that this Agreement may be extended for such period of time as the Parties agree in writing.

12. **Effective Date.** The Effective Date of this Agreement shall be September 25, 2023.

IN WITNESS THEREOF, the Parties have executed this Agreement on the dates set forth below.

BKK Working Group and its individual members

By: _____ Date: _____

Name: James J. Dragna, Esq.

Title: Attorney for the BKK Working Group
and its Members identified in Exhibit A

CITY OF IRWINDALE

By: _____ Date: _____

Print Name: _____ Title: _____

CONTACT INFORMATION FOR CITY OF IRWINDALE

Name: _____

Title: _____

Company: _____

Address: _____

Phone: _____

Email: _____

Exhibit A

- American Cyanamid
- American Honda Motor Co., Inc.
- Ameron International Corp.
- Anadarko E&P Onshore LLC
- Ashland LLC (formerly known as Ashland Chemical Company)
- Atlantic Richfield Company
- Baker Hughes Oilfield Operations, Inc.
- Baker Petrolite LLC
- Bayer Cropscience Inc.
- Big Heart Pet Brands
- The Boeing Company
- California Resources Corporation
- Chevron Environmental Management Company
- Chevron Marine LLC
- City Of Los Angeles, Acting By And Through The Los Angeles Department Of Water And Power
- ConocoPhillips Company
- Crosby & Overton, Inc.
- The Dow Chemical Company
- Ducommun Aerostructures, Inc.
- Essex Chemical Corporation
- ExxonMobil Corporation
- Filtrol Corporation
- Gemini Industries, Inc.
- General Dynamics Corporation
- General Latex and Chemical Corporation
- Hewlett-Packard Company
- Honeywell International Inc.
- Hugo Neu-Proler
- Huntington Beach Company
- Kal Kan Foods Inc.
- Lockheed Martin Corporation
- Mars, Inc.
- Montrose Chemical Corp. of California
- Mortell Company
- Morton International, Inc.
- National Steel And Shipbuilding Company
- Northrop Grumman Corporation
- Oxy USA Inc.
- Quemetco, Inc.
- Raytheon Company
- Raytheon Technologies Corporation for Inmont Corporation
- Rockwell Automation, Inc.
- Rohm & Hass Company
- Rohr, Inc.
- San Diego Gas & Electric Company
- Shell Oil Company
- Smith International, Inc.
- Southern California Edison Company

- Southern California Gas Company
- The Procter & Gamble Manufacturing Company
- THUMS Long Beach Company
- Todd Pacific Shipyards Corp.
- Union Carbide Corporation
- Union Pacific Railroad / Southern Pacific Transportation Company
- Unisys Corporation
- United States Steel Corporation
- Univar Solutions USA, Inc.
- Van Waters & Rogers
- Vigor Shipyards, Inc.
- Xerox Corporation

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 $\pm$ 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 9, 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.

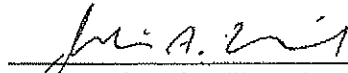
IN WITNESS THEREOF, the City and Vulcan hereby sign and agree to all terms of this Agreement on the dates indicated below.

[Signatures on Following Page]

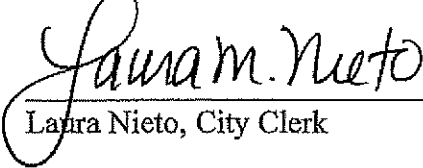
IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the 26th of July, 2023.

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:

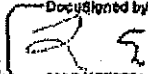
By: Signed in counterpart
Name:
Title:

APPROVED AS TO FORM:
FENNEMORE LLP

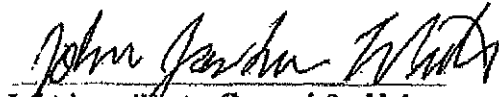
Signed in counterpart
J. Jackson Waste, Counsel for Vulcan

Signed in counterpart
Adrian R. Guerra, City Attorney

VULCAN:

Designated by:
By: 
Name: Lindsay Siner
Title: Attorney

APPROVED AS TO FORM:
FENNEMORE LLP


John Jackson Waste, Counsel for Vulcan

Certificate Of Completion

Envelope ID: 7533E4C6528E49E901CF5B92E9D7A2C

Status: Completed

Subject: Complete with DocuSign: Vulcan DIF Protest Claim Tolling Agreement - July 20, 2023 Clean Versio...

Source Envelope:

Document Pages: 5

Signatures: 1

Envelope Originator:

Certificate Pages: 1

Initials: 0

Alma D. Martinez

AutoNav: Enabled

1200 Urban Center Dr

Envelope Stamping: Enabled

Vestavia, AL 35242-2545

Time Zone: (UTC-06:00) Central Time (US & Canada)

martinezad@vmcmail.com

IP Address: 205.235.112.33

Record Tracking

Status: Original

Holder: Alma D. Martinez

Location: DocuSign

7/21/2023 4:52:51 PM

martinezad@vmcmail.com

Signer Events

Lindsay Sinc

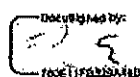
Sincor@vmcmail.com

Attorney

Vulcan Materials Company

Security Level: Email, Account Authentication
(None)

Signature



Signature Adoption: Drawn on Device
Using IP Address: 97.85.10.54
Signed using mobile

Timestamp

Sent: 7/21/2023 4:54:19 PM

Viewed: 7/21/2023 5:43:46 PM

Signed: 7/21/2023 5:43:53 PM

Electronic Record and Signature Disclosure:
Not Offered via DocuSign

In Person Signer Events

Signature

Timestamp

Editor Delivery Events

Status

Timestamp

Agent Delivery Events

Status

Timestamp

Intermediary Delivery Events

Status

Timestamp

Certified Delivery Events

Status

Timestamp

Carbon Copy Events

Status

Timestamp

Witness Events

Signature

Timestamp

Notary Events

Signature

Timestamp

Envelope Summary Events

Status

Timestamps

Envelope Sent

Hashed/Encrypted

7/21/2023 4:54:19 PM

Certified Delivered

Security Checked

7/21/2023 5:43:46 PM

Signing Complete

Security Checked

7/21/2023 5:43:53 PM

Completed

Security Checked

7/21/2023 5:43:53 PM

Payment Events

Status

Timestamps

TOLLING AGREEMENT

This Tolling Agreement ("Agreement") is made and entered into by and between the BKK Working Group and City of Irwindale. The BKK Working Group is an unincorporated association of the entities identified in Exhibit A. Hereinafter, the BKK Working Group and City of Irwindale are singularly referred to as a "Party" and collectively referred to as the "Parties."

Recitals

A. The BKK Working Group has incurred environmental response costs in connection with the BKK Landfills in West Covina, California (the "Facility") pursuant to three judicially-approved Consent Decrees and six Interim Settlement Agreements between the BKK Working Group and the California Department of Toxic Substances Control ("DTSC").

B. The BKK Working Group has notified City of Irwindale that it may have legal liability based upon the disposal of waste material at the Facility under the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. §§ 9601, *et seq.*), the California Hazardous Substances Account Act (Cal. Health & Safety Code §§ 25300, *et seq.*), and/or common law. City of Irwindale denies such liability for purposes of this Agreement.

C. The Parties desire to toll any applicable statute of limitations governing claims that the Parties could assert against each other relating to the Facility in the manner set forth below.

Terms and Conditions

1. **Tolled Claims.** The Parties agree that all statutes of limitations and any other statute, law, rule or principle of equity of similar effect, including provisions under the California Government Claims Act, California Gov't Code §§ 900-960.8 (collectively, "Statute of Limitations") applicable to any rights, claims, causes of action, counterclaims, crossclaims, defenses, and claims act presentation regarding, based upon, or arising out of the disposal of waste material at the Facility, or the ownership or operation of the Facility which the BKK Working Group could assert against City of Irwindale, or which City of Irwindale could assert against the BKK Working Group as of the Effective Date ("Claims"), shall be tolled for the period between the Effective Date and the Termination Date, and this tolling period shall be excluded from all computations of any applicable period of limitations.

2. **Waiver of Time-Related Defense.** The Parties agree that they shall waive and shall not plead, assert, or otherwise raise any Statute of Limitations or any other time-related defense otherwise applicable to the Claims, to the extent such limitations period or other time-related defense is tolled by this Agreement, as a bar to or other limitation on any Claim.

3. **Standstill.** The BKK Working Group and City of Irwindale agree not to initiate litigation concerning the investigation, remediation, or the recovery of costs relating to the Facility against the other Party between the Effective Date and the Termination Date. However, this provision shall not preclude any Party from seeking information pursuant to the California Public Records Act ("PRA"), California Gov't Code §§ 6250-6276.48 from another Party or a third Party relating to waste disposed at or liability associated with the Facility or from enforcing rights to such information under the PRA.

4. **Authorization.** Each of the undersigned certifies that he or she is fully authorized to enter into the terms and conditions of this Agreement and to legally bind such party to all terms and conditions of this document. This Agreement shall be binding upon the Parties, their successors and any additional entities who may join the BKK Working Group after execution of this Agreement.

5. **No Admission.** By entering into this Agreement, the Parties do not admit any fact nor assume any liability of any kind. Moreover, this Agreement may not be offered as evidence of an admission of such responsibility or liability in any court, administrative, alternative dispute resolution proceeding or legal proceeding, except as to enforce the standstill agreement and as to the issue of the tolling of any Statute of Limitations or any other time-related defense.

6. **No Resurrection of Claims.** The Parties agree that this Agreement shall not apply to any third party and shall not revive any rights, claims, causes of actions, counterclaims, crossclaims or defenses that are already barred by an applicable provision of law as of the Effective Date. Notwithstanding the above, this Agreement shall inure to the benefit of and be binding upon, any and all legal successors to or assigns of the Parties. Nothing expressed or implied in this Agreement is intended to confer on any person other than the Parties and their legal successors or assigns any rights or obligations under this Agreement.

7. **Counterparts.** This Agreement may be signed in counterparts by one or more of the Parties, and those counterparts when taken together shall have the same force and effect as if a single, original document had been signed by all the Parties.

8. **Termination.** The Termination Date of this Agreement shall be the earlier of: (a) three (3) years from the Effective Date or, (b) fifteen (15) days after any Party, in its sole discretion, gives written notification of termination to the other Party. Notwithstanding the termination of this Agreement, the Statute of Limitations shall remain tolled for an additional sixty (60) days following the Termination Date. This provision shall survive the termination of the Agreement.

9. **Preservation of Records.** The Parties shall preserve and maintain, during the term of the tolling period, and for a minimum of 90 days after termination of the tolling period, at least one legible copy of all documents and other materials subject to discovery under the Federal Rules of Civil Procedure and relating to waste disposal at the Facility, regardless of any document retention policy to the contrary.

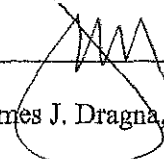
10. **Entire Agreement.** This Agreement contains the entire agreement between the Parties, and no statement, promise, or inducement made by any Party to this Agreement that is not set forth in this Agreement shall be valid or binding, nor shall it be used in construing the terms of the Agreement as set forth herein.

11. **Modifications.** Any modifications to this Agreement must be in writing and signed by all Parties. The Parties acknowledge that this Agreement may be extended for such period of time as the Parties agree in writing.

12. **Effective Date.** The Effective Date of this Agreement shall be September 25, 2017.

IN WITNESS THEREOF, the Parties have executed this Agreement on the dates set forth below.

BKK Working Group

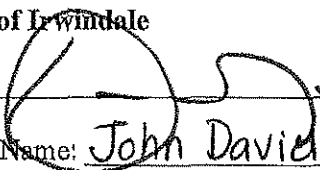
By:  _____

Date: 12/22/17

Name: James J. Dragna, Esq.

Title: Attorney for the BKK Working Group

City of Irwindale

By:  _____

Date: 11-13-17

Print Name: John Davidson

Title: City Manager

CONTACT INFORMATION FOR CITY OF IRWINDALE

Name: John Davidson

Title: City Manager

Company: City of Irwindale

Address: 5050 N. Irwindale Ave.
Irwindale, California
91706

Phone: 626-430-2217

Email: JDavidson@irwindaleca.gov

Exhibit A

- American Honda Motor Co., Inc.
- Ameron International Corp.
- Anadarko E&P Onshore LLC
- Ashland Chemical Company
- Atlantic Richfield Company
- Azusa Land Reclamation, Inc.
- Baker Hughes Oilfield Operations, Inc.
- Baker Petrolite LLC
- Bayer Cropscience Inc.
- Big Heart Pet Brands
- The Boeing Company
- Chemical Waste Management, Inc.
- Chevron Environmental Management Company
- Chevron Marine LLC
- City Of Los Angeles, Acting By And Through The Los Angeles Department Of Water And Power
- ConocoPhillips Company
- Crosby & Overton, Inc.
- The Dow Chemical Company
- Ducommun Aerostructures, Inc.
- Essex Chemical Corporation
- ExxonMobil Corporation
- Filtrol Corporation
- Gemini Industries, Inc.
- General Dynamics Corporation
- General Latex and Chemical Corporation
- Hewlett-Packard Company
- Honeywell International Inc.
- Hugo Neu-Proler
- Huntington Beach Company
- Kal Kan Foods Inc.
- Lockheed Martin Corporation
- Mars, Inc.
- Montrose Chemical Corp. of California
- Mortell Company
- Morton International, Inc.
- National Steel And Shipbuilding Company
- Northrop Grumman Corporation
- Quemetco, Inc.
- Raytheon Company
- Rockwell Automation, Inc.
- Rohm & Hass Company
- Rohr, Inc.
- San Diego Gas & Electric Company
- Shell Oil Company
- Southern California Edison Company
- Southern California Gas Company
- The Procter & Gamble Manufacturing Company
- THUMS Long Beach Company

- Todd Pacific Shipyards Corp.
- Union Carbide Corporation
- Union Pacific Railroad / Southern Pacific Transportation Company
- Unisys Corporation
- United States Steel Corporation
- United Technologies Corporation
- Univar USA, Inc.
- USA Waste of California, Inc.
- Van Waters & Rogers
- Vigor Shipyards, Inc.
- Waste Management Collection And Recycling, Inc.
- Waste Management of California, Inc.
- Waste Management Recycling and Disposal Services of California, Inc.
- Western Waste Industries
- Xerox Corporation

Morgan Lewis

Marina Rodriguez

Senior Paralegal

+1.213.680.6690

marina.rodriguez@morganlewis.com

February 28, 2018

VIA REGULAR MAIL

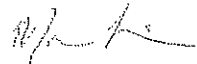
Fred Galante
City Attorney
City of Irwindale
Aleshire & Wynder LLP
18881 Von Kaman Avenue, Suite 1700
Irvine, CA 92612

Re: BKK Landfill
Fully Executed Tolling Agreement
City of Irwindale

Dear Fred Galante:

Enclosed for your records is a copy of the fully executed Tolling Agreement regarding the BKK Landfill located in West Covina, CA.

Sincerely,



Marina Rodriguez
Senior Paralegal

MR
Enclosure

Morgan, Lewis & Bockius LLP

300 South Grand Avenue
Twenty-Second Floor
Los Angeles, CA 90071-3132
United States

📞 +1.213.612.2500
📠 +1.213.612.2501

DB3/ 201815839.1

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

City of
IRWINDALE
AGENDA REPORT

Date: September 13, 2023
To: Honorable Mayor and Members of the City Council
From: Julian A. Miranda, City Manager
Issue: Approval of Safe Streets and Roads for All (SS4A) Grant Agreement between City of Irwindale and U.S. Department of Transportation Federal Highway Administration in the Amount of \$184,000

City Manager's Recommendation:

That the City Council **(1)** approve the grant agreement with the U.S. Department of Transportation Federal Highway Administration (FHWA) for the Safe Streets and Roads for All (SS4A) Grant Award; and **(2)** authorize the City Manager to execute the agreement upon approval as to form by the City Attorney.

Administrative Action:

Submitted by:

Eddie Chan,
Director of Engineering / Building Official

Prepared by:

Luis Pimentel, Associate Engineer
(626) 430-2259

Reviewed by:

Adrian Guerra, City Attorney

Electronically Approved

Kambiz Borhani, Finance Director / City Treasurer

Approved by:

Julian A. Miranda, City Manager

Background and Analysis:

The Bipartisan Infrastructure Law (BIL) established the new Safe Streets and Roads for All (SS4A) discretionary program, with \$5 billion in appropriated funds over 5 years, 2022-2026. The SS4A program funds regional, local, and Tribal initiatives through grants to prevent roadway deaths and serious injuries. The SS4A program supports the U.S. Department of Transportation's National Roadway Safety Strategy and goal of zero roadway deaths.

On February 1, 2023, U.S. Transportation Secretary Pete Buttigieg announced \$800 million in grant awards for 511 projects through the first round of funding for the SS4A grant program. The program supports the development of a comprehensive safety action plan (Action Plan) that identifies the most significant roadway safety concerns in a community and the implementation of projects and strategies to address roadway safety issues. Action Plans are the foundation of the SS4A grant program. SS4A requires an eligible Action Plan be in place before applying to implement projects and strategies. Action Plan grants assist communities that do not currently have a roadway safety plan in place to reduce roadway fatalities, laying the groundwork for a comprehensive set of actions.

Staff applied for and was awarded an Action Plan grant from the U.S. Department of Transportation Federal Highway Administration (FHWA) in the amount of \$184,000. It is estimated that the development of the Action Plan will cost approximately \$230,000, and the City is required to provide a local match of 20% for the project equaling \$46,000.

Upon approval by City Council, the SS4A Grant Agreement will be submitted to FHWA as required to be eligible for reimbursement of SS4A Action Plan expenditures.

Fiscal Impact:

Funding for this project is budgeted in the FY 2023/2024 CIP Budget as the Safe Streets for All (SS4A) Action Plan in the amount of \$230,000 (Account Number 48-80-800-45300-8357). The City of Irwindale will be eligible to receive reimbursement of up to \$184,000 from the SS4A Grant, which is estimated to be 80% of the total cost of developing the Action Plan. The City is responsible for the remaining 20% local match of \$46,000, where \$23,000 is funded from the General Fund and \$23,000 from the Mining Impact Fund.

Attachment:

- Safe Streets and Roads for All (SS4A) Grant Agreement

IRWINDALE – FY-22 SS4A GRANT AGREEMENT

1. Award No. 693JJ32340122	2. Effective Date See No. 17 Below	3. Assistance Listings No. 20.939										
4. Award To City of Irwindale 5050 N Irwindale Avenue Irwindale, CA 91706 Unique Entity Id.: E9J2S6RNLAC1 TIN No.: 95-6005899	5. Sponsoring Office U.S. Department of Transportation Federal Highway Administration Office of Safety 1200 New Jersey Avenue, SE HSSA-1, Mail Drop E71-117 Washington, DC 20590											
6. Period of Performance Effective date of award through 24 months	7. Total Amount <table border="0"><tr><td>Federal Share:</td><td>\$184,000</td></tr><tr><td>Recipient Share:</td><td>\$46,000</td></tr><tr><td>Other Federal Funds:</td><td>\$0</td></tr><tr><td>Other Funds:</td><td>\$0</td></tr><tr><td>Total:</td><td>\$230,000</td></tr></table>		Federal Share:	\$184,000	Recipient Share:	\$46,000	Other Federal Funds:	\$0	Other Funds:	\$0	Total:	\$230,000
Federal Share:	\$184,000											
Recipient Share:	\$46,000											
Other Federal Funds:	\$0											
Other Funds:	\$0											
Total:	\$230,000											
8. Type of Agreement Grant	9. Authority Section 24112 of the Infrastructure Investment and Jobs Act (Pub. L. 117–58, November 15, 2021; also referred to as the “Bipartisan Infrastructure Law” or “BIL”)											
10. Procurement Request No. HSSP230254PR	11. Federal Funds Obligated \$184,000											
12. Submit Payment Requests To See article 20.	13. Payment Office See article 20.											
14. Accounting and Appropriations Data 15X0173E50.0000.055SR10500.5592000000.41010.61006600												
15. Description of Project The City seeks to prepare a formal Action plan to identify underlying transportation issues and to promote safety and equity for all its users on the multimodal transportation network.												

RECIPIENT

16. Signature of Person Authorized to Sign

_____ Signature	_____ Date
Name: Julian A. Miranda	
Title: City Manager	

FEDERAL HIGHWAY ADMINISTRATION

17. Signature of Agreement Officer

_____ Signature	_____ Date
Name: Megan Mavis	
Title: Agreement Officer	

U.S. DEPARTMENT OF TRANSPORTATION

GRANT AGREEMENT UNDER THE
FISCAL YEAR 2022 SAFE STREETS AND ROADS FOR ALL GRANT PROGRAM

This agreement is between Federal Highway Administration (the “FHWA”) and The City of Irwindale (the “**Recipient**”).

This agreement reflects the selection of the Recipient to receive a Safe Streets and Roads for All (“SS4A”) Grant for the SS4A Action Plan Application.

The parties therefore agree to the following:

ARTICLE 1
GENERAL TERMS AND CONDITIONS

1.1 General Terms and Conditions.

- (a) In this agreement, “**General Terms and Conditions**” means the content of the document titled “General Terms and Conditions Under the Fiscal Year 2022 Safe Streets and Roads for All Grant Program,” dated February 8, 2023, which is available at <https://www.transportation.gov/grants/ss4a/grant-agreements>. Articles 7–30 are in the General Terms and Conditions. The General Terms and Conditions are part of this agreement.
- (b) The Recipient states that it has knowledge of the General Terms and Conditions. Recipient also states that it is required to comply with all applicable Federal laws and regulations including, but not limited to, the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (2 CFR part 200); National Environmental Policy Act (NEPA) (42 U.S.C. § 4321 et seq.); and Build America, Buy America Act (BIL, div. G §§ 70901-27).
- (c) The Recipient acknowledges that the General Terms and Conditions impose obligations on the Recipient and that the Recipient’s non-compliance with the General Terms and Conditions may result in remedial action, termination of the SS4A Grant, disallowing costs incurred for the Project, requiring the Recipient to refund to the FHWA the SS4A Grant, and reporting the non-compliance in the Federal-government-wide integrity and performance system.

ARTICLE 2
APPLICATION, PROJECT, AND AWARD

2.1 Application.

Application Title: SS4A Action Plan Application

Application Date: 09/14/2022

2.2 Award Amount.

SS4A Grant Amount: \$184,000

2.3 Award Dates.

Period of Performance End Date: See Section 6 on page 1

2.4 Budget Period.

Budget Period End Date: See Section 6 on page 1

2.5 Action Plan Grant or Implementation Grant Designation.

Designation: Action Plan Grant

2.6 Federal Award Identification Number.

The Federal Award Identification Number is listed on page 1, line 1.

ARTICLE 3
SUMMARY PROJECT INFORMATION

3.1 Summary of Project's Statement of Work.

The City of Irwindale is located in Los Angeles County, California. Although only 9.6 square miles with a population of 1,394, Irwindale is located only 20 miles from downtown Los Angeles and its transportation facilities are utilized by commuters throughout the Los Angeles metropolitan area. Some roadway segments service an average daily traffic count of over 50,000 vehicles per day. As such, the Statewide Integrated Traffic Records System (SWITRS) of California has identified unsafe speed as the most common primary collision factor in an analysis of crashes of the past five years. Irwindale has expressed interest in a citywide safety plan to address the multimodal transportation network, inclusive of pedestrians and bicyclists. The City has begun preliminary safety assessments by conducting speed surveys along major thoroughfares for adjustments to roadway speed limits.

Irwindale is committed to the engagement of various public and private stakeholders in preparation of an Action Plan to increase safety and equity amongst its disadvantaged community. The City will facilitate at least two key stakeholder focus group workshops with adjacent businesses and property owners, nearby schools, and community-based organizations that have an interest in public health and safety for drivers, transit riders, pedestrians, and cyclists. In addition, the City will conduct an online survey to gather information from both community members and commuters regarding any questions or concerns they may have about the development of the Action Plan.

The City seeks to prepare a formal Action Plan to identify underlying transportation issues and to promote safety and equity for all its users on the multimodal network. The Action Plan will provide strategies and recommendations to address any problems that may be identified through additional analysis of existing roadway conditions (such as speed and needed safety improvements), crash data, and community member feedback for future Implementation grant applications.

3.2 Project's Estimated Schedule.**ACTION PLAN SCHEDULE**

Milestone	Schedule Date
Planned Draft Action Plan Completion Date:	12/31/2024
Planned Action Plan Completion Date:	03/31/2025
Planned Action Plan Adoption Date:	05/30/2025
Planned SS4A Final Report Date:	06/30/2025

IMPLEMENTATION SCHEDULE NON-CONSTRUCTION

Milestone	Schedule Date
Planned NEPA Completion Date:	12/31/2027
Planned Activity Completion Date:	12/31/2028

3.3 Project's Estimated Costs.**(a) Eligible Project Costs**

Eligible Project Costs	
SS4A Grant Amount:	\$184,000
Other Federal Funds::	\$0
State Funds:	\$0
Local Funds:	\$46,000
In-Kind Match:	\$0
Other Funds:	\$0
Total Eligible Project Cost:	\$230,000

(b) Supplemental Estimated Budget

Cost Element	Federal Share	Non-Federal Share	Total Budget Amount
Direct Labor	\$20,000.00	\$5,000.00	\$25,000.00
Fringe Benefits	\$0.00	\$0.00	\$0.00
Travel	\$0.00	\$0.00	\$0.00
Equipment	\$0.00	\$0.00	\$0.00
Supplies	\$0.00	\$0.00	\$0.00
Contractual/Consultant	\$164,000.00	\$41,000.00	\$205,000.00
Other	\$0.00	\$0.00	\$0.00
Indirect Costs	\$0.00	\$0.00	\$0.00
Total Budget	\$184,000.00	\$46,000.00	\$230,000.00

ARTICLE 4

RECIPIENT INFORMATION

4.1 Recipient's Unique Entity Identifier.

E9J2S6RNLAC1

4.2 Recipient Contact(s).

Julian A. Miranda
City Manager
City of Irwindale
5050 N. Irwindale Ave.
626-430-2218
jmiranda@irwindaleca.gov

4.3 Recipient Key Personnel.

Name	Title or Position
Luis Pimentel	Associate Engineer
Benjamin Areyan	Engineering Technician
Berlyn Aguila	Management Analyst

4.4 USDOT Project Contact(s).

Safe Streets and Roads for All Program Manager
Federal Highway Administration
Office of Safety
HSSA-1, Mail Stop: E71-117
1200 New Jersey Avenue, S.E.
Washington, DC 20590

and

Ashley Cucchiarelli
Agreement Officer (AO)
Federal Highway Administration
Office of Acquisition and Grants Management
HCFA-33

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12300 W Dakota Ave
Lakewood, CO 80228
(720) 963-3589
ashley.cucchiarelli@dot.gov

and

Division Administrator
Agreement Officer's Representative (AOR)
FHWA California Division Office
650 Capitol Mall, Ste. 4-100
Sacramento, CA 95814
Hdaca@dot.gov

and

Lawrence Jesse Glazer
California Division Office Point of Contact
ITS/Operations Engineer
888 S. Figueroa Street, Suite 440
Los Angeles, CA 90017
(213) 422-4588 – mobile
Jesse.Glazer@dot.gov

Backup California Division Office POC: Maria.Bhatti@dot.gov

ARTICLE 5 USDOT ADMINISTRATIVE INFORMATION

5.1 Office for Subaward and Contract Authorization.

USDOT Office for Subaward and Contract Authorization: FHWA Office of Acquisition and Grants Management

SUBAWARDS AND CONTRACTS APPROVAL

Note: See 2 CFR § 200.331, Subrecipient and contractor determinations, for definitions of subrecipient (who is awarded a subaward) versus contractor (who is awarded a contract).

Note: Recipients with a procurement system deemed approved and accepted by the Government or by the AO are exempt from the requirements of this clause. See 2 CFR 200.317 through 200.327.

Note: This clause is only applicable to Action Plan Grants.

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Unless described in the application and funded in the approved award, the Recipient must obtain prior written approval from the AO for the subaward, transfer, or contracting out of any work under this award above the Simplified Acquisition Threshold. This provision does not apply to the acquisition of supplies, material, equipment, or general support services. Approval of each subaward or contract is contingent upon the Recipient's submittal of a written fair and reasonable price determination, and approval by the AO for each proposed contractor/sub-recipient. Consent to enter into subawards or contracts will be issued through written notification from the AO or a formal amendment to the Agreement.

The following subawards and contracts are currently approved under the Agreement by the AO. This list does not include supplies, material, equipment, or general support services which are exempt from the pre-approval requirements of this clause.

(Fill in at award or by amendment)

5.2 Reimbursement Requests

- (a) The Recipient may request reimbursement of costs incurred in the performance of this agreement if those costs do not exceed the funds available under section 2.2 and are allowable under the applicable cost provisions of 2 C.F.R. Part 200, Subpart E. The Recipient shall not request reimbursement more frequently than monthly.
- (b) The Recipient shall use the DELPHI eInvoicing System to submit requests for reimbursement to the payment office. When requesting reimbursement of costs incurred or credit for cost share incurred, the Recipient shall electronically submit supporting cost detail with the SF 271 (Outlay Report and Request for Reimbursement for Construction Programs) to clearly document all costs incurred.
- (c) The Recipient's supporting cost detail shall include a detailed breakout of all costs incurred, including direct labor, indirect costs, other direct costs, travel, etc., and the Recipient shall identify the Federal share and the Recipient's share of costs. If the Recipient does not provide sufficient detail in a request for reimbursement, the AO may withhold processing that request until the Recipient provides sufficient detail.
- (d) The USDOT shall not reimburse costs unless the Agreement Officer's Representative (the "AOR") reviews and approves the costs to ensure that progress on this agreement is sufficient to substantiate payment.
- (e) The USDOT may waive the requirement that the Recipient use the DELPHI eInvoicing System. The Recipient may obtain waiver request forms on the DELPHI eInvoicing website (<http://www.dot.gov/cfo/delphi-einvoicing-system.html>) or by contacting the AO. A Recipient who seeks a waiver shall explain why they are unable to use or access the Internet to register and enter payment requests and send a waiver request to

Director of the Office of Financial Management
US Department of Transportation,
Office of Financial Management B-30, Room W93-431
1200 New Jersey Avenue SE

IRWINDALE – FY-22 SS4A GRANT AGREEMENT

Washington DC 20590-0001

or

DOTElectronicInvoicing@dot.gov.

If the USDOT grants the Recipient a waiver, the Recipient shall submit SF 271s directly to:

DOT/FAA
P.O. Box 268865
Oklahoma City, OK 73125-8865
Attn:

- (f) The requirements set forth in these terms and conditions supersede previous financial invoicing requirements for Recipients.

**ARTICLE 6
SPECIAL GRANT TERMS**

- 6.1** SS4A funds must be expended within five years after the grant agreement is executed and DOT obligates the funds, which is the budget period end date in section 10.3 of the Terms and Conditions and section [wherever the date it is in this agreement].
- 6.2** The Recipient acknowledges that the Action Plan will be made publicly available, and the Recipient agrees that it will publish the final Action Plan on a publicly available website.
- 6.3** The Recipient demonstrates compliance with civil rights obligations and nondiscrimination laws, including Titles VI of the Civil Rights Act of 1964, the Americans with Disabilities Act (ADA), and Section 504 of the Rehabilitation Act, and accompanying regulations. Recipients of Federal transportation funding will also be required to comply fully with regulations and guidance for the ADA, Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, and all other civil rights requirements.
- 6.4** The City of Irwindale must coordinate its Action Plan development efforts with the Los Angeles County Metropolitan Transportation Authority's Action Plan development effort to ensure that the respective Action Plans are complementary and do not conflict.
- 6.5** There are no other special grant requirements for this award.

ATTACHMENT A
PERFORMANCE MEASUREMENT INFORMATION

Study Area: Area of study is estimated to be major intersections, arterial roads, as well as residential neighborhoods that see more foot traffic and pedestrian activity.

Baseline Measurement Date: Estimate: 12/31/28

Baseline Report Date: Estimate: 2/28/29

Table 1: Performance Measure Table

Measure	Category and Description	Measurement Frequency
Equity	Percent of Funds to Underserved Communities: Funding amount (of total project amount) benefitting underserved communities, as defined by USDOT	End of period of performance
Costs	Project Costs: Quantification of the cost of each eligible project carried out using the grant	End of period of performance
Lessons Learned and Recommendations	Lessons Learned and Recommendations: Description of lessons learned and any recommendations relating to future projects of strategies to prevent death and serious injury on roads and streets.	End of period of performance

ATTACHMENT B CHANGES FROM APPLICATION

INSTRUCTIONS FOR COMPLETING ATTACHMENT B: Describe all material differences between the scope, schedule, and budget described in the application and the scope, schedule, and budget described in Article 3. The purpose of this attachment B is to document the differences clearly and accurately in scope, schedule, and budget to establish the parties' knowledge and acceptance of those differences. See section 10.1.

Scope: N/A There have been no changes to the Scope as described in the application

Schedule: N/A There have been no changes to the Schedule as described in the application

Budget: N/A There have been no changes to the Budget as described in the application

The table below provides a summary comparison of the project budget.

Fund Source	Application		Section 3.3	
	\$	%	\$	%
Previously Incurred Costs (Non-Eligible Project Costs)				
Federal Funds				
Non-Federal Funds				
Total Previously Incurred Costs				
Future Eligible Project Costs				
SS4AFunds				
Other Federal Funds				
Non-Federal Funds				
Total Future Eligible Project Costs				
Total Project Costs				

ATTACHMENT C
RACIAL EQUITY AND BARRIERS TO OPPORTUNITY

1. Efforts to Improve Racial Equity and Reduce Barriers to Opportunity.

The Recipient states that rows marked with “X” in the following table are accurate:

	A racial equity impact analysis has been completed for the Project. <i>(Identify a report on that analysis or, if no report was produced, describe the analysis and its results in the supporting narrative below.)</i>
	The Recipient or a project partner has adopted an equity and inclusion program/plan or has otherwise instituted equity-focused policies related to project procurement, material sourcing, construction, inspection, hiring, or other activities designed to ensure racial equity in the overall delivery and implementation of the Project. <i>(Identify the relevant programs, plans, or policies in the supporting narrative below.)</i>
	The Project includes physical-barrier-mitigating land bridges, caps, lids, linear parks, and multimodal mobility investments that either redress past barriers to opportunity or that proactively create new connections and opportunities for underserved communities that are underserved by transportation. <i>(Identify the relevant investments in the supporting narrative below.)</i>
X	The Project includes new or improved walking, biking, and rolling access for individuals with disabilities, especially access that reverses the disproportional impacts of crashes on people of color and mitigates neighborhood bifurcation. <i>(Identify the new or improved access in the supporting narrative below.)</i>
	The Project includes new or improved freight access to underserved communities to increase access to goods and job opportunities for those underserved communities. <i>(Identify the new or improved access in the supporting narrative below.)</i>
	The Recipient has taken other actions related to the Project to improve racial equity and reduce barriers to opportunity, as described in the supporting narrative below.
X	The Recipient has not yet taken actions related to the Project to improve racial equity and reduce barriers to opportunity but, before beginning construction of the project, will take relevant actions described in the supporting narrative below
	The Recipient has not taken actions related to the Project to improve racial equity and reduce barriers to opportunity and will not take those actions under this award.

2. Supporting Narrative.

One of the goals of the Safe Streets 4 All Grant for the City of Irwindale is to find solutions to implement and/or improve new and existing pathways to provide not only an easier mean of access but more importantly, safer access to multimodal pedestrian transportation. This is somewhat of a significant challenge for our city as it is a small industrial city with lots of semi-truck activity that can pose dangers to pedestrian traffic.

Another goal of the City for the SS4A grant is to take the appropriate necessary actions in order to reduce barriers of opportunity and racial equity. This may include expanded mobility options such as dedicated bike paths/lanes to give residents more safe travel options that are also cost efficient.

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

City of
IRWINDALE
AGENDA REPORT

Date: September 13, 2023

To: Honorable Mayor and Members of the City Council

From: Julian A. Miranda, City Manager

Issue: Cost Sharing Agreement Renewal with the Los Angeles Gateway Region Integrated Regional Water Management Joint Power Authority to Continue Operating, Monitoring, and Performing Equipment Maintenance Pursuant to the Harbor Toxic Pollutants Total Maximum Daily Load

City Manager's Recommendation:

That the City Council (1) authorize the City Manager to enter into an agreement with the Los Angeles Gateway Region Integrated Regional Water Management Joint Powers Authority to continue operating, monitoring, and performing equipment maintenance pursuant to the Harbor Toxic Pollutants Total Maximum Daily Load

Administrative Action:

Submitted by:

Eddie Chan
Director of Engineering/ Building Official

Prepared by:

Luis Pimentel, Associate Engineer
(626) 430-2259

Reviewed by:

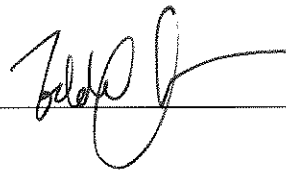
Adrian R. Guerra, City Attorney

Kambiz Borhani

Finance Director / City Treasurer

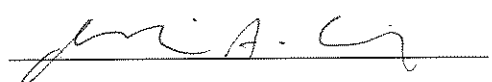
Approved by:

Julian A. Miranda, City Manager



Electronically Approved





Background and Analysis:

On May 5, 2011, the Los Angeles Region Water Quality Control Board (LARWQCB) adopted the Harbor Toxic Pollutants Total Maximum Daily Load (TMDL). On March 23, 2012, the U.S. Environmental Protection Agency established the Harbor Toxic TMDL. Subsequently, this TMDL has been incorporated in the Municipal Separate Storm Sewer System (MS4) Permit, which is enforceable through the Federal Clean Water Act.

Cities whose tributaries feed into the Los Angeles and San Gabriel Rivers, including the City of Irwindale, are identified in the TMDL as responsible parties. The TMDL requires the development and subsequent implementation of a water quality monitoring plan. The cities and other affected agencies have worked together with the Los Angeles Gateway Region Integrated Regional Water Management Joint Power Authority (GWMA), a Joint Powers Authority of which the City is a member, to develop this Agreement to share the cost of the required monitoring program. The GWMA will act solely as a fiduciary agent for this agreement.

The Harbor Toxic TMDL establishes Load Allocations and Waste Loads Allocations in numerical discharge limits for a variety of pollutants, including metals, polychlorinated biphenyl (PCB), dichlorodiphenyltrichloroethane (DDT), and other organic pollutants, generally referred to as "toxic."

As stated in the MS4 Permit, cities are required to monitor these toxic pollutants discharged in the Los Angeles and San Gabriel Rivers for both dry and wet weather conditions. Recognizing that the expenses associated with a monitoring program would be costly, if undertaken individually, Irwindale joined other cities within the affected watershed to minimize the financial burden associated with fulfilling the monitoring requirements.

On July 22, 2015, the City Council approved an agreement with GWMA to install monitoring equipment and monitoring toxic pollutants discharged to the Los Angeles and San Gabriel Rivers for both dry and wet weather conditions at a cost of \$18,272.80.

On June 13, 2018, the City Council authorized an agreement with the GWMA to continue operations, monitoring, and maintaining the equipment used to test the Harbor Toxic TMDLs in the Los Angeles and San Gabriel rivers. That agreement expired on June 30, 2023.

GWMA has drafted a new agreement to continue the monitoring program for the Harbor Toxic TMDLs in the Los Angeles and San Gabriel rivers. This renewed agreement is set take affect from on July 1, 2023 and expires on June 30, 2026. The agreement has been reviewed and approved by both Staff and the City Attorney.

Fiscal Impact:

Per Exhibit "A" of the new agreement, the City's total annual cost for GWMA's service is as follows:

Fiscal Year 2023-2024	\$2,137.25
Fiscal Year 2024-2025	\$2,146.50
Fiscal Year 2025-2026	<u>\$2,196.88</u>
Total	<u>\$6,480.63</u>

However, the cost may be adjusted based on actual costs and the number of participants sharing the costs. There are sufficient funds in the City's Fiscal Year 2023-2024 Environmental Mandates adopted budget (Account No. 01-52-523-42300-0000) to cover the cost.

Attachment:

Contract Service Agreement.

AGREEMENT
BETWEEN THE LOS ANGELES GATEWAY REGION INTEGRATED REGIONAL
WATER MANAGEMENT JOINT POWERS AUTHORITY
AND THE
CITY OF IRWINDALE

FOR COST SHARING FOR THE INSTALLATION OF MONITORING EQUIPMENT
AND MONITORING PURSUANT TO THE HARBOR TOXIC POLLUTANTS TMDL

This Agreement is made and entered into as of June 8, 2023, by and between the Los Angeles Gateway Region Integrated Regional Water Management Joint Powers Authority ("GWMA"), a California Joint Powers Authority, and the City of Irwindale, (the "Permittee"). The Permittee and the GWMA are collectively referred to as the "Parties";

RECITALS

WHEREAS, the mission of the GWMA includes the equitable protection and management of water resources within its area;

WHEREAS, for the purposes of this Agreement, the term "MS4 Permittees" shall mean those public agencies that are co-permittees to a National Pollutant Discharge Elimination System Municipal Separate Storm Sewer System Permit Order ("MS4 Permit") issued by the Los Angeles Regional Water Quality Control Board;

WHEREAS, the United States Environmental Protection Agency established the Total Maximum Daily Loads ("TMDL") for Toxic Pollutants on March 23, 2012, with the intent of protecting and improving water quality in the Dominguez Channel and the Greater Los Angeles and Long Beach Harbor Waters ("Harbor Toxic Pollutants TMDL");

WHEREAS, the Harbor Toxic Pollutants TMDL regulates certain discharges from National Pollutant Discharge Elimination System ("NPDES") permit holders, requiring organization and cooperation among the MS4 Permittees;

WHEREAS, the Permittee manages, drains or conveys storm water into at least a portion of the Los Angeles River including its estuary or Coyote Creek or the San Gabriel River including their estuaries;

WHEREAS, various MS4 Permittees desire to achieve the objectives of the Harbor Toxic Pollutants TMDL by continuing to maintain the monitoring station in the Los Angeles River at Wardlow Road, monitoring station in the San Gabriel River near Spring Street, and monitoring station in the Coyote Creek, also near Spring Street and conducting monitoring at said monitoring stations (collectively "Monitoring Stations") to ensure consistency with other regional monitoring programs and usability with other TMDL related studies;

WHEREAS, continuing maintenance of the Monitoring Stations and future monitoring requires administrative coordination for the various MS4 Permittees that the GWMA can and is willing to provide;

WHEREAS, the Lower Los Angeles River Watershed Management Group and the Lower San Gabriel River Watershed Management Group have been formed pursuant to the MS4 Permit and oversee and manage the monitoring program for the Harbor Toxic Pollutants TMDL within their respective watersheds;

WHEREAS, the members of the GWMA are the Cities of Artesia, Bell, Bell Gardens, Bellflower, Cerritos, Commerce, Compton, Cudahy, Downey, Hawaiian Gardens, Huntington Park, La Mirada, Lakewood, Long Beach, Lynwood, Maywood, Montebello, Norwalk, Paramount, Pico Rivera, Santa Fe Springs, Signal Hill, South Gate, Vernon, Whittier, Water Replenishment District, Central Basin Municipal Water District, Port of Long Beach, and the Long Beach Water Department ("GWMA Members");

WHEREAS, because of the financial savings and benefits resulting from this cost-sharing arrangement, other MS4 Permittees that are not GWMA Members may request to participate in the cost sharing of the Monitoring Costs for the maintenance of the Monitoring Stations and the costs of monitoring conducted at the Monitoring Stations (collectively "Monitoring Costs");

WHEREAS, the GWMA Board of Directors authorized the GWMA to enter into individual separate agreements with such individual MS4 Permittees (which shall not have voting rights in the GWMA) for purposes of only cost sharing in the Monitoring Costs;

WHEREAS, because GWMA Members already pay annual membership fees that pay for GWMA administrative costs, GWMA Members that participate in the cost share for the Monitoring Costs shall pay an administrative fee that is less than that the administrative fee charged to MS4 Permittees that are not GWMA Members;

WHEREAS, certain private NPDES permit holders that are subject to the Harbor Toxic Pollutants TMDL have also expressed interest in participating in the cost share for the Monitoring Costs and procuring the monitoring data generated pursuant to this Agreement in order to satisfy their own permit obligations;

WHEREAS, the current agreements that cover the cost share arrangements for the Monitoring Costs through fiscal year 2022-2023 will expire on June 30, 2023.

WHEREAS, it is currently unknown how many MS4 Permittees and private NPDES permit holders will ultimately participate in the cost sharing of the Monitoring Costs for fiscal years 2023-2024 through 2025-2026;

WHEREAS, depending on how many MS4 Permittees and private NPDES permit holders ultimately participate in the cost sharing for the Monitoring Costs, each participating Permittee's annual cost share amount will be adjusted and the GWMA will notify each participating Permittee of its adjusted annual cost share amount in writing;

WHEREAS, the Permittee desires to share in the Monitoring Costs;

WHEREAS, the Parties have determined that authorizing GWMA to hire consultants as necessary to maintain the Monitoring Stations and conduct the monitoring required by the Harbor Toxic Pollutants TMDL will be beneficial to the Parties;

WHEREAS, the Permittee agrees to pay: (a) its proportional share of the Monitoring Costs to be incurred by the GWMA in accordance with the Cost Sharing Formula reflected in Exhibit "A"; and (b) applicable administrative fees to cover administrative costs; and

WHEREAS, the role of the GWMA is to: (1) invoice and collect funds from the Permittee to cover its portion of the Monitoring Costs; and (2) hire and retain consultants to maintain Monitoring Stations and conduct monitoring at the Monitoring Stations.

