

# CITY OF IRWINDALE

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



## NOTICE AND AGENDA FOR THE SPECIAL AND REGULAR MEETING OF THE

### CITY COUNCIL

### SUCCESSOR AGENCY TO THE IRWINDALE COMMUNITY REDEVELOPMENT AGENCY

## MARCH 22, 2023

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

**IRWINDALE CITY COUNCIL CHAMBER**

**CLOSED SESSION / OPEN SESSION – CITY COUNCIL CHAMBER**

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

**Webinar ID: 871 0459 2389**

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

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

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

**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).



## Code of Ethics

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

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

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

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

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

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

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

*IRWINDALE CITY COUNCIL*



**SPECIAL MEETING – 5:30 P.M.**

**A. CALL TO ORDER**

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

**SPONTANEOUS COMMUNICATIONS**

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

**C. RECESS TO CLOSED SESSION**

1. Conference with Legal Counsel – Existing Litigation

Pursuant to California Government Code Section 54956.9

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

Case Number: 22STCV01394

**D. RECONVENE IN OPEN SESSION**

**E. REPORT FROM CLOSED SESSION**

**F. ADJOURNMENT**

**OPEN SESSION – 6:30 P.M.**

**A. CALL TO ORDER**

**B. PLEDGE OF ALLEGIANCE**

**C. INVOCATION**

**D. AB 2449 DISCLOSURES**

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

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

**F. REPORT FROM CLOSED SESSION OF FEBRUARY 22, 2023**

**G. CHANGES TO THE AGENDA**

**H. COUNCIL MEMBER TRAVEL REPORTS**

**I. COUNCILMEMBER COMMENTS**

**J. INTRODUCTION OF NEW EMPLOYEES/PROMOTIONS**

**K. PROCLAMATIONS / PRESENTATIONS / COMMENDATIONS**

1. Business of the Month – Acero’s Catering
2. Presentation by the Water Quality Authority

**L. CONSENT CALENDAR**

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

1. Minutes

**Department: Administration / City Clerk**

Recommendation: Approve the following minutes:

- A. Regular meeting held February 22, 2023
- B. Regular meeting held March 8, 2023

2. Warrants/Demands/Payroll

**Department: Finance**

Recommendation: Approve

3. Second Extension of Lease of City’s Water Production Rights for FY 2022/2023

**Department: Public Services**

Recommendation: (1) Approve the San Gabriel Valley Water Company’s proposal and lease the City’s 285.38 acre-feet of water production rights for FY 2022/2023; and (2) Authorize the City Manager to sign the second one-year extension to the lease for the temporary assignment of the City’s water production rights.

4. Designation of Authorized Agents to Act on behalf of the City to Obtain Emergency Financial Assistance

**Department: Administration**

Recommendation: (1) **Adopt Resolution No. 2023-26-3404** entitled: "A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF IRWINDALE DESIGNATING AUTHORIZED AGENTS TO ACT ON BEHALF OF THE CITY TO OBTAIN STATE AND FEDERAL FINANCIAL ASSISTANCE", and (2) Approve Cal OES Form 130, "Designation of Applicant's Agent Resolution for Non-State Agencies".

5. Approval of the Peerless Network, Inc. Agreement / Network Service for Telephone, Internet, and Data Service

**Department: Administration**

Recommendation: **Adopt Resolution No. 2023-20-3398** entitled: "A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF IRWINDALE APPROVING A TELECOMMUNICATIONS ACCOUNT AGREEMENT WITH PEERLESS NETWORK, INC. FOR CITYWIDE TELEPHONE, INTERNET, AND DATA SERVICES", reading by title only and waiving further reading thereof.

6. Approve Out-of-State Travel to the National Association of Latino Elected and Appointed Officials 40<sup>th</sup> Annual Conference in New York City, New York for one City Councilmember

**Department: Administration**

Recommendation: **Adopt Resolution No. 2023-23-3401** entitled: "A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF IRWINDALE APPROVING OUT-OF-STATE TRAVEL FOR THE MAYOR TO ATTEND THE NATIONAL ASSOCIATION OF LATINO ELECTED AND APPOINTED OFFICIALS 40<sup>TH</sup> ANNUAL CONFERENCE TO BE HELD FROM JULY 11-13, 2023 IN NEW YORK CITY, NEW YORK."

7. Second Reading of Ordinance No. 767 Pertaining to Amendment of Sections 5.04.50, 5.04.060, 5.04.070, 5.04.270, 5.04.410, and 5.04.420 of Chapter 5.04 of Title 5 of the Irwindale Municipal Code Related to the Dispute of Business Taxes, Licenses and Regulations

**Department: Administration**

Recommendation: **Adopt on second reading Ordinance No. 767** entitled: "AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF IRWINDALE AMENDING SECTIONS 5.04.050, 5.04.060, 5.04.070, 5.04.210, 5.04.270, 5.04.410, AND 5.04.420 OF CHAPTER 5.04 ("GENERAL REGULATIONS") OF TITLE 5 ("BUSINESS TAXES, LICENSES AND REGULATIONS") OF THE IRWINDALE MUNICIPAL CODE RELATED TO THE DISPUTE OF BUSINESS TAXES, LICENSES AND REGULATIONS".

8. Rejection of Claim: Fernando Guardado vs. City of Irwindale

***Department: Administration***

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

9. Approve Out-of-State Travel to the 2023 International Council of Shopping Centers Conference in Las Vegas, Nevada for City Council and City Staff

***Department: Administration***

Recommendation: adopt Resolution No. 2023-25-3403 entitled: "A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF IRWINDALE APPROVING THE OUT-OF-STATE TRAVEL TO THE 2023 INTERNATIONAL COUNCIL OF SHOPPING CENTERS CONFERENCE IN LAS VEGAS, NEVADA FOR TWO CITY COUNCIL MEMBERS AND THREE STAFF REPRESENTATIVES."

10. Award of Contracts for Construction and Civil Engineering Consultant Services for the 2022-2023 Resurfacing Program: Residential Resurfacing Project – Phase II; P-1043

***Department: Engineering***

Recommendation: (1) Authorize the Interim Director of Engineering / Building Official to enter into an agreement with Vance Corporation in the amount of \$394,774.10 for the 2022-2023 Resurfacing Program: Residential Resurfacing Project – Phase II; (2) approve a 20% project contingency in the amount of \$78,954.00 to cover any unforeseeable conditions that may arise during construction; (3) authorize the Interim Director of Engineering / Building Official to enter into an agreement with FCG Consultants in the amount of \$86,238.03 for civil engineering consultant services; (4) approve a 20% project contingency for construction management in the amount of \$17,247.00 to cover any unforeseeable conditions that may arise during construction.

11. Update Regarding the Irwindale Community Foundation's Approval to Redirect the use of the Irwindale Community Foundation's FY 2022-2023 Contribution to the Recreation Department

***Department: Administration***

Recommendation: Receive and file the update regarding the Irwindale Community Foundation's (ICF) approval of the City's request to redirect \$ 5,000 of the ICF's FY 2022-2023 Contribution to be reallocated to the Irwindale Recreation Department for a youth skateboarding event.

**M. SPONTANEOUS COMMUNICATIONS**

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

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

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

**Tier 1:** In-person attendees

**Tier 2:** Teleconference attendees

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

**N. NEW BUSINESS**

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

1. Resident Identification Card Policy Overview

**Department: Administration**

Recommendation: Receive and file or provide direction.

2. Introduction and First Reading of Ordinance No. 768 entitled, "AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF IRWINDALE REPEALING ORDINANCE NO. 747 IN ITS ENTIRETY, AMENDING TITLE 15.12 OF THE IRWINDALE MUNICIPAL CODE, ADOPTING BY REFERENCE THE LOS ANGELES COUNTY FIRE CODE (2023 EDITION), AND ADOPTING COUNTY AND CITY AMENDMENTS THERETO, PURSUANT TO GOVERNMENT CODE SECTION 50022.2 ET SEQ."

**Department: Engineering**

Recommendation: **Introduce Ordinance No. 768** by title only with further reading waived the first reading of Ordinance No. 768 amending Title 15.12 of the Irwindale Municipal Code and adopting by reference the 2023 Los Angeles County Fire Code with county and city amendments, and schedule a public hearing on April 12, 2023.

**O. PUBLIC HEARINGS**

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

1. A Public Hearing Regarding an Economic Development Subsidy Report and Operating Covenant Agreement between the City of Irwindale and Home Depot U.S.A., Inc. Pursuant to Government Code Section 53083.1; and Consideration of a Resolution Accepting the Economic Development Subsidy Report, Approving the Operating Covenant Agreement and Making Related Findings

**Department: Administration**

Recommendation: Hold the public hearing and **adopt Resolution No. 2023-24-3402** entitled, "A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF IRWINDALE, CALIFORNIA, APPROVING AN OPERATING COVENANT AGREEMENT WITH HOME DEPOT U.S.A., INC, AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT, AND APPROVING AND ORDERING THE PUBLICATION OF AN ECONOMIC DEVELOPMENT SUBSIDY REPORT IN ACCORDANCE WITH GOVERNMENT CODE SECTION 53083.1."

**P. CITY MANAGER'S REPORT**

**Q. REQUESTS BY COUNCILMEMBERS FOR FUTURE AGENDA ITEMS**

**R. ADJOURN**

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

**AB 2449 DISCLOSURES**

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

**A. CONSENT CALENDAR**

1. Minutes

**Department: Administration / City Clerk**

Recommendation: Approve the following minutes:

- A. Regular meeting held February 22, 2023
- B. Regular meeting held March 8, 2023

2. Warrants

**Department: Finance**

Recommendation: Approve

**B. SPONTANEOUS COMMUNICATIONS**

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

**C. NEW BUSINESS**

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

**D. PUBLIC HEARINGS**

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

**E. 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 Irwindale Successor Agency to the Irwindale Community Redevelopment Agency, to be held on March 22, 2023, be posted at the City Hall, Library, and Post Office on March 16, 2022.

**Laura M. Nieto, MMC**

Laura M. Nieto, MMC  
Chief Deputy City Clerk

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

CC Item L1A

**FEBRUARY 22, 2023**

**WEDNESDAY**

**6:31 P.M.**

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

**ROLL CALL:**

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

Also Present: Julian A. Miranda, City Manager; Adrian Guerra, City Attorney; Robert Castro, Interim Chief of Police; Theresa Olivares, Assistant City Manager; Kambiz Borhani, Director of Finance / City Treasurer; Marilyn Simpson, Community Development Director; Mary Hull, Human Resources Manager, and Laura Nieto, Chief Deputy City Clerk

**AB 2449 DISCLOSURES** None.

**CHANGES TO THE AGENDA**

None.

**COUNCILMEMBER TRAVEL REPORT**

**MAYOR PRO TEM AMBRIZ**

Mayor Pro Tem Ambriz reported on his participation in the presentation of a proclamation to the City of West Covina in recognition of its centennial celebration, held on February 17.

**COUNCILMEMBER COMMENTS**

**MAYOR ORTIZ**

Mayor Ortiz requested that the meeting be adjourned in memory of Bishop David O'Connell. He also recognized Congresswoman Grace Napolitano, who was in the audience this evening.

**CONGRESSWOMAN NAPOLITANO**

Congresswoman Grace Napolitano distributed a handout with details on services that her office provides as well as her office's achievements. She indicated that her office may be able to obtain funding for projects for the city.

**MAYOR PRO TEM AMBRIZ**

Mayor Pro Tem Ambriz requested that staff look into a request by Dena Zepeda wherein she asked that her husband be added to the deed to her house. He requested that staff's findings be presented to the Council, if necessary.

**CITY MANAGER MIRANDA**

City Manager Miranda indicated that staff would reach out to Mrs. Zepeda.

**INTRODUCTION OF  
NEW EMPLOYEES /  
PROMOTIONS**

INTRODUCTION OF  
INTERIM DIRECTOR  
OF ENGINEERING /  
BUILDING OFFICIAL

INTRODUCTION OF INTERIM DIRECTOR OF ENGINEERING /  
BUILDING OFFICIAL – WILLIAM K. TAM

The introduction was made; Mr. Tam not in attendance.

INTRODUCTION OF  
LIBRARY TECHNICIAN  
ELIZABETH MORALES-  
VELASQUEZ

INTRODUCTION OF LIBRARY TECHNICIAN – ELIZABETH  
MORALES-VELASQUEZ

The introduction was made.

**PROCLAMATIONS /  
PRESENTATIONS /  
COMMENDATIONS**

CHAMBER OF  
COMMERCE BUSINESS  
OF THE MONTH –  
ELITE OFFICE  
SOLUTIONS

CHAMBER OF COMMERCE BUSINESS OF THE MONTH – ELITE  
OFFICE SOLUTIONS

The proclamation was made.

**SPONTANEOUS  
COMMUNICATIONS**

MANNY ORTIZ

Manny Ortiz requested an update on flashing crosswalks on Irwindale Avenue, and asked about the possibility of creating a dog park in the city, to which City Manager Miranda advised that staff is looking into both items and will present an update on the flashing crosswalks at the next meeting.

DENA ZEPEDA

Dena Zepeda thanked Congresswoman Napolitano, reported a vandalized bus stop as well as a homeless man that has stopped traffic near the car wash, and requested that the Recreation Department offer day care on holidays. She also thanked Mayor Ortiz for honoring bishop O'Connell.

PAT GONZALES

Pat Gonzales stated that she enjoyed the informational trip to an Athens facility recently and indicated that many waste items can be reprocessed and reused.

JENNIFER SANTANA

Jennifer Santana, a representative for Irwindale on the Upper San Gabriel Valley Water District, introduced herself and provided informational handouts regarding the state's current water supply.

CONGRESSWOMAN  
NAPOLITANO

Congresswoman Napolitano spoke on meetings that officials from six states held relating to the state's water supply levels. She also provided the contact information for those that wish to attend a field trip to a waste facility, and suggested that staff contact Los Angeles County Supervisor Janice Hahn who may be able to secure funding for the creation of a dog park.

**CONSENT CALENDAR**

MOTION

A motion was made by Councilmember Breceda, seconded by Councilmember Burrola, to approve the Consent Calendar. The motion was unanimously approved.

ITEM NO. 1A  
MINUTES

MINUTES

The following minutes were approved:

- 1) Special joint meeting held January 25, 2023
- 2) Regular meeting held January 25, 2023

ITEM NO. 1B  
WARRANTS

WARRANTS

The warrants were approved.

ITEM NO. 1C  
ACCEPTING ICF  
FUNDING,  
APPROPRIATION  
OF FUNDS

ACCEPTING ICF FUNDING, APPROPRIATION OF FUNDS

RESOLUTION NO.  
2023-15-3393  
ADOPTED

**Resolution No. 2023-15-3393**, entitled:

"A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF IRWINDALE ACCEPTING A DONATION IN THE AMOUNT OF \$8,000 FROM THE IRWINDALE COMMUNITY FOUNDATION AND APPROPRIATING DONATED FUNDS," was adopted.

ITEM NO. 1D  
ADOPT RESOLUTION  
ESTABLISHING  
GUIDELINES FOR THE  
PROPOSITION 218  
PROCESS

ADOPT RESOLUTION NO. 2023-18-3396 ESTABLISHING  
GUIDELINES FOR THE PROPOSITION 218 PROCESS

RESOLUTION NO.  
2023-18-3396  
ADOPTED

**Resolution No. 2023-18-3396**, entitled:

"A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF IRWINDALE ESTABLISHING GUIDELINES FOR THE SUBMISSION AND TABULATION OF PROTESTS IN CONNECTION WITH THE PROPOSED INCREASES TO EXISTING

SOLID WASTE RATES PUBLIC HEARING CONDUCTED PURSUANT TO ARTICLE XIID, SECTION 6 OF THE CALIFORNIA CONSTITUTION AND PROPOSITIONS 13 (1978), 218 (1996), AND 26 (2010)", was adopted.

ITEM NO. 1E  
CALMAT CO., DBA  
VULCAN MATERIALS  
COMPANY,  
REIMBURSEMENT  
AGREEMENT  
TERMINATION

CALMAT CO., DBA VULCAN MATERIALS COMPANY,  
REIMBURSEMENT AGREEMENT TERMINATION

The Termination Agreement of the Reimbursement Agreement between the City of Irwindale and Calmat Company, dba Vulcan Materials Company, for the consideration and processing of development applications for the Reliance II Landfill, was approved.

**END OF CONSENT CALENDAR**

**NEW BUSINESS**

ITEM NO. 2A  
MID-YEAR FINANCIAL  
REVIEW AND  
ADJUSTMENTS TO  
THE FY 22/23 BUDGET

MID-YEAR FINANCIAL REVIEW AND ADJUSTMENTS TO THE FY  
2022-2023 BUDGET (Joint Item with Housing Authority and  
Reclamation Authority)

DIRECTOR BORHANI

Director Borhani presented the staff report.

COUNCILMEMBER  
BURROLA

In response to a question by Councilmember Burrola, Director Borhani advised that staff will do its very best to expend the funds donated by the Irwindale Community Foundation within the time frame specified, and that if this is not possible, staff would seek permission to roll the unused amounts forward.

Councilmember Burrola asked several questions regarding the funding being requested for tree maintenance, to which Director Rodriguez stressed the need to approve the requested amount since untrimmed trees can cause liability issues for the city. She noted that the funding would cover tree trimming as well as the services of arborists that check trees' health and make recommendations to keep them healthy. She added that the contractor moves quickly to remove diseased trees and plant new ones.

Councilmember Burrola suggested that the Council only approve the amount requested from the Mining Fund, and deny the amount requested from the General Fund.

CITY MANAGER  
MIRANDA

Responding to a question by City Manager Miranda, Director Rodriguez indicated that the contractor will finalize tree inspections, trim trees, remove dead and diseased trees, and plant trees citywide within the next couple of months. She added that staff will work with whichever amount of funding that the Council authorizes.

|                                                                              |                                                                                                                                                                                                                                                                                                                                                                                                           |
|------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| MAYOR PRO TEM<br>AMBRIZ                                                      | Mayor Pro Tem Ambriz stated that the amount requested by staff for tree maintenance is conservative and supported the expense, noting that proper tree maintenance is necessary to reduce potential liabilities.                                                                                                                                                                                          |
| COUNCILMEMBER<br>BRECEDA                                                     | Councilmember Breceda concurred with Mayor Pro Tem Ambriz and suggested that the full amount requested by staff be approved.                                                                                                                                                                                                                                                                              |
| MAYOR ORTIZ                                                                  | In reply to a question by Mayor Ortiz, Director Borhani indicated that staff would work with the amounts approved by the Council. Mayor Ortiz agreed with Councilmember Burrola to utilize only funding from the Mining Fund for now until it is time to adopt the full budget.                                                                                                                           |
| CITY MANAGER<br>MIRANDA                                                      | City Manager Miranda agreed with staff's recommendation as shown in the staff report.                                                                                                                                                                                                                                                                                                                     |
| MOTION                                                                       | <p>A motion was made by Councilmember Breceda, seconded by Mayor Pro Tem Ambriz, to adopt joint <b>Resolution No. 2023-16-3394, HA 2023-03-134, and RA 2023-01-036</b>, entitled:</p> <p>"A JOINT RESOLUTION OF THE CITY COUNCIL OF THE CITY OF IRWINDALE, THE IRWINDALE HOUSING AUTHORITY BOARD, AND THE RECLAMATION AUTHORITY BOARD APPROVING ADJUSTMENTS TO THE BUDGET FOR FISCAL YEAR 2022-2023."</p> |
| SUBSTITUTE MOTION                                                            | A substitute motion was made by Councilmember Burrola, seconded by Mayor Ortiz, to approve only the amounts requested to be funded by the Mining Fund. At roll call, the motion failed, with Councilmember Burrola and Mayor Ortiz voting in support; Councilmembers Breceda, Garcia, and Mayor Pro Tem Ambriz opposed.                                                                                   |
| ORIGINAL MOTION                                                              | A roll call vote was conducted for Councilmember Breceda's original motion. The motion was approved with Councilmembers Breceda, Garcia, Mayor Pro Tem Ambriz, and Mayor Ortiz voting in support; Councilmember Burrola opposed.                                                                                                                                                                          |
| <u>ITEM NO. 2B</u><br>OPTIONS FOR<br>OUTGOING<br>COMMISSIONER<br>RECOGNITION | OPTIONS FOR OUTGOING COMMISSIONER RECOGNITION                                                                                                                                                                                                                                                                                                                                                             |
| CITY MANAGER<br>MIRANDA                                                      | City Manager Miranda discussed the staff report and made a PowerPoint presentation.                                                                                                                                                                                                                                                                                                                       |
| MAYOR PRO TEM<br>AMBRIZ                                                      | Mayor Pro Tem Ambriz stated that he requested this item to be brought forward. However, he has spoken to several individuals who feel that outgoing commissioners already receive enough recognition. He stated his preference that the outgoing commissioners receive a certificate and that their names be engraved on the plaques on the                                                               |

armrests of the chairs inside the Council Chambers, regardless of the amount of time they served as Commissioners.

PAT GONZALES

Pat Gonzales noted that outgoing commissioners do not attend the recognitions by the Council. She also asked why recognition events are being considered when funding for tree maintenance was questioned by some members of the Council. She further stated that the \$8,000 being requested to come out of the General Fund for the recognition events seems excessive and added that the city already pays the commissioners generously and pays for their medical and vision benefits, where most cities merely pay their commissioners a small monthly stipend. She also indicated that the commissioners are generally recognized at the events that they attend, and stated her preference that proclamations are fine, but anything additional, such as engraving their names on plates, would be excessive.

DENA ZEPEDA

Dena Zepeda stated that outgoing commissioners should be recognized. She noted the many years that former Parks & Recreation Commissioner Dan Diaz served on the commission, and stated that she liked the idea of engraving their names on plaques and holding small luncheons to recognize them, and indicated that the Irwindale Community Foundation may be willing to fund these events.

COUNCILMEMBER  
BRECEDA

Councilmember Breceda concurred with Ms. Gonzales and stated his preference that outgoing commissioners be recognized with a plaque and a proclamation.

COUNCILMEMBER  
BURROLA

Councilmember Burrola stated that he likes the idea of the commissioners receiving plaques and acknowledgments at Council meetings. However, many times the commissioners do not attend their recognitions. He suggested that the commissioners' photos be hung: Parks & Recreation Commissioners photos can be hung at the Dan Diaz Recreation Center, Senior Commissioners' photos can be hung at the Senior Center, and Planning Commissioners' photos can be hung outside the Council Chambers.

COUNCILMEMBER  
GARCIA

Councilmember Garcia agreed with presenting the outgoing commissioners proclamations and plaques.

MAYOR ORTIZ

Mayor Ortiz agreed that the commissioners already receive great perks and recommended recognizing them with a proclamation and a tile plaque.

MOTION

A motion was made by Mayor Pro Tem Ambriz, seconded by Councilmember Breceda, to recognize outgoing commissioners with tile plaques and certificates of recognition. The motion was unanimously approved.

|                                                                                                                              |                                                                                                                                                                                                                                                                                                                                                                                                                                   |
|------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| RECESS                                                                                                                       | At 7:54 p.m., the City Council took a short recess.                                                                                                                                                                                                                                                                                                                                                                               |
| RECONVENE                                                                                                                    | At 8:01 p.m., the City Council reconvened in Open Session with all members present.                                                                                                                                                                                                                                                                                                                                               |
| <u>ITEM NO. 2C</u><br>ADOPTION OF<br>URGENCY<br>ORDINANCE<br>APPROVING AND<br>ADOPTING A MILITARY<br>EQUIPMENT USE<br>POLICY | ADOPTION OF URGENCY ORDINANCE NO. 766 APPROVING<br>AND ADOPTING A MILITARY EQUIPMENT USE POLICY                                                                                                                                                                                                                                                                                                                                   |
| CHIEF CASTRO                                                                                                                 | Interim Police Chief Castro presented the staff report.                                                                                                                                                                                                                                                                                                                                                                           |
| COUNCILMEMBER<br>BURROLA                                                                                                     | Responding to a question by Councilmember Burrola, Chief Castro advised that it would be incumbent on the next Chief of Police to ensure that all new laws are analyzed and followed.                                                                                                                                                                                                                                             |
| MAYOR PRO TEM<br>AMBRIZ                                                                                                      | Mayor Pro Tem Ambriz noted that the Police Department utilizes less-lethal weaponry, spoke on the importance of maintaining the safety of the officers and the community, and thanked Chief Castro for bringing this item forward.                                                                                                                                                                                                |
| COUNCILMEMBER<br>BRECEDA                                                                                                     | Councilmember Breceda stated that, although the city benefits from mutual aid agreements with other local police agencies, it is paramount that our officers are trained to properly operate their equipment.                                                                                                                                                                                                                     |
| COUNCILMEMBER<br>GARCIA                                                                                                      | Councilmember Garcia asked whether Chief Castro plans on promoting someone within the department to serve as coordinator with regard to the military equipment agreement, to which Chief Castro indicated that each agency can have somebody designated to coordinate. He added that up to three coordinators could be designated to determine what is available for the Police Department and what would best fit current needs. |
| COUNCILMEMBER<br>BURROLA                                                                                                     | Councilmember Burrola stated that officers will feel more comfortable if they are equipped with the right equipment to perform their duties.                                                                                                                                                                                                                                                                                      |
| CARMEN ROMAN                                                                                                                 | Carmen Roman suggested only obtaining equipment that is needed and appropriate for the characteristics of this city.                                                                                                                                                                                                                                                                                                              |
| URGENCY ORDINANCE<br>NO. 766 ADOPTED                                                                                         | <b>Urgency Ordinance No. 766</b> , entitled:<br><br>"AN URGENCY ORDINANCE OF THE CITY COUNCIL OF THE<br>CITY OF IRWINDALE APPROVING AND ADOPTING A MILITARY<br>EQUIPMENT POLICY AS PART OF THE IRWINDALE POLICE<br>DEPARTMENT POLICY MANUAL IN COMPLIANCE WITH                                                                                                                                                                    |

ASSEMBLY BILL 481," was passed, approved, and adopted, reading by title only and waiving further reading thereof, on the motion of Mayor Pro Tem Ambriz, seconded by Councilmember Breceda, and unanimously approved.

ITEM NO. 2D  
PROPOSED PUBLIC  
MEETING POLICIES  
AND PROCEDURES

PROPOSED PUBLIC MEETING POLICIES AND PROCEDURES

CITY MANAGER  
MIRANDA

City Manager Miranda made a PowerPoint presentation.

CARMEN ROMAN

Carmen Roman stated her opinion that it is "ridiculous" to limit the amount of time that members of the public can speak on items, requested a "bill of rights" for residents, stated that the Council is trying to impede speakers' constitutional rights, stated her belief that she speaks politely from the podium, and that she does not make things up.

MAYOR ORTIZ

Mayor Ortiz noted that this policy would apply to the public meetings of the city commissions and the City Council.

PAT GONZALES

Pat Gonzales stated that three minutes is sufficient to get one's message across and that, if one needs more time, they can contact the Council through the City Clerk's Office. She noted that meetings of other cities are conducted more rigidly and do not tolerate interruptions or outbursts, and stated that the members of the public owe the City Council respect. She spoke in favor of the Council working to ensure an orderly meeting.

DENA ZEPEDA

Dena Zepeda stated that she is an activist and represents others that fear speaking before the Council. She stated her belief that she treats employees fairly and indicated that she would bring the military to fight for her freedom to speak.

COUNCILMEMBER  
BURROLA

Councilmember Burrola stated his belief that public comments have gotten out of hand, with donations of time from individuals that are not in attendance to members of the public that wish to speak, which often result in redundant statements being made. He expressed his surprise that residents request that members of the public represent them before the Council since the Councilmembers themselves were elected by the people to represent them. He recommended allowing a maximum of six minutes for interested individuals to speak.

COUNCILMEMBER  
BRECEDA

Councilmember Breceda concurred with Councilmember Burrola. He added that residents have a right to speak, but that the Council meetings need to be run efficiently to conduct business at hand. He commended City Manager Miranda for his recommendation in the staff report.

MAYOR PRO TEM  
AMBRIZ

Mayor Pro Tem Ambriz stated the following: 1) members of the public should have the right to request that an item on the Consent Calendar be pulled so that they can speak on it, 2) members of the public should be given additional time to convey their thoughts, 3) requested clarification on whether Councilmembers may respond to comments made during Spontaneous Communication, 4) members of the public should be allowed to donate their allotted amount of time to speak to others, 5) Councilmembers should hold their comments and deliberations until after presenters and members of the public provide their input during public hearings, and that this process should extend to any presentation made at the meetings, 6) in the absence of the Chief Deputy City Clerk, a member of staff other than the Councilmembers should take notes on the meeting, and 7) he also requested members of the public show respect to the governing body, avoid mentioning staff members by name and refer to them by their titles. He stated that he approves of some items mentioned in the proposed policy, but added that some of the elements of the policy inhibit freedom of speech, and that suppressing freedom of speech leads to fascist states.

MAYOR ORTIZ

Mayor Ortiz stated that individuals' rights to freedom of speech would not be inhibited by the proposed policy since members of the public may still make comments. However, the policy is intended to avoid situations that prolong the meeting unnecessarily. He noted that the policy permits up to three minutes of speaking time per individual, with the option of an additional three minutes if somebody that is present at the meeting in person donates their time to the speaker, for a maximum of six minutes; no donations of time are permissible from individuals present over Zoom. Zoom attendees may speak for a total of three minutes and cannot donate or receive donations of time in order to extend their comments.

CITY MANAGER  
MIRANDA

City Manager Miranda clarified that Councilmembers should refrain from discussing items brought up during Spontaneous Communications, but may make brief responses, ask questions of staff for clarification, or may direct staff to research the matter or schedule certain matters for consideration at future meetings.

CARMEN ROMAN

Carmen Roman stated that statements made during Spontaneous Communications are not repetitious. She complained that the proposed policy takes away individuals' rights from having others represent them.

MAYOR ORTIZ

Mayor Ortiz reiterated that the policy is intended to run meetings more efficiently and advised that members of the public are still afforded the opportunity to speak.

COUNCILMEMBER  
BURROLA

Responding to a question by Councilmember Burrola, City Manager Miranda clarified that the individual that is chairing the meeting may, at his or her discretion, allow additional time for individuals to speak.

He added that requiring for the Council to vote on whether to grant each speaker additional time to speak would be onerous.

**MOTION**

A motion was made by Councilmember Burrola, seconded by Councilmember Breceda, to adopt **Resolution No. 2023-17-3395**, entitled:

**RESOLUTION NO.  
2023-17-3395**

"A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF IRWINDALE APPROVING AND ADOPTING CITY OF IRWINDALE COUNCIL PROCEDURES."

**SUPERSEDING MOTION**

Mayor Pro Tem Ambriz made a superseding motion to continue this matter to a future meeting for additional discussion. The motion died due to a lack of a second.

**CITY ATTORNEY  
GUERRA**

Responding to a question by City Attorney Guerra, Mayor Ortiz clarified that the policy allows for members of the public to speak for up to three minutes, unless they receive a donation of up to an additional three minutes from another individual present in-person at the meeting, for a maximum allowable time to speak of six minutes, and that the Chair of the meeting, at his or her discretion, may allow for additional time to speak.

**ROLL CAL**

The above-mentioned motion by Councilmember Burrola was approved with Councilmembers Breceda, Burrola, and Garcia, and Mayor Ortiz in favor; Mayor Pro Tem Ambriz opposed.

**PUBLIC HEARINGS**

None.

**CITY MANAGER'S  
REPORT**

**CITY MANAGER  
MIRANDA**

City Manager Miranda reported the following:

- 1) The city will host a blood drive with the American Red Cross on February 27 in front of City Hall.
- 2) The Irwindale Chamber of Commerce will host a Mayor's event on February 28 so that the Mayor may provide updates to the business community.
- 3) A community meeting regarding Prop 218 will be held tomorrow from 6 pm to 7 pm in the City Council Chambers.
- 4) He also listed the upcoming events and activities for the Recreation Department.

**REQUESTS BY  
COUNCILMEMBERS  
FOR FUTURE AGENDA  
ITEMS**

MAYOR PRO TEM  
AMBRIZ

Mayor Pro Tem Ambriz requested to reevaluate the Public Meeting Policies and Procedures agenda item again at a future meeting. The request failed to gain consensus by the City Council.

**ADJOURNMENT**

There being no further business to conduct, the meeting was adjourned at 9:08 p.m., in memory of Bishop David O'Connell.

---

Laura M. Nieto, MMC  
Chief Deputy City Clerk

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

CC Item L1B

**MARCH 8, 2023  
WEDNESDAY  
6:31 P.M.**

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

**ROLL CALL:**

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

Absent: Councilmember Manuel R. Garcia

Also Present: Julian A. Miranda, City Manager; Adrian Guerra, City Attorney; Robert Castro, Interim Chief of Police; Theresa Olivares, Assistant City Manager; Kambiz Borhani, Director of Finance / City Treasurer; Marilyn Simpson, Community Development Director; Mary Hull, Human Resources Manager, and Laura Nieto, Chief Deputy City Clerk

**AB 2449 DISCLOSURES** None.

**CHANGES TO THE  
AGENDA**

**CITY MANAGER  
MIRANDA**

City Manager Miranda indicated that two presentations would be added to the meeting to recognize outgoing Police Sergeant Rene Sapien and Interim Police Chief Robert Castro. Additionally, the items on the agenda relating to the fee adjustment for City Attorney services would be continued to a future meeting.

**COUNCILMEMBER  
TRAVEL REPORT**

None.

**COUNCILMEMBER  
COMMENTS**

**COUNCILMEMBER  
BRECEDA**

Councilmember Breceda requested an update on two items he had previously discussed with City Manager Miranda, to which City Manager Miranda advised that the resident property owner is responsible for maintaining the trees on their property and advised that staff would look into reports of a leaking water meter on Cypress.

**INTRODUCTION OF  
NEW EMPLOYEES /  
PROMOTIONS**

None.

**PROCLAMATIONS /  
PRESENTATIONS /  
COMMENDATIONS**

**PRESENTATION TO  
RENE SAPIEN,  
POLICE SERGEANT**

**PRESENTATION TO RENE SAPIEN, POLICE SERGEANT**  
  
The presentation was made.

PRESENTATION TO  
INTERIM POLICE CHIEF  
ROBERT CASTRO

PRESENTATION TO INTERIM POLICE CHIEF ROBERT CASTRO  
The presentation was made.

PRESENTATION BY  
JOSE MARTINEZ,  
GENERAL MANAGER  
OF THE VALLEY CO.  
WATER DISTRICT

PRESENTATION BY JOSE MARTINEZ, GENERAL MANAGER OF  
THE VALLEY COUNTY WATER DISTRICT  
The presentation was made.

PROCLAMATION  
PROCLAIMING  
MARCH AS RED CROSS  
MONTH

PROCLAMATION PROCLAIMING MARCH AS RED CROSS  
MONTH  
The presentation was made.

### **CONSENT CALENDAR**

MOTION

A motion was made by Councilmember Burrola, seconded by Councilmember Breceda, to approve the Consent Calendar, with the exception of Item No. 5, which was continued to a future meeting. The motion was unanimously approved; Councilmember Garcia absent.

ITEM NO. 1  
MINUTES

MINUTES

The following minutes were approved:

- A) Special joint meeting held February 8, 2023
- B) Regular meeting held February 8, 2023

ITEM NO. 2  
WARRANTS

WARRANTS

The warrants were approved.

ITEM NO. 3  
CONCEALED CARRY  
WEAPONS (CCW)  
PERMITS

CONCEALED CARRY WEAPONS (CCW) PERMITS

The agenda report documenting the procedure of processing and issuance of CCW permits by the Irwindale Police Department was received and filed.

ITEM NO. 4  
OPPOSITION TO  
STATE BALLOT  
INITIATIVE 21-0042A1

OPPOSITION TO STATE BALLOT INITIATIVE 21-0042A1, THE  
TAXPAYER PROTECTION AND GOVERNMENT  
ACCOUNTABILITY ACT

RESOLUTION NO.  
2023-19-3397  
ADOPTED

**Resolution No. 2023-19-3397**, entitled:

“A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF IRWINDALE, CALIFORNIA, TO OPPOSE STATE BALLOT INITIATIVE 21-000042A1, THE “TAXPAYER PROTECTION AND GOVERNMENT ACCOUNTABILITY ACT,” was approved, and 2) the

Mayor was authorized to send a letter on behalf of the City Council opposing the initiative.

ITEM NO. 5  
FOURTH AMENDMENT  
TO THE IRWINDALE  
FEE AGREEMENT  
FOR CITY ATTORNEY  
SERVICES WITH  
ALESHIRE & WYNDER,  
LLP

FOURTH AMENDMENT TO THE IRWINDALE FEE AGREEMENT  
FOR CITY ATTORNEY SERVICES WITH ALESHIRE & WYNDER,  
LLP

This matter was continued to a future meeting.

**END OF CONSENT CALENDAR**

**SPONTANEOUS  
COMMUNICATIONS**

ANONYMOUS

An email submitted by an anonymous individual was read, wherein the individual reported that city employees are parking in the green zone in front of the Gym for extended periods of time and requested that employees find alternate parking so that other gym patrons may park there.

TERESA ORTIZ

Teresa Ortiz spoke in favor of flying the Pride flag during June, as the City of Baldwin Park does.

MAYOR ORTIZ

Mayor Ortiz stated that the Council is open to requests of this nature and that the city welcomes people of all genders. He then requested that City Manager Miranda look into the request, to which City Manager Miranda stated that staff will return with additional information at a future meeting.

MIKE INMAN

Mike Inman, Assistant Fire Chief for Los Angeles County, congratulated Sergeant Sapien and Interim Chief Castro and made a public safety announcement to bring awareness of increased incidences of structure fires.

RON TAYLOR

Ron Taylor complained about his lack of progress in setting up a youth basketball league in the city, stated that staff has not been cooperative, and worried that his personal information is kept in the city records.

**NEW BUSINESS**

ITEM N1  
CITY MANAGER  
BASE SALARY  
INCREASE

CITY MANAGER BASE SALARY INCREASE

|                                                        |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
|--------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| CITY MANAGER<br>MIRANDA                                | City Manager Miranda declared a conflict of interest with this item and exited the Council Chambers at 7:54 p.m.                                                                                                                                                                                                                                                                                                                                                                                         |
| CITY ATTORNEY<br>GUERRA                                | City Attorney Guerra presented the staff report and advised that, if approved, the resolution would take effect immediately.                                                                                                                                                                                                                                                                                                                                                                             |
| COUNCILMEMBER<br>BURROLA                               | Responding to a question by Councilmember Burrola, City Attorney Guerra initially indicated that City Manager Miranda would not be entitled to a 3.5% raise in July, as other city employees would receive, but then clarified that City Manager Miranda actually would be eligible for the raise in July.                                                                                                                                                                                               |
| RESOLUTION NO.<br>2023-22-3400<br>ADOPTED              | <b>Resolution No. 2023-22-3400</b> , entitled:<br><br>"A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF IRWIDALE, CALIFORNIA, APPROVING A SALARY INCREASE FOR THE CITY MANAGER," was adopted on the motion of Councilmember Breceda, seconded by Mayor Pro Tem Ambriz, and unanimously approved.                                                                                                                                                                                                          |
| <u>ITEM NO. N2</u><br>CALLE DE PASEO<br>RED CURB STUDY | CALLE DE PASEO RED CURB STUDY                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
| COUNCILMEMBER<br>BRECEDA                               | Councilmember Breceda declared a potential conflict of interest and exited the Council Chambers at 7:58 p.m.                                                                                                                                                                                                                                                                                                                                                                                             |
| INTERIM DIRECTOR<br>TAM                                | Interim Director Tam introduced Assistant Engineer Luis Pimentel, who presented the report and made a PowerPoint presentation.                                                                                                                                                                                                                                                                                                                                                                           |
| MOTION                                                 | A motion was made by Mayor Pro Tem Ambriz, seconded by Mayor Ortiz, to adopt the recommendations made by staff in the PowerPoint presentation, namely: 1) remove the existing raised crosswalk, 2) remove the red curb adjacent to the raised crosswalk on both sides of Calle de Paseo to restore four on-street parking spots, 3) restore the pre-existing speed hump in front of the Library, and 4) install additional advisory signage along Calle de Paseo for eastbound and westbound directions. |
| COUNCILMEMBER<br>BURROLA                               | Responding to a question by Councilmember Burrola, Assistant Engineer Pimentel advised that the signs that staff proposes to install would inform motorists to be more attentive at the section of the street that curves, and that the existing tree should not pose any visibility issues.                                                                                                                                                                                                             |
| INTERIM DIRECTOR<br>TAM                                | Interim Director Tam added that signs will also be placed advising motorists of the recommended speed limits. He added that staff will monitor the area and noted that the red curbs would not be implemented at this time.                                                                                                                                                                                                                                                                              |

CITY COUNCIL MINUTES  
REGULAR MEETING

MARCH 8, 2023  
PAGE 5

|                                                                                                                     |                                                                                                                                                                                                                                                                                                                    |
|---------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COUNCILMEMBER<br>BURROLA                                                                                            | Councilmember Burrola also asked about liability issues, to which City Attorney Guerra advised that as long as the actions taken are based off the professional advice of an engineering firm, liability should be limited.                                                                                        |
| MAYOR ORTIZ                                                                                                         | Mayor Ortiz indicated that he has received complaints regarding city employees parking at the red curb, and requested that staff be instructed to park away from the gym, perhaps at the east parking lot.                                                                                                         |
| ROLL CALL                                                                                                           | The above-mentioned motion was unanimously approved at roll call; Councilmembers Breceda and Garcia absent.                                                                                                                                                                                                        |
| COUNCILMEMBER<br>BRECEDA AND CITY<br>MANAGER MIRANDA                                                                | At 8:18 p.m. Councilmember Breceda and City Manager Miranda returned to the Council Chambers.                                                                                                                                                                                                                      |
| <u>ITEM N3</u><br>UPDATE ON<br>FLASHING<br>CROSSWALKS ON<br>IRWINDALE AVENUE                                        | UPDATE ON FLASHING CROSSWALKS ON IRWINDALE AVENUE<br>(Verbal)                                                                                                                                                                                                                                                      |
| INTERIM DIRECTOR<br>TAM                                                                                             | Interim Director Tam asked where the flashing crosswalk should be installed, to which Mayor Ortiz requested that it be installed between Calle de Paseo and Cypress, near Peppertree Lane.                                                                                                                         |
| CITY ATTORNEY<br>GUERRA                                                                                             | City Attorney Guerra noted that two Councilmembers present have potential conflicts of interest, which results in a lack of quorum tonight. He recommended bringing the item back for discussion at the next meeting and for the Councilmembers to draw straws to determine who may participate in the discussion. |
| MAYOR PRO TEM<br>AMBRIZ                                                                                             | Mayor Pro Tem Ambriz questioned the need to postpone the matter, to which City Attorney Guerra stated that, under FPPC regulations, all three conflicted Councilmembers have the ability to draw a straw.                                                                                                          |
| INTERIM DIRECTOR<br>TAM                                                                                             | Interim Director Tam requested additional time in order to draft a complete report.                                                                                                                                                                                                                                |
| COUNCIL CONSENSUS                                                                                                   | Council consensus was reached to continue the matter to the next meeting.                                                                                                                                                                                                                                          |
| <u>ITEM NO. N4</u><br>REGULATION OF<br>UNMANNED AIRCRAFT<br>SYSTEMS (UAS) /<br>DRONES IN OTHER<br>CALIFORNIA CITIES | REGULATION OF UNMANNED AIRCRAFT SYSTEMS (UAS) /<br>DRONES IN OTHER CALIFORNIA CITIES                                                                                                                                                                                                                               |

|                          |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
|--------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| CITY ATTORNEY<br>GUERRA  | City Attorney Guerra presented the staff report.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
| COUNCILMEMBER<br>BRECEDA | Councilmember Breceda stated that Mr. Hartman commented on this matter at the previous meeting, and that he noted that the FAA already has strict requirements regarding drone operations. He questioned the need for this report.                                                                                                                                                                                                                                                                                               |
| CITY ATTORNEY<br>GUERRA  | City Attorney Guerra noted that the report simply included samples of ordinances adopted by other cities relating to drones and indicated that the Council could choose the provisions that they would like to include in their own ordinance.                                                                                                                                                                                                                                                                                   |
| MAYOR ORTIZ              | Mayor Ortiz stated that some cities have implemented ordinances to protect the privacy of residents, which is the same objective he is attempting to accomplish.                                                                                                                                                                                                                                                                                                                                                                 |
| ROBERT HARTMAN           | Robert Hartman stated that he read through all the ordinances in the staff report and noted that each provision is already covered under FAA regulations.                                                                                                                                                                                                                                                                                                                                                                        |
| MAYOR PRO TEM<br>AMBRIZ  | Mayor Pro Tem Ambriz suggested adopting an ordinance that adopts FAA and state regulations, while simultaneously protecting residents' privacy, and disagreed with Mr. Hartman that the provisions of the ordinances are covered by FAA regulations. He further stated that the cities of Calabasas, Chula Vista, Lake Forest, Oxnard, and Yorba Linda have ordinances that seem to achieve the results that Irwindale is interested in and stressed the need to develop a local ordinance regarding the proper usage of drones. |
| COUNCILMEMBER<br>BURROLA | Councilmember Burrola stated that the listed cities adopted ordinances for a reason and requested that a report be prepared detailing the options available to the city.                                                                                                                                                                                                                                                                                                                                                         |
| MAYOR ORTIZ              | Mayor Ortiz stated that the ordinance would be adopted in order to protect residents from a nuisance, and noted that the ordinance from Barstow seems to include provisions that could be applied to Irwindale. He stressed that the only drones that should be permitted to be operated would be for emergency personnel or for commercial uses, if operated with a permit. However, individuals that wish to fly recreational drones would have to find alternative locations other than in residential areas.                 |
| CITY ATTORNEY<br>GUERRA  | City Attorney Guerra stated his understanding that the Council would like for him to prepare an ordinance based on a compilation of the ordinances from Calabasas, Chula Vista, Lake Forest, Oxnard, Yorba Linda, and Barstow, and to potentially allow drone usage for emergency personnel and commercial drones, if by permit. He added that, although he would prepare the ordinance as directed, he is concerned that it would be preempted by federal law.                                                                  |

|                                                                                                                                                                                                               |                                                                                                                                                                                                                                                                                                 |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| MAYOR ORTIZ                                                                                                                                                                                                   | Mayor Ortiz also requested that the ordinance include a declaration that the city abides by FAA regulations, but that the intent of the ordinance is to protect residents' privacy.                                                                                                             |
| COUNCILMEMBER<br>BRECEDA                                                                                                                                                                                      | Councilmember Breceda stated that he is in favor of the security of the residents but questioned the need to prohibit recreational drones that individuals enjoy as a hobby. He stated that he cannot support the request to prepare an ordinance prohibiting recreational drones at this time. |
| CITY MANAGER<br>MIRANDA                                                                                                                                                                                       | City Manager Miranda noted that city staff owns and operates a drone for various city functions, and that the Council should consider this fact when considering the adoption of the ordinance.                                                                                                 |
| MAYOR ORTIZ                                                                                                                                                                                                   | Mayor Ortiz suggested that the ordinance also reflect that the drone operated for governmental purposes would be permissible.                                                                                                                                                                   |
| COUNCILMEMBER<br>BRECEDA                                                                                                                                                                                      | Councilmember Breceda opposed restricting the ability of individuals to operate recreational drones as a hobby.                                                                                                                                                                                 |
| MAYOR ORTIZ                                                                                                                                                                                                   | Mayor Ortiz stated that the City Attorney has received direction from the Council on the matter.                                                                                                                                                                                                |
| ROBERT HARTMAN                                                                                                                                                                                                | Robert Hartman stated that the city would be in violation of FAA regulations if it operates a drone for any type of commercial uses, including publishing photos.                                                                                                                               |
| RECESS                                                                                                                                                                                                        | At 8:29 p.m., the City Council took a short recess.                                                                                                                                                                                                                                             |
| RECONVENE                                                                                                                                                                                                     | At 8:38 p.m., the City Council reconvened with all members present except for Councilmember Garcia, who was absent.                                                                                                                                                                             |
| <u>ITEM NO. N5</u><br>INTRODUCTION<br>AND FIRST READING<br>OF ORDINANCE<br>PERTAINING TO<br>THE IRWINDALE<br>MUNICIPAL CODE<br>RELATED TO THE<br>DISPUTE OF<br>BUSINESS TAXES,<br>LICENSES AND<br>REGULATIONS | INTRODUCTION AND FIRST READING OF ORDINANCE NO. 767<br>PERTAINING TO AMENDMENT OF SECTIONS 5.04.060, 5.04.070,<br>5.04.270, 5.04.410, AND 4.04.420 OF CHAPTER 5.04 OF TITLE 5<br>OF THE IRWINDALE MUNICIPAL CODE RELATED TO THE<br>DISPUTE OF BUSINESS TAXES, LICENSES AND REGULATIONS          |
| CITY ATTORNEY<br>GUERRA                                                                                                                                                                                       | City Attorney Guerra presented the staff report.                                                                                                                                                                                                                                                |

MAYOR PRO TEM  
AMBRIZ

Mayor Pro Tem Ambriz asked clarifying questions, to which City Attorney Guerra advised that the proposed ordinance would rescind the authority granted to the City Attorney and vest that authority with the City Manager to more closely align with the duties of City officers as set forth in the city charter and municipal code.

