CITY OF IRWINDALE

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

NOTICE AND AGENDA FOR THE *AMENDED* SPECIAL AND REGULAR MEETING OF THE

CITY COUNCIL

HOUSING AUTHORITY

July 10, 2024

SPECIAL MEETING – 5:30 P.M.
REGULAR MEETING – 6:30 PM

CLOSED SESSION – CONFERENCE ROOM
OPEN SESSION – CITY COUNCIL CHAMBER

ALBERT F. AMBRIZ - Mayor

LARRY G. BURROLA - Mayor Pro Tem

MARK A. BRECEDA - Councilmember

MANUEL R. GARCIA - Councilmember

H. MANUEL ORTIZ - Councilmember

Via Zoom Webinar: https://us02web.zoom.us/j/87104592389
In the event that a Zoom broadcast is unavailable, staff will promptly notify the public through its social media platforms. The public meeting will proceed in accordance with The Brown Act.
Listen Over Phone: 1-669-900-6833; 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).

Compensation for Board Members: Compensation for the members of the Irwindale City Council is $750.16 a month. In accordance with Government Code Section 54952.3, Councilmembers will not receive any additional compensation or stipend for the convening of the regular meetings of the Successor Agency to the Irwindale Community Redevelopment Agency. Councilmembers will receive additional compensation of $50/meeting, not to exceed $150 per month, for the convening the regular meetings of the Irwindale Housing Authority and an additional compensation of $300/meeting for convening the regular meetings of the Irwindale Reclamation Authority.

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

1. CALL TO ORDER

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

3. AB 2449 DISCLOSURES

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

4. SPONTANEOUS COMMUNICATIONS

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

5. RECESS TO CLOSED SESSION

A. 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: IMEA, ICEA, IPOA, and Unrepresented Employees

B. Conference with Legal Counsel - Existing Litigation
Pursuant to Government Code Sections 54954.5(c), 54956.9(d)(1)

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

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

Property: 16249 Arrow Highway
Negotiating Parties: Marta McBride and Julian A. Miranda, City Manager
Under Negotiation: Price and terms of payment

D. Conference with Legal Counsel – Anticipated Litigation
Significant Exposure to Litigation
Pursuant to Government Code Section 54956.9 (d)(2), (e)(1)

A point has been reached where, in the opinion of the City Council, upon the advice of its legal counsel based on existing facts and circumstances, that there is significant exposure to litigation against the City. The facts and circumstances are those that might result in litigation against the City but which the City believes are not yet known to a potential

plaintiff or plaintiffs, which facts and circumstances need not be disclosed.

Agenda amended on Tuesday, July 9, 2024 at 2:45 p.m. to add Item 5D

6. RECONVENE IN OPEN SESSION

7. REPORT FROM CLOSED SESSION

8. ADJOURNMENT

REGULAR MEETING

9. CALL TO ORDER

10. PLEDGE OF ALLEGIANCE

11. INVOCATION

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

13. AB 2449 DISCLOSURES

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

14. CHANGES TO THE AGENDA

15. COUNCIL MEMBER TRAVEL REPORTS

16. COUNCILMEMBER COMMENTS

17. INTRODUCTION OF NEW EMPLOYEES/PROMOTIONS

A. Introduction of Bus Driver Norma Trujillo

B. Introduction of Irwindale Police Officer Edgar Murguia

18. PROCLAMATIONS / PRESENTATIONS / COMMENDATIONS

A. 100th Birthday Recognition of Amelia Adame

B. Retirement recognition for Albert Sarinana, Public Works Department

C. State of the City Video Presentation

19. CONSENT CALENDAR

A. Minutes - None for Approval
Department: City Clerk

Recommendation: Approve

B. Warrants / Demands / Payroll
Department: Finance

Recommendation: Approve.

C. Award of Contract for Construction of the 2023-2024 Resurfacing Project: Residential Resurfacing Project – Phase III; P-1053
Department: Engineering

Recommendation: That the City Council (1) authorize the City Manager to enter into an agreement with Sully-Miller Contracting Company in the amount of $962,098.50 for the 2023-2024 Resurfacing Project: Residential Resurfacing Project – Phase III; (2) approve a 5% construction contingency on the City of Irwindale's portion of the Project in the amount of $48,105.00 to cover any unforeseeable conditions that may arise during construction; (3) authorize the City manager to enter into a cooperative agreement with the City of Arcadia in order to cover the cost for their respective portion of the Project; (4) adopt Resolution No. 2024-54-3531 entitled "**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF IRWINDALE APPROVING THE (1) CARRYFORWARD THE REMAINING BUDGET FROM RESIDENTIAL RESURFACING PROJECT – PHASE II AND APPROPRIATING IT TO RESIDENTIAL RESURFACING PROJECT – PHASE III; P-1053, (2) CARRYFORWARD THE CAPITAL IMPROVEMENT PROGRAM RESIDENTIAL RESURFACING PROJECT – PHASE III; P-1053 to FY 2024-2025, AND (3) APPROPRIATING AN ADDITIONAL $246,197.02 FROM THE GENERAL FUND TO THE RESIDENTIAL RESURFACING PROJECT – PHASE III; P-1053.**"

D. Adopt Resolution No. 2024-52-3529 entitled, "A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF IRWINDALE ADOPTING UPDATED "VEHICLE MILES TRAVELED" THRESHOLDS OF SIGNIFICANCE FOR PURPOSES OF ANALYZING TRANSPORTATION IMPACTS UNDER THE CALIFORNIA ENVIRONMENTAL QUALITY ACT"
Department: Engineering

Recommendation: That the City Council adopt Resolution No. 2024-52-3529 entitled, "A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF IRWINDALE ADOPTING UPDATED "VEHICLE MILES TRAVELED" THRESHOLDS OF SIGNIFICANCE FOR PURPOSES OF ANALYZING TRANSPORTATION IMPACTS UNDER THE CALIFORNIA ENVIRONMENTAL QUALITY ACT".

E. Award of Contract for On-Call As-Needed Geotechnical Engineering and Engineering Geology Services Associated with Remediation & Land Development of Mine Sites not subject to SMARA, and Review of Site-Specific Geotechnical Reports Prepared in the Context of Building Code Chapter 18 for Land Development Project
Department: Engineering

Recommendation: That the City Council approve and authorize the City Manager to execute an agreement with Geo-Logic Associates, Inc. for On-Call As-Needed Geotechnical Engineering and Engineering Geology Services Associated with Remediation & Land Development of Mine Sites not subject to SMARA, and Review of Site-Specific Geotechnical Reports Prepared in the Context of Building Code Chapter 18 for Land Development Project in the amount not-to-exceed $350,000.

F. Award of Contract for Street Light Relocations on Irwindale Road
Department: Public Services

Recommendation: That the City Council approve and authorize the City Manager to enter into a public works maintenance contract agreement to relocate the street lights on Irwindale Road.

G. Waive the Bidding Process for the Dan Diaz Recreation Center HVAC #4 Replacement
Department: Public Services

Recommendation: That the City Council **adopt Resolution No. 2024-53-3530**, entitled, "A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF IRWINDALE FINDING AN EMERGENCY EXISTS, REQUIRING WAIVER OF FORMAL BIDDING REQUIREMENTS AND APPROVING AND AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH ACCO ENGINEERED SYSTEMS FOR THE REPLACEMENT OF HVAC #4 AT THE DAN DIAZ RECREATION CENTER"

H. Approval of Resolutions Relating to Compensation for City Employees and Approval of New Job Classifications and Associated Job Specifications
Department: Human Resources

Recommendation:

1. Adopt Resolution No. 2024-46-3523 entitled "**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF IRWINDALE APPROVING NEW JOB CLASSIFICATIONS AND ASSOCIATED JOB SPECIFICATIONS**"; and

2. Adopt Resolution No. 2024-45-3522 entitled "**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF IRWINDALE REPEALING AND REPLACING RESOLUTION NO. 2024-02-3479, AND ESTABLISHING THE NUMBER OF POSITIONS, SCHEDULE OF CLASSES, AND COMPENSATION FOR CITY EMPLOYEES**."

I. 2nd Reading - Ordinance No. 780
Department: Community Development

Recommendation: That the City Council adopt on second reading by title only with further reading waived, Ordinance No. 780, entitled**,** "AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF IRWINDALE RESCINDING ORDINANCE NO. 195 IN ITS ENTIRETY WHICH REZONED PROPERTIES LOCATED ON MOUNTAIN AVENUE AND AMBRIZ STREET (FORMERLY MOUNTAIN AVENUE) TO C-3 (HEAVY COMMERCIAL-RESIDENTIAL), AND RESCINDING ORDINANCE NO. 200 IN ITS ENTIRETY WHICH REZONED PROPERTIES LOCATED ON CITRUSVIEW AVENUE, PARK ROSE AVENUE AND RUELAS STREET TO M-2 (HEAVY MANUFACTURING), AND FINDING THE PROJECT EXEMPT FROM

THE CALIFORNIA ENVIRONMENTAL QUALITY ACT ("CEQA") PURSUANT TO CEQA GUIDELINES SECTION 15061(b)(3)".

J. Consideration of approval of Consent to Assignment to the Development Agreement from Irwindale Partners. L.P. to Park Building 3, LLC as to Parcel 3 and Parcel 4 and Estoppel Certificate Required by Park Building 3, LLC's Lender.
Department: City Attorney

Recommendation: That the City Council (1) Approve consent to assignment of the Development Agreement between the City of Irwindale and Irwindale Partners II, LLC dated February 12, 2020 from Irwindale Partners, L.P. to Park Building 3, LLC as to Parcel 3 and Parcel 4, and authorize the City Manager to execute such consent subject to City Attorney approval as to form; and (2) Approve the Estoppel Certificate required by Park Building 3, LLC's lender.

K. Claim Rejection - Fernando Velasquez v. City of Irwindale
Department: City Clerk

Recommendation: Staff recommends City Council (1) Reject the claim of Fernando Velasquez vs. City of Irwindale; and (2) Direct staff to send a letter of rejection.

L. Fourth Amendment to the Irwindale Fee Agreement for City Attorney Services with Aleshire & Wynder, LLP for Rate Structure Adjustment
Department: City Attorney

Recommendation: Approve the Fourth Amendment to the Irwindale Fee Agreement for City Attorney Services with Aleshire & Wynder, LLP and Authorize the Mayor to Execute Amendment.

20. SPONTANEOUS COMMUNICATIONS

This is the time set aside for members of the audience speak on items not on this agenda that are within the City Council's subject matter jurisdiction. 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 participate (except as stated), it is requested that all such communications be made in writing to be included on the next agenda for full discussion and action

All members of the public are asked to observe the City's Rules of Procedure and Public Meeting Decorum. The City's Rules of Procedure and Public Meeting Decorum can be found on the City's website, and Chapter 2.40 of the Irwindale Municipal Code. You may also contact the City Clerk's Office for copies.

Each speaker will be limited to 3 minutes unless such time limits are extended. 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. The Presiding Officer may, in his or her discretion, extend the 3-minute time limitation for the particular subject for all speakers. Organized groups of persons wishing to address the Council on the same subject should select a spokesperson to represent the group, so as to avoid

unnecessary repetition. In no event shall the total amount of speaking time for exceed 6 minutes per person for the subject under discussion.

The Council may regulate a speaker who is speaking too long or out of order, being unduly repetitious, discussing irrelevancies, or extending to items not within its subject matter jurisdiction. Please be reminded that discrimination, abusive use of profanity, unruly disruption, and violent or physically threatening conduct is discouraged. Members of the public shall not disrupt the orderly conduct of the meeting. The Presiding Officer will request that a person cease any disruptive conduct, and if not immediately stopped, will direct the person to be removed from the meeting.

Public Comments will be heard in the following order:

1: In-person attendees

2: Teleconference attendees

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

21. NEW BUSINESS

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

A. Verbal Report on the Feasibility of Installing Solar Panels in the Bleacher Area at the Irwindale Aquatics Center
Department: Public Services

Recommendation: Receive and file the verbal report.

22. PUBLIC HEARINGS

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

23. CITY MANAGER'S REPORT

24. FUTURE AGENDA ITEMS REQUESTED BY COUNCIL MEMBERS

At this time, the City Council will deliberate and discuss whether these items should be placed on a future agenda. In order for any listed item to be placed on a future agenda for substantive discussion or action, the City Council must act by formal motion to direct the City Manager to place the item on a future agenda.

25. ADJOURN

HOUSING AUTHORITY

26. AB 2449 DISCLOSURES

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

27. CONSENT CALENDAR

A. Minutes - None for Approval
Department: City Clerk

Recommendation: Approve

28. 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.

29. NEW BUSINESS

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

A. Presentation on Policy Change Regarding the Regulatory Agreement for the Substantial Home Rehabilitation Loan & First Time Homebuyer Programs
Department: Administration

Recommendation: Receive presentation and provide direction to staff.

30. PUBLIC HEARINGS

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

31. ADJOURN

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 and Housing Authority, to be held on July 10, 2024, be posted at the City Hall, Library, and Post Office on **July 3, 2024**.

Laura M. Nieto

_____
Laura M. Nieto, MMC
Chief Deputy City Clerk

CITY OF IRWINDALE
PAYROLL WARRANT REGISTER
June 2024

Payroll Batch	408-06-24, 409-06-24		
DATE OF ISSUE	DEPARTMENT		AMOUNT
6/13/24			
	11 City Council		1,731.15
	13 City Administrative Office		60,455.96
	14 Finance Department		33,920.13
	15 Summer Youth		-
	35 Police Department		239,805.07
	40 Recreation Department		30,041.11
	41 Aquatics Department		11,312.99
	42 Senior Citizens' Center		16,656.18
	44 Library		15,127.58
	51 Planning & Community Development		26,127.03
	52 Public Works - Engineering		30,038.78
	57 Public Works - Services		51,859.92
		Gross Payroll	517,075.90
		Required Deductions	(143,332.29)
		Voluntary Deductions	(21,011.48)
		Net Payroll	352,732.13

Payroll Batch	422-06-24		
DATE OF ISSUE	DEPARTMENT		AMOUNT
6/27/24			
	11 City Council		7,410.82
	13 City Administrative Office		60,306.88
	14 Finance Department		27,287.53
	15 Summer Youth		3,840.00
	35 Police Department		197,605.41
	40 Recreation Department		31,675.88
	41 Aquatics Department		26,337.64
	42 Senior Citizens' Center		18,177.80
	44 Library		14,803.85
	51 Planning & Community Development		27,603.25
	52 Public Works - Engineering		26,144.94
	57 Public Works - Services		54,016.89
		Gross Payroll	495,210.89
		Required Deductions	(134,537.44)
		Voluntary Deductions	(22,887.84)
		Net Payroll	337,785.61

Accounts Payable

Checks by Date - Summary by Check Number

User: imarin
Printed: 7/3/2024 4:51 PM

Check No	Vendor No	Vendor Name	Check Date	Check Amount
101986	ANG01	Sara Angulo	06/20/2024	5.00
101987	BRECED04	Mark A. Breceda	06/20/2024	1,007.65
101988	WOOD02	Nathaniel Burrola-Woodard	06/20/2024	75.00
101989	CONN01	Robert Connelly	06/20/2024	20.00
101990	CPG01	CPG Event Rentals LLC	06/20/2024	468.91
101991	DURAN06	Michelle Duran	06/20/2024	68.01
101992	ESPINO05	Ernesto Espino	06/20/2024	200.00
101993	EVANS02	Gloria Evans	06/20/2024	375.00
101994	FRONT01	Frontier Communications	06/20/2024	325.94
101995	ITERIS	Iteris, Inc.	06/20/2024	385.00
101996	JARAMI08	Gabriel Jaramillo	06/20/2024	75.00
101997	KELLY03	Justin Kelly	06/20/2024	20.01
101998	LUCA01	Willard Lucas	06/20/2024	75.00
101999	MCIV01	Megan Mciver	06/20/2024	400.00
102000	LEGAL03	Pre-Paid Legal Services, Inc.	06/20/2024	37.90
102001	ROMANC	Carmen M. Roman	06/20/2024	20.01
102002	SILV01	Randy Silva	06/20/2024	275.60
102003	SUBOH01	Subodh Thatte (Sam Thatte)	06/20/2024	8,050.00
102004	TYLER01	Jeff Tyler	06/20/2024	264.59
102005	PETTYC02	City of Irwindale-Rec Petty Cash	06/26/2024	418.35
102006	ACEROD	David Acero	06/27/2024	400.00
102007	AMERIC34	American Fidelity Assurance Co	06/27/2024	5,767.30
102008	AT&T06	AT & T	06/27/2024	1,706.53
102009	CINGULAR	AT & T Mobility	06/27/2024	1,753.33
102010	AZUSALW	Azusa Light & Water	06/27/2024	584.66
102011	NEST01	Blue Triton Brands, Inc.	06/27/2024	895.34
102012	ALVARA04	Aundrea Butler	06/27/2024	48.51
102013	CALIFO02	California American Water	06/27/2024	3,150.54
102014	SANGAB11	California Newspapers Partnership	06/27/2024	9,603.32
102015	CAMPOS03	Manuel Campos	06/27/2024	577.48
102016	CONCE01	Concentra	06/27/2024	585.00
102017	CPG01	CPG Event Rentals LLC	06/27/2024	16,890.00
102018	PMIDEN	Delta Dental Insurance Company	06/27/2024	583.27
102019	SOUTHE17	Golden State Water Company	06/27/2024	2,097.00
102020	GONZAL33	Olivia Gonzalez	06/27/2024	300.00
102021	LEDEZMA	Erica Ledezma	06/27/2024	300.00
102022	MAREZL	Linda S. Marez	06/27/2024	75.00
102023	PADILLAM	Melissa Marez	06/27/2024	75.00
102024	MEND22	Gabriel Mendez	06/27/2024	75.00
102025	NATION23	National Union Fire Insurance	06/27/2024	749.73
102026	OPTUM01	OptumRx, Inc.	06/27/2024	31,400.23
102027	PART01	Party Pronto, Inc	06/27/2024	2,011.00
102028	PITNEY06	Pitney Bowes, Inc	06/27/2024	384.31
102029	REYES06	Aaron Reyes	06/27/2024	1,800.00
102030	RUGG02	Mary Dolores Ruggio	06/27/2024	1,000.00
102031	SMART&	Smart & Final	06/27/2024	1,157.69
102032	GASCOM	SoCalGas	06/27/2024	2,522.53

Check No	Vendor No	Vendor Name	Check Date	Check Amount
102033	SCE02	Southern California Edison	06/27/2024	44,515.92
102034	STANDA01	Standard Insurance Co. RV	06/27/2024	492.45
102035	STANDA03	Standard Insurance Company	06/27/2024	2,494.88
102036	STROBE03	Gary Strobehn	06/27/2024	417.00
102037	TEXAS01	Texas Life Insurance Co.	06/27/2024	4,859.84
102038	TOD01	Khalalah Todd	06/27/2024	1,800.00
102039	TPX 01	TPX Communications	06/27/2024	2,773.90
102040	VISION01	Vision Service Plan - (CA)	06/27/2024	1,902.81
102041	VISION01	Vision Service Plan - (CA)	06/27/2024	4,573.00
102042	WILL01	April Williams	06/27/2024	320.00
102051	CALIFO56	California State Disbursement Unit	06/27/2024	604.15
102052	CALIFO57	California State Disbursement Unit	06/27/2024	143.07
102053	CITY01	City of Hope	06/27/2024	54.00
102054	FRANC06	Franchise Tax Board	06/27/2024	502.12
102055	ICEA	Irwindale City Employee Assoc.	06/27/2024	975.00
102056	IMEA	Irwindale Mgmt Employee Assoc.	06/27/2024	460.00
102057	IRWIND02	Irwindale Police Officers Assoc.	06/27/2024	3,088.00
102058	LOSANG31	Los Angeles County Sheriff's Dept.	06/27/2024	70.60
102059	HERNAN32	Joe Hernandez	07/01/2024	1,600.00
102060	REGIST01	Registrar-Recorder/County Clerk	07/01/2024	75.00
102061	A1PART	A-1 Party Rentals	07/10/2024	1,020.30
102062	ACCO01	ACCO Engineering Systems	07/10/2024	2,556.00
102063	ALLCI01	All City Management Services, Inc	07/10/2024	798.48
102064	ALLIAN02	Alliant Insurance Services, Inc.- Irvine Mai	07/10/2024	266.00
102065	AMAZON1	Amazon Capital Services, Inc.	07/10/2024	4,026.35
102066	AZUSAP01	Azusa Plumbing Supply	07/10/2024	848.37
102067	B&BTIR	B & B Tires Service	07/10/2024	25.00
102068	BAKER01	Baker & Taylor Books	07/10/2024	568.42
102069	BAKER10	Bakers Man Production	07/10/2024	2,500.00
102070	BARNEY	Barney's Locksmith Service	07/10/2024	2,680.90
102071	BILLST	Bill's Truck Repair, Inc.	07/10/2024	2,330.08
102072	CALRE01	CalRecycle	07/10/2024	320.00
102073	CINTAS	Cintas Corporation #693	07/10/2024	455.55
102074	BALDWI02	City of Baldwin Park	07/10/2024	2,768.43
102075	CRAFT01	Craftwater Engineering, Inc.	07/10/2024	1,858.00
102076	CSG01	CSG Consultants	07/10/2024	7,568.75
102077	CWE01	CWE	07/10/2024	30,814.94
102078	DASH01	Dash Medical Gloves, LLC	07/10/2024	253.48
102079	DELONG	Delong Unlimited	07/10/2024	229.32
102080	DUDEK01	Dudek	07/10/2024	270.00
102081	ECORP01	ECORP Consulting, Inc.	07/10/2024	9,506.32
102082	ENVIRO05	Environmental Science Associates (ESA)	07/10/2024	14,497.50
102083	EWINGI	Ewing Irrigation Products, Inc.	07/10/2024	1,204.53
102084	FAST02	Fast Response On-Site Testing	07/10/2024	125.00
102085	FCG01	FCG Consultants Inc.	07/10/2024	3,704.98
102086	GARVEY	Garvey Equipment Co	07/10/2024	421.50
102087	Harvey	Harvey Consulting Group, Inc.	07/10/2024	13,500.00
102088	HASA01	Hasa Inc.	07/10/2024	1,447.90
102089	INTER01	Interwest Consulting Group	07/10/2024	2,596.25
102090	IRWIND23	Irwindale Business Center	07/10/2024	842.47
102091	JOHNNY02	Johnny's Pool Service	07/10/2024	340.53
102092	KIML01	Kimley-Horn and Associates, Inc.	07/10/2024	8,392.50
102093	LANDSC	Landscape Warehouse III Inc.	07/10/2024	3,922.52
102094	LIEBERT	Liebert Cassidy Whitmore	07/10/2024	7,000.00
102095	MAINTE01	Maintex	07/10/2024	147.37
102096	MIDAS	Manuel C Muratalla	07/10/2024	3,031.76
102097	MARIPO	Mariposa Landscapes, Inc.	07/10/2024	11,449.14

Check No	Vendor No	Vendor Name	Check Date	Check Amount
102098	MCGRAT01	McGrath Rentcorp	07/10/2024	10,032.75
102099	MOR01	Jimore Morgan	07/10/2024	1,480.00
102100	NORMAN02	Norman A. Traub Associates	07/10/2024	1,344.22
102101	OFFICE03	ODP Business Solutions, LLC	07/10/2024	463.97
102102	ORKINP	Orkin	07/10/2024	1,727.93
102103	PAPER03	Paper Recycling & Shredding Specialist, In	07/10/2024	1,000.00
102104	PROPRINT	Pro Printing, Inc.	07/10/2024	3,739.09
102105	RIGHT01	Right of Way, Inc.	07/10/2024	4,504.28
102106	RIOHON01	Rio Hondo College	07/10/2024	50.00
102107	ROADLI	Roadline Products Inc. USA	07/10/2024	1,935.47
102108	ROSENO	RSG Inc.	07/10/2024	2,850.00
102109	SEAL01	SealMaster of Southern California	07/10/2024	1,249.54
102110	TAB01	TAB Products Co. LLC	07/10/2024	1,050.00
102111	TRIANG01	Triangle Truck Parts	07/10/2024	64.55
102112	UNITED15	United Refrigeration Inc	07/10/2024	598.33
102113	WAGN02	Jeanette Wagner	07/10/2024	575.00
102114	WALT01	Walters Wholesale Electric Co.	07/10/2024	1,632.12
102115	HDSUP01	WHITE CAP, L.P.	07/10/2024	2,938.56
102116	WICK01	Wick & Dennis Inc.	07/10/2024	5,000.00
102117	YTIRES	Y Tire Sales	07/10/2024	1,234.82
102118	Z&K01	Z&K Consultants, Inc.	07/10/2024	40,600.00
102119	MIJACA	Balcon Holdings, Inc.	07/10/2024	89.00
102120	HDL01	Hdl Software, LLC	07/10/2024	11,683.66
102121	INTER12	International Business InformationTechnolc	07/10/2024	6,321.00
102122	LEAGUE02	League Of California Cities	07/10/2024	960.75
			Report Total (129 checks):	418,195.16

Item #19.C.

City of
IRWINDALE
AGENDA REPORT

Date: July 10, 2024

To: Honorable Mayor and Members of the City Council

From: Julian A. Miranda, City Manager

Issue: Award of Contract for Construction of the 2023-2024 Resurfacing Project: Residential Resurfacing Project – Phase III; P-1053

City Manager's Recommendation:

That the City Council (1) authorize the City Manager to enter into an agreement with Sully-Miller Contracting Company in the amount of $962,098.50 for the 2023-2024 Resurfacing Project: Residential Resurfacing Project – Phase III; (2) approve a 5% construction contingency on the City of Irwindale's portion of the Project in the amount of $48,105.00 to cover any unforeseeable conditions that may arise during construction; (3) authorize the City manager to enter into a cooperative agreement with the City of Arcadia in order to cover the cost for their respective portion of the Project; (4) adopt Resolution No. 2024-54-3531 entitled "**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF IRWINDALE APPROVING THE (1) CARRYFORWARD THE REMAINING BUDGET FROM RESIDENTIAL RESURFACING PROJECT – PHASE II AND APPROPRIATING IT TO RESIDENTIAL RESURFACING PROJECT – PHASE III; P-1053, (2) CARRYFORWARD THE CAPITAL IMPROVEMENT PROGRAM RESIDENTIAL RESURFACING PROJECT – PHASE III; P-1053 to FY 2024-2025, AND (3) APPROPRIATING AN ADDITIONAL $246,197.02 FROM THE GENERAL FUND TO THE RESIDENTIAL RESURFACING PROJECT – PHASE III; P-1053.**"

Administrative Action:

Submitted by:
Eddie Chan, Director of Engineering/Building Official

Prepared by:
Luis Pimentel, Associate Engineer

Reviewed by:

Adrian R. Guerra, City Attorney

Kambiz Borhani, Finance Director / City Treasurer

Approved by:

Julian A. Miranda, City Manager

Background and Analysis:

The City's resurfacing program provides required maintenance to the City's street system, which extends the life of City streets and minimizes costly repairs, such as reconstruction. The 2023-2024 Resurfacing Project is identified in the City's Capital Improvement Program, and includes Peck Road, Meridian Street, Alice Rodriguez Circle, Ruelas Street and Park Rose Avenue. The project also includes replacing damaged concrete sidewalks on Meridian Street and Alice Rodriguez Circle.

On May 2 and May 9, 2024, a Notice Inviting Bids for the Project was advertised in the San Gabriel Valley Tribune. The final submission date for bids on PlanetBids was May 21, 2024 at 11:00 am. The City received four (4) bids with the following results:

	Contractor	Base Bid 1	Base Bid 2	Alternate Bid 1	Alternate Bid 2	Alternate Bid 3
1	Sully-Miller Contracting Co.	$646,951.50	$272,952.00	$1,060,325.00	$42,195.00	$17,775.00
2	All American Asphalt	$1,019,018.50	$408,350.00	$1,651,612.50	$95,245.00	$24,662.00
3	Sequel Contractors Inc.	$1,083,218.50	$378,267.00	$2,230,275.00	$137,050.00	$21,535.00
4	Hardy & Harper	$1,268,966.00	$372,677.00	$2,140,150.00	$98,600.00	$15,607.00

Staff reviewed the bid proposals and found Sully-Miller Contracting Co. to be the lowest responsible bidder with a valid California contractor's license, Department of Industrial Relations (DIR) registration, not barred from bidding on public works contracts, and having good references.

The Plans and Specifications for this Project included base bids for work done entirely within the City of Irwindale's jurisdiction and alternate bids for portions of streets that are within the neighboring jurisdictions of Duarte, Arcadia and Monrovia.

After receiving and reviewing the bids, Arcadia agreed to participate in the Project with the City of Irwindale and be responsible for funding their portion of the Project in the amount of $59,000.00. A Cooperative Agreement between the City of Arcadia and Irwindale is attached

to this agenda report. The breakdown of Arcadia's anticipated cost is as follows:

Bid Amount	Contingency	10% Design Cost	15% Construction Management & Inspection Cost	Total Cost	Round off
$42,195.00	$6,244.86	$4,219.50	$6,329.25	$58,988.61	$59,000.00

Staff recommends the contract be awarded to Sully-Miller Contracting Co. in the amount of $962,098.50 (Base Bid 1: $646,951.50 + Base Bid 2: $272,952.00 + Arcadia's portion: $42,195) for the 2023-2024 Resurfacing Project: Residential Resurfacing Project – Phase III.

It is anticipated that there will be a cost of $70,000 for work related to construction inspections and quality control. This work will be performed by one of our consultants under the City's existing On-Call As Needed Consulting Services List.

The attached contract agreement and cooperative agreement have been reviewed and approved as to form by the City Attorney's office.

Fiscal Impact:

Funding for this CIP was budgeted in the FY 2023-2024 Adopted Budget under Residential Resurfacing Project - Phase III for $750,000.00. The total cost for this Project is $1,097,008.50 (Base Bid 1: $646,951.50 + Base Bid 2: $272,952.00 + Arcadia's portion: $59,000.00 + 5% Construction Contingency of Irwindale portion: $48,105.00 ($646,951.50 + 272,952.00 + 42,195.00 = $978,903.50 x 5%) Construction Inspection & QC: $70,000.00). The Project is budgeted for $750,000 plus the carryover from the Residential Resurfacing Project II in the amount of $100,811.48 for a total available amount of $850,811.48. An additional appropriation of $247,197.02 from the General Fund is being requested to start this project. This Project is funded through the General Fund, Mining Impact Fund, Gas Tax, Prop C, TDA, Measure R, and Measure M funds, and accounted for in Capital Improvements Program Account No. 48-80-800-45300-8356.

Attachments:

1. Co-op Agreement with Arcadia
2. Construction Contract Agreement
3. Resolution 2024-54-3531

2023-2024 RESURFACING PROJECT: RESIDENTIAL RESURFACING PHASE III; P-1053

COOPERATIVE AGREEMENT BETWEEN IRWINDALE AND ARCADIA

THIS AGREEMENT, dated this ____ day of _____ 2024, for purposes of identification, is made and entered into, by and between the CITY OF ARCADIA, a municipal corporation, hereinafter referred to as "ARCADIA," and the CITY OF IRWINDALE, a municipal corporation, hereinafter referred to as "IRWINDALE." ARCADIA and IRWINDALE are sometimes referred to individually as "PARTY" and collectively as "PARTIES" herein.

WITNESSETH

WHEREAS, IRWINDALE is proposing to reconstruct/resurface and restripe the pavement on Peck Road, Meridian Street, Alice Rodriguez Circle, Ruelas Street and Park Rose Avenue within IRWINDALE city limits (hereinafter the "IRWINDALE PROJECT"); and

WHEREAS, a portion of Peck Road adjacent to the area of the IRWINDALE PROJECT is located within the boundaries of the City of Arcadia; and

WHEREAS, ARCADIA desires to reconstruct/resurface and restripe the pavement on Peck Road within its boundaries (hereinafter the "ARCADIA PORTION" of the PROJECT); and

WHEREAS, IRWINDALE is willing to include the ARCADIA PORTION in the IRWINDALE PROJECT; and

WHEREAS, IRWINDALE will be performing contract administration, contract inspection and engineering, material testing and project management for the IRWINDALE PROJECT, and is willing to also provide these services for the ARCADIA PORTION; and

WHEREAS, ARCADIA is willing to fund the ARCADIA PORTION of the PROJECT; and

WHEREAS, the cost of the PROJECT includes the design, construction contract, contract administration, contract inspection and engineering, material testing and project management for the IRWINDALE PROJECT, including the ARCADIA PORTION; and

WHEREAS, the cost of construction of the PROJECT, including portions of ARCADIA, is currently estimated to be $1,097,008.50; and

WHEREAS, the cost for the ARCADIA PORTION of the PROJECT is currently estimated to be $59,000.00.

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

1. DEFINITIONS:

a. JURISDICTION as referred to in this AGREEMENT shall be defined as the area within the geographical boundary of the IRWINDALE and ARCADIA areas identified in this AGREEMENT.

b. COST OF CONSTRUCTION CONTRACT as referred to in this AGREEMENT shall consist of 10% of the construction cost for design, the total of all payments to the construction contractor(s) and consultant(s) for the PROJECT; the total of all payments to utility companies or contractor(s) for the relocation of facilities necessary for the construction of PROJECT; and the cost of any additional unforeseen work that is necessary for the construction of the PROJECT in accordance with plans and specifications approved by IRWINDALE and ARCADIA.

c. CONSTRUCTION ADMINISTRATION as referred to in this AGREEMENT shall consist of construction contract administration, 15% of construction cost for construction inspection and materials testing, construction survey, traffic detour, signing and striping, construction engineering, utility relocation and coordination matters, changes and modifications of plans and specifications for PROJECT necessitated by unforeseen or unforeseeable field conditions encountered during construction of PROJECT, construction contingencies, and all other necessary work after advertising of PROJECT for construction bids to cause PROJECT to be constructed in accordance with said plans and specifications approved by IRWINDALE and ARACADIA.

d. COST OF PROJECT as referred to in this AGREEMENT shall consist of the COST OF CONSTRUCTION CONTRACT and CONSTRUCTION ADMINISTRATION costs and all other work necessary to complete PROJECT in accordance with the plans and specifications approved by IRWINDALE and ARCADIA and shall include currently effective percentages added to total salaries, wages, and equipment costs to cover overhead, administration, and depreciation in connection with any or all of the aforementioned items.

e. Completion of PROJECT as referred to in this AGREEMENT shall be defined as the date of field acceptance of construction of PROJECT by IRWINDALE and a written notification to ARCADIA'S Director of Public Works that the improvements within ARCADIA'S JURISDICTION are transferred to ARCADIA for the purpose of operation and maintenance.

2. ARCADIA AGREES:

a. To finance ARCADIA'S jurisdictional share of the COST OF PROJECT, the actual amount of which is to be determined by a final accounting, pursuant to Section (4) a. of this AGREEMENT.

b. To deposit with IRWINDALE following execution of this AGREEMENT and upon demand by IRWINDALE Fifty-Nine Thousand and 00/100 Dollars ($59,000.00) to finance its estimated jurisdictional share of the COST OF PROJECT (ARCADIA'S PAYMENT), the actual amount of which is to be determined by a final accounting, pursuant to Section (4) a. of this AGREEMENT. IRWINDALE'S demand will consist of a billing invoice prepared by IRWINDALE and delivered to ARCADIA.

c. To provide IRWINDALE with conditions for issuance of encroachment, excavation, and construction permit and any other special conditions at the time of plan approval for construction bids so that the permit conditions are fully incorporated into the PROJECT'S plans and specifications so that contractors or any other person in charge of construction shall have no merit or basis to request change in work compensation.

d. Upon receipt of permit application from IRWINDALE and approval of construction plans for PROJECT, to issue IRWINDALE any necessary permit(s) authorizing IRWINDALE to construct those portions of PROJECT within ARCADIA'S JURISDICTION at no cost to IRWINDALE.

e. To cooperate with IRWINDALE in conducting negotiations with and, where appropriate, to issue notices to public utility organizations and owners of substructure and overhead facilities regarding the relocation, removal, operation, and maintenance of all surface and underground utilities and facilities, structures, and transportation services, which interfere with the proposed construction. ARCADIA will take all necessary steps to grant, transfer, or assign all prior rights over the utility companies and owners of substructure and overhead facilities to IRWINDALE when necessary to construct, complete, and maintain PROJECT or to appoint IRWINDALE as its attorney-in-fact to exercise such prior rights.

f. To be financially responsible for disposal and/or mitigation measures, if necessary, should any hazardous materials, chemicals, or contaminants be encountered during construction of PROJECT within ARCADIA'S JURISDICTION.

3. IRWINDALE AGREES:

a. To include the ARCADIA PORTION of the PROJECT as a part of the IRWINDALE PROJECT and to perform the contract administration, which shall include actual construction, construction inspection and engineering, materials testing, project management and all other work necessary to complete PROJECT.

b. To finance IRWINDALE'S jurisdictional share of the COST OF PROJECT. IRWINDALE'S actual share will be determined by a final accounting pursuant to Section (4) a. of this AGREEMENT.

c. To accept ARCADIA'S PAYMENT in the amount of Fifty-Nine Thousand and 00/100 Dollars ($59,000.00), to finance ARCADIA'S estimated share of the COST OF PROJECT.

d. To solicit PROJECT for construction bids, award and administer the construction contract, perform CONSTRUCTION ADMINISTRATION, do all things necessary and proper to complete PROJECT, and act on behalf of ARCADIA in all negotiations pertaining thereto.

e. To be financially responsible for disposal and/or mitigation measures, if necessary, should any hazardous materials, chemicals, or contaminants be encountered during construction of PROJECT within IRWINDALE'S JURISDICTION.

f. To furnish ARCADIA within one hundred eighty (180) calendar days after final payment to contractor a final accounting of the actual COST OF PROJECT, including an itemization of actual unit costs and actual quantities for PROJECT.

h. To comply with all applicable Federal, State, and local laws, rules, and ordinances in the performance of this AGREEMENT.

j. In the event that a preliminary stop notice, stop payment notice, and/or action to enforce a stop payment notice is filed on the PROJECT, to provide ARCADIA with a copy of same within three (3) business days. IRWINDALE shall be responsible for withholding the funds in compliance with Civil Code § 9350 et seq.

4. IT IS MUTUALLY UNDERSTOOD AND AGREED AS FOLLOWS:

a. The final accounting of the actual total COST OF PROJECT shall allocate said total cost among IRWINDALE and ARCADIA based on the jurisdictional share of the street located at the PROJECT.

b. That if at final accounting ARCADIA'S jurisdictional share of COST OF PROJECT exceeds ARCADIA'S PAYMENT, as set forth in Section (2) b. of this AGREEMENT, ARCADIA shall upon review and approval of final accounting invoice as described in paragraph (4) d., below, pay to IRWINDALE the additional amount upon demand. Said demand shall consist of a billing invoice prepared by IRWINDALE. Conversely, if ARCADIA'S jurisdictional share of COST OF PROJECT is less than ARCADIA'S PAYMENT, IRWINDALE shall refund the difference to ARCADIA without further action by ARCADIA.

c. ARCADIA shall review the final accounting invoice prepared by IRWINDALE and report in writing any discrepancies to IRWINDALE within thirty (30) calendar days after the date of said invoice. Undisputed charges shall be paid by ARCADIA to IRWINDALE within forty-five (45) calendar days after the date of said invoice. IRWINDALE shall review all disputed charges and submit a written justification detailing the basis for those charges within forty-five (45) calendar days of receipt of ARCADIA 'S written report. ARCADIA shall then make payment of the previously disputed charges or submit justification for nonpayment within forty-five (45) calendar days after the date of IRWINDALE'S written justification.

d. During construction of PROJECT, IRWINDALE shall furnish an inspector or other representative to perform the functions of an inspector. ARCADIA may also furnish, at no cost to IRWINDALE, an inspector or other representative to inspect construction of PROJECT within ARCADIA 'S JURISDICTION. Said inspectors shall cooperate and consult with each other, but the orders of IRWINDALE inspector to the contractors or any other person in charge of construction shall prevail and be final.

e. This AGREEMENT may be terminated, amended or modified only by mutual written consent of ARCADIA and IRWINDALE. Amendments and modifications of a nonmaterial nature may be made by the mutual written consent of the parties' Directors of Engineering/City Engineer or their delegates.

f. Any correspondence, communication, or contact concerning this AGREEMENT shall be directed to the following:

CITY OF ARCADIA	CITY OF IRWINDALE
Mr. Paul Cranmer	Mr. Eddie Chan
Public Works Services Director	Director of Engineering/Building Official
240 W Huntington Dr	5050 N. Irwindale Ave
Arcadia, CA 91007	Irwindale, CA 91706

g. Other than as provided below, neither IRWINDALE nor any officer or employee of IRWINDALE shall be responsible for any damage or liability occurring by reason of any acts or omissions on the part of ARCADIA under or in connection with any work, authority, or jurisdiction delegated to or determined to be the responsibility of ARCADIA under this AGREEMENT. It is also understood and agreed that, pursuant to Government Code Section 895.4, ARCADIA shall fully indemnify, defend, and hold IRWINDALE harmless from any liability imposed for injury (as defined by Government Code Section 810.8) occurring by reason of any acts or omissions on the part of ARCADIA under or in connection with any work, authority, or jurisdiction delegated to or determined to be the responsibility of ARCADIA under this AGREEMENT.

h. Neither IRWINDALE nor any officer or employee of IRWINDALE shall be responsible, directly or indirectly, for damage or liability arising from or attributable to the presence or alleged presence, transport, arrangement, or release of any hazardous materials, chemicals, or contaminants present at or stemming from the PROJECT within ARCADIA 'S JURISDICTION or arising from acts or omissions on the part of ARCADIA under or in connection with any work, authority, or jurisdiction delegated to or determined to be the responsibility of ARCADIA under this AGREEMENT, including liability under the Comprehensive Environmental, Response, Compensation and Liability Act of 1980 (CERCLA), the California Health and Safety Code or common law. It is understood and agreed pursuant to Government Code Section 895.4, ARCADIA shall fully indemnify, defend, and hold IRWINDALE harmless from any such damage, liability, or claim. In addition to being an agreement enforceable under the laws of the State of California, the foregoing indemnity is intended by the parties to be an agreement pursuant to 42 U.S.C. Section 9607(e), Section 107(e) of the amended CERCLA, and the California Health and Safety Code Section 25364.

i. Other than as provided below, neither ARCADIA nor any officer or employee of ARCADIA shall be responsible for any damage or liability occurring by reason of any acts or omissions on the part of IRWINDALE under or in connection with any work, authority, or jurisdiction delegated to or determined to be the responsibility of IRWINDALE under this AGREEMENT. It is also understood and agreed that, pursuant to Government Code Section 895.4, IRWINDALE shall fully indemnify, defend, and hold ARCADIA harmless from any liability imposed for injury (as defined by Government Code Section 810.8) occurring by reason of any acts or omissions on the part of IRWINDALE under or in connection with any work, authority, or jurisdiction delegated to or determined to be the responsibility of IRWINDALE under this AGREEMENT.

j. Neither ARCADIA nor any officer or employee of ARCADIA shall be responsible, directly or indirectly, for damage or liability arising from or attributable to the presence or alleged presence, transport, arrangement, or release of any hazardous materials, chemicals, or contaminants present at or stemming from the PROJECT within IRWINDALE'S JURISDICTION or arising from acts or omissions on the part of IRWINDALE under or in connection with any work, authority, or jurisdiction delegated to or determined to be the responsibility of IRWINDALE under this AGREEMENT, including liability under the CERCLA, the California Health and Safety Code, or common law. It is understood and agreed pursuant to Government Code Section 895.4, IRWINDALE shall fully indemnify, defend, and hold ARCADIA harmless from any such damage, liability, or claim. In addition to being an agreement enforceable under the laws of the State of California, the foregoing indemnity is intended by the parties to be an agreement pursuant to 42 U.S.C. Section 9607(e), Section 107(e) of the amended CERCLA, and California Health and Safety Code Section 25364.

k. If any legal action, or any arbitration or other proceeding is initiated for the enforcement of this AGREEMENT, or because of any alleged dispute, breach, default or misrepresentation in connection with any of the provisions of this AGREEMENT, the successful or prevailing PARTY shall be entitled to recover reasonable attorneys' fees, witness fees and other costs incurred in that action or proceeding, in addition to any other relief to which it may be entitled.

l. IRWINDALE authorizes its Director of Engineering/Building Official to assign to ARCADIA all of its right, title, and interest in any unelapsed portion of the one-year warranty granted to IRWINDALE by the construction contractor performing the road improvement work within ARCADIA'S JURISDICTION. This assignment is effective following completion of PROJECT.

m. Venue shall be in Los Angeles County, California.

n. It is not intended by this AGREEMENT to create any third-party beneficiaries herein or to authorize any person not a party to this AGREEMENT to maintain any suit, claim, or action under the AGREEMENT.

IN WITNESS WHEREOF, the parties hereto have caused this AGREEMENT to be executed on the dates hereinafter respectively set forth.

CITY OF ARCADIA

By_____
Dominic Lazzaretto, City Manager

DATE OF EXECUTION:

_____

ATTEST:

_____
Linda Rodriguez, City Clerk

APPROVED AS TO FORM:

_____
Best Best & Krieger LLP, City Attorney

CITY OF IRWINDALE

By_____
Julian Miranda, City Manager

DATE OF EXECUTION:

_____

ATTEST:

By _____
Laura Nieto, Chief Deputy City Clerk

APPROVED AS TO FORM:

By _____
Adrian Guerra, City Attorney

Project Name/No.: 2023-2024 Resurfacing Project: Residential Resurfacing Phase III; P-1053
Approved: July 10, 2024

PUBLIC WORKS CONSTRUCTION CONTRACT AGREEMENT BETWEEN THE CITY OF IRWINDALE AND SULLY-MILLER CONTRACTING COMPANY

THIS PUBLIC WORKS AGREEMENT ("**Agreement**") is made and entered into this 10th day of July, 2024, by and between the City of Irwindale, a California charter city ("**City**") and Sully-Miller Contracting Company, 135 S. State College Boulevard Suite 400, Brea, CA 92821 ("**Contractor**"). City and Contractor may be referred to, sometimes individually or collectively, as "Party" or "Parties."

RECITALS

A. The City desires to retain Contractor, on an independent contractor basis, to perform services for public works, as more particularly described below.

B. Contractor represents that it is fully qualified to perform such services by virtue of its experience and the training, education and expertise of its principals and employees.

C. Pursuant to the City of Irwindale Municipal Code and California state law, City has authority to enter into and execute this Agreement.

D. The Parties desire to formalize the selection of Contractor for performance of the services and desire that the terms of that performance be as particularly defined and described herein.

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

AGREEMENT

ARTICLE 1. CONTRACTOR SERVICES

1.1 Scope of Work.

The Contractor shall perform all of the work, furnish all labor, materials, equipment, tools, utility services, and transportation, and comply with all of the specifications and requirements in the "Scope of Services" attached hereto as Exhibit "A" and incorporated herein by this reference. The Scope of Services shall include Contractor's Proposal or Bid Documents submitted for the project entitled **2023-2024 Resurfacing Project: Residential Resurfacing Phase III; P-1053** ("**Project**"). All such work shall be performed in a good and workmanlike manner, as reasonably determined by the City, and shall be performed in compliance with all local, state, and federal laws and regulations. As used herein, "**Proposal**" or "**Bid Documents**" refers to all of the documents included in the solicitation of bids for the Project, including but not limited to, the Invitation for

Bids, Instructions to Bidders, Bid or Bid Proposal, Contract Documents, Special Provisions, Technical Provisions, Construction Plans, Standard Plans, Drawings, Reference Specifications, all applicable permit requirements, any addenda, and any other documents included, referenced, or incorporated therein. The Bid Documents are incorporated into this Agreement and made part hereof. In the event of any conflict between the terms of the Bid Documents and this Agreement, the terms of this Agreement shall govern.

1.2 Incorporation of Green Book.

The provisions of the most recent edition of the Standard Specifications for Public Works Construction, as updated by errata, ("Greenbook") are incorporated herein, except as explicitly modified by the Bid Documents. In the event of any conflict between the provisions of the Greenbook and this Agreement, the terms of this Agreement shall govern.

1.3 Compliance with Labor and Wage Laws.

(a) Public Work. The Parties acknowledge that the work to be performed under this Agreement is a "public work" as defined in Labor Code Section 1720 and that this Agreement is therefore subject to the requirements of Division 2, Part 7, Chapter 1 (commencing with Section 1720) of the California Labor Code relating to public works contracts and the rules and regulations established by the Department of Industrial Relations ("**DIR**") implementing such statutes. The work performed under this Agreement is subject to compliance monitoring and enforcement by the DIR. Contractor shall post job site notices, as prescribed by regulation.

(b) Registration with DIR. Pursuant to Labor Code section 1771.1, Contractor and all subcontractors must be registered with, and pay an annual fee to, the DIR prior to and during the performance of any work under this Agreement.

(c) Prevailing Wages. Contractor shall pay prevailing wages to the extent required by Labor Code Section 1771. Pursuant to Labor Code Section 1773.2, copies of the prevailing rate of per diem wages are on file at City Hall and will be made available to any interested party on request. By initiating any work under this Agreement, Contractor acknowledges receipt of a copy of the DIR determination of the prevailing rate of per diem wages, and Contractor shall post a copy of the same at each job site where work is performed under this Agreement. If this Agreement is subject to the payment of federal prevailing wages under the Davis-Bacon Act (40 U.S.C. § 3141 *et seq.*), then Contractor shall pay the higher of either the state for federal prevailing wage applicable to each laborer.

(d) Penalty for Failure to Pay Prevailing Wages. Contractor shall comply with and be bound by the provisions of Labor Code Sections 1774 and 1775 concerning the payment of prevailing rates of wages to workers and the penalties for failure to pay prevailing wages. The Contractor shall, as a penalty to the City, forfeit two hundred dollars ($200) for each calendar day, or portion thereof, for each worker paid less than the prevailing rates as determined by the DIR for the work or craft in which the worker is employed for any public work done pursuant to this Agreement by Contractor or by any subcontractor.

(e) Payroll Records. Contractor shall comply with and be bound by the provisions of Labor Code Section 1776, which requires Contractor and each subcontractor to: keep

accurate payroll records and verify such records in writing under penalty of perjury, as specified in Section 1776; certify and make such payroll records available for inspection as provided by Section 1776; and inform the City of the location of the records.

(f) Apprentices. Contractor shall comply with and be bound by the provisions of Labor Code Sections 1777.5, 1777.6, and 1777.7 and California Code of Regulations Title 8, Section 200 *et seq.* concerning the employment of apprentices on public works projects. Contractor shall be responsible for compliance with these aforementioned Sections for all apprenticeable occupations. Prior to commencing work under this Agreement, Contractor shall provide City with a copy of the information submitted to any applicable apprenticeship program. Within sixty (60) days after concluding work pursuant to this Agreement, Contractor and each of its subcontractors shall submit to the City a verified statement of the journeyman and apprentice hours performed under this Agreement.

(g) Eight-Hour Work Day. Contractor acknowledges that eight (8) hours labor constitutes a legal day's work. Contractor shall comply with and be bound by Labor Code Section 1810.

(h) Penalties for Excess Hours. Contractor shall comply with and be bound by the provisions of Labor Code Section 1813 concerning penalties for workers who work excess hours. The Contractor shall, as a penalty to the City, forfeit twenty-five dollars ($25) for each worker employed in the performance of this Agreement by the Contractor or by any subcontractor for each calendar day during which such worker is required or permitted to work more than eight (8) hours in any one calendar day and forty (40) hours in any one calendar week in violation of the provisions of Division 2, Part 7, Chapter 1, Article 3 of the Labor Code. Pursuant to Labor Code section 1815, work performed by employees of Contractor in excess of eight (8) hours per day, and forty (40) hours during any one week shall be permitted upon public work upon compensation for all hours worked in excess of 8 hours per day at not less than one and one-half (1½) times the basic rate of pay.

(i) Workers' Compensation. California Labor Code Sections 1860 and 3700 provide that every employer will be required to secure the payment of compensation to its employees if it has employees. In accordance with the provisions of California Labor Code Section 1861, Contractor certifies as follows:

> "I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this contract."

(j) Contractor's Responsibility for Subcontractors. For every subcontractor who will perform work under this Agreement, Contractor shall be responsible for such subcontractor's compliance with Division 2, Part 7, Chapter 1 (commencing with Section 1720) of the California Labor Code, and shall make such compliance a requirement in any contract with any subcontractor for work under this Agreement. Contractor shall be required to take all actions necessary to enforce such contractual provisions and ensure subcontractor's compliance, including

without limitation, conducting a review of the certified payroll records of the subcontractor on a periodic basis or upon becoming aware of the failure of the subcontractor to pay his or her workers the specified prevailing rate of wages. Contractor shall diligently take corrective action to halt or rectify any such failure by any subcontractor.

1.4 Licenses, Permits, Fees and Assessments.

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

1.5 Familiarity with Work.

By executing this Agreement, Contractor warrants that Contractor (i) has thoroughly investigated and considered the scope of work to be performed, (ii) has carefully considered how the services should be performed, and (iii) fully understands the facilities, difficulties and restrictions attending performance of the services under this Agreement. If the services involve work upon any site, Contractor warrants that Contractor has or will investigate the site and is or will be fully acquainted with the conditions there existing, prior to commencement of services hereunder.

1.6 Discovery of Unknown Conditions.

(a) Pursuant to Public Contract Code section 7104, Contractor shall promptly, and before the following conditions are disturbed, notify the City, in writing, of any: (i) material Contractor believes may be hazardous waste as defined in Section 25117 of the Health & Safety Code required to be removed to a Class I, II, or III disposal site in accordance with existing law; (ii) subsurface or latent physical conditions at the site, materially different from those indicated by information about the site made available to bidders prior to the deadline for submitting bids on the project; or (iii) unknown physical conditions at the site of any unusual nature, different from those ordinarily encountered and generally recognized as inherent in work of the character provided for in this Agreement.

(b) City shall promptly investigate the conditions, and if it finds that the conditions do materially differ, or do involve hazardous waste, and cause a decrease or increase in Contractor's cost of, or the time required for, performance of any part of the work, shall issue a change order in accordance with this Agreement.

(c) In the event that a dispute arises between City and Contractor whether the conditions materially differ, or involve hazardous waste, or cause a decrease or increase in Contractor's cost of, or time required for, performance of any part of the work, Contractor shall not be excused from any scheduled completion date set, but shall proceed with all work to be performed under the Agreement. Contractor shall retain any and all rights provided either by

contract or by law, which pertain to the resolution of disputes and protests between the contracting parties.

1.7 Unidentified Utilities.

To the extent required by Government Code section 4215, City will compensate Contractor for the cost of locating, repairing damage not due to the failure of Contractor to exercise reasonable care, and removing or relocating utility facilities not identified by City in the Bid Documents with reasonable accuracy, and for equipment on the project necessarily idled during such work. Nothing herein shall be deemed to require City to indicate the presence of existing service laterals or appurtenances whenever the presence of such utilities on the project site can be inferred from the presence of other visible facilities, such as buildings, meters, and junction boxes, on or adjacent to the site of the construction; provided, however, nothing herein shall relieve City from identifying main or trunklines in the plans and specifications. If Contractor, while performing the work, discovers utility facilities not identified by City in the plans or specifications, Contractor shall immediately notify City and the utility in writing. This Agreement is subject to Government Code sections 4126 through 4216.9. Contractor must notify utilities and obtain an identification number before excavation or be subject to liability for damages to subsurface installations.

1.8 Trench Excavation.

Pursuant to Labor Code section 6705, if this Agreement is for more than $25,000 and requires the excavation of any trench or trenches five feet or more in depth, Contractor shall submit, in advance of such excavation, a detailed plan showing the design of shoring, bracing, sloping, or other provisions to be made for worker protection from the hazard of caving ground during the excavation of such trench or trenches. The plan shall be reviewed and accepted by the City, or a registered civil or structural engineer employed by the City to whom authority has been delegated, prior to the excavation. If the plan varies from the shoring system standards, the plan shall be prepared by a registered civil or structural engineer. This section shall not be deemed to allow the use of a shoring, sloping, or protective system less effective than that required by the Construction Safety Orders. This subsection shall not be construed to impose tort liability on the City or any of its employees. Full compensation for sheeting, shoring, bracing, sloping, and all other provisions required for worker protection shall be considered as included in the contract price shown in the appropriate Bid Item, and no additional compensation will be allowed therefor.

1.9 Protection and Care of Work and Materials.

The Contractor shall adopt reasonable methods, including providing and maintaining storage facilities, during the life of the Agreement to furnish continuous protection to the work, and the equipment, materials, papers, documents, plans, studies and/or other components thereof to prevent losses or damages, and shall be responsible for all such damages, to persons or property, until acceptance of the work by City, except such losses or damages as caused by City's own negligence. Stored materials shall be reasonably accessible for inspection. Contractor shall not, without City's consent, assign, sell, mortgage, hypothecate, or remove equipment or materials which have been installed or delivered and which may be necessary for the completion of the work.

1.10 Warranty.

Contractor warrants all work under the Agreement (which for purposes of this Section shall be deemed to include unauthorized work which has not been removed and any non-conforming materials incorporated into the work) to be of good quality and free from any defective or faulty material and workmanship. Contractor agrees that for a period of one year (or the period of time specified elsewhere in the Agreement or in any guarantee or warranty provided by any manufacturer or supplier of equipment or materials incorporated into the work, whichever is later) after the date of final acceptance, Contractor shall within ten (10) days after being notified in writing by the City of any defect in the work or non-conformance of the work to the Agreement, commence and prosecute with due diligence all work necessary to fulfill the terms of the warranty at its sole cost and expense. Contractor shall act as soon as requested by the City in response to an emergency. In addition, Contractor shall, at its sole cost and expense, repair, remove and replace any portions of the work (or work of other contractors) damaged by its defective work or which becomes damaged in the course of repairing or replacing defective work. For any work so corrected, Contractor's obligation hereunder to correct defective work shall be reinstated for an additional one year period, commencing with the date of acceptance of such corrected work. Contractor shall perform such tests as the City may require to verify that any corrective actions, including, without limitation, redesign, repairs, and replacements comply with the requirements of the Agreement. All costs associated with such corrective actions and testing, including the removal, replacement, and reinstitution of equipment and materials necessary to gain access, shall be the sole responsibility of the Contractor. All warranties and guarantees of subcontractors, suppliers and manufacturers with respect to any portion of the work, whether express or implied, are deemed to be obtained by Contractor for the benefit of the City, regardless of whether or not such warranties and guarantees have been transferred or assigned to the City by separate agreement and Contractor agrees to enforce such warranties and guarantees, if necessary, on behalf of the City. In the event that Contractor fails to perform its obligations under this Section, or under any other warranty or guaranty under this Agreement, to the reasonable satisfaction of the City, the City shall have the right to correct and replace any defective or non-conforming work and any work damaged by such work or the replacement or correction thereof at Contractor's sole expense. Contractor shall be obligated to fully reimburse the City for any expenses incurred hereunder upon demand.

1.11 Additional Work and Change Orders.

(a) City shall have the right at any time during the performance of the services, without invalidating this Agreement, to order extra work beyond that specified in the Scope of Work or make changes by altering, adding to or deducting from said work. No such extra work may be undertaken unless a written change order is first given by the City's Director of Public Works Engineering or City Engineer, or either of their designees, to the Contractor, incorporating therein any adjustment in (i) the Contract Sum, and/or (ii) the time to perform this Agreement, which said adjustments are subject to the written approval of the Contractor ("**Change Order**"). All Change Orders must be signed by the Contractor and City's Director of Public Works Engineering or City Engineer, or either of their designees, prior to commencing the extra work thereunder.

(b) Any increase in compensation of up to five percent (5%) of the Contract Sum or any increase in the time to perform of up to one hundred eighty (180) working days and which are not detrimental to the Work or to the interest of the City, may be approved by the City's Director of Public Works Engineering or City Engineer, or either of their designees. Any greater increases, taken either separately or cumulatively, must be approved by the City Council.

(c) Any adjustment in the Contract Sum for a Change Order must be in accordance with the rates set forth in the Contractor's Bid. If the rates in the Contractor's Bid do not cover the type of work in the Change Order, the cost of such work shall not exceed an amount agreed upon in writing and signed by Contractor and City's Director of Public Works Engineering or City Engineer, or either of their designees. If the cost of the Change Order cannot be agreed upon, the City will pay for actual work of the Change Order completed, to the satisfaction of the City, as follows:

(i) Labor: The cost of labor shall be the actual cost for wages of workers and subcontractors performing the work for the Change Order at the time such work is done. The use of labor classifications that would increase the cost of such work shall not be permitted.

(ii) Materials and Equipment: The cost of materials and equipment shall be at cost to Contractor or lowest current price which such materials and equipment are reasonably available at the time the work is done, whichever is lower.

(iii) If the cost of the extra work cannot be agreed upon, the Contractor must provide a daily report that includes invoices for labor, materials and equipment costs for the work under the Change Order. The daily report must include: list of names of workers, classifications, and hours worked; description and list of quantities of materials used; type of equipment, size, identification number, and hours of operation, including loading and transportation, if applicable; description of other City authorized services and expenditures in such detail as the City may require. Failure to submit a daily report by the close of the next working day may, at the City's sole and absolute discretion, waive the Contractor's rights for that day.

(d) It is expressly understood by Contractor that the provisions of this Section shall not apply to services specifically set forth in the Scope of Work. Contractor hereby acknowledges that it accepts the risk that the services to be provided pursuant to the Scope of Work may be more costly or time consuming than Contractor anticipates and that Contractor shall not be entitled to additional compensation therefor. City may in its sole and absolute discretion have similar work done by other contractors.

(e) No claim for an increase in the Contract Sum or time for performance shall be valid unless the procedures established in this Section are followed.

1.12 Special Requirements.

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

ARTICLE 2. COMPENSATION AND METHOD OF PAYMENT.

2.1 Contract Sum.

Subject to any limitations set forth in this Agreement, City agrees to pay Contractor the amounts set forth in the "Schedule of Compensation," attached hereto as Exhibit C and incorporated herein by this reference. Subject to any additions or deductions that may be made by change order or amendment, and any penalties or damages that may be assessed against Contractor, Contractor shall receive total compensation, including reimbursement of Contractor's expenses, of an amount not to exceed Nine Hundred Sixty-Two Thousand, Ninety-Eight Dollars and 50/100 Cents ($962,098.50) ("**Contract Sum**") for completion of the work. The Contract Sum shall constitute full compensation for furnishing all materials and for doing all the work contemplated and embraced in this Agreement; and also for all loss or damage arising out of the nature of the work, or from any unforeseen difficulties or obstructions which may arise or be encountered in the prosecution of the work until its acceptance by the City, and for all risks of every description connected with the work; also for all expenses incurred by or in consequence of the suspension or discontinuance of work and for well and faithfully completing the work, and the whole thereof, in the manner and according to the plans and specifications, and the requirements of the Bid Documents and this Agreement. The Contract Sum shall be made in the form of progress payments subject to retention pursuant to Section 2.4.

2.2 Invoices.

Each month Contractor shall furnish to City an original invoice for all work performed during the preceding month in a form approved by City's Director of Finance. By submitting an invoice for payment under this Agreement, Contractor is certifying compliance with all provisions of the Agreement.

All invoices shall include a copy of Contractor's Certified Payroll and proof that Certified Payroll has been submitted to the DIR. Contractor shall also submit a list of the prevailing wage rates (including federal prevailing wage rates, if applicable) for all employees and subcontractors providing services under this Agreement, as applicable, with Contractor's first invoice. If these rates change at any time during the term of the Agreement, Contractor shall submit a new list of rates to the City with its first invoice following the effective date of the rate change.

2.3 Payment.

(a) Payments Made by City. City shall independently review each invoice submitted by the Contractor to determine whether the work performed and expenses incurred are in compliance with the provisions of this Agreement. Except as to any charges for work performed or expenses incurred by Contractor which are disputed by City, City will cause Contractor to be paid any progress payment within thirty (30) days of receipt of Contractor's correct and undisputed invoice; however, Contractor acknowledges and agrees that due to City warrant run procedures, the City cannot guarantee that payment will occur within this time period. In the event that City does not cause Contractor to be paid any progress payment within thirty (30) days of receipt of an undisputed and properly submitted invoice and provided the Project is for construction, Contractor shall be entitled to the payment of interest to the extent allowed under Public Contract Code

Section 20104.50. In the event any charges or expenses are disputed by City, the original invoice shall be returned by City to Contractor, not later than seven (7) days after receipt by the City, for correction and resubmission. Returned invoices shall be accompanied by a document setting forth in writing the reasons why the payment request was rejected. Review and payment by the City of any invoice provided by the Contractor shall not constitute a waiver of any rights or remedies provided herein or any applicable law.

