

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 HOUSING AUTHORITY

JANUARY 25, 2023

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

IRWINDALE CITY COUNCIL CHAMBER

CLOSED SESSION / OPEN SESSION – CITY COUNCIL CHAMBER

Limited Public Access

Pursuant to Irwindale Resolution No. Resolution No. 2023-05-3383

The Irwindale City Council has authorized the conduct of hybrid meetings of the City Council, including all City Commissions and committee meetings, and all regularly scheduled meetings that would normally take place in the City Council Chambers, under the provisions of Government Code Section 54956 § E, as authorized by AB 361.

The public's health and well-being are the top priority for the City, and you are urged to take all appropriate health safety precautions. To facilitate this process, the meeting and opportunities to participate are available through the following:

In-Person at the City Council Chambers

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).

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

C. AB 2449 DISCLOSURES

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

SPONTANEOUS COMMUNICATIONS

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

D. 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

2. Public Employee Performance Evaluation
Pursuant to California Government Code Section 54957

Title: City Manager

3. Liability Claims
Pursuant to Government Code section 54956.95)

A) Claimant: Robert Avila
Agency claimed against: City of Irwindale

B) Claimant: Mariela Avila
Agency claimed against: City of Irwindale

E. RECONVENE IN OPEN SESSION

F. REPORT FROM CLOSED SESSION

G. 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. CHANGES TO THE AGENDA****G. COUNCIL MEMBER TRAVEL REPORTS****H. COUNCILMEMBER COMMENTS****I. INTRODUCTION OF NEW EMPLOYEES/PROMOTIONS****J. PROCLAMATIONS / PRESENTATIONS / COMMENDATIONS**

1. Chamber of Commerce Business of the Month - Vulcan Materials

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. If a member of the audience feels he or she must proceed tonight, then each speaker will be limited to 3 minutes unless such time limits are extended. 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 attendees who have not previously provide comments on the matter(s) being discussed by the legislative body

Tier 4: Teleconference attendees who have not previously provide comments on the matter(s) being discussed by the legislative body

1. 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.

A. Minutes

Department: Administration / City Clerk

Recommendation: Approve the following minutes:

1. Special joint meeting held December 14, 2022
2. Regular meeting held December 14, 2022

B. Warrants/Demands/Payroll

Department: Finance

Recommendation: Approve

C. Investment Quarterly Report for Fiscal Quarter Ending December 31, 2022 (Joint Item on Successor Agency and Housing Authority)

Department: Finance

Recommendation: Receive and file the Investment Quarterly Report for the fiscal quarter ending December 31, 2022.

D. Claim Rejection – Natalie Diaz

Department: Administration

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

E. Approval of Plans and Specifications for the 2022-2023 Resurfacing Program: Residential Resurfacing Project – Phase II; P-1043

Department: Engineering

Recommendation: (1) Approve the plans and specifications for the 2022-2023 Resurfacing Program: Residential Resurfacing Project – Phase II; and (2) authorize staff to solicit bids for construction of the project.

2. NEW BUSINESS

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

- A) Direction Regarding United Rock Products Request to Submit an Application to Modify the Development Agreement for the Olive Pit

Department: Community Development

Recommendation: Discuss and authorize the City Manager to sign the application for the modification of the Development Agreement for the Olive Pit, located at 4407 Azusa Canyon Road.

- B) Approval of Settlement Agreement between Five Points, LP and City of Irwindale regarding settlement of the lawsuit Five Points, LP vs. City of Irwindale, Los Angeles County Superior Court, Case No. 22STCV01394

Recommendation: 1) Approve the Settlement Agreement between the City of Irwindale and Five Points, LP regarding settlement of the lawsuit Five Points, LP vs. City of Irwindale, Los Angeles County Superior Court, Case No. 22STCV01394, and 2) Authorize the City Manager to execute the Settlement Agreement subject to City Attorney approval as to form with authorization to the City Manager to approve any non-substantive changes to the agreement prior to execution.

- C) Request to approve Amendment No. 3 to the professional consulting contract with De Novo Planning Group for the preparation of an additional air quality analysis for the Environmental Impact Report for the construction of a ±495,000 square-foot concrete tilt-up building and associated parking at 5175 Vincent Avenue [APNS: 8417-034-015 and 8417-034-016 as per the 2018 Assessor's Parcel Map. (Formerly APNS: 8417-034-904, 8417-034-910, 8417-034-911)]

Department: Community Development

Recommendation: Approve contract amendment No. 3 with De Novo Planning Group for the preparation of additional air quality analysis for the proposed project at 5175 Vincent Avenue. This analysis is being prepared as part of the Environmental Impact Report.

3. PUBLIC HEARINGS

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

4. CITY MANAGER'S REPORT**5. AGENDA ITEMS REQUESTED BY COUNCIL MEMBERS****6. 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

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.

1. CONSENT CALENDAR

A. Minutes

Department: Administration / City Clerk

Recommendation: Approve the following minutes:

1. Special joint meeting held December 14, 2022
2. Regular meeting held December 14, 2022

B. Warrants

Department: Finance

Recommendation: Approve

C. Investment Quarterly Report for Fiscal Quarter Ending December 31, 2022 (Joint Item on City Council and Housing Authority)

Department: Finance

Recommendation: Receive and file the Investment Quarterly Report for the fiscal quarter ending December 31, 2022.

2. NEW BUSINESS

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

3. PUBLIC HEARINGS

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

4. ADJOURN

HOUSING AUTHORITY

AB 2449 DISCLOSURES

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

SPONTANEOUS COMMUNICATIONS

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

1. CONSENT CALENDAR

A. Minutes

Department: Administration / City Clerk

Recommendation: Approve the following minutes:

1. Special joint meeting held December 14, 2022
2. Regular meeting held December 14, 2022

B. Investment Quarterly Report for Fiscal Quarter Ending December 31, 2022 (Joint Item on City Council and Successor Agency)

Department: Finance

Recommendation: Receive and file the Investment Quarterly Report for the fiscal quarter ending December 31, 2022.

2. NEW BUSINESS

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

A. Las Casitas Verbal Update

3. PUBLIC HEARINGS

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

4. ADJOURNMENT

AFFIDAVIT OF POSTING

I, Laura M. Nieto, Chief Deputy City Clerk, certify that I caused the agenda for the regular meeting of the City Council, Irwindale Successor Agency to the Irwindale Community Redevelopment Agency, and Housing Authority, to be held on January 25, 2023, be posted at the City Hall, Library, and Post Office on January 20, 2023.

Laura M. Nieto, MMC

Laura M. Nieto, MMC
Chief Deputy City Clerk

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

CC, SA & HA
ITEM 1A1

**DECEMBER 14, 2022
WEDNESDAY
5:30 P.M.**

The Irwindale **CITY COUNCIL, SUCCESSOR AGENCY TO THE COMMUNITY REDEVELOPMENT AGENCY, HOUSING AUTHORITY, AND RECLAMATION AUTHORITY** met in special joint session at the above time and place.

ROLL CALL:

Present: Council/Board Members Mark A. Breceda (arrived at 6:38 p.m.), Manuel R. Garcia, H. Manuel Ortiz; Mayor Pro Tem / Vice Chair Albert F. Ambriz; Mayor / Chair Larry G. Burrola

Also Present: Julian A. Miranda, City Manager / Executive Director; Adrian Guerra, City Attorney / General Counsel

**SPONTANEOUS
COMMUNICATIONS**

There were no speakers.

CONSENT CALENDAR

MOTION

A motion was made by Mayor Pro Tem Ambriz, seconded by Councilmember Ortiz, to approve the Consent Calendar. The motion was unanimously approved; Councilmember Breceda absent at the time of the roll call.

ITEM NO. D1

A RESOLUTION TO RE-RATIFY THE EXISTENCE OF A LOCAL EMERGENCY AND AUTHORIZE REMOTE MEETINGS FOR THE LEGISLATIVE BODIES OF THE CITY OF IRWINDALE FOR THE 30-DAY PERIOD BEGINNING DECEMBER 14, 2022 THROUGH JANUARY 13, 2023

A RESOLUTION TO RE-RATIFY THE EXISTENCE OF A LOCAL EMERGENCY AND AUTHORIZE REMOTE MEETINGS OF THE LEGISLATIVE BODIES OF THE CITY OF IRWINDALE FOR THE 30-DAY PERIOD BEGINNING DECEMBER 14, 2022 THROUGH JANUARY 13, 2023

**RESOLUTIONS
ADOPTED**

Joint Resolution Nos. 2022-112-3362, SA 2022-113-3363, HA 2022-21-131, and RA 2022-08-035 entitled:

"A JOINT RESOLUTION OF THE CITY COUNCIL OF THE CITY OF IRWINDALE, SUCCESSOR AGENCY TO THE IRWINDALE COMMUNITY REDEVELOPMENT AGENCY, AND THE BOARD OF THE HOUSING AUTHORITY RE-RATIFYING THE PROCLAMATION OF A STATE OF EMERGENCY BY GOVERNOR NEWSOM ON MARCH 4, 2020, AND AUTHORIZING REMOTE HYBRID MEETINGS OF THE LEGISLATIVE BODIES OF THE CITY OF IRWINDALE FOR THE 30-DAY PERIOD BEGINNING

DECEMBER 14, 2022, THROUGH JANUARY 13, 2023, PURSUANT TO THE RALPH M. BROWN ACT AND ASSEMBLY BILL NO. 361," was adopted, Councilmember Breceda absent.

RECESS TO
CLOSED SESSION

At 5:35 p.m., the City Council met in Closed Session to discuss the following:

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

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

ACTION: Discussed, direction provided; no reportable action taken (Councilmember Breceda did not participate).

Liability Claims
Pursuant to Government Code Section 54956.95

Claimant: Unspecified pursuant to Government Code Section 54961
Agency claimed against: City of Irwindale

ACTION: Update provided; no direction or action taken.

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

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

ACTION: Discussed, update provided. No action taken.

Property: 5223 Morada Street (APN 8619-012-907)
Agency Negotiators: Julian A. Miranda, City Manager
Negotiating Parties: TBD
Under Negotiation: Price and Terms

ACTION: Discussed, direction provided; no reportable action taken (Councilmember Breceda did not participate).

Property: 5239 Morada Street (APN 8619-012-910)
Agency Negotiators: Julian A. Miranda, Executive Director
Negotiating Parties: TBD
Under Negotiation: Price and Terms

ACTION: Discussed, direction provided; no reportable action taken (Councilmember Breceda did not participate).

Conference with Legal Counsel – Anticipated Litigation

Initiation of litigation pursuant to paragraph (4) of subdivision (d) of Section 54956.9

Number of cases: One

ACTION: Discussed, update provided; no reportable action taken (Councilmember Breceda did not participate).

**RECONVENE IN
OPEN SESSION**

At 6:38 p.m., the City Council reconvened in Open Session with all members present.

ADJOURNMENT

There being no further business to conduct, the meeting was adjourned at 6:40 p.m.

Laura M. Nieto, MMC
Chief Deputy City Clerk

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

CC ITEM 1A2

**DECEMBER 14, 2022
WEDNESDAY
6:40 P.M.**

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

ROLL CALL:

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

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; Arsanious Hanna, Director of Engineering / Building Official; Marilyn Simpson, Community Development Director; Mary Hull, Human Resources Manager, and Laura Nieto, Chief Deputy City Clerk

**CHANGES TO THE
AGENDA**

**CITY MANAGER
MIRANDA**

City Manager Miranda advised that: 1) Irwindale Police Detective Sergeant Rudy Gatto and Police Services Specialist Yvonne Benner would be recognized tonight by the Council due to their upcoming retirements, 2) staff is requesting to pull Item No. 1C so that it could be discussed and so that amendments to the report could be identified, 3) Item Nos. 2B and 2C have been updated to include the submittal of new applications to the Parks and Recreation and Planning Commissions, and 4) the City Attorney will read the corrected title of the ordinance included with Item No. 2E.

**REPORT FROM THE
SPECIAL MEETING
HELD DECEMBER 7,
2022**

**CITY ATTORNEY
GUERRA**

City Attorney Guerra reported on the outcome of the items on the special meeting held December 7, 2022. The results are reflected on the minutes for said meeting.

**COUNCILMEMBER
TRAVEL REPORT**

None.

**DECLARING RESULTS
OF NOVEMBER 8, 2022
ELECTION**

**CITY MANAGER
MIRANDA**

City Manager Miranda presented the staff report.

RESOLUTION NO.
2022-114-3364
ADOPTED

Resolution No. 2022-114-3364, entitled:

"A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF IRWINDALE, CALIFORNIA, RECITING THE FACT OF THE CONSOLIDATED GENERAL MUNICIPAL ELECTION HELD ON NOVEMBER 8, 2022, ACCEPTING THE OFFICIAL CANVASS AND OFFICIAL STATEMENT OF VOTES CAST FROM THE COUNTY OF LOS ANGELES REGISTRAR RECORDER'S OFFICE, AND DECLARING THE RESULTS AND SUCH OTHER MATTERS AS PROVIDED BY LAW," was passed, approved, and adopted, on the motion of Mayor Pro Tem Ambriz, seconded by Councilmember Breceda, and unanimously approved.

**ADMINISTRATION OF
OATHS OF OFFICE TO
ALBERT F. AMBRIZ
AND H. MANUEL ORTIZ**

The oaths of office were administered.

**REORGANIZATION OF
CITY COUNCIL**

CITY MANAGER
MIRANDA

City Manager Miranda presented the staff report and opened the floor for nominations for the office of Mayor.

COUNCILMEMBER
BURROLA

Councilmember Burrola nominated Councilmember Ortiz.

COUNCILMEMBER
ORTIZ

Councilmember Ortiz nominated Councilmember Ambriz.

ROLL CALL

There being no further nominations, Chief Deputy City Clerk Nieto closed the nomination period and, upon roll call vote, Councilmember Ortiz was unanimously appointed as Mayor; Councilmember Ambriz initially voting against the nomination but changing it to favor the nomination after the roll call vote concluded.

RECESS

At 6:59 p.m., the City Council took a short recess.

RECONVENE

At 7:03 p.m., the City Council reconvened in Open Session with all members present.

MAYOR ORTIZ

Mayor Ortiz then opened the floor to nominations for the office of Mayor Pro Tem.

Mayor Ortiz nominated Councilmember Ambriz.

COUNCILMEMBER
BRECEDA

Councilmember Breceda nominated Councilmember Garcia.

ROLL CALL There being no further nominations, Mayor Ortiz closed the nomination period and upon roll call vote, Councilmember Ambriz was appointed Mayor Pro Tem, with Councilmembers Ambriz, Burrola, and Mayor Ortiz voting in favor; Councilmembers Breceda and Garcia opposed.

ROLL CALL OF NEWLY SEATED CITY COUNCIL

The roll call for the newly seated City Council was conducted.

COUNCILMEMBER COMMENTS

COUNCILMEMBER BURROLA Councilmember Burrola thanked the community for supporting him during his time as Mayor.

MAYOR PRO TEM AMBRIZ Mayor Pro Tem Ambriz also thanked the community for re-electing him to the Council and thanked Councilmember Burrola for his service as Mayor.

MAYOR ORTIZ Mayor Ortiz thanked all his supporters for his reelection, and commended Councilmember Burrola for his service as Mayor.

INTRODUCTION OF NEW EMPLOYEES / PROMOTIONS

There were none.

PROCLAMATIONS / PRESENTATIONS / COMMENDATIONS

CHAMBER OF COMMERCE BUSINESS OF THE MONTH – FIT4DUTY CONSULTING CHAMBER OF COMMERCE BUSINESS OF THE MONTH – FIT4DUTY CONSULTING

The recognition was made.

PRESENTATION TO YVONNE BENNER, POLICE SERVICES SPECIALIST PRESENTATION TO YVONNE BENNER, POLICE SERVICES SPECIALIST

The recognition was made in light of Mrs. Benner's upcoming retirement.

PRESENTATION TO RUDY GATTO, POLICE DETECTIVE SERGEANT PRESENTATION TO RUDY GATTO, POLICE DETECTIVE SERGEANT

The recognition was made in light of Sgt. Gatto's upcoming retirement.

**SPONTANEOUS
COMMUNICATIONS**

DENA ZEPEDA	Dena Zepeda congratulated Mayor Ortiz and Mayor Pro Tem Ambriz on their reelection and Sergeant Gatto and Specialist Benner on their retirements, thanked staff for the wonderful new programs being offered, and thanked the Irwindale Community Foundation for its contributions to said programs.
BILL SALAZAR	Bill Salazar, with Royal Coaches Towing, noted an item on the agenda relating to towing, and stated his hope that Royal Coaches could continue providing towing services to the city.
ANGELO VILLA	Angelo Villa spoke on county taxes being imposed on the house he purchased, which covered a period of time before he owned said property. He requested staff assistance, to which Mayor Ortiz stated that staff would look into the matter.
COUNCILMEMBER BRECEDA	Councilmember Breceda advised that Mr. Villa has also spoken to him regarding his concerns told him that staff would look into the situation.
DANTE VILLA	Dante Villa, father of Angelo Villa, expressed his disappointment that his son's concern has been brought up to city staff months ago with little apparent progress.
SEBASTIAN DEL CASTILLO	Sebastian Del Castillo congratulated Mayor Ortiz, spoke on traffic incidents that have occurred on Meridian Street, and stated that he has spoken with staff regarding his concerns, but has not yet seen a resolution, to which City Manager Miranda advised that staff is looking into the matter and mentioned the possibility of painting the curbs red to mitigate accidents.
DIRECTOR HANNA	Director Hanna noted that he has met with City Manager Miranda and Assistant City Manager Olivares regarding the street, and indicated that Irwindale staff is working with Duarte staff to address the incidents. He added that staff is also looking into reports of mail delivery issues being experienced by residents in the area.

CONSENT CALENDAR

MOTION	A motion was made by Councilmember Breceda, seconded by Mayor Pro Tem Ambriz, to approve the Consent Calendar, with the exception of Item Nos. 1C and 1G, which were removed for separate consideration. The motion was unanimously approved; Councilmember Breceda abstaining on Item No. 1M, Councilmember Garcia abstaining on Item Nos. 1E and 1M; Mayor Ortiz abstaining on Item No. 1D.
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ITEM NO. 1A
MINUTES

MINUTES

The following minutes were approved:

- 1) Regular meeting held August 25, 2021
- 2) Special joint meeting held November 9, 2022
- 3) Regular meeting held November 9, 2022
- 4) Special joint meeting held November 17, 2022

ITEM NO. 1B
WARRANTS

WARRANTS

The warrants were approved.

ITEM NO. 1D
REQUEST TO
APPROVE A FEE
WAIVER FOR THE
PROCESSION OR
PARADE'S PUBLIC
SAFETY SERVICES
PERFORMED BY
IRWINDALE POLICE
DEPARTMENT FOR
THE "OUR LADY OF
GUADALUPE
CHURCH FIESTA" ON
DECEMBER 11, 2022

REQUEST TO APPROVE A FEE WAIVER FOR THE PROCESSION OR PARADE'S PUBLIC SAFETY SERVICES PERFORMED BY IRWINDALE POLICE DEPARTMENT FOR THE "OUR LADY OF GUADALUPE CHURCH FIESTA" ON DECEMBER 11, 2022

RESOLUTION NO.
2022-121-3371
ADOPTED

Resolution No. 2022-121-3371, entitled:

"A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF IRWINDALE RETROACTIVELY APPROVING THE PUBLIC SAFETY SERVICE FEE WAIVER FOR THE PROCESSION PARADE OF OUR LADY OF GUADALUPE CHURCH FIESTA ON DECEMBER 11, 2022," was adopted; Mayor Ortiz abstaining.

ITEM NO. 1E
AUTHORIZING
FINANCE DIRECTOR
TO AMEND FY 22/23
ADOPTED BUDGET
BY APPROPRIATING
\$4,349,965.75 FROM
THE GENERAL FUND
RESERVE TO THE
CAPITAL
IMPROVEMENT
PROGRAM PROJECT
8230, AND ISSUE A
LETTER TO THE

AUTHORIZING FINANCE DIRECTOR TO AMEND FISCAL YEAR 2022-2023 ADOPTED BUDGET BY APPROPRIATING \$4,349,965.75 FROM THE GENERAL FUND RESERVE TO THE CAPITAL IMPROVEMENT PROGRAM PROJECT 8230, AND ISSUE A LETTER TO CALIFORNIA STATE LIBRARY GUARANTEEING AND CONFIRMING CITY OF IRWINDALE'S AVAILABILITY OF ALL MATCHING FUNDS

CA STATE LIBRARY
GUARANTEEING
AND CONFIRMING
CITY OF IRWINDALE'S
AVAILABILITY OF ALL
MATCHING FUNDS

RESOLUTION NO.
2022-123-3373
ADOPTED

Resolution No. 2022-123-3373, entitled:

"A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF IRWINDALE AMENDING THE FISCAL YEAR 2022-2023 ADOPTED CAPITAL IMPROVEMENT PROGRAM BUDGET, APPROPRIATING \$4,349,965.75 FROM THE GENERAL FUND RESERVE TO THE CITY OF IRWINDALE PUBLIC LIBRARY IMPROVEMENT PROJECT, AND AUTHORIZING THE ISSUANCE OF A LETTER TO THE CALIFORNIA STATE LIBRARY GUARANTEEING AND CONFIRMING THE CITY OF IRWINDALE'S AVAILABILITY OF ALL MATCHING FUNDS FOR THE CITY OF IRWINDALE PUBLIC LIBRARY IMPROVEMENT PROJECT," was adopted; Councilmember Garcia abstaining.

ITEM NO. 1F
2023 LIST OF LOCAL
APPOINTMENTS

2023 LIST OF LOCAL APPOINTMENTS

RESOLUTION NO.
2022-115-3365
ADOPTED

Resolution No. 2022-115-3365, entitled:

"A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF IRWINDALE, STATE OF CALIFORNIA, REGARDING THE PREPARATION OF THE 2023 LOCAL APPOINTMENTS LIST AND POSTING OF THE SAME," was adopted.

ITEM NO. 1H
REQUEST TO
APPROVE THE
AMENDED AND
RESTATED PROJECT
REIMBURSEMENT
AGREEMENT WITH
IRWINDALE INDUSTRIAL,
LLC

REQUEST TO APPROVE THE AMENDED AND RESTATED PROJECT REIMBURSEMENT AGREEMENT BETWEEN THE CITY AND IRWINDALE INDUSTRIAL, LLC ("APPLICANT") FOR CITY AND CONSULTANT COSTS ASSOCIATED WITH A PROPOSED INDUSTRIAL / COMMERCIAL BUSINESS PARK TO BE LOCATED AT 500 SPEEDWAY DRIVE (APNS): 8532-004-022, 8532-004-026, AND 8532-004-025

The Amended and Restated Project Reimbursement Agreement with Irwindale Industrial, LLC for the reimbursement of city and consultant costs associated with the proposed industrial / commercial business park to be located at 500 Speedway Drive (APNs): 8532-004-022, 8532-004-026, and 8532-004-025, was approved.

ITEM NO. 1I
REQUEST TO
APPROPRIATE

REQUEST TO APPROPRIATE ADDITIONAL FUNDS, WAIVE FORMAL BIDDING AND APPROVE THE PURCHASE OF A NEW REPLACEMENT VEHICLE FOR THE COMMUNITY

ADDITIONAL FUNDS, DEVELOPMENT DEPARTMENT
WAIVE FORMAL
BIDDING, AND
APPROVE THE
PURCHASE OF A NEW
REPLACEMENT
VEHICLE FOR THE
COMMUNITY
DEVELOPMENT DEPT.

RESOLUTION NO.
2022-122-3372
ADOPTED

Resolution No. 2022-122-3372, entitled:

"A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF IRWINDALE APPROVING THE APPROPRIATION OF ADDITIONAL FUNDING FOR AND THE PURCHASE AND OUTFITTING OF ONE REPLACEMENT VEHICLE FOR THE COMMUNITY DEVELOPMENT DEPARTMENT AND WAIVING FORMAL BIDDING PROCEDURES PER IRWINDALE MUNICIPAL CODE SECTION 3.44.080(F)", was adopted.

ITEM NO. 1J
ISSUE REQUEST
FOR PROPOSALS (RFP)
FOR TOW SERVICES

ISSUE REQUEST FOR PROPOSALS (RFP) FOR TOW SERVICES

RESOLUTION NO.
2022-120-3370
ADOPTED

Resolution No. 2022-120-3370, entitled:

"A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF IRWINDALE AUTHORIZING THE ISSUANCE OF A REQUEST FOR PROPOSALS FOR TOW SERVICES," was adopted.

ITEM NO. 1K
RESOLUTION CASTING
THE CITY OF
IRWINDALE'S VOTE
FOR CITY OF COVINA
COUNCILMEMBER
HECTOR DELGADO
TO REPRESENT
CITIES WITH
PRESCRIPTIVE
PUMPING RIGHTS
AS AN ALTERNATE
MEMBER ON THE
BOARD OF THE SAN
GABRIEL BASIN
WATER QUALITY
AUTHORITY

RESOLUTION CASTING THE CITY OF IRWINDALE'S VOTE FOR CITY OF COVINA COUNCILMEMBER HECTOR DELGADO TO REPRESENT CITIES WITH PRESCRIPTIVE PUMPING RIGHTS AS AN ALTERNATE MEMBER ON THE BOARD OF THE SAN GABRIEL BASIN WATER QUALITY AUTHORITY

RESOLUTION NO.
2022-127-3377
ADOPTED

Resolution No. 2022-127-3377, entitled:

“A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF IRWINDALE, CALIFORNIA, CASTING ITS VOTE FOR CITY OF COVINA COUNCILMEMBER HECTOR DELGADO TO REPRESENT CITIES WITH PRESCRIPTIVE PUMPING RIGHTS AS AN ALTERNATE MEMBER ON THE BOARD OF THE SAN GABRIEL BASIN WATER QUALITY AUTHORITY,” was adopted.
REASONABLE ACCOMMODATIONS POLICY FOR PUBLIC AGENCY BROWN ACT MEETINGS

ITEM NO. 1L
REASONABLE
ACCOMMODATIONS
POLICY FOR PUBLIC
AGENCY BROWN
ACT MEETINGS

The Reasonable Accommodations Policy for Public Agency Brown Act Meetings was approved and adopted.

ITEM NO. 1M
AWARD OF CONTRACT
TO VECTORUSA FOR
THE SECURITY
SURVEILLANCE
SYSTEM &
INSTALLATION

AWARD OF CONTRACT TO VECTORUSA FOR THE SECURITY SURVEILLANCE SYSTEM & INSTALLATION

RESOLUTION NO.
2022-125-3375
ADOPTED

Resolution No. 2022-125-3375, entitled:

“A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF IRWINDALE WAIVING THE FORMAL BIDDING PROCEDURES PURSUANT TO IRWINDALE MUNICIPAL CODE SECTION 3.44.080(E), AUTHORIZING THE ISSUANCE OF A PURCHASE ORDER AND AUTHORIZING THE ASSISTANT CITY MANAGER TO EXECUTE A CONTRACT TO VECTORUSA, AND APPROPRIATING ADDITIONAL FUNDS FOR THE PURCHASE AND EQUIPMENT INSTALLATION OF THE SECURITY SURVEILLANCE SYSTEM & INSTALLATION,” was adopted; Councilmembers Breceda and Garcia abstaining.

ITEM NO. 1N
ACCEPTANCE OF
THE 2021-2022
RESURFACING
PROGRAM;
RESIDENTIAL
RESURFACING
PROJECT – PHASE I;
P-1034

ACCEPTANCE OF THE 2021-2022 RESURFACING PROGRAM: RESIDENTIAL RESURFACING PROJECT – PHASE I; P-1034

1) The changes to the original scope of work were ratified and the improvements and maintenance responsibilities for the constructed improvements of the 2021-2022 Resurfacing Program: Residential Resurfacing Project – Phase I, were accepted; 2) the final construction project amount of \$623,539.82 under the construction contract with Hardy and Harper, Inc., was approved; 3) the final construction management and inspection services contract with Z&K Consultants in the amount of \$71,962.00 was approved; 4) the City Clerk was authorized to record the Notice of Completion; and 5) the Finance Director was authorized to release the 5% retention amount for the construction project.

<u>ITEM NO. 1O</u> AMENDMENT NO. 1 TO CONTRACT SERVICES AGMT. WITH JOHNSON-FRANK & ASSOCIATES, INC. FOR TOPOGRAPHIC HYDROGRAPHIC SURVEY OF EIGHT (8) SAND AND GRAVEL MINES	AMENDMENT NO. 1 TO CONTRACT SERVICES AGREEMENT WITH JOHNSON-FRANK & ASSOCIATES, INC. FOR TOPOGRAPHIC-HYDROGRAPHIC SURVEY OF EIGHT (8) SAND AND GRAVEL MINES; P-1048 The Amendment to the Contract Agreement with Johnson-Frank & Associates, Inc., for Topographic-Hydrographic Survey of Eight (8) Sand and Gravel Mines (P-1048) to increase the contract amount from \$135,400 to \$161,763 (an increase of \$26,363) was approved and the City Manager was authorized to make the amendment.
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<u>ITEM NO. 1P</u> APPROVE ADDITIONAL FEE WAIVER FOR THE TOURNAMENT OF ROSES CITY TRANSPORTATION / OVERSIZED VEHICLE FEES	APPROVE ADDITIONAL FEE WAIVER FOR THE TOURNAMENT OF ROSES WAIVING CITY TRANSPORTATION / OVERSIZED VEHICLE FEES
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RESOLUTION NO. 2022-128-3378 ADOPTED	Resolution No. 2022-128-3378 , entitled: "A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF IRWINDALE APPROVING A FEE WAIVER FOR THE PASADENA TOURNAMENT OF ROSES 501(C)(3) NONPROFIT ORGANIZATION, WAIVING ADDITIONAL CITY TRANSPORTATION / OVERSIZED VEHICLE FEES IN THE AMOUNT OF \$64.00", was adopted.
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<u>ITEM NO. 1Q</u> REJECTION OF CLAIM: JOSE HERRERA GUDINO VS. CITY OF IRWINDALE	REJECTION OF CLAIM: JOSE HERRERA GUDINO VS. CITY OF IRWINDALE The claim of Jose Herrera Gudino vs. City of Irwindale was rejected and staff was directed to send a letter of rejection.
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END OF CONSENT CALENDAR

<u>ITEM NO. 1C</u> DEVELOPMENT IMPACT FEE COMPLIANCE REPORT REQUIRED PURSUANT TO GOVERNMENT CODE §66006	DEVELOPMENT IMPACT FEE COMPLIANCE REPORT REQUIRED PURSUANT TO GOVERNMENT CODE §66006
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DIRECTOR BORHANI	Director Borhani presented the staff report and advised of updates to the report: #3 on page 4 and #5-7.
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MOTION A motion was made by Councilmember Breceda, seconded by Councilmember Garcia, to receive and file the Development Impact Fee Compliance Report for Fiscal Year ending June 30, 2022. The motion was unanimously approved.

ITEM NO. 1G
REQUEST TO
APPROVE
AMENDMENT NO. 1
TO A PROFESSIONAL
CONSULTING
CONTRACT WITH
LSA ASSOCIATES, INC. REQUEST TO APPROVE AMENDMENT NO. 1 TO A PROFESSIONAL CONSULTING CONTRACT WITH LSA ASSOCIATES, INC. FOR THE PREPARATION OF CEQA DOCUMENTS (INITIAL STUDY AND ENVIRONMENTAL IMPACT REPORT) FOR THE CONSTRUCTION OF ELEVEN (11) SPECULATIVE CONCRETE TILT-UP BUILDINGS FOR A TOTAL OF 1.27 MILLION SQUARE FEET OF LIGHT INDUSTRIAL COMMERCIAL BUSINESS PARK USES ON AN APPROXIMATELY 62.7 ACRE PROJECT SITE LOCATED AT 500 SPEEDWAY DRIVE (APNS): 8532-004-022, 8532-004-026, AND 8532-004-025

MAYOR ORTIZ Mayor Ortiz questioned the timing of the EIR, to which Director Simpson discussed the staff report, and noted that the data is being compiled as a disclosure document to analyze any impacts related to the project. A mitigation and monitoring report will also be prepared. Conditions of Approval will also be added to address construction; however, the construction is not being considered at this point. She also noted that the owner of the land intends to move forward with the project, and indicated that there will be a need for remediation.