NOW, THEREFORE, in consideration of the mutual covenants and conditions set forth herein, the Parties do hereby agree as follows:

Section 1. Purpose. The purpose of this Agreement is for the Permittee to cost share in the Monitoring Costs.

Section 2. Cooperation. The Parties shall fully cooperate with one another to achieve the purposes of this Agreement.

Section 3. Voluntary Nature. The Parties voluntarily enter into this Agreement.

Section 4. Binding Effect. This Agreement shall become binding on GWMA and the Permittee.

Section 5. Term. This Agreement shall commence on July 1, 2023 and shall expire on June 30, 2026, unless terminated earlier pursuant to this Agreement.

Section 6. Role of the GWMA.

(a) The GWMA shall invoice and collect funds from the Permittee to cover the Monitoring Costs.

(b) The GWMA shall administer the consultants' contracts for the Monitoring Costs. Provided the Permittee has paid all outstanding invoices to the GWMA to cover the Monitoring Costs and administrative costs, the GWMA will provide the Permittee with the monitoring data collected from the Monitoring Stations and any associated reports.

(c) The GWMA is authorized and may negotiate, enter into agreements with, and collect funds from general and individual NPDES permit holders, that are not MS4 Permittees, for cost-sharing the Monitoring Costs in order to reduce the total costs incurred by the MS4 Permittees.

Section 7. Financial Terms.

(a) **Annual Payment Amount.** The Permittee shall pay no more than the following amounts for each of the three fiscal years (June 30-July 1) listed below ("Annual Payment Amount"):

Fiscal Year 2023-2024:

One Thousand Eight Hundred Fifty Eight Dollars and Forty Eight Cents
(\$1,858.48)

Fiscal Year 2024-2025:

One Thousand Eight Hundred Sixty Six Dollars and Fifty Two Cents (\$1,866.52)

Fiscal Year 2025-2026:

One Thousand Nine Hundred Ten Dollars and Thirty Three Cents (\$1,910.33)

Each Annual Payment Amount includes the Permittee's Cost Share Amount identified in Exhibit "A", attached hereto and incorporated herein.

(b) **Administrative Costs.** In addition to the Annual Payment Amount, the Permittee shall also pay its proportional share of the GWMA's staff time for hiring the consultants, managing the consultants' contracts, and invoicing the Permittee and legal fees incurred by the GWMA in the performance of its duties under this Agreement ("Direct Costs"), and audit expenses and other overhead costs ("Indirect Costs"), referred to collectively herein as the "Administrative Costs Payment Amount". The Administrative Costs Payment Amount will be added to the Permittee's annual invoice to cover the Permittee's share of the administrative costs.

i. **GWMA Members.** If the Permittee is a GWMA Member, then the Administrative Costs Payment Amount does not include the GWMA's Indirect Costs, which GWMA Members absorb as part of their annual membership dues. The rate charged to GWMA Members in order to recover the Direct Costs portion of the Administrative Costs Payment Amount will range between zero percent (0%) and five percent (5%) of the of the Permittee's Cost Share Amount identified in Exhibit "A." On an annual basis the GWMA will evaluate the percentage rate charged to GWMA Members to ensure it adequately recovers the GWMA's cost of performing its duties under this Agreement. Based on this review, the GWMA Board will establish the rate charged to recover its Direct Costs for the next fiscal year. The GWMA will provide the Permittee, through the respective Chairs of the Lower San Gabriel River and Lower Los Angeles River Watershed Management Groups, fifteen (15) days' written notice prior to July 1st of the fiscal year in which a new rate will take effect.

ii. **Non-GWMA Members.** If the Permittee is not a GWMA Member, then the Administrative Costs Payment Amount will include the GWMA's Indirect Costs. The rate charged to Non-GWMA Members in order to recover Direct Costs will range between five percent (5%) and ten percent (10%) of the Permittee's Cost Share

Amount identified in Exhibit "A." The rate charged to Non-GWMA Members in order to recover Indirect Costs will range between two percent (2%) and five percent (5%) of the Permittee's Cost Share Amount identified in Exhibit "A." On an annual basis the GWMA will evaluate the percentage rates for both Direct and Indirect Costs charged to Non-GWMA Members to ensure they adequately recover the GWMA's cost of performing its duties under this MOU. Based on this review, the GWMA Board may increase or decrease the rates charged to recover its Direct and Indirect Costs for the next fiscal year. The GWMA will provide the Permittee, through the respective Chairs of the Lower San Gabriel River and Lower Los Angeles River Watershed Management Groups, fifteen (15) days' written notice prior to July 1st of the fiscal year in which a new rate will take effect.

(c) Adjustment of Cost Share Based on Number of Participants. The Annual Payment Amount and the Administrative Costs Payment Amount identified in this Section 7 ("Financial Terms") represent the maximum dollar amounts that the Permittee is required to submit to the GWMA, but may be reduced based on the final number of MS4 Permittees that participate in the cost sharing for the Monitoring Costs.

(d) Reserve Credits. If the actual cost share amount plus administrative costs collected by GWMA from all participating permittees in the Harbor Toxic Pollutants TMDL program are less than the Annual Payment Amount, plus the Administrative Costs Payment Amount, paid by all permittees in a particular year, then the GWMA will notify the Chairs of the Lower San Gabriel River and Lower Los Angeles River Watershed Management Groups. The Chairs will direct GWMA on how to apply the excess balance, which may include carrying the balance over to cover permittee costs in one or more subsequent years. , GWMA reserves the right to transfer funds from the excess balance to maintain a minimum balance of \$10,000 in its account dedicated to the Harbor Toxic Pollutants TMDL program at all times, per GWMA's Administrative Budget Policy. Notwithstanding the forgoing, the Administrative Costs Payment Amount charged to non-GWMA Members for Indirect Costs will be retained by GWMA and is not subject to a credit.

(e) Funds remaining in the possession of the GWMA at the expiration or earlier termination of this MOU shall be promptly returned to the Permittee in proportion to the Cost Share Amount identified in Exhibit "A" or rolled over into the subsequent MOU for the Harbor Toxic Pollutants TMDL if requested by the Permittee.

(f) The Permittee's Annual Payment Amount and Administrative Costs Payment Amount for the 2023-2024 fiscal year are due upon execution of this Agreement, but in no event later than September 30, 2023. For each subsequent fiscal year, commencing with the 2024-2025 fiscal year, the GWMA shall submit annual invoices to the Permittee for the Annual Payment Amount and Administrative Costs Payment Amount. Upon receiving an invoice from GWMA, each Permittee shall pay the Annual Payment Amount and Administrative Costs Payment Amount set forth in the invoice to the GWMA within forty-five (45) days of receipt.

(g) The Permittee shall be delinquent if its invoiced payment is not

received by the GWMA within forty-five (45) days after the invoice's date. If the Permittee is delinquent, the GWMA will: 1) verbally contact the representative of the Permittee; and 2) submit a formal letter from the GWMA Executive Officer to the Permittee at the address listed in Section 11 of this Agreement. If payment is not received within sixty (60) days of the original invoice date, the GWMA may terminate this Agreement. However, no such termination may be ordered unless the GWMA first provides the Permittee with thirty (30) days written notice of its intent to terminate the Agreement. The terminated Permittee shall remain obligated to GWMA for its delinquent payments and any other obligations incurred prior to the date of termination. If the GWMA terminates this Agreement because the Permittee is delinquent in its payment, the Permittee shall no longer be entitled to the monitoring data collected from the Monitoring Stations.

(h) Any delinquent payments by the Permittee shall accrue compound interest at the average rate of interest paid by the Local Agency Investment Fund during the time that the payment is delinquent.

Section 8. Independent Contractor.

(a) The GWMA is, and shall at all times remain, a wholly independent contractor for performance of the obligations described in this Agreement. The GWMA's officers, officials, employees and agents shall at all times during the term of this Agreement be under the exclusive control of the GWMA. The Permittee cannot control the conduct of the GWMA or any of its officers, officials, employees or agents. The GWMA and its officers, officials, employees, and agents shall not be deemed to be employees of the Permittee.

(b) The GWMA is solely responsible for the payment of salaries, wages, other compensation, employment taxes, workers' compensation, or similar taxes for its employees and consultants performing services hereunder.

Section 9. Indemnification and Warranty.

(a) The Permittee shall defend, indemnify and hold harmless the GWMA and its officers, employees, and other representatives and agents from and against any and all liabilities, actions, suits proceedings, claims, demands, losses, costs, and expenses, including legal costs and attorney's fees, for injury to or death of person(s), for damage to property (including property owned by the GWMA) for negligent or intentional acts, errors and omissions committed by the Permittee or its officers, employees, and agents, arising out of or related to that Permittee's performance under this Agreement, except for such loss as may be caused by GWMA's negligence or that of its officers, employees, or other representatives and agents, excluding the consultant.

(b) GWMA makes no guarantee or warranty that any monitoring data prepared by the consultants shall be approved by the relevant governmental authorities. GWMA shall have no liability to the Permittee for the negligent or intentional acts or omissions of GWMA's consultants.

Section 10. Termination.

(a) The Permittee may terminate this Agreement for any reason, or no reason, by giving the GWMA prior written notice thereof, but the Permittee shall remain responsible for its entire Annual Payment Amount through the end of the current fiscal year during which Permittee terminates the Agreement and shall not be entitled any refund of any portion of said Annual Payment Amount. Moreover, unless the Permittee provides written notice of termination to the GWMA by February 15th immediately prior to a new fiscal year, the Permittee shall also be responsible for its Annual Payment Amount through the end of such new fiscal year (e.g., If the Permittee terminates on March 1st, 2024, the Permittee is responsible for the Annual Payment Amounts for both fiscal years 2023-2024 and 2024-2025. If the Permittee terminates on February 10, 2024, the Permittee is responsible for its Annual Payment Amount only for Fiscal year 2023-2024, not for fiscal year 2024-2025). If the Permittee terminates the Agreement, the Permittee shall remain liable for any loss, debt, or liability otherwise incurred through the end of the new fiscal year.

(b) The GWMA may, with a vote of the GWMA Board, terminate this Agreement upon not less than thirty (30) days written notice to the Permittee. Any remaining funds not due and payable or otherwise legally committed to Consultant shall be returned to the Permittee.

Section 11. Miscellaneous.

(a) Other NPDES Permit Holders. Individual or general NPDES permit holders who are not MS4 Permittees that receive Harbor Toxic Pollutants TMDL monitoring requirements in their NPDES permits may wish to participate in this cost share for the Monitoring Costs in order to receive the monitoring data collected from the Monitoring Stations. Upon receipt of a written request from an NPDES permit holder to participate in this cost share, the GWMA will either reject or accept the NPDES permit holder's participation in the cost share arrangement. If accepted, the NPDES permit holder will enter into a separate cost share agreement with the GWMA that will require the NPDES permit holder to pay annually at least twelve thousand three hundred dollars (\$12,300) ("Private Monitoring Fee") for the Monitoring Costs. Failure to pay the Private Monitoring Fee by the date set forth in the cost share agreement will result in termination of the NPDES permit holder's participant status. An NPDES permit holder accepted as a participant will only be entitled to receive the monitoring data collected from the Monitoring Stations for any fiscal year in which the participant has paid its Private Monitoring Fee. The Private Monitoring Fee will be applied as a credit toward the Permittee's Annual Payment Amount in proportion to the Permittee's Cost Share Amount identified in Exhibit "A."

(b) Notices. All Notices which the Parties require or desire to give hereunder shall be in writing and shall be deemed given when delivered personally or three (3) days after mailing by registered or certified mail (return receipt requested) to the following address or as such other addresses as the Parties may from time to time designate by written notice in the aforesaid manner:

To GWMA:

Ms. Grace Kast
Executive Officer
16401 Paramount Boulevard
Paramount, CA 90723

To the Permittee:

City of Irwindale
5050 N. Irwindale Ave
Irwindale, CA 91706
Attn: Sarah Rocha

(c) Amendment. The terms and provisions of this Agreement may not be amended, modified or waived, except by a written instrument signed by all Parties.

(d) Waiver. Waiver by either the GWMA or the Permittee of any term, condition, or covenant of this Agreement shall not constitute a waiver of any other term, condition, or covenant. Waiver, by the GWMA or the Permittee, to any breach of the provisions of this Agreement shall not constitute a waiver of any other provision or a waiver of any subsequent breach of any provision of this Agreement.

(e) Law to Govern: Venue. This Agreement shall be interpreted, construed, and governed according to the laws of the State of California. In the event of litigation between the Parties, venue shall lie exclusively in the County of Los Angeles.

(f) No Presumption in Drafting. The Parties to this Agreement agree that the general rule that an agreement is to be interpreted against the Party drafting it, or causing it to be prepared, shall not apply.

(g) Severability. If any term, provision, condition or covenant of this Agreement is declared or determined by any court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions of this Agreement shall not be affected thereby and this Agreement shall be read and construed without the invalid, void, or unenforceable provisions(s).

(h) Entire Agreement. This Agreement constitutes the entire agreement of the Parties with respect to the subject matter hereof and supersedes all prior or contemporaneous agreements, whether written or oral, with respect thereto.

(i) Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which taken together shall constitute but one and the same instrument, provided, however, that such counterparts shall have been delivered to all Parties to this Agreement.

(j) Legal Representation. All Parties have been represented by counsel in the preparation and negotiation of this Agreement. Accordingly, this Agreement shall be construed according to its fair language.

(k) Authority to Execute this Agreement. The person or persons executing this Agreement on behalf of Permittee warrants and represents that he or she has the authority to execute this Agreement on behalf of the Permittee and has the authority to bind Permittee.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed on their behalf, respectively, as follows:

DATE: _____

LOS ANGELES GATEWAY REGION
INTEGRATED REGIONAL WATER
MANAGEMENT JOINT POWERS
AUTHORITY

Adriana Figueroa
GWMA Chair

DATE: _____

PERMITTEE
City of Irwindale

Signature

Print Name

Print Title

EXHIBIT "A"

**COST SHARE MATRIX
ATTACHED**

Harbor Toxic Upstream
FY 2023-2024 Cost Share

Agency	GWMA Member?	LAR \$10	SGR GR1	SGR-CC \$13	Subtotal	Direct Admin Fee %	GWMA Direct Admin Fee	Indirect Admin Fee %	GWMA Indirect Admin Fee	Total Fee
City of Alhambra	no	\$ 769.90			\$ 769.90	10%	\$ 76.99	5.00%	\$ 38.51	\$ 885.39
City of Arcadia	no	\$ 883.29	\$ 647.82		\$ 1,531.11	10%	\$ 153.11	5.00%	\$ 76.56	\$ 1,760.77
City of Artesia	yes		\$ 670.42	\$ 1,999.78	\$ 2,670.20	5%	\$ 133.51	0.00%	\$ -	\$ 2,803.71
City of Azusa	no		\$ 1,406.84		\$ 1,406.84	10%	\$ 140.68	5.00%	\$ 70.33	\$ 1,617.87
City of Baldwin Park	no		\$ 1,195.60		\$ 1,195.60	10%	\$ 119.56	5.00%	\$ 59.78	\$ 1,374.93
City of Bell	yes	\$ 594.86			\$ 594.86	5%	\$ 29.74	0.00%	\$ -	\$ 624.61
City of Bell Gardens	yes	\$ 589.46			\$ 589.46	5%	\$ 29.46	0.00%	\$ -	\$ 618.93
City of Bellflower	yes		\$ 788.13		\$ 788.13	5%	\$ 39.41	0.00%	\$ -	\$ 827.53
City of Bradbury	no	\$ 530.64	\$ 722.94		\$ 1,253.58	10%	\$ 125.36	5.00%	\$ 62.68	\$ 1,441.62
City of Burbank	no	\$ 1,108.80			\$ 1,108.80	10%	\$ 110.88	5.00%	\$ 55.44	\$ 1,275.12
City of Calabasas	no	\$ 722.00			\$ 722.00	10%	\$ 72.20	5.00%	\$ 36.10	\$ 830.30
City of Cerritos	yes		\$ 874.61	\$ 3,356.65	\$ 4,231.26	5%	\$ 211.56	0.00%	\$ -	\$ 4,442.83
City of Claremont	no		\$ 1,755.26		\$ 1,755.26	10%	\$ 175.53	5.00%	\$ 87.76	\$ 2,018.55
City of Commerce	yes	\$ 732.31			\$ 732.31	5%	\$ 36.63	0.00%	\$ -	\$ 768.93
City of Compton	yes	\$ 857.25			\$ 857.25	5%	\$ 42.86	0.00%	\$ -	\$ 900.11
City of Covina	no		\$ 1,214.67		\$ 1,214.67	10%	\$ 121.47	5.00%	\$ 60.74	\$ 1,396.87
City of Cudahy	yes	\$ 546.30			\$ 546.30	5%	\$ 27.33	0.00%	\$ -	\$ 573.62
City of Diamond Bar	no		\$ 1,225.38	\$ 3,704.23	\$ 4,929.61	10%	\$ 492.96	5.00%	\$ 246.48	\$ 5,669.05
City of Downey	yes	\$ 696.90	\$ 1,182.79		\$ 1,879.69	5%	\$ 93.98	0.00%	\$ -	\$ 1,973.68
City of Duarte	no	\$ 549.90	\$ 818.96		\$ 1,368.86	10%	\$ 136.89	5.00%	\$ 68.44	\$ 1,574.19
City of El Monte	no	\$ 747.97	\$ 835.94		\$ 1,583.91	10%	\$ 158.39	5.00%	\$ 79.20	\$ 1,821.50
City of Glendale	no	\$ 1,572.21			\$ 1,572.21	10%	\$ 157.22	5.00%	\$ 78.62	\$ 1,808.05
City of Glendora	no		\$ 1,845.14		\$ 1,845.14	10%	\$ 184.51	5.00%	\$ 92.26	\$ 2,121.91
City of Hawaiian Gardens	yes			\$ 1,951.65	\$ 1,951.65	5%	\$ 97.58	0.00%	\$ -	\$ 2,049.23
City of Hidden Hills	no	\$ 555.85			\$ 555.85	10%	\$ 55.59	5.00%	\$ 27.79	\$ 639.23
City of Huntington Park	yes	\$ 608.72			\$ 608.72	5%	\$ 30.44	0.00%	\$ -	\$ 639.16
City of Industry	no		\$ 1,628.28		\$ 1,628.28	10%	\$ 162.83	5.00%	\$ 81.42	\$ 1,872.52
City of Irwindale	no	\$ 559.29	\$ 1,299.19		\$ 1,858.48	10%	\$ 185.85	5.00%	\$ 92.93	\$ 2,137.25
City of La Canada Flintridge	no	\$ 805.37			\$ 805.37	10%	\$ 80.54	5.00%	\$ 40.27	\$ 926.18
City of La Habra Heights	no		\$ 719.54	\$ 2,995.71	\$ 3,715.25	10%	\$ 371.52	5.00%	\$ 185.77	\$ 4,272.54
City of La Mirada	yes			\$ 3,914.11	\$ 3,914.11	5%	\$ 195.71	0.00%	\$ -	\$ 4,109.81
City of La Puente	no		\$ 917.59		\$ 917.59	10%	\$ 91.76	5.00%	\$ 45.87	\$ 1,055.23
City of La Verne	no		\$ 1,341.78		\$ 1,341.78	10%	\$ 134.18	5.00%	\$ 67.09	\$ 1,543.05
City of Lakewood	yes	\$ 506.20	\$ 716.67	\$ 1,956.11	\$ 3,178.97	5%	\$ 158.95	0.00%	\$ -	\$ 3,337.92
City of Long Beach	yes	\$ 933.38	\$ 710.26	\$ 2,354.48	\$ 3,998.12	5%	\$ 199.91	0.00%	\$ -	\$ 4,198.03
City of Los Angeles	no	\$ 10,395.22			\$ 10,395.22	10%	\$ 1,039.52	5.00%	\$ 519.76	\$ 11,954.50
City of Lynwood	yes	\$ 672.45			\$ 672.45	5%	\$ 33.62	0.00%	\$ -	\$ 706.08
City of Maywood	yes	\$ 544.56			\$ 544.56	5%	\$ 27.22	0.00%	\$ -	\$ 571.78
City of Monrovia	no	\$ 776.51	\$ 635.93		\$ 1,412.44	10%	\$ 141.24	5.00%	\$ 70.62	\$ 1,624.30
City of Montebello	yes	\$ 795.66			\$ 795.66	5%	\$ 39.77	0.00%	\$ -	\$ 835.44
City of Monterey Park	no	\$ 773.62			\$ 773.62	10%	\$ 77.36	5.00%	\$ 38.68	\$ 889.66
City of Norwalk	yes		\$ 993.49	\$ 3,218.96	\$ 4,212.45	5%	\$ 210.62	0.00%	\$ -	\$ 4,423.08

**Harbor Toxic Upstream
FY 2023-2024 Cost Share**

Agency	GWMA Member?	LAR \$10	SGR GR1	SGR-CC \$13	Subtotal	Direct Admin Fee %	GWMA Direct Admin Fee	Indirect Admin Fee %	GWMA Indirect Admin Fee	Total Fee
City of Paramount	yes	\$ 612.38			\$ 612.38	5%	\$ 30.62	0.00%	\$ -	\$ 643.00
City of Pasadena	no	\$ 1,311.23			\$ 1,311.23	10%	\$ 131.12	5.00%	\$ 65.57	\$ 1,507.92
City of Pico Rivera	yes	\$ 585.81	\$ 1,142.56		\$ 1,728.36	5%	\$ 86.42	0.00%	\$ -	\$ 1,814.78
City of Pomona	no		\$ 2,549.82		\$ 2,549.82	10%	\$ 254.98	5.00%	\$ 127.49	\$ 2,932.29
City of Rosemead	no	\$ 684.08			\$ 684.08	10%	\$ 68.41	5.00%	\$ 34.20	\$ 786.69
City of San Dimas	no		\$ 1,918.04		\$ 1,918.04	10%	\$ 191.80	5.00%	\$ 95.90	\$ 2,205.74
City of San Fernando	no	\$ 586.24			\$ 586.24	10%	\$ 58.62	5.00%	\$ 29.30	\$ 674.18
City of San Gabriel	no	\$ 647.74			\$ 647.74	10%	\$ 64.77	5.00%	\$ 32.39	\$ 744.90
City of San Marino	no	\$ 634.91			\$ 634.91	10%	\$ 63.49	5.00%	\$ 31.75	\$ 730.15
City of Santa Fe Springs	yes		\$ 878.14	\$ 3,361.55	\$ 4,239.69	5%	\$ 211.98	0.00%	\$ -	\$ 4,451.68
City of Sierra Madre	no	\$ 601.19			\$ 601.19	10%	\$ 60.12	5.00%	\$ 30.05	\$ 691.37
City of Signal Hill	yes	\$ 509.09			\$ 509.09	5%	\$ 25.45	0.00%	\$ -	\$ 534.54
City of South El Monte	no	\$ 589.00	\$ 659.45		\$ 1,248.45	10%	\$ 124.84	5.00%	\$ 62.42	\$ 1,435.72
City of South Gate	yes	\$ 760.08			\$ 760.08	5%	\$ 38.00	0.00%	\$ -	\$ 798.09
City of South Pasadena	no	\$ 622.69			\$ 622.69	10%	\$ 62.27	5.00%	\$ 31.13	\$ 716.09
City of Temple City	no	\$ 644.03			\$ 644.03	10%	\$ 64.40	5.00%	\$ 32.20	\$ 740.63
LA County Unincorporated	no	\$ 2,829.92	\$ 4,772.41	\$ 6,335.54	\$ 13,937.86	10%	\$ 1,393.79	5.00%	\$ 696.89	\$ 16,028.54
City of Vernon	yes	\$ 683.37			\$ 683.37	5%	\$ 34.17	0.00%	\$ -	\$ 717.53
City of Walnut	no		\$ 1,381.37		\$ 1,381.37	10%	\$ 138.14	5.00%	\$ 69.07	\$ 1,588.57
City of West Covina	no		\$ 1,979.57		\$ 1,979.57	10%	\$ 197.96	5.00%	\$ 98.98	\$ 2,276.51
City of Whittier	yes		\$ 844.56	\$ 5,124.38	\$ 5,968.94	5%	\$ 298.45	0.00%	\$ -	\$ 6,267.39
LACFCD	no	\$ 2,119.64	\$ 2,119.64	\$ 2,119.64	\$ 6,358.92	10%	\$ 635.89	5.00%	\$ 317.96	\$ 7,312.75
Total		\$43,250.02	\$ 42,392.78	\$ 42,392.78	\$ 128,035.57		\$10,440.14		\$ 4,038.39	\$ 142,514.10

NOTES:	
The GWMA administration cost is as follows:	
Direct admin fee is 0-5% for GWMA members and 5-10% for non-members.	
Indirect admin fee is 2-5% for non-members.	
The rates applied above assume the following :	
GWMA Members Admin Fee =	5%
GWMA Non-Members Admin Fee =	10%
GWMA Indirect Fee =	5%

Harbor Toxic Upstream
FY 2024-2025 Cost Share

Agency	GWMA Member?	LAR \$10	SGR GR1	SGR-CC \$13	Subtotal	Direct Admin Fee %	GWMA Direct Admin Fee	Indirect Admin Fee %	GWMA Indirect Admin Fee	Total Fee
City of Alhambra	no	\$ 773.24			\$ 773.24	10%	\$ 77.32	5.00%	\$ 38.67	\$ 889.22
City of Arcadia	no	\$ 887.11	\$ 650.62		\$ 1,537.73	10%	\$ 153.77	5.00%	\$ 76.89	\$ 1,768.39
City of Artesia	yes		\$ 673.32	\$ 2,008.43	\$ 2,681.75	5%	\$ 134.09	0.00%	\$ -	\$ 2,815.83
City of Azusa	no		\$ 1,412.93		\$ 1,412.93	10%	\$ 141.29	5.00%	\$ 70.64	\$ 1,624.87
City of Baldwin Park	no		\$ 1,200.77		\$ 1,200.77	10%	\$ 120.08	5.00%	\$ 60.04	\$ 1,380.88
City of Bell	yes	\$ 597.44			\$ 597.44	5%	\$ 29.87	0.00%	\$ -	\$ 627.31
City of Bell Gardens	yes	\$ 592.01			\$ 592.01	5%	\$ 29.59	0.00%	\$ -	\$ 621.61
City of Bellflower	yes		\$ 791.54		\$ 791.54	5%	\$ 39.58	0.00%	\$ -	\$ 831.11
City of Bradbury	no	\$ 532.94	\$ 726.06		\$ 1,259.00	10%	\$ 125.90	5.00%	\$ 62.95	\$ 1,447.85
City of Burbank	no	\$ 1,113.60			\$ 1,113.60	10%	\$ 111.36	5.00%	\$ 55.68	\$ 1,280.64
City of Calabasas	no	\$ 725.12			\$ 725.12	10%	\$ 72.51	5.00%	\$ 36.26	\$ 833.89
City of Cerritos	yes		\$ 878.39	\$ 3,371.17	\$ 4,249.57	5%	\$ 212.48	0.00%	\$ -	\$ 4,462.05
City of Claremont	no		\$ 1,762.85		\$ 1,762.85	10%	\$ 176.29	5.00%	\$ 88.14	\$ 2,027.28
City of Commerce	yes	\$ 735.48			\$ 735.48	5%	\$ 36.78	0.00%	\$ -	\$ 772.25
City of Compton	yes	\$ 860.96			\$ 860.96	5%	\$ 43.05	0.00%	\$ -	\$ 904.01
City of Covina	no		\$ 1,219.92		\$ 1,219.92	10%	\$ 121.99	5.00%	\$ 61.01	\$ 1,402.91
City of Cudahy	yes	\$ 548.66			\$ 548.66	5%	\$ 27.44	0.00%	\$ -	\$ 576.10
City of Diamond Bar	no		\$ 1,230.68	\$ 3,720.25	\$ 4,950.93	10%	\$ 495.09	5.00%	\$ 247.55	\$ 5,693.57
City of Downey	yes	\$ 699.91	\$ 1,187.91		\$ 1,887.82	5%	\$ 94.39	0.00%	\$ -	\$ 1,982.21
City of Duarte	no	\$ 552.28	\$ 822.50		\$ 1,374.78	10%	\$ 137.48	5.00%	\$ 68.74	\$ 1,581.00
City of El Monte	no	\$ 751.21	\$ 839.56		\$ 1,590.76	10%	\$ 159.08	5.00%	\$ 79.54	\$ 1,829.38
City of Glendale	no	\$ 1,579.02			\$ 1,579.02	10%	\$ 157.90	5.00%	\$ 78.96	\$ 1,815.87
City of Glendora	no		\$ 1,853.12		\$ 1,853.12	10%	\$ 185.31	5.00%	\$ 92.66	\$ 2,131.09
City of Hawaiian Gardens	yes			\$ 1,960.09	\$ 1,960.09	5%	\$ 98.00	0.00%	\$ -	\$ 2,058.10
City of Hidden Hills	no	\$ 558.25			\$ 558.25	10%	\$ 55.83	5.00%	\$ 27.91	\$ 641.99
City of Huntington Park	yes	\$ 611.36			\$ 611.36	5%	\$ 30.57	0.00%	\$ -	\$ 641.92
City of Industry	no		\$ 1,635.32		\$ 1,635.32	10%	\$ 163.53	5.00%	\$ 81.78	\$ 1,880.62
City of Inwindale	no	\$ 561.71	\$ 1,304.81		\$ 1,866.52	10%	\$ 186.65	5.00%	\$ 93.34	\$ 2,146.50
City of La Canada Flintridge	no	\$ 808.86			\$ 808.86	10%	\$ 80.89	5.00%	\$ 40.44	\$ 930.18
City of La Habra Heights	no		\$ 722.65	\$ 3,008.67	\$ 3,731.32	10%	\$ 373.13	5.00%	\$ 186.58	\$ 4,291.02
City of La Mirada	yes			\$ 3,931.04	\$ 3,931.04	5%	\$ 196.55	0.00%	\$ -	\$ 4,127.59
City of La Puente	no		\$ 921.56		\$ 921.56	10%	\$ 92.16	5.00%	\$ 46.07	\$ 1,059.80
City of La Verne	no		\$ 1,347.59		\$ 1,347.59	10%	\$ 134.76	5.00%	\$ 67.38	\$ 1,549.73
City of Lakewood	yes	\$ 508.39	\$ 719.77	\$ 1,964.57	\$ 3,192.72	5%	\$ 159.64	0.00%	\$ -	\$ 3,352.36
City of Long Beach	yes	\$ 937.42	\$ 713.34	\$ 2,364.67	\$ 4,015.42	5%	\$ 200.77	0.00%	\$ -	\$ 4,216.19
City of Los Angeles	no	\$ 10,440.19			\$ 10,440.19	10%	\$ 1,044.02	5.00%	\$ 522.01	\$ 12,006.22
City of Lynwood	yes	\$ 675.36			\$ 675.36	5%	\$ 33.77	0.00%	\$ -	\$ 709.13
City of Maywood	yes	\$ 546.91			\$ 546.91	5%	\$ 27.34	0.00%	\$ -	\$ 574.26
City of Monrovia	no	\$ 779.87	\$ 638.68		\$ 1,418.55	10%	\$ 141.85	5.00%	\$ 70.93	\$ 1,631.33
City of Montebello	yes	\$ 799.10			\$ 799.10	5%	\$ 39.95	0.00%	\$ -	\$ 839.06
City of Monterey Park	no	\$ 776.96			\$ 776.96	10%	\$ 77.70	5.00%	\$ 38.85	\$ 893.51
City of Norwalk	yes		\$ 997.79	\$ 3,232.88	\$ 4,230.68	5%	\$ 211.53	0.00%	\$ -	\$ 4,442.21

**Harbor Toxic Upstream
FY 2024-2025 Cost Share**

Agency	GWMA Member?	LAR \$10	SGR GR1	SGR-CC \$13	Subtotal	Direct Admin Fee %	GWMA Direct Admin Fee	Indirect Admin Fee %	GWMA Indirect Admin Fee	Total Fee
City of Paramount	yes	\$ 615.03			\$ 615.03	5%	\$ 30.75	0.00%	\$ -	\$ 645.78
City of Pasadena	no	\$ 1,316.91			\$ 1,316.91	10%	\$ 131.69	5.00%	\$ 65.85	\$ 1,514.44
City of Pico Rivera	yes	\$ 588.34	\$ 1,147.50		\$ 1,735.84	5%	\$ 86.79	0.00%	\$ -	\$ 1,822.63
City of Pomona	no		\$ 2,560.85		\$ 2,560.85	10%	\$ 256.08	5.00%	\$ 128.04	\$ 2,944.98
City of Rosemead	no	\$ 687.04			\$ 687.04	10%	\$ 68.70	5.00%	\$ 34.35	\$ 790.09
City of San Dimas	no		\$ 1,926.34		\$ 1,926.34	10%	\$ 192.63	5.00%	\$ 96.32	\$ 2,215.29
City of San Fernando	no	\$ 588.78			\$ 588.78	10%	\$ 58.88	5.00%	\$ 29.43	\$ 677.10
City of San Gabriel	no	\$ 650.54			\$ 650.54	10%	\$ 65.05	5.00%	\$ 32.53	\$ 748.12
City of San Marino	no	\$ 637.66			\$ 637.66	10%	\$ 63.77	5.00%	\$ 31.88	\$ 733.31
City of Santa Fe Springs	yes		\$ 881.94	\$ 3,376.10	\$ 4,258.03	5%	\$ 212.90	0.00%	\$ -	\$ 4,470.94
City of Sierra Madre	no	\$ 603.79			\$ 603.79	10%	\$ 60.38	5.00%	\$ 30.18	\$ 694.36
City of Signal Hill	yes	\$ 511.29			\$ 511.29	5%	\$ 25.56	0.00%	\$ -	\$ 536.86
City of South El Monte	no	\$ 591.55	\$ 662.30		\$ 1,253.85	10%	\$ 125.38	5.00%	\$ 62.69	\$ 1,441.93
City of South Gate	yes	\$ 763.37			\$ 763.37	5%	\$ 38.17	0.00%	\$ -	\$ 801.54
City of South Pasadena	no	\$ 625.39			\$ 625.39	10%	\$ 62.54	5.00%	\$ 31.27	\$ 719.19
City of Temple City	no	\$ 646.81			\$ 646.81	10%	\$ 64.68	5.00%	\$ 32.34	\$ 743.83
LA County Unincorporated	no	\$ 2,842.16	\$ 4,793.05	\$ 6,362.95	\$ 13,998.16	10%	\$ 1,399.82	5.00%	\$ 699.91	\$ 16,097.89
City of Vernon	yes	\$ 686.32			\$ 686.32	5%	\$ 34.32	0.00%	\$ -	\$ 720.64
City of Walnut	no		\$ 1,387.34		\$ 1,387.34	10%	\$ 138.73	5.00%	\$ 69.37	\$ 1,595.44
City of West Covina	no		\$ 1,988.13		\$ 1,988.13	10%	\$ 198.81	5.00%	\$ 99.41	\$ 2,286.35
City of Whittier	yes		\$ 848.22	\$ 5,146.55	\$ 5,994.76	5%	\$ 299.74	0.00%	\$ -	\$ 6,294.50
LACFCD	no	\$ 2,128.81	\$ 2,128.81	\$ 2,128.81	\$ 6,386.43	10%	\$ 638.64	5.00%	\$ 319.33	\$ 7,344.39
Total		\$43,437.13	\$ 42,576.18	\$ 42,576.18	\$ 128,589.48		\$ 10,485.31		\$ 4,055.86	\$ 143,130.64

NOTES:

The GWMA administration cost is as follows:

Direct admin fee is 0-5% for GWMA members and 5-10% for non-members.

Indirect admin fee is 2-5% for non-members.

The rates applied above assume the following :

GWMA Members Admin Fee = 5%

GWMA Non-Members Admin Fee = 10%

GWMA Indirect Fee = 5%

**Harbor Toxic Upstream
FY 2025-2026 Cost Share**

Agency	GWMA Member?	LAR \$10	SGR GR1	SGR-CC \$13	Subtotal	Direct Admin Fee %	GWMA Direct Admin Fee	Indirect Admin Fee %	GWMA Indirect Admin Fee	Total Fee
City of Alhambra	no	\$ 791.39			\$ 791.39	10%	\$ 79.14	5.00%	\$ 39.58	\$ 910.09
City of Arcadia	no	\$ 907.93	\$ 665.89		\$ 1,573.83	10%	\$ 157.38	5.00%	\$ 78.69	\$ 1,809.90
City of Artesia	yes		\$ 689.12	\$ 2,055.57	\$ 2,744.70	5%	\$ 137.23	0.00%	\$ -	\$ 2,881.93
City of Azusa	no		\$ 1,446.09		\$ 1,446.09	10%	\$ 144.61	5.00%	\$ 72.29	\$ 1,663.01
City of Baldwin Park	no		\$ 1,228.95		\$ 1,228.95	10%	\$ 122.90	5.00%	\$ 61.45	\$ 1,413.30
City of Bell	yes	\$ 611.46			\$ 611.46	5%	\$ 30.57	0.00%	\$ -	\$ 642.03
City of Bell Gardens	yes	\$ 605.91			\$ 605.91	5%	\$ 30.29	0.00%	\$ -	\$ 636.20
City of Bellflower	yes		\$ 810.12		\$ 810.12	5%	\$ 40.51	0.00%	\$ -	\$ 850.62
City of Bradbury	no	\$ 545.45	\$ 743.11		\$ 1,288.55	10%	\$ 128.86	5.00%	\$ 64.43	\$ 1,481.84
City of Burbank	no	\$ 1,139.74			\$ 1,139.74	10%	\$ 113.97	5.00%	\$ 56.99	\$ 1,310.70
City of Calabasas	no	\$ 742.14			\$ 742.14	10%	\$ 74.21	5.00%	\$ 37.11	\$ 853.46
City of Cerritos	yes		\$ 899.01	\$ 3,450.31	\$ 4,349.32	5%	\$ 217.47	0.00%	\$ -	\$ 4,566.78
City of Claremont	no		\$ 1,804.23		\$ 1,804.23	10%	\$ 180.42	5.00%	\$ 90.21	\$ 2,074.87
City of Commerce	yes	\$ 752.74			\$ 752.74	5%	\$ 37.65	0.00%	\$ -	\$ 790.38
City of Compton	yes	\$ 881.17			\$ 881.17	5%	\$ 44.06	0.00%	\$ -	\$ 925.23
City of Covina	no		\$ 1,248.56		\$ 1,248.56	10%	\$ 124.86	5.00%	\$ 62.44	\$ 1,435.84
City of Cudahy	yes	\$ 561.54			\$ 561.54	5%	\$ 28.09	0.00%	\$ -	\$ 589.62
City of Diamond Bar	no		\$ 1,259.57	\$ 3,807.58	\$ 5,067.15	10%	\$ 506.71	5.00%	\$ 253.36	\$ 5,827.22
City of Downey	yes	\$ 716.34	\$ 1,215.79		\$ 1,932.14	5%	\$ 96.61	0.00%	\$ -	\$ 2,028.74
City of Duarte	no	\$ 565.25	\$ 841.81		\$ 1,407.05	10%	\$ 140.71	5.00%	\$ 70.35	\$ 1,618.11
City of El Monte	no	\$ 768.84	\$ 859.26		\$ 1,628.10	10%	\$ 162.81	5.00%	\$ 81.41	\$ 1,872.32
City of Glendale	no	\$ 1,616.08			\$ 1,616.08	10%	\$ 161.61	5.00%	\$ 80.81	\$ 1,858.49
City of Glendora	no		\$ 1,896.62		\$ 1,896.62	10%	\$ 189.66	5.00%	\$ 94.83	\$ 2,181.12
City of Hawaiian Gardens	yes			\$ 2,006.10	\$ 2,006.10	5%	\$ 100.31	0.00%	\$ -	\$ 2,106.41
City of Hidden Hills	no	\$ 571.36			\$ 571.36	10%	\$ 57.14	5.00%	\$ 28.57	\$ 657.06
City of Huntington Park	yes	\$ 625.71			\$ 625.71	5%	\$ 31.29	0.00%	\$ -	\$ 656.99
City of Industry	no		\$ 1,673.71		\$ 1,673.71	10%	\$ 167.37	5.00%	\$ 83.70	\$ 1,924.76
City of Inwindale	no	\$ 574.89	\$ 1,335.44		\$ 1,910.33	10%	\$ 191.03	5.00%	\$ 95.53	\$ 2,196.88
City of La Canada Flintridge	no	\$ 827.84			\$ 827.84	10%	\$ 82.78	5.00%	\$ 41.39	\$ 952.02
City of La Habra Heights	no		\$ 739.62	\$ 3,079.29	\$ 3,818.91	10%	\$ 381.89	5.00%	\$ 190.96	\$ 4,391.74
City of La Mirada	yes			\$ 4,023.31	\$ 4,023.31	5%	\$ 201.17	0.00%	\$ -	\$ 4,224.48
City of La Puente	no		\$ 943.19		\$ 943.19	10%	\$ 94.32	5.00%	\$ 47.15	\$ 1,084.67
City of La Verne	no		\$ 1,379.22		\$ 1,379.22	10%	\$ 137.92	5.00%	\$ 68.96	\$ 1,586.10
City of Lakewood	yes	\$ 520.32	\$ 736.66	\$ 2,010.68	\$ 3,267.67	5%	\$ 163.38	0.00%	\$ -	\$ 3,431.05
City of Long Beach	yes	\$ 959.42	\$ 730.08	\$ 2,420.17	\$ 4,109.67	5%	\$ 205.48	0.00%	\$ -	\$ 4,315.16
City of Los Angeles	no	\$ 10,685.26			\$ 10,685.26	10%	\$ 1,068.53	5.00%	\$ 534.26	\$ 12,288.05
City of Lynwood	yes	\$ 691.22			\$ 691.22	5%	\$ 34.56	0.00%	\$ -	\$ 725.78
City of Maywood	yes	\$ 559.75			\$ 559.75	5%	\$ 27.98	0.00%	\$ -	\$ 587.74
City of Monrovia	no	\$ 798.17	\$ 653.67		\$ 1,451.85	10%	\$ 145.18	5.00%	\$ 72.59	\$ 1,669.62
City of Montebello	yes	\$ 817.86			\$ 817.86	5%	\$ 40.88	0.00%	\$ -	\$ 858.75
City of Monterey Park	no	\$ 795.20			\$ 795.20	10%	\$ 79.52	5.00%	\$ 39.76	\$ 914.48
City of Norwalk	yes		\$ 1,021.21	\$ 3,308.77	\$ 4,329.98	5%	\$ 216.50	0.00%	\$ -	\$ 4,546.48

**Harbor Toxic Upstream
FY 2025-2026 Cost Share**

Agency	GWMA Member?	LAR \$10	SGR GR1	SGR-CC \$13	Subtotal	Direct Admin Fee %	GWMA Direct Admin Fee	Indirect Admin Fee %	GWMA Indirect Admin Fee	Total Fee
City of Paramount	yes	\$ 629.46			\$ 629.46	5%	\$ 31.47	0.00%	\$ -	\$ 660.94
City of Pasadena	no	\$ 1,347.82			\$ 1,347.82	10%	\$ 134.78	5.00%	\$ 67.40	\$ 1,549.99
City of Pico Rivera	yes	\$ 602.15	\$ 1,174.43		\$ 1,776.58	5%	\$ 88.83	0.00%	\$ -	\$ 1,865.41
City of Pomona	no		\$ 2,620.96		\$ 2,620.96	10%	\$ 262.10	5.00%	\$ 131.05	\$ 3,014.10
City of Rosemead	no	\$ 703.16			\$ 703.16	10%	\$ 70.32	5.00%	\$ 35.16	\$ 808.64
City of San Dimas	no		\$ 1,971.55		\$ 1,971.55	10%	\$ 197.16	5.00%	\$ 98.58	\$ 2,267.29
City of San Fernando	no	\$ 602.60			\$ 602.60	10%	\$ 60.26	5.00%	\$ 30.12	\$ 692.99
City of San Gabriel	no	\$ 665.81			\$ 665.81	10%	\$ 66.58	5.00%	\$ 33.29	\$ 765.68
City of San Marino	no	\$ 652.63			\$ 652.63	10%	\$ 65.26	5.00%	\$ 32.63	\$ 750.52
City of Santa Fe Springs	yes		\$ 902.64	\$ 3,455.34	\$ 4,357.98	5%	\$ 217.90	0.00%	\$ -	\$ 4,575.88
City of Sierra Madre	no	\$ 617.97			\$ 617.97	10%	\$ 61.80	5.00%	\$ 30.89	\$ 710.66
City of Signal Hill	yes	\$ 523.29			\$ 523.29	5%	\$ 26.16	0.00%	\$ -	\$ 549.46
City of South El Monte	no	\$ 605.44	\$ 677.84		\$ 1,283.28	10%	\$ 128.33	5.00%	\$ 64.16	\$ 1,475.77
City of South Gate	yes	\$ 781.29			\$ 781.29	5%	\$ 39.06	0.00%	\$ -	\$ 820.36
City of South Pasadena	no	\$ 640.06			\$ 640.06	10%	\$ 64.01	5.00%	\$ 32.00	\$ 736.07
City of Temple City	no	\$ 661.99			\$ 661.99	10%	\$ 66.20	5.00%	\$ 33.10	\$ 761.29
LA County Unincorporated	no	\$ 2,908.87	\$ 4,905.56	\$ 6,512.31	\$ 14,326.74	10%	\$ 1,432.67	5.00%	\$ 716.34	\$ 16,475.75
City of Vernon	yes	\$ 702.43			\$ 702.43	5%	\$ 35.12	0.00%	\$ -	\$ 737.55
City of Walnut	no		\$ 1,419.91		\$ 1,419.91	10%	\$ 141.99	5.00%	\$ 71.00	\$ 1,632.89
City of West Covina	no		\$ 2,034.80		\$ 2,034.80	10%	\$ 203.48	5.00%	\$ 101.74	\$ 2,340.02
City of Whittier	yes		\$ 868.13	\$ 5,267.35	\$ 6,135.48	5%	\$ 306.77	0.00%	\$ -	\$ 6,442.25
LACFCD	no	\$ 2,178.78	\$ 2,178.78	\$ 2,178.78	\$ 6,536.34	10%	\$ 653.63	5.00%	\$ 326.83	\$ 7,516.79
Total		\$44,456.74	\$ 43,575.57	\$ 43,575.57	\$ 131,607.88		\$10,731.43		\$ 4,151.06	\$ 146,490.37

NOTES:	
The GWMA administration cost is as follows:	
Direct admin fee is 0-5% for GWMA members and 5-10% for non-members.	
Indirect admin fee is 2-5% for non-members.	
 <i>The rates applied above assume the following :</i>	
GWMA Members Admin Fee =	5%
GWMA Non-Members Admin Fee =	10%
GWMA Indirect Fee =	5%

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

City of
IRWINDALE
AGENDA REPORT

Date: September 13, 2023

To: Honorable Mayor and Members of the City Council

From: Julian A. Miranda, City Manager

Issue: Acceptance of the 2022-2023 Resurfacing Program: Residential Resurfacing Project – Phase II; P-1043

City Manager's Recommendation:

That the City Council (1) ratify changes to the original scope of work and accept the improvements and maintenance responsibilities for the constructed improvements of the 2022-2023 Resurfacing Program: Residential Resurfacing Project – Phase II; (2) approve the final construction project amount of \$399,561.59 under the construction contract with Vance Corporation; (3) approve final construction management and inspection services contract with FCG Consultants in the amount of \$76,266.06; (4) authorize the City Clerk to record the Notice of Completion; and (5) authorize the Finance Director to release the 5% retention amount for the construction project.