ORDINANCE NO. 767  
INTRODUCED FOR  
FIRST READING

**Ordinance No. 767**, entitled:

"AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF IRWINDALE AMENDING SECTIONS 5.04.050; 5.04.060; 5.04.070, 5.04.210, 5.04.270, 5.04.410, AND 5.04.420 OF CHAPTER 5.04 ("GENERAL REGULATIONS") OF TITLE 5 ("BUSINESS TAXES, LICENSES AND REGULATIONS") OF THE IRWINDALE MUNICIPAL CODE RELATED TO THE DISPUTE OF BUSINESS TAXES, LICENSES AND REGULATIONS," was introduced for first reading, reading by title only and waiving further reading thereof, on the motion of Mayor Pro Tem Ambriz, seconded by Councilmember Breceda, and unanimously approved.

ITEM NO. N6  
CALIFORNIA  
CONSULTING GRANT  
UPDATE

CALIFORNIA CONSULTING GRANT UPDATE (Verbal)

ASSISTANT CITY  
MANAGER OLIVARES

Assistant City Manager Olivares made a PowerPoint presentation where she explained the efforts of California Consulting in applying for and securing grants. She indicated that the firm has submitted applications for four different grants thus far, discussed the timeline of each, and mentioned potential grants for the future.

MAYOR ORTIZ

Responding to a question by Mayor Ortiz, Assistant City Manager Olivares stated that the frequency of grant applications varies depending on the grant criteria and cited examples.

CITY MANAGER  
MIRANDA

City Manager Olivares thanked Assistant City Manager Olivares and city staff for working with California Consulting in seeking grant opportunities.

## **PUBLIC HEARINGS**

ITEM O1  
PROPOSITION 218  
PUBLIC HEARING  
REGARDING  
PROPOSED  
INCREASES TO  
EXISTING SOLID  
WASTE RATES

PROPOSITION 218 PUBLIC HEARING REGARDING PROPOSED INCREASES TO EXISTING SOLID WASTE RATES

DIRECTOR RODRIGUEZ Director Rodriguez presented the staff report.

OPEN  
PUBLIC HEARING

At 9:16 p.m., Mayor Ortiz opened the public hearing.

ROBERT DIAZ

Robert Diaz spoke in opposition to the proposed increases to existing solid waste rates, suggested negotiating 5-year agreements with haulers, stated his belief that the city would be paying for trash pickup, and asked whether the city has received \$1 million from Athens.

DIRECTOR RODRIGUEZ

Responding to comments and questions by Robert Diaz, Director Rodriguez advised that neither the city nor residents are paying for trash services, and that Athens is incurring all costs of the service. Staff recommends moving forward with base service for residents to try for one month, after which city and Athens personnel would meet with residents to determine whether additional services are required. She added that automatically providing every household a 4<sup>th</sup> bin would cause parking issues. Additionally, the \$1 million that Mr. Diaz referenced relates to the MRF project, which is separate from this issue.

Responding to a question by Director Rodriguez, Chief Deputy City Clerk Nieto advised that 45 formal, written protests have been received.

MAYOR ORTIZ

Mayor Ortiz noted that this amount is much lower than the amount necessary to meet the cancellation threshold.

CLOSE  
PUBLIC HEARING

There being no additional speakers, Mayor Ortiz closed the public hearing at 9:27 p.m.

COUNCILMEMBER  
BURROLA

Councilmember Burrola wondered whether Athens could help alleviate street parking issues by picking up each of the three different bins on separate days. He also asked about the costs of the service.

DIRECTOR RODRIGUEZ

Director Rodriguez noted that picking up one bin per day for three days would cause the need for residents to remember which bin to leave at the curb for each of those days. She reiterated that the base service is free and that neither the city nor the residents would pay for it, nor have they paid for the services since 2019. This proposal would provide these no-cost services until 2032.

MAYOR PRO TEM  
AMBRIZ

Mayor Pro Tem Ambriz reiterated details included in the staff report and discussed the various benefits residents have already received from the city's partnership with Athens.

RESOLUTION NO.  
2023-21-3399

A motion was made by Mayor Pro Tem Ambriz to adopt **Resolution No. 2023-21-3399**, entitled:

"A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF IRVINDALE RATIFYING, APPROVING, AND ADOPTING INCREASES TO EXISTING SOLID WASTE RATES AS SET FORTH

IN THE FOURTH AMENDMENT TO THE EXCLUSIVE FRANCHISE AGREEMENT FOR WASTE HAULING SERVICES BY AND BETWEEN THE CITY OF IRWINDALE AND ARAKELIAN ENTERPRISES, INC., DBA ATHENS SERVICES, IN ACCORDANCE WITH PROPOSITION 218."

COUNCILMEMBER  
BRECEDA

Councilmember Breceda concurred and noted that all city residents and businesses had the opportunity to submit a formal protest, but the city only received 45 such protests. He agreed that contracts should be made "bulletproof," but stated that he was comfortable with the proposal as-is.

COUNCILMEMBER  
BURROLA

Councilmember Burrola asked about the status of the litigation from the City of Oakland with regard to Proposition 218, which Director Rodriguez elaborated on.

COUNCILMEMBER  
BRECEDA

Councilmember Breceda asked whether additional time could be given to this matter, to which Director Rodriguez indicated that staff needs to know Council's direction before instructing Athens to proceed with the service implementation and stated that CalRecycle could fine the city if it does not have its organic waste program in place by January 1, 2024.

MAYOR ORTIZ

Mayor Ortiz stated that the city would benefit from the approval of the proposed resolution since it would increase revenues.

COUNCILMEMBER  
BRECEDA

Councilmember Breceda seconded Mayor Pro Tem Ambriz's motion.

COUNCILMEMBER  
BURROLA

Councilmember Burrola stated his preference in waiting to determine whether Athens could pick up each of the three bins on different days before he votes on the matter, to which Director Rodriguez explained that, under the proposal, the blue and green bins would be emptied first, followed by the trash bin later on.

REOPEN  
PUBLIC HEARING

At 9:52 p.m., Mayor Ortiz reopened the public hearing.

ELIZABETH RAMIREZ

Elizabeth Ramirez with Athens Services, stated that Athens would look into the request. However, the challenge in pickup up bins on multiple days would be its negative effect on efficiency and additional costs. She added that the request could be discussed and negotiated, through it is not a service that Athens typically provides.

MAYOR PRO TEM  
AMBRIZ

Mayor Pro Tem Ambriz stated that he maintained his motion as he does not feel that the matter should be delayed.

CLOSE  
PUBLIC HEARING

There being no additional speakers, Mayor Ortiz closed the public hearing at 9:54 p.m.

- MAYOR ORTIZ Mayor Ortiz suggested informing residents regarding the approximate times that their bins would be emptied.
- REOPEN  
PUBLIC HEARING At 9:55 p.m., Mayor Ortiz reopened the public hearing.
- ROBERT ESCOVEDO Robert Escovedo suggested that all bins be emptied within a two- or three-hour window.
- CLOSE  
PUBLIC HEARING There being no additional speakers, Mayor Ortiz closed the public hearing at 9:55 p.m.
- COUNCILMEMBER  
BRECEDA Councilmember Breceda asked whether Councilmember Burrola's request could be revisited, to which Director Rodriguez advised that staff could discuss the request with Athens to determine whether a timeframe could be established. She reiterated her belief that not every household would require a fourth bin.
- ROLL CALL The above-mentioned motion was approved at roll call with all members in favor except for Councilmember Burrola, who opposed; Councilmember Garcia absent.

**CITY MANAGER'S  
REPORT**

- CITY MANAGER  
MIRANDA City Manager Miranda reported the following:
- 1) A Volkswagen drag race has been scheduled for March 12 at the Irwindale Speedway.
  - 2) The Summer Youth Program will run from June 12 through July 27 this year and is limited to 20 participants.
  - 3) He provided details on upcoming Recreation and Senior Center trips and activities.
  - 4) Staff will present an overview of the city's Resident ID Program at the next meeting to remind about the program requirements.

**REQUESTS BY  
COUNCILMEMBERS  
FOR FUTURE AGENDA  
ITEMS**

- COUNCILMEMBER  
BRECEDA Councilmember Breceda reported parking and dust issues on his block due to a nearby business, to which City Manager Miranda advised that Code Enforcement has been active in the area, and that he would contact Councilmember Breceda tomorrow with more details.

**ADJOURNMENT**

There being no further business to conduct, the meeting was adjourned at 10:02 p.m.

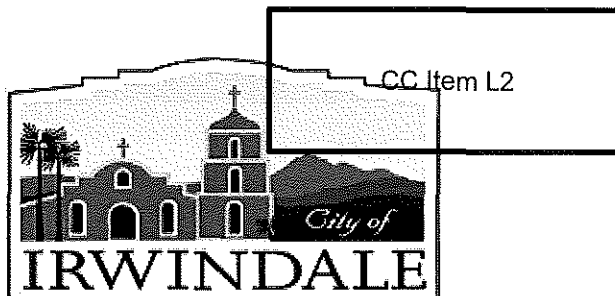
---

Laura M. Nieto, MMC  
Chief Deputy City Clerk

# Accounts Payable

## Checks by Date - Summary by Check Number

User: imarin  
Printed: 3/15/2023 6:06 PM



| Check No                  | Vendor No | Vendor Name                            | Check Date | Check Amount |
|---------------------------|-----------|----------------------------------------|------------|--------------|
| 79229                     | AZUSALW   | Azusa Light & Water                    | 03/02/2023 | 521.78       |
| 79230                     | MIJACA    | Balcon Holdings, Inc.                  | 03/02/2023 | 368.00       |
| 79231                     | BRECED04  | Mark A. Breceda                        | 03/02/2023 | 935.14       |
| 79232                     | CITYOF11  | City of Azusa                          | 03/02/2023 | 9,450.00     |
| 79233                     | D&DG01    | D & D Golf Car Services, Inc.          | 03/02/2023 | 8,128.00     |
| 79234                     | GARCIA03  | Manuel Garcia                          | 03/02/2023 | 855.47       |
| 79235                     | LACPCA    | LA County Police Canine Assoc          | 03/02/2023 | 300.00       |
| 79236                     | LAWEO1    | Law Enforcement Medical Services, Inc. | 03/02/2023 | 225.00       |
| 79237                     | ORKINP    | Orkin Pest Control                     | 03/02/2023 | 165.00       |
| 79238                     | RICOH01   | Ricoh USA, Inc                         | 03/02/2023 | 1,085.52     |
| 79239                     | STROBE03  | Gary Strobehn                          | 03/02/2023 | 233.00       |
| 79240                     | TAPI01    | Regina Tapia                           | 03/02/2023 | 300.00       |
| 79241                     | TOTALCOM  | Total Compensation Systems Inc         | 03/02/2023 | 1,350.00     |
| Report Total (13 checks): |           |                                        |            | 23,916.91    |

# Accounts Payable

## Checks by Date - Summary by Check Number

User: imarin  
Printed: 3/15/2023 6:07 PM



| Check No | Vendor No | Vendor Name                                  | Check Date | Check Amount |
|----------|-----------|----------------------------------------------|------------|--------------|
| 79244    | AGUILA07  | Berlyn Aguila                                | 03/09/2023 | 61.94        |
| 79245    | Ayala01   | Leonor Ayala                                 | 03/09/2023 | 507.00       |
| 79246    | CAMPOS03  | Manuel Campos                                | 03/09/2023 | 875.99       |
| 79247    | CHARTE01  | Charter Communications                       | 03/09/2023 | 390.00       |
| 79248    | CONCE01   | Concentra                                    | 03/09/2023 | 54.00        |
| 79249    | ESPINO10  | Iris Espino                                  | 03/09/2023 | 73.97        |
| 79250    | EVANS02   | Gloria Evans                                 | 03/09/2023 | 300.00       |
| 79251    | FLORE01   | Karla Flores                                 | 03/09/2023 | 780.00       |
| 79252    | FRAER01   | Laura Fraer Snyder                           | 03/09/2023 | 1,000.00     |
| 79253    | GALVAN02  | Claudia Galvan                               | 03/09/2023 | 440.00       |
| 79254    | HOMEDE    | Home Depot Credit Services                   | 03/09/2023 | 699.15       |
| 79255    | HOYEN     | Noelle Hoyer                                 | 03/09/2023 | 1,050.00     |
| 79256    | IRWIND21  | Irwindale Hand Wash & Auto Detail            | 03/09/2023 | 1,365.58     |
| 79257    | LOPEZJ01  | Jade Lopez                                   | 03/09/2023 | 419.46       |
| 79258    | OPTUM01   | OptumRx, Inc.                                | 03/09/2023 | 31,048.76    |
| 79259    | PAIK01    | Sumako Paik                                  | 03/09/2023 | 240.00       |
| 79260    | PETTYC05  | City of Irwindale Petty Cash                 | 03/09/2023 | 431.72       |
| 79261    | PURCHA    | Purchase Power                               | 03/09/2023 | 2,085.35     |
| 79262    | ROCH01    | Sarah Rocha                                  | 03/09/2023 | 66.08        |
| 79263    | SCFUELS   | SC Fuels                                     | 03/09/2023 | 11,719.48    |
| 79264    | TPX 01    | TPX Communications                           | 03/09/2023 | 2,553.23     |
| 79265    | VISION01  | Vision Service Plan - (CA)                   | 03/09/2023 | 3,950.94     |
| 79266    | WAGONER   | Pamela Wagoner                               | 03/09/2023 | 600.00       |
| 79267    | CALIFO56  | California State Disbursement Unit           | 03/09/2023 | 604.15       |
| 79268    | CALIFO57  | California State Disbursement Unit           | 03/09/2023 | 143.07       |
| 79269    | ALESHIRE  | Aleshire & Wynder, LLP                       | 03/22/2023 | 55,135.02    |
| 79270    | ALLCI01   | All City Management Services, Inc            | 03/22/2023 | 1,677.78     |
| 79271    | ALLIAN02  | Alliant Insurance Services, Inc.- Irvine Mai | 03/22/2023 | 1,967.00     |
| 79272    | ALLISO01  | Allison Mechanical, Inc                      | 03/22/2023 | 3,403.51     |
| 79273    | AMAZON    | Amazon                                       | 03/22/2023 | 131.69       |
| 79274    | ARAM01    | Aramark Uniform & Career Apparel Group       | 03/22/2023 | 415.91       |
| 79275    | ARROW01   | Arrow                                        | 03/22/2023 | 527.16       |
| 79276    | B&BTIR    | B & B Tires Service                          | 03/22/2023 | 40.00        |
| 79277    | BAXTER01  | Badge Frame, Inc                             | 03/22/2023 | 210.00       |
| 79278    | BAKER01   | Baker & Taylor Books                         | 03/22/2023 | 181.88       |
| 79279    | BARNEY    | Barney's Locksmith Service                   | 03/22/2023 | 40.00        |
| 79280    | BILLST    | Bill's Truck Repair, Inc.                    | 03/22/2023 | 350.00       |
| 79281    | BRITEW    | BriteWorks, Inc.                             | 03/22/2023 | 13,539.95    |
| 79282    | CALI22    | CAPIO                                        | 03/22/2023 | 550.00       |
| 79283    | CARQUEST  | Carquest                                     | 03/22/2023 | 110.96       |
| 79284    | CHARTE03  | Charter Communications                       | 03/22/2023 | 6,843.32     |
| 79285    | CINTAS    | Cintas Corporation #693                      | 03/22/2023 | 321.89       |
| 79286    | BALDWI02  | City of Baldwin Park                         | 03/22/2023 | 125.00       |
| 79287    | DEPTOF02  | County of LA Dept of Animal Care & Cont      | 03/22/2023 | 2,797.98     |
| 79288    | COUNTY04  | County of Los Angeles                        | 03/22/2023 | 10,807.82    |
| 79289    | LOSANG33  | County of Los Angeles                        | 03/22/2023 | 139,268.40   |
| 79290    | CUMMINS   | Cummins-Allison Corp                         | 03/22/2023 | 427.48       |

| Check No | Vendor No | Vendor Name                                | Check Date | Check Amount |
|----------|-----------|--------------------------------------------|------------|--------------|
| 79291    | CWA01     | CWA AIA, Inc                               | 03/22/2023 | 6,677.52     |
| 79292    | DF01      | D.F. Polygraph                             | 03/22/2023 | 200.00       |
| 79293    | DOGWAS01  | Dog Waste Depot                            | 03/22/2023 | 453.26       |
| 79294    | DUDEK01   | Dudek                                      | 03/22/2023 | 1,560.00     |
| 79295    | BATE01    | Elior Inc.                                 | 03/22/2023 | 3,805.45     |
| 79296    | EWINGI    | Ewing Irrigation Products, Inc.            | 03/22/2023 | 1,205.87     |
| 79297    | FABE01    | Faber Communications                       | 03/22/2023 | 4,187.03     |
| 79298    | FCG01     | FCG Consultants Inc.                       | 03/22/2023 | 4,581.49     |
| 79299    | FEDEX     | FedEx                                      | 03/22/2023 | 16.34        |
| 79300    | FILLG01   | Fill Good Landscaping                      | 03/22/2023 | 400.00       |
| 79301    | GARDEN    | Garden View                                | 03/22/2023 | 238.14       |
| 79302    | GEOLOG    | Geologic Associates                        | 03/22/2023 | 29,986.20    |
| 79303    | INTELL01  | Intelli-tech, Inc.                         | 03/22/2023 | 217.00       |
| 79304    | JCB01     | JCB Inc                                    | 03/22/2023 | 138.13       |
| 79305    | JOHN01    | Johnson Investigations                     | 03/22/2023 | 1,600.00     |
| 79306    | COORYE    | Samir M. Khoury                            | 03/22/2023 | 9,742.00     |
| 79307    | KJSERV01  | KJ Services Enviromental Consulting LLC    | 03/22/2023 | 212.50       |
| 79308    | LANDSC    | Landscape Warehouse III Inc.               | 03/22/2023 | 366.14       |
| 79309    | LEWISE    | Lewis Engraving, Inc.                      | 03/22/2023 | 68.36        |
| 79310    | LOSANG35  | Los Angeles County Police Chief's Associat | 03/22/2023 | 500.00       |
| 79311    | MIDAS     | Manuel C Muratalla                         | 03/22/2023 | 92.42        |
| 79312    | MARIPO    | Mariposa Landscapes, Inc.                  | 03/22/2023 | 8,796.00     |
| 79313    | MOUNT01   | MNRO Holdings, LLC                         | 03/22/2023 | 189.43       |
| 79314    | MOTOR01   | Motorola Solutions, Inc.                   | 03/22/2023 | 1,628.34     |
| 79315    | OFFICE03  | Office Depot                               | 03/22/2023 | 219.68       |
| 79316    | ORKINP    | Orkin Pest Control                         | 03/22/2023 | 379.00       |
| 79317    | PHASEII   | PARS                                       | 03/22/2023 | 1,750.00     |
| 79318    | PERF03    | Performance Elevator Contractors, Inc.     | 03/22/2023 | 360.00       |
| 79319    | PLACE01   | PlaceWorks, Inc.                           | 03/22/2023 | 35,172.05    |
| 79320    | PROPRINT  | Pro Printing, Inc.                         | 03/22/2023 | 180.49       |
| 79321    | RC02      | RC Systems, Inc.                           | 03/22/2023 | 1,475.00     |
| 79322    | RIGHT01   | Right of Way, Inc.                         | 03/22/2023 | 1,911.48     |
| 79323    | SkyBluep  | Sky Blueprint & Supplies, Inc              | 03/22/2023 | 1,391.58     |
| 79324    | STATEO01  | State Of California                        | 03/22/2023 | 130.00       |
| 79325    | SWT01     | SWT Engineering, Inc.                      | 03/22/2023 | 292.95       |
| 79326    | NORTHR    | The Northridge Group, Inc.                 | 03/22/2023 | 5,947.54     |
| 79327    | TRAN01    | Transtech Engineers, Inc.                  | 03/22/2023 | 1,475.00     |
| 79328    | TRIANG01  | Triangle Truck Parts                       | 03/22/2023 | 47.41        |
| 79329    | TRIP01    | Triple R Munitions, Inc                    | 03/22/2023 | 7,257.50     |
| 79330    | V&V01     | V & V Manufacturing, Inc.                  | 03/22/2023 | 127.83       |
| 79331    | VICT01    | Victory Tactical Gear, LLC                 | 03/22/2023 | 9,172.80     |
| 79332    | HDSUP01   | WHITE CAP, L.P.                            | 03/22/2023 | 10.47        |
| 79333    | YTIRES    | Y Tire Sales                               | 03/22/2023 | 346.89       |

Report Total (90 checks):

444,841.91

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

*City of*  
**IRWINDALE**  
**AGENDA REPORT**

---

Date: March 22, 2023  
To: Honorable Mayor and Members of the City Council  
From: Julian A. Miranda, City Manager  
Issue: Second Extension of Lease of City's Water Production Rights for FY 2022/2023

---

**City Manager's Recommendation:**

- 1) Approve the San Gabriel Valley Water Company's proposal and lease the City's 285.38 acre-feet of water production rights for FY 2022/2023; and
- 2) Authorize the City Manager to sign the second one-year extension to the lease for the temporary assignment of the City's water production rights.

**Administrative Action:**

**Submitted & Prepared by:**

Elizabeth Rodriguez, Public Services Director

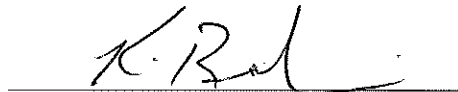


**Reviewed by:**

Adrian R. Guerra, City Attorney

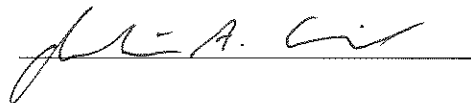
**Electronically Approved**

Kambiz Borhani, Finance Director/City Treasurer



**Approved by:**

Julian A. Miranda, City Manager



**Background and Analysis:**

- 1) The City of Irwindale ("City") does not need its 285.38-acre feet of water production rights for FY 2022/2023.

- 2) On February 25, 2021, staff issued a Notice to Bid to the following seven water companies:

|                                      |                                     |
|--------------------------------------|-------------------------------------|
| 1. Canyon Water Company              | 5. San Gabriel Valley Water Company |
| 2. California Domestic Water Company | 6. Valley County Water District     |
| 3. City of Azusa Light & Water       | 7. Valley View Mutual Water Co.     |
| 4. City of Arcadia                   |                                     |

- 3) On April 1, 2021, staff received one bid proposal from the San Gabriel Valley Water Company offering to pay 90% of \$880 per acre-feet, which is the cost that the Main San Gabriel Basin Watermaster ("Watermaster") charges for cyclic storage purchases to offset replacement water obligations for FY 2020/2021.
- 4) On May 12, 2021, City Council awarded the lease of water rights to San Gabriel Valley Water Company for one year. However, in the Notice to Bid, it states the city reserves the right to extend the lease of water rights to the Lessee for two (2), twelve (12) month periods with approval from the City Council.
- 5) On March 8, 2022, the city received a letter from the San Gabriel Water Company requesting to extend the lease for Fiscal Year 2021/2022 at 90% of the cyclic storage rate of \$902 per acre-feet, which is \$811.80 per acre-feet for a total of \$231,671.48. This was the first of the two (2), twelve 12 month extensions. Staff recommended that the temporary water lease be extended to San Gabriel Valley Water Company. On March 23, 2022, the City Council approved the First Extension to the Lease of Water Rights with San Gabriel Water Company.
- 6) On March 6, 2023, the city received a letter from the San Gabriel Water Company requesting to extend the lease for Fiscal Year 2022/2023 at 90% of the cyclic storage rate of \$958 per acre-feet, which is \$862.20 per acre-feet for a total of \$246,054.64. This is the second of the two (2), twelve 12 month extensions. Staff is recommending that the temporary water lease be extended to San Gabriel Valley Water Company.
- 7) The Second Extension to the Lease of Water Rights form is attached and will be subject to approval to form by the City Attorney.
- 8) Adoption of this lease approves and sets forth the terms of the water productions rights lease, and is exempt from the California Environmental Quality Act ("CEQA") under Section 15061(b)(1) of the CEQA Guidelines, which provides that a project is exempt by CEQA if the project is exempt by Statute (see e.g. Article 18, commencing with Section 15260). Per Section 15282 (u) of the CEQA Guidelines, the lease of the water rights is exempt as set forth in Section 1729 of the Water Code. Therefore, adoption of this lease is not subject to CEQA.

**Fiscal Impact:**

The one-year lease of the City's water production rights will result in \$246,054.64 in revenues to the City's General Fund.

**Attachment(s):**

1. FY22/23 Lease of Water Rights Form
2. Offer to Lease
3. San Gabriel Valley Water Company Letter

## SECOND EXTENSION OF TEMPORARY ASSIGNMENT OR LEASE OF WATER RIGHT

For a valuable consideration, receipt of which is hereby acknowledged, City of Irwindale  
("Assignor") does hereby assign and transfer to San Gabriel Valley Water Company, ("Assignee")  
commencing on July 1, 2022 and terminating June 30, 2023, on the following water right(s):

(Check the following appropriate category)

- |                                                                       |                                                   |
|-----------------------------------------------------------------------|---------------------------------------------------|
| <input checked="" type="checkbox"/> Production Right <u>285.38</u> AF | <input type="checkbox"/> Integrated Production    |
| <input type="checkbox"/> Prescriptive Pumping Right _____ AF          | <input type="checkbox"/> Carryover Right _____ AF |
| <input type="checkbox"/> Base Annual Diversion Right _____ AF         |                                                   |

Adjudicated to Assignor or his predecessor in the Judgement in the case of "Upper San Gabriel Valley Municipal Water District, v. City of Alhambra, et al." Los Angeles Superior Court No. 924128.

Said assignment is made upon condition that:

- (1) Assignee shall exercise said right on behalf of Assignor for the period described hereinabove and the first water produced by Assignee from the Relevant Watershed of the Main San Gabriel Basin after the date hereof shall be that produced hereunder;
- (2) Assignee shall put all waters utilized pursuant to said transfer to reasonable beneficial use; and
- (3) Assignee shall pay all Watermaster assessments on account of the water production hereby assigned or leased.

The total lease amount of \$246,054.64 will be paid by San Gabriel Valley Water Company to the City of Irwindale within 30 days from the Main San Gabriel Basin Watermaster's approval of the lease agreement. Through the first Temporary Assignment and Lease Agreement entered into by the Parties on May 12, 2021, the City reserved the right to extend the lease of water rights to the Lessee for two (2), twelve (12) month periods with approval from City Council at the rate of 90% of the Upper San Gabriel Valley Municipal Water District's replenishment rates for FY21/22 and FY22/23. Through this Second Extension, the City is exercising the second (and final) of the two (2), twelve (12) month extensions.

Dated: \_\_\_\_\_

Dated: \_\_\_\_\_

ASSIGNEE

ASSIGNOR

San Gabriel Valley Water Company

City of Irwindale

Signature: Robert W. Nicholson, President

Signature: Julian A. Miranda, City Manager

Name of Designee (of Assignee) to receive  
service of Processes and Notices:

Name of Designee (of Assignor) to receive  
service of Processes and Notices:

M. L. Whitehead

Julian A. Miranda, City Manager

P.O. Box 6010/11142 Garvey Avenue

5050 N. Irwindale Avenue

El Monte, CA 91734-2020

Irwindale, CA 91706

Tel. No.: 626/448-6183

Tel. No.: 626/430-2217

To be executed by both Assignee and Assignor and, if separately requested by Watermaster, be accompanied by a map of the service area where the water was used by Assignor and a map of the service area where the water is intended to be used by the Assignee.

(Have the appropriate individual(s) or corporate attached acknowledges completed as part of the temporary transfer.)

**A TRUE COPY HEREOF MUST BE FILED WITH WATERMASTER WITHIN 15 DAYS OF EXECUTION**

(To be accompanied by completed "Stipulation Re Intervention After Judgement" if Assignee is not a party to the Judgement)

### OFFER TO LEASE

CITY OF IRWINDALE (Lessor) hereby offers to lease to SAN GABRIEL VALLEY WATER COMPANY (San Gabriel) 285.38 acre-feet of Lessor's Integrated Production Right in the Main San Gabriel Basin as determined under the judgement in the case of Upper San Gabriel Valley Municipal Water District vs. City of Alhambra, et al., Los Angeles Superior Court No. 924128, during the fiscal year commencing July 1, 2022, under the following terms and conditions:

1. The consideration to be paid per acre-foot by San Gabriel shall be 90% of the cost that the Main San Gabriel Basin Watermaster ("Watermaster") charges for Full Service Untreated (Tier 1) water purchases for calendar year 2023.
2. The consideration shall be paid by San Gabriel within thirty (30) days of Watermaster acknowledgment of the Transfer.
3. San Gabriel shall pay all Watermaster assessments on account of the water produced under a lease entered into pursuant to this Offer to Lease.
4. If this offer is accepted, Lessor and San Gabriel shall execute an instrument to evidence their agreement prior to June 30, 2023.

### CITY OF IRWINDALE

By:   
Julian Miranda, City Manager, Designee

Date: 3/16/23

Accepted as to 285.38 acre-feet of  
Lessor's Integrated Production Right

### SAN GABRIEL VALLEY WATER COMPANY

By: \_\_\_\_\_

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

# SAN GABRIEL VALLEY WATER COMPANY

March 6, 2023

Ms. Elizabeth L. Rodriguez  
Public Works Services Manager  
City of Irwindale  
Department of Public Works  
5050 North Irwindale Avenue  
Irwindale, CA 91706

Subject: Lease of Main Basin Production Right Fiscal Year 2022-2023

Dear Ms. Rodriguez:

San Gabriel Valley Water Company ("San Gabriel") is interested in leasing the City of Irwindale's ("City") 285.38 acre-feet ("AF") of fiscal year ("FY") 2022-2023 Production Right in the Main San Gabriel Basin.

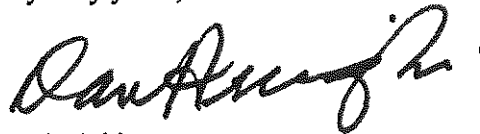
The consideration to be paid per AF by San Gabriel would be 90% of the cost that the Main San Gabriel Basin Watermaster ("Watermaster") charges for cyclic storage purchases to offset replacement water obligations for FY 2022-2023.

Watermaster has set the cyclic storage rate at \$958 per AF for FY 2022-2023. Therefore, the cost of the leased water would be \$862.20/AF computed as follows:  $\$958/\text{AF} \times 90\% = \$862.20/\text{AF}$ . San Gabriel would pay the City \$246,054.64 within thirty (30) days of Watermaster acknowledgement of the lease.

If the City is interested in leasing its Production Right to San Gabriel, enclosed is an Offer to Lease and three (3) originals of a Temporary Assignment or Lease of Water Right for your review and subsequent execution.

If you have any question or need additional information, please contact me by email at [darrighi@sgvwater.com](mailto:darrighi@sgvwater.com) or by phone at 626-448-6183. Thank you.

Very truly yours,



Dan Arrighi  
Water Resources Manager

DA:ss  
Enclosures

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

*City of*  
**IRWINDALE**  
**AGENDA REPORT**

---

Date: March 22, 2023  
To: Honorable Mayor and Members of the City Council  
From: Julian A. Miranda, City Manager  
Issue: Designation of Authorized Agents to Act on Behalf of the City to Obtaining  
Emergency Financial Assistance

---

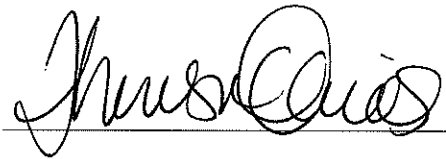
**City Manager's Recommendation:**

1. That the City Council of the City of Irwindale adopt Resolution No. 2023-26-3404 entitled: "A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF IRWINDALE DESIGNATING AUTHORIZED AGENTS TO ACT ON BEHALF OF THE CITY TO OBTAIN STATE AND FEDERAL FINANCIAL ASSISTANCE", and
2. Approve Cal OES Form 130, "Designation of Applicant's Agent Resolution for Non-State Agencies".

**Administrative Action:**

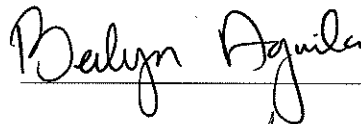
**Submitted by:**

Theresa Olivares, Assistant City Manager



**Prepared by:**

Berlyn Aguila, Management Analyst

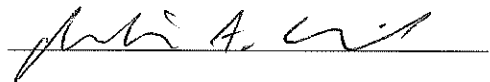


Kambiz Borhani, Finance Director / City Treasurer



**Approved by:**

Julian A. Miranda, City Manager



**Background and Analysis:**

The Federal Emergency Management Agency (FEMA) and the California Governor's Office of Emergency Services (Cal OES) provide local jurisdictions with specific guidelines for managing and administering disaster assistance programs. These guidelines detail activities and expenditures that are allowable under their respective programs established by the Robert T. Stafford Disaster Relief and Emergency Assistance Act of 1988 (Stafford Act) and the California Disaster Assistance Act (CDAA).

To participate in the disaster assistance programs, the City Council must designate agents authorized to act on behalf of the City to obtain State and Federal financial assistance through the disaster assistance programs. In addition, the Office of Emergency Services recommends maintaining a current Resolution every three (3) years to mitigate funding delays during a crisis.

The City Council previously adopted Cal OES Form 130, or Designation of Applicant's Agent Resolution for Non-State Agencies, on April 8, 2020. The Resolution is effective for all open and future disasters up to three (3) years following the approval date. Therefore, an updated Form 130 and active Resolution are required before the City receives reimbursement for emergency services. Staff recommends that the City Manager, Chief of Police, and Finance Director/City Treasurer each be authorized to act on behalf of the City for this purpose.

**Fiscal Impact:**

There is no fiscal impact. However, the adoption of the Resolution is a requirement by Cal OES for the City to be eligible for State and Federal financial assistance during an emergency.

**Attachments:**

1. Resolution No. 2023-26-3404
2. Cal OES Form 130

## **RESOLUTION NO. 2023-26-3404**

### **A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF IRWINDALE, CALIFORNIA, DESIGNATING AUTHORIZED AGENTS TO ACT ON BEHALF OF THE CITY TO OBTAIN STATE AND FEDERAL FINANCIAL ASSISTANCE**

**WHEREAS**, The City Council of the City of Irwindale desires to appoint and authorize agents of the City to apply for reimbursement for disaster-related expenditures under the Federal Emergency Management Agency (FEMA) and the California Governor's Office of Emergency Services (Cal OES) disaster assistance programs; and

**WHEREAS**, An updated Form 130 and active Resolution are required before the City receives reimbursement for emergency assistance; and

**WHEREAS**, The City Council designates the City Manager, Chief of Police, or Finance Director/City Treasurer as authorized agents to act on the City's behalf for the purpose of obtaining State and Federal Financial Assistance.

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

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

**SECTION 2.** The City Manager, Chief of Police, or Finance Director/City Treasurer are hereby authorized to execute for and on behalf of the City of Irwindale, a public entity established under the laws of the State of California, the financial assistance application and filing with the California Governor's Office of Emergency Services to obtain certain federal financial assistance under Public Law 93-288 as amended by the Robert T. Stafford Disaster Relief and Emergency Assistance Act of 1988, and/or state financial assistance under the California Disaster Assistance Act.

**SECTION 3.** The City of Irwindale, a public entity established under the laws of the State of California, hereby authorizes its agent(s) to provide to the California Governor's Office of Emergency Services, for all matters pertaining to such state disaster assistance, the assurances and agreements required.

**SECTION 4.** The Resolution is effective for all open and future disasters up to three (3) years following the approval date.

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

**PASSED, APPROVED, and ADOPTED** this 22<sup>nd</sup> day of March 2023.

---

H. Manuel Ortiz, Mayor

ATTEST:

---

Laura M. Nieto, MMC  
Chief Deputy City Clerk

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

I, Laura M. Nieto, Chief Deputy City Clerk of the City of Irwindale, do hereby certify that the foregoing Resolution No. 2023-23-3401 was adopted at a regular meeting of the Irwindale City Council held on the 22<sup>nd</sup> day of March 2023, by the following vote of the Council:

AYES:       Councilmembers:

NOES:       Councilmembers:

ABSTAIN:   Councilmembers:

ABSENT:     Councilmembers:

---

Laura M. Nieto, MMC  
Chief Deputy City Clerk



Cal OES ID No: \_\_\_\_\_

**DESIGNATION OF APPLICANT'S AGENT RESOLUTION FOR NON-STATE AGENCIES**

BE IT RESOLVED BY THE City Council OF THE City of Irwindale  
(Governing Body) (Name of Applicant)

THAT City Manager, OR  
(Title of Authorized Agent)  
Chief of Police, OR  
(Title of Authorized Agent)  
Finance Director/City Treasurer  
(Title of Authorized Agent)

is hereby authorized to execute for and on behalf of the City of Irwindale,  
(Name of Applicant)

a public entity established under the laws of the State of California, this application and to file it with the California Governor's Office of Emergency Services for the purpose of obtaining federal financial assistance for any existing or future grant program, including, but not limited to any of the following:

- **Federally declared Disaster (DR), Fire Mitigation Assistance Grant (FMAG), California State Only Disaster (CDAA), Immediate Services Program (ISP), Hazard Mitigation Grant Program (HMGP), Building Resilient Infrastructure and Communities (BRIC), Legislative Pre-Disaster Mitigation Program (LPDM)**, under
- Public Law 93-288 as amended by the Robert T. Stafford Disaster Relief and Emergency Assistance Act of 1988, and/or state financial assistance under the California Disaster Assistance Act.
- **Flood Mitigation Assistance Program (FMA)**, under Section 1366 of the National Flood Insurance Act of 1968.
- **National Earthquake Hazards Reduction Program (NEHRP)** 42 U.S. Code 7704 (b) ((2) (A) (ix) and 42 U.S. Code 7704 (b) (2) (B) National Earthquake Hazards Reduction Program, and also The Consolidated Appropriations Act, 2018, Div. F, Department of Homeland Security Appropriations Act, 2018, Pub. L. No. 115-141
- **California Early Earthquake Warning (CEEW)** under CA Gov Code – Gov, Title 2, Div. 1, Chapter 7, Article 5, Sections 8587.8, 8587.11, 8587.12

That the City of Irwindale, a public entity established under the  
(Name of Applicant)

laws of the State of California, hereby authorizes its agent(s) to provide to the Governor's Office of Emergency Services for all matters pertaining to such state disaster assistance the assurances and agreements required.



**Please check the appropriate box below**

- ☒ This is a universal resolution and is effective for all open and future disasters/grants declared up to three (3) years following the date of approval.
- ☐ This is a disaster/grant specific resolution and is effective for only disaster/grant number(s): \_\_\_\_\_

Passed and approved this 22 day of March, 2023

**H. Manuel Ortiz, Mayor**

(Name and Title of Governing Body Representative)

**Albert F. Ambriz, Mayor Pro-Tem**

(Name and Title of Governing Body Representative)

Larry G. Burrola, Mark A. Breceda, Manuel R. Garcia, Councilmembers

(Name and Title of Governing Body Representative)

**CERTIFICATION**

I, **Laura M. Nieto**, duly appointed and **Chief Deputy City Clerk** of  
(Name) (Title)

**City of Irwindale**, do hereby certify that the above is a true and  
(Name of Applicant)

correct copy of a resolution passed and approved by the **City Council**  
(Governing Body)

of the **City of Irwindale** on the 22 day of March, 2023.  
(Name of Applicant)

**Chief Deputy City Clerk**

(Signature)

(Title)



---

### Cal OES Form 130 Instructions

**A Designation of Applicant's Agent Resolution for Non-State Agencies is required of all Applicants to be eligible to receive funding. A new resolution must be submitted if a previously submitted resolution is older than three (3) years from the last date of approval, is invalid, or has not been submitted.**

When completing the Cal OES Form 130, Applicants should fill in the blanks on pages 1 and 2. The blanks are to be filled in as follows:

#### **Resolution Section:**

**Governing Body:** This is the group responsible for appointing and approving the Authorized Agents.

Examples include: Board of Directors, City Council, Board of Supervisors, Board of Education, etc.