COUNCILMEMBER
GARCIA In response to a question by Councilmember Garcia, City Attorney Guerra advised that approving additional funding for testing would not obligate the City to approve the proposed facility. He advised that this agreement merely permits the City to retain a consultant to perform the environmental analysis; the applicant would still be required to go through the planning process.

Councilmember Garcia also asked whether drilling would be conducted to determine the site's compaction rating, to which City Attorney Guerra advised that this agreement would not cover that. In terms of design, that would be a separate analysis, depending on where they drill.

Responding to an additional comment by Councilmember Garcia, City Attorney Guerra noted that the owner / developer would have to submit plans with regard to the project they would like to develop. Once that is determined, a study could be performed to determine whether the building they propose would be supported based on the site conditions. The developer would also have to demonstrate that they could actually build it. He stated his assumption that the developer performed its due diligence before purchasing the property.

MAYOR PRO TEM
AMBRIZ Mayor Pro Tem Ambriz stated that the Council is aware of what exists underneath the pad and expressed concern over potential liability if the developer disturbs the site contents, to which City Attorney

Guerra stated that whatever is built would need to be constructed according to the Building Code, and that the Building Official has to sign off on it. The EIR would determine remedies to correct impacts and prepare the site for development.

MAYOR PRO TEM
AMBRIZ

Mayor Pro Tem Ambriz reiterated this concerns over the potential affects to the environment and resulting liability for the city, to which City Manager Miranda advised that city staff will meet with geological support staff to determine remediation measures and the type of development that would be allowed.

Mayor Pro Tem Ambriz stated that the Council must ensure that the public is informed of what could occur.

COUNCILMEMBER
BRECEDA

Councilmember Breceda stated his surprise that the site has not been declared a superfund, and expressed his opinion that the site should probably remain as the Speedway.

COUNCILMEMBER
BURROLA

In response to comments by Councilmember Burrola, City Attorney Guerra noted that city staff will also need to work with county staff for certain services.

CITY MANAGER
MIRANDA

City Manager Miranda advised that the developer would be required to submit a plan to the city, which will then be scrutinized to ensure compliance with the Building Code.

MOTION

A motion was made by Mayor Ortiz, seconded by Councilmember Burrola, to approve Amendment No. 1 to the Contract with LSA Associates, Inc. for the preparation of an initial Study and Environmental Impact Report to be prepared in association with a land use entitlement application for property located at 500 Speedway Drive, Irwindale, CA 91706. The motion was unanimously approved; Mayor Pro Tem Ambriz abstaining.

NEW BUSINESS

ITEM NO. 2A
MAYOR'S
APPOINTMENT OF
DELEGATES AND
ALTERNATES

MAYOR'S APPOINTMENT OF DELEGATES AND ALTERNATES

CITY MANAGER
MIRANDA

City Manager Miranda presented the staff report.

RESOLUTION NO.
2022-116-3366
ADOPTED

Resolution No. 2022-116-3366, entitled:

"A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF IRWINDALE APPOINTING TWO MEMBERS TO THE PARKS & RECREATION COMMISSION OF THE CITY OF IRWINDALE," was

adopted with Mayor Ortiz's appointments, on the motion of Mayor Pro Tem Ambriz, seconded by Councilmember Garcia, and unanimously approved.

ITEM NO. 2B
PARKS & RECREATION
COMMISSION
APPOINTMENTS

PARKS & RECREATION COMMISSION APPOINTMENTS

CITY MANAGER
MIRANDA

City Manager Miranda presented the report.

MAYOR ORTIZ

Mayor Ortiz nominated Carmen Roman, with Councilmember Burrola, Mayor Pro Tem Ambriz, and Mayor Ortiz in favor; Councilmembers Breceda and Garcia opposed.

Mayor Ortiz nominated Michelle Duran, with unanimous support by the Councilmembers.

RESOLUTION NO.
2022-177-3367
ADOPTED

Resolution No. 2022-117-3367, entitled:

"A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF IRWINDALE APPOINTING TWO MEMBERS TO THE PARKS AND RECREATION COMMISSION OF THE CITY OF IRWINDALE," was adopted, thereby appointing Carmen Roman and Michelle Duran to the Commission.

ITEM NO. 2C
PLANNING
COMMISSION
APPOINTMENTS

PLANNING COMMISSION APPOINTMENTS

CITY MANAGER
MIRANDA

City Manager Miranda presented the report.

MAYOR ORTIZ

Mayor Ortiz nominated Suzanne Gomez. Councilmember Breceda expressed opposition; all other Councilmembers in favor of the appointment.

Mayor Ortiz nominated Maricela Frymark, with unanimous support by the Councilmembers.

RESOLUTION NO.
2022-118-3368
ADOPTED

Resolution No. 2022-118-3368, entitled:

"A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF IRWINDALE APPOINTING TWO MEMBERS TO THE PLANNING COMMISSION OF THE CITY OF IRWINDALE," was adopted, thereby appointing Suzanne Gomez and Maricela Frymark to the Commission.

ITEM NO. 2D
SENIOR CITIZEN
COMMISSION
APPOINTMENT

SENIOR CITIZEN COMMISSION APPOINTMENT

CITY MANAGER
MIRANDA

City Manager Miranda presented the report.

MAYOR ORTIZ

Mayor Ortiz nominated Christina Fraijo, with unanimous support by the Councilmembers.

RESOLUTION NO.
2022-119-3369
ADOPTED

Resolution No. 2022-119-3369, entitled:

"A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF IRWINDALE APPOINTING A MEMBER TO THE SENIOR CITIZEN COMMISSION OF THE CITY OF IRWINDALE," was adopted, thereby appointing Christina Fraijo to the Commission.

ITEM NO. 2E
INTRODUCTION AND
FIRST READING OF
ORDINANCE NO. 764

INTRODUCTION AND FIRST READING OF ORDINANCE NO. 764 ENTITLED: "AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF IRWINDALE REPEALING ORDINANCE NOS. 709 AND 743 IN THEIR ENTIRETY, AND ALL OTHER ORDINANCES OR PORTIONS OF ORDINANCES IN CONFLICT THEREWITH, AMENDING TITLE 15 OF THE IRWINDALE MUNICIPAL CODE BY ADDING CHAPTER 15.07 – "EXISTING BUILDING CODE," AND ADOPTING BY REFERENCE THE LOS ANGELES COUNTY BUILDING CODE (2023 EDITION) WITH IRWINDALE AMENDMENTS, LOS ANGELES COUNTY ELECTRICAL CODE (2023 EDITION), LOS ANGELES COUNTY PLUMBING CODE (2023 EDITION), LOS ANGELES COUNTY MECHANICAL CODE (2023 EDITION), LOS ANGELES COUNTY GREEN BUILDING STANDARDS CODE (2023 EDITION), LOS ANGELES COUNTY RESIDENTIAL CODE (2023 EDITION), EXISTING BUILDING CODE (2023 EDITION), AND ADOPTING LOCAL AMENDMENTS THERETO PURSUANT TO GOVERNMENT CODE SECTION 50022.2 ET SEQ.

DIRECTOR HANNA

Director Hanna presented the report.

ORDINANCE NO. 764
INTRODUCED FOR
FIRST READING

Ordinance No. 764, entitled:

"AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF IRWINDALE REPEALING ORDINANCE NOS. 709 AND 743 IN THEIR ENTIRETY, AMENDING TITLE 15 OF THE IRWINDALE MUNICIPAL CODE BY ADDING CHAPTER 15.07 – "EXISTING BUILDING CODE," AND ADOPTING BY REFERENCE THE LOS ANGELES COUNTY BUILDING CODE (2023 EDITION) WITH IRWINDALE AMENDMENTS, LOS ANGELES COUNTY ELECTRICAL CODE (2023 EDITION), LOS ANGELES COUNTY PLUMBING CODE (2023 EDITION), LOS ANGELES COUNTY

MECHANICAL CODE (2023 EDITION), LOS ANGELES COUNTY GREEN BUILDING STANDARDS CODE (2023 EDITION), LOS ANGELES COUNTY RESIDENTIAL CODE (2023 EDITION), EXISTING BUILDING CODE (2023 EDITION), AND ADOPTING LOCAL AMENDMENTS THERETO PURSUANT TO GOVERNMENT CODE SECTION 50022.2 ET SEQ.", 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 Burrola, and unanimously approved.

ITEM NO. 2F
REQUEST TO
EXTEND THE HOURS
OF OPERATION FOR
TRANSPORTATION
OF EXCAVATED
AGGREGATES FROM
THE OLIVE PIT TO
UNITED ROCK
PRODUCTS PIT NO. 2
FROM DECEMBER 31,
2022, UNTIL JULY 31,
2023

REQUEST TO EXTEND THE HOURS OF OPERATION FOR
TRANSPORTATION OF EXCAVATED AGGREGATES FROM THE
OLIVE PIT TO UNITED ROCK PRODUCTS PIT NO. 2 FROM
DECEMBER 31, 2022, UNTIL JULY 31, 2023

DIRECTOR HANNA

Director Hanna presented the report.

MOTION

A motion was made by Councilmember Garcia to approve the request from United Rock Products, Inc. (United) to extend the hours of operation for transportation of excavated aggregates from the Olive Pit to United Rock Products Pit No. 2 (URP-2) from December 31, 2022 until July 31, 2023. The extended hours of operation during this time period would be: Monday to Friday, 7 a.m. to 3 p.m., and Saturday, 7 a.m. to 5 p.m. (only 2nd and 4th Saturday of each month.)

MAYOR ORTIZ

Mayor Ortiz noted that, in September, the Council gave United Rock an extension that would end this month, and noted that they are once again asking for another extension. However, United still has not provided an exact timeline for the installation of a traffic signal at Los Angeles Street, to which Director Hanna stated that, per United Rock's estimate, the construction of the signal should take place in February 2023, with a scheduled completion in June 2023.

Mayor Ortiz suggested providing United Rock an extension of three months, with the possibility of an additional three-month extension, depending on United Rock's progress in constructing the traffic signal.

COUNCILMEMBER
GARCIA

Councilmember Garcia repeated his motion.

MAYOR PRO TEM AMBRIZ	Mayor Pro Tem Ambriz concurred with Mayor Ortiz, and agreed that United Rock is not moving forward quickly enough with regard to the installation of the traffic signal. He agreed that the extension be granted depending on United Rock's progress on the traffic signal installation.
MARK PACHURA	Mark Pachura, with United Rock Products, concurred that the three-month extension mentioned by Mayor Ortiz is fair. He added that United Rock feels that the signal work will begin in February, and stated that United is amenable to returning after three months to request another extension.
COUNCILMEMBER BURROLA	In reply to a comment by Councilmember Burrola, Director Hanna advised that the Engineering Department has not received any complaints about truck traffic at the subject site since September.
COUNCILMEMBER BRECEDA	Councilmember Breceda agreed that a three-month extension is sufficient at this time and would allow United Rock the opportunity to make progress on the installation of the traffic signal.
COUNCILMEMBER	Councilmember Garcia withdrew his motion.
MOTION	A motion was made by Mayor Pro Tem Ambriz, seconded by Councilmember Breceda, to approve the extension of the hours of operation for United Rock Products, Inc.'s transportation of excavated aggregates from the Olive Pit to United Rock Products Pit No. 2 (URP-2) from December 31, 2022, until March 31, 2023. The extended hours of operation during this time would be Monday to Friday, 7 a.m. to 3 p.m., and Saturday, 7 a.m. to 5 p.m. (only 2 nd and 4 th Saturday of each month). The motion was unanimously approved.
<u>ITEM NO. 2G</u> <u>ASSEMBLY BILL 2449</u> <u>BROWN ACT</u> <u>TELECONFERENCING</u> <u>REQUIREMENTS</u>	<u>ASSEMBLY BILL 2449 BROWN ACT TELECONFERENCING</u> <u>REQUIREMENTS</u>
ASSISTANT CITY MANAGER OLIVARES	Assistant City Manager Olivares presented the report and made a PowerPoint presentation.
COUNCIL CONSENSUS	Council consensus was reached to receive and file the report.
<u>PUBLIC HEARINGS</u>	None.
<u>CITY MANAGER'S</u> <u>REPORT</u>	None.
<u>AGENDA ITEMS</u> <u>REQUESTED BY</u> <u>COUNCILMEMBERS</u>	

MAYOR PRO TEM
AMBRIZ

Mayor Pro Tem Ambriz asked that the issue Angelo Villa mentioned during Spontaneous Communications be researched and reported to the Housing Authority as soon as possible.

COUNCILMEMBER
GARCIA

Councilmember Garcia suggested that staff reach out to new homeowners to determine whether they are facing issues similar to that of Mr. Villa's.

COUNCILMEMBER
BRECEDA

In response to a question by Councilmember Breceda, Assistant City Manager Olivares noted that Mr. Villa's property was initially purchased by the Housing Authority, but was subsequently sold to Mayans as part of the housing development. Mayans took ownership of the site while it was being developed, and a sale transaction took place afterward between Mayans as the seller and the individuals that acquired each property. She provided additional details relating to property taxes incurred, and advised that staff would research the concern further.

Councilmember Breceda also reported a damaged sidewalk across the street from his home, to which City Attorney Guerra noted that staff would look into it.

COUNCILMEMBER
GARCIA

Councilmember Garcia requested that staff practice common courtesy and reply to voicemails that they receive.

COUNCILMEMBER
ORTIZ

Councilmember Ortiz agreed that Mr. Villa's concerns should be addressed as soon as possible.

ADJOURNMENT

There being no further business to conduct, the meeting was adjourned at 8:53 p.m.

Laura M. Nieto, MMC
Chief Deputy City Clerk

CITY OF IRVINDALE
PAYROLL WARRANT REGISTER
December 2022

CC ITEM 1B

Payroll Batch DATE OF ISSUE 12/1/22	408-01-11, 409-01-11 DEPARTMENT	AMOUNT
	11 City Council	1,731.15
	13 City Administrative Office	52,194.21
	14 Finance Department	28,883.41
	35 Police Department	226,827.74
	40 Recreation Department	24,257.87
	41 Aquatics Department	5,836.06
	42 Senior Citizens' Center	23,696.82
	44 Library	9,939.25
	51 Planning & Community Development	29,619.58
	52 Public Works - Engineering	28,408.87
	57 Public Works - Services	59,078.05
	Gross Payroll	490,473.01
	Required Deductions	(136,148.06)
	Voluntary Deductions	(15,809.36)
	Net Payroll	338,515.59

Payroll Batch DATE OF ISSUE 12/15/22	422-01-11, 423-01-11 DEPARTMENT	AMOUNT
	11 City Council	5,635.59
	13 City Administrative Office	51,829.12
	14 Finance Department	25,534.64
	35 Police Department	234,455.07
	40 Recreation Department	26,631.45
	41 Aquatics Department	3,036.05
	42 Senior Citizens' Center	16,516.79
	44 Library	13,882.14
	51 Planning & Community Development	30,262.67
	52 Public Works - Engineering	30,738.49
	57 Public Works - Services	51,257.37
	Gross Payroll	489,779.38
	Required Deductions	(138,837.07)
	Voluntary Deductions	(27,466.36)
	Net Payroll	323,475.95

Payroll Batch DATE OF ISSUE 12/29/22	430-01-11 DEPARTMENT	AMOUNT
	11 City Council	1,731.15
	13 City Administrative Office	52,384.21
	14 Finance Department	25,596.75
	35 Police Department	195,608.35
	40 Recreation Department	25,549.89
	41 Aquatics Department	2,966.85
	42 Senior Citizens' Center	16,410.95
	44 Library	12,743.46
	51 Planning & Community Development	28,456.16
	52 Public Works - Engineering	27,758.19
	57 Public Works - Services	51,464.59
	Gross Payroll	440,670.55
	Required Deductions	(116,787.17)
	Voluntary Deductions	(15,542.70)
	Net Payroll	308,340.68

Payroll Batch DATE OF ISSUE 12/30/22	430-01-11 DEPARTMENT	AMOUNT
	11 City Council	300.00
	40 Recreation Department	218.04
	Gross Payroll	518.04
	Required Deductions	(29.70)
	Voluntary Deductions	-
	Net Payroll	488.34

Accounts Payable

Checks by Date - Summary by Check Number

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Check No	Vendor No	Vendor Name	Check Date	Check Amount
78773	ALESHIRE	Aleshire & Wynder, LLP	12/22/2022	42,730.50
78774	ALESHIRE	Aleshire & Wynder, LLP	12/22/2022	27,206.00
78775	ALLCI01	All City Management Services, Inc	12/22/2022	932.10
78776	AMAZON1	Amazon Capital Services, Inc.	12/22/2022	1,565.80
78777	AMERIC34	American Fidelity Assurance Co	12/22/2022	7,857.18
78778	AT&T06	AT & T	12/22/2022	1,679.53
78779	CINGULAR	AT & T Mobility	12/22/2022	1,756.62
78780	BRIGHT02	Bright Stars Academy	12/22/2022	500.00
78781	CALIFO26	California Police Chiefs	12/22/2022	400.00
78782	GALLARDC	Claudia Carlos	12/22/2022	308.00
78783	CORNEJOD	Diego Cornejo	12/22/2022	765.93
78784	PMIDEN	Delta Dental Insurance Company	12/22/2022	807.63
78785	PMIDEN01	Delta Dental of California	12/22/2022	13,143.68
78786	DeptJust	Dept of Justice	12/22/2022	64.00
78787	FRONT01	Frontier Communications	12/22/2022	490.20
78788	HARDY01	Joseph Hardy	12/22/2022	142.41
78789	HOMEDE	Home Depot Credit Services	12/22/2022	4,002.55
78790	NATION23	National Union Fire Insurance	12/22/2022	705.49
78791	NIETO01	Laura Nieto	12/22/2022	185.00
78792	OPTUM01	OptumRx, Inc.	12/22/2022	28,929.27
78793	ORTIZ03	Norma Ortiz	12/22/2022	761.51
78794	SMART&	Smart & Final	12/22/2022	765.81
78795	STANDA01	Standard Insurance Co. RV	12/22/2022	475.45
78796	STANDA03	Standard Insurance Company	12/22/2022	2,402.47
78797	STROBE03	Gary Strobehn	12/22/2022	732.66
78798	TAPIA02	Sofia Tapia	12/22/2022	300.00
78799	TAPIA11	Sylvia Tapia	12/22/2022	354.00
78800	TEXAS01	Texas Life Insurance Co.	12/22/2022	4,818.43
78801	TPX 01	TPX Communications	12/22/2022	2,559.82
78802	VARGAS03	Jose Vargas	12/22/2022	438.98
78803	verizonw	Verizon Wireless	12/22/2022	3,068.45
78804	VISION01	Vision Service Plan - (CA)	12/22/2022	4,573.00
78805	VISION01	Vision Service Plan - (CA)	12/22/2022	1,642.20
78806	CALIFO56	California State Disbursement Unit	12/29/2022	604.15
78807	CALIFO57	California State Disbursement Unit	12/29/2022	143.07
78808	ICEA	Irwindale City Employee Assoc.	12/29/2022	1,089.00
78809	AGUILA07	Berlyn Aguila	12/29/2022	3,972.00
78810	Ayala01	Leonor Ayala	12/29/2022	189.00
78811	AZUSALW	Azusa Light & Water	12/29/2022	595.67
78812	BANKOF03	Bank of The West	12/29/2022	16,954.67
78813	CALIFO02	California American Water	12/29/2022	19.41
78814	SANGAB11	California Newspapers Partnership	12/29/2022	743.00
78815	SOUTHE17	Golden State Water Company	12/29/2022	441.04
78816	GONZAL07	Raymond Gonzales	12/29/2022	184.00
78817	HOYEN	Noelle Hoyer	12/29/2022	910.00
78818	IRWIND21	Irwindale Hand Wash & Auto Detail	12/29/2022	875.69
78819	LIEBERT	Liebert Cassidy Whitmore	12/29/2022	5,441.00

Check No	Vendor No	Vendor Name	Check Date	Check Amount
78820	LOPE03	Amanda Lopez	12/29/2022	759.00
78821	PURCHA	Purchase Power	12/29/2022	2,020.99
78822	SCE02	Southern California Edison	12/29/2022	83,003.39
78823	VALLEY01	Valley County Water District	12/29/2022	11,290.45
78824	VALLEY09	Valley View Mutual Water Co.	12/29/2022	83.66
Report Total (52 checks):				286,383.86

Accounts Payable

Checks by Date - Summary by Check Number

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Printed: 1/19/2023 4:38 PM



Check No	Vendor No	Vendor Name	Check Date	Check Amount
78826	AMERIFID	American Fidelity Assurance	01/12/2023	8,195.98
78827	AMERIC34	American Fidelity Assurance Co	01/12/2023	4,473.16
78828	Ayala01	Leonor Ayala	01/12/2023	180.00
78829	CARDEN01	Rudy Cardenas	01/12/2023	150.00
78830	CO01	Daniel Co	01/12/2023	111.66
78831	CONCE01	Concentra	01/12/2023	75.00
78832	COSTCO02	Costco Wholesale	01/12/2023	522.42
78833	OPTUM01	OptumRx, Inc.	01/12/2023	28,014.83
78834	COLIN01	Sheyla Pedraza Colin	01/12/2023	216.64
78835	VISION01	Vision Service Plan - (CA)	01/12/2023	1,541.31
78836	CALIFO56	California State Disbursement Unit	01/12/2023	604.15
78837	CALIFO57	California State Disbursement Unit	01/12/2023	143.07
78838	ADVANT	Advantage Ford	01/25/2023	2,785.49
78839	ALLC101	All City Management Services, Inc	01/25/2023	2,143.83
78840	ALLSTATE	All State Police Equipment Co.	01/25/2023	431.33
78841	ALLISO01	Allison Mechanical, Inc	01/25/2023	6,063.99
78842	ARAM01	Aramark Uniform & Career Apparel Group	01/25/2023	218.04
78843	B&BTIR	B & B Tires Service	01/25/2023	4,510.13
78844	BAKER01	Baker & Taylor Books	01/25/2023	154.37
78845	BARNEY	Barney's Locksmith Service	01/25/2023	57.33
78846	BILLST	Bill's Truck Repair, Inc.	01/25/2023	318.00
78847	BRITEW	BriteWorks, Inc.	01/25/2023	13,539.95
78848	BURRO01	Burro Canyon Ent. Inc.	01/25/2023	60.00
78849	CALI22	CAPIO	01/25/2023	90.00
78850	CARQUEST	Carquest	01/25/2023	121.40
78851	Cat Spec	Cat Specialities Inc	01/25/2023	537.66
78852	CHARTE03	Charter Communications	01/25/2023	5,022.21
78853	CINTAS	Cintas Corporation #693	01/25/2023	194.25
78854	CITYOF18	City of Santa Fe Springs	01/25/2023	13,830.38
78855	COSTA01	Costar Realty Information, Inc.	01/25/2023	1,200.00
78856	DEPTOF02	County of LA Dept of Animal Care & Cont	01/25/2023	1,588.81
78857	COUNTY04	County of Los Angeles	01/25/2023	9,735.71
78858	LOSANG33	County of Los Angeles	01/25/2023	94,096.42
78859	DEMCOI	Demco, Inc.	01/25/2023	85.69
78860	BALLOO	Carol Diess	01/25/2023	65.00
78861	DUKE01	Duke Realty, LP	01/25/2023	30,000.00
78862	BATE01	Elior Inc.	01/25/2023	3,130.88
78863	FILLG01	Fill Good Landscaping	01/25/2023	400.00
78864	GRAING	Grainger	01/25/2023	211.99
78865	HOSEMA	Hose-Man, The	01/25/2023	106.08
78866	INDEPE	Independent Cities Association	01/25/2023	700.00
78867	IRWIND04	Irwindale Chamber Of Commerce	01/25/2023	7,500.00
78868	ITERIS	Iteris, Inc.	01/25/2023	192.00
78869	JCB01	JCB Inc	01/25/2023	210.22
78870	COORYE	Samir M. Khoury	01/25/2023	68,123.00
78871	LANDSC	Landscape Warehouse III Inc.	01/25/2023	171.38
78872	LEWISE	Lewis Engraving, Inc.	01/25/2023	151.60

Check No	Vendor No	Vendor Name	Check Date	Check Amount
78873	LEXISN	LexisNexis Risk Solutions	01/25/2023	151.50
78874	LAEDC01	Los Angeles County Economic Developme	01/25/2023	2,500.00
78875	MAINTE01	Maintex	01/25/2023	162.85
78876	MIDAS	Manuel C Muratalla	01/25/2023	1,382.26
78877	CALIBE01	Lawrence E. Marino	01/25/2023	1,855.80
78878	MARIPO	Mariposa Landscapes, Inc.	01/25/2023	8,796.00
78879	MMASC	MMASC	01/25/2023	90.00
78880	MOTOR01	Motorola Solutions, Inc.	01/25/2023	11,388.00
78881	OFFICE03	Office Depot	01/25/2023	867.61
78882	ORKINP	Orkin Pest Control	01/25/2023	390.00
78883	PROPRINT	Pro Printing, Inc.	01/25/2023	330.75
78884	RIGHT01	Right of Way, Inc.	01/25/2023	5,359.73
78885	ROGELI	Rogelio's Upholstery	01/25/2023	310.00
78886	SIERRM01	Marcos Sierra	01/25/2023	759.63
78887	SIERRA01	Sierra Chevrolet	01/25/2023	260.05
78888	SIERRA02	Sierra Chrysler/Dodge/Jeep/Ram	01/25/2023	211.84
78889	SOUTHE26	Southern California Library Cooperative	01/25/2023	1,720.00
78890	SPRINT01	Sprint	01/25/2023	100.00
78891	NORTHR	The Northridge Group, Inc.	01/25/2023	5,947.54
78892	THOM01	Thomson Reuters- West	01/25/2023	418.96
78893	WESTCO05	West Coast Arborists, Inc.	01/25/2023	15,624.00
78894	YTIRES	Y Tire Sales	01/25/2023	915.69
Report Total (69 checks):				371,517.57

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

City of
IRWINDALE
AGENDA REPORT

CC & SA Item 1C
HA Item 1B

Date: January 25, 2023

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

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

Issue: Investment Quarterly Report for Fiscal Quarter Ending December 31, 2022.

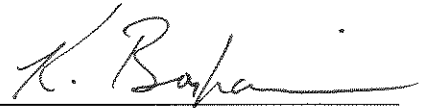
City Manager/Executive Director's Recommendation:

Receive and file the Investment Quarterly Report for the fiscal quarter ending December 31, 2022.

Administrative Action:

Submitted & Prepared by:

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



Reviewed by:

Adrian R. Guerra, City Attorney/General Counsel

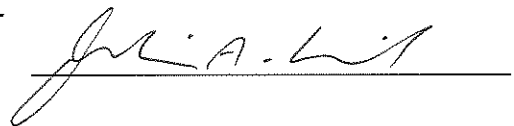
Electronically Approved

Kambiz Borhani
Authority Finance Director/ Authority Treasurer



Approved by:

Julian A. Miranda, City Manager/Executive Director



Background and Analysis:

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

The attached Investment Report summarizes the cash balances and investments as of December 31, 2022, for each agency. The City of Irwindale's balances include investments of all funds of the City and its agencies, which are pooled to maximize the interest yield. The cash balances in the general and money market accounts also include all funds of the City and its agencies, which also earn interest on the pooled cash balances. All investments comply with the City's Investment Policy.

As previously noted, all funds held by the City, Successor Agency, Housing Authority, and Reclamation Authority are pooled to maximize interest yields. The Reclamation Authority Board is not scheduled to meet again until March 8, 2023. Therefore, this same Investment Report will be included in the Reclamation Authority's Agenda for that meeting for review by the Reclamation Authority Board as well.