Administrative Action:

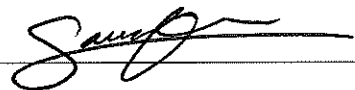
Submitted by:

Eddie Chan,
Director of Engineering/ Building Official



Prepared by:

Sarah Rocha, Engineering Technician
(626) 430-2264

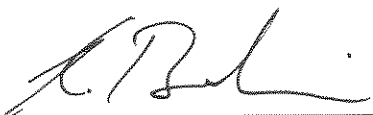


Reviewed by:

Adrian R. Guerra, City Attorney

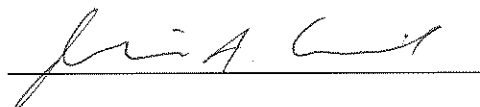
Electronically approved
by City Attorney

Kambiz Borhani,
Finance Director / City Treasurer



Approved by:

Julian A. Miranda,
City Manager



Background and Analysis:

On March 22, 2023, the City Council awarded the 2022-2023 Resurfacing Program: Residential Resurfacing Project – Phase II to Vance Corporation in the amount of \$394,774.10, plus a 20% contingency in the amount of \$78,954.00 for a total of \$473,728.10.

During the course of work, the City Council approved and directed staff to move forward with the recommendations to remove the raised crosswalk and install additional advisory signage along Calle de Paseo. This additional work totaled \$16,670.40 was issued as change order for this project.

This project has been completed per the approved plans and specifications. The final construction costs of the Residential Resurfacing Project – Phase II, including the additional work on Calle de Paseo, is \$399,561.59, which is \$74,166.51 less than the authorized amount. Staff recommends that the City Council ratify the changes in the contract amount due to the additional work.

The City Council awarded the contract for construction management and inspection services to FCG Consultants for \$86,238.03 plus a 20% contingency for \$17,247.00, with a total amount of \$103,485.03. The final amount of the services provided is \$76,266.06, which is \$27,218.10 less than the authorized amount.

Ratification of the changes in the work and acceptance of the work by the City Council complies with the acceptance and prompt payment provisions of the Public Contract Code.

The total cost of the project is \$479,210.31. This includes the design, advertisement, bidding, inspection, construction, and all other associated costs for this project as shown below:

Construction	\$ 399,561.59
Construction Management & Inspection	\$ 76,266.06
Other Costs (Advertisement, PS&E Reproduction, etc.)	\$ 3,382.66
Total Cost of Project	\$ 479,210.31

The total cost of the project is \$479,210.31, which is \$263,559.69 less than the total budget of \$742,770.00.

The Project is now complete and staff recommends that City Council accept the improvements and maintenance responsibility for the Residential Resurfacing Project – Phase II. Acceptance of the improvements by City Council will render the project complete. Once the project is complete, the City will file a Notice of Completion and release the retention amount for the project. Staff therefore recommends that the City Council authorize the City Clerk to record the Notice of Completion and authorize the Finance Director to release the 5% retention amount for the construction project.

Fiscal Impact:

The 5% retention payable amount for Vance Corporation is \$19,978.08. There is sufficient funding available in the budget to pay for this amount. Future request for the reallocation of the remaining \$263,559.69 budget to the Residential Resurfacing Project – Phase III will be presented to the City Council for consideration at the time service contract is being awarded.

Attachments:

- Notice of Completion

RECORDING REQUESTED BY: /
CITY OF IRWINDALE /
/

WHEN RECORDED MAIL TO: /
Eddie Chan /
City of Irwindale /
Public Works Engineering /
5050 N. Irwindale Avenue /
Irwindale, CA 91706 /
/
/
/

SPACE ABOVE THIS LINE FOR RECORDER'S USE

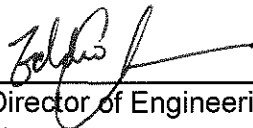
**NOTICE OF COMPLETION OF
PUBLIC IMPROVEMENT AND WORK**

NOTICE IS HEREBY GIVEN THAT:

1. The undersigned is owner of an interest or estate in the hereinafter described real property, the nature of which interest or estate is: DEDICATED PUBLIC ROAD RIGHT OF WAY EASEMENTS
2. The full name of the owner is: CITY OF IRWINDALE.
3. The full address of the owner is: 5050 NORTH IRWINDALE AVENUE, IRWINDALE, CALIFORNIA, 91706.
4. On the 13rd day of SEPTEMBER 2023, there was completed upon the hereinafter-described real property the following work: 2022-2023 RESURFACING PROGRAM: RESIDENTIAL RESURFACING PROJECT - PHASE II (P-1043).
5. The name of the original contractor for the work described above was: VANCE CORPORATION
6. The real property referred to herein is situated in the City of Irwindale, County of Los Angeles, State of California and is described as follows: MARTINEZ STREET, BACA AVENUE, CALLE DEL SUR, SABRE LANE, CALLE BRECEDA, NORA AVENUE, CALLE BURROLA AND FRAJO AVENUE.

DATED: _____, 2023

ATTEST:



Eddie Chan, Director of Engineering/Building Official
City of Irwindale

Chief Deputy City Clerk

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 _____

Subscribed and sworn to (or affirmed) before me on this _____ day of _____, 20____,
by _____,
proved to me on the basis of satisfactory evidence to be the person(s) who appeared before me.

(Seal) Signature _____

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

CC Item 9

City of
IRWINDALE
AGENDA REPORT

Date: September 13, 2023
To: Honorable Mayor and Members of the City Council
From: Julian A. Miranda, City Manager
Issue: Request to Approve a Project Reimbursement Agreement between the City and RIF III-Irwindale LLC ("Applicant") for the reimbursement of costs associated with processing and negotiating permits, entitlements, and proposed Conditions of Approval, including CEQA, City Attorney, and contract planning costs associated with a proposed industrial building to be located at 15715 Arrow Highway (APN: 8619-001-059).

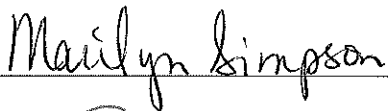
City Manager's Recommendation:

That the City Council approve the attached Project Reimbursement Agreement with RIF III-Irwindale LLC for the reimbursement of costs associated with processing and negotiating permits, entitlements, and proposed Conditions of Approval of the Project, including all CEQA work conducted and all necessary CEQA documents prepared by the CEQA consultant selected by the City as Lead Agency and costs incurred by the City's Attorney's office and contract planning services.

Administrative Action:

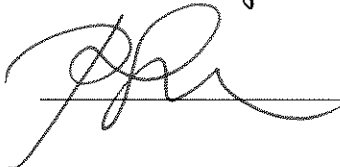
Submitted by:

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



Prepared by:

Brandi Jones, Senior Planner



Reviewed by:

Adrian R. Guerra, City Attorney

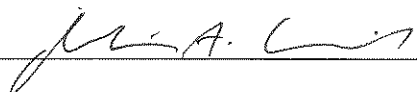
Electronically Approved

Kambiz Borhani, Finance Director / City Treasurer



Approved by:

Julian A. Miranda, City Manager



BACKGROUND

RIF III-Irwindale LLC, the Applicant, submitted an application to develop an approximately 105,000 square-foot speculative industrial, concrete tilt-up building for property located at 15715 Arrow Highway, in the M-2 (Heavy Manufacturing) zone. The application includes a request for a Site Plan and Design Review (DA) and the environmental analysis, which is required under the California Environmental Quality Act (CEQA) for land use entitlements.

The subject Project Reimbursement Agreement, which is attached for consideration, will reimburse the City for any fees incurred from consultants and attorneys as the City may require to process and negotiate permits, entitlements, and proposed Conditions of Approval of the proposed project. It will also reimburse the City for the environmental consultant, CEQA review and contract planning services. Staff is proposing the retention of ECORP Consulting, Inc. as a consultant to perform the environmental services for the proposed project. The contract with ECORP Consulting Inc. for these services is being considered separately by the City Council and will be funded by the Developer through the Project Reimbursement Agreement.

FISCAL IMPACT

The City's General Fund will not be impacted. The Applicant will provide a deposit of \$408,134.08 as an initial deposit to cover the estimated cost for this consultant's work. The deposit amount represents the \$291,511.00 contract service agreement by and between the City and ECORP Consulting, Inc., plus the required 28% administrative fee of \$81,623.08, \$15,000 for additional contract planning services, and \$20,000 for legal review. Additional supplemental deposits may include costs for ECORP Consulting, Inc.'s work as well as for any work by other consultants and attorneys retained for the proposed project.

ATTACHMENT

A. Project Reimbursement Agreement with RIF III-Irwindale LLC

ATTACHMENT "A"
PROJECT REIMBURSEMENT AGREEMENT

THIS PROJECT REIMBURSEMENT AGREEMENT (this "Agreement") is made as of September 13, 2023, by and between the City of Irwindale, a California municipal corporation ("City"), and RIF III-Irwindale LLC, a California limited liability company, ("Developer").

RECITALS

A. Developer has submitted to City an application to develop a speculative concrete tilt-up light industrial buildings at 15715 Arrow Highway, in the City of Irwindale, California ("Project");

C. Pursuant to California Environmental Quality Act ("CEQA"), the Project must be reviewed by City for potential additional environmental impacts. Environmental analysis is required under CEQA for land use entitlements. An Initial Study will be prepared, as part of the preparation of an environmental document for the Project. City will retain the services of outside consultants due to the nature and scope of the Project.

D. City and Developer agreed to enter into this Agreement to provide for the reimbursement of City by Developer for certain expenses to be incurred by City in undertaking the review of the Project pursuant to CEQA and preparation of the appropriate agreements to undertake the Project.

E. City and Developer desire to enter into this Agreement for the purpose of establishing the rights and responsibilities of each party with respect to the processing of Developer's application for the Project, the preparation of the environmental document for the Project and the reimbursement of the costs associated therewith.

NOW, THEREFORE, in consideration of performance by the parties of the promises, covenants, and conditions herein contained and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Application Processing.

City shall diligently process Developer's application for the Project in compliance with applicable laws and shall cause to be prepared an environmental document for the Project in compliance with the CEQA (California Public Resources Code Section 21000 *et seq.*) and regulations promulgated pursuant thereto. Developer acknowledges that this Agreement does not constitute a commitment by

City to take any particular action either in favor of or against the merits of Developer's application.

2. Payment.

A. Developer shall be responsible for, and shall reimburse City for, all direct and indirect costs, fees and expenses of City related to review and City's undertaking of the planning, design, and permitting for the Project, including processing and negotiating any permits, entitlements and proposed conditions of approval for the Project. Developer's reimbursement shall be inclusive of any City efforts to facilitate the review and approval of the Project by other agencies, as may be needed, and the processing of the approvals which requires an analysis and approval under CEQA laws and regulations (the "City Costs"). City Costs include, but are not limited to: (a) City Attorneys' fees, at a rate not to exceed \$350.00 per hour including but not limited to, for drafting, negotiating and reviewing this Agreement, contracts with Consultants, contracts with other agencies and public agencies, and any documents that the City deems necessary in connection with undertaking of the planning, design, permitting, and for the processing of the Project approvals, (b) staff time required for drafting, negotiating and reviewing this Agreement, contracts with Consultants, and contracts with other agencies and public agencies, and any documents that the City deems necessary in connection with undertaking of the processing, planning, design, and permitting for the Project; and (c) all costs associated with Sections 2(a) and 2(b) above, including consultant costs and fees; (d) all costs related to studies, reports and design services for the development of any Project-related infrastructure; (e) all costs related to investigations of the Property or the Project; and (f) any other fees and costs deemed necessary by the City in order to process, review, or act upon or complete the Project. Developer's obligation to deposit and reimburse City Costs are in addition to Developer's duty to indemnify, defend, and hold harmless City, as set forth in Section 8, below.

B. Within five (5) days of the City's approval of this Agreement, Developer shall pay to City a lump sum deposit in the amount of FOUR HUNDRED AND EIGHT THOUSAND AND ONE HUNDRED AND THIRTY-FOUR DOLLARS AND EIGHT CENTS (\$408,134.08) ("Initial Deposit"), which deposit represents City's best estimate of Developer's ultimate obligation hereunder with respect to the Expenses.

C. If City subsequently determines that the Initial Deposit is insufficient, which determination shall be based on the actual Expenses incurred by the City hereunder, then upon receipt of twenty (20) days written notice from City, Developer shall pay City a lump sum deposit in the amount reasonably estimated by City to be sufficient to cover the excess (each a "Supplemental Deposit"). If Developer does not pay the Initial Deposit per Section 2.B above or any Supplemental Deposit when required under this Section 2.C. to City, work on the environmental document shall be suspended until the applicable Initial or Supplemental Deposit is made to City.

D. City shall provide Developer with a monthly accounting of City's use of

the Deposits to pay Expenses within a reasonable time after the end of each calendar month during the term of this Agreement.

E. City shall promptly refund to Developer any amount of Developer's Deposits that remain unexpended at the end of the Project as well as provide Developer with a final monthly accounting of City's use of the Deposits. For purposes of this paragraph, "the end of the Project" means the time at which: (i) City's contractual liabilities to the CEQA Consultant under the Consultant Agreement and the Additional Consultants under the Contracts have been satisfied; and (ii) the earliest to occur of (a) City has rendered a final decision on the Project or (b) Developer has abandoned the Project pursuant to Section 3 below. As of the date of any termination of this Agreement, such termination shall also terminate any further funding or other obligations hereunder; except that Developer shall remain obligated to reimburse City for City's Expenses incurred prior to the date of termination of this Agreement.

F. Notwithstanding any provision herein to the contrary, the parties agree that the City's obligations to make payments to the CEQA Consultant pursuant to the Consultant Agreement and to the Additional Consultants pursuant to any Contracts shall be independent of and governed solely by the provisions of the Consultant Agreement and Contracts, as applicable. City shall make any payments to the CEQA Consultant when provided by the Consultant Agreement and to the Additional Consultants pursuant to the Contracts irrespective of any dispute arising hereunder.

3. Abandonment of Project. This Agreement does not constitute a commitment by Developer to proceed with the Project and Developer may choose to not proceed with the Project at any time for any or no reason whatsoever. If Developer should abandon the Project prior to a final decision on its application by City, then Developer may give written notice of such abandonment to City and City shall immediately suspend preparation of the environmental document and all other aspects of the environmental review for the Project.

4. Conflicts of Interest.

A. During the existence of City's contract with the CEQA Consultant, and for a period of one (1) year after final resolution of Developer's application for the Project, neither Developer, nor any of its representatives, agents or other persons acting in concert with Developer, shall enter into any financial relationship with the CEQA Consultant or with any City official or employee. Nor, during such period, shall Developer propose to enter into any future relationship with the CEQA Consultant or with any City official or employee.

B. Developer makes the following warranties for the 12-month period preceding the submission of its application for the Project. Developer warrants that it has not entered into any arrangement to pay financial consideration to, and has not made any payment to, the CEQA Consultant or any of the CEQA Consultant's agents

or employees. Developer further warrants that it has not entered into any arrangement to pay financial consideration to, and has not made any payment to, any City official, agent or employee that would create a legally cognizable conflict of interest as defined in the Political Reform Act (California Government Code Sections 87100 *et seq.*).

C. The parties acknowledge and agree that processing of Developer's application for the Project is not contingent on the hiring of any specific contractor.

D. The parties acknowledge and agree that Developer's duty to reimburse City is not contingent upon City's approval or disapproval of the Project or upon the result of any action of the City but that it is contingent on City's compliance with the terms and conditions of this Agreement.

E. Neither Developer nor its officers, employees or agents shall communicate with the CEQA Consultant or any Additional Consultant during the term of this Agreement, unless specifically authorized or requested to do so in writing by City.

5. Approval of Consultant Contract and Contracts. City shall promptly provide copies of (a) the proposed Consultant Contract; (b) any and all proposed Contracts; and (c) proposed amendments and supplements to the Consultant Contract and Contracts that would have the effect of revising the schedule or scope of work for such CEQA Consultant or Additional Consultant, prior to the execution thereof by City. Developer shall have a reasonable time thereafter within which to review and provide comments to and consult with City on such proposed Consultant Contract and Contracts and amendments and supplements thereto, but shall have no right to prevent their execution; *provided, however,* that Developer shall not be obligated to pay Expenses based upon a change in scope or schedule of any of them unless Developer has reviewed and approved such Consultant Contract or Contract or change thereto. Notwithstanding anything in this Agreement to the contrary, City may not revise, supplement or amend the scope of work proposed to be undertaken by the Environmental Consultant pursuant to the Consultant Contract without obtaining Developer's prior consent. Upon the execution of (i) the Consultant Contract and any amendments thereto by Environmental Consultant and City; and (ii) any Contracts and any amendments thereto by Additional Consultants and City; Developer's obligations with respect to such executed Consultant Contract and Contracts (each as amended) will be governed by the terms and conditions of this Agreement.

6. Notices. Any notices, bills, invoices or reports required by this Agreement shall be deemed received on (a) the day of delivery if delivered by hand during receiving party's regular business hours or by facsimile before or during receiving party's regular business hours; or (b) on the second business day following deposit in the United States mail, postage prepaid, to the addresses below, or to such other addresses as the parties may, from time to time, designate

in writing pursuant to this section.

City:

City of Irwindale
Attention: Chief Deputy City Clerk
5050 N. Irwindale Avenue
Irwindale, CA 91706

Developer:

RIF III-Irwindale, LLC
Attn: Carlos Serra, EVP Construction &
Development
11620 Wilshire Blvd., Suite 1000
Los Angeles, CA 90025

7. Litigation. In the event that either party shall commence any legal action or proceeding to enforce or interpret this Agreement, the prevailing party in such action or proceeding shall be entitled to recover its costs of suit, including reasonable attorney's fees. The venue for any litigation shall be Los Angeles County. In the event of any asserted ambiguity in, or dispute regarding the interpretation of any matter herein, the interpretation of this Agreement shall not be resolved by any rules of interpretation providing for interpretation against the party who causes the uncertainty to exist or against the drafting party. This Agreement shall be governed by and interpreted under the laws of the State of California.

8. Hold Harmless. Developer shall defend, indemnify and hold harmless the City, its elected and appointed officers and employees (collectively, the "Indemnified Parties"), from and against any claims, suits, actions or proceedings, judicial or administrative, for writs, orders, injunction or other relief, damages, liability, cost and expense (including, without limitation, reasonable attorneys' fees) (collectively, "Claims") arising out of a default by Developer of its obligations under this Agreement and the preparation by the City of the environmental document for the Project; provided, however, that the foregoing covenant to defend, indemnify and hold harmless the Indemnified Parties from and against any Claims shall not apply to any Claims (a) arising from the sole negligence, or fraud or intentional misconduct, of any Indemnified Party; or (b) covered by insurance.

9. Entire Agreement. This Agreement represents the entire and integrated agreement between City and Developer as to the subject matter contained herein. This Agreement supersedes all prior oral or written negotiations, representations or agreements. This Agreement may not be amended, nor any provision or breach hereof waived, except in a writing signed by the parties, which writing expressly refers to this Agreement.

10. Time of the Essence. Time is of the essence of each and every provision of this Agreement.

11. Counterparts. This Agreement may be executed in two or more fully or partially executed counterparts, each of which will be deemed an original binding the signer thereof against the other signing parties, but all counterparts together will constitute one and the same instrument.

12. Severability. Any term or provision of this Agreement that is invalid or unenforceable in any jurisdiction will, as to such jurisdiction, be ineffective to the extent of such invalidity or unenforceability without rendering invalid or unenforceable the remaining terms and provisions of this Agreement, or affecting the validity or enforceability of any of the terms or provisions of this Agreement.

13. Further Assurances. Each party, at the request of the other, shall execute, acknowledge or have notarized (if appropriate) and deliver in a timely manner such additional documents, and do such other additional acts, also in a timely manner, as may be reasonably required in order to accomplish the intent and purposes of this Agreement.

[SIGNATURES APPEAR ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties have executed this Agreement
as of the date first written above.

CITY OF IRWINDALE, a municipal
corporation

H. Manuel Ortiz, Mayor

ATTEST:

Laura M. Nieto, MMC
Chief Deputy City Clerk

APPROVED AS TO FORM:

ALESHIRE & WYNDER, LLP

Adrian R. Guerra, City Attorney

“DEVELOPER”:

RIF III-Irwindale LLC, a California limited
liability company

By: _____
Name: Carlos Serra
Title: Executive Vice President,
Development and Construction
Address: 11620 Wilshire Blvd.,
Suite 1000
Los Angeles, CA 90025

By: _____
Name: Bruce Herbkersman
Title: Senior Vice President
Address: 11620 Wilshire Blvd.,
Suite 1000
Los Angeles, CA 90025

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 _____

On _____ before me, _____, Notary Public, personally appeared _____ who 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

☐ INDIVIDUAL
☐ CORPORATE OFFICER

TITLE(S)

☐ PARTNER(S) ☐ LIMITED
☐ GENERAL

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

☐ OTHER _____

DESCRIPTION OF ATTACHED DOCUMENT

TITLE OR TYPE OF DOCUMENT

NUMBER OF PAGES

DATE OF DOCUMENT

SIGNER(S) OTHER THAN NAMED ABOVE

SIGNER IS REPRESENTING:
(NAME OF PERSON(S) OR ENTITY(IES))

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

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WITNESS my hand and official seal.

Signature: _____

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☐ OTHER _____

DESCRIPTION OF ATTACHED DOCUMENT

TITLE OR TYPE OF DOCUMENT

NUMBER OF PAGES

DATE OF DOCUMENT

SIGNER(S) OTHER THAN NAMED ABOVE

SIGNER IS REPRESENTING:

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

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

City of
IRWINDALE
AGENDA REPORT

CC Item 10

Date: September 13, 2023
To: Honorable Mayor and Members of the City Council
From: Julian A. Miranda, City Manager
Issue: Request to Approve a Project Reimbursement Agreement between the City and Rexford Industrial – 14005 Live Oak, LLC (“Applicant”) for the reimbursement of costs associated with processing and negotiating permits, entitlements and proposed Conditions of Approval, including CEQA, City Attorney, and contract planning costs associated with a proposed industrial building to be located at 14005 Live Oak Ave (APNs: 8535-001-033).

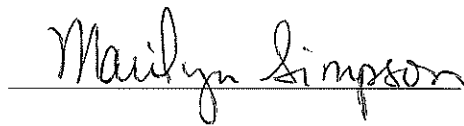
City Manager’s Recommendation:

That the City Council approve the attached Project Reimbursement Agreement with Rexford Industrial – 14005 Live Oak, LLC for the reimbursement of costs associated with processing and negotiating permits, entitlements, and proposed conditions of approval of the Project, including all CEQA work conducted and all necessary CEQA documents prepared by the CEQA consultant selected by the City as Lead Agency and costs incurred by the City’s Attorney’s office and contract planning services.

Administrative Action:

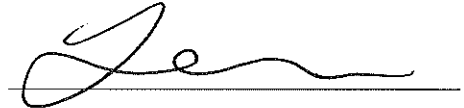
Submitted by:

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



Prepared by:

Lisa Chou, AICP, Associate Planner



Reviewed by:

Adrian R. Guerra, City Attorney

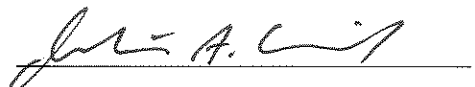
Electronically Approved

Kambiz Borhani, Finance Director / City Treasurer



Approved by:

Julian A. Miranda, City Manager



BACKGROUND

Rexford Industrial – 14005 Live Oak, LLC, the Applicant, submitted a request for the construction of a ±102,400 square foot speculative industrial building for the property located at 14005 Live Oak Ave (APN: 8535-001-033), in the M-2 (Heavy Manufacturing) zone (Project). The application includes a request for a Site Plan and Design Review (DA) and the environmental analysis, which is required under the California Environmental Quality Act (CEQA) for land use entitlements.

The subject Project Reimbursement Agreement, which is attached for consideration, will reimburse the City for any fees incurred from consultants and attorneys as the City may require to process and negotiate permits, entitlements and proposed Conditions of Approval of the proposed project. It will also reimburse the City for the environmental consultant and CEQA review. Staff is proposing the retention of Kimley-Horn and Associates, Inc. as a consultant to perform the environmental services for the proposed project. The contract with Kimley-Horn and Associates, Inc. for these services is being considered separately by the City Council and will be funded by the Developer through the Project Reimbursement Agreement.

FISCAL IMPACT

The City's General Fund will not be impacted. The Applicant will provide a deposit of \$197,138.88 as an initial deposit to cover the estimated cost for this consultant's work. The deposit amount represents the \$126,671.00 contract service agreement by and between the City and Kimley-Horn and Associates, Inc. plus the required 28% administrative fee of \$35,467.88, \$15,000 for additional contract planning services and \$20,000 for legal review. Additional supplemental deposits may include costs for Kimley-Horn and Associates, Inc.'s work as well as for any work by other consultants and attorneys retained for the proposed project.

ATTACHMENT

A. Project Reimbursement Agreement with Rexford Industrial - 14005 Live Oak, LLC.

ATTACHMENT "A"
PROJECT REIMBURSEMENT AGREEMENT

THIS PROJECT REIMBURSEMENT AGREEMENT (this "Agreement") is made as of September 13, 2023, by and between the City of Irwindale, a California municipal corporation ("City"), and Rexford Industrial - 14005 Live Oak, LLC, a California limited liability company ("Developer").

RECITALS

A. Developer has submitted to City an application to develop a speculative concrete tilt-up light industrial buildings at 14005 Live Oak Ave, in the City of Irwindale, California ("Project");

C. Pursuant to California Environmental Quality Act ("CEQA"), the Project must be reviewed by City for potential additional environmental impacts. Environmental analysis is required under CEQA for land use entitlements. An Initial Study will be prepared, as part of the preparation of an environmental document for the Project. City will retain the services of outside consultants due to the nature and scope of the Project.

D. City and Developer agreed to enter into this Agreement to provide for the reimbursement of City by Developer for certain expenses to be incurred by City in undertaking the review of the Project pursuant to CEQA and preparation of the appropriate agreements to undertake the Project.

E. City and Developer desire to enter into this Agreement for the purpose of establishing the rights and responsibilities of each party with respect to the processing of Developer's application for the Project, the preparation of the environmental document for the Project and the reimbursement of the costs associated therewith.

NOW, THEREFORE, in consideration of performance by the parties of the promises, covenants, and conditions herein contained and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Application Processing.

City shall diligently process Developer's application for the Project in compliance with applicable laws and shall cause to be prepared an environmental document for the Project in compliance with the CEQA (California Public Resources Code Section 21000 *et seq.*) and regulations promulgated pursuant thereto. Developer acknowledges that this Agreement does not constitute a commitment by

City to take any particular action either in favor of or against the merits of Developer's application.

2. Payment.

A. Developer shall be responsible for, and shall reimburse City for, all direct and indirect costs, fees and expenses of City related to review and City's undertaking of the planning, design, and permitting for the Project, including processing and negotiating any permits, entitlements and proposed conditions of approval for the Project. Developer's reimbursement shall be inclusive of any City efforts to facilitate the review and approval of the Project by other agencies, as may be needed, and the processing of the approvals which requires an analysis and approval under CEQA laws and regulations (the "City Costs"). City Costs include, but are not limited to: (a) City Attorneys' fees, at a rate not to exceed \$350.00 per hour including but not limited to, for drafting, negotiating and reviewing this Agreement, contracts with Consultants, contracts with other agencies and public agencies, and any documents that the City deems necessary in connection with undertaking of the planning, design, permitting, and for the processing of the Project approvals, (b) staff time required for drafting, negotiating and reviewing this Agreement, contracts with Consultants, and contracts with other agencies and public agencies, and any documents that the City deems necessary in connection with undertaking of the processing, planning, design, and permitting for the Project; and (c) all costs associated with Sections 2(a) and 2(b) above, including consultant costs and fees; (d) all costs related to studies, reports and design services for the development of any Project-related infrastructure; (e) all costs related to investigations of the Property or the Project; and (f) any other fees and costs deemed necessary by the City in order to process, review, or act upon or complete the Project. Developer's obligation to deposit and reimburse City Costs are in addition to Developer's duty to indemnify, defend, and hold harmless City, as set forth in Section 8, below.

B. Within five (5) days of the City's approval of this Agreement, Developer shall pay to City a lump sum deposit in the amount of ONE HUNDRED AND NINETY-SEVEN THOUSAND AND ONE HUNDRED AND THIRTY-EIGHT DOLLARS AND EIGHTY-EIGHT CENTS (\$197,138.88) ("Initial Deposit"), which deposit represents City's best estimate of Developer's ultimate obligation hereunder with respect to the Expenses.

C. If City subsequently determines that the Initial Deposit is insufficient, which determination shall be based on the actual Expenses incurred by the City hereunder, then upon receipt of twenty (20) days written notice from City, Developer shall pay City a lump sum deposit in the amount reasonably estimated by City to be sufficient to cover the excess (each a "Supplemental Deposit"). If Developer does not pay the Initial Deposit per Section 2.B above or any Supplemental Deposit when required under this Section 2.C. to City, work on the environmental document shall be suspended until the applicable Initial or Supplemental Deposit is made to City.

D. City shall provide Developer with a monthly accounting of City's use of the Deposits to pay Expenses within a reasonable time after the end of each calendar month during the term of this Agreement.

E. City shall promptly refund to Developer any amount of Developer's Deposits that remain unexpended at the end of the Project as well as provide Developer with a final monthly accounting of City's use of the Deposits. For purposes of this paragraph, "the end of the Project" means the time at which: (i) City's contractual liabilities to the CEQA Consultant under the Consultant Agreement and the Additional Consultants under the Contracts have been satisfied; and (ii) the earliest to occur of (a) City has rendered a final decision on the Project or (b) Developer has abandoned the Project pursuant to Section 3 below. As of the date of any termination of this Agreement, such termination shall also terminate any further funding or other obligations hereunder; except that Developer shall remain obligated to reimburse City for City's Expenses incurred prior to the date of termination of this Agreement.

F. Notwithstanding any provision herein to the contrary, the parties agree that the City's obligations to make payments to the CEQA Consultant pursuant to the Consultant Agreement and to the Additional Consultants pursuant to any Contracts shall be independent of and governed solely by the provisions of the Consultant Agreement and Contracts, as applicable. City shall make any payments to the CEQA Consultant when provided by the Consultant Agreement and to the Additional Consultants pursuant to the Contracts irrespective of any dispute arising hereunder.

3. Abandonment of Project. This Agreement does not constitute a commitment by Developer to proceed with the Project and Developer may choose to not proceed with the Project at any time for any or no reason whatsoever. If Developer should abandon the Project prior to a final decision on its application by City, then Developer may give written notice of such abandonment to City and City shall immediately suspend preparation of the environmental document and all other aspects of the environmental review for the Project.

4. Conflicts of Interest.

A. During the existence of City's contract with the CEQA Consultant, and for a period of one (1) year after final resolution of Developer's application for the Project, neither Developer, nor any of its representatives, agents or other persons acting in concert with Developer, shall enter into any financial relationship with the CEQA Consultant or with any City official or employee. Nor, during such period, shall Developer propose to enter into any future relationship with the CEQA Consultant or with any City official or employee.

B. Developer makes the following warranties for the 12 month period preceding the submission of its application for the Project. Developer warrants that it has not entered into any arrangement to pay financial consideration to, and has not

made any payment to, the CEQA Consultant or any of the CEQA Consultant's agents or employees. Developer further warrants that it has not entered into any arrangement to pay financial consideration to, and has not made any payment to, any City official, agent or employee that would create a legally cognizable conflict of interest as defined in the Political Reform Act (California Government Code Sections 87100 *et seq.*).

C. The parties acknowledge and agree that processing of Developer's application for the Project is not contingent on the hiring of any specific contractor.

D. The parties acknowledge and agree that Developer's duty to reimburse City is not contingent upon City's approval or disapproval of the Project or upon the result of any action of the City but that it is contingent on City's compliance with the terms and conditions of this Agreement.

E. Neither Developer nor its officers, employees or agents shall communicate with the CEQA Consultant or any Additional Consultant during the term of this Agreement, unless specifically authorized or requested to do so in writing by City.

5. Approval of Consultant Contract and Contracts. City shall promptly provide copies of (a) the proposed Consultant Contract; (b) any and all proposed Contracts; and (c) proposed amendments and supplements to the Consultant Contract and Contracts that would have the effect of revising the schedule or scope of work for such CEQA Consultant or Additional Consultant, prior to the execution thereof by City. Developer shall have a reasonable time thereafter within which to review and provide comments to and consult with City on such proposed Consultant Contract and Contracts and amendments and supplements thereto, but shall have no right to prevent their execution; *provided, however,* that Developer shall not be obligated to pay Expenses based upon a change in scope or schedule of any of them unless Developer has reviewed and approved such Consultant Contract or Contract or change thereto. Notwithstanding anything in this Agreement to the contrary, City may not revise, supplement or amend the scope of work proposed to be undertaken by the Environmental Consultant pursuant to the Consultant Contract without obtaining Developer's prior consent. Upon the execution of (i) the Consultant Contract and any amendments thereto by Environmental Consultant and City; and (ii) any Contracts and any amendments thereto by Additional Consultants and City; Developer's obligations with respect to such executed Consultant Contract and Contracts (each as amended) will be governed by the terms and conditions of this Agreement.

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below, or to such other addresses as the parties may, from time to time, designate in writing pursuant to this section.

City:

City of Irwindale
Attention: Chief Deputy City Clerk
5050 N. Irwindale Avenue
Irwindale, CA 91706

Developer:

Rexford Industrial – 14005 Live Oak, LLC
Attn: Carlos Serra, EVP Construction &
Development
11620 Wilshire Blvd., Suite 1000
Los Angeles, CA 90025

7. Litigation. In the event that either party shall commence any legal action or proceeding to enforce or interpret this Agreement, the prevailing party in such action or proceeding shall be entitled to recover its costs of suit, including reasonable attorney's fees. The venue for any litigation shall be Los Angeles County. In the event of any asserted ambiguity in, or dispute regarding the interpretation of any matter herein, the interpretation of this Agreement shall not be resolved by any rules of interpretation providing for interpretation against the party who causes the uncertainty to exist or against the drafting party. This Agreement shall be governed by and interpreted under the laws of the State of California.

8. Hold Harmless. Developer shall defend, indemnify and hold harmless the City, its elected and appointed officers and employees (collectively, the "Indemnified Parties"), from and against any claims, suits, actions or proceedings, judicial or administrative, for writs, orders, injunction or other relief, damages, liability, cost and expense (including, without limitation, reasonable attorneys' fees) (collectively, "Claims") arising out of a default by Developer of its obligations under this Agreement and the preparation by the City of the environmental document for the Project; provided, however, that the foregoing covenant to defend, indemnify and hold harmless the Indemnified Parties from and against any Claims shall not apply to any Claims (a) arising from the sole negligence, or fraud or intentional misconduct, of any Indemnified Party; or (b) covered by insurance.

9. Entire Agreement. This Agreement represents the entire and integrated agreement between City and Developer as to the subject matter contained herein. This Agreement supersedes all prior oral or written negotiations, representations or agreements. This Agreement may not be amended, nor any provision or breach hereof waived, except in a writing signed by the parties, which writing expressly refers to this Agreement.

10. Time of the Essence. Time is of the essence of each and every provision of this Agreement.

11. Counterparts. This Agreement may be executed in two or more fully or partially executed counterparts, each of which will be deemed an original binding the signer thereof against the other signing parties, but all counterparts together will constitute one and the same instrument.

12. Severability. Any term or provision of this Agreement that is invalid or unenforceable in any jurisdiction will, as to such jurisdiction, be ineffective to the extent of such invalidity or unenforceability without rendering invalid or unenforceable the remaining terms and provisions of this Agreement, or affecting the validity or enforceability of any of the terms or provisions of this Agreement.

13. Further Assurances. Each party, at the request of the other, shall execute, acknowledge or have notarized (if appropriate) and deliver in a timely manner such additional documents, and do such other additional acts, also in a timely manner, as may be reasonably required in order to accomplish the intent and purposes of this Agreement.

[SIGNATURES APPEAR ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties have executed this Agreement
as of the date first written above.

CITY OF IRWINDALE, a municipal
corporation

H. Manuel Ortiz, Mayor

ATTEST:

Laura M. Nieto, MMC
Chief Deputy City Clerk

APPROVED AS TO FORM:

ALESHIRE & WYNDER, LLP

Adrian R. Guerra, City Attorney

“DEVELOPER”:

Rexford Industrial – 14005 Live Oak,
LLC, a California limited liability company

By: _____
Name: Carlos Serra
Title: Executive Vice President,
Development and Construction
Address: 11620 Wilshire Blvd.,
Suite 1000
Los Angeles, CA 90025

By: _____
Name: Bruce Herbkersman
Title: Senior Vice President
Address: 11620 Wilshire Blvd.,
Suite 1000
Los Angeles, CA 90025

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 _____

On _____ before me, _____, Notary Public, personally appeared _____ who 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

☐ INDIVIDUAL
☐ CORPORATE OFFICER

TITLE(S)

☐ PARTNER(S) ☐ LIMITED
☐ GENERAL

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

☐ OTHER _____

DESCRIPTION OF ATTACHED DOCUMENT

TITLE OR TYPE OF DOCUMENT

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SIGNER(S) OTHER THAN NAMED ABOVE

SIGNER IS REPRESENTING:
(NAME OF PERSON(S) OR ENTITY(IES))

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INDIVIDUAL
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PARTNER(S) ☐ LIMITED
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SIGNER IS REPRESENTING:

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

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

City of
IRWINDALE
AGENDA REPORT

Date: September 13, 2023
To: Honorable Mayor and Members of the City Council
From: Julian A. Miranda, City Manager
Issue: Request to approve Amendment No. 2 to the Professional Consulting Contract with Interwest Consulting Group and adopt Resolution No. 2023-68-3446 approving an appropriation adjustment for the use of state grant funds for the Comprehensive Zoning Ordinance Update

City Manager's Recommendation:

- 1) Approve the attached contract Amendment No. 2 with Interwest Consulting Group for the preparation of the Comprehensive Zoning Ordinance Update; and
- 2) Adopt the attached Resolution No. 2023-68-3446, entitled "A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF IRWINDALE, APPROVING APPROPRIATION ADJUSTMENTS FOR THE USE OF STATE GRANT FUNDS FOR THE COMPREHENSIVE ZONING ORDINANCE UPDATE."

Administrative Action:

Submitted by:

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

Prepared by:

Lisa Chou, AICP, Associate Planner

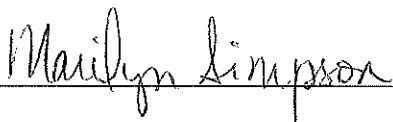
Reviewed by:

Adrian R. Guerra, City Attorney

Kambiz Borhani, Finance Director / City Treasurer

Approved by:

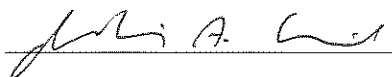
Julian A. Miranda, City Manager





Electronically Approved





Background and Analysis:

On March 25, 2020, the City Council approved the Professional Consulting Contract with Interwest Consulting Group (Interwest) for the preparation of a Comprehensive Zoning Ordinance update, optional tasks and applicable environmental review for a total cost of \$214,860. Of this amount, \$125,000 was to be funded from the \$160,000 SB 2 Planning Grant Program the City was awarded back on February 24, 2020.

On December 8, 2021, the City Council approved Amendment No. 1 to revise the "Schedule of Performance". Although project was anticipated to be completed by June 2021, due to the multiple factors, including the pandemic, scheduling conflicts, limited staffing, and changes in land use legislation, the timeline to complete the project has been delayed. Amendment No. 1 established a revised "Schedule of Performance" that carried the project through January 2023. However, to include the new state mandates regarding housing, provide additional time for community review, and complete the environmental analysis, the timeline for the project has been updated. A revised Schedule of Performance plus an additional fee of \$25,500 which brings the contract total to \$240,360 (\$214,860 + \$25,500) have been included in Amendment No. 2 as Exhibit "A", with an expected completion date of February 2024.

The extended project timeline will include new state mandates for housing which are outside of the original scope of the Comprehensive Zoning Ordinance Update. Staff has also been informed that the additional scope to include the new housing legislation qualifies as pre-approved tasks as laid out by the SB 2 Planning Grant which means the remaining \$35,000 of the \$160,000 grant can now be applied towards this agreement eliminating the need to ask for additional funding from the General Fund.

Fiscal Impact:

There is no fiscal impact to revise the Schedule of Performance or the appropriation of remaining \$35,000 funds from the SB2 Planning Grant. For the remainder of the contract balance, the City Council had also approved \$53,916 (Mining Impact Fund (60%)) and \$35,944 (General Fund (40%)) on April 22, 2020, which is sufficient to cover the remaining costs for this contract.

Attachments:

A – Resolution No. 2023-68-3446

B – Amendment No. 2 to the Professional Services Agreement with Interwest Consulting Group dated September 13, 2023

C – Professional Services Agreement with Interwest Consulting Group dated March 25, 2020

ATTACHMENT "A"

RESOLUTION NO. 2023-68-3446

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF IRWINDALE APPROVING APPROPRIATION ADJUSTMENTS FOR THE USE OF STATE GRANT FUNDS FOR THE COMPREHENSIVE ZONING ORDINANCE UPDATE

WHEREAS, Title 17 of the Irwindale Municipal Code consists of the City's Zoning Ordinance, for which various amendments have been adopted throughout the years and currently requires a Comprehensive Zoning Ordinance Update ("Update") to properly meet the current and future needs of the City; and

WHEREAS, after a Request for Proposals (RFP) process, on March 25, 2020 the City Council approved a Professional Consulting Services Contract with Interwest Consulting Group to perform the Update; and

WHEREAS, the professional services contract between the City and Interwest Consulting Group ("Agreement") for the Update was approved, with a total Contract Sum of \$214,860, for which sufficient funds were included in the FY 2019-2020 Community Development Budget funded by the General Fund; and

WHEREAS, during the City Council meeting on March 25, 2020, City Staff was directed to confirm whether alternate funding sources would be eligible to fund a portion of the cost of the Update; and

WHEREAS, on February 24, 2020, the City received notification from HCD that the City's application for an SB 2 Planning Grant was approved and the City was awarded \$160,000 in grant funds; and

WHEREAS, during the City Council meeting on April 22, 2020, the City Council approved the appropriation of \$125,000 of the \$160,000 SB2 Planning Grant funds to be used toward the Contract Sum per the Council's prior directive to find alternative funding sources; and

WHEREAS, additional funds from the Mining Impact Fund of up to \$89,860 were also identified by staff as an alternate funding source to fund the cost of the Contract Sum per the Council's prior directive to find alternative funding sources; and

WHEREAS, although the Update was anticipated to be completed by June 2021, due to the multiple factors, including the pandemic, scheduling conflicts, limited staffing, and changes in land use legislation, the timeline to complete the project has been delayed. On December 8, 2021, the City Council approved the first Amendment to the Agreement ("First Amendment"), to revise the "Schedule of Performance" due to these delays; and

WHEREAS, as the state has adopted additional housing legislation, the Update must now include new mandates that are outside of the original scope of the project, including, but not limited to, establishing objective standards and updating the

Accessory Dwelling Unit regulations to comply with State laws, requiring a second Amendment to the Agreement ("Second Amendment"); and

WHEREAS, the Second Amendment would amend the scope of services to the Agreement to include additional mandates under new state housing legislation, and would amend the schedule of performance and contract sum as a result of the additional services; and

WHEREAS, Section 1.9 of the Agreement requires that any increase in compensation to the Agreement in excess of \$25,000 must be approved by the City Council; and

WHEREAS, staff has been advised that the remainder of the \$35,000 from the SB2 Planning Grant of \$160,000 can be allocated towards the cost of the Update to cover the new scope of the Agreement, and is now requesting such an allocation.