**Name of Applicant:** The public entity established under the laws of the State of California.

Examples include: School District, Office of Education, City, County or Non-profit agency that has applied for the grant, such as: City of San Diego, Sacramento County, Burbank Unified School District, Napa County Office of Education, University Southern California.

**Authorized Agent:** These are the individuals that are authorized by the Governing Body to engage with the Federal Emergency Management Agency and the California Governor's Office of Emergency Services regarding grants for which they have applied. There are two ways of completing this section:

1. **Titles Only:** The titles of the Authorized Agents should be entered here, not their names. This allows the document to remain valid if an Authorized Agent leaves the position and is replaced by another individual. If "Titles Only" is the chosen method, this document must be accompanied by either a cover letter naming the Authorized Agents by name and title, or the Cal OES AA Names document. The supporting document can be completed by any authorized person within the Agency (e.g., administrative assistant, the Authorized Agent, secretary to the Director). It does not require the Governing Body's signature.
2. **Names and Titles:** If the Governing Body so chooses, the names **and** titles of the Authorized Agents would be listed. A new Cal OES Form 130 will be required if any of the Authorized Agents are replaced, leave the position listed on the document, or their title changes.



**Checking Universal or Disaster-Specific Box:** A Universal resolution is effective for all past disasters and for those declared up to three (3) years following the date of approval. Upon expiration it is no longer effective for new disasters, but it remains in effect for disasters declared prior to expiration. It remains effective until the disaster goes through closeout unless it is superseded by a newer resolution.

**Governing Body Representative:** These are the names and titles of the approving Board Members.

Examples include: Chairman of the Board, Director, Superintendent, etc. The names and titles **cannot** be one of the designated Authorized Agents. A minimum of three (3) approving board members must be listed. If less than three are present, meeting minutes must be attached in order to verify a quorum was met.

**Certification Section:**

**Name and Title:** This is the individual in attendance who recorded the creation and approval of this resolution.

Examples include: City Clerk, Secretary to the Board of Directors, County Clerk, etc. This person **cannot** be one of the designated Authorized Agents or Approving Board Member. If a person holds two positions (such as City Manager and Secretary to the Board) and the City Manager is to be listed as an Authorized Agent, then that person could sign the document as Secretary to the Board (not City Manager) to eliminate "Self-Certification."

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

*City of*  
**IRWINDALE**  
**AGENDA REPORT**

---

Date: March 22, 2023  
To: Honorable Mayor and Members of the City Council  
From: Julian A. Miranda, City Manager  
Issue: Approval of the Peerless Network, Inc. Agreement / Network Service for Telephone, Internet, and Data Service

---

**City Manager's Recommendation:**

Adopt Resolution No. 2023-20-3398 entitled: "A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF IRWINDALE APPROVING A TELECOMMUNICATIONS ACCOUNT AGREEMENT WITH PEERLESS NETWORK, INC. FOR CITYWIDE TELEPHONE, INTERNET, AND DATA SERVICES", reading by title only and waiving further reading thereof.

**Administrative Action:**

**Submitted by:**

Theresa Olivares, Assistant City Manager

**Prepared by:**

Berlyn Aguila, Management Analyst

Jeff Wagner, IT Manager

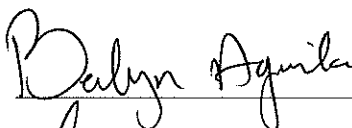
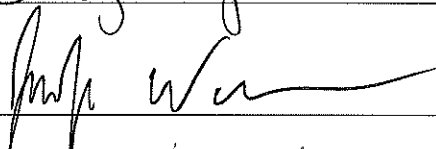
**Reviewed by:**

Kambiz Borhani, Finance Director / City Treasurer

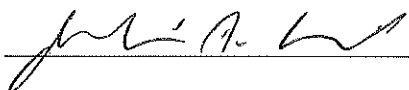
Adrian R. Guerra, City Attorney

**Approved by:**

Julian A. Miranda, City Manager


**Electronically Approved**



**Background and Analysis:**

On December 12, 2016, the City entered into a three (3) year agreement with TPx Communications, formally known as Telepacific Communications, for Citywide telephone,

internet, and data service. TPx Communications automatically renewed in 2020 for three (3) additional years. The agreement with TPx Communications terminates in March of 2023. The City has received five (5) quotes for services, and staff recommends that the City enter a Service Agreement/Network Service Order with Peerless Network, Inc.

The City's current recurring monthly cost for services provided by TPx Communications is \$2,482.43 (including taxes and other fees), and it offers 100 Mbps of data service. However, during the past six years, it has become increasingly apparent that the current data service received by TPx Communications does not meet the City's existing needs.

As a result, each bidder was requested to provide three types of services 1) 1000 Mbps of internet service, 2) Session Initiation Protocol (SIP) Trunking, defined as making and receiving phone calls through an internet connection, and 3) 20 Mbps of broadband internet for the Irwindale Senior Center. The 1000 Mbps of data service will adequately meet the City's existing needs, and SIP Trunking will allow for Voice-Over Internet Protocol (VOIP) technology that will cut calling costs. Additionally, adding broadband internet at the Irwindale Senior Center will enable services to failover properly to avoid daily service interruptions. Below is a breakdown of the bids received:

| Provider                   | Product Description | Term    | Monthly Recurring Cost* |
|----------------------------|---------------------|---------|-------------------------|
| Peerless Network, Inc.     | 1000 Mbps           | 3 Years | \$1,584.25              |
| AireSpring                 | 1000 Mbps           | 3 Years | \$1,807.59              |
| Granite Telecommunications | 1000 Mbps           | 3 Years | \$1,818.00              |
| Spectrum Communications    | 1000 Mbps           | 3 Years | \$2,432.00              |
| TPX Communications         | 1000 Mbps           | 3 Years | \$2,756.89              |

\*These recurring costs do not include taxes and other fees

The proposed Agreement with Peerless Network, Inc is for three (3) years and will result in a cost reduction and the recommended data service of 1000 Mbps, unlimited SIP Trunking, and broadband internet at the Senior Center that will provide for adequate future growth.

**Fiscal Impact:**

The base service fee for Peerless Network, Inc is \$ 1,584.25, and an estimated tax and other fees of \$360.00. The total estimated monthly cost will be \$1,944.25. Therefore, entering into this agreement will result in a monthly cost-savings of approximately \$538.18.

**Attachments:**

1. Resolution No. 2023-20-3398
2. Peerless Network, Inc Service Quote

**RESOLUTION NO. 2023-20-3398**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF IRWINDALE,  
CALIFORNIA, APPROVING A TELECOMMUNICATIONS ACCOUNT  
AGREEMENT WITH PEERLESS NETWORK, INC FOR CITYWIDE  
TELEPHONE, INTERNET, AND DATA SERVICES**

**WHEREAS**, the City's agreement with TPx Communications (formerly known as Telepacific Communication) terminates in March 2023; and

**WHEREAS**, the City of Irwindale Municipal Code Section 3.44.100 provides that, for informal bidding and whenever possible, the City shall solicit at least three bids for services; and

**WHEREAS**, the City has received five (5) bids for telecommunication services, and Peerless Network, Inc was the lowest responsible bidder whose proposal meets the current service needs to the City and will provide for adequate future growth; and

**WHEREAS**, the City Council wishes to approve the Service Agreement/Network Service Order with Peerless Network, Inc.

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

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

**SECTION 2.** The City Council approves the Service Agreement/Network Service Order with Peerless Network, Inc., attached hereto as Exhibit "A."

**SECTION 3.** The City Manager and/or any authorized officers are hereby authorized to take such actions, perform such acts as may be necessary to implement this Resolution.

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

**PASSED, APPROVED, and ADOPTED** this 22<sup>nd</sup> day of March 2023.

---

H. Manuel Ortiz, Mayor

ATTEST:

---

Laura M. Nieto, MMC  
Chief Deputy City Clerk

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

I, Laura M. Nieto, Chief Deputy City Clerk of the City of Irwindale, do hereby certify that the foregoing Resolution No. 2023-20-3398 was adopted at an regular meeting of the Irwindale City Council held on the 22<sup>nd</sup> day of March 2023, by the following vote of the Council:

AYES:       Councilmembers:

NOES:       Councilmembers:

ABSTAIN:   Councilmembers:

ABSENT:    Councilmembers:

---

Laura M. Nieto, MMC  
Chief Deputy City Clerk

# Attachment



Telecom Service Quote for  
City of Irwindale

Prepared by  
Peerless Network  
mrelaco@peerlessnetwork.com

Peerless Network, Inc. is a leading provider of interconnection and data center services focused on simplifying how networks, devices, and people connect. Headquartered in Chicago, Peerless is the premier provider of voice and data services (Hosted PBX, SIP and PRI, and broadband and dedicated circuits) for business customers.

This quote is subject to final approval by Peerless Network. All quotations are for planning purposes only. Peerless Network makes no guarantees of accuracy or fitness of use for Customer applications. Distances between locations are estimates only, and actual speeds and loop lengths are ascertainable only at the time of installation.

■ **5050 North Irwindale Avenue**

5050 North Irwindale Avenue Irwindale, CA 91706

| Quantity     | Description                                   | Setup Cost    | Monthly Cost      |
|--------------|-----------------------------------------------|---------------|-------------------|
| 1            | Dedicated Internet - 1000 Mbps, 36 Months     | \$0.00        | \$858.00          |
| 1            | /30 - 4 Static IP Addresses (1 Useable)       | \$0.00        | \$0.00            |
| 1            | Managed Router                                | \$0.00        | \$200.00          |
| 1            | unlimited SIP Trunk (Unlimited) - 25 Channels | --            | \$275.00          |
| 125          | DID with E911 and CNAM Delivery               | \$0.00        | \$81.25           |
| <b>Total</b> |                                               | <b>\$0.00</b> | <b>\$1,414.25</b> |

■ **16116 ARROW HIGHWAY IRWINDALE**

16116 Arrow Highway Irwindale, CA 91706

| Quantity     | Description                             | Setup Cost     | Monthly Cost    |
|--------------|-----------------------------------------|----------------|-----------------|
| 1            | Broadband Internet - 20 Mbps, 36 Months | \$99.00        | \$170.00        |
| 1            | /30 - 4 Static IP Addresses (1 Useable) | \$0.00         | \$0.00          |
| <b>Total</b> |                                         | <b>\$99.00</b> | <b>\$170.00</b> |

■ **Total**

|                      |                   |
|----------------------|-------------------|
| <b>Initial Costs</b> | <b>\$99.00</b>    |
| <b>Monthly Costs</b> | <b>\$1,584.25</b> |

The service term for all proposed services is 36 months, unless specified differently on a quoted line item. The term begins when your first service is purchased. Purchased services will bill monthly until the term end date. Cancelled services will be billed for the remainder of the term. This proposal is valid until March 17, 2023.

Click to Order

OR

The undersigned agrees to purchase the services and products above and agrees to the [The Peerless Portal Terms and Conditions](#).

PRINT PDF

Name

Date

## Create a Peerless Portal Account

Please fill out this form and submit it to create your Peerless Portal account.

**Credentials**

**Business**

**Payments**

**References**

**©**

### Service Terms and Agreement

5050 North Irwindale Avenue

5050 North Irwindale Avenue Irwindale, CA 91706

| Quantity | Description                                   | Setup Cost | Monthly Cost |
|----------|-----------------------------------------------|------------|--------------|
| 1        | Dedicated Internet - 1000 Mbps, 36 Months     | \$0.00     | \$858.00     |
| 1        | /30 - 4 Static IP Addresses (1 Useable)       | \$0.00     | \$0.00       |
| 1        | Managed Router                                | \$0.00     | \$200.00     |
| 1        | unlimited SIP Trunk (Unlimited) - 25 Channels | --         | \$275.00     |
| 126      | DID with E911 and CNAM Delivery               | \$0.00     | \$81.25      |
| Total    |                                               | \$0.00     | \$1,414.25   |

16116 ARROW HIGHWAY IRWINDA

16116 Arrow Highway Irwindale, CA 91706

| Quantity | Description                             | Setup Cost | Monthly Cost |
|----------|-----------------------------------------|------------|--------------|
| 1        | Broadband Internet - 20 Mbps, 36 Months | \$99.00    | \$170.00     |
| 1        | /30 - 4 Static IP Addresses (1 Useable) | \$0.00     | \$0.00       |
| Total    |                                         | \$99.00    | \$170.00     |

### Total

|               |            |
|---------------|------------|
| Initial Costs | \$99.00    |
| Monthly Costs | \$1,584.25 |

The service term for all proposed services is 36 months, unless specified differently on a quoted line item. The term begins when your first service is purchased. Purchased services will bill monthly until the term and date. Canceled services will be billed for the remainder of the term. This proposal is valid until March 17, 2023.

The undersigned guarantees that all statements made herein are true and correct to the best of his/her knowledge and authorizes the release of credit and financial information to Peerless Network by applicant's bank and trade references.

Additionally, the undersigned agrees to purchase the services and products above.

Your Name

Your Title

Enter Your Name

Enter Your Title

I agree to the Terms and Conditions.

Authorization Signature

Styled Text Draw

Signature

Create Account

# Terms of Service

[Home](#)

## Portal Terms and Conditions

PLEASE READ THESE TERMS AND CONDITIONS CAREFULLY AS THEY CONTAIN VERY IMPORTANT INFORMATION ABOUT THE TERMS APPLICABLE TO THE SERVICES AND DEVICES Peerless WILL PROVIDE YOU. BY CHECK MARKING THE BOX INDICATING YOUR AGREEMENT AND SELECTING "REGISTER" DURING THE REGISTRATION PROCESS, YOU AGREE TO BE BOUND BY THESE TERMS INCLUDING THE ARBITRATION PROVISION, AND THESE TERMS BECOME A BINDING LEGAL AGREEMENT BETWEEN YOU AND Peerless.

In these Portal Terms and Conditions ("Terms"), "we," "us," "our" or "Peerless" will refer to Peerless Network, Inc., and the terms "you," "your" and "Customer" will refer to you. Peerless and Customer are collectively referred to herein as "Parties" and individually as a "Party." If you are registering for a Peerless account to use the Services or Devices on behalf of an organization, you are agreeing to these Terms for that organization and promising to Peerless that you have the authority to bind that organization to these Terms (and, in which case, the terms "you," "your" and "Customer" will refer to that organization). If that organization has a separate written agreement with Peerless covering the use of the Services or Devices, that agreement will govern such use.

Peerless may revise these Terms from time to time. If we do, those revised Terms will supersede prior versions. Revisions will be effective upon the effective date indicated at the bottom of these Terms unless otherwise indicated. To the extent that we can, we will provide you at least thirty (30) days advance written notice of any revisions. This notice will be provided in your Peerless account portal or via an e-mail to the e-mail address owner of your Peerless account. We encourage you to check the effective date of these Terms whenever you visit Peerless's website or log in to your Peerless account. Your continued access or use of the Peerless Services or Devices constitutes your acceptance of any revisions. If you do not agree to the revisions, you should stop using the Peerless Services and Devices otherwise you will continue to be liable for the Services or Devices used.

## SERVICES AND DEVICES PROVIDED.

Peerless agrees to provide, and Customer agrees to accept and pay for, those services and/or devices Customer selects directly in the Peerless account portal (the "Portal") or with Peerless's assistance and which Peerless provides. In the Portal, the Customer can select from the services (collectively, the "Services") and Devices as offered in the Service Guide.

The Services and Devices will be provided in accordance with these Terms, the Service Guide, and additional terms referenced herein, and state and federal tariffs, if applicable. Applicable state and federal tariffs consist of the service descriptions and other provisions contained in tariffs filed by Peerless or its affiliates, with the applicable commission having jurisdiction over the Services being

provided, where applicable. In the event of a conflict between these Terms, the Service Guide, and the tariffs, where applicable, the order of priority shall be first the Terms, then the Service Guide, then the applicable tariffs.

All Services are subject to availability as well as operational and systems limitations. Services will be provided using Peerless' own facilities and/or those of third-party service providers.

## **TERM AND TERMINATION.**

The Terms are effective when you accept these Terms and select any of the Services or Devices provided in the Portal (the "Effective Date") and shall continue for successive one (1) month periods or as otherwise specified in the Portal when Services and Devices are ordered, unless cancelled by either Party giving at least thirty (30) days' written notice prior to the expiration of the then current term. Notwithstanding the foregoing, the Terms shall not expire for so long as Peerless continues to provide Services or Devices under these Terms. No new Services may be initiated, or Devices ordered, following notice of cancellation by either Party.

Each Service or Device will have Service and Billing Terms that commence as defined in the Service Guide:

**Termination Before Start of Service Date for a Service or Services:** If you terminate a Service (in whole or part) before the Start of Service Date, you agree to pay Peerless all charges Peerless incurs or will incur from underlying service providers, as well as costs Peerless has incurred to provide the Service or Services.

If Customer terminates the Services or lease of Devices prior to the expiration of the Service Term for any Services or Devices ordered in the Portal, Customer agrees to pay all remaining charges for Services and lease of Devices, if applicable, including but not limited to all MRCs for the remainder of the Service Term, as defined herein, which amounts shall become immediately due and payable upon receipt of Customer's early termination notice.

Termination/disconnection requests by Customer must be submitted in writing to [billing@peerlessnetwork.com](mailto:billing@peerlessnetwork.com). Customer acknowledges that in the event of expiration or termination of the Terms, Peerless has no obligation to continue to provide Services to Customer or, where applicable, to route traffic originating or terminating to Customer. Customer further agrees that it will immediately affect an orderly and timely transition of Services to another provider or route. Customer may terminate Services or the lease of Devices with prior written notice if Peerless cancels, changes, or supersedes any provision of the Service or lease of Devices due to a change in applicable law if the change materially impacts Customer's use of the Services or Devices or creates additional material obligations for the Customer.

Peerless may immediately suspend or terminate the Services or Customer's lease of Devices if Customer fails to (a) make any payment due under the Terms, (b) provide satisfactory assurance of its ability to pay for Services or lease of Devices after reasonable notice, (c) cure any fraudulent or otherwise unlawful activity after reasonable notice, (d) commits a material breach of the Terms

which is not remedied after reasonable notice or cannot be remedied; or (e) becomes the subject of a voluntary petition or an involuntary petition in bankruptcy or any proceeding for insolvency, receivership, liquidation, or assignment for the benefit of creditors that is not dismissed within sixty (60) days.

Termination of Services or lease of Devices for any cause does not release Customer from any liability which, at the time of termination, has already accrued to Customer, or which may accrue in respect of any act or omission prior to termination or from any obligation which is expressly stated to survive the termination.

### **CHARGES, BILLING AND PAYMENT.**

Commencing on the first day of the Service Term for each Service, Customer will pay the applicable charges for the Services and lease of Devices. For Service, monthly recurring charges ("MRCs") will be invoiced on a monthly basis in advance and non-recurring charges will be invoiced in arrears. Usage-based charges will be invoiced in arrears. Peerless may pass through surcharges without mark-up to Customer when directly related to Customer's use of service. If the first day of the Service Term for any Services falls on a day other than the first day of any Billing Cycle, the initial charge to Customer shall consist of (a) the pro-rata portion of the applicable monthly charge covering the period from the Effective Date to the first day of the subsequent Billing Cycle, and (b) the MRC for the following Billing Cycle. Peerless shall have the right to increase the rates and charges for the Services (including charges for any associated local access circuits) upon seven (7) days written notice to Customer for usage-based rates and upon thirty (30) days written notice to Customer for non-usage-based rates.

Special Construction - If an order for any access service is determined to require special construction by the underlying access vendor, Peerless will provide Customer the cost for the special construction and the option to agree to pay the cost. If Customer declines to pay for the special construction the order will be cancelled at no cost to Customer.

In the Portal, Customer must select a payment method: (i) prepay with credit card, where Customer agrees that fees will be deducted from its credit balance, with the ability to top-up and auto top-up; (ii) post-paid with credit card, where Customer wishes to pay for the Services or lease of Devices via credit card at the end of the billing cycle. With this option, Customer agrees their card will be charged on the 1st of each month for the prior month's usage; and (iii) post-paid with credit terms, where Customer selects that it will pay via check or Automated Clearing House ("ACH") net thirty (30). If Customer selects post-paid with credit terms and there is not credit card on file, Customer authorizes Peerless to assess Customer's credit worthiness by whatever means Peerless deems reasonable, including but not limited to accessing the Customer's business credit information and reaching out to bank and trade references provided by Customer in the Portal registration process. Depending on the method of payment selected, payment will be due on the applicable due date ("Due Date"). Any amount not properly disputed and not paid by the Due Date will bear a late payment charge at the rate of one and a half percent (1.5%) per month (or such lower amount as may be required by law) until fully paid.

Any billing dispute or request for a billing adjustment must be made in good faith and in writing within thirty (30) days from the Due Date otherwise charges will be conclusively deemed undisputed and accepted by Customer. The Parties agree that resolving disputes as promptly and efficiently as possible will best serve their respective interests. All disputes must be directed to [billing@peerlessnetwork.com](mailto:billing@peerlessnetwork.com) and shall include detailed documentation sufficient for Peerless to assess each element of the dispute (the "Dispute Notification"). Each Party will appoint a knowledgeable, responsible representative with decision-making authority to negotiate in good faith to resolve any dispute arising out of or relating to the dispute. Each Party, through its representatives, shall negotiate diligently and in good faith for a period of sixty (60) days from the Dispute Notification or a mutually-agreed upon time period, to resolve the dispute. If the internal resolution process does not result in a resolution of the dispute, the Parties will proceed to arbitration as set forth below. If the dispute is resolved, the Customer must pay the disputed amount or Peerless will provide a credit on the next invoice, provided Customer is not delinquent in payment or otherwise in default of the Terms, in which case the credit will be issued against a subsequent Customer invoice.

#### **BINDING ARBITRATION.**

Any dispute arising out of the Terms, provision of Services, or lease of Devices that cannot be resolved pursuant to good-faith negotiations must be submitted to binding arbitration in accordance with the rules established by the American Arbitration Association ("AAA"). The decision of a sole arbitrator shall be binding on all parties. The arbitration shall be held in accordance with the Commercial Arbitration Rules of the American Arbitration Association ("AAA Rules"), as amended by the Terms.

Either Party may initiate arbitration by providing written demand for arbitration, a copy of these Terms and the administrative fee required by the AAA Rules to the AAA located in Chicago, Illinois. A copy of the notice shall also be provided to the other Party. The remaining cost of the arbitration, including the fees and expenses of the arbitrator, shall be shared equally by the Parties, unless the arbitrator's award provides otherwise. Each Party shall bear the cost of preparing and presenting its case. The Parties agree that binding arbitration shall be conducted in Chicago, Illinois.

The Parties agree that the Arbitrator's authority to grant relief shall be subject to the provisions of the Terms, the Federal Arbitration Act, the ABA-AAA Code of Ethics for Arbitrators in Commercial Disputes, applicable tariffs, substantive law of the State of Illinois or the applicable state public service commission, and the Communications Act of 1934, as amended. Except for the intentional misconduct of a Party, the Arbitrator shall not be able to award, nor shall any Party be entitled to receive, punitive, incidental, consequential, exemplary, reliance or special damages, including damages for lost profits. The Arbitrators' decision shall follow the plain meaning of the relevant documents, and shall be final, binding, and enforceable in a court of competent jurisdiction. The decision of the Arbitrator can only be appealed for mistake(s) of law.

#### **CREDIT AND ASSURANCE OF PAYMENT.**

In the event charges due pursuant to any invoice are not paid in full by the Due Date, Peerless shall have the right to suspend all or any portion of the Services or lease of Devices to Customer

immediately until such time as Customer has paid in full all charges then due including any late fees or penalties. Following late payment or if at any time Peerless, in its sole discretion, believes that Customer presents an undue risk of nonpayment, Peerless may require that Customer provide satisfactory assurance of its ability to pay for Services or lease of Devices, i.e., requiring a deposit, guaranteed letter of credit, or other means as requested, and advanced payment of the cost of reinstituting Services prior to reinstating such Services or reinstate a Device lease prior to such reinstatement. Failure of Customer to provide the requested assurance within five (5) business days shall be a material breach of Customer's obligations under the Terms.

#### **AGENT AUTHORIZATION.**

If you come to Peerless through an authorized agent that invites you to the Portal, your authorized agent may manage your Portal account and add, change, or remove Services or Devices from your account. You agree to be bound by any changes made by agent to your Portal account, including any charges associated with the addition of Services or Devices. To the extent your agent makes any unauthorized changes to your Portal account, you agree to hold Peerless harmless for any such changes and pursue any claims or causes against agent for alleged damages or losses due to that unauthorized activity.

#### **TAXES, ASSESSMENTS AND CHARGES.**

Customer acknowledges that Peerless computes all charges exclusive of any applicable federal, state, or local use, excise, gross receipts, sales, and privilege taxes, duties, fees, or similar liabilities. Notwithstanding the forgoing, the End User Common Line charge, when applicable is included within the applicable rate. Except to the extent Customer provides a valid tax exemption certificate in a form acceptable to Peerless prior to the delivery of Service. Customer will be responsible to pay any other surcharges that Peerless is required, or permitted, to invoice to Customer in connection with any Service, including, without limitation, permanent or temporary governmental fees or assessments unless Customer provides the appropriate certification to Peerless that the Customer will make payments directly to the applicable agency assessing the fees. It is the Customer's sole responsibility to supply tax-exempt documentation, if applicable, failing which Customer will be billed accordingly. For taxing purposes, Customer's Place of Primary Use ("PPU") is Customer's billing address. Customer will contact [billing@peerlessnetwork.com](mailto:billing@peerlessnetwork.com) for changes to its PPU. All payments made by Customer will be made without any deduction or withholding for or on account of any taxes. Customer agrees to indemnify, defend and hold harmless Peerless from any liability or expense associated with applicable taxes or surcharges. To the extent Customer purchases Devices from Peerless, Customer is responsible for all taxes related to the purchase, including sales taxes, value-added taxes, and any other similar taxes imposed by any governmental entity.

#### **NETWORK MODIFICATION AND NETWORK MAINTENANCE.**

Peerless reserves the right to modify its network, system configurations or routing configurations. Peerless may, in its sole discretion and without liability, change or modify the features and functionalities of the Services or modify or replace any hardware or software in the network or in equipment used to deliver the Services provided that this does not have a material adverse effect

on the Services. Peerless may perform scheduled or emergency maintenance (including temporary suspension of Service as necessary) to maintain or modify the network, network terminating equipment, where applicable, or the Services. Peerless will give Customer such notice of the maintenance as is reasonably practicable in the circumstances, provided that, in the event of scheduled maintenance, Peerless will give Customer at least four (4) days' notice.

### **USE OF SERVICES OR DEVICES OUTSIDE THE US.**

Peerless encourages use of the Services within the United States to other countries, but Peerless does not presently offer or support use of the Services or Devices in countries other than the United States. Peerless's Services and Devices are intended for use only by persons or entities whose primary business address is in the United States. If you remove the Devices to a country outside the United States or use the Services from there, you do so at your own risk, including the risk that such activity violates local laws in that country. You will be solely responsible for any violations of law resulting from such use.

### **CONNECTIVITY**

Peerless's Cloud PBX Services are designed to work generally with unencumbered high-speed internet connections. If your internet service provider places restrictions on the usage of VoIP services, Peerless does not represent or warrant that use of the Cloud PBX Services by you is permitted by any or all of the internet service providers.

There may be other services with which our Cloud PBX Services may be incompatible. Some providers of broadband service may provide modems that prevent the transmission of communications using the Cloud PBX Services. Peerless does not warrant that the Cloud PBX Services will be compatible with all broadband services and expressly disclaims any express or implied warranties regarding the compatibility of the Services with any particular broadband service.

The Cloud PBX Services may also not be compatible with non-voice communications equipment, including but not limited to, some home and office security systems that are set up to make automatic phone calls, emergency phones in elevators, some aspects of satellite TV systems, digital entertainment systems, fax machines, modems and medical monitoring devices. You acknowledge and agree to such limitations and waive any claim you may have against Peerless for interference with or disruption of such systems due to the Services.

### **DATA AND COMPUTER MANAGEMENT**

You agree and acknowledge that you are responsible for obtaining, installing, configuring, and maintaining suitable equipment to use the Cloud PBX Services, including your computer, telephone, software, system or software upgrades, patches, and other fixes which may be necessary to access the Services. Peerless will only provide assistance with respect to Peerless-provided Devices. For Cloud PBX Services, Peerless may measure and monitor network performance and may access and record information about your computer's profile and settings to provide customized technical support. You agree that Peerless can monitor your internet connection and your network

performance, as well as access and adjust your computer settings, as related to the Cloud PBX Services. For Cloud PBX Services, Peerless is not obligated to store your communication logs, voicemails, faxes, or other messages and, if it does so, it is solely storing them as a convenience to you.

#### **WARRANTY AND LIMITATION OF LIABILITY.**

**WARRANTY AND DISCLAIMER.** Peerless WARRANTS THAT IT WILL PERFORM SERVICES WITH REASONABLE SKILL AND CARE AND IN A WORKMANLIKE MANNER AND WILL USE REASONABLE EFFORTS TO RESTORE SERVICES IN THE CASE OF FAILURE. Peerless MAKES NO OTHER WARRANTY OR GUARANTEE RELATING TO THE SERVICES OR DEVICES, EXPRESS OR IMPLIED, UNDER THE TERMS OR OTHERWISE, AND Peerless EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES OR CONDITIONS RELATING TO THE SERVICES AND DEVICES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO ANY IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY, SATISFACTORY QUALITY, AND/OR FITNESS FOR A PARTICULAR PURPOSE.

**LIMITATION OF LIABILITY.** IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, PUNITIVE, RELIANCE, OR COVER DAMAGES, INCLUDING LOSS OF PROFITS, REVENUE, DATA, OR USE, INCURRED BY EITHER PARTY OR ANY THIRD PARTY, INCLUDING ANY DAMAGES ARISING FROM ANY NEGLIGENT ACT OR INADVERTENT OMISSION, WHETHER IN CONTRACT, TORT OR UNDER LAW, EVEN IF THAT PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. EXCEPT FOR A BREACH OF CUSTOMER'S PAYMENT OBLIGATIONS HEREUNDER, IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR DIRECT DAMAGES IN AN AMOUNT IN EXCESS OF THE AMOUNT THAT Peerless CHARGED OR WOULD HAVE CHARGED FOR SUCH SERVICES OR DEVICES IN THE SIX MONTHS PRIOR TO WHEN THE CLAIMS FIRST AROSE OR \$100,000, WHICHEVER IS LESS.

**EXCLUSION OF LIABILITY.** SUBJECT TO THE PROVISIONS ON WARRANTY AND DISCLAIMER AND LIMITATION OF LIABILITY, ABOVE, IN NO CIRCUMSTANCES SHALL Peerless, ITS SUBCONTRACTORS OR AGENTS BE LIABLE FOR ANY OF THE FOLLOWING, EVEN IF INFORMED OF THEIR POSSIBILITY AND REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, WARRANTY, STRICT LIABILITY OR TORT, INCLUDING, WITHOUT LIMITATION, NEGLIGENCE OF ANY KIND WHETHER ACTIVE OR PASSIVE: (A) THIRD PARTY CLAIMS AGAINST CUSTOMER FOR DAMAGES, (B) ANY DELAY, LOSS, DAMAGE OR SERVICE FAILURE ATTRIBUTABLE TO ANY SERVICE, DEVICE, PRODUCT OR ACTIONS OF ANY PERSON, INCLUDING BUT NOT LIMITED TO DELAY, LOSS, DAMAGE, OR SERVICE OR DEVICE FAILURE ATTRIBUTABLE TO COMPUTER VIRUSES, WORMS, COMPUTER SABOTAGE, 'DENIAL OF SERVICE' ATTACKS, DNS SPOOFING ATTACKS AND/OR OTHER HACKING ATTACKS OF A SIMILAR NATURE, OR (C) INTEROPERABILITY OF SPECIFIC CUSTOMER APPLICATIONS.

**LIMITATIONS PERIOD.** EXCEPT FOR CLAIMS FOR INDEMNIFICATION, NO ACTION OR PROCEEDING AGAINST EITHER PARTY ARISING UNDER THESE TERMS, THE SERVICES, OR LEASE OR SALE OF DEVICES PROVIDED WILL BE COMMENCED BY THE OTHER PARTY MORE

THAN ONE (1) YEAR AFTER THE TERMINATION OF THE TERMS OR Peerless PROVIDING THE SERVICES OR DEVICES, WHICHEVER IS LATER, AND EACH PARTY ACKNOWLEDGES THAT THIS LIMITATION CONSTITUTES AN EXPRESS WAIVER BY IT OF ANY RIGHTS UNDER ANY APPLICABLE STATUTE OF LIMITATIONS WHICH WOULD OTHERWISE AFFORD ADDITIONAL TIME.

#### **INDEMNITY.**

For the purposes of this provision, "Losses" means all losses, liabilities, damages and costs, including taxes and other additional charges, and all related costs and expenses (including reasonable attorney's fees and disbursements and costs of investigation, litigation and settlement).

Customer shall defend, indemnify and hold Peerless, its affiliates, and their respective employees, agents, and contractors harmless from and against all Losses resulting from or in connection with any third party claims, suits, or proceedings: (i) arising from Customer's mischaracterization of its traffic or erroneous classification, as applicable, as an end user of the Services, where applicable; (ii) alleging that the content, use and/or publication of information and communications transmitted by Customer, or its customers or end-users using the Services or Devices ("Content") infringes upon or violates the rights of such third party; and (iii) alleging that Customer's use of the Services, Devices or the Content violates applicable law regardless of the form of action, whether in contract, tort, warranty, or strict liability and whether in respect of copyright infringement or any manner of intellectual property claims; including but not limited to, under either (ii) or (iii) above, defamation claims or claims involving publication or transmittal of obscene, indecent, offensive, racist, unreasonably violent, threatening, intimidating or harassing materials.

Each Party shall defend, indemnify and hold the other Party, its affiliates, and their respective employees, agents, and contractors harmless from and against all Losses resulting from or in connection with any third party claims, suits, or proceedings arising out of, relating to, or in connection with a death, personal injury, or damage to real and tangible real property to the extent resulting from or caused by the gross negligence, willful misconduct, or recklessness of the indemnifying Party, its affiliates, and their respective employees, agents, or contractors.

The Parties' indemnity obligations are conditioned upon: (A) the indemnified Party giving the indemnitor prompt written notice of any such suits, claims, and proceedings; (B) the indemnitor having complete and sole control of the defense and settlement of any such claim, suits, or proceeding provided, however, that the indemnitor provides all relevant information in a timely manner to the indemnified Party and that the indemnified Party must approve of any settlement, such approval not to be unreasonably withheld; and (C) the indemnified Party reasonably cooperating with the indemnitor to facilitate the defense or settlement thereof.

#### **FORCE MAJEURE.**

Other than with respect to failure to make payments due hereunder, neither party shall be held responsible for any delay or failure in performance of any part of these Terms to the extent such delay or failure is caused by: fire; flood; earthquake; the elements; lightning; explosion; war; act of terrorism; strike; embargo; labor dispute; utility curtailments; power failures; government

requirement; civil or military authority; act of god or nature; inability to secure materials or transportation facilities; act or omission of carriers or suppliers (other than the parties themselves); acts or failures to act of any governmental authority; computer viruses or worms; 'denial of service' attacks, DNS spoofing attacks and/or other hacking attacks of a similar nature (provided that the parties have taken reasonable steps to prevent such hacking attacks) or any other causes beyond its reasonable control, whether or not similar to the foregoing providing that for any cause of force majeure the parties have taken reasonable steps to prevent such an event. Failure of either party to perform under the Terms, because of the occurrence of an event of force majeure lasting more than forty-five (45) days will, upon twenty-four (24) hours written notice to the other party, represent a ground for termination only of the Services affected by such event.

**REGULATORY MATTERS; COMPLIANCE WITH LAWS; USE OF SERVICES AND SOFTWARE; ACCEPTABLE USE POLICY; FAIR USE POLICY; SHORT DURATION CALLS; AUTO-DIALING AND CALL BLASTING.**

The Parties shall comply with their licenses and all laws applicable to the Terms and to their respective businesses. The Parties shall perform their obligations under the Terms in a commercially reasonable, ethical, and professional manner and in accordance with applicable law.

Peerless, upon reasonable notice to Customer, may cancel or suspend the provision of the whole or any part of any Service or lease of Devices which is determined to be a violation of, or no longer permitted under, any applicable law or regulation or of Peerless' license in the jurisdiction, or for Customer use of Services not as designed or provided or disrupt other users of the Services or of the Peerless Network.

Peerless hereby grants to Customer a personal, non-exclusive, non-transferable license during the term of these Terms to use, in object code form, all software and related documentation owned by Peerless ("Licensed Material") which may be furnished to Customer under the Terms solely for use with the Service ordered. Any Licensed Material furnished to Customer under these Terms shall not be reproduced or copied in whole or in part and will be returned to Peerless at the conclusion of the term (or earlier termination) of these Terms.

Customer will ensure that neither it nor its customers or other authorized third-party end users interfere with or disrupt other users of the Services or of the Peerless Network. Customer will use a Services and Devices only for the purposes for which they are designed and provided. Customer shall abide by Peerless's then-current Acceptable Use Policy ("AUP") available at <https://www.peerlessnetwork.io/terms> and incorporated by reference.

*Fair Use Policy.* For unlimited SIP and PRI trunk services, Fair Use Policy limits outbound minutes to 4,000 per SIP trunk channel per month and 92,000 per PRI per month. The calculation is the total outbound minutes in a billing cycle, divided by the total SIP trunk channels or PRIs. The amount over 4,000 will be multiplied by the \$0.01 penalty rate and multiplied by the number of unlimited SIP trunks. By way of example only, if Customer has 20 unlimited SIP trunk channels, 96,000 minutes, the overage would be 800 outbound minutes per Unlimited SIP trunk channel, multiplied by 20 or \$160. In addition, if the percentage of outbound calls to high cost destinations exceed

10%, Peerless reserves the right to bill a \$0.01 per minute surcharge for traffic to over the 10% threshold to high cost destinations.

Customer is solely responsible for (a) content of information and communications transmitted using the Services and Devices, and (b) use and publication of communications and/or information using the Services or Devices. Customer understands and agrees that Peerless is only an intermediary for the transmission of Customer and third-party information, that Peerless plays a passive role as a conduit of information for Customer and third parties, and that Peerless neither initiates the transmission of information, selects the receivers of the transmission, nor selects nor modifies the information contained in the transmission.

*Call Recording.* With Cloud PBX Services, you may be provided with functionality that allows you to record individual telephone conversations. Laws regarding notice, notification and consent for recording conversations varies by each state, including the requirement to obtain consent in some states. You agree that you are solely responsible for complying with all federal, state, and local laws in any state if you decide to use the recording feature.

*CALEA Compliance.* Peerless intends to fully comply with the Communications Assistance for Law Enforcement Act ("CALEA"). Notwithstanding any provision in the Terms to the contrary, by using the Services or leasing Devices, Customer agrees and consents to Peerless's right to monitor and otherwise disclose the nature of communications if and as required by CALEA without any further notice to you.

## **GOVERNING LAW.**

These Terms shall be governed by the laws of the State of Illinois, without giving effect to the principles of conflicts of laws, except that if federal law, including the Communications Act of 1934 (47 U.S.C. 151 et. seq.), as amended by the Telecommunications Act of 1996, and as from time to time interpreted in the duly authorized rules, regulations and orders of the Federal Communications Commission ("FCC") or a state Commission, applies, federal law shall control.

## **NOTICES.**

All notifications, requests, demands and other communications required or permitted under these Terms ("Notices") will be in writing and addressed to the recipient Party at the address(es) specified below. Notice will be deemed given: (a) upon delivery, when delivered in person during a Business Day or, if outside the hours of a Business Day, on the next Business Day; (b) twenty-four hours (24) after transmission of an email or deposit with an overnight delivery service for next day delivery; (c) the same day when sent by facsimile transmission during normal business hours, receipt confirmed by sender's equipment; or (d) three (3) Business Days after deposit in the mail, postage prepaid, registered or certified mail, return receipt requested.

To Peerless: Peerless Network, Inc.  
433 W. Van Buren, Suite 410S, Chicago, IL 60607 ATTN: EVP, Sales and Marketing  
Facsimile: 312-506-0931  
[contracts@peerlessnetwork.com](mailto:contracts@peerlessnetwork.com)

For billing disputes: [billing@peerlessnetwork.com](mailto:billing@peerlessnetwork.com)

For termination: [billing@peerlessnetwork.com](mailto:billing@peerlessnetwork.com)

To Customer: Pursuant to the information submitted in the registration process.

## **GENERAL.**

*Independent Contractors.* Peerless and Customer are, and shall be deemed to be, independent contractors with respect to the subject matter of these Terms. Nothing contained herein shall constitute this arrangement to be a joint venture or a partnership between Peerless and Customer. Neither Party has any authority to enter into agreements of any kind on behalf of the other Party.

*Assignment.* Customer may not assign its rights or obligations under these Terms. Peerless may freely assign the Terms or any portion thereof to an entity controlling, controlled by, or under common control with, directly or indirectly, by Peerless (a "Peerless Affiliate"), and may freely assign its right to receive payments hereunder. Any assignment, transfer or other disposition which is in violation of this provision is void and of no force and effect.

*Subcontracting.* Peerless, without Customer's consent, may subcontract the provision of a Service, a portion of a Service, or lease of Devices provided that Peerless will continue to be liable for the performance of such subcontractors under the Terms.

*Customer Data.* Notwithstanding anything to the contrary, Customer agrees that Peerless (or any Peerless Affiliate) may process personal data (for example, contact details) provided by Customer in connection with the Terms (hereinafter, "Customer Data") for the purpose of the Terms, for purposes connected with the Service or lease of Devices, and/or business relationship between the Parties, consistent with applicable law and regulation. Customer confirms that, to the extent required, it has obtained all necessary consents from third parties in order to share any third-party information. Such processing may also include transferring Customer Data to other Peerless Affiliates worldwide and/or its storage in a local or foreign database.

*Confidential Information.* Each Party agrees to maintain in strict confidence customer data or data a reasonable person would consider confidential. No obligation of confidentiality shall apply to disclosed information which the recipient (i) already possessed without obligation of confidentiality, or (ii) develops independently, or (iii) rightfully receives without obligation of confidentiality from a third party, or (iv) must disclose due to reasons permitted or prescribed by law or due to court, mediation, arbitration, or official orders. The recipient shall immediately notify the other Party of any disclosures made pursuant to this provision. Each Party acknowledges that a breach or threatened breach of confidentiality may cause irreparable harm, which cannot be adequately compensated by monetary damages. Accordingly, in the event of any such breach or threatened breach, the Party that threatened to make or made the unauthorized disclosure consents to equitable relief, including temporary restraining orders or preliminary or permanent injunctions, in

addition to any other remedies that the Party to which the confidential information belongs is entitled.

*Privacy.* For Cloud PBX Services, Peerless must utilize, in whole or in part, the public Internet and third-party networks to transmit voice and other communications. Peerless encrypts all voice communications for its Cloud PBX Services, but Peerless cannot guarantee that VoIP communication will be completely secure. You agree that Peerless shall not be liable for any lack of privacy arising out of use of the Cloud PBX Services. You acknowledge that you have read our Privacy Policy ("Privacy Policy") understand that it sets forth how we will collect, store, and use your Customer Data. If you do not agree with our Privacy Policy, then you must stop using the Peerless Services immediately.

*Publicity.* Neither Party will publish or use any advertising, sales promotions, press releases or other publicity which uses the name, logo, trademarks or service marks of the other without the prior written approval of the other, provided either Party may list the other as a supplier/customer of the services provided hereunder.

*E9-1-1 Dialing.* If you decide to utilize the E9-1-1 service option, you agree to the Notification and Disclosure regarding the Non-Availability of Traditional 911 or E911 Dialing Service available at <https://www.peerlessnetwork.io/terms> when utilizing VoIP Emergency Services 911 Dialing. Customer is responsible for managing 911-database information associated with assigned numbers, including registering any telephone number and any applicable, corresponding CNAM for 911 calling capability in the Peerless Portal in advance of terminating any call(s) to 911. Peerless will send these calls to the Public Safety Answering Point ("PSAP") serving the physical location associated with the Registered Address. Calls to 911 from an unregistered or invalid number, will be routed to the Emergency Call Relay Center ("ECRC"). Callers will be required to provide their address and phone number for ECRC agents to properly address the call. Violations of this provision will incur an ECRC pass-through surcharge.

*No Waiver.* No waiver of any term or condition of the Terms shall be enforceable unless it is in writing and signed by the Party against whom it is sought to be charged. No failure or delay by either Party in exercising any right, power or remedy will operate as a waiver of any such right, power or remedy unless provided herein. The waiver by either Peerless or Customer of any breach of the Terms by the other in a particular instance will not operate as a waiver of subsequent breaches of a same or different kind.