(b) Payments Made by Contractor to Subcontractors. Contractor shall remit payments owed to subcontractors within fifteen (15) calendar days after receiving payments by City if payments are owed by Contractor to any subcontractor qualifying as a small business enterprise, and within thirty (30) calendar days if payments are owed by Contractor to any subcontractor other than a small business enterprise.

2.4 Retention.

Pursuant to Section 9203 of the Public Contract Code, City will deduct a five percent (5%) retention from all progress payments, which shall be released to Contractor no later than sixty (60) days from completion of the work in accordance with Section 7107 of the Public Contract Code. In the event of a dispute between City and Contractor, City may withhold from the final payment an amount not to exceed one hundred fifty percent (150%) of the disputed amount.

2.5 Waiver.

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

2.6 Substitution of Securities.

(a) In conformance with the State of California Public Contract Code, Part 5, Section 22300, Contractor may substitute securities for any monies withheld by the City to ensure performance under this Agreement.

(b) At the request and expense of Contractor, Contractor has the option of establishing an escrow account with a state or federally chartered bank which shall serve as an escrow agent, for Contractor's direct deposit of securities as a substitute for retention earnings required to be withheld by the City. Upon Contractor's completion of its obligations hereunder, as evidenced by the City's acceptance of the work pursuant to Section 3.3 hereof, the escrow agent shall return the securities to Contractor. The escrow agent shall notify the City within ten (10) days after deposit of the securities. The market value of the securities at the time of the substitution shall be at least equal to the cash amount then required to be withheld as retention. Securities shall be held in the name of the City and shall designate Contractor as the beneficial owner. Alternatively, on written request of Contractor, the City shall make payments of the retention earnings directly to the escrow account.

ARTICLE 3. PERFORMANCE SCHEDULE

3.1 Schedule of Performance.

Contractor shall complete the Project within Forty (40) working days after receiving a "Notice to Proceed" from the City in accordance with any schedule contained in or required to be provided by the Proposal or Bid Documents, and any revisions thereof approved by the City in writing. Time is of the essence. If the work is not completed within said time period, liquidated damages shall apply. The term of this Agreement shall expire one (1) year following City's acceptance of the Project.

3.2 Liquidated Damages.

Since the determination of actual damages for any delay in performance of this Agreement would be extremely difficult or impractical to determine in the event of a breach of this Agreement, the Contractor and its sureties shall be liable for and shall pay to the City the sum of Five Hundred Dollars ($500.00) as liquidated damages for each working day of delay in the performance of any service required hereunder. The City may withhold any accrued liquidated damages from any monies payable on account of services performed by the Contractor. To the extent required by Government Code section 4215, Contractor shall not be assessed liquidated damages for delay in completion of the work when such delay was caused by the failure of the City or owner of the utility to provide for removal or relocation of utility facilities.

3.3 Force Majeure.

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

3.4 Final Acceptance.

Acceptance of the Project shall only be by action of the City Council. Neither the acceptance nor any prior inspections or failure to inspect shall constitute a waiver by City of any defects in the work. From and after acceptance, the Project shall be owned and operated by City. As a condition to acceptance, Contractor shall certify to City in writing that all of the work has been performed in strict conformity with the Agreement and that all costs have been paid or supplied to City for security required herein, satisfactory to City, guaranteeing such performance.

ARTICLE 4. COORDINATION OF WORK

4.1 Representatives and Personnel of Contractor.

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

Jeff Galterio,	Assistant Secretary
_____,	_____

The Principals shall be responsible during the term of this Agreement for directing all activities of Contractor and devoting sufficient time to personally supervise the services hereunder. All personnel of Contractor, and any authorized agents, shall at all times be under the exclusive direction and control of the Principals. For purposes of this Agreement, the Principals may not be replaced nor may their responsibilities be substantially reduced by Contractor without the express written approval of City. Additionally, Contractor shall make every reasonable effort to maintain the stability and continuity of Contractor's staff and subcontractors, if any, assigned to perform the services required under this Agreement. Contractor shall notify City of any changes in Contractor's staff and subcontractors, if any, assigned to perform the services required under this Agreement, prior to and during any such performance.

4.2 Status of Contractor.

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

4.3 Project Manager.

The Project Manager shall be Luis Pimentel or any other person as may be designated by the City's Director of Public Works Engineering or City Engineer. It shall be the Contractor's responsibility to assure that the Project Manager is kept informed of the progress of the performance of the services and the Contractor shall refer any decisions which must be made by City to the Project Manager. Unless otherwise specified herein, any approval of City required hereunder shall mean the approval of the Project Manager. The Project Manager shall have authority, if specified in writing by the City's Director of Public Works Engineering or City Engineer, to sign all documents on behalf of the City required hereunder to carry out the terms of this Agreement.

4.4 Independent Contractor.

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

4.5 Prohibition Against Subcontracting or Assignment.

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

ARTICLE 5. INSURANCE, INDEMNIFICATION AND BONDS

5.1 Insurance Coverages.

Without limiting Contractor's indemnification of City, and prior to commencement of any services under this Agreement, Contractor shall obtain, provide and maintain at its own expense during the term of this Agreement, policies of insurance of the type and amounts described below and in a form satisfactory to City.

(a) General liability insurance. Contractor shall maintain commercial general liability insurance with coverage at least as broad as Insurance Services Office form CG 00 01, in an amount not less than $1,000,000 per occurrence, $2,000,000 general aggregate, for bodily injury, personal injury, and property damage. The policy must include contractual liability that has not been amended. Any endorsement restricting standard ISO "insured contract" language will not be accepted.

(b) Automobile liability insurance. Contractor shall maintain automobile insurance at least as broad as Insurance Services Office form CA 00 01 covering bodily injury and

property damage for all activities of the Contractor arising out of or in connection with Services to be performed under this Agreement, including coverage for any owned, hired, non-owned or rented vehicles, in an amount not less than $2,000,000 combined single limit for each accident.

(c) Workers' compensation insurance. Contractor shall maintain Workers' Compensation Insurance (Statutory Limits) and Employer's Liability Insurance (with limits of at least $1,000,000).

(d) Builder's Risk Insurance. Contractor shall maintain Builder's Risk (Course of Construction) insurance utilizing an "All Risk" (Special Perils) coverage form, with limits equal to the completed value of the project and no coinsurance penalty provisions or provisional limit provisions. The policy must include: (1) coverage for any ensuing loss from faulty workmanship, nonconforming work, omission or deficiency in design or specifications; (2) coverage against machinery accidents and operational testing; (3) coverage for removal of debris, and insuring the buildings, structures, machinery, equipment, materials, facilities, fixtures and all other properties constituting a part of the project; (4) ordinance or law coverage for contingent rebuilding, demolition, and increased costs of construction; (5) transit coverage (unless insured by the supplier or receiving contractor), with sub-limits sufficient to insure the full replacement value of any key equipment item; (6) ocean marine cargo coverage insuring any project materials or supplies, if applicable; (7) coverage with sub-limits sufficient to insure the full replacement value of any property or equipment stored either on or off the project site or any staging area.

If the Project does not involve new or major reconstruction, then at the option of City, an Installation Floater may be acceptable. For such projects, a Property Installation Floater shall be obtained that provides for the improvement, remodel, modification, alteration, conversion or adjustment to existing buildings, structures, processes, machinery and equipment. The Property Installation Floater shall provide property damage coverage for any building, structure, machinery or equipment damaged, impaired, broken, or destroyed during the performance of the work, including during transit, installation, and testing at the Project site.

(e) Pollution Liability Insurance. Contractor shall maintain Environmental Impairment Liability insurance, written on a Contractor's Pollution Liability form or other form acceptable to City providing coverage for liability arising out of sudden, accidental, and gradual pollution and remediation. The policy limit shall be no less than $1,000,000 per claim and in the aggregate. All activities contemplated in this Agreement shall be specifically scheduled on the policy as "covered operations." The policy shall provide coverage for the hauling of waste from the project site to the final disposal location, including non-owned disposal sites.

Products/completed operations coverage shall extend a minimum of one (1) year after project completion. Coverage shall be included on behalf of the insured for covered claims arising out of the actions of independent contractors. If the insured is using subcontractors, the policy must include work performed "by or on behalf" of the insured. Policy shall contain no language that would invalidate or remove the insurer's duty to defend or indemnify for claims or suits expressly excluded from coverage. Policy shall specifically provide for a duty to defend on the part of the insurer.

If Contractor maintains broader coverage and/or higher limits than the minimums shown above, City requires and shall be entitled to the broader coverage and/or the higher limits

maintained by Contractor. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to City.

5.2 General Insurance Requirements.

(a) Subcontractors. Contractor shall include all subcontractors as insureds under its policies or shall furnish separate certificates and certified endorsements for each subcontractor. All coverages for subcontractors shall include all of the requirements stated herein.

(b) Proof of Insurance. Contractor shall provide certificates of insurance and endorsements to City as evidence of the insurance coverages required herein, along with a waiver of subrogation endorsement for workers' compensation. Insurance certificates and endorsements must be approved by City's Risk Manager prior to commencement of performance. Current certification of insurance shall be kept on file with City at all times during the term of this Agreement. City reserves the right to require complete, certified copies of all required insurance policies, at any time.

(c) Duration of Coverage. Contractor shall procure and maintain for the duration of this Agreement insurance against claims for injuries to persons or damages to property, which may arise from or in connection with the performance of the Services hereunder by Contractor, its agents, representatives, employees or subcontractors.

(d) Primary/noncontributing. Coverage provided by Contractor shall be primary and any insurance or self-insurance procured or maintained by City shall not be required to contribute with it. The limits of insurance required herein may be satisfied by a combination of primary and umbrella or excess insurance. Any umbrella or excess insurance shall contain or be endorsed to contain a provision that such coverage shall also apply on a primary and non-contributory basis for the benefit of City before the City's own insurance or self-insurance shall be called upon to protect it as a named insured.

(e) City's Rights of Enforcement. In the event any policy of insurance required under this Agreement does not comply with these specifications or is canceled and not replaced, City has the right but not the duty to obtain the insurance it deems necessary and any premium paid by City will be promptly reimbursed by Contractor or City will withhold amounts sufficient to pay premium from Contractor payments. In the alternative, City may cancel this Agreement.

(f) Waiver of Subrogation. All insurance coverage maintained or procured pursuant to this agreement shall be endorsed to waive subrogation against City, its elected or appointed officers, agents, officials, employees and volunteers or shall specifically allow Contractor or others providing insurance evidence in compliance with these specifications to waive their right of recovery prior to a loss. Contractor hereby waives its own right of recovery against City, and shall require similar written express waivers and insurance clauses from each of its subcontractors.

(g) Enforcement of Contract Provisions (non-estoppel). Contractor acknowledges and agrees that any actual or alleged failure on the part of the City to inform Contractor of non-compliance with any requirement imposes no additional obligations on the City nor does it waive any rights hereunder.

(h) Requirements Not Limiting. Requirements of specific coverage features or limits contained in this section are not intended as a limitation on coverage, limits or other requirements, or a waiver of any coverage normally provided by any insurance. Specific reference to a given coverage feature is for purposes of clarification only as it pertains to a given issue and is not intended by any party or insured to be all inclusive, or to the exclusion of other coverage, or a waiver of any type. If the Contractor maintains higher limits than the minimums shown above, the City requires and shall be entitled to coverage for the higher limits maintained by the Contractor. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the City.

(i) Notice of Cancellation. Contractor agrees to oblige its insurance agent or broker and insurers to provide to City with a thirty (30) day notice of cancellation (except for nonpayment for which a ten (10) day notice is required) or nonrenewal of coverage for each required coverage.

(j) Additional Insured Status. General and auto liability policies shall provide or be endorsed to provide that City and its officers, officials, employees, and agents, and volunteers shall be additional insureds under such policies. This provision shall also apply to any excess/umbrella liability policies.

(k) Prohibition of Undisclosed Coverage Limitations. None of the coverages required herein will be in compliance with these requirements if they include any limiting endorsement of any kind that has not been first submitted to City and approved of in writing.

(l) Separation of Insureds. A severability of interests provision must apply for all additional insureds ensuring that Contractor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the insurer's limits of liability. The policy(ies) shall not contain any cross-liability exclusions.

(m) Pass Through Clause. Contractor agrees to ensure that its subconsultants, subcontractors, and any other party involved with the project who is brought onto or involved in the project by Contractor, provide the same minimum insurance coverage and endorsements required of Contractor. Contractor agrees to monitor and review all such coverage and assumes all responsibility for ensuring that such coverage is provided in conformity with the requirements of this section. Contractor agrees that upon request, all agreements with consultants, subcontractors, and others engaged in the project will be submitted to City for review.

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

(o) Self-Insured Retentions. Any self-insured retentions must be declared to and approved by City. City reserves the right to require that self-insured retentions be eliminated, lowered, or replaced by a deductible. Self-insurance will not be considered to comply with these specifications unless approved by City.

(p) Timely Notice of Claims. Contractor shall give City prompt and timely notice of claims made or suits instituted that arise out of or result from Contractor's performance under this Agreement, and that involve or may involve coverage under any of the required liability policies.

(q) Additional Insurance. Contractor shall also procure and maintain, at its own cost and expense, any additional kinds of insurance, which in its own judgment may be necessary for its proper protection and prosecution of the work.

5.3 Indemnification.

Contractor shall indemnify, defend with legal counsel approved by City, and hold harmless City, its officers, officials, employees and volunteers (each, an "Indemnitee") from and against all liability, loss, damage, expense, cost (including without limitation reasonable legal counsel fees, expert fees and all other costs and fees of litigation) of every nature arising out of or in connection with Contractor's performance of work under this Agreement or its failure to comply with any of its obligations contained in this Agreement, except such loss or damage which is caused by the sole or active negligence or willful misconduct of the City. Should conflict of interest principles preclude a single legal counsel from representing both City and Contractor, or should City otherwise find Contractor's legal counsel unacceptable, then Contractor shall reimburse the City its costs of defense, including without limitation reasonable legal counsels fees, expert fees and all other costs and fees of litigation. The Contractor shall promptly pay any final judgment rendered against the City (and its officers, officials, employees and volunteers) with respect to claims determined by a trier of fact to have been the result of the Contractor's negligent, reckless or wrongful performance. It is expressly understood and agreed that the foregoing provisions are intended to be as broad and inclusive as is permitted by the law of the State of California and will survive termination of this Agreement.

Contractor obligations under this section apply regardless of whether or not such claim, charge, damage, demand, action, proceeding, loss, stop notice, cost, expense, judgment, civil fine or penalty, or liability was caused in part or contributed to by an Indemnitee. However, without affecting the rights of City under any provision of this Agreement, Contractor shall not be required to indemnify and hold harmless City for liability attributable to the active negligence of City, provided such active negligence is determined by agreement between the parties or by the findings of a court of competent jurisdiction. In instances where City is shown to have been actively negligent and where City's active negligence accounts for only a percentage of the liability involved, the obligation of Contractor will be for that entire portion or percentage of liability not attributable to the active negligence of City.

5.4 Notification of Third-Party Claims.

City shall timely notify Contractor of the receipt of any third-party claim relating to the work under this Agreement. City shall be entitled to recover from Contractor its reasonable costs incurred in providing such notification.

5.5 Performance and Payment Bonds.

Concurrently with execution of this Agreement, Contractor shall deliver to the City all of the following bonds if the Contract Sum should exceed $25,000:

(a) A performance bond securing the faithful performance of this Agreement, in an amount not less than 100% of the total compensation for this Agreement, as stated in Section 2.1.

(b) A payment bond, securing the payment of all persons furnishing labor and/or materials in connection with the work under this Agreement, in an amount not less than 100% of the total compensation for this Agreement, as stated in Section 2.1.

All bonds shall be on the applicable forms provided in Exhibit "D" and Exhibit "E" attached hereto and made part hereof. The bonds shall each contain the original notarized signature of an authorized officer of the surety and affixed thereto shall be a certified and current copy of his/her power of attorney. The bonds shall be unconditional and remain in force during the entire term of the Agreement until released pursuant to Section 5.7 hereof.

5.6 Sufficiency of Insurer or Surety.

Insurance and bonds required by this Agreement shall be satisfactory only if issued by companies qualified to do business in California, rated "A" or better in the most recent edition of Best's Rating Guide, The Key Rating Guide or in the Federal Register, and only if they are of a financial category Class VII or better. If the City determines that the work to be performed under this Agreement creates an increased or decreased risk of loss to the City, the Contractor agrees that the minimum limits of the insurance policies and the bonds may be changed accordingly upon receipt of written notice from the City's Risk Manager.

5.7 Release of Securities.

City shall release the performance bond and payment bond when the following have occurred:

(a) Contractor has made a written request for release and provided evidence of satisfaction of all other requirements under Article 5 of this Agreement;

(b) the Project has been accepted; and

(c) after passage of the time within which lien claims are required to be made pursuant to applicable laws; if lien claims have been timely filed, City shall hold the payment bond until such claims have been resolved, Contractor has provided statutory bond, or otherwise as required by applicable law.

ARTICLE 6. RECORDS, REPORTS, AND RELEASE OF INFORMATION

6.1 Records.

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

6.2 Reports.

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

6.3 Ownership of Documents.

All drawings, specifications, maps, designs, photographs, studies, surveys, data, notes, computer files, reports, records, documents and other materials (the "documents and materials") prepared by Contractor, its employees, subcontractors and agents in the performance of this Agreement shall be the property of City and shall be delivered to City upon request of the Project Manager or upon the termination of this Agreement, and Contractor shall have no claim for further employment or additional compensation as a result of the exercise by City of its full rights of ownership use, reuse, or assignment of the documents and materials hereunder. Any use, reuse or assignment of such completed documents for other projects and/or use of uncompleted documents without specific written authorization by the Contractor will be at the City's sole risk and without liability to Contractor, and Contractor's guarantee and warranties shall not extend to such use, reuse or assignment. Contractor may retain copies of such documents for its own use. Contractor shall have an unrestricted right to use the concepts embodied therein. All subcontractors shall provide for assignment to City of any documents or materials prepared by them, and in the event

Contractor fails to secure such assignment, Contractor shall indemnify City for all damages resulting therefrom. Moreover, Contractor with respect to any documents and materials that may qualify as "works made for hire" as defined in 17 U.S.C. § 101, such documents and materials are hereby deemed "works made for hire" for the City.

6.4 Confidentiality and Release of Information.

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

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

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

(d) Contractor shall promptly notify City should Contractor, its officers, employees, agents or subcontractors be served with any summons, complaint, subpoena, notice of deposition, request for documents, interrogatories, request for admissions or other discovery request, court order or subpoena from any party regarding this Agreement and the work performed there under. City retains the right, but has no obligation, to represent Contractor or be present at any deposition, hearing or similar proceeding. Contractor agrees to cooperate fully with City and to provide City with the opportunity to review any response to discovery requests provided by Contractor. However, this right to review any such response does not imply or mean the right by City to control, direct, or rewrite said response.

ARTICLE 7. ENFORCEMENT OF AGREEMENT; DEFAULT, SUSPENSION AND TERMINATION

7.1 California Law.

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

7.2 Default of Contractor.

Contractor's failure to comply with the provisions of this Agreement shall constitute a default. In the event that Contractor is in default for cause under the terms of this Agreement, City shall have no obligation or duty to continue compensating Contractor for any work performed after the date of default and can terminate or suspend this Agreement immediately by written notice to Contractor. If the Project Manager determines that Contractor is in default in the performance of any of the terms or conditions of this Agreement, the Project Manager shall cause to be served upon Contractor a written notice of the default. Contractor shall have ten (10) days after service upon it of said notice in which to cure the default by rendering a satisfactory performance. In the event that Contractor fails to cure its default within such period of time, the City shall have the right, notwithstanding any other provision of this Agreement, to terminate this Agreement without further notice and without prejudice to any other remedy to which it may be entitled at law, in equity or under this Agreement.

7.3 Suspension and Termination.

(a) The City may at any time, for any reason, with or without cause, suspend this Agreement, or any portion hereof, by serving upon Contractor at least ten (10) days prior written notice. Upon receipt of said notice, Contractor shall immediately cease all work under this Agreement, unless the notice provides otherwise. If the City suspends a portion of this Agreement such suspension shall not make void or invalidate the remainder of this Agreement.

(b) This Agreement may be terminated by either party for cause. The City may terminate this Agreement without cause upon thirty (30) days' written notice of termination. Upon termination, Contractor shall be entitled to compensation for completion of any portion of the Project accepted by City up to the effective date of termination unless any portion of the Project is accepted by City after termination in which event Contractor shall be paid for such completed portion.

7.4 Dispute Resolution Process.

Section 20104 *et seq*. of the California Public Contract Code prescribes a process utilizing informal conferences, non-binding judicial-supervised mediation, and judicial arbitration to resolve disputes on construction claims of $375,000 or less. Section 9204 of the Public Contract Code prescribes a process for negotiation and mediation to resolve disputes on construction claims. The intent of this Section is to implement Sections 20104 *et seq*. and Section 9204 of the California Public Contract Code. This Section shall be construed to be consistent with said statutes.

For purposes of these procedures, "claim" means a separate demand by the Contractor, after the City has denied Contractor's timely and duly made request for payment for extra work and/or a time extension, for (A) a time extension, (B) payment of money or damages arising from work done by or on behalf of the Contractor pursuant to the Agreement and payment of which is not otherwise expressly provided for or the Contractor is not otherwise entitled to, or (C) an amount the payment of which is disputed by the City.

The following requirements apply to all claims to which this section applies:

(a) Claim Submittal. The claim shall be in writing and include the documents necessary to substantiate the claim. Claims governed by this procedure must be filed on or before the date of final payment. Nothing in this section is intended to extend the time limit or supersede notice requirements otherwise provided in the Agreement for the filing of claims, including all requirements pertaining to compensation or payment for extra work, disputed work, and/or changed conditions. Failure to follow such contractual requirements shall bar any claims or subsequent lawsuits for compensation or payment thereon.

(b) Supporting Documentation. The Contractor shall submit all claims in the following format:

(i) Summary of the claim, including references to the specific Contract Document provisions upon which the claim is based.

(ii) List of documents relating to claim: (a) Specifications, (b) Drawings, (c) Clarifications (Requests for Information), (d) Schedules, and (e) Other.

(iii) Chronology of events and correspondence related to the claim.

(iv) Statement of grounds for the claim.

(v) Analysis of the claim's cost, if any.

(vi) Analysis of the claim's time/schedule impact, if any.

(c) City's Response. Upon receipt of a claim pursuant to this section, City shall conduct a reasonable review of the claim and, within a period not to exceed 45 days, shall provide the Contractor a written statement identifying what portion of the claim is disputed and what portion is undisputed. Any payment due on an undisputed portion of the claim will be processed and made within 60 days after the City issues its written statement.

(i) If the City needs approval from the City Council to provide the Contractor a written statement identifying the disputed portion and the undisputed portion of the claim, and the City Council does not meet within the 45 days or within the mutually agreed to extension of time following receipt of a claim sent by registered mail or certified mail, return receipt requested, the City shall have up to three days following the next duly publicly noticed meeting of the City Council after the 45-day period, or extension, expires to provide the Contractor a written statement identifying the disputed portion and the undisputed portion.

(ii) Within 30 days of receipt of a claim, the City may request in writing additional documentation supporting the claim or relating to defenses or claims the City may have against the Contractor. If additional information is thereafter required, it shall be requested and provided pursuant to this subdivision, upon mutual agreement of City and the Contractor.

(iii) The City's written response to the claim, as further documented, shall be submitted to the Contractor within 30 days (if the claim is less than $50,000, within 15 days) after receipt of the further documentation, or within a period of time no greater than that

taken by the Contractor in producing the additional information or requested documentation, whichever is greater.

(d) Meet and Confer. If the Contractor disputes the City's written response, or the City fails to respond within the time prescribed, the Contractor may so notify the City, in writing, either within 15 days of receipt of the City's response or within 15 days of the City's failure to respond within the time prescribed, respectively, and demand an informal conference to meet and confer for settlement of the issues in dispute. Upon receipt of a demand, the City shall schedule a meet and confer conference within 30 days for settlement of the dispute.

(e) Mediation. Within 10 business days following the conclusion of the meet and confer conference, if the claim or any portion of the claim remains in dispute, the City shall provide the Contractor a written statement identifying the portion of the claim that remains in dispute and the portion that is undisputed. Any payment due on an undisputed portion of the claim shall be processed and made within 60 days after the City issues its written statement. Any disputed portion of the claim, as identified by the contractor in writing, shall be submitted to nonbinding mediation, with the City and the Contractor sharing the associated costs equally. The City and Contractor shall mutually agree to a mediator within 10 business days after the disputed portion of the claim has been identified in writing, unless the parties agree to select a mediator at a later time.

(i) If the parties cannot agree upon a mediator, each party shall select a mediator and those mediators shall select a qualified neutral third party to mediate with regard to the disputed portion of the claim. Each party shall bear the fees and costs charged by its respective mediator in connection with the selection of the neutral mediator.

(ii) For purposes of this section, mediation includes any nonbinding process, including, but not limited to, neutral evaluation or a dispute review board, in which an independent third party or board assists the parties in dispute resolution through negotiation or by issuance of an evaluation. Any mediation utilized shall conform to the timeframes in this section.

(iii) Unless otherwise agreed to by the City and the contractor in writing, the mediation conducted pursuant to this section shall excuse any further obligation under Public Contract Code Section 20104.4 to mediate after litigation has been commenced.

(iv) All unresolved claims shall be considered jointly in a single mediation, unless a new unrelated claim arises after mediation is completed.

(f) City's Responses. The City's failure to respond to a claim from the Contractor within the time periods described in this section or to otherwise meet the time requirements of this section shall result in the claim being deemed rejected in its entirety. A claim that is denied by reason of the City's failure to have responded to a claim, or its failure to otherwise meet the time requirements of this section, shall not constitute an adverse finding with regard to the merits of the claim or the responsibility of qualifications of the Contractor. City's failure to respond shall not waive City's rights to any subsequent procedures for the resolution of disputed claims.

(g) Government Code Claims. If following the mediation, the claim or any portion remains in dispute, the Contractor must comply with the claim procedures set forth in

Government Code Section 900 *et seq.* prior to filing any lawsuit against the City. Such Government Code claims and any subsequent lawsuit based upon the Government Code claims shall be limited to those matters that remain unresolved after all procedures pertaining to extra work, disputed work, construction claims, and/or changed conditions, including any required mediation, have been followed by Contractor. If no such Government Code claim is submitted, or if the prerequisite contractual requirements are not satisfied, no action against the City may be filed. A Government Code claim must be filed no earlier than the date that Contractor completes all contractual prerequisites to filing a Government Code claim, including any required mediation. A Government Code claim shall be inclusive of all unresolved claims unless a new unrelated claim arises after the Government Code claim is submitted. For purposes of Government Code Section 900 *et seq*., the running of the period of time within which a claim must be filed shall be tolled from the time the Contractor submits his or her written claim to the City until the time the claim is denied, including any period of time utilized by the meet and confer conference or mediation that does not result in a complete resolutions of all claims.

(h) Civil Actions for Claims of $375,000 or Less. The following procedures are established for all civil actions filed to resolve claims totaling $375,000 or less:

(i) Within 60 days, but no earlier than 30 days, following the filing or responsive pleadings, the court shall submit the matter to non-binding mediation unless waived by mutual stipulation of both parties or unless mediation was held prior to commencement of the action in accordance with Public Contract Code section 9204 and the procedures in this Section. The mediation process shall provide for the selection within 15 days by both parties of a disinterested third person as mediator, shall be commenced within 30 days of the submittal, and shall be concluded within 15 days from the commencement of the mediation unless a time requirement is extended upon a good cause showing to the court or by stipulation of both parties. If the parties fail to select a mediator within the 15-day period, either party may petition the court to appoint the mediator.

(ii) If the matter remains in dispute, the case shall be submitted to judicial arbitration pursuant to Chapter 2.5 (commencing with Section 1141.10) of Title 3 of Part 3 of the Code of Civil Procedure, notwithstanding Section 1141.11 of that code. The Civil Discovery Act (Title 4 (commencing with Section 2016.010) of Part 4 of the Code of Civil Procedure) shall apply to any proceeding brought under this subdivision consistent with the rules pertaining to judicial arbitration.

(iii) Upon stipulation of the parties, arbitrators appointed for these purposes shall be experienced in construction law, and, upon stipulation of the parties, mediators and arbitrators shall be paid necessary and reasonable hourly rates of pay not to exceed their customary rate, and such fees and expenses shall be paid equally by the parties, except in the case of arbitration where the arbitrator, for good cause, determines a different division.

(iv) In addition to Chapter 2.5 (commencing with Section 1141.10) of Title 3 of Part 3 of the Code of Civil Procedure, any party who after receiving an arbitration award requests a trial de novo but does not obtain a more favorable judgment shall, in addition to payment of costs and fees under that chapter, pay the attorney's fees of the other party arising out of the trial de novo.

7.5 Waiver.

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

7.6 Rights and Remedies Are Cumulative.

Except with respect to rights and remedies expressly declared to be exclusive in this Agreement, the rights and remedies of the parties are cumulative and the exercise by either party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the other party.

7.7 Unfair Business Practices Claims.

Pursuant to Public Contract Code section 7103.5, in entering into this Agreement, Contractor offers and agrees to assign to the City all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. § 15) or under the Cartwright Act (Chapter 2, (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, services or materials related to this Agreement. This assignment shall be made and become effective at the time the City tenders final payment to the Contractor without further acknowledgment by the Parties.

ARTICLE 8. CITY OFFICERS AND EMPLOYEES: NON-DISCRIMINATION

8.1 Non-liability of City Officers and Employees.

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

8.2 Conflict of Interest.

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

conflicts of interest or the appearance of any conflicts of interest with the interests of City in the performance of this Agreement.

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

8.3 Covenant Against Discrimination.

Contractor covenants that, by and for itself, its heirs, executors, assigns, and all persons claiming under or through them, there shall be no discrimination against or segregation of, any person or group of persons on account of race, color, creed, religion, sex, gender, sexual orientation, marital status, national origin, ancestry, or other protected class in the performance of this Agreement. Contractor shall take affirmative action to insure that applicants are employed and that employees are treated during employment without regard to their race, color, creed, religion, sex, gender, sexual orientation, marital status, national origin, ancestry, or other protected class.

8.4 Unauthorized Aliens.

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

ARTICLE 9. MISCELLANEOUS PROVISIONS

9.1 Provisions Required By Law.

Each and every provision of law and clause required by law to be inserted in this Agreement shall be deemed to be inserted herein, and the Agreement shall be read and enforced as though it were included herein. If through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon application of either party, the contract shall forthwith be physically amended to make such insertion or correction.

9.2 Notices.

Any notice, demand, request, document, consent, approval, or communication either party desires or is required to give to the other party or any other person shall be in writing and either served personally or sent by prepaid, first-class mail, in the case of the City, to the Interim Director of Engineering/Building Official and to the attention of the Project Manager (with her/his name and City title), City of Irwindale, 5050 N. Irwindale Ave, Irwindale, California 91706 and in the case of the Contractor, to the person(s) at the address designated on the execution page of this

Agreement. Either party may change its address by notifying the other party of the change of address in writing. Notice shall be deemed communicated at the time personally delivered or in seventy-two (72) hours from the time of mailing if mailed as provided in this Section.

9.3 Interpretation.

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

9.4 Counterparts.

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

9.5 Integration; Amendment.

This Agreement including the attachments hereto is the entire, complete and exclusive expression of the understanding of the parties. It is understood that there are no oral agreements between the parties hereto affecting this Agreement and this Agreement supersedes and cancels any and all previous negotiations, arrangements, agreements and understandings, if any, between the parties, and none shall be used to interpret this Agreement. No amendment to or modification of this Agreement shall be valid unless made in writing and approved by the Contractor and by the City Council. The parties agree that this requirement for written modifications cannot be waived and that any attempted waiver shall be void.

9.6 Severability.

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

9.7 Warranty & Representation of Non-Collusion.

No official, officer, or employee of City has any financial interest, direct or indirect, in this Agreement, nor shall any official, officer, or employee of City participate in any decision relating to this Agreement which may affect his/her financial interest or the financial interest of any corporation, partnership, or association in which (s)he is directly or indirectly interested, or in violation of any corporation, partnership, or association in which (s)he is directly or indirectly interested, or in violation of any State or municipal statute or regulation. The determination of "financial interest" shall be consistent with State law and shall not include interests found to be "remote" or "noninterests" pursuant to Government Code Sections 1091 or 1091.5. Contractor warrants and represents that it has not paid or given, and will not pay or give, to any third party including, but not limited to, any City official, officer, or employee, any money, consideration, or

other thing of value as a result or consequence of obtaining or being awarded any agreement. Contractor further warrants and represents that (s)he/it has not engaged in any act(s), omission(s), or other conduct or collusion that would result in the payment of any money, consideration, or other thing of value to any third party including, but not limited to, any City official, officer, or employee, as a result of consequence of obtaining or being awarded any agreement. Contractor is aware of and understands that any such act(s), omission(s) or other conduct resulting in such payment of money, consideration, or other thing of value will render this Agreement void and of no force or effect.

Contractor's Authorized Initials _____

Contractor's Authorized Initials _____

9.8 Corporate Authority.

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

[SIGNATURES ON FOLLOWING PAGE]

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

CITY:

CITY OF IRWINDALE, a California charter city

_____
Julian A. Miranda, City Manager

ATTEST:

_____
Laura M. Nieto, Chief Deputy City Clerk

APPROVED AS TO FORM:
ALESHIRE & WYNDER, LLP

_____
Adrian Guerra, City Attorney

CONTRACTOR:

Sully-Miller Contracting Company

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

Address: Sully-Miller Contracting Company
135 S. State College Blvd,
Suite 400
Brea, CA 92821

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

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

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

STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

On _____, 2024 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

☐ INDIVIDUAL
☐ CORPORATE OFFICER

_____
TITLE(S)

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

_____

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

_____
_____

DESCRIPTION OF ATTACHED DOCUMENT

_____
TITLE OR TYPE OF DOCUMENT

_____
NUMBER OF PAGES

_____
DATE OF DOCUMENT

_____
SIGNER(S) OTHER THAN NAMED ABOVE

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

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

STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

On _____, 2024 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

☐ INDIVIDUAL
☐ CORPORATE OFFICER

_____
TITLE(S)

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

_____

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

_____
_____

DESCRIPTION OF ATTACHED DOCUMENT

_____
TITLE OR TYPE OF DOCUMENT

_____
NUMBER OF PAGES

_____
DATE OF DOCUMENT

_____
SIGNER(S) OTHER THAN NAMED ABOVE

EXHIBIT A

SCOPE OF SERVICES

I. Contractor will perform construction services related to the 2023-2024 Resurfacing Project, which is identified in the City's Capital Improvement Program, including, but not limited to, the following (herein after referred to collectively as "Services"):

II. As part of the Construction Services, Contractor will deliver the following tangible work products to the City:

- **A.** Resurface/reconstruct Peck Road, Meridian Street, Alice Rodriguez Circle, Ruelas Street and Park Rose Avenue.
- **B.** Remove existing and construct new sidewalk panels on Meridian Street and Alice Rodriguez Circle.

III. All work product is subject to review and acceptance by the City, and must be revised by the Consultant without additional charge to the City until found satisfactory and accepted by City.

EXHIBIT B

SPECIAL REQUIREMENTS

(Superseding Contract Boilerplate)

If the Parties wish to revise provisions in the Agreement above (from page 1 through the signature page), then the revisions shall be presented in this Exhibit B, with deletions shown in ~~strike through~~ and additions shown in ***bold and italics***.

EXHIBIT C

SCHEDULE OF COMPENSATION

I. Contractor shall complete work for the Project in accordance with the following:

2023-2024 RESURFACING PROJECT, IN THE CITY OF IRWINDALE: RESIDENTIAL RESURFACING PHASE III – PECK ROAD:

ITEM NO.	DESCRIPTION	EST. QTY	UNIT	UNIT PRICE	TOTAL AMOUNT
1	MOBILIZATION	1	LS	56,000.00	56,000.00
2	TRAFFIC CONTROL	1	LS	150,000.00	150,000.00
3	CLEARING AND GRUBBING	1	LS	650.00	650.00
4	STORMWATER POLLUTION PREVENTION/EROSION CONTROL	1	LS	8,000.00	8,000.00
5	PRESERVATION OF EXISTING CITY MONUMENTS	1	LS	1,500.00	1,500.00
6	REMOVE AND DISPOSE EXISTING AC PAVEMENT, BASE AND/OR NATIVE SOIL; 14" MIN DEPTH	51,750	S.F.	1.75	90,562.50
7	CONSTRUCT 8" CRUSHED AGGREGATE BASE	2,570	TONS	55.00	141,350.00
8	CONSTRUCT 6" AC OVERLAY	1,845	TONS	95.00	175,275.00
9	INSTALL CALTRANS TYPE E LOOP DETECTOR	5	EA	895.00	4,475.00
10	INSTALL CALTRANS TYPE D BICYCLE LOOP DETECTOR	1	EA	980.00	980.00
11	INSTALL SPECIALTY LOOP DETECTOR PER PLAN	1	EA	1,450.00	1,450.00

12	ADJUST ALL MANHOLES AND UTILITY COVERS TO GRADE	1	LS	1,970.00	1,970.00
13	REMOVE EXISTING PAVEMENT MARKINGS AND STRIPING ON CONCRETE	1	LS	4,300.00	4,300.00
14	STRIPING - INSTALL 12" SOLID WHITE CROSSWALK LINE, A24E	265	LF	3.00	795.00
15	STRIPING - INSTALL 12" SOLID WHITE LIMIT LINE, A24F	40	LF	3.00	120.00
16	STRIPING - INSTALL TYPE IV (L) OR (R) ARROW, A24G	5	EA	60.00	300.00
17	STRIPING - INSTALL 8" SOLID WHITE CHANELIZING LINE WITH PAVEMENT MARKERS, A20D DETAIL 38A.	350	LF	2.00	700.00
18	INSTALL BLUE RETROREFLECTIVE RAISED PAVEMENT MARKER PER CA MUTCD FIGURE 3B-102	3	EA	20.00	60.00
19	STRIPING - INSTALL 4" DASHED WHITE LANE LINE, A20A DETAIL 9	1680	LF	1.05	1,764.00
20	STRIPING - INSTALL 4" SOLID WHITE LINE WITH TYPE G PAVEMENT MARKERS, A20A	50	LF	2.00	100.00
21	FURNISH AND INSTALL 84" x 60" CITY PROJECT SIGNS	4	EA	1,650.00	6,600.00

TOTAL BASE BID NO. 1 FOR 2023-2024 RESURFACING PROJECT - PECK ROAD:

$ 646,951.50

Six hundred forty six thousand nine hundred fifty-one dollars and fifty cents

(TOTAL BASE BID NO. 1 AMOUNT WRITTEN IN WORDS)

2023-2024 RESURFACING PROJECT, IN THE CITY OF IRWINDALE: RESIDENTIAL RESURFACING PHASE III – MERIDIAN STREET, ALICE RODRIGUEZ CIRCLE, RUELAS STREET AND PARK ROSE AVENUE

ITEM NO.	DESCRIPTION	EST. QTY	UNIT	UNIT PRICE	TOTAL AMOUNT
1	MOBILIZATION	1	LS	23,000.00	23,000.00
2	TRAFFIC CONTROL	1	LS	7,500.00	7,500.00
3	CLEARING AND GRUBBING	1	LS	650.00	650.00
4	STORMWATER POLLUTION PREVENTION/EROSION CONTROL	1	LS	5,000.00	5,000.00
5	PRESERVATION OF EXISTING CITY MONUMENTS	1	LS	10,800.00	10,800.00
6	COLDMILL (GRIND AND DISPOSE) EXISTING AC PAVEMENT, 2" MIN. DEPTH	105,000	SF	0.25	26,250.00
7	CONSTRUCT 2" AC OVERLAY	1,250	TONS	102.00	127,500.00
8	REMOVE EXISTING AND CONSTRUCT NEW 4" THICK P.C.C. SIDEWALK	410	SF	27.00	11,070.00
9	ADJUST ALL MANHOLES AND UTILITY COVERS TO GRADE	1	LS	33,210.00	33,210.00
10	REMOVE EXISTING PAVEMENT MARKINGS AND STRIPING ON ASPHALT	1	LS	6,800.00	6,800.00
11	REMOVE AND RECONSTRUCT SPEED HUMP PER PLAN DETAIL	2	EA	6,000.00	12,000.00
12	STRIPING - INSTALL 4" DASHED YELLOW CENTERLINE, A20A DETAIL 2	770	LF	1.10	847.00
13	STRIPING - INSTALL 4" SOLID WHITE LINE, A20B DETAIL 27B	1070	LF	1.00	1,070.00
14	STRIPING - INSTALL 12" SOLID WHITE LIMIT LINE, A24G	85	LF	3.00	255.00
15	INSTALL PAVEMENT MARKING AS SHOWN PER PLAN PER CALTRANS STD. PLANS	10	EA	250.00	2,500.00
16	INSTALL BLUE RETROREFLECTIVE RAISED PAVEMENT MARKER PER CA MUTCD FIGURE 3B-102	10	EA	20.00	200.00

17	INSTALL SPEED HUMP PAVEMENT MARKING PER DETAIL "D" ON SHEET 3	4	EA	175.00	700.00
18	INSTALL SPEED HUMP PAVEMENT MARKING PER DETAIL "A" ON SHEET 3	2	EA	150.00	300.00
19	FURNISH AND INSTALL 4" x 60" CITY PROJECT SIGNS	2	EA	1,650.00	3,300.00

TOTAL BASE BID NO. 2 FOR 2023-2024 RESURFACING PROJECT – MERIDIAN STREET, ALICE RODRIGUEZ CIRCLE, RUELAS STREET & PARK ROSE AVENUE:

$ 272,952.00

two hundred seventy-two thousand nine hundred fifty-two
(TOTAL BASE BID NO. 2 AMOUNT WRITTEN IN WORDS) dollars and zero cents.

2023-2024 RESURFACING PROJECT, IN THE CITY OF IRWINDALE: RESIDENTIAL RESURFACING PHASE III – ALTERNATE BID NO. 2 WITHIN ARCADIA JURISDICTION - PECK ROAD:

ITEM NO.	DESCRIPTION	EST. QTY	UNIT	UNIT PRICE	TOTAL AMOUNT
1	MOBILIZATION	1	LS	1,000.00	1,000.00
2	TRAFFIC CONTROL	1	LS	1,800.00	1,800.00
3	CLEARING AND GRUBBING	1	LS	650.00	650.00
4	STORMWATER POLLUTION PREVENTION/EROSION CONTROL	1	LS	2,800.00	2,800.00
5	PRESERVATION OF EXISTING CITY MONUMENTS	1	LS	600.00	600.00
6	REMOVE AND DISPOSE EXISTING AC PAVEMENT, BASE AND/OR NATIVE SOIL; 14" MIN DEPTH	5,800	S.F.	1.30	7,540.00
7	CONSTRUCT 8" CAB	290	TONS	37.00	10,730.00
8	CONSTRUCT 6" AC OVERLAY	70	TONS	150.00	10,500.00
9	ADJUST ALL MANHOLES AND UTILITY COVERS TO GRADE	1	LS	6,350.00	6,350.00
10	STRIPING - INSTALL 12" SOLID WHITE CROSSWALK LINE, A24E	20	LF	7.50	150.00
11	STRIPING - INSTALL 12" SOLID WHITE LIMIT LINE, A24F	10	LF	7.50	75.00

TOTAL ALTERNATE BID NO. 2 WITHIN ARCADIA JURISDICTION – PECK ROAD:

$ 42,195.00

(TOTAL ALTERNATE BID NO. 2 AMOUNT WRITTEN IN WORDS)

II. The City will compensate Contractor for work performed and expenses incurred toward completion of the Project upon submission of a valid invoice. In addition to what is required under Section 2.2 of the Agreement, each invoice is to include:

A. Line items for all personnel describing the work performed.

B. Line items for all materials and equipment properly charged to the Project.

C. Line items for the price and quantity of all materials, equipment and work.

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

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

III. The total compensation for the Project shall not exceed $962,098.50 as provided in Section 2.1 of this Agreement.

EXHIBIT D

PERFORMANCE BOND

PROJECT NO. _____

We, _____, as Principal, and _____, as Surety, jointly and severally, firmly bind ourselves, our heirs, representatives, successors and assigns, as set forth herein, to the City of Irwindale ("City") for payment of the penal sum of **Nine Hundred sixty-two thousand and ninety-eight U.S. Dollars and fifty Cents ($962,098.50)**. City and Principal have entered into an agreement, or are about to enter into the agreement attached hereto and incorporated by reference herein, for completion of public works for the property(ies) referenced in said agreement. Surety herein approves of the terms and conditions of said agreement and binds itself to faithfully perform the obligations of Principal therein if Principal fails to so perform. Surety acknowledges that the agreement herein referenced shall be that document as executed by City and Principal.

THE CONDITION OF THIS OBLIGATION IS SUCH that if the Principal shall in all things stand to and abide by, and well and truly keep and perform all of the covenants, conditions, and provisions in said agreement, and any alteration thereof made as therein provided, on Principal's part to be kept and performed at the time and in the manner therein specified, and shall indemnify and save harmless the City, City's engineer, and their consultants, and each of their officials, directors, officers, employees and agents, as therein stipulated, then this obligation shall become null and void; otherwise, it shall be and remain in full force and effect.

Surety agrees that should it fail to take over and diligently perform the agreement upon Principal's default after notice and within the time specified in the agreement, Surety will promptly on demand deposit with City such amount as City may reasonably estimate as the cost of completing all of Principal's obligations. Surety's obligation for payment herein shall exist, notwithstanding any controversy between Principal and City regarding Principal's failure under the agreement, and payment by Surety should be conclusively presumed between the parties herein to relieve, as demanded, Surety's obligations herein and shall be deemed proper payment as between Principal and Surety.

Surety agrees that no change, extension of time, alteration, or addition to the terms of the agreement, or the work to be performed thereunder or the plans and specifications, or any matters unknown to Surety which may affect Surety's risk shall in any wise affect its obligation on this bond, and it does thereby waive notice thereof.

Principal and Surety agree that if the City is required to engage the services of an attorney in connection with the enforcement of this bond, each shall pay City's reasonable attorneys' fees incurred, with or without suit, in addition to the above sum.

Executed this _____day of _____, ____.

Seal of Corporation _____

By:_____
Authorized Representative of Principal

Title: _____

(ATTACH ACKNOWLEDGEMENT OF AUTHORIZED REPRESENTATIVES)

Any claims under this bond may be addressed to: (check one)

Surety's agent for service
of process in California: ( ) _____
[name of surety company]

_____ _____
Name Street Number

_____ _____
Street Number City and State

_____ _____
City and State Telephone Number

_____
Telephone Number

By:_____
Attorney in Fact or other
Representative

(ATTACH ACKNOWLEDGEMENT OF AUTHORIZED REPRESENTATIVE)

Furnish the name, address and phone number of the company agent as well as the surety company.

Sureties must be authorized to do business in and have an agent for service of process in California and be on the accredited list of the United States Treasury Department (their bonds will be limited to such amounts as would be acceptable to the Treasury Department), and otherwise meet the requirements of the agreement.

EXHIBIT E

PAYMENT BOND

PROJECT NO. _____

We, _____, as Principal, and _____, as Surety, jointly and severally, firmly bind ourselves, our heirs, representatives, successors and assigns, as set forth herein, to the City of Irwindale ("City") and those for whose benefit this bond insures in the sum of **Nine Hundred sixty-two thousand and ninety-eight U.S. Dollars and fifty Cents ($962,098.50)**. City and Principal have entered into an agreement, or are about to enter into the agreement attached hereto and incorporated by reference herein, for completion of public works for the property(ies) referenced in said agreement. Surety herein approves of the terms and conditions of said agreement and binds itself to faithfully perform the obligations of Principal therein if Principal fails to so perform. Surety acknowledges that the agreement herein referenced shall be that document as executed by City and Principal. If Principal or any of Principal's contractors or subcontractors, fails to pay any of the persons named in Section 9000 *et seq*. of the California Civil Code employed in the performance of the agreement for materials furnished or for labor thereon of any kind, or for amounts due under the Unemployment Insurance Code with respect to such work or labor, then Surety shall pay the same in an amount not exceeding the sum specified above, and also shall pay, in case suit is brought upon this bond, such reasonable attorneys' fees as shall be fixed by the court.

Surety agrees that it shall pay the amounts due the persons above named and diligently perform the agreement upon Principal's default after notice and within the time specified in the agreement. If Surety fails to perform within the times specified in the agreement, Surety shall promptly on demand deposit with City such amount as City may reasonably estimate as the cost of completing all of Principal's obligations. Surety's obligation for payment herein shall extend, notwithstanding any controversy between Principal and City regarding Principal's failure under the agreement. Principal and Surety agree that any payment by Surety pursuant to this paragraph should be conclusively presumed between the parties herein to relieve, as demanded, Surety's obligation herein and shall be deemed proper payment as between Principal and Surety.

This bond shall insure to the benefit of any and all of the persons named in Section 9000 *et seq*. of the California Civil Code so as to give a right of action to them or their assigns in any suit brought upon this bond.

Surety agrees that no change, extension of time, alteration, or addition to the terms of the agreement, or the work to be performed thereunder, or the plans and specifications, or any matters unknown to Surety which might affect Surety's risk, shall in any way affect its obligation on this bond, and it does hereby waive notice thereof.

Principal and Surety agree that should City become a party to any action on this bond, that each will also pay City's reasonable attorneys' fees incurred therein in addition to the above sums.

Executed this _____ day of _____, _____.

Seal of Corporation _____

By:_____
Authorized Representative of Principal

Title: _____

(ATTACH ACKNOWLEDGEMENT OF AUTHORIZED REPRESENTATIVES)

Any claims under this bond may be addressed to: (check one)

Surety's agent for service
of process in California: ( ) _____
[name of surety]

_____ _____
Name Street Number

_____ _____
Street Number City and State

_____ _____
City and State Telephone Number

_____
Telephone Number

By:_____
Attorney in Fact or other
Representative

(ATTACH ACKNOWLEDGEMENT OF AUTHORIZED REPRESENTATIVE)

Furnish the name, address and phone number of the company agent as well as the surety company.

Sureties must be authorized to do business in and have an agent for service of process in California and be on the accredited list of the United States Treasury Department (their bonds will be limited to such amounts as would be acceptable to the Treasury Department), and otherwise meet the requirements of the agreement.

RESOLUTION NO. 2024-54-3531

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF IRWINDALE APPROVING THE TRANSFER OF CAPITAL IMPROVEMENT FUNDS, AND APPROPRIATING $246,197.02 FROM THE GENERAL FUND RESERVES, FOR THE RESIDENTIAL RESURFACING PROJECT – PHASE III; P-1053

WHEREAS, the Residential Resurfacing Project – Phase III is identified in the City's 2023-2024 Capital Improvement Program; and

WHEREAS, the Project will resurface the pavement on Peck Road, Meridian Street, Alice Rodriguez Circle, Ruelas Street and Park Rose Avenue, and replace damaged concrete sidewalks on Meridian Street and Alice Rodriguez Circle; and

WHEREAS, the anticipated construction and all associated costs for this project are $1,097,008.50; and

WHEREAS, in the Fiscal Year 2022-2023 Adopted Budget, the City Council approved $750,000.00 for Capital Improvements Project ("CIP") No. 8356 (Residential Resurfacing Project – Phase III) Also, the remaining balance of $100,811.48 from CIP No. 8355, (Residential Resurfacing Project – Phase II) will need to be transferred to CIP Project No. 8356 bringing the total available amount for the Residential Resurfacing Project – Phase III to $850,811.48. Additional funding of $246,197.02 from the General Fund Reserve is now being requested to start this project; and

WHEREAS, the City Council desires to approve the above referenced CIP transfers, and an appropriation of $246,197.02 to cover the remaining costs for the construction and all associated costs for this project.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF IRWINDALE, DOES HEREBY RESOLVE, DETERMINE, AND ORDER AS FOLLOWS:

SECTION 1. The foregoing recitals are true and correct and incorporated herein by this reference.

SECTION 2. The City Council of the City of Irwindale hereby approves the transfer of $100,811.48 from CIP No. 8355 Residential Resurfacing Project – Phase II to Residential Resurfacing Project – Phase III; P1053.

SECTION 3. The City Council of the City of Irwindale hereby approves the appropriation of $246,197.02 from the General Fund Reserves to the Residential Resurfacing Project – Phase III; P1053.

SECTION 4. That 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 10th day of July 2024.

_____
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. 2024-54-3531 as duly adopted by the City Council of the City of Irwindale, at a regular meeting held on the 10th day of July 2024, by the following vote:

AYES: Councilmembers:

NOES: Councilmembers:

ABSENT: Councilmembers:

ABSTAIN: Councilmembers:

_____
Laura M. Nieto, MMC
Chief Deputy City Clerk

Item #19.D.

City of
IRWINDALE
AGENDA REPORT

Date: July 10, 2024

To: Honorable Mayor and Members of the City Council

From: Julian A. Miranda, City Manager

Issue: Adopt Resolution No. 2024-52-3529 entitled, "A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF IRWINDALE ADOPTING UPDATED "VEHICLE MILES TRAVELED" THRESHOLDS OF SIGNIFICANCE FOR PURPOSES OF ANALYZING TRANSPORTATION IMPACTS UNDER THE CALIFORNIA ENVIRONMENTAL QUALITY ACT"

City Manager's Recommendation:

That the City Council adopt Resolution No. 2024-52-3529 entitled, "A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF IRWINDALE ADOPTING UPDATED "VEHICLE MILES TRAVELED" THRESHOLDS OF SIGNIFICANCE FOR PURPOSES OF ANALYZING TRANSPORTATION IMPACTS UNDER THE CALIFORNIA ENVIRONMENTAL QUALITY ACT".

Administrative Action:

Submitted by:
Eddie Chan, Director of Engineering/Building Official

Prepared by:
Luis Pimentel, Associate Engineer

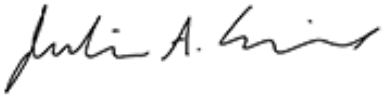
Reviewed by:

Adrian R. Guerra, City Attorney

Kambiz Borhani, Finance Director / City Treasurer

Approved by:

Julian A. Miranda, City Manager



Background and Analysis:

In March 2020, the City entered into a Memorandum of Agreement with the San Gabriel Valley Council of Governments (SGVCOG) to participate in the San Gabriel Valley Regional Vehicle Miles of Travel (VMT) Analysis Model. The City of Irwindale is one of 26 SGVCOG member cities that opted into the SGVCOG SB 743 Implementation process.

On November 20, 2020, the City, with guidance provided by the SGVCOG, adopted Resolution No. 2020-53-3163 entitled, "A Resolution of the City Council of the City of Irwindale adopting "Vehicle Miles Traveled" thresholds of significance for purposes of analyzing transportation impacts under the California Environmental Quality Act " adopting Vehicle Miles Traveled (VMT) significance thresholds for three different VMT metrics pursuant to guidance provided by the State's Office of Planning and Research (OPR). This resolution modified how the City evaluates projects for transportation impacts for the purposes of CEQA. Specifically, the City requires the use VMT instead of Level of Service (LOS) as the metric to evaluate transportation impacts in CEQA documents pursuant to Senate Bill 743 (SB 743).

The current SGVCOG VMT Tool is based on VMT outputs from the Southern California Association of Governments (SCAG) 2016 Regional Transportation Plan/Sustainable Communities Strategy (RTP/SCS) trip-based model (TBM) and needs to be updated to be consistent with the 2024 RTP/SCS activity-based model (ABM). The change of both the model simulation platform (trip-based model to activity-based model) and the underlying data, such as traffic counts and socioeconomic data, resulted in changes to the VMT threshold numbers and low VMT areas.

The SGVCOG participating cities were aware that the model would be changing from TBM to ABM and had anticipated that the change may prompt them to change the adopted baseline for their VMT significance thresholds. However, the cities did not anticipate that the updated data would result in more significant changes to low VMT areas than the conversion to an activity-based model (refer to Attachment B, SGVCOG Technical Memorandum). The recommendation herein recognizes the following: 1) every four years the SCAG RTP/SCS will be updated prompting an update to the regional travel demand model, 2) the City's low VMT areas are based on the SCAG model, 3) low VMT areas under each of the three geographic baselines are likely to change when the SCAG model is updated, and 4) the City intends to use the baselines that maximize the number of "low VMT" screening areas and to set the most achievable bar for reaching a given threshold.

Analysis:

Baseline Data Differences (2016 vs. 2020 RTP/SCS)

The SCAG 2016 RTP/SCS is based on traffic counts collected in 2012, the 2012 roadway network, 2012 transit network and ridership information, land use information, and other socio-

economic inputs. The 2020 RTP/SCS is based on the same datapoints collected in 2016. This is the first update to the RTP since the SGVCOG participating cities adopted VMT thresholds of significance. The changes in the underlying data significantly altered the low, moderate, and high VMT-generating areas throughout the SGVCOG region for each of the three baseline alternatives (City, Central Subarea, and SGVCOG Region). In some cities under their adopted baseline, an area considered a low VMT area using the 2016 RTP model became a high VMT area using the 2024 RTP model. And under different baselines, the reverse occurred. This is important because the selection of baselines for determining VMT significance may impact a city's ability to approve projects. For example, if a developer selected a location for a housing project based on the city's low VMT areas for residential uses and compatibility with the city's general plan but before they had submitted the development application the SCAG model was updated and the area became a high VMT area for housing, then the project would likely require the City to certify an environmental impact report (EIR) and adopt a statement of overriding considerations to move forward. Not only would this scenario delay project approval by up to two years, but it would delay construction of housing in an area designated for housing and result in higher priced housing units.

The City of Irwindale is located in the Central Subarea of the SGVCOG region. According to the City of Irwindale Transportation Study Guidelines for Vehicle Miles Traveled and Level of Service Assessment (September 2020), the City adopted the City of Irwindale baseline VMT as the benchmark to determine CEQA transportation impacts for all project types (residential, employment, and mixed-use/regional retail).

Pursuant to the OPR Guidance, cities can adopt different baselines based on project types and states that employment based VMT thresholds should use subregional or regional baselines. For employment generated VMT (VMT/employee), the City currently uses "City" as the baseline counter to OPR recommendations to use a regional baseline for employment-generating uses. It is recommended that the City adopt the highest of two baselines (Central Subarea or SGVCOG) to set the most achievable bar for employment generating uses consistent with OPR guidance. The City's current threshold (City) is appropriate for Total VMT per service population (OD VMT/SP) and for home-based VMT (VMT/capita), but it is recommended that the City adopt the "highest of the three baselines" (City, Central Subarea, or SGVCOG Region) to set the most achievable bar for reaching the given threshold. Adopting this change will allow the City to update baselines every four years when the SCAG RTP model is updated consistent with its general plan policies.

This Resolution has been assessed in accordance with the authority and criteria contained in the California Environmental Quality Act (CEQA), the State CEQA Guidelines, and the environmental regulations of the City. The adoption of new local CEQA thresholds of significance for transportation impacts and the adoption of new Local Transportation Assessment Guidelines will not have a significant environmental impact and are exempt from the CEQA pursuant to Section 15308 of Title 14 of the California Code of Regulations because the action is undertaken by the City for the protection of the environment. The revised CEQA thresholds will be compliant with a State mandate (SB 743) and will be used in a regulatory process (CEQA process) that involves procedures for the protection of the environment. Accordingly, the City Council will consider the recommendation to find the Resolution exempt from the environmental review requirements of CEQA pursuant to Section 15308 of Title 14 of the California Code of Regulations.

Therefore, staff recommends to adopt the attached resolution recommending that the City Council find that the action is exempt from CEQA and adopt the proposed thresholds of significance.

Fiscal Impact:

None

Attachments:

1. Attachment A - Resolution No. 2024-52-3529 VMT Thresholds
2. Attachment B - SGVCOG Technical Memo

RESOLUTION NO. 2024-52-3529

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF IRWINDALE ADOPTING UPDATED "VEHICLE MILES TRAVELED" THRESHOLDS OF SIGNIFICANCE FOR PURPOSES OF ANALYZING TRANSPORTATION IMPACTS UNDER THE CALIFORNIA ENVIRONMENTAL QUALITY ACT

WHEREAS, the California Environmental Quality Act Guidelines ("CEQA Guidelines") encourage public agencies to develop and publish generally applicable "thresholds of significance" to be used in determining the significance of a project's environmental effects; and

WHEREAS, CEQA Guidelines section 15064.7(a) defines a threshold of significance as "an identifiable quantitative, qualitative or performance level of a particular environmental effect, noncompliance with which means the effect will normally be determined to be significant by the agency and compliance with which means the effect normally will be determined to be less than significant"; and

WHEREAS, CEQA Guidelines section 15064.7(b) requires that thresholds of significance must be adopted by ordinance, resolution, rule, or regulations, developed through a public review process, and be supported by substantial evidence; and

WHEREAS, pursuant to CEQA Guidelines section 15064.7(c), when adopting thresholds of significance, a public agency may consider thresholds of significance adopted or recommended by other public agencies provided that the decision of the agency is supported by substantial evidence; and

WHEREAS, Senate Bill 743, enacted in 2013 and codified in Public Resources Code section 21099, required changes to the CEQA Guidelines regarding the criteria for determining the significance of transportation impacts of projects; and

WHEREAS, in 2018, the Governor's Office of Planning and Research ("OPR") proposed, and the California Natural Resources Agency certified and adopted, new CEQA Guidelines section 15064.3 that identifies vehicle miles traveled ("VMT") – meaning the amount and distance of automobile travel attributable to a project – as the most appropriate metric to evaluate a project's transportation impacts; and

WHEREAS, as a result, automobile delay, as measured by "level of service" and other similar metrics, generally no longer constitutes a significant environmental effect under CEQA; and

WHEREAS, the City's project review process will retain "level of service" analysis to ensure consistency with the General Plan; and

WHEREAS, CEQA Guidelines section 15064.3 went into effect on July 1, 2020, and the City of Irwindale adopted Resolution No. 2020-53-3163 entitled, "A Resolution

of the City Council of the City of Irwindale adopting "Vehicle Miles Traveled" thresholds of significance for purposes of analyzing transportation impacts under the California Environmental Quality Act" on November 20, 2020; and

WHEREAS, the City of Irwindale is one of 26 San Gabriel Valley Council of Governments (SGVCOG) member cities that opted into the SGVCOG SB 743 Implementation process; and

WHEREAS, at the conclusion of the process, the SGVCOG VMT Evaluation Tool was developed for the SGVCOG region, including VMT screening establishing a baseline threshold: and

WHEREAS, the current SGVCOG VMT Evaluation Tool is based on VMT outputs from the 2016 Regional Transportation Plan/Sustainable Communities Strategies (RTP/SCS) trip-based model and needs to be updated to be consistent with the 2024 RTP/SCS activity-based model. Additionally, changes in population, employment, and traffic counts have been updated in the 2024 RTP/SCS; and

WHEREAS, both updates have resulted in changes to the VMT threshold numbers and low VMT areas throughout the SGVCOG region; and

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF IRWINDALE DOES RESOLVE, DETERMINE, AND ORDER AS FOLLOWS:

SECTION 1. The City Council of Irwindale finds that, pursuant to CEQA Guidelines section 15064.7(c), the 2024 VMT thresholds of significance recommended for adoption by the San Gabriel Valley Council of Governments, based on the Southern California Association of Governments 2020 Regional Transportation Plan/Sustainable Communities Strategies activity-based model for evaluating project transportation impacts under CEQA, are supported by substantial evidence as defined under CEQA Guidelines section 15384. The SGVCOG Technical Memorandum analyzing vehicle miles traveled differences between the SCAG 2016 and 2020 Regional Transportation Plan/Sustainable Communities models and how these differences affect the thresholds for VMT impact analyses in the City is attached hereto as Exhibit A.

SECTION 2. The City of Irwindale hereby amends the City of Irwindale VMT Baselines and Thresholds of Significance adopted via Resolution No. 2020-53-3163. Except as expressly amended by this resolution, the City of Irwindale VMT Baselines and Thresholds of Significance continue in full force and effect. The baseline VMT for all projects shall be based on the most current and available Southern California Association of Governments Regional Transportation Plan travel demand model. As amended, VMT thresholds for each VMT type are based on 15 percent below the baseline VMT that sets the most achievable VMT target. The VMT per employee threshold for employment-generating projects shall be based on 15 percent below either the SGVCOG Central Subarea or SGVCOG Region, whichever results in the

largest numerical value. The VMT per capita thresholds for residential projects shall be based on the City, SGVCOG Central Subarea, or SGVCOG Region, whichever results in the largest numerical value. The VMT per service population baseline shall be based on the City, SGVCOG Central Subarea, or SGVCOG Region, whichever results in the largest numerical value.