NOW, THEREFORE, the City Council of the City of Irwindale, California, resolves, determines, and orders as follows:

SECTION 1. The City Council hereby finds the Recitals above true and correct and incorporates them herein by this reference.

SECTION 2. The City Council does hereby approve the Second Amendment to the Contract Services Agreement between the City of Irwindale and Interwest Consulting Group, attached hereto as "Exhibit A".

SECTION 3. The City Council hereby approves an appropriation adjustment to allocate the remaining \$35,000 of the SB2 Planning Grant toward completion of the comprehensive zoning code update. The additional appropriation will have no impact on the General Fund or previously appropriated amounts.

SECTION 4. 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 13th day of September, 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. 2023-68-3446 duly adopted by the City Council of the City of Irwindale, at a regular meeting held on the 13th day of September 2023, by the following vote:

AYES: Councilmembers:

NOES: Councilmembers:

ABSENT: Councilmembers:

ABSTAIN: Councilmembers:

Laura M. Nieto, MMC
Chief Deputy City Clerk

ATTACHMENT "B"

AMENDMENT NO. 2 TO CONTRACT SERVICES AGREEMENT BETWEEN THE CITY OF IRWINDALE AND INTERWEST CONSULTING GROUP

THIS AMENDMENT NO 2 TO CONTRACT SERVICES AGREEMENT (this "Amendment No. 2"), is made and entered into this 13th day of September 2023, by and between the City of Irwindale, a California municipal corporation ("City"), and Interwest Consulting Group, a California corporation ("Consultant" or "Interwest"). City and Consultant are sometimes hereinafter individually referred to as "Party" and hereinafter collectively referred to as the "Parties".

RECITALS

A. City and Consultant entered into that certain Contract Services Agreement, (herein "Agreement") dated September 13, 2023 for Preparation of the Ordinance, Community Outreach, and Adoption of the Irwindale Zoning Ordinance Update, as those terms are defined in the Agreement.

B. The Agreement established a maximum Contract Sum of Two Hundred Fourteen Thousand Eight Hundred and Sixty Dollars (\$214,860.00).

C. By this Amendment No. 2, City and Consultant desire to amend the Agreement in accordance with the provisions of section 3.2 of the Agreement to account for a revised Schedule of Performance.

D. By this Amendment No. 2, City and Consultant desire to amend the Agreement in accordance with the provisions of section 2.1 of the Agreement to increase in the Contract Sum from \$214,860.00 to \$240,360.

E. Pursuant to Section 1.9 of this Agreement, any increase in compensation up to ten percent (10%) of the Contract Sum or \$25,000 may be approved by the Contract Officer. Any increase in compensation exceeding \$25,000 must be approved by the City Council. The City Council has approved this amendment to the Agreement pursuant to Section 1.9.

NOW, THEREFORE, in consideration of the mutual benefits to be derived by City and Consultant, and the promises contained herein, it is hereby agreed as follows:

1. Section 2.1 of the Agreement is hereby amended to read in its entirety as follows (added text shown in ***bold italics***, deleted text shown in ~~strike through~~):

"Contract Sum. Subject to any limitations set forth in this Agreement, City agrees to pay Consultant 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 ~~TWO HUNDRED FOURTEEN THOUSAND EIGHT HUNDRED SIXTY DOLLARS (\$214,860.00)~~ ***TWO HUNDRED FORTY THOUSAND THREE HUNDRED SIXTY DOLLARS (\$240,360.00)*** (the "Contract Sum"), unless additional compensation is approved pursuant to Section 1.9."

2. Section 3.2 of the Agreement is hereby amended to read in its entirety as follows (added text shown in ***bold italics***, deleted text shown in ~~strikethrough~~):

"Schedule of Performance. Consultant shall commence the services pursuant to this Agreement upon receipt of a written notice to proceed and shall perform all services within the period(s) established in the "Schedule of Performance" attached hereto as Exhibit "D", dated ~~December 2, 2021~~ ***August 15, 2023***, and incorporated herein by this reference. When requested by the Consultant, 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) day cumulatively."

3. Exhibit "D" of the Agreement entitled "Schedule of Performance/Timeline" shall be substituted and superseded in its entirety by the "Schedule of Performance/Timeline" contained in Exhibit "A" attached hereto.

4. Except as expressly amended hereby, the Agreement remains in full force and effect as originally executed. All rights and obligations of the parties under the Agreement that are not expressly amended by this amendment shall remain unchanged.

IN WITNESS WHEREOF, the parties hereto have executed this Amendment No. 2 on the date and year first-above written.

CITY:

CITY OF IRWINDALE, a municipal corporation

H. Manuel Ortiz, Mayor

ATTEST:

Laura M. Nieto, MMC
Chief Deputy City Clerk

APPROVED AS TO FORM:

ALESHIRE & WYNDER, LLP

Adrian R. Guerra, City Attorney

CONSULTANT:

Interwest Consulting Group

15140 Transistor Lane

Huntington Beach, CA 92649

By: _____
Name: James M. Ross
Title: Public Works Group Leader

By: _____
Name:
Title:
Address:

Two corporate officer signatures required when Consultant 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. CONSULTANT'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 CONSULTANT'S BUSINESS ENTITY.

Exhibit “D” of the Agreement entitled “Schedule of Performance/Timeline” shall be substituted and superseded in its entirety as follows:

EXHIBIT “D”

SCHEDULE OF PERFORMANCE/TIMELINE

Proposal Dated August 15, 2023

Project Schedule	
Milestones	Timeframe
Project Initiation	Spring 2020
Existing Conditions Analysis and Zoning Code Review	Summer-Fall 2020
Administrative Draft Zoning Code	Winter 2021 – Summer 2022
Public Review Draft Zoning Code	Fall 2022 – Summer 2023
Joint Planning Commission/City Council Study Session	July 19, 2023
Draft Environmental Document	July – September 2023
Final Draft Zoning Code	August – October 2023
Adoption Hearings/Final Zoning Code Document	September 2023 - February 2024

ATTACHMENT "C"

AGREEMENT FOR CONTRACT SERVICES BETWEEN THE CITY OF IRWINDALE AND INTERWEST CONSULTING GROUP

THIS AGREEMENT FOR CONTRACT SERVICES (herein "Agreement") is made and entered into this 25th day of March 2020 by and between the City of Irwindale, a California municipal corporation ("City") and Interwest Consulting Group ("Consultant"), 1500 S. Haven Avenue, Suite 220, Ontario, CA 91761. City and Consultant are sometimes hereinafter individually referred to as "Party" and hereinafter collectively referred to as the "Parties".

RECITALS

A. City has sought, by issuance of a Request for Proposals or Invitation for Bids, the performance of the services defined and described particularly in Article 1 of this Agreement.

B. Consultant, 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.

C. Pursuant to the City of Irwindale's Municipal Code, City has authority to enter into and execute this Agreement.

D. The Parties desire to formalize the selection of Consultant for performance of those services defined and described particularly in Article 1 of this Agreement and desire that the terms of that performance be as particularly defined and described herein.

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 CONSULTANT

1.1 Scope of Services.

In compliance with all terms and conditions of this Agreement, the Consultant 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, Consultant 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. Consultant shall at all times faithfully, competently and to the best of its ability, experience and talent, perform all services described herein. Consultant 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 Consultant's Proposal.

The Scope of Service shall include the Consultant's proposal 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.

Consultant 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.

Consultant 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. Consultant 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 Consultant'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, Consultant warrants that Consultant (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, Consultant warrants that Consultant 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 Consultant discover any latent or unknown conditions, which will materially affect the performance of the services hereunder, Consultant shall immediately inform the City of such fact and shall not proceed except at Consultant's risk until written instructions are received from the Contract Officer.

1.6 Care of Work.

The Consultant 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 Prevailing Wages.

Consultant is advised of the requirements of California Labor Code Section 1720 which provides: prevailing wage rates apply to "[construction, alteration, demolition, installation, or repair work done under contract and paid for in whole or in part out of public funds, except work done directly by any public utility company pursuant to order of the Public Utilities Commission or other public authority." It is the Parties' understanding that this Project shall not be required to pay prevailing wages pursuant to Sections 1770 – 1781 of the California Labor Code and 33423 – 33426 of the California Health and Safety Code. To this end, Consultant acknowledges and agrees that should any third party, including but not limited to the Director of the Department of Industrial Relations ("DIR"), require Consultant or any of its contractors or subcontractors to pay the general prevailing wage rates of per diem wages and overtime and holiday wages determined by the Director of the DIR under Prevailing Wage Law, then Consultant shall indemnify, defend, and hold City harmless from any such determinations, or actions (whether legal, equitable, or administrative in nature) or other proceedings, and shall assume all obligations and liabilities for the payment of such wages and for compliance with the provisions of the Prevailing Wage Law. The City make no representation that any work completed by Consultant is or is not subject to Prevailing Wage Law.

1.8 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.

1.9 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 Consultant, 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 Consultant. 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 Consultant that the provisions of this Section shall not apply to services specifically set forth in the Scope of Services. Consultant 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 Consultant anticipates and that Consultant 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.

1.10 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 Consultant 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 TWO HUNDRED FOURTEEN THOUSAND EIGHT HUNDRED SIXTY DOLLARS (\$214,860.00) (the "Contract Sum"), unless additional compensation is approved pursuant to Section 1.9.

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 Consultant'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 Consultant 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 Consultant is required to attend additional meetings to facilitate such coordination, Consultant shall not be entitled to any additional compensation for attending said meetings.

2.4 Invoices.

Each month Consultant 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, Consultant 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. Consultant shall not invoice City for any duplicate services performed by more than one person.

City shall independently review each invoice submitted by the Consultant 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 Consultant which are disputed by City, or as provided in Section 7.3, City will use its best efforts to cause Consultant to be paid within forty-five (45) days of receipt of Consultant's correct and undisputed invoice; however, Consultant 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 Consultant for correction and resubmission. Review and payment by City for any invoice provided by the Consultant shall not constitute a waiver of any rights or remedies provided herein or any applicable law.

2.5 Waiver.

Payment to Consultant for work performed pursuant to this Agreement shall not be deemed to waive any defects in work performed by Consultant.

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.

Consultant 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 Consultant, 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 Consultant, 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 Consultant 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 Consultant be entitled to recover damages against the City for any delay in the performance of this Agreement, however caused, Consultant'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 one (1) 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 Consultant.

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

Paul Junker
(Name)

Planning Services Group Leader
(Title)

Nick Pergakes, AICP
(Name)

Project Manager
(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 Consultant and devoting sufficient time to personally supervise the services hereunder. All personnel of Consultant, 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 Consultant without the express written approval of City. Additionally, Consultant shall utilize only competent personnel to perform services pursuant to this Agreement. Consultant shall make every reasonable effort to maintain the stability and continuity of Consultant's staff and subcontractors, if any, assigned to perform the services required under this Agreement. Consultant shall notify City of any changes in Consultant'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 Consultant.

Consultant 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. Consultant shall not at any time or in any manner represent that Consultant or any of Consultant's officers, employees, or

agents are in any manner officials, officers, employees or agents of City. Neither Consultant, nor any of Consultant'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. Consultant expressly waives any claim Consultant may have to any such rights.

4.3 Contract Officer.

The Contract Officer shall be the City Manager or such person as may be designated by the City Manager. It shall be the Consultant's responsibility to assure that the Contract Officer is kept informed of the progress of the performance of the services and the Consultant 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 Consultant, 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 Consultant's employees, servants, representatives or agents, or in fixing their number, compensation or hours of service. Consultant 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. Consultant 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 Consultant in its business or otherwise or a joint venturer or a member of any joint enterprise with Consultant.

4.5 Prohibition Against Subcontracting or Assignment.

The experience, knowledge, capability and reputation of Consultant, its principals and employees were a substantial inducement for the City to enter into this Agreement. Therefore, Consultant 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 Consultant, 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 Consultant or any surety of Consultant of any liability hereunder without the express consent of City.

ARTICLE 5. INSURANCE AND INDEMNIFICATION

5.1 Required Insurance Policies.

Without limiting Consultant's indemnification of the City and prior to commencement of services, Consultant shall obtain, provide 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:

(a) Comprehensive General Liability Insurance. Consultant 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 \$1,000,000 per occurrence, \$2,000,000 general aggregate, for bodily injury, personal injury, and property damage, including without limitation, blanket contractual liability. 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. Consultant 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 Consultant 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 \$1,000,000 combined single limit for each accident.

(c) Professional Liability (errors & omissions) Insurance. Consultant shall maintain professional liability insurance that covers the services to be performed in connection with this Agreement, in the minimum amount of \$1,000,000 per claim and in the aggregate. Any policy inception date, continuity date, or retroactive date must be before the effective date of this agreement and Consultant agrees to maintain continuous coverage through a period no less than three years after completion of the services required by this Agreement.

(d) Workers' Compensation Insurance. Consultant shall maintain Workers' Compensation Insurance (Statutory Limits) and Employer's Liability Insurance (with limits of at least \$1,000,000).

5.2 Other Provisions or Requirements.

(a) Proof of Insurance. Consultant shall provide certificates of insurance to City as evidence of the insurance coverage required in section 5.1, and for purposes of Workers' Compensation Insurance Consultant shall submit a Waiver of Subrogation endorsement in favor of City, its officers, agents, employees and volunteers. Should the Consultant be a sole proprietor, the Consultant shall complete and submit a declaration of sole proprietors form to the City in lieu of proof of Workers' Compensation as it not required for sole proprietors. The insurance certificates and endorsements must be approved by City's Risk Manager prior to commencement of performance of services. 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.

(b) Duration of Coverage. Consultant shall procure and maintain each of the insurance policies required in Section 5.1 for the duration of the Agreement, and any extension thereof.

(c) Primary/Noncontributing. Coverage provided by Consultant shall be primary and any insurance or self-insurance procured or maintained by City shall be excess to the Consultant's insurance and shall not 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.

(d) 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 Consultant or City will withhold amounts sufficient to pay premium from Consultant payments. In the alternative, City may cancel this Agreement.

(e) Acceptable Insurers. All insurance policies shall be issued by an insurance company currently authorized by the Insurance Commissioner to transact business of insurance or is on the List of Approved Surplus Line Insurers in the State of California, with an assigned policyholders' Rating of A- (or higher) and Financial Size Category Class VI (or larger) in accordance with the latest edition of Best's Key Rating Guide, unless otherwise approved by the City's Risk Manager.

(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 Consultant or others providing insurance evidence in compliance with these specifications to waive their right of recovery prior to a loss. Consultant hereby waives its own right of recovery against City, and shall require similar written express waivers and insurance clauses from each of its subconsultants.

(g) Enforcement of Contract Provisions (non estoppel). Consultant acknowledges and agrees that any actual or alleged failure on the part of the City to inform Consultant 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 Consultant maintains higher limits than the minimums shown above, the City requires and shall be entitled to coverage for the higher limits maintained by the Consultant. 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. Consultant 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 liability and automobile policies shall provide or be endorsed to provide that City and its officers, officials, employees, 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 by the City in writing.

(l) Separation of Insureds. A severability of interests provision must apply for all additional insureds ensuring that Consultant'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. Consultant agrees to ensure that its subconsultants, subcontractors, and any other party involved with the services, which are the subject of this Agreement, who is brought onto or involved in these services by Consultant, provide the same minimum insurance coverage and endorsements required of Consultant. Consultant 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. Consultant agrees that upon request, all agreements with consultants, subcontractors, and others engaged in the services will be submitted to City for review.

(n) City's Right to Revise Specifications. The City reserves the right at any time during the term of the Agreement to change the amounts and types of insurance required by giving the Consultant ninety (90) days advance written notice of such change. If such change results in substantial additional cost to the Consultant, the City and Consultant may renegotiate Consultant's compensation.

(o) Deductibles/ Self-insured Retentions. Any deductibles and self-insured retentions must be declared to and approved by City. At the option of the City, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions with respect to the City, its officers, officials, employees, agents and volunteers, or the Consultant shall provide a financial guarantee satisfactory to the City guaranteeing payment of losses and related investigations, claims administration and defense expense.

(p) Timely Notice of Claims. Consultant shall give City prompt and timely notice of claims made or suits instituted that arise out of or result from Consultant's

performance under this Agreement, and that involve or may involve coverage under any of the required liability policies.

(q) Additional Insurance. Consultant 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 Performance Bond.

Concurrently with execution of this Agreement, Contractor shall deliver to City a performance bond in the sum of the amount of this Agreement, in the form provided by the City Clerk, which secures the faithful performance of this Agreement, unless such requirement is waived by the Contract Officer. The bond shall contain the original notarized signature of an authorized officer of the surety and affixed thereto shall be a certified and current copy of his power of attorney. The bond shall be unconditional and remain in force during the entire term of the Agreement and shall be null and void only if the Contractor promptly and faithfully performs all terms and conditions of this Agreement.

5.4 Indemnification.

(a) Indemnity for Professional Liability. Consultant shall indemnify, protect, defend and hold harmless City and any and all of its officers, officials, employees and agents ("Indemnified Parties") from and against any and all losses, liabilities, damages, costs and expenses, including legal counsel's fees and costs where the same arise out of, are a consequence of, or are in any way attributable to whole or in part by, any negligent or wrongful act, error or omission of Consultant, its officers, agents, employees or Subconsultants (or any agency or individual that Consultant shall bear the legal liability thereof) in the performance of professional services under this agreement.

(b) Indemnity for Other than Professional Liability. Other than in the performance of professional services and to the full extent permitted by law, Consultant shall indemnify, defend and hold harmless City, and any and all of its employees, officials and agents from and against any liability (including liability for claims, suits, actions, arbitration proceedings, administrative proceedings, regulatory proceedings, losses, expenses or costs of any kind, whether actual, alleged or threatened, including legal counsel fees and costs, court costs, interest, defense costs, and expert witness fees), where the same arise out of, are a consequence of, or are in any way attributable to, in whole or in part, the performance of this Agreement by Consultant or by any individual or agency for which Consultant is legally liable, including but not limited to officers, agents, employees or subcontractors of Consultant, but excluding such claims or liabilities to the extent caused by the sole negligence or willful misconduct of the City.

ARTICLE 6. RECORDS, REPORTS, AND RELEASE OF INFORMATION

6.1 Records.

Consultant 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 Consultant's business, custody of the books and records may be given to City, and access shall be provided by Consultant's successor in interest. Notwithstanding the above, the Consultant 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.

Consultant 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. Consultant 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, Consultant agrees that if Consultant 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 Consultant is providing design services, the cost of the project being designed, Consultant shall promptly notify the Contract Officer of said fact, circumstance, technique or event and the estimated increased or decreased cost related thereto and, if Consultant 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 Consultant, 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 Consultant 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 Consultant will be at the City's sole risk and without liability to Consultant, and Consultant's guarantee and warranties shall not extend to such use, reuse or assignment. Consultant may retain copies of such documents for its own use. Consultant 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 Consultant fails to secure such assignment, Consultant shall indemnify City for all damages resulting therefrom. Moreover, Consultant 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 Consultant in performance of this Agreement shall be considered confidential, unless such information is in the public domain or already known to Consultant. Consultant 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) Consultant, 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 Consultant gives City notice of such court order or subpoena.

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

(d) Consultant shall promptly notify City should Consultant, 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 Consultant or be present at any deposition, hearing or similar proceeding. Consultant agrees to cooperate fully with City and to provide City with the opportunity to review any response to discovery requests provided by Consultant. 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 Consultant 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 Consultant is in default under the terms of this Agreement, the City shall not have any obligation or duty to continue compensating Consultant for any work performed after the date of default. Instead, the City may give notice to Consultant of the default and the reasons for the default. The notice shall include the timeframe in which Consultant 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 Consultant 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 Consultant 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 Consultant'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.

Consultant hereby authorizes City to deduct from any amount payable to Consultant (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 Consultant's acts or omissions in performing or failing to perform Consultant'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 Consultant, 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 Consultant 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 Consultant 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, Consultant 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 Consultant, except that where termination is due to the fault of the Consultant, the period of notice may be such shorter time as may be determined by the Contract Officer. In addition, the Consultant 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 Consultant may determine. Upon receipt of any notice of termination, Consultant shall immediately cease all services hereunder except such as may be specifically approved by the Contract Officer. Except where the Consultant has initiated termination, the Consultant 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 Consultant has initiated termination, the Consultant 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 Consultant.

If termination is due to the failure of the Consultant 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 Consultant 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 Consultant 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 Consultant, 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 Consultant or to its successor, or for breach of any obligation of the terms of this Agreement.

8.2 Conflict of Interest.

Consultant 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 Consultant's performance of services under this Agreement. Consultant 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. Consultant 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 Consultant 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.

Consultant 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. Consultant 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.

Consultant 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 Consultant 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, Consultant 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, California 91706 and in the case of the Consultant, 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 Consultant 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. Consultant 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. Consultant 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. Consultant 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 _____

9.7 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) 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.

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

CITY:

CITY OF IRWINDALE, a municipal
corporation

Albert F. Ambriz, Mayor

ATTEST:

Laura M. Nieto, MMC
Deputy City Clerk

APPROVED AS TO FORM:

ALESHIRE & WYNDER, LLP

Fred Galante, City Attorney

CONSULTANT:

Interwest Consulting Group

15140 Transistor Lane

Huntington Beach, CA 92649

By: _____
Name: James M. Ross
Title: Public Works Group Leader

By: _____
Name:
Title:
Address:

Two corporate officer signatures required when Consultant 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. CONSULTANT'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 CONSULTANT'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 _____

On _____ before me, _____, Notary Public, personally appeared _____ who 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	_____
☐ ATTORNEY-IN-FACT ☐ GENERAL	NUMBER OF PAGES
☐ TRUSTEE(S)	_____
☐ GUARDIAN/CONSERVATOR	DATE OF DOCUMENT
☐ OTHER _____	_____
_____	_____
_____	SIGNER(S) OTHER THAN NAMED ABOVE

SIGNER IS REPRESENTING:
(NAME OF PERSON(S) OR ENTITY(IES))

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 _____

On _____ before me, _____, Notary Public, personally appeared _____ who 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(S) OTHER THAN NAMED ABOVE

SIGNER IS REPRESENTING:
(NAME OF PERSON(S) OR ENTITY(IES))

EXHIBIT "A"

SCOPE OF SERVICES

Proposal Dated February 3, 2020

Scope of Work

Below is our proposed scope of services to be completed by the Interwest team for the Irwindale Zoning Ordinance Update. We are flexible regarding the proposed scope of work and will work with you to prepare a more detailed scope when we enter into a contract. We also recognize that it may be necessary to alter the scope as the project progresses to meet the City's needs and would be happy to work with you to do so in order to ensure the successful completion of the project.

Phase 1 | Project Initiation

1.1 Project Kickoff Meeting with City Staff

The Interwest team will meet with City staff to review the draft scope of work for the Zoning Ordinance Update. We will review the general goals for the Zoning Ordinance Update, project schedule, work products, and meetings. For this meeting, we will prepare a detailed schedule with milestones leading to the adoption of the updated Zoning Ordinance.

Deliverables: Kickoff Meeting Agenda, Project Schedule, and Meeting Notes Summary (electronic + hard copies)

1.2 Public Participation Plan

Interwest will prepare a memorandum to City staff formalizing the public participation plan for the Zoning Ordinance Update. Our scope of work currently assumes the following meetings with Planning Commission members, stakeholders, and the public: Zoning Study Sessions (4)

- Stakeholder Interview Meetings
- Community Outreach Meetings (2)
- Zoning Ordinance Adoption Hearings (3)

In addition to meetings with stakeholders and residents, Interwest will prepare information for the City to post on its website. This will include the project scope and schedule, upcoming public participation opportunities, and completed products. There will also be a link to a list-serve sign-up so community members can be notified about upcoming public meetings and new draft products available for review.

Deliverable: Public Participation Plan memo (electronic copy)

1.3 Zoning Study Session 1: Meet with City Staff and Planning Commission

The Interwest team will facilitate a study session with City staff and Planning Commission members to review the existing zoning ordinance, subdivision regulations, and commercial and industrial design guidelines. We will also solicit comments on issues to be addressed in the updated Zoning Ordinance.

Deliverables: Planning Commission PowerPoint Presentation, Meeting Agenda, and Meeting Summary (electronic copies)

1.4 Stakeholder Interviews

Interwest will interview key stakeholders associated with the land development process. Interviews will focus on strengths and weaknesses of the current Zoning Ordinance and possible revisions and additions to the updated Zoning Ordinance. Stakeholders may include property owners, developers, local architects, neighborhood leaders, and other interested residents of Irwindale. We plan to conduct these interviews one-on-one and in small groups, beginning on the same day as Zoning Study Session Number 1.

Deliverable: Stakeholder Interview Questions and Stakeholder Meetings Summary (electronic copies)

Phase 2 | Issues and Approach

2.1 Existing City Documents Review

Interwest will review the City's General Plan, the existing Zoning Ordinance, other applicable chapters of the Irwindale Municipal Code, development standards from other specific plans, the City's Commercial and Industrial Design Guidelines, and other City policy documents applicable to the Zoning Ordinance Update. As part of this task, we will prepare a summary matrix identifying General Plan policies and other items to be implemented in the Zoning Ordinance Update.

Deliverable: Summary Matrix Review of Existing Policies (electronic copy)

2.2 State Law Assessment

Interwest will assess existing compliance of the existing Zoning Ordinance with state and federal law. Based on this assessment, we will identify necessary changes to the Zoning Ordinance to comply with these laws. We will include the results of this assessment in the Annotated Outline (Task 2.4). Some of the items to be included in the assessment are the following:

■ Housing development approvals per SB 35	■ Permit Streamlining Act
■ Density bonus law	■ Project review procedures including public hearings, noticing, and review schedules
■ Transitional and supportive housing	■ Signs (per recent U.S. Supreme Court Reed vs. Town of Gilbert case)
■ Non-conforming multi-family dwellings	■ Telecommunications facilities including small wireless facilities (per FCC rules)
■ Recent Accessory Dwelling Unit laws	
■ Community care facilities	
■ Family day care homes	
■ Emergency shelters	

Deliverable: State Law Assessment memo (electronic copy)

2.3 Zoning Study Session 2: Issues and Alternatives

Interwest will attend a meeting with City staff and Planning Commission members to discuss key issues for the Zoning Code Update and the preferred approach to address these issues. Topics to discuss may include the overall Code structure, new land use classification systems, the introduction of new zoning districts, adding new regulations for certain types of uses, modifying administrative procedures, and modifying development standards. We will also ask City staff to identify specific issues with the current zoning code that should be addressed – sections of the existing code that are ambiguous, incomplete or inconsistent. Within this discussion we will review “best practices” from other communities that could be introduced in Irwindale.

A Zoning Ordinance Evaluation memo identifying what was discussed in the study session and potential ideas and recommendations to address the issues in the existing zoning ordinance will be prepared.

Deliverable: Zoning Evaluation Memo (electronic copy)

2.4 Annotated Outline

Based on the outcome of the prior tasks, Interwest will prepare a detailed, annotated outline for the updated Zoning Ordinance. The outline will identify the structure of the Zoning Ordinance, revisions to the existing Zoning Ordinance, and new provisions to be added. During this stage, the project team will also produce a template example showing the layout and structure of the documents. This will be submitted for City review and comments. Interwest will ask that City staff carefully review and comment on the annotated outline to ensure our efforts align with City staff's expectations.

Deliverable: Annotated Outline Memo and Document template (electronic copy)

Phase 3 | Administrative Draft Zoning Ordinance

After laying the groundwork for the updated Zoning Ordinance, we will roll up our sleeves and prepare draft sections for City staff review. This will be a collaborative effort between the City staff and the consultant team. It is important that staff at all levels knows what changes are being proposed and where familiar sections may be moving. We also like staff to provide their suggestions on where elements of the code should reside and what additional regulatory guidance would be helpful to the public. Ultimately, the planner at the public counter will need to be able to explain some provision of the zoning code to a member of the public – it's important to us that information is easy to find, easy to read, and easy to interpret. Interwest will maintain an ongoing list or matrix of changes to show what items will be revised, modified, or moved to another section of the Zoning Ordinance.

In addition to working with Planning Department staff, we encourage involvement from other departments, including Public Works, Building and Safety, and Recreation. These other departments are sometimes overlooked in planning efforts and they can provide valuable input on development standards. We anticipate bi-weekly conference calls or in-person meetings with City staff to discuss detailed questions about the draft sections as we prepare them. With this approach, City staff will be involved with incremental decision making during the drafting process and will help produce draft sections that are consistent with the City's unique needs, goals, and expectations. We anticipate that the Zoning Ordinance will include the main components described below.

3.1 Zoning Map and Districts

We have found it helpful to prepare a draft zoning map as an early item during a Zoning Ordinance Update. Based on our experience working on zoning code updates, basic foundational GIS work would include setting up the base map template, reviewing the data, and highlighting parcels that are inconsistent with the General Plan. Secondary tasks would include drafting changes at the parcel level, providing review materials and mapping, delivery of final data, and an updated zoning map. Preparing the zoning map early provides adequate time to review the draft map, ensure its accuracy, and request revisions. Since the City has GIS staff capable of producing the updated zoning map in GIS, Interwest will work with staff directly to produce the map with the updated zoning designations.

Interwest will work with City staff to determine zoning designations that are needed to be consistent with and implement the City's General Plan. For example, the General Plan calls for new land use designations, such as open space/easements, regional commercial, public/institutional, and industrial/business park designations for which there are no corresponding zoning districts in the current code.

3.2 Land Use Regulations

For all zoning districts, we will review permitted, conditionally permitted, and prohibited uses with City staff and adjust accordingly. These land use regulations will employ up-to-date terminology reflecting recent changes in State law. To the extent possible, regulations will apply generally to land use categories rather than individual land uses. As part of this subtask, we will develop a preliminary list of uses requiring special standards and definitions for all land use categories.

3.3 Development Standards

Interwest will prepare development standards for each zoning district. For ease of use, development standards will be shown in tables to the maximum extent possible, and diagrams and illustrations will be used to clarify more complex standards. Development standards will be informed by our team's expertise in urban design and development regulations. We will also review existing specific plans and planned developments, to identify standards that are working well and should be retained in the updated Zoning Code.

We anticipate that the most substantive changes will be made to encourage and facilitate different forms of manufacturing and office uses, including flex space. Existing residential development standards will also be reviewed and revised to encourage new housing types such as duplexes, townhouses, multi-family dwellings, etc. as determined appropriate for Irwindale and consistent with policies in the General Plan. We will address how the new housing types will fit in and be compatible with the existing character of neighborhoods and districts. Objective multi-family design standards will be developed to meet recent SB 35 legislation and guidelines.

3.4 Supplemental Standards and Regulations

Zoning codes need to address a multitude of issues beyond basic building regulations and site development standards. This includes provisions for topics such as signs, telecommunication facilities, parking lot design, tree preservation, accessory structures, temporary uses, and historic preservation. These provisions will also reflect recent changes in state and federal law. All supplemental standards will be clearly cross-referenced in the land use regulation tables. Regulations applicable to non-conforming uses and structures will be updated, as well as those that govern protection of historic resources.

3.5 Administration and Enforcement Provisions

A key goal will be crafting an updated Zoning Ordinance that is easy to use for applicants, City staff, City officials, and the public. An important part of a user-friendly code is clear and concise permitting and administration provisions. Topics covered will include decision-making authorities (e.g. City Council, Planning Commission, Planning Director, other planners), permit review and approval process, public hearings and noticing, appeals, and procedures. As a part of this task, Interwest will also review and provide input on the City's development application forms.

3.6 Graphics and Illustrations

An effective and user-friendly Zoning Ordinance needs to include graphics and illustrations that clarify the meaning and intent of the zoning standards and regulations. We will prepare graphics and illustrations to be inserted into the public review draft. The illustrations included in this proposal are an example of the types of rich graphical content that we will prepare for the Irwindale Zoning Ordinance.

3.7 Zoning Study Session 3: Special Topics

During the preparation of the draft Zoning Ordinance sections, questions will likely arise that warrant early public input. We have found it helpful to hold a session to discuss these questions prior to the completion of the draft Zoning Code. This will allow us to receive guidance and input on specific issues and to potentially diffuse controversy associated with these issues. Following this workshop, we will incorporate feedback into the preparation of the public review draft code.

a) <i>Deliverables:</i>			
■ Draft Zoning Districts Memo	■ Supplemental Regulations	Standards and	
■ Draft Zoning District Regulations	■ Administration and Provisions	Enforcement	

Task 4 | Public Review Draft Zoning Ordinance

4.1 Public Review Draft Ordinance

Following the third study session, Interwest will prepare a revised draft zoning ordinance for public review and comment. The Public Review Draft Ordinance will be complete, including all illustrations and maps, and will be the basis for the project description of the environmental assessment. Rather than create a separate website, we recommend that the Draft Zoning Code be hosted on the City of Irwindale's website. This will encourage residents to visit the site for information and to download drafts.

Interwest will prepare a revised public draft Zoning Ordinance addressing comments from all public outreach events. This will be posted on the website for public review prior to the adoption meetings.

4.2 Community Outreach Meetings

Interwest will facilitate two community outreach meetings to review changes introduced by the updated Zoning Ordinance. At these meetings, we will review the Zoning Ordinance format, new regulations and development incentives, and proposed land use processes. Interwest will also clarify how new zoning regulations change existing zoning districts and explain the factors that shaped the changes and the alternative strategies considered in their development.

4.3 Environmental Review

The focus of this effort is to update the Zoning Code to reflect the existing City of Irwindale General Plan. The General Plan was adopted with certification of an environmental impact report (EIR) in December 2006. (SCH# 2005071047) The General Plan evaluated in the EIR contained several policies regarding review and revision of the zoning code to implement the General Plan. Provided that the proposed Zoning Code revisions are consistent with the General Plan, we recommend preparation of an Addendum pursuant to CEQA Guidelines §15164. Because land uses evaluated in the General Plan EIR will not change significantly, we do not believe that the update of the Zoning Code would create new significant impacts that are not already evaluated in the EIR. The use of an Addendum builds on the investment in the General Plan made by the City, and significantly shortens the time period for consideration of the project. Finally, provided that the City's decision to use an Addendum for this project is supported with substantial evidence on the record, the decision enjoys the same level of legal protection as the General Plan EIR if challenged.

PlaceWorks will prepare an Administrative Draft Addendum following a format discussed during the kickoff meeting. Our default format for an Addendum follows the findings in §15162 rather than using an initial study. If a formal initial study is requested, we will need to increase the budget and scope accordingly. All impacts identified in the General Plan EIR will be reviewed in the context of the proposed changes. One administrative draft will be provided for review. The final draft of the Addendum will be used to support the CEQA determination during the hearing(s) for the proposed project.

Assumptions for Preparing the EIR Addendum:

- No distribution of the document
- Filing fees to be paid by the City
- No technical studies will be prepared (i.e. traffic, air quality, greenhouse gas analysis, noise)
- Electronic copy of the General Plan EIR is available for review and use by the consultant team

	<i>a) Deliverables:</i>
☞	Public Review Zoning Ordinance (5 hard copies and electronic version)
☞	Final Public Review Zoning Ordinance (5 hard copies and electronic version)
☞	Administrative Draft Addendum (5 hard copies and electronic version)
☞	Final Draft Addendum (5 hard copies and electronic version)

Phase 5 | Zoning Ordinance Adoption

5.1 Final Draft Zoning Ordinance Based on the comments received on the Public Review Draft Zoning Ordinance, Interwest will prepare a Revised Public Review Draft Zoning Ordinance for review and adoption by the Planning Commission and City Council. Upon adoption of the Final Zoning Ordinance Update and updated Zoning Map by the City Council, the consultant will prepare a final adopted version with the date of adoption prominently displayed on the front cover and throughout the document to distinguish it as the official document from other versions.

5.2 Zoning Study Session 4

Interwest will facilitate a fourth study session with City staff and Planning Commission members to receive feedback on the Final Draft Zoning Ordinance. We will revise the sections as needed to address comments before attending the adoption hearings.

5.3 Adoption Hearings

Interwest will attend one meeting with the Planning Commission and up to two City Council hearings for adoption of the Zoning Ordinance Update. Following Planning Commission and City Council hearings, Interwest will incorporate all final changes as directed by the City Council and this document will be the final and adopted Zoning Ordinance.

	<i>b) Deliverables:</i>
☞	Public Hearing Materials – including Final Draft Zoning Map and Zoning Ordinance
☞	Adopted Zoning Ordinance (10 bound copies, one electronic copy in Microsoft Word format and one PDF copy)

Optional Tasks

The City of Irwindale has asked for two optional tasks that are in addition to the Zoning Ordinance Update. Below is our response for these optional tasks.

Option 1: Commercial and Industrial Design Guidelines Update

Interwest will prepare highly illustrative design guidelines implementing Irwindale's design objectives for commercial and industrial development. The guidelines will convey to the reader Irwindale's expectations for high quality development that helps realize the vision for the City of Irwindale and strengthens the character of the community. Design guidelines will also address the public realm, including streetscapes and amenities to contribute to enhancing the character and identity of the City, including signage, lighting, landscaping, parking, streetscapes, and open space/public areas.

The updated design guidelines will include photos and graphics highlighting examples of vernacular commercial architecture and recent high-quality built development projects in the San Gabriel Valley region. Photo images, diagrams, or illustrative drawings will be incorporated throughout the document to explain desired architectural elements and features.

c) Deliverables:

- Review draft design guidelines document (5 hard copies and electronic copy)
- Final design guidelines document (5 hard copies and electronic copy)

Option 2: Subdivision Ordinance Update

Interwest will review the existing Subdivision Ordinance and assess what sections will need to be modified or completely updated to meet state law and be consistent with the updated Zoning Ordinance. This includes at a minimum the following:

- Development application requirements and consistency with current City practices
- Review standards such as minimum lot sizes and widths, and ensure consistency with the Zoning Ordinance
- Subdivision procedures and consistency with current City practices
- Lot size requirements, such as residential lots to be sized similar to neighboring lots
- Findings for denial
- Fee requirements
- Adequacy of vesting tentative map provisions

An assessment report will be prepared outlining our findings and recommendations for updating the Subdivision Ordinance. Interwest will meet with City staff to discuss issues with the existing Subdivision Ordinance and provide recommended revisions during the Study Session #2. Interwest will prepare administrative draft subdivision regulations for review and comments by City staff in Study Session #3. Once comments are received, Interwest will prepare a final draft of the Subdivision Ordinance for adoption.

d) Deliverables:

- Subdivision Ordinance Assessment (electronic copy)
- Review Draft Subdivision Ordinance sections (5 hard copies and electronic copy)

EXHIBIT "B"

**SPECIAL REQUIREMENTS
(Superseding Contract Boilerplate)**

THERE ARE NO SPECIAL REQUIREMENTS FOR THIS CONTRACT.

Inwindale Zoning Ordinance Update Budget

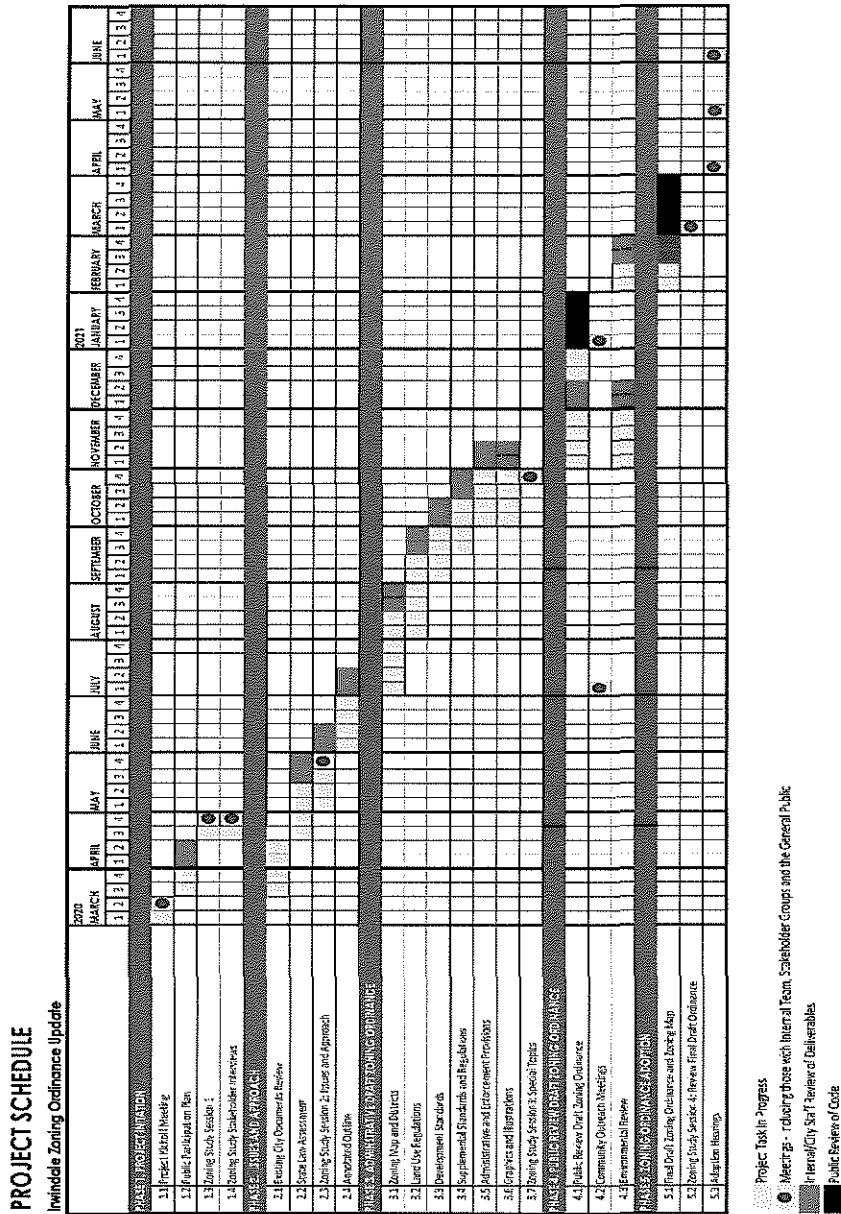
	Interwest Consulting Group				PlaceWorks			Lou's Design Garage		
	Paul Junker	Nick Pergolesi	Eric Norris	Concilio Neal	Charital Power	Mark Teague	Jasmine Osman	Paul W. Regard	Anna L. Regard	John W. Regard
Role	Principal-in-Charge	Project Manager	Principal Planner	Principal Planner	Senior Planner	Associate Principal	Associate Planner	Senior Graphic Designer		
Hourly Rate	\$ 175	\$ 150	\$ 160	\$ 145	\$ 125	\$ 215	\$ 115	\$ 60		
Hours Per Task										
Phase 1, Project Initiation										
Subtotal	8	60	16	16	24	4	0	0	128	\$ 19,140
Phase 2, Issues and Approach										
Subtotal	8	40	24	24	40	0	0	0	136	\$ 19,720
Phase 3, Administrative Draft Zoning Ordinance										
Subtotal	12	100	40	24	80	4	24	40	324	\$ 43,000
Phase 4, Public Review Draft Ordinance										
Subtotal	12	60	24	24	80	4	24	40	268	\$ 34,440
Phase 5, Zoning Ordinance Adoption										
Subtotal	12	60	16	12	16	4	5	0	224	\$ 18,950
Grand Total Hours	52	320	120	100	240	16	60	80	908	
Fee Total	\$ 9,100	\$ 48,000	\$ 19,200	\$ 14,500	\$ 30,000	\$ 3,440	\$ 6,900	\$ 4,800		\$ 135,940
Reimbursable Expenses										\$ 10,000
Grand Fee Total										\$ 145,940
Hourly Rate	\$ 160	\$ 160	\$ 160	\$ 145	\$ 125			\$ 60		
Optional Tasks										
1. Design guidelines update	8	100	24	40	24			60	256	\$ 32,520
2. Subdivision regulations update	16	80	40	24	40			16	216	\$ 30,400
Total Optional Task Hours	24	180	64	64	64			76	472	
Reimbursable Expenses										\$ 6,000
Total Optional Task Fees	\$ 3,840	\$ 27,000	\$ 10,240	\$ 9,280	\$ 8,000			\$ 4,560		\$ 62,920
										\$ 68,920

SCHEDULE OF COMPENSATION/BUDGET

EXHIBIT "C"

EXHIBIT "D"

SCHEDULE OF PERFORMANCE/TIMELINE Proposal Dated February 3, 2020



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

City of
IRWINDALE
AGENDA REPORT

CC Item 12

Date: September 13, 2023
To: Honorable Mayor and Members of the City Council
From: Julian A. Miranda, City Manager
Issue: Request to Approve a Professional Contract Services Agreement with Kimley-Horn and Associates, Inc for the preparation of CEQA documents for the construction of a ±102,400 square foot speculative industrial building with associated standard and trailer parking for the property located at 14005 Live Oak Ave (APN: 8535-001-033).