*Binding Effect.* If any provision of these Terms is held to be invalid or unenforceable, the remainder of the Terms will remain in full force and effect, and such provision will be deemed to be amended to the minimum extent necessary to render it enforceable.

*Amendments.* No amendment to or modification of or rescission, termination, or discharge of these Terms is effective unless it is in writing, identified as an amendment to or rescission, termination or discharge of these Phone Lease Terms and signed by an authorized representative of Peerless.

*Survival.* Termination of these Terms shall not affect either Party's accrued rights or obligations under these Terms as they exist at the time of termination, or any rights or obligations that either expressly or by implication continue after these Terms have ended.

*No Third-Party Beneficiary.* These Terms are not intended to be for the benefit of any third party, is not enforceable by any third party, and will not confer on any third party any remedy, claim, right of action or other right.

*Headings.* The headings and other captions in these Terms are for convenience and reference only and shall not be used in interpreting, construing or enforcing any of the provisions of these Terms.

*Remedies.* Except as may otherwise be provided herein, the assertion by a Party of any right or the obtaining of any remedy hereunder shall not preclude such Party from asserting or obtaining any other right or remedy, at law or in equity, hereunder.

*Last updated: May 26, 2022*

# **MASTER SERVICES AGREEMENT**

This Master Services Agreement (this "Agreement") is entered into between the signatories below and consists of this signature page, the attached Peerless Terms and Conditions, Service Guide, and any applicable documents incorporated by reference. The Effective Date of the Agreement is the last date when the Agreement was signed ("Effective Date").

Except as otherwise provided in this Agreement, all notices will be given in writing to the address below. The parties will notify each other in writing of any changes to the contact information on this page.

The parties have caused this Agreement to be duly executed by their authorized representatives below. *Peerless may consider this document null and void if a Customer-executed version is not received by Peerless within thirty (30) days of the Peerless signature date or if Customer amends the Peerless-executed version.*

|                                                                                     |                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
|-------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Customer:</b>                                                                    | <b>Peerless Network, Inc. and its Affiliates</b>                                                                                                                                                                                                                                                                                                                                                                                                           |
| <b>Signature:</b>                                                                   | <b>Signature:</b>                                                                                                                                                                                                                                                                                                                                                                                                                                          |
| <b>Name:</b>                                                                        | <b>Name:</b>                                                                                                                                                                                                                                                                                                                                                                                                                                               |
| <b>Title:</b>                                                                       | <b>Title:</b>                                                                                                                                                                                                                                                                                                                                                                                                                                              |
| <b>Date:</b>                                                                        | <b>Date:</b>                                                                                                                                                                                                                                                                                                                                                                                                                                               |
| <b>Notices to Customer:</b><br>Address:<br><br>Attn:<br><br>Phone #:<br><br>E-mail: | <b>Notices to Peerless:</b><br>433 W. Van Buren, Suite 410S, Chicago, IL 60607<br>ATTN: EVP Sales and Marketing<br>Facsimile: 312-506-0931<br><a href="mailto:contracts@peerlessnetwork.com">contracts@peerlessnetwork.com</a> ;<br><a href="mailto:enterprisecontracts@peerlessnetwork.com">enterprisecontracts@peerlessnetwork.com</a><br>For billing disputes/termination: <a href="mailto:billing@peerlessnetwork.com">billing@peerlessnetwork.com</a> |

*Continue to Next Page*

## Terms and Conditions

PLEASE READ THESE TERMS AND CONDITIONS CAREFULLY AS THEY CONTAIN VERY IMPORTANT INFORMATION ABOUT THE TERMS APPLICABLE TO THE SERVICES AND DEVICES PEERLESS WILL PROVIDE YOU.

In these Terms and Conditions ("Terms"), "we," "us," "our" or "Peerless" will refer to Peerless Network, Inc., and the terms "you," "your" and "Customer" will refer to you. Peerless and Customer are collectively referred to herein as "Parties" and individually as a "Party." If you are registering for a Peerless account to use the Services or Devices on behalf of an organization, you are agreeing to these Terms for that organization and promising to Peerless that you have the authority to bind that organization to these Terms (and, in which case, the terms "you," "your" and "Customer" will refer to that organization). If that organization has a separate written agreement with Peerless covering the use of the Services or Devices, that agreement will govern such use.

Peerless will provide you at least thirty (30) days advance written notice of any non-pricing revisions. This notice will be provided to the email address noted in the cover page above. Your continued access or use of the Peerless Services or Devices constitutes your acceptance of any revisions. If you do not agree to the revisions, you should stop using the Peerless Services and Devices otherwise you will continue to be liable for the Services or Devices used.

### SERVICES AND DEVICES PROVIDED.

Peerless agrees to provide, and Customer agrees to accept and pay for, those services and/or devices Customer selects from the Service Guide found on the Peerless Portal at <https://www.peerlessnetwork.io/terms#service-guide-terms> and associated rates provided in the fully executed Service Order Attachments ("SOA") that accompany this Agreement.

The Services and Devices will be provided in accordance with these Terms, the Service Guide, and additional terms referenced herein, and state and federal tariffs, if applicable. Applicable state and federal tariffs consist of the service descriptions and other provisions contained in tariffs filed by Peerless or its affiliates, with the applicable commission having jurisdiction over the Services being provided, where applicable. In the event of a conflict between these Terms, the Service Guide, and the tariffs, where applicable, the order of priority shall be first the Terms, then the Service Guide, then the applicable tariffs.

All Services are subject to availability as well as operational and systems limitations. Services will be provided using Peerless' own facilities and/or those of third-party service providers.

### TERM AND TERMINATION.

The Terms are effective as of the "Effective Date" and shall continue for successive one (1) month periods or as otherwise agreed to by the Parties when Services and Devices are ordered, unless cancelled by either Party giving at least thirty (30) days' written notice prior to the expiration of the then current term. Notwithstanding the foregoing, the Terms shall not expire for so long as Peerless continues to provide Services or Devices under these Terms. No new Services may be initiated, or Devices ordered, following notice of cancellation by either Party.

Each Service or Device will have a Service Term that is defined below:

- SIP Trunking, Unified Communications, Toll Free and all related VoIP Services and Devices: the Service Term commences when you select and order any of the Services or Devices per this Agreement.
- Network Services, SD-WAN and other Managed Services: the Service Term commences when the Service ordered is made available to you.

Termination Before Start of Service Date for a Service or Services: If you terminate a Service (in whole or part) before the Start of Service Date, you agree to pay Peerless all charges Peerless incurs or will incur from underlying service providers, as well as costs Peerless has incurred to provide the Service or Services.

If Customer terminates the Services or lease of Devices prior to the expiration of the Service Term for any Services or Devices, Customer agrees to pay all remaining charges for Services and lease of Devices, if applicable, including but not limited to all MRCs for the remainder of the Service Term, as defined herein, which amounts shall become immediately due and payable upon receipt of Customer's early termination notice.

Termination/disconnection requests by Customer must be submitted in writing to [billing@peerlessnetwork.com](mailto:billing@peerlessnetwork.com). Customer acknowledges that in the event of expiration or termination of the Terms, Peerless has no obligation to continue to provide

Services to Customer or, where applicable, to route traffic originating or terminating to Customer. Customer further agrees that it will immediately affect an orderly and timely transition of Services to another provider or route. Customer may terminate Services or the lease of Devices with prior written notice if Peerless cancels, changes, or supersedes any provision of the Service or lease of Devices due to a change in applicable law if the change materially impacts Customer's use of the Services or Devices or creates additional material obligations for the Customer.

Peerless may immediately suspend or terminate the Services or Customer's lease of Devices if Customer fails to (a) make any payment due under the Terms, (b) provide satisfactory assurance of its ability to pay for Services or lease of Devices after reasonable notice, (c) cure any fraudulent or otherwise unlawful activity after reasonable notice, (d) commits a material breach of the Terms which is not remedied after reasonable notice or cannot be remedied; or (e) becomes the subject of a voluntary petition or an involuntary petition in bankruptcy or any proceeding for insolvency, receivership, liquidation, or assignment for the benefit of creditors that is not dismissed within sixty (60) days.

Termination of Services or lease of Devices for any cause does not release Customer from any liability which, at the time of termination, has already accrued to Customer, or which may accrue in respect of any act or omission prior to termination or from any obligation which is expressly stated to survive the termination.

#### **CHARGES, BILLING AND PAYMENT.**

Commencing on the first day of the Service Term for each Service, Customer will pay the applicable charges for the Services and lease of Devices. For Service, monthly recurring charges ("MRCs") will be invoiced on a monthly basis in advance and non-recurring charges will be invoiced in arrears. Usage-based charges will be invoiced in arrears. Peerless may pass through surcharges without mark-up to Customer when directly related to Customer's use of service. If the first day of the Service Term for any Services falls on a day other than the first day of any Billing Cycle, the initial charge to Customer shall consist of (a) the pro-rata portion of the applicable monthly charge covering the period from the Effective Date to the first day of the subsequent Billing Cycle, and (b) the MRC for the following Billing Cycle. With the exception of international long distance calls, the rates for Services and Device leases set forth in each Order will be fixed during the applicable Service Term.

Special Construction - If an order for any access service is determined to require special construction by the underlying access vendor, Peerless will provide Customer the cost for the special construction and the option to agree to pay the cost. If Customer declines to pay for the special construction the order will be cancelled at no cost to Customer.

Customer elects the following payment method: \_\_\_\_ **prepay** with credit card, where Customer agrees that fees will be deducted from its credit balance, with the ability to top-up and auto top-up; or (ii) \_\_\_\_ **post-paid** with credit card, where Customer wishes to pay for the Services or lease of Devices via credit card at the end of the billing cycle. With this option, Customer agrees their card will be charged on the 1st of each month for the prior month's usage; and (iii) \_\_\_\_ **post-paid with credit terms**, where Customer selects that it will pay via check or Automated Clearing House ("ACH") net thirty (30). If Customer selects post-paid with credit terms and there is not credit card on file, Customer authorizes Peerless to assess Customer's credit worthiness by whatever means Peerless deems reasonable, including but not limited to accessing the Customer's business credit information and reaching out to bank and trade references that must be provided by Customer prior to contract execution. Depending on the method of payment selected, payment will be due on the applicable due date ("Due Date"). Any amount not properly disputed and not paid by the Due Date will bear a late payment charge at the rate of one and a half percent (1.5%) per month (or such lower amount as may be required by law) until fully paid.

Any billing dispute or request for a billing adjustment must be made in good faith and in writing within thirty (30) days from the Due Date otherwise charges will be conclusively deemed undisputed and accepted by Customer. The Parties agree that resolving disputes as promptly and efficiently as possible will best serve their respective interests. All disputes must be directed to [billing@peerlessnetwork.com](mailto:billing@peerlessnetwork.com) and shall include detailed documentation sufficient for Peerless to assess each element of the dispute (the "Dispute Notification"). Each Party will appoint a knowledgeable, responsible representative with decision-making authority to negotiate in good faith to resolve any dispute arising out of or relating to the dispute. Each Party, through its representatives, shall negotiate diligently and in good faith for a period of sixty (60) days from the Dispute Notification or a mutually-agreed upon time period, to resolve the dispute. If the internal resolution process does not result in a resolution of the dispute, the Parties will proceed to arbitration as set forth below. If the dispute is resolved, the Customer must pay the disputed amount or Peerless will provide a credit on the next invoice, provided Customer is not delinquent in payment or otherwise in default of the Terms, in which case the credit will be issued against a subsequent Customer invoice.

#### **BINDING ARBITRATION.**

Any dispute arising out of the Terms, provision of Services, or lease of Devices that cannot be resolved pursuant to good-faith negotiations must be submitted to binding arbitration in accordance with the rules established by the American Arbitration Association ("AAA"). The decision of a sole arbitrator shall be binding on all parties. The arbitration shall be held in accordance with the Commercial Arbitration Rules of the American Arbitration Association ("AAA Rules"), as amended by the Terms.

Either Party may initiate arbitration by providing written demand for arbitration, a copy of these Terms and the administrative fee required by the AAA Rules to the AAA located in Chicago, Illinois. A copy of the notice shall also be provided to the other Party. The remaining cost of the arbitration, including the fees and expenses of the arbitrator, shall be shared equally by the Parties, unless the arbitrator's award provides otherwise. Each Party shall bear the cost of preparing and presenting its case. The Parties agree that binding arbitration shall be conducted in Chicago, Illinois.

The Parties agree that the Arbitrator's authority to grant relief shall be subject to the provisions of the Terms, the Federal Arbitration Act, the ABA-AAA Code of Ethics for Arbitrators in Commercial Disputes, applicable tariffs, substantive law of the State of Illinois or the applicable state public service commission, and the Communications Act of 1934, as amended. Except for the intentional misconduct of a Party, the Arbitrator shall not be able to award, nor shall any Party be entitled to receive, punitive, incidental, consequential, exemplary, reliance or special damages, including damages for lost profits. The Arbitrators' decision shall follow the plain meaning of the relevant documents, and shall be final, binding, and enforceable in a court of competent jurisdiction. The decision of the Arbitrator can only be appealed for mistake(s) of law.

#### **CREDIT AND ASSURANCE OF PAYMENT.**

In the event charges due pursuant to any invoice are not paid in full by the Due Date, Peerless shall have the right to suspend all or any portion of the Services or lease of Devices to Customer immediately until such time as Customer has paid in full all charges then due including any late fees or penalties. Following late payment or if at any time Peerless, in its sole discretion, believes that Customer presents an undue risk of nonpayment, Peerless may require that Customer provide satisfactory assurance of its ability to pay for Services or lease of Devices, i.e., requiring a deposit, guaranteed letter of credit, or other means as requested, and advanced payment of the cost of reinstituting Services prior to reinstating such Services or reinstate a Device lease prior to such reinstatement. Failure of Customer to provide the requested assurance within five (5) business days shall be a material breach of Customer's obligations under the Terms.

#### **AGENT AUTHORIZATION.**

If you come to Peerless through an authorized agent, your authorized agent may manage your account and add, change, or remove Services or Devices from your account. You agree to be bound by any changes made by agent to your account, including any charges associated with the addition of Services or Devices. To the extent your agent makes any unauthorized changes to your account, you agree to hold Peerless harmless for any such changes and pursue any claims or causes against agent for alleged damages or losses due to that unauthorized activity.

#### **TAXES, ASSESSMENTS AND CHARGES.**

Customer acknowledges that Peerless computes all charges exclusive of any applicable federal, state, or local use, excise, gross receipts, sales, and privilege taxes, duties, fees, or similar liabilities. Notwithstanding the forgoing, the End User Common Line charge, when applicable is included within the applicable rate. Except to the extent Customer provides a valid tax exemption certificate in a form acceptable to Peerless prior to the delivery of Service. Customer will be responsible to pay any other surcharges that Peerless is required, or permitted, to invoice to Customer in connection with any Service, including, without limitation, permanent or temporary governmental fees or assessments unless Customer provides the appropriate certification to Peerless that the Customer will make payments directly to the applicable agency assessing the fees. It is the Customer's sole responsibility to supply tax-exempt documentation, if applicable, failing which Customer will be billed accordingly. For taxing purposes, Customer's Place of Primary Use ("PPU") is Customer's billing address. Customer will contact [billing@peerlessnetwork.com](mailto:billing@peerlessnetwork.com) for changes to its PPU. All payments made by Customer will be made without any deduction or withholding for or on account of any taxes. Customer agrees to indemnify, defend and hold harmless Peerless from any liability or expense associated with applicable taxes or surcharges. To the extent Customer purchases Devices from Peerless, Customer is responsible for all taxes related to the purchase, including sales taxes, value-added taxes, and any other similar taxes imposed by any governmental entity.

#### **NETWORK MODIFICATION AND NETWORK MAINTENANCE.**

Peerless reserves the right to modify its network, system configurations or routing configurations. Peerless may, in its sole discretion and without liability, change or modify the features and functionalities of the Services or modify or replace any hardware or software in the network or in equipment used to deliver the Services provided that this does not have a material adverse effect on the Services. Peerless may perform scheduled or emergency maintenance (including temporary suspension of Service as necessary) to maintain or modify the network, network terminating equipment, where applicable, or the Services. Peerless will give Customer such notice of the maintenance as is reasonably practicable in the circumstances, provided that, in the event of scheduled maintenance, Peerless will give Customer at least four (4) days' notice.

#### **USE OF SERVICES OR DEVICES OUTSIDE THE US.**

Peerless encourages use of the Services within the United States to other countries, but Peerless does not presently offer or support use of the Services or Devices in countries other than the United States. Peerless's Services and Devices are intended for use only by persons or entities whose primary business address is in the United States. If you remove the Devices to a country outside the United States or use the Services from there, you do so at your own risk, including the risk that such activity violates local laws in that country. You will be solely responsible for any violations of law resulting from such use.

#### **CONNECTIVITY**

Peerless's Cloud PBX Services are designed to work generally with unencumbered high-speed internet connections. If your internet service provider places restrictions on the usage of VoIP services, Peerless does not represent or warrant that use of the Cloud PBX Services by you is permitted by any or all of the internet service providers.

There may be other services with which our Cloud PBX Services may be incompatible. Some providers of broadband service may provide modems that prevent the transmission of communications using the Cloud PBX Services. Peerless does not warrant that the Cloud PBX Services will be compatible with all broadband services and expressly disclaims any express or implied warranties regarding the compatibility of the Services with any particular broadband service.

The Cloud PBX Services may also not be compatible with non-voice communications equipment, including but not limited to, some home and office security systems that are set up to make automatic phone calls, emergency phones in elevators, some aspects of satellite TV systems, digital entertainment systems, fax machines, modems and medical monitoring devices. You acknowledge and agree to such limitations and waive any claim you may have against Peerless for interference with or disruption of such systems due to the Services.

#### **DATA AND COMPUTER MANAGEMENT**

You agree and acknowledge that you are responsible for obtaining, installing, configuring, and maintaining suitable equipment to use the Cloud PBX Services, including your computer, telephone, software, system or software upgrades, patches, and other fixes which may be necessary to access the Services. Peerless will only provide assistance with respect to Peerless-provided Devices. For Cloud PBX Services, Peerless may measure and monitor network performance and may access and record information about your computer's profile and settings to provide customized technical support. You agree that Peerless can monitor your internet connection and your network performance, as well as access and adjust your computer settings, as related to the Cloud PBX Services. For Cloud PBX Services, Peerless is not obligated to store your communication logs, voicemails, faxes, or other messages and, if it does so, it is solely storing them as a convenience to you.

#### **WARRANTY AND LIMITATION OF LIABILITY.**

**WARRANTY AND DISCLAIMER.** PEERLESS WARRANTS THAT IT WILL PERFORM SERVICES WITH REASONABLE SKILL AND CARE AND IN A WORKMANLIKE MANNER AND WILL USE REASONABLE EFFORTS TO RESTORE SERVICES IN THE CASE OF FAILURE. PEERLESS MAKES NO OTHER WARRANTY OR GUARANTEE RELATING TO THE SERVICES OR DEVICES, EXPRESS OR IMPLIED, UNDER THE TERMS OR OTHERWISE, AND PEERLESS EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES OR CONDITIONS RELATING TO THE SERVICES AND DEVICES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO ANY IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY, SATISFACTORY QUALITY, AND/OR FITNESS FOR A PARTICULAR PURPOSE.

**LIMITATION OF LIABILITY.** IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, PUNITIVE, RELIANCE, OR COVER DAMAGES, INCLUDING LOSS OF PROFITS, REVENUE, DATA, OR USE, INCURRED BY EITHER PARTY OR ANY THIRD PARTY, INCLUDING ANY DAMAGES ARISING FROM ANY NEGLIGENT ACT OR INADVERTENT OMISSION, WHETHER IN CONTRACT, TORT OR UNDER LAW, EVEN IF THAT PARTY HAS BEEN ADVISED OF THE

POSSIBILITY OF SUCH DAMAGES. EXCEPT FOR A BREACH OF CUSTOMER'S PAYMENT OBLIGATIONS HEREUNDER, IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR DIRECT DAMAGES IN AN AMOUNT IN EXCESS OF THE AMOUNT THAT PEERLESS CHARGED OR WOULD HAVE CHARGED FOR SUCH SERVICES OR DEVICES IN THE SIX MONTHS PRIOR TO WHEN THE CLAIMS FIRST AROSE OR \$100,000, WHICHEVER IS LESS.

**EXCLUSION OF LIABILITY.** SUBJECT TO THE PROVISIONS ON WARRANTY AND DISCLAIMER AND LIMITATION OF LIABILITY, ABOVE, IN NO CIRCUMSTANCES SHALL PEERLESS, ITS SUBCONTRACTORS OR AGENTS BE LIABLE FOR ANY OF THE FOLLOWING, EVEN IF INFORMED OF THEIR POSSIBILITY AND REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, WARRANTY, STRICT LIABILITY OR TORT, INCLUDING, WITHOUT LIMITATION, NEGLIGENCE OF ANY KIND WHETHER ACTIVE OR PASSIVE: (A) THIRD PARTY CLAIMS AGAINST CUSTOMER FOR DAMAGES, (B) ANY DELAY, LOSS, DAMAGE OR SERVICE FAILURE ATTRIBUTABLE TO ANY SERVICE, DEVICE, PRODUCT OR ACTIONS OF ANY PERSON, INCLUDING BUT NOT LIMITED TO DELAY, LOSS, DAMAGE, OR SERVICE OR DEVICE FAILURE ATTRIBUTABLE TO COMPUTER VIRUSES, WORMS, COMPUTER SABOTAGE, 'DENIAL OF SERVICE' ATTACKS, DNS SPOOFING ATTACKS AND/OR OTHER HACKING ATTACKS OF A SIMILAR NATURE, OR (C) INTEROPERABILITY OF SPECIFIC CUSTOMER APPLICATIONS.

**LIMITATIONS PERIOD.** EXCEPT FOR CLAIMS FOR INDEMNIFICATION, NO ACTION OR PROCEEDING AGAINST EITHER PARTY ARISING UNDER THESE TERMS, THE SERVICES, OR LEASE OR SALE OF DEVICES PROVIDED WILL BE COMMENCED BY THE OTHER PARTY MORE THAN ONE (1) YEAR AFTER THE TERMINATION OF THE TERMS OR PEERLESS PROVIDING THE SERVICES OR DEVICES, WHICHEVER IS LATER, AND EACH PARTY ACKNOWLEDGES THAT THIS LIMITATION CONSTITUTES AN EXPRESS WAIVER BY IT OF ANY RIGHTS UNDER ANY APPLICABLE STATUTE OF LIMITATIONS WHICH WOULD OTHERWISE AFFORD ADDITIONAL TIME.

#### **INDEMNITY.**

For the purposes of this provision, "Losses" means all losses, liabilities, damages and costs, including taxes and other additional charges, and all related costs and expenses (including reasonable attorney's fees and disbursements and costs of investigation, litigation and settlement).

Customer shall defend, indemnify and hold Peerless, its affiliates, and their respective employees, agents, and contractors harmless from and against all Losses resulting from or in connection with any third party claims, suits, or proceedings: (i) arising from Customer's mischaracterization of its traffic or erroneous classification, as applicable, as an end user of the Services, where applicable; (ii) alleging that the content, use and/or publication of information and communications transmitted by Customer, or its customers or end-users using the Services or Devices ("Content") infringes upon or violates the rights of such third party; and (iii) alleging that Customer's use of the Services, Devices or the Content violates applicable law regardless of the form of action, whether in contract, tort, warranty, or strict liability and whether in respect of copyright infringement or any manner of intellectual property claims; including but not limited to, under either (ii) or (iii) above, defamation claims or claims involving publication or transmittal of obscene, indecent, offensive, racist, unreasonably violent, threatening, intimidating or harassing materials.

Each Party shall defend, indemnify and hold the other Party, its affiliates, and their respective employees, agents, and contractors harmless from and against all Losses resulting from or in connection with any third party claims, suits, or proceedings arising out of, relating to, or in connection with a death, personal injury, or damage to real and tangible real property to the extent resulting from or caused by the gross negligence, willful misconduct, or recklessness of the indemnifying Party, its affiliates, and their respective employees, agents, or contractors.

The Parties' indemnity obligations are conditioned upon: (A) the indemnified Party giving the indemnitor prompt written notice of any such suits, claims, and proceedings; (B) the indemnitor having complete and sole control of the defense and settlement of any such claim, suits, or proceeding provided, however, that the indemnitor provides all relevant information in a timely manner to the indemnified Party and that the indemnified Party must approve of any settlement, such approval not to be unreasonably withheld; and (C) the indemnified Party reasonably cooperating with the indemnitor to facilitate the defense or settlement thereof.

#### **FORCE MAJEURE.**

Other than with respect to failure to make payments due hereunder, neither party shall be held responsible for any delay or failure in performance of any part of these Terms to the extent such delay or failure is caused by: fire; flood; earthquake; the elements; lightning ;explosion; war; act of terrorism; strike; embargo; labor dispute; utility curtailments; power failures;

;government requirement; civil or military authority; act of god or nature; inability to secure materials or transportation facilities; act or omission of carriers or suppliers (other than the parties themselves); acts or failures to act of any governmental authority; computer viruses or worms; 'denial of service' attacks, DNS spoofing attacks and/or other hacking attacks of a similar nature (provided that the parties have taken reasonable steps to prevent such hacking attacks) or any other causes beyond its reasonable control, whether or not similar to the foregoing providing that for any cause of force majeure the parties have taken reasonable steps to prevent such an event. Failure of either party to perform under the Terms, because of the occurrence of an event of force majeure lasting more than forty-five (45) days will, upon twenty-four (24) hours written notice to the other party, represent a ground for termination only of the Services affected by such event.

**REGULATORY MATTERS; COMPLIANCE WITH LAWS; USE OF SERVICES AND SOFTWARE; ACCEPTABLE USE POLICY; FAIR USE POLICY; SHORT DURATION CALLS; AUTO-DIALING AND CALL BLASTING.**

The Parties shall comply with their licenses and all laws applicable to the Terms and to their respective businesses. The Parties shall perform their obligations under the Terms in a commercially reasonable, ethical, and professional manner and in accordance with applicable law.

Peerless, upon reasonable notice to Customer, may cancel or suspend the provision of the whole or any part of any Service or lease of Devices which is determined to be a violation of, or no longer permitted under, any applicable law or regulation or of Peerless' license in the jurisdiction, or for Customer use of Services not as designed or provided or disrupt other users of the Services or of the Peerless Network.

Peerless hereby grants to Customer a personal, non-exclusive, non-transferable license during the term of these Terms to use, in object code form, all software and related documentation owned by Peerless ("Licensed Material") which may be furnished to Customer under the Terms solely for use with the Service ordered. Any Licensed Material furnished to Customer under these Terms shall not be reproduced or copied in whole or in part and will be returned to Peerless at the conclusion of the term (or earlier termination) of these Terms.

Customer will ensure that neither it nor its customers or other authorized third-party end users interfere with or disrupt other users of the Services or of the Peerless Network. Customer will use a Services and Devices only for the purposes for which they are designed and provided. Customer shall abide by Peerless's then-current Acceptable Use Policy ("AUP") available at <https://www.peerlessnetwork.io/terms#acceptable-use-policy> and incorporated by reference.

Customer is solely responsible for (a) content of information and communications transmitted using the Services and Devices, and (b) use and publication of communications and/or information using the Services or Devices. Customer understands and agrees that Peerless is only an intermediary for the transmission of Customer and third-party information, that Peerless plays a passive role as a conduit of information for Customer and third parties, and that Peerless neither initiates the transmission of information, selects the receivers of the transmission, nor selects nor modifies the information contained in the transmission.

**Call Recording.** With Cloud PBX Services, you may be provided with functionality that allows you to record individual telephone conversations. Laws regarding notice, notification and consent for recording conversations varies by each state, including the requirement to obtain consent in some states. You agree that you are solely responsible for complying with all federal, state, and local laws in any state if you decide to use the recording feature.

**CALEA Compliance.** Peerless intends to fully comply with the Communications Assistance for Law Enforcement Act ("CALEA"). Notwithstanding any provision in the Terms to the contrary, by using the Services or leasing Devices, Customer agrees and consents to Peerless's right to monitor and otherwise disclose the nature of communications if and as required by CALEA without any further notice to you.

**GOVERNING LAW.**

These Terms shall be governed by the laws of the State of Illinois, without giving effect to the principles of conflicts of laws, except that if federal law, including the Communications Act of 1934 (47 U.S.C. 151 et. seq.), as amended by the Telecommunications Act of 1996, and as from time to time interpreted in the duly authorized rules, regulations and orders of the Federal Communications Commission ("FCC") or a state Commission, applies, federal law shall control.

**NOTICES.**

All notifications, requests, demands and other communications required or permitted under these Terms ("Notices") will be in writing and addressed to the recipient Party at the address(es) specified on the cover page above. Notice will be deemed given: (a) upon delivery, when delivered in person during a Business Day or, if outside the hours of a Business Day, on the next Business Day; (b) twenty-four hours (24) after transmission of an email or deposit with an overnight delivery service for next day delivery; (c) the same day when sent by facsimile transmission during normal business hours, receipt confirmed by sender's equipment; or (d) three (3) Business Days after deposit in the mail, postage prepaid, registered or certified mail, return receipt requested.

#### **GENERAL.**

*Independent Contractors.* Peerless and Customer are, and shall be deemed to be, independent contractors with respect to the subject matter of these Terms. Nothing contained herein shall constitute this arrangement to be a joint venture or a partnership between Peerless and Customer. Neither Party has any authority to enter into agreements of any kind on behalf of the other Party.

*Assignment.* Customer may not assign its rights or obligations under these Terms. Peerless may freely assign the Terms or any portion thereof to an entity controlling, controlled by, or under common control with, directly or indirectly, by Peerless (a "Peerless Affiliate"), and may freely assign its right to receive payments hereunder. Any assignment, transfer or other disposition which is in violation of this provision is void and of no force and effect.

*Subcontracting.* Peerless, without Customer's consent, may subcontract the provision of a Service, a portion of a Service, or lease of Devices provided that Peerless will continue to be liable for the performance of such subcontractors under the Terms.

*Customer Data.* Notwithstanding anything to the contrary, Customer agrees that Peerless (or any Peerless Affiliate) may process personal data (for example, contact details) provided by Customer in connection with the Terms (hereinafter, "Customer Data") for the purpose of the Terms, for purposes connected with the Service or lease of Devices, and/or business relationship between the Parties, consistent with applicable law and regulation. Customer confirms that, to the extent required, it has obtained all necessary consents from third parties in order to share any third-party information. Such processing may also include transferring Customer Data to other Peerless Affiliates worldwide and/or its storage in a local or foreign database.

*Confidential Information.* Each Party agrees to maintain in strict confidence customer data or data a reasonable person would consider confidential. No obligation of confidentiality shall apply to disclosed information which the recipient (i) already possessed without obligation of confidentiality, or (ii) develops independently, or (iii) rightfully receives without obligation of confidentiality from a third party, or (iv) must disclose due to reasons permitted or prescribed by law or due to court, mediation, arbitration, or official orders. The recipient shall immediately notify the other Party of any disclosures made pursuant to this provision. Each Party acknowledges that a breach or threatened breach of confidentiality may cause irreparable harm, which cannot be adequately compensated by monetary damages. Accordingly, in the event of any such breach or threatened breach, the Party that threatened to make or made the unauthorized disclosure consents to equitable relief, including temporary restraining orders or preliminary or permanent injunctions, in addition to any other remedies that the Party to which the confidential information belongs is entitled.

*Privacy.* For Cloud PBX Services, Peerless must utilize, in whole or in part, the public Internet and third-party networks to transmit voice and other communications. Peerless encrypts all voice communications for its Cloud PBX Services, but Peerless cannot guarantee that VoIP communication will be completely secure. You agree that Peerless shall not be liable for any lack of privacy arising out of use of the Cloud PBX Services. You acknowledge that you have read our Privacy Policy ("Privacy Policy") understand that it sets forth how we will collect, store, and use your Customer Data. If you do not agree with our Privacy Policy, then you must stop using the Peerless Services immediately.

*Publicity.* Neither Party will publish or use any advertising, sales promotions, press releases or other publicity which uses the name, logo, trademarks or service marks of the other without the prior written approval of the other, provided either Party may list the other as a supplier/customer of the services provided hereunder.

*E9-1-1 Dialing.* If you decide to utilize the E9-1-1 service option, you agree to the Notification and Disclosure regarding the Non-Availability of Traditional 911 or E911 Dialing Service available at <https://www.peerlessnetwork.io/terms#disclosure-911> when utilizing VoIP Emergency Services 911 Dialing. *Customer is responsible for managing 911-database information associated with assigned numbers, including registering any telephone number and any applicable, corresponding CNAM for*

911 calling capability in the Peerless Portal in advance of terminating any call(s) to 911. Peerless will send these calls to the Public Safety Answering Point ("PSAP") serving the physical location associated with the Registered Address. Calls to 911 from an unregistered or invalid number, will be routed to the Emergency Call Relay Center ("ECRC"). Callers will be required to provide their address and phone number for ECRC agents to properly address the call. Violations of this provision will incur an ECRC pass-through surcharge.

*No Waiver.* No waiver of any term or condition of the Terms shall be enforceable unless it is in writing and signed by the Party against whom it is sought to be charged. No failure or delay by either Party in exercising any right, power or remedy will operate as a waiver of any such right, power or remedy unless provided herein. The waiver by either Peerless or Customer of any breach of the Terms by the other in a particular instance will not operate as a waiver of subsequent breaches of a same or different kind.

*Binding Effect.* If any provision of these Terms is held to be invalid or unenforceable, the remainder of the Terms will remain in full force and effect, and such provision will be deemed to be amended to the minimum extent necessary to render it enforceable.

*Amendments.* No amendment to or modification of or rescission, termination, or discharge of these Terms is effective unless it is in writing, identified as an amendment to or rescission, termination or discharge of these Phone Lease Terms and signed by an authorized representative of Peerless.

*Survival.* Termination of these Terms shall not affect either Party's accrued rights or obligations under these Terms as they exist at the time of termination, or any rights or obligations that either expressly or by implication continue after these Terms have ended.

*No Third-Party Beneficiary.* These Terms are not intended to be for the benefit of any third party, is not enforceable by any third party, and will not confer on any third party any remedy, claim, right of action or other right.

*Headings.* The headings and other captions in these Terms are for convenience and reference only and shall not be used in interpreting, construing or enforcing any of the provisions of these Terms.

*Remedies.* Except as may otherwise be provided herein, the assertion by a Party of any right or the obtaining of any remedy hereunder shall not preclude such Party from asserting or obtaining any other right or remedy, at law or in equity, hereunder.

*[End of Terms; Continue to Rates and Service Guide]*

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

*City of*  
**IRWINDALE**  
**AGENDA REPORT**

---

Date: March 22, 2023  
To: Honorable Mayor and Members of the City Council  
From: Julian A. Miranda, City Manager  
Issue: Approve Out-of-State Travel to the National Association of Latino Elected and Appointed Officials 40<sup>th</sup> Annual Conference in New York City, New York for one City Councilmember

---

**City Manager's Recommendation:**

That the City Council of the City of Irwindale adopt Resolution No. 2023-23-3401 entitled, "A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF IRWINDALE APPROVING OUT-OF-STATE TRAVEL FOR THE MAYOR TO ATTEND THE NATIONAL ASSOCIATION OF LATINO ELECTED AND APPOINTED OFFICIALS 40<sup>TH</sup> ANNUAL CONFERENCE TO BE HELD FROM JULY 11-13, 2023 IN NEW YORK CITY, NEW YORK."

**Administrative Action:**

**Submitted by:**

Theresa Olivares, Assistant City Manager



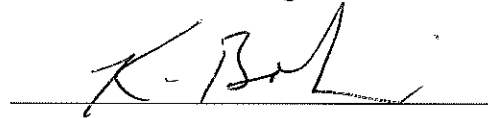
**Prepared by:**

Berlyn Aguila, Management Analyst



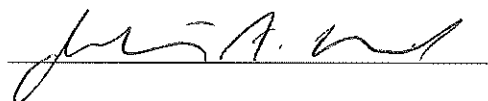
**Reviewed by:**

Kambiz Borhani, Finance Director / City Treasurer



**Approved by:**

Julian A. Miranda, City Manager



**Background and Analysis:**

Every year, the National Association of Latino Elected and Appointed Officials (NALEO) holds an annual conference to unite hundreds of Latino leaders nationwide to facilitate the meaningful exchange of ideas and foster solutions around today's most pressing policy issues. Elected and appointed official representatives will participate by sharing and learning from other policy and governance leaders during the innovative breakout and plenary sessions.

The conference provides national leadership on critical issues affecting Latino political participation, including immigration and naturalization, voting rights, election reform, the Census, and the appointment of qualified Latinos to top executive and judicial positions. It achieves its mission through integrated strategies that include increasing the effectiveness of Latino policymakers, mobilizing the Latino community to engage in civic life, and promoting policies that advance Latino political engagement.

The City Council will be represented at the conference by Mayor H. Manuel Ortiz. The City's participation in the NALEO 40<sup>th</sup> annual conference promotes policy and workforce development, emergency preparedness, and securing criminal infrastructure.

**Fiscal Impact:**

The City of Irwindale is an active member of NALEO. The approximate cost to attend the conference is \$3,000.00, including registration and travel accommodations. Funding for the Mayor to attend this conference is available in the FY 2022-2023 budget.

**Attachments:**

1. Resolution 2023-23-3401
2. NALEO Conference Fees and Agenda

**RESOLUTION NO. 2023-23-3401**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF IRWINDALE,  
CALIFORNIA, APPROVING OUT-OF-STATE TRAVEL FOR THE MAYOR TO  
ATTEND THE NATIONAL ASSOCIATION OF LATINO ELECTED AND  
APPOINTED OFFICIALS 40<sup>TH</sup> ANNUAL CONFERENCE TO BE HELD FROM  
JULY 11-13, 2023 IN NEW YORK CITY, NEW YORK.**

**WHEREAS**, every year, the National Association of Latino Elected and Appointed Officials (NALEO) holds an annual conference to facilitate the meaningful exchange of ideas and foster solutions around today's most pressing policy issues; and

**WHEREAS**, elected and appointed official representatives participate by sharing and learning from other policies and governance leaders; and

**WHEREAS**, the conference provides national leadership on critical issues affecting Latino political participation, including immigration, naturalization, voting rights, election reform, the census, and the appointment of qualified Latinos; and

**WHEREAS**, NALEO's mission is to increase the effectiveness of Latino policymakers, mobilizing the Latino community and promoting policies that advance political engagement; and

**WHEREAS**, the City Council desires to be represented at the conference by the Mayor; and

**WHEREAS**, attending the conference will benefit the City and its community by discussing economics, education, workforce development, emergency preparedness, and securing criminal infrastructure.

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

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

**SECTION 2.** The City Council hereby finds that the City's participation in the National Association of Latino Elected and Appointed Officials (NALEO) 40<sup>th</sup> Annual Conference in New York City, New York serves the valid purpose of policy development and preparedness and approving out-of-state travel for the Mayor to represent the City at the 2023 NALEO Conference.

**SECTION 3.** The Chief Deputy City Clerk shall certify to the adoption of this resolution, which, shall in turn, have immediate effect.

**PASSED, APPROVED, and ADOPTED** this 22<sup>nd</sup> day of March 2023.

---

H. Manuel Ortiz, Mayor

ATTEST:

---

Laura M. Nieto, MMC  
Chief Deputy City Clerk

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

I, Laura M. Nieto, Chief Deputy City Clerk of the City of Irwindale, do hereby certify that the foregoing Resolution No. 2023-23-3401 was adopted at a regular meeting of the Irwindale City Council held on the 22<sup>nd</sup> day of March 2023, by the following vote of the Council:

AYES:       Councilmembers:

NOES:       Councilmembers:

ABSTAIN:   Councilmembers:

ABSENT:     Councilmembers:

---

Laura M. Nieto, MMC  
Chief Deputy City Clerk

[About](#) [Agenda](#) [Fees](#) [Hotel](#) [COVID-19](#) [FAQ](#) [Contact Us](#)  
[About Us](#)

[REGISTER](#)

[Already Registered?](#)



JULY 11-13,  
2023

NEW YORK  
CITY

## FEES

### Online Rates

Last day to register online is June 23, 2023.

**Lifetime Members | \$600**  
For NALEO Lifetime Members.

### Onsite Rates

**Lifetime Members | \$700**  
For NALEO Lifetime Members.

Access to all Conference sessions, meals, and NALEO-sponsored evening events.

**Members | \$700**

For current paid NALEO Members.

Access to all Conference sessions, meals, and NALEO-sponsored evening events.

**New/Renewing Members | \$800**

Includes a one-year NALEO membership.

Access to all Conference sessions, meals, and NALEO-sponsored evening events.

**Non-Members | \$900**

Access to all Conference sessions, meals, and NALEO-sponsored evening events.

Access to all Conference sessions, meals, and NALEO-sponsored evening events.

**Members | \$800**

For current paid NALEO Members.

Access to all Conference sessions, meals, and NALEO-sponsored evening events.

**New/Renewing Members | \$900**

Includes a one-year NALEO membership.

Access to all Conference sessions, meals, and NALEO-sponsored evening events.

**Non-Members | \$1000**

Access to all Conference sessions, meals, and NALEO-sponsored evening events.

## Single-Day Pass (Pricing coming soon)

## Evening Event (Pricing coming soon)

## Cancellation, Refund and Transfer Policies

"All Events" access fee includes access to all Conference workshops, general sessions, all meal functions, and all special events for the duration of the three-day Conference. Mail-in registration must be postmarked before June 23, 2023, and must include full payment. Any registration postmarked after June 23, 2023, will be processed at the on-site rate.

Registrations canceled on or before June 23, 2023, will be refunded less a \$200 processing fee. After June 23, 2023, there will be no cancellation refunds. No Exceptions. Cancellation requests must be in writing. All refunds will be issued after the Conference. There will be a \$25 processing fee for all returned checks.

NALEO Educational Fund ("the Fund"), its staff, Board of Directors, volunteers, and sponsors disclaim any liability for the actions or omissions of suppliers to this Conference and disclaim any responsibility for the safety of any attendee while in transit to or from this Conference or any event(s) associated with the Conference. The planners and sponsors reserve the right, if circumstance compels, to cancel this function without penalty. At its option, the Fund may allow a refund of the registration fee.

By checking the terms and conditions, you agree that any photographs, video, sound recordings, or any other depiction of you by any medium, will be the exclusive property of

the Fund. You hereby give the Fund consent to use any such photographs, video, sound recordings, or any other depiction of you by any medium, obtained in connection with this event, for any purpose related to the Fund's work, including, but not limited to, use in the Fund's promotional materials and promotional materials of its donors and sponsors.

By checking the terms and conditions for registration, you hereby give the Fund consent to include your name in its list of Conference participants

### **Registration Replacements/Transfers**

If a NALEO member transfers his or her registration to a nonmember, the nonmember must pay the difference between the member and nonmember price at the time of transfer. Transfer requests must be submitted in writing to the NALEO Educational Fund by the paid registrant at least five business days in advance of the start of the NALEO Annual Conference. The signed written request should include the name and affiliation of the person to whom the registration is being transferred. No registration transfers will be processed onsite at the NALEO Annual Conference.

[REGISTER](#)

[Already registered?](#)

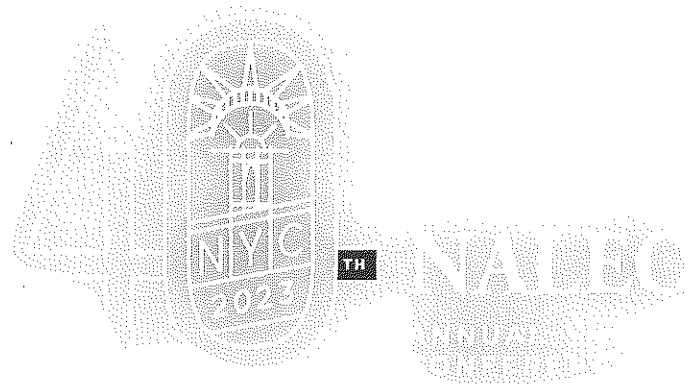
Copyright © 2000-2023 Cvent, Inc. All rights reserved.

Event Management Software   Mobile Event Apps   Survey Software   Event Venues  
Strategic Meetings Management  
Privacy Policy

**About** **Agenda** **Fees** **Hotel** **COVID-19** **FAQ** **Contact Us**  
**About Us**

**REGISTER**

[Already Registered?](#)



**JULY 11-13,  
2023**

**NEW YORK  
CITY**

## **HOTEL INFORMATION**

## The Heart of the City. The Soul of Times Square.

### New York Marriott Marquis

#### Reserving a room for the NALEO 40<sup>th</sup> Annual Conference

NALEO reserved a block of rooms for attendees at the New York Marriott Marquis. The room rate under the NALEO room block is **\$269.00 (plus tax)**.