SECTION 3. This Resolution shall take effect immediately upon its adoption by the City Council, and the Clerk of the Council shall attest to and certify the vote adopting this Resolution.

PASSED, APPROVED and **ADOPTED** this 10th day of July 2024.

_____
Albert F. Ambriz, 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. 2024-52-3529 as duly adopted by the City Council of the City of Irwindale, at a regular meeting held on the 10th day of July 2024, by the following vote:

AYES: Councilmembers:
NOES: Councilmembers:
ABSENT: Councilmembers:
ABSTAIN: Councilmembers:

_____
Laura M. Nieto, MMC
Chief Deputy City Clerk

SGVCOG Technical Memorandum

Date: December 3, 2023

To: Turner Lott, SGVCOG
Steph Wong, SGVCOG
Roy Choi, SGVCOG

From: Katy Cole, Jolene Hayes, and Biling Liu

Subject: **City of Irwindale**
Analysis of the City's VMT Thresholds (Deliverable 2.3)

OC20- 0715.02

This technical memorandum summarizes the vehicle miles traveled (VMT) differences between the SCAG 2016 and 2020 Regional Transportation Plan/Sustainable Communities (RTP/SCS) models and how these differences may affect the thresholds for vehicle miles of travel (VMT) impact analyses in the City of Irwindale (City). The current SGVCOG VMT Tool is based on VMT outputs from the 2016 Regional Transportation Plan/Sustainable Communities Strategy (RTP/SCS) trip-based model (TBM) and needs to be updated to be consistent with the 2020 RTP/SCS activity-based model (ABM). The change of both the model simulation platform (trip-based model to activity-based model) and the underlying data, such as traffic counts and socio-economic data, results in changes to the VMT threshold numbers and low VMT areas. The following memorandum describes the changes in VMT, and more specifically, the change in the number of low VMT areas that meet the low VMT screening criterion.

VMT Calculations

For the purpose of updating the SGVCOG VMT Evaluation Tool, we first considered how the change in model platforms (trip-based to activity-based) would change the low VMT areas in the City. In addition to the model platform, the change in the underlying inputs to the model (e.g., population, employment, traffic counts, etc.) also resulted in changes to the low VMT areas as illustrated by the differences between the 2016 and 2020 Total VMT per total population and employment (OD VMT/SP). This calculation is the same for both model versions, therefore, the change in low VMT areas shown in **Table 1** for OD VMT/SP reflects the effect of the new data inputs only, whereas the changes to home-based VMT per capita and work-based VMT per

employee are combinations of data updates and the change in model methodologies (trips versus tours).

Model Methodology Comparisons

The SCAG 2016 RTP/SCS trip-based model (TBM) VMT methodology includes all trips within the SCAG model for each of the following variable formats:

1. Origin-Destination (OD) VMT per Service Population (all vehicles and all trip purposes): The total VMT to and from all traffic analysis zones (TAZ) in the geographic area are divided by the total service population to calculate the efficiency metric of VMT per service population. Service population is defined as all residents and employees of the zones being evaluated. The image shows a visual representation of OD VMT per Service Population for a single project. To calculate it for a set geography, an analyst determines the total VMT produced to or from the geography divided by the total population plus employment of that same geography.

OD VMT Per Service Population

2. Home-based VMT per capita (automobile only): All home-based trips are traced back to the residence of the trip-maker. Trips without an origin or destination from home are excluded. For example, if you leave home and stop for coffee, then for gas, and then at the store before returning home, the trip from coffee to the gas station and from the gas station to the store would be deemed an "other to other" trip and omitted from HB VMT. The image shows a visual representation of Home-Based VMT per capita for a single home.

Home-Based VMT per Capita

3. Home-based work VMT per employee: Captures only the segment of the trip to work that directly connects home to work. All stops along the way to or from work are defined as work to/from other and are not part of the HBW VMT calculation. The image shows a visual representation of Home-Based work VMT per employee for a single home.

Home-Based Work VMT per Employee

The SCAG 2020/RTP/SCS model, an activity-based model (ABM), is quite different than the TBM because it considers the entire linked trip, or tour, that a person makes when leaving home or commuting to work. Whereas the calculation for total VMT per service population is the same under both models, the home-based and home-based work calculations are different.

1. OD VMT per Service Population (all vehicles and all trip purposes): The total VMT to and from all zones in the geographic area are divided by the total service population to calculate the efficiency metric of VMT per service population. This metric is the same as described above for the TBM.

2. VMT per capita (automobile only): Considers VMT for all tours embarked upon by residents, encompassing both Single Occupancy Vehicle (SOV) and High-Occupancy Vehicle (HOV) drivers (drivers only). The VMT is divided by the population within the geographic area. This method includes all trips made by the population of the geographic area, including those that do not directly start or end at home. For example, if you leave home and stop for coffee, then for gas, and then at the store before returning home, all of these legs of the trip together would be a "tour" and they are all included in the calculation. The image shows a visual representation of tour-based VMT per capita for a single home.

VMT per Capita (Tour-Based)

3. VMT per employee: Encompasses VMT for all work-related tours, encompassing both work and work-related business. The VMT is divided by the employees within the geographic area. For example, if a person commutes to work, then has a lunch meeting and runs a work errand mid-day, and then commutes home from work stopping at the gym on the way, all of these legs are summed together as work-related tours and are included in the calculation.

VMT per Employee (Tour-Based)

Baseline Data Differences (2016 vs. 2020 SCAG RTP/SCS)

The SCAG 2016 RTP/SCS was calibrated and validated based on traffic counts collected in 2012, the 2012 roadway network, 2012 transit network and ridership information, land use information, and other socio-economic inputs. The 2020 RTP/SCS was calibrated and validated based on the datapoints collected in 2016. The changes in the underlying data affected the low VMT areas within the SGVCOG region. To conduct comparative VMT results, the VMT from the SCAG 2016 RTP/SCS and 2020 RTP/SCS were both interpolated to a 2023 baseline in the next VMT Comparison section.

VMT Comparison

Irwindale is located in the Central Subarea of the SGVCOG region. According to the *City of Irwindale Transportation Study Guidelines for Vehicle Miles Traveled and Level of Service Assessment (August 2020*), the City adopted the City of Irwindale (City) baseline VMT as the benchmark to determine CEQA transportation impacts for all project types (residential, employment, and mixed-use/regional retail). A comparison of the number of low VMT areas under the 2016 versus the 2020 RTP using the City's adopted threshold (15% below the City Baseline) is shown in **Table 1**.

Table 1: Comparison of Low VMT Areas Using Irwindale's Adopted VMT Baseline (2016 vs. 2020 RTP/SCS)

2023	Adopted Threshold (2016 RTP)			Adopted Threshold (2020 RTP)			Changes		
VMT Type	TAZs that are better than the City's Baseline	TAZs 0 to 15% above the Baseline	TAZs more than 15% above Baseline	TAZs that are better than the City's Baseline	TAZs 0 to 15% above the Baseline	TAZs more than 15% above Baseline	TAZs that are better than the City's Baseline	TAZs 0 to 15% above the Baseline	TAZs more than 15% above Baseline
OD VMT/SP	0	1	3	0	2	2	0	1	-1
VMT/Capita	1	3	2	0	2	4	-1	-1	2
VMT/Employee	0	4	3	0	4	3	0	0	0

Pursuant to the OPR Guidance, cities can adopt different baselines based on project types and states that employment-based VMT thresholds should use subregional or regional baselines. The City's current threshold (City) is appropriate for Total and home-based VMT types, but the City should consider using the Central or SGVCOG as the baseline for employment-based VMT (VMT/Employee) consistent with OPR's guidance. The threshold for Total VMT, since it is a mix of both residential and employment, can use any baseline.

Table 2 shows the comparison of the thresholds for the different baseline options (SGVCOG, Central Subarea, and City) using the 2020 RTP model. The higher thresholds result in the ability to screen out more projects, whereby more transportation analysis zones (TAZs) generate less miles of travel per person than the baseline. For example, for Total VMT per service population (OD VMT/SP), a project that generates 33 miles of travel per person would exceed the thresholds for the SGVCOG and the Central Subarea of 28.93 and 27.60 miles per person, respectively but would fall below the City threshold (35.35 miles). The numbers in bold in **Table 2** are the basis for the comparisons in **Table 3** and serve as the thresholds that would achieve the lowest VMT thresholds and that are consistent with OPR's guidelines. As previously stated, the OPR Guidelines recommend a subregional

or regional VMT threshold for analyzing employment-generating projects. The City currently uses the City of Irwindale's employment VMT rate as the threshold. Changing the threshold from City to SGVCOG would result in an improvement of less than quarter-mile of travel per person thereby resulting in no change to the number of low VMT screening areas. Using the SGVCOG baseline for residential projects would result in a conversion of two high VMT zones to two moderate VMT zones (red to yellow).

Table 2: Baseline VMT Rates

	Baseline (Threshold)			15% Below Baseline (Threshold)		
Region/City	OD VMT/SP	VMT/Capita	VMT/Employment	OD VMT/SP	VMT/Capita	VMT/Employment
SGVCOG	34.03	**24.10**	**39.23**	28.93	**20.49**	**33.34**
Central	32.48	22.30	36.47	27.60	18.95	31.00
Irwindale	**41.59**	22.89	39.05	**35.35**	19.46	33.19

In **Table 3** below, based on the 2020 RTP, the Adopted Threshold (City) is compared to an alternative threshold. The City threshold continues to maximize low VMT areas for OD VMT/SP, however, the SGVCOG baseline is both consistent with OPR Guidelines for work-based VMT and slightly improves it for home-based VMT. The table below reflects the SGVCOG rather than the City threshold for employment and residential projects, which results in two fewer red areas and two more yellow areas for home-based VMT, as reflected in **Table 3** and in the maps.

Table 3: Comparison of Low VMT Areas (Adopted VMT Baseline vs. Alternative Baseline Option)

2023	Adopted Threshold (2020 RTP)			Alternative Threshold (2020 RTP)			Changes		
VMT Type	TAZs that are better than the City's Baseline	TAZs 0 to 15% above the Baseline	TAZs more than 15% above Baseline	TAZs that are better than the City's Baseline	TAZs 0 to 15% above the Baseline	TAZs more than 15% above Baseline	TAZs that are better than the City's Baseline	TAZs 0 to 15% above the Baseline	TAZs more than 15% above Baseline
OD VMT/SP	0	2	2	0	2	2	0	0	0
VMT/Capita	0	2	4	0	4	2	0	2	-2
VMT/Employee	0	4	3	0	4	3	0	0	0

The 2023 baseline VMT maps reflecting the City's adopted VMT baseline under both the 2016 and 2020 RPT, as well as the alternative thresholds for consideration are shown in **Attachments A-C**.

Conclusion

This analysis compares the VMT metric options for CEQA VMT analysis purposes between the 2016 RTP/SCS and 2020 RTP/SCS SCAG regional travel demand model. The following provides takeaways based on this analysis:

- The SCAG regional model changed formats from a "trip-based" model to a "tour-based" activity-based model. This change, along with changes in traffic volumes, transportation behavior and socioeconomic conditions between the 2016 and 2020 RTP/SCS planning documents, resulted in changes to the way average VMT metrics are calculated and the actual VMT results throughout the region.
- A thorough comparison of VMT metrics and changes in the VMT was conducted to understand the implications for CEQA VMT analysis.
- To maximize the number of "low VMT" screening areas, set the most achievable bar for reaching a given threshold, and be consistent with OPR's guidelines related to low VMT screening for work-based VMT, the following VMT metrics are suggested:
    - Mixed Use/Retail/Other: Retain the threshold of 15% below the OD VMT/Service Population of the **City.**
    - Residential Projects: Amend the threshold to 15% below the VMT/Capita for the **SGVCOG.**
    - Employment Projects: Amend the threshold to 15% below the VMT/Employee for the **SGVCOG.**

Next Steps

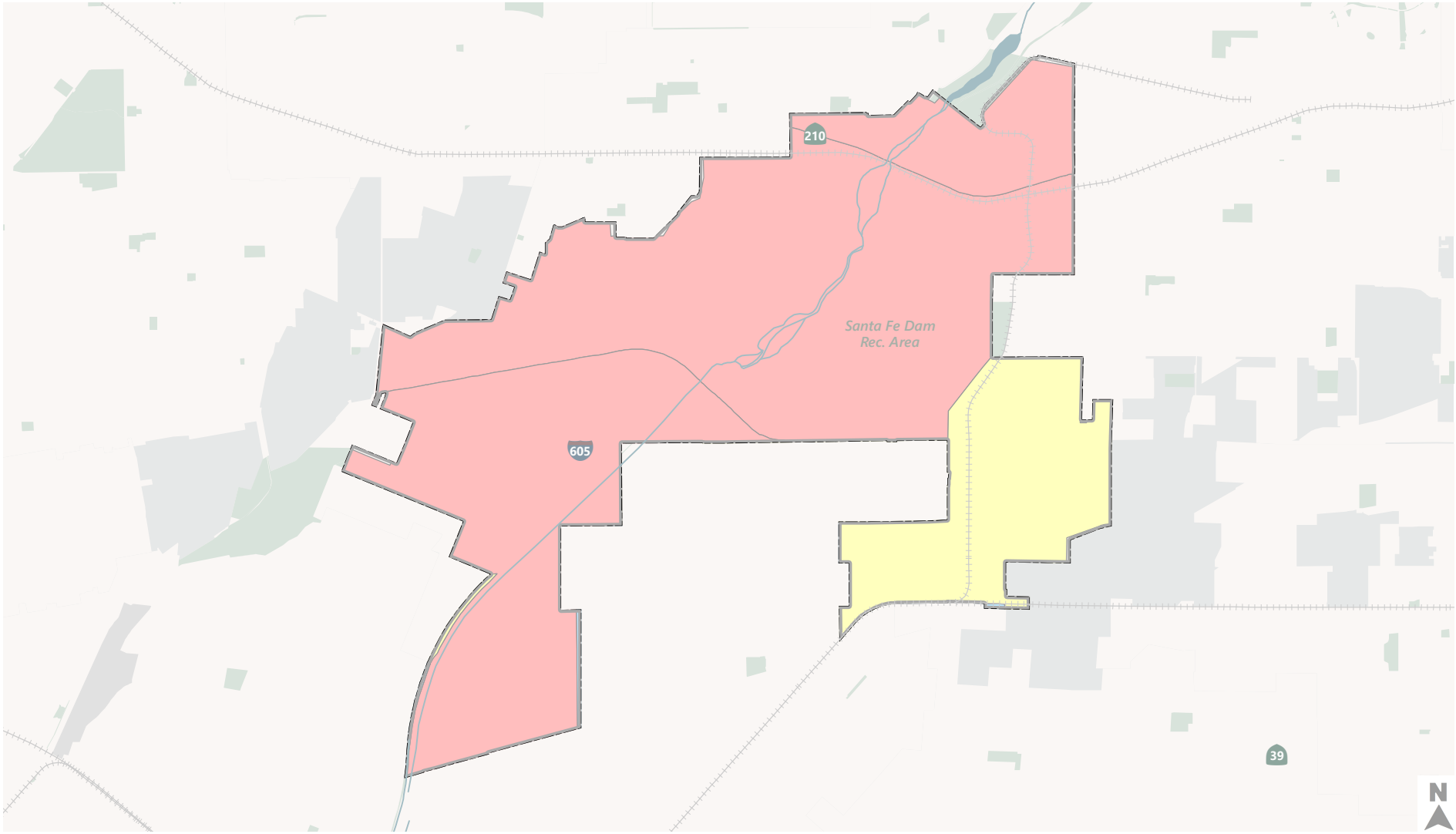
The findings for each participating SGVCOG city will be evaluated by each city to determine if the thresholds should be changed. Changing the thresholds will require City Council approval.

Attachments

- Attachment A: 2023 Baseline OD/SP VMT Maps
- Attachment B: 2023 Baseline Home-Based Work VMT Maps
- Attachment C: 2023 Baseline Home-Based VMT Maps

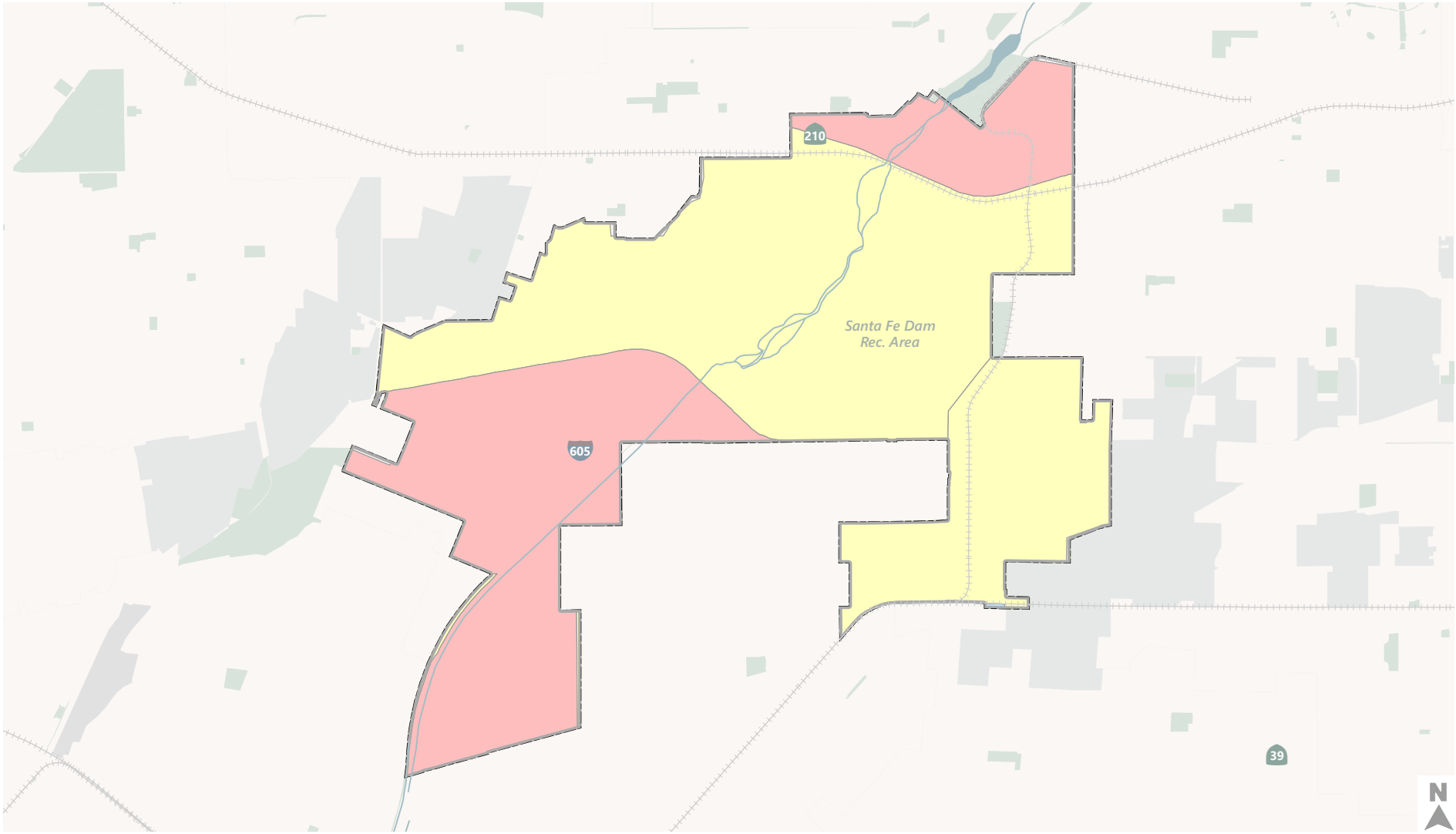
Attachment A

OD/SP VMT Maps



Less than 15% below regional average
0 to 15% below regional average
Higher than regional average
Irwindale

2023 OD VMT per Service Population from 2016 RTP Model with Adopted Threshold
Irwindale

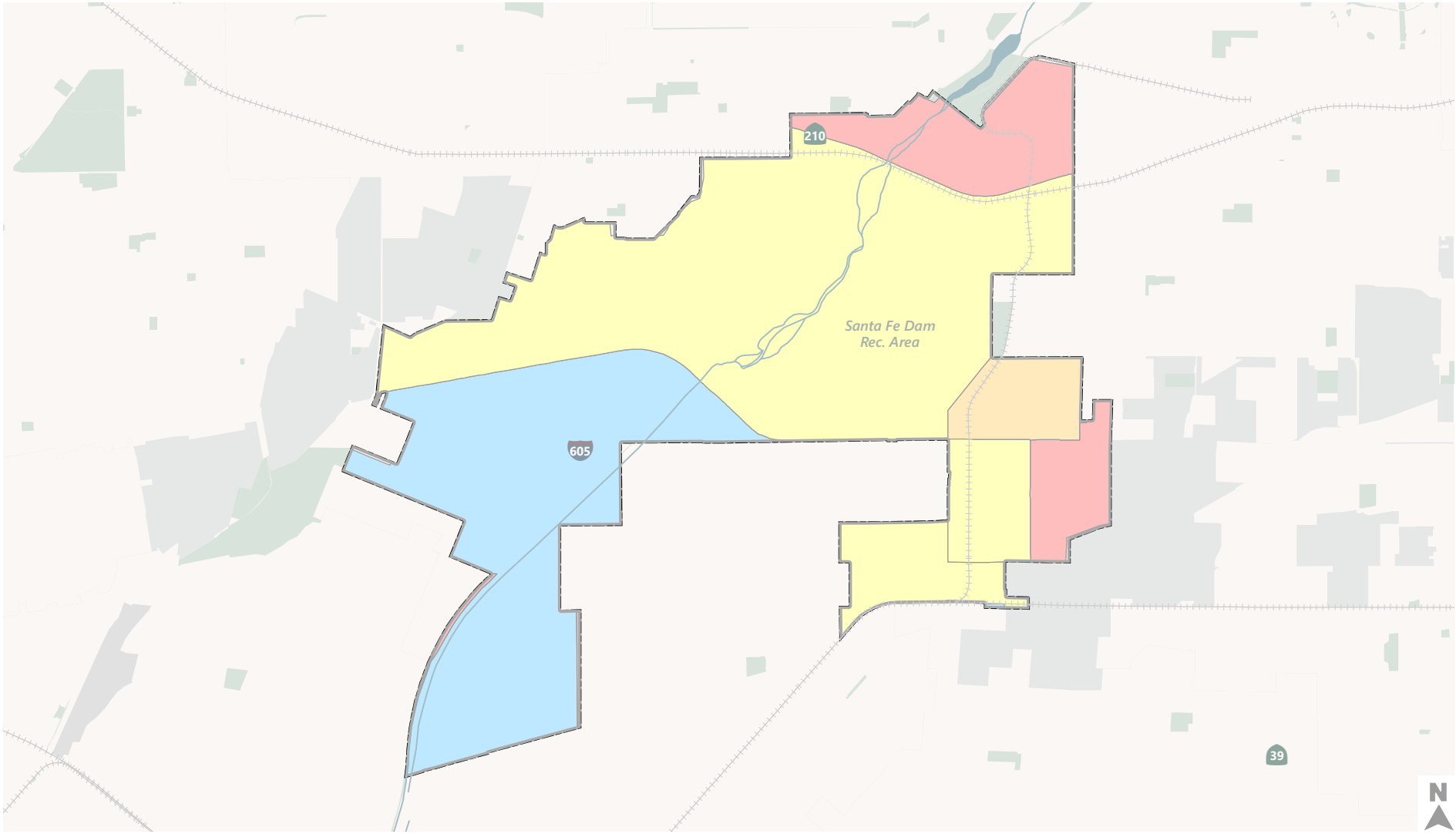


Less than 15% below regional average
0 to 15% below regional average
Higher than regional average
Irwindale

2023 OD VMT per Service Population from 2020 RTP Model with Adopted Threshold
Irwindale

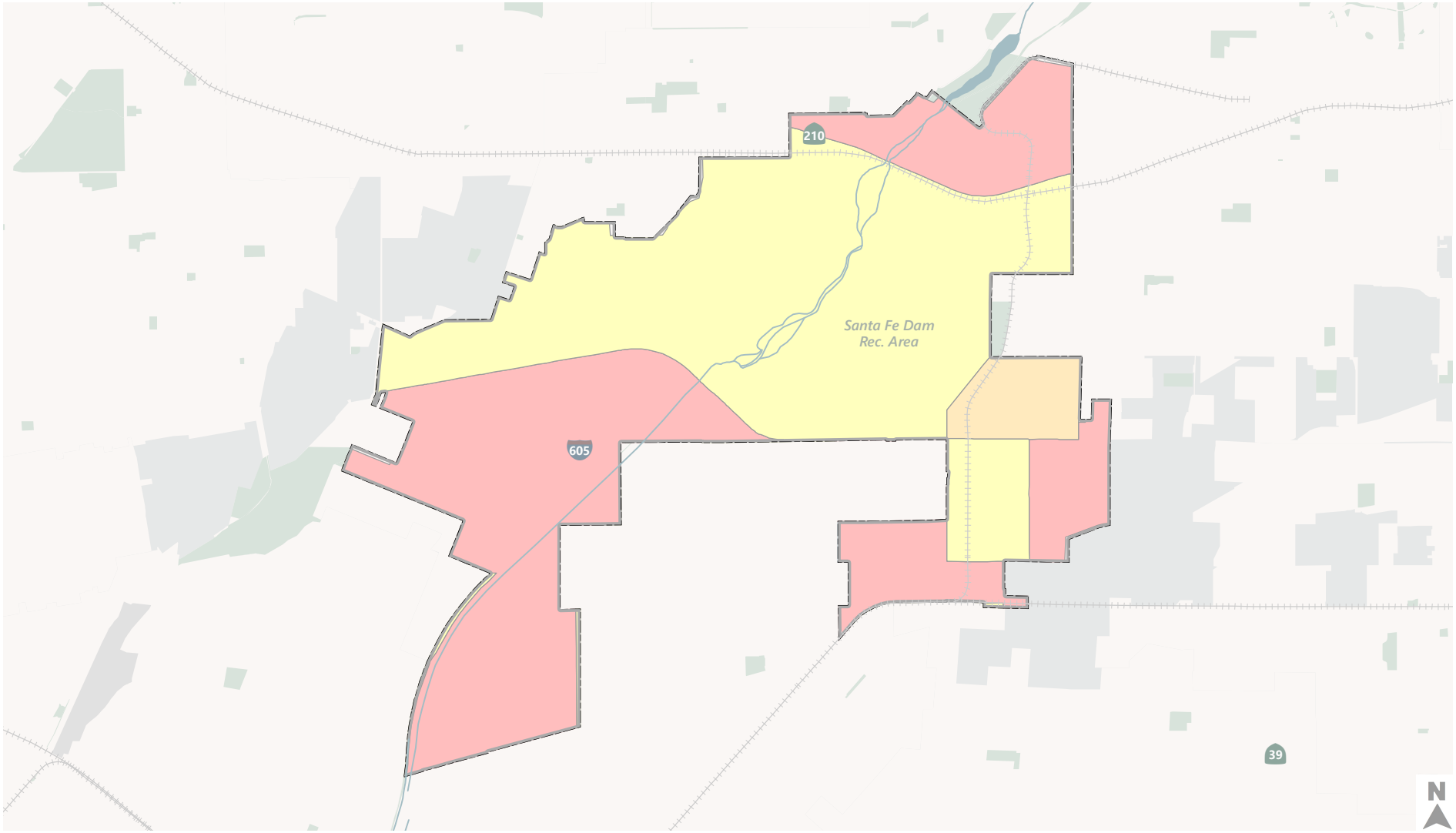
Attachment B

Home-Based VMT Maps



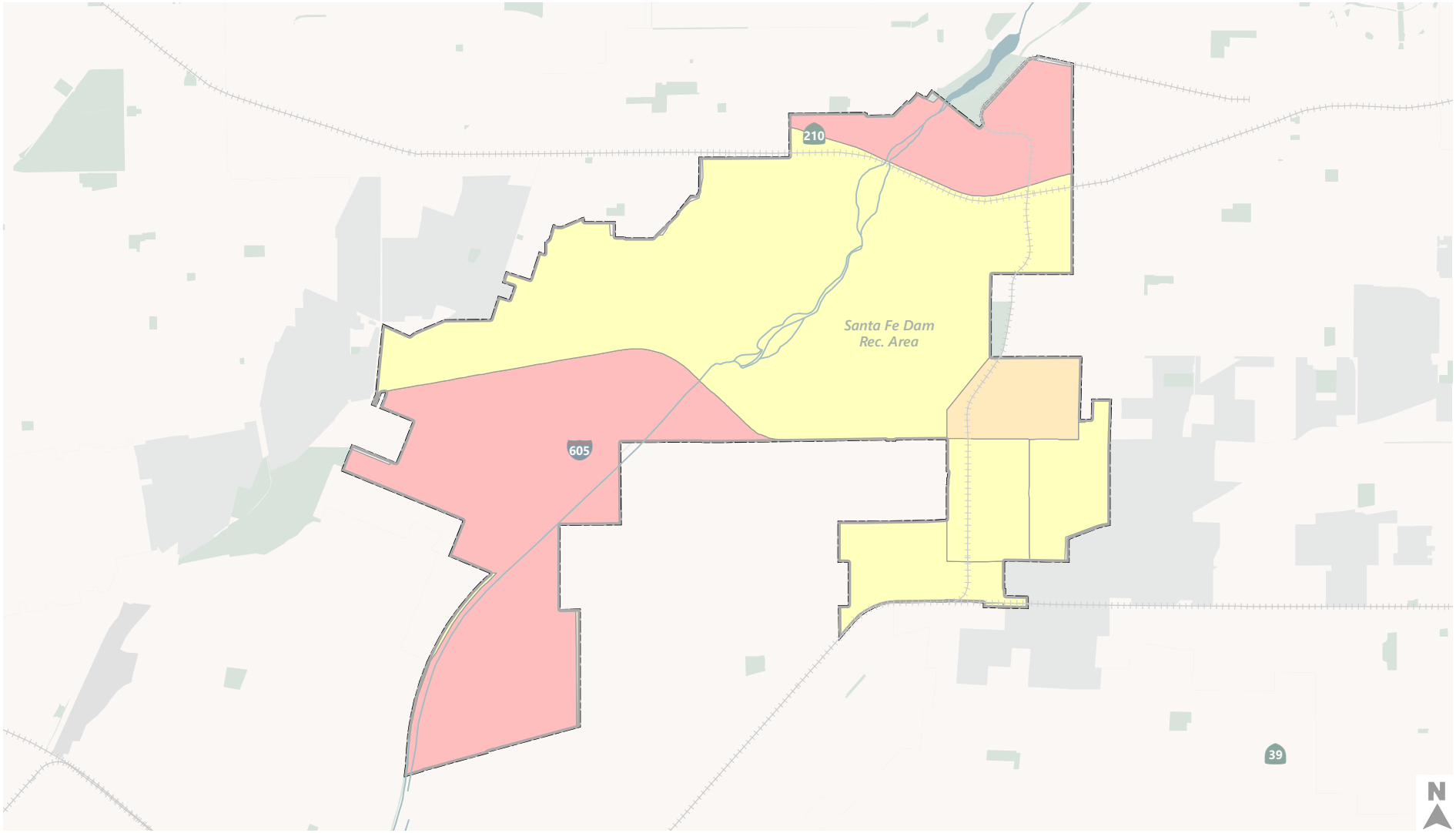
- No Population
- Less than 15% below regional average
- 0 to 15% below regional average
- Higher than regional average
- Irwindale

2023 Home-based VMT per Capita from 2016 RTP Model with Adopted Threshold
Irwindale



- No Population
- Less than 15% below regional average
- 0 to 15% below regional average
- Higher than regional average
- Irwindale

2023 VMT per Capita from 2020 RTP Model with Adopted Threshold Irwindale

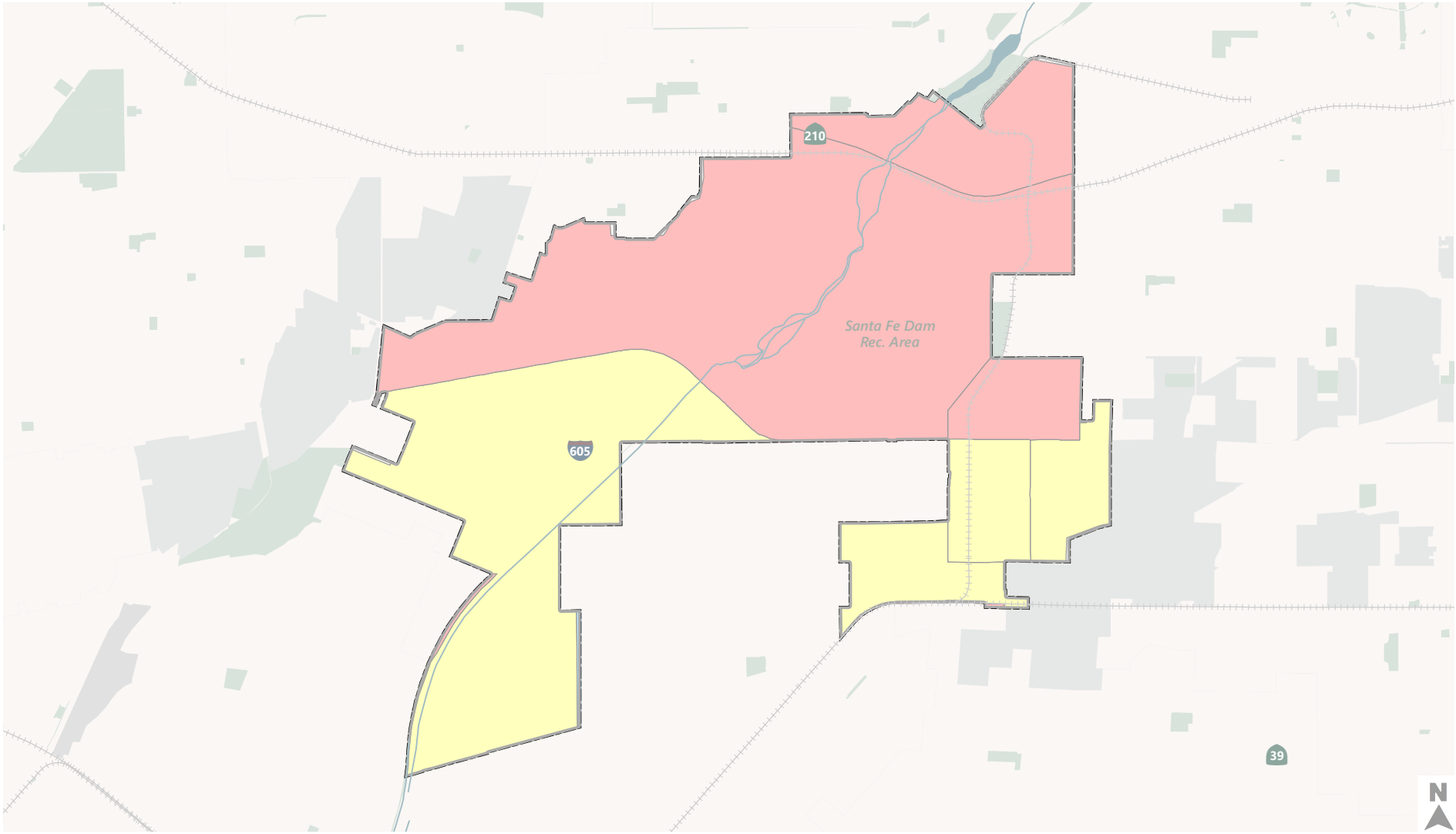


- No Population
- Less than 15% below regional average
- 0 to 15% below regional average
- Higher than regional average
- Irwindale

2023 VMT per Capita from 2020 RTP Model with Alternative Threshold Irwindale

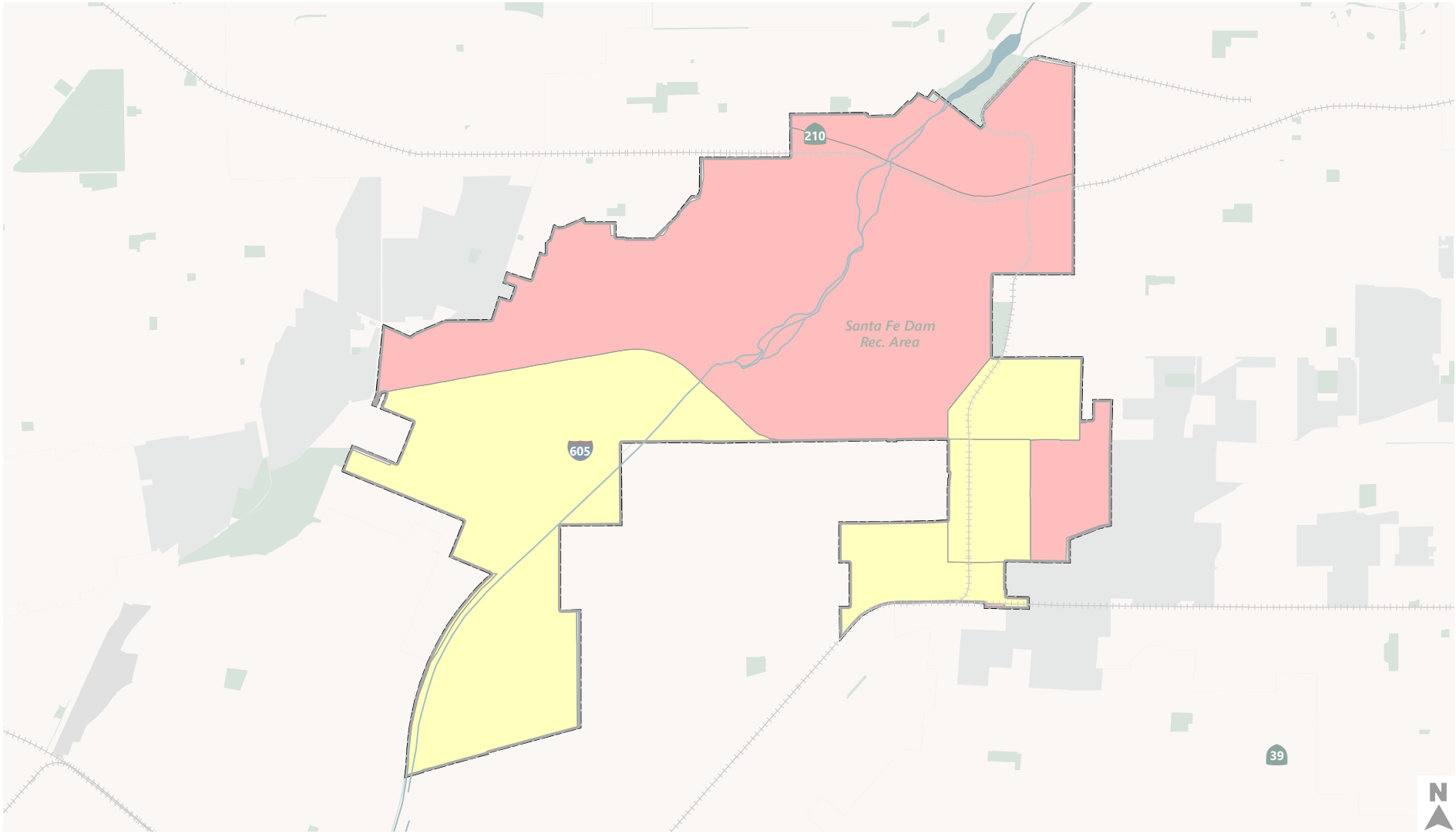
Attachment C

Work-Based VMT Maps



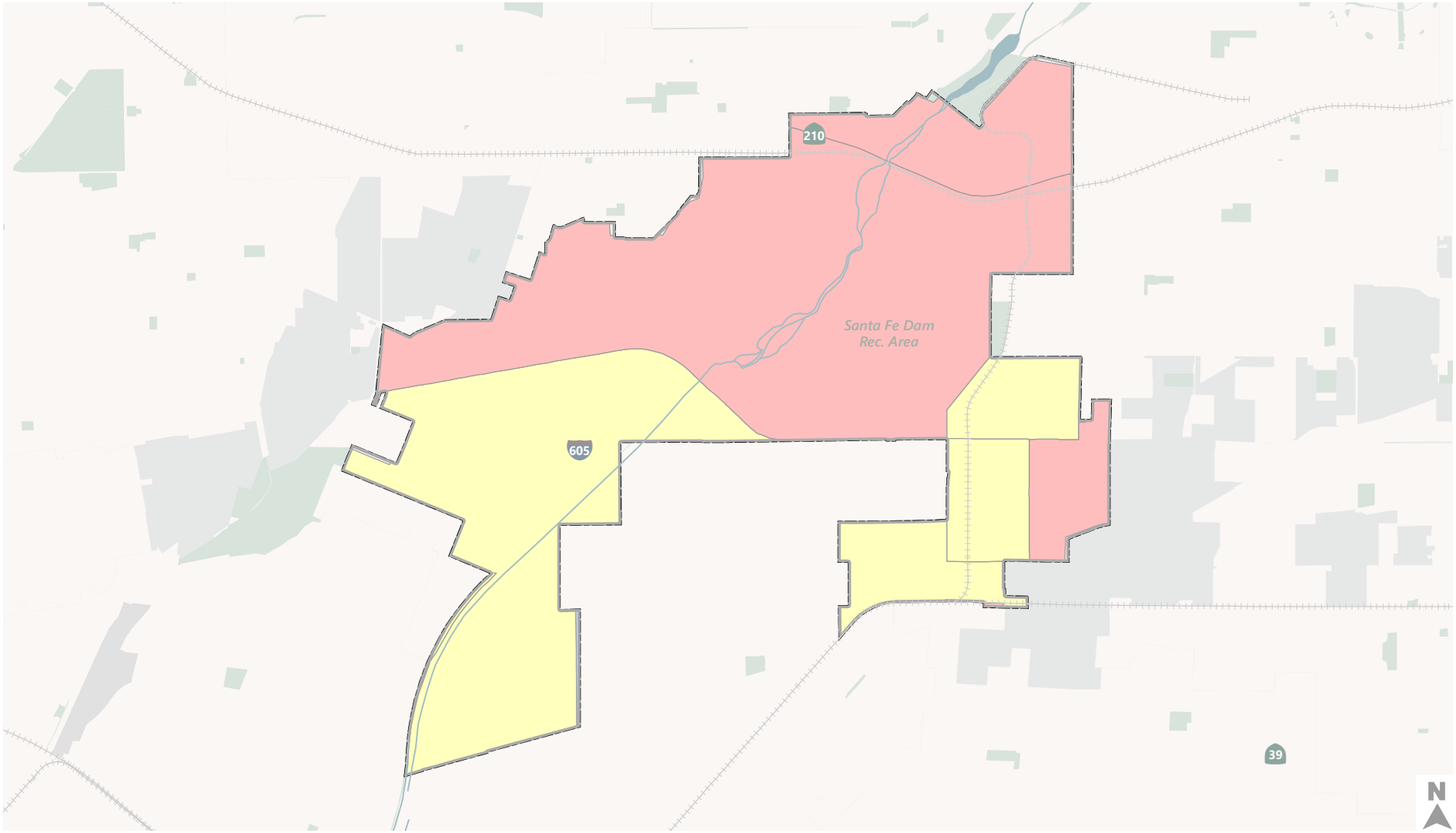
Less than 15% below regional average
0 to 15% below regional average
Higher than regional average
Irwindale

2023 Home-based Work VMT per Employee from 2016 RTP Model with Adopted Threshold
Irwindale



Less than 15% below regional average
0 to 15% below regional average
Higher than regional average
Irwindale

2023 VMT per Employee from 2020 RTP Model with Adopted Threshold Irwindale



Less than 15% below regional average
0 to 15% below regional average
Higher than regional average
Irwindale

2023 VMT per Employee from 2020 RTP Model with Alternative Threshold Irwindale

Item #19.E.

City of
IRWINDALE
AGENDA REPORT

Date: July 10, 2024

To: Honorable Mayor and Members of the City Council

From: Julian A. Miranda, City Manager

Issue: Award of Contract for On-Call As-Needed Geotechnical Engineering and Engineering Geology Services Associated with Remediation & Land Development of Mine Sites not subject to SMARA, and Review of Site-Specific Geotechnical Reports Prepared in the Context of Building Code Chapter 18 for Land Development Project

City Manager's Recommendation:

That the City Council approve and authorize the City Manager to execute an agreement with Geo-Logic Associates, Inc. for On-Call As-Needed Geotechnical Engineering and Engineering Geology Services Associated with Remediation & Land Development of Mine Sites not subject to SMARA, and Review of Site-Specific Geotechnical Reports Prepared in the Context of Building Code Chapter 18 for Land Development Project in the amount not-to-exceed $350,000.

Administrative Action:

Submitted / Prepared by:
Eddie Chan, Director of Engineering/Building Official

Reviewed by:

Adrian R. Guerra, City Attorney

Kambiz Borhani, Finance Director / City Treasurer

Approved by:

Julian A. Miranda, City Manager

Background and Analysis:

Current and former open-pit sand and gravel mines encompass about thirty-nine percent (39) of the land area in Irwindale. Some of these mine sites are subject to the provisions of the Surface Mining and Reclamation Act (SMARA) while others are not. The City's vision for the future of Irwindale includes: 1) As mining is completed, converting existing and former mine sites into developable property, and 2) Redeveloping other former mine sites that currently have only basic land uses for higher and more productive land uses. To achieve this vision, these development and redevelopment projects must properly consider the difficult soil and geology issues at these sites. This in turn requires careful geotechnical engineering and engineering geology practices by the mining companies and land developers, along with thorough City regulatory review, approval, and permitting processes.

The scope of services for this on-call as-needed consultant service includes, but is not limited to the following:

A. For remediation and land development of former mine sites not subject to SMARA:
   a. Provide geotechnical input to the CEQA and land use entitlement processes
   b. Review and comment on land use entitlements for future mining operations and prepare Conditions of Approval for such land use entitlements.
   c. Attend the City's Planning Commission and the City Council meetings on an as-needed basis.
   d. Review geotechnical reports and other documents submitted as part of applications for grading permits
   e. Monitor grading activities, including regular site visits
   f. Review quarterly and annual reports of grading
   g. Assist the Director of Engineering with enforcement of the various Irwindale mining Guidelines, Bulletins, and Building Code Appendix J
   h. Review final reports for completed grading projects including settlement monument data and requests to close grading permits
   i. Assist Los Angeles County Department of Public Works GMED with issues related to the enforcement of Irwindale Guidelines, Bulletins and Building Code provisions

B. For site-specific geotechnical reports prepared in the context of the requirements outlined in Building Code Chapter 18 at all current and former mine sites regardless of SMARA status:
   a. Review site-specific geotechnical reports prepared in the context of Building Code Chapter 18. These reports include those for proposed development as well as for mining-related structures at active mine sites.
   b. Assist the Los Angeles County Department of Public Works GMED division with issues related to enforcement of the Irwindale Guidelines and Bulletins, and with the Building and Safety Division regarding implementation of geotechnical design recommendations into building and infrastructure permits

Services will be provided only for projects being reimbursed by the applicant, or paid for by a deposit from the applicant and will not be used for any other purpose.

On April 9, 2024, staff issued an RFP for the On-Call As-Need Geotechnical Engineering and Engineering Geology Services Associated with Remediation & Land Development of Mine Sites not subject to SMARA, and Review of Site-Specific Geotechnical Reports Prepared in the Context of Building Code Chapter 18 for Land Development Project. The RFP was advertised in the San Gabriel Valley Tribune on April 15, 2024. The final submission date for proposals on PlanetBids was April 30, 2024, at 5:00 pm. The City received three (3) proposals from qualified firms with the following results:

CONSULTANT	RANKING
GLA	1
UES	2
SLR	3

Irwindale Municipal Code (IMC) 3.44.020. The Definition of "Services" exempts professional or other contractual services for which the procedure for procurement is specifically provided by law or approved city procedures or are in their nature unique and not subject to competition. The City has adopted a Purchasing Policy, which sets forth the procurement process for Professional Services. City staff have complied with Irwindale Purchasing Policy Section 5 Professional Consultant Selection requirements such that the contract is exempt from the centralized purchasing requirements of IMC Chapter 3.44, per IMC sections 3.44.060 and 3.44.080(D).

Staff evaluated each proposal received by ranking each consultant based on technical competency, project understanding, experience, staff qualifications, and availability. Geo-Logic Associates, Inc. (GLA) was determined to be the most qualified firm with extensive experience in Geotechnical engineering and Engineering Geology services provided to the City of Irwindale and by other public agencies. GLA's qualification is based on their ability to consistently meet reporting deadlines; provide complete, technically credible, and defensible reports; and complete work within the contracted budget.

Staff recommends the City Council approve and authorize the City Manager to execute an agreement with Geo-Logic Associates, Inc. for On-Call As-needed Geotechnical Engineering and Engineering Geology Services Associated with Remediation & Land Development of Mine Sites not subject to SMARA, and Review of Site-Specific Geotechnical Reports Prepared in the Context of Building Code Chapter 18 for Land Development Project. The fee schedule and agreement will be reviewed as part of the City's annual budget review process as necessary.

The attached contract agreement has been reviewed and approved as to form by the City Attorney's office.

Fiscal Impact:

None. Funding for this Agreement will be deducted from deposits provided to the City from the respective current and/or future applicant(s) of private development projects.

Attachments:

1. Attachment B – Contract Agreement with Geo-Logic Associates, Inc.

AGREEMENT FOR CONTRACT SERVICES

By and Between

CITY OF IRWINDALE

and

GEO-LOGIC ASSOCIATES, INC.

AGREEMENT FOR CONTRACT SERVICES BY AND BETWEEN THE CITY OF IRWINDALE AND GEO-LOGIC ASSOCIATES, INC.

This AGREEMENT FOR CONTRACT SERVICES (herein "Agreement") is made and entered into this 10th day of June, 2024 by and between the CITY OF IRWINDALE, a California Charter city and municipal corporation ("City") and Geo-Logic Associates, Inc., a California corporation, located at 2777 East Guasti Road, Suite 1 Ontario, California 91761 (herein "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 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 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, 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 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 Consultant's scope of work or bid which shall be incorporated herein by this reference as though fully set forth herein. In the event of any inconsistency between the terms of such proposal and this Agreement, the terms of this Agreement shall govern.

1.3 Compliance with Law.

Consultant shall keep itself informed concerning, and shall render all services hereunder in accordance with, all ordinances, resolutions, statutes, rules, and regulations of 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 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 Consultant discover any latent or unknown conditions, which will materially affect the performance of the services hereunder, Consultant shall immediately inform 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.

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 Further Responsibilities of Parties.

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

1.8 Additional Services.

City shall have the right at any time during the performance of the services, without invalidating this Agreement, to order extra work beyond that specified in the Scope of Services or make changes by altering, adding to or deducting from said work. No such extra work may be undertaken unless a written order is first given by the Contract Officer to 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 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.

1.9 Special Requirements.

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

ARTICLE 2. COMPENSATION AND METHOD OF PAYMENT

2.1 Contract Sum.

Subject to any limitations set forth in this Agreement, City agrees to pay 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 **Three Hundred and Fifty Thousand and 00/100 Dollars ($350,000.00)** (the "Contract Sum"), unless additional compensation is approved pursuant to Section 1.8.

2.2 Method of Compensation.

The method of compensation may include: (i) a lump sum payment upon completion; (ii) payment in accordance with specified tasks or the percentage of completion of the services, less contract retention; (iii) payment for time and materials based upon 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 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 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, 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 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 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 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 City, if 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 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 three (3) years from the date hereof, except as otherwise provided in the Schedule of Performance (Exhibit "D").

ARTICLE 4. COORDINATION OF WORK

4.1 Representatives and Personnel of 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:

Brian Constant	Principal Engineer, Geo-Logic Associates, Inc
(Name)	(Title)

It is expressly understood that the experience, knowledge, capability and reputation of the foregoing principals were a substantial inducement for City to enter into this Agreement. Therefore, the foregoing principals shall be responsible during the term of this Agreement for directing all activities of 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 Assistant City Manager]. It shall be Consultant's responsibility to assure that the Contract Officer is kept informed of the progress of the performance of the services and 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 City required hereunder to carry out the terms of this Agreement.

4.4 Independent Consultant.

Neither 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 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 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 Consultant or any surety of Consultant of any liability hereunder without the express consent of City.

ARTICLE 5. INSURANCE AND INDEMNIFICATION

5.1 Insurance Coverages.

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

(a) General Liability Insurance (Occurrence Form CG0001 or equivalent). A policy of comprehensive general liability insurance written on a per occurrence basis for bodily injury, personal injury and property damage. The policy of insurance shall be in an amount not less than $1,000,000.00 per occurrence or if a general aggregate limit is used, then the general aggregate limit shall be twice the occurrence limit.

(b) Worker's Compensation Insurance. A policy of worker's compensation insurance in such amount as will fully comply with the laws of the State of California and which shall indemnify, insure and provide legal defense for Consultant against any loss, claim or damage arising from any injuries or occupational diseases occurring to any worker employed by or any persons retained by Consultant in the course of carrying out the work or services contemplated in this Agreement.

(c) Automotive Insurance (Form CA 0001 (Ed 1/87) including "any auto" and endorsement CA 0025 or equivalent). A policy of comprehensive automobile liability insurance written on a per occurrence for bodily injury and property damage in an amount not less than $1,000,000. Said policy shall include coverage for owned, non-owned, leased, hired cars and any automobile.

(d) Professional Liability. Professional liability insurance appropriate to Consultant's profession. This coverage may be written on a "claims made" basis, and must include

coverage for contractual liability. The professional liability insurance required by this Agreement must be endorsed to be applicable to claims based upon, arising out of or related to services performed under this Agreement. The insurance must be maintained for at least five (5) consecutive years following the completion of Consultant's services or the termination of this Agreement. During this additional 5-year period, Consultant shall annually and upon request of City submit written evidence of this continuous coverage.

(e) Subcontractors. Consultant shall include all subcontractors as insureds under its policies or shall furnish separate certificates and certified endorsements for each subcontractor. All coverages for subcontractors shall include all of the requirements stated herein.

(f) Additional Insurance. Policies of such other insurance, as may be required in the Special Requirements in Exhibit "B".

(g) Broader Coverages and Higher Limits. Notwithstanding anything else herein to the contrary, if Consultant maintains broader coverages and/or higher limits than the minimums shown above, City requires and shall be entitled to the broader coverages and/or higher limits maintained by Consultant.

5.2 General Insurance Requirements.

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

All of said policies of insurance shall provide that said insurance may not be amended or cancelled by the insurer or any Party hereto without providing thirty (30) days prior written notice by certified mail return receipt requested to City. In the event any of said policies of insurance are cancelled, Consultant shall, prior to the cancellation date, submit new evidence of insurance in conformance with Section 5.1 to the Contract Officer.

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

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

CANCELLATION:

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATED THEREOF, THE ISSUING COMPANY SHALL MAIL THIRTY (30)-DAY ADVANCE WRITTEN NOTICE TO CERTIFICATE HOLDER NAMED HEREIN.

[to be initialed] _____
Consultant's Initials

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

Any deductibles or self-insured retentions must be declared to and approved by City. At the option of City, either the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects City or its respective elected or appointed officers, officials, employees and volunteers or Consultant shall procure a bond guaranteeing payment of losses and related investigations, claim administration, defense expenses and claims. Consultant agrees that the requirement to provide insurance shall not be construed as limiting in any way the extent to which Consultant may be held responsible for the payment of damages to any persons or property resulting from Consultant's activities or the activities of any person or persons for which Consultant is otherwise responsible nor shall it limit Consultant's indemnification liabilities as provided in Section 5.3.

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

5.3 Indemnification.

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

of or failure to perform any term, provision, covenant or condition of this Agreement, and in connection therewith:

(a) Consultant will defend any action or actions filed in connection with any of said claims or liabilities and will pay all costs and expenses, including legal costs and attorneys' fees incurred in connection therewith;

(b) Consultant will promptly pay any judgment rendered against City, its officers, agents or employees for any such claims or liabilities arising out of or in connection with the negligent performance of or failure to perform such work, operations or activities of Consultant hereunder; and Consultant agrees to save and hold City, its officers, agents, and employees harmless therefrom;

(c) In the event City, its officers, agents or employees is made a party to any action or proceeding filed or prosecuted against Consultant for such damages or other claims arising out of or in connection with the negligent performance of or failure to perform the work, operation or activities of Consultant hereunder, Consultant agrees to pay to City, its officers, agents or employees, any and all costs and expenses incurred by City, its officers, agents or employees in such action or proceeding, including but not limited to, legal costs and attorneys' fees.

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

5.4 Sufficiency of Insurer.

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

ARTICLE 6. RECORDS, REPORTS, AND RELEASE OF INFORMATION

6.1 Records.

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 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, Consultant shall fully cooperate with 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 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 Consultant will be at 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 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, City shall not have any obligation or duty to continue compensating Consultant for any work performed after the date of default. Instead, 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, City shall hold all invoices and shall, when the default is cured, proceed with payment on the invoices. In the alternative, 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, City may take necessary steps to terminate this Agreement under this Article. Any failure on the part of City to give notice of Consultant's default shall not be deemed to result in a waiver of 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 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. 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 Consultant, the period of notice may be such shorter time as may be determined by the Contract Officer. In addition, 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 City, the period of notice may be such shorter time as 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 Consultant has initiated termination, 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 Consultant has initiated termination, 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 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 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 City shall use reasonable efforts to mitigate such damages), and City may withhold any payments to Consultant for the purpose of set-off or partial payment of the amounts owed 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 City shall be personally liable to Consultant, or any successor in interest, in the event of any default or breach by City or for any amount which may become due to 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 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. 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. § 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 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 Ave, Irwindale, CA 91706 and in the case of 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 and Electronic Signatures.

This Agreement may be executed in two or more counterparts, each of which when so executed shall be deemed to be an original and all of which when taken together shall constitute one and the same instrument. The words "execution," "signed," "signature," and words of like import in this Agreement or in any other certificate, agreement or document related to this Agreement, shall include images of manually executed signatures transmitted by facsimile or other electronic format (including, without limitation, "pdf", "tif" or "jpg") and other electronic signatures (including, without limitation, DocuSign and AdobeSign). The use of electronic signatures and electronic records (including, without limitation, any contract or other record created, generated, sent, communicated, received, or stored by electronic means) shall be of the same legal effect, validity and enforceability as a manually executed signature or use of a paper-based record-keeping system to the fullest extent permitted by applicable law, including the Federal Electronic Signatures in Global and National Commerce Act, the California Uniform Electronic Transactions Act and any other applicable law, including, without limitation, any state law based on the Uniform Electronic Transactions Act or the Uniform Commercial Code.

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 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 "non-interests" 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.

[SIGNATURES ON FOLLOWING PAGE]

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

CITY:

CITY 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

CONSULTANT:

GEO-LOGIC ASSOCIATES, INC., a California corporation

By:_____
Name:
Title:

By:_____
Name:
Title:
Address: 2777 East Guasti Road, Suite 1
Ontario, California, 91761

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 _____, 2024 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

- ☐ INDIVIDUAL
- ☐ CORPORATE OFFICER

_____
TITLE(S)

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

_____

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

_____

_____

DESCRIPTION OF ATTACHED DOCUMENT

_____
TITLE OR TYPE OF DOCUMENT

_____
NUMBER OF PAGES

_____
DATE OF DOCUMENT

_____
SIGNER(S) OTHER THAN NAMED ABOVE

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

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

STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

On _____, 2024 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

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- ☐ INDIVIDUAL
- ☐ CORPORATE OFFICER

_____
TITLE(S)

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

_____

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

_____

_____

DESCRIPTION OF ATTACHED DOCUMENT

_____
TITLE OR TYPE OF DOCUMENT

_____
NUMBER OF PAGES

_____
DATE OF DOCUMENT

_____
SIGNER(S) OTHER THAN NAMED ABOVE

EXHIBIT "A"
SCOPE OF SERVICES

I. Consultant will perform the following Services:

A. For remediation and land development of former mine sites not subject to SMARA:

i. Provide geotechnical input to the CEQA and land use entitlement processes.

ii. Review and comment on land use entitlements for future mining operations and prepare Conditions of Approval for such land use entitlements.

iii. Attend the City's Planning Commission and the City Council meetings on an as-needed basis.

iv. Review geotechnical reports and other documents submitted as part of applications for grading permits.

v. Monitor grading activities, including regular site visits.

vi. Review quarterly and annual reports of grading.

vii. Assist the Director of Engineering with enforcement of the various Irwindale mining Guidelines, Bulletins, and Building Code Appendix J.

viii. Review final reports for completed grading projects including settlement monument data and requests to close grading permits.

ix. Assist Los Angeles County Department of Public Works GMED with issues related to the enforcement of Irwindale Guidelines, Bulletins and Building Code provision.s

B. For site-specific geotechnical reports prepared in the context of the requirements outlined in Building Code Chapter 18 at all current and former mine sites regardless of SMARA status:

i. Review site-specific geotechnical reports prepared in the context of Building Code Chapter 18. These reports include those for proposed development as well as for mining-related structures at active mine sites.

ii. Assist the Los Angeles County Department of Public Works GMED division with issues related to enforcement of the Irwindale Guidelines and Bulletins, and with the Building and Safety Division regarding implementation of geotechnical design recommendations into building and infrastructure permits.

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

A. Reports as determined by City.

III. All work product is subject to review and acceptance by City, and must be revised by Consultant without additional charge to City until found satisfactory and accepted by City.

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

A. Brian Constant, PE, GE, as Principal in Charge and lead Technical Reviewer

B. Mark Vincent, PG, CEG, in charge of office operations

C. Luis Mariscal, PE, in charge of field operations

D. Jason Hefner, PE, additional office support

E. Neven Matasovic, PHD, PE, GE., additional support for technical review

EXHIBIT "B"
SPECIAL REQUIREMENTS
(Superseding Contract Boilerplate)

[Not Applicable]

EXHIBIT "C"
SCHEDULE OF COMPENSATION

I. Consultant shall perform the Services at the billing rates for Consultant's personnel, attached hereto as Exhibit "C-1".

II. On-Call Services:

Consultant will assist the City in performing on-call private development review and plan check services. Services will be provided only for projects being reimbursed by the applicant, or paid for by a deposit from the applicant and will not be used for any other purpose. Mr. John M. Hower is hereby designated as being the principal and representative of Consultant authorized to act in his behalf with respect to the work and services specified herein and make all decisions in connection therewith.

For the services rendered pursuant to this Agreement, GEO-LOGIC ASSOCIATES, INC. shall be compensated at a not-to-exceed total Contract Sum of Three Hundred and Fifty Thousand and 00/100 Dollars ($350,000.00) as provided in Section 2.1 of this Agreement. The fee schedule and Agreement will be reviewed as part of the City's annual budget review process as necessary.

The Contract Sum is inclusive of all costs and expenses, unless pre-approved by the City in writing. Payments for services shall be made within forty-five (45) days of receipt of GEO-LOGIC ASSOCIATES' invoice.

III. City will compensate Consultant for the Services performed upon submission of a valid invoice. Each invoice is to include:

A. Line items for all personnel describing 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 total compensation for the Services shall not exceed $350,000 as provided in Section 2.1 of this Agreement.

EXHIBIT C-1
CONSULTANT'S BILLING RATES

Geo-Logic ASSOCIATES

2024 FEE SCHEDULE

PROFESSIONAL STAFF

Staff Professional I	$138.00/Hour
Staff Professional II	153.00/Hour
Staff Professional III	168.00/Hour
Project Professional I	184.00/Hour
Project Professional II	200.00/Hour
Project Professional III	216.00/Hour
Senior Professional I	224.00/Hour
Senior Professional II	239.00/Hour
Senior Professional III	255.00/Hour
Principal Professional I	270.00/Hour
Principal Professional II	289.00/Hour
Principal Professional III	308.00/Hour
Court Appearance (Expert Witness, Deposition, etc.; four-hour minimum)	2 x HourlyRate

FIELD/LABORATORY STAFF

Technician I	97.00/Hour
Technician II	117.00/Hour
Technician III (or Minimum Prevailing Wage)	132.00/Hour
Technician IV	146.00/Hour
Laboratory Manager	176.00/Hour
Principal Technician	197.00/Hour
Managing Technician	211.00/Hour

CADD/GIS

CADD/GIS/Database Manager I	117.00/Hour
CADD/GIS/Database Manager II	138.00/Hour
CADD Designer	153.00/Hour
GIS Specialist	153.00/Hour

SUPPORT STAFF

Administrative Assistant I	117.00/Hour
Administrative Assistant II	132.00/Hour
Administrative Assistant III	135.00/Hour
Technical Editor	109.00/Hour
Senior Technical Editor	153.00/Hour

*Overtime Premium is 35% of PERSONNEL CHARGE

EQUIPMENT CHARGES

BAT Permeameter	200.00/Day
Compaction Testing Equipment & Supplies	50.00/Day
Peel & Shear Strength Apparatus (FML Seams)	900.00/Month
Portable Laboratory (8' x 32' trailer) with equipment	1,200/Month
Portable Laboratory (mobilization / demobilization)	1,500.00
ReMi/Refraction Seismograph	600.00/Day
Sealed Single Ring Infiltrometer (SSRI)	200.00/Day or 750.00/Month
Sealed Double Ring Infiltrometer (SDRI)	Call for Quote
Slope Inclinometer	250.00/Day
Unmanned Aerial Vehicle (Drone) Reconnaissance	250.00/Day

Schedule 2024 SoCal — Effective Through 12/31/2024

Geo-Logic ASSOCIATES

EXPENSES

Vehicle Use for Field Services	17.00/Hour or 500.00/week
Soil Sampling Equipment & Drilling Supplies	7.00/Hour
Groundwater Sampling Equipment and Supplies	17.00/Hour
Per Diem	Lesser of (Cost +15%) or (Local Government Rate)
Outside Services (Consultants, Surveys, Chemical lab Tests, etc.)	Cost + 15%
Reimbursables (Maps, Photos, Permits, Expendable Supplies, etc.)	Cost + 15%
Outside Equipment (Drill Rig, Backhoe, Monitoring Equipment, etc.)	Cost + 15%

PERMITS, FEES AND BONDS

The costs of all permits, fees, and performance bonds required by government agencies are to be paid by the Client, unless stated otherwise in an accompanying proposal.