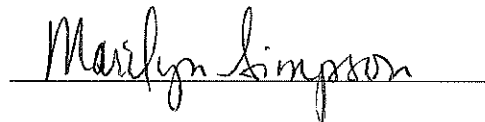
City Manager's Recommendation:

- 1) That the City Council approve the attached contract with Kimley-Horn and Associates, Inc. for the preparation of an Initial Study with a Mitigated Negative Declaration and/or an Environmental Impact Report to be prepared in association with land use entitlement applications for property located at 14005 Live Oak Ave, Irwindale, CA 91706.

Administrative Action:

Submitted by:

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



Prepared by:

Lisa Chou, AICP, Associate Planner

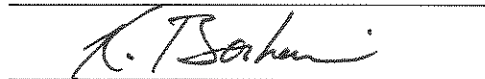


Reviewed by:

Adrian R. Guerra, City Attorney

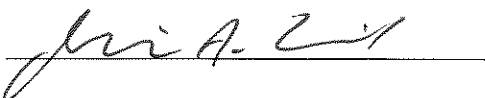
Electronically Approved

Kambiz Borhani, Finance Director / City Treasurer



Approved by:

Julian A. Miranda, City Manager



BACKGROUND

Rexford Industrial – 14005 Live Oak, LLC., the Applicant, submitted a request for the construction of a ±102,400 square foot speculative industrial building with associated parking for property located at 14005 Live Oak Ave (APN: 8535-001-033), in the M-2 (Heavy Manufacturing) zone (Project). The application includes a request for a Site Plan and Design Review (DA) and the environmental analysis, which is required under the California Environmental Quality Act (CEQA) for land use entitlements.

After soliciting proposals through a Request for Proposals process, Planning Staff reviewed thirteen (13) proposals from consulting firms, interviewed seven of the consulting firms, and is now recommending the retention of Kimley-Horn and Associates, Inc. to complete the CEQA work necessary to obtain entitlements for this Project. The Contract Services Agreement with Kimley-Horn and Associates, Inc. is for an amount not to exceed \$126,671.00, and is attached with this report. The Initial Study conducted by Kimley-Horn and Associates, Inc. will determine the type of CEQA document to be prepared (Initial Study with a Mitigated Negative Declaration or Environmental Impact Report).

FISCAL IMPACT

The City's General Fund will not be impacted. Pursuant to the Reimbursement Agreement with the Applicant, which is also presented for approval, the Applicant has agreed to reimburse the City of all costs and expenses incurred by the City related to the services agreed to in the Agreement for Contract Services with Kimley-Horn and Associates, Inc. The Reimbursement Agreement requires a deposit account wherein Applicant will make deposits of amounts to cover all costs and expenses of work done by Kimley-Horn and Associates, any other consultant retained for the Project, and the City Attorney's office for work related to the land use entitlements.

ATTACHMENTS

- A. Agreement for Contract Services with Kimley-Horn and Associates, Inc. (including cost proposal)

ATTACHMENT "A"
AGREEMENT FOR CONTRACT SERVICES
BETWEEN THE CITY OF IRWINDALE AND Kimley-Horn and Associates, INC.

THIS AGREEMENT FOR CONTRACT SERVICES (herein "Agreement") is made and entered into this 13th day of September 2023, by and between the City of Irwindale, a California municipal corporation ("City"), and Kimley-Horn and Associates, Inc., a California corporation ("Consultant"). City and Consultant are sometimes hereinafter individually referred to as "Party" and hereinafter collectively referred to as the "Parties".

RECITALS

A. City has sought, by issuance of a Request for Proposals or Invitation for Bids, the performance of the services pertaining to California Environmental Quality Act (CEQA) for land use entitlements defined and described in Exhibit 1 of this Agreement.

B. Consultant, following submission of a proposal or bid for the performance of the services defined and described in Exhibit 1 of this Agreement, was selected by the City to perform those services.

C. Pursuant to the Section 607 of the City of Irwindale's Municipal Code, City has authority to enter into and execute this Agreement.

D. The Parties desire to formalize the selection of Consultant for performance of those services defined and described particularly in Article 1 of this Agreement and desire that the terms of that performance be as particularly defined and described herein.

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 CONSULTANT

1.1 Scope of Services.

In compliance with all terms and conditions of this Agreement, the Consultant 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, Consultant 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. Consultant shall at all times faithfully, competently and to the best of its ability, experience and talent, perform all services described herein. Consultant 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 Consultant's Proposal.

The Scope of Service shall include the Consultant's proposal 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.

Consultant 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.

Consultant 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. Consultant 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 Consultant'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, Consultant warrants that Consultant (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, Consultant warrants that Consultant 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 Consultant discover any latent or unknown conditions, which will materially affect the performance of the services hereunder, Consultant shall immediately inform the City of such fact and shall not proceed except at Consultant's risk until written instructions are received from the Contract Officer.

1.6 Care of Work.

The Consultant 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 Prevailing Wages.

Consultant is advised of the requirements of California Labor Code Section 1720 which provides: prevailing wage rates apply to "[c]onstruction, alteration, demolition, installation, or repair work done under contract and paid for in whole or in part out of public funds, except work done directly by any public utility company pursuant to order of the Public Utilities Commission or other public authority." It is the Parties' understanding that this Project shall not be required to pay prevailing wages pursuant to Sections 1770 – 1781 of the California Labor Code and 33423 – 33426 of the California Health and Safety Code. To this end, Consultant acknowledges and agrees that should any third party, including but not limited to the Director of the Department of Industrial Relations ("DIR"), require Consultant or any of its contractors or subcontractors to pay the general prevailing wage rates of per diem wages and overtime and holiday wages determined by the Director of the DIR under Prevailing Wage Law, then Consultant shall indemnify, defend, and hold City harmless from any such determinations, or actions (whether legal, equitable, or administrative in nature) or other proceedings, and shall assume all obligations and liabilities for the payment of such wages and for compliance with the provisions of the Prevailing Wage Law. The City makes no representation that any work completed by Consultant is or is not subject to Prevailing Wage Law.

1.8 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.

1.9 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 Consultant, 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 Consultant. 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 Consultant that the provisions of this Section shall not apply to services specifically set forth in the Scope of Services. Consultant 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 Consultant anticipates and that Consultant 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.

1.10 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 Consultant 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 ONE HUNDRED AND TWENTY-SIX THOUSAND AND SIX HUNDRED AND SEVENTY-ONE DOLLARS (\$126,671.00) (the "Contract Sum"), unless additional compensation is approved pursuant to Section 1.9.

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 Consultant'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 Consultant 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 Consultant is required to attend additional meetings to facilitate such coordination, Consultant shall not be entitled to any additional compensation for attending said meetings.

2.4 Invoices.

Each month Consultant 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,

Consultant 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. Consultant shall not invoice City for any duplicate services performed by more than one person.

City shall independently review each invoice submitted by the Consultant 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 Consultant which are disputed by City, or as provided in Section 7.3, City will use its best efforts to cause Consultant to be paid within forty-five (45) days of receipt of Consultant's correct and undisputed invoice; however, Consultant 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 Consultant for correction and resubmission. Review and payment by City for any invoice provided by the Consultant shall not constitute a waiver of any rights or remedies provided herein or any applicable law.

2.5 Waiver.

Payment to Consultant for work performed pursuant to this Agreement shall not be deemed to waive any defects in work performed by Consultant.

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.

Consultant 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 Consultant, 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 Consultant, 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 Consultant 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 Consultant be entitled to recover damages against the City for any delay in the performance of this Agreement, however caused, Consultant'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 two (2) 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 Consultant.

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

Jean Fares
(Name)

Sr. Vice President
(Title)

Shahrzad Ranta
(Name)

Vice President
(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 Consultant and devoting sufficient time to personally supervise the services hereunder. All personnel of Consultant, 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 Consultant without the express written approval of City. Additionally, Consultant shall utilize only competent personnel to perform services pursuant to this Agreement. Consultant shall make every reasonable effort to maintain the stability and continuity of Consultant's staff and subcontractors, if any, assigned to perform the services required under this Agreement. Consultant shall notify City of any changes in Consultant'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 Consultant.

Consultant 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. Consultant shall not at any time or in any manner represent that Consultant or any of Consultant's officers, employees, or agents are in any manner officials, officers, employees or agents of City. Neither Consultant, nor any of Consultant'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. Consultant expressly waives any claim Consultant may have to any such rights.

4.3 Contract Officer.

The Contract Officer shall be the City Manager or such person as may be designated by the City Manager. It shall be the Consultant's responsibility to assure that the Contract Officer is kept informed of the progress of the performance of the services and the Consultant 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 Consultant, 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 Consultant's employees, servants, representatives or agents, or in fixing their number, compensation or hours of service. Consultant 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. Consultant 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 Consultant in its business or otherwise or a joint venturer or a member of any joint enterprise with Consultant.

4.5 Prohibition Against Subcontracting or Assignment.

The experience, knowledge, capability and reputation of Consultant, its principals and employees were a substantial inducement for the City to enter into this Agreement. Therefore, Consultant 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 Consultant, 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 Consultant or any surety of Consultant of any liability hereunder without the express consent of City.

ARTICLE 5. INSURANCE AND INDEMNIFICATION

5.1 Required Insurance Policies.

Without limiting Consultant's indemnification of the City and prior to commencement of services, Consultant shall obtain, provide 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:

(a) Comprehensive General Liability Insurance. Consultant 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 \$1,000,000 per occurrence, \$2,000,000 general aggregate, for bodily injury, personal injury, and property damage, including without limitation, blanket contractual liability. 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. Consultant 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 Consultant 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 \$1,000,000 combined single limit for each accident.

(c) Professional Liability (errors & omissions) Insurance. Consultant shall maintain professional liability insurance that covers the services to be performed in connection with this Agreement, in the minimum amount of \$1,000,000 per claim and in the aggregate. Any policy inception date, continuity date, or retroactive date must be before the effective date of this agreement and Consultant agrees to maintain continuous coverage through a period no less than three years after completion of the services required by this Agreement.

(d) Workers' Compensation Insurance. Consultant shall maintain Workers' Compensation Insurance (Statutory Limits) and Employer's Liability Insurance (with limits of at least \$1,000,000).

5.2 Other Provisions or Requirements.

(a) Proof of Insurance. Consultant shall provide certificates of insurance to City as evidence of the insurance coverage required in section 5.1, and for purposes of Workers' Compensation Insurance Consultant shall submit a Waiver of Subrogation endorsement in favor of City, its officers, agents, employees and volunteers. Should the Consultant be a sole proprietor, the Consultant shall complete and submit a declaration of sole proprietors form to the City in lieu of proof of Workers' Compensation as it not required for sole proprietors. The insurance certificates and endorsements must be approved by City's Risk Manager prior to commencement of performance of services. 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.

(b) Duration of Coverage. Consultant shall procure and maintain each of the insurance policies required in Section 5.1 for the duration of the Agreement, and any extension thereof.

(c) Primary/Noncontributing. Coverage provided by Consultant shall be primary and any insurance or self-insurance procured or maintained by City shall be excess to the Consultant's insurance and shall not 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.

(d) 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 Consultant or City will withhold amounts sufficient to pay premium from Consultant payments. In the alternative, City may cancel this Agreement.

(e) Acceptable Insurers. All insurance policies shall be issued by an insurance company currently authorized by the Insurance Commissioner to transact business of insurance or is on the List of Approved Surplus Line Insurers in the State of California, with an assigned policyholders' Rating of A- (or higher) and Financial Size Category Class VI (or larger) in accordance with the latest edition of Best's Key Rating Guide, unless otherwise approved by the City's Risk Manager.

(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 Consultant or others providing insurance evidence in compliance with these specifications to waive their right of recovery prior to a loss. Consultant hereby waives its own right of recovery against City, and shall require similar written express waivers and insurance clauses from each of its subconsultants.

(g) Enforcement of Contract Provisions (non estoppel). Consultant acknowledges and agrees that any actual or alleged failure on the part of the City to inform Consultant 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 Consultant maintains higher limits than the minimums shown above, the City requires and shall be entitled to coverage for the higher limits maintained by the Consultant. 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. Consultant 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 liability and automobile policies shall provide or be endorsed to provide that City and its officers, officials, employees, 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 by the City in writing.

(l) Separation of Insureds. A severability of interests provision must apply for all additional insureds ensuring that Consultant'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. Consultant agrees to ensure that its subconsultants, subcontractors, and any other party involved with the services, which are the subject of this Agreement, who is brought onto or involved in these services by Consultant, provide the same minimum insurance coverage and endorsements required of Consultant. Consultant 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. Consultant agrees that upon request, all agreements with consultants, subcontractors, and others engaged in the services will be submitted to City for review.

(n) City's Right to Revise Specifications. The City reserves the right at any time during the term of the Agreement to change the amounts and types of insurance required by giving the Consultant ninety (90) days advance written notice of such change. If such change results in substantial additional cost to the Consultant, the City and Consultant may renegotiate Consultant's compensation.

(o) Deductibles/ Self-insured Retentions. Any deductibles and self-insured retentions must be declared to and approved by City. At the option of the City , either: the insurer shall reduce or eliminate such deductibles or self-insured retentions with respect to the City, its officers, officials, employees, agents and volunteers, or the Consultant shall provide a financial guarantee satisfactory to the City guaranteeing payment of losses and related investigations, claims administration and defense expense.

(p) Timely Notice of Claims. Consultant shall give City prompt and timely notice of claims made or suits instituted that arise out of or result from Consultant's

performance under this Agreement, and that involve or may involve coverage under any of the required liability policies.

(q) Additional Insurance. Consultant 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 Performance Bond.

Concurrently with execution of this Agreement, Contractor shall deliver to City a performance bond in the sum of the amount of this Agreement, in the form provided by the City Clerk, which secures the faithful performance of this Agreement, unless such requirement is waived by the Contract Officer. The bond shall contain the original notarized signature of an authorized officer of the surety and affixed thereto shall be a certified and current copy of his power of attorney. The bond shall be unconditional and remain in force during the entire term of the Agreement and shall be null and void only if the Contractor promptly and faithfully performs all terms and conditions of this Agreement.

5.4 Indemnification.

(a) Indemnity for Professional Liability. Consultant shall indemnify, protect, defend and hold harmless City and any and all of its officers, officials, employees and agents ("Indemnified Parties") from and against any and all losses, liabilities, damages, costs and expenses, including legal counsel's fees and costs where the same arise out of, are a consequence of, or are in any way attributable to whole or in part by, any negligent or wrongful act, error or omission of Consultant, its officers, agents, employees or Subconsultants (or any agency or individual that Consultant shall bear the legal liability thereof) in the performance of professional services under this agreement.

(b) Indemnity for Other than Professional Liability. Other than in the performance of professional services and to the full extent permitted by law, Consultant shall indemnify, defend and hold harmless City, and any and all of its employees, officials and agents from and against any liability (including liability for claims, suits, actions, arbitration proceedings, administrative proceedings, regulatory proceedings, losses, expenses or costs of any kind, whether actual, alleged or threatened, including legal counsel fees and costs, court costs, interest, defense costs, and expert witness fees), where the same arise out of, are a consequence of, or are in any way attributable to, in whole or in part, the performance of this Agreement by Consultant or by any individual or agency for which Consultant is legally liable, including but not limited to officers, agents, employees or subcontractors of Consultant, but excluding such claims or liabilities to the extent caused by the sole negligence or willful misconduct of the City.

ARTICLE 6. RECORDS, REPORTS, AND RELEASE OF INFORMATION

6.1 Records.

Consultant 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 Consultant's business, custody of the books and records may be given to City, and access shall be provided by Consultant's successor in interest. Notwithstanding the above, the Consultant 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.

Consultant 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. Consultant 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, Consultant agrees that if Consultant 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 Consultant is providing design services, the cost of the project being designed, Consultant shall promptly notify the Contract Officer of said fact, circumstance, technique or event and the estimated increased or decreased cost related thereto and, if Consultant 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 Consultant, 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 Consultant 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 Consultant will be at the City's sole risk and without liability to Consultant, and Consultant's guarantee and warranties shall not extend to such use, reuse or assignment. Consultant may retain copies of such documents for its own use. Consultant 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 Consultant fails to secure such assignment, Consultant shall indemnify City for all damages resulting therefrom. Moreover, Consultant 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 Consultant in performance of this Agreement shall be considered confidential, unless such information is in the public domain or already known to Consultant. Consultant 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) Consultant, 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 Consultant gives City notice of such court order or subpoena.

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

(d) Consultant shall promptly notify City should Consultant, 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 Consultant or be present at any deposition, hearing or similar proceeding. Consultant agrees to cooperate fully with City and to provide City with the opportunity to review any response to discovery requests provided by Consultant. 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 Consultant 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 Consultant is in default under the terms of this Agreement, the City shall not have any obligation or duty to continue compensating Consultant for any work performed after the date of default. Instead, the City may give notice to Consultant of the default and the reasons for the default. The notice shall include the timeframe in which Consultant 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 Consultant 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 Consultant 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 Consultant'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.

Consultant hereby authorizes City to deduct from any amount payable to Consultant (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 Consultant's acts or omissions in performing or failing to perform Consultant'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 Consultant, 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 Consultant 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 Consultant 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, Consultant 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 Consultant, except that where termination is due to the fault of the Consultant, the period of notice may be such shorter time as may be determined by the Contract Officer. In addition, the Consultant 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 Consultant may determine. Upon receipt of any notice of termination, Consultant shall immediately cease all services hereunder except such as may be specifically approved by the Contract Officer. Except where the Consultant has initiated termination, the Consultant 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 Consultant has initiated termination, the Consultant 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 Consultant.

If termination is due to the failure of the Consultant 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 Consultant 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 Consultant 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 Consultant, 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 Consultant or to its successor, or for breach of any obligation of the terms of this Agreement.

8.2 Conflict of Interest.

Consultant 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 Consultant's performance of services under this Agreement. Consultant 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. Consultant 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 Consultant 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.

Consultant 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. Consultant 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.

Consultant 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 Consultant 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, Consultant 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, California 91706 and in the case of the Consultant, 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 Consultant 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. Consultant 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. Consultant 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. Consultant 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 _____

9.7 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) 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.

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

CITY:

CITY OF IRWINDALE, a municipal
corporation

H. Manuel Ortiz, Mayor

ATTEST:

Laura M. Nieto, MMC
Chief Deputy City Clerk

APPROVED AS TO FORM:

ALESHIRE & WYNDER, LLP

Adrian R. Guerra, City Attorney

CONSULTANT:

Kimley-Horn and Associates, INC., a
California corporation

By: _____
Name: Jean Fares
Title: Sr. Vice President
Address: 660 S. Figueroa St.
Ste. 2050,
Los Angeles, CA 90017

By: _____
Name: Shahrzad Ranta
Title: Vice President
Address: 660 S. Figueroa St.
Ste. 2050,
Los Angeles, CA 90017

Two corporate officer signatures required when Consultant 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. CONSULTANT'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 CONSULTANT'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 _____

On _____ before me, _____, Notary Public, personally appeared _____ who 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

☐ INDIVIDUAL
☐ CORPORATE OFFICER

TITLE(S)

☐ PARTNER(S) ☐ LIMITED
☐ GENERAL

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

☐ OTHER _____

DESCRIPTION OF ATTACHED DOCUMENT

TITLE OR TYPE OF DOCUMENT

NUMBER OF PAGES

DATE OF DOCUMENT

SIGNER(S) OTHER THAN NAMED ABOVE

SIGNER IS REPRESENTING:

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

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 _____

On _____ before me, _____, Notary Public, personally appeared _____ who 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

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CAPACITY CLAIMED BY SIGNER

☐
☐

INDIVIDUAL
CORPORATE OFFICER

TITLE(S)

☐
☐

PARTNER(S) ☐ LIMITED
☐ GENERAL

☐
☐
☐
☐

ATTORNEY-IN-FACT
TRUSTEE(S)
GUARDIAN/CONSERVATOR

OTHER _____

DESCRIPTION OF ATTACHED DOCUMENT

TITLE OR TYPE OF DOCUMENT

NUMBER OF PAGES

DATE OF DOCUMENT

SIGNER(S) OTHER THAN NAMED ABOVE

SIGNER IS REPRESENTING:

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

EXHIBIT "A"

SCOPE OF SERVICES

- I. Consultant will perform CEQA work and prepare CEQA documents necessary to obtain entitlements for the construction of an ±102,400 square-foot speculative concrete tilt-up building on an approximately 5.12 acre project site located at 14005 Live Oak Lane (APN: 8535-001-033) ("Project"), including, but not limited to, the following (herein after referred to collectively as "Services"):

Proposal for the
**14005 Live Oak Avenue Project
Environmental Assessment**



Subconsultant

BCR Consulting LLC.



BCRCONSULTING LLC

BCR Consulting LLC (BCR Consulting) is made up of a highly qualified team of professionals that provide cultural resource compliance services for publicly and privately funded projects pursuant to the

*Address:
505 West 8th Street,
Claremont, CA 91711*

California Environmental Quality Act (CEQA), Section 106 of the National Historic Preservation Act (NHPA), and the National Environmental Policy Act (NEPA). BCR Consulting clients are accustomed to receiving excellent results ahead of schedule and within budget limits. Fields of specialization are detailed below and include Archaeology (both prehistoric and historic), Historic Preservation (History and Architectural History), Paleontology, and Geographic Information Systems (GIS). BCR Consulting is based in Claremont, California, with offices in Napa, Tehachapi, and San Diego, California. This allows us to expedite projects throughout the entire state at extremely competitive rates.

c. Scope of Work

Our proposed scope of services has been prepared in accordance with the requirements of CEQA. Based on the information included in the Request for Proposal (RFP), Kimley-Horn will prepare an Initial Study/Mitigated Negative Declaration (IS/MND). The CEQA Lead Agency is identified as the City.

If the findings of any technical studies identify potentially significant impacts, then the IS/MND may not be applicable. If the technical studies determine that the Project may have significant and unavoidable impacts, an EIR would likely be the appropriate CEQA documentation.

All deliverables will be transmitted electronically unless otherwise noted.

Phase I: Project Initiation and Kick-off Meeting

Task 1 – Project Kick-Off Meeting

Two Kimley-Horn staff will participate in the kick-off meeting with City staff and the Applicant, if necessary, to confirm the approach to the project; the scope of services for the project; communication protocol, and the administrative record. The meeting discussion would include any known issues related to the project, and agency and community issues that need to be considered through the process, as well as potential streamlining provisions that may be appropriate.

Task 1 Deliverable

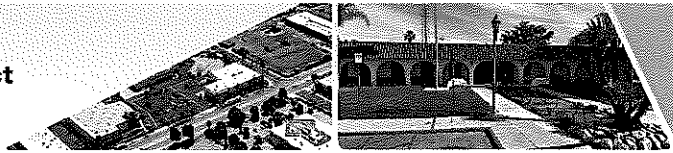
- Participation in Kick-Off Meeting

Task 2 – Data Review and Site Reconnaissance

Based on the RFP, the City will provide the following Applicant-prepared technical studies: preliminary drainage report, geotechnical exploration report, and a low impact development (LID) report. Kimley-Horn will conduct a site reconnaissance and will review available project materials, as well as policy documentation for the City and any other applicable agencies. Kimley-Horn will assess whether available information is adequate and complete. Following the meeting and review of the most recent project plans and related information, Kimley-Horn will prepare a data needs memorandum listing additional information and assumptions that may be required to support completion of the CEQA process. Examples of data to be confirmed include proposed sustainability features (i.e., LEED certification), construction schedule, construction equipment and phasing, demolition and excavation volumes, narratives concerning architectural and landscape designs, and various details concerning operation of the project. Kimley-Horn assumes that responses to most of our data needs will be provided within approximately two weeks of receipt of our request, in a consolidated format, and that a prolonged iterative process to obtain the information needed to complete the process will not be required. The City will be notified if additional information is needed.

Kimley-Horn will provide the City with a draft project description for the project.

Proposal for the
**14005 Live Oak Avenue Project
Environmental Assessment**



Task 2 Deliverables

- Review of preliminary drainage report, geotechnical exploration report, and a low impact development (LID) report
- Identification of data needs
- Draft project description

Task 3 – Technical Analyses

Kimley-Horn assumes standalone technical studies will be prepared to determine the appropriate path for CEQA clearance. For the purpose of developing a scope and fee, Kimley-Horn assumed the project's impacts would qualify for an IS/MND, and that results of the technical analyses will be summarized within the IS/MND. Based on the RFP, the Applicant will provide a preliminary drainage report, geotechnical exploration report, and a low impact development (LID) report. We assume one round of review for those reports to ensure that the analyses provided will be accurate and adequate to complete the IS/MND.

Air Quality Assessment

The air quality assessment will be prepared in accordance with the criteria, standards, and provisions of the California Environmental Quality Act (CEQA) and will respond to the applicable checklist items within Appendix G of the CEQA Guidelines. The assessment of air quality emissions will be conducted in accordance with the South Coast Air Quality Management District's (SCAQMD's) recommended methodologies.

- **Construction Emissions.** Kimley-Horn will calculate construction emissions using the latest version of the California Emissions Estimator Model (CalEEMod). Emissions will be calculated based on the scope of the project, assumptions regarding construction equipment and scheduling, and associated vehicle trips. The air pollutant emissions during construction will be compared to the SCAQMD regional thresholds of significance.
- **Operational Emissions.** Kimley-Horn will quantify emissions associated with the existing conditions as well as operations of the proposed project (i.e., area, energy, and mobile source) related to area sources and local/regional vehicle miles traveled. The project's net change in emissions will be compared to the SCAQMD thresholds of significance. Mitigation will be identified as necessary.
- **Localized Impacts.** Localized impacts will be analyzed based upon the SCAQMD's Localized Significance Thresholds (LST) methodology.
- **Plan Consistency.** Consistency of the project's regional emissions will be evaluated against the SCAQMD's 2016 Air Quality Management Plan (AQMP). The determination of AQMP consistency is primarily concerned with the long-term influence of a project on air quality in the South Coast Air Basin. Kimley-Horn will evaluate the project's increase in population and vehicle miles traveled in comparison with regional growth trends, per SCAQMD guidance.

Kimley-Horn assumes that the Applicant or City will provide site plans, proposed grading plans, detailed construction phasing and grading/excavation/paving quantities, and information related to potential Project Design Features. It should be noted that a health risk assessment is excluded from this scope of services.

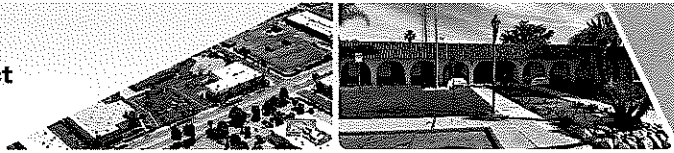
Health Risk Assessment

The project is an Industrial use and therefore anticipated to be a source of TACs. Based on a desktop review, the closest sensitive uses include residences located approximately 40 feet from the project site. Therefore, a quantitative Health Risk Assessment (HRA) is recommended. The quantitative Impact analysis will evaluate risk from project construction and operations (truck exhaust, on-site mobile equipment, and stationary sources) within 1,000 feet of existing sensitive receptors. Steps to complete the HRA involves the following:

- **Construction Modeling.** Construction diesel particulate matter (DPM) emissions rates will be derived from on- and off-road emissions quantified in the Air Quality Assessment. Construction pollutant concentrations will be projected at the nearest sensitive receptors using the U.S. EPA AERMOD dispersion modeling software.
- **Operational Modeling.** Operational DPM sources during operations will be quantified based on CARB's emissions factors and anticipated truck activity. DPM emissions will be based on the truck trip percentages and daily trip rates and fleet mix from the transportation analysis. Operational pollutant concentrations will be projected at the nearest sensitive receptors using the U.S. EPA AERMOD dispersion modeling software.

The modeled concentrations will be used to determine the increase in cancer risk, as well as the chronic and acute health impacts due to DPM exposure. The increased cancer risk and health hazard will be calculated following the methodology in the California Environmental

Proposal for the
**14005 Live Oak Avenue Project
Environmental Assessment**



Protection Agency's Office of Environmental Health Hazard Assessment (OE-HA) Air Toxics Hot Spots Program Risk Assessment Guidelines - The Air Toxics Hot Spot Program Guidance Manual for Preparation of Health Risk Assessment.

The assessment will present background information on DPM and its health risks, the assumptions used for the modeling and modeling methodology and the results of the analysis.

Greenhouse Gas Emissions Analysis

The analysis will evaluate the project's potential contribution to cumulative impacts environmental effects of climate change and whether the project would affect the State's ability to achieve established greenhouse gas (GHG) reduction goals. The analysis will discuss the potential global climate change impacts, the effects of GHG emissions, and GHG emissions regulations in California. The significance of GHG impacts will be determined in comparison to applicable significance thresholds.

- **GHG Emissions Quantification.** Land use data will be reviewed and an inventory of GHG emissions (i.e., nitrous oxide, methane, and carbon dioxide) from both direct (i.e., area and mobile sources) and indirect sources (i.e., energy/water consumption and wastewater/solid waste generation) will be prepared. Total GHG emissions from construction activities will be amortized into the GHG emissions inventory. CalEEMod will be used to quantify GHG emissions.
- **Emissions Assessment and GHG Plan Consistency.** The net change in project-related GHG emissions will be assessed against SCAQMD draft project-level thresholds and consistency with applicable GHG reduction plans including applicable City policies, and other applicable regional/statewide GHG emissions reduction strategies such as the CARB Scoping Plan and the Regional Transportation Plan/Sustainable Community Strategy for the Southern California Association of Governments region. Applicable mitigation will be identified.

Noise and Vibration Memorandum

Kimley-Horn will prepare a noise and vibration analysis for the proposed project. The noise memorandum will quantify both construction and operational noise and vibration levels.

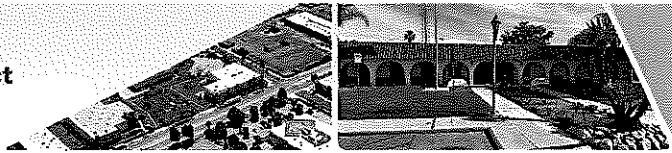
The following outlines our approach:

- **Existing Conditions and Regulatory Setting.** Noise standards regulating noise impacts will be discussed for land uses on and adjacent to the project site. Kimley-Horn will conduct a site visit throughout the project site and short-term (i.e. ten minute) noise level measurements will be taken along the project area. The noise monitoring survey will be conducted at up to four separate locations to establish baseline noise levels in the project area.
- **Construction Noise.** Noise impacts from construction sources will be analyzed based on the anticipated equipment to be used, length of a specific construction task, equipment power type (gasoline or diesel engine), horsepower, load factor, and percentage of time in use. The construction noise impacts will be evaluated in terms of maximum levels (L_{max}) and hourly equivalent continuous noise levels (L_{eq}) and the frequency of occurrence at adjacent sensitive locations. The noise analysis will examine whether construction noise would generate a substantial temporary increase in ambient noise levels in the vicinity of the project in excess of applicable standards. No on-site noise measurements are included in this scope of services.
- **Vibration.** An analysis of construction and operational vibration impacts will be based on the FTA's vibration analysis guidance. Analysis requirements will be based on the sensitivity of the area, specific construction and operational activities, and Noise Ordinance specifications. The analysis will examine whether the project would generate excessive groundborne vibration.
- **Operational Noise.** On-site noise impacts will be assessed against the City's Land Use Compatibility table in the General Plan and the Municipal Code. Stationary noise sources will be quantitatively assessed. On- and off-site noise impacts from vehicular traffic will be assessed using the U.S. Federal Highway Traffic Noise Prediction Model (FHWA-RD-77-108). The 24-hour weighted Community Noise Equivalent Levels (CNEL) will be presented in a tabular format. On-site noise generating activities will also be addressed and analyzed for potential impacts to the adjacent uses. Mitigation measures will be identified, if necessary.

Transportation

Kimley-Horn will document existing traffic conditions in the Project vicinity, including site access points, surrounding street system and traffic control, and surrounding land uses. Develop preliminary trip generation estimates for the proposed Project, using the Institute of Transportation Engineers (ITE) Trip Generation Manual (11th Edition). If applicable, calculate the net increase in trip generation with credit for existing uses.

Proposal for the
**14005 Live Oak Avenue Project
Environmental Assessment**



Kimley-Horn would obtain morning (7-9 am) and evening (4-6 pm) peak period traffic count data at up to 4 intersections including project driveways and daily counts at up to 2 roadway segments.

- Conduct Level of Service (LOS) at up to 4 intersections for the following scenarios:
 - Existing
 - Opening year without project
 - Opening year with project
 - Horizon year without project
 - Horizon year with project

The Traffic Analysis would provide a qualitative VMT screening assessment based on the preliminary land use plan. Identify potential operational impacts, improvements, estimated Development Impact Fees (DIF) and potential fair share costs, at study intersections. The Traffic Analysis would summarize the results of the traffic data in a report.

Cultural Resources

BCR Consulting will prepare a Cultural Resources Assessment for the Project. The Cultural Resources Assessment will include records search for cultural resources (archaeological and historical) through the South Central Coastal Information Center (SCCIC) at California State University, Fullerton. This research will characterize the status and extent of previous cultural resource studies completed in the project area, and will review the status of any local historical resources (including historic districts). BCR Consulting initiate a paleontological overview for the project with the Los Angeles County Natural History Museum for the project. BCR Consulting will contact the Native American Heritage Commission (NAHC) to request a Sacred Lands File (SLF) Search. Kimley-Horn will perform Assembly Bill (AB) 52 Consultation with the appropriate tribes with City coordination. If requested to participate, BCR Consulting will be available to discuss any tribal concerns during one conference call. A cultural resources report will be produced consistent with CEQA requirements, in a format acceptable to the City. The report will include the appropriate Department of Park and Recreation (DPR) 523 site forms. Kimley-Horn will review, summarize, and incorporate the Cultural Resources Assessment into the CEQA document.

Water Quality

Kimley-Horn assumes that the water quality discussion will provide an evaluation of the hydrology and water quality criteria in the CEQA Guidelines Appendix G (Environmental Checklist Form). Kimley-Horn will rely on the Applicant-provided LID report and drainage concept plan for additional information. If technical information regarding water quality is needed, beyond reliance on regulatory requirements, the City's Public Works Department will provide the necessary input.

Hazardous Materials

Regarding the potential for on-site hazardous materials, the State Water Board's GeoTracker database and the Department of Toxic Substances Control EnviroStor database do not show any open hazardous waste sites for the Project Site. Additionally, a Phase 1 and 2 were prepared for the Project site in January 2022. The Phase 1 and Phase 2 will be reviewed, summarized, and included in the IS/MND if found to be sufficient. Therefore, the Project would not be located on sites being affected by hazardous wastes or on-going clean-up programs.

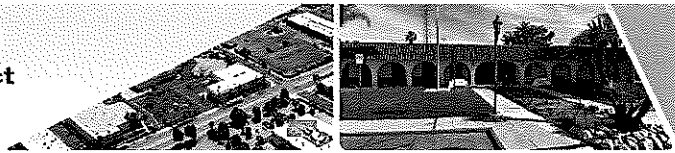
Phase II: Preparation of CEQA Documentation (IS/MND)

Task 4 – Prepare Screencheck Draft IS/MND

The Screencheck Draft IS/MND will include the project title; lead agency name and address; contact person and phone number; project location; project applicant's name and address; general plan designation; description of the project; description of surrounding land uses and setting; other public agencies whose approval is required; environmental factors potentially affected; an IS/MND determination; the CEQA Environmental Checklist, including a detailed discussion of issues raised in the checklist (as well as the identification of mitigation measures, where applicable, to lessen project-related impacts); and references. It will also contain appropriate graphics, including regional and local vicinity maps and project graphics.

All environmental topics identified in Appendix G of the CEQA Guidelines will be addressed in the IS/MND. For all non-technical areas that do not require an Applicant-prepared technical study from Phase 1, Task 2 above (e.g., land use and planning or population and housing), Kimley-Horn will use data and information that is readily available. Kimley-Horn assumes that the City will lead the Assembly Bill (AB) 52 Tribal

Proposal for the
**14005 Live Oak Avenue Project
Environmental Assessment**



Cultural Resources consultation effort. Kimley-Horn will submit an electronic version (both MS Word and Adobe PDF) of the Screencheck Draft IS/MND to the City for review and comment.

Task 4 Deliverables

- Screencheck Draft IS/MND

Task 5 – Prepare Proofcheck and Public Review IS/MND

Kimley-Horn will address one round of consolidated comments provided by the City on the Screencheck Draft IS/MND. Kimley-Horn will make necessary changes and submit a Proofcheck IS/MND for final review and approval by the City. Final comments and revisions are anticipated to be minor. Kimley-Horn will incorporate comments and prepare a final IS/MND for public review.

Task 5 Deliverables

- Proofcheck IS/MND
- Public Review IS/MND (3 hard copies and 1 electronic copy)
- Web-ready IS/MND files

Task 6 – Prepare Notice of Intent and Notice of Completion

Kimley-Horn will prepare a Notice of Intent (NOI) for the IS/MND for the City and for submittal to the County Clerk. We will prepare the Notice of Completion (NOC) and Summary Form for the State Clearinghouse. Our team will assist the City with uploading the NOI, IS/MND, NOC, and Summary Form to the State Clearinghouse via CEQANet. Kimley-Horn assumes the City will provide the NOI to any interested parties and agencies.

Task 6 Deliverables

- NOI
- NOC and Summary Form for the State Clearinghouse

Task 7 – Responses to Comments, Final IS/MND, and Mitigation Monitoring and Reporting Program

Following the conclusion of the public review period, Kimley-Horn will assist the City in preparing responses to any comments that may be received on the IS/MND. It is assumed that City will compile and transmit to Kimley-Horn all comments received on the IS/MND throughout the public review period as one unified set of comments following the close of the public review period. Kimley-Horn assumes up to 18 hours of responses to comments. Our team will confer with the City to review comments on the IS/MND, including comments from public meetings, to develop a general strategy for preparation of responses. The Final IS/MND will include the revisions, as necessary to reflect responses to comments, and a mitigation monitoring and reporting program (MMRP), as necessary.

Task 7 Deliverables

- Responses to comments on the IS/MND
- Final IS/MND (3 hard copies and 1 electronic copy)
- Web-ready IS/MND files
- MMRP

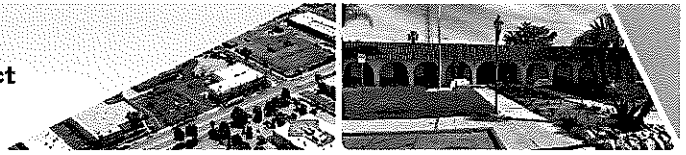
Task 8 – Prepare Findings

Kimley-Horn will prepare the Findings of Facts for each potentially significant impact identified in the IS/MND. We will coordinate with the City to determine the appropriate format and will include all of the necessary sections in the Findings. One of three findings must be made for each significant effect and must be supported by substantial evidence in the record, as further articulated in CEQA Guidelines Section 15091. Kimley-Horn will submit a draft of the Findings to the City for review. Kimley-Horn will revise the Findings based on one set of consolidated comments and will submit the final version to the City.

Task 8 Deliverables

- Draft Findings of Facts
- Final Findings of Facts

Proposal for the
**14005 Live Oak Avenue Project
Environmental Assessment**



Task 9 – Public Hearings and Notice of Determination

Heidi Rous and one additional staff member will attend up to three public hearings (up to two hours each hearing) during which approval of the Project would be considered. It is assumed that City will coordinate and facilitate the meetings and that presentation materials describing or illustrating the project will be provided jointly by Kimley-Horn and the City. Kimley-Horn will be available to answer questions concerning the CEQA process.

Following the hearings and project approval, Kimley-Horn will prepare and promptly file the Notice of Determination (NOD) with the County Clerk if the MND is adopted by the City. Pursuant to CEQA Guidelines Section 150775, the NOD will be filed within five working days after approval of the Project. Kimley-Horn will post the NOD with the County Clerk and will pay the requisite filing fees of \$2,698.00 (\$2,623.00 for the California Department of Fish and Wildlife Fee (CDFW) for an MND and \$75 County Clerk Processing Fee) as of January 1, 2022. Kimley-Horn will upload the NOD, once recorded by the County Clerk, to the State Clearinghouse via CEQANet.

Task 9 Deliverables

- Participation in three public hearings
- NOD
- Payment of the required \$2,698.00 CDFW filing fee and County Clerk posting fee
- Submittal of the NOD to CEQANet

Task 10 – Project Management and Meetings

Heidi will serve as the project manager responsible for supervision of the Kimley-Horn team and review the documentation compliance with CEQA requirements and guidelines and City CEQA procedures. Project management responsibilities include task scheduling and assignment, contract administration and accounting, and coordination and communications with the City. Heidi will maintain email communications with the City to confirm compliance with the scope of services, budget, and schedule, and to disseminate project information in a timely manner. Associated with the preparation of the IS/MND, our scope of services assumes up to six meetings (inclusive of the kick-off meeting in Task 1). Participation in and attendance at additional meetings and/or the need for additional management efforts exceeding the budget allocation will require an amendment or would be billed on a time-and materials basis.

Task 10 Deliverables

- Six meetings (inclusive of the kick-off meeting and CEQA determination meeting)

- II. 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

THERE ARE NO SPECIAL REQUIREMENTS FOR THIS CONTRACT.

EXHIBIT "C"

SCHEDULE OF COMPENSATION/BUDGET

- I. **Consultant's proposed budget for services related to the IS/MND is as follows:**

City of Irwindale
14005 Live Oak Avenue CEQA
March 8, 2023

		Kimley-Horn and Associates, Inc.							
		Sr. Professional II	Professional	Analyst II	Analyst I	Sr. Support Staff	Support Staff		
Category/Title	Billing Rate	\$330.00	\$215.00	\$190.00	\$150.00	\$185.00	\$105.00	Total Hours	Total Cost
Task 1	Project Kick-Off Meeting	8	8		4	1		21	\$ 5,145.00
Task 2	Technical Studies					1		1	\$ 185.00
2.1	AQ, GHG, HRA, Noise	8	55	60	140	1		264	\$ 47,050.00
2.2	Traffic/VMT	2	45		80	1		128	\$ 22,520.00
Task 3	Prepare Screencheck Draft IS/MND	8	10	20	70	1		109	\$ 19,275.00
Task 4	Prepare Proofcheck and Public Review IS/MND	6	12		12	1		31	\$ 6,545.00
Task 5	Prepare NOI and NOC		2		2	1		5	\$ 915.00
Task 6	RTC, Final IS/MND, MMRP		12		4	1		17	\$ 3,365.00
Task 7	Prepare Findings		4	8		1		13	\$ 2,565.00
Task 8	Public Hearings and NOD	8	8			1		17	\$ 4,545.00
Task 9	Project Management and Meetings	8	8			4	2	22	\$ 5,310.00
TOTAL HOURS		48	164	88	312	14	2	628	
Subtotal Labor:		\$ 15,840.00	\$ 35,260.00	\$ 16,720.00	\$ 46,800.00	\$ 2,590.00	\$ 210.00		\$ 117,420.00
Other Direct Costs									\$ 9,251.00
BCR Consulting (Historical)									\$ 3,850.00
Office Expense									\$ 5,401.00
TOTAL COST:									\$ 126,671.00

- II. **The compensation for the Services shall not exceed the Contract Sum and total compensation for all Services during the Term of this Agreement shall not exceed the Contract Sum, as provided in Section 2.1 of this Agreement.**
- III. **The City will compensate Consultant for the Services performed upon submission of a valid invoice. Each invoice is to include:**
 - a. Line items for all the work performed, the number of hours worked, and the hourly rate.
 - b. Line items for all materials and equipment properly charged to the Services.
 - c. Line items for all other approved reimbursable expenses claimed, with supporting documentation.
 - d. Line items for all approved subcontractor labor, supplies, equipment, materials, and travel properly charged to the Services.
- IV. **The compensation for the Services shall not exceed the Contract Sum and total compensation for all Services during the Term of this Agreement shall not exceed the Contract Sum, as provided in Section 2.1 of this Agreement.**

EXHIBIT "D"

SCHEDULE OF PERFORMANCE/TIMELINE

- I. Consultant shall perform the Services and deliver the tangible work products, in accordance with the schedules below:**
- II. 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 two (2) years from the date hereof,**
- III. The Contract Officer may approve extensions for performance of the services in accordance with Section 3.2.**

IS/MND Task Timetable

TASK	WEEK
Notice to Proceed/Kick-off Meeting	1
Prepare Project Description	2
City Review / Concurrence	3
Prepare Technical Studies	4 – 10
City Review / Concurrence	11 - 13
Prepare Screencheck Draft IS/MND	14 – 18
City Review / Concurrence	19 – 20
Prepare Proofcheck and Public Review IS/MND	21
City Review / Concurrence	22
Notice of Intent and Notice of Completion	22
30-day Public Review Period	23-26
Prepare Responses to Comments, Final IS/MND, and MMRP	27-28
Prepare Findings	29

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

City of
IRWINDALE
AGENDA REPORT

CC Item 13

Date: September 13, 2023
To: Honorable Mayor and Members of the City Council
From: Julian A. Miranda, City Manager
Issue: Request to Approve a Professional Contract Services Agreement with ECORP Consulting, Inc for the preparation of CEQA documents for the construction of a ±105,000 square foot speculative industrial building with associated parking for the property located at 15715 Arrow Highway (APN: 5619-001-059).

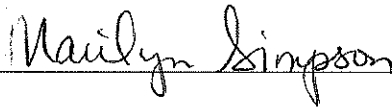
City Manager's Recommendation:

- 1) That the City Council approve the attached contract with ECORP Consulting, Inc. for the preparation of an Initial Study with a Mitigated Negative Declaration and/or an Environmental Impact Report to be prepared in association with land use entitlement applications for property located at 15715 Arrow Highway, Irwindale, CA 91706.