Fiscal Impact:

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

Attachment:

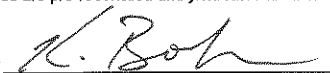
City of Irwindale Investment Report – December 31, 2022

**CITY OF IRWINDALE
INVESTMENT REPORT
December 31, 2022**

SECURITY DESCRIPTION	PAR VALUE / ORIGINAL COST	CURRENT YIELD TO MATURITY	PURCHASE DATE	MATURITY DATE	MKT VALUE / ENDING BALANCE	INVESTMENT RATINGS
CITY OF IRWINDALE (POOLED - ALL FUNDS, INCLUDING RECLAMATION AUTHORITY)						
BANK OF THE WEST GENERAL ACCOUNT	\$ 370,964	0.36%			\$ 370,964	
WELLS FARGO BANK MONEY MARKET ACCOUNT	\$ 1,100,000	3.92%			\$ 1,447,026	
LOCAL AGENCY INVESTMENT FUND (LAIF)	\$ 48,891,456	2.07%			\$ 47,950,832	
US GOVERNMENT AGENCIES						
FEDERAL HOME LN BKS CONS BD (FHLB)	\$ 5,000,000	0.52%	07/28/21	01/28/25	\$ 4,586,900	Aaa / AA+
FEDERAL FARM CR BKS CONS SYSTEMWIDE (FFCB)	5,000,000	0.58%	06/23/21	06/23/25	4,536,300	Aaa / AA+
FEDERAL FARM CR BKS CONS SYSTEMWIDE (FFCB)	3,000,000	0.90%	06/15/21	06/15/26	2,666,730	Aaa / AA+
FEDERAL HOME LN BKS CONS BD (FHLB)	5,000,000	1.00%	06/30/21	06/26/26	4,448,850	Aaa / AA+
FEDERAL HOME LN BKS CONS BD (FHLB)	5,000,000	0.50%	06/30/21	06/30/26	4,436,300	Aaa / AA+
FEDERAL FARM CR BKS CONS SYSTEMWIDE (FFCB)	5,000,000	0.87%	07/28/21	07/28/26	4,424,100	Aaa / AA+
FEDERAL HOME LN BKS (FHLB)	5,000,000	0.50%	07/29/21	07/29/26	4,426,050	Aaa / AA+
FEDERAL HOME LN BKS CONS BD (FHLB)	1,000,000	3.42%	08/29/22	11/15/24	935,152	Aaa / AA+
FEDERAL HOME LN BKS CONS BD (FHLB)	1,000,000	3.45%	08/29/22	12/27/24	934,442	Aaa / AA+
FEDERAL HOME LN BKS CONS BD (FHLB)	1,000,000	3.28%	08/29/22	02/22/27	915,016	Aaa / AA+
Sub-Total US Government Agencies:	\$ 36,000,000				\$ 32,309,840	
MUNICIPAL BONDS						
CALIFORNIA STATE TAXABLE	\$ 1,000,000	3.35%	08/30/22	04/01/24	\$ 982,355	Aa2 / AA-
BAY AREA CALIFORNIA TOLL AUTHORITY	1,000,000	3.50%	08/30/22	04/01/25	953,732	Aa3 / AA
Sub-Total Municipal Bonds:	\$ 2,000,000				\$ 1,936,087	
CORPORATE BONDS						
Wells Fargo & Company	\$ 2,000,000	6.25%	10/21/22	10/21/27	\$ 2,016,963	A1 / BBB+
Toyota Motor Credit Corporation	1,000,000	5.00%	11/10/22	10/16/25	895,995	A1 / A+
	\$ 3,000,000				\$ 2,912,958	
CERTIFICATES OF DEPOSIT						
BANK OF CHINA	\$ 245,000	3.159 %	08/31/22	02/28/24	\$ 240,911	FDIC Insured
JP MORGAN CHASE BANK	245,000	3.40 %	08/31/22	08/30/24	240,272	FDIC Insured
APEX BANK	245,000	3.153 %	08/31/22	08/30/24	239,255	FDIC Insured
UBS BANK USA	245,000	3.40 %	08/31/22	09/02/25	237,716	FDIC Insured
AMERICAN EXPRESS NATIONAL BANK	245,000	3.35 %	08/31/22	09/02/25	237,467	FDIC Insured
COMMUNITY BANK OF THE BAY	245,000	3.50 %	08/31/22	08/31/27	233,781	FDIC Insured
CAPITAL ONE BANK USA	245,000	3.45 %	08/31/22	08/31/27	233,315	FDIC Insured
CAPITAL ONE NATIONAL ASSN VA	245,000	3.45 %	08/31/22	08/31/27	233,315	FDIC Insured
ALLY BANK	245,000	3.35 %	09/01/22	09/01/26	234,928	FDIC Insured
SYNCHRONY BANK	245,000	3.45 %	09/02/22	09/02/27	233,306	FDIC Insured
CUSTOMERS BANK	245,000	3.00 %	09/06/22	09/06/23	242,474	FDIC Insured
MEDALLION BANK	245,000	3.25 %	09/07/22	09/08/25	236,746	FDIC Insured
BMO HARRIS BANK	245,000	3.15 %	09/09/22	03/11/24	240,817	FDIC Insured
DR BANK	245,000	3.60 %	09/09/22	09/09/26	236,863	FDIC Insured
SAFRA NATIONAL BANK	245,000	3.05 %	09/09/22	10/10/23	242,195	FDIC Insured
MORGAN STANLEY BANK	245,000	3.45 %	09/09/22	09/09/27	233,308	FDIC Insured
MORGAN STANLEY BANK	245,000	3.45 %	09/09/22	09/09/27	233,308	FDIC Insured
TRADITIONAL CAPITAL BANK	245,000	3.30 %	09/14/22	03/13/26	235,726	FDIC Insured
PONCE BANK	245,000	3.35 %	09/14/22	09/14/27	232,095	FDIC Insured
FIRST NATIONAL BANK	245,000	3.45 %	09/19/22	09/20/27	233,148	FDIC Insured
Sub-Total Certificates of Deposit:	\$ 4,900,000				\$ 4,730,944	
Total City of Irwindale Investments (Pooled Funds):	\$ 95,262,420				\$ 91,658,650	
HOUSING AUTHORITY (Funds 11 & 12)						
BANK OF THE WEST GENERAL ACCOUNT	\$ 1,652,086	0.36%			\$ 1,652,086	
LOCAL AGENCY INVESTMENT FUND (LAIF)	5,659,136	2.07%			5,589,017	
	\$ 7,311,222				\$ 7,241,103	
SUCCESSOR AGENCY (Funds 50-66)						
BANK OF THE WEST MONEY MARKET ACCOUNT	\$ 462,357	0.36%			\$ 462,357	
LOCAL AGENCY INVESTMENT FUND (LAIF)	5,292,662	2.07%			5,190,836	
	\$ 5,755,019				\$ 5,653,193	
GRAND TOTAL OF INVESTMENTS	\$108,328,661				\$ 104,552,946	

This investment portfolio is in conformity with the City of Irwindale's Investment Policy which was approved by City Council on June 8, 2022. The City Treasurer's cash management program and cash flow analysis indicates that sufficient liquidity is on hand to meet estimated future expenditures for a period of six months. The weighted average of maturity of the City's pooled investment portfolio is 1.22 years, and the weighted average yield of the City's pooled investments at cost is 1.29%. Market prices of securities are obtained directly through Bank Statements. Due to timing, Bank of the West General Account balances are pre-reconciled and yield rates are based on the prior month's account analysis statement.

Approved by



Kambiz Borhani, Finance Director / City Treasurer

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

City of
IRWINDALE
AGENDA REPORT

CC Item 1D

Date: January 25, 2023
To: Honorable Mayor and Members of the City Council
From: Julian A. Miranda, City Manager
Issue: Rejection of Claim: Natalie Diaz vs. City of Irwindale.

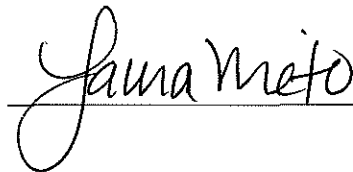
City Manager's Recommendation:

Staff recommends City Council (1) Reject the claim of Natalie Diaz 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

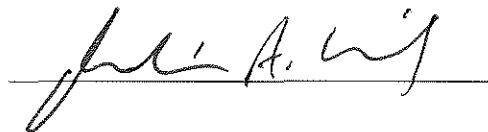
Electronically Approved

Kambiz Borhani, Finance Director / City Treasurer



Approved by:

Julian A. Miranda, City Manager



Background and Analysis:

On December 22, 2022, the City received a claim for damages from claimant Natalie Diaz. Claimant Diaz alleges that she was a passenger in a vehicle that ran off Interstate 210 westbound 0.15 miles east of Monterey Avenue where no guardrail was in place, and sustained injuries and damages as a result.

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 the location is outside of the City's jurisdiction and is not controlled or maintained by the City of Irwindale. Accordingly, staff is recommending that the City Council reject the claim. Alternatively, the City Council may direct the City Manager to negotiate resolution of the claim.

Fiscal Impact:

None.

Attachment:

Claim for Damages received December 22, 2022



CITY OF IRWINDALE

**CLAIM FOR DAMAGES
TO PERSON OR PROPERTY**

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 22 2022

**CITY OF IRWINDALE
CITY CLERK'S DEPT.
Filing Stamp**

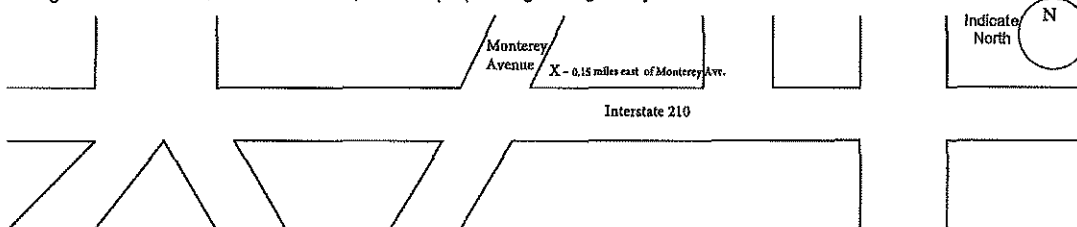
To: City of Irwindale		Claimant's Date of Birth [REDACTED]
Name of Claimant NATALIE MARIE DIAZ		Claimant's Occupation
Home Address of Claimant [REDACTED]		Home Telephone Number
Business Address of Claimant		Business Telephone Number
Name and address to which you desire notices or communications to be sent regarding this claim: Gavrilov & Brooks, c/o Bryan C. Nettels, 2315 Capitol Avenue, Sacramento, CA 95816		
When did DAMAGE or INJURY occur? Date: 07/07/2022 Time: 4:40 p.m. If claim is for Equitable Indemnity, give date claimant served with complaint: _____	Names of any City employees involved in INJURY or DAMAGE	
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: Interstate 210 westbound 0.15 miles east of Monterey Avenue		
Describe in detail how the DAMAGE or INJURY occurred. Claimant was a passenger in a vehicle that ran off Interstate 210, which had no guardrail at the incident location describe above, and crashed into a tree on a steep embankment appurtenant to Interstate 210.		
Why do you claim the City of Irwindale is responsible? The City of Irwindale negligently designed, constructed, and/or maintained the part of Interstate 210 in which the incident occurred, thereby creating a dangerous condition, or, in the alternative, had actual and/or constructive notice that said part of Interstate 210 was a dangerous condition a sufficient time prior to the incident to protect against said condition. The dangerous condition existing at the time of the incident created a reasonably foreseeable risk of the injuries Claimant sustained and was the proximate cause thereof.		
What DAMAGE or INJURIES do you claim resulted? Give full extent of injuries or damage claimed. Claimant has sustained personal, general, and economic injuries and/or losses, including, but not limited to: left open femur fracture; fracture of right medial orbital wall and floor; nasal fracture; closed head injuries and injuries to head; facial lacerations; left knee avulsion; right arm abrasion; and cuts to the hands.		

Claimant's Name: NATALIE MARIE DIAZ											
State the amount which you are claiming as of the date of presentation of this claim. Give basis of computation. unlimited civil case											
Give estimated amount of future losses due to INJURY or DAMAGE: 											
Was damage and/or injury investigated by the police? <u>YES</u> If yes, what City? <u>MONROVIA PD/CHP</u>											
Were paramedics or ambulance called? <u>YES</u> If yes, name City or ambulance <u>CARE AMBULANCE</u>											
If injured, give name and address of your doctor and the date and time of your first visit: HUNTINGTON HOSPITAL, 100 W. CALIFORNIA BLVD., PASADENA, CA 91105 ON JULY 7, 2022											
Doctors and Hospitals: <table style="width: 100%; border: none;"> <tr> <td style="width: 33%;">Doctor _____</td> <td style="width: 33%;">Address _____</td> <td style="width: 33%;">Date Hospitalized _____</td> </tr> <tr> <td>Hospital _____</td> <td>Address _____</td> <td>Date Hospitalized _____</td> </tr> <tr> <td>Hospital _____</td> <td>Address _____</td> <td>Date Hospitalized _____</td> </tr> </table>			Doctor _____	Address _____	Date Hospitalized _____	Hospital _____	Address _____	Date Hospitalized _____	Hospital _____	Address _____	Date Hospitalized _____
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: <table style="width: 100%; border: none;"> <tr> <td style="width: 33%;">Name <u>DANIELLE BRITTANY VAPA</u></td> <td style="width: 33%;">Address <u>[REDACTED]</u></td> <td style="width: 33%;">Phone <u>[REDACTED]</u></td> </tr> <tr> <td>Name <u>JAMES KEVORKIAN</u></td> <td>Address <u>[REDACTED]</u></td> <td>Phone <u>[REDACTED]</u></td> </tr> </table>			Name <u>DANIELLE BRITTANY VAPA</u>	Address <u>[REDACTED]</u>	Phone <u>[REDACTED]</u>	Name <u>JAMES KEVORKIAN</u>	Address <u>[REDACTED]</u>	Phone <u>[REDACTED]</u>			
Name <u>DANIELLE BRITTANY VAPA</u>	Address <u>[REDACTED]</u>	Phone <u>[REDACTED]</u>									
Name <u>JAMES KEVORKIAN</u>	Address <u>[REDACTED]</u>	Phone <u>[REDACTED]</u>									

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) Claimant's Attorney	Typed Name Bryan C. Nettels	Date 12/15/2022
--	---	---

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

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

City of
IRWINDALE
AGENDA REPORT

CC Item 1E

Date: January 25, 2023
To: Honorable Mayor and Members of the City Council
From: Julian A. Miranda, City Manager
Issue: Approval of Plans and Specifications for the 2022-2023 Resurfacing Program:
Residential Resurfacing Project – Phase II; P-1043

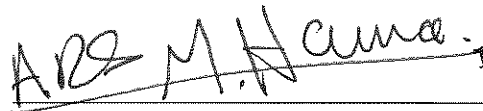
City Manager's Recommendation:

That the City Council (1) approve the plans and specifications for the 2022-2023 Resurfacing Program: Residential Resurfacing Project – Phase II; and (2) authorize staff to solicit bids for construction of the project.

Administrative Action:

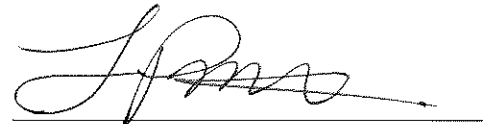
Submitted by:

Arsanious Hanna,
Director of Engineering / Building Official



Prepared by:

Luis Pimentel, Assistant Engineer
(626) 430-2259

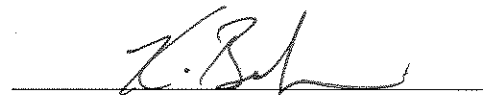


Reviewed by:

Adrian R. Guerra, City Attorney

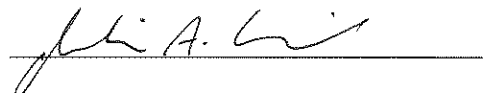
Electronically Approved

Kambiz Borhani,
Finance Director / City Treasurer



Approved by:

Julian A. Miranda, City Manager



Background and Analysis:

The 2022-2023 Resurfacing Program: Residential Resurfacing Project – Phase II (“Project”) is identified in the City’s Capital Improvement Program to provide the required maintenance of the City’s street system.

The Project extends the life of city streets and minimizes costly repairs, such as street reconstruction. This year’s project includes the resurfacing of Martinez Street, Baca Avenue, Sabre Lane, Calle Del Sur, Calle Breceda, Fraijo Avenue, Calle Burrola and Nora Avenue as well as minor concrete repairs of sidewalk panels if needed.

Public Works Engineering staff has prepared the design plans and specifications for the Project, which includes a necessary bid package to advertise and solicit bids per Section 3.44.110 of the City’s Municipal Code and applicable sections of the California Public Works Contract Code. The scope of work for the Project is comprised of cold milling the existing asphalt, resurfacing with conventional asphalt, re-striping, traffic signal loop installation, adjusting utility manholes and removing and reconstructing speed humps and minor concrete repairs of sidewalk panels if needed.

A set of the Project plans and specifications is available for review in the Public Works Engineering Office.

Upon approval by the City Council, the Project will be advertised in February 2023, with an expected award of contract scheduled for City Council consideration in March or April 2023.

This Project is categorically exempt from CEQA as it consists of repair and maintenance of “existing highways and streets, sidewalks, gutters”, pursuant to Section 15301(c) of CCR, Title 14, Division 6, Chapter 3 “Guidelines for Implementation of the California Environmental Quality Act”.

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. The 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).

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

City of
IRWINDALE
AGENDA REPORT

CC Item 2A

Date: January 25, 2023
To: Honorable Mayor and Members of the City Council
From: Julian A. Miranda, City Manager
Issue: Direction Regarding United Rock Products Request to Submit an Application to Modify the Development Agreement for the Olive Pit

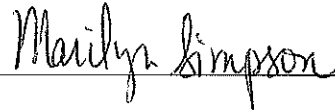
City Manager's Recommendation:

Staff recommends City Council discuss and authorize the City Manager to sign the application for the modification of the Development Agreement for the Olive Pit, located at 4407 Azusa Canyon Road.

Administrative Action:

Submitted by:

Marilyn Simpson, Community Development Director
626-430-2209



Prepared by:

Lisa Chou, Associate Planner



Reviewed by:

Adrian R. Guerra, City Attorney

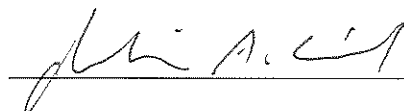
Electronically Approved

Kambiz Borhani, Finance Director / City Treasurer



Approved by:

Julian A. Miranda, City Manager



Background and Analysis:

On December 3, 2014, the City Council approved entering into a Development Agreement with United Rock Products (URP) to allow construction of a new on-site access road and relocation of the on-site access point, phase extraction of mineral resources (Phase I and II) and site reclamation (Phase I and II) at the Olive Pit, located at 4407 Azusa Canyon Road.

On January 6, 2015, the City of Baldwin Park challenged the City's approval and Certification of the EIR for the site. On August 19, 2015, the Cities of Irwindale and Baldwin Park and URP entered into a Settlement Agreement to resolve the legal challenge by Baldwin Park of the EIR and related approvals.

On December 9, 2015, City formally entered into the Development Agreement (DA) No. 01-2014 with URP (Attachment A) for the Olive Pit to extract construction aggregate resources in a phased manner while also reclaiming the site for future beneficial uses.

On March 14, 2017, the City and URP entered into Amendment No. 1 to DA No. 01-2014 (Amendment B) which allowed an increase in the average annual rate of mining from 1 million to 1.5 million tons per year for both Phase I and Phase II, as approved per the certified EIR. This amendment reduced the overall timeline of mining and reclamation of the Site by approximately ten (10) years from approximately thirty-two (32) year to between twenty-two (22) and twenty-three (23) years.

On September 14, 2022, the City Council approved the request from URP to extend the hours of operation for transportation of excavated aggregates from the Olive Pit to United Rock Products Pit (URP) No. 2 until December 31, 2022. The extended hours of 7 a.m. to 3 p.m. from Monday through Friday and 7 a.m. to 5 p.m. on Saturday on the 2nd and 4th Saturdays of each month only. On December 14, 2022, the extended hours of operation was continued from December 31, 2022 to March 31, 2023. Per DA No. 01-2014, the hours of operation for transportation of excavated aggregates to URP No. 2 are Monday through Saturday from 7 a.m. to 5 p.m. The difference in hours of operation from the current and what the DA allows is due to the lack of a new traffic signal to allow safe ingress and egress to the site.

On November 16, 2022, Jeff Cameron, Environmental Manager, from URP submitted an entitlement application letter (Attachment C) requesting that the City Council authorize the City Manager to sign the application to amend the Olive Pit Development Agreement. Since the City owns the Olive Pit, URP is requesting that the City, as property owner, approve the signing of the application submittal.

URP is requesting an amendment to DA No. 01-2014 with the following:

Exhibit B, Section A.2.a "Mining Phase I"

- Increase the annual tonnage from an average of 1.5 million tons per year to a maximum of 2.0 million tons per year.

Exhibit B, Section A.2.b "Mining Phase II"

- Increase the annual tonnage from an average of 1.5 million tons per year to a maximum of 2.0 million tons per year.

Exhibit B, Section A.1 "Access Road Relocation"

- Modify the entrance of the site from Los Angeles Street to allow for trucks to enter off of Azusa Canyon Road by the Los Angeles County Flood Control gate.

This request is for the City to approve the signing of the application as the Property Owner. This request does not grant URP the approval of a project but would allow URP to submit an application to the City for the modification of current land use entitlements, including but not limited to the Development Agreement, License Agreement, Reclamation Plan, and the Environmental Impact Report.

Recommendation:

It is therefore recommended that the City Council discuss, and authorize the City Manager to sign the application for the modification of DA No. 01-2014 for the Olive Pit.

Fiscal Impact:

The entire cost for the development will be covered by the Applicant/Operator. There will be no cost to the City's budget to submit the application.

The royalty payment paid to the City for the first 12.5 million tons of aggregates excavated is \$1.00 per ton. Therefore, the proposed 0.5 million tons per year can equate to a maximum of \$500,000 in added revenue.

Attachment:

- A. Development Agreement No. 01-2014
- B. Amendment No. 1 to the DA No. 01-2014
- C. United Rock Products Letter dated November 16, 2022

ATTACHMENT "A"

RECORDING REQUESTED BY
AND WHEN RECORDED, MAIL TO:

CITY OF IRWINDALE
5050 N. IRWINDALE AVE.
IRWINDALE, CA 91706
ATTN: CITY CLERK

(Space above this line for recorder's use only)

Exempt from Recording Fees per Gov't. Code Sec. 6103

DEVELOPMENT AGREEMENT FOR OLIVE PIT

between

THE CITY OF IRWINDALE

and

UNITED ROCK PRODUCTS CORPORATION

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DEVELOPMENT AGREEMENT FOR OLIVE PIT

THIS DEVELOPMENT AGREEMENT FOR OLIVE PIT ("Development Agreement" or "Agreement") is entered into on December 9, 2015, by and between the CITY OF IRWINDALE, a municipal corporation (the "City"), and UNITED ROCK PRODUCTS CORPORATION, a Delaware corporation ("Developer"). The City and Developer may be referred to collectively as the "Parties" and individually as a "Party."

RECITALS:

A. Developer Property. The City owns and maintains an inactive mining site known as the Olive Pit and identified as APN 8415-001-906 ("Site"). The Site is a 189.74 acre inactive sand and gravel quarry, as shown in the "Site Map" attached hereto as **Exhibit A** and incorporated herein by this reference.

B. Legislation Authorizing Development Agreements. To strengthen the public planning process, encourage private participation in comprehensive planning and reduce the economic risk of development, the legislature of the State of California adopted the Development Agreement Statute, Section 65864 et seq. of the Government Code, authorizing the City to enter into an agreement with any person having a legal or equitable interest in real property providing for the development of such property and establishing certain development rights therein.

C. CEQA. The activities contemplated under this Agreement qualify as a project under State law, are not exempt under the provisions of the California Environmental Quality Act, at California Public Resources Code Section 21000 et seq. and regulations promulgated pursuant thereto ("CEQA"), and, as such has been reviewed by City for its potential environmental impacts pursuant to that certain Environmental Impact Report ("EIR") certified by City concurrently with the approval of this Agreement.

D. Purpose of Agreement.

To address the on-going costs and liability of owning and maintaining the inactive mining site due to factors such as slope stability concerns threatening neighboring properties, erosion, and illegal dumping, the City issued a Request for Qualifications ("RFQ") in January, 2013 to evaluate options for the effective re-use of the Site. On or about January 22, 2013, in response to the RFP, the City received 2 proposals, including a proposal from Developer, to excavate and reclaim portions of the Site ("Project"). The City Council considered proposed terms to license the Site to Developer for such purposes and approved that certain Memorandum of Understanding ("MOU") on August 14, 2013 with Developer, finding that the proposal from Developer best suits the needs of the City, as further described herein. City and Developer enter into this Agreement pursuant to Government Code sections 65864 et seq. for the implementation of the Project. Additionally, the parties intend to enter into a license agreement ("License") concurrently with the approval of this Agreement, to provide access to Developer to the Site and provide for Developer's payment of applicable royalties to City. The effectiveness of this Agreement shall be contingent on the City's approval and continued effectiveness of the License.

The Planning Commission and City Council have determined that the development and operation of the Project is consistent with the City's General Plan, current policies and the California Surface Mining And Reclamation Act of 1975, as amended ("SMARA"), and implementing regulations of the State Mining and Geology Board ("SMARA Regulations") designating the area that includes the Site as a Regionally Significant Construction Aggregate Resource Area in the Orange County-Temescal Valley and San Gabriel Valley Production-Consumption Regions (SMARA Regulations §3550.5). Said SMARA provisions prohibit the City from abandoning the existing significant construction reserves or otherwise reclaiming the Site so as to prevent the ability to extract such reserves, without making certain findings that are not likely feasible to establish as to the Site (SMARA Section 2763).

Developer has submitted to City an application for development and operation of the Project at the Site. The City is prepared to grant such entitlement, provided that Developer agrees (1) to enter into the License concurrently with this Agreement providing Developer with rights to access the Site and describing Developer's obligations to pay City royalties; (2) to mine the Site in accordance with the terms of this Agreement; (3) to reclaim the Site in the manner set forth herein and in the approved Reclamation Plan; (4) to provide the security required in this Agreement in addition to the City's pledge of revenue as financial assurances in compliance with SMARA; and (5) to fund the cost for all mitigation measures as identified in the EIR, except as may be expressly provided at Article 9.0.

E. Public Hearings; Findings. On November 19, 2014 the City's Planning Commission, after a duly noticed public hearing, adopted Resolution No. 637(14) recommending City Council certification of the EIR, Resolution No. 641(14) recommending City Council approval of Zone Change, Resolution No. 640(14) recommending City Council approval of the Reclamation Plan and Financial Assurances and Resolution No. 639(14) recommending City Council approval of this Agreement. On December 3, 2014, the City Council, after making appropriate findings at a duly noticed public hearing, adopted Resolution No. 2014-51-2711 certifying the EIR, introducing Zone Change by Ordinance No. 686, conditionally approving and certifying the Reclamation Plan and Financial Assurances by Resolution No. 2014-55-2715, subject to comment from the California Department of Conservation, and approving this Agreement by introducing Ordinance No. 684, and on December 10, 2014, after considering all comments from the Department of Conservation, adopted Ordinance No. 684 approving this Agreement and Ordinance No. 686 approving the Zone Change.

F. Writ of Mandate and Settlement. On January 6, 2015, the City of Baldwin Park ("Baldwin Park") challenged the EIR by way of it's Petition for Writ of Mandate, Los Angeles Superior Court Case No. BS152919 ("Writ"). On or about August 19, 2015, the parties reached an out of court settlement of that action requiring the City to pay Baldwin Park a sum of money and agree to build a wall along the western boundary of the Site in exchange for a full settlement of the Writ. The Project was thus delayed as a result of the Writ and resulting settlement.

NOW, THEREFORE, in consideration of the mutual promises and covenants herein contained, and having determined that the foregoing recitals are true and correct and should be and hereby are incorporated into this Agreement, the parties agree as follows:

1.0 MUTUAL BENEFITS AND ASSURANCES.

1.1 Project Description.

Developer intends to mine useable aggregates from the Site, utilizing both dry and underwater mining processes. The parties desire to have Developer construct a new on-site access road and relocated driveway entrance to the Site on the south side of the Site, mine the easterly area of the Site in the initial phase of the Project so as to allow reclamation of the easterly area comprising approximately 31.2 acres to commence as soon as possible, and mine the balance of the Site. All such mining and reclamation activities shall strictly follow the City's Guidelines, as defined below as well as Appendix J of the City's Building Code. Developer intends to accomplish the Project utilizing environmental control systems aimed at mitigating the impact of the Project on surrounding residences, businesses and roadways.

Developer understands and acknowledges that the City intends to ultimately develop the 31.2 acre portion of the Site for future commercial or industrial development in accordance with the terms of this Agreement and the remainder for long-term use as a storm water retention area, both of which are envisioned to occur after the completion of the mining and reclamation of the Project described herein. This Article 1.0 outlines the parties' general intent as to the timeframe and sequence for the development of the Site. The intended mining, reclamation and development are more specifically described in the "Scope of Development" attached hereto as **Exhibit B** and incorporated herein by this reference. In addition, the timeframes are established in the "Schedule of Performance" attached hereto as **Exhibit C** and incorporated herein by this reference.

1.2 Summary of Development Plan.

As further described in the Scope of Development at **Exhibit B**, Developer will extract economically available construction aggregate resources from the Site in compliance with State and City regulations. Developer will extract the resources in a phased manner while also reclaiming the Site for future beneficial uses. The first phase will include mining the eastern portion of the Site, followed by reclamation of this area to create an approximate 31.2-acre pad suitable for development. Reclamation will involve filling the extraction void with inert fill materials. The second phase will include mining the remainder of the Site utilizing both dry and underwater mining processes.

1.3 Interest and Representations of Developer.

"Developer" is United Rock Products Corporation, a Delaware corporation, and its permitted successors and assigns, with its principal offices at 135 South State College Boulevard, Suite 400, Brea, California 92821. Developer warrants and represents to City that:

- (a) Developer is a Delaware corporation duly organized and existing under the laws of the State of Delaware;
- (b) By proper action of Developer, Developer's signatories have been duly authorized to execute and deliver this Agreement, acting by and through its duly authorized officers;

(c) Developer is duly qualified to do business in good standing under the laws of the State of California and has all requisite power and authority to carry out its business as now and whenever conducted and to enter into and perform its obligations under this Agreement;

(d) Entering into this Agreement by Developer does not violate any provision of any other agreement to which Developer is a party;

(e) Except as may be specifically set forth in this Agreement, no approvals or consents not heretofore obtained by Developer are necessary in connection with the execution of this Agreement by Developer or with the performance by Developer of its obligations hereunder;

(f) Neither Developer, nor the principals of Developer, have filed or been the subject of any filing of a petition under the Federal Bankruptcy Law or any insolvency laws, or any laws for the discharge of indebtedness or for the reorganization of debtors;

(g) No representation, warranty, or covenant of Developer in this Agreement, or in any document or certificate furnished or to be furnished to the City pursuant to this Agreement, contains or will contain any untrue statement of a material fact or omits or will omit to state a material fact necessary to make the statements contained herein or therein not misleading; provided that the foregoing representation does not apply to the present condition of the Site inasmuch as the City is the owner of this property;

(h) Developer has not paid or given to, and will not pay or give to, the City or any official or agent of the City any money or other consideration for obtaining this Agreement, except as expressly provided herein; and

(i) Developer is legally entitled to enter into the License with City to secure the right of possession to the Site and operate any of the activities thereon approved under this Agreement.

(j) Developer has inspected the Site pursuant to the authorization provided by City under the MOU and performed sufficient testing in its discretion and to its satisfaction to verify and, as a result of such access and testing, has verified that the Site contains recoverable (i.e. useable) reserves of a minimum of 30 million tons and that such reserves meet the quality standards of applicable California governmental agencies for construction.

1.4 Binding Effect of Agreement.

The mutual burdens and benefits of this Agreement inure to and shall be binding upon the successors in interest of the Parties. City represents and warrants that it is the owner of the Site.

1.5 Superseded Mining Agreements.

Prior to this Agreement, the Site was subject to approvals by the County of Los Angeles (collectively, the "Superseded Mining Agreements"). Upon the Effective Date of this

Agreement, all of the Superseded Mining Agreements related to the Site shall be superseded by this Agreement and shall be of no further force and effect. The Superseded Mining Agreements shall also include the MOU between Developer and the City, dated August 14, 2013.

2.0 DEFINITIONS.

The following words and phrases are used as defined terms throughout this Agreement. Each defined term shall have the meaning set forth below. Any capitalized terms not defined in this Section shall have the meaning otherwise assigned to them in this Agreement or apparent from the context in which they are used.

2.1 Anticipated High Water Level.

"Anticipated High Water Level" means the anticipated high groundwater level of approximately $\pm 285'$ amsl. The California State Regional Water Quality Control Board has analyzed anticipated groundwater levels along with other data pertaining to and affecting local groundwater data, and has adopted the concept of "anticipated groundwater levels" as opposed to using "historic high groundwater levels" for the purpose of planning and regulating projects that may affect, or be affected by, groundwater.

2.2 Applicable Law.

"Applicable Law" means all statutes, rules, regulations, guidelines, actions, determinations, Permits, orders, or requirements of the United States, State, County, City and local and regional government authorities and agencies having applicable jurisdiction, that apply to or govern the Site or the performance of the Parties' respective obligations hereunder, including any of the foregoing which concern health, safety, fire, environmental protection, labor relations, mitigation monitoring plans, building codes, zoning, non-discrimination, and prevailing wages if applicable.

2.3 Assignment.

All forms of use of the verb "assign" and the nouns "assignment" and "assignee" shall include all contexts of hypothecations, conveyances, transfers, leases, and assignments.

2.4 Authorizing Ordinance.

"Authorizing Ordinance" means Ordinance No. 684 approving this Agreement.

2.5 City.

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

2.6 City Council.

"City Council" means the governing body of the City of Irwindale.

2.7 Commercial Filling Operations.

"Commercial Filling Operations" shall refer to the following: The City has established a phased reclamation process to concentrate fill materials in prioritized mining pits so that the pits can be fully reclaimed as quickly as possible and made available for the end uses, and. Developer has agreed to participate in this process. Accordingly, without the written approval of the City Manager, Developer shall not conduct a Commercial Filling Operation on the Site. A "Commercial Filling Operation" shall be defined as a filling operation that is prioritized by the City ahead of Pit No. 1 formerly owned by Developer and now by Irwindale Partners, LLC ("IP"), Hanson Aggregate's 40 acre portion along the 605 freeway, Developer's Pit No. 2 and Vulcan Materials' Durbin and Reliance quarries. Developer understands and acknowledges the contractual obligations of City to IP, Hanson, Developer (by separate agreement) and Vulcan and, as such, also agrees that without the written approval of the City Manager, it will not post signs on or around the Site advertising the availability of the Site and directing customers to the Site and derive revenue by published public rates and charges for those persons bringing fill to the Site. This shall not prevent Developer from commencing or carrying out reclamation through noncommercial filling operations by utilizing fill from its own internal operations on the Site or from Developer's other operations, or from entering into fill contracts to acquire fill, not otherwise reasonably available to the other mining operators, but not by general solicitation, advertising or other similar means, if such activities would jeopardize the City's contractual obligations to IP, Hanson, Developer (by separate agreement), and Vulcan.