INSURANCE

Geo-Logic Associates, Inc. carries workers' compensation, comprehensive general liability and automobile with policy limits normally acceptable to most clients. The cost for this insurance is covered by the fees listed in this schedule. Cost of any special insurance required by the Client, including increases in policy limits, adding additional insured parties and waivers of subrogation, are charged at cost plus 15%. Unless otherwise stated, such charges are in addition to the estimated or maximum charges stated in any accompanying proposal.

TERMS

Payment is due upon presentation of invoice and is past due thirty (30) days from invoice date. Past due accounts are subject to a finance charge of one and one-half percent (1-1/2%) per month, or the maximum rate allowed by law.

PROPOSAL PERIOD

Unless otherwise stated, a proposal accompanying this schedule is effective for sixty (60) days. If authorization to proceed is not received within this period, Geo-Logic Associates, Inc. reserves the right to renegotiate the fee.

EXHIBIT "D"
SCHEDULE OF PERFORMANCE

I. Consultant shall perform all Services timely in accordance with the schedule to be developed by Consultant and subject to the written approval of the Contract Officer and the City Attorney's office.

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 three (3) years. At the City's sole election, the term of this Agreement may be extended by one (1) additional twelve-month (12) period following written notice issued by the City Engineer. The Contract Officer may approve extensions for performance of the services in accordance with Section 3.2.

Item #19.F.

City of
IRWINDALE
AGENDA REPORT

Date: July 10, 2024

To: Honorable Mayor and Members of the City Council

From: Julian A. Miranda, City Manager

Issue: Award of Contract for Street Light Relocations on Irwindale Road

City Manager's Recommendation:

That the City Council approve and authorize the City Manager to enter into a public works maintenance contract agreement to relocate the street lights on Irwindale Road.

Administrative Action:

Submitted/Prepared by:
Elizabeth Rodriguez, Public Services Director

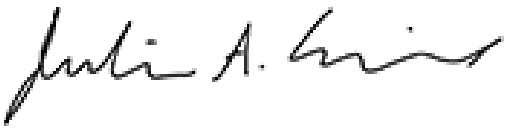
Reviewed by:

Adrian R. Guerra, City Attorney

Kambiz Borhani, Finance Director / City Treasurer

Approved by:

Julian A. Miranda, City Manager



Background and Analysis:

As part of the Metro Gold Line Foothill Expansion Project from Pasadena to Azusa and the construction requirements for the Irwindale Gold Line Station, Foothill Transit Constructors were required to install

street lights along the west side of Irwindale Road, which provides a path of travel to Irwindale Avenue. The installation of these street lights were based on the approved construction plans which called for the light poles to be installed on the easterly portion of the sidewalk, closest to the curb. The construction was completed at the end of September 2015 and passenger service for the Irwindale Gold Line Station began on March 5, 2016. Since the operation of the Irwindale Gold Line, these street lights have been hit and knocked down by unknown vehicles numerous times. The damage to these street light poles was so significant that completely new poles were required to be ordered. These new poles and repairs have been costly to the City. Ordering, installing, and making repairs to the electrical is a time-consuming process, and it will take a few months for the City to even receive the new poles. As such, staff recommends these poles be relocated to the westerly portion of the sidewalk to provide more space and protection from further damage.

The Public Works Services Department issued a Request for Quotations (RFQ) for Street Light Relocations on Irwindale Road on Wednesday, May 15, 2024. A notice was posted at City Hall, the Library, at the Post Office, and in the San Gabriel Valley Tribune on May 17, 2024. The RFQ was uploaded to both the City's website and PlanetBids. Both sites distributed the Notice of RFQ to vendors registered on each website. The RFQ required companies to submit a letter of introduction, how they would provide scope of services, past record of performance, capacity of firm, list of licenses, description of their quality assurance/control program, ability to meet insurance and bonding requirements, and their proposed project budget and pricing.

The Public Services Department accepted questions until Tuesday, June 4, 2024, at 5 p.m. There was one addendum issued on Thursday, June 6, 2024.

RFQs were due on Thursday, June 13, 2024, at 5:00 p.m. in person or via PlanetBids. There were a total five (5) bids submitted. The RFQs were evaluated based on experience, capacity of firm, and pricing. The results of the RFQ evaluations are outlined below.

	Contractors	**Bid (Lump Sum)**
1	Metrocell Construction, Inc.	$45,168
2	California Professional Engineering, Inc.	$95,200
3	Crosstown Electrical & Data, Inc.	$98,924
4	MC Electric	$111,300
5	Skervitek Electric, Inc.	$349,071

Metrocell Construction was deemed the most qualified and experienced contractor for this project. Staff reached out to Metrocell Construction's references, and they received great reviews. Therefore, staff recommends the award of contract to Metrocell Construction.

Fiscal Impact:

Sufficient funds are available in the Fiscal Year 2024/2025 Budget under Public Works Contract Account Number 01-57-570-42360-0000.

Attachments:

1. 07-01-2024 Award of Contract for Street Lights Relocations for Irwindale Road - CONTRACT

CITY OF IRWINDALE
PUBLIC WORKS AGREEMENT FOR
STREET LIGHT RELOCATIONS ON IRWINDALE ROAD; L-320

PUBLIC WORKS CONSTRUCTION CONTRACT AGREEMENT BETWEEN THE CITY OF IRWINDALE AND METROCELL CONSTRUCTION, INC.

THIS PUBLIC WORKS AGREEMENT ("**Agreement**") is made and entered into this 10TH day of July, 2024, by and between the City of Irwindale, a California charter city ("**City**") and Metrocell Construction, Inc., a California corporation ("**Contractor**"). City and Contractor may be referred to, sometimes individually or collectively, as "Party" or "Parties."

RECITALS

A. The City desires to retain Contractor, on an independent contractor basis, to perform services for public works, as more particularly described below.

B. Contractor represents that it is fully qualified to perform such services by virtue of its experience and the training, education and expertise of its principals and employees.

C. Pursuant to the City of Irwindale Municipal Code and California state law, City has authority to enter into and execute this Agreement.

D. The Parties desire to formalize the selection of Contractor for performance of the services and desire that the terms of that performance be as particularly defined and described herein.

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

AGREEMENT

ARTICLE 1. CONTRACTOR SERVICES

1.1 Scope of Work.

The Contractor shall perform all of the work, furnish all labor, materials, equipment, tools, utility services, and transportation, and comply with all of the specifications and requirements in the "Scope of Services" attached hereto as Exhibit "A" and incorporated herein by this reference. The Scope of Services shall include Contractor's Proposal or Bid Documents submitted for the project entitled Street Light Relocations on Irwindale Road ("**Project**"). All such work shall be performed in a good and workmanlike manner, as reasonably determined by the City, and shall be performed in compliance with all local, state, and federal laws and regulations. As used herein, "**Proposal**" or "**Bid Documents**" refers to all of the documents included in the solicitation of bids for the Project, including but not limited to, the Invitation for Bids, Instructions to Bidders, Bid or

Bid Proposal, Contract Documents, Special Provisions, Technical Provisions, Construction Plans, Standard Plans, Drawings, Reference Specifications, all applicable permit requirements, any addenda, and any other documents included, referenced, or incorporated therein. The Bid Documents are incorporated into this Agreement and made part hereof. In the event of any conflict between the terms of the Bid Documents and this Agreement, the terms of this Agreement shall govern.

1.2 Incorporation of Green Book.

The provisions of the 2021 Edition of the Standard Specifications for Public Works Construction, as updated by errata, ("Greenbook") are incorporated herein, except as explicitly modified by the Bid Documents. In the event of any conflict between the provisions of the Greenbook and this Agreement, the terms of this Agreement shall govern.

1.3 Compliance with Labor and Wage Laws.

(a) Public Work. The Parties acknowledge that the work to be performed under this Agreement is a "public work" as defined in Labor Code Section 1720 and that this Agreement is therefore subject to the requirements of Division 2, Part 7, Chapter 1 (commencing with Section 1720) of the California Labor Code relating to public works contracts and the rules and regulations established by the Department of Industrial Relations ("**DIR**") implementing such statutes. The work performed under this Agreement is subject to compliance monitoring and enforcement by the DIR. Contractor shall post job site notices, as prescribed by regulation.

(b) Registration with DIR. Pursuant to Labor Code section 1771.1, Contractor and all subcontractors must be registered with, and pay an annual fee to, the DIR prior to and during the performance of any work under this Agreement.

(c) Prevailing Wages. Contractor shall pay prevailing wages to the extent required by Labor Code Section 1771. Pursuant to Labor Code Section 1773.2, copies of the prevailing rate of per diem wages are on file at City Hall and will be made available to any interested party on request. By initiating any work under this Agreement, Contractor acknowledges receipt of a copy of the DIR determination of the prevailing rate of per diem wages, and Contractor shall post a copy of the same at each job site where work is performed under this Agreement. If this Agreement is subject to the payment of federal prevailing wages under the Davis-Bacon Act (40 U.S.C. § 3141 *et seq.*), then Contractor shall pay the higher of either the state for federal prevailing wage applicable to each laborer.

(d) Penalty for Failure to Pay Prevailing Wages. Contractor shall comply with and be bound by the provisions of Labor Code Sections 1774 and 1775 concerning the payment of prevailing rates of wages to workers and the penalties for failure to pay prevailing wages. The Contractor shall, as a penalty to the City, forfeit two hundred dollars ($200) for each calendar day, or portion thereof, for each worker paid less than the prevailing rates as determined by the DIR for the work or craft in which the worker is employed for any public work done pursuant to this Agreement by Contractor or by any subcontractor.

(e) Payroll Records. Contractor shall comply with and be bound by the provisions of Labor Code Section 1776, which requires Contractor and each subcontractor to: keep

accurate payroll records and verify such records in writing under penalty of perjury, as specified in Section 1776; certify and make such payroll records available for inspection as provided by Section 1776; and inform the City of the location of the records.

(f) Apprentices. Contractor shall comply with and be bound by the provisions of Labor Code Sections 1777.5, 1777.6, and 1777.7 and California Code of Regulations Title 8, Section 200 *et seq.* concerning the employment of apprentices on public works projects. Contractor shall be responsible for compliance with these aforementioned Sections for all apprenticeable occupations. Prior to commencing work under this Agreement, Contractor shall provide City with a copy of the information submitted to any applicable apprenticeship program. Within sixty (60) days after concluding work pursuant to this Agreement, Contractor and each of its subcontractors shall submit to the City a verified statement of the journeyman and apprentice hours performed under this Agreement.

(g) Eight-Hour Work Day. Contractor acknowledges that eight (8) hours labor constitutes a legal day's work. Contractor shall comply with and be bound by Labor Code Section 1810.

(h) Penalties for Excess Hours. Contractor shall comply with and be bound by the provisions of Labor Code Section 1813 concerning penalties for workers who work excess hours. The Contractor shall, as a penalty to the City, forfeit twenty-five dollars ($25) for each worker employed in the performance of this Agreement by the Contractor or by any subcontractor for each calendar day during which such worker is required or permitted to work more than eight (8) hours in any one calendar day and forty (40) hours in any one calendar week in violation of the provisions of Division 2, Part 7, Chapter 1, Article 3 of the Labor Code. Pursuant to Labor Code section 1815, work performed by employees of Contractor in excess of eight (8) hours per day, and forty (40) hours during any one week shall be permitted upon public work upon compensation for all hours worked in excess of 8 hours per day at not less than one and one-half (1½) times the basic rate of pay.

(i) Workers' Compensation. California Labor Code Sections 1860 and 3700 provide that every employer will be required to secure the payment of compensation to its employees if it has employees. In accordance with the provisions of California Labor Code Section 1861, Contractor certifies as follows:

> "I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this contract."

(j) Contractor's Responsibility for Subcontractors. For every subcontractor who will perform work under this Agreement, Contractor shall be responsible for such subcontractor's compliance with Division 2, Part 7, Chapter 1 (commencing with Section 1720) of the California Labor Code, and shall make such compliance a requirement in any contract with any subcontractor for work under this Agreement. Contractor shall be required to take all actions necessary to enforce such contractual provisions and ensure subcontractor's compliance, including without limitation, conducting a review of the certified payroll records of the subcontractor on a

periodic basis or upon becoming aware of the failure of the subcontractor to pay his or her workers the specified prevailing rate of wages. Contractor shall diligently take corrective action to halt or rectify any such failure by any subcontractor.

1.4 Licenses, Permits, Fees and Assessments.

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

1.5 Familiarity with Work.

By executing this Agreement, Contractor warrants that Contractor (i) has thoroughly investigated and considered the scope of work to be performed, (ii) has carefully considered how the services should be performed, and (iii) fully understands the facilities, difficulties and restrictions attending performance of the services under this Agreement. If the services involve work upon any site, Contractor warrants that Contractor has or will investigate the site and is or will be fully acquainted with the conditions there existing, prior to commencement of services hereunder.

1.6 Discovery of Unknown Conditions.

(a) Pursuant to Public Contract Code section 7104, Contractor shall promptly, and before the following conditions are disturbed, notify the City, in writing, of any: (i) material Contractor believes may be hazardous waste as defined in Section 25117 of the Health & Safety Code required to be removed to a Class I, II, or III disposal site in accordance with existing law; (ii) subsurface or latent physical conditions at the site, materially different from those indicated by information about the site made available to bidders prior to the deadline for submitting bids on the project; or (iii) unknown physical conditions at the site of any unusual nature, different from those ordinarily encountered and generally recognized as inherent in work of the character provided for in this Agreement.

(b) City shall promptly investigate the conditions, and if it finds that the conditions do materially differ, or do involve hazardous waste, and cause a decrease or increase in Contractor's cost of, or the time required for, performance of any part of the work, shall issue a change order in accordance with this Agreement.

(c) In the event that a dispute arises between City and Contractor whether the conditions materially differ, or involve hazardous waste, or cause a decrease or increase in Contractor's cost of, or time required for, performance of any part of the work, Contractor shall not be excused from any scheduled completion date set but shall proceed with all work to be performed under the Agreement. Contractor shall retain any and all rights provided either by

contract or by law, which pertain to the resolution of disputes and protests between the contracting parties.

1.7 Unidentified Utilities.

To the extent required by Government Code section 4215, City will compensate Contractor for the cost of locating, repairing damage not due to the failure of Contractor to exercise reasonable care, and removing or relocating utility facilities not identified by City in the Bid Documents with reasonable accuracy, and for equipment on the project necessarily idled during such work. Nothing herein shall be deemed to require City to indicate the presence of existing service laterals or appurtenances whenever the presence of such utilities on the project site can be inferred from the presence of other visible facilities, such as buildings, meters, and junction boxes, on or adjacent to the site of the construction; provided, however, nothing herein shall relieve City from identifying main or trunklines in the plans and specifications. If Contractor, while performing the work, discovers utility facilities not identified by City in the plans or specifications, Contractor shall immediately notify City and the utility in writing. This Agreement is subject to Government Code sections 4126 through 4216.9. Contractor must notify utilities and obtain an identification number before excavation or be subject to liability for damages to subsurface installations.

1.8 Trench Excavation.

Pursuant to Labor Code section 6705, if this Agreement is for more than $25,000 and requires the excavation of any trench or trenches five feet or more in depth, Contractor shall submit, in advance of such excavation, a detailed plan showing the design of shoring, bracing, sloping, or other provisions to be made for worker protection from the hazard of caving ground during the excavation of such trench or trenches. The plan shall be reviewed and accepted by the City, or a registered civil or structural engineer employed by the City to whom authority has been delegated, prior to the excavation. If the plan varies from the shoring system standards, the plan shall be prepared by a registered civil or structural engineer. This section shall not be deemed to allow the use of a shoring, sloping, or protective system less effective than that required by the Construction Safety Orders. This subsection shall not be construed to impose tort liability on the City or any of its employees. Full compensation for sheeting, shoring, bracing, sloping, and all other provisions required for worker protection shall be considered as included in the contract price shown in the appropriate Bid Item, and no additional compensation will be allowed therefor.

1.9 Protection and Care of Work and Materials.

The Contractor shall adopt reasonable methods, including providing and maintaining storage facilities, during the life of the Agreement to furnish continuous protection to the work, and the equipment, materials, papers, documents, plans, studies and/or other components thereof to prevent losses or damages, and shall be responsible for all such damages, to persons or property, until acceptance of the work by City, except such losses or damages as caused by City's own negligence. Stored materials shall be reasonably accessible for inspection. Contractor shall not, without City's consent, assign, sell, mortgage, hypothecate, or remove equipment or materials which have been installed or delivered and which may be necessary for the completion of the work.

1.10 Warranty.

Contractor warrants all work under the Agreement (which for purposes of this Section shall be deemed to include unauthorized work which has not been removed and any non-conforming materials incorporated into the work) to be of good quality and free from any defective or faulty material and workmanship. Contractor agrees that for a period of one year (or the period of time specified elsewhere in the Agreement or in any guarantee or warranty provided by any manufacturer or supplier of equipment or materials incorporated into the work, whichever is later) after the date of final acceptance, Contractor shall within ten (10) days after being notified in writing by the City of any defect in the work or non-conformance of the work to the Agreement, commence and prosecute with due diligence all work necessary to fulfill the terms of the warranty at its sole cost and expense. Contractor shall act as soon as requested by the City in response to an emergency. In addition, Contractor shall, at its sole cost and expense, repair, remove and replace any portions of the work (or work of other contractors) damaged by its defective work or which becomes damaged in the course of repairing or replacing defective work. For any work so corrected, Contractor's obligation hereunder to correct defective work shall be reinstated for an additional one year period, commencing with the date of acceptance of such corrected work. Contractor shall perform such tests as the City may require to verify that any corrective actions, including, without limitation, redesign, repairs, and replacements comply with the requirements of the Agreement. All costs associated with such corrective actions and testing, including the removal, replacement, and reinstitution of equipment and materials necessary to gain access, shall be the sole responsibility of the Contractor. All warranties and guarantees of subcontractors, suppliers and manufacturers with respect to any portion of the work, whether express or implied, are deemed to be obtained by Contractor for the benefit of the City, regardless of whether or not such warranties and guarantees have been transferred or assigned to the City by separate agreement and Contractor agrees to enforce such warranties and guarantees, if necessary, on behalf of the City. In the event that Contractor fails to perform its obligations under this Section, or under any other warranty or guaranty under this Agreement, to the reasonable satisfaction of the City, the City shall have the right to correct and replace any defective or non-conforming work and any work damaged by such work or the replacement or correction thereof at Contractor's sole expense. Contractor shall be obligated to fully reimburse the City for any expenses incurred hereunder upon demand.

1.11 Additional Work and Change Orders.

(a) City shall have the right at any time during the performance of the services, without invalidating this Agreement, to order extra work beyond that specified in the Scope of Work or make changes by altering, adding to or deducting from said work. No such extra work may be undertaken unless a written change order is first given by the City's Director of Public Works Engineering or City Engineer, or either of their designees, to the Contractor, incorporating therein any adjustment in (i) the Contract Sum, and/or (ii) the time to perform this Agreement, which said adjustments are subject to the written approval of the Contractor ("**Change Order**"). All Change Orders must be signed by the Contractor and City's Director of Public Works Engineering or City Engineer, or either of their designees, prior to commencing the extra work thereunder.

(b) Any increase in compensation of up to twenty percent (20%) of the Contract Sum or any increase in the time to perform of up to one hundred eighty (180) working days and

which are not detrimental to the Work or to the interest of the City, may be approved by the City's Director of Public Works Engineering or City Engineer, or either of their designees. Any greater increases, taken either separately or cumulatively, must be approved by the City Council.

(c) Any adjustment in the Contract Sum for a Change Order must be in accordance with the rates set forth in the Contractor's Bid. If the rates in the Contractor's Bid do not cover the type of work in the Change Order, the cost of such work shall not exceed an amount agreed upon in writing and signed by Contractor and City's Director of Public Works Engineering or City Engineer, or either of their designees. If the cost of the Change Order cannot be agreed upon, the City will pay for actual work of the Change Order completed, to the satisfaction of the City, as follows:

(i) Labor: The cost of labor shall be the actual cost for wages of workers and subcontractors performing the work for the Change Order at the time such work is done. The use of labor classifications that would increase the cost of such work shall not be permitted.

(ii) Materials and Equipment: The cost of materials and equipment shall be at cost to Contractor or lowest current price which such materials and equipment are reasonably available at the time the work is done, whichever is lower.

(iii) If the cost of the extra work cannot be agreed upon, the Contractor must provide a daily report that includes invoices for labor, materials and equipment costs for the work under the Change Order. The daily report must include: list of names of workers, classifications, and hours worked; description and list of quantities of materials used; type of equipment, size, identification number, and hours of operation, including loading and transportation, if applicable; description of other City authorized services and expenditures in such detail as the City may require. Failure to submit a daily report by the close of the next working day may, at the City's sole and absolute discretion, waive the Contractor's rights for that day.

(d) It is expressly understood by Contractor that the provisions of this Section shall not apply to services specifically set forth in the Scope of Work. Contractor hereby acknowledges that it accepts the risk that the services to be provided pursuant to the Scope of Work may be more costly or time consuming than Contractor anticipates and that Contractor shall not be entitled to additional compensation therefor. City may in its sole and absolute discretion have similar work done by other contractors.

(e) No claim for an increase in the Contract Sum or time for performance shall be valid unless the procedures established in this Section are followed.

1.12 Special Requirements.

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

ARTICLE 2. COMPENSATION AND METHOD OF PAYMENT.

2.1 Contract Sum.

Subject to any limitations set forth in this Agreement, City agrees to pay Contractor the amounts set forth in the "Schedule of Compensation," attached hereto as Exhibit C and incorporated herein by this reference. Subject to any additions or deductions that may be made by change order or amendment, and any penalties or damages that may be assessed against Contractor, Contractor shall receive total compensation, including reimbursement of Contractor's expenses, of an amount not to exceed Forty-five Thousand one-hundred sixty-eight Dollars and forty-four cents ($45,168.44) ("**Contract Sum**") for completion of the work. The Contract Sum shall constitute full compensation for furnishing all materials and for doing all the work contemplated and embraced in this Agreement; and also for all loss or damage arising out of the nature of the work, or from any unforeseen difficulties or obstructions which may arise or be encountered in the prosecution of the work until its acceptance by the City, and for all risks of every description connected with the work; also for all expenses incurred by or in consequence of the suspension or discontinuance of work and for well and faithfully completing the work, and the whole thereof, in the manner and according to the plans and specifications, and the requirements of the Bid Documents and this Agreement. The Contract Sum shall be made in the form of progress payments subject to retention pursuant to Section 2.4.

2.2 Invoices.

Each month Contractor shall furnish to City an original invoice for all work performed during the preceding month in a form approved by City's Director of Finance. By submitting an invoice for payment under this Agreement, Contractor is certifying compliance with all provisions of the Agreement.

All invoices shall include a copy of Contractor's Certified Payroll and proof that Certified Payroll has been submitted to the DIR. Contractor shall also submit a list of the prevailing wage rates (including federal prevailing wage rates, if applicable) for all employees and subcontractors providing services under this Agreement, as applicable, with Contractor's first invoice. If these rates change at any time during the term of the Agreement, Contractor shall submit a new list of rates to the City with its first invoice following the effective date of the rate change.

2.3 Payment.

(a) Payments Made by City. City shall independently review each invoice submitted by the Contractor to determine whether the work performed and expenses incurred are in compliance with the provisions of this Agreement. Except as to any charges for work performed or expenses incurred by Contractor which are disputed by City, City will cause Contractor to be paid any progress payment within thirty (30) days of receipt of Contractor's correct and undisputed invoice; however, Contractor acknowledges and agrees that due to City warrant run procedures, the City cannot guarantee that payment will occur within this time period. In the event that City does not cause Contractor to be paid any progress payment within thirty (30) days of receipt of an undisputed and properly submitted invoice and provided the Project is for construction, Contractor shall be entitled to the payment of interest to the extent allowed under Public Contract Code Section 20104.50. In the event any charges or expenses are disputed by City, the original invoice

shall be returned by City to Contractor, not later than seven (7) days after receipt by the City, for correction and resubmission. Returned invoices shall be accompanied by a document setting forth in writing the reasons why the payment request was rejected. Review and payment by the City of any invoice provided by the Contractor shall not constitute a waiver of any rights or remedies provided herein or any applicable law.

(b) Payments Made by Contractor to Subcontractors. Contractor shall remit payments owed to subcontractors within fifteen (15) calendar days after receiving payments by City if payments are owed by Contractor to any subcontractor qualifying as a small business enterprise, and within thirty (30) calendar days if payments are owed by Contractor to any subcontractor other than a small business enterprise.

2.4 Retention.

Pursuant to Section 9203 of the Public Contract Code, City will deduct a five percent (5%) retention from all progress payments, which shall be released to Contractor no later than sixty (60) days from completion of the work in accordance with Section 7107 of the Public Contract Code. In the event of a dispute between City and Contractor, City may withhold from the final payment an amount not to exceed one hundred fifty percent (150%) of the disputed amount.

2.5 Waiver.

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

2.6 Substitution of Securities.

(a) In conformance with the State of California Public Contract Code, Part 5, Section 22300, Contractor may substitute securities for any monies withheld by the City to ensure performance under this Agreement.

(b) At the request and expense of Contractor, Contractor has the option of establishing an escrow account with a state or federally chartered bank which shall serve as an escrow agent, for Contractor's direct deposit of securities as a substitute for retention earnings required to be withheld by the City. Upon Contractor's completion of its obligations hereunder, as evidenced by the City's acceptance of the work pursuant to Section 3.3 hereof, the escrow agent shall return the securities to Contractor. The escrow agent shall notify the City within ten (10) days after deposit of the securities. The market value of the securities at the time of the substitution shall be at least equal to the cash amount then required to be withheld as retention. Securities shall be held in the name of the City and shall designate Contractor as the beneficial owner. Alternatively, on written request of Contractor, the City shall make payments of the retention earnings directly to the escrow account.

ARTICLE 3. PERFORMANCE SCHEDULE

3.1 Schedule of Performance.

Contractor shall complete the Project within ten (10) calendar days after receiving a "Notice to Proceed" from the City in accordance with any schedule contained in or required to be provided by the Proposal or Bid Documents, and any revisions thereof approved by the City in writing. Time is of the essence. If the work is not completed within said time period, liquidated damages shall apply. The term of this Agreement shall expire one (1) year following City's acceptance of the Project.

3.2 Liquidated Damages.

Since the determination of actual damages for any delay in performance of this Agreement would be extremely difficult or impractical to determine in the event of a breach of this Agreement, the Contractor and its sureties shall be liable for and shall pay to the City the sum of One Thousand Dollars ($1,000.00) as liquidated damages for each working day of delay in the performance of any service required hereunder. The City may withhold any accrued liquidated damages from any monies payable on account of services performed by the Contractor. To the extent required by Government Code section 4215, Contractor shall not be assessed liquidated damages for delay in completion of the work when such delay was caused by the failure of the City or owner of the utility to provide for removal or relocation of utility facilities.

3.3 Force Majeure.

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

3.4 Final Acceptance.

Acceptance of the Project shall only be by action of the City Council. Neither the acceptance nor any prior inspections or failure to inspect shall constitute a waiver by City of any defects in the work. From and after acceptance, the Project shall be owned and operated by City. As a condition to acceptance, Contractor shall certify to City in writing that all of the work has been performed in strict conformity with the Agreement and that all costs have been paid or supplied to City for security required herein, satisfactory to City, guaranteeing such performance.

ARTICLE 4. COORDINATION OF WORK

4.1 Representatives and Personnel of Contractor.

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

James Culwell (Name)	President (Title)
Brett Bunger (Name)	Civil Manager (Title)
Steven Culwell (Name)	Electrical Manager (Title)

The Principals shall be responsible during the term of this Agreement for directing all activities of Contractor and devoting sufficient time to personally supervise the services hereunder. All personnel of Contractor, and any authorized agents, shall at all times be under the exclusive direction and control of the Principals. For purposes of this Agreement, the Principals may not be replaced nor may their responsibilities be substantially reduced by Contractor without the express written approval of City. Additionally, Contractor shall make every reasonable effort to maintain the stability and continuity of Contractor's staff and subcontractors, if any, assigned to perform the services required under this Agreement. Contractor shall notify City of any changes in Contractor's staff and subcontractors, if any, assigned to perform the services required under this Agreement, prior to and during any such performance.

4.2 Status of Contractor.

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

4.3 Project Manager.

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

4.4 Independent Contractor.

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

4.5 Prohibition Against Subcontracting or Assignment.

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

ARTICLE 5. INSURANCE, INDEMNIFICATION AND BONDS

5.1 Insurance Coverages.

Without limiting Contractor's indemnification of City, and prior to commencement of any services under this Agreement, Contractor shall obtain, provide and maintain at its own expense during the term of this Agreement, policies of insurance of the type and amounts described below and in a form satisfactory to City.

(a) General liability insurance. Contractor shall maintain commercial general liability insurance with coverage at least as broad as Insurance Services Office form CG 00 01, in an amount not less than $2,000,000 per occurrence, $4,000,000 general aggregate, for bodily injury, personal injury, and property damage. The policy must include contractual liability that has not been amended. Any endorsement restricting standard ISO "insured contract" language will not be accepted.

(b) Automobile liability insurance. Contractor shall maintain automobile insurance at least as broad as Insurance Services Office form CA 00 01 covering bodily injury and

property damage for all activities of the Contractor arising out of or in connection with Services to be performed under this Agreement, including coverage for any owned, hired, non-owned or rented vehicles, in an amount not less than $1,000,000 combined single limit for each accident.

(c) Workers' compensation insurance. Contractor shall maintain Workers' Compensation Insurance (Statutory Limits) and Employer's Liability Insurance (with limits of at least $1,000,000).

(d) Builder's Risk Insurance. Contractor shall maintain Builder's Risk (Course of Construction) insurance utilizing an "All Risk" (Special Perils) coverage form, with limits equal to the completed value of the project and no coinsurance penalty provisions or provisional limit provisions. The policy must include: (1) coverage for any ensuing loss from faulty workmanship, nonconforming work, omission or deficiency in design or specifications; (2) coverage against machinery accidents and operational testing; (3) coverage for removal of debris, and insuring the buildings, structures, machinery, equipment, materials, facilities, fixtures and all other properties constituting a part of the project; (4) ordinance or law coverage for contingent rebuilding, demolition, and increased costs of construction; (5) transit coverage (unless insured by the supplier or receiving contractor), with sub-limits sufficient to insure the full replacement value of any key equipment item; (6) ocean marine cargo coverage insuring any project materials or supplies, if applicable; (7) coverage with sub-limits sufficient to insure the full replacement value of any property or equipment stored either on or off the project site or any staging area.

If the Project does not involve new or major reconstruction, then at the option of City, an Installation Floater may be acceptable. For such projects, a Property Installation Floater shall be obtained that provides for the improvement, remodel, modification, alteration, conversion or adjustment to existing buildings, structures, processes, machinery and equipment. The Property Installation Floater shall provide property damage coverage for any building, structure, machinery or equipment damaged, impaired, broken, or destroyed during the performance of the work, including during transit, installation, and testing at the Project site.

(e) Pollution Liability Insurance. Contractor shall maintain Environmental Impairment Liability insurance, written on a Contractor's Pollution Liability form or other form acceptable to City providing coverage for liability arising out of sudden, accidental, and gradual pollution and remediation. The policy limit shall be no less than $1,000,000 per claim and in the aggregate. All activities contemplated in this Agreement shall be specifically scheduled on the policy as "covered operations." The policy shall provide coverage for the hauling of waste from the project site to the final disposal location, including non-owned disposal sites.

Products/completed operations coverage shall extend a minimum of three (3) years after project completion. Coverage shall be included on behalf of the insured for covered claims arising out of the actions of independent contractors. If the insured is using subcontractors, the policy must include work performed "by or on behalf" of the insured. Policy shall contain no language that would invalidate or remove the insurer's duty to defend or indemnify for claims or suits expressly excluded from coverage. Policy shall specifically provide for a duty to defend on the part of the insurer.

If Contractor maintains broader coverage and/or higher limits than the minimums shown above, City requires and shall be entitled to the broader coverage and/or the higher limits

maintained by Contractor. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to City.

5.2 General Insurance Requirements.

(a) Subcontractors. Contractor shall include all subcontractors as insureds under its policies or shall furnish separate certificates and certified endorsements for each subcontractor. All coverages for subcontractors shall include all of the requirements stated herein.

(b) Proof of Insurance. Contractor shall provide certificates of insurance and endorsements to City as evidence of the insurance coverages required herein, along with a waiver of subrogation endorsement for workers' compensation. Insurance certificates and endorsements must be approved by City's Risk Manager prior to commencement of performance. Current certification of insurance shall be kept on file with City at all times during the term of this Agreement. City reserves the right to require complete, certified copies of all required insurance policies, at any time.

(c) Duration of Coverage. Contractor shall procure and maintain for the duration of this Agreement insurance against claims for injuries to persons or damages to property, which may arise from or in connection with the performance of the Services hereunder by Contractor, its agents, representatives, employees or subcontractors.

(d) Primary/noncontributing. Coverage provided by Contractor shall be primary and any insurance or self-insurance procured or maintained by City shall not be required to contribute with it. The limits of insurance required herein may be satisfied by a combination of primary and umbrella or excess insurance. Any umbrella or excess insurance shall contain or be endorsed to contain a provision that such coverage shall also apply on a primary and non-contributory basis for the benefit of City before the City's own insurance or self-insurance shall be called upon to protect it as a named insured.

(e) City's Rights of Enforcement. In the event any policy of insurance required under this Agreement does not comply with these specifications or is canceled and not replaced, City has the right but not the duty to obtain the insurance it deems necessary and any premium paid by City will be promptly reimbursed by Contractor or City will withhold amounts sufficient to pay premium from Contractor payments. In the alternative, City may cancel this Agreement.

(f) Waiver of Subrogation. All insurance coverage maintained or procured pursuant to this agreement shall be endorsed to waive subrogation against City, its elected or appointed officers, agents, officials, employees and volunteers or shall specifically allow Contractor or others providing insurance evidence in compliance with these specifications to waive their right of recovery prior to a loss. Contractor hereby waives its own right of recovery against City, and shall require similar written express waivers and insurance clauses from each of its subcontractors.

(g) Enforcement of Contract Provisions (non-estoppel). Contractor acknowledges and agrees that any actual or alleged failure on the part of the City to inform Contractor of non-compliance with any requirement imposes no additional obligations on the City nor does it waive any rights hereunder.

(h) Requirements Not Limiting. Requirements of specific coverage features or limits contained in this section are not intended as a limitation on coverage, limits or other requirements, or a waiver of any coverage normally provided by any insurance. Specific reference to a given coverage feature is for purposes of clarification only as it pertains to a given issue and is not intended by any party or insured to be all inclusive, or to the exclusion of other coverage, or a waiver of any type. If the Contractor maintains higher limits than the minimums shown above, the City requires and shall be entitled to coverage for the higher limits maintained by the Contractor. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the City.

(i) Notice of Cancellation. Contractor agrees to oblige its insurance agent or broker and insurers to provide to City with a thirty (30) day notice of cancellation (except for nonpayment for which a ten (10) day notice is required) or nonrenewal of coverage for each required coverage.

(j) Additional Insured Status. General and auto liability policies shall provide or be endorsed to provide that City and its officers, officials, employees, and agents, and volunteers shall be additional insureds under such policies. This provision shall also apply to any excess/umbrella liability policies.

(k) Prohibition of Undisclosed Coverage Limitations. None of the coverages required herein will be in compliance with these requirements if they include any limiting endorsement of any kind that has not been first submitted to City and approved of in writing.

(l) Separation of Insureds. A severability of interests provision must apply for all additional insureds ensuring that Contractor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the insurer's limits of liability. The policy(ies) shall not contain any cross-liability exclusions.

(m) Pass Through Clause. Contractor agrees to ensure that its subconsultants, subcontractors, and any other party involved with the project who is brought onto or involved in the project by Contractor, provide the same minimum insurance coverage and endorsements required of Contractor. Contractor agrees to monitor and review all such coverage and assumes all responsibility for ensuring that such coverage is provided in conformity with the requirements of this section. Contractor agrees that upon request, all agreements with consultants, subcontractors, and others engaged in the project will be submitted to City for review.

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

(o) Self-Insured Retentions. Any self-insured retentions must be declared to and approved by City. City reserves the right to require that self-insured retentions be eliminated, lowered, or replaced by a deductible. Self-insurance will not be considered to comply with these specifications unless approved by City.

(p) Timely Notice of Claims. Contractor shall give City prompt and timely notice of claims made or suits instituted that arise out of or result from Contractor's performance under this Agreement, and that involve or may involve coverage under any of the required liability policies.

(q) Additional Insurance. Contractor shall also procure and maintain, at its own cost and expense, any additional kinds of insurance, which in its own judgment may be necessary for its proper protection and prosecution of the work.

5.3 Indemnification.

Contractor shall indemnify, defend with legal counsel approved by City, and hold harmless City, its officers, officials, employees and volunteers (each, an "Indemnitee") from and against all liability, loss, damage, expense, cost (including without limitation reasonable legal counsel fees, expert fees and all other costs and fees of litigation) of every nature arising out of or in connection with Contractor's performance of work under this Agreement or its failure to comply with any of its obligations contained in this Agreement, except such loss or damage which is caused by the sole or active negligence or willful misconduct of the City. Should conflict of interest principles preclude a single legal counsel from representing both City and Contractor, or should City otherwise find Contractor's legal counsel unacceptable, then Contractor shall reimburse the City its costs of defense, including without limitation reasonable legal counsels fees, expert fees and all other costs and fees of litigation. The Contractor shall promptly pay any final judgment rendered against the City (and its officers, officials, employees and volunteers) with respect to claims determined by a trier of fact to have been the result of the Contractor's negligent, reckless or wrongful performance. It is expressly understood and agreed that the foregoing provisions are intended to be as broad and inclusive as is permitted by the law of the State of California and will survive termination of this Agreement.

Contractor obligations under this section apply regardless of whether or not such claim, charge, damage, demand, action, proceeding, loss, stop notice, cost, expense, judgment, civil fine or penalty, or liability was caused in part or contributed to by an Indemnitee. However, without affecting the rights of City under any provision of this Agreement, Contractor shall not be required to indemnify and hold harmless City for liability attributable to the active negligence of City, provided such active negligence is determined by agreement between the parties or by the findings of a court of competent jurisdiction. In instances where City is shown to have been actively negligent and where City's active negligence accounts for only a percentage of the liability involved, the obligation of Contractor will be for that entire portion or percentage of liability not attributable to the active negligence of City.

5.4 Notification of Third-Party Claims.

City shall timely notify Contractor of the receipt of any third-party claim relating to the work under this Agreement. City shall be entitled to recover from Contractor its reasonable costs incurred in providing such notification.

5.5 Performance and Payment Bonds.

Concurrently with execution of this Agreement, Contractor shall deliver to the City all of the following bonds if the Contract Sum should exceed $25,000:

(a) A performance bond securing the faithful performance of this Agreement, in an amount not less than 100% of the total compensation for this Agreement, as stated in Section 2.1.

(b) A payment bond, securing the payment of all persons furnishing labor and/or materials in connection with the work under this Agreement, in an amount not less than 100% of the total compensation for this Agreement, as stated in Section 2.1.

All bonds shall be on the applicable forms provided in Exhibit "D" and Exhibit "E" attached hereto and made part hereof. The bonds shall each contain the original notarized signature of an authorized officer of the surety and affixed thereto shall be a certified and current copy of his/her power of attorney. The bonds shall be unconditional and remain in force during the entire term of the Agreement until released pursuant to Section 5.7 hereof.

5.6 Sufficiency of Insurer or Surety.

Insurance and bonds required by this Agreement shall be satisfactory only if issued by companies qualified to do business in California, rated "A" or better in the most recent edition of Best's Rating Guide, The Key Rating Guide or in the Federal Register, and only if they are of a financial category Class VII or better. If the City determines that the work to be performed under this Agreement creates an increased or decreased risk of loss to the City, the Contractor agrees that the minimum limits of the insurance policies and the bonds may be changed accordingly upon receipt of written notice from the City's Risk Manager.

5.7 Release of Securities.

City shall release the performance bond and payment bond when the following have occurred:

(a) Contractor has made a written request for release and provided evidence of satisfaction of all other requirements under Article 5 of this Agreement;

(b) the Project has been accepted; and

(c) after passage of the time within which lien claims are required to be made pursuant to applicable laws; if lien claims have been timely filed, City shall hold the payment bond until such claims have been resolved, Contractor has provided statutory bond, or otherwise as required by applicable law.

ARTICLE 6. RECORDS, REPORTS, AND RELEASE OF INFORMATION

6.1 Records.

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

6.2 Reports.

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

6.3 Ownership of Documents.

All drawings, specifications, maps, designs, photographs, studies, surveys, data, notes, computer files, reports, records, documents and other materials (the "documents and materials") prepared by Contractor, its employees, subcontractors and agents in the performance of this Agreement shall be the property of City and shall be delivered to City upon request of the Project Manager or upon the termination of this Agreement, and Contractor shall have no claim for further employment or additional compensation as a result of the exercise by City of its full rights of ownership use, reuse, or assignment of the documents and materials hereunder. Any use, reuse or assignment of such completed documents for other projects and/or use of uncompleted documents without specific written authorization by the Contractor will be at the City's sole risk and without liability to Contractor, and Contractor's guarantee and warranties shall not extend to such use, reuse or assignment. Contractor may retain copies of such documents for its own use. Contractor shall have an unrestricted right to use the concepts embodied therein. All subcontractors shall provide for assignment to City of any documents or materials prepared by them, and in the event Contractor fails to secure such assignment, Contractor shall indemnify City for all damages

resulting therefrom. Moreover, Contractor with respect to any documents and materials that may qualify as "works made for hire" as defined in 17 U.S.C. § 101, such documents and materials are hereby deemed "works made for hire" for the City.

6.4 Confidentiality and Release of Information.

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

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

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

(d) Contractor shall promptly notify City should Contractor, its officers, employees, agents or subcontractors be served with any summons, complaint, subpoena, notice of deposition, request for documents, interrogatories, request for admissions or other discovery request, court order or subpoena from any party regarding this Agreement and the work performed there under. City retains the right, but has no obligation, to represent Contractor or be present at any deposition, hearing or similar proceeding. Contractor agrees to cooperate fully with City and to provide City with the opportunity to review any response to discovery requests provided by Contractor. However, this right to review any such response does not imply or mean the right by City to control, direct, or rewrite said response.

ARTICLE 7. ENFORCEMENT OF AGREEMENT; DEFAULT, SUSPENSION AND TERMINATION

7.1 California Law.

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

7.2 Default of Contractor.

Contractor's failure to comply with the provisions of this Agreement shall constitute a default. In the event that Contractor is in default for cause under the terms of this Agreement, City shall have no obligation or duty to continue compensating Contractor for any work performed after the date of default and can terminate or suspend this Agreement immediately by written notice to Contractor. If the Project Manager determines that Contractor is in default in the performance of any of the terms or conditions of this Agreement, the Project Manager shall cause to be served upon Contractor a written notice of the default. Contractor shall have ten (10) days after service upon it of said notice in which to cure the default by rendering a satisfactory performance. In the event that Contractor fails to cure its default within such period of time, the City shall have the right, notwithstanding any other provision of this Agreement, to terminate this Agreement without further notice and without prejudice to any other remedy to which it may be entitled at law, in equity or under this Agreement.

7.3 Suspension and Termination.

(a) The City may at any time, for any reason, with or without cause, suspend this Agreement, or any portion hereof, by serving upon Contractor at least ten (10) days prior written notice. Upon receipt of said notice, Contractor shall immediately cease all work under this Agreement, unless the notice provides otherwise. If the City suspends a portion of this Agreement such suspension shall not make void or invalidate the remainder of this Agreement.

(b) This Agreement may be terminated by either party for cause. The City may terminate this Agreement without cause upon thirty (30) days' written notice of termination. Upon termination, Contractor shall be entitled to compensation for completion of any portion of the Project accepted by City up to the effective date of termination unless any portion of the Project is accepted by City after termination in which event Contractor shall be paid for such completed portion.

7.4 Dispute Resolution Process.

Section 20104 *et seq*. of the California Public Contract Code prescribes a process utilizing informal conferences, non-binding judicial-supervised mediation, and judicial arbitration to resolve disputes on construction claims of $375,000 or less. Section 9204 of the Public Contract Code prescribes a process for negotiation and mediation to resolve disputes on construction claims. The intent of this Section is to implement Sections 20104 *et seq*. and Section 9204 of the California Public Contract Code. This Section shall be construed to be consistent with said statutes.

For purposes of these procedures, "claim" means a separate demand by the Contractor, after the City has denied Contractor's timely and duly made request for payment for extra work and/or a time extension, for (A) a time extension, (B) payment of money or damages arising from work done by or on behalf of the Contractor pursuant to the Agreement and payment of which is not otherwise expressly provided for or the Contractor is not otherwise entitled to, or (C) an amount the payment of which is disputed by the City.

The following requirements apply to all claims to which this section applies:

(a) Claim Submittal. The claim shall be in writing and include the documents necessary to substantiate the claim. Claims governed by this procedure must be filed on or before the date of final payment. Nothing in this section is intended to extend the time limit or supersede notice requirements otherwise provided in the Agreement for the filing of claims, including all requirements pertaining to compensation or payment for extra work, disputed work, and/or changed conditions. Failure to follow such contractual requirements shall bar any claims or subsequent lawsuits for compensation or payment thereon.

(b) Supporting Documentation. The Contractor shall submit all claims in the following format:

(i) Summary of the claim, including references to the specific Contract Document provisions upon which the claim is based.

(ii) List of documents relating to claim: (a) Specifications, (b) Drawings, (c) Clarifications (Requests for Information), (d) Schedules, and (e) Other.

(iii) Chronology of events and correspondence related to the claim.

(iv) Statement of grounds for the claim.

(v) Analysis of the claim's cost, if any.

(vi) Analysis of the claim's time/schedule impact, if any.

(c) City's Response. Upon receipt of a claim pursuant to this section, City shall conduct a reasonable review of the claim and, within a period not to exceed 45 days, shall provide the Contractor a written statement identifying what portion of the claim is disputed and what portion is undisputed. Any payment due on an undisputed portion of the claim will be processed and made within 60 days after the City issues its written statement.

(i) If the City needs approval from the City Council to provide the Contractor a written statement identifying the disputed portion and the undisputed portion of the claim, and the City Council does not meet within the 45 days or within the mutually agreed to extension of time following receipt of a claim sent by registered mail or certified mail, return receipt requested, the City shall have up to three days following the next duly publicly noticed meeting of the City Council after the 45-day period, or extension, expires to provide the Contractor a written statement identifying the disputed portion and the undisputed portion.

(ii) Within 30 days of receipt of a claim, the City may request in writing additional documentation supporting the claim or relating to defenses or claims the City may have against the Contractor. If additional information is thereafter required, it shall be requested and provided pursuant to this subdivision, upon mutual agreement of City and the Contractor.

(iii) The City's written response to the claim, as further documented, shall be submitted to the Contractor within 30 days (if the claim is less than $50,000, within 15 days) after receipt of the further documentation, or within a period of time no greater than that taken by the Contractor in producing the additional information or requested documentation, whichever is greater.

(d) Meet and Confer. If the Contractor disputes the City's written response, or the City fails to respond within the time prescribed, the Contractor may so notify the City, in writing, either within 15 days of receipt of the City's response or within 15 days of the City's failure to respond within the time prescribed, respectively, and demand an informal conference to meet and confer for settlement of the issues in dispute. Upon receipt of a demand, the City shall schedule a meet and confer conference within 30 days for settlement of the dispute.

(e) Mediation. Within 10 business days following the conclusion of the meet and confer conference, if the claim or any portion of the claim remains in dispute, the City shall provide the Contractor a written statement identifying the portion of the claim that remains in dispute and the portion that is undisputed. Any payment due on an undisputed portion of the claim shall be processed and made within 60 days after the City issues its written statement. Any disputed portion of the claim, as identified by the contractor in writing, shall be submitted to nonbinding mediation, with the City and the Contractor sharing the associated costs equally. The City and Contractor shall mutually agree to a mediator within 10 business days after the disputed portion of the claim has been identified in writing, unless the parties agree to select a mediator at a later time.

(i) If the parties cannot agree upon a mediator, each party shall select a mediator and those mediators shall select a qualified neutral third party to mediate with regard to the disputed portion of the claim. Each party shall bear the fees and costs charged by its respective mediator in connection with the selection of the neutral mediator.

(ii) For purposes of this section, mediation includes any nonbinding process, including, but not limited to, neutral evaluation or a dispute review board, in which an independent third party or board assists the parties in dispute resolution through negotiation or by issuance of an evaluation. Any mediation utilized shall conform to the timeframes in this section.

(iii) Unless otherwise agreed to by the City and the contractor in writing, the mediation conducted pursuant to this section shall excuse any further obligation under Public Contract Code Section 20104.4 to mediate after litigation has been commenced.

(iv) All unresolved claims shall be considered jointly in a single mediation, unless a new unrelated claim arises after mediation is completed.

(f) City's Responses. The City's failure to respond to a claim from the Contractor within the time periods described in this section or to otherwise meet the time requirements of this section shall result in the claim being deemed rejected in its entirety. A claim that is denied by reason of the City's failure to have responded to a claim, or its failure to otherwise meet the time requirements of this section, shall not constitute an adverse finding with regard to the merits of the claim or the responsibility of qualifications of the Contractor. City's failure to respond shall not waive City's rights to any subsequent procedures for the resolution of disputed claims.

(g) Government Code Claims. If following the mediation, the claim or any portion remains in dispute, the Contractor must comply with the claim procedures set forth in Government Code Section 900 *et seq.* prior to filing any lawsuit against the City. Such Government Code claims and any subsequent lawsuit based upon the Government Code claims shall be limited to those matters that remain unresolved after all procedures pertaining to extra

work, disputed work, construction claims, and/or changed conditions, including any required mediation, have been followed by Contractor. If no such Government Code claim is submitted, or if the prerequisite contractual requirements are not satisfied, no action against the City may be filed. A Government Code claim must be filed no earlier than the date that Contractor completes all contractual prerequisites to filing a Government Code claim, including any required mediation. A Government Code claim shall be inclusive of all unresolved claims unless a new unrelated claim arises after the Government Code claim is submitted. For purposes of Government Code Section 900 *et seq*., the running of the period of time within which a claim must be filed shall be tolled from the time the Contractor submits his or her written claim to the City until the time the claim is denied, including any period of time utilized by the meet and confer conference or mediation that does not result in a complete resolutions of all claims.

(h) Civil Actions for Claims of $375,000 or Less. The following procedures are established for all civil actions filed to resolve claims totaling $375,000 or less:

(i) Within 60 days, but no earlier than 30 days, following the filing or responsive pleadings, the court shall submit the matter to non-binding mediation unless waived by mutual stipulation of both parties or unless mediation was held prior to commencement of the action in accordance with Public Contract Code section 9204 and the procedures in this Section. The mediation process shall provide for the selection within 15 days by both parties of a disinterested third person as mediator, shall be commenced within 30 days of the submittal, and shall be concluded within 15 days from the commencement of the mediation unless a time requirement is extended upon a good cause showing to the court or by stipulation of both parties. If the parties fail to select a mediator within the 15-day period, either party may petition the court to appoint the mediator.

(ii) If the matter remains in dispute, the case shall be submitted to judicial arbitration pursuant to Chapter 2.5 (commencing with Section 1141.10) of Title 3 of Part 3 of the Code of Civil Procedure, notwithstanding Section 1141.11 of that code. The Civil Discovery Act (Title 4 (commencing with Section 2016.010) of Part 4 of the Code of Civil Procedure) shall apply to any proceeding brought under this subdivision consistent with the rules pertaining to judicial arbitration.

(iii) Upon stipulation of the parties, arbitrators appointed for these purposes shall be experienced in construction law, and, upon stipulation of the parties, mediators and arbitrators shall be paid necessary and reasonable hourly rates of pay not to exceed their customary rate, and such fees and expenses shall be paid equally by the parties, except in the case of arbitration where the arbitrator, for good cause, determines a different division.

(iv) In addition to Chapter 2.5 (commencing with Section 1141.10) of Title 3 of Part 3 of the Code of Civil Procedure, any party who after receiving an arbitration award requests a trial de novo but does not obtain a more favorable judgment shall, in addition to payment of costs and fees under that chapter, pay the attorney's fees of the other party arising out of the trial de novo.

7.5 Waiver.

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

7.6 Rights and Remedies Are Cumulative.

Except with respect to rights and remedies expressly declared to be exclusive in this Agreement, the rights and remedies of the parties are cumulative and the exercise by either party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the other party.

7.7 Unfair Business Practices Claims.

Pursuant to Public Contract Code section 7103.5, in entering into this Agreement, Contractor offers and agrees to assign to the City all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. § 15) or under the Cartwright Act (Chapter 2, (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, services or materials related to this Agreement. This assignment shall be made and become effective at the time the City tenders final payment to the Contractor without further acknowledgment by the Parties.

ARTICLE 8. CITY OFFICERS AND EMPLOYEES: NON-DISCRIMINATION

8.1 Non-liability of City Officers and Employees.

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

8.2 Conflict of Interest.

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

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

8.3 Covenant Against Discrimination.

Contractor covenants that, by and for itself, its heirs, executors, assigns, and all persons claiming under or through them, there shall be no discrimination against or segregation of, any person or group of persons on account of race, color, creed, religion, sex, gender, sexual orientation, marital status, national origin, ancestry, or other protected class in the performance of this Agreement. Contractor shall take affirmative action to insure that applicants are employed and that employees are treated during employment without regard to their race, color, creed, religion, sex, gender, sexual orientation, marital status, national origin, ancestry, or other protected class.

8.4 Unauthorized Aliens.

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

ARTICLE 9. MISCELLANEOUS PROVISIONS

9.1 Provisions Required By Law.

Each and every provision of law and clause required by law to be inserted in this Agreement shall be deemed to be inserted herein, and the Agreement shall be read and enforced as though it were included herein. If through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon application of either party, the contract shall forthwith be physically amended to make such insertion or correction.

9.2 Notices.

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

9.3 Interpretation.

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

9.4 Counterparts.

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

9.5 Integration; Amendment.

This Agreement including the attachments hereto is the entire, complete and exclusive expression of the understanding of the parties. It is understood that there are no oral agreements between the parties hereto affecting this Agreement and this Agreement supersedes and cancels any and all previous negotiations, arrangements, agreements and understandings, if any, between the parties, and none shall be used to interpret this Agreement. No amendment to or modification of this Agreement shall be valid unless made in writing and approved by the Contractor and by the City Council. The parties agree that this requirement for written modifications cannot be waived and that any attempted waiver shall be void.

9.6 Severability.

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

9.7 Warranty & Representation of Non-Collusion.

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

aware of and understands that any such act(s), omission(s) or other conduct resulting in such payment of money, consideration, or other thing of value will render this Agreement void and of no force or effect.

Contractor's Authorized Initials _____

9.8 Corporate Authority.

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

[SIGNATURES ON FOLLOWING PAGE]

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

CITY:

CITY OF IRWINDALE, a municipal corporation

_____

Julian A. Miranda, City Manager

ATTEST:

_____

Laura M. Nieto, MMC, Chief Deputy City Clerk

APPROVED AS TO FORM:

ALESHIRE & WYNDER, LLP

_____

Adrain Guerra, City Attorney

CONTRACTOR:

Metrocell Construction, Inc.

1166 Mildred Street, Ontario, CA 91761

By:_____

Name: James Culwell
Title: President

By:_____

Name:
Title:

Address:_____

_____

_____

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

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

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

STATE OF CALIFORNIA
COUNTY OF _____
On _____, 2024 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

- ☐ INDIVIDUAL
- ☐ CORPORATE OFFICER

_____
TITLE(S)

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

_____

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

_____
_____

DESCRIPTION OF ATTACHED DOCUMENT

_____
TITLE OR TYPE OF DOCUMENT

_____
NUMBER OF PAGES

_____
DATE OF DOCUMENT

_____
SIGNER(S) OTHER THAN NAMED ABOVE

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

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

STATE OF CALIFORNIA
COUNTY OF LOS ANGELES
On _____, 2024 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

☐ INDIVIDUAL
☐ CORPORATE OFFICER

_____
TITLE(S)

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

_____

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

_____
_____

DESCRIPTION OF ATTACHED DOCUMENT

_____
TITLE OR TYPE OF DOCUMENT

_____
NUMBER OF PAGES

_____
DATE OF DOCUMENT

_____
SIGNER(S) OTHER THAN NAMED ABOVE

EXHIBIT A

SCOPE OF WORK AND CONSTRUCTION PLANS

STREET LIGHT RELOCATIONS ON IRWINDALE ROAD; L-320

SCOPE OF WORK:

1- Remove and relocate six (6) streetlights to the satisfaction of Irwindale Public Services staff. **City to provide missing streetlights**.

2- Construct new footings for street lights – size 24" W x 30" D and bolts ¾ "by 30" L.

3- Install two (2) electrical junction boxes and extend conduit to new locations to the satisfaction of Irwindale Public Services staff.

4- Install concrete around new light locations (36" x 26").

5- Install new 1" conduit run with underground marking tape. Install three (3) #10 AWG standard wires.

6- Remove sidewalk where existing streetlights were located and replace all sidewalk panels affected by project. Score line to score line.

7- Submit traffic control plans to the City for approval in conformance with the latest edition of the California Manual on Uniform Traffic Control Devices (CA MUTCD).

8- Contractor shall have up to 10 working days to complete work.

CONSTRUCTION PLANS:

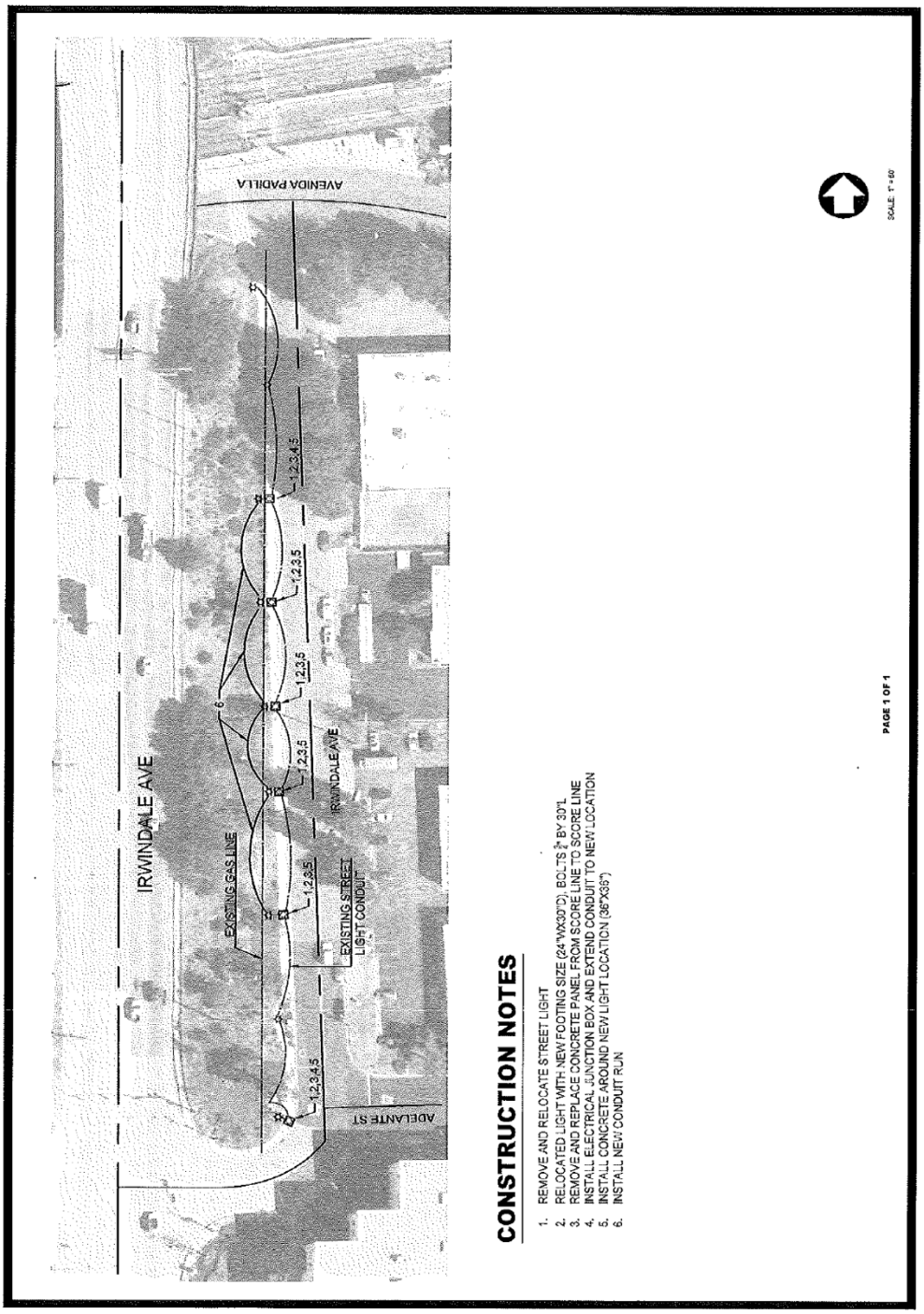


EXHIBIT B

SPECIAL REQUIREMENTS

(Superseding Contract Boilerplate)

None

EXHIBIT C

SCHEDULE OF COMPENSATION

I. Contractor shall complete work for the Project in accordance with the following:

DESCRIPTION	QUANTITY	PRICE
Relocate Street six (6) Lights; new footings, new electrical junction boxes, conduit and wire, new sidewalk concrete (see scope of services for full description)	Lump Sum	$45,168.44

II. The City will compensate Contractor for work performed and expenses incurred toward completion of the Project upon submission of a valid invoice. In addition to what is required under Section 2.2 of the Agreement, each invoice is to include:

III. The total compensation for the Project shall not exceed $45,168.44 as provided in Section 2.1 of this Agreement.

EXHIBIT D

PERFORMANCE BOND

PROJECT NO. _____

We, _____, as Principal, and _____, as Surety, jointly and severally, firmly bind ourselves, our heirs, representatives, successors and assigns, as set forth herein, to the City of Irwindale ("City") for payment of the penal sum of **_____ U.S. Dollars and ____ Cents ($_____)**. City and Principal have entered into an agreement, or are about to enter into the agreement attached hereto and incorporated by reference herein, for completion of public works for the property(ies) referenced in said agreement. Surety herein approves of the terms and conditions of said agreement and binds itself to faithfully perform the obligations of Principal therein if Principal fails to so perform. Surety acknowledges that the agreement herein referenced shall be that document as executed by City and Principal.

THE CONDITION OF THIS OBLIGATION IS SUCH that if the Principal shall in all things stand to and abide by, and well and truly keep and perform all of the covenants, conditions, and provisions in said agreement, and any alteration thereof made as therein provided, on Principal's part to be kept and performed at the time and in the manner therein specified, and shall indemnify and save harmless the City, City's engineer, and their consultants, and each of their officials, directors, officers, employees and agents, as therein stipulated, then this obligation shall become null and void; otherwise, it shall be and remain in full force and effect.