Administrative Action:

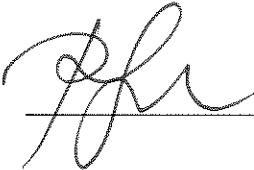
Submitted by:

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



Prepared by:

Brandi Jones, Senior Planner

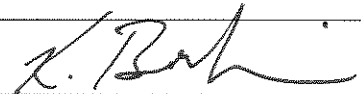


Reviewed by:

Adrian R. Guerra, City Attorney

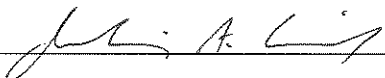
Electronically Approved

Kambiz Borhani, Finance Director / City Treasurer



Approved by:

Julian A. Miranda, City Manager



BACKGROUND

RIF III-Irwindale LLC, the Applicant, submitted a request for the construction of a ±105,000 square foot speculative industrial building with associated parking for property located at 15715 Arrow Highway (APN: 5619-001-059), in the M-2 (Heavy Manufacturing) zone (Project). The application includes a request for a Site Plan and Design Review (DA) and the environmental analysis, which is required under the California Environmental Quality Act (CEQA) for land use entitlements.

After soliciting proposals through a Request for Proposals process, Planning Staff reviewed eleven (11) proposals from consulting firms, interviewed six of the consulting firms, and is now recommending the retention of ECORP Consulting, Inc. to complete the CEQA work necessary to obtain entitlements for this Project. The Contract Services Agreement with ECORP Consulting, Inc. is for an amount not to exceed \$291,511.00, and is attached with this report. The Initial Study conducted by ECORP Consulting, Inc. will determine the type of CEQA document to be prepared (Initial Study with a Mitigated Negative Declaration or Environmental Impact Report).

FISCAL IMPACT

The City's General Fund will not be impacted. Pursuant to the Reimbursement Agreement with the Applicant, which is also presented for approval, the Applicant has agreed to reimburse the City of all costs and expenses incurred by the City related to the services agreed to in the Agreement for Contract Services with ECORP Consulting, Inc. The Reimbursement Agreement requires a deposit account wherein Applicant will make deposits of amounts to cover all costs and expenses of work done by ECORP Consulting, Inc., any other consultant retained for the Project, and the City Attorney's office for work related to the land use entitlements.

ATTACHMENT

- A. Agreement for Contract Services with ECORP Consulting, Inc. (including cost proposal)

ATTACHMENT "A"
AGREEMENT FOR CONTRACT SERVICES
BETWEEN THE CITY OF IRWINDALE AND ECORP CONSULTING, INC.

THIS AGREEMENT FOR CONTRACT SERVICES (herein "Agreement") is made and entered into this 13th day of September 2023, by and between the City of Irwindale, a California municipal corporation ("City"), and ECORP Consulting, Inc., a California corporation ("Consultant"). City and Consultant are sometimes hereinafter individually referred to as "Party" and hereinafter collectively referred to as the "Parties".

RECITALS

A. City has sought, by issuance of a Request for Proposals or Invitation for Bids, the performance of the services pertaining to California Environmental Quality Act (CEQA) for land use entitlements defined and described in Exhibit 1 of this Agreement.

B. Consultant, following submission of a proposal or bid for the performance of the services defined and described in Exhibit 1 of this Agreement, was selected by the City to perform those services.

C. Pursuant to the Section 607 of the City of Irwindale's Municipal Code, City has authority to enter into and execute this Agreement.

D. The Parties desire to formalize the selection of Consultant for performance of those services defined and described particularly in Article 1 of this Agreement and desire that the terms of that performance be as particularly defined and described herein.

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 CONSULTANT

1.1 Scope of Services.

In compliance with all terms and conditions of this Agreement, the Consultant 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, Consultant 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. Consultant shall at all times faithfully, competently and to the best of its ability, experience and talent, perform all services described herein. Consultant 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 Consultant's Proposal.

The Scope of Service shall include the Consultant's proposal 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.

Consultant 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.

Consultant 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. Consultant 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 Consultant'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, Consultant warrants that Consultant (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, Consultant warrants that Consultant 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 Consultant discover any latent or unknown conditions, which will materially affect the performance of the services hereunder, Consultant shall immediately inform the City of such fact and shall not proceed except at Consultant's risk until written instructions are received from the Contract Officer.

1.6 Care of Work.

The Consultant 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 Prevailing Wages.

Consultant is advised of the requirements of California Labor Code Section 1720 which provides: prevailing wage rates apply to "[c]onstruction, alteration, demolition, installation, or repair work done under contract and paid for in whole or in part out of public funds, except work done directly by any public utility company pursuant to order of the Public Utilities Commission or other public authority." It is the Parties' understanding that this Project shall not be required to pay prevailing wages pursuant to Sections 1770 – 1781 of the California Labor Code and 33423 – 33426 of the California Health and Safety Code. To this end, Consultant acknowledges and agrees that should any third party, including but not limited to the Director of the Department of Industrial Relations ("DIR"), require Consultant or any of its contractors or subcontractors to pay the general prevailing wage rates of per diem wages and overtime and holiday wages determined by the Director of the DIR under Prevailing Wage Law, then Consultant shall indemnify, defend, and hold City harmless from any such determinations, or actions (whether legal, equitable, or administrative in nature) or other proceedings, and shall assume all obligations and liabilities for the payment of such wages and for compliance with the provisions of the Prevailing Wage Law. The City make no representation that any work completed by Consultant is or is not subject to Prevailing Wage Law.

1.8 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.

1.9 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 Consultant, 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 Consultant. 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 Consultant that the provisions of this Section shall not apply to services specifically set forth in the Scope of Services. Consultant 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 Consultant anticipates and that Consultant 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.

1.10 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 Consultant 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 TWO HUNDRED AND NINETY-ONE THOUSAND AND FIVE HUNDRED AND ELEVEN DOLLARS (\$291,511.00) (the "Contract Sum"), unless additional compensation is approved pursuant to Section 1.9.

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 Consultant'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 Consultant 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 Consultant is required to attend additional meetings to facilitate such coordination, Consultant shall not be entitled to any additional compensation for attending said meetings.

2.4 Invoices.

Each month Consultant 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, Consultant 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. Consultant shall not invoice City for any duplicate services performed by more than one person.

City shall independently review each invoice submitted by the Consultant 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 Consultant which are disputed by City, or as provided in Section 7.3, City will use its best efforts to cause Consultant to be paid within forty-five (45) days of receipt of Consultant's correct and undisputed invoice; however, Consultant 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 Consultant for correction and resubmission. Review and payment by City for any invoice provided by the Consultant shall not constitute a waiver of any rights or remedies provided herein or any applicable law.

2.5 Waiver.

Payment to Consultant for work performed pursuant to this Agreement shall not be deemed to waive any defects in work performed by Consultant.

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.

Consultant 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 Consultant, 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 Consultant, 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 Consultant 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 Consultant be entitled to recover damages against the City for any delay in the performance of this Agreement, however caused, Consultant'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 two (2) 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 Consultant.

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

<u>Anne Surdzial</u> (Name)	<u>Vice President</u> (Title)
<u>Lisa Westwood</u> (Name)	<u>Vice President</u> (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 Consultant and devoting sufficient time to personally supervise the services hereunder. All personnel of Consultant, 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 Consultant without the express written approval of City. Additionally, Consultant shall utilize only competent personnel to perform services pursuant to this Agreement. Consultant shall make every reasonable effort to maintain the stability and continuity of Consultant's staff and subcontractors, if any, assigned to perform the services required under this Agreement. Consultant shall notify City of any changes in Consultant'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 Consultant.

Consultant 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. Consultant shall not at any time or in

any manner represent that Consultant or any of Consultant's officers, employees, or agents are in any manner officials, officers, employees or agents of City. Neither Consultant, nor any of Consultant'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. Consultant expressly waives any claim Consultant may have to any such rights.

4.3 Contract Officer.

The Contract Officer shall be the City Manager, or such person as may be designated by the City Manager. It shall be the Consultant's responsibility to assure that the Contract Officer is kept informed of the progress of the performance of the services and the Consultant 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 Consultant, 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 Consultant's employees, servants, representatives or agents, or in fixing their number, compensation or hours of service. Consultant 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. Consultant 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 Consultant in its business or otherwise or a joint venturer or a member of any joint enterprise with Consultant.

4.5 Prohibition Against Subcontracting or Assignment.

The experience, knowledge, capability and reputation of Consultant, its principals and employees were a substantial inducement for the City to enter into this Agreement. Therefore, Consultant 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 Consultant, 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 Consultant or any surety of Consultant of any liability hereunder without the express consent of City.

ARTICLE 5. INSURANCE AND INDEMNIFICATION

5.1 Required Insurance Policies.

Without limiting Consultant's indemnification of the City and prior to commencement of services, Consultant shall obtain, provide 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:

(a) Comprehensive General Liability Insurance. Consultant 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 \$1,000,000 per occurrence, \$2,000,000 general aggregate, for bodily injury, personal injury, and property damage, including without limitation, blanket contractual liability. 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. Consultant 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 Consultant 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 \$1,000,000 combined single limit for each accident.

(c) Professional Liability (errors & omissions) Insurance. Consultant shall maintain professional liability insurance that covers the services to be performed in connection with this Agreement, in the minimum amount of \$1,000,000 per claim and in the aggregate. Any policy inception date, continuity date, or retroactive date must be before the effective date of this agreement and Consultant agrees to maintain continuous coverage through a period no less than three (3) years after completion of the services required by this Agreement.

(d) Workers' Compensation Insurance. Consultant shall maintain Workers' Compensation Insurance (Statutory Limits) and Employer's Liability Insurance (with limits of at least \$1,000,000).

5.2 Other Provisions or Requirements.

(a) Proof of Insurance. Consultant shall provide certificates of insurance to City as evidence of the insurance coverage required in section 5.1, and for purposes of Workers' Compensation Insurance Consultant shall submit a Waiver of Subrogation endorsement in favor of City, its officers, agents, employees and volunteers. Should the Consultant be a sole proprietor, the Consultant shall complete and submit a declaration of sole proprietors form to the City in lieu of proof of Workers' Compensation as it not required for sole proprietors. The insurance certificates and endorsements must be approved by City's Risk Manager prior to commencement of performance of services. 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.

(b) Duration of Coverage. Consultant shall procure and maintain each of the insurance policies required in Section 5.1 for the duration of the Agreement, and any extension thereof.

(c) Primary/Noncontributing. Coverage provided by Consultant shall be primary and any insurance or self-insurance procured or maintained by City shall be excess to the Consultant's insurance and shall not 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.

(d) 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 Consultant or City will withhold amounts sufficient to pay premium from Consultant payments. In the alternative, City may cancel this Agreement.

(e) Acceptable Insurers. All insurance policies shall be issued by an insurance company currently authorized by the Insurance Commissioner to transact business of insurance or is on the List of Approved Surplus Line Insurers in the State of California, with an assigned policyholders' Rating of A- (or higher) and Financial Size Category Class VI (or larger) in accordance with the latest edition of Best's Key Rating Guide, unless otherwise approved by the City's Risk Manager.

(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 Consultant or others providing insurance evidence in compliance with these specifications to waive their right of recovery prior to a loss. Consultant hereby waives its own right of recovery against City and shall require similar written express waivers and insurance clauses from each of its subconsultants.

(g) Enforcement of Contract Provisions (non estoppel). Consultant acknowledges and agrees that any actual or alleged failure on the part of the City to inform Consultant 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 Consultant maintains higher limits than the minimums shown above, the City requires and shall be entitled to coverage for the higher limits maintained by the Consultant. 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. Consultant 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 liability and automobile policies shall provide or be endorsed to provide that City and its officers, officials, employees, 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 by the City in writing.

(l) Separation of Insureds. A severability of interests provision must apply for all additional insureds ensuring that Consultant'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. Consultant agrees to ensure that its subconsultants, subcontractors, and any other party involved with the services, which are the subject of this Agreement, who is brought onto or involved in these services by Consultant, provide the same minimum insurance coverage and endorsements required of Consultant. Consultant 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. Consultant agrees that upon request, all agreements with consultants, subcontractors, and others engaged in the services will be submitted to City for review.

(n) City's Right to Revise Specifications. The City reserves the right at any time during the term of the Agreement to change the amounts and types of insurance required by giving the Consultant ninety (90) days advance written notice of such change. If such change results in substantial additional cost to the Consultant, the City and Consultant may renegotiate Consultant's compensation.

(o) Deductibles/ Self-insured Retentions. Any deductibles and self-insured retentions must be declared to and approved by City. At the option of the City , either: the insurer shall reduce or eliminate such deductibles or self-insured retentions with respect to the City, its officers, officials, employees, agents and volunteers, or the Consultant shall provide a financial guarantee satisfactory to the City guaranteeing payment of losses and related investigations, claims administration and defense expense.

(p) Timely Notice of Claims. Consultant shall give City prompt and timely notice of claims made or suits instituted that arise out of or result from Consultant's

performance under this Agreement, and that involve or may involve coverage under any of the required liability policies.

(q) Additional Insurance. Consultant 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 Performance Bond.

Concurrently with execution of this Agreement, Contractor shall deliver to City a performance bond in the sum of the amount of this Agreement, in the form provided by the City Clerk, which secures the faithful performance of this Agreement, unless such requirement is waived by the Contract Officer. The bond shall contain the original notarized signature of an authorized officer of the surety and affixed thereto shall be a certified and current copy of his power of attorney. The bond shall be unconditional and remain in force during the entire term of the Agreement and shall be null and void only if the Contractor promptly and faithfully performs all terms and conditions of this Agreement.

5.4 Indemnification.

(a) Indemnity for Professional Liability. Consultant shall indemnify, protect, defend and hold harmless City and any and all of its officers, officials, employees and agents ("Indemnified Parties") from and against any and all losses, liabilities, damages, costs and expenses, including legal counsel's fees and costs where the same arise out of, are a consequence of, or are in any way attributable to whole or in part by, any negligent or wrongful act, error or omission of Consultant, its officers, agents, employees or Subconsultants (or any agency or individual that Consultant shall bear the legal liability thereof) in the performance of professional services under this agreement.

(b) Indemnity for Other than Professional Liability. Other than in the performance of professional services and to the full extent permitted by law, Consultant shall indemnify, defend and hold harmless City, and any and all of its employees, officials and agents from and against any liability (including liability for claims, suits, actions, arbitration proceedings, administrative proceedings, regulatory proceedings, losses, expenses or costs of any kind, whether actual, alleged or threatened, including legal counsel fees and costs, court costs, interest, defense costs, and expert witness fees), where the same arise out of, are a consequence of, or are in any way attributable to, in whole or in part, the performance of this Agreement by Consultant or by any individual or agency for which Consultant is legally liable, including but not limited to officers, agents, employees or subcontractors of Consultant, but excluding such claims or liabilities to the extent caused by the sole negligence or willful misconduct of the City.

ARTICLE 6. RECORDS, REPORTS, AND RELEASE OF INFORMATION

6.1 Records.

Consultant 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 Consultant's business, custody of the books and records may be given to City, and access shall be provided by Consultant's successor in interest. Notwithstanding the above, the Consultant 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.

Consultant 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. Consultant 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, Consultant agrees that if Consultant 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 Consultant is providing design services, the cost of the project being designed, Consultant shall promptly notify the Contract Officer of said fact, circumstance, technique or event and the estimated increased or decreased cost related thereto and, if Consultant 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 Consultant, 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 Consultant 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 Consultant will be at the City's sole risk and without liability to Consultant, and Consultant's guarantee and warranties shall not extend to such use, reuse or assignment. Consultant may retain copies of such documents for its own use. Consultant 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 Consultant fails to secure such assignment, Consultant shall indemnify City for all damages resulting therefrom. Moreover, Consultant 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 Consultant in performance of this Agreement shall be considered confidential, unless such information is in the public domain or already known to Consultant. Consultant 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) Consultant, 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 Consultant gives City notice of such court order or subpoena.

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

(d) Consultant shall promptly notify City should Consultant, 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 Consultant or be present at any deposition, hearing or similar proceeding. Consultant agrees to cooperate fully with City and to provide City with the opportunity to review any response to discovery requests provided by Consultant. 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 Consultant 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 Consultant is in default under the terms of this Agreement, the City shall not have any obligation or duty to continue compensating Consultant for any work performed after the date of default. Instead, the City may give notice to Consultant of the default and the reasons for the default. The notice shall include the timeframe in which Consultant 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 Consultant 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 Consultant 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 Consultant'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.

Consultant hereby authorizes City to deduct from any amount payable to Consultant (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 Consultant's acts or omissions in performing or failing to perform Consultant'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 Consultant, 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 Consultant 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 Consultant 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, Consultant 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 Consultant, except that where termination is due to the fault of the Consultant, the period of notice may be such shorter time as may be determined by the Contract Officer. In addition, the Consultant 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 Consultant may determine. Upon receipt of any notice of termination, Consultant shall immediately cease all services hereunder except such as may be specifically approved by the Contract Officer. Except where the Consultant has initiated termination, the Consultant 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 Consultant has initiated termination, the Consultant 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 Consultant.

If termination is due to the failure of the Consultant 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 Consultant 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 Consultant 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 Consultant, 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 Consultant or to its successor, or for breach of any obligation of the terms of this Agreement.

8.2 Conflict of Interest.

Consultant 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 Consultant's performance of services under this Agreement. Consultant 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. Consultant 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 Consultant 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.

Consultant 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. Consultant shall take affirmative action to ensure 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.

Consultant 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 Consultant 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, Consultant 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, California 91706 and in the case of the Consultant, 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 Consultant 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. Consultant 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. Consultant 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. Consultant 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 _____

9.7 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) 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.

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

CITY:

CITY OF IRWINDALE, a municipal
corporation

H. Manuel Ortiz, Mayor

ATTEST:

Laura M. Nieto, MMC
Chief Deputy City Clerk

APPROVED AS TO FORM:

ALESHIRE & WYNDER, LLP

Adrian Guerra, City Attorney

CONSULTANT:

ECORP CONSULTING, INC., a
California corporation

By: _____
Name: Anne Surdzial
Title: Vice President
Address: 215 N. 5th Street
Redlands, CA 92374

By: _____
Name: Lisa Westwood
Title: Vice President
Address: 2861 Pullman Street
Santa Ana, CA 92705

Two corporate officer signatures required when Consultant 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. CONSULTANT'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 CONSULTANT'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 _____

On _____ before me, _____, Notary Public, personally appeared _____ who 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

☐ INDIVIDUAL
☐ CORPORATE OFFICER

TITLE(S)

☐ PARTNER(S) ☐ LIMITED
☐ GENERAL

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

☐ OTHER _____

DESCRIPTION OF ATTACHED DOCUMENT

TITLE OR TYPE OF DOCUMENT

NUMBER OF PAGES

DATE OF DOCUMENT

SIGNER(S) OTHER THAN NAMED ABOVE

SIGNER IS REPRESENTING:

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

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 _____

On _____ before me, _____, Notary Public, personally appeared _____ who 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

☐ INDIVIDUAL
☐ CORPORATE OFFICER

TITLE(S)

☐ PARTNER(S) ☐ LIMITED
☐ GENERAL

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

☐ OTHER _____

DESCRIPTION OF ATTACHED DOCUMENT

TITLE OR TYPE OF DOCUMENT

NUMBER OF PAGES

DATE OF DOCUMENT

SIGNER(S) OTHER THAN NAMED ABOVE

SIGNER IS REPRESENTING:

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

EXHIBIT "A"

SCOPE OF SERVICES

- I. **Consultant will perform CEQA work and prepare CEQA documents necessary to obtain entitlements for the construction of a ±105,000 square-foot speculative concrete tilt-up building on an approximately 4.92 acre project site located at 15715 Arrow Highway (APN: 5619-001-059) ("Project"), including, but not limited to, the following (herein after referred to collectively as "Services"):**

C – SCOPE OF WORK

Task 1 – Kickoff Meeting

The ECORP Team will schedule and conduct a project kickoff meeting with City staff within one (1) week of the notice to proceed (NTP). The purpose of the meeting will be to establish communication protocol, confirm the scope and schedule, identify project stakeholders and agencies to be consulted, and identify any remaining data to be transferred. A site visit will be conducted in conjunction with the project kickoff.

Task 2 – Technical Reports

Team member Group Delta will prepare the Phase I Environmental Site Assessment and Geotechnical Report, KOA will prepare the traffic analysis, and PACE will provide review of the Applicant provided hydrology analysis and water quality analysis. ECORP will prepare the following technical studies: air quality, greenhouse gas emissions, health risk assessment, biological resources desktop survey, energy analysis, cultural resources report, AB 52 Consultation Assistance, paleontological resources analysis, and noise analysis. The approach to preparation of these studies is provided below.

2.1 Air Quality/Greenhouse Gas Emissions Assessment (ECORP)

The assessment of air quality and greenhouse gas (GHG) emissions will quantify short-term (i.e., construction) and long-term (i.e., operational) emissions generated by the Proposed Project using the most recent version of the California Emissions Estimator Model (CalEEMod™) software. CalEEMod™ is a statewide land use emissions computer model designed to quantify pollutant emissions associated with operations from a variety of land use projects. Project criteria air pollutant and GHG emissions will be compared to the thresholds of significance promulgated by the South Coast Air Quality Management District (SCAQMD), including SCAQMD's recommended Localized Significance Thresholds (LSTs). LSTs were developed in response to SCAQMD Governing Boards' Environmental Justice Enhancement Initiative (I-4). ECORP proposes to evaluate potential air quality and GHG emission-related impacts in a technical report. The analysis will be supported by modeling documentation, which would be included as an appendix to the technical report. The Air Quality and Greenhouse Gas Emissions Assessment Report will be the source of the analysis contained in the CEQA document.

Deliverables:

- ❖ One (1) electronic version of the Air Quality and Greenhouse Gas Emissions Assessment Report

2.2 Construction Health Risk Assessment (ECORP)

The Project Site is located in close proximity to existing sensitive land uses, such as the urgent care directly across Arrow Highway from the Project and residences fronting Hidalgo Street. Project construction would employ the use of heavy-duty offroad equipment, a source of the toxic air

contaminant (TAC) and diesel particulate matter (DPM). ECORP will prepare a Construction Health Risk Assessment (HRA) to address the Proposed Project's construction health impacts on nearby receptors, per CEQA guidelines. Project emissions calculations will be combined with regulatory and industry-based specifications to quantify emissions of TACs. The air dispersion modeling for the Construction HRA will be performed using the U.S. EPA AERMOD dispersion model with unitized emissions of 1 gram per second. AERMOD is a steady-state, multiple-source, Gaussian dispersion model designed for use with emission sources situated in varying terrain. AERMOD requires hourly meteorological data consisting of wind vector, wind speed, temperature, stability class, and mixing height. Health risk modeling associated with the identified TAC concentrations will be completed using the calculated emissions, AERMOD source receptor grids and the HARP2 model with regulatory default settings. HARP2 implements the latest regulatory guidance health risk factors and exposure parameters to provide gridded health risk in the Project Area.

The Construction HRA would be prepared in accordance with SCAQMD guidance. The modeled concentrations will be used to estimate the increased cancer risk and health hazard in accordance with the California Environmental Protection Agency's Office of Environmental Health Hazard Assessment (OEHHA) *Air Toxics Hot Spots Program Risk Assessment Guidelines - The Air Toxics Hot Spot Program Guidance Manual for Preparation of Health Risk Assessment*. The assessment will present background information on TACs and health risks, the assumptions used for the modeling and modeling methodology and the results of the analysis. Pollutant concentrations and corresponding health risk from Project construction activities will be identified.

ECORP proposes to evaluate potential health risks from Project construction as a component of the Air Quality and Greenhouse Gas Assessment Report. The analysis will be supported by modeling documentation, which would be included as an appendix to the report. A streamlined analysis of the Construction HRA will also be included in the Air Quality section of the CEQA document.

Deliverables:

- ◆ One (1) electronic version of the Construction Health Risk Assessment contained within the Air Quality and Greenhouse Gas Emissions Assessment Report
- ◆ One (1) streamlined analysis contained within the Air Quality section of the CEQA document

2.3 Operational Health Risk Assessment (ECORP)

The Project proposes warehouse space that would be utilized by heavy trucks, a source of the TAC, DPM. As such, ECORP proposes to prepare an Operations HRA for the Proposed Project. Like the proposed Construction HRA, the air dispersion modeling for the Operations HRA will be performed using the U.S. EPA AERMOD dispersion model with unitized emissions of 1 gram per second. Health risk modeling associated with the identified DPM concentrations will be completed using the calculated emissions, AERMOD source receptor grids, and the HARP2 model with regulatory default settings. Like the Construction HRA, the Operations HRA will be prepared in accordance with the SCAQMD's guidance, and the modeled concentrations will be used to estimate the increased cancer

risk and health hazard in accordance with OEHHA's guidance. The assessment will present background information on TACs and health risks, the assumptions used for the modeling and modeling methodology, and the results of the analysis.

ECORP will require the completed Traffic Impact Assessment to complete the Operations HRA. The Operations HRA will be prepared as a component of the Air Quality and Greenhouse Gas Assessment Report. The analysis will be supported by modeling documentation, which would be included as an appendix to the technical report. A streamlined analysis of the Operations HRA will also be included in the Air Quality section of the CEQA document.

Deliverables:

- ✦ One (1) electronic version of the Operations Health Risk Assessment contained within the Air Quality and Greenhouse Gas Emissions Assessment Report
- ✦ One (1) streamlined analysis of the Operations Health Risk Assessment contained within the Air Quality section of the CEQA document

2.4 Biological Resources Due Diligence Assessment and Report (ECORP)

ECORP will conduct a biological resources due diligence assessment of the Project Site, identify any potential biological constraints to development and, if applicable, make recommendations based on the findings. Prior to conducting the due diligence assessment, the biologist will conduct queries of the latest versions of the CDFW, California Natural Diversity Data Base (CNDDB), and California Native Plant Society (CNPS) Electronic Inventory of Rare and Endangered Plants. A review of USFWS National Wetlands Inventory (NWI) mapping will be conducted to identify whether any blue line streams are present on the Project Site that could require a formal aquatic resources delineation. Based on the literature review, the biologists will identify the sensitive and/or listed species that could occur on the proposed Project Site.

Once the literature review is completed, ECORP biologists will conduct a brief biological reconnaissance survey to document the site conditions and assess the existing structure that will be demolished for its potential as bat roosting habitat (several sensitive bat species are known to roost in buildings). The survey will be conducted by visiting and walking the perimeter of the existing structure to assess the potential for sensitive biological resources (including roosting bats) to be found there. A list of both plant and animal species observed will be kept during the survey. Representative photographs will be taken of the area to document site conditions at the time of the survey. If any sensitive biological resources are discovered during the survey within the Project Site, or immediately adjacent to the Project Site, their location will be recorded using a Global Positioning System (GPS) equipped with sub-meter accuracy and the City will be notified.

Following the literature review and reconnaissance survey, ECORP will prepare a Biological Due Diligence Assessment Letter Report that details the results of the literature review and field survey. The report will include a summary of the biological setting of the Project Site, a Project description,

Project location, discussion of survey methods and results, and potential biological constraints to the proposed development. If appropriate, the report will also include an impacts assessment and recommended mitigation measures consistent with the requirements of CEQA. If necessary, recommendations for additional work, including focused surveys for sensitive species, will be discussed in the report. ECORP will submit one electronic copy of the draft Biological Due Diligence Assessment Letter Report to the City. After receiving one round of complete comments, a final version of the Biological Due Diligence Assessment Letter Report will be submitted electronically.

This scope of work does not include focused (protocol-level) surveys, an aquatic resources delineation, or coordination with the regulatory agencies. If those services are determined to be necessary, a separate scope of work and cost estimate for those services will be provided.

Deliverables:

- ◆ Draft and Final versions of the Biological Due Diligence Assessment Letter Report

2.5 Cultural Resources Inventory (ECORP)

ECORP will carry out a cultural resources inventory of the 4.92-acre Project Area. The scope of work for the cultural resources inventory includes a records search of the California Historical Resources Information System (CHRIS) and literature review for the Project Area, a Sacred Lands File search with the Native American Heritage Commission (NAHC), a request of information from local historical societies (if any), a pedestrian field survey of the Project Area, and preparation of a cultural resources inventory report. The cultural resources inventory will be conducted under the direct supervision of a Registered Professional Archaeologist who meets the Secretary of the Interior's Professional Qualifications Standards for prehistoric and historic archaeology. This study will be conducted pursuant to compliance with CEQA and Section 106 of NHPA and its implementing regulations in 36 CFR 800.

ECORP will request a records search of the CHRIS from the South Central Coastal Information Center (SCCIC) located on the California State University, Fullerton campus. The CHRIS records search will identify the locations and extent of previous surveys conducted within one mile of the Project Area and will determine if there are any known archaeological or built environment resources (i.e., pre-contact [prehistoric] or historic archaeological sites or historic-period features) located within or near the Project Area. The CHRIS records search will identify resources listed on or determined eligible for listing on the NRHP) and/or the CRHR located within or near the Project Area.

ECORP will request a search of the Sacred Lands File from the NAHC. The Sacred Lands File search will identify any known sensitive or sacred Native American resources located within or near the Project Area. It should be noted that the Sacred Lands File search will not constitute consultation in compliance with Senate Bill (SB) 18, Assembly Bill (AB) 52, or Section 106 of NHPA. SB 18 and Section 106 consultation are separate processes from cultural technical studies and are not included in this scope of work. AB 52 consultation assistance is described as part of Task 3.

ECORP will contact local historical societies (if any) seeking information about the history of the Project Area. Local historical societies are often able to provide additional information about an area that CHRIS or the NAHC may not have. It should be noted that this contacting of local historical societies does not constitute stakeholder outreach and is solely for the purpose of seeking information about the Project Area.

ECORP will complete a field survey of the 4.92-acre Project Area. An ECORP archaeologist will conduct a pedestrian survey of all accessible areas within the Project Area using pedestrian transect intervals spaced 10 to 15 meters apart, where possible. The Project Area will be examined for evidence of archaeological and built environment resources, including pre-contact and historic-period (i.e., over 50 years of age) archaeological deposits and features. If any resources are identified in the Project Area, the location and nature of the resources will be preliminarily noted in accordance with the standards of the California Office of Historic Preservation (OHP). For costing purposes, ECORP assumes that no resources will be observed in the Project Area during survey. A separate scope and cost will be prepared for any recording of resources and evaluation of eligibility to be included in the California Register of Historical Resources (CRHR) or the National Register of Historic Places (NRHP) based on the level of effort required.

ECORP will prepare a cultural resources inventory report that is co-compliant with CEQA and Section 106 of the NHPA to document the methods and results of the CHRIS records search, Sacred Lands File search, and field survey. The report will include a brief summary of the environmental setting and cultural background of the Project Area. The report will also present recommendations for further work, if needed, to evaluate any archaeological and built environment resources that may have been identified by the survey.

Deliverables:

- ❖ One (1) electronic version of the Cultural Resources Inventory Report

2.6 Energy Consumption Assessment (ECORP)

ECORP proposes to analyze Project energy consumption in a technical report where potential impacts related to Project energy consumption will be assessed against the Office of Planning and Research's proposed standards of significance: i.e., whether the Project result in the wasteful, inefficient, or unnecessary consumption of energy, or wasteful use of energy resources; and, whether the Project would conflict with an applicable plan for renewable energy or energy efficiency. There are no established thresholds of significance, statewide or locally, for what constitutes a wasteful, inefficient, and unnecessary consumption of energy for proposed industrial warehousing. Therefore, for the purposes of this analysis, the amount of energy necessary for both Project construction and operation will be quantified and compared to that consumed in Los Angeles County as a whole. Where appropriate, the analysis would be supported by modeling documentation, which would be included as an appendix to the report. The Energy Consumption Assessment will be the source of the analysis contained in the Energy section of CEQA document.



Deliverables:

- ◆ One (1) electronic version of the Energy Consumption Assessment

2.7 Geology and Soils (Group Delta)

A geotechnical study will be conducted to identify and evaluate significant potential impacts at the site as required by CEQA guidelines. Our services will consist of reviewing readily available geotechnical and geological information, performing a preliminary reconnaissance-level site visit to observe site conditions and identify any geologic hazards if existing, and preparing a Geotechnical Study Report that will contain a project and site description, geologic conditions and hazards, and geotechnical impacts and mitigation.

The Geotechnical Study Report will address the following:

- ◆ Site conditions and observations from the site visit
- ◆ General geology and ground water conditions
- ◆ Seismic hazards including fault rupture, seismic ground shaking, liquefaction and liquefaction induced settlement and lateral spreading
- ◆ Slope stability (landslides) and seismically induced landsliding
- ◆ Geotechnical impacts including potential for expansive and collapsible soil
- ◆ Geotechnical considerations pertain to the site rough grading and general earthwork
- ◆ Potential for on-site infiltration

This scope of work does not include any field investigation. It is our expectation that existing geotechnical reports for the site, if available, will be provided prior to the start of work for inclusion in the evaluation.

Deliverables:

- ◆ One (1) electronic version of the Geotechnical Study Report

2.8 Phase I ESA (Group Delta)

Group Delta will perform a Phase I ESA for the designated Project Site in accordance with the ASTM 1527-21. This version of the ASTM standard complies with the Federal All Appropriate Inquiry (AAI) rule (40 CFR Part 312 – Standards and Practices for All Appropriate Inquiries). The Phase I ESA will be managed by an Environmental Professional in general accordance with the AAI rule and the ASTM 1527-21 requirements. The ESA report will provide a discussion of any identified recognized environmental conditions (RECs) and areas of concern.

Group Delta's proposed scope of services includes an ESA report including records review of available environmental databases, environmental lien and title review, public and private records of current and historical land use, relevant files from federal, state, local agencies and environmental

sources, regulatory correspondence, and environmental reports. Group Delta will also perform a site reconnaissance to observe the property and its current use. At the permission of the property owner, photographs will be taken to document conditions observed. Group Delta will interview the ESA user and available key site personnel who may have historical environmental information for the Site. Interviews may be conducted with prior owners and/or occupants in order to obtain information indicating RECs in connection with the property.

Deliverables:

- ◆ One (1) electronic version of the Phase I ESA

2.9 Hydrology/Drainage Analysis (PACE)

PACE will evaluate Applicant provided Project reports, calculations, and plans related to Hydrology and Water Quality, to support project CEQA documentation. PACE will evaluate the Project's Hydrology Report/ calculations/plans provided by the Project Applicant to determine impacts of the Project related to hydrology and water quality.

Existing Drainage Technical Information/Studies. Provide engineering services related to technical research and investigation of previous studies/technical data that directly influence assessment of the hydrologic impacts of the Project. Obtain the existing additional available technical studies and updated background data from the local jurisdictional agencies related to the existing flood hazard mapping or floodplain studies, dam inundation studies, municipal drainage masterplans, and watershed hydrologic information for the watershed area. PACE will evaluate the Project reports based on:

- ◆ Engineering data
- ◆ Environmental background information
- ◆ Design data
- ◆ Physical constraints
- ◆ Project design objectives
- ◆ Regulatory/environmental controls

Additional information will include review of the plans for the existing offsite/adjacent drainage facilities, such as the existing offsite municipal drainage facilities.

Evaluate Project Information. PACE will review the hydrology designs, calculations, and reports provided by the Project to determine if engineering standards have been followed and overall adequacy of the design and documentation provided by the Project.

Evaluate Project Compliance with Applicable Standards. PACE will evaluate the Project documentation for compliance with applicable standards related to Project impacts on the environment and on surrounding properties and receiving waters. PACE review will include

regulations such as peak discharge limitations, increases in discharge rate, volume, acceptance of offsite flows, etc. The PACE review is not intended to address items such as City design standards that do not impact the environment or offsite properties.

Assessment of Project Impacts. PACE will prepare an assessment of Project impacts related to hydrology and water quality. A narrative assessment or quantitative assessment will be prepared as appropriate based on the Project materials available for review.

Project Meetings. PACE will attend internal team meetings, which include coordination, communication, and technical consultation with the Project Team during the technical investigation and planning process. This includes meetings at regular intervals to discuss the progress of the study and provide clarifications to assist the Project planning.

Deliverables:

- ◆ A technical memo documenting:
 - Review of overall compliance with engineering standards and adequacy of design
 - Compliance with applicable regulations and standards
 - Assessment of Project impacts related to hydrology

2.10 Water Quality Analysis (PACE)

Review of Water Quality Plans and Reports. Review Applicant provided Project reports, calculations, and designs related to water quality management. Anticipated materials available for review include Project WQMP and LID report, plans for water quality BMPs and other facilities, design calculations.

Evaluate Project Information. PACE will evaluate Project-proposed facilities in light of standard engineering practice. PACE review shall include overall adequacy of documentation, completeness of documentation provided by the Project, and completeness of the Project documentation to support impacts analysis.

Evaluate Project Compliance with Applicable Standards. PACE will evaluate Project-proposed facilities considering applicable water quality regulations such as the LA County MS4 permit and LA County LID Manual.

Assessment of Project Impacts. PACE will assess Project impacts and prepare narrative or quantitative evaluation for use in CEQA documentation.

Project Meetings. PACE will attend internal team meetings, which include coordination, communication, and technical consultation with the Project Team during the technical investigation and planning process. This includes meetings at regular intervals to discuss the progress of the study and provide clarifications to assist the Project planning.

Deliverables:

- ◆ A technical memo documenting:
 - Review of overall compliance with engineering standards and adequacy of design
 - Compliance with applicable regulations and standards
 - Assessment of Project impacts related to hydrology and water quality

2.11 Noise Impact Assessment (ECORP)

The evaluation of noise impacts associated with the Project will be completed by staff members who are noise experts. The applicable noise criteria for the Project Site will be reviewed and discussed for land uses adjacent to, and nearby, the Project Site as they will be the basis for the Project impact determination and whether mitigation is necessary. To establish the existing ambient noise levels currently experienced at and around the Project Site, ECORP will conduct up to five (5) short-term (15 minutes) measurements in the Project vicinity. ECORP will also calculate the existing traffic noise generated in the Project vicinity using the U.S. Federal Highway Traffic Noise Prediction Model (FHWA-RD-77-108) coupled with data provided by the Traffic Impact Assessment prepared for the Project. The combination of the baseline noise survey and the modeled traffic noise will provide a representative understanding of the current noise environment.

Construction would occur during implementation of the Proposed Project. Noise levels from construction sources will be analyzed using the Federal Highway Administration Roadway Construction Noise Model and based on the anticipated equipment to be used. To evaluate the potential health-related effects (physical damage to the ear) from construction noise, construction noise will be evaluated in terms of hourly equivalent continuous noise levels (L_{eq}) and the frequency of occurrence at the nearby residences. In addition to construction noise, an analysis of vibration impacts will be prepared based on the California Department of Transportation's (Caltrans) vibration analysis guidance.

The evaluation of the Project's contribution to noise increases over existing conditions will be addressed. The predominate source of onsite noise would include internal heavy-duty truck maneuvering, including back-up beepers. The analysis of onsite noise will rely on the SoundPLAN 3D noise model, which will be used to calculate the propagation/spread of onsite Project noise levels from onsite Project operations. The SoundPLAN 3D noise model predicts noise levels based on the location, noise level, and frequency spectra of the noise sources as well as the geometry and reflective properties of the local terrain, buildings, and barriers. A noise contour graphic will be prepared to depict the noise levels at the surrounding receptors. The modeling results and noise contour graphics will be discussed and summarized in the analysis.

Another major source of noise associated with the Project would be offsite automobile traffic. Potential noise impacts from vehicular traffic will be assessed using the U.S. Federal Highway Traffic Noise Prediction Model (FHWA-RD-77-108). The 24-hour weighted Community Noise Equivalent

Levels (CNEL) will be presented in a tabular format. ECORP will require the completed LOS Analysis or Local Mobility Analysis to complete the evaluation of offsite traffic noise.

ECORP proposes to evaluate noise impacts in a technical report. Where appropriate, the analysis would be supported by modeling documentation, which would be included as an appendix to the report. The Noise Impact Technical Report will be the source of the analysis contained in the Noise Chapter of the environmental document.

Deliverables:

- ◆ One (1) electronic version of the Noise Impact Assessment Report

2.12 Paleontological Resources Assessment (ECORP)

ECORP will conduct a paleontological record search through the Western Science Center (WSC), Hemet, California. The record search results will detail the Project Site's sensitivity to producing paleontological resources as well as any recorded paleontological resources from within the Project area and from within a 1-mile radius. In addition to the record search, a detailed desktop literature review will be conducted on the paleontology of the Project Area. Information about previous surveys and previously recorded paleontological resources will be obtained for the Project Area.

A qualified paleontologist will review the results of the record search obtained from the WSC. Based on the observations and recommendations outlined in the search, a paleontological resources assessment letter report will be drafted discussing the geologic units found within the Project Site and within a 1-mile radius, particularly those units that are sensitive to producing paleontological resources. In addition, a list of paleontological resources that have been documented and curated at the museum from the Project Site and vicinity will be listed. Finally, if there is a likelihood of encountering paleontological resources during project construction, the letter report will recommend mitigation measures to follow during construction activities.

Deliverables:

- ◆ One (1) electronic version of the Paleontological Resources Assessment Letter Report

2.13 Traffic Study (KOA)

KOA has defined a potential study area of seven intersections based on the general project size and access routes along the local area roadway network. The Project is located in close enough proximity to the freeway, and also of relative regional prominence, to require analysis of freeway ramp intersections and freeway mainline segments in the vicinity. The scope of services for the traffic impact analysis includes the following:

Scoping Effort. KOA will create a succinct scoping document including count locations, timeframes, volume types, LOS definitions, scenario definitions, trip generation including trucks and autos, ambient growth cumulative project inputs, and other necessary details. After the City provides comments on or verification of the assumptions, the next step will proceed.

Traffic Data Collection. AM and PM peak-hour vehicle turning movement counts including vehicles and trucks will be conducted from 7:00 a.m. to 9:00 a.m. and from 4:00 p.m. to 6:00 p.m. at up to seven study intersections, envisioned to be located on local roadways at the perimeter of the Project Site, and along Live Oak Avenue and Arrow Highway from the Project Site to the I-605 freeway interchanges on both roadway corridors.

Trip Generation. A trip generation estimate of the Proposed Project will be created based on a proposed Project Site Plan, total gross floor area of the industrial use, and other operational details that might be available. Passenger car equivalency (PCE) factors will be added based on numbers of trucks with trailers or truck cabs only, if such information can be defined for the land use program or proposed tenants.

Traffic Analysis. An analysis file will be set up to include existing and Project-year baseline scenarios. Study intersection approach lane and signal phasing will be verified in the field. An impacts analysis under existing baseline analysis will be conducted using the existing traffic volumes and estimated project trips. Project year future projections will include ambient growth projections from the Metro CMP, the SCAG RTP, or another source as determined through coordination with the City, and cumulative/planned area Project trips as applicable.

KOA will analyze off-ramp queuing, merge/diverge locations, and mainline flow effects for pre-Project and post-Project conditions at the Live Oak Avenue and Arrow Highway interchanges with the I-605 to the west of the Project Site. The queuing analysis will be based on current Highway Capacity Manual methodologies. This analysis will serve as a specialized analysis within the overall study area, specifically to identify any potential impacts on Caltrans facilities.

Prepare Draft and Final Traffic Impact Analysis Report. KOA will prepare a draft traffic impact study for review by the Client and subsequently by the City (including revisions from Client as necessary). Electronic Word or PDF versions of the document can be provided, and hard copies can also be provided for review as needed. KOA will then incorporate comments and submit the final traffic impact study to the Client and City.

Project Coordination and Meetings. KOA will attend up to four meetings, including but not limited to one kick-off meeting with City staff; one meeting with staff to discuss issues regarding the preparation of the draft document, and two public hearings before the Planning Commission and City Council.

Task 3 – AB 52 Consultation Assistance

ECORP will assist the City in consulting with California Native American tribes under Assembly Bill 52 (AB 52). ECORP will draft all required notification letters, coordinate tribal meetings, maintain the AB 52 administrative record, and provide technical support to the agency in determining whether Tribal Cultural Resources (TCRs) will be significantly impacted by the Project. ECORP will document the consultation process and comments discussed and advise the lead agency on how to conclude the

consultation, as specified by AB 52. This cost is based on time and materials, "best efforts" basis. If the amount of tribal involvement or requests for technical support exceed what can be accommodated by this budget, an amendment would be required to continue assisting the Client.

Deliverables:

- ✦ Draft AB 52 notification, consultation initiation, and consultation conclusion letters

Task 4 – Notice of Intent and Administrative Initial Study/Mitigated Negative Declaration

Draft Notice of Intent (NOI). ECORP will prepare the NOI for the IS/MND. The NOI will include a brief project description, supporting maps, the starting and ending dates for the public review period, project schedule, notice of public hearing, addresses where copies of the IS/MND are available for review, contact information, and other supporting information.

Administrative Draft IS/MND. ECORP will prepare an IS/MND using the approved checklist format from the City or Appendix G of the CEQA Guidelines. ECORP will write a description of the Proposed Project, including the location of the Project Area (including a Project map), a brief description of the environmental setting, an identification of environmental effects using the above-referenced checklist format, a brief substantiation of the checklist entries, and a list of references and preparers. ECORP will provide mitigation measures (if required) that can be developed using existing data. ECORP will prepare the Project Description to include required content pursuant to CEQA Guidelines Section 15124. This will include project location, project objectives, narrative description of project technical and environmental characteristics, proposed uses of the Industrial/Commercial Specific Plan, a construction timeline, intended uses and agencies expected to use the CEQA document, and permit(s) required to implement the project. Agreement between the City and the ECORP Team on the elements of the Project Description before analysis begins will help ensure that the Project stays on schedule and within budget.