2.8 Completion of Reclamation.

"Completion of Reclamation" means, consistent with the definition under the California Surface Mining and Reclamation Act of 1975, the completed process of land treatment which minimizes water degradation, air pollution, damage to aquatic or wildlife habitat, flooding, erosion, and other adverse effects from surface mining operations, including adverse surface effects incidental to underground mines, so that the mined lands are reclaimed to a usable condition which is readily adaptable for the ultimate development and other uses of the Site, as specified in this Agreement and the Guidelines, and creates no danger to public health or safety. The process shall require backfilling, grading, resoiling, revegetation, soil compaction to those standards specified in this Agreement and the Guidelines, stabilization and other measures to make such mined lands readily adaptable to the ultimate end use of the Site, as specified in this Agreement. It is specifically agreed that this definition is satisfied only by, among other activities, the use of Engineered Fill in the creation of the approximately 31.2 acre Development Parcel in accordance with the Guidelines. Other reclamation activities include, but are not limited to, the removal of all mining related facilities, final grading and revegetation of mine slopes, etc.

2.9 Concurrent Mining Approvals.

"Concurrent Mining Approvals" means the approval granted by City concurrent with the approval of this Development Agreement to mine and reclaim the Site, namely the Reclamation Plan, EIR and approvals addressing Financial Assurance obligations.

2.10 Conditions of Approval.

"Conditions of Approval" means those conditions regulating the mining and reclamation activities authorized by this Agreement and attached as **Exhibit B** hereto.

2.11 Default.

"Default" refers to any material default, breach, or violation of a provision of this Agreement as defined in Section 12.0. "City Default" refers to a Default by the City, while "Developer Default" refers to a Default by Developer.

2.12 Development.

"Development" shall have the meaning set forth under the definition of "Project" herein.

2.13 Development Agreement Statute.

"Development Agreement Statute" means Sections 65864 through 65869.5 of the California Government Code as they exist on the Effective Date or as may be amended from time-to-time.

2.14 Development Approvals.

"Development Approvals" means all site-specific (meaning specifically applicable to the Site only and not generally applicable to some or all other properties within the City) plans, maps, permits, and entitlements to use of every kind and nature. Development Approvals include, but are not limited to, permits to mine to specified depths, Reclamation Plan, specific plans, site plans, tentative and final subdivision maps, variances, zoning designations, conditional use permits, grading, building, and other similar permits, environmental assessments, including environmental impact reports and negative declarations, and any amendments, supplements or modifications to those plans, maps, permits, assessments and entitlements. The term Development Approvals does not include (i) rules, regulations, policies, and other enactments of general application within the City, (ii) any of the Superseded Mining Agreements, (iii) any matter where City has reserved authority under Article 10.0.

2.15 Development Parcel.

"Development Parcel" means the 31.2-acre portion of the Site comprising the easterly-most portion of the Site, which is intended to be developed for commercial and industrial uses, when geotechnically stable, in accordance with the Guidelines and Scope of Development. Developer shall reclaim such 31.2-acre portion pursuant to the terms of this Agreement and Reclamation Plan to street level with a 2:1 slope along the western margin of the Site, which will require more than 8 million cubic yards of fill.

2.16 Development Plan.

"Development Plan" means the Existing Development Approvals, Future Development Approvals, Mining Land Use Regulations and permitted Future Mining Land Use Regulations per Article 10.0.

2.17 Effective Date.

"Effective Date" means the date the Agreement becomes effective, which shall be the date thirty (30) days after the adoption of the Authorizing Ordinance; provided the parties approve the License on or before such date. Otherwise, Effective Date shall be the date that this Agreement is fully executed and delivered by the parties and shall coincide with the Effective Date of the License being entered into by the parties hereto.

2.18 EIR or "environmental documents".

"EIR" or "environmental documents" means the final Environmental Impact Report or other environmental documents certified by City Council Resolution No. 2014-51-2711 in accordance with the requirements of CEQA and processed in accordance with Section 4.4.

2.19 Engineered Fill.

"Engineered Fill" means the use of Site Development Fill for the reclamation of quarry pits to the following standard:

(a) All fill placed into the natural groundwater (Underwater Fill) at any level that may exist at the time of fill placement shall comply with all provisions of the Guidelines for Underwater Fill, as defined in Section 2.24.

(b) All fill placed above the natural groundwater (Above Water Fill) at any level that may exist at the time of fill placement shall comply with all provisions of the Guidelines for Above Water Fill, as defined in "Guidelines" herein.

2.20 Existing Development Approvals.

"Existing Development Approvals" means those Development Approvals which are in effect on the Effective Date, but does not include the Superseded Mining Agreements.

2.21 Financial Assurances.

"Financial Assurances" shall mean the financial assurances required by City pursuant to the Surface Mining and Reclamation Act of 1975 ("SMARA") to assure the reclamation of the Site, as established pursuant to Sections 12.2.

2.22 Future Development Approvals.

"Future Development Approvals" means those Development Approvals applicable to the Site approved by the City after the Effective Date.

2.23 Future Mining Land Use Regulations.

"Future Mining Land Use Regulations" means those Mining Land Use Regulations approved by the City after the Effective Date.

2.24 Guidelines.

a. "Guidelines" shall be the collective term used to refer to the following standards applicable in the City for reclamation and maintenance of mining quarries, developed by the Irwindale Technical Committees, as approved December 20, 2005 by Resolution No. 2005-89-2106 of the City Council, and specifically includes any and all duly approved revisions, updates, amendments and modifications of such Guidelines; provided, however, that any changes to the existing guidelines which would result in a material increase in cost to the Developer shall be the subject of further negotiations between the parties. The parties contemplate that the City shall inspect and approve on a monthly basis any filling operation performed by the Developer in order to assure that the parties are in agreement that reclamation has been properly performed.

b. "Guidelines for Above Water Fill" shall mean the November 23, 2005 Guidelines for Above Water Backfilling of Open-Pit Mines, Irwindale, California.

c. "Guidelines for Erosion Control" shall mean the July 6, 2004 Guidelines For Drainage And Erosion Control for Open-Pit Mines, Irwindale, California.

d. "Guidelines for Underwater Fill" shall mean the May 20, 2005 Guidelines for Underwater Backfilling of Open-Pit Mines, Irwindale, California.

e. "Guidelines for Slope Stability" shall mean the December 24, 2003 Guidelines for Slope Stability Analysis of Open Pit Mine Slopes, Irwindale, California.

2.25 Inert Materials.

"Inert Materials" shall have the meaning as provided in the Guidelines.

2.26 License

"License" shall have the meaning set forth at Recital D above and approval of the License shall be a precondition to the effectiveness of this Agreement pursuant to Section 3.1 below.

2.27 Maximum Depth.

"Maximum Depth" shall have the meaning set forth at **Exhibit B**, Section A (1) (a) and (b) herein which shall provide for the maximum depth Developer shall be authorized to excavate pursuant to this Agreement.

2.28 Mining Development Approvals.

"Mining Development Approvals" means those City approvals including this Agreement for mining and reclamation of the Site. Mining Development Approvals include the authority to mine to specified depths, Reclamation Plan, and financial assurances concerning mining, mining environmental assessments, and any amendments or modifications thereto.

2.29 Mining Land Use Regulations.

"Mining Land Use Regulations" means those Project related Development Approvals and Land Use Regulations including all zoning ordinances (including IMC Section 17.60 (Quarry Zone) and IMC Section 17.63 (Surface Mining and Reclamation Plans)), as they may be amended from time-to-time and other ordinances and regulations governing the conduct of mining and reclamation activities within the Site.

2.30 Mining Tax.

"Mining Tax" means the tax enacted by the voters pursuant to Sections 3.18.030 and 3.18.040 of the Irwindale Municipal Code, as it may be amended from time to time.

2.31 Project Improvements.

"Project Improvements" means those improvements required by Section 4.8 of this Agreement to be constructed or installed by Developer in conjunction with the post-reclamation development of the Site. The parties acknowledge that such Project Improvements do not constitute a comprehensive list of improvements that may be required and that the City reserves the right to require additional improvements at the time it considers the post-reclamation development of the Site; provided that Developer shall not be responsible for post-reclamation development of the Site and any improvements would be at the City's expense.

2.32 Project.

"Project" means the excavation, reclamation, and placement of Site Development Fill for rough-grade pads at the Site for commercial and industrial uses and open space-flood control, storm water retention and/or ground water recharge basin uses pursuant to this Agreement. "Development" means the improvement of the Site for purposes of constructing the structures, improvements and facilities consistent with the uses identified for the Project including, without limitation: grading, the construction of infrastructure and public facilities related to the Project identified in this Agreement, the Reclamation Plan, whether located within or outside the Site, but not the construction of structures and buildings, infrastructure, public facilities or installation of landscaping for the ultimate end use. This Agreement does not encompass any such construction for the ultimate end use of the Development Parcel insofar as those will be accomplished by the City, in its sole discretion, following the completion of Developer's activities per this Agreement.

2.33 Reclamation Plan.

"Reclamation Plan" shall mean the October, 2014 Reclamation Plan prepared by Environmine, Inc. for the Olive Pit and approved concurrently herewith by the City as part of this Development Agreement.

2.34 Reservations of Authority.

"Reservations of Authority" shall have the meaning set forth in Section 10 of this Agreement.

2.35 Schedule of Performance.

"Schedule of Performance" means that certain Schedule of Performance attached hereto as **Exhibit C** specifying the time limits by which the various obligations under this Agreement must be performed.

2.36 Scope of Development.

"Scope of Development" means the development of the Site as described at **Exhibit B** hereto.

2.37 Site.

"Site" means the property commonly referred to as the Olive Pit shown on the Site Map, attached hereto as **Exhibit A**, and more specifically described in the Legal Description attached hereto as **Exhibit A-1**.

2.38 Site Development Fill.

"Site Development Fill" shall mean silt fill and Inert Materials used for the filling of the Site, subject to the requirements of Section 7.1 below.

2.39 Superseded Mining Agreements.

"Superseded Mining Agreements" shall have the meaning set forth in Section 1.5 of this Agreement.

2.40 Term.

"Term" means that period of time during which this Agreement shall be in effect and bind the Parties, as defined in Section 3.1.

2.41 Uniform Codes.

"Uniform Codes" means the California codes that are based on recommendations of a multi-state professional organization, as adopted by City, such as, but not limited to, the California Building, Electrical, Plumbing, Mechanical, Fire, or Abatement of Dangerous Building Codes and includes the City's Grading ordinance "Appendix J Grading."

2.42 Zone Amendment.

"Zone Amendment" means the amendment to the Irwindale Zoning Code, at Chapter 17.63 authorizing the entitlements granted herein by development agreement and the inclusion of the Site within the Quarry Zone pursuant to Irwindale Zoning Code, at Chapter 17.60.

3.0 TERM.

3.1 Term.

Provided the parties duly approve the License on or before the Effective Date, the term of this Agreement (the "Term") shall commence on the Effective Date and shall continue until no later than December 31, 2050, when final reclamation shall be accomplished for the Site, in accordance with Article 7.0. The parties agree that this Agreement shall not be effective and shall be void if the License is not approved by the parties and remains in effect throughout the Term. However, mining operations and reclamation authorized by this Agreement and the Reclamation Plan shall be conducted during the times set forth in the Schedule of Performance. In the event Developer has not completed its performance hereunder upon expiration of the term, the City Council may extend the Term in its reasonable discretion and seek specific performance in lieu of accepting termination but this right shall not preclude City from exercising any other rights hereunder for such violation. Additionally, based on Developer's access and inspection of the available aggregate reserves at the Site before the Effective Date, should the parties desire to have Developer continue to mine beyond the permitted depth to secure the additional reserves at the Site, this Agreement may be amended, subject to the mutual agreement of the parties, separate negotiation of the extension and amendment to the License, subject to compliance with CEQA. Notwithstanding the foregoing, this Agreement shall terminate when reclamation, as described in this Agreement and the Reclamation Plan, as may be duly amended by the parties, is complete.

3.2 Completion of Project.

Developer shall undertake the Project in accordance with this Agreement and the License. When Developer believes the Project is complete, it shall so inform the City Engineer and Consultant Engineer (as such term is defined in Section 7.2 below) in writing and the Consultant Engineer shall within ten (10) days provide a written response confirming same. Should Consultant Engineer disagree, Consultant Engineer shall prepare a list of outstanding items for Developer to perform, which Developer shall perform within the time set forth in the Schedule of Performance, unless otherwise agreed to by the Parties and memorialized in writing in accordance with the Schedule of Performance. The Project shall be deemed complete upon the issuance of a final report by the Consultant Engineer, and the filling of the Site completely (collectively "Completion Notice")

3.3 Force Majeure.

Developer agrees that the time within which it shall be required to perform any act under this Agreement shall not be extended, provided that (i) the delay is not caused by any excess delay (including, without limitation, restrictions on priority, initiative or referendum, or moratoria) by the City, in which case, Developer shall provide written notice to the City specifically describing the nature and extent of the delay and Developer's detailed efforts to avoid such delay, which references this Section and deliver such notice within 45 days of discovering such delay, and Developer's obligations shall be extended for such time as the City deems reasonable as a result of the delay if and only if Developer provides such written notice to the City within such time; and (ii) the time within which Developer shall be required to perform any act under this Development Agreement shall be extended by a period of time equal to the number of days during which performance of such act is delayed due to war, insurrection, strikes, lock-outs, riots, floods, earthquakes, fires, casualties, natural disasters, acts of God, acts of the public enemy, epidemics, quarantine restrictions, freight embargoes, processing with any

governmental agencies, intervening and unforeseeable governmental regulations or other governmental actions that cause a demonstrable and substantial impact upon a material aspect of Developer's operations of the Project, unusually severe weather, or any other similar causes beyond the control of Developer or without the fault of Developer. An extension of time for any such cause shall be for the period of the enforced delay and shall commence to run from the time of the commencement of the cause, if written notice by Developer claiming such extension is sent to the City within 45 days of knowledge of the commencement of the cause. Any extension granted herein shall not amend the Term as to reclamation if Developer is able to make up the fill shortfall in future years of the Term. An extension of time due to the shortfall of fill shall only apply to the reclamation phase of any portion of the Site, and not to the mining phase of any portion of the Site.

4.0 OPERATION OF THE PROJECT AND DEVELOPMENT OF THE SITE.

4.1 Right to Undertake Project.

This Agreement is approved by the City pursuant to Irwindale Municipal Code Section 17.63 and is intended to serve as the entitlement for Developer to operate and accomplish the Project at the Site. Accordingly, during the Term, Developer shall have the right to operate and accomplish the Project at the Site (subject to Section 5.0 below) to the full extent permitted by this Agreement. This Agreement, License and Reclamation Plan shall exclusively control the mining and reclamation and other components encompassing the Project at the Site. Additionally, at its cost, Developer shall be solely responsible for securing all other applicable permits, entitlements and authorizations (collectively, "Permits") to perform the Project from agencies having jurisdiction over the Project, including but not limited to, approvals from the SCAQMD and RWQCB, if applicable. Developer further warrants that it is familiar with securing such Permits and understands that the Agency is relying on Developer's experience and expertise in securing all Permits. Developer and its authorized consultants may access the Site to perform a Phase I soil report and, if warranted, a Phase II soil report of the Site before commencing operations; provided that Developer shall be solely responsible for the cost of such inspections and reports and shall provide City a copy of any such reports within five (5) days of its receipt of same. City shall provide Developer or its authorized consultant access to the Site to accomplish such inspection(s) upon at least 24 hours' prior notice to City, which access shall be subject to Developer's indemnification obligations under Section 14.2.

4.2 Later Enacted Measures.

Developer acknowledges and agrees that this Agreement shall not supersede any initiative, measure, moratorium, statute, ordinance or other limitation enacted after the Effective Date in accordance with the manner described in Section 10 below.

4.3 Inconsistencies.

It is expressly agreed that in the event of any inconsistency between the provisions or conditions of the Development Approvals and the provisions of this Agreement, the provisions of this Agreement shall govern. The conditions of such Development Approvals shall be interpreted insofar as possible to prevent such inconsistency, and in the event this Agreement is

silent concerning an issue, the conditions of the Development Approvals shall govern. Any question concerning inconsistency shall be pursued by the process established in Article 10 below. If any of the Existing Development Approvals are now or hereafter found to be in conflict with or inconsistent with any of the Future Development Approvals, such conflicting or inconsistent provisions contained in the Existing Development Approvals shall be deemed deleted or modified in order to conform same to the Future Development Approvals.

4.4 CEQA.

The City shall be responsible for any and all processing required under CEQA in connection with this Project. As to the CEQA requirements hereunder, the parties agree as follows:

(a) The City has reviewed and processed the EIR for this Agreement and the Reclamation Plan for mining and reclaiming the Site.

(b) City selected HMCg, LLC to serve as its environmental consultant in the preparation of the EIR.

(c) As of the date of this Agreement, Developer has deposited with the City the sum of \$190,000.00, which includes the deposit against fifty percent (50%) of the total estimated cost for the preparation of the new environmental documents. City shall be solely responsible to pay for the next Fifty Thousand and 00/100 Dollars (\$50,000.00) for costs in preparing the expenses incurred by the environmental consultant in the preparation of the environmental documents. Any amounts beyond such additional \$50,000 paid by the City shall be split equally between the City and Developer up to a total contribution by Developer of two hundred ninety thousand dollars (\$290,000) in connection with the approvals of this Agreement. Should an amendment be processed pursuant to Section 9.1, any expenses in connection with such amendment shall be addressed pursuant to Section 9.1. Notwithstanding the foregoing, Developer shall be solely responsible for the cost for the preparation of the Reclamation Plan, securing any permits or other authorizations to conduct the Project, and any other costs related to securing the approvals under this Agreement, including any amendments thereto.

(d) City shall pay the environmental consultant selected under subsection 4.4 (b) above pursuant to the environmental services contract between City and such consultant, using funds deposited by Developer with the City under the MOU and the City funds, as described therein. Should the funds deposited by Developer with City be depleted, Developer shall promptly, within fifteen (15) days of the request therefor, deposit additional funds necessary to pay the additional costs estimated to be paid to the environmental consultant until such time as the environmental consultant is fully paid for its services subject to subsection 4.4 (c) above. Within fifteen (15) days after the City's payment of the last invoice to the environmental consultant, the City shall return to Developer any unused funds deposited by Developer with the City hereunder. No interest shall be paid or credited to Developer on such deposit.

4.5 Project Challenges.

In the event of any legal challenge to the City's determinations under CEQA, or to any other City or City Council determination in connection with the Project by any third party, the cost of the defense of any lawsuit, including all litigation costs thereof, including, but not limited to costs, attorney's fees, and expert witness fees, award of damages, costs, attorney's fees, undertakings, or any other liability shall be paid by Developer up to a maximum amount of two hundred fifty thousand dollars (\$250,000) and, any additional expenses thereafter, paid by City.

The City will promptly notify Developer of any such claim, action or proceeding against the City and pay the associated legal costs or will advance funds to pay for the defense of the matter by the City Attorney per Section 14.2(a). The City may retain other counsel, but only with the consent of Developer, and such consent shall not be unreasonably withheld. The parties shall cooperate fully in the defense of any such action. Notwithstanding the foregoing, the City retains the right to settle or abandon the matter without Developer's consent as to the City's liabilities or rights only, so long as the City's actions do not affect Developer's material entitlements under the Agreement, and even with those entitlements that are not material, the City will enter into good faith discussions with Developer prior to settling or abandoning the matter.

4.6 Rights of Access.

Representatives of the City shall have the reasonable right of access to the Site without charges or fees, at any time during the period of excavation, reclamation and development, for the purpose of assuring compliance with this Agreement, including but not limited to the inspection of excavation, reclamation and development work being performed by or on behalf of Developer. Such representatives of the City shall be those who are so identified by the City Manager. Each such representative of the City shall identify himself or herself at the job site office upon his or her entrance to the Site. City inspectors or designees must be accompanied by Developer personnel at all times per Federal MSHA. The City's inspectors shall behave in a manner so as to not interfere with Developer's operations or usage of the Site, subject to Developer's safety requirements pursuant to Developer's policy, California OSHA requirements and Federal MSHA requirements.

4.7 Mining, Reclamation and Development of the Site.

The Site shall be mined, reclaimed and developed in accordance with this Agreement, as more specifically described in Sections 1.2 and 7.0, the Scope of Development (**Exhibit B**) and Reclamation Plan and within the times set forth in the Schedule of Performance (**Exhibit C**). Developer understands and acknowledges that the development of the Site shall be within the sole authority of City to consider and is outside the scope of this Agreement. The current regulations concerning mining and reclamation are specified in this Section. Developer agrees that the City may amend the regulations applicable to mining and reclamation, provided such amendments are in accordance with Article 10 herein.

4.8 Project Improvements.

The Project Improvements described in this Section, the Scope of Development (**Exhibit B**) and Reclamation Plan shall be constructed or installed by Developer in conjunction with the

post-reclamation development of the Site in accordance with the approvals granted by the City at the time.

a. Walls, Fences and Landscaping.

Developer will at all times maintain walls, fences, berms and landscaping both during Mining Operations and any subsequent development of the Site, as provided in the Development Plan and/or the approved Reclamation Plan, to screen the Site and present an attractive appearance to the community. Additionally, at Developer's cost, Developer shall install improvements to the northern boundary of the Site between the pit wall and Olive Street so as to create an aesthetic, well landscaped walking park and adequate screening to the border of the pit. Developer's costs will be capped at Two Hundred Fifty Thousand and 00/100 Dollars (\$250,000.00). Any landscaping condition for other borders of the Site shall be in addition to the aforementioned cap and shall be consistent with conditions typically imposed by the City for such approvals, such as the landscaping requirements imposed for Developer's Pit 2 operations in 2002. Any significant increases to this landscaping condition shall be subject to further negotiations between the parties.

b. Other Infrastructure Requirements.

Developer, at its expense, shall install all necessary infrastructure, as identified in the EIR and the Scope of Development (**Exhibit B**).

4.9 Environmental Control Systems.

Developer shall implement the minimum measures to mitigate the impacts from mining and reclamation activities to surrounding residents, businesses and roadways, as well as all additional mitigation measures identified in either the EIR or **Exhibit B**.

4.10 Community Benefits.

Throughout the term of this Agreement, Developer shall sponsor community events, as specified by City, which sponsorship shall be in an amount of Ten Thousand Dollars (\$10,000) per year and payable on the Effective Date of the Development Agreement and on each anniversary of such date. Additionally, if requested by City, Developer shall participate in City, school, or other community events as follows: a) Provide display materials for use at City-sponsored events and school presentations, b) Provide promotional items for distribution at community events, c) Annual participation in an educational capacity at school assemblies, and other civic organizations, and d) Participation in an educational capacity at community outreach events annually. City will take into consideration preferences which Developer may have as to which events are sponsored with its monies.

4.11 Performance Responsibilities.

(a) Developer Guarantees Against Violations. Developer guarantees that it shall perform the obligations under this Agreement in a manner so as not to cause violations of the terms of this Agreement or Irwindale Municipal Code. The breach of any performance guarantee (including regulatory agency requirements) will subject

Developer to the administrative penalties provided at Section 4.12 below. Complaints substantiated by the Public Works Director or designee of the following conditions shall include, but is not limited to, the following:

- (1) Traffic queuing on City streets and/or recurrent failures to meet standards for vehicular circulation onto, through and away from the Site as required by Section this Agreement and any approved traffic circulation plan;
- (2) Failure to clear dirt and debris attributable to Developer's operations found upon and in the immediate surrounding area near the Site and along immediate access routes, traffic corridors and public rights-of-way or the maintenance of the Site in such a manner as to facilitate a pest infestation;
- (3) Violations of safety standards required under Applicable Law or by this Agreement;
- (4) Odor, air quality, soil or water conditions violating those standards stated in the conditions of approval applicable to the Project and/or the EIR;
- (5) Violations of the City's noise ordinance and other noise-related requirements found in the conditions of approval applicable to the Project, the EIR or Applicable Law;
- (6) Failure to maintain landscaping at the Site in an attractive and professional manner;
- (7) Knowingly accepting fill materials that do not qualify as Inert Materials;
- (8) Closure of the operations at the Site in violation of this and other Agreements;
- (9) Misconduct with respect to scale operations, knowingly misrepresenting measurements or persistent violations of Applicable Laws governing weights and measures.

Violations listed in this Section 4.11 above, as items (1) through (6) shall be deemed "minor" in nature, while violations in categories (7) through (9) shall be considered "major." For any minor violation, the liquidated damages provisions of Section 4.12 below shall apply. Repeated violations in any minor category during a 12 month period may become major violations for purposes of this Agreement. Should Developer commit any major or repeated minor violations, the City may terminate this Agreement in accordance with the procedures set forth in Article 12.0. If, in its reasonable discretion, City deems necessary, these guarantees will be monitored by requiring Developer to submit reports to City, wherein Developer certifies to City that it has met its performance obligations during the period covered by the report. If Developer cannot so certify, if its complaint log evidences, or if the City notifies Developer it has failed to meet any of its

performance obligations and the service failures are not remedied in a satisfactory or reasonable manner and time frame, then Developer will pay liquidated damages per occurrence pursuant to Section 4.12 below for each of the specified breaches.

(b) City Right to Audit. City may also audit the tonnage, revenues and payments to the City at any time or may perform an additional audit based on the request of complainants, in its sole discretion. If City requests such an audit in addition to the annual audit provided by Developer with payment of the applicable Mining Tax (or Royalty Fee per the License), City will pay for the cost of the tonnage audit unless the audit reflects a discrepancy (negative) greater than three percent (3%) of the Mining Tax (or Royalty Fee per the License) due to the City, in which case Developer shall pay for such audit; provided that any such audit conducted in accordance with any review under Subsection 4.11(a) above shall be a part of such review and paid for thereunder. In addition, in the event of an audit generated by complaints, if any violations or significant issues are identified, Developer shall reimburse the City for any costs incurred in performing the audit.

4.12 Liquidated Damages.

The City, in its discretion, may elect to declare a default under this Agreement in accordance with the procedures hereinafter set forth for any failure or breach by Developer in its performance of a material duty or obligation of the terms of this Agreement or Irwindale Municipal Code for issues such as, but not limited to, noise violations, dumping of debris on public-rights-of way, traffic queuing on City streets, operating outside of permitted hours, late payments, and late reports required herein or the License. However, the City must provide written notice to Developer setting forth the nature of the breach or failure and the actions, if any, required by Developer to cure such breach or failure ("Default Notice"). If a Default Notice is issued and thereafter City concludes, in its reasonable discretion, that a default in fact occurred and continued to exist without timely cure, then liquidated damages may be assessed against Developer (as liquidated damages and not a penalty) by the Public Works Director and/or City Manager designee in the amount of \$250 for every day the condition persisted or persists.

The Parties recognize that if Developer causes or allows violations identified at Section 4.11(a) to occur, the City and its residents will suffer damages and that it is and will be impractical and extremely difficult to ascertain and determine the exact amount of damages which City and its citizens will suffer. Therefore, the Parties agree that the liquidated damages established herein represent a reasonable estimate of the amount of such damages for such specific violations, considering all of the circumstances existing on the date of this Agreement, including the relationship of the sums to the range of harm to City that reasonably could be anticipated and the anticipation that proof of actual damages would be costly or impractical. In placing their initials at the places provided, each Party specifically confirms the accuracy of the statements made above and the fact that each Party has had ample opportunity to consult with legal counsel and obtain an explanation of these liquidated damage provisions prior to entering this Agreement.

Developer Initials

DM

City Initials

MB

5.0 SCHEDULE OF PERFORMANCE: TIME FOR OPERATION AND COMPLETION OF PROJECT.

Developer understands that the Development and any further developments for the ultimate end use of the Site shall be considered Future Development Approvals, subject to separate discretionary and administrative approvals, as applicable, by the City, as described in Sections 4.7 and Article 10.0 of this Agreement, for which the City intends to secure a third party developer to undertake. The Project shall be operated and completed, and the times for performance of the requirements of this Agreement shall be accomplished, in accordance with the Schedule of Performance at **Exhibit C**, as may be extended in the manner described therein. Subject to the terms of this Agreement, failure to adhere to the dates set forth in the Schedule of Performance shall be deemed a Default hereunder.

6.0 PROCESSING OF REQUESTS AND APPLICATIONS; OTHER GOVERNMENT PERMITS.

6.1 Standards.

In reviewing Mining Development Approvals after the Effective Date that are discretionary, the City may impose only those conditions, exactions, and restrictions which are allowed by the Development Plan and this Agreement, including, but not limited to, the Conditions of Approval. All other Future Development Approvals shall be subject to conditions, exactions, and restrictions consistent with the then existing land use regulations of City, whatever they may be.

6.2 Reclamation Plan.

The Reclamation Plan approved concurrently herewith shall be reviewable by the City every five (5) years. The City's review shall be undertaken in accordance with SMARA, the SMARA Regulations, and City's mining ordinance. Any action or inaction on the part of City concerning the review of the Reclamation Plan may be appealed to the State Board pursuant to SMARA. City may propose and approve changes to the Reclamation Plan that are consistent with SMARA, the SMARA Regulations, and City's mining ordinance and which reclaim the mined lands into readily usable alternative land uses consistent with the Development Approvals and the City's goal to have developable land. Any changes to the Reclamation Plan may be approved by the City by Resolution consistent with Section 9.4, without requiring an amendment to this Agreement, unless such change would create a specific inconsistency with the provisions of this Agreement. If required pursuant to SMARA, any reclamation plan amendment created pursuant to the CUP or this Agreement shall be submitted to the Director of the Department of Conservation for review, consistent with Public Resources Code Section 2774(c), as may be amended from time to time and shall be compliant with the requirements of SMARA. In no event may the City make changes to the Reclamation Plan, which will (i) have a significant adverse economic impact on Developer, (ii) interfere with Developer's ability to satisfy its obligations hereunder, or (iii) be inconsistent with the provisions of Section 10.1(b).

6.3 Other Governmental Permits.

Developer shall apply in a timely manner for such other permits and approvals as may be required from other governmental or quasi-governmental agencies having jurisdiction over the Project as may be required for the development of, or provision of services to, the Project in accordance with the phasing requirements set forth herein. The City shall cooperate with Developer in its efforts to obtain such permits and approvals.

6.4 Public Agency Coordination.

The City and Developer shall cooperate and use reasonable efforts in coordinating the implementation of the Development Plan with other public agencies, if any, having jurisdiction over the Site or the Project.

7.0 RECLAMATION LIMITATIONS AND OBLIGATIONS.

The parties contemplate that, unless the provisions of Section 7.3 below apply, beginning on the Commencement Date, as defined in Section 7.2 below, Developer will fill the Development Parcel with Engineered Fill within the times set forth in the Schedule of Performance, subject to the following:

7.1 Fill Requirements and Specifications.

Developer hereby acknowledges and represents, which representation is a material consideration in City's decision to enter in to this Agreement, that the fill performed by Developer at the Site will be suitable for development in accordance with the Applicable Building Codes for residential, industrial or commercial development when the Development Parcel, and any additional reclamation that may be required, is completed. Nothing herein is intended or shall be construed as an assumption by Developer of any duty, responsibility, obligation, or liability for the acts, errors, omissions, or debts of any third party who is not the authorized employee, contractor, agent, or invitee of Developer performing the scope of work set forth in this Agreement. Annually during the Term, Developer shall reimburse the City for the cost to prepare a Topographic Survey in a form and by a licensed surveyor approved by the City Engineer, which adequately and comprehensively describes the elevation of the fill materials placed by Developer at the Site.