Surety agrees that should it fail to take over and diligently perform the agreement upon Principal's default after notice and within the time specified in the agreement, Surety will promptly on demand deposit with City such amount as City may reasonably estimate as the cost of completing all of Principal's obligations. Surety's obligation for payment herein shall exist, notwithstanding any controversy between Principal and City regarding Principal's failure under the agreement, and payment by Surety should be conclusively presumed between the parties herein to relieve, as demanded, Surety's obligations herein and shall be deemed proper payment as between Principal and Surety.

Surety agrees that no change, extension of time, alteration, or addition to the terms of the agreement, or the work to be performed thereunder or the plans and specifications, or any matters unknown to Surety which may affect Surety's risk shall in any wise affect its obligation on this bond, and it does thereby waive notice thereof.

Principal and Surety agree that if the City is required to engage the services of an attorney in connection with the enforcement of this bond, each shall pay City's reasonable attorneys' fees incurred, with or without suit, in addition to the above sum.

Executed this _____day of _____, ____.

Seal of Corporation _____

By:_____
Authorized Representative of Principal

Title: _____

(ATTACH ACKNOWLEDGEMENT OF AUTHORIZED REPRESENTATIVES)

Any claims under this bond may be addressed to: (check one)

Surety's agent for service
of process in California: ( ) _____
[name of surety company]

_____ _____

Name	Street Number
Street Number	City and State
City and State	Telephone Number
Telephone Number	

By:_____
Attorney in Fact or other
Representative

(ATTACH ACKNOWLEDGEMENT OF AUTHORIZED REPRESENTATIVE)

Furnish the name, address and phone number of the company agent as well as the surety company.

Sureties must be authorized to do business in and have an agent for service of process in California and be on the accredited list of the United States Treasury Department (their bonds will be limited to such amounts as would be acceptable to the Treasury Department), and otherwise meet the requirements of the agreement.

EXHIBIT E

PAYMENT BOND

PROJECT NO. _____

We, _____, as Principal, and _____, as Surety, jointly and severally, firmly bind ourselves, our heirs, representatives, successors and assigns, as set forth herein, to the City of Irwindale ("City") and those for whose benefit this bond insures in the sum of **_____ U.S. Dollars and _____ Cents ($_____)**. City and Principal have entered into an agreement, or are about to enter into the agreement attached hereto and incorporated by reference herein, for completion of public works for the property(ies) referenced in said agreement. Surety herein approves of the terms and conditions of said agreement and binds itself to faithfully perform the obligations of Principal therein if Principal fails to so perform. Surety acknowledges that the agreement herein referenced shall be that document as executed by City and Principal. If Principal or any of Principal's contractors or subcontractors, fails to pay any of the persons named in Section 9000 *et seq*. of the California Civil Code employed in the performance of the agreement for materials furnished or for labor thereon of any kind, or for amounts due under the Unemployment Insurance Code with respect to such work or labor, then Surety shall pay the same in an amount not exceeding the sum specified above, and also shall pay, in case suit is brought upon this bond, such reasonable attorneys' fees as shall be fixed by the court.

Surety agrees that it shall pay the amounts due the persons above named and diligently perform the agreement upon Principal's default after notice and within the time specified in the agreement. If Surety fails to perform within the times specified in the agreement, Surety shall promptly on demand deposit with City such amount as City may reasonably estimate as the cost of completing all of Principal's obligations. Surety's obligation for payment herein shall extend, notwithstanding any controversy between Principal and City regarding Principal's failure under the agreement. Principal and Surety agree that any payment by Surety pursuant to this paragraph should be conclusively presumed between the parties herein to relieve, as demanded, Surety's obligation herein and shall be deemed proper payment as between Principal and Surety.

This bond shall insure to the benefit of any and all of the persons named in Section 9000 *et seq*. of the California Civil Code so as to give a right of action to them or their assigns in any suit brought upon this bond.

Surety agrees that no change, extension of time, alteration, or addition to the terms of the agreement, or the work to be performed thereunder, or the plans and specifications, or any matters unknown to Surety which might affect Surety's risk, shall in any way affect its obligation on this bond, and it does hereby waive notice thereof.

Principal and Surety agree that should City become a party to any action on this bond, that each will also pay City's reasonable attorneys' fees incurred therein in addition to the above sums.

Executed this _____ day of _____, _____.

Seal of Corporation _____

By:_____
Authorized Representative of Principal

Title: _____

(ATTACH ACKNOWLEDGEMENT OF AUTHORIZED REPRESENTATIVES)

Any claims under this bond may be addressed to: (check one)

Surety's agent for service
of process in California: ( ) _____
[name of surety]

_____	_____
Name	Street Number
_____	_____
Street Number	City and State
_____	_____
City and State	Telephone Number
_____	
Telephone Number	

By:_____
Attorney in Fact or other
Representative

(ATTACH ACKNOWLEDGEMENT OF AUTHORIZED REPRESENTATIVE)

Furnish the name, address and phone number of the company agent as well as the surety company.

Sureties must be authorized to do business in and have an agent for service of process in California and be on the accredited list of the United States Treasury Department (their bonds will be limited to such amounts as would be acceptable to the Treasury Department), and otherwise meet the requirements of the agreement.

Item #19.G.

City of
IRWINDALE
AGENDA REPORT

Date: July 10, 2024

To: Honorable Mayor and Members of the City Council

From: Julian A. Miranda, City Manager

Issue: Waive the Bidding Process for the Dan Diaz Recreation Center HVAC #4 Replacement

City Manager's Recommendation:

That the City Council **adopt Resolution No. 2024-53-3530**, entitled, "A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF IRWINDALE FINDING AN EMERGENCY EXISTS, REQUIRING WAIVER OF FORMAL BIDDING REQUIREMENTS AND APPROVING AND AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH ACCO ENGINEERED SYSTEMS FOR THE REPLACEMENT OF HVAC #4 AT THE DAN DIAZ RECREATION CENTER"

Administrative Action:

Submitted / Prepared by:
Elizabeth Rodriguez, Public Services Director

Reviewed by:

Adrian R. Guerra, City Attorney

Kambiz Borhani, Finance Director / City Treasurer

Approved by:

Julian A. Miranda, City Manager

Background and Analysis:

The Dan Diaz Recreation Center HVAC Unit #4 is more than 30 years old and is now inoperable. Over the years, the City's HVAC maintenance contractors have replaced many of its parts. The compressor, the heart of the HVAC system, was replaced almost a year ago and is now not functioning. This unit services the gymnasium, which is the central location of the building and where many activities take place.

The replacement of five (5) HVAC Units at the Dan Diaz Recreation Center is part of the City's Fiscal Year 2024-2025 Capital Improvement Projects; however, the time frame to go out to bid is four (4) months out and another seven (7) months to order and receive the 12.5 ton Carrier Units.

The Dan Diaz Recreation Center (DDRC) provides critical services to our tots, children, teens and seniors, which includes Summer Tots, Summer Kidzone, Teen Club, and Senior Center Morning Exercise Classes. When the temperatures are too high for Summer Tots and Kidzone to use the outdoor playground, they use the gymnasium to play. All the Senior Center Morning Exercise Classes take place in the gymnasium including Line Dancing, Zumba Gold, and Walking Club.

California is experiencing extreme heat with temperatures set to exceed triple digits, and the state has issued an extreme heat advisory. Governor Newsom has directed the Office of Emergency Services to activate its State Operations Center and move into Phase II of its Extreme Temperature Response Plan in order to coordinate community outreach and ensure that members of the community have access to cooling centers. The DDRC is also the City's Emergency Evacuation Center. With the temperatures continuing to rise for the summer season, it is imperative that this HVAC Unit is replaced immediately.

Public Contract Code section 20168 states that in the case of an emergency, the legislative body may pass a resolution by a four-fifths vote of its members declaring that the public interest and necessity demand the immediate expenditure of public money to safeguard life, health, or property. Upon adoption of the resolution, it may expend any sum required in the emergency without complying with formal bidding requirements for public projects.

In the case of an emergency, the governing body may repair or replace a public facility, take any directly related and immediate action required by that emergency, and procure the necessary equipment, services, and supplies for those purposes, without giving notice for bids to let contracts, pursuant to Public Contract Code section 22050.

It is in the best interest of the City to find that sufficient evidence exists to support an emergency and dispense with bidding to allow for the immediate purchase and installation of this unit by the City's current HVAC Maintenance Contractor so the City can continue to provide a safe and cool place for the community, including tots, children, teens, and seniors to play and exercise during the summer season.

Fiscal Impact:

Sufficient funding is available in the Fiscal Year 2024/2025 Budget under CIP Account Number 48-80-800-45200-8228.

Attachments:

1. 7-10-2024 Dan Diaz Recreation Center HVAC #4 Replacement - PROPOSAL
2. 7-10-2024 Dan Diaz Recreation Center HVAC #4 Replacement - EMERGENCY RESOLUTION(996337.1)

Proposal Name: Recreation Center – AC-4 Packaged Gas Unit Replacement (12.5 - Ton)
Date: 7/1/2024

Provider:	**Customer:**
ACCO Engineered Systems	**City of Irwindale**
265 McCormick Ave.	**5050 N. Irwindale Ave.**
Costa Mesa, CA 92626	**Irwindale, CA 91706**

Contact Name: Richard Corpis
Contact Number: (626) 430-2253
Email: rcorpis@irwindaleca.gov

Work Site Location Name: Recreation Center
Work Site Address: 16053 Calle de Paseo, Irwindale, CA 91706 US

ACCO Engineered Systems *is pleased to have this opportunity to offer our proposal for the replacement of one (1) existing 12.5- Ton Carrier Package Unit with a new 12.5- Ton Daikin G/E Package unit. The existing 12.5-ton Carrier package unit is at the end of its life and has not been operating for some time now. ACCO Engineered Systems is to provide all labor and materials required for replacing the existing unit with a new Daikin unit. ACCO Engineered Systems will also provide all mechanical, seismic and structural engineering services required for the development of a formal construction plan set submittal to the City of Irwindale for review and permit approval. ACCO Engineered Systems will look to provide a construction schedule around the lead times provided by the equipment supplier. Actual schedule to be determined at a later date. Scope details below:*

Related Equipment:

- Carrier Packaged Rooftop Unit (AC-4) – Model # 48TJD014---511GA; Serial # 2395G30222

ACCO ENGINEERED SYSTEMS PROPOSED SCOPE OF WORK

Included in this Proposal:

- Structural & Mechanical Engineering Services
- Seismic Analysis & Attachment Details
- Development of Plan Set Construction Drawings
- One (1) 12.5-Ton Daikin Gas/Electric Package Unit
- Equipment Pad

- Final Equipment Selections
- Field labor – ACCO Sheet Metal, Rigging and Retrofit Labor
- Electrical Disconnect
- Crane Rental
- Flatbed Rental for Equipment Disposal
- One (1) Year Manufacture Parts Warranty
- One (1) Year Workmanship Warranty
- City of Irwindale City Plan Check Review
- City of Irwindale Permit Procurement
- City of Irwindale Plan Check Fees & Permits

Proposed Scope of Work:

1. **Engineering & Permits (Applicable to all options provided):**
    a. Provide mechanical & structural engineering, seismic calculations and construction plans as required by law; Engineering includes the following:
        i. Site survey of existing conditions
        ii. Equipment selection
        iii. Existing CAD background drawings with new CAD layout of new equipment and piping
            1. *Customer to provide existing CAD drawings upon contract execution*
        iv. Construction plans and documents to include, but not limited to the following:
            1. Cover Sheet, HVAC Legend, Drawing Schedule
            2. Mechanical Equipment Schedules
            3. Mechanical Title 24 Compliance Page
            4. Mechanical Roof Demo Plan
            5. Mechanical Roof – New Mechanical Plan
            6. Mechanical Details
            7. Structural - General Notes Page
            8. Structural Section
            9. Structural Attachment Details
            10. Structural Specifications
        v. Title 24 Compliance
        vi. Seismic Calculations
        vii. Structural Analysis – includes vertical and lateral analysis for unit attachment and roof verification
        viii. As-built drawings
    b. Submit project plans to the City of Irwindale for plan check
    c. Plan Check Responses (as required)
    d. Procure required permits from the City of Irwindale

2. **Scope of work to Install One (1) Daikin 12.5 -Ton Package Unit:**
    1. Procure and pick up required material & equipment prior to arrival
    2. Check in with facilities personnel upon arrival
    3. Properly lock out /tag out electrical power to existing 12.5-ton Carrier package unit (AC-4)
    4. Disconnect system electrical circuitry at unit
    5. Safe off existing gas line (ACCO assumes the existing gas valve will hold; additional charges may apply if found to be compromised)
    6. Disconnect and remove existing gas line connection at unit
    7. Disconnect and remove low voltage controls
    8. Disconnect and remove condensate line from existing unit
    9. Disconnect existing supply & return duct from existing packaged rooftop unit

10. Disconnect and demo existing packaged rooftop unit from existing equipment pad cover and prepare for rigging
11. Demo and remove existing Carrier 12.5-ton package unit, isolation springs, pad cover,
12. Provide crane services for demo & removal of one (1) existing Carrier package unit; properly dispose as required
13. Disconnect and demo existing thermostat
14. Demo and remove existing equipment pad cover
15. Provide and install one (1) new equipment pad cover (ACCO sheet metal team will fabricate new equipment pad)
16. Provide crane rental for rigging of one (1) new 12.5-ton Daikin packaged unit with economizer
17. Modify existing supply/return ductwork as required; Provide transitions in order to connect new unit with existing duct
18. Secure and mount new Daikin package unit to equipment pad using structural attachments (Structural attachments to be provided by ACCO)
19. Provide and install one (1) new economizer
20. Provide and install one (1) new disconnect for new rooftop unit
21. Connect existing power to unit
22. Provide and install one (1) new programmable t-stat
23. Connect existing condensate line to new Daikin Package unit (make modifications as needed)
24. Connect existing gas line to unit (Make any modifications as needed)
25. Restore system power
26. Clean up work area before departure
27. All work to be performed during regular business hours

3. <u>Start-up, Testing & System Training:</u>

a. Provide pre-startup sheets of one (1) new Daikin Package Unit
b. Equipment Start-up
c. Provide project close out documents
    i. Project plans
    ii. As-Built drawings
    iii. Warranty Letter
    iv. IOM manual
    v. Final Equipment Submittals

Notes & Clarifications:

- ***This document is proprietary and confidential. No part of this document may be disclosed in any manner to a third party without the prior written consent of ACCO Engineered Systems***
- ACCO Engineered Systems requires proper personal protective equipment and safety standards to be followed and executed at all times
- ACCO Engineered Systems assumes area to be provided for parking and staging of job materials, including respective sub-contractors
- All recommendations for repair will be proposed independent of this contract
- Union labor rates apply
- Prevailing Wages apply
- Certified Payroll is included
- ACCO has priced this work based on a plan to complete all activities in a contiguous fashion. Scheduled activities will be communicated in advance with the customer to reduce any lapse in progress. While minor variations in the schedule will be tolerated, significant lapses will need to be negotiated for cost and resource impacts
- ACCO will provide all necessary insurance requirements and documentation prior to performing work
- ACCO will provide a detailed schedule of construction upon contract award and approval
- ACCO will clean up all work areas and return to proper form upon completion of work
- Repair or replacement of existing systems outside this scope of work is excluded

Preliminary Project Schedule:

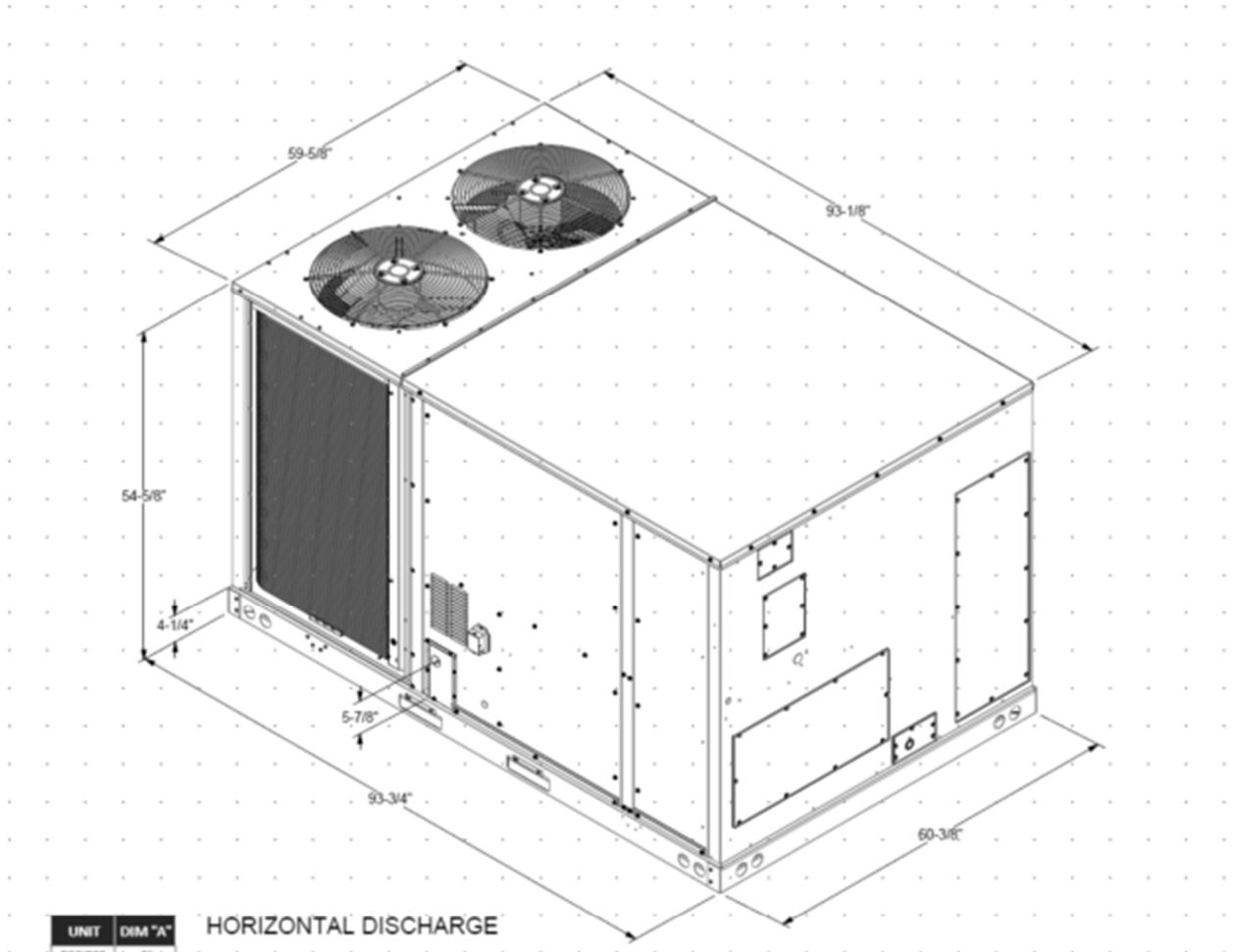
Approximate Duration – 2 - 3 Months

The project plan in general will be as follows:

1. Site survey and review (by ACCO Engineering)
2. Develop design plans and equipment list (by ACCO Engineering)
3. Develop shop drawings and Bill of Materials (by ACCO Engineering)
4. Submit Plan Set Shop Drawings to City of Irwindale for Review (by ACCO)
5. Procure new HVAC Equipment as required (Lead Time – 4-7 weeks at the time of proposal release)
6. Detail ducting
7. Install of equipment
8. Close out documentation

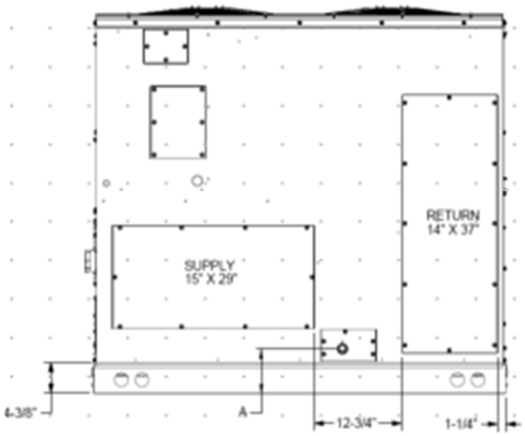
Equipment Options:

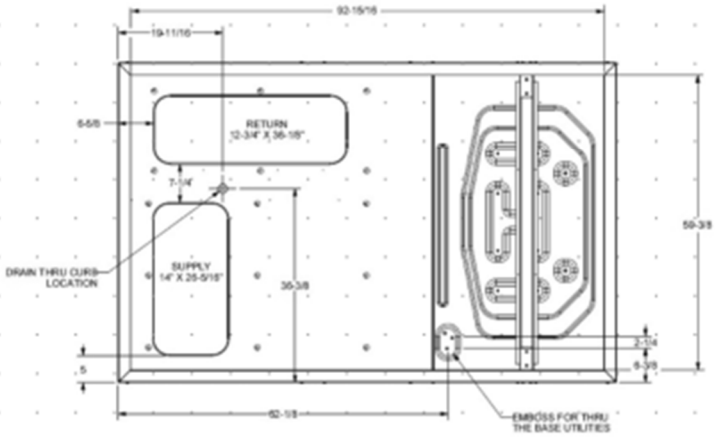
See provided submittal page on other page. Model number of unit in submittal is subject to change.



UNIT	DIM "A"
DFG 090	9"
DFG 102	9"
DFG 120	6½"
DFG 150	6½"

HORIZONTAL DISCHARGE





Design Requirements	
Cooling Capacity	12.5 Ton
Tap	T4
Configuration	Horizontal

- R-410A chlorine-free refrigerant
- High-efficiency Copeland scroll compressor(s)
- Copper tube / aluminum fin coils
- High-capacity, steel-cased filter dryer
- High- and Low-pressure switches
- Lugged electrical contactor
- Single-point power
- Color Coded Wiring
- Foil Faced Internal Insulation
- Heavy-gauge, galvanized-steel cabinet
- UV-resistant powder-paint finish
- Full perimeter base rail

Model Number:	**DFG1503WM00004C**
Code String:	**DFG1503W180CAAXXXXXXXX**
Tag:	**RTU**
Cooling Performance	
Total Capacity	143.3 MBh
Sensible Capacity	104.609 MBh
Cooling Stages	Two
Refrig Type	R410A
Compressor Type	Copeland Scroll
Pressure Switches	High & Low Pressure (std)
Outdoor Design Temp	95.0°F
Entering Air Temp(db)	80.0°F
Entering Air Temp(wb)	67.0°F
Leaving Air Temp(db)	61.7°F
Leaving Air Temp(wb)	58.4°F
Efficiency	14.2 IEER/11 EER
Heating Performance	
High Stage Input / Output	180/145.8 (KBTU/H)
Low Stage Input / Output	135/109.4 (KBTU/H)
Heat Type	GAS
Entering Air Temp	55.0°F
Leaving Air Temp	80.6°F
Supply Air Blower Performance	
ACFM	5214 CFM
SCFM	5214 CFM
ESP	1.5 IWG
Total ESP	1.77 IWG
Blower Type	Direct Drive - High Static
Elevation	0
Unit Electrical Data	
Power Supply	208-230/3/60
Total Unit MCA	62.7/62.7
Total Unit MOP	80/80
Indoor Motor HP	5.0
SCCR	5
Physical Attributes	
Base Unit Oper. Weight (lbs)	1230
Filter(s)	Qty (2) 20/25"x20"x2"

Outdoor sound (db) at 60 Hz									
Model	A-Weighted	63	125	250	500	1000	2000	4000	8000
150	86.8	95.4	85.3	86.8	83.3	81.7	79.8	72.2	66.9

Exclusions from Contract:

- Plan check fees
- Permit fees
- Network Communication Cable, 24V power and control wiring & conduit
- After hours, Weekend or Holiday Labor
- Asbestos abatement or work in contaminated areas
- Repair or replacement to existing mechanical systems other than stated above
- Low voltage integration
- VFD Repair/Replacement
- Roof and/or roof repair
- Coring/Penetrations/Patching/Painting of any kind
- Any/all work relating to Fire & Life Safety, including fire devices, smoke detectors, monitoring relays, etc.
- BMS programming
- Duct work outside of modifications to inlet of return and supply ducts
- Electrical power upgrades
- Certified TAB
- Any and all other work not specifically stated above

Pricing Summary:

Deliverable Description	Deliverable Price
ACCO Journeyman/Sheet Metal Labor - Straight Time	$8,580.00 U.S. Dollars
ACCO Engineering Services- Straight Time (New plan set of unit)	$4,827.00 U.S. Dollars
Vibrex Subcontract (Seismic Engineering with Stamped Approval of Civil Engineer)	$4,905.00 U.S. Dollars
Plump Engineering (Structural Engineering)	$5,147.00 U.S. Dollars
One (1) 12.5-Ton Daikin Packaged Unit	$22,377.00 U.S. Dollars
One (1) Electrical Disconnect	$500.00 U.S. Dollars
Crane Subcontract	$1,650.00 U.S. Dollars
Misc. Materials – (Consumables, T-stat, Drain Piping, Sheet Metal, Equipment PadEtc.)	$950.00 U.S. Dollars
Total Price =	$48,936.00 U.S. Dollars

☐ Sales Tax will be invoiced separately	☒ Use Tax is included in the price	☐ Tax exempt

Terms of Payment, unless modified above: 40% down payment for equipment mobilization with the balance due upon progression of work completed and the receipt of invoice.

This proposal is valid for 30 days, from the date of this agreement. If not executed by this date, the contractor shall have the right to submit revised pricing.

Proposal Submitted By:

Name: Ricky Thomas
Title: Project Manager
Direct: (949) 426-5156
Email: rthomas@accoes.com

PROVIDER: ACCO ENGINEERED SYSTEMS	CUSTOMER: CITY OF IRWINDALE
Signature: _____	**Signature:** _____
Name: _____	**Name:** _____
Title: _____	**Title:** _____
Date: _____	**Date:** _____

GENERAL TERMS AND CONDITIONS

1. All work shall be performed during normal working hours unless otherwise stated herein.
2. ACCO Engineered Systems agrees to maintain in full force and effect a Workmen's Compensation Insurance policy and a Comprehensive Liability Insurance policy in substantial amounts to protect all parties to this agreement, furnishing certificates of insurance, if required by Buyer.
3. Buyer shall prepare the premises to permit free movement and erection of materials, providing necessary openings, supports, cutting, patching, necessary public utility and steam services, and pay all fees in accordance with codes and ordinances unless otherwise indicated in this Bid Contract.
4. In the event that the Seller encounters any asbestos product or Hazardous material in the course of performing its work, the Seller shall have the right to immediately discontinue its work and remove its employees from the project, or that portion of the project wherein such product or materials were encountered, until such time as any hazards connected therewith are abated, encapsulated or removed and/or it is determined that no hazard exists; further, Seller shall receive an extension of time to complete its work and compensation for delays encountered and compensation for any change in the sequence of method or its work occasioned as a consequence of said encounter. "Hazardous Material" are substances or chemicals that pose a health hazard, a physical hazard, or harm to the environment and defined and regulated by the U.S. Environmental Protection Agency (EPA), U.S. Occupational Safety and Health Administration (OSHA), U.S. Department of Transportation (DOT), and U.S. Nuclear Regulatory Commission (NRC).
5. Seller transfers manufacturer's standard warranties on all new equipment, misuse or abuse excepted, for a period not to exceed one year from date of first beneficial use, which shall be defined as the Start-up Date. Seller warrants Seller provided materials, parts and labor for a period of ninety (90) days from the date of first beneficial use. There are no warranties, expressed or implied, other than the above unless so noted herein.
6. Seller shall not be liable for any consequential damages including, but not limited to, liquidated damages, loss of rent, interest expense, extended overhead or any other delay damages of any kind, nature or description. It is expressly understood and agreed that the only liability of Seller is to replace defective workmanship or material as herein above set forth
7. Seller will not replace any refrigerant loss caused by defects in the equipment, material, parts, or workmanship furnished under this contract. Replacement of refrigerant due to failure or defects of items furnished by Seller is not included as a part of this agreement.
8. Seller shall not be liable for the corrosive or erosive action of liquids and/or gases upon the equipment specified and no part of such equipment shall be deemed defective by reason of its failure to resist physical or chemical action of such elements or items upon such equipment.
9. This agreement shall not be binding until duly accepted by Seller. This agreement constitutes the entire agreement between the parties and supersedes and revokes any previous agreement, written or oral, with respect to the labor and equipment covered hereby and may not be amended or modified except in writing executed by the parties hereto.
10. Under no circumstances shall the liability of Seller arising out of the sale or erection of the equipment hereunder, or arising out of its use, whether on warranties or otherwise, in any case exceed the lesser of the following: (a) Cost of correcting defects in the equipment or workmanship; or (b) the difference in value between the installation as installed and the cost of the original installation thereof, if installed strictly as in the contract documents set forth. And in no event shall any claims be made by either party against the other for consequential damages.
11. The Seller shall not be bound by any plan(s) and specification(s) or condition(s), existing or otherwise, that has not been incorporated into this agreement by specific reference or attached to this agreement, nor shall the Seller be bound by any city ordinances, State laws or other governmental regulations not in effect at the time of submitting this bid, or which had become obsolete and which no longer was enforced by such public body enacting the same.
12. Seller shall be excused for any delay in completion of this agreement caused by acts of God, including but not limited to, wind, rain, flood, storm, landslide, subsidence and earthquake; pandemic; acts of neglect of owner or architect or by any employee or agent of either; acts of neglect of separate contractors employed by owner; acts of public utilities or governmental or public bodies or their agents; material shortages; labor trouble, labor slowdowns; strikes; union activity causing a reduction in productivity; fire; casualty; delay in transportation; changes ordered in the work; failure of Buyer to make payments to Seller as required under this agreement, or other causes beyond the reasonable control of Seller, any of which shall automatically entitle Seller to reasonable or necessary extensions of the completion date of the work and to an equitable adjustment of the agreement price to compensate Seller for all costs and expenses of additional labor, service, equipment or material and extended overhead resulting from any such delay.
13. If any of the materials specified are not readily available, the Seller may substitute equally efficient materials or fixtures of generally similar character in lieu of the equipment, materials or fixtures specified, and it shall allow any differential between the original cost of the materials specified and the materials furnished.
14. In the event of inability to obtain labor at union scale or without paying a premium above such scale, Seller may delay performance until same shall be obtainable without premium payment or at the option of the Buyer the latter may require the use of materials or labor requiring the payment of such excess cost, but upon condition that the Buyer shall pay such excess.
15. No additional work will be performed unless it is authorized in writing by the Buyer. If the Buyer refuses to sign a written work authorization or change order for the extra work, Seller reserves the right to refuse to perform the extra work.
16. Should either party hereto bring suit in court to enforce the terms hereof, any judgment awarded shall include court costs and reasonable attorney's fees to the successful party.
17. Seller assumes no responsibility for the design on those jobs where Seller prepares working or shop drawings from designs furnished by others. Seller assumes no responsibility whatsoever for design or operative end result under any contract unless there is affirmatively stated on the obverse side of this Bid Contract, a direct undertaking on Seller's part so to do.
18. Seller may suspend further performance under this Bid Contract upon three (3) days written notice to the Buyer in the event the Buyer is in breach of this Bid Contract for breach other than non-payment. Notice need not be given if work is suspended due to non-payment or due to the failure of the Buyer to pay for change orders as provided herein. In the event Seller elects to suspend performance, Seller shall be entitled to remobilization costs, including profit and overhead, upon the Buyer bringing payments current or issuing proper change orders for extra work. Such costs will equal actual losses sustained by Seller in terminating and restarting work.
19. This agreement is entered into upon the understanding that in the prosecution of any work herein specified Seller will be allowed sufficient time for the performance of said work on the basis of a normal eight-hour day, and in the event that Buyer or any subcontractor require Seller to perform such labor on an overtime basis, then such additional expense of every kind and character as Seller may be required to incur on account of said overtime labor, shall constitute an additional charge herein.
20. Unless expressly provided in this agreement Buyer shall provide, as needed and without cost to Seller, proper hoisting conveyances and scaffolding (including the use of engineer) at times so as to not delay Seller's part of the work under this agreement.
21. Any loss or damage to Seller's work, materials or equipment occurring at the site of the project occasioned by fire, flood, earthquake, windstorm, riot or civil commotion shall be protected by Buyer purchased insurance, without contribution by Seller's insurance, and Seller shall receive payment of loss under any such policy or policies.
22. Seller shall not be liable for the cost of correcting defects arising from or caused by the acts or omissions of employees of or other contractors, of customer or owner of the project or building. Before Seller proceeds with any corrective work to repair such damage, Buyer shall give Seller an unqualified instruction to proceed with the work and such work shall be performed at an additional cost paid by Buyer.ACCO Engineered Systems shall assume the defense and indemnify and save harmless the Buyer, its officers and employees, from any and all claims, loss, damage, injury and liability of every kind, nature and description, directly arising from ACCO Engineered Systems' active negligence and/or intentional conduct.

23. Seller expressly reserves the right to assign all or any portion of its rights and/or duties under this Bid Contract with or without notice to the Buyer herein.
24. In the event of a conflict between the terms and conditions of this agreement and terms and conditions stated in plans and/or specifications attached to or incorporated into this agreement, the terms of this agreement shall govern.
25. If, in Seller's reasonable opinion, Buyer's credit becomes impaired, Seller may, at its option, suspend work and deliveries under this agreement until it has received full payment for services rendered and security for future payment of uncompleted work under this agreement. If Buyer fails or refuses to make such payment and give security as required herein, then Seller shall have the right to terminate this agreement. Until such time as Buyer has made payment and provided acceptable security required herein, any delay or suspension of the work under this agreement resulting therefrom shall extend the time of performance of Seller under this agreement. If legal action is filed to effect collection of any sums due hereunder, Seller shall be entitled to reasonable attorney fees in addition to all other damages found to be due hereunder.

RESOLUTION NO. 2024-53-3530

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF IRWINDALE FINDING AN EMERGENCY EXISTS, REQUIRING WAIVER OF FORMAL BIDDING REQUIREMENTS AND APPROVING AND AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH ACCO ENGINEERED SYSTEMS FOR THE REPLACEMENT OF HVAC #4 AT THE DAN DIAZ RECREATION CENTER

WHEREAS, the Dan Diaz Recreation Center HVAC Unit #4 (HVAC Unit #4) is more than 30 years old and is now inoperable; and

WHEREAS, over the years, the City's HVAC maintenance contractors have replaced many of its parts including most recently the compressor, which is no longer functioning; and

WHEREAS, HVAC Unit #4 services the gymnasium, which is the central location of the building and where many activities take place; and

WHEREAS, HVAC Unit #4 is part of the Dan Diaz Recreation Center HVAC Replacement Project under the City's Fiscal Year 2024-2025 Capital Improvement Projects; however, the time frame to go out to bid is four (4) months out and another seven (7) months to order and receive the 12.5 ton Carrier Units; and

WHEREAS, the Dan Diaz Recreation Center (DDRC) provides critical services to the City's community, including tots, children, teens and seniors, which includes Summer Tots, Summer Kidzone, Teen Club, and Senior Center Morning Exercise Classes; and

WHEREAS, the DDRC is also the City's Emergency Evacuation Center; and

WHEREAS, California is experiencing extreme heat with temperatures set to exceed triple digits, and the state has issued an extreme heat advisory. Governor Newsom has directed the Office of Emergency Services to activate its State Operations Center and move into Phase II of its Extreme Temperature Response Plan in order to coordinate community outreach and ensure that members of the community have access to cooling centers. With the temperatures continuing to rise for the summer season, it is imperative that this HVAC Unit # 4 is replaced immediately; and

WHEREAS, Public Contract Code section 20168 states that in the case of an emergency, the legislative body may pass a resolution by a four-fifths vote of its members declaring that the public interest and necessity demand the immediate expenditure of public money to safeguard life, health, or property. Upon adoption of the resolution, it may expend any sum required in the emergency without complying with formal bidding requirements for public projects; and

WHEREAS, in the case of an emergency, the governing body may repair or replace a public facility, take any directly related and immediate action required by that emergency, and procure the necessary equipment, services, and supplies for those

purposes, without giving notice for bids to let contracts, pursuant to Public Contract Code section 22050; and

WHEREAS, it is in the best interest of the City to dispense with bidding to allow for the immediate purchase and installation of this unit by the City's current HVAC Maintenance Contractor so the City can continue to provide a safe and cool place for the community, including tots, children, teens, and seniors to play and exercise during the summer season; and

WHEREAS, the City Council now desires to find that an emergency exists demanding the immediate expenditure of City funds, and dispense with formal bidding procedures pursuant to Public Contract Code sections 20168 and 22050 and approve and authorize the City Manager to enter into an agreement with ACCO Engineered Systems to purchase and install one (1) Daikin Packaged 12.5 Ton Unit and all other required mechanical and electrical work at the DDRC.

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

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

SECTION 2. The City Council of the City of Irwindale hereby finds that the HVAC #4 at the Dan Diaz Recreation Center is inoperable, and in immediate need of replacement. The Dan Diaz Recreation Center provides critical services to the Community, and serves as the City's Emergency Evacuation Center. The City is experiencing extreme heat with temperatures set to exceed triple digits, and the state has issued an extreme heat advisory for all of California.

SECTION 3. The City Council hereby finds, based on substantial evidence in the record, including information from Staff, the public, the Staff Report and all attachments thereto, that an emergency exists that will not permit a delay resulting from competitive solicitation of bids because the bidding process will delay repair of HVAC #4 by approximately 11 months. In order to safeguard the life and health of the community from the dangers of extreme heat, and to safeguard the City's property, the public interest and necessity demand that the city waive the bidding process for the immediate purchase and installation of one (1) Daikin Packaged 12.5 Ton Unit for the Dan Diaz Recreation Center. The City Council further finds that this action is necessary in order to continue to provide critical services to the community via the Dan Diaz Recreation Center.

SECTION 4. The City Council of the City of Irwindale hereby waives the formal bidding process for the purchase and installation of one (1) Daikin Packaged 12.5 Ton Unit and all other required mechanical and electrical work pursuant to Public Contract Code sections 20168 and 22050and authorizes the issuance of a purchase order for the same.

SECTION 6. The City Council of the City of Irwindale hereby authorizes the City Manager to enter into an agreement with ACCO Engineered Systems, in the amount of $48,936 for the purchase and installation of one (1) Daikin Packaged 12.5 Ton Unit and all other required mechanical and electrical work. The City Manager is hereby authorized to take any action necessary to ensure the operation of the Dan Diaz recreation center, pursuant to Public Contract Code section 22050(a)(1).

SECTION 7. Pursuant to Public Contract Code section 22050(c), the City Council shall review this action and any actions taken by the City Manager at its next regularly scheduled meeting and at every regular meeting thereafter to determine by four-fifths vote if there is a need to continue emergency action, unless this action is terminated by the City Manager in accordance with Public Contract Code section 22050(c)(2). If this action is not terminated by the City Manager, the City Council shall terminate this emergency action at the earliest possible date that conditions warrant so that the remainder of the emergency action may be completed by giving notice for bids to let contracts.

SECTION 8. If any section, subsection, sentence, clause, phrase, or portion of this Resolution, or the application thereof to any person or circumstances, is, for any reason, held invalid or unconstitutional by any court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the application of any other section, subsection, sentence, clause, phrase, or portion of this Resolution, and to this end the invalid or unconstitutional section, subsection, sentence, clause, phrase of this Resolution are declared to be severable. The City Council hereby declares that it would have adopted this Resolution and each section, subsection, sentence, clause, phrase, part or portion thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases, parts or portions thereof be declared invalid or unconstitutional.

SECTION 9. 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 10TH day of July 2024.

_____
Albert F. Ambriz, 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. 2024-53-3530 duly adopted by the City Council of the City of Irwindale, at a regular meeting held on the 10th day of July 2024, by the following vote:

AYES: Councilmembers:

NOES: Councilmembers:

ABSENT: Councilmembers:

ABSTAIN: Councilmembers:

_____
Laura M. Nieto, MMC
Chief Deputy City Clerk

Item #19.H.

City of
IRWINDALE
AGENDA REPORT

Date: July 10, 2024

To: Honorable Mayor and Members of the City Council

From: Julian A. Miranda, City Manager

Issue: Approval of Resolutions Relating to Compensation for City Employees and Approval of New Job Classifications and Associated Job Specifications

City Manager's Recommendation:

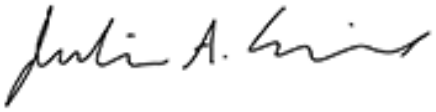
1. Adopt Resolution No. 2024-46-3523 entitled "**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF IRWINDALE APPROVING NEW JOB CLASSIFICATIONS AND ASSOCIATED JOB SPECIFICATIONS**"; and

2. Adopt Resolution No. 2024-45-3522 entitled "**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF IRWINDALE REPEALING AND REPLACING RESOLUTION NO. 2024-02-3479, AND ESTABLISHING THE NUMBER OF POSITIONS, SCHEDULE OF CLASSES, AND COMPENSATION FOR CITY EMPLOYEES**."

Administrative Action:

Submitted by:

Julian A. Miranda, City Manager



Prepared by:

Mary Hull, Human Resources/Risk Manager

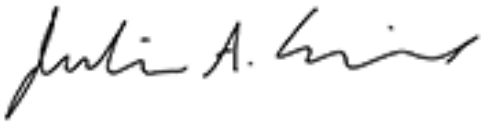
Reviewed by:

Adrian R. Guerra, City Attorney

Kambiz Borhani, Finance Director / City Treasurer

Approved by:

Julian A. Miranda, City Manager



Background and Analysis:

Article VIII, Section 803 of the City Charter authorizes the City Council to establish, by resolution, a classification plan, salaries, and other forms of compensation for all City employees. Section 2.12.010 of the Irwindale Municipal Code requires that the offices and positions in City employment be fixed and established by resolution of the City Council.

Classification Resolution No. 2024-46-3523

Through the adoption of Ordinance No. 779, which adopted the FY 2024-25 Budget, the City Council approved various personnel adjustments, including the approval of a new Communications and Records Supervisor and Police Administrative Clerk job classifications. Accordingly, staff recommends approval of Resolution No. 2024-46-3523, which approves and adopts the new Communications and Records Supervisor and Police Administrative Clerk job classifications and associated job specifications.

The City met and conferred with representatives of the Irwindale Management Employees Association (IMEA) and Irwindale City Employees Association (ICEA) regarding the new classifications, pursuant to the provisions of the Meyers-Milias-Brown Act (Government Code § 3500 et seq.).

Compensation Resolution No. 2024-45-3522

The City's Compensation Resolution is updated periodically as a result of personnel adjustments and/or compensation adjustments. It sets forth the authorized number of employees along with titles and compensation levels for unclassified management positions, unaffiliated and/or unrepresented unclassified at-will part-time positions, and full-time represented positions. It was most recently updated on January 10, 2024, through the City Council's adoption of Resolution No. 2024-02-3479. The salary range schedule incorporated in proposed Resolution No. 2024-45-3522 reflects the following personnel adjustments approved through the adoption of Ordinance 779, which adopted the FY-2024-25 Budget:

1. Defund one (1) represented, classified full-time Assistant City Engineer position.
2. Defund one (1) represented, classified full-time Planning Technician position.
3. Fund one (1) represented, classified full-time Management Analyst position.
4. Fund one (1) represented, classified full-time Maintenance Lead Worker position.
5. Fund one (1) represented, classified, full-time Assistant Planner position.
6. Fund one (1) represented, classified full-time Assistant Engineer position.

7. Fund one (1) represented, classified full-time Communications and Records Supervisor position.
8. Fund one (1) represented, classified full-time Police Administrative Clerk position.
9. Fund one (1) at-will, unrepresented, unclassified permanent part-time Senior Center Aide Position.

This Resolution meets the requirements for a publicly available pay schedule as required by CalPERS (2 C.C.R. §570.5.)

Fiscal Impact:

The amount allocated in the Fiscal Year 2024-2025 Adopted Budget for the Planning Technician position, including salary and benefits, is $100,899. The adoption of Resolution No. 2024-45-3522 authorizes the Finance Director to amend the Fiscal Year 2024-2025 Adopted Budget to defund the Planning Technician position. All remaining positions being funded or defunded, along with their respective adjustments, are included in the Fiscal Year 2024-2025 Adopted Budget. No additional funding is requested.

Attachments:

1. Classification Resolution No. 2024-46-3523
2. Compensation Resolution No. 2024-45-3522

RESOLUTION NO. 2024-46-3523

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF IRWINDALE APPROVING NEW JOB CLASSIFICATIONS AND ASSOCIATED JOB SPECIFICATIONS

WHEREAS, Article VIII, Section 800 of the City Charter authorizes the City Council to designate miscellaneous and safety employee positions from time to time; and

WHEREAS, Section 2.12.010 of the Irwindale Municipal Code requires that the offices and positions in City employment be fixed and established by resolution of the City Council; and

WHEREAS, Section 2.05 of the City of Irwindale Personnel Rules, as adopted by the City Council in Resolution No. 2022-36-3286 on April 27, 2022, states that the Personnel Officer shall determine the duties and responsibilities of all City positions for inclusion in a Classification Plan, which shall be adopted by the City Council; and

WHEREAS, on January 10, 2024, the City Council adopted Resolution No. 2024-02-3479 establishing the number of positions, schedule of classes, compensation, and benefits for City employees; and

WHEREAS, the City desires to add a two new job classifications with associated job specifications; and

WHEREAS, the City has met and conferred with the representatives of the Irwindale Management Employees Association (IMEA) and Irwindale Municipal Employees Association (ICEA) regarding the proposed actions herein, pursuant to the provisions of the Meyers-Milias-Brown Act (Government Code § 3500 et seq.); and

WHEREAS, concurrently herewith, the City intends to adopt Resolution No. 2024-45-3522 to replace 2024-02-3479 establishing the number of positions, schedule of classes, and compensation, for all City employees.

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

SECTION 1. Recitals.

The foregoing recitals are true and correct and are hereby incorporated by this reference.

SECTION 2. Personnel Job Classifications and Associated Job Specifications Ordered Approved and Adopted.

The City Council hereby approves and adopts the Communications and Records Supervisor job classification and associated job specification attached hereto as Exhibit A.

The City Council hereby approves and adopts the Police Administrative Clerk job classification and associated job specifications attached hereto as Exhibit B.

SECTION 3. Certification

The Chief Deputy City Clerk shall certify to the adoption of this resolution.

PASSED, APPROVED AND ADOPTED this 10th day of July 2024.

_____
Albert F. Ambriz, Mayor

ATTEST:

_____
Laura 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. 2024-46-3523 was duly and regularly passed and adopted by the City Council of the City of Irwindale at its regular meeting held on the 10th day of July 2024, by the following vote:

AYES: Councilmembers:

NOES: Councilmembers:

ABSENT: Councilmembers:

ABSTAIN: Councilmembers:

_____
Laura Nieto, Chief Deputy City Clerk

CITY OF IRWINDALE

COMMUNICATIONS AND RECORDS SUPERVISOR

*Class specifications are intended to present a descriptive list of the range of duties performed by employees in the class. Specifications are **not** intended to reflect all duties performed within the job.*

SUMMARY DESCRIPTION

Under general direction, plans, organizes, evaluates, and supervises the Communications and Records units within the Police Department; ensures work quality and adherence to established policies and procedures; and performs the more technical and complex tasks relative to assigned areas of responsibility; ensures that functions meet all applicable laws, regulations, and City policies.

REPRESENTATIVE DUTIES

The following duties are typical for this classification. Incumbents may not perform all of the listed duties and/or may be required to perform additional or different duties from those set forth below to address business needs and changing business practices.

1. Plans, organizes, evaluates, and supervises the work of staff responsible for providing police dispatch services and the daily operations and activities of law enforcement records management.
2. Trains, counsels, evaluates, schedules and participates in the selection of staff assigned to the Communication and Records units; works with employees to correct deficiencies; identifies staffing needs; reviews needs with the appropriate management staff.
3. Assists in the development and maintenance of policies and procedures; monitors work activities to ensure compliance with established policies and procedures; makes recommendations for changes and improvements to existing standards and procedures; recommends and assists in the implementation of goals and objectives.
4. Identifies training needs related to assigned areas of responsibility; reviews recommendations or identified needs with the appropriate management staff.
5. Serves as system administrator for a variety of records management and intelligence databases and systems; assigns police employee privileges.
6. Monitors and maintains dispatch center and records equipment and supplies needs; researches the dispatch equipment market; makes recommendations on equipment purchases.
7. Coordinates and oversees audits of Records unit information and processes, including Department of Justice and National Crime Information Center audits.
8. Compiles and oversees the release of police records information in accordance with the California Public Records Act.
9. Assists in the preparation of county, state and federally mandated Uniform Crime and Arrest Reports (and National Incident Based Reporting System when implemented). Complies with all monthly federal submission requirements in a timely manner; prepare statistical reports as needed.
10. Assists in the preparation and administration of the assigned program budgets; submits budget recommendations; monitor expenditures.
11. Attends and participates in professional group meetings; stays abreast of new trends and innovations in the field of police dispatch and records management.
12. Prepares analytical and statistical reports on operations and activities.
13. Monitors legal and procedural developments related to law enforcement records.
14. May perform full range of duties of police dispatcher/clerk personnel.
15. Performs related duties as required.

QUALIFICATIONS

The following generally describes the knowledge and ability required to enter the job and/or be learned within a short period of time in order to successfully perform the assigned duties.

Knowledge of:

Operations, regulations, services and activities of a police dispatch center and law enforcement records management program.
Methods and techniques of computer aided dispatch.
Computer aided dispatch systems and radio equipment.
Operations and procedures of police records management and crime statistics database systems.
Principles and practices of data storage, retrieval and processing.
Methods and techniques of record keeping.
Principles and practices of program development and implementation.
Principles, practices, methodologies, and techniques of crime analysis as it relates to statistics and law enforcement.
Principles of supervision, training, and performance evaluation.
Principles and practices of budgets and expenditure monitoring.
Modern and complex principles and practices of the criminal justice system, law enforcement and police patrol.
Federal Communications Commission regulations.
Police Department and City policies and procedures.
Court procedures/requirements concerning criminal case filings.
Pertinent federal, state and local laws, codes and regulations.

Ability to:

Select, supervise, train and evaluate staff.
Plan, organize and coordinate the work and activity of a public safety communications center.
Schedule effective twenty-four hour dispatch center operations.
Organize and administer law enforcement records management system.
Audit and validate crime data.
Apply applicable codes and regulations to records management.
Accurately utilize assigned law enforcement software applications and computer programs.
Manage multiple database systems.
Work under pressure, exercise good judgment and make sound decisions in emergency situations.
Work cooperatively with other departments, City officials and outside agencies.
Operate radio transmitting equipment, 911 and computer aided dispatch systems, and all other equipment within the communications center.
Participate in the preparation and administration of the assigned budget.
Interpret and explain City and Department policies and procedures.
Interpret and apply current legislation to law enforcement records management.
Operate modern office equipment including computers and supporting applications.
Prepare clear and concise reports.
Communicate clearly and concisely, both orally and in writing.
Establish and maintain effective working relationships with those contacted in the course of work.

Education and Experience Guidelines - *Any combination of education and experience that would likely provide the required knowledge and abilities is qualifying. A typical way to obtain the knowledge and abilities would be:*

Education/Training:
Equivalent to the completion of the twelfth grade supplemented by college level course work in law enforcement, public administration, or a related field.

Experience:

Five years of police dispatch and/or records management experience including two years of administrative and/or lead supervisory experience.

Required License or Certificate:

Possession of an appropriate, valid driver's license.

Possession of Peace Officer's Standards and Training (POST) Basic Public Safety Dispatcher certificate.

PHYSICAL DEMANDS AND WORKING ENVIRONMENT

The conditions herein are representative of those that must be met by an employee to successfully perform the essential functions of this job. Reasonable accommodations may be made to enable individuals with disabilities to perform the essential job functions.

Environment: Work is performed primarily in a standard office environment with extensive public contact and constant interruptions.

Physical: Primary functions require sufficient physical ability and mobility to work in an office setting; to stand or sit for prolonged periods of time; to occasionally stoop, bend, kneel, crouch, reach, and twist; to lift, carry, push, and/or pull light to moderate amounts of weight; to operate office equipment requiring repetitive hand movement and fine coordination including use of a computer keyboard; and to verbally communicate to exchange information.

Vision: See in the normal visual range with or without correction.

Hearing: Hear in the normal audio range with or without correction.

Date: July 2024

CITY OF IRWINDALE

POLICE ADMINISTRATIVE CLERK

*Class specifications are intended to present a descriptive list of the range of duties performed by employees in the class. Specifications are **not** intended to reflect all duties performed within the job.*

SUMMARY DESCRIPTION

Under general supervision, performs a wide variety of general and specialized office support, and clerical work in support of the Police Department; collects, records, maintains, and retrieves property, evidence, and confidential law enforcement data and information; provides assistance to the public; and provides support and assistance to other non-sworn functions and activities of the Police Department.

REPRESENTATIVE DUTIES

A member of this classification may work within varied bureaus of the Police Department, including but not limited to the Detective Bureau, Records Bureau, and Administration Bureau.

The following duties are typical for this classification. Incumbents may not perform all of the listed duties and/or may be required to perform additional or different duties from those set forth below to address business needs and changing business practices.

1. Receives, logs, stores, and maintains property and evidence in accordance with Department procedures; transports evidence for forensic examination; maintains evidence rooms in an organized condition.
2. Verifies inventories of evidence and property received and/or confiscated by Police Department.
3. Reviews evidence and analysis forms for errors and omissions and assists with corrections.
4. Determines purge dates for property and evidence; releases or disposes of property and evidence in accordance with applicable laws and court orders; prepares and sends letters to property owners for claim; releases property to rightful owner; prepares surplus and unclaimed property for disposal or auction.
5. Prepares property and evidence for court trials; releases property to authorized persons; tracks chain of custody of evidence items; testifies in court regarding evidence chain of custody.
6. Assists in determining evidence analysis requirements; provides training in proper evidence and packaging procedures.
7. Reviews and files photographic evidence.
8. Responds to outside agency requests for evidence, status, and chain of custody.
9. Prepares a variety of property and evidence reports.
10. Assists in other police service support work.
11. Establishes and maintains inventory systems.
12. Performs a wide variety of law enforcement support duties related to collecting, recording, transcribing, maintaining, processing, editing, retrieving, and distributing technical and confidential law enforcement data and information including police reports, citations, warrants, protective orders, and subpoenas.
13. Enters, maintains, and retrieves data, reports, and information into and from a variety of automated law enforcement records systems; validates selected records from the Department of Justice files including warrants, stolen vehicles, and missing persons.

14. Assists with police file and record management; scans reports; assists in the implementation of file record management systems and programs.
15. Photocopies and distributes crime, incident, arrest, and accident reports to the general public and various agencies.
16. Assists, provides information, and responds to questions and concerns from the general public, departmental staff, and other agencies in person and by telephone; takes and provides phone messages.
17. Types correspondence, reports, forms, and other confidential and specialized documents from drafts, notes, dictated tapes, or brief instructions; composes letters and other documents as necessary.
18. Live Scans all new City employees and fills out necessary forms.
19. Performs related duties as required.

QUALIFICATIONS

The following generally describes the knowledge and ability required to enter the job and/or be learned within a short period of time in order to successfully perform the assigned duties.

Knowledge of:

Modern office procedures, methods and equipment including computers.
Law enforcement property management principles, procedures, techniques, and equipment.
Basic police terminology.
Pertinent federal, state, and local laws, codes, and regulations and department rules, policies, and procedures.
Property and evidence storage, filing, retrieval and recordkeeping systems.
Laws related to processing, storage, release and disposal of property and evidence.
Customer service principles and practices.
Methods and techniques of proper phone etiquette.
Computer applications such as word processing, spreadsheet, and database applications.
Automated law enforcement information systems and procedures.
Mathematical principles.
Basic principles of business letter writing and basic report preparation.
English usage, spelling, grammar, and punctuation.

Ability to:

Store, track, and retrieve property and evidence.
Understand the organization, operation, and services of the city, the Police Department, and of outside agencies as necessary to assume assigned responsibilities.
Understand, interpret, and apply general administrative and departmental policies and procedures.
Perform a variety of law enforcement office support and clerical duties and activities of a general and specialized nature for the Police Department.
Work under steady pressure with frequent interruptions and a high degree of public contact by phone or in person.
Exercise good judgment in maintaining critical and sensitive information, records, and reports.
Read, understand, and review documents for accuracy and relevant information.
Use applicable office terminology, forms, documents, and procedures in the course of the work.
Use sound judgment in following and applying appropriate laws, regulations, policies, and procedures.
Organize and prioritize work assignments.
Deal successfully with the public, in person and over the telephone.
Respond to and resolve difficult and sensitive citizen inquiries and complaints.

Courteously respond to community issues, concerns, and needs.
Understand and follow oral and written instructions.
Operate and use modern office equipment including a computer and various software packages.
Operate specialized automated law enforcement information systems including public safety computer systems to access and maintain data.
Type and enter data accurately at a speed necessary for successful job performance.
Communicate clearly and concisely, both orally and in writing.
Establish and maintain effective working relationships with those contacted in the course of work.

Education and Experience Guidelines - *Any combination of education and experience that would likely provide the required knowledge and abilities is qualifying. A typical way to obtain the knowledge and abilities would be:*

Education/Training:
Equivalent to the completion of the twelfth grade.

Experience:
Two years of responsible relevant law enforcement work.

License or Certificate:
Possession of an appropriate, valid driver's license.

PHYSICAL DEMANDS AND WORKING ENVIRONMENT

The conditions herein are representative of those that must be met by an employee to successfully perform the essential functions of this job. Reasonable accommodations may be made to enable individuals with disabilities to perform these essential job functions.

Environment: Work is performed primarily in a standard office environment with extensive public contact and constant interruptions.

Physical: Primary functions require sufficient physical ability and mobility to work in an office setting; to stand or sit for prolonged periods of time; to occasionally stoop, bend, kneel, crouch, reach, and twist; to lift, carry, push, and/or pull light to moderate amounts of weight; to operate office equipment requiring repetitive hand movement and fine coordination including use of a computer keyboard; and to verbally communicate to exchange information.

Vision: See in the normal visual range with or without correction.

Hearing: Hear in the normal audio range with or without correction.

Date: July 2024

RESOLUTION NO. 2024-45-3522

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF IRWINDALE REPEALING AND REPLACING RESOLUTION NO. 2024-02-3479, AND ESTABLISHING THE NUMBER OF POSITIONS, SCHEDULE OF CLASSES, AND COMPENSATION FOR CITY EMPLOYEES

WHEREAS, Article VIII, Section 803 of the City Charter requires the City Council to establish by resolution salaries and other forms of compensation for all City employees; and

WHEREAS, Section 2.12.010 of the Irwindale Municipal Code requires that the offices and positions in the City employment be fixed and established by resolution of the City Council; and

WHEREAS, Section 2.12.020 of the Irwindale Municipal Code requires that the salaries and compensation of officers and employees of the City be fixed and determined by resolution of the City Council; and

WHEREAS, Section 2.25 of the City's Personnel Rules states that the Personnel Officer shall prepare an annual salary resolution that establishes the minimum through maximum salary rates of pay for employee classifications, which shall be adopted by the City Council; and

WHEREAS, the City Council last adopted Resolution No. 2024-02-3479 on January 10, 2024, which established the number of positions, schedule of classes, and compensation for City employees; and

WHEREAS, the City desires to defund one (1) represented, classified full-time Assistant City Engineer position; and

WHEREAS, the City desires to defund one (1) represented, classified full-time Planning Technician position; and

WHEREAS, the City desires to fund one (1) represented, classified full-time Management Analyst position; and

WHEREAS, the City desires to fund one (1) represented, classified full-time Maintenance Lead Worker position; and

WHEREAS, the City desires to fund one (1) represented, classified, full-time Assistant Planner position; and

WHEREAS, the City desires to fund one (1) represented, classified full-time Assistant Engineer position; and

WHEREAS, the City desires to fund one (1) represented, classified full-time Communications and Records Supervisor position; and

WHEREAS, the City desires to fund one (1) represented, classified full-time Police Administrative Clerk position; and

WHEREAS, the City desires to fund one (1) at-will, unrepresented, unclassified permanent part-time Senior Center Aide Position.

WHEREAS, the City Council desires to adopt this resolution to accurately reflect the current compensation ranges, position titles, and number of positions for all City classifications; and

WHEREAS, this resolution is also intended to serve as the City's California Public Employees Retirement System ("CalPERS") publicly available pay schedule as required by California Code of Regulations, Title 2, Section 570.5.

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

SECTION 1. **Recitals.**

The foregoing recitals are true and correct and are hereby incorporated by this reference.

SECTION 2. **Personnel Positions Ordered Defunded.**

1) One (1) represented, classified full-time Assistant City Engineer position.

2) One (1) represented, classified full-time Planning Technician position.

SECTION 3. **Personnel Positions Approved and Ordered Funded.**

1) One (1) represented, classified full-time Maintenance Lead Worker position.

2) One (1) represented, classified full-time Management Analyst position.

3) One (1) represented, classified, full-time Assistant Planner position.

4) One (1) represented, classified, full-time Assistant Engineer position**.**

5) One (1) represented, classified full-time Communications and Records Supervisor position.

6) One (1) represented, classified full-time Police Administrative Clerk position.

7) One (1) at-will, unrepresented, unclassified permanent part-time Senior Center Aide Position.

SECTION 4. **Applicability to other Governing Documents.**

This Resolution shall repeal, supersede, and replace Resolution No. 2024-02-3479. This Resolution shall also take the place of all existing resolutions or orders of the City Council as they relate to the subject matter contained herein. However, in no event shall this Resolution rescind, supersede, alter or in any way have an effect on Resolution No. 2021-116-3238, that was adopted December 8, 2021, relating to the compensation and benefits of unclassified, unrepresented management employees, or on any approved or adopted memoranda of understanding in accordance with Section 2 of this Resolution.

In the event that any provision of this Resolution is in conflict with the City's Personnel Rules or other policies, this Resolution shall supersede and govern the City's policies and practices with regard to unrepresented and/or unaffiliated employees.

SECTION 5. Classified Employees Organized In Bargaining Units Represented By Recognized Employee Organizations.

The Memoranda of Understanding for IMEA, ICEA, and IPOA govern the employment relationship between the City and the employees represented by their respective Recognized Employee Organizations. In the event that this Resolution conflicts with the benefits granted or the restrictions imposed pursuant to any Memoranda of Understanding negotiated with these Recognized Employee Organizations, the applicable Memoranda of Understanding shall govern as to that particular employee bargaining unit.

SECTION 6. Salary and Wage Schedules.

The City Council hereby approves the number of positions, list of class titles, and compensation for all City job classifications reflected in Exhibit A, effective retroactive to July 1, 2024.

If any employee is receiving compensation above the highest step of the salary range stated in this resolution for his/her position, the employee's present rate shall be continued as an approved additional step rate for the class ("Y-rated"), until the highest step is greater than the Y-rate. Except as provided herein or an applicable MOU, no non Y-rated employee may be adjusted to a Y-rate upon reclassification or promotional appointment, and the Y-rate shall no longer be in effect after the termination of the employment in that class of the incumbent(s) on whose behalf the Y-rate is authorized. Nothing in this resolution shall prohibit any Y-rated employee from receiving a cost of living adjustment that other employees within the employee's applicable bargaining group may receive pursuant to an applicable Tentative Agreement or MOU.

SECTION 7. Certification.

The Chief Deputy City Clerk shall certify to the adoption of this resolution.

PASSED, APPROVED AND ADOPTED this 10th day of July 2024.