Deliverables:

- ✦ Draft Notice of Intent (NOI) document (one electronic file in PDF and Microsoft Word)
- ✦ Administrative Draft MND (one electronic file in PDF and Microsoft Word)
- ✦ Public Review Version of Notice of Intent (NOI) (one electronic file in PDF and Microsoft Word)

Task 5 – Public Review Draft IS/MND

After receipt of one (1) set of integrated, non-conflicting comments on the Administrative Draft IS/MND from the City, ECORP will revise the IS/MND accordingly. The revised IS/MND will be provided to the City in track-changes for ease of review and as a "clean" version. After the City approves the document for public circulation ECORP will prepare the Notice of Completion (NOC) for electronic transmittal of the IS/MND to the State Clearinghouse (SCH) via CEQAnet. Two (2) bound



copies of the IS/MND and two (2) CDs with appendices will be sent the local library. Document deliveries will be sent via overnight and delivery confirmation will be provided to the City.

The NOI will be filed with the Los Angeles County Clerk and the State Clearinghouse. The NOI is required by CEQA to be either 1) posted on-site; 2) mailed to the surrounding property owners; or 3) published in a newspaper of general circulation. The NOI will be distributed (for a 30-day public review period) via one of the three methods listed above.

Deliverables:

- ◆ Public Review Draft IS/MND with City comments incorporated (one electronic file in PDF and Microsoft Word)
- ◆ Notice of Intent (NOI) that meets State requirements (one electronic file in PDF and Microsoft Word)
- ◆ Electronic upload of the IS/MND to the SCH CEQAnet
- ◆ NOI filing with County Clerk and NOC for SCH
- ◆ NOI newspaper ad or other preferred method
- ◆ Two (2) bound copies and two (2) CDs with appendices

Task 6 – Response to Comments on IS/MND, Final IS/MND and Mitigation Monitoring and Reporting Program

The Lead Agency (City) must consider any comments received on the MND when making a decision on the Project. For costing, we have assumed that fifty (50) comment letters containing four (4) comments each will be received (or a total of 200 comments). ECORP will collate all public comments and comment letters regarding the IS and prepare written responses to comments in a matrix format. The matrix will be submitted to the City for review. It is assumed that City staff will receive all comments and will forward to ECORP as soon as possible after receipt.

The Final IS/MND will include responses to comments received on the Draft IS/MND, any changes to the Draft IS/MND, and the Mitigation Monitoring and Reporting Program (MMRP, if required), prepared in accordance with CEQA Guidelines Section 15097. ECORP will prepare the MMRP in table format, with input from the City. The MMRP will include all best management practices and mitigation measures identified in the IS/MND and will include the timing, responsible entity, and the method for verifying implementation of the measure.

An Administrative Final IS/MND and MMRP will be prepared, and after review by the City, the Final IS/MND and MMRP will be provided.

Deliverables:

- ◆ Responses to Comments on Public Draft IS/MND
- ◆ Final MND

- ✦ Draft and Final MMRP

Task 7 – Notice of Determination

ECORP will prepare and file the Notice of Determination (NOD) with the Los Angeles County Clerk's office and the State Clearinghouse within five business days of adoption of the MND. Fees associated with the NOD (in 2023) are as follows:

- ✦ NOD – County filing fee of \$75.00 and CDFW CEQA environmental document filing fee of \$2,764.00 (IS/MND).

The County filing fees and the CDFW fee are included in the cost.

Deliverables:

- ✦ NOD (one scanned and stamped electronic file in PDF)
- ✦ Evidence of payment of the County filing fee and the CDFW fee (one scanned electronic file in PDF)

Task 8 – Meetings and Project Management

ECORP will be responsible for meeting with City staff and applicant on a bi-weekly basis as well as one kick-off meeting with City staff and applicant; one meeting with staff to discuss issues regarding the preparation of the draft document, one scoping or community meeting, and two public hearings before the Planning Commission and City Council. It is our understanding based on the City's RFP that the number and frequency of the meetings will be determined in consultation with all parties before the Project begins. The purpose of the meetings will be to establish objectives, discuss alternatives, provide direction, and review progress. In addition, it is our understanding that ECORP will be expected to attend periodic meetings of the Planning Commission and City Council.

ECORP will attend Project meetings and coordinate with City staff throughout the CEQA process. For the purposes of budgeting ECORP has made the following assumptions regarding meetings and project management

Attendance at Project meetings, including:

- ✦ One kickoff meeting with City staff and the applicant (Task 1)
- ✦ One meeting with staff to discuss issues regarding the preparation of the draft CEQA document
- ✦ One scoping or community meeting
- ✦ Two (2) public hearings before the Planning Commission (one meeting) and City Council (one meeting).

Coordination and progress calls with City staff will take place regularly (per the RFP on a bi-weekly basis) throughout the CEQA process. For the purposes of budgeting, we presume that the bi-weekly



meetings will occur twice a month for a total of eight months for a total of 16 meetings, at one hour per meeting. If additional meetings and/or time is required for these bi-weekly meetings, they can be accommodated on a time-and-materials basis.

Deliverables:

- ✦ Meeting/Teleconference agendas
- ✦ Meeting/Teleconference notes, action items
- ✦ Monthly invoices

Optional Environmental Impact Report

If the technical studies and IS identify an impact that would remain significant after mitigation (potentially requiring an Environmental Impact Report [EIR]), then ECORP will immediately notify the City to determine if there may be an architectural or engineering solution to minimize or avoid the impact. If the impact cannot be reduced to less than significant, an EIR will be required as described in the scope of work below. It is our approach that most of the documentation in the EIR will be focused on those issues where more information or analysis was, and a determination of significance could not be made in the IS.

As determined by CEQA, the purpose of an EIR is to provide decision makers, public agencies, and the general public with an objective and informative document that facilitates a basic understanding of the proposed project, including direct, indirect, and cumulative environmental effects. The EIR also identifies feasible mitigation measures to mitigate significant environmental effects. The City will use the EIR to issue permits, agreements, and approvals to implement portions of the Project under its authority.

Tasks E1 through E4 – Project Kickoff, Project Description, Technical Reports, AB 52, and Initial Study

Tasks E1 through E4 would be the same as Tasks 1 through 4 proposed as part of the IS/MND option above. They are listed here for reference:

- ✦ Task E1: Kickoff Meeting
- ✦ Task E2: Technical Reports
- ✦ Task E3: AB 52 Tribal Consultation Assistance
- ✦ Task E4: Initial Study (IS)
- ✦ The IS prepared under Task E4 would be used as part of the Notice of Preparation (NOP) package for the EIR as described below for Task E5.

Task E5 – Notice of Preparation/Scoping Meeting

Notice of Preparation. ECORP will prepare the Notice of Preparation (NOP), soliciting participation in determining the scope of the EIR. The IS (prepared as part of Task E4) will be attached to the NOP.

The IS/NOP will be circulated pursuant to California Public Resources Code Section 21153(a) and CEQA Guidelines Section 15082. ECORP will distribute thirty (30) copies of the approved IS/NOP via certified mail to the Office of Planning and Research, various public agencies whose approval and/or comments are required (Responsible Agencies), agencies with resources affected by the project (Trustee Agencies) and interested parties and groups. The NOP will also be posted at the County Clerk. Within the 30-day public review and comment period, Responsible Agencies, Trustee Agencies, and members of the public may provide comments about the EIR contents and the project in general.

Public Scoping Meeting. A public scoping meeting shall be scheduled to help the City further understand community concerns and support for the Project. A Public Meeting in an Open House format will be held at City, or other venue determined by the City, during the 30-day NOP review period. ECORP will plan and facilitate the meeting, provide exhibits, handouts/fact sheets, and refreshments, and provide staff for the sign-in table. At least one of these staff members will be English-Spanish bilingual. We have assumed that the City will schedule (or provide a contact at the City so that ECORP may schedule) the meeting room, and that tables, chairs, etc. will be provided by the City. The ECORP Project Manager and one other technical staff would attend this meeting. We have assumed that City staff and the Project Applicant will also attend this meeting to answer questions. Depending on the state of the COVID-19 pandemic this may be a virtual meeting.

Deliverables:

- ◆ NOP to OPR/SCH
- ◆ NOP to mailing list and County Clerk
- ◆ Scoping Meeting materials

Task E6 – Administrative Draft EIR

An Administrative Draft EIR will be submitted to the City for review and comment prior to the preparation of the Draft EIR. The EIR will include the topics for which impacts were identified either as “potentially significant” or “less than significant with mitigation incorporated” in the Initial Study (IS) checklist. It is important to carry forward the mitigation required in the IS to the EIR, so that it will be documented in the Mitigation Monitoring and Reporting Program (MMRP). However, it is our approach that most of the documentation in the EIR will be focused on those issues where more information or analysis was required, and a determination of significance could not be made in the IS. In addition, the EIR will discuss the extent to which the project promotes growth directly or indirectly.

The EIR will also analyze up to two alternatives: an alternative of less intensive development, and the No Project Alternative. We have assumed that the City/Project Applicant would provide any information required for the alternatives development. An “alternatives considered but rejected” section will also be included in the EIR.



The EIR will also provide brief discussions of other topics specifically mandated by CEQA, as follows: unavoidable significant impacts, significant irreversible changes, growth-inducing impacts, consistency with applicable general and regional plans, and energy consumption and conservation.

The Administrative Draft EIR will be provided electronically to the City for review and comment. After receipt of one (1) set of integrated comments on the Administrative Draft SEIR from the City, ECORP will revise the EIR accordingly. ECORP is prepared to meet with the City to review the comments. The revised EIR will be provided to the City in track-changes for ease of review and as a "clean" version. Prior to circulation of the Draft EIR a screencheck copy of the document will be provided to the City for approval.

Deliverables:

- ✦ Administrative Draft EIR (Word and PDF)
- ✦ Screencheck Draft EIR (Word and PDF)

Task E7 – Draft EIR and Notices

After review and comment on the Draft EIR, ECORP will revise the EIR and print sufficient copies for public review. We will also prepare the Notice of Completion (NOC) and Notice of Availability (NOA) to accompany the Draft EIR.

The NOA will be filed with the Los Angeles County Clerk and the State Clearinghouse. The NOA is required by CEQA to be either 1) posted on-site; 2) mailed to the surrounding property owners; or 3) published in a newspaper of general circulation. The NOA will be distributed (for a 30-day public review period) via one or more of the three methods listed above.

Two (2) bound copies of the EIR and two (2) CDs (or thumb drives) with appendices will be sent the local libraries. Document deliveries will be sent via overnight and delivery confirmation will be provided to the City.

As of November 3, 2020, the Office of Planning and Research (OPR), State Clearinghouse (SCH) Unit has discontinued accepting hard copies of environmental documents and notices. All agencies are required to submit online to the CEQA Database (CEQAnet), where CEQA notices and documents will be filed and posted. We have assumed that the City will provide authorization for ECORP to submit all environmental documents and notices to the CEQA database on the City's behalf.

Deliverables:

- ✦ Public Review EIR with City comments incorporated (one electronic file in PDF and Microsoft Word)
- ✦ Notice of Availability (NOA) that meets State requirements (one electronic file in PDF and Microsoft Word)
- ✦ Electronic upload of the EIR to the SCH CEQAnet

- ✦ NOA filing with County Clerk and NOC for SCH
- ✦ NOA newspaper ad or other preferred method
- ✦ Two (2) bound copies and two (2) CDs (or thumb drives) with appendices for local libraries

Task E8 – Public Meeting

The scope for the EIR public meeting is the same as that for the IS/MND public meeting (Task 8).

Deliverables:

- ✦ Meeting attendance

Task E9 – Administrative Final EIR/Draft MMRP

ECORP will prepare an Administrative Final EIR, consisting of copies of comment letters received on the Draft EIR during the State-mandated 45-day public review period, responses to these comments, any errata sheets required based on the comments, and the Draft Mitigation Monitoring and Reporting Program (MMRP, if needed as described below). It is assumed that City staff will receive all comments and will forward to ECORP as soon as possible after receipt. We have assumed that up to 50 comment letters will be received each with an average of four (4) comments, or approximately 200 comments total. Beyond that number of comments and/or the time allotted in our budget proposal, ECORP will complete this task on a time and materials basis.

If needed, ECORP will prepare the MMRP (in accordance with CEQA Guidelines Section 15097) to create a legally enforceable mechanism for the implementation of mitigation measures required in the Draft EIR. This document will be included in the Administrative Final EIR and will identify each mitigation measure to be carried out if the Project is implemented, the entity that will be responsible for implementing the mitigation measures, and when it will be implemented.

An electronic version of the Administrative Final EIR and Draft MMRP will be prepared for City review. If necessary, a second round of review and comment on the Administrative Final EIR and Responses to Comments will be scheduled.

Deliverables:

- ✦ Administrative Final EIR (Word and PDF)

Task E10 – Final EIR/Final MMRP

After City comments on the Administrative Final EIR and Draft MMRP, ECORP will prepare the Final EIR and MMRP. We will mail (or provide electronically) the Final EIR to the required agencies and individuals at least 10 days prior to the City's certification of the Final EIR, as required by CEQA. We have assumed printing of two (2) Final EIRs. We will also prepare ten (10) electronic copies for the City in PDF format on compact discs (or thumb drives).

Deliverables:

- ✦ Final EIR (Word and PDF)
- ✦ Two (2) hard copies of Final EIR
- ✦ Ten (10) compact discs or thumb drives with the Final EIR

Task E11 – Statement of Overriding Considerations/Findings

ECORP will prepare findings to allow for certification of the EIR. The findings will summarize significant impacts, present mitigation measures required to reduce impacts to less-than-significant levels, identify the environmentally superior alternative, and permit adoption of the MMRP. If necessary, a Statement of Overriding Considerations (SOOC) will be prepared, in accordance with Section 15093 of the CEQA Guidelines.

Deliverables:

- ✦ Draft and Final SOOC/Findings

Task E12 – Meetings, Project Management, and Notice of Determination

The scope for the EIR City Meetings is the same as that described under the IS/MND option above (Task 8). It should be noted that the Notice of Determination (NOD) fee for an EIR is greater than for and IS/MND. Fees associated with the NOD (in 2023) are as follows:

- ✦ NOD – County filing fee of \$75.00 and CDFW CEQA environmental document filing fee of \$3,839.25 (EIR).

The County filing fees and the CDFW fee are included in the cost.

Deliverables:

- ✦ NOD (one scanned and stamped electronic file in PDF)
- ✦ Evidence of payment of the County filing fee and the CDFW fee (one scanned electronic file in PDF)

D – CONFLICT OF INTEREST

ECORP and our subconsultants have no financial, business, or other relationships with the property owner and applicant Rexford Industrial Realty, Inc.

E – LIMITS OF GENERAL AND PROFESSIONAL LIABILITY INSURANCE

See ECORP's Conflict of Interest statement above. We are aware of no interests to be disclosed from any source that could either give the appearance of a conflict or cause speculation as to the objectivity of ECORP as the preparer of the EIR.



EXHIBIT "B"

SPECIAL REQUIREMENTS

THERE ARE NO SPECIAL REQUIREMENTS FOR THIS CONTRACT.

EXHIBIT "C"

SCHEDULE OF COMPENSATION/BUDGET

- I. Consultant's proposed budget for services related to the IS/MND is as follows:

B. ECORP'S TOTAL COST TO PERFORM THE WORK IN ITS ENTIRETY

As indicated by Table 2, the total cost for preparation of an Initial Study, Technical Studies, and Mitigated Negative Declaration (MND) is **\$173,212**. The total cost for preparation of an Initial Study, Technical Studies, and EIR is **\$290,111** (Table 3).

Table 2 – Estimated Cost (Initial Study/Mitigated Negative Declaration)

Activity	Cost
Task 1 – Kickoff Meeting	\$930
Task 2 – Technical Reports	
2.1 – Air Quality & Greenhouse Gas Emissions Assessment (ECORP)	\$6,635
2.2 – Construction Health Risk Assessment (ECORP)	\$3,924
2.3 – Operational Health Risk Assessment (ECORP)	\$4,734
2.4 – Biological Resources Due Diligence Assessment and Report (ECORP)	\$4,111
2.5 – Cultural Resources Inventory (ECORP)	\$7,364
2.6 – Energy Consumption Assessment (ECORP)	\$2,940
2.7 – Peer Review of Applicant-Prepared Geotechnical Report (Group Delta)	\$3,262
2.8 – Phase I Environmental Site Assessment (Group Delta)	\$6,510
2.9 – Hydrology/Drainage Analysis Peer Review (PACE)	\$16,646
2.10 – Water Quality Analysis Peer Review (PACE)	\$16,646
2.11 – Noise Impact Analysis (ECORP)	\$7,830
2.12 – Paleontological Resources Assessment (ECORP)	\$4,226
2.13 – Traffic Study (KOA)	\$23,982
Technical Reports Subtotal	\$108,810
Task 3 – AB 52 Consultation Assistance	\$5,300
Task 4 – Prepare CEQA Initial Study/MND	\$26,000
Task 5 – Prepare Public Review Draft MND	\$7,842
Task 6 – Prepare Responses to Comments, Final IS/MND and MMRP	\$12,500
Task 7 – Notice of Determination	\$900
Task 8 – Meetings and Project Management	\$10,930
TOTAL Without Optional Task	\$173,212
OPTIONAL TASK 2.14 Built Environment Resources Evaluation (ECORP)	\$1,400
TOTAL Including Optional Task	\$174,612



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II. Consultant's proposed budget for services related to EIR, if needed, is as follows:

Table 3 – Cost Breakdown – EIR

Activity	Cost
Task E (Option 2) – Prepare EIR	--
Task E1 – Kickoff Meeting	\$930
Task E2 – Technical Reports	
E2.1 – Air Quality & Greenhouse Gas Emissions Assessment (ECORP)	\$6,635
E2.2 – Construction Health Risk Assessment (ECORP)	\$3,924
E2.3 – Operational Health Risk Assessment (ECORP)	\$4,734
E2.4 – Biological Resources Due Diligence Assessment and Report (ECORP)	\$4,111
E2.5 – Cultural Resources Inventory (ECORP)	\$7,364
E2.6 – Energy Consumption Assessment (ECORP)	\$2,940
E2.7 – Peer Review of Applicant-Prepared Geotechnical Report (Group Delta)	\$3,262
E2.8 – Phase I Environmental Site Assessment (Group Delta)	\$6,510
E2.9 – Hydrology/Drainage Analysis Peer Review (PACE)	\$16,646
E2.10 – Water Quality Analysis Peer Review (PACE)	\$16,646
E2.11 – Noise Impact Analysis (ECORP)	\$7,830
E2.12 – Paleontological Resources Assessment (ECORP)	\$4,226
E2.13 – Traffic Study (KOA)	\$23,982
Technical Reports Subtotal	\$108,810
Task E3 – AB 52 Consultation Assistance	\$5,300
Task E4 – Prepare CEQA Initial Study	\$26,000
Task E5– Notice of Preparation/Scoping Meeting	\$9,839
Task E6 – Administrative Draft EIR	\$56,250
Task E7 – Public Review Draft EIR and Notices	\$23,172
Task E8 – Public Meeting	\$4,993
Task E9 – Administrative Final EIR/Draft MMRP	\$23,770
Task E10 – Final EIR/Final MMRP	\$8,070
Task E11– Statement of Overriding Considerations/Findings	\$10,260
Task E12– Meetings, Project Management, and Notice of Determination	\$12,717
TOTAL Without Optional Task	\$290,111
OPTIONAL TASK 2.14 Built Environment Resources Evaluation (ECORP)	\$1,400
TOTAL Including Optional Task	\$291,511

Cost Assumptions

- ✦ Schedule estimates are based on our best judgment of the requirements known at the time of the proposal and can be influenced favorably or adversely by the City's needs and other circumstances. ECORP Consulting, Inc. will perform the services and accomplish the objectives within the presented costs and schedule. However, if the scope of work or



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ENVIRONMENTAL CONSULTANTS

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- III. The compensation for the Services shall not exceed the Contract Sum and total compensation for all Services during the Term of this Agreement shall not exceed the Contract Sum, as provided in Section 2.1 of this Agreement.**
- IV. The City will compensate Consultant for the Services performed upon submission of a valid invoice. Each invoice is to include:**
- a. Line items for all the work performed, the number of hours worked, and the hourly rate.
 - b. Line items for all materials and equipment properly charged to the Services.
 - c. Line items for all other approved reimbursable expenses claimed, with supporting documentation.
 - d. Line items for all approved subcontractor labor, supplies, equipment, materials, and travel properly charged to the Services.
- V. The compensation for the Services shall not exceed the Contract Sum and total compensation for all Services during the Term of this Agreement shall not exceed the Contract Sum, as provided in Section 2.1 of this Agreement.**

EXHIBIT "D"

SCHEDULE OF PERFORMANCE/TIMELINE

- I. Consultant shall perform the Services and deliver the tangible work products, in accordance with the schedules below:**
- II. 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 two (2) years from the date hereof,**
- III. The Contract Officer may approve extensions for performance of the services in accordance with Section 3.2.**

G – SCHEDULE OF SERVICES

ECORP is confident we will meet the time frame for the completion of the required CEQA document as detailed in the schedule below. The 30-day AB 52 (for Native American consultation) response period and any related tribal consultation will need to be completed prior to the start of the public review period.

Table 1 – Project Kickoff and Initial Study

Tasks	Timeline
Notice to Proceed/Kickoff Meeting	Week 1
Project Description	Week 3
Initial Study (and technical studies)	Weeks 6-8

Table 1 Option 1 – Mitigated Negative Declaration

Tasks	Timeline
Administrative Draft IS/MND	Week 10 (follows preparation of Initial Study)
City Review	Weeks 11-12
Revised Administrative Draft IS/MND	Week 13
City Review	Week 14
Distribute Public Review Draft IS/MND (30-day Review)	Week 15
Responses to Comments and MMRP	Week 19
City Review	Weeks 20-21
Final IS/MND	Week 23
Public Hearings	TBD

Table 1 Option 2 – EIR

Tasks	Timeline
Notice of Preparation	Week 10 (follows preparation of Initial Study)
Distribute IS/NOP	Week 12
Public Scoping (30 days)	Weeks 12-15
Administrative Draft EIR	Week 18
City Review	Week 19-20
Revise Administrative Draft EIR	Week 22
Distribute Draft EIR, NOC, NOA	Week 24
Draft EIR Public Review (45 days)	Week 31
Response to Comments and MMRP	Week 32
City Review	Week 33-35
Administrative Final EIR, Draft Findings and Statement of Overriding Considerations (if necessary)	Week 38
Final EIR	Week 40
Public Hearings	TBD

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

CC Item 14

City of
IRWINDALE
AGENDA REPORT

Date: September 13, 2023

To: Honorable Mayor and Members of the City Council

From: Julian A. Miranda, City Manager

Issue: Introduction and First Reading of Ordinance No. 772 Pertaining to Adoption of Chapter 9.18 of Title 9 of the Irwindale Municipal Code Related to the Regulation of Unmanned Aircraft Systems and Drones

City Manager's Recommendation:

It is recommended that the Irwindale City Council introduce for first reading by title only with further reading waived Ordinance No. 772 AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF IRWINDALE ADDING CHAPTER 9.18 ("DRONES AND UNMANNED AIRCRAFT SYSTEMS") TO TITLE 9 ("PUBLIC PEACE, MORALS AND WELFARE") TO THE IRWINDALE MUNICIPAL CODE RELATED TO THE OPERATION OF DRONES AND UNMANNED AIRCRAFT WITHIN THE CITY OF IRWINDALE AND ADOPTING CALIFORNIA CIVIL CODE SECTION 1708.8, CALIFORNIA PENAL CODE SECTION 402, SECTION 44809 OF UNITED STATES CODE TITLE 49, AND PART 107 OF UNITED STATES CODE OF FEDERAL REGULATIONS TITLE 14 BY REFERENCE"

Administrative Action:

Submitted & Prepared by:

Adrian R. Guerra, City Attorney

Electronically Approved

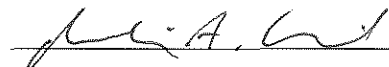
Reviewed by:

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 the operation of 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 City Council meeting. At

the January 8 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 City 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.

At the July 26, 2023 City Council meeting, staff presented two versions of the proposed ordinance to the City Council for review, comment, and further direction. The two versions of the ordinance were practically identical; one version banned all drone flight within the City's residential zone, and the second version banned drone flight within 50 feet of a public right-of-way. Staff asked that the City Council consider both options and provide further direction. Staff also requested 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.

The City Council directed staff to move forward with preparing the proposed ordinance banning all drone flight within the City's residential zone for formal introduction and first reading. As the proposed ordinance would adopt sections of the California Civil Code, California Penal Code, United States Code, and United States Code of Federal Regulations by reference, a noticed public hearing will be set and held after the first reading to amend, adopt, or reject the ordinance. The notice period shall be at least fourteen (14) days before the public hearing. Notice shall be published once a week for two successive weeks.

ANALYSIS

The proposed ordinance would add Chapter 9.18 "Drones and Unmanned Aircraft Systems" to the Irwindale Municipal Code. Chapter 9.18 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, videotaping, 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 the residential zones of the City.
- Within any City park or recreation area except when authorized by City permit.
- That has any type of weapon attached to it.
- In violation of 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.

The Ordinance would take effect **90 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 Ordinance.

FISCAL IMPACT

None.

Decision Maker Conflicts:

None.

Attachments:

Exhibit A – Ordinance No. 772 Adopting Chapter 9.18 “DRONES AND UNMANNED AIRCRAFT SYSTEMS” to the Irwindale Municipal Code

ORDINANCE NO. 772

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF IRWINDALE ADDING CHAPTER 9.18 ("DRONES AND UNMANNED AIRCRAFT SYSTEMS") TO TITLE 9 ("PUBLIC PEACE, MORALS AND WELFARE") TO THE IRWINDALE MUNICIPAL CODE RELATED TO THE OPERATION OF DRONES AND UNMANNED AIRCRAFT WITHIN THE CITY OF IRWINDALE AND ADOPTING CALIFORNIA CIVIL CODE SECTION 1708.8, CALIFORNIA PENAL CODE SECTION 402, SECTION 44809 OF UNITED STATES CODE TITLE 49, AND PART 107 OF UNITED STATES CODE OF FEDERAL REGULATIONS TITLE 14 BY REFERENCE

WHEREAS, a city has the power make and enforce regulations designed to promote the public convenience or the general prosperity, as well as regulations designed to promote the public health, the public morals, or the public safety; and

WHEREAS, in executing that power, a city council may make and enforce within its limits all local, police, sanitary and other ordinances and regulations not in conflict with general laws; and

WHEREAS, the use of Unmanned Aircraft Systems ("UAS"), otherwise known as drones, for both business use and recreational use has been rising significantly within the City; and

WHEREAS, the increased use of drones gives rise to certain concerns regarding public safety, public nuisance, and privacy among City residents; and

WHEREAS, the Irwindale Municipal Code ("IMC") currently does not regulate the use of drones for either business use or recreational use, leaving residents largely unprotected from these certain risks and concerns; and

WHEREAS, the Federal Aviation Administration ("FAA") has promulgated certain regulations regarding the use of drones, and the City Council desires to empower local public safety officers to support and uphold these regulations on a local level; and

WHEREAS, the State of California has also promulgated certain regulations regarding the use of drones, which the City Council desires to empower local public safety officers to support and uphold these regulations on a local level;

WHEREAS, the City Council also desires to incorporate drone usage into existing permitting and licensing requirements under the IMC Chapters 5.04, 9.65, and 17.88; and

WHEREAS, the City Council wishes to promulgate additional regulations addressing local concerns regarding public safety, public nuisance, and privacy among city residents, in order to ensure proper operation of drones within the City's jurisdiction; and

WHEREAS, on September 13, 2023, the City Council conducted a legally noticed public hearing for this Ordinance, and has considered all oral and written testimony from members of the public and City staff, including, but not limited to, all staff reports and exhibits and accompanying documents; and

WHEREAS, all legal prerequisites for the adoption of this Ordinance have occurred.

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

SECTION 1. The facts set forth in the recitals in this Ordinance are true and correct and incorporated by reference.

SECTION 2. The City Council hereby adds a new Chapter 9.18, entitled "DRONES AND UNMANNED AIRCRAFT SYSTEMS," to Title 9 of the Irwindale Municipal Code to read in its entirety as set forth below:

"CHAPTER 9.18 – DRONES AND UNMANNED AIRCRAFT SYSTEMS

9.18.010 - 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.

9.18.020 - 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.

9.18.030 – 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, videotaping, 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, special event or temporary use 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.

9.18.040 – Invasion of Privacy.

California Civil Code § 1708.8, as amended from time to time, is adopted as section 9.18.040 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.

9.18.050 – Emergency Responders.

California Penal Code § 402, as amended from time to time, is adopted as section 9.18.050 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.

9.18.060 – 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 9.18.060 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.

9.18.070 – Small Unmanned Aircraft Systems.

14 C.F.R. Part 107, as amended from time to time, is adopted as section 9.18.070 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.

9.18.080 - 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.

9.18.090. - Use by Public Safety Agencies.

This chapter shall not prohibit the use of any unmanned aircraft by law enforcement or public safety agencies.

9.18.100 - 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.”

SECTION 3. If any section, subsection, sentence, clause or phrase of this ordinance is, for any reason, held to be invalid or unconstitutional, such decision shall not affect the validity or constitutionality of the remaining portions of this ordinance. The City Council hereby declares that it would have passed this ordinance, and each section, subsection, sentence, clause or phrase hereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared unconstitutional due to the writs of mandate issued by the Court.

SECTION 4. The Mayor shall sign this Ordinance and the City Clerk shall certify to the passage and adoption of this Ordinance, and shall cause the same to be published and posted pursuant to the provisions of law in this regard, and this Ordinance shall take effect 90 days after its final passage. City Staff are directed and authorized to inform and educate the public regarding the adoption of this Ordinance prior to its taking effect.

PASSED, APPROVED AND ADOPTED at a regular meeting of the City Council of the City of Irwindale this 12th day of September, 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. 772 was introduced for first reading at a regular meeting of the City Council of the City of Irwindale held on August 23, 2023, and adopted on second reading at a regular meeting of the City Council of the City of Irwindale held on September 12, 2023, and was carried by the following-roll call vote:

AYES: Councilmembers:

NOES: Councilmembers:

ABSENT: Councilmembers:

ABSTAIN: Councilmembers:

Laura M. Nieto, MMC
Chief Deputy City Clerk

AFFIDAVIT OF POSTING

I, Laura M. Nieto, MMC, Chief Deputy City Clerk, certify that I caused a copy of Ordinance No. 772 adopted by the City Council of the City of Irwindale at its regular meeting held September 12, 2023, to be posted at the City Hall, Library, and Post Office on _____, 2023.

Laura M. Nieto, MMC
Chief Deputy City Clerk

Dated: _____

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

City of
IRWINDALE
AGENDA REPORT

CC Item 15

Date: September 13, 2023
To: Honorable Mayor and Members of the City Council
From: Julian A. Miranda, City Manager
Issue: Amendments to City Donation Policy

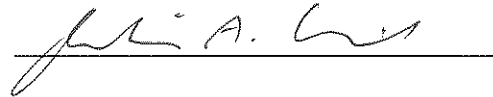
City Manager's Recommendation:

Discuss and provide direction to staff relating to possible amendments to the City's Donation Policy.

Administrative Action:

Submitted by:

Julian A. Miranda, City Manager



Prepared by:

Iris Espino, Assistant to the City Manager

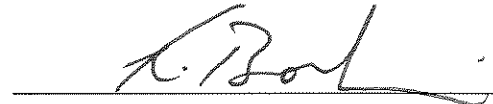


Reviewed by:

Adrian Guerra, City Attorney

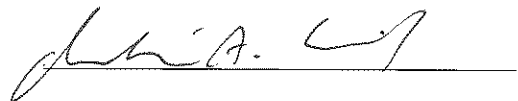
Electronically Approved

Kambiz Borhani, Finance Director / City Treasurer



Approved by:

Julian A. Miranda, City Manager



Background and Analysis:

Per Resolution 2009-06-2364, the Irwindale City Council adopted the City of Irwindale Donation Policy, which allows the City Council to consider and approve requests/applications for donations from City residents and appropriate non-profit entities that serve the City communities. All applications for donations must be considered and approved by the City Council, pursuant to the terms of the Policy. All applications for donations must abide by the requirements spelled out in the Policy.

In order for an application for donation to be approved under the Policy, the applicant must be either 1.) a current resident of Irwindale, or 2.) an organization that is recognized by the Internal Revenue Service as a not-for-profit organization, charitable organization or athletic, academic or social non-profit student organization established by any elementary, middle or high school serving Irwindale residents. Any organization must also have a minimum of twenty percent (20%) Irwindale residents or businesses that either actively participate in the organization or benefit from the requested donation.

Applicants must establish, through documentary proof, that the requested donation will 1.) benefit the community of Irwindale; 2.) provide a public service or otherwise promote the public health, safety, and welfare of the residents of Irwindale; or 3.) if the request is made for or by a religious organization, that it primarily serve a secular purpose that neither advances or inhibits any religion and avoids excessive entanglement by the City in any religion or religious purpose.

Applications shall be considered by a Donations Committee appointed by the Mayor comprising of two (2) members of the City Council and one (1) City Manager representative. The Committee shall determine whether all applications for donations meet the criteria of the policy. If so, the Committee recommends the total dollars to be donated per application, and recommends approval or denial of the donation.

The Donations Policy currently does not allow the Donations Committee to recommend an application for approval that does not meet the strict minimum criteria outlined in the Policy. The Policy also does not allow City Council to waive any part of the required criteria in order to approve an application that does not meet all of the criteria outlined in the Policy. Staff is recommending that the City Council review the current Donation Policy and assess whether the Policy should be amended in any way, including to allow cooperation with other governmental entities, and consider whether a clause should be added that permits waiver of the strict requirements of the policy if the Council deems it to be a hindrance to the advancement of the purposes as set forth in the policy.

For example, on July 11, 2023, Mayor H. Manuel Ortiz received a request, attached as Exhibit B, from Mayor German Cervantes Vega of Salvatierra, Guanajuato for a donation of an ambulance to the city of Salvatierra to help fortify the health services provided to the community. Salvatierra, Guanajuato is the City of Irwindale's sister city. Mayor Vega's application for a donation does not currently meet the required criteria under the City's

Donation Policy, which currently disallows the City from considering or approving the request. In light of Mayor Vega's current request, and in anticipation of possible future requests from other parties who similarly do not currently meet the City's Donation Policy requirements but make requests that nonetheless would further the policy's goals, staff is recommending that the City Council direct staff, in consultation with the City Attorney's Office, to evaluate the policy and provide recommendations for amendments to the current Donation Policy.

Fiscal Impact:

None

Attachments:

Exhibit A – City of Irwindale Donation Policy

Exhibit B – Letter from Mayor German Cervantes Vega of Salvatierra (7/11/23)

CITY OF IRWINDALE DONATION POLICY

The City Council of the City of Irwindale would like to promote community, charitable and similar activities in the City that yield an appropriate public purpose, consistent with the provisions of the California Constitution, Art. XVI, sec. 6. To achieve this goal, the City is implementing this Donation Policy to encourage all appropriate non-profit entities to participate in and promote events that are beneficial to the community or otherwise provide a valid and substantial public purpose within the mission of the City. All donations must be considered and approved by the City Council, pursuant to the terms of this Policy.

1. Application Process. The requested donation must meet the criteria set forth at Section 4 below. All applications must explain, in sufficient detail for the City to understand, all of the following information:
 - a. If the applicant is an entity, it must disclose the nature of the organization and confirm its non-profit status. The applicant must also demonstrate the designated goals and objectives of the organization.
 - b. If the applicant is an individual, he/she must provide proof of current residency in Irwindale.
 - c. The application must demonstrate how the requested donation benefits Irwindale and meets the criteria set forth in Section 4 below.
 - d. The application must demonstrate how the funds or item of value will be used.
2. Committee to Consider Applications. The City Manager shall convene a Donations Committee appointed by the Mayor comprising of two (2) members of the City Council and one (1) City Manager representative. The Donations Committee shall perform the following duties:
 - a. Review all applications received by the City and determine which applications meet the criteria in this policy for eligibility to be recommended to the City Council;
 - b. Based on the City's availability of funds, recommend the total dollars to be donated by the applications that qualify for donations under this Policy, and any other criteria the Donations Committee may consider in its discretion.
 - c. Recommend to the City Council approval or denial of the requested donation for each application the Donations Committee believes meet the criteria of this Policy, and provide the reasons for such recommendation.

3. Funds Set Aside for Discretionary Donations. On an annual basis through the budget process, the Council will set aside a donations fund.
4. Criteria for Approval of Donations. The City Council may approve a donation of funds or items of value for applicants when such donation would serve a public purpose. The following criteria must be established to qualify for a donation:
 - a. Applicants. Applicants for donations must be either:
 - i. Recognized by the Internal Revenue Service as a not-for-profit organization, charitable organization or athletic, academic or social non-profit student organization established by any elementary, middle or high school serving Irwindale residents. Any organization meeting the criteria of this subsection 4.a.i must also have a minimum of twenty percent (20%) Irwindale residents or businesses that either actively participate in the organization or benefit from the requested donation.
 - ii. Current residents of the City.
 - b. Donations Criteria. Donations may be granted where the applicant may establish, through documentary proof, that the criteria of subsection b.i and b.ii below can be met.
 - i. Benefit the community. This includes, but is not limited to, circumstances where the applicant:
 1. Supports civic or provide community programs for the City's residents, or businesses;
 2. Provides financial assistance to the City's residents or businesses;
 3. Involves participation by a significant number of Irwindale residents;
 4. Provides a venue, which will serve as a significant attraction of visitors to the community and revenue to the City will exceed the requested donation; or
 5. Improves the condition of property or availability of affordable housing within the City.
 - ii. Provide a public service or otherwise promote the public health, safety and welfare. This includes, but is not limited to, circumstances where the individual or entity provides needed donations or other assistance to residents and businesses of the City in areas such as:
 1. health care;
 2. counseling and guidance services;

3. abatement of dangerous or unhealthful living or working conditions, including but not limited to those constituting violations of the Irwindale Municipal Code;
4. affordable housing;
5. transportation needs of residents or employees;
6. educational benefits;
7. cultural awareness and education; or
8. nutrition needs of residents.

iii. Religious Organizations. The City will not approve any requested donation that otherwise meets the above criteria if the donation will cause the City to violate the Establishment Clause of the United States Constitution. Generally, a donation to a religious organization violates the Establishment Clause, unless it primarily serves a secular purpose, neither advances or inhibits any religion and avoids excessive entanglement by the City in any religion or religious purpose.

5. Recipient's Obligations to Report Use of Funds. Sixty (60) days after receipt of the donation, the recipient shall provide a written explanation to the City, in a form approved by the City, of how the donated funds or item(s) of value has been used and benefited the City, its residents or businesses in the manner set forth at Section 4 above.
6. City Council Consideration of Donation. The City Council may consider all recommendations from the Donation Policy. If the City Council finds that all the requirements under this Policy have been met, it may, in its sole discretion, approve the recommended donation. Alternatively, the City Council may deny or reduce such requested donation in an amount it deems appropriate based upon its assessment of the level by which the proposed activity meets the criteria outlined in this Policy. The decision of the City Council on any donation shall be final.

Document Number: PMS/E 165/223

RE: Donation Request

Manuel Ortiz

Mayor of Irwindale, California

Hand Delivered

From the undersigned, German Cervantes Verga, Mayor of Salvatierra, Guanajuato. By this means I extend to you my warm greeting and, in recognition of our historic sisterhood, please also accept a friendly greeting from the citizens of Salvatierra, who I am honored to preside over, and in acknowledgment of the diligent and responsible work that you carry out for the benefit of the citizens of Irwindale, I request your invaluable support in the form of a donation of an ambulance to the Salvatierra Municipality in order to fortify the health services provided to the Salvatierra Municipality.

With nothing further, I say goodbye but not before thanking you for your careful consideration.

Sincerely yours,

July 11, 2023

German Cervantes Vega

Mayor of Salvatierra, Guanajuato

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

SA Item 20A

**AUGUST 23, 2023
~~WEDNESDAY~~
8:31 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, Manuel R. Garcia; Mayor Pro Tem Albert F. Ambriz

Absent: 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; Mayor Ortiz absent.

**ITEM NO. 14
MINUTES**

MINUTES

The following minutes were approved:

A) Regular meeting held July 26, 2023

**ITEM NO. 15
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 8:32 p.m.

Laura M. Nieto, MMC
Chief Deputy City Clerk

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
80494	ROSENO	RSG Inc.	08/17/2023	136.25
Report Total (1 checks):				136.25

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

AUGUST 23, 2023
WEDNESDAY
8:32 P.M.

The Irwindale **HOUSING AUTHORITY** met in regular session at the above time and place.

ROLL CALL:

Present: Board Members Mark A. Breceda, Larry G. Burrola;
Manuel R. Garcia; Vice Chair Albert F. Ambriz

Absent: Chair H. Manuel Ortiz

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 Burrola, to approve the Consent Calendar. The motion was unanimously approved; Chair Ortiz absent.

ITEM NO. 16
MINUTES

MINUTES

The following minutes were approved:

A) Regular meeting held July 26, 2023.

END OF CONSENT CALENDAR

SPONTANEOUS
COMMUNICATIONS

There were no speakers.

ADJOURNMENT

There being no further business to conduct, the meeting was adjourned at 8:32 p.m.

Laura M. Nieto, MMC
Chief Assistant Authority Secretary

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

City of
IRWINDALE
AGENDA REPORT

Date: September 13, 2023
To: Honorable Chair and Members of the Housing Authority
From: Julian A. Miranda, Executive Director
Issue: Consideration of Approval of Amendment No. 1 to Affordable Housing Agreement, Option to Purchase and Declaration of Covenants Running with Land for 16124 Calle de Paseo to Implement Equity Sharing Policy

City Manager's Recommendation:

- 1) Approve Amendment No. 1 to Affordable Housing Agreement, Option to Purchase and Declaration of Covenants Running with Land between Irwindale Housing Authority and Kenneth Aguayo, Leonard Aguayo and Valerie Sanchez; and
- 2) Authorize the Executive Director to execute Amendment No. 1 subject to Authority Counsel approval as to form.

Prepared and Submitted by:

Robert J. Lee, Assistant Authority Counsel

Electronically Approved

Reviewed by:

Adrian R. Guerra, Authority Counsel

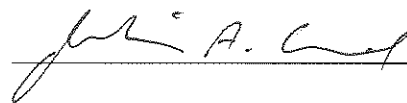
Electronically Approved

Kambiz Borhani, Finance Director / City Treasurer



Approved by:

Julian A. Miranda, Executive Director



Background and Analysis:

Historically, the equity sharing practices of the Irwindale Housing Authority ("Authority") provided for the Authority to retain a significant majority of the excess sale proceeds until year 40 of the 45-year affordable housing period. Accordingly, it was very difficult for affordable homeowners in the City of Irwindale to build meaningful equity in their affordable homes towards improving their financial status which is one of the paramount objectives of the Authority's affordable housing programs.

As part of the Substantial Rehabilitation Program, Ignacio B. Aguayo and Sally F. Aguayo, as co-trustees for The Ignacio B. and Sally F. Aguayo Trust, dated June 8, 1998 ("Previous Owner") and the former Irwindale Community Redevelopment Agency ("ICRA") entered into that certain Affordable Housing Agreement, Option to Purchase and Declaration of Covenants Running with Land, dated October 3, 2006 and recorded on May 1, 2007 as document no. 20071047274 ("Agreement"), whereby ICRA provided Previous Owner a loan in the amount of \$134,668.95 for the substantial rehabilitation of Previous Owner's property located at 16124 Calle de Paseo ("Property") in exchange for Previous Owner's promise to maintain the Property as an affordable housing unit for a period of 45 years.

Equity sharing permits retention by owner/seller of a portion of excess sale proceeds based on the length of occupancy, after the agency loan is repaid. The amount of the excess sale proceeds is the difference between the sale price that is in excess of the affordable housing price of what is allowable under the an affordable housing agreement and the original purchase price of the home paid by the affordable homeowner. The Agreement's equity sharing provisions are triggered when there's been a "Prohibited Transfer" as defined in the Agreement; put another way, equity sharing is invoked when there's a sale of the home where the sale does not qualify as a "Permitted Transfer" under the Agreement. Permitted Transfers typically include but are not limited to the following:

(i) transfer by gift, devise, or inheritance to the Owner's spouse; (ii) transfer by devise or inheritance to the Owner's children; (iii) transfer of title by an Owner's death to a surviving joint tenant, tenant by entireties, or a surviving spouse of community property; and (iv) transfer of title to a spouse as part of divorce or dissolution proceedings or in conjunction with marriage.

On July 14, 2021, the Authority Board approved and adopted an equity sharing policy ("Policy") for the Authority's Substantial Rehabilitation and First Time Homebuyer affordable housing programs so that the percentage of the equity sharing appreciation amount retained by homeowners is now much larger than the amount allowed previously **for those homeowners who elect to take advantage of the enhanced Policy benefits**. The application of the Policy with regards to any homeowner who is part of the Authority's affordable housing programs requires a formal amendment to any affordable housing agreement's existing equity sharing provisions; the calculations for the new equity sharing differ under the Policy depending on whether the homeowner is under the First Time Homebuyer Program or Substantial Rehabilitation Program.