All Site Development Fill used for the Site shall meet the requirements of this Section 7.1 and the Scope of Development and be completed within the times set forth in the Schedule of Performance, except as may be delayed by geotechnical conditions of the fill or other causes beyond the reasonable control of the Developer. The determination of fill being above water or underwater for the purpose of distinguishing the type of allowable Site Development Fill to be placed at any given location of the Development Parcel shall be based on the location of the groundwater table at the time of fill placement, in accordance with the Guidelines. All Site Development Fill placed into the natural groundwater (Underwater Fill) at any level that exists at the time of fill placement, or such higher level required under the Guidelines, shall comply with all provisions of the Guidelines for Underwater Fill. All Site Development Fill placed above the natural groundwater (Above Water Fill) at any level that it may exist at the time of fill placement, or such lower level required under the Guidelines, shall comply with the provisions of the Guidelines for Above Water Fill and Appendix J of the City's Building Code. Further,

reclamation for the Site shall be in accordance with the Reclamation Plan and the provisions of the Guidelines and Appendix J of the City's Building Code, as further set forth in the Scope of Development at **Exhibit B**.

7.2 Consultant Engineer; Site Certification.

At Developer's sole cost, which cost to Developer shall not exceed twelve thousand dollars (\$12,000) per month for the first five (5) years of reclamation operations (expected to commence 5 years from the Effective Date of this Agreement), which not-to-exceed amount shall increase to fifteen thousand dollars (\$15,000) upon completion of the fifth (5th) year of reclamation operations, City shall retain a licensed geotechnical engineer ("Consultant Engineer") to advise the City on the status of the Project. Throughout reclamation, Developer shall reimburse City for the Consultant Engineer's cost within fifteen (15) days of receipt of each copy of Consultant Engineer's invoice. The Consultant Engineer shall regularly inspect the Site, based on a schedule approved by the City Engineer. Developer shall cooperate and provide the Consultant Engineer with copies of all materials relevant to the remediation and filling operations at the Site. Developer acknowledges that the Consultant Engineer shall have full and complete access to the Site at all times for the purpose of verifying that the Project is being performed in accordance with the requirements of this Agreement. Consultant Engineer shall continually inspect the Site, import materials and Developer's performance of the Project and provide the City with daily, weekly, monthly, quarterly and annual testing reports that can be used as a basis to certify the entire fill in accordance with Applicable Building Codes. These reporting procedures and certifications, shall all bear Consultant Engineer's signature and official seal, and certify that the remediation, filling and compaction at the Site is being performed in accordance with this Agreement, including but not limited to, the requirements of the Guidelines and Applicable Building Codes. Such logs and certifications shall be in a form approved by the City Engineer. City and its Consultant Engineer shall only take actions consistent with the purposes of this Agreement, or their responsibilities under law, and shall not otherwise interfere with Developer's remedial work pursuant to this Agreement. Such work will be Developer's sole responsibility, and the City and its Consultant Engineer shall have no right to direct or supervise such work. Consultant Engineer however, shall be the City's field representative and shall advise Developer in writing of any concerns that Consultant Engineer has with Developer's performance under the terms of this Agreement. Consultant Engineer shall keep City informed as to Developer's performance. Any concerns of Consultant Engineer with Developer's performance shall first be brought to Developer. Consultant Engineer may confer with the City during the performance of the remedial work. Where Consultant Engineer has substantial concerns over Developer's performance, Consultant Engineer shall give Developer the opportunity to correct such deficiencies by giving written notice of the deficiencies to Developer. If Developer does not commence correction of such deficiencies within two (2) working days of receipt of such notice, then Consulting Engineer, City and Developer shall meet to discuss the deficiencies, with forty-eight (48) hours written notice given to all parties of the time and place of the meeting and the deficiencies. Consultant Engineer shall prepare a final report, which includes a certification that the fill materials have been observed, tested, and placed in accordance with the approved plans and specifications under this Agreement.

7.3 Commencement Date/Prioritization of Fill.

Developer shall not commence Commercial Filling Operations at the Site until such time as fill operations at (i) Pit-1, formerly owned by Developer, now owned by Irwindale Partners, LLC as of the date of this Agreement, bearing APN 8532-001-002 and located at 1270 East Arrow Highway, Irwindale ("Pit-1"), (ii) a 40 acre portion along the 605 Freeway of the Hanson mining operation, bearing APN 8532-004-024, (iii) Developer's Pit-2, bearing APN 8533-002-001, APN 8534-017-004, APN 8534-017-005, APN 8534-017-006, and APN 8534-017-007 and located northwest of the intersection of Arrow Highway and Avenida Barbosa; and the Durbin quarry, bearing APN 8546-002-082; 085; and 089, and Reliance I quarry, 16001 Foothill Boulevard, bearing APN 8605-016-006; 007; 008; 009; 011; 017; 018; 900; 901; 902; 407; and 422, owned by Vulcan Materials (collectively "Priority Quarries") are concluded or until such time as the City, in its discretion, authorizes in writing commencement of Commercial Filling Operations ("Commencement Date"). The City has not yet determined the priority of quarries following Pit 1 above. The parties expressly acknowledge that the City is attempting to prioritize filling of mining pits and, as such, the Commencement Date of any Commercial Filling Operations at the Site shall be deferred until the Priority Quarries have been reclaimed; subject to the provisions of Section 3.2 above relating to force majeure. Developer shall obtain all required permits for the reclamation backfill of the Site, using Developer's own fill sources so that the filling operations are not operated as Commercial Fill Operations, and shall immediately commence backfilling the same as provided in the Scope of Development, at Exhibit B and further set forth in the Reclamation Plan adopted concurrent herewith.

7.4 Free-Market Filling Operation.

Should the City and the owners of the Priority Quarries, or their successors or assigns, amend the requirements establishing the Priority Quarries under entitlements granted to United, Hanson, and Vulcan so that any quarry operator in the City may compete in the marketplace for fill materials, the provisions of this Section 7.2 shall not apply with respect to the prioritization of any quarry in the City.

8.0 FEES, TAXES AND ASSESSMENTS.

8.1 General.

During the term of this Agreement, the City shall not, without the prior written consent of Developer, impose any additional fees, taxes or assessments on all or any portion of the Project or the Site, except such fees, taxes and assessments as are described in or required by this Development Agreement and/or the Development Plan pursuant to development of the site for the ultimate end uses. This Development Agreement shall not prohibit the application of fees, taxes or assessments as follows:

(a) Developer shall be obligated to pay those fees, taxes or City assessments which exist as of the Effective Date or are included in the Development Plan, as stated above, or Concurrent Mining Approvals approved concurrently herewith and any increases in same, as provided herein;

(b) Developer shall be obligated to pay any fees or taxes, and increases thereof, imposed on a City-wide basis for activities such as business license fees or taxes,

sales or use taxes, utility taxes, and mining taxes, irrespective and in addition to, any royalties or license fees it pays to City under the License;

(c) Developer shall be obligated to pay all fees applicable to a permit application as charged by City at the time such application is filed by Developer;

(d) Developer shall be obligated to pay any future fees or assessments imposed on an area-wide basis, (such as landscape and lighting assessments and community services assessments) provided that the fees and assessments levied against the Site do not constitute more than fifty percent (50%) of the total fees or assessment levied within the applicable area, unless otherwise consented to in writing by Developer. Developer reserves its right to protest the establishment or amount of any such fees or assessments through the method prescribed by law;

(e) Developer shall be obligated to pay any fees imposed pursuant to any assessment district established within the Project otherwise proposed or consented to by Developer;

(f) Developer shall be obligated to pay any future fees or assessments imposed as a condition of a Development Approval, even if such Development Approval or Future Development Approval is processed and approved after the Effective Date;

(g) Developer shall be obligated to pay any fees imposed pursuant to any Uniform Code; and

(h) Developer shall be obligated to pay any fees, assessments, or taxes imposed by an area-wide or multi-jurisdictional entity of which City is a member, including but not limited to a sewer sanitation district, transportation district, water replenishment district, or similar entities.

(i) Developer shall pay any waste discharge permit fee requirements of the Regional Water Quality Control Board, or County of Los Angeles, as may be applicable, or any other waste discharge-related fees (collectively "Discharge Fee") insofar as "Solid Waste Materials," as that term is defined (copied below) in the Los Angeles County Code, section 20.88.020 H, may be imported at the Site. Solid Waste Materials are defined in Los Angeles County Code, section 20.88.020 H as: "'Solid Waste' means all putrescible and nonputrescible solid, semisolid, and liquid wastes, including garbage, trash, refuse, paper, rubbish, ashes, industrial wastes, demolition and construction wastes, abandoned vehicles and parts thereof, discarded home and industrial appliances, dewatered, treated, or chemically fixed sewage sludge which is not hazardous waste, manure, vegetable or animal solid and semisolid wastes, and other discarded solid and semisolid wastes." Developer shall have the right to reasonably contest the application of county taxes and fees to its operations on the Site.

8.2 Mining Tax.

With respect to the City's mining and processing tax pursuant to Irwindale Municipal Code § 3.18.030 and the existing special mining tax pursuant to Irwindale Municipal Code §

3.18.040, and in exchange for the benefits provided herein, Developer shall not contest the existing mining taxes imposed by the City or the use of the special mining tax permitted under such ordinance. Developer also shall not contest the adjustment to the mining and processing tax or the special mining tax presently provided for in Irwindale Municipal Code § 3.18.030 and 3.18.040, respectively, as the same may be subsequently amended. If the City imposes a new tax, nothing in this Agreement shall prejudice Developer from challenging the new tax. Notwithstanding the foregoing, Developer shall only be obligated to pay mining and processing taxes, including any tax increases, to the extent all other mining operators are required to pay them and shall receive the benefit of any mining tax reduction given to any other operator, unless such reduction is due to special circumstances applicable solely and exclusively to such other operator.

8.3 Tipping Fees.

No tipping (or filling) fee is intended to apply for the filling of the Development Parcel (which shall include the slope included in the definition of such term), as described in this Agreement. Any filling activities in excess of the Development Parcel as well as a tipping fee shall be negotiated between the parties prior to completion of Phase 2 of mining. In calculating the applicable tipping fee, Developer will share its knowledge and costs for filling the Site including market pricing for disposing suitable materials, processing costs, truck haul, filling, compacting permits, administration fees, etc. The tipping fee will be calculated so that the parties share equally in the profits by subtracting all costs associated with the filling of the Site from the market tipping fee. If the parties cannot come to acceptable terms and conditions, the City reserves the right to negotiate the filling of the Site, other than the Development Parcel with a third party; provided the Developer shall reserve a 90 day right to make a matching or better offer on any potential agreement with a third party.

8.4 Accord and Satisfaction.

No payment by either party or receipt by either party of a lesser amount than legally required by such party shall be deemed to be other than a partial payment of the full amount due, nor shall any endorsement or statement on a check or any letter accompanying a check or payment be deemed an accord and satisfaction, and either may accept such check or payment without prejudice to such party's right to recover the balance due or pursue any other remedy herein provided.

8.5 Payment Made by City on Behalf of Developer.

In the event that:

- (a) Developer fails to pay any amount due hereunder, whether any fee, cost, or expense, or
- (b) City incurs any other expense to remedy the Default of Developer, Developer having been given the opportunity to cure pursuant to Section 12.4, and
- (c) City incurs the expense thereof on behalf of Developer, then Developer shall reimburse the City for all such costs and expenses. If the City is not reimbursed for

such costs by Developer within fifteen (15) days after giving written notice thereof, the same shall be deemed delinquent, and the amount thereof shall bear interest as stated in Section 12.6 until paid.

9.0 AMENDMENT OF DEVELOPMENT AGREEMENT.

9.1 Initiation of Amendment.

Either Party may propose an amendment to this Agreement. The City acknowledges that this Agreement was entered into by the Parties based on an estimate of the average amount of materials to be excavated from the Site. However, should Developer determine in its sole discretion, and be able to document such determination to the City, that commercial production warrants an increase in the average annual excavation rate designated for the Project, Developer shall have the right to apply for an amendment to such average production rate and the City agrees to amend this Agreement to accomplish such revised average rate, subject to compliance with CEQA and implementation of any required mitigation measures.

City and Developer shall share equally in the cost of the EIR Consultant in processing such amendment, provided that City's contribution toward such costs shall not exceed fifty thousand dollars (\$50,000), and Developer shall be required to pay the entirety of any costs in excess of such amount. Notwithstanding the foregoing, and recognizing that the City is the owner of the Site and will accordingly benefit from the increased aggregate production and resulting property value, as it relates to the entitlements approved under this Agreement, City will pay fifty percent (50%) percent of the cost of any required mitigation measures in excess of those presently required, as may be required by an amendment contemplated under this Section 9.1.

In the event that such an amendment cannot be made to the average annual excavation rate, notwithstanding the best efforts of the parties within a year of the Developer's determination (or if earlier prior to the second payment of two million five hundred thousand dollars (\$2,500,000) of advanced royalties due under the License), the Parties agree to meet and confer to determine an appropriate adjustment to such amounts to account for the failure of the amendment process. The adjustment will take into account, among all of the factors, the economic viability of the permitted entitlement together with the costs of operation of the Developer at the Site and elsewhere. If the parties cannot agree on an appropriate adjustment, then Developer shall have the option to turn over the Project to City and shall receive a credit equal to 2.5 million tons of aggregate materials (provided developer has paid the aforementioned two million five hundred thousand dollars to the City) to be taken from the Site and the City may re-sell the Project to another operator.

9.2 Procedure.

Except as set forth in Section 9.4 below, the procedure for proposing and adopting an amendment to this Agreement shall be the same as the procedure required for entering into this Agreement in the first instance.

9.3 Consent.

Except as expressly provided in this Agreement, no amendment to all or any provision of this Agreement shall be effective unless set forth in writing, signed by duly authorized representatives of each of the parties hereto and recorded in the Official Records of Los Angeles County.

9.4 Minor Modifications.

(a) Implementation of the Project may require minor modifications of the details of the Development Plan and performance of the Parties under this Agreement. The parties desire to retain a certain degree of flexibility with respect to those items covered in general terms under this Agreement. Therefore, modifications of the Development Plan agreed to by both Developer and City, which are found by the City Manager to be non-substantive and procedural consistent with the terms of this Section 9.4 shall not require modification of this Agreement, but, instead, may be approved administratively by the City Manager in writing.

(b) A modification will be presumed non-substantive and/or procedural if it does not result in more than a ten percent (10%) change in fees, cost, density, volumes, time, intensity of use, permitted uses, the maximum height and size of buildings, the reservation or dedication of land for public purposes, or the improvement and specifications for the Project.

(c) Any modification that the City Manager believes is more than minor, but does not materially change the Development Plan, may be approved by the City Council by Resolution at a public hearing. Material changes to the Development Plan or other terms of this Agreement shall require amendment of this Agreement.

(d) The City will process any material change to this Agreement consistent with State law. The Parties expressly agree nothing herein is intended to deprive any Party or person of due process of law.

9.5 Effect of Amendment to Development Agreement.

The Parties agree that except as expressly set forth in any such amendment, an amendment to this Agreement will not alter, affect, impair, modify, waive, or otherwise impact any other rights, duties, or obligations of either Party under this Agreement.

10.0 RESERVATIONS OF AUTHORITY.

10.1 Limitations, Reservations and Exceptions.

The application of Mining Land Use Regulations to the Project is governed by Sections 4.2, 6.1 and this Article. In addition to the Mining Land Use Regulations, only the following regulations adopted by City hereafter and intended to be applicable to the Site, shall apply to and govern the development of the Site ("Reservation of Authority"):

(a) Future Mining Land Use Regulations. All Future Mining Land Use Regulations shall apply if they (i) are reasonably technically supported, (ii) are within the

City's police power and are required to protect public health and safety, and (iii) are equally applicable to all mining companies operating in the City.

(b) Adoption of Land Use Regulations. All zoning ordinances, General Plan amendments and other City policy or regulations or area-wide or multi-jurisdictional codes and which are based on recommendations of a county or multi-jurisdictional organization and become widely applicable, such as the San Gabriel Valley Council of Governments (collectively, "Land Use Regulations") related to the allowable end uses of Site are within the City's police power and may be implemented by the City in its discretion to protect public health and safety and appropriately plan for the future end uses of the Site, or portions thereof; provided such Land Use Regulations do not materially impact the applicable mining or reclamation standards required to be met by Developer under this Agreement.

(c) State and Federal Laws and Regulations. Where state or federal laws or regulations enacted after the Effective Date prevent or preclude compliance with one or more provisions of the Agreement, or require actions not contemplated by this Agreement, those provisions shall be modified, through revision or suspension, to the extent necessary to comply with such state or federal laws or regulations.

(d) Public Health and Safety/Uniform Codes.

(1) Adoption Automatic Regarding Uniform Codes. This Agreement shall not prevent the City from adopting Future Mining Land Use Regulations which are Uniform Codes and are based on recommendations of a multi-state professional organization and become applicable throughout the City, such as, but not limited to, the Uniform Building, Electrical, Plumbing, Mechanical, or Fire Codes, or Slope regulations or standards.

(2) Adoption Regarding Public Health and Safety/Uniform Codes. This Agreement shall not prevent the City from adopting Future Mining Land Use Regulations respecting public health and safety to be applicable throughout the City which result from findings by the City that failure to adopt such Future Mining Land Use Regulations would result in a condition injurious or detrimental to the public health and safety and that such Future Mining Land Use Regulations are the most effective means to correct or avoid such injurious or detrimental condition.

(3) Adoption Regarding Environmental Compliance. This Agreement shall not prevent the City from adopting Future Mining Land Use Regulations where the regulation is the most practical means to mitigate a significant adverse environmental condition or hazard and where the cost of implementing the regulation is reasonable relative to public benefit derived and does not constitute an economic hardship substantially affecting Developer's operations nor Developer's ability to perform its obligations hereunder; provided nothing herein shall limit the City's right to implement Future Mining Land Use Regulations, which are equally applicable to other mining operators in the City.

(e) Ability to Adopt Fees, Taxes and Assessments pursuant to Section 8. This Agreement shall not prevent the City from adopting fees, taxes and assessments per Section 8.0.

10.2 Objections to Regulation.

In evaluating the reservation of authority to the City and applying the standards described above, in the event Developer believes that such Future Mining Land Use Regulation does not satisfy such standards, Developer shall give written notice of its objections and the grounds therefor to City, City shall duly consider Developer's objections during a noticed public hearing and provide a written response within 30 days after the conclusion of the noticed public hearing. If City finds the objections well founded, City shall suspend the application of the Regulation to the Site. City shall have the obligation to make such findings only if Developer's position is supported by a preponderance of the evidence.

10.3 Regulation by Other Public Agencies.

It is acknowledged by the Parties that other public agencies not within the control of the City possess authority to regulate aspects of the development of the Site separately from or jointly with the City and this Agreement does not limit the authority of such other public agencies.

11.0 ANNUAL REVIEW.

11.1 Annual Monitoring Review.

(a) In accordance with Government Code section § 65865.1, City and Developer shall review the performance of this Agreement, and performance of the Project, at least once during each twelve (12) month period from the Effective Date and concurrently with the review of the performance guarantee, as described in Section 12.1. The cost of the annual monitoring review shall be borne by Developer, but in no event shall such reimbursable costs exceed Five Thousand Dollars (\$5,000) per year, escalating by 15% every five years. As part of such annual monitoring review, within thirty (30) days after each anniversary of the Effective Date of this Agreement, Developer shall deliver to City the amount of the annual fee, as determined by the City's Director of Finance, as well as all information reasonably requested by City (i) regarding Developer's performance under this Agreement demonstrating that Developer has complied in good faith with terms in this Agreement and (ii) as required by the Existing Land Use Regulations. If the City determines that Developer has substantially complied with the terms and conditions of this Agreement, the review shall be concluded. If the City finds and determines that Developer has not substantially complied with the terms and conditions of this Agreement for the period under review, the City may declare a Default by Developer in accordance with Section 12.0. Such review shall be in addition to any mining lead agency monitoring and testing to be conducted by the City pursuant to the requirements of the Irwindale Municipal Code and SMARA. Developer shall fully cooperate with the Director and his staff and consultants conducting the reviews. The Public Works Director's review will consider, at minimum, the following:

(1) Any bona fide complaints received by the City about the approved operations, activities and events;

(2) Any negative impacts to the City, as identified by City staff, which have not been resolved with Developer. Negative impacts may also include impacts upon municipal revenue(s); and

(3) Violations of any of the performance standards.

(b) Following the review, the Public Works Director will notify Developer in writing of any outstanding violations or other issues ("Issues List") related to Developer's compliance with the conditions of the Agreement. Thereafter, within a specified time, Developer will meet with City staff to discuss and develop a plan and schedule of correction ("Correction Plan") concerning the issues outlined in the Issues List, which Correction Plan shall be subject to the approval of the Public Works Director. Should there be no resolution of the issues in the Public Works Director's discretion, as outlined in the Correction Plan approved by the Public Works Director or if Developer fails to participate in the development of the Correction Plan, the Public Works Director may set the matter for a duly noticed public hearing before the City Council to consider the Issues List. At such hearing, the City Council may pursue termination proceedings under the Development Agreement or any other remedy available to it thereunder. Failure of the City to perform the statutory annual periodic review shall not affect the enforceability of this Agreement.

11.2 Estoppel Compliance.

If at the conclusion of an annual monitoring review the City finds that Developer is in substantial compliance with this Agreement, the City shall, upon request by Developer, issue an Estoppel Certificate pursuant to Section 15.2.

11.3 Failure to Conduct Annual Review.

The failure of the City to conduct an annual monitoring review shall not be a Developer Default, provided Developer initiates annual monitoring review in accordance with Section 11.1.

12.0 DEFAULT, REMEDIES, TERMINATION AND FINANCIAL ASSURANCES.

12.1 Security for Performance.

No later than the date set forth in Section 12.2 below, Developer shall provide a performance guarantee in the amount of Three Hundred Ten Thousand Dollars (\$310,000) representing the estimate of the security required to assure Developer's faithful performance of all obligations hereunder. The performance guarantee shall be in the form of surety bonds, irrevocable letter of credit, trust funds or cash deposit with the City, as approved by the City Finance Director, and shall apply to all obligations hereunder, regardless of whether additional security for the performance of any obligation as to any or all portions of the Site is provided elsewhere in this Agreement. The performance guarantee shall be issued in favor of the City in case of breach of any obligation by Developer hereunder (following the notice and cure

provisions of Section 12.4 herein) to guarantee compensation for any costs and damages incurred by the City in performing Developer's obligations hereunder.

12.2 Financial Assurance Bonds.

Before Developer commences the mining operations authorized by this Agreement, the performance guarantee shall be provided in the amount described in Section 12.1. As owner of the Site, the City qualifies as a public agency for purposes of complying with Sections 3803, 3806 and 3806.1 of the regulations promulgated by the State Mining and Geology Board ("SMGB") and Irwindale Municipal Code section 17.63.100, allowing greater flexibility to public agencies in providing financial assurance mechanisms for reclamation than to private entities. Additionally, by entering into this Agreement, Developer agrees to provide Inert Fill, processed at Developer's Pit 2 in the City of Irwindale, for reclamation at no cost to the City Pursuant to the aforementioned provisions of the SMGB Regulations and Irwindale Municipal Code, the City is supplementing this fill commitment by Developer by setting aside revenues derived from the Project in the amount of Two Hundred Forty Thousand and 00/100 Dollars (\$240,000.00) annually for ten (10) years for a total pledge of revenues of Two Million Four Hundred Thousand and 00/100 Dollars (\$2,400,000.00). Such amount represents the City's pledge of revenues under SMGB section 3806.1 ("Pledge of Revenues") to secure the fill and reclamation commitment by Developer. At all times, City retains exclusive control and discretion as to the use of such Pledge of Revenues. All interest and principal of such funds shall at all times remain the City's sole property and shall be revert to the City's unrestricted use following termination of reclamation, as described in this Agreement. As such, fill revenues from filling activities at the Site with Inert Fill that accrue in conducting the operations of the Site shall be counted toward the financial assurance obligations for the Site.

12.3 Rights of Non-Defaulting Party after Default.

The Parties acknowledge that both Parties shall have hereunder all legal and equitable remedies as provided by law following the occurrence of a Default (as defined in Section 12.4 below) or to enforce any covenant or agreement herein. Before this Agreement may be terminated or action may be taken to obtain judicial relief the Party seeking relief ("Nondefaulting Party") shall comply with the notice and cure provisions of Section 12.4.

12.4 Notice and Opportunity to Cure.

A Nondefaulting Party may elect to declare a default under this Agreement in accordance with the procedures hereinafter set forth for any failure or breach of the other party ("Defaulting Party") to perform any material duty or obligation of said Defaulting Party under the terms of this Agreement or License ("Default"). However, the Non-Defaulting Party must provide written notice to the Defaulting Party setting forth the nature of the Default and the actions, if any, required by Defaulting Party to cure such Default. The Defaulting Party shall be deemed in default under this Agreement if the Defaulting Party has failed to cure such Default within thirty (30) days after the date of such notice or ten (10) days for monetary Defaults (or such lesser time as may be specifically provided in this Agreement). However, if such non-monetary Default cannot be cured within such thirty (30) day period, and as long as the Defaulting Party does each of the following:

(a) Notifies the Non-Defaulting Party in writing with a reasonable explanation as to the reasons the asserted Default is not curable within the thirty (30) day period;

(b) Notifies the Non-Defaulting Party of the Defaulting Party's proposed cause of action to cure the Default, specifying dates by which specific actions will be taken;

(c) Promptly commences to cure the Default within the thirty (30) day period;

(d) Makes reports in accordance with the time schedule provided to the Non-Defaulting Party as to the progress of the program of cure, showing how the proposed dates have been met and establishing any additional needed dates; and

(e) Diligently prosecutes such cure to completion, then the Defaulting Party shall not be deemed in breach of this Agreement. Notwithstanding the foregoing, the Defaulting Party shall be deemed in default under this Agreement if said breach or failure involves the payment of money but the Defaulting Party has failed to completely cure said monetary Default within ten (10) days (or such lesser time as may be specifically provided in this Agreement) after the date of such notice.

12.5 Remedies Cumulative.

Except as otherwise expressly stated in this Agreement, the rights and remedies of the parties are cumulative, and the exercise by either party of one or more of its rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the other party. Developer specifically acknowledges and agrees that the City's remedies under the performance bond described at Section 12.1 are cumulative to other remedies available to City hereunder.

12.6 Interest.

In the event Developer fails to perform any monetary obligation under this Agreement, Developer shall pay interest thereon at the lesser of: (i) ten percent (10%) per annum, or (ii) the maximum rate permitted by law, from and after the due date of said monetary obligation until payment is actually received by City.

12.7 Rights and Duties Following Termination.

Upon the termination of this Agreement, no Party shall have any further right or obligation hereunder except (i) with respect to any obligations to have been performed prior to said termination or with respect to any default in the performance of the provisions of this Agreement which has occurred prior to said termination, and (ii) with respect to the indemnity obligations set forth herein.

13.0 RESTRICTIONS ON TRANSFER.

13.1 General.

Neither Party shall assign or transfer its interests, rights or obligations under this Agreement without the prior written consent of the other, which consent shall not be unreasonably withheld or delayed.

The term "assignment" as used in this Agreement shall include successors-in-interest to the City that may be created by operation of law. Notwithstanding the foregoing, the City shall have the right to sell, assign or transfer its interest in any real property dedicated or transferred to the City pursuant to the terms of this Agreement or to another public agency.

Developer shall not transfer this Agreement or any of Developer's rights hereunder, or any interest in the Site per the License or in the improvements thereon, directly or indirectly, voluntarily or by operation of law, except as provided below, without the prior written approval of the City, and if so purported to be transferred, the same shall be null and void. In considering whether it will grant approval to any transfer by Developer, which transfer requires the City's approval, the City shall consider factors such as (i) whether the completion of the Project is delayed or jeopardized; (ii) the financial strength and capability of the proposed transferee to perform the City's obligations hereunder; and (iii) the proposed transferee's experience and expertise in the planning, financing, development, ownership, and operation of similar projects.

In addition, no attempted assignment of any of Developer's obligations hereunder shall be effective unless and until the successor party executes and delivers to the City an assumption agreement in a form approved by the City assuming such obligations. No consent or approval by the City of any transfer requiring the City's approval shall constitute a further waiver of the provision of this Section 13.1 and, furthermore, the City's consent to a transfer shall not be deemed to release Developer of liability for performance under this Agreement unless such release is specific and in writing executed by the City.

The foregoing prohibition shall not apply to any of the following:

(a) A sale or transfer resulting from or in connection with a reorganization as contemplated by the provisions of the Internal Revenue Code of 1986, as amended or otherwise, in which the ownership interests of a corporation are assigned directly or by operation of law to a person or persons, firm or corporation which acquires the control of the voting capital stock of such corporation or all or substantially all of the assets of such corporation.

(b) A sale or transfer of Developer to any entity controlling, controlled by or under common control with United Rock Products Corporation.

(c) A sale or transfer of Developer to another company reasonably acceptable to the City, so long as the purchaser entity executes an assumption agreement assuming all of Developer's duties and obligations hereunder.

13.2 Subject to Terms of Agreement.

Following any such assignment or transfer of any of the rights and interests of Developer under this Agreement, in accordance with Section 13.1 above, the exercise, use and enjoyment

shall continue to be subject to the terms of this Agreement to the same extent as if the assignee or transferee were Developer.

13.3 Release of Developer.

Upon the written consent of the City to the complete assignment of this Agreement and the express written assumption of the assigned obligations of Developer under this Agreement by the assignee, Developer shall be relieved of its legal duty to perform the assigned obligations under this Agreement, except to the extent Developer is in default under the terms of this Agreement prior to said transfer.

14.0 INSURANCE, INDEMNIFICATION, WAIVERS.

14.1 Insurance.

(a) Types of Insurance.

(1) Public Liability Insurance. Beginning on the Effective Date hereof and until completion of construction by Developer on the Site, Developer shall at its sole cost and expense keep or cause to be kept in force for the mutual benefit of the City and Developer comprehensive broad form general public liability insurance against claims and liability for personal injury or death arising from the use, occupancy, disuse or condition of the Site, improvements or adjoining areas or ways, affected by such use of the Site or for property damage, providing protection of at least Two Million Dollars (\$2,000,000.00) for bodily injury or death to any one person, at least Five Million Dollars (\$5,000,000.00) for any one accident or occurrence, and at least One Million Dollars (\$1,000,000.00) for property damage, which limits shall be subject to such increases in amount as the City may reasonably require from time to time.

(2) Builder's Risk Insurance. Before commencement of any construction, Developer shall procure and shall maintain in force until completion and acceptance of the work, "all risks" builder's risk insurance including vandalism and malicious mischief, covering improvements in place and all material and equipment at the job site furnished under contract, but excluding contractor's, subcontractor's, and construction manager's tools and equipment and property owned by contractor's or subcontractor's employees, with limits in accordance with subsection (1) above.

(3) Worker's Compensation. Developer shall also furnish or cause to be furnished to the City evidence reasonably satisfactory to it that any contractor with whom Developer has contracted for the performance of any work for which Developer is responsible hereunder carries workers' compensation insurance as required by law.

(4) Other Insurance. Developer may procure and maintain any insurance not required by this Agreement, but all such insurance shall be subject

to all of the provisions hereof pertaining to insurance and shall be for the benefit of the City and Developer.