NALEO Conference participants **must** register for the Conference before reserving a room. When you register for the NALEO Conference online, you will have the option to make your reservations under the NALEO Conference room block located on the registration confirmation page.

The hotel will not accept telephone reservations. The deadline to make hotel reservations under the NALEO group rate is **Wednesday, June 7, 2023**.



[MAP](#)

[REGISTER](#)

[Already registered?](#)

Copyright © 2000-2023 Cvent, Inc. All rights reserved.

[Event Management Software](#)   [Mobile Event Apps](#)   [Survey Software](#)   [Event Venues](#)  
[Strategic Meetings Management](#)  
[Privacy Policy](#)

[About](#) [Agenda](#) [Fees](#) [Hotel](#) [COVID-19](#) [FAQ](#) [Contact Us](#)  
[About Us](#)

[REGISTER](#)

[Already Registered?](#)



JULY 11-13,  
2023

NEW YORK  
CITY

# AGENDA

🕒 Viewing in Eastern Time [Adjust](#)

## July 10, 2023

---

### > Conference Registration: Early Check-In

2:00 PM-5:00 PM ET

## July 11, 2023

---

### Opening Gavel Breakfast Ceremony

9:00 AM-10:00 AM ET

### NALEO Service Project

10:00 AM-12:00 PM ET

### Understanding the Pandemic's Role and Impact on Families and Children

10:30 AM-11:30 AM ET

Concurrent Breakout Session

### The Nuts and Bolts of County and Municipal Budgets

10:30 AM-11:30 AM ET

Concurrent Breakout Session

### Emergency Preparedness: Droughts

10:30 AM-11:30 AM ET

Concurrent Breakout Session

### The Digital Economy & Blockchain Technology

10:30 AM-11:30 AM ET

Concurrent Breakout Session

### National Leadership Luncheon & Plenary: New York Latino Diaspora

12:00 PM-1:30 PM ET

**NALEO Marketplace and Networking Break**

1:30 PM-2:00 PM ET

**NALEO Service Project**

1:30 PM-3:00 PM ET

**Securing our Critical Infrastructures**

2:00 PM-3:00 PM ET

Concurrent Breakout Session

**Small Businesses and Latino Entrepreneurship**

2:00 PM-3:00 PM ET

Concurrent Breakout Session

**Understanding our Communities: The History of Puerto Rico and the Diaspora**

2:00 PM-3:00 PM ET

Concurrent Breakout Session

**"Newly" Alumni Networking**

3:30 PM-4:30 PM ET

**Opening Reception: Welcome to the Big Apple**

5:00 PM-7:00 PM ET

**July 12, 2023**

---

**Breakfast Plenary: Latina Leadership**

8:45 AM-10:15 AM ET

**NALEO Service Project**

10:00 AM-12:00 PM ET

**The Fentanyl Crisis in Schools**

10:30 AM-11:30 AM ET

Concurrent Breakout Session

**Emergency Preparedness: Floods**

10:30 AM-11:30 AM ET

Concurrent Breakout Session

**Workforce Development for Local Government: Hiring for Open Positions**

10:30 AM-11:30 AM ET

Concurrent Breakout Session

**Electrification**

10:30 AM-11:30 AM ET

Concurrent Breakout Session

**National Leadership Luncheon & Plenary: Economic and Financial Outlook**

12:00 PM-1:30 PM ET

**NALEO Marketplace and Networking Break**

1:30 PM-2:00 PM ET

**NALEO Service Project**

1:30 PM-3:00 PM ET

**Best Practices Policy Expo: Community Resiliency in the Face of Tragedy**

2:00 PM-3:00 PM ET

## **Lifetime Membership Networking**

3:30 PM-4:30 PM ET

## **July 13, 2023**

---

### **Breakfast Plenary: Discussion with National Leaders**

9:00 AM-10:00 AM ET

### **NALEO Service Project**

10:00 AM-12:00 PM ET

### **Having Courageous Conversations on Race in America**

10:30 AM-11:30 AM ET

Concurrent Breakout Session

### **The Nuts and Bolts of School District Budgets**

10:30 AM-11:30 AM ET

Concurrent Breakout Session

### **National Leadership Luncheon**

12:00 PM-1:00 PM ET

### **Presidential Forum**

1:00 PM-2:00 PM ET

### **Latino Leadership – Developing Coalitions and Agendas across Ethnic and Community Interests**

2:30 PM-3:30 PM ET

The NALEO Network at Work: Charla on Leadership and Best Practices

### **Leadership, Compassion Fatigue, and Self-Care**

2:30 PM-3:30 PM ET

The NALEO Network at Work: Charla on Leadership and Best Practices

**Newly Elected & Alumni Roundtables**

2:30 PM-3:30 PM ET

The NALEO Network at Work: Charla on Leadership and Best Practices

[REGISTER](#)

[Already registered?](#)

Copyright © 2000-2023 Cvent, Inc. All rights reserved.

[Event Management Software](#)   [Mobile Event Apps](#)   [Survey Software](#)   [Event Venues](#)  
[Strategic Meetings Management](#)  
[Privacy Policy](#)

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

*City of*  
**IRWINDALE**  
**AGENDA REPORT**

CC Item L7

---

Date: March 22, 2023

To: Honorable Mayor and Members of the City Council

From: Julian A. Miranda, City Manager

Issue: Second Reading of Ordinance No. 767 Pertaining to Amendment of Sections 5.04.050, 5.04.060, 5.04.070, 5.04.270, 5.04.410, and 5.04.420 of Chapter 5.04 of Title 5 of the Irwindale Municipal Code Related to the Dispute of Business Taxes, Licenses and Regulations

---

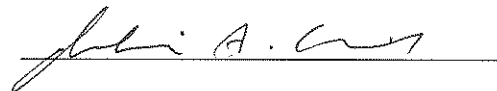
**City Manager's Recommendation:**

It is recommended that the Irwindale City Council **adopt on second reading by title only with further reading waived, Ordinance No. 767** entitled: "AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF IRWINDALE AMENDING SECTIONS 5.04.050, 5.04.060, 5.04.070, 5.04.210, 5.04.270, 5.04.410, AND 5.04.420 OF CHAPTER 5.04 ("GENERAL REGULATIONS") OF TITLE 5 ("BUSINESS TAXES, LICENSES AND REGULATIONS") OF THE IRWINDALE MUNICIPAL CODE RELATED TO THE DISPUTE OF BUSINESS TAXES, LICENSES AND REGULATIONS".

**Administrative Action:**

**Prepared & Submitted by:**

Julian A. Miranda, City Manager



**Reviewed by:**

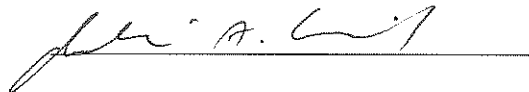
Adrian R. Guerra, City Attorney

**Electronically Approved**

---

**Approved by:**

Julian A. Miranda, City Manager



**Background and Analysis:**

At the meeting of March 8, 2023, the City Council introduced for first reading Ordinance No. 767, which would amend Chapter 5.04 of the IMC to rescind the authority granted to the City Attorney and vest that authority with the City Manager in order to more closely align with the duties of City officers as set forth in the City Charter and IMC.

It would now be appropriate for the City Council to adopt Ordinance No. 767 on second reading.

**Attachments:**

Ordinance No. 767 "AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF IRWINDALE AMENDING SECTIONS 5.04.050, 5.04.060, 5.04.070, 5.04.210, 5.04.270, 5.04.410, AND 5.04.420 OF CHAPTER 5.04 ("GENERAL REGULATIONS") OF TITLE 5 ("BUSINESS TAXES, LICENSES, AND REGULATIONS") OF THE IRWINDALE MUNICIPAL CODE RELATED TO THE DISPUTE OF BUSINESS TAXES, LICENSES AND REGULATIONS"

## **ORDINANCE NO. 767**

### **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF IRWINDALE AMENDING SECTIONS 5.04.050, 5.04.060, 5.04.070, 5.04.210, 5.04.270, 5.04.410, AND 5.04.420 OF CHAPTER 5.04 ("GENERAL REGULATIONS") OF TITLE 5 ("BUSINESS TAXES, LICENSES, AND REGULATIONS") OF THE IRWINDALE MUNICIPAL CODE RELATED TO THE DISPUTE OF BUSINESS TAXES, LICENSES AND REGULATIONS**

**WHEREAS**, Chapter 5.04 of Title 5 of the Irwindale Municipal Code ("IMC") defines the general regulations pertaining to business taxes, licenses and regulations within the City; and

**WHEREAS**, within IMC Chapter 5.04, the City Attorney is vested with certain final decision making authority regarding disputes relating to business taxes, licenses, and regulations; and

**WHEREAS**, under Section 705 of the Charter of the City of Irwindale, the City Attorney's duties include, but are not limited to, acting as the legal advisor of the City and its officers, defending the City in all matters in civil litigation, and prosecuting violations of City ordinances; and

**WHEREAS**, the authority granted by IMC Chapter 5.04 exceeds the scope of the City Attorney's duties as set forth in the City Charter; and

**WHEREAS**, the Charter of the City of Irwindale Sections 702 and 703 create the office of the City Manager and provide that the office's duties shall be provided under the IMC; and

**WHEREAS**, under IMC Section 2.08.050, the City Manager's duties include, but are not limited to, enforcing all laws, rules, and regulations of the City, preparing the annual budget and submitting the same to the City Council together with his recommendations, and keeping the City Council at all times fully advised as to the financial condition of the city; and

**WHEREAS**, the City Manager is the administrative head of the City, and is responsible for the operation of all city departments, providing leadership, direction, and guidance, and leading the City's Administration Department, which strives to provide excellent customer service to decision-makers, City departments, employees, businesses and the public; and

**WHEREAS**, the City Manager's office is more appropriately vested with decision making authority regarding business taxes, licenses, and regulations as set forth in Chapter 5.04; and

**WHEREAS**, the City Council now wishes to amend Chapter 5.04 of Title 5 of the IMC to rescind the authority granted to the City Attorney, and vest that authority with the City Manager in order to more closely align with the duties of City officers as set forth in the City Charter and IMC.

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

**SECTION 1.** The City Council of the City of Irwindale finds the above recitals are true and correct and are incorporated herein by this reference.

**SECTION 2.** Section 5.04.050 ("City Clerk- License collector and custodian of funds") of Chapter 5.04 ("General Regulations") of Title 5 ("Business Taxes, Licenses, and Regulations") of the Irwindale Municipal Code is amended and shall now read as follows (deleted text, if any, is shown in strikethrough; new text, if any, is shown in bold & italics):

"The city clerk and/or ~~his authorized deputy~~ ***or his or her authorized designee***, shall serve as license collector and shall be the custodian of all funds collected thereunder until transferred to the city treasurer. ***All references to the City Clerk throughout this chapter shall mean and refer to the City Clerk or his or her authorized designee.*** All funds collected by the license collector under Chapters 5.04 through 5.16 shall be deposited daily with the city treasurer."

**SECTION 3.** Section 5.04.060 ("City Clerk- Additional Powers") of Chapter 5.04 ("General Regulations") of Title 5 ("Business Taxes, Licenses, and Regulations") of the Irwindale Municipal Code is amended and shall now read as follows (deleted text, if any, is shown in strikethrough; new text, if any, is shown in ***bold & italics***):

"The city clerk shall have, in addition to all other powers conferred upon him, for good cause shown, the power to extend the time for filing any statement required for a period of not to exceed thirty days, and in such case waive any penalty that would have otherwise accrued, and, with the approval of the council and the written approval of the ~~city attorney~~ ***city manager***, to compromise any claim for license fee subject to the provisions of Chapters 5.04 through 5.16."

**SECTION 4.** Section 5.04.070 ("Application – Form – Filing") of Chapter 5.04 ("General Regulations") of Title 5 ("Business Taxes, Licenses, and Regulations") of the Irwindale Municipal Code is amended and shall now read as follows (deleted text, if any, is shown in strikethrough; new text, if any, is shown in ***bold & italics***):

"All applications for license shall be in writing upon a form approved by the city attorney and issued by the city clerk. The applicant, in addition, shall submit any further information or evidence in writing as required by the city clerk, or the ~~city attorney~~ ***city manager***, or other designated agency of the

city. The application shall be verified by the applicant and shall be filed with the city clerk **or his or her designee**. The city clerk shall send copies of the application to those officers and departments designated in Chapters 5.04 through 5.16, and to any other that may be designated by the city council."

**SECTION 5.** Subsection A of Section 5.04.210 ("License fees – Payable in Advance – Computation") of Chapter 5.04 ("General Regulations") of Title 5 ("Business Taxes, Licenses, and Regulations") of the Irwindale Municipal Code is amended and shall now read as follows (deleted text, if any, is shown in ~~strikethrough~~; new text, if any, is shown in **bold & italics**):

"A. The city council may, upon its own motion, or upon the written charges filed by the city clerk ~~or his deputy~~ or the ~~city attorney~~ **city manager**, give notice to any licensee or permittee to appear before the city council at a time and place set for such hearing to show cause, if there may be any, why the license or permit issued to the licensee or permittee shall not be revoked or suspended. The notice shall state the grounds for complaint or reasons for suspension in clear and concise language."

**SECTION 6.** Subsection A of Section 5.04.270 ("License fees – Payable in Advance – Computation") of Chapter 5.04 ("General Regulations") of Title 5 ("Business Taxes, Licenses, and Regulations") of the Irwindale Municipal Code is amended and shall now read as follows (deleted text, if any, is shown in ~~strikethrough~~; new text, if any, is shown in **bold & italics**):

"A. All license fees shall be paid in advance to the city clerk in lawful money of the United States. The amount to be paid shall be determined by the city clerk in accordance with the terms and provisions of Chapters 5.04 through 5.16. In case of dispute, the decision of the ~~city attorney~~ **city manager** as to the amount to be paid pursuant to the provisions of Chapters 5.04 through 5.16 shall be final."

**SECTION 7.** Subsection B of Section 5.04.410 ("Exemptions - Interstate Commerce") of Chapter 5.04 ("General Regulations") of Title 5 ("Business Taxes, Licenses, and Regulations") of the Irwindale Municipal Code is amended and shall now read as follows (deleted text, if any, is shown in ~~strikethrough~~; new text, if any, is shown in **bold & italics**):

"B. If it appears that the applicant is entitled to such exemption, the city clerk shall forthwith issue a free license. In case of dispute, the decision of the ~~city attorney~~ **city manager** is final."

**SECTION 8.** Section 5.04.420 ("Exemptions – Under Other Provisions of State Law") of Chapter 5.04 ("General Regulations") of Title 5 ("Business Taxes, Licenses, and Regulations") of the Irwindale Municipal Code is amended and shall now read as follows (deleted text, if any, is shown in ~~strikethrough~~; new text, if any, is shown in **bold & italics**):

"Every person claiming to be entitled to an exemption from payment of any license fee provided for in Chapters 5.04 through 5.16, upon the ground that such license fee is exempt under state law, shall file a verified statement with the city clerk disclosing the character of the business entitling such exemption. The statement shall state the name and location of the company or firm claiming the exemption, the type of business conducted and facts establishing that the person, organization or firm comes within the exemption of state law. Additional information shall be supplied to the city clerk or ~~city attorney~~ **city manager**, upon request in order to ascertain whether or not the claimant meets the exemption of the state law. In case of dispute, the decision of the ~~city attorney~~ **city manager** shall be final."

**SECTION 9. Severability.** If any section, subsection, sentence, clause or phrase of this ordinance is, for any reason, held to be invalid or unconstitutional, such decision shall not affect the validity or constitutionality of the remaining portions of this ordinance. The City Council hereby declares that it would have passed this ordinance, and each section, subsection, sentence, clause or phrase hereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared unconstitutional due to the writs of mandate issued by the Court.

**SECTION 10. Certification and Effective Date.** The City Clerk shall certify as to the passage and adoption of this Ordinance and shall cause the same to be posted at the designated locations in the City of Irwindale. This ordinance shall be in effective on the thirtieth (30th) day after the day of its adoption.

**PASSED, APPROVED AND ADOPTED** at a regular meeting of the City Council of the City of Irwindale this 22<sup>nd</sup> day of March, 2023.

---

H. Manuel Ortiz, Mayor

ATTEST:

---

Laura M. Nieto, MMC  
Chief Deputy City Clerk

STATE OF CALIFORNIA                      )

COUNTY OF LOS ANGELES     ) ss.  
CITY OF IRWINDALE         )

I, Laura M. Nieto, Chief Deputy City Clerk of the City of Irwindale do hereby certify that the foregoing Ordinance No. 767 was introduced for first reading at a regular meeting of the City Council of the City of Irwindale held on March 8, 2023, and adopted on second reading at a regular meeting of the City Council of the City of Irwindale held on March 22, 2023, and was carried by the following-roll call vote:

AYES:           Councilmembers:

NOES:           Councilmembers:

ABSENT:        Councilmembers:

ABSTAIN:       Councilmembers:

\_\_\_\_\_  
Laura M. Nieto, MMC  
Chief Deputy City Clerk

#### AFFIDAVIT OF POSTING

I, Laura M. Nieto, MMC, Chief Deputy City Clerk, certify that I caused a copy of Ordinance No. 767 adopted by the City Council of the City of Irwindale at its regular meeting held March 22, 2023, to be posted at the City Hall, Library, and Post Office on March 2, 2023.

\_\_\_\_\_  
Laura M. Nieto, MMC  
Chief Deputy City Clerk

Dated: \_\_\_\_\_

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

*City of*  
**IRWINDALE**  
**AGENDA REPORT**

---

Date: March 22, 2023  
To: Honorable Mayor and Members of the City Council  
From: Julian A. Miranda, City Manager  
Issue: Rejection of Claim: Fernando Guardado vs. City of Irwindale.

---

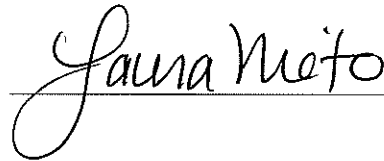
**City Manager's Recommendation:**

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

**Administrative Action:**

**Prepared / Submitted by:**

Laura Nieto, Chief Deputy City Clerk



**Reviewed by:**

Adrian R. Guerra, City Attorney

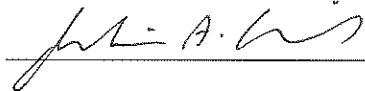
**Electronically Approved**

Kambiz Borhani, Finance Director / City Treasurer



**Approved by:**

Julian A. Miranda, City Manager



**Background and Analysis:**

On December 5, 2022, the City received a claim for damages from claimant Fernando Guardado. Claimant Guardado alleges that the front and rear passenger tires of his car were damaged when he drove over a pothole between the metal plates on Arrow Highway, between Allen Drive and Ayon.

The claim was reviewed by the City's claims adjuster, Carl Warren & Co., who has recommended the rejection of the claim on the basis that work was being completed under an encroachment permit, by Southern California Edison. The claim was tendered to Southern California Edison for further handling. 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.

**Attachment:**

Recommendation for Rejection  
Claim for Damages received December 5, 2022



**CARL WARREN & COMPANY**  
Claims Management and Solutions

A  **VENBROOK** Company

3/15/2023

TO: City of Irwindale

ATTENTION: Laura Nieto

RE:           Claim                               : Fernando Guardado V. City of Irwindale  
              Claimant                         : Fernando Guardado  
              Member                         : City of Irwindale  
              Date Rec'd by Mbr             : 12-05-2022  
              Date of Event                 : 11-20-2022  
              CW File Number              : 3040842

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. Please provide us with a copy of the Notice of Rejection and copy of Proof of Mailing. If you have any questions, feel free to contact the assigned adjuster or the undersigned claims specialist.

Very truly yours,

*Janice Baluyut*  
Janice Baluyut  
Claims Examiner  
Carl Warren & Company, LLC | A Venbrook Company  
Direct: 657.622.4326  
Email: JBaluyut@CarlWarren.com

PO Box 2411, Tustin, CA 92781  
T: 657-622-4200 | F: 866-254-4423 | [www.carlwarren.com](http://www.carlwarren.com)  
CA License #2607296



## CITY OF IRWINDALE

CLAIM FOR DAMAGES  
TO PERSON OR PROPERTY

504.6V

## 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 form 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

RECEIVED

DEC 05 2022

CITY OF IRWINDALE  
CITY CLERK'S DEPT.  
Clerk's Office  
Filing Stamp

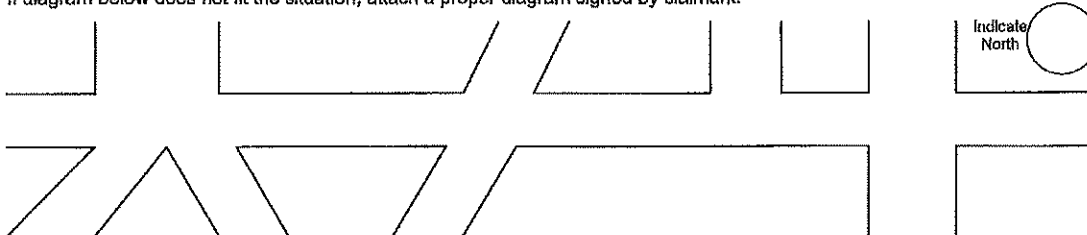
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |                                                                            |                                                               |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------|---------------------------------------------------------------|
| To: City of Irwindale                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |                                                                            | Claimant's Date of Birth<br>[REDACTED]                        |
| Name of Claimant<br><i>Fernando Guardado</i>                                                                                                                                                                                                                                                                                                                                                                                                                                                           |                                                                            | Claimant's Occupation<br><i>Respiratory Care Practitioner</i> |
| Home Address of Claimant<br>[REDACTED]                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |                                                                            | Home Telephone Number<br>[REDACTED]                           |
| Business Address of Claimant<br><i>N/A</i>                                                                                                                                                                                                                                                                                                                                                                                                                                                             |                                                                            | Business Telephone Number<br><i>N/A</i>                       |
| Name and address to which you desire notices or communications to be sent regarding this claim:<br><i>Fernando Guardado</i> [REDACTED]                                                                                                                                                                                                                                                                                                                                                                 |                                                                            |                                                               |
| When did DAMAGE or INJURY occur?<br><br>Date: <i>11/20/2022</i> Time: <i>0525 AM</i><br>If claim is for Equitable Indemnity, give date claimant served with complaint: _____                                                                                                                                                                                                                                                                                                                           | Names of any City employees involved in INJURY or DAMAGE<br><br><i>N/A</i> |                                                               |
| 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:<br><i>The damage happened on Arrow Highway, between the streets Allen Dr and Ayon Ave. going westbound to Los Angeles. On the right hand side lane at about midlane. There about five steel plates were located exposing a pothole and one plate was moved stacked on top of the other becoming a hazard for drivers.</i> |                                                                            |                                                               |
| Describe in detail how the DAMAGE or INJURY occurred.<br><i>The damage happened while driving to work at 0525 AM on Sunday November 20th. As I Fernando approached what seemed to be a patched work area/potholes I soon realized that there were some steel plates and an exposed pothole causing the tire damage.</i>                                                                                                                                                                                |                                                                            |                                                               |
| Why do you claim the City of Irwindale is responsible?<br><i>The city of Irwindale is responsible because the steel plates were <sup>error FC</sup> <del>removed</del> exposing a pothole. In addition one of the plates being on top of the other causing a hazard and an uneven surface and danger to drivers. The city failed to fix the pothole or place the steel plates back in place or placing cones to indicate a construction zone to warn drivers.</i>                                      |                                                                            |                                                               |
| What DAMAGE or INJURIES do you claim resulted? Give full extent of injuries or damage claimed.<br><i>The damage resulted on both front and back passenger tires <sup>error FC</sup> causing huge gouges on front and back passenger tires which the tires are unable to be patched to be fixed. Both tires needed to be replaced on <sup>error FC</sup> <del>my</del> Honda accord</i>                                                                                                                 |                                                                            |                                                               |

|                                                                                                                                     |               |                         |
|-------------------------------------------------------------------------------------------------------------------------------------|---------------|-------------------------|
| Claimant's Name: <u>Fernando Guardado</u>                                                                                           |               |                         |
| State the amount which you are claiming as of the date of presentation of this claim. Give basis of computation.<br><u>\$575.50</u> |               |                         |
| Give estimated amount of future losses due to INJURY or DAMAGE:<br><u>N/A</u>                                                       |               |                         |
| Was damage and/or injury investigated by the police? <u>NO</u> If yes, what City? <u>N/A</u>                                        |               |                         |
| Were paramedics or ambulance called? <u>NO</u> If yes, name City or ambulance <u>N/A</u>                                            |               |                         |
| 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)<br><u>[Signature]</u> | Typed Name<br><u>Fernando Guardado</u> | Date<br><u>12/01/2022</u> |
|---------------------------------------------------------------------------------------------|----------------------------------------|---------------------------|

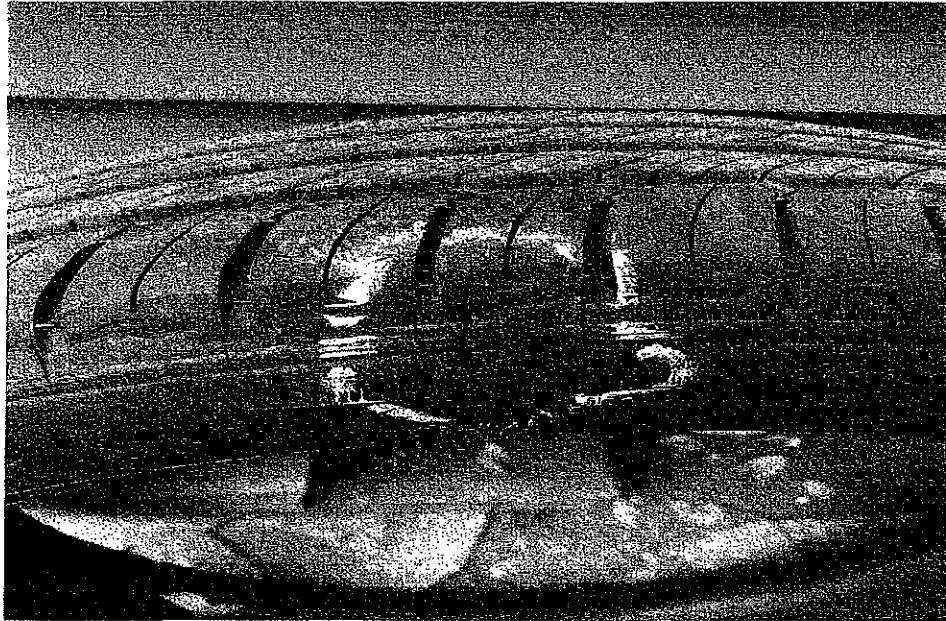
Note: Claims must be filed with the City Clerk. Presentation of a false claim is a felony (Penal Code Section 72)



Hazardous steel plates on Arrow highway



**Flat tires on passenger side and abrasion on the circumference of the tire as well.**



Receipt for purchase of two tires.

# CAN TIRE DEPOT

TIRES • BRAKES • ALIGNMENT • SHOCKS

---

AMERICAN TIRE DEPOT COVIN  
1070 N. AZUSA AVE.  
COVINA, CA 91722-2802  
TEL: (626) 838-1076

DATE: 07/21/22 TIME: 16:45 TO: 16:45:13  
LICENSE: 9A0L0161  
MILEAGE: 8,500 22 KWH ACCUR

SOLD TO: YESENIA GORDADO

CASH

| ITEM                                                                                                                                                                            | DESCRIPTION                         | QTY | UNIT PRICE | TOTAL  | TAX  | TOTAL  |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------|-----|------------|--------|------|--------|
| 55262                                                                                                                                                                           | HIGH 235/40R19 95V XL TRIM B2M4 DT  | 2   | 0.00       | 205.00 | 4.00 | 209.00 |
| VS                                                                                                                                                                              | VALVE STEM & WHEEL NUTS (PER WHEEL) | 2   | 0.00       | 0.00   | 0.00 | 0.00   |
| MB                                                                                                                                                                              | MOUNT & BALANCE TIRE                | 2   | 0.00       | 22.00  | 0.00 | 22.00  |
| <p>* ROTATE TIRES EVERY 5000 MILES TO KEEP<br/>           * MANUFACTURERS WARRANTY VALID.<br/>           * WE OFFER FREE ROTATIONS WITH PROOF<br/>           * OF PURCHASE.</p> |                                     |     |            |        |      |        |
| TH                                                                                                                                                                              | TIRE PRESSURE CHECKED               | 2   | 0.00       | 0.00   | 0.00 | 0.00   |
| TI                                                                                                                                                                              | TIRE INSPECTION PERFORMED           | 2   | 0.00       | 0.00   | 0.00 | 0.00   |
| DF                                                                                                                                                                              | TIRE DISPOSAL FEE                   | 2   | 0.00       | 0.00   | 0.00 | 0.00   |
| TR                                                                                                                                                                              | CALIFORNIA TIRE RECALL FEE          | 2   | 0.00       | 0.00   | 0.00 | 0.00   |

ESTIMATE: [ ] REVISED ESTIMATE: [ ] APPROVAL: [ ] DATE: [ ]

APPROVED BY: [ ] ALL WORK GUARANTEED AND SUBJECT TO INSPECTION FEE

REMARKS: [ ]

Customer's Signature: [ ]

ALL PERSONS HAVE LIMITED WARRANTY FOR 90 DAYS OR 10,000 MILES, WHICHEVER COMES FIRST. SEE REVERSE FOR DETAILS. ALL CLAIMS SUBJECT TO INSPECTION FEE.

[illegible]

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

*City of*  
**IRWINDALE**  
**AGENDA REPORT**

---

Date: March 22, 2023  
To: Honorable Mayor and Members of the City Council  
From: Julian A. Miranda, City Manager  
Issue: Approve Out-of-State Travel to the 2023 International Council of Shopping Centers Conference in Las Vegas, Nevada for City Council and City Staff

---

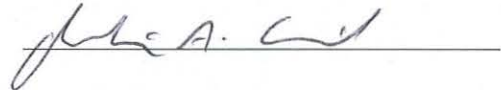
**City Manager's Recommendation:**

That the City Council of the City of Irwindale adopt Resolution No. 2023-25-3403 entitled: "A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF IRWINDALE APPROVING THE OUT-OF-STATE TRAVEL TO THE 2023 INTERNATIONAL COUNCIL OF SHOPPING CENTERS CONFERENCE IN LAS VEGAS, NEVADA FOR TWO CITY COUNCIL MEMBERS AND THREE STAFF REPRESENTATIVES."

**Administrative Action:**

**Submitted by:**

Julian A. Miranda, City Manager



**Prepared by:**

Iris Espino, Assistant to the City Manager

**Electronically Approved**

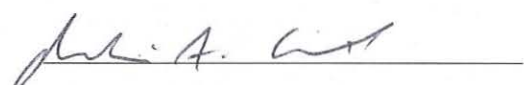
**Reviewed by:**

Kambiz Borhani, Finance Director / City Treasurer



**Approved by:**

Julian A. Miranda, City Manager



**Background and Analysis:**

Every year in May, the International Council of Shopping Centers (ICSC) holds its annual conference in Las Vegas, Nevada to advance the shopping center industry and promote its role in the commercial distribution of consumer goods and services. Cities throughout

the nation send representatives to promote retail opportunities and attract quality businesses and jobs.

The conference provides educational programs and publications in all aspects of shopping center development, finance, management, marketing, and other specialized areas of professional interest; holds meetings and other programs designed to promote the exchange of ideas among members and to facilitate the conduct of their business; collects and disseminates information about the shopping center industry, including statistical data and other statistical research; develops and maintains professional certification programs to encourage high standards for shopping center professionals; advocates the interest of the shopping center industry to local, state/provincial, federal and international governmental bodies; and publicizes to the general public promotional and educational shopping center business information.

The opportunity to attend ICSC was extended to all city council members. Two council members and three staff members are requesting to attend as representatives of the City of Irwindale at the ICSC 2023 annual conference. The City Manager, Community Development Director, and the Assistant to the City Manager will attend on behalf of the City. Additionally, the City will be collaborating with the San Gabriel Valley Economic Partnership through its membership to have access to the conference floor, with a booth to serve as a meeting space. The City's previous participation in the conference has allowed it to sell former redevelopment sites and attract commercial opportunities. The City's participation serves the valid public purpose of promoting the City's economic and business development.

**Fiscal Impact:**

The approximate cost for two council members and three staff representatives to attend the conference is \$10,000 which includes registration and travel accommodations. Funding for this conference has already been appropriated in the FY 2022-2023 General Fund Budget.

**Attachment(s):** Resolution 2023-25-3403  
ICSC 2023 Las Vegas Schedule

**RESOLUTION NO. 2023-25-3403**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF IRWINDALE  
APPROVING THE OUT-OF-STATE- TRAVEL TO THE 2022 INTERNATIONAL  
COUNCIL OF SHOPPING CENTERS CONFERENCE IN LAS VEGAS, NEVADA FOR  
THREE CITY COUNCIL MEMBERS AND TWO STAFF REPRESENTATIVES**

**WHEREAS**, every year in May, the International Council of Shopping Centers (ICSC) holds its annual conference in Las Vegas, Nevada to advance the shopping center industry and promote its role in the commercial distribution of consumer goods and services; and

**WHEREAS**, cities throughout the nation send representatives to promote retail opportunities and attract quality businesses and jobs; and

**WHEREAS**, the conference provides educational programs and publications in all aspects of shopping center development, finance, management, marketing, and other specialized areas of professional interest; holds meetings and other programs designed to promote the exchange of ideas among members and to facilitate the conduct of their businesses; collects and disseminates information about the shopping center industry, including statistical data and other statistical research; develops and maintains professional certification programs to encourage high standards for shopping center professionals; advocates the interest of the shopping center industry to local, state/provincial, federal and international governmental bodies; and publicizes to the general public promotional and educational shopping center business information; and

**WHEREAS**, the City of Irwindale will be represented at the conference by two councilmembers, and three staff members, City Manager, one from Community Development and one from Economic Development;

**WHEREAS**, attending the conference will benefit the City and the community it serves by promoting the City's economic and business development.

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF IRWINDALE, CALIFORNIA DOES HEREBY RESOLVE AS FOLLOWS:**

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

**Section 2.** The City Council hereby finds that the City's participation in the 2023 International Council of Shopping Centers (ICSC) Conference in Las Vegas, Nevada serves the valid public purpose of promoting the City's economic and business development, and approves out-of-state travel for three council members and two staff members to represent the City at the 2023 ICSC Conference.

**Section 3.** The Chief Deputy City Clerk shall certify to the adoption of this resolution, which, shall in turn, have immediate effect.

**PASSED, APPROVED and ADOPTED** this 22nd day of March, 2023

\_\_\_\_\_  
H. Manuel Ortiz, Mayor

ATTEST

\_\_\_\_\_  
Laura M. Nieto, MMC  
Chief Deputy City Clerk

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

I, Laura M. Nieto, Chief Deputy City Clerk of the City of Irwindale, do hereby certify that the foregoing Resolution No. 2023-25-3403 was adopted at an regular meeting of the Irwindale City Council held on the 22nd day of March 2023, by the following vote of the Council:

AYES:           Councilmembers:

NOES:           Councilmembers:

ABSENT:        Councilmembers:

ABSTAIN:       Councilmembers

\_\_\_\_\_  
Laura M. Nieto, MMC  
Chief Deputy City Clerk



ICSC LAS VEGAS is our premier event and takes place annually in May. It is a two- to three-day gathering of dealmakers and industry experts, who are driving innovation and evolution in the Marketplaces Industry.

#### Schedule At-a-Glance

(Times are subject to change)

##### **Sunday, May 21 • Wynn**

1:00 – 4:30 pm • Professional Development Workshops

4:45 – 6:00 pm • Keynote Speaker

6:00 – 8:00 pm • Opening Reception

7:00 – 8:30 pm • ICSC Global Awards Ceremony

##### **Monday, May 22 • LVCC**

8:00 am – 5:00 pm • Exhibit Hall Open

10:00 am – 4:30 pm • Sessions

##### **Tuesday, May 23 • LVCC**

8:00 am – 3:00 pm • Exhibit Hall Open

10:00 – 11:45 am • Sessions

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

*City of*  
**IRWINDALE**  
**AGENDA REPORT**

**Date:** March 22, 2023  
**To:** Honorable Mayor and Members of the City Council  
**From:** William K. Tam, Interim Director of Engineering/Building Official  
**Issue:** Award of Contracts for Construction and Civil Engineering Consultant Services for the 2022-2023 Resurfacing Program: Residential Resurfacing Project – Phase II; P-1043

**Interim Director of Engineering/Building Official's Recommendation:**

That the City Council (1) authorize the Interim Director of Engineering/Building Official to enter into an agreement with Vance Corporation in the amount of \$394,774.10 for the 2022-2023 Resurfacing Program: Residential Resurfacing Project – Phase II; (2) approve a 20% project contingency in the amount of \$78,954.00 to cover any unforeseeable conditions that may arise during construction; (3) authorize the Interim Director of Engineering/Building Official to enter into an agreement with FCG Consultants in the amount of \$86,238.03 for civil engineering consultant services; (4) approve a 20% contingency for consultant services in the amount of \$17,247.00 to cover any unforeseeable conditions that may arise during construction.

**Administrative Action:**

**Submitted by:**

Luis Pimentel, Assistant Engineer



**Prepared by:**

Luis Pimentel, Assistant Engineer  
(626) 430-2259



**Reviewed by:**

Adrian R. Guerra, City Attorney

**Electronically Approved**

Kambiz Borhani,  
Finance Director / City Treasurer



**Approved by:**

William K. Tam,  
Interim Director of Engineering/Building Official

*Electronically Approved*

## 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 2022-2023 Resurfacing Program is identified in the City's Capital Improvement Program, and includes Martinez Street, Baca Avenue, Sabre Lane, Calle Del Sur, Calle Breceda, Nora Avenue, Calle Burrola and Fraijo Avenue. The project also includes replacing damaged concrete sidewalk panels on Azusa Canyon Road and Cypress Street and restriping the Arrow Highway and Irwindale Avenue intersection.

The plans and specifications for this project were approved by the City Council on January 25, 2023. The project was advertised on January 30, 2023 and February 6, 2023 in the San Gabriel Valley Tribune Newspaper and in 4 online publications.

On February 21, 2023, the City received seven (7) bids with the following results:

|   | Contractor                   | Bid 1        | Bid 2       | Bid 3       | Total Bid    |
|---|------------------------------|--------------|-------------|-------------|--------------|
| 1 | Vance Corporation            | \$361,682.50 | \$16,106.60 | \$16,985.00 | \$394,774.10 |
| 2 | Sully-Miller Contracting Co. | \$370,778.90 | \$20,238.00 | \$12,931.00 | \$403,947.90 |
| 3 | Hardy & Harper               | \$387,000.00 | \$13,000.00 | \$15,000.00 | \$415,000.00 |
| 4 | Excel Paving                 | \$399,323.50 | \$16,220.00 | \$13,960.00 | \$429,503.50 |
| 5 | All American Asphalt         | \$392,015.30 | \$26,505.00 | \$26,700    | \$445,220.30 |
| 6 | Christensen Brothers         | \$462,322.50 | \$17,565.40 | \$17,170.00 | \$497,057.90 |
| 7 | Onyx Paving                  | \$473,733.00 | \$58,256.00 | \$69,011.00 | \$601,000.00 |

Staff reviewed the bid proposals and found Vance Corporation to be the lowest responsible bidder and recommends the contract be awarded to them for this project.

On February 1, 2023, staff issued a Request for Proposal (RFP) to various engineering and project management firms soliciting proposals for professional civil engineering consultant services and review work with respect to management, inspection, labor compliance oversight, and material testing services for this project.

The following is a summary of responses to the City's RFP:

| Firm               | Fee          | Ranking |
|--------------------|--------------|---------|
| FCG Consultants    | \$ 86,238.03 | 1       |
| Z&K Consultants    | \$ 86,692.00 | 2       |
| Onward Engineering | \$ 87,801.00 | 3       |

Staff evaluated each proposal received and applicants were ranked based on technical competency, project understanding, relevant experience, availability, schedule, project history, and general professionalism.

FCG Consultants was determined to be the most qualified firm for the project and staff is recommending that the contract be awarded to them.

Therefore, Staff is recommending that the City Council approve the proposed agreements with Vance Corporation and FCG Consultants for the Residential Resurfacing Project Phase II.

**Fiscal Impact:**

Funding for this Project is budgeted in the FY 2022/2023 CIP Budget as the Residential Resurfacing Project Phase II in the amount of \$600,000. This Project is funded by the Mining Impact Fund, Gas Tax, Prop C, TDA, Measure R, and Measure M funds, and accounted for in the Capital Projects Fund 48 (Account Number 48-80-800-45300-8355).

**Attachments:**

- Contract Agreement for Construction
- Contract Service Agreement for Project Management, Inspection, Labor Compliance Oversight & Geotechnical Testing Services

**PUBLIC WORKS CONSTRUCTION CONTRACT AGREEMENT  
BETWEEN THE CITY OF IRWINDALE AND  
VANCE CORPORATION**

THIS PUBLIC WORKS AGREEMENT ("**Agreement**") is made and entered into this 22 day of March, 2023, by and between the City of Irwindale, a California charter city ("**City**") and Vance Corporation, P.O. Box 575, Beaumont, CA 92223 ("**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 2022-2023 Residential Resurfacing Project – Phase II; P-1043 ("**Project**"). All such work shall be performed in a good and workmanlike manner, as reasonably determined by the City, and shall be performed in compliance with all local, state, and federal laws and regulations. As used herein, "**Proposal**" or "**Bid Documents**" refers to all of the documents included in the solicitation of bids for the Project, including but not limited to, the Invitation for Bids, Instructions to Bidders, Bid or Bid Proposal, Contract Documents, Special Provisions, Technical Provisions, Construction Plans, Standard Plans, Drawings, Reference Specifications, all

applicable permit requirements, any addenda, and any other documents included, referenced, or incorporated therein. The Bid Documents are incorporated into this Agreement and made part hereof. In the event of any conflict between the terms of the Bid Documents and this Agreement, the terms of this Agreement shall govern.

### **1.2 Incorporation of Green Book.**

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

### **1.3 Compliance with Labor and Wage Laws.**

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

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

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

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

(e) Payroll Records. Contractor shall comply with and be bound by the provisions of Labor Code Section 1776, which requires Contractor and each subcontractor to: keep accurate payroll records and verify such records in writing under penalty of perjury, as specified

in Section 1776; certify and make such payroll records available for inspection as provided by Section 1776; and inform the City of the location of the records.

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

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

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

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

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

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

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

#### **1.4 Licenses, Permits, Fees and Assessments.**

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

#### **1.5 Familiarity with Work.**

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

#### **1.6 Discovery of Unknown Conditions.**

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

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

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

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

### **1.7 Unidentified Utilities.**

To the extent required by Government Code section 4215, City will compensate Contractor for the cost of locating, repairing damage not due to the failure of Contractor to exercise reasonable care, and removing or relocating utility facilities not identified by City in the Bid Documents with reasonable accuracy, and for equipment on the project necessarily idled during such work. Nothing herein shall be deemed to require City to indicate the presence of existing service laterals or appurtenances whenever the presence of such utilities on the project site can be inferred from the presence of other visible facilities, such as buildings, meters, and junction boxes, on or adjacent to the site of the construction; provided, however, nothing herein shall relieve City from identifying main or 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 Three Hundred Ninety-Four Thousand, Seven Hundred Seventy-Four Dollars and 10/100 Cents (\$394,774.10) ("**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 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:

Derek Ritarita,

President

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 \$5,000,000 per occurrence, \$10,000,000 general aggregate, for bodily injury, personal injury, and property damage. The policy must include contractual liability that has not been amended. Any endorsement restricting standard ISO "insured contract" language will not be accepted.