_____
Albert F. Ambriz, Mayor

ATTEST:

_____
Laura 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. 2024-45-3522 was duly and regularly passed and adopted by the City Council of the City of Irwindale at its regular meeting held on the 10th day of July 2024, by the following vote:

AYES: Councilmembers:

NOES: Councilmembers:

ABSENT: Councilmembers:

ABSTAIN: Councilmembers:

_____

Laura M. Nieto, MMC
Chief Deputy City Clerk

EXHIBIT A

CITY OF IRWINDALE
Full-Time Salary Schedule
Fiscal Year 2024-2025
Effective July 1, 2024

Unit	Position Title	Authorized Position Count	Period	Range	Step A	Step B	Step C	Step D	Step E
Legislative	Councilmember	5	Bi-Weekly		346.23	346.23	346.23	346.23	346.23
			Monthly	Elected	750.16	750.16	750.16	750.16	750.16
			Annual		9,001.92	9,001.92	9,001.92	9,001.92	9,001.92
CM	City Manager	1	Hourly	88	100.2755	105.2894	110.5538	116.0817	121.8861
			Bi-Weekly		8,022.04	8,423.15	8,844.31	9,286.54	9,750.88
			Monthly		17,381	18,250	19,163	20,121	21,127
			Annual		208,573	219,002	229,952	241,450	253,523
Director	Assistant City Manager	1	Hourly	81	84.3587	88.5764	93.0053	97.6558	102.5385
			Bi-Weekly		6,748.69	7,086.12	7,440.42	7,812.46	8,203.08
			Monthly		14,622	15,353	16,121	16,927	17,773
			Annual		175,466	184,239	193,451	203,124	213,280
Director	Chief of Police	1	Hourly	85	94.9798	99.7288	104.7154	109.9510	115.4486
			Bi-Weekly		7,598.38	7,978.31	8,377.23	8,796.08	9,235.88
			Monthly		16,463	17,286	18,151	19,058	20,011
			Annual		197,558	207,436	217,808	228,698	240,133
Director	Community Development Director	1	Hourly	78	78.3351	82.2519	86.3644	90.6827	95.2168
			Bi-Weekly		6,266.81	6,580.15	6,909.15	7,254.62	7,617.35
			Monthly		13,578	14,257	14,970	15,718	16,504
			Annual		162,937	171,084	179,638	188,620	198,051
Director	Director of Engineering/Building Official	1	Hourly	80	82.3010	86.4159	90.7365	95.2736	100.0370
			Bi-Weekly		6,584.08	6,913.27	7,258.92	7,621.88	8,002.96
			Monthly		14,266	14,979	15,728	16,514	17,340
			Annual		171,186	179,745	188,732	198,169	208,077
Director	Finance Director/City Treasurer	1	Hourly	79	80.2933	84.3082	88.5236	92.9495	97.5971
			Bi-Weekly		6,423.46	6,744.65	7,081.88	7,435.96	7,807.77
			Monthly		13,918	14,613	15,344	16,111	16,917
			Annual		167,010	175,361	184,129	193,335	203,002
Director	Public Services Director	1	Hourly	74	70.9678	74.5163	78.2423	82.1543	86.2620
			Bi-Weekly		5,677.42	5,961.31	6,259.38	6,572.35	6,900.96
			Monthly		12,301	12,916	13,562	14,240	14,952
			Annual		147,613	154,994	162,744	170,881	179,425

CITY OF IRWINDALE
Full-Time Salary Schedule
Fiscal Year 2024-2025
Effective July 1, 2024

Unit	Position Title	Authorized Position Count	Period	Range	Step A	Step B	Step C	Step D	Step E
ICEA	Accountant	1	Hourly	45	34.6793	36.4135	38.2341	40.1457	42.1529
			Bi-Weekly		2,774.35	2,913.08	3,058.73	3,211.65	3,372.23
			Monthly		6,011	6,312	6,627	6,959	7,307
			Annual		72,133	75,740	79,527	83,503	87,678
ICEA	Administrative Secretary	2	Hourly	37	28.4625	29.8856	31.3798	32.9490	34.5966
			Bi-Weekly		2,277.00	2,390.85	2,510.38	2,635.92	2,767.73
			Monthly		4,934	5,180	5,439	5,711	5,997
			Annual		59,202	62,162	65,270	68,534	71,961
ICEA	Assistant Planner	1	Hourly	45	34.6793	36.4135	38.2341	40.1457	42.1529
			Bi-Weekly		2,774.35	2,913.08	3,058.73	3,211.65	3,372.23
			Monthly		6,011	6,312	6,627	6,959	7,307
			Annual		72,133	75,740	79,527	83,503	87,678
ICEA	Building Permit Technician	0	Hourly	37	28.4625	29.8856	31.3798	32.9490	34.5966
			Bi-Weekly		2,277.00	2,390.85	2,510.38	2,635.92	2,767.73
			Monthly		4,934	5,180	5,439	5,711	5,997
			Annual		59,202	62,162	65,270	68,534	71,961
ICEA	Bus Driver	1	Hourly	33	25.7861	27.0755	28.4293	29.8510	31.3438
			Bi-Weekly		2,062.88	2,166.04	2,274.35	2,388.08	2,507.50
			Monthly		4,470	4,693	4,928	5,174	5,433
			Annual		53,635	56,317	59,133	62,090	65,195
ICEA	Code Enforcement Officer	1	Hourly	39	29.9038	31.3990	32.9692	34.6178	36.3486
			Bi-Weekly		2,392.31	2,511.92	2,637.54	2,769.42	2,907.88
			Monthly		5,183	5,443	5,715	6,000	6,300
			Annual		62,200	65,310	68,576	72,005	75,605
ICEA	Deputy City Clerk	0	Hourly	41	31.4173	32.9880	34.6375	36.3692	38.1875
			Bi-Weekly		2,513.38	2,639.04	2,771.00	2,909.54	3,055.00
			Monthly		5,446	5,718	6,004	6,304	6,619
			Annual		65,348	68,615	72,046	75,648	79,430
ICEA	Engineering Technician	3	Hourly	40	30.6514	32.1841	33.7933	35.4832	37.2572
			Bi-Weekly		2,452.12	2,574.73	2,703.46	2,838.65	2,980.58
			Monthly		5,313	5,579	5,858	6,150	6,458
			Annual		63,755	66,943	70,290	73,805	77,495

CITY OF IRWINDALE
Full-Time Salary Schedule
Fiscal Year 2024-2025
Effective July 1, 2024

Unit	Position Title	Authorized Position Count	Period	Range	Step A	Step B	Step C	Step D	Step E
ICEA	Finance Analyst	1	Hourly	45	34.6793	36.4135	38.2341	40.1457	42.1529
			Bi-Weekly		2,774.35	2,913.08	3,058.73	3,211.65	3,372.23
			Monthly		6,011	6,312	6,627	6,959	7,307
			Annual		72,133	75,740	79,527	83,503	87,678
ICEA	Finance Technician	1	Hourly	36	27.7683	29.1567	30.6144	32.1452	33.7524
			Bi-Weekly		2,221.46	2,332.54	2,449.15	2,571.62	2,700.19
			Monthly		4,813	5,054	5,307	5,572	5,850
			Annual		57,758	60,646	63,678	66,862	70,205
ICEA	Human Resources Specialist	0	Hourly	38	29.1740	30.6327	32.1644	33.7726	35.4611
			Bi-Weekly		2,333.92	2,450.62	2,573.15	2,701.81	2,836.88
			Monthly		5,057	5,310	5,575	5,854	6,147
			Annual		60,682	63,716	66,902	70,247	73,759
ICEA	Inclusion Specialist	1	Hourly	37	28.4625	29.8856	31.3798	32.9490	34.5966
			Bi-Weekly		2,277.00	2,390.85	2,510.38	2,635.92	2,767.73
			Monthly		4,934	5,180	5,439	5,711	5,997
			Annual		59,202	62,162	65,270	68,534	71,961
ICEA	Janitor	1	Hourly	20	18.7053	19.6404	20.6226	21.6538	22.7365
			Bi-Weekly		1,496.42	1,571.23	1,649.81	1,732.31	1,818.92
			Monthly		3,242	3,404	3,575	3,753	3,941
			Annual		38,907	40,852	42,895	45,040	47,292
ICEA	Library Technician	1	Hourly	29	23.3606	24.5288	25.7553	27.0433	28.3957
			Bi-Weekly		1,868.85	1,962.31	2,060.42	2,163.46	2,271.65
			Monthly		4,049	4,252	4,464	4,688	4,922
			Annual		48,590	51,020	53,571	56,250	59,063
ICEA	Maintenance Aide	4	Hourly	25	21.1635	22.2216	23.3327	24.4995	25.7245
			Bi-Weekly		1,693.08	1,777.73	1,866.62	1,959.96	2,057.96
			Monthly		3,668	3,852	4,044	4,247	4,459
			Annual		44,020	46,221	48,532	50,959	53,507
ICEA	Maintenance Lead Worker	2	Hourly	43	33.0082	34.6587	36.3918	38.2115	40.1221
			Bi-Weekly		2,640.65	2,772.69	2,911.35	3,056.92	3,209.77
			Monthly		5,721	6,008	6,308	6,623	6,955
			Annual		68,657	72,090	75,695	79,480	83,454

CITY OF IRWINDALE
Full-Time Salary Schedule
Fiscal Year 2024-2025
Effective July 1, 2024

Unit	Position Title	Authorized Position Count	Period	Range	Step A	Step B	Step C	Step D	Step E
ICEA	Maintenance Worker I	0	Hourly	31	24.5433	25.7707	27.0591	28.4120	29.8327
			Bi-Weekly		1,963.46	2,061.65	2,164.73	2,272.96	2,386.62
			Monthly		4,254	4,467	4,690	4,925	5,171
			Annual		51,050	53,603	56,283	59,097	62,052
ICEA	Maintenance Worker II	6	Hourly	40	30.6514	32.1841	33.7933	35.4832	37.2572
			Bi-Weekly		2,452.12	2,574.73	2,703.46	2,838.65	2,980.58
			Monthly		5,313	5,579	5,858	6,150	6,458
			Annual		63,755	66,943	70,290	73,805	77,495
ICEA	Office Specialist	3	Hourly	29	23.3606	24.5288	25.7553	27.0433	28.3957
			Bi-Weekly		1,868.85	1,962.31	2,060.42	2,163.46	2,271.65
			Monthly		4,049	4,252	4,464	4,688	4,922
			Annual		48,590	51,020	53,571	56,250	59,063
ICEA	Planning Technician	1	Hourly	36	27.7683	29.1567	30.6144	32.1452	33.7524
			Bi-Weekly		2,221.46	2,332.54	2,449.15	2,571.62	2,700.19
			Monthly		4,813	5,054	5,307	5,572	5,850
			Annual		57,758	60,646	63,678	66,862	70,205
ICEA	Police Administrative Clerk	1	Hourly	28	22.7913	23.9308	25.1274	26.3837	27.7029
			Bi-Weekly		1,823.31	1,914.46	2,010.19	2,110.69	2,216.23
			Monthly		3,951	4,148	4,355	4,573	4,802
			Annual		47,406	49,776	52,265	54,878	57,622
ICEA	Police Records Clerk	0	Hourly	28	22.7913	23.9308	25.1274	26.3837	27.7029
			Bi-Weekly		1,823.31	1,914.46	2,010.19	2,110.69	2,216.23
			Monthly		3,951	4,148	4,355	4,573	4,802
			Annual		47,406	49,776	52,265	54,878	57,622
ICEA	Police Records Clerk/ Dispatcher	1	Hourly	32	25.1567	26.4144	27.7351	29.1216	30.5779
			Bi-Weekly		2,012.54	2,113.15	2,218.81	2,329.73	2,446.23
			Monthly		4,361	4,579	4,807	5,048	5,300
			Annual		52,326	54,942	57,689	60,573	63,602
ICEA	Police Services Specialist	1	Hourly	41	31.4173	32.9880	34.6375	36.3692	38.1875
			Bi-Weekly		2,513.38	2,639.04	2,771.00	2,909.54	3,055.00
			Monthly		5,446	5,718	6,004	6,304	6,619
			Annual		65,348	68,615	72,046	75,648	79,430

CITY OF IRWINDALE
Full-Time Salary Schedule
Fiscal Year 2024-2025
Effective July 1, 2024

Unit	Position Title	Authorized Position Count	Period	Range	Step A	Step B	Step C	Step D	Step E
ICEA	Recreation Assistant	0	Hourly	29	23.3606	24.5288	25.7553	27.0433	28.3957
			Bi-Weekly		1,868.85	1,962.31	2,060.42	2,163.46	2,271.65
			Monthly		4,049	4,252	4,464	4,688	4,922
			Annual		48,590	51,020	53,571	56,250	59,063
ICEA	Senior Bus Driver	1	Hourly	37	28.4625	29.8856	31.3798	32.9490	34.5966
			Bi-Weekly		2,277.00	2,390.85	2,510.38	2,635.92	2,767.73
			Monthly		4,934	5,180	5,439	5,711	5,997
			Annual		59,202	62,162	65,270	68,534	71,961
ICEA	Senior Center Assistant	1	Hourly	29	23.3606	24.5288	25.7553	27.0433	28.3957
			Bi-Weekly		1,868.85	1,962.31	2,060.42	2,163.46	2,271.65
			Monthly		4,049	4,252	4,464	4,688	4,922
			Annual		48,590	51,020	53,571	56,250	59,063
ICEA	Senior Center Leader/Bus Driver	1	Hourly	33	25.7861	27.0755	28.4293	29.8510	31.3438
			Bi-Weekly		2,062.88	2,166.04	2,274.35	2,388.08	2,507.50
			Monthly		4,470	4,693	4,928	5,174	5,433
			Annual		53,635	56,317	59,133	62,090	65,195
ICEA	Senior Center Specialist	1	Hourly	37	28.4625	29.8856	31.3798	32.9490	34.5966
			Bi-Weekly		2,277.00	2,390.85	2,510.38	2,635.92	2,767.73
			Monthly		4,934	5,180	5,439	5,711	5,997
			Annual		59,202	62,162	65,270	68,534	71,961
ICEA	Senior Code Enforcement Officer	1	Hourly	45	34.6793	36.4135	38.2341	40.1457	42.1529
			Bi-Weekly		2,774.35	2,913.08	3,058.73	3,211.65	3,372.23
			Monthly		6,011	6,312	6,627	6,959	7,307
			Annual		72,133	75,740	79,527	83,503	87,678
ICEA	Senior Recreation Leader	3	Hourly	19	18.2495	19.1620	20.1202	21.1264	22.1827
			Bi-Weekly		1,459.96	1,532.96	1,609.62	1,690.12	1,774.62
			Monthly		3,163	3,321	3,488	3,662	3,845
			Annual		37,959	39,857	41,850	43,943	46,140

CITY OF IRWINDALE
Full-Time Salary Schedule
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Effective July 1, 2024

Unit	Position Title	Authorized Position Count	Period	Range	Step A	Step B	Step C	Step D	Step E
IMEA	Aquatics Supervisor	1	Hourly	47	36.4346	38.2563	40.1692	42.1779	44.2870
			Bi-Weekly		2,914.77	3,060.50	3,213.54	3,374.23	3,542.96
			Monthly		6,315	6,631	6,963	7,311	7,676
			Annual		75,784	79,573	83,552	87,730	92,117
IMEA	Assistant City Engineer	0	Hourly	64	55.4399	58.2120	61.1226	64.1788	67.3880
			Bi-Weekly		4,435.19	4,656.96	4,889.81	5,134.31	5,391.04
			Monthly		9,610	10,090	10,595	11,124	11,681
			Annual		115,315	121,081	127,135	133,492	140,167
IMEA	Assistant Engineer	1	Hourly	52	41.2226	43.2837	45.4481	47.7207	50.1067
			Bi-Weekly		3,297.81	3,462.69	3,635.85	3,817.65	4,008.54
			Monthly		7,145	7,503	7,878	8,272	8,685
			Annual		85,743	90,030	94,532	99,259	104,222
IMEA	Assistant to the City Manager	1	Hourly	63	54.0880	56.7923	59.6317	62.6135	65.7442
			Bi-Weekly		4,327.04	4,543.38	4,770.54	5,009.08	5,259.54
			Monthly		9,375	9,844	10,336	10,853	11,396
			Annual		112,503	118,128	124,034	130,236	136,748
IMEA	Associate Engineer	1	Hourly	56	45.5024	47.7774	50.1663	52.6745	55.3082
			Bi-Weekly		3,640.19	3,822.19	4,013.31	4,213.96	4,424.65
			Monthly		7,887	8,281	8,696	9,130	9,587
			Annual		94,645	99,377	104,346	109,563	115,041
IMEA	Associate Planner	1	Hourly	49	38.2793	40.1933	42.2029	44.3130	46.5288
			Bi-Weekly		3,062.35	3,215.46	3,376.23	3,545.04	3,722.31
			Monthly		6,635	6,967	7,315	7,681	8,065
			Annual		79,621	83,602	87,782	92,171	96,780
IMEA	Benefits Administrator	1	Hourly	58	47.8058	50.1962	52.7058	55.3409	58.1077
			Bi-Weekly		3,824.46	4,015.69	4,216.46	4,427.27	4,648.62
			Monthly		8,286	8,701	9,136	9,592	10,072
			Annual		99,436	104,408	109,628	115,109	120,864
IMEA	Chief Deputy City Clerk	1	Hourly	58	47.8058	50.1962	52.7058	55.3409	58.1077
			Bi-Weekly		3,824.46	4,015.69	4,216.46	4,427.27	4,648.62
			Monthly		8,286	8,701	9,136	9,592	10,072
			Annual		99,436	104,408	109,628	115,109	120,864

CITY OF IRWINDALE
Full-Time Salary Schedule
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Unit	Position Title	Authorized Position Count	Period	Range	Step A	Step B	Step C	Step D	Step E
IMEA	City Librarian	1	Hourly	62	52.7688	55.4072	58.1774	61.0861	64.1404
			Bi-Weekly		4,221.50	4,432.58	4,654.19	4,886.88	5,131.23
			Monthly		9,147	9,604	10,084	10,588	11,118
			Annual		109,759	115,247	121,009	127,059	133,412
IMEA	Communication and Records Supervisor	1	Hourly	48	37.3462	39.2135	41.1740	43.2327	45.3942
			Bi-Weekly		2,987.69	3,137.08	3,293.92	3,458.62	3,631.54
			Monthly		6,473	6,797	7,137	7,494	7,868
			Annual		77,680	81,564	85,642	89,924	94,420
IMEA	Community Development Manager/City Planner	0	Hourly	62	52.7688	55.4072	58.1774	61.0861	64.1404
			Bi-Weekly		4,221.50	4,432.58	4,654.19	4,886.88	5,131.23
			Monthly		9,147	9,604	10,084	10,588	11,118
			Annual		109,759	115,247	121,009	127,059	133,412
IMEA	Construction Compliance Manager	1	Hourly	62	52.7688	55.4072	58.1774	61.0861	64.1404
			Bi-Weekly		4,221.50	4,432.58	4,654.19	4,886.88	5,131.23
			Monthly		9,147	9,604	10,084	10,588	11,118
			Annual		109,759	115,247	121,009	127,059	133,412
IMEA	Economic Development Coordinator	0	Hourly	53	42.2534	44.3659	46.5841	48.9135	51.3591
			Bi-Weekly		3,380.27	3,549.27	3,726.73	3,913.08	4,108.73
			Monthly		7,324	7,690	8,075	8,478	8,902
			Annual		87,887	92,281	96,895	101,740	106,827
IMEA	Executive Assistant	0	Hourly	43	33.0082	34.6587	36.3918	38.2115	40.1221
			Bi-Weekly		2,640.65	2,772.69	2,911.35	3,056.92	3,209.77
			Monthly		5,721	6,008	6,308	6,623	6,955
			Annual		68,657	72,090	75,695	79,480	83,454
IMEA	Finance Manager	1	Hourly	68	61.1952	64.2548	67.4678	70.8413	74.3837
			Bi-Weekly		4,895.62	5,140.38	5,397.42	5,667.31	5,950.69
			Monthly		10,607	11,138	11,694	12,279	12,893
			Annual		127,286	133,650	140,333	147,350	154,718
IMEA	Housing Coordinator	1	Hourly	53	42.2534	44.3659	46.5841	48.9135	51.3591
			Bi-Weekly		3,380.27	3,549.27	3,726.73	3,913.08	4,108.73
			Monthly		7,324	7,690	8,075	8,478	8,902
			Annual		87,887	92,281	96,895	101,740	106,827

CITY OF IRWINDALE
Full-Time Salary Schedule
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Unit	Position Title	Authorized Position Count	Period	Range	Step A	Step B	Step C	Step D	Step E
IMEA	Human Resources/Risk Manager	1	Hourly	67	59.7029	62.6880	65.8226	69.1139	72.5697
			Bi-Weekly		4,776.23	5,015.04	5,265.81	5,529.12	5,805.58
			Monthly		10,349	10,866	11,409	11,980	12,579
			Annual		124,182	130,391	136,911	143,757	150,945
IMEA	Information Technology Manager	1	Hourly	63	54.0880	56.7923	59.6317	62.6135	65.7442
			Bi-Weekly		4,327.04	4,543.38	4,770.54	5,009.08	5,259.54
			Monthly		9,375	9,844	10,336	10,853	11,396
			Annual		112,503	118,128	124,034	130,236	136,748
IMEA	Management Analyst	3	Hourly	47	36.4346	38.2563	40.1692	42.1779	44.2870
			Bi-Weekly		2,914.77	3,060.50	3,213.54	3,374.23	3,542.96
			Monthly		6,315	6,631	6,963	7,311	7,676
			Annual		75,784	79,573	83,552	87,730	92,117
IMEA	Police Captain	1	Hourly	77	77.9548	81.8524	85.9452	90.2423	94.7543
			Bi-Weekly		6,236.38	6,548.19	6,875.62	7,219.38	7,580.35
			Monthly		13,512	14,188	14,897	15,642	16,424
			Annual		162,146	170,253	178,766	187,704	197,089
IMEA	Police Lieutenant	1	Hourly	71	67.2197	70.5808	74.1096	77.8149	81.7058
			Bi-Weekly		5,377.58	5,646.46	5,928.77	6,225.19	6,536.46
			Monthly		11,651	12,234	12,846	13,488	14,162
			Annual		139,817	146,808	154,148	161,855	169,948
IMEA	Project Manager - Construction Compliance	1	Hourly	48	37.3462	39.2135	41.1740	43.2327	45.3942
			Bi-Weekly		2,987.69	3,137.08	3,293.92	3,458.62	3,631.54
			Monthly		6,473	6,797	7,137	7,494	7,868
			Annual		77,680	81,564	85,642	89,924	94,420
IMEA	Project Manager - Mining	0	Hourly	62	52.7688	55.4072	58.1774	61.0861	64.1404
			Bi-Weekly		4,221.50	4,432.58	4,654.19	4,886.88	5,131.23
			Monthly		9,147	9,604	10,084	10,588	11,118
			Annual		109,759	115,247	121,009	127,059	133,412
IMEA	Public Works Maintenance Supervisor	1	Hourly	48	37.3462	39.2135	41.1740	43.2327	45.3942
			Bi-Weekly		2,987.69	3,137.08	3,293.92	3,458.62	3,631.54
			Monthly		6,473	6,797	7,137	7,494	7,868
			Annual		77,680	81,564	85,642	89,924	94,420

CITY OF IRWINDALE
Full-Time Salary Schedule
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Effective July 1, 2024

Unit	Position Title	Authorized Position Count	Period	Range	Step A	Step B	Step C	Step D	Step E
IMEA	Public Works Services Manager	0	Hourly	62	52.7688	55.4072	58.1774	61.0861	64.1404
			Bi-Weekly		4,221.50	4,432.58	4,654.19	4,886.88	5,131.23
			Monthly		9,147	9,604	10,084	10,588	11,118
			Annual		109,759	115,247	121,009	127,059	133,412
IMEA	Recreation Manager	1	Hourly	62	52.7688	55.4072	58.1774	61.0861	64.1404
			Bi-Weekly		4,221.50	4,432.58	4,654.19	4,886.88	5,131.23
			Monthly		9,147	9,604	10,084	10,588	11,118
			Annual		109,759	115,247	121,009	127,059	133,412
IMEA	Recreation Supervisor	2	Hourly	47	36.4346	38.2563	40.1692	42.1779	44.2870
			Bi-Weekly		2,914.77	3,060.50	3,213.54	3,374.23	3,542.96
			Monthly		6,315	6,631	6,963	7,311	7,676
			Annual		75,784	79,573	83,552	87,730	92,117
IMEA	Senior Center Manager	1	Hourly	62	52.7688	55.4072	58.1774	61.0861	64.1404
			Bi-Weekly		4,221.50	4,432.58	4,654.19	4,886.88	5,131.23
			Monthly		9,147	9,604	10,084	10,588	11,118
			Annual		109,759	115,247	121,009	127,059	133,412
IMEA	Senior Finance Analyst	1	Hourly	51	40.2168	42.2279	44.3394	46.5563	48.8841
			Bi-Weekly		3,217.35	3,378.23	3,547.15	3,724.50	3,910.73
			Monthly		6,971	7,320	7,686	8,070	8,473
			Annual		83,651	87,834	92,226	96,837	101,679
IMEA	Senior Human Resources/ Risk Management Analyst	0	Hourly	53	42.2534	44.3659	46.5841	48.9135	51.3591
			Bi-Weekly		3,380.27	3,549.27	3,726.73	3,913.08	4,108.73
			Monthly		7,324	7,690	8,075	8,478	8,902
			Annual		87,887	92,281	96,895	101,740	106,827
IMEA	Senior Management Analyst	0	Hourly	53	42.2534	44.3659	46.5841	48.9135	51.3591
			Bi-Weekly		3,380.27	3,549.27	3,726.73	3,913.08	4,108.73
			Monthly		7,324	7,690	8,075	8,478	8,902
			Annual		87,887	92,281	96,895	101,740	106,827
IMEA	Senior Planner	1	Hourly	55	44.3923	46.6120	48.9428	51.3899	53.9596
			Bi-Weekly		3,551.38	3,728.96	3,915.42	4,111.19	4,316.77
			Monthly		7,695	8,079	8,483	8,908	9,353
			Annual		92,336	96,953	101,801	106,891	112,236

CITY OF IRWINDALE
Full-Time Salary Schedule
Fiscal Year 2024-2025
Effective July 1, 2024

Unit	Position Title	Authorized Position Count	Period	Range	Step A	Step B	Step C	Step D	Step E
IPOA	Police Sergeant	6	Hourly	63	54.9014	57.6466	60.5288	63.5553	66.7332
			Bi-Weekly		4,392.12	4,611.73	4,842.31	5,084.42	5,338.65
			Monthly		9,516	9,992	10,492	11,016	11,567
			Annual		114,195	119,905	125,900	132,195	138,805
IPOA	Police Officer	21	Hourly	52	41.8433	43.9356	46.1322	48.4389	50.8611
			Bi-Weekly		3,347.46	3,514.85	3,690.58	3,875.12	4,068.88
			Monthly		7,253	7,616	7,996	8,396	8,816
			Annual		87,034	91,386	95,955	100,753	105,791
IPOA	Police Dispatcher/Clerk	6	Hourly	38	28.7510	30.1885	31.6981	33.2832	34.9471
			Bi-Weekly		2,300.08	2,415.08	2,535.85	2,662.65	2,795.77
			Monthly		4,984	5,233	5,494	5,769	6,058
			Annual		59,802	62,792	65,932	69,229	72,690

CITY OF IRWINDALE
Part-Time Salary Schedule
Fiscal Year 2024-2025
Effective July 1, 2024

Permanent Part-Time - Hourly Rates

Position Title	Authorized Number	Range	Step A	Step B	Step C	Step D	Step E
Senior Center Leader	3	19	18.25	19.16	20.12	21.12	22.18
Library Aide	1	26	21.69	22.78	23.92	25.11	26.37
Civil Engineering Technician	0	33	25.78	27.07	28.43	29.85	31.34

Part-Time - Hourly Rates

Position Title	Rate
Aquatics Aide/Pool Cashier	18.21
Assistant Pool Manager	22.74
Bus Driver	25.78
Communications Specialist	33.00
Community Center Worker (temp assignment of staff member)	22.24
Community Service Officer	19.61
Finance Assistant	22.18
Intern	20.68
Library Page	19.61
Lifeguard	18.66
Office Specialist	23.36
Police Officer Trainee	36.98
Recreation Aide	18.21
Reserve Police Officer	41.84
Senior Center Aide	18.21
Senior Library Page	21.64
Senior Lifeguard	20.59
Summer Youth Worker	16.00
Tutor	20.68

Item #19.I.

City of
IRWINDALE
AGENDA REPORT

Date: July 10, 2024

To: Honorable Mayor and Members of the City Council

From: Julian A. Miranda, City Manager

Issue: 2nd Reading - Ordinance No. 780

City Manager's Recommendation:

That the City Council adopt on second reading by title only with further reading waived, Ordinance No. 780, entitled**,** "AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF IRWINDALE RESCINDING ORDINANCE NO. 195 IN ITS ENTIRETY WHICH REZONED PROPERTIES LOCATED ON MOUNTAIN AVENUE AND AMBRIZ STREET (FORMERLY MOUNTAIN AVENUE) TO C-3 (HEAVY COMMERCIAL-RESIDENTIAL), AND RESCINDING ORDINANCE NO. 200 IN ITS ENTIRETY WHICH REZONED PROPERTIES LOCATED ON CITRUSVIEW AVENUE, PARK ROSE AVENUE AND RUELAS STREET TO M-2 (HEAVY MANUFACTURING), AND FINDING THE PROJECT EXEMPT FROM THE CALIFORNIA ENVIRONMENTAL QUALITY ACT ("CEQA") PURSUANT TO CEQA GUIDELINES SECTION 15061(b)(3)".

Administrative Action:

Submitted / Prepared by:

Marilyn Simpson, Community Development Director

Marilyn Simpson

Reviewed by:

Adrian R. Guerra, City Attorney

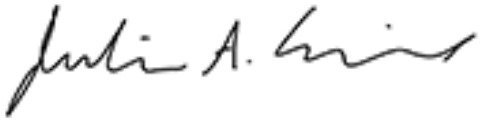
Adri R. Guerra

Kambiz Borhani, Finance Director / City Treasurer

K. Borhani

Approved by:

Julian A. Miranda, City Manager



Background and Analysis:

At its meeting of June 26, 2024 the City Council introduced the above ordinance for first reading. Ordinance No. 780 is attached for adoption on its second reading for Zone Change No. 01-2014. The City-initiated proposal will revise the Zoning Map to reconcile inconsistencies and make appropriate changes to support the highest and best uses.

Due to inconsistencies throughout the City, there are multiple non-conforming uses. The existing non-conformities limit the highest and best uses of the properties because of limitations on expansion/intensification for their zone. These impact properties zoned for industrial, commercial and residential. For example, the inconsistency would hinder residential improvements such as the ability to increase square footage for additions and Accessory Dwelling Units (ADU) conversions. This issue was discovered during a zoning map "clean-up" in November 2018. Since then, Planning Staff has received multiple applications that require General Plan Amendments. Zoning is one of the primary means of implementing the General Plan. The success of a General Plan rests upon the effectiveness of the Zoning Code and Map. Additionally, there should be consistency between the General Plan and Zoning as a common-sense approach to planning and transparency.

All of the properties listed on Meridian Street, Shrode Avenue, Citrusview Avenue, Park Rose Avenue, and Ruelas Street are currently developed as single-family residential properties, and the General Plan designates these properties as Residential. However, on June 20, 1967, the City Council approved Ordinance No. 200 to allow the rezoning of the properties located on Citrusview Avenue, Park Rose Avenue, Ruelas Street and Shrode Avenue and parcels outside of City boundaries. This changed the existing zoning designation from A-1 (Agricultural) to M-1 (Light Manufacturing). Although the Ordinance memorialized the change, the City's Zoning Map was not updated. As a result, the residential developments were approved based on the previous A-1 (Agricultural) designation allowing single-family residential use. Thus, all of the current residential development is considered legally non-conforming because it is a residential use in an M-1 (Light Manufacturing) zone. This hinders improvements such as the ability to increase square footage and compliance with recent State legislation allowing Accessory Dwelling Units (ADU) conversions and small lot subdivisions. The proposed rescission of Ordinance No. 200 and Zone Change from M-1 (Light Manufacturing) to R-1 (Single-Family Residential) would be consistent with current use and the existing Residential General Plan designation.

Additionally, on May 2, 1967, the City Council approved Ordinance No. 195 to allow the rezoning of the properties located on Mountain Avenue and Ambriz Street (formerly known as Mountain Avenue). This changed the existing zoning designation to C-3 (Heavy Commercial-Residential). Although single family residential units are permitted in this zone, there are limitations due to recent State legislature regarding housing. These residential parcels also are not able to utilize the latest housing legislature to build additional units, convert existing square footage or subdivide the property. The proposed

rescission of Ordinance No. 195 and Zone Change from C-3 (Heavy Commercial-Residential) to R-1 (Single-Family Residential) would be consistent with current use and the existing Residential General Plan designation.

The proposed changes to the Zoning Maps will remedy the existing inconsistencies and non-conformities. The maps will be updated to reflect the proposed changes. The proposed Zone Change will supersede the changes adopted by Ordinance Nos. 195 and 200 once they are rescinded by Ordinance No.780.

ENVIRONMENTAL REVIEW

Pursuant to the authority and criteria contained in the California Environmental Quality Act (CEQA) of 1970, as amended, and the City of Irwindale environmental guidelines, the Project has been determined to qualify for a general rule exemption pursuant to CEQA Section 15061(b)(3) in that it can be seen with certainty that there is no possibility that the General Plan Amendment or Zone Change, by themselves, will have a significant effect on the environment. However, any proposed physical development will undergo its own CEQA review when the entitlement is considered.

Fiscal Impact:

There is no cost with the City Council approval of the Zone Change or rescinding Ordinance Nos. 195 and 200.

Attachments:

1. Ordinance No. 780 FINAL Attachment A

ATTACHMENT "A"

ORDINANCE NO. 780

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF IRWINDALE RESCINDING ORDINANCE NO. 195 IN ITS ENTIRETY WHICH REZONED PROPERTIES LOCATED ON MOUNTAIN AVENUE AND AMBRIZ STREET (FORMERLY MOUNTAIN AVENUE) TO C-3 (HEAVY COMMERCIAL-RESIDENTIAL), AND RESCINDING ORDINANCE NO. 200 IN ITS ENTIRETY WHICH REZONED PROPERTIES LOCATED ON CITRUSVIEW AVENUE, PARK ROSE AVENUE AND RUELAS STREET TO M-2 (HEAVY MANUFACTURING), AND FINDING THE PROJECT EXEMPT FROM THE CALIFORNIA ENVIRONMENTAL QUALITY ACT ("CEQA") PURSUANT TO CEQA GUIDELINES SECTION 15061(b)(3).

WHEREAS, the City of Irwindale, 5050 Irwindale Avenue, Irwindale, CA 91706, acting as the Applicant, has initiated the request for Zone Change No. 01-2024 to reconcile inconsistencies on the City's Zoning Map and make appropriate changes to support the highest and best use and modify the Zoning Map to reflect the updated zoning designations at the above referenced properties; and

WHEREAS, Section 17.84 (Amendments) of the Irwindale Municipal Code allows for changes to the classification of property whenever the public interest and necessity so require; and

WHEREAS, the City Council finds that this Ordinance is exempt from the California Environmental Quality Act ("CEQA") pursuant to the authority and criteria contained in the California Environmental Quality Act (CEQA) of 1970, as amended, and the City of Irwindale environmental guidelines, the Project has been determined to qualify for a General Rule exemption pursuant to CEQA Section 15061(b)(3) in that it can be seen with certainty that there is no possibility that the Zone Change, by itself, will have a significant effect on the environment. However, any proposed physical development will undergo its own CEQA review when the entitlement is considered; and

WHEREAS, on May 2, 1967, the City Council conducted a duly noticed public hearing, as required by law, and approved Ordinance No. 195 to allow the rezoning of the properties located on Mountain Avenue and Ambriz Street (formerly known as Mountain Avenue). This changed the existing zoning designation to C-3 (Heavy Commercial-Residential); and

WHEREAS, on June 20, 1967, the City Council conducted a duly noticed public hearing, as required by law, and approved Ordinance No. 200 to allow the rezoning of the properties located on Citrusview Avenue, Park Rose Avenue, Ruelas Street and Shrode Avenue and parcels outside of City boundaries. This changed the existing zoning designation from A-1 (Agricultural) to M-1 (Light Manufacturing); and

WHEREAS, on July 9, 2019, Staff held two (2) separate Zone Change workshops at the Community Center; one (1) for residentially zoned properties and the other for commercially and industrially zoned properties; and

WHEREAS, on August 31, 2022, Staff requested direction from the Planning Commission on the above referenced properties as well as Meridian Avenue, Ramona Boulevard (Vulcan Durbin Pit), Park Avenue, Calle Burrola, Fraijo Avenue, Nora Avenue and Las Lomas Road; and

WHEREAS, on May 23, 2023, Staff sent out a general information letter to property owners who were currently impacted by the inconsistencies. The letter explained the City-initiated process and future public notification informing them about the City's next steps; and

WHEREAS, on April 4, 2024, the property owners and property owners within 500 feet of the subject properties were notified by mail. The public notice was posted in the four (4) designated public places (City Hall, Community Development Department, Library and Post Office) on April 4, 2024 and was also published in the newspaper on April 5, 2024. This timing met the minimum public notification requirement of 10 days prior to the meeting; and

WHEREAS, on April 17, 2024, the Planning Commission heard the proposed Zone Change item at which time it received input from Staff and the City Attorney's Office, heard public testimony, and discussed the Proposed Project; and closed the public hearing and continued the item to the May 15, 2024 Planning Commission meeting. The Planning Commission directed staff to re-notice the continued meeting; and

WHEREAS, on April 18, 2024, the second public notice was mailed to property owners within 500 feet of the subject property and posted in the four (4) designated public places (City Hall, Community Development Department, Library and Post Office). The second public notice was published in the newspaper on Monday, April 22, 2024. This timing met and exceeded the minimum public notification requirement of 10 days prior to meeting; and

WHEREAS, on May 15, 2024, the Planning Commission conducted a duly noticed public hearing, as required by law, regarding the proposed Zone Change to receive testimony and other evidence regarding the proposed Zone Change, including without limitation, information to the Planning Commission and City Staff; and

WHEREAS, on May 15, 2024 the Planning Commission adopted Resolution No. 822(24), recommending that the City Council approve the proposed Zone Changes to rezone the above referenced properties and rescind Ordinance Nos. 195 and 200; and

WHEREAS, on May 30, 2024, the property owners and property owners within 500 feet of the subject properties were notified by mail. The public notice was posted in the four (4) designated public places (City Hall, Community Development Department, Library

and Post Office) on May 30, 2024 and also published in the newspaper on May 31, 2024. This timing met the minimum public notification requirement of 10 days prior to the meeting; and

WHEREAS, on June 12, 2024, the City Council conducted a duly noticed public hearing, as required by law, on the Application and continued the item to the June 26, 2024 City Council meeting; and

WHEREAS, the City Council now desires to approve the Zone Change in order to further protect the public health, safety, and welfare of its residents; and

WHEREAS, the proposed Ordinance is consistent with and will implement the City's vision, goals, and policies of the Irwindale 2020 General Plan; and

WHEREAS, on June 26, 2024, the City Council conducted a duly noticed public hearing, as required by law, on the Application and approved the Zone Change, subject to the approval of this Ordinance; 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. That the recitals in this Ordinance are true and correct and are incorporated herein by reference.

SECTION 2. Ordinance No. 195, which rezoned properties on Mountain Avenue and Ambriz Street (formerly Mountain Avenue) to C-3 (Heavy Commercial-Residential) is hereby rescinded in its entirety.

SECTION 3. Ordinance No. 200, which rezoned properties located on Citrusview Avenue, Park Rose Avenue, and Ruelas Street to M-2 (Heavy Manufacturing), is hereby rescinded in its entirety.

SECTION 4. The City Council hereby finds and determines based on the independent judgment of the City Council, after consideration of the whole of the administrative record, that this Zone Change and Ordinance are exempt from the California Environmental Quality Act ("CEQA") pursuant to the State CEQA Guidelines Sections 15061(b)(3) on the grounds that it can be seen with certainty that the activity in question will have no significant effect on the environment.

SECTION 5. 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, 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 5. 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 30 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 it taking effect.

PASSED, APPROVED, AND ADOPTED at a regular meeting of the City Council of the City of Irwindale this 10th day of July, 2024.

_____
Albert F. Ambriz, 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. 780 was introduced for first reading at a regular meeting of the City Council of the City of Irwindale held on June 26, 2024, and duly adopted at a regular meeting of the City Council of the City of Irwindale held on July 10, 2024, 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. 780 adopted by the City Council of the City of Irwindale at its regular meeting held July 10, 2024, to be posted at the City Hall, Library, and Post Office on July 11, 2024.

Dated:

Laura M. Nieto, MMC
Chief Deputy City Clerk

Item #19.J.

City of
IRWINDALE
AGENDA REPORT

Date: July 10, 2024

To: Honorable Mayor and Members of the City Council

From: Julian A. Miranda, City Manager

Issue: Consideration of approval of Consent to Assignment to the Development Agreement from Irwindale Partners. L.P. to Park Building 3, LLC as to Parcel 3 and Parcel 4 and Estoppel Certificate Required by Park Building 3, LLC's Lender.

City Manager's Recommendation:

That the City Council (1) Approve consent to assignment of the Development Agreement between the City of Irwindale and Irwindale Partners II, LLC dated February 12, 2020 from Irwindale Partners, L.P. to Park Building 3, LLC as to Parcel 3 and Parcel 4, and authorize the City Manager to execute such consent subject to City Attorney approval as to form; and (2) Approve the Estoppel Certificate required by Park Building 3, LLC's lender.

Administrative Action:

>>

Submitted / Prepared by:

Electronically Approved

Robert J. Lee, Deputy City Attorney

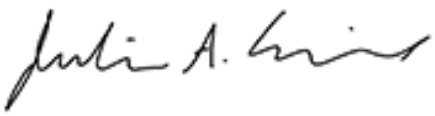
Reviewed by:

Adrian R. Guerra, City Attorney

Kambiz Borhani, Finance Director / City Treasurer

Approved by:

Julian A. Miranda, City Manager



Background and Analysis:

The City of Irwindale and Irwindale Partners II, LLC entered into a Development Agreement dated February 12, 2020 ("DA") with respect to a former mining site located at 1200, 1220 and 1270 Arrow Highway ("Property"), for the purpose of allowing developer to construct and operate an industrial/commercial business park for the Property, commonly referred to as the Park at Live Oak ("Project"). The Property was amassed through three grant deeds:

- November 29, 2004 grant deed from United Rock Products Corporation to Irwindale Partners, L.P. (Parcel 1);
- July 21, 2016 grant deed from the City of Irwindale to Irwindale Partners, L.P. (Parcel 2); and
- July 26, 2018 grant deed from the City of Irwindale, as Successor Agency to the Irwindale Community Development Agency, to Irwindale Partners, L.P. (Parcel 3)

Irwindale Partners II, LLC and Irwindale Partners, L.P. share common principals. The duties and obligations under the DA have been carried out by Irwindale Partners, L.P. On December 13, 2023, the City Council approved reformation of the DA pursuant to California Civil Code Section 3399 to adjust and clarify the designation of developer's name in the DA to be Irwindale Partners, L.P., a California limited partnership, to be consistent with the reality that the party actually developing the Project under the DA is Irwindale Partners, L.P, not Irwindale Partners II, LLC. During that same meeting, the City Council also approved City's consent to assign portions of the DA and completed Project to wholly owned subsidiaries of Irwindale Partners, L.P. pursuant to the terms of Section 2.3 of the DA, in connection with loans given to these wholly owned subsidiaries. The DA interests with respect to Parcel 1 were assigned to Park Building 1, LLC and the DA interests with respect to Parcel 2 were assigned to Park Building 2, LLC. Park Building 1, LLC now owns Parcel 1 and Park Building 2, LLC now owns Parcel 2, both as of September 26, 2023.

Now, Irwindale Partners, L.P. seeks to assign additional portions of the DA and completed Project to another wholly owned subsidiary of Irwindale Partners, L.P. pursuant to the terms of Section 2.3 of the DA, in connection with a loan given to that wholly owned subsidiary. The DA interests with respect to Parcel 3 and Parcel 4 will be assigned to Park Building 3 LLC, in accordance with the attached assignment and assumption agreement. Park Building 3, LLC now owns Parcel 3 and Parcel 4, both as of May 2, 2024. All requirements under Section 2.3 have been met.

Park Building 3 LLC's lender is requiring that an Estoppel Certificate be furnished whereby City certifies to all the modifications made to the DA and that there are no defaults under the DA to the City's actual knowledge. The proposed Estoppel Certificate, which may be signed by the City Manager under Section 10.13 of the DA, is attached to this report.

Fiscal Impact:

There is no fiscal impact associated with City's consent to the assignment or execution of the Estoppel Certificate.

Attachments:

1. Irwindale Partners II, LLC - 2020-02-12
2. Reformation of Development Agreement (Final 12.12.23)(944817.1)
3. Assignment Developer Rights (Building 3 - Parcels 3 and 4) - Execution (6-13-24)
4. City of Irwindale Estoppel Certificate (Parcels 3 and 4)(Revised 6-17-24)

Recording Requested by And
When Recorded Return to:

5050 N. Irwindale Ave.
Irwindale, CA 91706
Attn: City Clerk

(Space Above This Line for Recorder's Office Use Only)
(Exempt from Recording Fee per Gov. Code § 6103)

DEVELOPMENT AGREEMENT

between

THE CITY OF IRWINDALE

("City")

and

IRWINDALE PARTNERS II, LLC

A California Limited Liability Company

("Developer")

DEVELOPMENT AGREEMENT

This Development Agreement (hereinafter "Agreement") is entered into this 12th day of February, 2020, by and between the CITY OF IRWINDALE, a municipal charter corporation (hereinafter "**City**"), and IRWINDALE PARTNERS II, LLC, a California limited liability company, ("hereinafter "**Developer**"). City and Developer are hereinafter referred to each as a "party" and collectively as the "parties".

RECITALS

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

§§ 65864(c) and 65865.2, that the lack of public facilities, including, but not limited to, streets, sewerage, transportation, drinking water, school, and utility facilities is a serious impediment to the development of new housing and commercial economic development opportunities, and that applicants and local governments may include provisions in development agreements relating to applicant financing of necessary public facilities and subsequent reimbursement over time.

B. The Property. Developer is the owner of legal and equitable interests in certain real property legally described in Exhibit "A" attached hereto and incorporated herein (the "Property"), and thus qualifies to enter into this Agreement in accordance with Development Agreement Law. The Property is a former mining site located at 1200, 1220, and 1270 Arrow Highway, Irwindale, California, 91706 and identified as APNs 8532-001-002, 8532-001-900 (the parcel bearing APN 8532-001-900, known as the Gore Point, at 1200 Arrow Highway) and 8532-001-901. The Property is located south of Arrow Highway, northwest of Live Oak Avenue, and west of Interstate 605 (I-605). I-605 is the immediate east boundary of the site, Interstate 10 (I-10) is located approximately 3.1 miles to the south of the site, and Interstate 210 (I-210) is located approximately 1.5 miles to the north of the Property.

C. Existing Uses and Zoning. The Property is currently within the Regional Commercial land use designation of the City's General Plan, and an amendment to the City's General Plan and Zoning Maps is required to implement the Project. Developer has already submitted applications for a Development Agreement, Specific Plan, Zone Change, Tentative Parcel Map, and General Plan Amendment. The City is approving the entitlements for construction of the Project, subject to certain understandings contained in that Memorandum of Understanding entered by the Parties on August 9, 2017 (the "MOU") that are now manifest in this Agreement. Such understandings are aimed at accommodating the needs of the City and Developer, including a monetary payment to the City in order to support the loss of sales tax revenue that may potentially result from the contemplated change in land use from commercial uses to a significant amount of industrial uses. To this end, the legislative and discretionary approvals sought from the City by Developer include a General Plan Amendment, a Zone Change, Specific Plan, Tentative Parcel Map and this Development Agreement. Developer acknowledges that the County of Los Angeles conducts plan check for the City on a contract basis.

D. The Project. Developer and City agree that a development agreement should be approved and adopted for this Property in order to memorialize the Property expectations of City and Developer as more particularly described herein. Developer has proposed a project for the construction and operation of an industrial/commercial business park for the Property (the "Project"). (*See* Specific Plan and Project Description at Exhibit "B".) The Project proposes the construction and operation of an industrial/commercial business park on the reclaimed property, containing multiple buildings that collectively would provide a maximum of 1,550,000 square feet of building space, which includes up to 1,451,400 square feet of industrial building space, and up-to 98,600 additional square feet of commercial building space. The proposed Project represents the end use that will result from reclaiming a property that was previously mined. The Project is intended to appeal to a range of tenant types, including general warehouse and distribution, logistics, high-cube warehouse, e-commerce, light industrial, manufacturing, industrial park, and ancillary retail. Development of the Project may occur concurrently with fill activities on the Property. Associated improvements to the Property would include, but are not limited to, paved

parking areas, drive aisles, truck courts, utility infrastructure, landscaping, retention basins/water quality basins, monument signage, lighting, and property walls, gates, and fencing. The Project shall include a private drive as its main access road with signalized intersections at Live Oak Ave and Arrow Highway (at the existing Avenida Barbosa intersection), described as Private Drive A in more detail in the Specific Plan; provided that any private road shall have access to public rights of way, as further required in the CC&Rs. The Project shall comport to the Specific Plan and be designed in accordance with the Specific Plan Design Guidelines described therein.

E. Public Benefits of the Project. The City Council has found that this Agreement is in the best public interest of the City and its residents, adopting this Agreement constitutes a present exercise of the City's authority, and this Agreement is consistent with the City's General Plan, as amended. This Agreement and the proposed Project will achieve a number of City objectives, including the orderly development of the Property; the providing of public benefits to the City and its residents through public improvements, improvements to the Property, and street improvements in and around the Property. The Project will provide local and regional public benefits to the City, including, without limitation:

Increased Tax Revenues. The development of the Property in accordance with the terms of this Agreement will result in increased real property, sales, utility and business taxes, and other revenues to the City. In addition to the generation of actual retail sales tax proceeds allocable to the City, this Agreement also provides for Developer's payment in-lieu of taxes attributable to the loss of retail sales tax potential at the Property as a result of the Project's warehouse components.

Sustainable Design. The Developer will, to the extent reasonably feasible, include sustainable design for commercial and industrial uses and green building standards.

Job Creation. The Project proposes to employ approximately 850 people.

Environmental Reclamation. The proposed Project represents the end use that will result from reclaiming a property that was previously mined, including the reclamation of severely environmentally damaged lands to useful commercial/industrial/service use purposes.

F. Public Hearing Findings. City finds and determines that all actions required of City precedent to approval of this Agreement by Ordinance No. 745 of the City Council have been duly and regularly taken. In accordance with the requirements of the California Environmental Quality Act (Public Resources Code § 21000, *et seq.* ("CEQA")), appropriate studies, analyses, reports and documents were prepared and considered by the Planning Commission and the City Council. The Planning Commission, after a public hearing on December 18, 2019, recommended to the City Council by Resolution No. 774(19), and the City Council, after making appropriate findings, certified, by Resolution No. 2020-08-3169, on February 12, 2020, a Final Environmental Impact Report (SCH No. 2018041001) for the Project, as having been prepared in compliance with CEQA. On December 18, 2019, the Planning Commission, after giving notice pursuant to Government Code §§ 65090, 65091, 65092 and 65094, held a public hearing on the Developer's application for this Agreement. On February 12, 2020, the City Council, after providing the public notice required by law, held a public hearing to consider the Developer's application for this Agreement. The Planning Commission and the City Council have found on the basis of substantial

evidence based on the entire administrative record, that this Agreement is consistent with all applicable plans, rules, regulations and official policies of the City.

COVENANTS

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

1. DEFINITIONS AND EXHIBITS.

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

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

1.1.2 *Annual Review.* "Annual Review" means the annual review of the Developer's performance of the Agreement in accordance with Section 4.1 of the Agreement and Government Code § 65865.1.

1.1.3 *Applications.* "Application(s)" means a complete application for the applicable land use approvals (such as a subdivision map, conditional use permit, etc.) meeting all of the current ordinances of the City provided that any additional or alternate requirements in those ordinances enacted after the Effective Date which affect the Project application shall apply only to the extent permitted by this Agreement.

1.1.4 *Authorizing Ordinance.* "Authorizing Ordinance" means Ordinance No. 745 approving this Agreement, introduced on February 12, 2020 and adopted on February 26, 2020.

1.1.5 *Certificate of Occupancy.* "Certificate of Occupancy," with respect to a particular building or other work of improvement, means the final certificate of occupancy issued by the City with respect to such building or other work of improvement.

1.1.6 *City.* "City" means the City of Irwindale, a chartered municipal corporation.

1.1.7 *City Council.* "City Council" means the City Council of the City.

1.1.8 *Claims or Litigation.* "Claims or Litigation" means any challenge by adjacent owners or any other third parties (i) to the legality, validity or adequacy of the General Plan, Land Use Regulations, this Agreement, Development Approvals or other actions of the City pertaining to the Project, or (ii) seeking damages against the City as a consequence of the foregoing actions, for the taking or diminution in value of their property or for any other reason.

1.1.9 *Developer.* "Developer" means Irwindale Partners II, LLC, a California limited liability company, fee owner of the Property, and its successors and assigns to all or any part of the Property.

1.1.10 *Development.* "Development" means the improvement of the Property for the purposes of completing the structures, improvements and facilities comprising the Project including, but not limited to: grading; the construction of infrastructure related to the Project whether located within or outside the Property; the construction of buildings and structures; and the installation of landscaping and other facilities and improvements necessary or appropriate for the Project, the maintenance, repair, or reconstruction of any building, structure, improvement, landscaping or facility after the construction and completion thereof on the Property and leasing or selling portions of, or all of, the Project to third party end users.

1.1.11 *Development Approvals; Existing Development Approvals.* "Development Approvals" means all site-specific (meaning specifically applicable to the Property only and not generally applicable to some or all other properties within the City) plans, maps, permits, and entitlements to use of every kind and nature. Development Approvals include, but are not limited to, General Plan amendments, specific plans, site plans, tentative and final subdivision maps, design guidelines, variances, zoning designations or changes, conditional use permits, grading, building, and other similar permits, the site-specific provisions of General Plans, environmental assessments, including environmental impact reports and negative declarations, and any amendments or modifications to those plans, maps, permits, assessments and entitlements. The term Development Approvals does not include (i) rules, regulations, policies, and other enactments of general application within the City, or (ii) any matter where City has reserved authority under Article 3. It is anticipated that the following Development Approvals will be approved before or in conjunction with this Agreement (the "Existing Development Approvals"): (i) Zone Change No. 01-2017, and (iii) General Plan Amendment No. 01-2017, and (v) Zone Ordinance Amendment No. 01-2019, to adopt a Specific Plan and (vi) Tentative Parcel Map No. 82551, (vii) this Development Agreement, (viii) certification of an Environmental Impact Report ("EIR") pursuant to CEQA and the existing Land Use Regulations in effect at the time this Development Agreement was adopted.

1.1.12 *Effective Date.* "Effective Date" means the date thirty (30) days after the adoption of the Authorizing Ordinance if no Claim or Litigation has been filed that would prevent the Authorizing Ordinance from taking effect. If such a Claim or Litigation has been filed, then the Effective Date shall be the date that the Claim or Litigation has been successfully resolved in the City's favor, and the time for any further judicial review has run, so that the Authorizing Ordinance shall be effective. The City shall give Developer notice as to the date established as the Effective Date. The Effective Date may be tolled for any other Force Majeure as described in Section 10.10.

1.1.13 *Existing Land Use Regulations.* "Existing Land Use Regulations" means the Land Use Regulations which have been adopted and are effective on or before the Effective Date of this Agreement. For avoidance of doubt, the Existing Land Use Regulations include the Development Approvals and the Existing Development Approvals.

1.1.14 *Land Use Regulations.* "Land Use Regulations" means all ordinances, laws, resolutions, codes, rules, regulations, policies, requirements, guidelines or other actions of City, including but not limited to the City's General Plan, the Specific Plan ("Specific Plan"), and Municipal Code and Zoning Code and including all development impact fees (except as otherwise provided in Sections 3.9 and 3.12), which affect, govern or apply to the Development and use of the Property, including, without limitation, the permitted use of land, the density or intensity of use,

subdivision requirements, the maximum height and size of proposed buildings, the provisions for reservation or dedication of land for public purposes, and the design, improvement and construction standards and specifications applicable to the Development of the Property, subject to the terms of this Agreement. The term Land Use Regulations does not include, however, regulations relating to the conduct of business, professions, and occupancies generally; taxes and assessments; regulations for the control and abatement of nuisances; uniform codes; utility easements; encroachment and other permits and the conveyances of rights and interests which provide for the use of or entry upon public property; any exercise of the power of eminent domain; health and safety regulations; environmental regulations; or similar matters or any other matter reserved to the City pursuant to Article 3.

1.1.15 *Mortgagee.* "Mortgagee" means a mortgagee of a mortgage, a beneficiary under a deed of trust or any other security device, a lender or each of their respective successors and assigns.

1.1.16 *Project.* "Project" means the Development of the Property consistent with the Specific Plan and this Agreement and as further described in Recital D hereinabove.

1.1.17 *Property.* "Property" means the real property legally described and shown in Exhibit "A."

1.1.18 *Public Improvements.* "Public Improvements" means the improvements to be constructed on and adjacent to the Property, as further described in Exhibit "C" attached hereto.

1.1.19 *Reservation of Authority.* "Reservation of Authority" means the rights and authority accepted from the assurances and rights provided to Developer under this Agreement and reserved to City under Section 3.5 of this Agreement.

1.1.20 *Specific Plan.* "Specific Plan" shall refer to the Park @ Live Oak Specific Plan approved concurrently with the approval of this Agreement.

1.1.21 *Subsequent Development Approvals.* "Subsequent Development Approvals" means all Development Approvals issued subsequent to the Effective Date in connection with Development of the Property, which shall include, without limitation, approvals included in the Specific Plan to be issued after the Effective Date, subject to the approval process provided in the Specific Plan, and (i) all on-site plans, including grading and on-site utilities, (ii) approval of a Storm Water Pollution Prevention Plan (SWPPP) to mitigate site runoff during construction and a Standard Urban Stormwater Mitigation Plan (SUSMP) to mitigate for post-construction runoff flows.

1.1.22 *Subsequent Land Use Regulations.* "Subsequent Land Use Regulations" means any Land Use Regulations effective after the Effective Date of this Agreement (whether adopted prior to or after the Effective Date of this Agreement), which apply to the development, and use of the Property.

1.1.23 *Term.* "Term" shall mean the period of time from the Effective Date until the termination of this Agreement as provided in Section 2.4, unless earlier terminated as provided in this Agreement.

1.2 **Exhibits.** The following documents are attached to, and by this reference made a part of, this Agreement:

A. Exhibit "A" (Legal Descriptions);

B. Exhibit "B" (Specific Plan Land Use Plan and Conditions of Approval);

C. Exhibit "C" (Public Improvements);

D. Exhibit "D" (CC&Rs);

E. Exhibit "E" (Estimated City Fees; City User Fee Schedule).

2. TERM & GENERAL COVENANTS.

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

2.2 **Ownership of Property.** Developer represents it has a legal or equitable interest in the Property and thus Developer is qualified to enter into and be a party to this Agreement under the Development Agreement Law.

2.3 Assignment.

2.3.1 Right to Assign. Developer shall have the right to sell, transfer or assign the Property in whole or in part (provided that no such partial transfer shall violate the Subdivision Map Act, Government Code Section 66410, et seq.) to any person, partnership, joint venture, firm or corporation ("Assignee") at any time during the term of this Agreement; provided, however, that (i) Developer shall provide evidence to the City, as described in Subsection 2.3.2 below, confirming that: (a) the transfer to such proposed Assignee shall not delay or jeopardize the completion of the Project, that (b) the Assignee possesses sufficient financial strength and capability to perform City's obligations hereunder; and (c) the Assignee possesses experience and expertise in the planning, financing, development, ownership and operation of similar projects; and (ii) any such sale, transfer or assignment shall include the assignment and assumption of the rights, duties and obligations arising under or from this Agreement and be made in strict compliance with the following conditions precedent:

(a) No sale, transfer or assignment of any right or interest under this Agreement shall be made unless made together with the sale, transfer or assignment of all or a part of the Property.

(b) Concurrent with any such sale, transfer or assignment, or within 30 business days thereafter, Developer shall notify City, in writing, of such sale, transfer or assignment and shall provide City with a copy of an executed agreement by the purchaser, transferee or assignee and providing therein that the purchaser, transferee or assignee expressly

and unconditionally assumes all the duties and obligations of Developer under this Agreement or portions thereof, as approved by the City.

Any sale, transfer or assignment not made in compliance with the foregoing conditions shall constitute a default by Developer under this Agreement. Notwithstanding the failure of any purchaser, transferee or assignee to execute the agreement required by Paragraph (b) of this Subsection 2.4.1, the burdens of this Agreement shall be binding upon such purchaser, transferee or assignee, but the benefits of this Agreement shall not inure to such purchaser, transferee or assignee until and unless such agreement is executed.

2.3.2 For purposes of Section 2.3.1(i), Developer shall provide to City documentation reasonably requested by the City to facilitate the City's review, including but not limited to: (i) reasonably satisfactory evidence that the proposed transferee has commercial development and retail or industrial (as applicable) management experience on a scale equal to or exceeding the scale of the Project; (ii) reasonably satisfactory evidence that the transferee's key principals have no felony criminal convictions; and (iv) any other information reasonably required by the City to ensure the Assignee can fulfill the terms of this Agreement and the Development Approvals, including the payment of indemnities and damages and provision of bonds and/or performance standards. Any financial statement deemed private shall be provided to City's third party financial consultant to protect its confidentiality; provided that Developer shall pay the reasonable cost of any such consultant's fees to review same. Failure of Developer to provide City documentation confirming that the Assignee meets the requirements of Section 3.2.1(i) shall authorize the City, by action of the City Manager, in its reasonable discretion, to deny such Assignee and any purported assignment over the City's written objection, provided within 30 days of Developer's provision of the documentation required by this Section 2.3.2 shall be deemed a default by Developer under this Agreement.

2.3.3 Release of Transferring Developer. Notwithstanding any sale, transfer or assignment, Developer shall continue to be obligated under this Agreement as to that portion of the Property sold, transferred or assigned, unless Developer is given a release in writing by City, which release shall be provided by City upon the full satisfaction by Developer of all of the following conditions:

(a) Developer no longer has a legal or equitable interest in all or any part of the Property sold.

(b) Developer is not then in default under this Agreement.

(c) Developer has provided City with the notice and executed agreement required under paragraph (b) of subsection 2.4.1 above.

(d) The purchaser, transferee or assignee provides City with security equivalent to the security, if any, previously provided by Developer to secure performance of its obligations regarding the Project.

2.3.4 Subsequent Assignment. Any subsequent sale, transfer or assignment after an initial sale, transfer or assignment shall be made only in accordance with and subject to the terms and conditions of this Section

2.4 **Term of Agreement.** Unless earlier terminated as provided in this Agreement, this Agreement shall continue in full force and effect until the date that is twenty (20) years from and after the Effective Date.

2.5 **Covenants Run with the Land; CC&Rs.** Prior to the date identified in the Section 3.4.1, the Developer shall submit a proposed form of Declaration of Covenants, Conditions and Restrictions to be recorded against the Property to City for its review and approval ("CC&Rs"). Such CC&Rs shall be substantially similar in form and substance to City's standard form of declaration of covenants, conditions and restrictions imposed by City upon commercial development projects located in the City, and will contain, among other things, protective covenants to protect and preserve the integrity and value in the Project, including but not limited to use restrictions, maintenance covenants, , restrictions under this Agreement and the Development Plan that will continue to apply to the Project, and a provision giving City the right to enforce said CC&Rs. The CC&Rs will be in a form substantially similar to those at Exhibit "D" hereto. Except as specifically provided otherwise in this Agreement, and pursuant to the Development Agreement Statute (Gov. Code § 65868.5):

2.5.1 All of the provisions, agreements, rights, powers, standards, terms, covenants and obligations contained in this Agreement shall be binding upon the parties and their respective heirs, successors (by merger, consolidation, or otherwise) and assigns, devisees, administrators, representatives, lessees, and all other persons acquiring any rights or interests in the Property, or any portion thereof, whether by operation of laws or in any manner whatsoever and shall inure to the benefit of the parties and their respective heirs, successors (by merger, consolidation or otherwise) and assigns;

2.5.2 All of the provisions of this Agreement shall be enforceable as equitable servitudes and constitute covenants running with the land pursuant to applicable law; and

2.5.3 Each covenant to do or refrain from doing some act on the Property hereunder (i) is for the benefit of and is a burden upon every portion of the Property, (ii) runs with such lands, and (iii) is binding upon each party and each successive owner during its ownership of such properties or any portion thereof, and each person having any interest therein derived in any manner through any owner of such lands, or any portion thereof, and each other person succeeding to an interest in such lands.

3. DEVELOPMENT OF THE PROJECT.

3.1 **Rights to Develop.** Developer shall be responsible for obtaining all legislative and discretionary approvals, permits and entitlements required by law for the proposed Project. The Subject to and during the Term of this Agreement, Developer shall have a vested right to develop the Property in accordance with, and to the extent of, the Specific Plan and this Agreement. Except as provided within this Agreement, the Specific Plan shall exclusively control the Development of the Property (including the uses of the Property, the density or intensity of use, the maximum

height and size of proposed buildings, the provisions for reservation or dedication of land for public purposes and the design, improvement and construction standards and specifications applicable to the Project). The Developer retains the right to apportion the uses, intensities and densities, between itself and any subsequent Owners, upon the sale, transfer, or assignment of any portion of the Property, so long as such apportionment is consistent with this Agreement and the Specific Plan. Subject to Section 9.4, Developer may elect to develop and construct upon the Property or any portion thereof a Project of lesser height or building square footage than that permitted by the Specific Plan, provided that such Project otherwise complies with the Specific Plan and this Agreement. Developer further retains the right to develop the Project following completion of all fill and grading activities or in phases concurrently with such activities. Certificates of Occupancy for any building will not be issued until all fill and rough grading activities have been completed and associated permits have been closed. Developer shall comply with all applicable laws in the development and operation of the Project.