(5) Insurance Policy Form, Content and Insurer. All insurance required by express provisions hereof shall be carried only by responsible insurance companies licensed to do business by California, rated "A" or better in the most recent edition of Best Rating Guide, The Key Rating Guide or in the Federal Register, and only if they are of a financial category Class VIII or better, unless such requirements are waived by the Risk Manager of the City ("Risk Manager") due to unique circumstances. In the event the Risk Manager determines that the work or services to be performed under this Agreement creates an increased or decreased risk of loss to the City, Developer agrees that the minimum limits of the insurance policies and the performance bond required by this Section may be changed accordingly upon receipt of written notice from the Risk Manager; provided that Developer shall have the right to appeal a determination of increased coverage by the Risk Manager to the City Council of City within ten (10) days of receipt of notice from the Risk Manager. All such policies shall be non-assessable and shall contain language, to the extent obtainable, to the effect that (i) any loss shall be payable notwithstanding any act of negligence of the City or Developer that might otherwise result in the forfeiture of the insurance, (ii) the insurer waives the right of subrogation against the City and against the City's agents and representatives, except as provided in this Section 14.1; (iii) the policies are primary and noncontributing with any insurance that may be carried by City; and (iv) the policies cannot be canceled or materially changed except after thirty (30) days' written notice by the insurer to the City or the City's designated representative. Developer shall furnish the City with copies of all such policies promptly on receipt of them, or with certificates evidencing the insurance. The City shall be named as an additional insured on all policies of insurance required to be procured by the terms of this Agreement.

(b) Failure to Maintain Insurance and Proof of Compliance.

Developer shall deliver to the City, in the manner required for notices, copies of certificates of all insurance policies required hereunder together with evidence satisfactory to the City of payment required for procurement and maintenance of each policy within the following time limits:

(1) For insurance required above, within thirty (30) days after the Effective Date.

(2) For any renewal or replacement of a policy already in existence, at least ten (10) days before expiration or termination of the existing policy.

If Developer fails or refuses to procure or maintain insurance as required hereby or fails or refuses to furnish the City with required proof that the insurance has been procured and is in force and paid for, such failure or referral shall be a default hereunder.

14.2 Indemnification.

(a) General.

Developer shall defend, indemnify and hold harmless the City, its agents, officers, consultants and employees from any claim, action or proceeding against the City or its agents, officers, consultants or employees to attack, set aside, void or annul any approval of the City, its legislative body, Planning Commission, or other advisory agencies, or administrative officers concerning this Agreement, Reclamation Plan, and related approvals, or for any damage to persons or property, losses, costs, penalties, obligations, or liabilities arising out of or in connection with Developer's acts or omission on the Site, whether or not such act or omission resulted or was undertaken pursuant to this Agreement, the Reclamation Plan, and related approvals. The City will promptly notify Developer of any such claim, action or proceeding against the City and Developer will either undertake defense of the matter and pay the City's associated legal costs or will advance funds to pay for the defense of the matter by the City Attorney. The City may retain other counsel, but only with the consent of Developer, and such consent shall not be unreasonably withheld. The City shall cooperate fully in the defense of any such action. If the City fails to notify Developer in a timely manner of any such claim, action or proceeding, so that the City's and/or Developer's rights are prejudiced, Developer shall not, thereafter, be responsible to defend, indemnify or hold harmless the City. Notwithstanding the foregoing, the City retains the right to settle or abandon the matter without Developer's consent as to the City's liabilities or rights only, so long as the City's actions do not affect Developer's material entitlements under the Agreement, and even with those entitlements that are not material, the City will enter into good faith discussions with Developer prior to settling or abandoning the matter. Should the City settle or abandon the matter, the City shall waive the indemnification herein, except, the City's decision to settle or abandon the matter following an adverse judgment or failure to appeal shall not cause a waiver of the indemnification rights herein. At the time of the execution of this Agreement, the City has no actual knowledge of any pending or threatened claim which would result in indemnification under this condition including without limitation any environmental condition affecting the Site.

(b) Exceptions. The foregoing indemnity shall not include claims or liabilities arising from the sole or gross negligence or willful misconduct of the City, its officers, agents, or employees, who are directly responsible to the City.

In addition, the City shall indemnify and hold harmless the Developer and its agents, officers, consultants and employees from any claim, action or proceeding relating to environmental conditions existing on the Site as of the date that the Developer takes possession of the Site. The terms of the indemnity shall work in favor of the Developer in the same procedure and method as specified above in (a) relating to indemnification in favor of the City.

(c) Additional Coverage.

Without limiting the generality of the foregoing, said indemnity shall include any liability arising by reason of:

(1) Any claim made by any occupant, subtenant, assignee, employee, agent, visitor, invitee, or user of any portion of the Site;

(2) Any accident or other occurrence in or on the Site causing injury to any person or property whatsoever;

(3) Any failure of Developer to comply with performance of all of the provisions of this Agreement;

(4) Developer's failure to prevent any employee or any invitee or any other person from entering upon or remaining in any place upon the Site which is not safe and does not comply with all laws pertaining thereto as they may now or hereafter exist; or

(5) Any harm, delays, injuries or other damages incurred by any party as a result of any subsurface conditions on the Site caused by the Developer, including but not limited to, the presence of buried debris, hazardous materials, hydrocarbons, or any form of soil contamination.

(6) Any Environmental Claims, Environmental Cleanup Liability and Environmental Compliance Costs Concerning Hazardous Materials, demands, judgments, actions, damages, losses, penalties, liabilities, costs and expenses (including, without limitation, attorney's fees and court costs) arising from or in connection with the performance of any obligation, activity, work or things done, permitted or suffered by Developer or its authorized parties, employees, invitees, contractors, agents and consultants under the terms of this Agreement or in or about the Site, except to the extent caused by City's negligence or misconduct, or Site conditions, including subsurface conditions, existing prior to the date of this Agreement. For purposes of this Section, the following terms shall have the following meanings:

a. **"Environmental Claim"** means any claim for personal injury, death and/or property damage made, asserted or prosecuted by or on behalf of any third party, including, without limitation, any governmental entity, relating to the Site or its operations and arising or alleged to arise under any Environmental Law.

b. **"Environmental Cleanup Liability"** means any cost or expense incurred to contain, remove, remedy, clean up, or abate any contamination or any Hazardous Materials on or under all or any part of the Site, including, without limitation, (i) any direct costs or expenses required to comply with orders and directives from federal, state or local government agencies, including costs for investigation, study, assessment, legal representation, cost recovery by governmental agencies, or ongoing monitoring in connection therewith and (ii) any cost, expense, loss or damage incurred with respect to the Site or its operation as a result of actions or measures necessary to implement or effectuate any such containment, removal, remediation, treatment, cleanup or abatement.

c. **"Environmental Compliance Cost"** means any cost or expense incurred to enable the Site to comply with all applicable Environmental Laws in effect. "Environmental Compliance Cost" shall include all costs necessary to demonstrate that the Site is capable of such compliance to the extent directed by governmental agencies.

d. **"Environmental Law"** means any federal, state or local statute, ordinance, rule, regulation, order, consent decree, judgment or common-law doctrine, and provisions and conditions of permits, licenses and other operating authorizations relating to (i) pollution or protection of the environment, including natural resources, (ii) exposure of persons, including employees, to Hazardous Materials or other products, raw materials, chemicals or other substances, (iii) protection of the public health or welfare from the effects of by-products, wastes, emissions, discharges or releases of chemical substances from industrial or commercial activities, or (iv) regulation of the manufacture, use or introduction into commerce of chemical substances, including, without limitation, their manufacture, formulation, labeling, distribution, transportation, handling, storage and disposal.

e. **"Hazardous Material"** is defined to include any hazardous or toxic substance, material or waste which is or becomes regulated by any local governmental authority, the State of California, or the United States Government. The term "Hazardous Material" includes, without limitation, any material or substance which is: (i) petroleum or oil or gas or any direct or derivate product or byproduct thereof; (ii) defined as a "hazardous waste," "extremely hazardous waste" or "restricted hazardous waste" under Sections 25115, 25117 or 25122.7, or listed pursuant to Section 25140, of the California Health and Safety Code, Division 20, Chapter 6.5 (Hazardous Waste Control Law); (iii) defined as a "hazardous substance" under Section 25316 of the California Health and Safety Code, Division 20, Chapter 6.8 (Carpenter-Presley-Tanner Hazardous Substance Account Act); (iv) defined as a "hazardous material," "hazardous substance," or "hazardous waste" under Sections 25501(j) and (k) and 25501.1 of the California Health and Safety Code, Division 20, Chapter 6.95 (Hazardous Materials Release Response Plans and Inventory); (v) defined as a "hazardous substance" under Section 25281 of the California Health and Safety Code, Division 20, Chapter 6.7 (Underground Storage of Hazardous Substances); (vi) "used oil" as defined under Section 25250.1 of the California Health and Safety Code; (vii) asbestos; (viii) listed under Chapter 11 of Division 4.5 of Title 22 of the California Code of Regulations, or defined as hazardous or extremely hazardous pursuant to Chapter 10 of Division 4.5 of Title 22 of the California Code of Regulations; (ix) defined as waste or a hazardous substance pursuant to the Porter-Cologne Act, Section 13050 of the California Water Code; (x) designated as a "toxic pollutant" pursuant to the Federal Water Pollution Control Act, 33 U.S.C. § 1317; (xi) defined as a "hazardous waste" pursuant to the Federal Resource Conservation and Recovery Act, 42 U.S.C. § 6901 et seq. (42 U.S.C. § 6903); (xii) defined as a "hazardous substance" pursuant to the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601 et seq. (42 U.S.C. § 9601);

(xiii) defined as "Hazardous Material" pursuant to the Hazardous Materials Transportation Act, 49 U.S.C. § 5101 et seq.; or (xiv) defined as such or regulated by any "Superfund" law, or any other federal, state or local law, statute, ordinance, code, rule, regulation, order or decree regulating, relating to, or imposing liability or standards of conduct concerning Hazardous Materials and/or underground storage tanks, as now, or at any time hereafter, in effect.

(d) Loss and Damage.

The City shall not be liable for any damage to property of Developer or of others located on the Site, nor for the loss of or damage to any property of Developer or of others by theft or otherwise. The City shall not be liable for any injury or damage to persons or property resulting from fire, explosion, steam, gas, electricity, water, rain, dampness or leaks from any part of the Site or from the pipes or plumbing, or from the street, or from any environmental or soil contamination or hazard, or from any other latent or patent defect in the soil, subsurface or physical condition of the Site, or by any other cause of whatsoever nature.

(e) Period of Indemnification.

The obligations for indemnity under this Section 14.2 shall begin upon the Effective Date and shall terminate upon termination of this Agreement, provided that indemnification shall apply to all claims or liabilities arising during that period even if asserted at any time thereafter.

14.3 Waiver of Subrogation.

Developer agrees that it shall not make any claim against, or seek to recover from City or its agents, servants, or employees, for any loss or damage to Developer or to any person or property, except as specifically provided hereunder and Developer shall give notice to any insurance carrier of the foregoing waiver of subrogation, and obtain from such carrier, a waiver of right to recovery against City, its agents and employees.

15.0 EFFECT OF AGREEMENT ON TITLE.

15.1 Covenants Run with the Land.

Subject to the provisions of Section 13.0:

(a) All of the provisions, agreements, rights, powers, standards, terms, covenants and obligations contained in this Agreement shall be binding upon the Parties and their respective heirs, successors (by merger, consolidation, or otherwise) and assigns, devisees, administrators, representatives, lessees, and all other persons acquiring any rights or interests in the Site, or any portion thereof, whether by operation of laws or in any manner whatsoever and shall inure to the benefit of the Parties and their respective heirs, successors (by merger, consolidation or otherwise) and assigns;

(b) All of the provisions of this Agreement shall be enforceable as equitable servitudes and constitute covenants running with the land pursuant to applicable law; and

(c) Each covenant to do or refrain from doing some act on the Site hereunder (i) is for the benefit of and is a burden upon every portion of the Site; (ii) runs with such lands; and (iii) is binding upon each party and each successive owner during its ownership of such properties or any portion thereof, and each person having any interest therein derived in any manner through any owner of such lands, or any portion thereof, and each other person succeeding to an interest in such lands.

15.2 Estoppel Certificate.

Either Party may at any time deliver written notice to the other Party requesting an estoppel certificate (the "Estoppel Certificate") stating:

(a) The Agreement is in full force and effect and is a binding obligation of the Parties; and

(b) The Agreement has not been amended or modified either orally or in writing or, if so amended, identifying the amendments.

A Party receiving a request for an Estoppel Certificate shall provide a signed certificate to the requesting Party within thirty (30) days after receipt of the request. The City Manager may sign Estoppel Certificates on behalf of the City, in a form approved by the City Attorney. An Estoppel Certificate may be relied on by assignees and mortgagees. Notwithstanding the foregoing, the Party receiving the request may decline to provide an Estoppel Certificate if that Party has previously given the other Party actual notice of a default or is aware of circumstances which may constitute a default. If requested to do so by the requesting Party, the Party receiving the request may state in writing the reasons for declining the request.

16.0 GENERAL.

16.1 Non-liability of City Officers and Employees.

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

16.2 Conflict of Interest.

No officer or employee of the City shall have any financial interest, direct or indirect, in this Agreement nor shall any such officer or employee participate in any decision relating to the Agreement which affects 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.

16.3 Covenant Against Discrimination.

Developer 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, marital status, national origin, or ancestry in the performance of this Agreement. Developer shall take affirmative action to insure that employees are treated during employment without regard to their race, color, creed, religion, sex, marital status, national origin or ancestry.

16.4 Construction of Agreement.

The language of this Agreement shall be construed as a whole and given its fair meaning. The captions of the sections and subsections are for convenience only and shall not influence construction. This Agreement shall be governed by the laws of the State of California. This Agreement shall not be deemed to constitute the surrender or abrogation of the City's governmental powers over the Site.

16.5 Severability.

If any covenant, term, condition, or provision of this Agreement shall, to any extent, be invalid or unenforceable, the remainder of this Agreement shall be valid and enforceable to the fullest extent permitted by law unless that covenant, term, condition, or provision declared to be invalid is so material that its invalidity deprives either party of the basic benefit of their bargain or renders the remainder of this Agreement meaningless.

16.6 Attorney's Fees.

If either Party to this Agreement is required to initiate or defend any action or proceeding, the prevailing party in such action or proceeding, in addition to any other relief which may be granted, whether legal or equitable, shall be entitled to reasonable attorney's fees. Attorney's fees shall include attorney's fees on any appeal, mediation fees incurred per section 16.20, and in addition a Party entitled to attorney's fees shall be entitled to all other reasonable costs for investigating such action, taking depositions and discovery and all other necessary costs the court allows which are incurred in such litigation. All such fees shall be deemed to have accrued on the commencement of such action and shall be enforceable whether or not such action is prosecuted.

16.7 Time of Essence.

Time is of the essence in:

(a) The performance of the provisions of this Agreement as to which time is an element; and

(b) The resolution of any dispute which may arise concerning the obligations of Developer and City as set forth in this Agreement.

16.8 Waiver.

Failure by a Party to insist upon the strict performance of any of the provisions of this Agreement by the other Party, or the failure by a Party to exercise its rights upon the default of the other Party, shall not constitute a waiver of such Party's right to insist and demand strict compliance by the other Party with the terms of this Agreement thereafter.

16.9 No Third Party Beneficiaries.

The only parties to this Agreement are Developer and the City. There are no third Party beneficiaries and this Agreement is not intended, and shall not be construed to benefit or be enforceable by any other person whatsoever.

16.10 Mutual Covenants.

The covenants contained herein are mutual covenants and also constitute conditions to the concurrent or subsequent performance by the Party benefited thereby of the covenants to be performed hereunder by such benefited Party.

16.11 Counterparts.

This Agreement may be executed by the parties in counterparts which counterparts shall be construed together and have the same effect as if all of the parties had executed the same instrument.

16.12 Authority to Execute.

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; (iv) the entering into of this Agreement does not violate any provision of any other Agreement to which said Party is bound; and (v) there is no litigation or legal proceeding which would prevent the parties from entering into this Agreement.

16.13 Notices, Demands and Communications Between the Parties.

Notices, demands, submission of documents, and communications between City and Developer shall be given either by personal service, delivery by courier, or by mailing in the United States mail, certified mail, postage prepaid, return receipt requested, addressed to the addresses provided below.

CITY: CITY OF IRWINDALE
5050 North Irwindale Avenue
Irwindale, CA 91706
Telecopier No. (626) 962-4209
Attn: City Manager

A copy to: ALESHIRE & WYNDER, LLP
18881 Von Karman Avenue, #1700
Irvine, CA 92612

Telecopier No. (949) 223-1180

Attn: Fred Galante, Esq.

DEVELOPER:

United Rock Products Corp.

Attention: David Martinez

135 South State College Boulevard, Suite 400

Brea, California 92821

A copy to:

Daniel J. LaFrance, Esq., Assistant General Counsel

Colas Inc.

163 Madison Avenue, Suite 500

Morristown, New Jersey 07960

and

JEFFER, MANGELS, BUTLER & MITCHELL LLP

1900 Avenue of the Stars, Seventh Floor

Los Angeles, CA 90067-5010

Telecopier No. (310) 203-0567

Attn: William F. Capps, Esq.

Any such notice shall be deemed to have been given upon delivery if personally served or delivered by courier, or upon the expiration of three (3) business days after mailing if given by certified mail, return receipt requested. Such written notices, demands and communications may be sent in the same manner to such other addresses as a party may from time to time designate by mail.

16.14 Further Actions and Instruments.

Each of the Parties shall cooperate with and provide reasonable assistance to the other to the extent necessary to implement this Agreement. Upon the request of either Party at any time, the other Party shall promptly execute, with acknowledgement or affidavit if reasonably required, and file or record such required instruments and writings and take any actions as may be reasonably necessary to implement this Agreement or to evidence or consummate the transactions contemplated by this Agreement.

16.15 Recitals.

The recitals in this Agreement constitute part of this Agreement and each Party shall be entitled to rely on the truth and accuracy of each recital as an inducement to enter into this Agreement.

16.16 Recording.

The City Clerk shall cause a copy of this Agreement, or a memorandum thereof, to be executed by the City and recorded in the Official Records of Los Angeles County no later than ten (10) days after the Effective Date. The recordation of this Agreement is deemed a ministerial

act and the failure of the City to record the Agreement as required by this Section and the Development Agreement Statute shall not make the Agreement void or ineffective.

16.17 Relationship of Parties.

It is specifically understood and agreed by and between the Parties that the Project is a private development, that neither Party is acting as the agent of the other in any respect hereunder, and that such Party is an independent contracting entity with respect to the terms, covenants, and conditions contained in this Agreement. The only relationship between the City and Developer is that of a government entity regulating the development of private property and the owner of such private property.

16.18 Inspection of Books and Records.

In addition to any other right of inspection otherwise allowed by law, the City shall have the right to inspect, upon not less than seventy-two (72) hours' notice, at a reasonable time, the production records and tax payment information of Developer which pertain to the Project. The parties agree that Developer's financial statements and financial records not pertaining to the Project are confidential and shall not be disclosed to City pursuant to the provisions of this Agreement.

16.19 Integration Clause.

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, brochures, agreements, and understandings, if any, between the parties hereto or displayed by the City to Developer with respect to the subject matter thereof, except for the Development Approvals, and none shall be used to interpret or construe this Agreement. This Agreement includes all attachments attached hereto, which by this reference are incorporated herein. Said documents shall be interpreted insofar as possible to prevent any inconsistency and to effectuate the terms thereof, without one prevailing over the other.

16.20 Disputes.

Any controversy or claim arising out of, or relating to, this Agreement shall be mediated before a JAMS (or if unavailable, ADR Services) mediator mutually selected by the parties prior to initiation of any legal proceeding. Any cost of such mediation shall be equally shared by the parties. Any legal proceeding following any unsuccessful mediation attempt, despite good faith efforts by the parties, shall be filed in the Superior Court, County of Los Angeles.

17.0 EXHIBITS.

The following are the Exhibits to this Agreement:

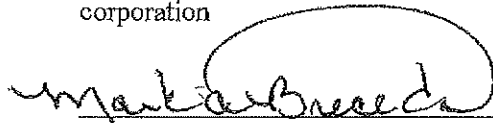
- Exhibit A: Site Map
- Exhibit A-1: Legal Description of Site
- Exhibit B: Scope of Development
- Exhibit B-1: Manner of Reclamation
- Exhibit B-2: Typical Slope Cross Sections
- Exhibit B-3: Location of New Access Point and Road

Exhibit C: Schedule of Performance
Exhibit D: Reclamation Plan Drawings

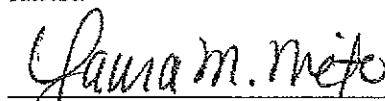
IN WITNESS WHEREOF, the City and Developer have executed this Development Agreement on the date first above written.

"CITY"

CITY OF IRWINDALE, a municipal corporation

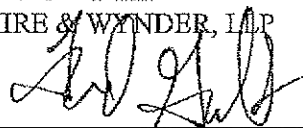

Mark A. Breceda, Mayor

Attest:


City Clerk

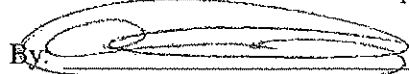
Approved as to form:

ALESHIRE & WYNDER, LLP


Fred Galante, City Attorney

"DEVELOPER"

UNITED ROCK PRODUCTS CORPORATION, a Delaware corporation

By: 
Name: DAVID MARTINEZ
Title: PRESIDENT

By: _____
Name: _____
Title: _____

[END OF SIGNATURES / NOTARY JURAT(S) FOLLOW]

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

CIVIL CODE § 1189

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 12/14/15 before me, Laura M. Nieto, Notary Public

Date

Here Insert Name and Title of the Officer

personally appeared

Mark A. Breceda

Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Signature

Laura M. Nieto
Signature of Notary Public

Place Notary Seal Above

OPTIONAL

Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document

Title or Type of Document: _____ Document Date: _____

Number of Pages: _____ Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

☐ Corporate Officer — Title(s): _____☐ Partner — ☐ Limited ☐ General☐ Individual ☐ Attorney in Fact☐ Trustee ☐ Guardian or Conservator☐ Other: _____

Signer Is Representing: _____

Signer's Name: _____

☐ Corporate Officer — Title(s): _____☐ Partner — ☐ Limited ☐ General☐ Individual ☐ Attorney in Fact☐ Trustee ☐ Guardian or Conservator☐ Other: _____

Signer Is Representing: _____

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 Orange)

On December 11, 2015, before me, Julia A. Nelson, a Notary Public, personally appeared David Leroy Martinez, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) ~~is/are~~ subscribed to the within instrument and acknowledged to me that he/~~she/they~~ executed the same in his/~~her/their~~ authorized capacity(ies), and that by his/~~her/their~~ signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify UNDER PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

JAN
Notary in and for the State of California

[SEAL]

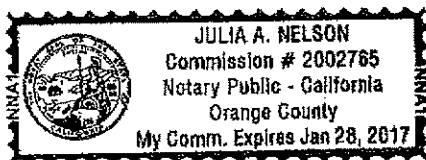
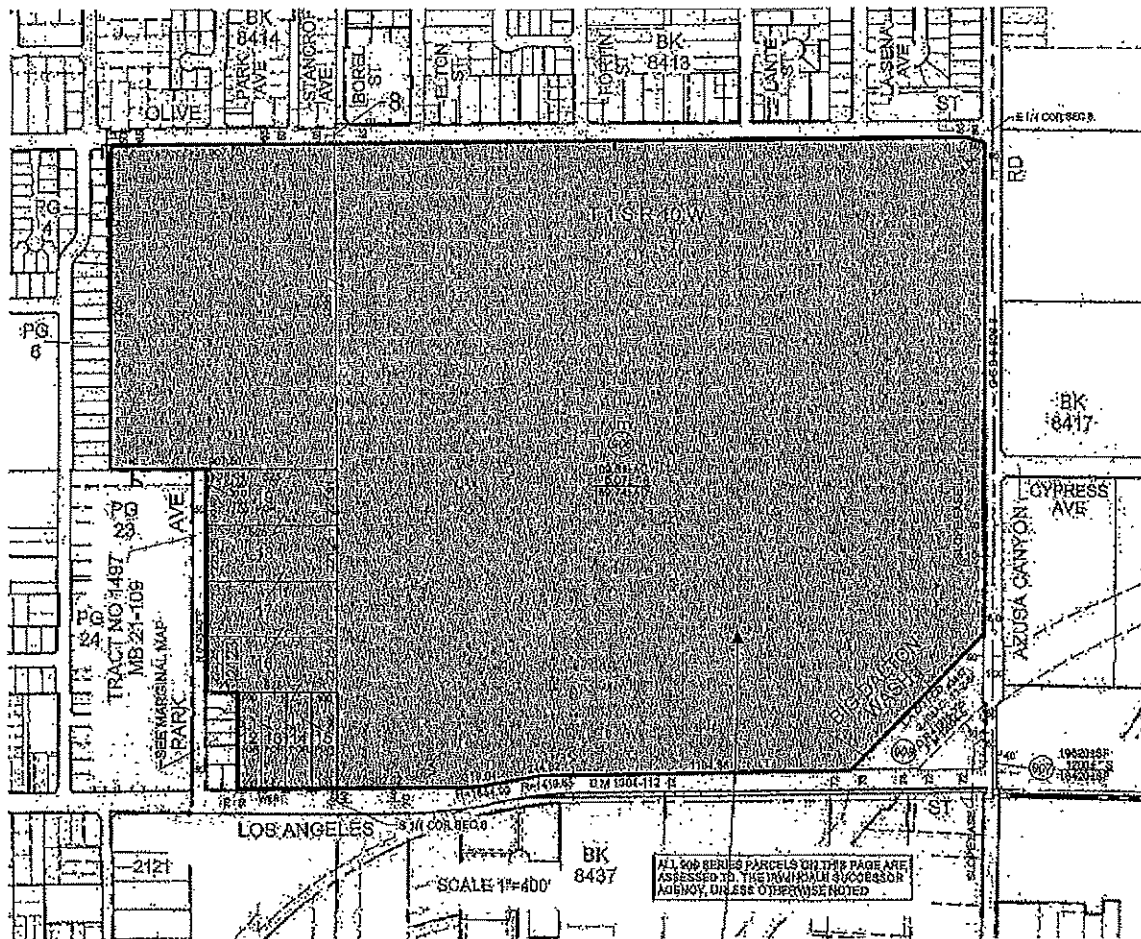


EXHIBIT "A"

SITE MAP

[See Attached]

EXHIBIT A



Project Location

Site Map

N.T.S.

EXHIBIT A-1
LEGAL DESCRIPTION OF SITE

EXHIBIT A-1

Page 1 of 3

Legal Description of the Site Assessor's Parcel No. 8415-001-906

Page 1
Order No 41098535

DESCRIPTION

PARCEL A.

THE SOUTHEAST QUARTER ON SECTION 8 TOWNSHIP 1 SOUTH, RANGE 10 WEST, IN THE CITY OF IRVINDALE, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, SAN BERNARDINO BASE AND MERIDIAN

EXCEPT THEREFROM THAT PORTION OF SAID LAND SHOWN AND DESCRIBED IN THAT ORDER OF JUDGMENT RECORDED JUNE 8, 1953 IN BOOK 41916 PAGE 326, OFFICIAL RECORDS AND BY FINAL ORDER OF CONDEMNATION RECORDED NOVEMBER 2, 1964 AS INSTRUMENT NO. 3487 (KNOWN AS BIG DALTON WASH)

ALSO EXCEPT THEREFROM THOSE PORTIONS THEREOF DESCRIBED IN DEED TO CITY OF IRVINDALE RECORDED NOVEMBER 12, 1962 AS INSTRUMENT NO. 82-2136224, MORE PARTICULARLY DESCRIBED AS FOLLOWS

PARCEL 1 - OLIVE STREET

THAT PORTION OF THE SOUTHEAST ONE-QUARTER OF SAID SECTION 8, DESCRIBED AS FOLLOWS

BEGINNING AT A POINT IN THE SOUTHERLY LINE OF THE NORTHERLY 25.00 FEET OF SAID SOUTHEAST ONE-QUARTER DISTANT WESTERLY THEREON 81.00 FEET FROM THE WESTERLY LINE OF THE EASTERLY 20.00 FEET OF SAID SOUTHEAST ONE-QUARTER, THENCE, SOUTHERLY AT RIGHT ANGLES TO SAID SOUTHERLY LINE 15.00 FEET TO A LINE PARALLEL WITH AND 40.00 FEET SOUTHERLY, MEASURED AT RIGHT ANGLES, FROM THE NORTHERLY LINE OF SAID SOUTHEAST ONE-QUARTER, THENCE, EASTERLY ALONG SAID PARALLEL LINE TO A POINT DISTANT 17.00 FEET FROM THE WESTERLY LINE OF THE EASTERLY 40.00 FEET OF SAID SOUTHEAST ONE-QUARTER, THENCE, SOUTHEASTERLY IN A DIRECT LINE TO A POINT IN SAID WESTERLY LINE DISTANT SOUTHERLY THEREON 17.00 FEET FROM SAID PARALLEL LINE, THENCE, NORTHERLY ALONG SAID LAST MENTIONED WESTERLY LINE TO THE SOUTHERLY LINE OF THE NORTHERLY 25.00 FEET OF SAID SOUTHEAST ONE-QUARTER, THENCE, WESTERLY ALONG SAID SOUTHERLY LINE TO THE POINT OF BEGINNING

PARCEL 2 - AZUSA CANYON ROAD

THE WESTERLY 20.00 FEET OF THE EASTERLY 40.00 FEET OF THE SOUTHEAST ONE-QUARTER OF SECTION 8, TOWNSHIP 1 SOUTH, RANGE 10 WEST, SAN BERNARDINO MERIDIAN, BOUNDED NORTHERLY BY THE SOUTHERLY LINE OF THE NORTHERLY 25.00 FEET OF SAID SOUTHEAST ONE-QUARTER AND BOUNDED SOUTHERLY BY THE NORTHERLY LINE OF THE LAND DESCRIBED IN PARCEL NO. 843 1 IN DOCUMENT NO. 3121 RECORDED MARCH 24, 1963, IN THE OFFICE OF THE COUNTY RECORDER, LOS ANGELES COUNTY

ALSO EXCEPT THEREFROM THAT PORTION THEREOF DESCRIBED IN DEED TO CITY OF IRVINDALE RECORDED MARCH 11, 1963 AS INSTRUMENT NO. 85-263980, BEING THAT PORTION OF SAID SECTION 8, AND OF LOTS 12 THROUGH 15, TRACT 1497, DESCRIBED AS FOLLOWS

A PARCEL OF LAND BOUNDED WESTERLY BY THE EASTERLY LINE OF LOT 11 OF SAID TRACT 1497, SOUTHERLY BY THE NORTHERLY RIGHT OF WAY LINE OF LOS ANGELES STREET AS PREVIOUSLY DEDICATED TO THE COUNTY OF LOS ANGELES, EASTERLY BY THE NORTHWESTERLY LINE OF THE 200.00 FOOT WIDE RIGHT OF WAY FOR BIG DALTON WASH DESIGNATED AS PARCEL 63 ON PLAT MAP 12034-5 IN THE OFFICE OF THE LOS ANGELES COUNTY ENGINEER,

EXHIBIT A-1

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Page: 2
Order No. 41002555

DESCRIPTION

SAID RIGHT OF WAY HAVING BEEN CONVEYED TO LOS ANGELES COUNTY FLOOD CONTROL DISTRICT BY FINAL JUDGMENT RECORDED IN BOOK 41916, PAGE 325 OF OFFICIAL RECORDS OF SAID COUNTY, AND BOUNDED NORTHERLY BY THE FOLLOWING DESCRIBED LINE:

BEGINNING AT THE INTERSECTION OF A LINE WHICH IS 40.00 FEET NORTHERLY OF AND PARALLEL WITH THE SOUTH LINE OF SAID SECTION 8 WITH THE EASTERLY LINE OF LOT 11 OF SAID TRACT 1497, THENCE, ALONG SAID PARALLEL LINE N 89° 59' 39" E, 392.63 FEET AND N 89° 00' 35" E, 392.03 FEET TO A POINT IN SAID LINE WHICH IS N 89° 04' 35" E, 392.02 FEET ALONG THE SOUTH LINE OF SAID SECTION AND N 00° 59' 25" W, 40.00 FEET PERPENDICULAR TO SAID SECTION LINE, FROM THE SOUTH ONE QUARTER CORNER OF SAID SECTION 8, SAID POINT ALSO BEING THE BEGINNING OF A CURVE TANGENT TO SAID PARALLEL LINE, CONCAVE NORTHERLY AND HAVING A RADIUS OF 2083.71 FEET, THENCE ALONG SAID CURVE AN ARC DISTANCE OF 315.25 FEET THROUGH A CENTRAL ANGLE OF 8° 40' 10" TO A POINT OF REVERSE CURVATURE WITH A CURVE CONCAVE SOUTHERLY AND HAVING A RADIUS OF 2160.71 FEET, THENCE ALONG SAID CURVE AN ARC DISTANCE OF 326.93 FEET THROUGH A CENTRAL ANGLE OF 8° 40' 10" TO A POINT OF TANGENCY WITH A LINE WHICH IS 88.50 FEET NORTHERLY OF AND PARALLEL WITH THE SOUTH LINE OF SAID SECTION 8, THENCE, N 89° 04' 35" E, 1086.58 FEET TO THE NORTHWESTERLY LINE OF THE 200.00 FOOT WIDE FLOOD CONTROL RIGHT OF WAY AS DESCRIBED ABOVE.