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

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

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

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

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

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

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

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

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

## **5.2 General Insurance Requirements.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

### **5.3 Indemnification.**

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

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

### **5.4 Notification of Third-Party Claims.**

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

## **5.5 Performance and Payment Bonds.**

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

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

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

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

## **5.6 Sufficiency of Insurer or Surety.**

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

## **5.7 Release of Securities.**

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

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

(b) the Project has been accepted; and

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

## **ARTICLE 6. RECORDS, REPORTS, AND RELEASE OF INFORMATION**

### **6.1 Records.**

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

### **6.2 Reports.**

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

### **6.3 Ownership of Documents.**

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

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

#### **6.4 Confidentiality and Release of Information.**

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

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

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

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

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

#### **7.1 California Law.**

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

## **7.2 Default of Contractor.**

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

## **7.3 Suspension and Termination.**

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

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

## **7.4 Dispute Resolution Process.**

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

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

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

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

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

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

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

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

(iv) Statement of grounds for the claim.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## **7.5 Waiver.**

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

## **7.6 Rights and Remedies Are Cumulative.**

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

## **7.7 Unfair Business Practices Claims.**

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

# **ARTICLE 8. CITY OFFICERS AND EMPLOYEES: NON-DISCRIMINATION**

## **8.1 Non-liability of City Officers and Employees.**

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

## **8.2 Conflict of Interest.**

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

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

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

### **8.3 Covenant Against Discrimination.**

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

### **8.4 Unauthorized Aliens.**

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

## **ARTICLE 9. MISCELLANEOUS PROVISIONS**

### **9.1 Provisions Required By Law.**

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

### **9.2 Notices.**

Any notice, demand, request, document, consent, approval, or communication either party desires or is required to give to the other party or any other person shall be in writing and either served personally or sent by prepaid, first-class mail, in the case of the City, to the 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 \_\_\_\_\_

#### **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

**CONTRACTOR:**

Vance Corporation

\_\_\_\_\_  
William K. Tam,  
Interim Director of Engineering/  
Building Official

**ATTEST:**

\_\_\_\_\_  
Laura M. Nieto, Chief Deputy City Clerk

**APPROVED AS TO FORM:**  
ALESHIRE & WYNDER, LLP

By: \_\_\_\_\_  
Name: Derek Ritarita  
Title: President

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Address: Vance Corporation  
P.O. Box 575  
Beaumont, CA 92223

\_\_\_\_\_  
Adrian Guerra, City Attorney

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

## CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

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

STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

On \_\_\_\_\_, 2023 before me, \_\_\_\_\_, personally appeared \_\_\_\_\_, proved to me on the basis of satisfactory evidence to be the person(s) whose names(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature: \_\_\_\_\_

### OPTIONAL

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

#### CAPACITY CLAIMED BY SIGNER

#### DESCRIPTION OF ATTACHED DOCUMENT

☐  
☐

INDIVIDUAL  
CORPORATE OFFICER

\_\_\_\_\_  
TITLE(S)

\_\_\_\_\_  
TITLE OR TYPE OF DOCUMENT

☐  
☐

PARTNER(S) ☐ LIMITED  
☐ GENERAL

\_\_\_\_\_  
NUMBER OF PAGES

☐  
☐  
☐  
☐

ATTORNEY-IN-FACT  
TRUSTEE(S)  
GUARDIAN/CONSERVATOR  
OTHER \_\_\_\_\_

\_\_\_\_\_  
DATE OF DOCUMENT

#### SIGNER IS REPRESENTING:

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

\_\_\_\_\_  
SIGNER(S) OTHER THAN NAMED ABOVE

## CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

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

STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

On \_\_\_\_\_, 2023 before me, \_\_\_\_\_, personally appeared \_\_\_\_\_, proved to me on the basis of satisfactory evidence to be the person(s) whose names(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature: \_\_\_\_\_

### OPTIONAL

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

#### CAPACITY CLAIMED BY SIGNER

#### DESCRIPTION OF ATTACHED DOCUMENT

☐ INDIVIDUAL  
☐ CORPORATE OFFICER  
\_\_\_\_\_  
TITLE(S)

\_\_\_\_\_  
TITLE OR TYPE OF DOCUMENT

☐ PARTNER(S) ☐ LIMITED  
☐ GENERAL

\_\_\_\_\_  
NUMBER OF PAGES

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

\_\_\_\_\_  
DATE OF DOCUMENT

#### SIGNER IS REPRESENTING:

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

\_\_\_\_\_  
SIGNER(S) OTHER THAN NAMED ABOVE

## **EXHIBIT A**

### **SCOPE OF SERVICES**

- I. Contractor will perform construction services related to the 2022-2023 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 Martinez Street, Baca Avenue, Sabre Lane, Calle Del Sur, Calle Breceda, Nora Avenue, Calle Burrola and Fraijo Avenue.**
  - B. Remove existing and restripe pavement markings at Arrow Highway and Irwindale Avenue intersection.**
  - C. Remove existing and construct new sidewalk panels on Azusa Canyon Road, Cypress Street and Calle Burrola.**
- 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:

| DESCRIPTION | QUANTITY | PRICE |
|-------------|----------|-------|
|-------------|----------|-------|

**BID SCHEDULE:**

**RESIDENTIAL RESURFACING PHASE II – MARTINEZ STREET, BACA AVENUE, SABRE LANE, CALLE DEL SUR, CALLE BRECEDA, NORA AVENUE, CALLE BURROLA AND FRAIJO AVENUE:**

| ITEM NO. | DESCRIPTION                                                      | EST. QTY | UNIT | UNIT PRICE                | TOTAL AMOUNT                   |
|----------|------------------------------------------------------------------|----------|------|---------------------------|--------------------------------|
| 1        | MOBILIZATION                                                     | 1        | LS   | <del>25,000</del>         | <del>25,000</del>              |
| 2        | TRAFFIC CONTROL                                                  | 1        | LS   | <del>11,800</del>         | <del>11,800</del>              |
| 3        | CLEARING AND GRUBBING                                            | 1        | LS   | <del>1,100</del>          | <del>1,100</del>               |
| 4        | STORMWATER POLLUTION PREVENTION BMP'S                            | 1        | LS   | <del>4,700</del>          | <del>4,700</del>               |
| 5        | PRESERVATION OF EXISTING CITY MONUMENTS                          | 1        | LS   | <del>5,200</del><br>9,500 | <del>5,200</del><br>9,500      |
| 6        | COLDMILL (GRIND AND DISPOSE) EXISTING AC PAVEMENT, 2" MIN. DEPTH | 172,070  | SF   | <del>0.24</del><br>0.30   | <del>41,296.80</del><br>51,621 |
| 7        | CONSTRUCT 2" AC OVERLAY                                          | 2,050    | TONS | <del>104</del>            | <del>213,200</del>             |
| 8        | ADJUST ALL MANHOLES AND UTILITY COVERS TO GRADE                  | 1        | LS   | <del>15,700</del>         | <del>15,700</del>              |

|    |                                                                         |       |    |         |          |
|----|-------------------------------------------------------------------------|-------|----|---------|----------|
| 9  | REMOVE AND RECONSTRUCT SPEED HUMP PER PLAN DETAIL                       | 2     | EA | 4,100 - | 8,200 -  |
| 10 | INSTALL CALTRANS TYPE E LOOP DETECTORS                                  | 1     | EA | 1,000 - | 1,000 -  |
| 11 | INSTALL CALTRANS TYPE D BICYCLE LOOP DETECTORS                          | 1     | EA | 1,030 - | 1,030 -  |
| 12 | INSTALL SPECIALTY LOOP DETECTOR PER PLAN                                | 2     | EA | 1,030   | 2,060 -  |
| 13 | REMOVE EXISTING 12 INCH LIMIT LINE, A243                                | 60    | LF | 10.50   | 630 -    |
| 14 | INSTALL 12 INCH LIMIT LINE, A24E                                        | 160   | LF | 5.75    | 920 -    |
| 15 | REMOVE EXISTING SOLID DOUBLE YELLOW LINE, A20A                          | 50    | LF | 10.50   | 525 -    |
| 16 | REMOVE "STOP" PAVEMENT MARKER                                           | 1     | LS | 788 -   | 788 -    |
| 17 | INSTALL 6" SOLID DOUBLE YELLOW LINE W/ PAVEMENT MARKERS, A20A DETAIL 22 | 280   | LF | 1.90    | 532 -    |
| 18 | INSTALL 6" SOLID WHITE LINE W/ TYPE G PAVEMENT MARKERS, A20A            | 100   | LF | 1.25    | 125 -    |
| 19 | INSTALL 8" SOLID WHITE LANE LINE W/ PAVEMENT MARKERS, A20D DETAIL 38A   | 50    | LF | 2.10    | 105 -    |
| 20 | INSTALL 6" YELLOW CENTER LINE, A20A DETAIL 5                            | 1,070 | LF | 1.25    | 1,337.50 |
| 21 | INSTALL 6" SOLID YELLOW LINE, A20A                                      | 140   | LF | 1.25    | 175 -    |
| 22 | INSTALL TYPE IV ARROW (L) OR (R), A24A                                  | 1     | EA | 130 -   | 130 -    |
| 23 | INSTALL "BUMP" PAVEMENT MARKING, A24D                                   | 4     | EA | 368 -   | 1,472 -  |
| 24 | INSTALL SPEED HUMP PAVEMENT MARKINGS PER PLAN                           | 4     | EA | 158 -   | 632 -    |
| 25 | INSTALL "STOP" PAVEMENT MARKING, A24D                                   | 2     | EA | 367 -   | 734 -    |
| 26 | INSTALL BLUE RAISED PAVEMENT MARKERS, PER CA MUTCD 3B-102               | 14    | EA | 19 -    | 266 -    |
| 27 | FURNISH AND INSTALL CITY 84" x 60" PROJECT SIGNS                        | 4     | EA | 2,100 - | 8,400 -  |

TOTAL BID NO. 1 FOR RESIDENTIAL RESURFACING PHASE II - MARTINEZ STREET, BACA AVENUE, SABRE LANE, CALLE DEL SUR, CALLE BRECEDA, NORA AVENUE, CALLE BURROLA, FRAJO AVENUE: \$ 361,682.50

*Three Hundred Sixty-one Thousand Six-hundred Eighty-two Dollars Fifty Cents*  
(TOTAL BID NO. 1 AMOUNT WRITTEN IN WORDS)

**RESIDENTIAL RESURFACING PHASE II -- REMOVING EXISTING AND RESTRIPE PAVEMENT MARKINGS AT ARROW HIGHWAY AND IRWINDALE AVENUE INTERSECTION**

**ARROW HWY & IRWINDALE AVE:**

| ITEM NO. | DESCRIPTION                                                                    | EST. QTY | UNIT | UNIT PRICE                  | TOTAL AMOUNT                |
|----------|--------------------------------------------------------------------------------|----------|------|-----------------------------|-----------------------------|
| 1        | MOBILIZATION                                                                   | 1        | LS   | 1,200 -                     | 1,200 -                     |
| 2        | TRAFFIC CONTROL                                                                | 1        | LS   | 55 -                        | 55 -                        |
| 3        | CLEARING AND GRUBBING                                                          | 1        | LS   | 215 -                       | 215 -                       |
| 4        | STORMWATER POLLUTION PREVENTION BMP'S                                          | 1        | LS   | 215 -                       | 215 -                       |
| 5        | PRESERVATION OF EXISTING CITY MONUMENTS                                        | 1        | LS   | <del>2,100</del><br>1,050 - | <del>2,100</del><br>1,050 - |
| 6        | REMOVE EXISTING PAVEMENT MARKINGS AND STRIPING ON CONCRETE                     | 1        | LS   | 5,500 -                     | 5,500 -                     |
| 7        | INSTALL 6" SOLID WHITE LINE W/ TYPE G PAVEMENT MARKERS, A20A                   | 560      | LF   | 1.26                        | 705.60                      |
| 8        | INSTALL 6" DASHED WHITE LANE LINE W/ TYPE G PAVEMENT MARKERS, A20A<br>DETAIL 9 | 1,200    | LF   | 1.26 -                      | 1,512 -                     |
| 9        | INSTALL 8" SOLID WHITE LANE W/ PAVEMENT MARKERS, A20D<br>DETAIL 38             | 1,440    | LF   | 2.10                        | 3,024 -                     |
| 10       | INSTALL TYPE IV ARROW (L) OR (R), A24A                                         | 10       | EA   | 126 -                       | 1,260 -                     |
| 11       | INSTALL "ONLY" PAVEMENT MARKING, A24E                                          | 4        | EA   | 295 -                       | 1,180 -                     |
| 12       | INSTALL "35" PAVEMENT MARKING, A24C                                            | 1        | EA   | 190 -                       | 190 -                       |

TOTAL BID NO. 2 FOR REMOVING EXISTING AND RESTRIPE PAVEMENT MARKINGS AT ARROW HIGHWAY AND IRWINDALE AVENUE INTERSECTION: \$ 16,106.60.

Sixteen Thousand One Hundred Six dollars, and sixty cents.  
(TOTAL BID NO. 2 AMOUNT WRITTEN IN WORDS)

**RESIDENTIAL RESURFACING PHASE II – REMOVING EXISTING AND  
CONSTRUCT NEW SIDEWALK PANELS:**

**AZUSA CANYON ROAD, CYPRESS STREET AND CALLE  
BURROLA:**

| ITEM NO. | DESCRIPTION                                                | EST. QTY | UNIT | UNIT PRICE                   | TOTAL AMOUNT                 |
|----------|------------------------------------------------------------|----------|------|------------------------------|------------------------------|
| 1        | MOBILIZATION                                               | 1        | LS   | 1,200 -                      | 1,200 -                      |
| 2        | TRAFFIC CONTROL                                            | 1        | LS   | 55 -                         | 55 -                         |
| 3        | CLEARING AND GRUBBING                                      | 1        | LS   | 2,500 -                      | 2,500 -                      |
| 4        | STORMWATER POLLUTION PREVENTION BMP'S                      | 1        | LS   | 215 -                        | 215 -                        |
| 5        | PRESERVATION OF EXISTING CITY MONUMENTS                    | 1        | LS   | <del>2,100 -</del><br>825.00 | <del>2,100 -</del><br>825.00 |
| 6        | REMOVE EXISTING AND CONSTRUCT NEW 4" THICK P.C.C. SIDEWALK | 530      | SF   | 23 -                         | 12,190                       |

TOTAL BID NO. 3 FOR AZUSA CANYON ROAD, CYPRESS STREET AND CALLE  
BURROLA: \$ ~~18,260.00~~ \$16,985.00

Sixteen Thousand, Nine Hundred Eighty-Five Dollars, Zero Cents  
~~Eighteen Thousand, Two Hundred Sixty Dollars, Zero Cents~~ (DN)  
(TOTAL BID NO. 3 AMOUNT WRITTEN IN WORDS)

TOTAL PROJECT BID AMOUNT (TOTAL BID NO. 1 + TOTAL BID NO. 2 + TOTAL BID  
NO.3): \$ 394,774.10

Three Hundred ninety-four thousand seven hundred seventy-four Dollars and ten Cents  
(TOTAL PROJECT BID AMOUNT WRITTEN IN WORDS)

THE CITY RESERVES THE RIGHT TO ACCEPT OR REJECT ANY AND ALL BIDS OF ANY  
PORTION THEREOF.

**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 \$394,774.10 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.

**CITY OF IRWINDALE  
CONTRACT SERVICES AGREEMENT FOR  
CIVIL ENGINEERING CONSULTANT SERVICES  
FOR**

**2022-2023 RESURFACING PROGRAM:  
RESIDENTIAL RESURFACING PROJECT – PHASE II; P-1043**

THIS PROFESSIONAL SERVICES AGREEMENT (herein “Agreement”) is made and entered into this 22<sup>nd</sup> day of March, 2023, by and between the CITY OF IRWINDALE, a California municipal corporation (“City”) and FCG Consultants Inc., 22885 Savi Ranch Parkway, Suite G, Yorba Linda, CA 92887, (herein “Consultant”).

NOW, THEREFORE, the parties hereto agree as follows:

**1. SERVICES OF CONSULTANT**

1.1 Scope of Services. In compliance with all of the terms and conditions of this Agreement, the Consultant shall perform the work or services set forth in the “Scope of Services” attached hereto as Exhibit “A” and incorporated herein by reference. Consultant warrants that it has the experience and ability to perform all work and services required hereunder and that it shall diligently perform such work and services in a professional and satisfactory manner.

1.2 Compliance With Law. All work and services rendered hereunder shall be provided in accordance with all ordinances, resolutions, statutes, rules, and regulations of the City and any Federal, State or local governmental agency of competent jurisdiction.

1.3 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 the Agreement.

1.4 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.

**2. COMPENSATION**

2.1 Contract Sum. For the services rendered pursuant to this Agreement, Consultant shall be compensated in accordance with the “Schedule of Compensation” attached hereto as Exhibit “C” and incorporated herein by this reference, but not exceeding the maximum contract amount of Eighty-six thousand, two hundred thirty-eight and three cents 03/100 Dollars (\$86,238.03) (“Contract Sum”).

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

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

2.3 Additional Services. City shall have the right at any time during the performance of the services, without invalidating this Agreement, to order extra work beyond that specified in the Scope of Services or make changes by altering, adding to or deducting from said work. No such extra work may be undertaken unless a written order is first given by the Contract Officer to the Consultant, incorporating therein any adjustment in (i) the Contract Sum for the actual cost of the extra work, and/or (ii) the time to perform this Agreement, which said adjustments are subject to the written approval of the Consultant. Any increase in compensation of up to twenty percent (20%) of the Contract Sum but not exceeding a total contract amount of seventeen thousand two hundred forty-seven dollars (\$17,247) or in the time to perform of up to ninety (90) days may be approved by the Contract Officer. Any greater increases, taken either separately or cumulatively, must be approved by the City Council. 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.

### **3. PERFORMANCE SCHEDULE**

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

3.2 Schedule of Performance. Consultant shall commence the services pursuant to this Agreement upon receipt of a written notice to proceed and shall perform all services within the time period(s) established in the "Schedule of Performance" attached hereto as Exhibit "D" and incorporated herein by this reference. When requested by the Consultant, extensions to the time period(s) specified in the Schedule of Performance may be approved in writing by the Contract Officer but not exceeding thirty (30) days cumulatively.

3.3 Force Majeure. The time period(s) specified in the Schedule of Performance for performance of the services rendered pursuant to this Agreement shall be extended because of any delays due to unforeseeable causes beyond the control and without the

fault or negligence of the Consultant, including, but not restricted to, acts of God or of the public enemy, unusually severe weather, fires, earthquakes, floods, epidemics, quarantine restrictions, riots, strikes, freight embargoes, wars, litigation, and/or acts of any governmental agency, including the City, if the Consultant shall within ten (10) days of the commencement of such delay notify the Contract Officer in writing of the causes of the delay. The Contract Officer shall ascertain the facts and the extent of delay, and extend the time for performing the services for the period of the enforced delay when and if in the judgment of the Contract Officer such delay is justified. The Contract Officer's determination shall be final and conclusive upon the parties to this Agreement. In no event shall Consultant be entitled to recover damages against the City for any delay in the performance of this Agreement, however caused, Consultant's sole remedy being extension of the Agreement pursuant to this Section.

3.4 Term. Unless earlier terminated in accordance with Article 7 of this Agreement, this Agreement shall continue in full force and effect until completion of the services but not exceeding one (1) year from the date hereof, except as otherwise provided in the Schedule of Performance (Exhibit "D").

#### **4. COORDINATION OF WORK**

4.1 Representative of Consultant. Mr. A.B. Fakhouri, P.E. is hereby designated as being the representative of Consultant authorized to act on its behalf with respect to the work and services specified herein and make all decisions in connection therewith. All personnel of Consultant and any authorized agents shall be under the exclusive direction of the representative of Consultant. 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, and shall keep City informed of any changes.

4.2 Contract Officer. William K. Tam, Interim Director of Engineering/Building Official [or such person as may be designated by the Interim Director of Engineering/Building Official] is hereby designated as being the representative the City authorized to act in its behalf with respect to the work and services specified herein and to make all decisions in connection therewith ("Contract Officer").

4.3 Prohibition Against Subcontracting or Assignment. Consultant shall not contract with any entity to perform in whole or in part the work or services required hereunder without the express written approval of the City. Neither this Agreement nor any interest herein may be assigned or transferred, voluntarily or by operation of law, without the prior written approval of City. Any such prohibited assignment or transfer shall be void.

4.4 Independent Contractor. Neither the City nor any of its employees shall have any control over the manner, mode or means by which Consultant, its agents or employees, perform the services required herein, except as otherwise set forth. Consultant shall perform all services required herein as an independent contractor of City 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, or that it is a member of a joint enterprise with City.

## 5. INSURANCE AND INDEMNIFICATION

### 5.1 Required Insurance Policies.

Without limiting Consultant's indemnification of the City and prior to commencement of services, Consultant shall obtain, provide and maintain, at its sole cost and expense, in a form and content satisfactory to City, during the entire term of this Agreement including any extension thereof, the following policies of insurance:

(a) Comprehensive General Liability Insurance. Consultant shall maintain commercial general liability insurance with coverage at least as broad as Insurance Services Office form CG 00 01, in an amount not less than \$1,000,000 per occurrence, \$2,000,000 general aggregate, for bodily injury, personal injury, and property damage, including without limitation, blanket contractual liability. The policy must include contractual liability that has not been amended. Any endorsement restricting standard ISO "insured contract" language will not be accepted.

(b) Automobile Liability Insurance. Consultant shall maintain automobile insurance at least as broad as Insurance Services Office form CA 00 01 covering bodily injury and property damage for all activities of the Consultant arising out of or in connection with services to be performed under this Agreement, including coverage for any owned, hired, non-owned or rented vehicles, in an amount not less than \$1,000,000 combined single limit for each accident.

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

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

### 5.2 Other Provisions or Requirements.

(a) Proof of Insurance. Consultant shall provide certificates of insurance to City as evidence of the insurance coverage required in section 5.1, and for purposes of Workers' Compensation Insurance Consultant shall submit a Waiver of Subrogation endorsement in favor of City, its officers, agents, employees and volunteers. Should the Consultant be a sole proprietor, the Consultant shall complete and submit a declaration of sole proprietors form to the City in lieu of proof of Workers' Compensation as it not required for sole proprietors. The insurance certificates and endorsements must be approved by City's Risk Manager prior to commencement of performance of services. Current certification of insurance shall be kept on file with City at all times during the term of this Agreement. City reserves the right to require complete, certified copies of all required insurance policies, at any time.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

### 5.3 Indemnification.

To the full extent permitted by law, Consultant agrees to indemnify, defend and hold harmless the City, its officers, employees and agents (“Indemnified Parties”) against, and will hold and save them and each of them harmless from, any and all actions, either judicial, administrative, arbitration or regulatory claims, damages to persons or property, losses, costs, penalties, obligations, errors, omissions or liabilities whether actual or threatened (herein “claims or liabilities”) that may be asserted or claimed by any person, firm or entity arising out of or in connection with the negligent performance of the work, operations or activities provided herein of 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 negligent 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 the City, its officers, agents or employees for any such claims or liabilities arising out of or in connection with the negligent performance of or failure to perform such work, operations or activities of Consultant hereunder; and Consultant agrees to save and hold the City, its officers, agents, and employees harmless therefrom;

(c) In the event the City, its officers, agents or employees is made a party to any action or proceeding filed or prosecuted against 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 the City, its officers, agents or employees, any and all costs and expenses incurred by the City, its officers, agents or employees in such action or proceeding, including but not limited to, legal costs and attorneys’ fees.

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.

## **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 and shall keep such records for a period of three years following completion of the services hereunder. 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.

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 or as the Contract Officer shall require.

### **6.3 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 the City without prior written authorization from the Contract Officer.

(b) Consultant 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 the City notice of such court order or subpoena.

(c) If Consultant provides any information or work product in violation of this Agreement, then the 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 the City should Consultant 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 thereunder. The 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 the City and to provide the City with the opportunity to review any response to discovery requests provided by Consultant.

6.4 Ownership of Documents. All studies, surveys, data, notes, computer files, reports, records, drawings, specifications, maps, designs, photographs, documents and other materials (the “documents and materials”) prepared by Consultant in the performance of this Agreement shall be the property of the City and shall be delivered to the 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 the City of its full rights of ownership use, reuse, or assignment of the documents and materials hereunder. Moreover, Consultant with respect to any documents and materials that may qualify as “works made for hire” as defined in 17 U.S.C. § 101, such documents and materials are hereby deemed “works made for hire” for the City.

## **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. In the event of litigation in a U.S. District Court, venue shall lie exclusively in the Central District of California, in the County of Los Angeles, State of California.

7.2 Disputes; Default. In the event that Consultant is in default under the terms of this Agreement, the City shall not have any obligation or duty to continue compensating Consultant for any work performed after the date of default. Instead, the City may give notice to Consultant of the default and the reasons for the default. The notice shall include the timeframe in which Consultant may cure the default. This timeframe is presumptively thirty (30) days, but may be extended, if circumstances warrant. During the period of time that Consultant is in default, the City shall hold all invoices and shall, when the default is cured, proceed with payment on the invoices. If Consultant does not cure the default, the City may take necessary steps to terminate this Agreement under this Article.

7.3 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 any legal action under this Agreement.

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.

7.4 Termination Prior to Expiration of Term. This Section shall govern any termination of this Contract except as specifically provided in the following Section for termination for cause. The City reserves the right to terminate this Contract at any time, with or without cause, upon thirty (30) days’ written notice to Consultant, except that where termination is due to the fault of the Consultant, the period of notice may be such shorter time as may be

determined by the Contract Officer. In addition, the Consultant reserves the right to terminate this Contract at any time, with or without cause, upon sixty (60) days' written notice to City, except that where termination is due to the fault of the City, the period of notice may be such shorter time as the Consultant may determine. Upon receipt of any notice of termination, Consultant shall immediately cease all services hereunder except such as may be specifically approved by the Contract Officer. Except where the Consultant has initiated termination, the Consultant shall be entitled to compensation for all services rendered prior to the effective date of the notice of termination and for any services authorized by the Contract Officer thereafter in accordance with the Schedule of Compensation or such as may be approved by the Contract Officer. In the event the Consultant has initiated termination, the Consultant shall be entitled to compensation only for the reasonable value of the work product actually produced hereunder, but not exceeding the compensation provided therefore in the Schedule of Compensation Exhibit "C". 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.

7.5 Termination for Default of Consultant. If termination is due to the failure of the Consultant to fulfill its obligations under this Agreement, City may, after compliance with the provisions of Section 7.2, take over the work and prosecute the same to completion by contract or otherwise, and the Consultant shall be liable to the extent that the total cost for completion of the services required hereunder exceeds the compensation herein stipulated (provided that the City shall use reasonable efforts to mitigate such damages), and City may withhold any payments to the Consultant for the purpose of set-off or partial payment of the amounts owed the City as previously stated.

## 8. MISCELLANEOUS

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

8.2 Non-liability of City Officers and Employees. No officer or employee of the City shall be personally liable to the Consultant, or any successor in interest, in the event of any default or breach by the City or for any amount, which may become due to the Consultant or to its successor, or for breach of any obligation of the terms of this Agreement.

8.3 Notice. 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 Contract Officer (with her/his name and City title), City of Irwindale, 5050 N. Irwindale Ave., Irwindale CA 91706 and in the case of the Consultant, to the person(s) at the address designated on the execution page of this Agreement. Either party may change its address by notifying the other party of the change of address in writing. Notice shall be deemed communicated at the time

personally delivered or in seventy-two (72) hours from the time of mailing if mailed as provided in this Section.

8.4 Integration; Amendment. 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. This Agreement may be amended at any time by the mutual consent of the parties by an instrument in writing.

8.5 Severability. In the event that part of 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 portions 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.

8.6 Waiver. No delay or omission in the exercise of any right or remedy by non-defaulting party on any default shall impair such right or remedy or be construed as a waiver. A party's consent to or approval of any act by the other party requiring the party's consent or approval shall not be deemed to waive or render unnecessary the other party's consent to or approval of any subsequent act. 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.

8.7 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, whether or not the matter proceeds to judgment.

8.8 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.

8.9 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.

8.10 Warranty & Representation of Non-Collusion. No official, officer, or employee of City has any financial interest, direct or indirect, in this Agreement, nor shall any official, officer, or employee of City participate in any decision relating to this Agreement which may affect his/her financial interest or the financial interest of any corporation, partnership, or association in which (s)he is directly or indirectly interested, or in violation of any corporation, partnership, or association in which (s)he is directly or indirectly interested, or in violation of any State or municipal statute or regulation. The determination of "financial interest" shall be consistent with State law and shall not include interests found to be "remote" or "noninterests"

pursuant to Government Code Sections 1091 or 1091.5. Consultant warrants and represents that it has not paid or given, and will not pay or give, to any third party including, but not limited to, any City official, officer, or employee, any money, consideration, or other thing of value as a result or consequence of obtaining or being awarded any agreement. Consultant further warrants and represents that (s)he/it has not engaged in any act(s), omission(s), or other conduct or collusion that would result in the payment of any money, consideration, or other thing of value to any third party including, but not limited to, any City official, officer, or employee, as a result of consequence of obtaining or being awarded any agreement. Consultant is aware of and understands that any such act(s), omission(s) or other conduct resulting in such payment of money, consideration, or other thing of value will render this Agreement void and of no force or effect.

Consultant's Authorized Initials \_\_\_\_\_

8.11 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 the 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

\_\_\_\_\_  
William K. Tam,  
Interim Director of Engineering/  
Building Official

ATTEST:

\_\_\_\_\_  
Laura M. Nieto, Chief Deputy City Clerk

**APPROVED AS TO FORM:**

ALESHIRE & WYNDER, LLP

\_\_\_\_\_  
Adrian Guerra, City Attorney

**CONSULTANT:**

\_\_\_\_\_  
FCG Consultants, Inc.

By: \_\_\_\_\_  
Name:  
Title:

By: \_\_\_\_\_  
Name:  
Title:

Address: 22885 Savi Ranch Pkwy, Suite G  
Yorba Linda, CA 92887  
\_\_\_\_\_

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

## CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

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

STATE OF CALIFORNIA

COUNTY OF \_\_\_\_\_

On \_\_\_\_\_, 2023 before me, \_\_\_\_\_, personally appeared \_\_\_\_\_, proved to me on the basis of satisfactory evidence to be the person(s) whose names(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature: \_\_\_\_\_

### OPTIONAL

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

#### CAPACITY CLAIMED BY SIGNER

- ☐  
☐

INDIVIDUAL  
CORPORATE OFFICER

\_\_\_\_\_  
TITLE(S)

- ☐  
☐  
☐  
☐  
☐

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

#### DESCRIPTION OF ATTACHED DOCUMENT

\_\_\_\_\_  
TITLE OR TYPE OF DOCUMENT

\_\_\_\_\_  
NUMBER OF PAGES

\_\_\_\_\_  
DATE OF DOCUMENT

#### SIGNER IS REPRESENTING:

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

\_\_\_\_\_  
SIGNER(S) OTHER THAN NAMED ABOVE

## CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

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

STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

On \_\_\_\_\_, 2023 before me, \_\_\_\_\_, personally appeared \_\_\_\_\_, proved to me on the basis of satisfactory evidence to be the person(s) whose names(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature: \_\_\_\_\_

### OPTIONAL

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

#### CAPACITY CLAIMED BY SIGNER

☐  
☐

INDIVIDUAL  
CORPORATE OFFICER

\_\_\_\_\_  
TITLE(S)

☐  
☐  
☐  
☐  
☐

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

#### DESCRIPTION OF ATTACHED DOCUMENT

\_\_\_\_\_  
TITLE OR TYPE OF DOCUMENT

\_\_\_\_\_  
NUMBER OF PAGES

\_\_\_\_\_  
DATE OF DOCUMENT

#### SIGNER IS REPRESENTING:

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

\_\_\_\_\_  
SIGNER(S) OTHER THAN NAMED ABOVE

## **EXHIBIT “A”**

### **SCOPE OF SERVICES**

- I. Consultant will perform engineering, project management, inspection, and geotechnical testing services related to the 2022-2023 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 Services, Consultant will prepare and deliver the following tangible work products to the City:**
  - A. Construction/Project Management and Inspection:**
    - 1. Manage the construction of the 2022-2023 Resurfacing Program: Residential Resurfacing Project – Phase II to ensure compliance with the Plans, Specifications, and other requirements, such as but not limited to the Contracts, Traffic Control, Cal-OSHA Standards, Outside Agency Permits, Standard Plans, and other projects requirements
    - 2. Prepare for Agency review and signature correspondence with: contractor, designer, and regulatory agencies.
    - 3. Attend pre-construction and progress meetings and prepare agendas and minutes.
    - 4. Coordinate agency sub-consultants and utilities.
    - 5. Coordinate with agency and contractor a Public Outreach Program whereby residents, business owners, and other parties are informed of lane closures and general progress of the project.
    - 6. Prepare monthly costs progress reports and contract change orders for agency review and approval.
    - 7. Review contractor’s weekly payroll for compliance with prevailing wages. Review contractor’s progress payment requests and recommend approval.
    - 8. Review and approve storm water pollution prevention BMPs, as well as other pollution control requirements.
    - 9. Provide a Full-Time Public Works Inspector for this CIP project.

10. Prepare daily diaries (log), fill out Incident (accident) Reports, and take before, during and after pictures of the project. A daily Inspection Report identifying work done by the Contractor shall be submitted to the City on the next business day for review and filing.
11. Provide digital images of this CIP project to the City of Irwindale in “jpg” format.
12. Ensure that “as-constructed” plans are completed and submitted to agency for final review.
13. Prepare “punch-list” of unfinished work and ensure that it is completed before “Notice of Completion” is issued.

**B. Labor Compliance Oversight:**

1. Meet with city staff prior to beginning of work to discuss background, scope objectives and other pertinent details of the projects. The consultant shall attend periodic meetings with City staff at various stages of the projects as needed.
2. Verify all the requirements in accordance with Contract Documents.
3. Perform interviews at the job site to determine classification and wages of employees.
4. Collect and review reports generated from the contractor’s payroll office.

**C. Geotechnical Testing:**

1. Compaction testing during construction.
2. Observation & testing during asphalt placement.
3. Batch Plant inspection.
4. Observation & testing during concrete placement.
5. Laboratory Testing.
6. Other testing as required by the City Engineer.

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

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

- Construction Manager – Fabian Aoun, PE
- Project Manager – A.B. Fakhouri, PE
- Labor Compliance – Lourdes Cagner
- Lead Inspector – Casey Morales
- Backup Inspector – Mark Korando
- Backup Inspector – Bill Fernandez
- Backup Inspector – David Alcala
- Geotechnical Testing – Michele Shams (MB Pro)
- Any other personnel approved by the Director of Engineering.

**EXHIBIT "B"**

**SPECIAL REQUIREMENTS**

N/A

## EXHIBIT "C"

### SCHEDULE OF COMPENSATION

In connection with the Services provided pursuant to the terms of this Agreement, Consultant shall provide the Services at the cost and hourly rate as provided below. City will pay Consultant for completed Services, billed in increments of six minutes (0.1 hours), not to exceed the Contract Sum of \$86,238.03. Expenses not listed below will not be reimbursed by the City, and no hourly fees or mileage will be charged for travel to and from City Hall.

City will pay Consultant as described below upon City's receipt of a written invoice provided by Consultant at the hourly billing rates set forth below in the chart upon City's receipt of a written invoice provided by Consultant no more than monthly. Payments for services shall be made within forty-five (45) days of receipt of Consultant's invoice

|                                                                                                                      |        |              |                                 |           |
|----------------------------------------------------------------------------------------------------------------------|--------|--------------|---------------------------------|-----------|
| FCG Consultants Inc. - DBE                                                                                           |        |              | City of Irwindale               |           |
| Construction Management Services                                                                                     |        |              | Project No. P-1043              |           |
| Cost Proposal - February 22, 2023                                                                                    |        |              | 2022 - 2023 Resurfacing Project |           |
| Classification                                                                                                       | Hours  | Hourly Rate  | Cost                            |           |
| Pre-construction Phase (20 Working Days)                                                                             |        |              |                                 |           |
| Project Manager / Construction Manager                                                                               | 16     | \$ 234.34    | \$                              | 3,749.37  |
| Construction Inspector                                                                                               | 0      | \$ 148.25    | \$                              | -         |
| Office Engineer                                                                                                      | 8      | \$ 98.04     | \$                              | 784.31    |
| Subtotal (FCG Only)                                                                                                  | 24     |              | \$                              | 4,533.68  |
| Construction Phase (40 Working Days)                                                                                 |        |              |                                 |           |
| Project Manager / Construction Manager                                                                               | 80     | \$ 234.34    | \$                              | 18,746.85 |
| Construction Inspector                                                                                               | 240    | \$ 148.25    | \$                              | 35,580.76 |
| Office Engineer                                                                                                      | 80     | \$ 98.04     | \$                              | 7,843.07  |
| Subtotal (FCG Only)                                                                                                  | 400    |              | \$                              | 62,170.68 |
| Post-Construction Phase (20 Working Days)                                                                            |        |              |                                 |           |
| Project Manager / Construction Manager                                                                               | 16     | \$ 234.34    | \$                              | 3,749.37  |
| Construction Inspector                                                                                               | 0      | \$ 148.25    | \$                              | -         |
| Office Engineer                                                                                                      | 8      | \$ 98.04     | \$                              | 784.31    |
| Subtotal (FCG Only)                                                                                                  | 24     |              | \$                              | 4,533.68  |
| Misc. Expenses                                                                                                       | Months | Monthly Cost | Total                           |           |
| Vehicles                                                                                                             |        | \$ -         | \$                              | -         |
| Laptops                                                                                                              |        | \$ -         | \$                              | -         |
| Cell Phones                                                                                                          |        | \$ -         | \$                              | -         |
| Office Supplies                                                                                                      |        | \$ -         | \$                              | -         |
| Field Office                                                                                                         |        | \$ -         | \$                              | -         |
| Subtotal (FCG Only)                                                                                                  |        |              | \$                              | 71,238.03 |
|                                                                                                                      |        | DBE %        | 82.61%                          |           |
| Subconsultants                                                                                                       |        | DBE %        |                                 |           |
| MB Pro - Materials Testing                                                                                           |        |              | \$                              | 15,000.00 |
| Total Cost (NOT TO EXCEED)                                                                                           |        |              | \$                              | 86,238.03 |
| Total DBE %                                                                                                          |        |              | 82.61%                          |           |
| Limitations & Conditions:                                                                                            |        |              |                                 |           |
| Construction Management duration is estimated at for 10 months total.                                                |        |              |                                 |           |
| Inspectors will be fully equipped with vehicles, computers, and tools and equipment required to perform their tasks. |        |              |                                 |           |
| Overtime and Weekend work is not included. Overtime is to be charged at 1.5 the above rate.                          |        |              |                                 |           |
| Cost proposal is subject to prevailing wage rates, and prevailing wage rate change for Inspectors.                   |        |              |                                 |           |
| Miscellaneous expenses includes stationeries and other items needed for CM team.                                     |        |              |                                 |           |
| All costs are subject to negotiations.                                                                               |        |              |                                 |           |

**EXHIBIT “D”**

**SCHEDULE OF PERFORMANCE**

Unless earlier terminated in accordance with this Agreement, the Agreement shall continue in full force and effect until completion of the Services, or December 31, 2023, whichever comes first. The term of this agreement can be extended for a twelve-month period with written notice issued by the City Engineer.

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

*City of*  
**IRWINDALE**  
**AGENDA REPORT**

---

Date: March 22, 2023  
To: Honorable Mayor and Members of the City Council  
From: Julian A. Miranda, City Manager  
Issue: Update Regarding the Irwindale Community Foundation's Approval to Redirect the use of the Irwindale Community Foundation's FY 2022-2023 Contribution to the Recreation Division.

---

**City Manager's Recommendation:**

It is recommended that the City Council receive and file the update regarding the Irwindale Community Foundation's (ICF) approval of the City's request to redirect \$ 5,000 of the ICF's FY 2022-2023 Contribution to be reallocated to Irwindale Recreation Division for a youth skateboarding event.

**Administrative Action:**

**Prepared /Submitted by:**

Theresa Olivares, Assistant City Manager  
(626) 430-2294



**Reviewed by:**

Elizabeth Rodriguez, Public Services Director

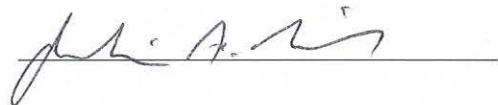
***Electronically Approved***

Kambiz Borhani, Finance Director / City Treasurer



**Approved by:**

Julian A. Miranda, City Manager



**Background and Analysis:**

On May 23, 2022, the Irwindale Community Foundation ("ICF") approved the Recreation Division's Fiscal Year ("FY") 2022-2023 Budget requests totaling \$50,700.

Among the requested items, the Board approved \$5,000 for a snow zone at the Christmas Spectacular. Due to inclement weather, the Recreation Division was unable to hold the snow zone event and is requesting these funds to be reallocated to a youth skateboarding

event organized to take place at the Irwindale Skate Park in May. This event is offered through Pushin' Forward, an organization that focuses on social-emotional learning, mental wellness, education, and gang prevention. Additionally, 30-40 youths will receive skateboards, safety gears, and other merchandise.

On March 13, 2023, the Irwindale Community Foundation approved the Recreation Division's request to reallocate \$5,000 to support the youth skateboarding event.

**Fiscal Impact:**

There is no fiscal impact for the redirection of the ICF funding, as the City Council approved the appropriation of the ICF contribution on June 22, 2022. There is sufficient unspent IFC funding available to cover the reallocation.

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

*City of*  
**IRWINDALE**  
**AGENDA REPORT**

---

Date: March 22, 2023  
To: Honorable Mayor and Members of the City Council  
From: Julian A. Miranda, City Manager  
Issue: Resident Identification Card Policy Overview

---

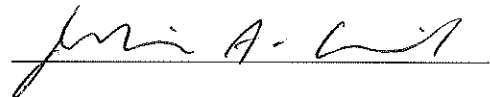
**City Manager's Recommendation:**

Receive and file or provide direction.

**Administrative Action:**

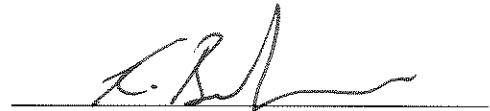
**Prepared/Submitted by:**

Julian A. Miranda, City Manager  
(626) 430-2217



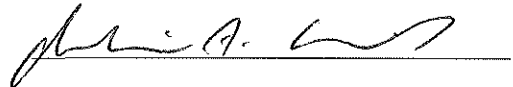
**Reviewed by:**

Kambiz Borhani, Finance Director/City Treasurer



**Approved by:**

Julian A. Miranda, City Manager



**Background and Analysis:**

The attached City of Irwindale Resident Identification Card Policy was approved by the City Council on December 8, 2021. This report will be supplemented by a PowerPoint presentation.

**Fiscal Impact:**

None

**Attachment:**

City of Irwindale Resident Identification Card Policy dated December 8, 2021

## **Attachment**

## **CITY OF IRWINDALE RESIDENT IDENTIFICATION CARD POLICY**

### **PURPOSE**

The purpose of the Resident Identification Card Policy ("Policy") is to provide a method by which City staff can accurately identify eligible residents of the City of Irwindale ("City") for purposes of providing a variety of benefits (i.e., prescription and vision programs, recreation, library and senior citizen programs, school busing, tutoring, etc.) which are only available to residents and/or are provided to residents at a reduced or no cost as compared to non-residents.

### **DEFINITION OF RESIDENT**

For purposes of obtaining a Resident Identification Card ("Card"), a resident of the City of Irwindale shall be defined as a living person who has been residing within the City limits on a full-time basis for at least 6 months prior to his/her application for a Card and who maintains his/her principal place of residence in the City, as defined by Section 244 of the California Government Code. Temporary absence from the City for college or boarding school attendance, military service, vacation, hospitalization or incarceration (not to exceed six months) shall not preclude a person who would otherwise qualify from being considered an eligible resident for purposes of this program.

### **APPLICATION PROCESS – NEW, RENEWAL AND LAPSED CARDS**

An applicant must establish proof of identity and Irwindale residency when applying for a Card. Applicants must appear in person at Irwindale City Hall, complete an application and certify the information under penalty of perjury, present documents establishing identity and residency, have a photograph taken, and pay the required fee.