3.2 **Effect of Agreement on Land Use Regulations.** Except as otherwise provided under the terms of this Agreement, the rules, regulations and official policies governing permitted uses of the Property, the density and intensity of use of the Property, the maximum height and size of proposed buildings, and the design, improvement and construction standards and specifications applicable to Development of the Property, shall be as set forth in the terms of this Agreement and as defined by the Specific Plan, including duly-approved amendments to the Specific Plan. To the extent there is any conflict in interpretation between this Agreement and the Specific Plan, the terms of the Specific Plan shall govern. Pursuant to Government Code Section 66452.6, the term of any tentative map for the Property or any portion thereof, if any, filed within the term of this Agreement shall automatically be extended for the term of this Agreement, as amended by the Development Approvals. Any Subsequent Land Use Regulations shall not be applied to the Project or any phase thereof unless the subject matter is not addressed in the Specific Plan, the Specific Plan is amended to incorporate the Subsequent Land Use Regulations, or is otherwise required by law.

3.3 **Development of Commercial Area.** Pursuant to the Specific Plan, until at least 15,000 square feet of commercial floor space is constructed at the Project, a minimum of 1.0 acre will be reserved for this purpose within the area described therein with adequate vehicular access for commercial uses.

3.4 **Timing of Development.** Developer may develop the Project following completion of all fill and grading activities or in phases concurrently with such activities. Certificates of Occupancy for any building will not be issued until all fill and rough grading activities have been completed and associated permits have been closed. Pursuant to Irwindale Municipal Code section 3.50.020D, any portions of the Project that have (i) received a building permit and (ii) commenced construction in reliance on such building permit within eight (8) years of the Effective Date of this Agreement, plus two (2) additional years with City Manager approval so long as reasonable progress has been made to develop the Project in a timely and responsible manner and subject to Section 10.10 below, shall not be subject to or required to pay the Development Impact Fees set forth in Irwindale Ordinance No. 726 (establishing Municipal Code section 3.50 et seq.). Any portions of the Project that have not received a building permit and commenced construction within such eight (8) year period shall pay the then applicable

Development Impact Fees in effect at such time as set forth in Irwindale Municipal Code Chapter 3.50, as amended from time-to-time. These current fees are set forth in Exhibit E.1.

3.5 **Progress Meetings**. During the preparation of all drawings, applications and plans for the Subsequent Development Approvals, the parties shall hold regular progress meetings to coordinate the preparation of, submission to, and review of construction plans and related documents by City. If any substantial revisions or corrections of plans approved by City shall be required by any government official, agency, department or bureau having jurisdiction, or any lending institution involved in financing, the parties shall cooperate in efforts to develop a mutually acceptable alternative.

3.6 **Reservations of Authority**.

3.6.1 *Limitations, Reservations and Exceptions.* Notwithstanding any other provision of this Agreement, the following Subsequent Land Use Regulations shall apply to the Development of the Property:

(a) Existing processing fees and charges of every kind and nature imposed by City to cover the estimated actual costs to City of processing applications for Subsequent Development Approvals or for monitoring compliance with any Subsequent Development Approvals granted or issued.

(b) Procedural regulations consistent with this Agreement relating to hearing bodies, petitions, applications, notices, findings, records, hearing, reports, recommendations, appeals and any other matter of procedure.

(c) Changes adopted by the International Conference of Building Officials, or other similar body, as part of the then most current versions of the Uniform Building Code, Uniform Fire Code, Uniform Plumbing Code, Uniform Mechanical Code, or National Electrical Code, or other such Uniform Codes, and also adopted by City as Subsequent Land Use Regulations, if applicable City-wide.

(d) Federal, State, County, and multi-jurisdictional laws and regulations which City is required to enforce as against the Property or the Development of the Property.

(e) Subsequent Land Use Regulations applicable to regional development impact fees. City development impact fees shall apply, as specified in Section 3.4.1 above.

3.6.2 *Modification or Suspension by Federal, State, County, or Multi-Jurisdictional Law.* In the event that Federal, State, County, or multi-jurisdictional laws or regulations, enacted after the Effective Date of this Agreement, prevent or preclude compliance with one or more of the provisions of this Agreement, such provisions of this Agreement shall be modified or suspended as may be necessary to comply with such Federal, State, County, or multi-jurisdictional laws or regulations, and this Agreement shall remain in full force and effect to the extent it is not inconsistent with such laws or regulations and to the extent such laws or regulations do not render such remaining provision impractical to enforce.

3.7 **Regulation by Other Public Agencies.**

3.7.1 It is acknowledged by the parties that other public agencies not subject to control by City may possess authority to regulate aspects of the Development of the Property, and this Agreement does not limit the authority of such other public agencies. Developer acknowledges that the County of Los Angeles conducts plan check for the City on a contract basis.

3.7.2 The Developer shall apply in a timely manner for such other permits and approvals as may be required from other governmental or quasi-governmental agencies having jurisdiction over the Project as may be required for the Development of, or provision of services to, the Project. The City shall provide the Developer reasonable cooperation in Developer's efforts to obtain such permits and approvals. The City and Developer shall cooperate and use reasonable efforts in coordinating the implementation of the Specific Plan with other public agencies, if any, having jurisdiction over the Property or the Project.

3.8 **Employment Outreach for Local Residents.** A goal of the City with respect to this Project and other major projects within the City is to foster employment opportunities for Irwindale residents. To that end, Developer covenants that with respect to the construction, operation and maintenance of the Project, the Developer shall make reasonable efforts to cause all solicitations for full or part-time, new or replacement, employment relating to the construction, operation and maintenance of the Project to be advertised in such a manner as to target local City residents and shall make other reasonable efforts at local employment outreach as the City shall approve. Developer shall also notify the City of jobs available at the Project such that the City may inform City residents of job availability at the Project. Developer will inform its purchasers and lessees of the provisions of these requirements. Without limiting the generality of the foregoing, the provisions of this Section 3.8 are not intended, and shall not be construed, to benefit or be enforceable by any person whatsoever other than City.

3.9 **Development Costs & Fees**. Developer shall be solely responsible for all Development costs associated with the Project, including without limitation design, land use entitlements, permitting, CEQA review, construction, rolling stock, equipment, operational costs, advertising and public relations and information and City staff and consultant expenses related to the Project. Project Development and operations will entail extensive, significant costs and capital expenditures due, without limitation, to the Project's size, the magnitude of necessary environmental mitigation measures, need for heavy equipment and complex design and infrastructural elements. Currently, Project costs are expected to exceed Twenty-Eight Million, Six Hundred and Fifty Thousand- Dollars ($28,650,000.00). Further, Developer shall be responsible for paying all of the customary and ordinary fees and costs imposed by the City on the development of an industrial/commercial business park facility like the Project as set forth on the "Schedule of Estimated City Fees" attached hereto as Exhibit "E". Developer shall also be responsible for Los Angeles County building plan check, inspection and permit fees for review and inspection of all on-site work at rates no higher than the City-approved building fee schedule in Exhibit "E". The fee schedules attached hereto as Exhibit "E" are current at the time of the contract agreement execution, but are subject to change. Developer shall pay the current fees at the time such fees are due.

3.9.1 *Offsite Improvement Fees.* In addition to Developer's construction of those offsite Public Improvements described in Exhibit "C", Developer will pay City $600,000.00 to cover City fees related to offsite work. These fees will be paid according to the City's User Fee Schedule effective at the time fees are due (current fees schedule is included in Exhibit "E").

3.9.2 *Caltrans Studies.* Additionally, Developer shall be responsible for paying its pro rata fair share cost to Caltrans to fund the preparation of a study of potential improvements to the I-605 Corridor that may be initiated by Caltrans and/or City in the future. Prior to issuance of the first building permit, Developer shall pay $703,665.81 to City toward this study. Developer shall provide the City with a cash deposit in the amount of $1,600,000.00, at the time of the first building permit issuance, to be applied to the cost of the Caltrans improvements. City shall commit to requiring all future developments, which City reasonably determines will impact such Caltrans improvements, to contribute a fair share amount toward this study so that each developer is not contributing more than its fair share and the costs of this study are borne equally.

3.9.3 *Payment in Lieu of Taxes (PILT).* Developer shall pay to City $350,000.00 per year for "payment in-lieu of taxes" attributable to the loss of retail sales tax potential at the Property as a result of the Project ("PILT"). PILT payments shall begin upon Developer securing a certificate of occupancy on the first industrial building on the Property, be paid to the City annually no later than July 1, and Agreement is in effect and continue for a period of ten (10) years. For any partial annual period (July 1 to July 1) in which this Agreement is in effect, the PILT payment shall be prorated on a monthly/weekly basis. The PILT payment is to be increased each year in accordance with the Los Angeles-Riverside-Orange County, CA Consumer Price Index. However, if the Developer secures a fulfillment or distribution center (such as a Target online retail distribution center) as a user at the Project that generates sales tax for the City, the PILT will be reduced by an amount equal to seventy percent (70%) of the generated sales tax received by the City. For example, if the fulfillment center were to generate $100,000.00 in sales tax, the $350,000.00 PILT would be reduced by $70,000.00 to $280,000.00. Developer acknowledges and agrees that the PILT is payment that it is willing to pay in exchange for the City approving the Development Agreement, Specific Plan, Tentative Parcel Map and modifications to the existing General Plan Map and Zoning Map to allow for the Project. Developer hereby acknowledges and agrees that the PILT payment is reasonable to address any potential loss of sales tax revenue to the City resulting from the Project and, as such, waives any right to assert any legal challenge to same. .Upon sale and transfer of portions of the Project, this PILT obligation shall be apportioned on a per building square footage basis.

3.9.4 *Reimbursement of City Costs and Expenses.* In addition to any applicable user fees or fees described in Section 3.9.1, and pursuant to the terms of the MOU, Developer and/or assignee agreed to reimburse City for all actual costs and expenses incurred by City, estimated in the MOU as the amount of the Initial Deposit of $130,000.00, which Initial Deposit and any Subsequent Deposit shall cover the Expenses, as such terms as refined in the MOU. To this end, the terms of the MOU related to the Initial and Supplemental Deposits, including but not limited to, the City's provision of monthly accounting of the use of the funds and any refunds shall continue to control beyond the approval of this Agreement and until the end of the Project.

3.10 **Prevailing Wages.** Developer's purchase price for the Property and cost of Developing the Project and constructing all of the onsite and offsite improvements, if any, at or about the Property required to be constructed for the Project shall be borne by Developer. Developer is aware of the laws of the State governing the payment of prevailing wages on public projects and will comply with same and will indemnify City in the event Developer fails to do so. As the City is not providing any direct or indirect financial assistance to Developer, the Project should not be considered to be a "public work" "paid for in whole or in part out of public funds," as described in California Labor Code Section 1720. Accordingly, it is believed by the parties that Developer is not required to pay prevailing wages in connection with any aspect of the Development or the construction of the Project. However, to the extent that (contrary to the parties' intent) it is determined that Developer was required to pay prevailing wage and has not paid prevailing wages for any portion of the Project, Developer shall defend and hold the City (which, for purposes of this Section, shall include its related agencies, officers, employees, agents and assigns) harmless from and against any and all increase in construction costs, or other liability, loss, damage, costs, or expenses (including reasonable attorneys' fees and court costs) arising from or as a result of any action or determination that Developer failed to pay prevailing wages in connection with the construction of the Project. City shall reasonably cooperate with Developer regarding any action by Developer hereunder challenging any determination that the Project is subject to the payment of prevailing wages. Notwithstanding the foregoing, the City retains the right to settle or abandon the matter without Developer's consent as to the City's liabilities or rights only, but should it do so, City shall waive the indemnification herein provided such waiver occurs prior to the issuance of any judgment in the matter.

3.11 **Public Improvements.** Developer shall construct those offsite Public Improvements described in Exhibit "C," which are in accordance with the requirements of the EIR. In addition, and notwithstanding any provision herein to the contrary, the City shall retain the right to condition any Subsequent Development Approvals to require Developer to dedicate necessary land and/or to construct the required Public Improvements ("Exactions") at such time as City shall determine subject to the following conditions:

3.11.1 The dedication, payment or construction must be to alleviate an impact caused by the Project or be of benefit to the Project;

3.11.2 The timing of the Exaction should be reasonably related to the phasing of the Development of the Project and said Public Improvements shall be phased to be commensurate with the logical progression of the Project Development as well as the reasonable needs of public; and

3.11.3 When Developer is required by this Agreement and/or the Specific Plan to construct any Public Improvements that will be dedicated to the City or any other public agency upon completion, Developer shall perform such work in the same manner and subject to the same construction standards as would be applicable to the City or such other public agency should it have undertaken such construction work. The City desires that required Public Improvements generally be constructed in the early portion of the Development cycle, with work on such Public Improvements commencing not later than the start of onsite Project grading.

3.12 **Fees, Taxes and Assessments.** During the term of this Agreement, the City shall not, without the prior written consent of Developer, impose any additional fees, taxes or assessments on all or any portion of the Project, except such fees, taxes and assessments as are described in or required by this Development Agreement and/or the Specific Plan. Except as set forth in Section 3.4 above, this Development Agreement shall not prohibit the application of fees, taxes or assessments as follows:

3.12.1 Developer, or Developer's Project tenants, shall be obligated to pay those fees, taxes or City assessments which exist as of the Effective Date or are included in the Specific Plan and any increases in same, as provided herein;

3.12.2 Developer, or Developer's Project tenants, shall be obligated to pay any non-development impact fees, except as provided in Section 3.4 taxes, and increases thereof, imposed on a City-wide basis such as business license fees or taxes, sales or use taxes, transient occupancy taxes, utility taxes, and public safety taxes;

3.12.3 Developer, or Developer's Project tenants, shall be obligated to pay any future landscape and lighting assessments and community services assessments, provided that Developer reserves its right to protest the establishment or amount of any such fees or assessments through the method prescribed by law;

3.12.4 Developer, or Developer's Project tenants, shall be obligated to pay any fees imposed pursuant to any assessment district established within the Project otherwise proposed or consented to by Developer;

3.12.5 Developer, or Developer's Project tenants, shall be obligated to pay any fees imposed pursuant to any Uniform Code.

3.12.6 Developer, or Developer's Project tenants, shall be obligated to pay any utility fees and charges, including amended rates thereof, for City services such as electrical utility charges, water rates, and sewer rates.

4. REVIEW FOR COMPLIANCE.

4.1 **Annual Review.** The City Council shall review this Agreement annually, on or before the anniversary of the Effective Date, in order to ascertain the good faith compliance by Developer with the terms of the Agreement ("Annual Review"). No failure on part of City to conduct or complete an Annual Review as provided herein shall have any impact on the validity of this Agreement. The cost of the Annual Review shall be borne by Developer and Developer shall pay a reasonable deposit in an amount requested by City to pay for such review.

4.2 **Special Review.** The City Council may, in its sole and absolute discretion, order a special review of compliance with this Agreement at any time at City's sole cost ("Special Review"). Developer shall cooperate with the City in the conduct of such Special Reviews.

4.3 **Procedure.** Each party shall have a reasonable opportunity to assert matters which it believes have not been undertaken in accordance with the Agreement, to explain the basis

for such assertion, and to receive from the other party a justification of its position on such matters. The procedure for an Annual Review or Special Review shall be as follows:

4.3.1 As part of either an Annual Review or Special Review, within ten (10) days of a request for information by the City, the Developer shall deliver to the City all information and supporting documents reasonably requested by City (i) regarding the Developer's performance under this Agreement demonstrating that the Developer has complied in good faith with the terms of this Agreement, and (ii) as required by the Existing Land Use Regulations.

4.3.2 The City Manager, or his/her designee, shall prepare and submit to Developer a written report on the performance of the Project and identify any perceived deficiencies in Developer's performance of this Agreement. The Developer may submit written responses to the report and Developer's written response shall be included in the City Manager's report. If the City Manager determines that the Developer has substantially complied with the terms and conditions of this Agreement, the Annual or Special Review shall be concluded.

4.3.3 If any deficiencies are noted, or if requested by a Councilmember, a public hearing shall be held before the City Council at which the Council will review the City Manager's report. The report to Council shall be made at a regularly-scheduled City Council meeting occurring as soon as possible, subject to the requirements of the Brown Act, after the commencement of the Annual or Special Review process outlined in Section 4.3.1. If the City Council finds and determines, based on substantial evidence, that the Developer has not substantially complied with the terms and conditions of this Agreement for the period under review, the City may declare a default by the Developer in accordance with Article 5.

4.3.4 Neither party hereto shall be deemed in breach if the reason for non-compliance is due to a "*Force Majeure*" as defined in, and subject to the provisions of, Section 10.10.

4.4 **Certificate of Agreement Compliance.** If, at the conclusion of an Annual Review or a Special Review, Developer is found to be in compliance with this Agreement, City shall, upon request by Developer, issue a Certificate of Agreement Compliance ("Certificate") to Developer stating that after the most recent Annual Review or Special Review and based upon the information known or made known to the City Manager, Planning Commission, and City Council that (i) this Agreement remains in effect and (ii) Developer is in compliance. The Certificate, whether issued after an Annual Review or Special Review, shall be in recordable form, shall contain information necessary to communicate constructive record notice of the finding of compliance. Developer record the Certificate with the County Recorder. Additionally, Developer may at any time request from the City a Certificate stating, in addition to the foregoing, which obligations under this Agreement have been fully satisfied with respect to the Property or any lot or parcel within the Property.

4.5 **Review Process Not a Prerequisite to Declaring a Default.** Neither the Annual Review nor Special Review procedure is a prerequisite to either party declaring a default and initiating the default and cure procedure in Article 5. In other words, either party may declare a default at any time without first undertaking the Annual Review or Special Review process.

4.6 **Public Hearings.** The public hearing prescribed by Section 4.3.3 is independent of, and in addition to, any further hearing procedures prescribed in Article 5. Thus, if the City Council finds that the Developer has not substantially complied with the terms and conditions of this Agreement as part of a review process pursuant to Section 4.3.3 and determines to declare a default, the City Council is still required to follow the notice/cure process (Section 5.2) and the termination hearing process (Section 5.4) before terminating this Agreement.

5. DEFAULT AND REMEDIES.

5.1 **Rights of Non-Defaulting Party after Default; Opportunities to Cure.** The parties acknowledge that both parties shall have hereunder all legal and equitable remedies as provided by law following the occurrence of a default or to enforce any covenant or agreement herein. Before this Agreement may be terminated or action may be taken to obtain judicial relief the party seeking relief ("Non-Defaulting Party") shall comply with the notice and cure provisions of this Section 5.1.

5.1.1 *Notice and Opportunity to Cure.* A Non-Defaulting Party in its discretion may elect to declare a default under this Agreement in accordance with the procedures hereinafter set forth for any failure or breach of the other party ("Defaulting Party") to perform any material duty or obligation of the Defaulting Party under the terms of this Agreement. However, the Non-Defaulting Party must provide written notice to the Defaulting Party setting forth the nature of the breach or failure and the actions, if any, required by the Defaulting Party to cure such breach or failure (the "Default Notice"). The Defaulting Party shall be deemed in Default under this Agreement, if the breach or failure can be cured, but the Defaulting Party has failed to take such actions and cure such default within thirty (30) days after the date of such notice or ten (10) days for monetary defaults (or such lesser time as may be specifically provided in this Agreement). However, if such non-monetary Default cannot be cured within such thirty (30) day period, and if and, as long as the Defaulting Party does each of the following:

1. Notifies the Non-Defaulting Party in writing with a reasonable explanation as to the reasons the asserted default is not curable within the thirty (30) day period;

2. Notifies the Non-Defaulting Party of the Defaulting Party's proposed cause of action to cure the default;

3. Promptly commences to cure the default within the thirty (30) day period;

4. Makes periodic reports to the Non-Defaulting Party as to the progress of the program of cure; and

5. Diligently prosecutes such cure to completion.

Then the Defaulting Party shall not be deemed in breach of this Agreement.

5.2 **Termination Notice.** Upon receiving a Default Notice, should the Defaulting Party fail to timely cure any default, or fail to diligently pursue such cure as prescribed above, the Nondefaulting Party may seek termination of this Agreement, in which case the Nondefaulting Party shall provide the Defaulting Party with a written notice of intent to terminate this Agreement ("Termination Notice"). The Termination Notice shall state that the Nondefaulting Party will elect to terminate this Agreement within thirty (30) days and state the reasons therefor (including a copy of any specific charges of default or a copy of the Default Notice) and a description of the evidence upon which the decision to terminate is based. Once the Termination Notice has been issued, the Nondefaulting Party's election to terminate this Agreement will only be rescinded if so determined by the City Council pursuant to Section 5.3, below.

5.3 **Hearing Opportunity Prior to Termination.** If Developer is the Defaulting Party pursuant to Section 5.2 above, then the City's Termination Notice to Developer shall additionally specify that Developer has the right to a hearing prior to the City's termination of any Agreements ("Termination Hearing"). The Termination Hearing shall be scheduled as an open public hearing item at a regularly-scheduled City Council meeting within thirty (30) days of the Termination Notice, subject to any legal requirements including but not limited to the Ralph M. Brown Act, Government Code Sections 54950-54963. At said Termination Hearing, Developer shall have the right to present evidence to demonstrate that it is not in default and to rebut any evidence presented in favor of termination. Based upon substantial evidence presented at the Termination Hearing, the Council may, by adopted resolution, act as follows:

1. Decide to terminate this Agreement; or

2. Determine that Developer is innocent of a default and, accordingly, dismiss the Termination Notice and any charges of default; or

3. Impose conditions on a finding of default and a time for cure, such that Developer's fulfillment of said conditions will waive or cure any default.

Findings of a default or a conditional default must be based upon substantial evidence supporting the following two findings: (i) that a default in fact occurred and has continued to exist without timely cure, and (ii) that such default has caused or will cause a material breach of this Agreement and/or a substantial negative impact upon public health, safety and welfare, the environment, or such other interests that the City and public may have in the Project.

5.4 **Rights and Duties Following Termination.** Upon the termination of this Agreement, no party shall have any further right or obligation hereunder except with respect to (i) any obligations to have been performed prior to said termination, (ii) any default in the performance of the provisions of this Agreement which has occurred prior to said termination, or (iii) any indemnification provisions herein. Termination of this Agreement shall not affect either party's rights or obligations with respect to any Development Approval granted prior to such termination.

5.5 **Waiver of Breach.** By not challenging any Development Approval within 90 days of the action of City enacting the same, Developer shall be deemed to have waived any claim that any condition of approval is improper or that the action, as approved, constitutes a breach of the

provisions of this Agreement. Otherwise, failure by a party to insist upon the strict performance of any of the provisions of this Agreement by the other party, or the failure by a Party to exercise its rights upon the default of the other party, shall not constitute a waiver of such party's right to insist and demand strict compliance by the other party with the terms of this Agreement thereafter.

5.6 **Interest on Monetary Default**. In the event Developer fails to perform any monetary obligation under this Agreement, Developer shall pay interest thereon at the rate of ten percent (10%) per annum from and after the due date of said monetary obligation until payment is actually received by City.

5.7 **Crossdefault.** In the event that the City Council, following a hearing on a Developer default, determines to terminate this Agreement as a remedy for such default, such determination shall concurrently be the basis for termination of the MOU, any Development Approvals, Reimbursement Agreement, CC&Rs, or such other instruments extant between the parties that are directly related to the Project, except as the City Council shall otherwise direct by resolution.

6. LITIGATION, INDEMNITIES & LEGAL DEFENSE OBLIGATIONS.

6.1 Indemnity Obligations on Third-Party Claims or Litigation; Hazardous Materials.

6.1.1 *General.* The Developer shall indemnify and defend the City and its elected boards, commissions, officers, agents and employees and will defend, hold and save them and each of them harmless from any and all third-party Claims or Litigation (including but not limited to attorneys' fees and costs) against the City and shall be responsible for any judgment arising therefrom.

6.1.2 *Hazardous Materials*. Developer understands and agrees that in the event Developer incurs any loss or liability concerning Hazardous Materials (as hereinafter defined) and/or underground storage tanks whether attributable to events occurring prior to or following the Effective Date, then Developer may look to current or prior owners of the Property, but in no event shall Developer look to City for any liability or indemnification regarding Hazardous Materials and/or underground storage tanks, except concerning Hazardous Materials that were directly brought onto the Property by City or its respective contractors, agents, employees or affiliated governmental bodies (such as the successor agency). Developer, and each of the entities constituting Developer, if any, from and after the Effective Date, hereby waives, releases, remises, acquits and forever discharges City, its directors, officers, shareholders, employees, and agents, and their heirs, successors, personal representatives and assigns, of and from any and all Environmental Claims, Environmental Cleanup Liability and Environmental Compliance Costs, as those terms are defined below, and from any and all actions, suits, legal or administrative orders or proceedings, demands, actual damages, punitive damages, loss, costs, liabilities and expenses, which concern or in any way relate to the physical or environmental conditions of the Property, the existence of any Hazardous Materials thereon, or the release or threatened release of Hazardous Materials therefrom, whether existing prior to, at or after the Effective Date. It is the intention of the parties pursuant to this release that if the Effective Date occurs any and all responsibilities and obligations of City, and any and all rights, claims, rights of action, causes of action, demands or legal rights of any kind of

Developer, its successors, assigns or any affiliated entity of Developer, against the City, arising by virtue of the physical or environmental condition of the Property, the existence of any Hazardous Materials thereon, or any release or threatened release of Hazardous Material therefrom, whether existing prior to, at or after the Effective Date, are by this release provision declared null and void and of no present or future force and effect as to the parties; provided, however, that no parties other than the Indemnified Parties (defined below) shall be deemed third party beneficiaries of such release. **In connection therewith, Developer and each of the entities constituting Developer, expressly agree to waive any and all rights which said party may have with respect to such released claims under Section 1542 of the California Civil Code which provides as follows:**

> **"A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor."**

Developer and each of the entities constituting Developer, shall, from and after the Effective Date, defend, indemnify and hold harmless City and its officers, directors, employees, agents and representatives (collectively, the "Indemnified Parties") from and against any and all Environmental Claims, Environmental Cleanup Liability, Environmental Compliance Costs, and any other claims, actions, suits, legal or administrative orders or proceedings, demands or other liabilities resulting at any time from the physical and/or environmental conditions of the Property after the Effective Date or from the existence of any Hazardous Materials or the release or threatened release of any Hazardous Materials of any kind whatsoever, in, on or under the Property occurring at any time after the Effective Date, including, but not limited to, all foreseeable and unforeseeable damages, fees, costs, losses and expenses, including any and all attorneys' fees and environmental consultant fees and investigation costs and expenses, directly or indirectly arising therefrom, and including fines and penalties of any nature whatsoever, assessed, levied or asserted against any Indemnified Parties to the extent that the fines and/or penalties are the result of a violation or an alleged violation of any Environmental Law. Developer further agrees that in the event Developer obtains, from former or present owners of the Property or any other persons or entities, releases from liability, indemnities, or other forms of hold harmless relating to the subject matter of this Section, Developer shall use its diligent efforts to obtain for City the same releases, indemnities and other comparable provisions.

Notwithstanding anything to the contrary in this Section, Developer's limited release and indemnification of the Indemnified Parties from liability pursuant to this Section shall not extend to Hazardous Materials brought onto the Property by City or its respective contractors, agents, or employees after the Effective Date. For purposes of this Section, the following terms shall have the following meanings:

(a) "Environmental Claim" means any claim for personal injury, death and/or property damage made, asserted or prosecuted by or on behalf of any third party, including, without limitation, any governmental entity, relating to the Property or its operations and arising or alleged to arise under any Environmental Law.

(b) "Environmental Cleanup Liability" means any cost or expense of any nature whatsoever incurred to contain, remove, remedy, clean up, or abate any contamination or

any Hazardous Materials on or under all or any part of the Property, including the ground water thereunder, including, without limitation, (A) any direct costs or expenses for investigation, study, assessment, legal representation, cost recovery by governmental agencies, or ongoing monitoring in connection therewith and (B) any cost, expense, loss or damage incurred with respect to the Property or its operation as a result of actions or measures necessary to implement or effectuate any such containment, removal, remediation, treatment, cleanup or abatement.

(c) "Environmental Compliance Cost" means any cost or expense of any nature whatsoever necessary to enable the Property to comply with all applicable Environmental Laws in effect. "Environmental Compliance Cost" shall include all costs necessary to demonstrate that the Property is capable of such compliance.

(d) "Environmental Law" means any federal, state or local statute, ordinance, rule, regulation, order, consent decree, judgment or common-law doctrine, and provisions and conditions of permits, licenses and other operating authorizations relating to (A) pollution or protection of the environment, including natural resources, (B) exposure of persons, including employees, to Hazardous Materials or other products, raw materials, chemicals or other substances, (C) protection of the public health or welfare from the effects of by-products, wastes, emissions, discharges or releases of chemical sub-stances from industrial or commercial activities, or (D) regulation of the manufacture, use or introduction into commerce of chemical substances, including, without limitation, their manufacture, formulation, labeling, distribution, transportation, handling, storage and disposal.

(e) "Hazardous Material" is defined to include any hazardous or toxic substance, material or waste which is or becomes regulated by any local governmental authority (other than the City or Agency), the State of California, or the United States Government. The term "Hazardous Material" includes, without limitation, any material or substance which is: (A) petroleum or oil or gas or any direct or derivate product or byproduct thereof; (B) defined as a "hazardous waste," "extremely hazardous waste" or "restricted hazardous waste" under Sections 25115, 25117 or 25122.7, or listed pursuant to Section 25140, of the California Health and Safety Code, Division 20, Chapter 6.5 (Hazardous Waste Control Law); (C) defined as a "hazardous substance" under Section 25316 of the California Health and Safety Code, Division 20, Chapter 6.8 (Carpenter-Presley-Tanner Hazardous Substance Account Act); (D) defined as a "hazardous material," "hazardous substance," or "hazardous waste" under Sections 25501(j) and (k) and 25501.1 of the California Health and Safety Code, Division 20, Chapter 6.95 (Hazardous Materials Release Response Plans and Inventory); (E) defined as a "hazardous substance" under Section 25281 of the California Health and Safety Code, Division 20, Chapter 6.7 (Underground Storage of Hazardous Substances); (F) "used oil" as defined under Section 25250.1 of the California Health and Safety Code; (G) asbestos; (H) listed under Chapter 11 of Division 4.5 of Title 22 of the California Code of Regulations, or defined as hazardous or extremely hazardous pursuant to Chapter 10 of Division 4.5 of Title 22 of the California Code of Regulations; (I) defined as waste or a hazardous substance pursuant to the Porter-Cologne Act, Section 13050 of the California Water Code; (J) designated as a "toxic pollutant" pursuant to the Federal Water Pollution Control Act, 33 U.S.C. § 1317; (K) defined as a "hazardous waste" pursuant to the Federal Resource Conservation and Recovery Act, 42 U.S.C. § 6901 et seq. (42 U.S.C. § 6903); (L) defined as a "hazardous substance" pursuant to the Comprehensive Environmental Response, Compensation and Liability

Act, 42 U.S.C. § 9601 et seq. (42 U.S.C. § 9601); (M) defined as "Hazardous Material" pursuant to the Hazardous Materials Transportation Act, 49 U.S.C. § 5101 et seq.; or (N) defined as such or regulated by any "Superfund" or "Superlien" law, or any other federal, state or local law, statute, ordinance, code, rule, regulation, order or decree regulating, relating to, or imposing liability or standards of conduct concerning Hazardous Materials and/or underground storage tanks, as now, or at any time here-after, in effect.

(f) Notwithstanding any other provision of this Agreement, Developer's release and indemnification as set forth in the provisions of this Section, as well as all provisions of this Section shall survive the termination of this Agreement and shall continue in perpetuity.

Notwithstanding anything to the contrary in this Section, Developer's limited release and indemnification of Agency and City and the Indemnified Parties from liability pursuant to this Section shall not extend to Hazardous Materials brought onto the Property by City or their respective contractors, agents, or employees.

6.1.3 *Defense Obligations.* The City shall provide the Developer with notice of the pendency of such Claims or Litigation and shall request that the Developer defend such action. The Developer may utilize the City Attorney's office or use legal counsel of its choosing, but shall reimburse the City for any necessary legal cost incurred by City. In all cases, City shall have the right to utilize the City Attorney's office in any legal action. The Developer shall provide a deposit in the amount of 100% of the City's estimate, in its sole and absolute discretion, of the cost of litigation, including the cost of any award of attorney's fees, and shall make additional deposits as requested by City to keep the deposit at such level. If the Developer fails to provide or maintain the deposit, the City may abandon the action and the Developer shall pay all costs resulting therefrom and City shall have no liability to the Developer. The Developer's obligation to pay the cost of the action, including judgment, shall extend until judgment. After judgment in a trial court, the parties must mutually agree as to whether any appeal will be taken or defended. Any and all portions of the Deposit not expended by the City shall be returned the Developer within thirty (30) days of the resolution of the Claim or Litigation.

(a) The Developer shall have the right, within the first 30 days of the service of the complaint, in its reasonable discretion, to determine that it does not want to defend the Claims or Litigation, in which case the City shall allow the Developer to settle the Claims or Litigation on whatever terms the Developer determines, in its reasonable discretion, but Developer shall confer with City before acting and cannot bind City. In that event, the Developer shall be liable for any costs incurred by the City up to the date of settlement but shall have no further obligation to the City beyond the payment of those costs. In the event of an appeal, or a settlement offer, the parties shall confer in good faith as to how to proceed.

(b) The procedures and administration of litigation defense costs and legal defense procedures set forth in this Section 6.1.3 may be relegated to the Reimbursement Agreement, the terms of which shall control such obligations and procedures.

6.2 **Hold Harmless: Developer's Construction and Other Activities.** The Developer shall defend, save and hold the City and its elected and appointed boards, commissions, officers, agents, and employees harmless from any and all claims, costs (including attorneys' fees)

and liability for any damages, personal injury or death, which may arise, directly or indirectly, from the Developer's or the Developer's agents, contractors, subcontractors, agents, or employees' Project construction activities and operations under this Agreement, whether such Project construction activities and operations be by the Developer or by any of the Developer's agents, contractors or subcontractors or by any one or more persons directly or indirectly employed by or acting as agent for the Developer or any of the Developer's agents, contractors or subcontractors. Nothing herein is intended to make the Developer liable for the acts of the City's officers, employees, agents, contractors of subcontractors.

6.2.1 *Loss and Damage.* City shall not be liable for any damage to property of Developer or of others located on the Property, nor for the loss of or damage to any property of Developer or of others by theft or otherwise. City shall not be liable for any injury or damage to persons or property resulting from fire, explosion, steam, gas, electricity, water, rain, dampness or leaks from any part of the Property or from the pipes or plumbing, or from the street, or from any environmental or soil contamination or hazard, or from any other latent or patent defect in the soil, subsurface or physical condition of the Property, or by any other cause of whatsoever nature.

6.3 **Non-liability of City Officers and Employees.** No official, agent, contractor, or employee of the City shall be personally liable to the Developer, 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 Developer or to its successor, or for breach of any obligation of the terms of this Agreement.

6.4 **Conflict of Interest.** 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 this Agreement which affects the financial interest of any corporation, partnership or association in which he or she is, directly or indirectly, interested, in violation of any state statute or regulation.

6.5 **Revision of Land Use Restrictions to Cure Litigation.** If, for any reason, the Specific Plan, Existing Development Approvals, this Agreement or any part thereof is hereafter judicially determined, as provided above, to not be in compliance with the State or Federal Constitution, laws or regulations and, if such noncompliance can be cured by an appropriate amendment thereof otherwise conforming to the provisions of this Agreement, then this Agreement shall remain in full force and effect to the extent permitted by law. The Specific Plan, Existing Development Approvals and this Agreement may be amended by mutual agreement of the parties as necessary, in order to comply with such judicial decision.

6.6 **Release of Claims Related to Prior Litigation**. By executing this Agreement, Developer further releases and forever discharges the City and its elected boards, commissions, officers, agents and employees for any Claim alleged by any party in the cases entitled Irwindale Partners, L.P. v. United Rock Products Corporation et al., Case Number KC051372G or USA Waste of California, Inc. v. City of Irwindale; Irwindale Partners, L.P.; and Dispatch Transportation, LLC dba Windrow Earth Transport, Case No. KC066276H, whether related to the City's actions to enforce filling standards at the Property, competing fill, violations of Priority Filling Obligations, as defined in Section 6.7 below, or otherwise.

6.7 **Release of Benefits Under Prioritization Clause.** Developer relinquishes, waives and releases (collectively "release") the City from any further rights it may have to conduct a priority filling operation at the Site, pursuant to the "Prioritization Clause" contained in various agreements between the City and operators conducting mining and reclamation operations in the City (including United Rock Products Corporation ("United"), Hanson Aggregates West, Inc. and Calmat Co., dba Vulcan Materials Company, Western Division), a sample of which Prioritization Clause is contained in the September 1, 2004 Settlement Agreement and Mutual General Release between the City and United, wherein the City may approve filling operations at its properties, provided it uses fill that would not otherwise be reasonably available to the operators subject to the Prioritization Clause or their successors ("Priority Filling Obligations"). The release provided herein shall be effective commencing on either (i) the issuance of the first building permit for development of the Project, or any portion thereof, or (ii) September 30, 2020, whichever occurs first. Following the termination of Priority Filling Obligations, Developer may no longer claim any rights or benefits to the terms of such Priority Clause.

6.8 **Venue.** In the event of any judicial action, venue shall be in the Superior Court of Los Angeles County.

6.9 **Survival of Indemnity Obligations.** All indemnity provisions set forth in this Agreement shall survive termination of this Agreement for any reason other than a default by City.

7. MORTGAGEE PROTECTION.

The parties hereto agree that this Agreement shall not prevent or limit Developer, in any manner, at Developer's sole discretion, from encumbering the Property or any portion thereof or any improvement thereon by any mortgage, deed of trust or other security device securing financing with respect to the Property. City acknowledges that the lenders providing such financing may require certain Agreement interpretations and modifications and City agrees upon request, from time to time, to meet with Developer and representatives of such lenders to negotiate in good faith any such request for interpretation or modification. Subject to compliance with applicable laws, City will not unreasonably withhold its consent to any such requested interpretation or modification provided City determines such interpretation or modification is consistent with the intent and purposes of this Agreement. Any Mortgagee of the Property shall be entitled to the following rights and privileges:

(a) Neither entering into this Agreement nor a breach of this Agreement shall defeat, render invalid, diminish or impair the lien of any mortgage on the Property made in good faith and for value, unless otherwise required by law.

(b) The Mortgagee of any mortgage or deed of trust encumbering the Property, or any part thereof, which Mortgagee has submitted a request in writing to the City in the manner specified herein for giving notices, shall be entitled to receive written notification from City of any default by Developer in the performance of Developer's obligations under this Agreement.

(c) If City timely receives a request from a Mortgagee requesting a copy of any notice of default given to Developer under the terms of this Agreement, City shall make a good faith effort to provide a copy of that notice to the Mortgagee within ten (10) days of sending

the notice of default to Developer. The Mortgagee shall have the right, but not the obligation, to cure the default during the period that is the longer of (i) the remaining cure period allowed such party under this Agreement, or (ii) sixty (60) days.

(d) Any Mortgagee who comes into possession of the Property, or any part thereof, pursuant to foreclosure of the mortgage or deed of trust, or deed in lieu of such foreclosure, shall take the Property, or part thereof, subject to the terms of this Agreement. Notwithstanding any other provision of this Agreement to the contrary, no Mortgagee shall have an obligation or duty under this Agreement to perform any of Developer's obligations or other affirmative covenants of Developer hereunder, or to guarantee such performance; except that (i) to the extent that any covenant to be performed by Developer is a condition precedent to the performance of a covenant by City, the performance thereof shall continue to be a condition precedent to City's performance hereunder, and (ii) in the event any Mortgagee seeks to develop or use any portion of the Property acquired by such Mortgagee by foreclosure, deed of trust, or deed in lieu of foreclosure, such Mortgagee shall strictly comply with all of the terms, conditions and requirements of this Agreement and the Specific Plan applicable to the Property or such part thereof so acquired by the Mortgagee.

8. INSURANCE.

8.1 Types of Insurance.

8.1.1 *Public Liability Insurance.* Prior to commencement and until completion of construction by Developer on the Property, Developer shall, at its sole cost and expense, keep or cause to be kept in force, for the mutual benefit of City and Developer, comprehensive broad form general public liability insurance against claims and liability for personal injury or death arising from the use, occupancy, disuse or condition of the Property, improvements or adjoining areas or ways, affected by such use of the Property or for property damage. Such policy shall provide at least One Million Dollars ($1,000,000) for any one accident or occurrence, including bodily injury and property damage, which limits shall be subject to such increases in amount as City may reasonably require from time to time.

8.1.2 *Builder's Risk Insurance.* Prior to commencement and until completion of construction by Developer on the Property, Developer shall procure and shall maintain in force, or caused to be maintained in force, "all risks" builder's risk insurance including vandalism and malicious mischief, covering improvements in place and all material and equipment at the job site furnished under contract, but excluding contractor's, subcontractor's, and construction manager's tools and equipment and property owned by contractor's or subcontractor's employees, with limits in accordance with subsection (8.1.1) above.

8.1.3 *Worker's Compensation.* Developer shall also furnish or cause to be furnished to City evidence reasonably satisfactory to it that any contractor with whom Developer has contracted for the performance of any work for which Developer is responsible hereunder carries workers' compensation insurance as required by law.

8.1.4 *Other Insurance.* Developer may procure and maintain any insurance not required by this Agreement, but all such insurance shall be subject to all of the provisions hereof pertaining to insurance.

8.2 **Insurance Policy Form, Sufficiency, Content and Insurer.** All insurance required by express provisions hereof shall be carried only by responsible insurance companies licensed and admitted to do business by California, rated "A" or better in the most recent edition of Best Rating Guide, The Key Rating Guide or in the Federal Register, and only if they are of a financial category Class VIII or better, unless waived by City. All such policies shall be non-assessable and shall contain language, to the extent obtainable, to the effect that (i) any loss shall be payable notwithstanding any act of negligence of City or Developer that might otherwise result in the forfeiture of the insurance, (ii) the insurer waives the right of subrogation against City and against City's agents and representatives; (iii) the policies are primary and noncontributing with any insurance that may be carried by City; and (iv) the policies cannot be canceled or materially changed except after thirty (30) days' written notice by the insurer to City or City's designated representative. Developer shall furnish City with copies of all such policies promptly on receipt of them or with certificates evidencing the insurance. City shall be named as an additional insured on all policies of insurance required to be procured by the terms of this Agreement. Moreover, the insurance policy must specify that where the primary insured does not satisfy the self-insured retention, any additional insured may satisfy the self-insured retention. In the event the City's Risk Manager determines that the use, activities or condition of the Property, improvements or adjoining areas or ways, affected by such use of the Property under this Agreement creates an increased or decreased risk of loss to the City, Developer agrees that the minimum limits of the insurance policies required by Section 8.1 may be changed accordingly upon receipt of written notice from the City's Risk Manager; provided that Developer shall have the right to appeal a determination of increased coverage to the City Council of City within ten (10) days of receipt of notice from the City's Risk Manager.

8.3 **Failure to Maintain Insurance and Proof of Compliance.** Developer shall deliver to City, in the manner required for notices, copies of certificates of all insurance policies required hereunder together with evidence satisfactory to City of payment required for procurement and maintenance of each policy within the following time limits:

(a) For insurance required above, within thirty (30 days) after the Effective Date.

(b) For any renewal or replacement of a policy already in existence, at least ten (10) days before the expiration or termination of the existing policy.

If Developer fails or refuses to procure or maintain insurance as required hereby or fails or refuses to furnish City with required proof that that insurance has been procured and is in force and paid for, such failure or refusal shall be a default hereunder.

9. AMENDMENT AND MODIFICATION OF DEVELOPMENT AGREEMENT.

9.1 **Initiation of Amendment.** Either party may propose an amendment to this Agreement.

9.2 **Procedure.** Except as set forth in Section 9.4 below, the procedure for proposing and adopting an amendment to this Agreement shall be the same as the procedure required for

entering into this Agreement in the first instance, and meet the requirements of the Development Agreement Statute § 65867.

9.3 **Consent.** Except as expressly provided in this Agreement, no amendment to all or any provision of this Agreement shall be effective unless set forth in writing and signed by duly authorized representatives of each of the parties hereto and recorded in the Official Records of Los Angeles County.

9.4 **Minor Modifications.** The provisions of this Agreement require a close degree of cooperation between the City and the Developer. Implementation of the Project may require minor modifications of the details of the Specific Plan and affect the performance of the parties under this Agreement. The anticipated refinements to the Project and the Development of the Property may demonstrate that clarifications to this Agreement and the Existing Land Use Regulations are appropriate with respect to the details of performance of the City and the Developer. The parties desire to retain a certain degree of flexibility with respect to those items covered in general terms under this Agreement. Therefore, non-substantive and procedural modifications of the Specific Plan shall be those that qualify for a Substantial Conformance Determination under the provisions of the Chapter 5 of the Specific Plan, at Section B thereunder and shall not require amendment of this Agreement.

9.5 Hearing Rights Protected. Notwithstanding the foregoing, City will process any change to this Agreement consistent with state law and will hold public hearings thereon if so required by state law and the parties expressly agree nothing herein is intended to deprive any party or person of due process of law.

9.6 **Effect of Amendment to Development Agreement.** All modifications determined not to be minor shall require an amendment to this Agreement. Except as expressly set forth in any such amendment, an amendment to this Agreement will not alter, affect, impair, modify, waive, or otherwise impact any other rights, duties, or obligations of either party under this Agreement.

10. MISCELLANEOUS PROVISIONS.

10.1 **Recordation of Agreement.** This Agreement shall be recorded with the County Recorder by the City Clerk within the period required by Section 65868.5 of the Government Code. Amendments approved by the parties, and any cancellation, shall be similarly recorded.

10.2 **Entire Agreement.** This Agreement sets forth and contains the entire understanding and agreement of the parties with respect to the subject matter set forth herein, and there are no oral or written representations, understandings or ancillary covenants, undertakings or agreements which are not contained or expressly referred to herein. No testimony or evidence of any such representations, understandings or covenants shall be admissible in any proceeding of any kind or nature to interpret or determine the terms or conditions of this Agreement.

10.3 **Severability.** If any term, provision, covenant or condition of this Agreement shall be determined invalid, void or unenforceable, then this Agreement shall terminate in its

entirety, unless the parties otherwise agree in writing, which agreement shall not be unreasonably withheld.

10.4 **Interpretation and Governing Law.** This Agreement and any dispute arising hereunder shall be governed and interpreted in accordance with the laws of the State of California. This Agreement shall be construed as a whole according to its fair language and common meaning to achieve the objectives and purposes of the parties hereto, and the rule of construction to the effect that ambiguities are to be resolved against the drafting party or in favor of City shall not be employed in interpreting this Agreement, all parties having been represented by counsel in the negotiation and preparation hereof.

10.5 **Section Headings.** All section headings and subheadings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.

10.6 **Singular and Plural.** As used herein, the singular of any word includes the plural.

10.7 **Time of Essence.** Time is of the essence in the performance of the provisions of this Agreement as to which time is an element.

10.8 **Waiver.** Failure of a party to insist upon the strict performance of any of the provisions of this Agreement by the other party, or the failure by a party to exercise its rights upon the default of the other party, shall not constitute a waiver of such party's right to insist and demand strict compliance by the other party with the terms of this Agreement thereafter.

10.9 **No Third Party Beneficiaries.** This Agreement is made and entered into for the sole protection and benefit for the parties and their successors and assigns. No other person shall have any right of action based upon any provision of this Agreement.

10.10 **Force Majeure.** Neither party shall be deemed to be in default where failure or delay in performance of any of its obligations under this Agreement is caused by earthquakes, other acts of God, fires, wars, terrorism, riots or similar hostilities, strikes and other labor difficulties beyond the party's control (including the party's employment force), government regulations, court actions and pending litigation (such as restraining orders or injunctions, or petitions for writ of mandate filed challenging the Development Approvals), the existence of third party lawsuits, which impact development of the Project, or other causes beyond the party's reasonable control. If any such events shall occur, the term of this Agreement and the time for performance shall be extended for the duration of each such event, provided that the term of this Agreement shall not be extended under any circumstances for more than one (1) year.

10.11 **Mutual Covenants.** The covenants contained herein are mutual covenants and also constitute conditions to the concurrent or subsequent performance by the party benefited thereby of the covenants to be performed hereunder by such benefited party.

10.12 **Counterparts.** This Agreement may be executed by the parties in counterparts, which counterparts shall be construed together and have the same effect as if all of the parties had executed the same instrument.

10.13 **Estoppel Certificates.** Either party (or a Mortgagee under Article 7) may at any time deliver written notice to the other party requesting an Estoppel Certificate stating:

A. The Agreement is in full force and effect and is a binding obligation of the parties;

B. The Agreement has not been amended or modified either orally or in writing or, if so amended, identifying the amendments; and

C. There are no existing defaults under the Agreement to the actual knowledge of the party signing the Estoppel Certificate.

A party receiving a request for an Estoppel Certificate shall provide a signed certificate to the requesting party within thirty (30) days after receipt of the request. The City Manager may sign Estoppel Certificates on behalf of the City. An Estoppel Certificate may be relied on by assignees and Mortgagees.

10.14 **Covenant Not To Sue.** The parties to this Agreement, and each of them, agree that this Agreement and each term hereof are legal, valid, binding, and enforceable. The parties to this Agreement, and each of them, hereby covenant and agree that each of them will not commence, maintain, or prosecute any claim, demand, cause of action, suit, or other proceeding against any other party to this Agreement, in law or in equity, or based on any allegation or assertion in any such action, that this Agreement or any term hereof is void, invalid, or unenforceable.

10.15 **Project as a Private Undertaking.** It is specifically understood and agreed by and between the parties hereto that the Development of the Project is a private Development, that neither party is acting as the agent of the other in any respect hereunder, and that each party is an independent contracting entity with respect to the terms, covenants and conditions contained in this Agreement. No partnership, joint venture or other association of any kind is formed by this Agreement. The only relationship between City and Developer is that of a government entity regulating the Development of private property, on the one hand, and the holder of a legal or equitable interest in such property and as future holder of fee title to such property, on the other hand. City agrees that by its approval of, and entering into, this Agreement that it is not taking any action which would transform this private Development into a "public work" project, and that nothing herein shall be interpreted to convey upon Developer any benefit which would transform Developer's private project into a public work project, it being understood that this Agreement is entered into by City and Developer upon the exchange of consideration described in this Agreement, including the Recitals to this Agreement, and that City is receiving by and through this Agreement the full measure of benefit in exchange for the burdens placed on Developer by this Agreement, including but not limited to Developer's obligation to provide the public improvements set forth herein.

10.16 **Further Actions and Instruments.** Each of the parties shall cooperate with and provide reasonable assistance to the other to the extent contemplated here under in the performance of all obligations under this Agreement and the satisfaction of the conditions of this Agreement. Upon the request of either party at any time, the other party shall promptly execute, with

acknowledgment or affidavit if reasonably required, and file or record such required instruments and writings and take any actions as may be reasonably necessary under the terms of this Agreement to carry out the intent and to fulfill the provisions of this Agreement or to evidence or consummate the transactions contemplated by this Agreement.

10.17 **Eminent Domain.** No provision of this Agreement shall be construed to limit or restrict the exercise by City of its power of eminent domain.

10.18 **Attorney's Fees.** If either party to this Agreement is required to initiate or defend litigation against the other party, 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 a final judgment.

10.19 **Corporate Authority.** The person(s) executing this Agreement on behalf of each of the parties hereto represent and warrant that (i) such party, if not an individual, is duly organized and existing, (ii) they are duly authorized to execute and deliver this Agreement on behalf of said party, (iii) by so executing this Agreement such party is formally bound to the provisions of this Agreement, and (iv) the entering into this Agreement does not violate any provision of any other agreement to which such party is bound.

10.20 **Notices.** All notices under this Agreement shall be effective when delivered by (i) personal delivery, or (ii) reputable same-day or overnight courier or messenger service, (iii) overnight United States Postal Service Express Mail, postage prepaid, or (iv) by United States Postal Service mail, registered or certified, postage prepaid; and addressed to the respective parties as set forth below or as to such other address as the parties may from time to time designate in writing:

Original To City:	City of Irwindale 5050 N. Irwindale Ave. Irwindale, CA 91706 Attn: City Manager
With copy to:	Aleshire & Wynder 18881 Von Karman Avenue, Suite 1700 Irvine, CA 92612 Attn: Fred Galante
With copy to :	Tony Spinrad (Developer) Irwindale Partners II, LLC 373 E. Foothill Blvd, Suite 100 San Dimas, CA 91773

With copy to: Jeff Yellen
Irwindale Partners, LP
11021 Winner's Circle, Suite 200
Los Alamitos, CA 90720

and

John A. Ramirez
Rutan & Tucker, LLP
611 Anton Blvd.
Costa Mesa, CA 92694

10.21 **Recitals.** The recitals in this Agreement constitute part of this Agreement and each party shall be entitled to rely on the truth and accuracy of each recital as an inducement to enter into this Agreement.

10.22 **No Brokers.** City and Developer represent and warrant to the other that neither has employed any broker and/or finder to represent its interest in this transaction. Each party agrees to indemnify and hold the other free and harmless from and against any and all liability, loss, cost, or expense (including court costs and reasonable attorney's fees) in any manner connected with a claim asserted by any individual or entity for any commission or finder's fee in connection with this Agreement arising out of agreements by the indemnifying party to pay any commission or finder's fee.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year first set forth above.

City: CITY OF IRWINDALE, a municipal corporation

By: _____
Albert F. Ambriz, Mayor

ATTEST:

By _____
Laura M. Nieto, MMC
Chief Deputy City Clerk

APPROVED AS TO FORM:
ALESHIRE & WYNDER, LLP

By _____
Fred Galante, City Attorney

Developer: IRWINDALE PARTNERS II, LLC, a California limited liability company

By: _____
Tony Spinrad, Managing Member

By: _____
John Edwards, Jr., Member

[End of Signatures]

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 _____, 2020 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: _____

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 _____, 2020 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: _____

EXHIBIT "A"

LEGAL DESCRIPTION OF THE PROPERTY

Real property in the City of Irwindale, County of Los Angeles, State of California, described as follows:

PARCEL 1:

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF IRWINDALE, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

THOSE PORTIONS OF LOTS 36, 43, AND 44 OF THE J.R. LOFTUS TRACT NO. 1, AS SHOWN ON A MAP RECORDED IN BOOK 14, PAGE 29 OF MAPS IN THE OFFICE OF THE COUNTY RECORDER OF LOS ANGELES, CALIFORNIA, AND ALSO THAT PORTION OF SECTION 1, TOWNSHIP 1 SOUTH, RANGE 11 WEST, OF THE SUBDIVISION OF THE RANCHO AZUSA DE DUARTE, AS SHOWN ON A MAP RECORDED IN BOOK 6, PAGES 80 TO 82, INCLUSIVE, OF MISCELLANEOUS RECORDS OF LOS ANGELES COUNTY, CALIFORNIA, BOUNDED AS FOLLOWS:

BOUNDED WESTERLY BY THE SOUTHERLY PROLONGATION OF THE WESTERLY LINE OF LOT 35 OF SAID J.R. LOFTUS TRACT NO. 1;

BOUNDED SOUTHWESTERLY BY THE NORTHEASTERLY LINE OF THE 100-FOOT WIDE PUBLIC ROAD DESCRIBED IN THE FINAL JUDGMENT IN FAVOR OF THE COUNTY OF LOS ANGELES UNDER CASE NO. 269622 IN SUPERIOR COURT, RECORDED AUGUST 18, 1933 IN BOOK 12289, PAGE 277 OF OFFICIAL RECORDS.

BOUNDED EASTERLY BY THE GENERAL WESTERLY LINES OF THE LAND DESCRIBED IN PARCEL 3A (REAMENDED) IN THE FINAL ORDER OF CONDEMNATION IN FAVOR OF THE PEOPLE OF THE STATE OF CALIFORNIA UNDER CASE NO. 842381 IN SUPERIOR COURT, RECORDED FEBRUARY 25, 1970 AS DOCUMENT NO. 2784, IN BOOK D-4641, PAGE 886 OF OFFICIAL RECORDS.

BOUNDED NORTHWESTERLY BY THE SOUTHEASTERLY LINE OF 100-FOOT WIDE PUBLIC ROAD DESCRIBED IN THE FINAL ORDER OF CONDEMNATION IN FAVOR OF THE COUNTY OF LOS ANGELES UNDER CASE NO. 517607 IN SUPERIOR COURT, RECORDED JANUARY 12, 1949 AS DOCUMENT NO. 1324, IN BOOK 29149, PAGE 166 OF OFFICIAL RECORDS.

AND BOUNDED NORTHERLY BY A LINE HAVING A BEARING AND DISTANCE OF "SOUTH 83°39'23"WEST, 384.64," AS SAID LINE IS SET FORTH IN PARCEL 3A OF THE FINAL ORDER OF CONDEMNATION RECORDED FEBRUARY 25, 1970 AS DOCUMENT NO. 2784, IN BOOK D-4641, PAGE 866 OF OFFICIAL RECORDS.

APN: 8532-001-002

PARCEL 2:

THAT PORTION OF LOT 6 OF FRACTIONAL SECTION 1 OF TOWNSHIP 1 SOUTH, RANGE 11 WEST, AS SHOWN ON MAP OF THE SUBDIVISION OF THE RANCHO AZUSA DE DUARTE, IN THE CITY OF IRWINDALE, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 6 PAGES 80 TO 82 INCLUSIVE OF MISCELLANEOUS RECORDS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, BOUNDED AS FOLLOWS:

BOUNDED NORTHERLY BY THE SOUTHERLY LINE OF ARROW HIGHWAY, 100 FEET WIDE, AS DESCRIBED IN PARCEL 4-3, IN FINAL ORDER OF CONDEMNATION ENTERED IN LOS ANGELES COUNTY SUPERIOR COURT CASE NO. 517607, A CERTIFIED COPY OF WHICH WAS RECORDED IN BOOK 29149 PAGE 166 OFFICIAL RECORDS OF SAID COUNTY, BOUNDED SOUTHERLY BY THE NORTHERLY LINE OF LIVE OAK AVENUE, 100 FEET WIDE, AS DESCRIBED IN FINAL ORDER OF CONDEMNATION ENTERED IN LOS ANGELES COUNTY SUPERIOR COURT CASE NO. 269622, A CERTIFIED COPY OF WHICH WAS RECORDED IN BOOK 12289 PAGE 277 OFFICIAL RECORDS OF SAID COUNTY, BOUNDED WESTERLY BY THE EAST LINE OF PARCEL 1 OF PARCEL MAP NO. 18724, AS SHOWN ON MAP FILED IN BOOK 198 PAGES 77 AND 78 OF PARCEL MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

APN: 8532-001-901 (OLD) 8532-001-006 (NEW)

PARCEL 3:

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF BALDWIN PARK, IN THE COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

PARCEL 1 OF PARCEL MAP NO. 18724, AS PER MAP FILED IN BOOK 198, PAGES 77 AND 78 OF PARCEL MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

APN: 8532-001-900

EXHIBIT "B"

SPECIFIC PLAN, CONCEPTUAL PLANS, TPM CONDITIONS OF APPROVAL
(Attached Separately)

EXHIBIT "C"

PUBLIC IMPROVEMENTS

Off-site improvements that would occur in association with the Project include the following:

Construction of an 10-foot wide meandering sidewalk/landscaped parkway along the Project's frontage with Live Oak Avenue and Arrow Highway;

Construction of a 12-inch underground water main in the segments of Live Oak Avenue and Arrow Highway that front the Project site;

Construction of a 16-inch underground water main in the segment of the Avenida Barbosa right-of-way located between Buena Vista Street and Arrow Highway;

Construction of a 16-inch underground water main in the segment of Buena Vista Street located east of the intersection of Avenida Barbosa and Buena Vista Street which would connect to an existing pipeline in Buena Vista Street;

Upsizing of an existing 8-inch underground water main in Buena Vista Street to a 12-inch underground water main;

Construction of lateral connections to proposed and existing water, sewer and storm water utilities located in Arrow Highway and Live Oak Avenue; and

Construction of driveway aprons along Arrow Highway and Live Oak Avenue.

Off-site Traffic Improvements.

MM 4.11-1 Prior to issuance of the first certificate of occupancy, the Project Applicant shall submit to the City of Irwindale a payment equal to the full cost to install the following improvement at Intersection #3 – Longden Avenue & Live Oak Avenue/Driveway. The City of Irwindale shall ensure installation of the improvement.

Restripe a 3rd eastbound through lane and modify the existing traffic signal to accommodate the additional 3rd eastbound lane.

MM 4.11-2 Prior to issuance of the first certificate of occupancy, the Project Applicant shall submit to the City of Irwindale a payment equal to the full cost to install the following improvement at Intersection #27 – Stewart Avenue & Live Oak Avenue. The City of Irwindale shall ensure installation of the improvement.

Restripe a 3rd westbound through lane and modify the existing traffic signal to accommodate the additional 3rd westbound lane. MM 4.11-2

MM 4.11-3 Prior to issuance of the first certificate of occupancy, the Project Applicant shall submit to the City of Irwindale a payment equal to the full cost to install the following improvement at Intersection #29 – Arrow Highway & Live Oak Avenue. The City of Irwindale shall ensure installation of the improvement.

Restripe a 3rd eastbound through lane and modify the existing traffic signal to accommodate the additional 3rd eastbound lane.

MM 4.11-4 Prior to issuance of the first certificate of occupancy, the Project Applicant shall submit to the City of Irwindale a payment equal to the full cost to install the following improvement at the intersection of Maine Avenue & Arrow Highway (Intersection #30). The City of Irwindale shall ensure installation of the improvement.

• Restripe a 3rd eastbound through lane and modify the existing traffic signal to accommodate the additional 3rd eastbound lane.

MM 4.11-5 Prior to issuance of building permits for future implementing development projects that involve a driveway connection point with Arrow Highway or Live Oak Avenue, the Project Applicant shall submit a driveway access study to the City of Irwindale Public Works Department for City review and approval. The study shall be prepared by a licensed traffic engineer, identify the proposed access driveway(s) connecting to a public street, and include a detailed evaluation of the proposed driveway for intersection lane geometrics, turn lane storage capacity, and sight distance. The City shall require that the driveway intersection be constructed in accordance with the City-approved access study prior to the issuance of a certificate of occupancy for any building that would use the driveway for ingress/egress.

Based on the studied driveway locations (as shown on Exhibit 1-1 of The Park @ Live Oak Traffic Impact Analysis prepared by Urban Crossroads, Inc. and dated December 12, 2018) and mix of land uses studied in The Park @ Live Oak Specific Plan's Traffic Impact Analysis prepared by Urban Crossroads, Inc. and dated December 12, 2018 (as shown in EIR Table 4.11-15, Project Trip Generation Summary (Actual Vehicles)), the following are anticipated to be required as the maximum extent of public roadway lane configuration and signalization improvements:

a) As a condition of any building permit that would involve ingress/egress at the intersection of Arrow Highway and Private Drive A, the Project Applicant shall install the following improvements at the existing intersection of Avenida Barbosa/Private Drive A & Arrow Highway (Intersection #15). The improvements shall be constructed and operable prior to the issuance of a certificate of occupancy.
    - Restripe a southbound through lane. (E+P requirement)
    - Add a 3rd eastbound through lane. (E+P requirement)
    - Add a westbound left turn lane. (E+P requirement)

• Add a 2nd westbound left turn lane (E+P requirement with maximum commercial development in Planning Areas 1A and 2A)
• Add a northbound left turn lane. (2020 Opening Year requirement)
• Add a northbound through lane. (2020 Opening Year requirement)
• Add a northbound right turn lane. (2020 Opening Year requirement)
• Modify traffic signal to accommodate the above-listed changes to lane configurations.

b) As a condition of any building permit that would involve ingress/egress at the intersection of Arrow Highway and Private Drive B, the Project Applicant shall install the following improvement at Private Drive B & Arrow Highway (Intersection #11). The improvement shall be constructed and operable prior to the issuance of a certificate of occupancy.

• Install a traffic signal (E+P requirement with maximum commercial development in Planning Areas 2A and 3A)

c) As a condition of any building permit that would involve ingress/egress access at the intersection of Live Oak Avenue and Private Drive A, the Project Applicant shall install the following improvement at Private Drive A and Live Oak Avenue (Intersection #16). The improvement shall be constructed and operable prior to the issuance of a certificate of occupancy.