ALSO EXCEPT THEREFROM THAT PORTION THEREOF DESCRIBED IN DEED TO IN THE CITY OF IRVINDALE, RECORDED MAY 23, 1988 AS INSTRUMENT NO. 85-579393, BEING THAT PORTION OF SAID SECTION 8, DESCRIBED AS FOLLOWS:

A PARCEL OF LAND BOUNDED SOUTHERLY BY THE NORTHERLY RIGHT OF WAY LINE OF LOS ANGELES STREET AS CONVEYED TO THE CITY OF IRVINDALE BY DOCUMENT RECORDED MARCH 11, 1985, AS INSTRUMENT NO. 85-263950, OFFICIAL RECORDS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, AND BOUNDED NORTHERLY BY THE FOLLOWING DESCRIBED LINE:

BEGINNING AT A POINT IN A LINE WHICH IS 40.00 FEET NORTHERLY OF AND PARALLEL WITH THE SOUTH LINE OF SAID SECTION 8, WHICH POINT IS N 89° 00' 35" E, 392.02 FEET ALONG THE SOUTH LINE OF SAID SECTION AND N 00° 59' 25" W, 40.00 FEET PERPENDICULAR TO SAID SECTION LINE, FROM THE SOUTH ONE QUARTER CORNER OF SAID SECTION 8, SAID POINT ALSO BEING THE BEGINNING OF A CURVE TANGENT TO SAID PARALLEL LINE, CONCAVE NORTHERLY AND HAVING A RADIUS OF 1382.95 FEET, THENCE, EASTERLY ALONG SAID CURVE AN ARC DISTANCE OF 319.64 FEET THROUGH A CENTRAL ANGLE OF 8° 54' 22" TO A POINT OF REVERSE CURVATURE WITH A CURVE CONCAVE SOUTHERLY AND HAVING A RADIUS OF 1419.65 FEET, THENCE, EASTERLY ALONG SAID CURVE AN ARC DISTANCE OF 244.62 FEET THROUGH A CENTRAL ANGLE OF 9° 52' 22" TO A POINT OF TANGENCY WITH A LINE WHICH IS 88.50 FEET NORTHERLY OF AND PARALLEL WITH THE SOUTH LINE OF SAID SECTION 8, THENCE, N 89° 04' 35" E, 78.30 FEET ALONG SAID LINE TO A POINT IN THE ABOVE DESCRIBED NORTHERLY RIGHT OF WAY LINE, SAID POINT BEING THE EASTERLY END OF A CURVE IN SAID RIGHT OF WAY LINE HAVING A RADIUS OF 2160.71 FEET.

ALSO EXCEPT THEREFROM THAT PORTION OF SAID LAND DESCRIBED IN DEED DATED APRIL 20, 1988 AND RECORDED JUNE 14, 1988 AS INSTRUMENT NO. 88-540573.

EXHIBIT A-1

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Page 3
Order No. 41006585

DESCRIPTION

PARCEL B:

THE NORTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 8, IN TOWNSHIP 1 SOUTH,
RANGE 10 WEST, SAN BERNARDINO MERIDIAN, ACCORDING TO THE OFFICIAL PLAT OF THE
SURVEY OF SAID LAND ON FILE IN THE BUREAU OF LAND MANAGEMENT

EXCEPT THE WEST 1/2 ACRES OF SAID LAND

ALSO EXCEPT THEREFROM THE NORTH 30 FEET RESERVED FOR ROAD PURPOSES

PARCEL C:

LOTS 12, 13, 14, 15, 16, 17, 18 AND 19 OF TRACT 1197, AS PER MAP RECORDED IN
BOOK 21, PAGE 109 OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY

APN: 8415-001-906

EXHIBIT B

SCOPE OF DEVELOPMENT

Developer shall mine the Site in accordance with this Agreement and reclaim and develop the Site in accordance with the Reclamation Plan and this Agreement and in the manner described below, as further depicted in **Exhibit D**.

A. **Mining and Reclamation.** Developer shall conduct mining and reclamation operations in 2 phases as follows:

1. **Access Road Relocation:** Within forty-five (45) days of the Effective Date, Developer shall commence construction of a new on-site access road and relocated driveway entrance to the Site on the south side of the Site, as further described in Section 4.8 (b) of this Agreement and 3.14 of the Reclamation Plan.

2. **Mining:**

- a. **Mining Phase 1.** The maximum depth of excavation during the Phase 1 is anticipated to yield approximately 4 million tons of material at elevation 175 above mean sea which is approximately 100 feet below the existing ground level in the Site. Phase 1 is anticipated to take 3 years, but could be extended depending on the conclusion of the environmental analysis, as adopted by the City.

As part of the first phase of mining, access to the Site will be relocated from Olive Street to a new intersection at Los Angeles Street. Developer will construct the new access road with a combination of on-site materials and fill materials and ascend from the bottom of the pit along the southern edge of the Site on an 8% grade to the southeastern corner of the Site where it will exit at Los Angeles Street. The access point will be approximately 700 feet west of the Los Angeles and Azusa Canyon intersection. Developer will install a signal to allow for safe ingress and egress to the site. Developer will construct the new access road with a 45 foot wide road bed. Developer will also create an approximate 4-acre pad ("Loading Area") at the southeastern corner of the Site for loading trucks with extracted materials, which Loading Area shall include property leased by City from Los Angeles County and paid for by Developer. Construction of the new access road and loading area will require 1.9-million cubic yards of fill.

Mining will begin at the toe (bottom) of the existing pit area. The maximum depth of excavation during Phase I is anticipated to reach 175' amsl, or 100 feet below the current surface level. Phase I will yield approximately 4-million tons of material.

Developer shall extract an average of 1 million tons per year during Phase I, but no more than the amount approved per the certified EIR, or any duly-approved amendment, addendum or supplement thereto. Assuming 306 (6 day work week with 6 holidays) working days a year this will result in 262 one-way truck trips a day or 131 round trips. Actual production will vary depending on market conditions.

b. **Mining Phase II.** As stated above, Developer will commence Phase II mining after completing Phase I mining and concurrently with Phase I reclamation. Phase II consists of the remaining 137 acres of the site and will be mined to 0' amsl and will yield approximately 28 million tons. Developer will create a 5-acre pad at the base of the pit within the southwest corner of the Site, which will require approximately 207,600 cubic yards of fill. The pad will serve as a collection point for aggregates mined in Phase II. During Phase II, Developer will first mine all resources that occur above the water table using a front end loader or excavator. When the water table is encountered, Developer will use a dredge or other method adapted for underwater mining (e.g., dragline or long reach excavator) to extract materials. Phase II mining will yield about 28-million tons.

c. **Process of Mining.** All mining activities will be in compliance with the Guidelines. Material will be extracted through dry mining and, thereafter, use of a dredge or other methods for material below the water table. At present, the majority of the pit bottom is found at or below the high water table elevation ($\pm 285'$ amsl). The water table is known to raise and lower dependent upon season and precipitation cycles. As such, all mining activities will form a maximum 2:1 cut slope and be in accordance with the Guidelines. Developer will transport excavated material up the access road to the Loading Area by conveyor or off-road haul trucks and subsequently placed in overhead hoppers. Over-the-road haul trucks will be loaded at the hoppers through an automated process. As material is extracted and loaded into haul trucks, Developer will transport such material to Developer's existing processing facility located at 1245 E. Arrow Highway in Irwindale ("Processing Site"). The proposed route is approximately 3.3 miles and lies entirely within the City of Irwindale. Trucks will reach this location by exiting the site at Los Angeles Street, turning north onto Azusa Canyon, then west on Arrow Highway to the Developer's processing plant. As part of the mining operations, Developer will maintain the existing pit walls per the Reclamation Plan. Provided Developer adequately and fully complies with such maintenance obligations, it shall not be responsible for any damage or failure of such existing walls due to pre-existing conditions. All other pit walls, improvements and other changes to the Site created by Developer shall be Developer's sole responsibility for which Developer shall indemnify the City pursuant to Section 14 of this Agreement.

3. **Reclamation:**

a. **Phase I Reclamation.** Per the approved Reclamation Plan, Developer will begin Phase I reclamation at the conclusion of the first mining phase. Phase II mining will occur simultaneously with Phase I reclamation. Reclamation of Phase I will include filling the area according the Guidelines for Above-Water and Underwater Backfilling of Open-Pit Mines. Before commencing fill operations, Developer will remove disturbed and uncertified fill and place compacted fill in a controlled manner. Additionally, Developer shall compact all fills within 40 feet of the final elevation to a minimum of 93 percent, as further described the aforementioned Guidelines. Backfilling of Phase I will be to street level (approximately 420 feet msl) and proposed to be a minimum of 600 foot wide (east to west) along the entire approximately 1000 foot eastern side of the Site, resulting in an approximately 31.2-acre pad ("Development Parcel") with a 2:1 slope along the western margin and will require more than 8 million cubic yards of fill. All final fill slopes will be revegetated per the Reclamation Plan.

Backfill material will originate from Developer's processing location where it is collected from various sources throughout the greater urban area, including construction demolition materials from construction projects associated with Developer. Developer's trucks will exit the Site with a load of mined material and return loaded with material to fill the pit. Fill material could also originate from different sources throughout the Los Angeles region. Depending on the type of construction activity, fill material suitable for reclamation at the Site could originate from projects in which Developer-associated companies are engaged. The availability of this material is anticipated to be random and subject to market conditions.

The additional area to be reclaimed beyond the 600 foot Development Parcel is necessary for fill placement to establish a 2:1 final fill slope from the bottom of the pit to the Development Parcel. Backfilling will involve the backhaul of processed material from Developer's Pit 2 processing operations and will insure that the material placement will meet or exceed the Guidelines. No processing of materials shall occur at the Site. The Development Parcel shall be completed within the time set forth in the Schedule of Performance, as adjusted for delays as described in Section 13 above. Maintenance of the final fill slope for the reclamation area as well as required landscaping will be City's responsibility, as may be assigned by the City to any third party.

b. **Phase II Reclamation.** Developer will commence Phase II reclamation at the conclusion of Phase II mining or when the mineable aggregate resources have been exhausted at the Site. Currently, Phase II reclamation consists of utilizing the Site for flood control, storm water retention and/or ground water recharge basin. Minimally, reclamation to any of the suggested end uses would involve stabilization of the mined slopes and ensuring public safety through fencing and access restrictions.

c. **Reclamation of Additional Areas.** Any additional reclamation of the

Site shall be subject to separate future agreement of the parties and duly-approved amendment to the Development Agreement. Nothing stated herein shall require the parties to reach mutual agreement on such additional reclamation.

d. **Prioritization System.** Developer has further requested to perform reclamation operations at the Site as an authorized commercial fill operation under the filling prioritization system applicable to reclamation operations in the City, as such terms and system are further defined in development and settlement agreements between City and other operators, including operations owned and operated by Developer in other sites at the City. Although other operators, including Developer, have the prior rights to operate commercial fill operations in advance of any rights that may be granted by City for the Site, the parties will nevertheless work together to ascertain if the Site may be granted the priority fill designation, provided other affected operators agree. If such priority designation is infeasible, Developer understands that it will be bound to operate a non-commercial fill operation, utilizing fill from its own sources and has represented that it is able to accomplish reclamation, as intended and described in this Agreement, as adjusted for delays as described in Section 3.

e. **Flood Control or Storm Water Collection/Recharge Basin.** The City has expressed desire to have areas not reclaimed for future development serve as a future flood control or storm water collection/recharge basin to serve the needs of the City and potentially surrounding cities in their obligation to provide for storm water runoff. The Development Agreement and Reclamation Plan shall include requirements for Developer to reclaim the remaining portions of the Site not slated for future development in such a manner as to accommodate such end use.

4. **Offsite Improvements.** Offsite improvements would be provided pursuant to the City's usual development requirements, subject to the requirements of Section B below.

B. **Environmental Control Systems.** Developer is committed to implementing the following minimum measures to mitigate the impacts from mining and reclamation activities to surrounding residents, businesses and roadways, as well as any additional mitigation measures identified through the environmental evaluation of the Project:

1. **Transportation.** Developer proposes to relocate the access point to the Site to Los Angeles Street in an effort to minimize traffic and noise impacts to residential development to the north and west of the Site. The existing access point is found near the northeast corner of the Site, which will be used until alternative access may be completed. Due to the limited setback and steep slopes along the perimeter of the Site, the new access road will need to be constructed. The new access road will require approximately 9 million cubic yards of fill from the existing pit bottom (approximately 270 feet m.s.l.) along the southern edge of

the pit. The new access road will be constructed with a 45 foot road bed at a maximum grade of 7.6%, as further described in the Proposal. Developer shall install signals per the EIR. Any improvements, including but not limited to, the access road, intersection, signal and other improvements shall not exceed \$80,000, which maximum amount excludes any mitigation measures required by the EIR to be paid by Developer; provided that Developer may object to any such mitigation measures or negotiate with the City the allocation of costs for same as part of the Development Agreement. In accordance with the EIR, all vehicles of Developer, its employees, contractors, agents or invitees, entering and exiting the Site shall utilize the new access road at Los Angeles Street. Additionally, all commercial trucks of Developer, its employees, contractors, agents or invitees used for the carrying any type of fill material or materials excavated from the Site shall utilize the following routes exclusively for the import or export of such materials:

Los Angeles Street to Azusa Avenue to Arrow Highway to United Rock Pit 2 and returning to the Site

2. **Hours of Operation.** To further limit the impacts to neighboring properties, Developer will only conduct mining activities during normal business hours which are:

- a. For road construction: Monday through Saturday 7 a.m. to 7 p.m.
- b. For extraction and reclamation: Monday through Saturday 6 a.m. to 6 p.m.
- c. Transportation to the processing plant: Monday through Saturday 7 a.m. to 5 p.m.;
- d. Onsite maintenance which does not cause noise, light glare or other potential impact to surrounding uses shall be authorized at other times.

3. **Dust Control.** Developer will manage dust from operations by paving the entrance to the access road and the use of water trucks for all unpaved surfaces. Additionally, Developer shall use a street sweeper to patrol the streets on a regular basis to eliminate any spillage that could occur. Developer will conduct all operations in strict compliance with South Coast Air Quality Management District ("SCAQMD") requirements.

4. **Noise Attenuation.** Developer's proposed relocation of the access road, as described above is aimed at reducing noise impacts to residents along the northern boundary of the Site. Additionally, mining activities will occur at approximately 120 feet below ground level and will be 200 feet from the edge of the northern property line of the Site. This is augmented by the presence of an approximately 6 foot high block wall that extends along a portion of the northern boundary of the Site to further eliminate line-of-sight contact between residential areas and mining activities so as to reduce estimated noise signature to

approximately 60 dBA. Additionally, all of Developer's mining and reclamation equipment will be late models using state-of-the-art noise reduction technology. To reduce noise from over-the-road haul trucks, Developer shall implement the following measures:

- a. Hours of operation will be limited to normal business hours,
- b. All trucks shall be equipped with Diesel Particulate Filters or a resonator to reduce noise by 3 to 6 dBA,
- c. No Jake Brakes shall be used.
- d. All trucks shall be equipped with a single exhaust, vertical straight stacks and no turndown, and
- e. All trucks shall be equipped with automatic transmissions, which eliminate unnecessary engine revving.

5. **Improvement to Northern Border.** Developer and City shall negotiate and implement at Developer's cost, mutually agreed improvements to the northern boundary of the Site between the pit wall and Olive Street so as to create an aesthetic, well landscaped walking park and adequate screening to the border of the pit. Developer's costs will be capped at \$250,000. Any landscaping condition for other borders of the Site shall be in addition to the aforementioned cap and shall be consistent with conditions typically imposed by the City for such approvals, such as the landscaping requirements imposed for Developer's Pit 2 operations in 2002. Any significant increases to this landscaping condition shall be subject to negotiations between the parties as part of the Development Agreement.

6. **Use of Water.** Developer shall procure from the applicable water supplier, and use water in the amounts and manner necessary to control dust at that Site as well as any other prudent operational purpose. Developer shall be solely responsible for paying for and securing the transportation of the water to the Site.

7. **Street Sweeping.** Developer, at its sole cost and using a street sweeper shall perform street sweeping upon all streets used by trucks entering and exiting the Site in an area within 500 feet of the Site and at all times during Developer's performance of the Project.

8. **Responding to Public Concerns.** Developer shall respond to any public complaints or concerns related to the Project within 48 hours of any complaint. Developer shall make a written record of all complaints or concerns received and present them to the City within the same time required for it to respond to such complaints or concerns.

C. **Public Works Conditions of Approval.** Developer shall conduct all activities

described in this Agreement in accordance with the following Public Works conditions of approval:

1. Applicant shall comply with the City Guidelines for Drainage and Erosion Control for Open-Pit Mines during all phases of mining and reclamation of the Site to address the following:

- a. Implement appropriate measures to keep surface water from flowing over the rim of the pits to avoid overtopping-induced erosion.
- b. Implement appropriate measures to protect pit slopes from incident-precipitation induced erosion.
- c. Implement necessary measures to protect pit slopes that are exposed to groundwater lakes and wave-lap erosion.
- d. Applicant shall prepare necessary engineering plans for the implementation of measures stated above, and submit to City for review and approval by the City Engineer within one hundred twenty (120) days from the approval of this DA.
- e. Maintain sidewalks around the entire perimeter of the site clean at all times.
- f. Provide a minimum of one street sweeper during all hours of operation. Street sweeping shall be extended at least 500 feet beyond property boundaries. Debris left behind due to street sweeping adjacent to catch basins shall be cleaned at all times.

2. Applicant shall ensure that Best Management Practices (BMPs) are used to eliminate risks of contamination to the groundwater and ensure the safety of the public with the implementation of the following:

3. Controlled Access.

- a. The primary access to the pit during mining and reclamation activities shall be strictly thru the proposed signalized entrance at Los Angeles Street. Request for alternate access point must be requested by the operator in writing to the City Engineer for its review and approval.
- b. Restrict Site areas to authorized vehicles and equipment directly related to Applicant's operation.
- c. Place continuous security provisions to monitor and safeguard all access point to the Site
- d. Secure all access point with locks, except at entrances during business hours.

4. Security.

- a. Construct and maintain in good, appropriate condition, appropriate berms in accordance with the MSHA requirement for safety berm. The design and construction of these berms shall meet the City's Drainage and Erosion Control Guidelines if also used to control surface runoff.
- b. Repair any damage to walls, fences, berms and its appurtenances within two days of discovery. Make immediate necessary repairs to ensure public safety.
- c. Inspect MSHA berms on a daily basis; and
- d. Police Site and remove any deleterious or hazardous materials in accordance with government requirements.
- e. Secure the Site with adequate walls and fences per Planning Division requirements.
- f. If not being used, the Applicant shall close and secure the existing driveway located along Azusa Canyon Road. (g) Access points along Olive Street shall be secured.

5. The Applicant shall, within ninety (90) days of the approval of the Reclamation Plan, prepare and submit an Emergency Plan which includes step by step remedial actions that deal with the handling of contamination to the Site. If, at any time, contamination is found to be at or above established action levels, the Applicant shall immediately notified the City and other responsible Agencies and shall take all necessary remedial actions.

6. The Applicant, at its sole cost, shall implement all mitigation measures as described in the final Environmental Impact Report. The improvements, as described herein, shall be designed and constructed to City standards and/or other applicable State and County standards pursuant to the schedule approved by the city. All improvements shall be based on construction plans and specifications, prepared by professional consultants retained by the Applicant. The Applicant shall obtain all necessary permits for construction of the required improvements.

7. The Applicant shall complete construction of the two new traffic signals at the intersections of Los Angeles Street and Azusa Canyon Road and at the new access road on Los Angeles Street per the City approved construction plans and specifications within twelve months of the City's approval of such plans and specifications. The Applicant shall obtain all necessary permits for construction of the required improvements.

8. The Applicant shall maintain in good condition the striping on the following streets, per the direction of the City Engineer:

- a. Los Angeles Street from Azusa Canyon Road to City Limits with Baldwin Park(Westerly of Park Avenue).
- b. Azusa Canyon Road from Los Angeles Street to Arrow Highway.
- c. Avenida Barbosa from Arrow Highway to Buena Vista Street

9. **Slope Revegetation**

- a. Applicant shall revegetate the mine slopes in accordance with the approved Reclamation Plan for the Site in phases concurrent with ongoing mining operations on the Site.
- b. Should any plant material become unhealthy or die, Applicant shall replace same with equivalent materials within the next winter to spring planting season in accordance with the revegetation plan contained in the approved reclamation plan. Success of revegetation will be judged by comparing the quantified measures of vegetative cover, density, and species-richness of the reclaimed mined-lands to similar parameters of naturally occurring vegetation in the area. Successful revegetation will be deemed complete when plant cover has been established over 75 percent of the Site slopes for three consecutive years.

10. **Tree and Landscape Maintenance.** The Applicant shall maintain all trees and landscaping within the entire property and all trees and landscaping in the public right-of-way adjacent to the entire property.

11. **Air Quality and Dust Control.**

- a. Air Quality Mitigation Measures - The following mitigation measures are required as Best Management Practices (BMPs) during mining operations, reclamation, and post-reclamation phases of the Proposed Project to reduce tailpipe exhaust emissions of CO, NOx, Sox, PM10, and fugitive dust. Heavy-duty diesel trucks and other mobile equipment shall be properly tuned and maintained to manufacturer's specifications to ensure minimum emissions under normal operations.
- b. Applicant shall comply with all requirements of the site's South Coast Air Quality Management District (SCAQMD) permits, including Rule 403 and 1157.
- c. Dust shall be controlled pursuant to the requirements of the SCAQMD Rule 403, as may be amended from time to time. A copy of the control plan, as may be amended, prepared in accordance with Rule 403, shall be provided to the City.
- d. Applicant shall implement permanent necessary measures per SCAQMD, as approved by the City Engineer, to minimize the tracking of

mud and/or dirt to the public right of way. These measures shall be maintained to the satisfaction of the City Engineer.

e. The Applicant shall apply for and maintain all appropriate permits from the SCAQMD.

12. Water Quality.

a. Applicant shall work with the responsible parties discharging storm water to the Site to install appropriate protective measures to ensure protection of the groundwater quality from storm water runoff.

b. Applicant shall implement necessary measures to protect groundwater quality as stated in the Main San Gabriel Basin Watermaster Resolution No 3-88-57.

c. Applicant shall prepare a Stormwater Pollution Prevention Program (SWPPP) to identify necessary measures to minimize erosion damages and water quality pollution. This SWPPP shall be in accordance with National Pollution Discharge Elimination System (NPDES) requirements and Irwindale Municipal Code Chapter 8.28. Applicant shall file a copy of the approved SWPPP with the City Department of Public Works within sixty (60) days of approval.

d. Applicant shall provide to the City Engineer's office a copy of the Regional Water Quality Control Board (RWQCB) issued General Activity Certificate and/or its Spill Prevention Control and Countermeasure Plan (SPCCP) sixty (60) days after City's approval of the Reclamation Plan.

13. Soils.

a. Applicant shall at all times comply with the City's Technical Guidelines during all phases of mining and reclamation at the Site to ensure adequate safety of all mining slopes. "Technical Guidelines" shall be the collective term used to refer to the following standards applicable in the City for reclamation and maintenance of mining quarries, developed by the Irwindale Backfilling Committee, as approved December 20, 2005 by Resolution No. 2005-89-2106 of the City Council, and specifically includes any and all duly approved revisions, updates, amendments and modifications of such Guidelines:

b. "Guidelines for Above Water Fill" shall mean the November 23, 2005 Guidelines for Above Water Backfilling of Open-Pit Mines, Irwindale, California.

c. "Guidelines for Erosion Control" shall mean the July 6, 2004 Guidelines For Drainage And Erosion Control for Open-Pit Mines, Irwindale, California.

d. "Guidelines for Underwater Fill" shall mean the May 20, 2005 Guidelines for Underwater Backfilling of Open-Pit Mines, Irwindale, California.

e. "Guidelines for Slope Stability" shall mean the December 24, 2003 Guidelines for Slope Stability Analysis of Open Pit Mine Slopes, Irwindale, California.

14. Applicant shall continuously monitor all the pit slopes that are created by the mining activities of the operator, and the operator is required to monitor wave-lap erosion and apply one or more of the following remediation methods as required by the Guidelines:

- a. Reduce slope steepness to achieve a slope inclination not subject to wave lap erosion.
- b. Armor the slope to prevent wave lap erosion.
- c. Implement other procedures approved by the City Engineer's office.

15. **Reclamation.**

a. Mine reclamation backfills shall be required to obtain a special grading permit for mine reclamation backfill from the City, and/or other State and County permits that may be applicable based on the various type of backfill material used for reclamation.

b. Applicant shall comply with the approved Reclamation Plan for the reclamation of the Site. The reclamation phasing and timeline shall not be altered without the approval by the City and, if required, the approval of the State of California Department of Conservation.

c. Applicant shall be responsible for City's cost to monitor the reclamation activities of the Site. The Applicant shall deposit sufficient funds based on an annual cost estimate prepared by the City Engineer's office to cover the actual monitoring cost. The Applicant shall deposit these funds to the City on or before July 10th of each year. Deposits in excess of actual City cost will be refunded to Applicant. To the extent the City obtains aerial photographs, ground based photographs, topographic/Hydrographic maps or reports from outside consultants as part of its monitoring activities, the City shall provide copies of such documents to the Applicant. To the extent possible, copies of aerial photographs and topographic/hydrographic maps shall be provided in AutoCAD compatible electronic form as well.

d. City shall have the right, after providing at least 48 hours notice to Applicant, to independently inspect and monitor the imported inert debris fill loads (for mine reclamation backfill) for the presence of any Hazardous Materials using a consultant retained by the City. The reasonable costs for

such tests shall be paid by Applicant if performed no more than quarterly. Any material that is hazardous shall be removed and disposed of properly in accordance with applicable State law.

e. Applicant shall not conduct any waste trash recycling operations at the Site, except as allowed under the Development Agreement.

f. No permanent waste disposal locations or tailings ponds are permitted to remain as tailings ponds upon the site after completion of mining and reclamation.

g. The remediation of the slopes shall be in accordance with the approved Reclamation Plan. Slope remediation plans and a construction schedule for this work shall be submitted and approved by the City Engineer prior to starting of the remediation. The slope remediation work shall commence immediately after the plans are approved.

h. All equipment, structures, and other facilities associated with the mining operations shall be dismantled and completely removed from the Site upon termination of mining activities, and within the timeline specified in the approved Reclamation Plan.

D. Planning Division Conditions of Approval. Developer shall conduct all activities described in this Agreement in accordance with the following Planning Division conditions of approval:

1. All conditions, requirements, ordinances, rules, regulations and/ or policies, as they may be amended from time to time, applied and/or enforced by any local agency, Federal or State agency, the State of California, the County of Los Angeles or any other public or quasi-public entity including the City of Irwindale, and each of its departments and divisions, with jurisdiction over the Site (collectively "Applicable Law") shall be satisfied by the Applicant, and such conformance shall be maintained at all times while the use approved by this Development Agreement ("DA") is in operation.

2. The Applicant shall fully cooperate with the City of Irwindale and any agency or entity with jurisdiction over the Site and uses approved thereon regarding the filing of any materials, execution of documents, instruments or similar items and all other acts, actions or undertaking deemed reasonably necessary by the City of Irwindale to further the purposes of this DA. The Applicant's full cooperation shall be at no cost to the City.

3. If the use authorized by this Development Agreement has become idle (as defined in SMARA §2727.1 as such provision may be amended from time-to-time), Applicant shall, within ninety (90) days thereafter, submit to the Director of Planning for review and approval, an interim management plan (IMP), pursuant to §2770 of SMARA, as may be amended. The IMP shall be processed in accordance with §17.63.110 of the Irwindale Municipal Code and §2770 of

SMARA, as may be amended.

4. This DA may be revoked for any **material** violation of or noncompliance with any of the conditions of approval of this DA or Applicable Law.

5. The Applicant shall defend, indemnify and hold harmless the City of Irwindale, its agents, officers, consultants and employees from any claim, action or proceeding against the City or its agents, officers, consultants or employees to attach, set aside, void or annul any approval of the City, its legislative body, Planning Commission, or other advisory agencies, or administrative officers concerning DA No. 01-2014, including but not limited to the Environmental Impact Report, or for any damage to persons or property, losses, costs, penalties, obligations, or liabilities arising out of or in connection with Applicant's acts or omission on the Site, whether or not such act or omission resulted or was undertaken pursuant to any condition or approval granted under this DA. The City will promptly notify the Applicant of any such claim, action or proceeding against the City and the Applicant will either undertake defense of the matter and pay the City's associated legal costs or will advance funds to pay for the defense of the matter by the City Attorney. The Applicant may elect to retain separate counsel for themselves. The City shall cooperate fully in the defense of any such action. If the City fails to promptly notify the Applicant of any such claim, action or proceeding, or fails to cooperate fully in the defense, the Applicant shall not, thereafter, be responsible to defend, indemnify or hold harmless the City. Notwithstanding the foregoing, the City retains the right to settle or abandon the matter without the Applicant's consent as to the City's liabilities or rights only, but should it do so, the City shall waive the indemnification herein, except, the City's decision to settle or abandon the matter following an adverse judgment or failure to appeal, shall not cause a waiver of the indemnification rights herein. At the time of the issuance of this DA, the City has no actual knowledge of any pending or threatened claim which would result in indemnification under this condition.

6. The Applicant shall at all times maintain the Site—and its use and appearance thereof in full compliance with Applicable Law.

7. The Applicant agrees to allow City inspectors and/ or designees of the City to reasonably inspect the Site during normal business hours or at any time operations are occurring on site to assure compliance with Applicable Law, provided the City complies with Mine Safety Health Administration (MSHA) regulations. In cases of emergencies, City shall have the right to inspect the Site, whether or not operations are occurring on site, provided City gives prior notice to Applicant as may be reasonably possible. City inspectors or designees must be accompanied by Applicant's personnel at all times per MSHA.

8. Any and all fees required to be paid to any public agency shall be paid promptly when due.

9. Approval of this application shall not excuse compliance with Applicable Law.

10. The Applicant shall maintain the Site at all times free and clear of any accumulation of trash. Applicant shall further maintain the Site in a manner that shall avoid any determination by the City that any condition on the Site constitutes a nuisance, pursuant to the City's Municipal Code.