**FOR RENEWALS: RENEWAL OF CARDS (CARDS THAT HAVE EXPIRED FOR LESS THAN 6 MONTHS) SHALL REQUIRE DOCUMENTATION SHOWING APPLICANT HAS BEEN A RESIDENT FOR AT LEAST 60 DAYS.**

**FOR NEW AND LAPSED CARDS: ALL NEW APPLICATIONS SHALL REQUIRE DOCUMENTATION SHOWING APPLICANT HAS BEEN A RESIDENT FOR AT LEAST SIX (6) MONTHS PRIOR TO THE APPLICATION DATE.**

**A CARD THAT HAS EXPIRED MORE THAN 6 MONTHS AGO IS CONSIDERED A LAPSED CARD. AN APPLICATION TO RENEW A LAPSED CARD SHALL BE CONSIDERED A "NEW" APPLICATION, THEREFORE, REQUIRING DOCUMENTATION SHOWING APPLICANT HAS BEEN A RESIDENT FOR AT LEAST SIX (6) MONTHS PRIOR TO THE APPLICATION DATE.**

**( This requirement does not apply to foster children or children under the age of 18.)**

The following documents (showing at least either 60 days or 6 months of residency, depending on whether the application is for a renewal or new/lapsed card) shall be required in order to prove identity and establish residency:

**ACCEPTABLE FORMS OF DOCUMENTATION:**

**A. For Applicants 18 years of age and over:**

1. Primary Identification: One (1) of the following current documents (must display applicant's photograph, date of birth, and legal residential address within the City) (no P.O. Boxes permitted):
  - California Driver's License with Irwindale address (An official DMV document showing a change of address is acceptable)
  - California Identification Card with Irwindale address (An official DMV document showing a change of address is acceptable)
  - Consular ID Card with Irwindale address

**Plus:**

2. Secondary Identification: Two (2) different forms of current documents reflecting legal Irwindale residential address (no P.O. Boxes permitted), **dated within the last 60 days (for renewals) OR the last 6 months (for new/lapsed cards):**
  - Utility Bill (e.g. gas, electric, home phone (not cell), cable, satellite, water)
  - Financial Institution (bank, savings & loan, credit union, lender, retirement fund) Statement or Bill
  - State or Federal Income Tax or refund statement
  - Vehicle Registration (issue date within 60 days of Card application)
  - Vehicle Registration Renewal Notice (with a due date that has not lapsed)
  - Property Tax statement or mortgage payment receipt
  - Official Correspondence from Federal, State, County or City Government
  - Employment Pay Stub
  - Jury summons or court order issued by a state or federal court
  - Insurance Correspondence, Statement or Bill (homeowner's, renter's, health, life or automobile)
  - Official correspondence from community college, school of higher education or trade school including loan statement
  - Official medical record (e.g. Explanation of Benefits (EOB) from insurance provider, medical bill or statement)
  - Signed and notarized affidavit by property owner, under penalty of perjury, attesting that the person applying for a Card is residing at his/her property

Or:

Affidavit: If a resident is unable to provide two (2) different forms of documentation from the Secondary Identification list above to prove residency, a signed and notarized affidavit from two (2) Irwindale Residents shall be accepted in lieu of documentation from the Secondary Identification list above. The two (2) Irwindale Residents must each sign an Affidavit of Residency by Irwindale Resident.

The Irwindale Resident providing the signed and notarized affidavit must not be the same person as the applicant. The Irwindale Resident must possess a current valid Irwindale Resident ID card and reside at a different address from the applicant. For purposes of this Policy, the Irwindale Resident may not be related to the applicant by blood or marriage.

**B. For Applicants Under 18 years of age:**

1. Children under 18 years of age **must be accompanied by a parent or legal guardian who possesses a valid Irwindale Resident Identification Card.** An application submitted on behalf of a minor must be completed by the minor's parent or legal guardian.
2. Primary Identification: A birth certificate (certified copy acceptable) is required. An original letter from the medical facility affirming the details of the birth of the child is acceptable for children under six months of age.

**Plus:**

3. Secondary Identification: One (1) of the following (no P.O. Boxes permitted):
  - Adoption documents
  - Court documents establishing legal guardianship, ward of court, custodial parent status or foster parent (official documentation from foster agency is sufficient)
  - Valid Irwindale Resident Identification Card(s) of parent(s)
  - Documents from governmental agency providing assistance for minor child (e.g. Healthy Families, WIC, Options)
  - Tax returns (most recent year) claiming child as dependent;
  - Correspondence or documentation from County or State (e.g. County Dept. of Child Support Services) acknowledging resident parent receiving child support

**And:**

4. One (1) of the following to prove residency (reflecting Irwindale address and dated within the last 60 days) (no P.O. Boxes permitted):
  - Official medical record (e.g. Explanation of Benefits (EOB) from insurance provider, medical bill or statement)
  - Official school record stamped with school or district seal (e.g. student data printout, school progress report or report card) verifying child's enrollment in a school (public or private)
  - Financial Institution (bank, savings & loan, credit union, lender, retirement fund) Statement or Bill in child's name
  - School-issued work permit
  - Official Correspondence from Federal, State, County or City Government
  - Employment Pay Stub

#### **SUBSTITUTE DOCUMENTS**

Requests to substitute documents and/or resolution of any dispute over the adequacy of documentation shall be referred to the City Manager's designee, prior to submittal. The decision of the City Manager's designee, shall be final. Previous participation in resident programs does not conclusively establish resident status after the effective date of this Policy.

#### **APPLICATION REVIEW**

Pursuant to Irwindale City Council action of December 8, 2021, the City Manager's designee shall review the applications for compliance with the Policy as it relates to proof of residency twice per month.

If the City Manager's designee finds the application meets all Policy requirements, the applicant shall be notified by telephone when the Card is ready for pick up. If the City Manager's designee finds an application to be incomplete, inadequate, or questionable, the City Manager's designee may request the applicant to provide additional information as may be required, including but not limited to a signed affidavit of residency by the property owner on behalf of the applicant in question. The City may also conduct a Code Enforcement field inspection to confirm residency as well as a Police investigation of potential fraud and perjury pursuant to Section 118 of the State of California Penal Code. If the City Manager's designee's recommendation is not to issue a Card, the applicant shall be advised in writing. The applicant may appeal the City Manager's designee's decision to the City Manager within ten (10) calendar days of the written notification. The City Manager's decision shall be final.

## **FEES**

The fee for a new or lapsed Card shall be \$5.00. The fee for a renewal shall be \$5.00. The fee for a replacement or duplicate Card shall be \$10.00.

## **TERMS**

For applicants who are 49 years or younger, a Card shall be valid for a term not to exceed one (1) year and expiring on the applicant's birthday. Applicants who are 50 years of age or older shall be issued a Card valid for a term not to exceed two (2) years and expiring on the applicant's birthday. The Card may be renewed for a period not to exceed one year or two years, depending on the applicant's age, upon meeting the requirements stated in this Policy. The Card may be renewed no more than 30 days prior to expiration. At any time during the initial or any subsequent term when the applicant ceases to be a resident in good standing, the Card shall become void and may no longer be used to secure benefits. It shall be the responsibility of the applicant to return a card no longer valid to the City for destruction.

## **NON-TRANSFERABILITY**

The Irwindale Resident Identification Card is issued to a specific individual and is not transferable to any other person or entity.

## **PERJURY DECLARATION**

All information and documentation provided to establish residency for purposes of the Resident Identification Program shall be subscribed to under penalty of perjury. Failure to provide a perjury declaration or submission of false information shall be cause for immediate termination of all benefits and removal from City programs and prosecution to the fullest extent of the law. Fraudulent use of a Card shall be cause for immediate termination of an individual's participation in the Resident Identification Program and denial of all other City benefits. **Any person who allows another to fraudulently obtain a Card by utilizing their address will be permanently disqualified from the program.**

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

*City of*  
**IRWINDALE**  
**AGENDA REPORT**

---

**Date:** March 22, 2023

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

**From:** Julian A. Miranda, City Manager

**Issue:** Introduction and First Reading of Ordinance No. 768 entitled, "AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF IRWINDALE REPEALING ORDINANCE NO. 747 IN ITS ENTIRETY, AMENDING TITLE 15.12 OF THE IRWINDALE MUNICIPAL CODE, ADOPTING BY REFERENCE THE LOS ANGELES COUNTY FIRE CODE (2023 EDITION), AND ADOPTING COUNTY AND CITY AMENDMENTS THERETO, PURSUANT TO GOVERNMENT CODE SECTION 50022.2 ET SEQ."

---

**City Manager's Recommendation:**

That the City Council introduce by title only with further reading waived the first reading of Ordinance No. 768 amending Title 15.12 of Irwindale Municipal Code and adopting by reference the 2023 Los Angeles County Fire Code with county and city amendments, and schedule a public hearing on April 12, 2023.

**Administrative Action:**

**Submitted by:**

William K. Tam  
Interim Director of Engineering/Building Official  
(626) 430-2215

Electronically approved by  
Interim Director of Engineering/  
Building Official

---

**Prepared by:**

Laura Snyder, Executive Assistant

Electronically approved by  
Executive Assistant

---

**Reviewed by:**

Adrian Guerra, City Attorney

**Electronically Approved**

---

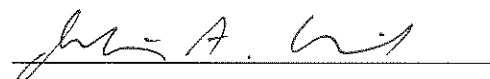
Kambiz Borhani, Finance Director / City Treasurer




---

**Approved by:**

Julian A. Miranda, City Manager




---

**Background and Analysis:**

1. The State's Health and Safety Code requires Cities and Counties to update their codes to conform to the new State Fire Code. Irwindale has been using the Los Angeles County Fire Code as its local code since the City incorporated in 1957.
2. Title 15.12 of the Irwindale Municipal Code contains administrative and technical requirements for fire protection for all types of construction. The City's current fire code was last adopted in May 27, 2020 by Ordinance 747.
3. On January 31, 2023, the Los Angeles County Board of Supervisors adopted by reference, the 2022 California Fire Code with County amendments.
4. Similar to past practice, the City will adopt the County Fire Code, by reference, to bring the City into compliance with the California Fire and Safety Code.
5. The new 2023 Los Angeles County Fire Code is based on the 2022 California Fire Code, various sections of the 2021 International Fire Code that are not part of the California Fire Code, LA County's amendments, and adds several Fire Department authored amendments.
6. The proposed adoption of this ordinance is exempt under the provision of the California Environmental Quality Act, pursuant to State Guidelines 15061(b)(3) and 15378 (b)(c).
7. Upon adoption of the 2023 Los Angeles County Fire Code, staff will send a letter to the Department of Housing and Community Development, Division of Codes and Standards, State Housing Law Program advising them of the City's newly adopted 2023 Los Angeles County Fire Code with county and city amendments.
8. A copy of the above referenced 2023 Los Angeles County Fire Code, with County amendments and the Findings of Fact will be available online for review and inspection by the public at:  
[https://library.municode.com/ca/los\\_angeles\\_county/codes/code\\_of\\_ordinances?nodeId=TIT32FICO](https://library.municode.com/ca/los_angeles_county/codes/code_of_ordinances?nodeId=TIT32FICO)
9. Pursuant to the authority and criteria contained in the California Environmental Quality Act (CEQA) of 1970, as amended, and the City of Irwindale environmental guidelines, the City, as the Lead Agency, has analyzed the project and has determined that the actions contemplated by this ordinance are exempt from CEQA, under CEQA Guidelines Section 15061(b)(3), in that it can be seen with certainty that there is no possibility for the proposed ordinance to have a significant effect on the environment.

**Fiscal Impact:**

No fiscal impact.

**Attachment:**

- City of Irwindale Ordinance No. 768

**Electronic Attachments:**

- Link to Los Angeles County Fire Code Ordinance No. 2023-0008  
<https://file.lacounty.gov/SDSInter/bos/supdocs/177579.pdf>

## **ORDINANCE NO. 768**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF IRWINDALE REPEALING ORDINANCE NO. 747 IN ITS ENTIRETY, AMENDING TITLE 15.12 OF THE IRWINDALE MUNICIPAL CODE, ADOPTING BY REFERENCE THE LOS ANGELES COUNTY FIRE CODE (2023 EDITION), AND ADOPTING COUNTY AND CITY AMENDMENTS THERETO, PURSUANT TO GOVERNMENT CODE SECTION 50022.2 ET SEQ.**

**WHEREAS**, Government Code section 50022.2 *et seq.* authorizes the adoption by reference of California codes and codes that adopt the California codes, including the codes of the County of Los Angeles, which adopts the California Fire Code, as amended.

**WHEREAS**, Section 17958.5 of the Health and Safety Code expressly authorizes cities to make changes in the California Fire Code, as reasonably necessary due to local conditions.

**WHEREAS**, the Los Angeles County Fire Code incorporates appropriate findings related to local climatic, geological or topographical conditions of Los Angeles County, as specified under the provisions of the California Health & Safety Code.

**WHEREAS**, on March 22, 2023, the City Council of the City of Irwindale considered Ordinance 768 and accepted staff's recommendation to adopt by reference of the County of Los Angeles Fire Code with County's amendments, which adopts the California Fire Code, as amended.

**WHEREAS**, on April 12, 2023, the City Council of the City of Irwindale, pursuant to a notice duly issued under Government Code section 50022.3, conducted a public hearing to consider this ordinance adopting the County of Los Angeles Fire Code with County's amendments.

**WHEREAS**, pursuant to the authority and criteria contained in the California Environmental Quality Act (CEQA) of 1970, as amended, and the City of Irwindale environmental guidelines, the City, as the Lead Agency, has analyzed the project and has determined that the actions contemplated by this ordinance are exempt from CEQA, under CEQA Guidelines Section 15061(b)(3), in that it can be seen with certainty that there is no possibility for the proposed ordinance to have a significant effect on the environment.

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

## FIRE CODE

**SECTION 1:** The City Council of the City of Irwindale finds the above recitals are true and correct and are incorporated herein by this reference.

**SECTION 2:** Ordinance No. 747 is hereby repealed in its entirety. Chapter 15.12 of the Irwindale Municipal Code is hereby amended to read in its entirety as follows:

“Section 15.12.10. Adoption of code. There is hereby adopted, as the city fire code, except as provided in this chapter, that certain fire code known and designated as the Los Angeles County Fire Code, 2023 Edition (Title 32 of the Los Angeles County Code), Los Angeles County Ordinance No. 2023-0008, as adopted by County of Los Angeles, which incorporates and amends the 2022 California Fire Code, including all appendixes thereto and changes made by the County of Los Angeles, and such code shall be and become the fire code of the city which prescribes the minimum Fire Code requirements for fire and life-safety issues.”

**SECTION 3:** The City Council hereby finds that the County of Los Angeles, in adopting its Ordinance No. 2023-0008, has made all appropriate findings related to local climatic, geological or topographical conditions, as specified under the provisions of the California Health & Safety Code. The City Council hereby incorporates the findings summarized in the Los Angeles County Ordinance No. 2023-0008.

**SECTION 4:** The City Council hereby finds that the County of Los Angeles, in adopting its Ordinance No. 2023-0008 has made all appropriate findings related to administrative matters. The City Council hereby incorporates the findings summarized in the Los Angeles County Ordinance No. 2023-0008.

**SECTION 5:** All violations of the provisions of the Los Angeles County Fire Code, (2023 Edition), adopted by the City shall be a misdemeanor and subject to the penalty provisions contained in Chapter 1.12 of the Irwindale Municipal Code.

**SECTION 6:** Full Force and Effect. Except as expressly amended herein, all other subsections of Chapter 15 of the Irwindale Municipal Code shall be unchanged and in full force and effect.

**SECTION 7:** Effective Date. The City Clerk shall certify to the passage and adoption of this ordinance by the City Council of the City of Irwindale and shall, within 15 days after its final passage, cause the same to be published once in a newspaper of general circulation in the City of Irwindale, and this Ordinance shall take effect 30 days after its passage.

**SECTION 8:** Severability. If any section, subsection, sentence, clause, phrase, or portion of this Ordinance is, for any reason, held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council of the City of Irwindale hereby

declares that it would have adopted this Ordinance and each section, subsection, sentence, clause, phrase, or portion thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases, or portions thereof may be declared invalid or unconstitutional.

PASSED, APPROVED AND ADOPTED on the 12th day of April 2023.

\_\_\_\_\_  
H. Manuel Ortiz, Mayor

ATTEST:

\_\_\_\_\_  
Laura M. Nieto, MMC  
Chief Deputy City Clerk

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

I, Laura M. Nieto, Chief Deputy City Clerk of the City of Irwindale, California, do hereby certify that the foregoing Ordinance No. 768 was introduced for first reading at a regular meeting of the City Council of the City of Irwindale held on March 22, 2023, and adopted on second reading at a regular meeting of the City Council of the City of Irwindale held on April 12, 2023, and was carried by the following-roll call vote:

AYES:           Councilmembers:

NOES:           Councilmembers:

ABSENT:        Councilmembers:

ABSTAIN:       Councilmembers:

\_\_\_\_\_  
Laura M. Nieto, MMC  
Chief Deputy City Clerk

AFFIDAVIT OF POSTING

I, Laura M. Nieto, Chief Deputy City Clerk, certify that I caused a copy of Ordinance No. 768, adopted by the City Council of the City of Irwindale at its regular meeting held April 12, 2023 to be posted at the City Hall, Library, and Post Office on April 13, 2023.

\_\_\_\_\_  
Laura M. Nieto, MMC  
Chief Deputy City Clerk

Dated: \_\_\_\_\_

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

*City of*  
**IRWINDALE**  
**AGENDA REPORT**

CC Item O-1

---

Date: March 22, 2023  
To: Honorable Mayor and Members of the City Council  
From: Julian A. Miranda, City Manager  
Issue: A PUBLIC HEARING REGARDING AN ECONOMIC DEVELOPMENT SUBSIDY REPORT AND OPERATING COVENANT AGREEMENT BETWEEN THE CITY OF IRWINDALE AND HOME DEPOT U.S.A, INC. PURSUANT TO GOVERNMENT CODE SECTION 53083.1; AND CONSIDERATION OF A RESOLUTION ACCEPTING THE ECONOMIC DEVELOPMENT SUBSIDY REPORT, APPROVING THE OPERATING COVENANT AGREEMENT AND MAKING RELATED FINDINGS

---

**City Manager's Recommendation:**

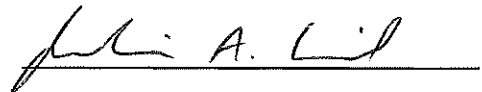
It is recommended that the City Council:

- A. Hold the public hearing and adopt Resolution 2023-24-3402 entitled "A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF IRWINDALE, CALIFORNIA, APPROVING AN OPERATING COVENANT AGREEMENT WITH HOME DEPOT U.S.A., INC, AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT, AND APPROVING AND ORDERING THE PUBLICATION OF AN ECONOMIC DEVELOPMENT SUBSIDY REPORT IN ACCORDANCE WITH GOVERNMENT CODE SECTION 53083.1."

**Administrative Action:**

**Submitted by:**

Julian A. Miranda, City Manager



**Prepared by:**

Iris Espino, Assistant to the City Manager



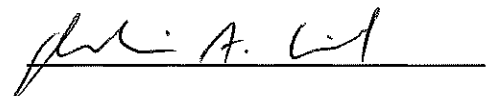
**Reviewed by:**

Kambiz Borhani, Finance Director / City Treasurer



**Approved by:**

Julian A. Miranda, City Manager



## **Background and Analysis:**

On January 26, 2022, the City Council adopted the Economic Development Incentive Program and Sales and Use Tax Sharing Policy as part of the City's economic development efforts to attract high-caliber businesses that generate a large amount of sales tax for the City. The City has received a request from Home Depot U.S.A., Inc. (Home Depot) to enter into a Sales Tax Agreement ("Agreement") (Attachment "B") with the City for the new Home Depot distribution center located at 13131 Los Angeles Street. Home Depot will establish a local distribution center, designating the City as the point of sale, such that operations will generate taxable retail sales within the City.

The Bradley-Burns Uniform Local Sales and Use Tax Law (the "Sales and Use Tax Law") authorizes counties and cities to impose local sales and use taxes in conformity with its terms. Under the Sales and Use Tax Law, the City of Irwindale receives one percent (1%) of all taxable sales generated within the City. The Agreement proposes that Home Depot receive a rebate on the City's portion of the Bradley Burns sales tax generated at the facility.

Sales and Use Tax revenues are important to the City because they are used to provide essential City services, such as police, infrastructure maintenance, and community service programs. Through a site selection process, Home Depot determined to locate a new e-commerce distribution facility in the City of Irwindale at the property located at 13131 Los Angeles Street. The proposed Agreement provides an economic subsidy by the City to Home Depot to incentivize the leasing of a new 530,000 sq. ft. build-to-suit facility and designate the City as a new point-of-sale location. The incentives provided in this Agreement are intended to ensure that Home Depot expands its operations to Irwindale and remains in the City for no less than 10 years.

Entering into this Agreement will generate substantial revenue for the City and create approximately 45-65 new permanent jobs. Further, the expansion of Home Depot serves the additional public purpose of fostering a positive business and civic environment that may attract additional businesses and investment in the community. The availability of increased public and private services and economic activity resulting therefrom will assist the City in its goal of enhancing economic development in the community. Considering the potential benefits Home Depot will bring to the community, Staff recommends the approval of this Operating Covenant Agreement to incentivize Home Depot to establish its business operations as a point of sale in the City.

Pursuant to the terms of the proposed Agreement, the operating covenant payment between the City and Home Depot is calculated based on Home Depot's sales tax revenue during a computation quarter in an amount equal to the sum of thirty-five percent (35%) of the local sales tax revenue received. Per the Economic Development Subsidy Report, payment to Home Depot is estimated at three hundred fifty thousand dollars (\$350,000) annually for the duration of the agreement- based on an estimated one hundred million dollars (\$100,000,000) in annual sales tax revenue due to the operation of the new Home Depot facility in the City. Over the 10-year term of the Agreement, therefore, the total subsidy will equal up to three million five hundred thousand dollars (\$3,500,000).

The City of Irwindale will receive approximately six hundred and fifty thousand dollars (\$650,000) per year in sales tax revenue, and approximately two thousand three hundred twenty-eight (\$2,328) per year in business license tax revenue, totaling six million five hundred twenty-three thousand two hundred eighty dollars (\$6,523,280) over the initial 10-year term of the agreement. Entering into the Agreement ensures that local sales tax revenue generated by Home Depot will remain in the City for no less than 10 years.

The Parties have negotiated two 5-year options to extend the agreement, which increases the amount of revenue Home Depot would receive, and decreases the amount of revenue the City would receive, by 5% after the Parties' agreement to exercise each option. Home Depot would receive 40% for years 11 through 15; and 45% for years 16 through 20, after the Parties' mutual agreement to exercise each option. The City would receive 60% for years 11 through 15; and 55% for years 16 through 20, after the Parties' mutual agreement to exercise each option.

**Legal Impact:**

Pursuant to the parties' negotiations, Home Depot has represented to the City that the purpose of the Agreement is to provide an economic development subsidy to Home Depot through its creation of local sales tax revenue. Home Depot has represented that an acceptable remedy for default of its obligations is for the City to withhold or rebate revenue as appropriate. Home Depot has therefore stated that it will not agree to additional remedies normally available to contracting parties, such as consequential money damages, or injunctive relief.

Therefore, the Agreement provides that were either Party to breach the Agreement, neither Party would be liable to the other for consequential damages and, in no event shall the City have the right of specific performance or other mandatory injunctive relief to compel Home Depot's operation of the Distribution Facility. This language significantly limits the City's legal remedies in the event of a breach of the agreement by Home Depot.

**Fiscal Impact:**

For the remainder of the 2022-2023 Fiscal Year, there is likely to be no fiscal impact to the City. In accordance with the terms of the Agreement, estimated revenues and expenditures will be calculated in future City budgets.

**Attachment(s):**

"A": RESOLUTION 2023-24-3402

"B": HOME DEPOT OPERATING COVENANT AGREEMENT

"C": HOME DEPOT ECONOMIC DEVELOPMENT SUBSIDY REPORT

**RESOLUTION NO. 2023-24-3402**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF IRWINDALE, CALIFORNIA, APPROVING AN OPERATING COVENANT AGREEMENT WITH HOME DEPOT U.S.A., INC, AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT, AND APPROVING AND ORDERING THE PUBLICATION OF AN ECONOMIC DEVELOPMENT SUBSIDY REPORT IN ACCORDANCE WITH GOVERNMENT CODE SECTION 53083.1**

**WHEREAS**, on January 26, 2022, the City of Irwindale adopted an Economic Development Sales and Use Tax Sharing Policy ("Policy") for the purpose of promoting development that will benefit the community as a whole in terms of both jobs and revenue creation; and

**WHEREAS**, in accordance with the Policy, the City of Irwindale and Home Depot U.S.A, Inc. ("Home Depot") have negotiated an Operating Covenant Agreement ("Agreement") with respect to the establishment and retention of an E-Commerce Distribution Facility within the City; and

**WHEREAS**, Home Depot has executed a 10-year lease with two 5-year options to renew for an approximately 530,000 square foot E-Commerce Distribution Center located at 13131 Los Angeles Street, Irwindale, CA 91706 ("Facility"), to serve as a next-day and same-day delivery center, specializing in big and bulky building material SKUs that are most effectively delivered on the Owner's flatbed trucks (e.g., lumber, building materials, flooring); and

**WHEREAS**, Home Depot has established operations at the Facility, defined as a qualified business location with a stock of goods as defined by State statute, thus allowing the Facility to be a Point of Sale within the City for local tax allocation purposes; and

**WHEREAS**, the City of Irwindale, in consideration of the Local Sales and/or Use Tax Revenues to be collected and remitted by Home Depot for the benefit of City, which City would not otherwise realize, will provide payments to Home Depot as compensation for its establishing operations at the Facility within City, and otherwise satisfying its obligations under the Agreement; and

**WHEREAS**, the City and Home Depot have negotiated in good faith to determine the deal points as set forth within the Agreement, in accordance with the City's Economic Development Sales and Use Tax Sharing Policy; and

**WHEREAS**, on March 10, 2023, the City published a notice of public hearing regarding the City Council's consideration of the economic subsidy and Operating Covenant Agreement; and

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

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

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

**SECTION 2.** In accordance with the Economic Development Sales and Use Tax Sharing Policy, the City Council hereby makes the following findings with respect to the Operating Covenant Agreement by and between the City of Irwindale and Home Depot:

1. *The net financial benefit to the public is larger than the financial incentive given which shall represent new resources of general fund revenue to the City.*

The City of Irwindale will receive approximately six hundred and fifty thousand dollars (\$650,000) per year in sales tax revenue, and approximately two thousand three hundred twenty-eight (\$2,328) per year in business license tax revenue, totaling six million five hundred twenty-three thousand two hundred eighty dollars (\$6,523,280) over the initial 10-year term of the agreement.

Home Depot U.S.A., Inc. will receive approximately three hundred and fifty thousand dollars (\$350,000) per year in sales tax revenue, totaling three million five hundred thousand dollars (\$3,500,000) over the initial 10-year term of the agreement.

The Parties have negotiated two 5-year options to extend the agreement, which increases the amount of revenue Home Depot would receive, and decreases the amount of revenue the City would receive, by 5% after the Parties' agreement to exercise each option. Home Depot would receive 40% for years 11 through 15; and 45% for years 16 through 20, after the Parties' mutual agreement to exercise each option. The City would receive 60% for years 11 through 15; and 55% for years 16 through 20, after the Parties' mutual agreement to exercise each option.

The net financial benefit to the public is larger than the financial incentive given to Home Depot. The establishment and retention of the Facility within the City will generate substantial general fund revenue for the City that might not otherwise be available to the community for many years.

2. *The agreement provides a direct benefit to the City, including the following:*
  - a. Revenues that will be used to provide for municipal services, public improvements, and/or civic or community programs, including but not limited to, public safety services and facilities, public improvements and recreational opportunities;
  - b. The creation, retention, and/or expansion of full-time, seasonal, or temporary jobs within the City;
  - c. Retention of a local or regional business within the City, which may attract additional businesses and investment in the community due to increased services and economic activity in the area;
  - d. Other ancillary benefits to the community, such as Home Depot's agreement to use commercially reasonable methods to participate in supporting community benefit events and activities.
3. *The business establishes the City of Irwindale as its operative location for point of sale and/or use for purposes of the collection of local sales and use tax revenues directly attributable to the business conducted within the City.*

Home Depot has covenanted to operate an E-Commerce Distribution Center at the Facility located within the City, and to ensure that it conducts its operations so that the point of sale for the purposes of collecting local sales and use tax revenues occurs and is designated within the City during the Term of the Agreement.

4. *The business itself is located within the City of Irwindale and will remain located within the City for a minimum of 10 years.*

The E-Commerce Distribution Center ("Facility") is located at 13131 Los Angeles Street, Irwindale, CA 91706, and Home Depot has covenanted to remain in the City for a minimum of 10 years. The Parties have negotiated two 5-year options to extend the agreement, for a maximum of 20 years.

**SECTION 3.** Based on the above findings as incorporated herein, the City Council hereby approves the Operating Covenant Agreement in substantially final form, attached hereto as **Exhibit "A"**. The City Council hereby authorizes the City Manager, with the concurrence of the City Attorney, to make any non-financially substantive changes determined to be appropriate and in the City's interest and execute said Agreement. City Manager is hereby authorized to take any additional steps necessary to facilitate the intent of this Resolution.

**SECTION 4.** The City Council hereby approves the Economic Development Subsidy Report, attached hereto as **Exhibit "B"** and incorporated herein by reference. The City Council further finds the report is in compliance with applicable law, and directs staff to publish the report to the public in accordance with Government Code Section 53083.1.

**SECTION 5.** The City Council hereby finds that pursuant to the California Environmental Quality Act ("CEQA") (Pub. Res. Code, § 21000 et seq.) and the State CEQA Guidelines (Cal. Code Regs, tit. 14 § 15000 et seq.), approval of the Operating Covenant Agreement and acceptance of the Economic Development Subsidy Report is not a "project" for purposes of CEQA and therefore is not subject to CEQA review. The Agreement and acceptance of the Economic Development Subsidy Report is not a project pursuant to State CEQA Guidelines section 15378(b)(4), which states that government fiscal activities which do not involve any commitment to any specific project which may result in a potentially significant environmental impact are not subject to CEQA. Further, the Agreement and acceptance of the Economic Development Subsidy Report is not a project under State CEQA Guidelines section 15061(b)(3), which states that CEQA does not apply where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment.

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

**PASSED, APPROVED, and ADOPTED** this \_\_\_\_ day of \_\_\_\_\_ 2023.

\_\_\_\_\_  
H. Manuel Ortiz, Mayor

ATTEST:

\_\_\_\_\_  
Laura M. Nieto, MMC  
Chief Deputy City Clerk

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

I, Laura M. Nieto, Chief Deputy City Clerk of the City of Irwindale, do hereby certify that the foregoing Resolution No. 2023-24-3402 was adopted at an regular meeting of the Irwindale City Council held on the \_\_\_\_ day of \_\_\_\_\_ 2023, by the following vote of the Council:

AYES:       Councilmembers:

NOES:       Councilmembers:

ABSTAIN:   Councilmembers:

ABSENT:     Councilmembers:

---

Laura M. Nieto, MMC  
Chief Deputy City Clerk

**OPERATING COVENANT AGREEMENT**

**between**

**CITY OF IRWINDALE**

**a Municipal Corporation**

**and**

**HOME DEPOT U.S.A., INC.**

**a Delaware Corporation**

\_\_\_\_\_, 2023

## **ARTICLE I. PARTIES AND EFFECTIVE DATE.**

**1.1 Parties.** This Location Agreement ("**Agreement**") is entered into by and between the CITY OF IRWINDALE, a charter city and municipal corporation ("**City**"), and HOME DEPOT U.S.A., INC., a Delaware corporation (the "**Owner**"). City and Owner are sometimes referred to individually as a "**Party**" and together as "**Parties**" herein.

**1.2 Effective Date.** This Agreement is dated for reference purposes only. This Agreement will not become effective until the date ("**Effective Date**") on which all of the following conditions precedent are true:

**1.2.1** This Agreement has been approved by the City Council following all legally required notices and hearings;

**1.2.2** This Agreement has been executed by the appropriate authorities of City and Owner;

**1.2.3** Owner has entered into a warehouse lease agreement to operate an E-Commerce Distribution Center within the City. Owner has represented to the City that it has executed a 10-year lease with two 5-year options to renew for the E-Commerce Distribution Center to be located at 13131 Los Angeles Street, Irwindale, CA 91706, in satisfaction of the condition precedent as described in this subsection. Owner understands that the City is materially relying on such representation in entering into this agreement; and

**1.2.4** The E-Commerce Distribution Center is generating Local Sales and/or Use Tax Revenues for the City.

**1.2.5** If all of the foregoing conditions precedent have not been satisfied within five (5) years of the Effective Date of this Agreement, then this Agreement shall not thereafter become effective and any prior signatures and approvals of the Parties will be deemed void and of no force or effect. The Parties shall be able to administratively extend this Section 1.1.5 beyond that initial five (5) year term, annually upon mutual written agreement.

## **ARTICLE II. RECITALS.**

**2.1** Owner has executed a 10-year lease with two 5-year options to renew for an approximately 530,000 square foot E-Commerce Distribution Center located at 13131 Los Angeles Street, Irwindale, CA 91706, to serve as a next-day and same-day delivery center, specializing in big and bulky building material SKUs that are most effectively delivered on the Owner's flatbed trucks (e.g., lumber, building materials, flooring).

**2.2** The purpose of this agreement is to encourage the Owner to establish Operations in the City to be defined as a qualified business location with a stock of goods as defined by State statute, thus allowing the Distribution Center to be a Point of Sale within the City for local tax allocation purposes.

**2.3** City, in consideration of the Local Sales and/or Use Tax Revenues (as defined in Section 3.1.18) to be collected and remitted by Owner for the benefit of City, which City would not otherwise realize, desires to provide City Payments to Owner as compensation for Owner establishing Operations within City through Owner's Distribution Center and otherwise satisfying its obligations under this Agreement.

**2.4** Such City Payment for each Fiscal Quarter will be an amount paid from Local Sales and/or Use Tax Revenues, and shall be measured by a percentage of the Local Sales and/or Use Tax Revenues generated in such Fiscal Quarter, as more particularly set forth in this Agreement.

**2.5** The operations of Owner in City will provide significant community benefits to City, in that the additional revenues will be generated as a result of Owner's efforts, which may be used by City for the funding of necessary public services and facilities. The City has determined that the long-term operation of Owner within the City will result in substantial benefits to the City, and its citizens including, without limitation, the creation of significant new numbers of employment opportunities, property tax revenues, sales tax revenues, community improvements, and other ancillary benefits. Accordingly, the City has also determined that its entry into this Agreement and the performance of the Covenants by Owner serve a significant public purpose, while providing only incidental benefits to a private party.

**2.6** City and Owner desire to enter into this Agreement for the purposes described above.

### **ARTICLE III. DEFINITIONS.**

**3.1 Definitions.** Unless the context otherwise requires, the terms defined in this Article 3 shall, for all purposes, and of any amendment hereof, and of any opinion or report or other document mentioned herein or therein, have the meanings defined herein; the following definitions to be equally applicable to both the singular and plural forms of any of the terms defined herein.

**3.1.1 "Agreement"** shall have the meaning set forth in Section 1.1.

**3.1.2 "Applicable Reporting Period"** means, for purposes of determining the Parties' financial obligations hereunder, the Reporting Period applicable to the Fiscal Quarter for which the financial obligation is being calculated. As an example, the Applicable Reporting Period for determining a financial obligation attributable to Sales occurring in the Fiscal Quarter ending January 31, shall include the then-current Fiscal Quarter ending January 31, and the three immediately prior Fiscal Quarters ending April 30, July 31, and October 31, respectively.

**3.1.3 "Business Day"** means a day which is not a Friday, Saturday, Sunday or legal holiday on which banking institutions in the State of California or City are closed.

**3.1.4 "CDTFA"** means the California Department of Tax and Fee

Administration and any successor agency.

**3.1.5 "City"** shall have the meaning set forth in Section 1.1 and shall include any nominee, assignee or successor to City's rights, powers and responsibilities.

**3.1.6 "City Payment"** means, with respect to a particular Fiscal Quarter within the Term, the sum **total** amount of City's "Location Payment Obligation" (LPO), as defined in Section 3.1.18, for such Fiscal Quarter.

**3.1.7 "Data and Documentation"** shall have the meaning set forth in Section 4.2.2.

**3.1.8 "Designated Sales Territory"** means the geographical boundaries of the sales, service and distribution area served by the Distribution Center which is located within the jurisdiction of the City.

**3.1.9 "Dispute Notice"** shall have the meaning set forth in Section 6.15.

**3.1.10 "Distribution Center"** means the location operated by Owner within the City at which E-Commerce Retail Sales and other sales transactions are consummated pursuant to the Sales Tax Law, which is located at 13131 Los Angeles Street, Irwindale, CA 91706.

**3.1.11 "E-Commerce Retail Sales"** means all Sales of Material conducted electronically on the internet to any person or entity distributed through a Distribution Center, which is subject to the Sales Tax Law and which generates Local Sales and/or Use Tax Revenues in the City.

**3.1.12 "Effective Date"** shall have the meaning set forth in Section 1.2.

**3.1.13 "Enforced Delays"** shall have the meaning set forth in Section 6.12.

**3.1.14 "Event of Default"** shall have the meaning set forth in Section-4.6.

**3.1.15 "Financial Assistance"** shall have the meaning set forth in Section 4.1.

**3.1.16 "Fiscal Quarter"** means one three-month period within the Term and commencing on February 1, May 1, August 1, or November 1, and ending on, as applicable, the immediately following April 30, July 31, October 31, January 31.

**3.1.17 "Location Payment Obligation" or "LPO"** means, as to a particular Fiscal Quarter during the Term, an amount equal to thirty-five percent (35%) of each dollar of Local Sales and/or Use Tax Revenues received by City and attributable to Owner for each Fiscal Quarter for the first ten (10) years beginning on the Effective Date of this Agreement. Owner has executed a 10-year lease with two 5-year options to renew for the Distribution Center. Upon Owner's exercise of their first option to extend the lease term for an additional five (5) years for a minimum total lease term of 15 years, the LPO shall increase to forty

percent (40%) upon commencement of the eleventh (11<sup>th</sup>) year of this Agreement, beginning on the anniversary of the Effective Date, provided that the parties have exercised their option to extend the term of this Agreement in accordance with section 4.7 herein. Upon Owner's exercise of its second five-year lease extension option exercised for a minimum total lease term of 20 years, the LPO shall increase to forty-five percent (45%) upon commencement of the sixteenth 16<sup>th</sup> year of this Agreement, beginning on the anniversary of the Effective Date, provided that the parties have exercised their option to extend the term of this Agreement in accordance with section 4.7 herein.

**3.1.18 "Local Sales and/or Use Tax Revenues"** means that portion of the Sales and/or Use Tax, paid by Owner, which is allocated and paid to City pursuant to the Sales Tax and/or Use Tax Law. Local Sales and/or Use Tax Revenues shall not include: (i) Penalty Assessments, (ii) any Sales Tax levied by, collected for or allocated to the State of California, the County of Los Angeles, or a district or any entity (including an allocation to a statewide or countywide pool) other than City, (iii) any administrative fee charged by the CDTFA, (iv) any Sales Tax subject to any sharing, rebate, offset or other charge imposed pursuant to any applicable provision of federal, state or local (except City's) law, rule or regulation, (vi) any Sales Tax attributable to any transaction not consummated within the Term, or (vii) any Sales Tax (or other funds measured by Sales Tax) required by the State of California to be paid over to another public entity (including the State) or set aside and/or pledged to a specific use other than for deposit into or payment from the City's general fund.

**3.1.19 "Material"** means any and all tangible personal property offered for sale by Owner to its customers/clients which is subject to the Sales Tax Law.

**3.1.20 "Minimum Annual Revenue Tax Base"** means, in accordance with the City's Sales and Use Tax Sharing Policy, the minimum tax base of one hundred million dollars (\$100,000,000) of annual revenue generated through Sales or Use by Owner within the City of Irwindale that is subject to Sales Tax Law and the Sales and/or Use Tax.

**3.1.21 "Minor Amendment"** means any limited technical correction, or not-substantive modification of this Agreement, as determined by the City Manager and City Attorney.

**3.1.22 "Operations"** means E-Commerce Retail Sales consummated through the Distribution Center located in the City and operated by Owner.

**3.1.23 "Penalty Assessments"** means penalties, assessments, collection costs and other costs, fees or charges resulting from late or delinquent payment of Sales Tax and which are levied, assessed or otherwise collected from Owner.

**3.1.24 "Reporting Period"** means, at any one point in time, the then- current Fiscal Quarter together with the immediately preceding three (3) Fiscal Quarters. As to any Fiscal Quarter, Owner's returns to the State of California under applicable Sales Tax Law are due by the end of the calendar month following a Fiscal Quarter, and accordingly, Owner's reporting for a Reporting Period shall be due to the City by the end of the calendar month following the calendar month in which Owner is obligated to file. For example, for

Fiscal Quarter ending July 31<sup>st</sup>, Owner's Data and Documentation shall be received by the City by September 30<sup>th</sup>.

**3.1.25 "Resolution Period"** shall have the meaning set forth in Section 6.15.

**3.1.26 "Sale" and "Sales"** mean, individually or collectively, E-Commerce Retail Sale(s).

**3.1.27 "Sales and/or Use Tax"** means all sales and use taxes levied under the authority of the Sales Tax Law, excluding Sales Tax which is to be refunded to Owner, because of an overpayment of Sales Tax.

**3.1.28 "Sales Tax Law"** means (i) California Revenue and Taxation Code Section 6001 *et seq.*, and any successor law thereto, (ii) any legislation allowing City or other public agency with jurisdiction in City to levy any form of Sales Tax, and (iii) regulations of the CDTFA and other binding rulings and interpretations relating to (i) and (ii) hereof.

**3.1.29 "Term"** shall mean that period commencing on the Effective Date and ending on the earlier of (i) the date that is ten (10) years after the Effective Date, unless otherwise extended in accordance with section 4.7 herein, or (ii) the date on which this Agreement is terminated pursuant to the specific provisions of this Agreement.

#### **ARTICLE IV. LOCATION AND OPERATION**

**4.1 Location and Operation Covenant.** Owner hereby covenants and agrees that it shall establish its Operations through its Distribution Center within the jurisdictional boundaries of the City and shall thereafter, for the full Term, conduct any E-Commerce Retail Sales Operations for the Designated Sales Territory through the Distribution Center in accordance with this Agreement, Sales Tax Law, and all other applicable provisions of local, state and federal law; provided, however, that a temporary cessation of operations directly resulting from events of force majeure as described in Section 4.11 will not constitute an Event of Default under Section 4.8. Owner's Distribution Center located in the City shall conduct its operations in accordance with all applicable provisions of local, state and federal law.

Owner will not directly or indirectly solicit or accept any "Financial Assistance" from any other public or private person or entity, if such Financial Assistance is given for the purpose of causing or would result in Owner's breach of the covenants set forth in this Section 4.1, failing to establish or to continue for the Term, Operations through its Distribution Center within the City. For purposes of this Section 4.1 the term "**Financial Assistance**" means any direct or indirect payment, subsidy, rebate, or other similar or dissimilar monetary or non-monetary benefit, including, without implied limitation, payment of land subsidies, relocation expenses, public financings, property or Sales tax relief, rebates, exemptions or credits, relief from public improvement obligations, and payment for public improvements to or for the benefit of Owner.

**4.1.1 Covenant to Designate City as Point of Sale.** Owner shall use all commercially reasonable efforts to ensure that it conducts its Operations within the City so that the place of Sale for taxable Sales occurring in the City during the Term of this Agreement will be the City, pursuant to the Sales Tax Law. In all Sales reports filed by Owner with the CDTFA relating to taxable Sales by such Operations, where such a designation is permitted or required under Sales Tax Law, Owner shall use to ensure that its Operations shall specify the City as the place of Sale for all of its taxable Sales that are conducted in the City. Owner shall maintain the appropriate master Sales permits applicable to and required for its Operations. Owner agrees and covenants that it shall not Relocate its Distribution Center, nor shall it redirect its place of Sale to another jurisdiction within the Designated Sales Territory during the term of this Agreement. "Relocate," as used in this Agreement shall mean the closing of the Distribution Center and opening of a substantially similar E-Commerce Distribution Center within the Designated Sales Territory during the Term of this Agreement.

City understands, acknowledges and agrees that Owner has established and may establish other distribution centers outside the City ("Additional Offices"). However, nothing in this Agreement limits Owner's right to conduct sales and other business and operations at or from the Additional Offices, but City makes no representations or warranties with respect to Owner's operations with respect to Additional Offices. Owner covenants and agrees that under no circumstances will Owner's agreements for Additional Offices impact Owner's obligations under this Agreement with respect to City's designation as point of Sale for Owner's Operations consummated at or through the Distribution Center, nor shall the agreements for any Additional Offices impact or negate any other representations, warranties and covenants of Owner contained in this Agreement.

## **4.2 Payment of City's Location Payment Obligation.**

**4.2.1** Within sixty (60) days following the later of: (i) City's receipt of final reconciliation reports from the CDTFA for a Fiscal Quarter occurring within the Term, or (ii) City's receipt of any and all Data and Documentation for the Reporting Period applicable to such Fiscal Quarter, City will determine and, in accordance with its Location Payment Obligation, pay to Owner the City Payment due for such Fiscal Quarter.