• Install a traffic signal (E+P requirement)

d) As a condition of any grading or building permit that would involve ingress/egress access at the existing intersection of Speedway Driveway & Live Oak Avenue, the Project Applicant shall install the following roadway improvement at Speedway Driveway & Live Oak Avenue (Intersection #7). The improvement shall be constructed and operable prior to the issuance of a certificate of occupancy.

• Install a traffic signal (E+P requirement)
• Add a 3rd westbound through lane. (E+P requirement)

e) As a condition of any building permit that would involve ingress/egress at the existing intersection of Live Oak Avenue and the entrance driveway to the Irwindale Events Center Intersection #13 (Project Driveway 7), the Project Applicant shall install the following improvement at Project Driveway 7/Driveway & Live Oak Avenue (Intersection #13). The improvement shall be constructed and operable prior to the issuance of a certificate of occupancy.

• Add a 3rd eastbound through lane and modify the traffic signal to accommodate the additional 3rd eastbound lane. (E+P requirement)

MM 4.11-6 Prior to the issuance of each building permit for future implementing development projects proposed within The Park @ Live Oak Specific Plan, the Project Applicant shall submit a preliminary trip generation calculation and trip distribution exhibit to the City of Irwindale Public Works Department for the development project under consideration for City review and approval. The preliminary calculation and exhibit shall be prepared by a licensed traffic engineer and be accompanied by sufficient analytical data to enable the City to (1) Determine which of the mitigation measures identified below to address cumulatively considerable impacts in the E+P, Opening Year 2020, and Horizon Year 2040 scenarios are applicable to the implementing project and calculate the fair share percentage associated with each applicable respective mitigation measure, and (2) Enable the City to determine sufficient intersection and driveway geometrics and lane storage and turn lane capacity needs. The City Engineer shall have the authority to determine the extent of the traffic study and analyses required to determine the appropriate mitigation measures and fair share calculations. Traffic analyses shall utilize traffic counts collected within 12 months of the analysis.

Proposed development projects and speculative buildings without an occupant or tenant shall be analyzed in accordance with the proposed uses, trip generations rates and planning areas listed in EIR Table 4.11-15. For the purposes of the traffic analysis, uses assigned to speculative developments within The Park @ Live Oak Specific Plan site shall be consistent with the distribution and proportion of uses and trip generation rates studied in The Park @ Live Oak Specific Plan's Traffic Impact Analysis prepared by Urban Crossroads, Inc. and dated December 12, 2018 and listed in EIR Table 4.11-15.

If the total trips generated by all developments within The Park @ Live Oak Specific Plan area exceeds the trips analyzed in The Park @ Live Oak Specific Plan's Traffic Impact Analysis prepared by Urban Crossroads, Inc. and dated December 12, 2018 (1,280 PCE AM peak hour trips and 1,644 PCE PM peak hour trips), an additional full Traffic Impact Analysis shall be required.

Based on the studied driveway locations (depicted on Exhibit 1-1 of The Park @ Live Oak Specific Plan's Traffic Impact Analysis prepared by Urban Crossroads, Inc. and dated December 12, 2018), mix of land uses, and projected traffic volumes studied in the Park @ Live Oak Specific Plan's Traffic Impact Analysis and listed in EIR Table 4.11-15, the following are anticipated to be to applicable to some or all implementing development projects:

a) Prior to issuance of building permits, the Project Applicant shall make a fair share monetary contribution to the City of Irwindale for the following improvements to Intersection #1 – Myrtle Avenue & Longden Avenue:

• Restripe a 2nd eastbound through lane and widen the bridge over the Sawpit Wash.

b) Prior to issuance of building permits, the Project Applicant shall make a fair share monetary contribution to the City of Irwindale for the following improvements to Intersection #2 – Myrtle Avenue/Peck Road & Live Oak Avenue:

- Add a 2nd southbound left turn lane and modify the existing traffic signal to

accommodate the 2nd southbound left turn lane.

c) Prior to issuance of grading and building permits, the Project Applicant shall make a fair share monetary contribution to the City of Irwindale for the following improvements to Intersection #4 – Live Oak Avenue & Arrow Highway (West):

- Add a 3rd westbound through lane.
- Restripe a 3rd eastbound through lane.
- Modify the existing traffic signal to accommodate the above-listed lane configuration improvements.

d) Prior to issuance of grading and building permits, the Project Applicant shall make a fair share monetary contribution to the City of Irwindale for the following improvements to Intersection #15 – Avenida Barbosa/Private Drive A & Arrow Highway:

- Add a 3rd westbound through lane.
- Add a 2nd eastbound left turn lane.
- Modify the traffic signal to implement overlap phasing on the westbound right turn lane and accommodate the changes to lane configuration.

e) Prior to issuance of grading and building permits, the Project Applicant shall make a fair share monetary contribution to the City of Irwindale for the following improvements to Intersection #7 – Speedway Driveway & Live Oak Avenue:

- Install a traffic signal.

f) Prior to issuance of building permits, the Project Applicant shall make a fair share monetary contribution to the City of Irwindale for the following improvements to Intersection #13 – Driveway 7/Driveway & Live Oak Avenue:

- Add an eastbound right turn lane and modify the existing traffic signal to accommodate the new eastbound right turn lane.

g) Prior to issuance of grading and building permits, the Project Applicant shall make a fair share monetary contribution to the City of Irwindale for the

following improvements to Intersection #23 – I-605 Northbound Off-Ramp & Live Oak Avenue:

• Install a traffic signal.

h) Prior to the issuance of building permits, the Project Applicant shall make a fair share monetary contribution to the City of Irwindale for the following improvements to Intersection #26 – Rivergrade Road & Live Oak Avenue:

• Modify the traffic signal to implement overlap phasing on the northbound right turn lane.

i) Prior to issuance of building permits, the Project Applicant shall make a fair share monetary contribution to the City of Irwindale for the following improvements to Intersection #27 – Stewart Avenue & Live Oak Avenue

• Restripe a 3rd eastbound through lane and modify the existing traffic signal to accommodate the 3rd eastbound through lane.

MM 4.11-7 Mitigation and fair share calculations for impacts to State Highway System facilities shall be subject to the review and approval of the California Department of Transportation (Caltrans). Fair share contributions for improvements to State Highway System facilities shall be determined by and paid to Caltrans in accordance with nexus requirements contained in the Mitigation Fee Act (Govt. Code § 66000 et seq.) and 14 Cal. Code of Regs. § 15126.4(a)(4).

MM 4.11-8 Prior to the issuance of grading or building permits, the Project Applicant shall prepare and the City of Irwindale shall approve a temporary traffic control plan. The temporary traffic control plan shall comply with the applicable requirements of the California Manual on Uniform Traffic Control Devices and shall address temporary closures of roadways and sidewalks. A requirement to comply with the temporary traffic control plan shall be noted on all grading and building plans and also shall be specified in bid documents issued to prospective construction contractors.

EXHIBIT "D"

CC&Rs

FREE RECORDING REQUESTED AND
WHEN RECORDED, RETURN TO:

City of Irwindale
5050 N. Irwindale Ave.
Irwindale, CA 91706

Attn: City Clerk

(Space above this line for Recorder's Office Use Only)

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS ("**CC&Rs**") is made and entered into this 12th day of February, 2020, by IRWINDALE PARTNERS II, LLC, a California limited liability company (collectively, "**Owner**"). These CC&Rs are declared for the benefit of the CITY OF IRWINDALE, a California Charter municipality ("**City**"). Owner and City are occasionally referred to herein each as a "**Party**" and collectively as the "**Parties**".

RECITALS:

A. Owner is the owner of that certain real property located in the City of Irwindale, County of Los Angeles, State of California, more particularly described in Exhibit "A" attached hereto and incorporated herein by this reference ("**Site**") .

B. Pursuant to the Development Agreement, Owner shall submit a proposed form of Declaration of Covenants, Conditions and Restrictions to be recorded against the Site to ensure Owner undertakes appropriate development of the Site consistent with The Park @ Live Oak Specific Plan and all applicable building codes in connection with developing the Site and indemnifies the City in ongoing litigation, as further described in these CC&Rs.

D. City has fee or easement interests in various streets, sidewalks and other property within the City and is responsible for the appropriate planning and development of land within the City in such a manner so as to provide for the health, safety and welfare of the residents of the City. That portion of the City's interest in real property most directly affected by these CC&Rs are public rights of way surrounding the Site.

E. City and Owner now desire to place restrictions upon the use and operation of the Site in order to ensure that the Site shall be developed and operated in accordance with the requirements set forth herein.

F. It is the intent of City and Owner that these CC&Rs shall be recorded on title to the Site in the Office of the County Recorder for the County of Los Angeles, and that the terms hereof shall be binding on the Owner and its successors in interest in the Site until replaced with covenants applicable to the developed Site.

A G R E E M E N T:

NOW, THEREFORE, Owner declares, covenants and agrees, by and for itself, its heirs, executors, administrators and assigns, and all persons claiming under or through it, that the Site shall be held, transferred, encumbered, used, sold, conveyed, leased and occupied, subject to the covenants and restrictions hereinafter set forth, all of which are declared to be in furtherance of a common plan for the improvement and sale of the Site, and are established expressly and exclusively for the use and benefit of City, the residents of the City of Irwindale, and every person buying an interest in the Site.

1. DEVELOPMENT OF THE SITE AND THE PARK @ LIVE OAK Owner has represented and hereby represents to City that it intends to and will develop the Site ("**The Park @ Live Oak**") as an industrial and commercial development in compliance with The Park @ Live Oak Specific Plan.

2. MAINTENANCE.

2.1 General Maintenance Obligations. Following development of the Site in a manner consistent with The Park @ Live Oak Specific Plan, Owner, for itself and its successors and assigns, shall enter into a new covenant agreement to replace these CC&Rs, which shall require Owner to maintain and repair or cause to be maintained and repaired the Site (or such applicable portion of the Site) and all related on-site improvements and landscaping thereon, including, without limitation, buildings, parking areas, lighting, signs and walls in a first class condition of comparable properties in the Irwindale area and repair, free of rubbish, debris and other hazards to persons using the same, and in accordance with all applicable laws, rules, ordinances and regulations of all federal, state, and local bodies and agencies having jurisdiction, at Owner's sole cost and expense. Such maintenance and repair shall include, but not be limited to, the following: (i) sweeping and trash removal; (ii) the care and replacement of all shrubbery, plantings, and other landscaping in a healthy condition; and (iii) the repair, replacement and restriping of asphalt or concrete paving using the same type of material originally installed, to the end that such pavings at all times be kept in a level and smooth condition. Such conditions to be imposed shall require the Owner to maintain the Property or cause the Property to be maintained in such a manner as to avoid the reasonable determination of a duly authorized official of the City that a public nuisance has been created by the absence of adequate maintenance such as to be detrimental to the public health, safety or general welfare or that such a condition of deterioration or disrepair causes appreciable harm or is materially detrimental to property or improvements within one thousand (1,000) feet of such portion of the Site.

2.2 Condition During Construction. During any period of grading or other construction activities, Owner, for itself and its successors and assigns, hereby covenants and agrees to maintain and repair or cause to be maintained and repaired the Site (or such applicable portion of the Site) in a safe condition, free of rubbish, debris and other hazards to persons using the same, and in accordance with all applicable laws, rules, ordinances and regulations of all federal, state, and local bodies and agencies having jurisdiction, at Owner's sole cost and expense. Such maintenance and repair shall include, but not be limited to, the following: (i) sweeping and trash removal; (ii) ground watering or other similar measures for the reasonable suppression of construction-related dust and air particulates; and (iii) employment of acoustical barriers, limited heavy construction hours, or other similar measures for the reasonable suppression of construction-related noise.

2.3 Private Streets, Parking and Driveways. Should any private streets be provided on the Site, including, but not limited to the private drive serving its main access road with signalized intersections at Live Oak Ave and Arrow Highway (at the existing Avenida Barbosa intersection), described as Private Drive A in more detail in the Specific Plan, Owner shall at all times assure that each such private streets have full access to public rights of way, as expressly approved by the City Engineer of the City. The driveways and traffic aisles on the Site shall be kept clear and unobstructed at all times. No obstructions to vehicular or pedestrian traffic shall project into any of the driveways, traffic aisles, or pedestrian thoroughfares in such a manner as to unreasonably block ingress, egress and circulation or create a safety hazard. Additionally, Owner shall further cause to be maintained all areas as described in Section H., entitled "Maintenance Plan," of the Specific Plan, including but not limited to, enforcing the Truck Traffic Management Plan contained in the in the Specific Plan.

2.4 Right of Entry. From and after the date(s) that Owner's obligations to maintain the Site commence under Sections 2.1 through 2.3, and in the event Owner, or its successors or assigns, fail to maintain the common area of the Site as set forth in Sections 2.1 through 2.3 above, and satisfactory progress is not made in correcting the condition within thirty (30) days from the date of written notice from City, City may, at its option, and without further notice to Owner, declare the unperformed maintenance to constitute a public nuisance. Thereafter, subject to the rights of tenants to perform the landscaping or maintenance pursuant to such tenant's lease, City, its employees, contractors or agents, may cure Owner's default by entering upon the Site and performing the necessary maintenance. The City shall give Owner reasonable notice of the time and manner of entry, and entry shall only be at such times and in such manner as is reasonably necessary to carry out these CC&Rs. The Owner, or its successors and assigns owning the affected portion of the Site, shall pay such costs as are reasonably incurred by City for such maintenance for the affected common area of the Site, including attorneys' fees and costs within thirty (30) days after receipt of a written invoice from City with supporting documentation for such costs.

Nothing in this Section 2.4 shall be construed to waive, limit or prevent the City from seeking all legal and equitable remedies for the abatement or prosecution of public nuisances found on the Site in the reasonable determination of a duly authorized official of the City, regardless of whether such nuisance conditions are located within a common area, tenant improvement, or any other portion of the Site.

2.5 Lien. If such costs incurred by City pursuant to Section 2.4 above are not reimbursed within thirty (30) days after Owner's, or such successors or assigns, receipt of written notice thereof with supporting documentation as set forth in Section 2.5 above, the same shall be deemed delinquent, and the amount thereof shall bear interest thereafter at a rate equal to the lesser of ten percent (10%) per annum or the legal maximum until paid. Any and all delinquent amounts, together with said interest, costs and reasonable attorney's fees, shall be an obligation of the Owner or such successor or assign as well as a lien and charge, with power of sale, upon the property interests of Owner or such successor, and the rents, issues and profits of such property. City may bring an action at law against Owner or such successor obligated to pay any such sums or foreclose the lien against Owner's or such successor's property interests. Any such lien shall be created by recordation of a Notice of Claim of Lien against the affected portion of the Site and may be enforced by sale by the City following recordation of a Notice of Default of Sale given in the manner and time required by law as in the case of a deed of trust; such sale to be conducted in accordance with the provisions of Section 2924, *et seq.*, of the California Civil Code, applicable to the exercise of powers of sale in mortgages and deeds of trust, or in any other manner permitted by law.

Any monetary lien provided for herein shall be subordinate to any bona fide mortgage or deed of trust covering an ownership or leasehold interest in and to the Site or the applicable portion thereof, and any purchaser at any foreclosure or trustee's sale (as well as the transferee under any deed or assignment in lieu of foreclosure or trustee's sale) under any such mortgage or deed of trust shall take title free from any monetary lien created by these CC&Rs, but otherwise subject to the provisions hereof; provided that, after the foreclosure of any such mortgage and/or deed of trust, all other assessments provided for herein to the extent they relate to the expenses incurred subsequent to such foreclosure and are assessed hereunder to the purchaser at the foreclosure sale, as Owner of the subject Site after the date of such foreclosure sale, shall become a lien upon the affected portion of the Site upon recordation of a Notice of Claim of Lien as hereinabove provided.

3. COMPLIANCE WITH LAWS.

Owner or its successors and assigns shall comply with all ordinances and regulations of the State or City applicable to the Site. Owner or its successors and assigns shall comply with all rules and regulations of any assessment district of the City with jurisdiction over the Site.

4. OBLIGATION TO REPAIR.

If a portion of the Project shall be totally or partially destroyed or rendered wholly or partly uninhabitable by fire or other casualty, Owner, or its successor with respect to the affected portion of the Project, shall either (i) promptly proceed to obtain any available insurance proceeds and take all steps necessary to begin reconstruction and, upon receipt of insurance proceeds and any applicable permits and approvals, to promptly and diligently commence and to thereafter pursue the repair or replacement of the affected portion of the Project to substantially the same condition as existed prior to such damage or destruction, or (ii) if Owner, or such successor with respect to the affected portion of the Site, elects not to restore or replace such improvements, such Owner or successor shall promptly remove all debris from the affected portion of the Site and place the affected portion of the Site in a clear and secure condition. City shall cooperate with Owner, at no

expense to City, in obtaining any governmental permits required for the repair, replacement, or restoration of any improvements. Following any such event of damage or destruction, Owner, or its successor with respect to the affected portion of the Site, may also reconstruct such other improvements on the Site as are consistent with applicable land use regulations provided it shall obtain all legally required approvals from the City and other governmental agency or agencies with jurisdiction with respect to those improvements.

5. ENFORCEMENT.

In the event Owner defaults in the performance or observance of any covenant, agreement or obligation of Owner pursuant to these CC&Rs, and if such default remains uncured for a period of thirty (30) days after written notice thereof shall have been given by City, or, in the event said default cannot reasonably be cured within said time period, Owner has failed to commence to cure such default within said thirty (30) days and thereafter fails to diligently prosecute said cure to completion, then City may declare an "Event of Default" to have occurred hereunder, and, at its option, may take one or more of the following steps:

5.1 By mandamus or other suit, action or proceeding at law or in equity, require Owner to perform its obligations and covenants hereunder or enjoin any acts or things which may be unlawful or in violation of these CC&Rs; or

5.2 Take such other action at law or in equity as may appear necessary or desirable to enforce the obligations, covenants and agreements of Owner hereunder; or

5.3 Enter the affected portion of the Site and cure the Event of Default.

Except as otherwise expressly stated in these CC&Rs, the rights and remedies of the parties are cumulative, and the exercise by any party of one or more of its 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 another party.

6. COVENANTS TO RUN WITH THE LAND.

Owner hereby subjects the Site to the covenants, reservations, and restrictions set forth in these CC&Rs. City and Owner hereby declare their express intent that all such covenants, reservations, and restrictions shall be deemed covenants running with the land and shall pass to and be binding upon the Owner's successors in title to the Site. All covenants, without regard to technical classification or designation, shall be binding for the benefit of the City, and such covenants shall run in favor of the City for the entire term of these CC&Rs, without regard to whether the City is or remains an owner of any land or interest therein to which such covenants relate. Each and every contract, deed or other instrument hereafter executed covering or conveying the Site, or any portion thereof, shall conclusively be held to have been executed, delivered and accepted subject to the CC&Rs, regardless of whether such covenants, reservations, and restrictions are set forth in such contract, deed or other instrument.

City and Owner hereby declare their understanding and intent that the burden of the covenants set forth herein touch and concern the land. City and Owner hereby further declare their understanding and intent that the benefit of such covenants touch and concern the land by

enhancing and increasing the enjoyment and use of the Site by the intended beneficiaries of such covenants, reservations, and restrictions, and by furthering the public purposes of protecting the public health, safety and welfare.

Owner hereby agrees to hold, sell, and convey the Site subject to the terms of these CC&Rs. Owner also grants to the City, as a third party beneficiary hereof, the right and power to enforce the terms of these CC&Rs against the Owner and all persons having any right, title or interest in the Site or any part thereof, their heirs, successive owners and assigns.

7. INDEMNIFICATION.

Owner, while in possession of the Site, and each successor or assign of Owner while in possession of the Site, shall remain fully obligated for the payment of any property taxes and assessments applicable to its interest in the Site. Owner, and its successors and assigns, shall indemnify, defend and hold harmless City from and against any loss, liability, claim or judgment arising from their breach of the foregoing covenant. The foregoing indemnification, defense, and hold harmless agreement shall only be applicable to and binding upon the party then owning the Site or applicable portion thereof.

8. INSURANCE.

Owner covenants and agrees for itself, and its assigns and successors-in-interest in the Site, that during grading and related construction activities on the Site, Owner or such successors and assigns shall procure and keep in full force and effect or cause to be procured and kept in full force and effect for the mutual benefit of Owner and City, and shall provide City evidence reasonably acceptable to Executive Director and the City's Risk Manager of the existence of, the following policies of insurance:

8.1 Comprehensive General Liability Insurance. Prior to commencement and until completion of construction by Developer on the Property, Developer shall, at its sole cost and expense, keep or cause to be kept in force, for the mutual benefit of City and Developer, comprehensive broad form general public liability insurance against claims and liability for personal injury or death arising from the use, occupancy, disuse or condition of the Property, improvements or adjoining areas or ways, affected by such use of the Property or for property damage. Such policy shall provide protection of at least One Million Dollars ($ 1,000,000) for any one accident or occurrence, $2,000,000 general aggregate, for including bodily injury and property damage, which limits shall be subject to such increases in amount as City may reasonably require from time to time.

8.2 Workers' Compensation Insurance. If applicable, Owner shall also furnish or cause to be furnished to City evidence reasonably satisfactory to it that any contractor with whom Owner has contracted for the performance of any work for which Owner is responsible hereunder carries workers' compensation insurance as required by law.

9. ATTORNEY'S FEES.

In the event that a party to these CC&Rs brings an action against the other party hereto by reason of the breach of any condition, covenant, representation or warranty in these CC&Rs, the prevailing party in such action shall be entitled to recover from the other reasonable expert witness fees, and its reasonable attorney's fees and costs. 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, including the conducting of discovery.

10. AMENDMENTS.

These CC&Rs shall only be amended by a written instrument executed by both the Owner and City or their successors in title, and duly recorded in the real property records of the County of Los Angeles.

11. NOTICES.

Any notice required to be given hereunder shall be made in writing and shall be given by personal delivery, certified or registered mail, postage prepaid, return receipt requested, at the addresses specified below, or at such other addresses as may be specified in writing by the parties hereto:

Original To City: City of Irwindale
5050 N. Irwindale Ave.
Irwindale, CA 91706
Attn: City Manager

With copy to: Aleshire & Wynder
18881 Von Karman Avenue, Suite 1700
Irvine, CA 92612
Attn: Fred Galante

With copy to: Owner: Irwindale Partners, LP
11021 Winners Circle, Suite 200
Los Alamitos, CA 9072
Attn: Jeffrey Yellen

With a copy to: John A. Ramirez
Rutan & Tucker, LLP
611 Anton Blvd. Costa Mesa, CA 92694 Email: jramirez@rutan.com

The notice shall be deemed given three (3) business days after the date of mailing, or, if personally delivered, when received.

12. SEVERABILITY / WAIVER / LENDER PROTECTION.

12.1 Severability. If any provision of these CC&Rs shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining portions hereof shall not in any way be affected or impaired thereby.

12.2 Waiver. A waiver by either party of the performance of any covenant or condition herein shall not invalidate these CC&Rs nor shall it be considered a waiver of any other covenants or conditions, nor shall the delay or forbearance by either party in exercising any remedy or right be considered a waiver of, or an estoppel against, the later exercise of such remedy or right.

12.3 Owner's Breach Does Not Defeat Mortgage Lien. Owner's breach of any of the covenants or restrictions contained in these CC&Rs shall not defeat or render void or invalid the lien of any mortgage, deed of trust or other security interest encumbering the Site made in good faith and for value but, unless otherwise provided herein, the terms, covenants, conditions, restrictions, easements and reservations of these CC&Rs shall be binding and effective against the holder of such encumbrance whose interest is acquired by foreclosure, trustee's sale, deed or assignment in lieu thereof, or otherwise.

13. GOVERNING LAW.

These CC&Rs shall be governed by the laws of the State of California.

[SIGNATURES APPEAR ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the Owner has executed these CC&Rs by its duly authorized representative on the date first written hereinabove.

"OWNER"

IRWINDALE PARTNERS, LP, a California Limited Partnership

By: _____
Jeffrey Yellen, President, Irwindale Management, Inc., a California Corp (General Partner)

By: _____
John Edwards, Jr., Managing Member, Yellow Iron Development 255, a Delaware limited liability company (Partner)

APPROVED BY CITY OF IRWINDALE as third-party beneficiary to the CC&Rs:

City: CITY OF IRWINDALE, a municipal corporation

By: _____
Albert F. Ambriz, Mayor

ATTEST:

By _____
Laura M. Nieto, MMC
Chief Deputy City Clerk

APPROVED AS TO FORM:
ALESHIRE & WYNDER, LLP

By _____
Fred Galante, City Attorney

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 _____, 2020 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: _____

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.

EXHIBIT "A"

LEGAL DESCRIPTION OF SITE

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF IRWINDALE IN THE COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

PARCEL 1:

THAT PORTION OF LOT 6 OF FRACTIONAL SECTION 1 OF TOWNSHIP 1 SOUTH, RANGE 11 WEST, AS SHOWN ON MAP OF THE SUBDIVISION OF THE RANCHO AZUSA DE DUARTE, IN THE CITY OF IRWINDALE, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 6 PAGES 80 TO 82 OF MISCELLANEOUS RECORDS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, BOUNDED AS FOLLOWS:

BOUNDED NORTHERLY BY THE SOUTHERLY LINE OF ARROW HIGHWAY, 100 FEET WIDE, AS DESCRIBED IN PARCEL 4-3, IN FINAL ORDER OF CONDEMNATION ENTERED IN LOS ANGELES COUNTY SUPERIOR COURT CASE NO. 517607, A CERTIFIED COPY OF WHICH WAS RECORDED IN BOOK 29149 PAGE 166 OF OFFICIAL RECORDS OF SAID COUNTY, BOUNDED SOUTHERLY BY THE NORTHERLY LINE OF LIVE OAK AVENUE, 100 FEET WIDE, AS DESCRIBED IN FINAL ORDER OF CONDEMNATION ENTERED IN LOS ANGELES COUNTY SUPERIOR COURT CASE NO. 269622, A CERTIFIED COPY OF WHICH WAS RECORDED IN BOOK 12289 PAGE 277 OF OFFICIAL RECORDS OF SAID COUNTY, BOUNDED WESTERLY BY THE EAST LINE OF PARCEL 1 OF PARCEL MAP NO. 18724, AS SHOWN ON MAP FILED IN BOOK 198 PAGES 77 AND 78 OF PARCEL MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

APN: 8532-001-006

PARCEL 2:

THOSE PORTIONS OF LOTS 36, 43, AND 44 OF THE J.R. LOFTUS TRACT NO. 1, IN THE CITY OF IRWINDALE, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS SHOWN ON A MAP RECORDED IN BOOK 14, PAGE 29 OF MAPS IN THE OFFICE OF THE COUNTY RECORDER OF LOS ANGELES, CALIFORNIA, AND ALSO THAT PORTION OF SECTION 1, TOWNSHIP 1 SOUTH, RANGE 11 WEST, OF THE SUBDIVISION OF THE RANCHO AZUSA DE DUARTE, IN SAID CITY, COUNTY AND STATE, AS SHOWN ON A MAP RECORDED IN BOOK 6, PAGES 80 TO 82 OF MISCELLANEOUS RECORDS OF LOS ANGELES COUNTY, CALIFORNIA, BOUNDED AS FOLLOWS:

BOUNDED WESTERLY BY THE SOUTHERLY PROLONGATION OF THE WESTERLY LINE OF LOT 35 OF SAID J.R. LOFTUS TRACT NO. 1; BOUNDED SOUTHWESTERLY BY

THE NORTHEASTERLY LINE OF THE 100-FOOT WIDE PUBLIC ROAD DESCRIBED IN THE FINAL JUDGEMENT IN FAVOR OF THE COUNTY OF LOS ANGELES UNDER CASE NO. 269622 IN SUPERIOR COURT, RECORDED AUGUST 18, 1933 IN BOOK 12289, PAGE 277 OF OFFICIAL RECORDS; BOUNDED EASTERLY BY THE GENERAL WESTERLY LINES OF THE LAND DESCRIBED IN PARCEL 3A (REAMENDED) IN THE FINAL ORDER OF CONDEMNATION IN FAVOR OF THE PEOPLE OF THE STATE OF CALIFORNIA UNDER CASE NO. 842381 IN SUPERIOR COURT, RECORDED FEBRUARY 25, 1970 AS DOCUMENT NO. 2784, IN BOOK D-4641, PAGE 886 OF OFFICIAL RECORDS; BOUNDED NORTHWESTERLY BY THE SOUTHEASTERLY LINE OF 100-FOOT WIDE PUBLIC ROAD DESCRIBED IN THE FINAL ORDER OF CONDEMNATION IN FAVOR OF THE COUNTY OF LOS ANGELES UNDER CASE NO. 517607 IN SUPERIOR COURT, RECORDED JANUARY 12, 1949 AS DOCUMENT NO. 1324, IN BOOK 29149, PAGE 166 OF OFFICIAL RECORDS; AND BOUNDED NORTHERLY BY A LINE HAVING A BEARING AND DISTANCE OF "SOUTH 83°39'23" WEST, 384.64," AS SAID LINE IS SET FORTH IN PARCEL 3A OF THE FINAL ORDER OF CONDEMNATION RECORDED FEBRUARY 25, 1970 AS DOCUMENT NO. 2784, IN BOOK D-4641, PAGE 866 OF OFFICIAL RECORDS.

APN: 8532-001-002

PARCEL 3:

PARCEL 1 OF PARCEL MAP NO. 18724, IN THE CITY OF IRWINDALE, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS PER MAP FILED IN BOOK 198 PAGES 77 AND 178 OF PARCEL MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

APN: 8532-001-900 (OLD) 8532-001-07 (NEW)

EXHIBIT "E"

SCHEDULE OF ESTIMATED CITY FEES

Community Development Filing Fee Schedule

Adopted by City Council Resolution No. 2018-78-3072 of November 14, 2018

OCCUPANCY PERMIT	
Fee	$150.00
PLAN CHECK	
Tenant Improvement/Addition	$100.00
Entitlement Plan Check	$100.00
REVIEW	
Development Review Team 1st Meeting	No Fee
Development Review Team 2nd Meeting	$250.00
Development Review Team 3rd Meeting	$250.00
Preliminary Review	$300.00
ZONING VERIFICATION LETTER	
Fee	$106.00+ Any Additional Research Costs
RESEARCH & ANALYSIS	
Fee	Hourly Rate Varies
SIGN PERMITS	
For Banners	$40.00
For Wall Signs	$50.00
For Monument Signs	$100.00
BUSINESS LICENSE PROCESSING FEES	
New/1st Time Applications – In City Business	$30.00
New/1st Time Applications – Out of City But Requiring Special Permit Reviews	$30.00
Expedited Fee	$30.00
BUSINESS LICENSE PENALTIES	
Delinquency Penalty Fee	10% 1st Month + 5% Each Additional Month
Enforcement Fee	$200.00
Appeal	$200.00
SPECIAL EVENT PERMIT	
Standard Fee (30 Days or More Prior)	$150.00
Late Fee (10-29 Days Prior)	$203.00

FILM PERMIT

Application.....$215.00

Expedited Fee.....$150.00

CONDITIONAL USE PERMIT & CUP MODIFICATIONS

Application (1) (2) (3) $2,000.00

Appeal (2).....$400.00

Determination (2).....$300.00

SITE PLAN & DESIGN REVIEW

Administrative Approval (1).....$1,000.00

Discretionary Approval (1) (2) (3).....$2,000.00

VARIANCE

Single Family Home (1) (2) (3).....$300.00

Non-Residential (Standard) (1) (2) (3).....$2,000.00

Appeal (2).....$400.00

ZONING ORDINANCE AMENDMENT

Application (1) (2) (3).....$2,000.00 + Attorney Deposit

Appeal (2).....$400.00 + Attorney Deposit

ZONE CHANGE

Application (1) (2) (3).....$2,000.00

Appeal (2).....$400.00

GENERAL PLAN AMENDMENT

Application (1) (2) (3).....$1,000.00

LAND SUBDIVISIONS

Lot Line Adjustment (4).....$200.00

Tentative Parcel Map (1) (2) (3) (4).....$1,900.00 + $60.00 per lot

Tentative Tract Map (1) (2) (3) (4).....$2,000.00 + $60.00 per lot

Vesting Tentative Map (1) (2) (3) (4).....$2,000.00 + $60.00 per lot

Reversion to Acreage (1) (2) (3) (4).....$200.00

Appeal (2).....$400.00

DEVELOPMENT AGREEMENT

Application + (1) (2) (3).....$2,000.00

City Attorney Deposit.....$10,000.00

All Costs (Consultants, Notices, etc.).....All Costs + Admin. Fee

Note:
(1) Applications subject to environmental assessment fees. Fees are processed once per application package as indicated below:

ENVIRONMENTAL DOCUMENTS	
Environmental Assessment Questionnaire	$250.00
Negative Declaration	$500.00
Mitigated Neg. Dec.	$1,500.00 + Deposit Study + 100% Consultant Cost + Admin. Fee
Env. Impact Report	$1,000.00 + Deposit Study + 100% Consultant Cost + Admin. Fee
CA Dept. of Fish and Wildlife CEQA Filing Fees	See Attached Document

Note:
(2) Applications subject to notification fees. Fees are processed once per application package as indicated below:

NOTIFICATION FEES	
Newspaper Ad (One Hearing Required)	$175.00
Newspaper Ad (Two Hearings Required)	$350.00
Public Notice Mailing/Posting (One Hearing Required)	$1.00/parcel + Admin. Fee
Public Notice Mailing/Posting (Two Hearings Required)	$2.00/parcel + Admin. Fee

Note:
(3) Please submit a separate, undated check made payable to the "LACC" for the fee indicated below, which is a filing fee for the Notice of Determination to be posted for 30 days after the approving body has approved an environmental clearance:

NOTICE OF DETERMINATION FEE (Payable to LACC)	
Fee	$75.00

Note:
(4) Applications subject to engineering fees:

ENGINEERING FEES	
Fee	$7,000 Deposit + all costs for Engineering Review + Admin. Fee

Note:
***35%** Administrative Fee is for review and oversight of projects and contracts.

RECORDING REQUESTED BY:

FIDELITY NATIONAL TITLE COMPANY
4400 MacArthur Blvd., Suite 200
Newport Beach, CA 92660

Return to:
Irwindale Partners, L.P.
11021 Winner's Circle, Suite 200
Los Alamitos, CA 90720

(SPACE ABOVE THIS LINE FOR RECORDER'S USE)

REFORMATION OF DEVELOPMENT AGREEMENT

THIS REFORMATION OF DEVELOPMENT AGREEMENT ("Reformation") is entered into as of _____, 2023 ("Effective Date"), by and among IRWINDALE PARTNERS, L.P., a California limited partnership ("Developer") and the City of Irwindale ("City") and acknowledged and agreed to by Irwindale Partners II, LLC, a California limited liability company ("LLC"). Developer, LLC and City (sometimes singularly referred to as a "Party" and collectively as the "Parties"), hereby agree as follows:

1. Facts. This Reformation is made with the following facts in mind:

(a) Developer is the owner of certain parcel of real property more particularly described in **Exhibit A** of this Reformation ("Property").

(b) A Development Agreement relating to the Property was entered into by and between the City and LLC dated as of February 12, 2020 ("Development Agreement").

2. Developer. The Parties agree and acknowledge that the term "Developer" as used in the Development Agreement is hereby amended through reformation (Cal. Civ. Code §3399) to refer to and name "Irwindale Partners, L.P., a California limited partnership," as of the effective date of the Development Agreement By its signature below, Developer affirms and ratifies each of its obligations under the Development Agreement as though it had been designated as "Developer" in the Development Agreement.

3. Counterparts. This Reformation may be executed in any number of counterparts, each of which shall be deemed an original, but all of which when taken together shall constitute one and the same instrument.

[Signatures on next page]

IN WITNESS WHEREOF, the Parties have signed this Reformation of Development Agreement as of the date set forth above.

DEVELOPER:

IRWINDALE PARTNERS, L.P.,
a California limited partnership

By: Irwindale Management, LLC,
a California limited liability company
Its: General Partner

By: _____
Name: _____
Title: _____

CITY:

CITY OF IRWINDALE,
a municipal corporation

By: _____
Julian Miranda, City Manager

ATTEST:

By: _____
Laura Nieto, Chief Deputy City Clerk

APPROVED AS TO FORM:

By: _____
Adrian R. Guerra, City Attorney

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_____202__ before me, _____
(insert name and title of the officer)
personally appeared _____, _____of _____
_____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____

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_____202__ before me, _____
(insert name and title of the officer)
personally appeared _____, _____of _____
_____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____

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_____202__ before me, _____
(insert name and title of the officer)
personally appeared _____, _____of _____
_____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____

EXHIBIT "A"

LEGAL DESCRIPTION

The land referred to herein is situated in the State of California, County of Los Angeles, City of Irwindale, and described as follows:

PARCEL 1 OF PARCEL MAP 82551, IN THE CITY OF IRWINDALE, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, FILED IN BOOK 411, PAGES 35 THROUGH 45 INCLUSIVE OF PARCEL MAPS, RECORDS OF SAID COUNTY.

APN: 8532-001-009

PARCEL 2 OF PARCEL MAP 82551, IN THE CITY OF IRWINDALE, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, FILED IN BOOK 411, PAGES 35 THROUGH 45 INCLUSIVE OF PARCEL MAPS, RECORDS OF SAID COUNTY.

APN: 8532-001-010

PARCEL 1 OF PARCEL MAP NO. 18724, IN THE CITY OF IRWINDALE, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS PER MAP FILED IN BOOK 198, PAGES 77 AND 78 OF PARCEL MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

APN: 8532-001-900

RECORDING REQUESTED BY:

FIDELITY NATIONAL TITLE COMPANY
4400 MacArthur Blvd., Suite 200
Newport Beach, CA 92660

Return to:
Irwindale Partners, L.P.
11021 Winner's Circle, Suite 200
Los Alamitos, CA 90720

_____

(SPACE ABOVE THIS LINE FOR RECORDER'S USE)

DEVELOPMENT AGREEMENT ASSIGNMENT AND ASSUMPTION AGREEMENT (PARCEL 3 and PARCEL 4)

THIS DEVELOPMENT AGREEMENT ASSIGNMENT AND ASSUMPTION AGREEMENT ("Assignment") is entered into as of _____, 2024 ("Effective Date"), by and between IRWINDALE PARTNERS, L.P., a California limited partnership ("Assignor"), and PARK BUILDING 3, LLC, a California limited liability company ("Assignee"). Assignor and Assignee (sometimes referred to as a "Party" and collectively as the "Parties"), hereby agree as follows:

1. Facts. This Assignment is made with the following facts in mind:

(a) Assignor is currently the owner of certain parcel of real property more particularly described in **Exhibit A** of this Assignment ("Assignor Parcel"). Assignee is a single purpose entity wholly-owned by Assignor. In connection with the financing of the Assignor Parcel, Assignor is contemporaneously executing and delivering to Assignee, a grant deed conveying to Assignee all of the Assignor's title and interest in the Assignor Parcel. The Assignor Parcel is located within an industrial/commercial park located in the City of Irwindale, Los Angeles County, California known as The Park at Live Oak ("Project").

(b) A Development Agreement relating to the Project was entered into by and between the City of Irwindale ("City") and Irwindale Partners II, LLC, a California limited liability company ("IP II") dated as of February 12, 2020, as adjusted and clarified by that certain Reformation of Development Agreement dated as of September 25, 2023 (as reformed, "Development Agreement").

2. Assignment. As of the Effective Date, Assignor hereby transfers and assigns to Assignee all of Assignor's transferable rights, title and interest as the Developer in, to and under the Development Agreement with respect to the Assignor Parcel only that may be held by Assignor as Developer and may be freely transferred to Assignee. The Parties agree and acknowledge that Assignor shall retain all rights, title and interest as the Developer in, to and under the Development Agreement with respect to the Project except as relates to the Assignor Parcel.

4. Assumption. As of the Effective Date, Assignee hereby accepts the foregoing assignment and assumes all of Assignor's obligations as the Developer with respect to the Assignor Parcel (and not the Project in general) under the Development Agreement with respect to the period from and after the Effective Date.

5. Indemnification by Assignee. Assignee agrees to indemnify, protect, defend and hold Assignor harmless from and against any and all claims, demands, liabilities, losses, costs, damages or expenses including, without limitation, reasonable attorneys' fees and costs (collectively, "Claims") arising as a result of any act, omission or obligation of Assignee arising or accruing with respect to the Development Agreement on or after the date hereof, including, without limitation, any breach of the obligations of the Assignee in this Assignment; provided, however, that Assignee shall have no obligation to provide any indemnification or defense for any injury, damage or conduct occurring prior to the Effective Date.

6. Indemnification by Assignor. Assignor hereby agrees to indemnify, protect, defend and hold Assignee harmless from and against any and all Claims asserted by owners under the Development Agreement arising as a result of any act, omission or obligation of Assignor arising or accruing with respect to the Development Agreement prior to the date hereof, including, without limitation, any breach of the obligations of the Assignor in this Assignment; provided, however, that Assignor shall have no obligation to provide any indemnification or defense for any occurrence or any conduct occurring on or after the Effective Date except as may relate to Assignor's duties as "Developer" of the Project.

7. No Encumbrance Created or Spread. The execution and recordation of this Assignment is not intended to and shall not encumber or otherwise affect any of the real property.

8. Successors and Assigns. Subject to any limitations and prohibitions in the Development Agreement, the provisions of this Assignment shall be binding upon, and shall inure to the benefit of, the successors and assigns of Assignor and Assignee, respectively.

9. Counterparts. This Assignment may be executed in any number of counterparts, each of which shall be deemed an original, but all of which when taken together shall constitute one and the same instrument.

[Signatures on next page]

IN WITNESS WHEREOF, the Parties have signed this Development Agreement Assignment and Assumption Agreement as of the date set forth in the first paragraph of this Development Agreement Assignment and Assumption Agreement.

ASSIGNOR:

Irwindale Partners, L.P.,
a California limited partnership

By: Irwindale Management, LLC,
a California limited liability company
Its: General Partner

By: _____
Name: _____
Title: _____

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_____202__ before me, _____
(insert name and title of the officer)
personally appeared _____, _____of _____
_____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____

IN WITNESS WHEREOF, the Parties have signed this Development Agreement Assignment and Assumption Agreement as of the date set forth in the first paragraph of this Development Assignment and Assumption Agreement.

ASSIGNEE:

THE PARK BUILDING 3, LLC,
A California limited liability company

By: Irwindale Partners, L.P.,
a California limited partnership
Its: Sole Member

By: Irwindale Management, LLC,
a California limited liability company
Its: General Partner

By: _____
Name: _____
Title: _____

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_____202__ before me, _____
(insert name and title of the officer)
personally appeared _____, _____of _____
_____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____

EXHIBIT "A"

Legal Description of Assignor Parcel

The land referred to herein is situated in the State of California, County of Los Angeles, City of Irwindale, and described as follows:

PARCEL 3 AND 4 OF PARCEL MAP 82551, IN THE CITY OF IRWINDALE, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, FILED IN BOOK 411, PAGES 35 THROUGH 45 INCLUSIVE OF PARCEL MAPS, RECORDS OF SAID COUNTY.

APN: 8532-001-011 AND 8532-001-012

CONSENT TO DEVELOPMENT AGREEMENT ASSIGNMENT AND ASSUMPTION AGREEMENT

Pursuant to Section 2.3 of that certain Development Agreement dated February 12, 2020, Developer has the right to assign the Property in whole or in part subject to the terms contained said in Section 2.3. The City hereby consents to the assignment of the Development Agreement to The Park Building 3, LLC, a California limited liability company, as to Parcel 3 and Parcel 4 pursuant to the terms of that certain Development Agreement Assignment and Assumption Agreement.

CITY OF IRWINDALE,
a municipal corporation

By: _____
Julian Miranda, City Manager

ATTEST:

By: _____
Laura Nieto, Chief Deputy City Clerk

APPROVED AS TO FORM:

By: _____
Adrian R. Guerra, City Attorney

ESTOPPEL CERTIFICATE AND ACKNOWLEDGEMENT
(DEVELOPMENT AGREEMENT)

THIS ESTOPPEL AND ACKNOWLEDGEMENT ("**Estoppel**"), is made for reference purposes only as of _____, 2024 and is given by THE CITY OF IRWINDALE, a municipal charter corporation ("**City**"), and IRWINDALE PARTNERS, LP, a California limited partnership, THE PARK BUILDING 1, LLC, a California limited liability company, and THE PARK BUILDING 2, LLC, a California limited liability company (collectively, "**Developer**").

RECITALS

A. City and Developer are parties to that certain Development Agreement dated February 12, 2020, as adjusted and clarified by that certain Reformation of Development Agreement dated September 25, 2023 ("Agreement").

B. Section 10.13 of the Agreement provides that either party may request an estoppel certificate.

C. Developer requests that the City provide an estoppel to the Agreement.

ESTOPPEL

1. The Agreement is in full force and effect and is a binding obligation of the parties.

2. The Agreement has not been amended or modified either orally or in writing or except by the following:

    a. Development Agreement Assignment and Assumption Agreement (Parcel 1) dated December 13, 2023 and recorded as Instrument 20240094319 on February 12, 2024; and
    b. Development Agreement Assignment and Assumption Agreement (Parcel 2) dated December 13, 2023 and recorded as Instrument 20240094320 on February 12, 2024.
    c. Development Agreement Assignment and Assumption Agreement (Parcels 3 and 4) anticipated to be approved by the City concurrent with approval of this Estoppel but not yet executed.

3. There is no existing default under the Agreement to the actual knowledge of the parting signing the Estoppel Certificate.

IN WITNESS WHEREOF, this Estoppel has been duly executed and delivered by as of the date first written above.

City: CITY OF IRWINDALE,
a municipal corporation

By:_____

Name:_____

Its:_____

Item #19.K.

City of
IRWINDALE
AGENDA REPORT

Date: July 10, 2024

To: Honorable Mayor and Members of the City Council

From: Julian A. Miranda, City Manager

Issue: Claim Rejection - Fernando Velasquez v. City of Irwindale

City Manager's Recommendation:

Staff recommends City Council (1) Reject the claim of Fernando Velasquez vs. City of Irwindale; and (2) Direct staff to send a letter of rejection.

Administrative Action:

Submitted by:

Theresa Olivares, Assistant City Manager

Prepared by:

Laura Nieto, Chief Deputy City Clerk

Reviewed by:

Adrian R. Guerra, City Attorney

Kambiz Borhani, Finance Director / City Treasurer

Approved by:

Julian A. Miranda, City Manager

Background and Analysis:

On February 12, 2024, the City received a claim for damages from claimant Fernando Velasquez. Claimant Velasquez alleges that while driving on the 605 freeway, he encountered a pothole in the roadway that damaged the rim of his vehicle.

The claim was reviewed by the City's claims adjuster, Carl Warren & Co., who has recommended the rejection of the claim. Their recommendation is made on the basis that the City does not own, control, or maintain the 605 Freeway. Accordingly, staff is recommending that the City Council reject the claim and direct staff to send a standard letter of rejection. Alternatively, the City Council may direct the City Manager to negotiate resolution of the claim.

Fiscal Impact:

None

Attachments:

1. Claim - Fernando Velasquez
2. 20240605 Velasquez Irwindale REJECTION NOTICE TO CITY LETTER CJP-3050783

CITY OF IRWINDALE

CLAIM FOR DAMAGES TO PERSON OR PROPERTY

RECEIVED
FEB 13 2024
CITY OF IRWINDALE
CITY CLERKS DEPT.
Clerk's Official Filing Stamp

INSTRUCTIONS

1. **Claims for death, injury to person or to personal property must be filed not later than 6 months after the occurrence.**
2. **Claims for damages to real property must be filed not later than 1 year after occurrence.**
3. **Read entire claim before filing.**
4. **See page 2 for diagram upon which to locate place of accident.**
5. **This claim for must be signed on page 2 at bottom.**
6. **Attach separate sheets if necessary to give full details. Sign each sheet.**
7. **File with City Clerk, 5050 N. Irwindale Ave., Irwindale, CA 91706**

To: City of Irwindale	Claimant's Date of Birth [redacted]
Name of Claimant Fernando Velasquez	Claimant's Occupation
Home Address of Claimant [redacted]	Home Telephone Number [redacted]
Business Address of Claimant	Business Telephone Number

Name and address to which you desire notices or communications to be sent regarding this claim:

When did DAMAGE or INJURY occur?	Names of any City employees involved in INJURY or DAMAGE
Date: 2/7/24 Time: 6:15 am If claim is for Equitable Indemnity, give date claimant served with complaint: _____	

Where did DAMAGE or INJURY occur? Describe in full detail and locate on diagram on page 2. Where appropriate, give street names, addresses, and measurements from landmarks:
North bound live oak exit

Describe in detail how the DAMAGE or INJURY occurred. When I was driving on the bot freeway North and got off on Live oak ave I hit a small pothole which I thought it only poped my tire But when I took off My rim off My car I saw MY rim broken and my tire okay.

Why do you claim the City of Irwindale is responsible? I feel like its the city responsible To get all pothole colsed so no one gets in a car crash or ~~get~~ anything.

What DAMAGE or INJURIES do you claim resulted? Give full extent of injuries or damage claimed. Damage to My Front driver rim

Claimant's Name:

State the amount which you are claiming as of the date of presentation of this claim. Give basis of computation.

$ 300

Give estimated amount of future losses due to INJURY or DAMAGE:

Was damage and/or injury investigated by the police? NO If yes, what City? _____

Were paramedics or ambulance called? NO If yes, name City or ambulance _____

If injured, give name and address of your doctor and the date and time of your first visit:

Doctors and Hospitals:

Doctor _____ Address _____ Date Hospitalized _____

Hospital _____ Address _____ Date Hospitalized _____

Hospital _____ Address _____ Date Hospitalized _____

Witnesses to DAMAGE or INJURY: List all persons and addresses of persons known to have information:

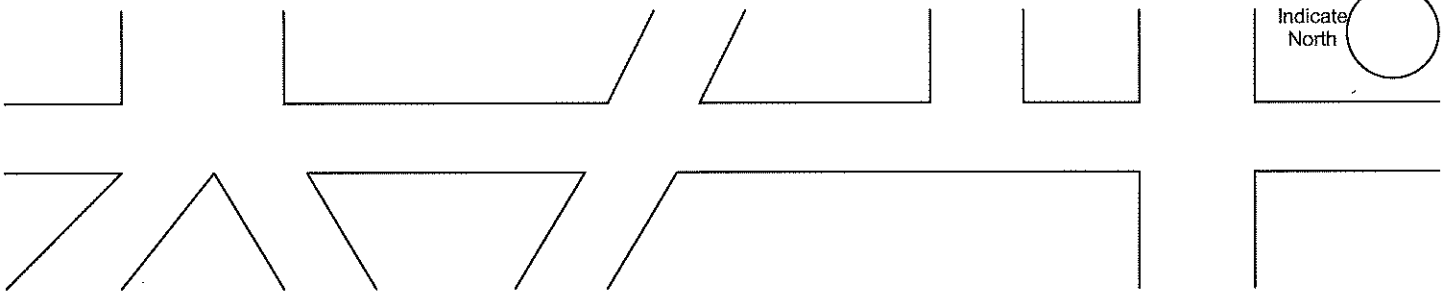
Name _____ Address _____ Phone _____

Name _____ Address _____ Phone _____

READ CAREFULLY

For all accident claims, indicate on the diagram street names, including North, East, South, and West. Indicate place of accident with an "X". Indicate house numbers or distances to street corners.

If a City vehicle was involved, designate with an "A" the location of the City vehicle when you first saw it, and with "B" the location of yourself or your vehicle when you first saw the City vehicle. Indicate location of City vehicle at the time of accident by "A-1" and location of yourself or your vehicle at the time of the accident by "B-1". Mark the point of impact with an "X". Note: If diagram below does not fit the situation, attach a proper diagram signed by claimant.



Signature of Claimant (if other than claimant, indicate relationship)	Typed Name	Date
Fernando velasquez	Fernand velasquez	2/13/24

Note: Claims must be filed with the City Clerk. **Presentation of a false claim is a felony (Penal Code Section 72)**

CARL WARREN & COMPANY
Claims Management and Solutions

A VENBROOK Company

June 5, 2024

TO: City of Irwindale

ATTENTION: Laura Nieto

RE:	Claim	:	Velasquez vs. Irwindale
	Claimant	:	Fernando Velasquez
	Member	:	City of Irwindale
	Date Rec'd by Mbr	:	2/13/24
	Date of Event	:	2/7/24
	CW File Number	:	CJP-3050783 WRV

Please allow this correspondence to acknowledge receipt of the captioned claim. Please take the following action:

- **CLAIM REJECTION: Send a standard rejection letter to the claimant.**

Please include a Proof of Mailing with your rejection notice to the claimant. An exemplar copy of a Proof of Mailing is attached. Please provide us with a copy of the Notice of Rejection and copy of the Proof of Mailing. If you have any questions feel free to contact the assigned adjuster or the undersigned claims specialist.

Very Truly Yours,

CARL WARREN & CO.

Timothy M. Varon

Timothy M. Varon
Claims Supervisor

Item #19.L.

City of
IRWINDALE
AGENDA REPORT

Date: July 10, 2024

To: Honorable Mayor and Members of the City Council

From: Julian A. Miranda, City Manager

Issue: Fourth Amendment to the Irwindale Fee Agreement for City Attorney Services with Aleshire & Wynder, LLP for Rate Structure Adjustment

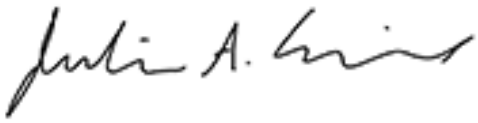
City Manager's Recommendation:

Approve the Fourth Amendment to the Irwindale Fee Agreement for City Attorney Services with Aleshire & Wynder, LLP and Authorize the Mayor to Execute Amendment.

Administrative Action:

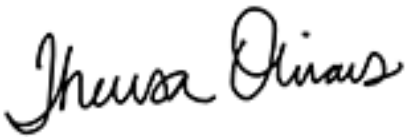
Submitted / Approved by:

Julian A. Miranda, City Manager



Reviewed by:

Theresa Olivares, Assistant City Manager



Kambiz Borhani, Finance Director / City Treasurer

Background and Analysis:

On June 18, 2003, the City and Aleshire & Wynder, LLP (A&W) entered into the Irwindale Fee Agreement for City Attorney Services ("Agreement"), pursuant to which A&W agreed to provide attorney services to the City. The Agreement was amended on July 11, 2007 and again on January 10, 2018, by which the fee arrangement and billing practices were amended.

Adrian R. Guerra from A&W served the City as Assistant City Attorney from 2015 until July 2020. In July

2020, the City Council appointed him as Interim City Attorney. On September 23, 2020, the City Council removed the “interim” title and appointed him the official City Attorney. The Agreement was amended to reflect this appointment.

Since 2003, A&W has only received *two* rate adjustments – in 2007 and in 2018. By this proposed amendment, A&W is requesting its first rate adjustment in nearly 7 years to account for significant cost of living increases and inflation during this period.

The current and proposed rate structures are set forth below:

Current	**Proposed**
General $200/hour (first 50 hours) $205/hour after	General Retainer for General Services Fixed $19,350 for max of 90 hours $220/hour for all hours above 90 hours
Risk Management/Insurance Defense $210/hour	Risk Management/Insurance Defense $230/hour
Special Projects $205/hour	Special Projects $220/hour
Special Services Partner - $255/hour Associate - $245/hour	Special Services Partner - $270/hour Associate - $255/hour
Reimbursable Partner - $300/hour Associate - $250/hour	Reimbursable Partner - $350/hour Associate - $300/hour Paralegal/Law Clerks $175/hour
Bonds/Public Finance $350/hour	Bonds/Public Finance $375/hour Paralegal/Law Clerks $200/hour
Paralegal $125/hour Law Clerk $110/hour	Paralegal/Law Clerk $145/hour
Document Clerk $60/hour	Document Clerk $100/hour

City staff have reviewed agreements for city attorney services from nearby cities including Alhambra, Azusa, Covina, Duarte, El Monte, Monrovia, and Monterey Park. City staff found the proposed A&W rates are consistent with, and in many cases below, the rates in these cities.

The Agreement also applies to all boards, commissions and entities of the City including the Housing Authority, the Reclamation Authority, and the Successor Agency.

Fiscal Impact:

While rates for various special services are proposed to increase, City staff believes there is an opportunity to reduce the overall amount paid for legal services by the creation of a retainer for general services. With the retainer, the City's Executive Team in coordination with the City Attorney will aim to reduce the overall hours dedicated to general services to less than 90 hours per month. In so doing, the City would only pay $232,200 per year for general services, which would be a significant reduction overall.

Attachments:

1. Irwindale - 2024 4th Amendment to City Attorney Fee Agreement(995854.1)

FOURTH AMENDMENT TO THE IRWINDALE FEE AGREEMENT FOR CITY ATTORNEY SERVICES

This **FOURTH AMENDMENT TO THE IRWINDALE FEE AGREEMENT FOR CITY ATTORNEY SERVICES** ("Fourth Amendment") is made and entered into this 10th day of July, 2024, by and between the City of Irwindale, the Irwindale Successor Agency, the Irwindale Housing Authority, and the Irwindale Reclamation Authority (collectively, "City"), and Aleshire & Wynder, LLP, a California limited liability partnership ("Firm").

R E C I T A L S

A. On or about June 18, 2003, the Firm and the City entered into the Irwindale Fee Agreement for City Attorney Services ("Agreement"), pursuant to which the Firm agreed to provide attorney services to the City.

B. The Agreement was amended on or about July 11, 2007 and again on January 10, 2018, by which the fee arrangement and billing practices were amended.

C. At its meeting on September 23, 2020, the City Council entered into a third amendment to the Agreement to appoint Adrian Guerra as City Attorney, which includes counsel to all boards, commissions and other bodies of the City.

D. The City and Firm now desire to update and amend the fee arrangement and billing practices.

A G R E E M E N T

The recitals contained above are incorporated herein by reference and the Agreement, as previously amended, is hereby amended as follows:

1. **Contract Changes**.

(a) Exhibit A, entitled "Fee Arrangement" shall be revised by substituting the new Exhibit A attached to this Fourth Amendment.

(b) Exhibit B, entitled "Statement of Billing Practices for Legal Services" shall be revised by substituting the new Exhibit B attached to this Fourth Amendment.

The Agreement applies to all boards, commissions and entities of City.

2. **Continuing Effect of Agreement**. Except as expressly provided herein, all other terms and conditions shall be as provided in the Agreement, as amended, but in the event of any conflict herewith, the terms hereof shall govern.

3. **Effective Date**. This Fourth Amendment shall be effective July 1, 2024.

4. **Affirmation of Agreement; Warranty Re Absence of Defaults**. City and Firm 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, as amended, other than as provided herein. Each party represents and warrants to the other that the Agreement, as amended, is currently an effective, valid and binding obligation. Firm represents and warrants to City that, as of the date of this Fourth Amendment, City is not in default of any material term of the Agreement, as amended, and that there have been not events that, with the passing of time or the giving of notice, or both, would constitute a material default under the Agreement, as amended.

5. **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 Fourth Amendment.

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

[SIGNATURE PAGE FOLLOWS ON PAGE 3]

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

CITY:
CITY OF IRWINDALE
IRWINDALE SUCCESSOR AGENCY
IRWINDALE HOUSING AUTHORITY
IRWINDALE RECLAMATION AUTHORITY

_____
Albert F. Ambriz, Mayor/Chair

ATTEST:

_____
Laura M. Nieto, Chief Deputy City Clerk/Secretary

FIRM:

ALESHIRE & WYNDER, LLP

By: _____
Adrian R. Guerra, Equity Partner

EXHIBIT "A"

FEE ARRANGEMENT

Effective July 1, 2024, the following fee arrangement shall apply. The City Council shall review and consider rate increases annually thereafter.

I. General Retainer.

A. City shall pay a fixed fee of $19,350.00 per calendar month for up to 90 hours of General Legal Services. City shall pay $220.00 per hour for every hour of General Legal Services after 90 hours have been incurred in a calendar month.

B. General Legal Services are defined below:

1. Preparation for and attendance at City Council meetings, Planning Commission meetings, and any other City meetings requested by the City.

2. Attendance at weekly staff meetings, if requested by the City Manager, meetings with City staff, and meetings with external parties relating to General Legal Services.

3. Providing routine legal advice, consultation, and opinions to the City Council, commissions, or staff.

4. Drafting, editing, and/or review of ordinances, resolutions, and other related official City documents.

5. Drafting, negotiating, and/or review of City agreements.

6. Assisting with any California Public Records Act requests or responses to subpoenas for document production (where the city is not a party).

7. Routine advisory (non-litigation) code enforcement services.

8. Monitoring new legislation and court opinions and updating/advising the City Council, commissions and staff as appropriate.

II. Special Projects.

A. City shall pay $220.00 per hour for Special Projects.

B. Special Projects are services similar in nature to General Legal Services, but may require designation as single project that will be billed separately from the General Retainer due to budgeting or tracking purposes, because a significant amount of time will be dedicated to completion of a single project, or because the project will be ongoing for more than one month. Special Projects shall be pre-approved by the City Manager.

III. Special Legal Services.

A. City shall pay Partners $270.00 per hour and Associates $255.00 per hour for Special Legal Services.

B. Special Legal Services shall include, but not be limited to, litigation, real estate, public finance, housing, Housing Authority services, Reclamation Authority services, Successor Agency services, personnel, labor negotiations, mining and reclamation, telecommunications, water, toxics, refuse and recycling, franchising, enterprise activities and any major contract negotiation involving more than 10 hours.

IV. Insurance defense or risk management.

A. City shall pay $230.00 per hour.

V. Reimbursable Services.

A. Where there is an opportunity to obtain cost recovery through a private party, City shall pay the hourly rates below which shall be reimbursed by the private party:

Partner - $350/hr.
Associate - $300/hr.
Paralegal/Law Clerks - $175/hr.

VI. Public Finance.

A. For Bond or Financial services in connection with the issuance or potential issuance of debt, loans, certificates of participation including formation of assessment or community facilities districts, etc., the hourly rate shall $375.00 per attorney hour. Paralegal, law clerk, or project specialist time shall be billed at $200.00 per hour.

B. Expenses shall be charged at the cost thereof, which expenses shall include the cost of special tax counsel, if applicable, in an amount not to exceed $5,000.00 and a not to exceed other expenses fee (excluding special tax counsel) of $2,500.00 per bond transaction.

VII. Paralegals, Law Clerks, and Document

A. City shall pay Paralegals and Law Clerks at the rate of $145 per hour.

B. City shall pay Document Clerks at the rate of $100 per hour.

VIII. Costs and Out of Pocket Expenses

A. In addition to the foregoing, the Firm shall be reimbursed for out-of-pocket expenses as described in the attached Exhibit B.

IX. This arrangement shall remain in effect until amended.

EXHIBIT "B"

STATEMENT OF BILLING PRACTICES FOR EMPLOYMENT OF LEGAL SERVICES

The Firm's fees are charged on an hourly basis for all time actually expended and are generally billed monthly with payment due within thirty (30) days after the date of the bill.

The Firm will incur various costs and expenses in performing legal services. These costs and expenses are separately billed to the client and include fees fixed by law or assessed by public agencies, litigation costs including deposition, reporter fees, and transcript fees, long distance telephone calls, messenger and other delivery fees, postage, photocopying (charge of twenty cents ($.25) per page) and other reproduction costs, staff overtime when necessitated and authorized by the client, and computer-assisted research fees when authorized by the client, all based on the actual and reasonable cost (mileage, reproduction and other costs are periodically adjusted in accordance with the Firm's actual costs).

Travel costs including mileage (current IRS rate), parking, airfare, lodging, meals, and incidentals are charged in connection with administrative or judicial proceedings, or when traveling outside of Los Angeles County. Travel time may also be charged in connection with such proceedings. In addition, the client will be responsible for paying the fees of consultants and other outside experts who are retained after consultation with the client.

It is understood that Firm will generally not charge for mileage or travel time between our office and City facilities, nor for local telephone calls or calls made to the City. In exchange, Firm shall not be charged for calls made or received at the City, whether local or long-distance, or for copying charges since copying onsite will reduce the charge to the client.

The monthly billing statements for fees and costs shall indicate the basis of the fees, including a detailed and auditable breakdown of the hours worked, the billable rates charged and description of the work performed. All bills are expected to be paid within thirty (30) days of the date of the billing statement. In the event any statement remains unpaid for more than thirty (30) days after the date of the statement, interest thereon at the rate of ten percent (10%) per annum shall be due and payable thereafter on the unpaid balance.

Registration fees for attorneys attending conferences and seminars are paid by the Firm and are never charged to the City (unless expressly requested by the City).