The Previous Owner became owner of the Property under that certain Declaration of the Ignacio B. and Sally F. Aguayo Trust dated June 8, 1998 ("Declaration of Trust"), as amended by the Trust Amendment to the Declaration of Trust dated February 14, 2020 ("Trust Amendment"). The Previous Owner is deceased and now, pursuant to the Declaration of Trust, Trust Amendment, and the Order of the Superior Court of the State of California in Case Number 22STPB08322, dated November 1, 2022, Kenneth Aguayo, Leonard Aguayo and Valerie Sanchez (collectively, "Owner"), the adult children of Previous Owner, are owners of the Property with equal one-third interests. The transfer of ownership from Previous Owner to Owner is considered to be a "Permitted Transfer" under the terms of the Agreement notwithstanding that an income analysis was not conducted to determine whether Owner is an "Eligible Person or Family."

Now, Owner and the Authority (as successor to ICRA) desire to formally amend the Agreement to incorporate the increased equity sharing benefits available to Owner under the Policy. However, it should be underscored that amending the Agreement in and of itself does not vest Owner with any equity sharing benefit conferred under the Policy other than to allow Owner to place itself in position to possibly retain a greater share of equity sharing appreciation in the event a "Prohibited Sale" should occur in the future. **This Amendment No. 1 modifies the Agreement and is only a first step towards Owner availing itself of the increased benefits under the new Policy. The 45-year affordability covenant remains in place and there is no financial equity distribution at this time because there is no sale of the home.**

Fiscal Impact:

Currently none, but if Owner sells the home and the equity sharing provisions are triggered, Authority will retain a smaller percentage of the equity sharing appreciation.

Attachments:

- 1: Amendment No. 1 to Affordable Housing Agreement, Option to Purchase and Declaration of Covenants Running with Land for 16124 Calle de Paseo to Implement Equity Sharing Policy.
- 2: Court Order dated November 1, 2022

ATTACHMENT "1"

RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:

Irwindale Housing Authority
5050 North Irwindale Avenue
Irwindale, California 91706
Attention: Executive Director

APN: 8417-031-025

Exempt from payment of a recording fee pursuant to Government Code Section 6103

**AMENDMENT NO. 1
TO
AFFORDABLE HOUSING AGREEMENT, OPTION TO PURCHASE AND
DECLARATION OF COVENANTS RUNNING WITH LAND
(Substantial Rehabilitation Housing Improvement Loan)**

This **AMENDMENT NO. 1 TO THE AFFORDABLE HOUSING AGREEMENT, OPTION TO PURCHASE AND DECLARATION OF COVENANTS RUNNING WITH LAND** ("Amendment No. 1") by and between the **IRWINDALE HOUSING AUTHORITY** as housing successor to the former Irwindale Community Redevelopment Agency ("Authority") and **KENNETH AGUAYO, LEONARD AGUAYO, AND VALERIE SANCHEZ** (collectively, "Owner"), is effective as of the 13th day of September, 2023. Authority and Owner are sometimes referred to collectively as "Parties."

RECITALS

A. Ignacio B. Aguayo and Sally F. Aguayo, as co-trustees for The Ignacio B. and Sally F. Aguayo Trust, dated June 8, 1998 ("Previous Owner"), and the former Irwindale Community Redevelopment Agency ("ICRA") entered into that certain **AFFORDABLE HOUSING AGREEMENT, OPTION TO PURCHASE AND DECLARATION OF COVENANTS RUNNING WITH LAND**, dated October 3, 2006 and recorded on May 1, 2007 as document no. 20071047274 ("Agreement") whereby the ICRA agreed to provide Previous Owner financial assistance in connection with the residential real property owned by Previous Owner and located at 16124 Calle de Paseo, Irwindale, California ("Property"). The Property is part of Authority's affordable housing program commonly referred to as the Substantial Rehabilitation Program.

B. On February 1, 2012, pursuant to Assembly Bill 1x26 and Health and Safety Code Section 34170 *et seq.*, the ICRA was effectively dissolved and the City of Irwindale ("City") became the Successor Agency to the ICRA.

C. On January 11, 2012, the City Council of the City of Irwindale adopted Resolution No. 2012-09-2548 and elected not to retain the housing functions and assets of the ICRA, and affirmatively determined and confirmed that the Authority would retain the housing assets and functions of the ICRA.

D. On January 11, 2012, the Board of the Authority adopted Resolution No. 2012-01-034 which accepted the housing assets and functions of the dissolved ICRA. The Authority thereby is the housing successor agency to the ICRA, vested with all of the rights, powers, duties, assets, liabilities, and obligations of the housing activities of the ICRA.

E. As housing successor to the ICRA, the Authority assumed all of the ICRA's rights, powers, duties and obligations under the Agreement.

F. The Authority implements an affordable housing program through a Low and Moderate Income Housing Fund to assist persons and families of very low, low, and moderate income, as defined by Section 50093 of the California Health and Safety Code to rehabilitate residential property and to increase, improve and preserve very low, low and moderate-income housing available at affordable housing cost (as defined in Health and Safety Code Section 50052.5) within the territorial jurisdiction of the Authority in accordance with Housing Authorities Law (Health and Safety Code Section 34200, *et seq.*)

G. Pursuant to Health and Safety Code Section 33334.3 and as part of its affordable housing program, the Authority has established an equity sharing program allowing the sale of owner-occupied units prior to expiration of the 45-year affordability period established through an agreement between the Authority and affordable homeowner for a price in excess of the affordable housing price, so long as the Authority's investment of moneys from the Low and Moderate Income Housing Fund is protected, including through implementation of a schedule of equity sharing that permits the seller and the Authority to retain a portion of the sale proceeds based on length of occupancy prior to sale.

H. Historically, the equity sharing practices of the Authority provided for the Authority to retain a significant majority of the excess sale proceeds until year 40 of the 45-year affordable housing period. Accordingly, it was very difficult for affordable homeowners in the City to build meaningful equity in their affordable homes towards improving their financial status which is one of the paramount objectives of the Authority's affordable housing program.

I. On July 14, 2021, the Authority approved and adopted an equity sharing policy ("Policy") for the Authority's Substantial Rehabilitation and First Time Homebuyer affordable housing programs so that the percentage of the equity sharing appreciation amount retained by homeowners is now much larger than the amount allowed previously. The implementation of the policy requires a formal amendment to the Agreement.

J. The Previous Owner became owner of the Property under that certain Declaration of the Ignacio B. and Sally F. Aguayo Trust dated June 8, 1998 ("Declaration of Trust"), as amended by the Trust Amendment to the Declaration of Trust dated February 14, 2020 ("Trust Amendment"). The Previous Owner is deceased and now, pursuant to the Declaration of Trust, Trust Amendment, and the Order of the Superior

Court of the State of California in Case Number 22STPB08322, dated November 1, 2022, Kenneth Aguayo, Leonard Aguayo and Valerie Sanchez, the adult children of Previous Owner, are owners of the Property with equal one-third interests. The transfer of ownership from Previous Owner to Owner is considered to be a "Permitted Transfer" under the terms of the Agreement notwithstanding that an income analysis was not conducted to determine whether Owner is an "Eligible Person or Family."

K. The Parties now desire to formally amend the Agreement to incorporate the increased benefits available to Owner thereunder to be made effective retroactive to the effective date of the Agreement.

TERMS

1. **Contract Changes.** The Agreement is amended as provided herein (added text shown in **bold, italics, underlined**, deleted text shown in ~~strikethrough~~).

A. Section 8.2, "Shared Equity Appreciation," of the Agreement is hereby amended effective as of the effective date of the Agreement, to read in its entirety as follows

Shared Equity Appreciation. In the event of a Prohibited Transfer during the Affordability Period, in addition to repayment of the balance of the Note Amount, Agency shall receive a share of the sales proceeds that exceed the value of the Property at the time of the Agency Loan, **of the difference between the sale price that is in excess of the Affordable Housing Cost and the purchase price of the Property paid by the Owner**, in order to recover funds for other low and moderate-income housing pursuant to Housing Program and state law. The Agency's share of the increase in equity shall be determined based on the length of time the Property has been occupied by an Eligible Person or Family prior to the Prohibited Transfer, pursuant to the table below. ~~The Agency's share of the equity increase will be lowered in the event the Prohibited Transfer is the result of divorce or death.~~

<u>Year of Prohibited Transfer After Loan</u>	<u>Percent of Equity Increase Retained by Owner</u>		
Years	Other	Divorce	Death
0—15	0%	0%	0%
16—18	2%	6%	9%
19—21	5%	9%	12%
22—24	9%	13%	16%
25—27	13%	17%	20%
28—30	17%	21%	24%
31—33	23%	27%	30%
34—36	29%	33%	36%
37—39	40%	44%	47%
40—42	69%	73%	76%
43—45	100%	100%	100%

As an example only:

- Value of Property at time of loan = \$150,000
- Value of Property at time of Prohibited Transfer = \$250,000
- Increase in equity = \$100,000
- Year of Prohibited Transfer after Loan = 20
- Amount of Equity Increase kept by Owner = (5% X \$100,000) = \$5,000
- Amount of Equity Increase shared with Agency = (95% X \$100,000) = \$95,000

More specifically, the Agency Loan will be forgiven by 1/20 on an annual basis for 20 years after which time the entire loan will be forgiven. During that 20-year period, the equity sharing ratio (“ESR”) will be 10%, meaning the Agency will retain 10% of the equity sharing appreciation amount (“ESAA”) and the homeowner will retain 90% of the ESAA; thereafter, until expiration of the 45-year period, the 10% ESR will decrease by 0.4% per annum. The Parties are to consult the Authority’s Equity Sharing Policy for examples of the foregoing.

2. Continuing Effect of Agreement. Except as amended by this Amendment No. 1, all provisions of the Agreement shall remain unchanged and in full force and effect. From and after the date of this Amendment No. 1, whenever the term "Agreement" appears in the Agreement, it shall mean the Agreement, as amended by Amendment No. 1.

3. Counterpart Execution. This Amendment No. 1 may be executed in any number of counterparts, each of which shall be deemed to be an original instrument and all of which together shall constitute a single agreement.

4. Recordation. This Amendment No. 1 shall be recorded as soon as practicable following its mutual execution by the Parties.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties hereto have executed this Amendment No. 1 on the date and year first-above written.

“AUTHORITY”

IRWINDALE HOUSING AUTHORITY,
a public body, as Housing Successor
to the Irwindale Community
Redevelopment Agency

Julian A. Miranda, Executive Director

ATTEST:

Laura M. Nieto, MMC
Authority Secretary

APPROVED AS TO FORM:

ALESHIRE & WYNDER, LLP

Adrian R. Guerra, General Counsel

“OWNER”

KENNETH AGUAYO

Kenneth Aguayo

LEONARD AGUAYO

Leonard Aguayo

VALERIE SANCHEZ

Valerie Sanchez

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

STATE OF CALIFORNIA)
) §
County of _____)

On _____, before me, _____ a Notary Public, 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 capacities, 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 of Notary

(Affix seal here)

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 _____)

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STATE OF CALIFORNIA)
) §
County of _____)

On _____, 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 capacities, 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.

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STATE OF CALIFORNIA)
) §
County of _____)

On _____, 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 capacities, 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.

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WITNESS my hand and official seal.

Signature of Notary

(Affix seal here)

ATTACHMENT "2"

DE-115/GC-015

ATTORNEY OR PARTY WITHOUT ATTORNEY NAME: STEPHEN E. ENSBERG FIRM NAME: ENSBERG LAW GROUP STREET ADDRESS: 1609 W. Garvey Ave. N. CITY: West Covina TELEPHONE NO.: 626-813-3744 EMAIL ADDRESS: sensberg@aol.com ATTORNEY FOR (name): Kenneth M. Aguayo		STATE BAR NUMBER: 100652 STATE: CA ZIP CODE: 91790 FAX NO.: 626-813-3886	FOR COURT USE ONLY
SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES STREET ADDRESS: 111 North Hill Street MAILING ADDRESS: 111 North Hill Street CITY AND ZIP CODE: Los Angeles, 90012 BRANCH NAME: Stanley Mosk Courthouse			
☒ ESTATE OF (name): ☐ IN THE MATTER OF (name): Ignacio B. and Sally F. Aguayo ☐ DECEDENT ☒ TRUST ☐ CONSERVATEE ☐ MINOR			
NOTICE OF HEARING ON PETITION TO DETERMINE CLAIM TO PROPERTY		CASE NUMBER: 22STPB08322	

A petition has been filed asking the court to determine a claim to the property identified in 3, and a hearing on the petition has been set. Please refer to the petition for more information.

If you have a claim to the property described in 3, you may attend the hearing and object or respond to the petition. If you do not want to attend the hearing, you may also file a written response before the hearing.

If you do not respond to the petition or attend the hearing, the court may make orders affecting ownership of the property without your input.

1. NOTICE is given that (*name*): Kenneth M. Aguayo
(*fiduciary or representative capacity, if any*): Petitioner and son of Decedent
has filed a petition entitled (*state complete title*): SEE ATTACHED
under Probate Code section 850 asking for a court order determining a claim or claims to the property described in 3.
2. A HEARING on the petition will be held as follows:

Hearing Date → Date: 11/1/22 Time: 08:30 a.m. Name and address of court if different from above:
Dept.: 4 Room:

3. The property that is the subject of the petition is (describe each item of real or personal property; for real property—i.e., land or buildings—give the street address or, if none, describe the property's location and give the assessor's parcel number): 16124 Calle De Paseo, Irwindale, CA 91706. ("Real Property"). The legal description of the Real Property is: "Lot 25 of Tract 29197 as per map recorded in Book 729, pages 61-62 of Maps, Records of the County Recorder's Office of Said County."

APN: 8417-031-025.

☐ Continued on Attachment 3.

Check 4 only if the petition seeks the additional relief described.

4. ☐ In addition to seeking to recover the property described in 3, the petition also alleges and seeks relief for bad faith conduct, undue influence in bad faith, or elder or dependent adult financial abuse. The petition describes these allegations in detail. Based on the allegations, the petition seeks to recover twice the value of the property described in 3 ☐ and requests that the court award attorney's fees and costs to the petitioner. (Prob. Code, § 859.)



Requests for Accommodations

Assistive listening systems, computer-assisted real-time captioning, or sign language interpreter services are available if you ask at least five days before the hearing. Contact the clerk's office or go to www.courts.ca.gov/forms for *Request for Accommodations by Persons With Disabilities and Response* (form MC-410). (Civ. Code, § 54.8.)

NOTICE OF HEARING ON
PETITION TO DETERMINE CLAIM TO PROPERTY

☒ ESTATE OF ☐ IN THE MATTER OF (name): Ignacio B. and Sally F. Aguayo	CASE NUMBER: 22STPB08322
☐ DECEDENT ☒ TRUST ☐ CONSERVATEE ☐ MINOR	

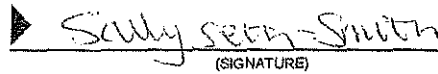
PROOF OF SERVICE BY MAIL*

1. I am over the age of 18 and not a party to this cause. I am a resident of or employed in the county where the mailing occurred.
2. My residence or business address is (specify): 1609 West Garvey Ave. North, West Covina 91790
3. I served the foregoing *Notice of Hearing on Petition to Determine Claim to Property* on each person named below by enclosing a copy in an envelope addressed as shown below AND
 - a. ☐ depositing the sealed envelope on the date and at the place shown in item 4 with the U.S. Postal Service with the postage fully prepaid.
 - b. ☒ placing the envelope for collection and mailing on the date and at the place shown in item 4 following our ordinary business practices. I am readily familiar with this business's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the U.S. Postal Service in a sealed envelope with postage fully prepaid.
4. a. Date mailed: 10/7/22
 b. Place mailed (city, state): West Covina, California
5. ☒ I served with the *Notice of Hearing on Petition to Determine Claim to Property* a copy of the petition referred to in the Notice.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: October 7, 2022

Sally Seth-Smith
 (TYPE OR PRINT NAME)


 (SIGNATURE)

NAME AND ADDRESS OF EACH PERSON TO WHOM NOTICE WAS MAILED

	<u>Name</u>	<u>Address (street & number, city, state, zip code)</u>
1.	Valerie R. Sanchez	419 E. Foothill Blvd., Monrovia, CA 91017
2.	Leonard B. Aguayo	2629 Coralbush Drive, Leander, TX 78641
3.		
4.		
5.		
6.		

☐ Continued on an attachment. (You may use Attachment to Notice of Hearing Proof of Service by Mail, form DE-120(MA)/GC-020(MA), for this purpose.)

* Do not use this form to prove personal or electronic service. You may use form DE-120(P) or GC-020(P) to prove personal service.

Hearing Information: 11/1/2022 8:30 AM

Assigned for all purposes to: Penny, Brenda J., Judicial Officer; Stanley Mosk Dept. - 4

1 STEPHEN E. ENSBERG, SBN 100652
2 ENSBERG LAW GROUP
3 1609 WEST GARVEY AVENUE NORTH
4 WEST COVINA, CA 91790
5 (626) 813-3744
6 (626) 813-3886-FAX
7 SENSBERG@AOL.COM

8 ATTORNEYS FOR KENNETH M. AGUAYO,
9 PETITIONER

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 FOR THE COUNTY OF LOS ANGELES

22STPB08322

12 IN THE MATTER OF) Case No.:
13 THE IGNACIO B. and SALLY F. AGUAYO)
14 TRUST, DATED JULY 14, 1998) PETITION FOR ORDER TO
15) CONFIRM VALIDITY OF TRUST; AND
16) ALSO CONFIRM TRUSTEE AND ASSETS
17) TO REVOCABLE TRUST
18) [(PROBATE CODE SECTION §§ 850;17200(a);
19) and 17200(b)(1)]
20)
21) DATE:
22) TIME:
23) DEPT:
24)

25 Petitioner Kenneth M. Aguayo ("Trustee"), Successor Trustee of the Ignacio B. and Sally F.
26 Aguayo Trust, dated July 14, 1998 ("Trust"), hereby alleges,

27 I.

28 JURISDICTION AND VENUE

1. The Court has jurisdiction over the Real Property which is a matter under Probate Code sections 850(a)(3)(b), 17200(a), and 17200(b)(1) because the assets at issue in this proceeding belongs to the Trust, which was validity created by the Settlers thereof.

2. Venue is properly laid in Los Angeles County under Probate Code section 17005 in that

PETITION FOR ORDER TO CONFIRM VALIDITY OF TRUST; AND ALSO CONFIRM TRUSTEE AND ASSETS TO REVOCABLE TRUST [(PROBATE CODE SECTION §§ 850;17200(a); and 17200(b)(1)]

1 the named Trustee of the Trust (Kenneth M. Aguayo) and the originators of the Trust, all resided in Los
2 Angeles County. Additionally, the principal location for the Trust administration is in the City of
3 Irwindale, Los Angeles County, within this Jurisdictional District.

4 II.

5 FACTUAL BACKGROUND

6
7 3. On March 17, 1965, Ignacio B. and Sally F. Aguayo, husband and wife, acquired the
8 Real Property known at issue herein as 16124 Calle De Paseo, Irwindale, CA 91706. ("Real Property").
9 The legal description of the Real Property is: "Lot 25 of Tract 29197 as per map recorded in Book 729,
10 pages 61-62 of Maps, Records of the County Recorder's Office of Said County." APN: 8417-031-025.
11 True and correct copies of the original deed dated March 17, 1965 are attached hereto as Exhibit 1, and
12 incorporated herein by this reference, bearing Instrument No. 1366.

13
14 4. The Real Property remained in Title by the Settlers up to and including, when the Real
15 Property and its ownership was transferred on June 8, 1998 by Ignacio B. and Sally F. Aguayo, husband
16 and wife, as joint tenants to Ignacio B. and Sally F. Aguayo, as Co-Trustees of the Ignacio B. and Sally
17 F. Aguayo Trust dated June 8, 1998. True and correct copies of the Deed placing the Property into the
18 Trust, dated June 8, 1998 are attached hereto as Exhibit 2, and incorporated herein by this reference,
19 bearing Instrument No. 98-1203274.

20
21 5. A true and correct copy of the Trust Instrument is attached as Exhibit 3, and incorporated
22 herein by this reference. The Settlers listed the Real Property, 16124 Calle De Paseo, Irwindale, CA
23 91706, within Exhibit A to the Trust, dated June 8, 1998.

24
25 6. On or about May 1, 2007, the Trustees entered into a Deed of Trust with an Assignment
26 of Rents Loan with Irwindale Redevelopment Agency evidencing a public loan in the amount of
27 \$134,668.95 for the purpose of completing and repairing various code violations of the Subject Property
28

1 involving electrical, plumbing, water heater, roof, kitchen remodel, bathroom remodel, flooring,
2 interior/exterior doors, termite repairs, patio covers, windows/sliders, HVAC, gates, landscape,
3 irrigation system and concrete work at the Subject Premises. This was a junior loan to the Subject
4 Property and did not impair the Deed of the Trustees, nor their priority ownership Trust interest. The
5 Deed of Trust for Irwindale Development Agency was recorded as Instrument Number 200710472273
6 on May 1, 2007. A true and correct copy of the Deed of Trust is attached as Exhibit 4, and incorporated
7 herein by this reference. This Deed of Trust did not affect the ownership priority of the Trustee/Owners.

9 7. Thereafter, on or about November 1, 2011, the Trustors/Trustees took out a secured
10 mortgage loan in the amount of \$196,000, which was recorded on November 1, 2011, as Instrument No.
11 20111475975 in the Office of the Los Angeles County Recorder. A true and correct copy of the
12 Mortgage Loan is attached as Exhibit 5, and incorporated herein by this reference. As occurs in so many
13 lender loan transactions, the mortgage lender to document the new loan requires and required in this
14 instance the borrowers, here the Trustees, Ignacio B. and Sally F. Aguayo, to reconvey title to the Real
15 Property in the individuals as Trustees and make them transfer and hold title for the purposes of the loan
16 only as individuals as occurred here in the Grant Deed dated November 1, 2011 as recorded Instrument
17 No. 20111475974. A true and correct copy of the Grant Deed is attached as Exhibit 6, and incorporated
18 herein by this reference. The Trustees, Ignacio B. and Sally F. Aguayo, understood that title to their
19 property would be automatically reinstated in November to the borrowers as Trustees of the Property
20 ownership such that the property would be held again as Trustees Ignacio B. and Sally F. Aguayo. (See
21 Declaration of Kenneth M. Aguayo, son and current Trustee.) It has always been so held. The Deed
22 language to the Property was never removed from the Trust language and writing.

23
24
25
26 8. The Deed of Trust of the new loan is recorded as Instrument No. 20111475975. A true
27 and correct copy of the Grant Deed is attached as Exhibit 7, and incorporated herein by this reference.
28

1 9. The Trustees/Owners, Ignacio B. and Sally F. Aguayo, believed that their Real Property
2 had again been made in their Trust when they came to have a Trust Amendment dated February 14,
3 2020 to attorney Stephen E. Ensberg. A true and correct copy of the Trust Amendment is attached as
4 Exhibit 8, and incorporated herein by this reference. Counsel reviewed the original Trust (1999) and the
5 intentions of the Trustees, Ignacio B. and Sally F. Aguayo, who confirmed that title to their house still
6 remained in their ownership as Trustees, Ignacio B. and Sally F. Aguayo. This was confirmed in
7 paragraphs 2 through 4, and paragraph 7 of their Trust and Amendment which provide as follows:

9 “2. Part Two, Dispositive Provisions, Page 6. Notwithstanding anything else set forth in the
10 original Trust to the contrary, all assets of the Trust are to be used solely for the benefit of the
11 original Trustors/Settlors, Ignacio B. Aguayo and Sally F. Aguayo, and for the Survivor of either
 of them during their lifetime.

12 3. Primary Beneficiary Trust, page 16. Upon the demise of both Ignacio B. Aguayo and Sally F.
13 Aguayo, after their final taxes and expenses are paid, all the assets of the Trust shall be
14 marshalled (house, and existing annuity, and anything else owned by the original
15 Trustors/Settlors), and distributed to Valerie R. Sanchez (one third share), Kenneth M. Aguayo
 (one third share), and Leonard B. Aguayo (one third share). If any of these beneficiaries
 predecease the original Trustors and do not outlive them, their respective one third share shall be
 given to their issue by right of representation.

16 4. The distribution of the Estate assets in one third shares shall be accomplished by the sale of
17 the Real Property, located at 16124 Calle De Paseo, Irwindale, CA 91706-2112, and the division
18 and distribution thereof of the sales proceeds into thirds, one share for each sibling. Any bank or
 other financial accounts of the Trustors, or either of them, shall also be divided into three shares,
 with one share being distributed to each sibling.”

19 (Trust Amendment, page 1, paragraphs 2-4; Exhibit 8).

20 * * * *

21 “7. The following items are deleted from the Schedule A, Trust Assets:

- 22 a. Metropolitan Life, Whole Life Policy #929658116PR;
- 23 b. Aetna Life, Life Policy #N2872988;
- 24 c. 1993 Chevrolet Pickup, Serial #1GCCS192TP1819727;
- d. 1989 Lazedaze Motor Home, Serial #2GBJC31K4129197;
- e. 1984 Toyota Pickup, Serial #4RN6555E503305.”

25 (Schedule A, Trust Assets; Exhibit 8). Attached as part of the original The Ignacio B. and Sally F.
 Aguayo Trust, dated June 8, 1998 and May 14, 2020.

26 10. A review of the original Trust provisions (Schedule A, Trust Assets, dated June 8, 1998)
27 shows that the Real Property was part of the Trust, which is confirmed on May 14, 2020 (Exhibit 3)
28 which shows that the Trustees/Owners stated that the Real Property was still in their Trust since

PETITION FOR ORDER TO CONFIRM VALIDITY OF TRUST; AND ALSO CONFIRM TRUSTEE
AND ASSETS TO REVOCABLE TRUST [(PROBATE CODE SECTION §§ 850; 17200(a); and
17200(b)(1)]

1 paragraph 7 makes plain that the Trustors/Owners thought Schedule A (Exhibit 8) did not remove their
2 Real Property from the Trust, dated June 8, 1998. This confirms their belief that the Real Property
3 remained in the Trust, at all times.

4 11. On February 14, 2020, the Trustors/Owners, Ignacio B. Aguayo and Sally F. Aguayo
5 prepared an amendment to their original Trust, June 8, 1998, again confirming that the Real Property is
6 in their Family Trust as reflected in paragraphs 2-4, and paragraph 7, (Exhibit 8). This makes it clear
7 that the Trustees/Owners Ignacio B. Aguayo and Sally F. Aguayo, made a mistake in 2011, believing
8 that the property had again been placed in Trust after the loan on 2011 for \$196,000, was taken out.

9 12. This is a regular error made by lay people about taking out loans, taking out title to their
10 Trust from the Real Property, and then failing to have it put back into Trust due either by a mistake, or
11 misunderstanding (either of which highly likely which occurred here).

12 13. The Settlor/Trustees each passed away on January 9, 2022 and August 18, 2020. The
13 Trust names Petitioner, Kenneth M. Aguayo, and Valerie R. Sanchez were as Successor Trustees of the
14 Trust following the death of the Trustees/Trustors, their parents, Ignacio B. Aguayo and Sally F.
15 Aguayo. The two individuals, Kenneth and Valerie, have agreed that Kenneth as Successor Trustee will
16 act for and sign this pleading as Trustee of the Estate of Ignacio B. Aguayo and Sally F. Aguayo.

17 14. At the time of the deaths of the Settlor, Ignacio B. Aguayo and Sally F. Aguayo, the real
18 property for them both mistakenly remained titled in the names of Ignacio B. Aguayo and Sally F.
19 Aguayo, as individuals, as their separate property, rather than as their title as Successor Trustees.
20 Notwithstanding this titling, the Real Property was and is a proper asset of the Trust and should be
21 designated, respectively, as so. The wording of the Real Property for the Trust never changed.

22 15. Petitioner, Kenneth M. Aguayo, now petitions this Court to confirm the Settlor's Real
23 Property as a Trust asset as to be held and administered pursuant to the terms of the Trust by both
24 Trustees, Kenneth M. Aguayo, and Valerie R. Sanchez.

25 III.

26 LEGAL ARGUMENT

27 16. Probate Code Section 850(a)(3)(B) authorizes a trustee to bring a petition "where the
28 trustee has a claim to real or personal property". Here, Petitioner as Successor Trustee, is claiming
an interest in the Real Property as being a proper Trust asset.

17. An authorized method for creating a Trust is by "[a] declaration by the owner of the property that the owner holds the property as Trustee. ("P.C.") Section 15200(a). Here the Trust dated July 14, 1998, Schedule A dated July 14, 1998, established in writing that the property at 16124 Calle De Paseo, Irwindale, CA 91706, was made part of The Ignacio B. and Sally F. Aguayo Trust. If Real Property like this is involved, the Declaration of Trust must be in writing, signed by the Trustees as occurred here by the Ignacio B. and Sally F. Aguayo Trust, and the signature of the Trustees. ("P.C. §15206(a)"). However, in a Declaration of Trust for Real Property, no separate transfer by Deed is required, although such transfer occurred here. (See Exhibit 2). (*Estate of Heggstad* (1993) 16 Cal. App. 4th 943., 947.; see also Schedule A July 14, 2018 (See Exhibit 8). See also Trust Amendment (Exhibit 7 and Exhibit 8).

18. In *Heggstad*, Mr. Heggstad created a valid Revocable Living Trust in which he named himself as Trustee, and included within his Trust the Real and Personal Property listed in Schedule A which was attached to the Heggstad Trust. Mr. Heggstad never transferred the Title of the Real Property to himself as Trustee. The Court, in affirming the Trial Court's decision, held that "a written declaration of trust by the owner of real property, in which he names himself as trustee, is sufficient to create a trust in that property, and the law does not require a separate deed transferring the property to the trust." (*Estate of Heggstad* (1993), 16 Cal. App. 4th 943, 950.)

19. In this case, the Settlers/Trustees, Ignacio B. and Sally F. Aguayo, in 1998, executed the Trust and amendments thereto declaring themselves as Trustees with the ownership of their Real Property in Trust. As in *Heggstad*, the Settlers listed the Real Property at issue in Trust as shown on Schedule A of the Trust dated July 14, 1998, (Exhibit 2); see also Schedule A, February 14, 2020 (Exhibit 8), and in their Trust Amendment, dated February 14, 2020. In all these documents, the Settlers/Trustees, Ignacio B. and Sally F. Aguayo, made reference to their Trust ownership of the Real Property located at 16124 Calle De Paseo, Irwindale, CA 91706, even after their mortgage loan was taken out in 2011, as discussed above.

20. Because, in all of these documents, the Settlers/Trustees declared themselves to be Trustees of the Trust and declaring that the Trust referred to all Trust documents identified in all of the above described property. This confirmed that it was never the intent of the Settlers/Trustees to have the Real Property outside of the Trust. All of the Trust documents and amendments refer to the Real Property as part of the Trust. Even the fact that in 2011 accident took place because the Deed was not properly re-done, does not effect the fact that the Trust documents all identify the Real Property as

PETITION FOR ORDER TO CONFIRM VALIDITY OF TRUST; AND ALSO CONFIRM TRUSTEE AND ASSETS TO REVOCABLE TRUST [(PROBATE CODE SECTION §§ 850;17200(a); and 17200(b)(1)]

1 within the Trust. This was confirmed in 2020 when the Amended Trust was done and again referred to
2 the same language as Exhibit A regarding the Real Property into the Amended Trust. This confirmed
3 that the Real Property, at all times, should be accepted and ordered as part of the Trust.

4 21. Pursuant to P.C. Section 15200(a), the Real Property in the Trust of Ignacio B. and Sally
5 F. Aguayo is and remains an asset of the Trust Estate as of the date of the original and amended Trust
6 from 1998 through the present because the Trustees, original and successors, declared themselves to be
7 Trustees of the Ignacio B. and Sally F. Aguayo Trust. The Real Property should be confirmed as a Trust
8 asset so that Petitioner, one of the Successor Trustees, can hold, sell, administer and distribute the Real
9 Property along with the other Trust assets.

10 22. Petitioner respectfully requests that this Court confirm that the Real Property is an asset
11 of the Trust estate to be held and administered pursuant to the Trust's terms.

12 23. The names and addresses of the beneficiaries of the Trust, all of whom are entitled to
13 notice (other than Petitioner), are as follows:

Name and Address	Age	Relationship
Kenneth M. Aguayo 6343 Iris Court East Vale, CA 92880	Adult Child	Son/Successor/Beneficiary
Valerie R. Sanchez 419 E. Foothill Blvd. Monrovia, CA 91016	Adult Child	Daughter/Successor/Beneficiary
Leonard B. Aguayo 2629 Coralbush Drive Leander TX 78641	Adult Child	Son/Successor/Beneficiary

19
20 Wherefore, Petitioner prays for:

- 21 1. An Order determining that the Ignacio B. and Sally F. Aguayo Trust, dated July 15, 1998 is
22 valid and also the Trust Amendment, dated February 14, 2020 is valid;
- 23 2. An Order confirming that Kenneth M. Aguayo is the Successor Trustee of the Ignacio B. and
24 Sally F. Aguayo Trust, dated July 15, 1998 and the Trust Amendment, dated February 14,
25 2020;
- 26 3. An Order confirming that Successor Trustee, Kenneth M. Aguayo's right, title and interest
27 in and to the Real Property commonly known as 16124 Calle De Paseo, Irwindale, CA
28 91706, with a legal description as "Lot 25 of Tract 29197 as per map recorded in Book 729,

PETITION FOR ORDER TO CONFIRM VALIDITY OF TRUST; AND ALSO CONFIRM TRUSTEE
AND ASSETS TO REVOCABLE TRUST [(PROBATE CODE SECTION §§ 850;17200(a); and
17200(b)(1)]

1 pages 61-62 of Maps, Records of the County Recorder's Office of Said County, APN: 8417-
2 031-025. is an asset of the Ignacio B. and Sally F. Aguayo Trust, dated July 15, 1998, to be
3 held, administered, sold, and/or distributed by Successor Trustee, Kenneth M. Aguayo under
4 the terms of the Trust.

5
6 4. Such and further Orders as the Court deems proper.

7
8 Dated: August 17, 2022

ENSBERG LAW GROUP

9
10 BY:


11 Stephen E. Ensberg
12 Attorneys for Kenneth M. Aguayo
13 Petitioner
14
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**IRWINDALE CITY COUNCIL CHAMBERS
5050 N. IRWINDALE AVENUE
IRWINDALE, CALIFORNIA 91706**

RA Item 24A

**JUNE 5, 2023
MONDAY
5:47 P.M.**

The Irwindale **RECLAMATION AUTHORITY** met in regular session at the above time and place.

ROLL CALL:

Present: Board Members Mark A. Breceda, Manuel R. Garcia,
Larry G. Burrola, Vice Chair Albert F. Ambriz;
Chair H. Manuel Ortiz

Also present: Julian A. Miranda, Executive Director; Jamie Traxler, Assistant 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

CHIEF ASSISTANT
AUTHORITY
SECRETARY NIETO

Chief Assistant Authority Secretary Nieto noted that Vice Chair Ambriz would be participating in the meeting remotely under the provisions of AB 2449.

ANNOUNCEMENT

CHIEF ASSISTANT
AUTHORITY
SECRETARY NIETO

Chief Assistant Authority Secretary Nieto announced the following:

"As required by Government Code Section 54954.3, members of the City Council are also members of the Reclamation Authority, which is concurrently convening with the City Council this evening and each Council Member is paid an additional stipend of \$300 for attending the Reclamation Authority meeting."

CONSENT CALENDAR

MOTION

A motion was made by Board Member Burrola, seconded by Board Member Breceda, to approve the Consent Calendar. The motion was unanimously approved.

ITEM NO. 16
MINUTES

MINUTES

The following minutes were approved:

A) Regular meeting held March 8, 2023

ITEM NO. 17
2023 2nd QUARTER
MINING REPORT OF
NINE (9) SMARA PITS

2023 2nd QUARTER MINING REPORT OF NINE (9) SMARA PITS

The report was received and filed.

RECLAMATION AUTHORITY MINUTES
SPECIAL MEETING

JUNE 5, 2023
PAGE 2

ITEM NO. 18
INVESTMENT POLICY
REVIEW AND
DELEGATION OF
INVESTMENT
AUTHORITY

INVESTMENT POLICY REVIEW AND DELEGATION OF
INVESTMENT AUTHORITY (Joint Item on City Council, Successor
Agency, Housing Authority, and Reclamation Authority Agendas)

RESOLUTION NO.
HA 2023-03-038
ADOPTED

Resolution No. RA 2023-03-038, entitled:

"A JOINT RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
IRWINDALE, SUCCESSOR AGENCY BOARD, HOUSING
AUTHORITY BOARD, AND RECLAMATION AUTHORITY BOARD,
RATIFYING THE CITY OF IRWINDALE INVESTMENT POLICY, AND
DELEGATING AUTHORITY TO THE CITY TREASURER TO INVEST
THE SURPLUS FUNDS OF THE CITY OF IRWINDALE, IRWINDALE
SUCCESSOR AGENCY, IRWINDALE HOUSING AUTHORITY, AND
IRWINDALE RECLAMATION AUTHORITY," was adopted.

ITEM NO. 19
INVESTMENT
QUARTERLY REPORT
FOR FISCAL
QUARTER
ENDING MARCH 31,
2023

INVESTMENT QUARTERLY REPORT FOR FISCAL QUARTER
ENDING MARCH 31, 2023

The Investment Quarterly Report for the fiscal quarter ending
March 31, 2023, was received and filed.

**SPONTANEOUS
COMMUNICATIONS**

There were no speakers.

PUBLIC HEARINGS

ITEM NO. 20
ADOPTION OF FY
23/24 BUDGET AND
ESTABLISHING THE
APPROPRIATIONS
LIMIT FOR FY
23/24

ADOPTION OF FISCAL YEAR 2023-24 BUDGET AND
ESTABLISHING THE APPROPRIATIONS LIMIT FOR FISCAL
YEAR 2023-2024 (Joint Item on City Council, Housing Authority, and
Reclamation Authority Agenda)

ASSISTANT GENERAL
COUNSEL TRAXLER

Assistant General Counsel Traxler requested that all agencies
convene concurrently to discuss this item.

DIRECTOR BORHANI

Director Borhani made a PowerPoint presentation and presented the
staff report.

OPEN
PUBLIC HEARING

At 5:30 p.m., Chair Ortiz opened the public hearing.

RECLAMATION AUTHORITY MINUTES
SPECIAL MEETING

JUNE 5, 2023
PAGE 3

CLOSE PUBLIC HEARING	There being no speakers, Chair Ortiz closed the public hearing at 5:31 p.m.
BOARDMEMBER BURROLA	As requested by Boardmember Burrola, Director Borhani briefly discussed forecasted revenues from construction permits and plan check fees.
BOARDMEMBER GARCIA	Boardmember Garcia expressed concern over dwindling availability of housing funds, to which Executive Director Miranda advised that a presentation will soon be made to the Council regarding linkage fees, which would help raise funds for housing.
ASSISTANT EXECUTIVE DIRECTOR OLIVARES	In response to a question by Boardmember Garcia, Assistant Executive Director Olivares advised that the all-in-one learning stations being currently used at the Irwindale Library would be relocated to the new Library, once built.
CHAIR ORTIZ	Chair Ortiz expressed his belief that the city should not foot the bill for animal control services conducted by the County of Los Angeles at the Santa Fe Dam, which is operated by the County.
BOARDMEMBER BRECEDA	Boardmember Breceda concurred with Chair Ortiz.
RESOLUTION NO. HA 2023-05-136 ADOPTED	Resolution No. HA 2023-05-136 , entitled: "A RESOLUTION OF THE IRWINDALE HOUSING AUTHORITY ADOPTING THE BUDGET FOR FISCAL YEAR 2023-2024," was adopted, on the motion of Vice Chair Ambriz, seconded by Boardmember Breceda, and unanimously approved.
<u>ADJOURNMENT</u>	There being no further business to conduct, the meeting was adjourned at 5:48 p.m.

Laura M. Nieto, MMC
Chief Assistant Authority Secretary

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

City of
IRWINDALE
AGENDA REPORT

RA Item 25

Date: September 13, 2023
To: Honorable Chairman and Members of the Irwindale Reclamation Authority
From: Julian A. Miranda, Executive Director
Issue: 2023 Third Quarter Mining Report of Nine (9) SMARA Pits

Executive Director's Recommendation:

That the Irwindale Reclamation Authority receive and file this report.

Administrative Action:

Submitted by:

Eddie Chan
Authority Engineer/Building Official



Prepared by:

Francisco Carrillo
Construction Compliance Manager



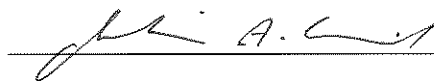
Reviewed by:

Kambiz Borhani
Authority Finance Director / Authority Treasurer



Approved by:

Julian A. Miranda, Executive Director



Background and Analysis:

The table below summarizes the 2023 third quarter estimated mining production of five (5) pits governed by the Surface Mining and Reclamation Act of 1975 (SMARA Pits) currently conducting mining activity in the City.

Mine Site	Estimated Production June 2023 through August 2023 (Tons)	Estimated Remaining Reserve (Tons)
Lehigh Hanson Pit	492,196	50,792,106
Peck Road Gravel Pit	15,000	142,000
Vulcan Reliance I	764,707	21,623,699
Vulcan Durbin	449,059	28,948,816
Olive Pit	492,765	27,825,193

A total of approximately **2,213,727 Tons** of material were produced during this reporting period, June 2023 through August 2023, from the five (5) SMARA Pits listed above. This is approximately **575,322 Tons** more than reported in the previous quarter.

Below is a summary of the third quarter and current activity of the remaining four (4) SMARA Pits in the City.

Mine Site	Status	Activity
United Pit No. 2	Under Reclamation	Fill Operations for Mine Reclamation
United Pit No. 3	Under IMP Review*	Inactive
United Pit No. 4	Active	Processing Plant
Azusa Western Pit	Idle (IMP)	Inactive

*Interim Management Plan (IMP) for United Pit No. 3 is currently under review. Thus, no production was reported and it is estimated that 370,470 Tons of reserves remain for future mining.

During the 2023 third quarter reporting period, reclamation activity was reported from three (3) SMARA Pits. Following is a summary of the reclamation activity at these three SMARA Pits:

Mine Site	Estimated Fill Placed June 2023 through August 2023 (C.Y.)
Lehigh Hanson Pit	104,808
United Pit No. 2	362,936
Vulcan Durbin Pit	129,800

As to the status of the City owned Olive Pit, CA Mine ID # 91-19-0052:

United Rock Products (United) continues to make progress on the installation of the traffic signal at the Olive Pit entrance on Los Angeles Street. United has successfully secured the necessary right-of-entry permit from Metrolink to continue with the construction of this traffic signal. Based on the revised construction schedule, the anticipated completion date for this signal is September 30, 2023.

United continues its efforts to obtain the final approval of the traffic signal at the intersection of Azusa Canyon Road and Los Angeles Street. Notably, progress has been made as the owner of the southeast corner property of the intersection have verbally consented to dedicate to the City the necessary easement for the construction of this traffic signal. The property's attorney is currently reviewing the Easement Dedication documents for formal signature, subsequent documentations will be filed accordingly. In addition, staff has established communication with the east side property owners associated with the second required easement for this project. Due to the need of this property owner to develop their property, they are also inclined to dedicate the easement to the City. With the cooperation of all parties and agencies involved, United is anticipating the final approval of the project's design by late 2023.

Fiscal Impact:

None.

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

City of
IRWINDALE
AGENDA REPORT

RA Item 26

Date: September 13, 2023
To: Honorable Chair and Members of the Reclamation 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 Reclamation Authority Board receive and file the Investment Quarterly Report for the fiscal quarter ending June 30, 2023.

Administrative Action:

Submitted, Prepared & Reviewed by:

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



Approved by:

Julian A. Miranda, City Manager/Executive Director



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 City's Investment Policy applies to all funds held by the City, Housing Authority, Successor Agency, and Reclamation Authority. The Reclamation Authority's funds are included in the City's cash and investment balances. The Investment Report for the quarter ending June 30, 2023, was presented to the City Council, Housing Authority, and Successor Agency Board on July 26, 2023. The Reclamation Authority Board was not scheduled to meet on that date, and therefore it is appropriate to present the same Quarterly Investment Report to the Reclamation Authority during their next regularly scheduled meeting.

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, including the Reclamation Authority, 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.

Fiscal Impact:

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

Attachment:

City of Irwindale Investment Report – June 30, 2023

**CITY OF IRVINDALE
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 IRVINDALE (POOLED - ALL FUNDS, INCLUDING RECLAMATION AUTHORITY)						
BANK OF THE WEST GENERAL ACCOUNT	\$ 366,806	0.36%			\$ 366,806	
WELLS FARGO BANK MONEY MARKET ACCOUNT	\$ 615,452	5.01%			\$ 615,452	
LOCAL AGENCY INVESTMENT FUND (LAIF)	\$ 50,470,273	3.36%			\$ 49,788,446	
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	06/23/25	4,573,520	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	06/28/26	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	1,020,892	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	234,886	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):	\$101,597,831				\$ 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 2.21 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