**4.2.2 Conditions Precedent to City Payments.** City's obligations under Section 4.2.2 hereof are contingent on a year-to-year basis and, for each Fiscal Quarter within the Term, City's obligations to make any payments to Owner hereunder are expressly contingent upon the satisfaction of the following conditions precedent in each Fiscal Quarter after Owner has begun E-Commerce Retail Sales in City, and after Owner reaches the Minimum Annual Revenue Tax Base:

- (i) Receipt by the City of the Local Sales and/or Use Tax Revenues derived from the Operation of the Distribution Center for each Fiscal Quarter;
- (ii) Owner will provide the City with the Data and Documentation (as

defined in Section 4.2.3) for each Fiscal Quarter, including Fiscal Quarters prior to achieving the Minimum Annual Revenue Tax Base;

- (iii) Owner's continuation of Operations through its Distribution Center within the City; and
- (iv) City's receipt and reasonable approval of the Data and Documentation, certified as complete and accurate by an authorized Owner officer or an authorized signatory delegate within (30) days following the end of the Reporting Period for each Fiscal Quarter. For example, for Fiscal Quarter ending July 31<sup>st</sup>, Owner's Data and Documentation shall be received by the City by September 30<sup>th</sup>.

Should any one or more of the foregoing conditions precedent not be satisfied for each Fiscal Quarter, then City shall have no obligation to make any City Payment to Owner for such Fiscal Quarter until such conditions precedent are met. If the City elects to delay any payment on account of any such purported noncompliance by the Owner, the City must promptly give the Owner written notice pursuant to Section 6.8 of all such material obligations that the City alleges have not been fulfilled and cooperate with the Owner's efforts to effect a cure or remedy with respect thereto. It is understood and agreed by Owner that, the City's Obligation to make payments and each City Payment is specifically contingent upon receipt by the City of the Local Sale and/or Use Tax Revenues derived from the Operation of the Distribution Center for each Fiscal Quarter.

**4.2.3 Data and Documentation.** For the purposes of this Agreement, the term "Data and Documentation" means copies of Owner's quarterly reports to the CDTFA and/or Sales and/or Use Tax Returns for the applicable Fiscal Quarter which sets forth the amount of Sales and/or Use Taxes paid to the CDTFA during the Fiscal Quarter arising from Owners' Operations.

**4.2.4 Reporting Obligations.** Owner acknowledges and agrees that it is required to provide the City any information necessary to comply with City's reporting obligations in accordance with Government Code section 53803.1 during the Term of this Agreement. The Parties agree that the City's annual Reporting Obligations as set forth in Government Code section 53083.1 shall commence on the Effective Date of this Agreement. Owners shall provide the City any information required by the City to comply with its Reporting Obligations at least forty-five (45) days prior to the anniversary of the Effective Date of this Agreement.

**4.2.5 Adequate Consideration.** Each City Payment due and payable hereunder shall constitute the total payment to Owner for the Fiscal Quarter to which it relates. The Parties hereto have determined and agreed that the City Payment due and payable during each Fiscal Quarter represents fair consideration to Owner for its covenants and obligations hereunder.

Both City and Owner expressly acknowledge and agree that Owner will receive

no compensation under this Agreement other than the City Payment. Owner shall not be entitled to any reimbursement or other compensation from City for any costs incurred by Owner in performing or preparing to perform its obligations under this Agreement. The City Payments shall not be reduced or offset for any costs or expenses incurred by City in performing or preparing to perform its duties under this Agreement.

**4.2.6 No Carry Forward or Back.** City and Owner acknowledge and agree that the calculation and determination of all financial components of the Parties' rights and obligations under this Agreement shall be computed on a Fiscal Quarter-to-Fiscal Quarter basis. Revenues generated in one Fiscal Quarter may not be carried forward or back to any prior or future Fiscal Quarter, it being the express agreement and understanding of the Parties that for each Fiscal Quarter the financial obligations of the Parties and satisfaction of the conditions precedent to such obligations shall be determined and made independently of any other Fiscal Quarter.

**4.2.7 Source of City Payment.** City Payments shall be payable from Local Sales and/or Use Tax Revenues. City covenants to reasonably consider such actions as may be necessary to include all City Payments owed hereunder in each of its annual budgets during the Term and to reasonably consider the necessary annual budgetary appropriations for all such City Payments.

**4.2.8 Recapture of City Payments.** If, at any time during or after the Term of this Agreement, CDTFA makes a final Board determination that all or any portion of the Local Sales and/or Use Tax Revenues received by the City were improperly allocated and/or paid to the City, and if CDTFA requires repayment of, offsets against future Sales and/or Use Tax payments, or otherwise recaptures from the City those improperly allocated and/or paid Local Sales and/or Use Tax Revenues, then Owner shall, within sixty (60) days after written demand from the City, together with reasonable documentation, repay all City Payments (or applicable portions thereof) theretofore paid to Owner which are attributable to such repaid, offset or recaptured Local Sales and/or Use Tax Revenues; provided, however, that the Owner's repayment obligations hereunder shall be limited to the actual amount of City Payments to be repaid. If Owner fails to make such repayment within sixty (60) days after the City's written demand, together with reasonable documentation, then such obligation shall accrue interest from the date of the City's original written demand at the then-maximum legal rate imposed by the California Code of Civil Procedure on prejudgment monetary obligations, compounded monthly, until paid. In addition, to the extent unpaid, City may withhold such amounts from future City Payments. The City will promptly contact Owner regarding any communication from the CDTFA pertaining to tax allocations associated with the Owner's business.

City and Owner agree that, should the CDTFA question the correctness of the allocation or determine that there has been an improper allocation to the City, City will (at the request of Owner) engage legal counsel to use his or her best efforts to defend such allocation in all CDTFA administrative proceedings. Costs associated for such efforts will be borne by both City and Owner in proportion to their respective percentage interests in the Local Sales and/or Use Tax Revenue. For purposes of this paragraph, administrative

proceedings include all CDTFA meetings, conferences and appeals before CDTFA Board members. Owner will cooperate fully with the City and its attorney. Owner shall have the right, but not the obligation, to participate in any such administrative proceedings and may engage its own legal counsel or consultant, at its own cost. In the event that the CDTFA reverses its decision (or is required to reverse its decision) and refunds or credits the City with some or all of the Local Sales and/or Use Tax Revenue previously found to have been misallocated to the City, the City shall refund all amounts previously repaid to the City pursuant to this Section with respect to such Local Sales and/or Use Tax Revenue.

**4.2.9 Underpayment by CDTFA.** In order to further the goals of this Agreement, City hereby authorizes Owner, upon reasonable notice and within the limits of the California Public Records Act, to allow Owner to review records regarding the receipt of Local Sales and/or Use Tax Revenues by City from CDTFA relating to Owner. City and Owner agrees that, in the event of an underpayment of Local Sales and/or Use Tax Revenues by CDTFA, City will (at the request of Owner) engage legal counsel to use his or her best efforts to defend such allocation in all CDTFA administrative proceedings. Costs associated for such efforts will be borne by both City and Owner in proportion to their respective percentage interests in the Local Sales and/or Use Tax Revenue. For purposes of this paragraph, administrative proceedings include all CDTFA meetings, conferences and appeals before CDTFA Board members.

**4.3 Audit of Books and Records.** Either Party shall, within the sixty (60) days following the filing for a Reporting Period, make its books and records relating to the Reporting Period being audited and the calculation and determination of that Party's rights and obligations under this Agreement available at no cost to the requesting Party and/or its designees (including its accountants and/or attorneys) and shall direct its accountants and other consultants and contractors in possession of its books and records to do likewise; provided, however, that nothing herein shall be deemed to abridge or constitute a waiver of any Party's evidentiary rights and privileges arising pursuant to any provision of law, including, without implied limitation, the California Evidence Code, California Government Code (including the Public Records Act), the Code of Civil Procedure, federal statutes and state or federal judicial decisions. Furthermore, Owner may redact or omit confidential information, including but not limited to customer information such as addresses, names and phone numbers. Furthermore, all such non-privileged books and records may be made available and introduced as evidence if ordered by any court of competent jurisdiction. Each Party shall bear the costs of its own auditors, experts and other consultants it may engage to complete its investigation of the other Party's books and records; provided, however, that any audit and/or investigation ordered by the court, may be recovered as an item of litigation expense pursuant to Section 6.14.

**4.4 Reconciliation.** Each City Payment shall be accompanied by a statement setting forth the calculations made to determine the amount of such disbursement and setting forth all disbursements made to date. The City Payment may be subject to any credits or offsets necessary to account for adjustments to Local Sales and/or Use Tax Revenues in accordance with Section 3.1.18 or any other provision of this Agreement. Each Party shall have the right to contest any of the calculations or information contained in said statement

or the determined amount of payment upon written notice to the other Party within sixty (60) calendar days of the date of the statement or City Payment. If the challenging Party can show to the reasonable satisfaction of the other Party, within sixty (60) calendar days of receiving such notice, that the amount of a City Payment was incorrect, either City shall disburse to Owner the correct amount due, or Owner shall reimburse City for any amount received in excess of the correct amount due, as applicable.

**4.5 Employment Outreach for Local Residents.** A goal of the City in entering into this Agreement is to foster employment opportunities for City residents. To that end, Owner shall use commercially reasonable efforts to recruit and hire local City residents for full and part time employment opportunities at its Distribution Center, as determined by Owner in its sole discretion. The City shall be authorized to post and advertise the job recruitment information provided to the City or posted on careers.homedepot.com on the City's website and other jobs available and job recruitment sites within the region and to provide a link to careers.homedepot.com, which reflects Owner's current job postings. If the Owner offers job recruitment events, then Owner will coordinate with the City. Failure by Owner to comply with the outreach initiatives in this Section shall not constitute an Event of Default under Section 4.8 of this Agreement. Any offers of employment shall be at Owner's sole discretion. Nothing in this paragraph shall require Owner to offer employment to individuals who are not otherwise qualified for such employment. Without limiting the generality of the foregoing, the provisions of this Section 4.5 are not intended, and shall not be construed, to benefit or be enforceable by any person whatsoever other than City.

**4.6 Community Improvement.** A material consideration for the City in entering into this Agreement is Owner's agreement to support community and public improvements within the City. Owner agrees to participate in supporting community benefit events and activities consistent with Owner's practices and policies. City staff may submit a request to Owner for Owner's participation in community benefit events at least once per year during the Term of this Agreement. Owner will consider, in its sole discretion and consistent with its practices and policies, whether to participate in specific community benefit events. In the alternative, Owner may consider, in its sole discretion, a deduction of the City's Location Payment Obligation for the purpose of community benefit participation.

**4.7 Option to Extend Term and Location Payment Obligations.** Upon Owner's exercise of each five (5) year option to extend its lease agreement for the Distribution Center, City and Owner shall retain the option to extend or modify the Term of this Agreement and proportion of Location Payment Obligations as set forth in this Agreement upon mutual written agreement by the parties and in accordance with the City's Sales and Use Tax Sharing Policy.

**4.8 Event of Default.** Each of the following shall constitute an "Event of Default":

**4.8.1** Failure by a Party to comply with and observe any of the material conditions, terms, or covenants set forth in this Agreement, if such failure remains uncured within ninety (90) days after written notice of such failure from the non-defaulting Party to the defaulting Party in the manner provided herein or, with respect to a default that cannot

be cured within ninety (90) days, if the defaulting Party fails to commence such cure within such ninety (90) day period or thereafter fails to diligently and continuously proceed with such cure to completion. However, if a different period, notice requirement, or remedy is specified under any other section of this Agreement, then the specific provision shall control.

**4.8.2** Any representation or warranty contained in this Agreement or in any application, financial statement invoice, certificate, or report submitted pursuant to this Agreement proves to have been incorrect in any material respect when made.

**4.9 Rights and Remedies; Rights and Remedies Not Exclusive.** Unless prohibited by law or otherwise provided by a specific term of this Agreement, the rights and remedies of City and Owner under this Agreement are nonexclusive and all remedies hereunder may be exercised individually or cumulatively. Notwithstanding anything in this Agreement to the contrary, (a) neither Party shall be liable to the other Party for consequential damages and (b) in no event shall the City have the right of specific performance or other mandatory injunctive relief to compel any aspect of the Owner's operation of the Distribution Facility. Upon the other Party's Event of Default, in addition to those remedies expressly granted herein, the Parties shall also have the right to seek all other available legal and equitable remedies.

#### **4.10 Termination.**

**4.10.1** In the event Owner's lease agreement for any Distribution Center in the City expires or terminates, Owner may, at its option, terminate this Agreement upon written notice to the City.

**4.10.2** In the event of the permanent cessation of the entirety of Owner's Operations within the City due to a force majeure event as described in Section 4.11, either Party may terminate this Agreement and all of its obligations hereunder without cost or liability.

**4.10.3 The City's Rights to Terminate its Obligations under Section 4.2.** The City's obligations under Section 4.2 shall automatically terminate without cost, expense, or liability to City, upon the occurrence of any one or more of the following: (i) Owner Default, as to which any applicable notice and cure period provided for herein has expired; (ii) the end of the Term; or (iii) upon the final determination by a court of competent jurisdiction that any one or more of the Covenants are void, voidable, invalid, or even unenforceable for any reason whatsoever, including, without limitation, legal infirmity. Upon termination, all of the City's LPO obligations for future City Payments will be terminated.

**4.10.4 Owner Termination.** Notwithstanding any other provisions of this Agreement, Owner may, at its option, upon written notice to City, terminate this Agreement and/or relocate the Distribution Facility, its Designated Sales Territory or its Distribution Center to any other city or county in California or elsewhere and reallocate Owner's E-Commerce Sales accordingly and in conformance with applicable Sales Tax Law. Owner shall provide at least three (3) months of written notice to the City prior to termination. Upon termination, all of Owner's obligations to comply with the Covenants in Section 4.1 and

4.1.1 shall terminate.

**4.11 Force Majeure.** Neither Party to this Agreement will be liable for failure or delay in its performance of its obligations hereunder due to causes beyond its reasonable control, including, but not limited to fire, flood, war, riot, embargo, labor dispute, strike, earthquake, or other similar acts of God, acts of civil and military authorities, or terrorism.

## **ARTICLE V. REPRESENTATIONS AND WARRANTIES**

**5.1 City Representations and Warranties.** City represents and warrants to Owner that, to City's actual current knowledge:

- (i) City is a municipal corporation exercising governmental functions and powers and organized and existing under the State of California;
- (ii) City has taken all actions required by law to approve the execution of this Agreement;
- (iii) City's entry into this Agreement and the performance of City's obligations under this Agreement do not violate any contract, agreement or other legal obligation of City;
- (iv) There are no pending lawsuits or other actions or proceedings which would prevent or impair the timely performance of City's obligations under this Agreement;
- (v) City has the legal right, power and authority to enter into this Agreement and to consummate the transactions contemplated hereby, and the execution, delivery and performance of this Agreement has been duly authorized and no other action by City is requisite to the valid and binding execution, delivery and performance of this Agreement, except as otherwise expressly set forth herein; and
- (vi) The individual executing this Agreement is authorized to execute this Agreement on behalf of City.

The representations and warranties set forth above are material consideration to Owner and City acknowledges that Owner is relying upon the representations set forth above in undertaking Owner's obligations set forth in this Agreement.

The term "City's actual current knowledge" means, and is limited to, the actual current knowledge of City Manager, as of the Effective Date, without having undertaken any independent inquiry or investigation for the purpose of making such representation or warranty and without any duty of inquiry or investigation. All of the terms, covenants and conditions of this Agreement shall be binding on and shall inure to the benefit of City and

its nominees, successors and assigns.

**5.2 Owner Representations and Warranties.** Owner represents and warrants to City that, to Owner's actual current knowledge:

- (i) Owner is a duly formed Delaware corporation and is in good standing and qualified to do business under the laws of the State of California;
- (ii) The individual(s) executing this Agreement is/are authorized to execute this Agreement on behalf of Owner;
- (iii) Owner has taken all actions required by law to approve this Agreement;
- (iv) Owner's entry into this Agreement and the performance of Owner's obligations under this Agreement do not violate any contract, agreement or other legal obligation of Owner
- (v) There are no pending lawsuits or other actions or proceedings which would prevent or impair the timely performance of Owner's obligations under this Agreement; and
- (vi) Owner has the legal right, power and authority to enter into this Agreement and to consummate the transactions contemplated hereby, and the execution, delivery and performance of this Agreement have been duly authorized and no other action by Owner is requisite to the valid and binding execution, delivery and performance of this Agreement, except as otherwise expressly set forth herein.

The representations and warranties set forth herein are material considerations to City and Owner acknowledges that City is relying upon the representations set forth above in undertaking City's obligations set forth above.

The term "Owner's actual current knowledge" means, and is limited to, the actual current knowledge of the individual(s) executing this Agreement on behalf of Owner as of the Effective Date, without having undertaken any independent inquiry or investigation for the purpose of making such representation or warranty and without any duty of inquiry or investigation.

**5.3** The City has entered into this Agreement with Owner because of the unique qualifications and identity of Owner. No voluntary or involuntary successor-in-interest of Owner shall acquire any rights or powers under this Agreement except as expressly set forth herein. Owner may not assign or transfer all or any part of this Agreement except as provided in Section 6.25.

## ARTICLE VI. MISCELLANEOUS

**6.1 Amendment; Modification.** At any time City and Owner may determine that this Agreement should be amended for the mutual benefit of the Parties, or for any other reason. Any such amendment to this Agreement shall only be by written agreement between City and Owner. City and Owner agree to consider reasonable requests for amendments to this Agreement which may be made by either of the Parties hereto, although neither Party shall be obligated to approve any such amendment. Any amendments to this Agreement must be in writing and signed by the appropriate authorities of both City and Owner. With the concurrence of the City Attorney, the City Manager is authorized on behalf of City to approve and execute Minor Amendments to this Agreement (as defined in Section 3.1.20) on behalf of City. Any amendment that is not a Minor Amendment shall require approval by the City Council. Any such approved amendment shall control over this Agreement.

**6.2 California Law.** This Agreement shall be construed and governed in accordance with the laws of the State of California without regard to its conflict of laws principles.

**6.3 Execution in Counterparts.** This Agreement may be executed in two (2) or more counterparts, each of which shall be deemed an original, and all of which shall constitute but one (1) and the same instrument.

**6.4 Business Days.** Any act or thing required to be done or exist on any date set forth herein which does not constitute a Business Day in any year shall be deemed to be done or to exist on such date if such act or thing is done or exists on the next date which constitutes a Business Day.

**6.5 Tax Consequences.** Owner shall be responsible and assume all liability for federal, state and/or local income or other taxes resulting from its receipt of City Payments.

**6.6 Rights Not Granted.** This Agreement is not, and shall not be construed to be, a statutory development agreement under California Government Code Section 65864 *et seq.* or a disposition and development agreement under California Health and Safety Code Section 33000 *et seq.* This Agreement is not, and shall not be construed to be, an approval of or an agreement to issue permits or a granting of any right or entitlement by City concerning any project, development, or construction by Owner in City. This Agreement does not, and shall not be construed to exempt Owner in any way from the requirement to obtain permits and/or other discretionary or non-discretionary approvals as may be necessary for the development, maintenance and operation of any project, development or construction within City.

This Agreement does not, and shall not be construed to exempt Owner from the application and/or exercise of City's power of eminent domain or its police power, including, but not limited to, the regulation of land uses and the taking of any actions necessary to protect the health, safety and welfare of its citizenry.

**6.7 Consent.** Whenever consent or approval of either Party is required under this

Agreement, that Party shall not unreasonably withhold, delay or condition such consent or approval unless a different standard is otherwise provided by a specific provision of this Agreement.

**6.8 Notices and Demands.** All notices or other communications required or permitted between City and Owner under this Agreement shall be in writing, and may be (i) personally delivered, (ii) sent by United States registered or certified mail, postage prepaid, return receipt requested, or (iii) sent by nationally recognized overnight courier service (e.g., Federal Express), and addressed to the Parties at the addresses below subject to the right of either Party to designate a different address for itself by notice similarly given. Any notice so given by registered or certified United States mail shall be deemed to have been received on the fourth (4<sup>th</sup>) Business Day after the same is deposited in the United States mail. Any notice not so given by registered or certified mail, such as notices delivered by courier service (e.g., Federal Express), shall be deemed received upon actual receipt of the same by the Party to whom the notice is given.

To City:

City of Irwindale  
5050 N. Irwindale Avenue  
Irwindale, CA 91706  
Attn: Julian A. Miranda, City Manager

With a copy to:

Aleshire & Wynder, LLP  
18881 Von Karman Avenue Suite 1700  
Irvine, CA 92612  
Attn: Adrian R. Guerra, City Attorney

To Owner:

Home Depot U.S.A., Inc.  
2455 Paces Ferry Rd.  
Atlanta, GA 30339-4024  
Attn: Real Estate Property Manager

With a copy to:

Home Depot U.S.A., Inc.  
2455 Paces Ferry Rd.  
Atlanta, GA 30339-4024  
Attn: Nick Harper, Senior Corporate Counsel

**6.9 Non-liability of Parties' Officials and Employees.** No officer, elected official, contractor, consultant, attorney or employee of City shall be personally liable to Owner, any voluntary or involuntary successors or assignees of Owner, or any lender or other party holding an interest in Owner's property, in the event of any default or breach by City, or for any amount which may become due to Owner or to its successors or assignees, or on any obligations arising under this Agreement.

No officer, official, contractor, consultant, attorney or employee of Owner shall be personally liable to City, any voluntary or involuntary successors or assignees of City in the event of any default or breach by Owner, or for any amount which may become due to City or to its successors or assignees, or on any obligations arising under this Agreement.

**6.10 Conflicts of Interest.** No officer, elected official, contractor, consultant, attorney or employee of City shall have any personal interest, direct or indirect, in this Agreement nor shall any such officer, elected official, contractor, consultant, attorney or employee participate in any decision relating to this Agreement which unlawfully affects his/her personal interests or the interests of any corporation, partnership or association in which he/she is directly or indirectly interested.

**6.11 Entire Agreement; Confidentiality.** This Agreement contains all of the terms and conditions agreed upon by the Parties. No other understanding, oral or otherwise, in direct conflict with this Agreement shall be deemed to exist or to bind any of the Parties hereto. All prior written or oral offers, counteroffers, memoranda of understanding, proposals and the like are superseded by this Agreement. The terms and existence of this Agreement will not be publicized or made public beyond what is required by law. City shall keep any and all proprietary and confidential information and data provided by Owner under this Agreement strictly confidential to the extent permitted by law. City will use information provided by Owner pursuant to this Agreement only for the purposes within the scope of this Agreement. Owner shall clearly mark or otherwise identify in writing all information it considers to be proprietary and confidential at the time it is delivered to City. The confidentiality obligation under this section shall not apply to:

(a) information which is already public information or which is otherwise available to the general public; (b) information received from a third party without a similar confidentiality restriction who is lawfully in possession of the information and who has the lawful right to disclose it; (c) information that is already in City's possession prior to receiving it from Owner; (d) information delivered by Owner to City and not marked or otherwise identified as proprietary and confidential at the time it was delivered; or (e) information required to be disclosed under the California Public Records Act.

**6.12 Extensions and Delays.** Time is of the essence in the performance of the obligations of City and Owner under this Agreement. In addition to specific provisions of this Agreement, providing for extensions of time, times for performance hereunder shall be extended where delays in performance are due to war, insurrection; any form of labor dispute; lockouts; riots; floods; earthquakes; fires; acts of God or of third parties; third party litigation or orders and judgments of courts of competent jurisdiction; acts of a public enemy; acts of governmental authorities; epidemics; quarantine restrictions; freight

embargoes; and other circumstances outside of a Party's reasonable control (collectively, "**Enforced Delays**") provided, however, that the Party claiming the extension shall notify the other Party of the nature of the matter causing the default; and, provided further, that the extension of time shall be only for the period of the Enforced Delays. In no event shall either Party be deemed in default of this Agreement because of an Enforced Delay event.

However, deadlines for performance may not be extended as provided above due to any inability of the Owner to obtain or maintain acceptable financing for the operation of the Distribution Center.

ANYTHING IN THIS COVENANT AGREEMENT TO THE CONTRARY NOTWITHSTANDING, OWNER ASSUMES THE RISK OF UNFORESEEABLE CHANGES IN ECONOMIC CIRCUMSTANCES AND/OR MARKET DEMAND/CONDITIONS AND WAIVES, TO THE GREATEST LEGAL EXTENT, ANY DEFENSE, CLAIM, OR CAUSE OF ACTION BASED IN WHOLE OR IN PART ON ECONOMIC NECESSITY, IMPRACTICABILITY, FRUSTRATION OF PURPOSE, CHANGED ECONOMIC CIRCUMSTANCES OR SIMILAR THEORIES.

OWNER EXPRESSLY AGREES THAT ADVERSE CHANGES IN ECONOMIC CONDITIONS, EITHER OF OWNER SPECIFICALLY OR THE ECONOMY GENERALLY, OR CHANGES IN THE MARKET CONDITIONS OR DEMANDS, SHALL NOT OPERATE TO EXCUSE OR DELAY THE STRICT OBSERVANCE OF EACH AND EVERY OF THE OBLIGATIONS, COVENANTS, CONDITIONS AND REQUIREMENTS OF THIS COVENANT AGREEMENT. OWNER EXPRESSLY ASSUMES THE RISK OF SUCH ADVERSE ECONOMIC OR MARKET CHANGES, WHETHER OR NOT FORESEEABLE AS OF OWNER'S EXECUTION OF THIS COVENANT AGREEMENT.

OWNER'S INITIALS \_\_\_\_\_

**6.13 Indemnification; Offset.** Owner agrees to indemnify City and hold it harmless from and against all third party demands, suits, proceedings, causes of action or claims arising from, in connection with or related to this Agreement or from City's performance of this Agreement, except to the extent such demand, suit, proceeding, cause of action or claim was caused by City's negligence or intentional misconduct, or the negligence or intentional misconduct of any of the City's officials, officers, employees, or agents, with the exception of CDTFA administrative proceedings described in Section 4.2. In the event that a court or administrative body determines that any portion of Local Sales and/or Use Tax Revenues must be shared with another jurisdiction, such amount shall be deducted from Local Sales and/or Use Tax Revenues and shall not be used to calculate the Location Payment Obligation. The City shall fully cooperate in the defense of such demand, suit, proceeding, cause of action or claim and upon written request of Owner shall provide to Owner such documents and records in possession of the City that are relevant to such demand, suit, proceeding or claim and not otherwise protected by law.

**6.14 Attorneys' Fees.** In the event of the bringing of an action or suit by a Party

hereto against another Party hereunder by reason of any breach of any of the covenants or agreements or any intentional inaccuracies in any of the representations and warranties on the part of the other Party arising out of this Agreement or any other dispute between the Parties concerning this Agreement then, in that event, the prevailing Party in such action or dispute, whether by final judgment or arbitration award, shall be entitled to recover from the other Party all costs and expenses of suit or claim, including actual attorneys' fees and expert witness fees. Any judgment, order or award entered in any final judgment or award shall contain a specific provision providing for the recovery of all costs and expenses of suit or claim, including actual attorneys' fees and expert witness fees (collectively, "**Costs**") incurred in enforcing, perfecting and executing such judgment or award. For the purposes of this Section 6.14, Costs shall include, without implied limitation, attorneys' and experts' fees, costs and expenses incurred in the following: (i) post judgment motions and appeals, (ii) contempt proceedings, (iii) garnishment, levy and debtor and third party examination; (iv) discovery; and (v) bankruptcy litigation. This Section 6.14 shall survive any termination of this Agreement.

**6.15 Informal Dispute Resolution.** The Parties shall attempt in good faith to resolve any differences, controversy or claim arising out of or relating to this Agreement promptly by negotiations between senior officials of the Parties who have authority to settle the difference or controversy. The disputing Party may give the other Party written notice ("**Dispute Notice**") that a dispute exists between them. Within twenty (20) days after receipt of a Dispute Notice, the receiving Party shall submit to the disputing Party a written response. The Dispute Notice and response shall include (a) a statement of each Party's position and a summary of the evidence and arguments supporting its position, and (b) the name and title of the official who shall represent that Party. The senior officials shall meet at a mutually acceptable time and place or by telephone conference within thirty (30) days of the date of the Dispute Notice, and thereafter as often as they reasonably deem necessary to exchange relevant information and to attempt to resolve the dispute, up to a maximum of ninety (90) days of the date of the Dispute Notice ("**Resolution Period**"). In the event any Party fails to provide a response to a Dispute Notice in accordance with this section or fails to cooperate in the scheduling of, or to attend, the meetings, described above, to resolve the dispute, then, with respect to that Party, the Resolution Period shall be deemed to have run so that the dispute may immediately be subject to legal action.

**6.16 Jurisdiction and Venue.** Any legal action or proceeding concerning this Agreement shall be filed and prosecuted in the appropriate State of California court in the County of Los Angeles, California. Both Parties hereto irrevocably consent to the personal jurisdiction of that court. City and Owner each hereby expressly waive the benefit of any provision of federal or state law or judicial decision providing for the filing, removal, or change of venue to any other court or jurisdiction, including, without implied limitation, federal district court, due to any diversity of citizenship between City and Owner, due to the fact that City is a party to such action or proceeding or due to the fact that a federal question or federal right is involved or alleged to be involved. Without limiting the generality of the foregoing, City and Owner specifically waive any rights provided to it pursuant to California Code of Civil Procedure Section 394. Owner acknowledges that the provisions of this Section 6.16 are material consideration to City for its entry into this Agreement, in that City

will avoid the potential cost, expense and inconvenience of litigating in a distant forum.

**6.17 Interpretation.** City and Owner acknowledge that this Agreement is the product of mutual arms-length negotiation and drafting and that both Parties have been represented by legal counsel in the negotiation and drafting of this Agreement. Accordingly, the rule of construction which provides that ambiguities in a document shall be construed against the drafter of that document shall have no application to the interpretation and enforcement of this Agreement. In any action or proceeding to interpret or enforce this Agreement, the finder of fact may refer to any extrinsic evidence not in direct conflict with any specific provision of this Agreement to determine and give effect to the intention of the Parties with respect to any ambiguities in this Agreement.

**6.18 No Waiver.** Failure to insist on any occasion upon strict compliance with any of the terms, covenants or conditions hereof shall not be deemed a waiver by any Party of such term, covenant or condition, nor shall any waiver or relinquishment of any rights or powers hereunder at any one time or more times be deemed a waiver or relinquishment by any Party of such other right or power at any other time or times.

**6.19 Successors and Assigns.** The terms, covenants and conditions of this Agreement shall be binding upon and inure to the benefit of the Parties hereto and their voluntary and involuntary successors and assigns.

**6.20 No Third Party Beneficiaries.** The performance of the respective obligations of City and Owner under this Agreement are not intended to benefit any party other than City or Owner. No person or entity not a signatory to this Agreement shall have any rights or causes of action against any Party to this Agreement as a result of that Party's performance or non-performance under this Agreement.

**6.21 No Effect on Eminent Domain Authority.** Nothing in this Agreement shall be deemed to limit, modify, or abridge or affect in any manner whatsoever City's eminent domain powers with respect to any property.

**6.22 Warranty Against Payment of Consideration.** Owner 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. Third parties, for the purposes of this Section 6.22, shall not include persons to whom fees are paid for professional services if rendered by attorneys, financial consultants, accountants, engineers, architects and the like when such fees are considered necessary by Owner.

**6.23 Severability.** City and Owner declare that the provisions of this Agreement are severable. If it is determined by a court of competent jurisdiction that any term, condition or provision hereof is void, voidable, or unenforceable for any reason whatsoever, then such term, condition or provision shall be severed from this Agreement and the remainder of the Agreement enforced in accordance with its terms.

**6.24 Further Acts.** City and Owner each agree to take such additional acts and execute such other documents as may be reasonable and necessary in the performance of

their obligations hereunder. The foregoing shall not, however, be deemed to require City to exercise its legislative discretion in any particular fashion or to provide to Owner any remedy or claim for damages against City based on the lawful exercise of City's discretion.

**6.25 No Assignment, Transfer, Pledge or Hypothecation.** Owner may not assign, transfer, encumber or hypothecate its rights or obligations under this Agreement to any person or entity, without the express written consent of City, which may be withheld in City's sole and absolute discretion. Any unpermitted assignment, transfer, pledge, encumbrance, or hypothecation, or any attempt to do so, shall not confer any rights upon the purported assignee or transferee and shall constitute Owner's immediate and incurable material default of this Agreement, and City may, without providing Owner notice or opportunity to cure, exercise those remedies available to City pursuant to Sections 4.7 and 4.8.3. Notwithstanding the foregoing, Owner shall have the right to assign this Agreement or any right or obligation hereunder to its immediate or ultimate parent, or to an affiliate, by providing advance written notice to City. An "affiliate" shall mean any legal entity that, at the applicable time, directly or indirectly controls, is controlled with or by, or is under common control with, Owner.

**6.26 Relationship of Parties.** The Parties shall not be deemed in a relationship of partners or a joint venture by virtue of this Agreement, nor shall either Party be an agent, representative, trustee or fiduciary of the other. Neither Party shall have any authority to bind the other to any agreement.

**6.27 Non-Dedication of Property.** The execution of this Agreement by Owner does not result in the dedication of any Owner property for public use.

**[Signatures on following pages]**

SIGNATURE PAGE  
TO  
LOCATION AGREEMENT

CITY:

CITY OF IRWINDALE  
a California Municipal Corporation

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Julian A. Miranda, City Manager

ATTEST:

By: \_\_\_\_\_  
Laura M. Nieto, Chief Deputy City Clerk

APPROVED AS TO LEGAL FORM:

By: \_\_\_\_\_  
Adrian R. Guerra, City Attorney

SIGNATURE PAGE  
TO  
LOCATION AGREEMENT

OWNER:

Home Depot U.S.A., Inc.,  
a Delaware corporation

Dated: \_\_\_\_\_

By: \_\_\_\_\_

Its: \_\_\_\_\_

65404181.v11  
67469187.v1

**ECONOMIC DEVELOPMENT SUBSIDY REPORT  
PURSUANT TO GOVERNMENT CODE SECTION 53083.1**

**FOR A WAREHOUSE DISTRIBUTION CENTER OPERATING COVENANT  
AGREEMENT  
BY AND BETWEEN  
CITY OF IRWINDALE  
AND  
HOME DEPOT U.S.A., INC.**

Pursuant to Government Code Section 53083.1, the City Council of the City of Irwindale must hold a noticed public hearing and, prior to the public hearing, provide all of the following information in written form and available to the public and through the City's website, regarding a proposed economic development subsidy to be provided by the City pursuant to an Operating Covenant Agreement by and between the City of Irwindale ("City") and Home Depot U.S.A., INC. ("Home Depot") (the "Agreement"). The Agreement provides an economic subsidy by the City to Home Depot to incentivize the leasing of a new build-to-suit facility of 530,000 square feet, or locate a new point of sale in an existing facility, to operate an E-Commerce Distribution Facility ("Facility").

Notice was published in the local newspaper for a public hearing to be held on March 22, 2023.

The purpose of this report is to provide the information required pursuant to Government Code Section 53083.1 in regard to the Agreement. This report shall remain available to the public and posted on the City's website until the end date of the economic development subsidy, as further described in number 2 below.

- 1. The name and address of all corporations, including members of a commonly controlled group or members of a combined reporting group of which the corporation is a member, or any other business entities, except for sole proprietorships, that are the beneficiary of the economic development subsidy.**

The Agreement is with Home Depot U.S.A., INC., a Delaware corporation ("Home Depot"). Home Depot is the sole beneficiary of the economic development subsidy.

Home Depot U.S.A., INC.  
2455 Paces Ferry Road, N.W.  
Atlanta, Georgia 30339  
(770) 384-2864

**2. The name and address of all warehouse distribution centers that are the beneficiary of the economic development subsidy.**

Through a site selection process, Home Depot determined to locate a new e-commerce distribution facility in the City of Irwindale at the property located at 13131 Los Angeles Street, Irwindale, California 91706.

**3. The start and end dates and schedule, if applicable, for the economic development subsidy.**

The Effective Date of the Agreement is contingent on City Council approval after all legally required notices and hearings; execution of the agreement by Home Depot, and the City; Home Depot's execution of a warehouse lease agreement for the distribution center to be located at 13131 Los Angeles Street; and the facility has begun to generate Sales and/or Use Tax Sales revenues for the City.

The term will commence on the Effective Date of the Agreement and continue for a minimum of ten years. The City's obligation to make any payments to Home Depot are expressly contingent upon the satisfaction of certain conditions precedent in each Fiscal Quarter after Home Depot has begun E-Commerce Retail Sales at the distribution center, and after Home Depot's annual sales and/or use tax base equals or exceeds \$100,000,000.00.

The Parties have negotiated two five-year options to extend the Agreement, for a total term of 20 years.

**4. A description of the economic development subsidy, including the estimated total amount of the expenditure of public funds by, or of revenue lost to, the local agency as a result of the economic development subsidy.**

The Agreement provides that Home Depot U.S.A., Inc. will retain 35% of Sales and/or Use Tax Revenues attributable to taxable sales within the City over the next ten years following the Effective Date; Payment will be made on a quarterly basis. It is estimated that Home Depot U.S.A, Inc. will generate approximately \$1,000,0000 annually in sales tax revenue. Based upon this estimate, Home Depot U.S.A, Inc. is projected to receive approximately three hundred and fifty thousand dollars (\$350,000) per annum. The total amount of the expenditure or loss of revenue is estimated to be three million five hundred thousand dollars (\$3,500,000). The amounts may increase, with increased sales.

The Parties have negotiated two 5-year options to extend the agreement, which increases the amount of revenue Home Depot would receive by 5% for a total of 40% for years 11 through 15; and 45% for years 16 through 20, after the Parties' mutual agreement to exercise each option.

**5. A statement of the public purposes for the economic development subsidy.**

To continue to expand and enhance economic opportunities for businesses in the City, continue to expand the City's employment base, and continue to generate hereinafter defined Sales Tax that the City can utilize to fund general government services such as police, street maintenance, park maintenance, and community service programs.

The City has determined that the Agreement with Home Depot will generate substantial revenue for the City, allow for the creation of new jobs, and result in community and public improvements that might not otherwise be available to the community for many years. This Agreement furthers the policies of the City to be business-friendly and support economic growth including the creation of new sources of revenue that support residents and city services.

**6. Projected tax revenue to the local agency as a result of the economic development subsidy.**

The City of Irwindale will retain 65% of the sales tax revenue and receive approximately six hundred and fifty thousand dollars (\$650,000) per year in sales tax revenue, and approximately two thousand three hundred twenty-eight (\$2,328) per year in business license tax revenue, totaling six million five hundred twenty-three thousand two hundred eighty dollars (\$6,523,280) over the initial 10-year term of the agreement. In addition, the City may also collect unsecured property tax on fixtures, furniture, and machinery used in business, however, that amount is unknown until the taxpayer reports the actual value to Los Angeles County in the latter part of 2023.

The Parties have negotiated two 5-year options to extend the agreement, which decreases the amount of revenue the City would receive by 5% for a total of 60% for years 11 through 15; and 55% for years 16 through 20, after the Parties' mutual agreement to exercise each option.

**7. Estimated number of jobs created by the economic development subsidy, broken down by full-time, part-time, and temporary positions.**

The City and Home Depot U.S.A, Inc. have estimated that the Agreement will create approximately 45 to 65 new full-time jobs as a result of this Project. The positions will have an average hourly wage of \$21.50 plus benefits. In addition, 45 to 75 third-party logistics employees will service the facility.

**8. The estimated number of workers employed through temporary agencies.**

Home Depot does not anticipate using temporary agencies on site.

**9. Whether any benefits package is offered, including health benefits, fringe benefits, and defined benefit pensions.**

Home Depot offers health and retirement benefits to full-time employees including but not limited to, medical, vision, dental, 401(K), profit-sharing bonuses, and tuition reimbursement.

**10. Both of the following regarding each warehouse distribution center that is the beneficiary of the economic development subsidy:**

**a. A description of the outreach, training, and hiring plans, including plans to hire disadvantaged workers.**

Home Depot will use commercially reasonable efforts to recruit and hire locally for full and part-time opportunities.

**b. A description and total value of any state or federal subsidies in the process of being applied for, or received by, the warehouse distribution center.**

None.

**11. A description of any accountability measures, including, but not limited to, clawbacks of subsidies, provided in the contract if the warehouse distribution center does not meet the goal outlined in the contract for subsidies.**

The Agreement provides that prior to City issuance of payment, the City must receive and approve copies of Home Depot's quarterly reports to the CDTFA and/or Sales and Use Tax Returns for the applicable Fiscal Quarter which sets forth the amount of Sales and/or Use Taxes paid to the CDTFA during the Fiscal Quarter arising from Home Depot's operations within the City. Improper allocations of revenue to Home Depot based on a final CDTFA determination may be repaid to the City upon 60 days written notice.

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

SA Item A1A

**FEBRUARY 22, 2023**  
**WEDNESDAY**  
**9:08 P.M.**

The Irwindale **SUCCESSOR AGENCY TO THE IRWINDALE COMMUNITY REDEVELOPMENT AGENCY** met in regular session at the above time and place.

**ROLL CALL:**

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

Present: Julian A. Miranda, City Manager; Adrian Guerra, City  
Attorney; Robert Castro, Interim Chief of Police; Theresa Olivares,  
Assistant City Manager; Kambiz Borhani, Director of Finance / City  
Treasurer; Marilyn Simpson, Community Development Director; Mary  
Hull, Human Resources Manager, Elizabeth Rodriguez, Public  
Services Director; and Laura Nieto, Chief Deputy City Clerk

**AB 2449 DISCLOSURES** None.

**SPONTANEOUS  
COMMUNICATIONS**

There were no speakers.

**CONSENT CALENDAR**

**MOTION**

A motion was made by Councilmember Breceda, seconded by  
Councilmember Garcia, to approve the Consent Calendar. The  
motion was unanimously approved.

**ITEM NO. 1A1  
MINUTES**

**MINUTES**

The following minutes were approved:

- 1) Special joint meeting held January 25, 2023
- 2) Regular meeting held January 25, 2023

**ITEM NO. 1B  
WARRANTS**

**WARRANTS**

The warrants were approved.

**END OF CONSENT CALENDAR**

**ADJOURNMENT**

There being no further business to conduct, the meeting was  
adjourned at 9:08 p.m.

---

Laura M. Nieto, MMC  
Chief Deputy City Clerk

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

SA Item A1B

**MARCH 8, 2023**  
**WEDNESDAY**  
**10:02 P.M.**

The Irwindale **SUCCESSOR AGENCY TO THE IRWINDALE COMMUNITY REDEVELOPMENT AGENCY** met in regular session at the above time and place.

**ROLL CALL:**

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

Absent: Councilmember Manuel R. Garcia

Present: Julian A. Miranda, City Manager; Adrian Guerra, City Attorney; Robert Castro, Interim Chief of Police; Theresa Olivares, Assistant City Manager; Kambiz Borhani, Director of Finance / City Treasurer; Marilyn Simpson, Community Development Director; Mary Hull, Human Resources Manager, Elizabeth Rodriguez, Public Services Director; and Laura Nieto, Chief Deputy City Clerk

**AB 2449 DISCLOSURES** None.

**CONSENT CALENDAR**

**MOTION**

A motion was made by Mayor Pro Tem Ambriz, seconded by Mayor Ortiz, to approve the Consent Calendar, with the exception of Item No. 5, which was continued to a future meeting. The motion was unanimously approved; Councilmember Garcia absent.

**ITEM NO. A1**  
**MINUTES**

**MINUTES**

The following minutes were approved:

- A) Special joint meeting held February 8, 2023
- B) Regular meeting held February 8, 2023

**ITEM NO. A2**  
**WARRANTS**

**WARRANTS**

The warrants were approved.

**ITEM NO. A3**  
**FOURTH AMENDMENT**  
**TO THE IRWINDALE**  
**FEE AGREEMENT**  
**FOR CITY ATTORNEY**  
**SERVICES WITH**  
**ALESHIRE & WYNDER,**  
**LLP**

**FOURTH AMENDMENT TO THE IRWINDALE FEE AGREEMENT**  
**FOR CITY ATTORNEY SERVICES WITH ALESHIRE & WYNDER,**  
**LLP**

This matter was continued to a future meeting.

**END OF CONSENT CALENDAR**

**SPONTANEOUS**  
**COMMUNICATIONS**

There were no speakers.

**ADJOURNMENT**

There being no further business to conduct, the meeting was adjourned at 10:03 p.m.

---

Laura M. Nieto, MMC  
Chief Deputy City Clerk

**Accounts Payable**

Checks by Date - Summary by Check Number

**City of Irwindale as Successor Agency to the  
Irwindale Community Redevelopment Agency**

| Check No                 | Vendor No | Vendor Name | Check Date | Check Amount |
|--------------------------|-----------|-------------|------------|--------------|
|                          | 79242     | ROSENO      | 03/09/2023 | 3,875.00     |
|                          | 79243     | WILLDAN     | 03/09/2023 | 3,750.00     |
| Report Total (2 checks): |           |             |            | 7,625.00     |