11. Except as in accordance with Applicable Law, the Applicant shall maintain the Site at all times free and clear of and shall not discharge or otherwise release any hazardous substances, hazardous wastes and/or hazardous materials as such terms are defined in their broadest form under any applicable federal, state or local law or regulation, and any other kind of soil, air, or water contamination, and combustible and/ or flammable materials (except for fuels, lubricants, household waste and other chemicals normally used with the mining and reclamation uses allowed by this DA (collectively, as limited, "Hazardous Materials"). Any Hazardous Materials lawfully used on the Site will be handled in accordance with Applicable Law.

12. All graffiti shall be removed within 48 hours after Applicant becomes aware, or the City notifies Applicant, of its application. The graffiti shall be removed by either painting over the evidence of such vandalism with paint, which has been color- matched to the surface to which is applied, or the graffiti may be removed with solvents or detergent as appropriate.

13. All plans required by these conditions shall identify the Plant Manager and other persons who have the authority and responsibility to ensure that the intent and purpose of the plans are carried out. Such information shall also be provided on a sign posted at the site office. These employees will be responsible for coordinating, with the City Manager's Office, a response to complaints or concerns expressed by persons affected by the operations on the subject Site. Applicant must provide a written update to the City of the identification of such Plant Managers within forty-eight (48) hours of any change.

14. In the event that any conflicts in the conditions of approval herein appear to or do exist, the more stringent requirement/ or condition shall apply. The conditions herein shall prevail over any conflicting conditions in the Olive Pit Reclamation Plan dated October, 2014, approved by the City concurrently herewith ("Reclamation Plan").

15. Landscaping/ Fencing.

a. The Applicant shall repair and maintain the existing six-foot high concrete block and/or chain link fence with barbed wire extension along the perimeter.

b. All landscaped areas will be kept in a clean condition and free of weeds and trash. All plant materials shall be kept healthy. In the event such

materials are not kept in such condition, they shall be replaced with similar materials, as required by the landscape plan, within 30 days. Applicant shall revegetate inactive disturbed landscape areas at the Site. A landscape and irrigation plan shall be prepared by a licensed landscape architect for all required landscape areas. Such plan shall be submitted to the City within 120 days of approval of this DA, and shall be subject to the review and approval by the City Engineer and Director of Community Development.

c. Landscaping within the site shall be in accordance with revegetation program as stated in the approved Reclamation Plan.

d. The landscape setback along the Olive Street frontage shall be planted with native plants, groundcover, and trees. A non-deciduous vine shall be planted that will be trained to grow upon the fence and block wall, both to obscure the site and deter graffiti. The landscape plan shall be subject to the review and approval of the City Engineer and Community Development Director.

e. The landscape setback along the western portion of the site shall be planted with native plants, groundcover, and trees. The landscape plan shall be subject to the review and approval of the City Engineer and Community Development Director.

f. The existing landscape setback along the eastern and southern portion of the site shall be cleaned up and all trees trimmed where necessary, as determined by the Community Development Director. Any new landscaping along this setback shall be native groundcover, plants, and trees. The setback shall be maintained with a neat and clean appearance on an ongoing basis.

16. Applicant acknowledges that the City of Irwindale may modify its Q zone to create a Quarry Overlay Zone providing mining standards applicable to the Site and other mining sites in the City pursuant to the terms of the Development Agreement.

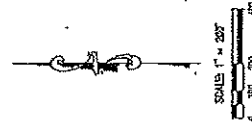
EXHIBIT "B-1"
MANNER OF RECLAMATION

B-1-1

EXHIBIT B-1

Page 1 of 2

MANNER OF RECLAMATION, PHASE I



- LEGEND
- PLANT AREA, REED BEDS (WITH GRASS) (FOR LIONS DEN VALLEY)
 - RECLAMATION AREA, REED BEDS (WITH GRASS) (FOR LIONS DEN VALLEY)
- NOTES: RECLAMATION TO BE COMPLETED BY ELEVATION 605 FEET, AND ABOVE

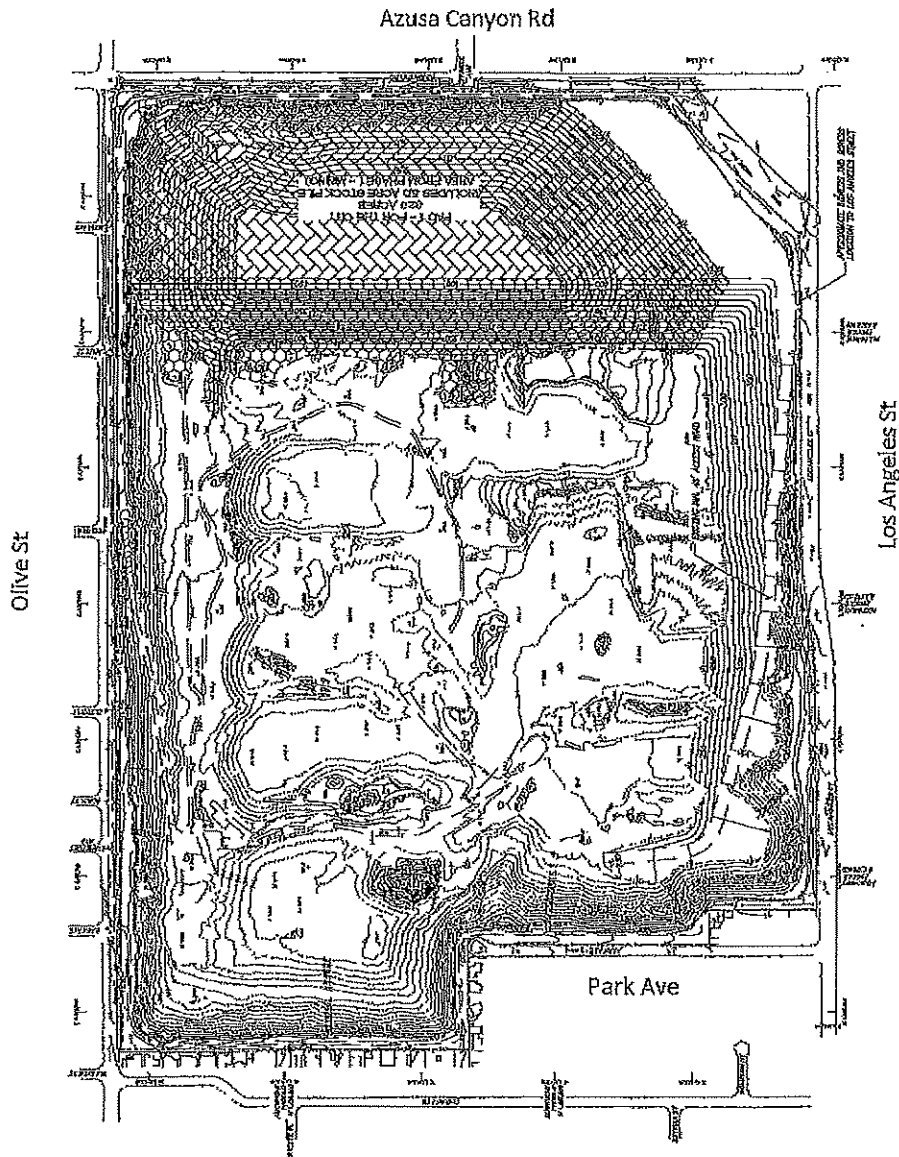


EXHIBIT B-1

Page 2 of 2

MANNER OF RECLAMATION, PHASE II

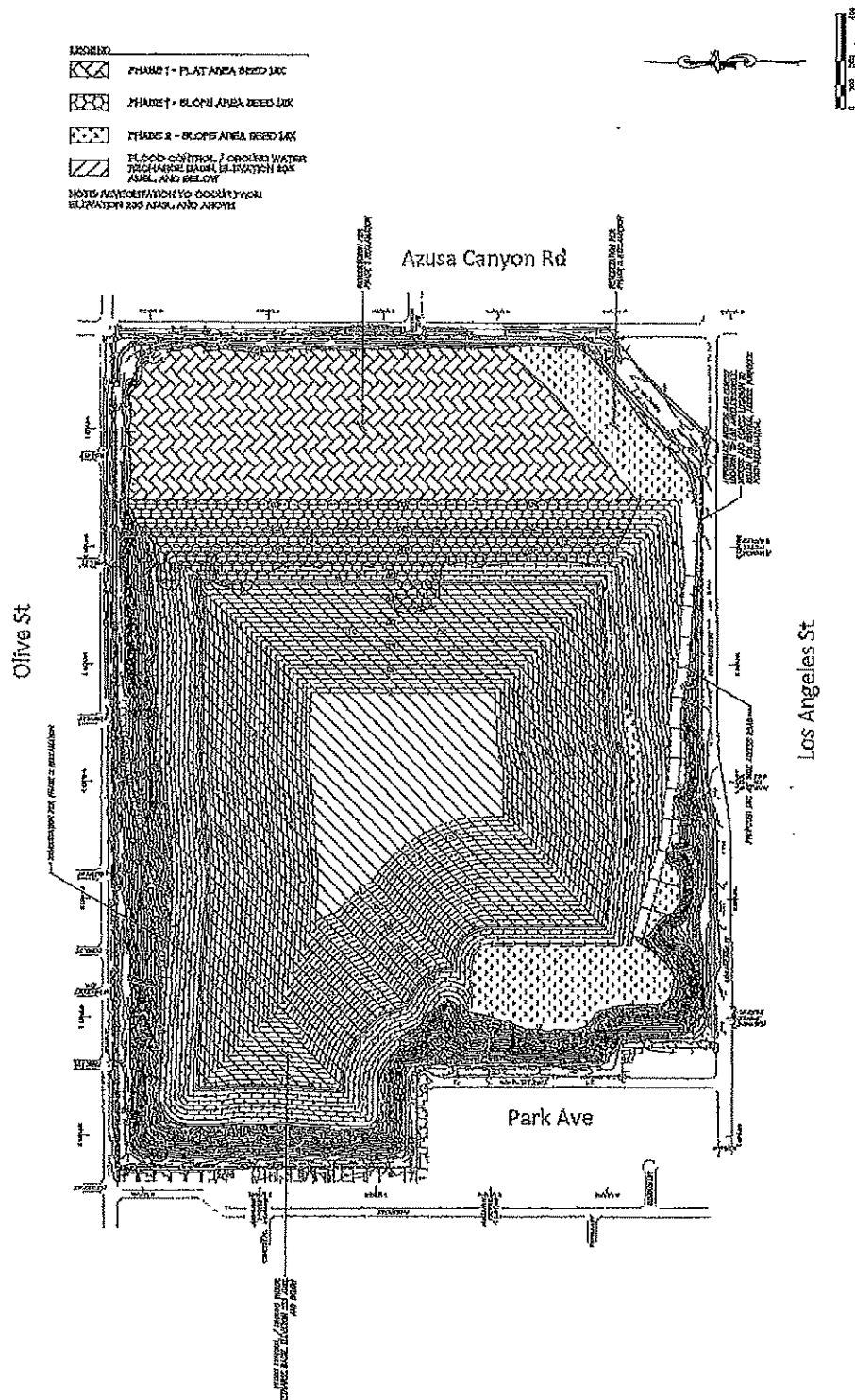


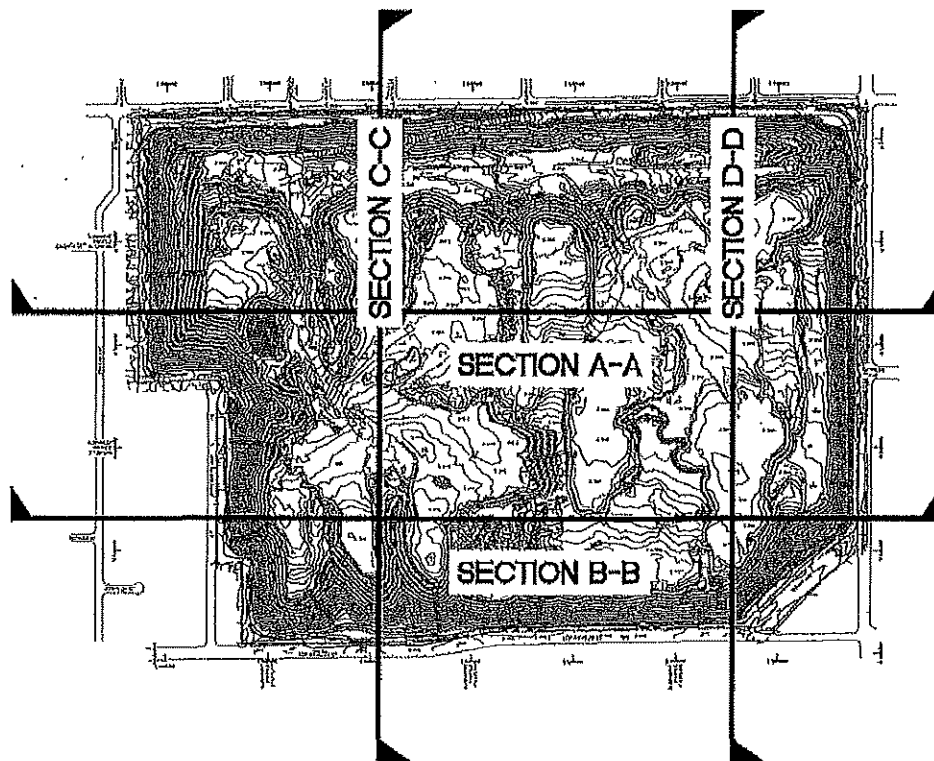
EXHIBIT "B-2"
TYPICAL SLOPE CROSS SECTIONS

B-2-1

EXHIBIT B-2

Page 1 of 3

SITE CROSS-SECTIONS



CROSS-SECTION KEY MAP

NTS

SCALE: 1" = 200'

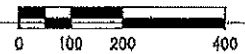


EXHIBIT B-2

SITE CROSS-SECTIONS

Page 2 of 2

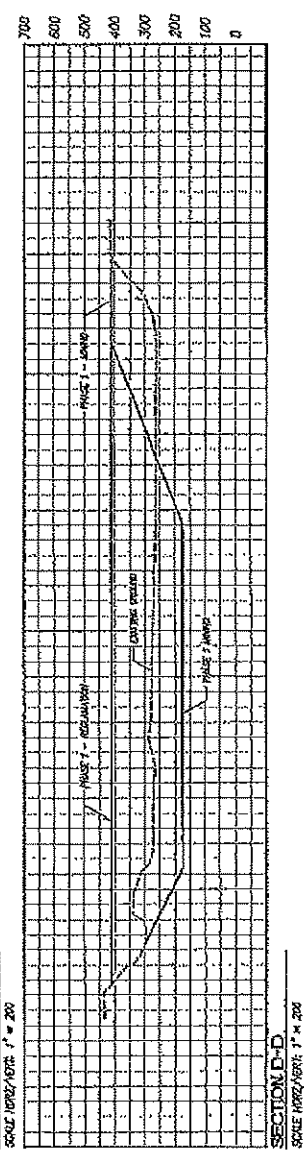
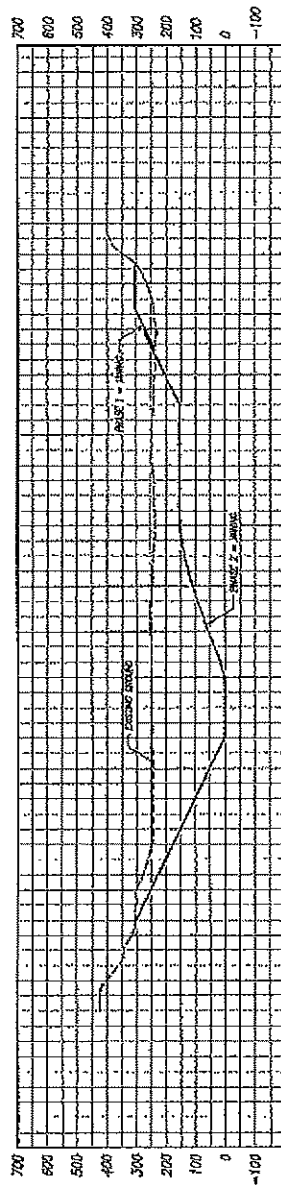
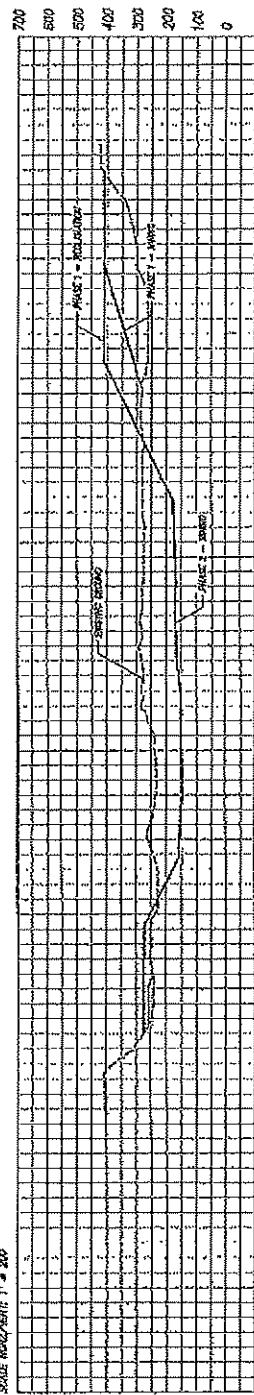
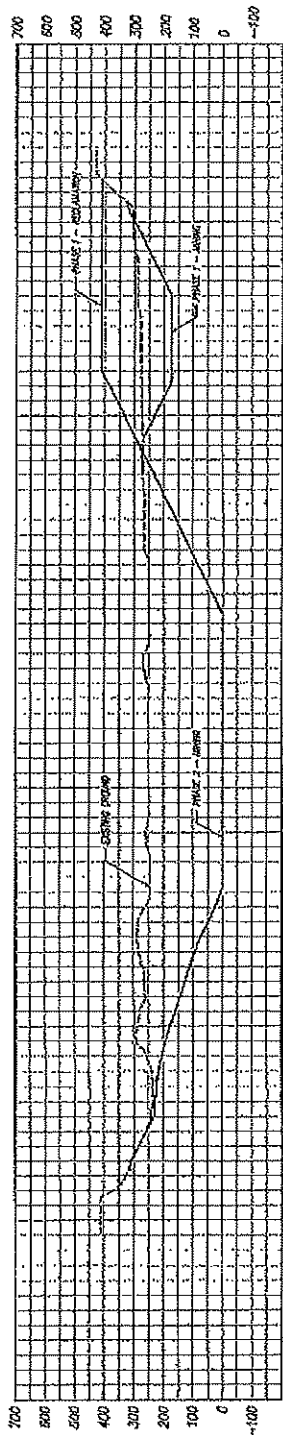


EXHIBIT "B-3"
LOCATION OF NEW ACCESS POINT AND ROAD

B-3-1

LOCATION OF NEW ACCESS POINT AND ROAD



EXHIBIT "C"

SCHEDULE OF PERFORMANCE

ITEM TO BE PERFORMED		TIME FOR PERFORMANCE	AGREEMENT REFERENCE
1.	Planning Commission holds public hearing on this Agreement, Reclamation Plan and Financial Assurances	November 19, 2014	Recitals
2.	City Council conducts first reading of Ordinance approving this Agreement and License Agreement	December 3, 2014	Recitals
3.	City Council conducts second reading of Ordinance approving this Agreement	December 10, 2014	Recitals
4.	Developer executes the Reclamation Plan	On or before December 9, 2015	1.3(b)
5.	Effective Date of this Agreement	December 9, 2015	§ 2.17
6.	City records Agreement	Within 10 days of execution by all parties, which execution shall occur by December 9, 2015	§ 18.16
7.	Developer commences construction of relocated road to intersection of Cypress and Los Angeles Streets	Within 45 days of the Effective Date	Exhibit B, § A.1
8.	Developer delivers to City first payment of \$2,500,000	January 7, 2016.	§ 4.11(b) and License Agreement
9.	Developer prepares Emergency Plan as attachment to Reclamation Plan	March 8, 2016 (90 days following the date at Event No. 6 above).	Exhibit B, § C.5

ITEM TO BE PERFORMED		TIME FOR PERFORMANCE	AGREEMENT REFERENCE
10.	Developer prepares plans for implementation of erosion and drainage measures	April 7, 2016 (120 days following the date at Event No. 4 above).	Exhibit B, § C.2
11.	Developer completes construction of relocated access road at Los Angeles Street	Within two (2) years of the Effective Date.	Exhibit B, § A.1
12.	Developer commences mining operations	Concurrently with Event No. 11.	Exhibit B, § A.2
13.	Developer delivers to City second payment of \$2,500,000	January 5, 2017 (12 months following the date at Event No. 8 above).	§ 4.10(b)
14.	Developer delivers to City third payment of \$2,500,000	January 4, 2018 (24 months following the date at Event No. 8 above).	§ 4.10(b)
15.	Developer delivers to City annual monitoring fee and documentation showing good faith compliance with Agreement	No later than December 12 of each year of term, beginning on December 12, 2016	§ 11.1
16.	City and Developer review performance of parties under this Agreement	No later than February 1 of each year of term, beginning in 2017	§ 11.1
17.	Developer completes Phase I mining	No later than four (4) years after Event 12, unless the rate of mining is amended to expedite extraction as contemplated in this Agreement.	§ 7.0 & Exhibit B, § 5(c)&(d)
18.	Developer delivers to City fourth payment of \$2,500,000	January 7, 2019 (36 months following the date at Event No. 8 above).	§ 4.10(b)

ITEM TO BE PERFORMED		TIME FOR PERFORMANCE	AGREEMENT REFERENCE
19.	Developer commences Phase I reclamation and Phase II mining	Concurrently with Event No. 17	§ 7.0 and Exhibit B, §§ A.2.b and A.3.a and Reclamation Plan
20.	Developer completes reclamation of Development Parcel	No later than December 31, 2034, unless the rate of mining is amended to expedite extraction as contemplated in this Agreement.	§ 7.0 and Exhibit B, § A.3.a and Reclamation Plan
21.	Developer completes mining Phase II	December 31, 2050, unless the rate of mining is amended to expedite extraction as contemplated in this Agreement.	§ 7.0 and Exhibit B, § A.2.b and Reclamation Plan
22.	Developer completes Phase II reclamation	December 31, 2050, unless the rate of mining is amended to expedite extraction as contemplated in this Agreement.	§ 7.0 and Exhibit B, § A.3.b and Reclamation Plan

It is understood that the foregoing Schedule of Performance is subject to all of the terms and conditions set forth in the text of the Agreement. The summary of the items of performance in this Schedule of Performance is not intended to supersede or modify the more complete description in the text; in the event of any conflict or inconsistency between this Schedule of Performance and the text of the Agreement, the text shall govern.

The time periods set forth in this Schedule of Performance may be altered or amended only by written agreement signed by both City and Developer. A failure by either party to enforce a breach of any particular time provision shall not be construed as a waiver of any other time provision. The City Manager shall have the authority to approve extensions of time without City Council action not to exceed a cumulative total of 180 days.

Exhibit "D"

RECLAMATION PLAN DRAWINGS

The following Reclamation Plan drawings provide facility locations and the manner of mining and reclamation including depths, sequencing, tons mined and backfill volume information referred to in Exhibit B "Scope of Development". The Reclamation Plan drawings listed below are provided in reduced 11" x 17" prints hereafter.

Title

Title Sheet

Maximum Mining Extent

Reclamation Sequence Plan

Mine & Reclamation Fill Phasing

Reclamation Revegetation Plan

[illegible][illegible][illegible]

FINAL SPECIFICATIONS SHALL BE SUBMITTED BY AUTOMANAGE WITH THE "CONTRACTS OF GRANTING AND EROSION CONTROL, RINDALE, CALIFORNIA", JULY 8 2004 AND WILL ALSO BE IN LINE WITH THE APPROVED RETENTION PLAN.

[illegible][illegible]

NAME	Mr. J. H. Smith
ADDRESS	123 Main St., New York, N.Y.
CITY	New York
STATE	N.Y.
COUNTRY	U.S.A.
TELEPHONE	NY 1-2345
DATE	Jan 15, 1950
TIME	10:30 AM
FROM	Mr. J. H. Smith
TO	Mr. J. H. Smith
SUBJECT	Mr. J. H. Smith
REMARKS	Mr. J. H. Smith

APPROVED BY: _____
CITY OF WASHINGTON

DATE _____

SECTION / CITY ENGINEER _____

DATE

OLIVE H
COVER 8
IRVINDALE CA

DEVELOPMENT AGENCY
PIT
HEET
ALIFORNIA

HS	
D	

WG. NO. 1 OF 7

UNITED ROCK PRODUCTS
1245 E. ASHLOW HWY
IRVINGDALE, CA 91708
PHONE (818) 738-1141
CONTACT: MUSEY CARLOS
HP GENERAL MANAGER

CITY OF RIVERSIDE
2050 N. MICHIGAN AVE.
RIVERSIDE, CA 92506
(951) 514-1122

ENTIREMENT AGENT
ENTIREMENT INC.
3511 CAMINO DEL RIO SOUTH STE 405
SAN DIEGO, CA 92108
PHONE (619) 264-6572
CONTACT: CHRISTAL HALLMAN, PROJECT LEAD

TOPOGRAPHY SOURCE
CITY OF LINDSEY 2012
SOURCE OF MAP LAYERS

SHEET INDEX

LEGEND

YOE / YOE OF SLOPE

PAGE 1

CITY 2,015,000 CIL YARD

EXPORT 724,000 CIL YARD

DRIVE 1 - 854 414125

EXPENSE 0 CH. YARDS
 18,742,000
 CH. YARDS

[illegible]

OLIVE PIT
COVER SHEET

10

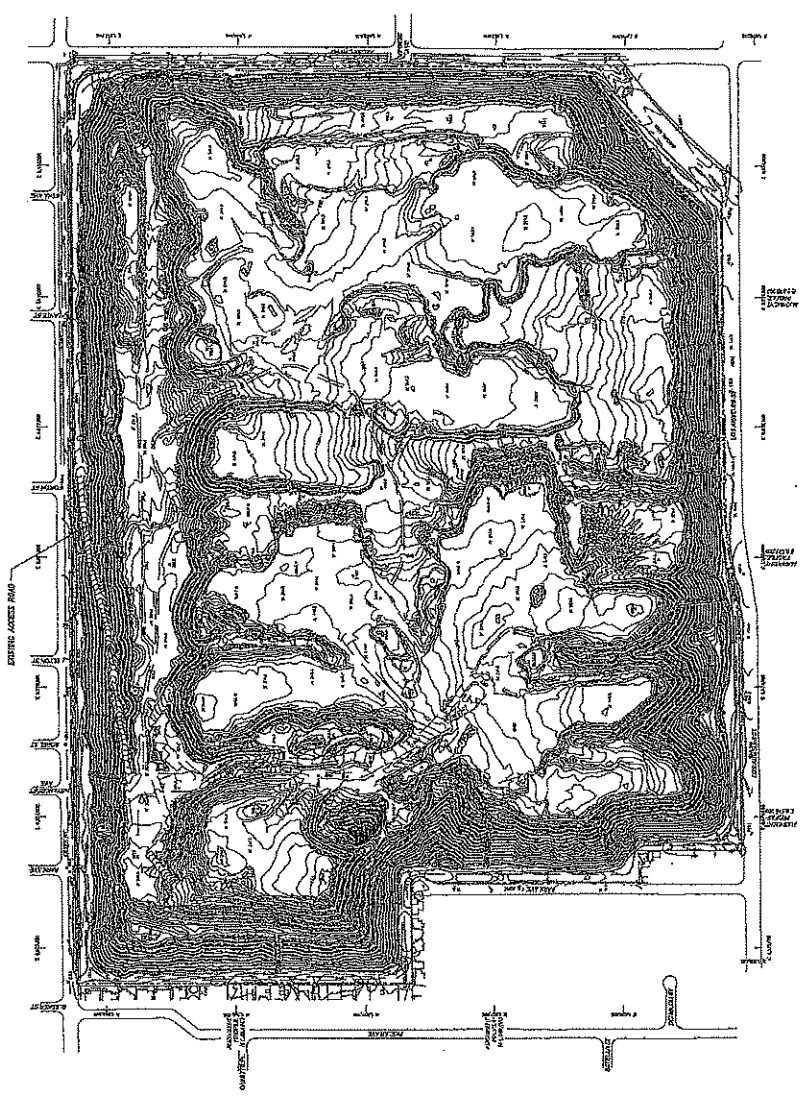
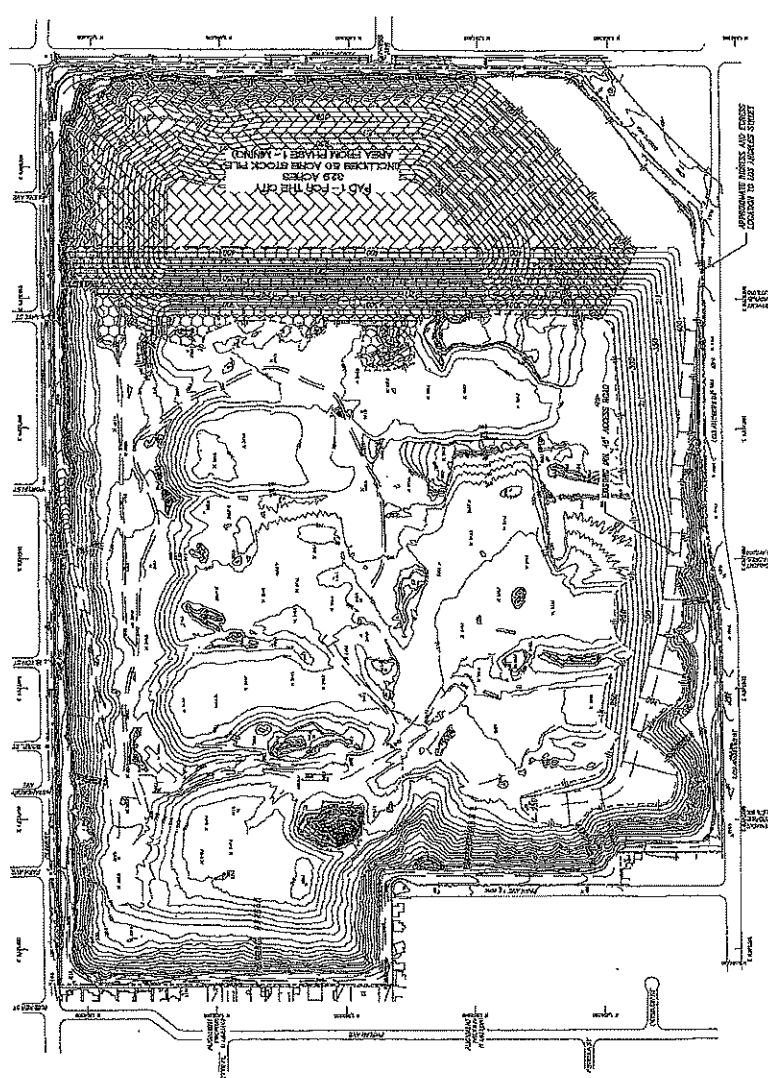


EXHIBIT D

RIVINDALE COMMUNITY REDEVELOPMENT AGENCY OLIVE PIT EXISTING CONDITIONS MAP RIVINDALE, CALIFORNIA		DWG. NO. SHEET 2 OF 7	
CITY OF RIVINDALE APPROVED BY: _____ PERIOD: _____		DATE: _____	
CHANGING THE CITY OF RIVINDALE PERIOD: _____ PERIOD: _____ PERIOD: _____ PERIOD: _____ PERIOD: _____		PERIOD: _____ PERIOD: _____ PERIOD: _____ PERIOD: _____ PERIOD: _____	
REVISIONS		REFERENCES	
NO.	DATE	DESCRIPTION	REFERENCE
1	10/1/77	ISSUED FOR REVIEW	
2	10/1/77	ISSUED FOR REVIEW	
3	10/1/77	ISSUED FOR REVIEW	
4	10/1/77	ISSUED FOR REVIEW	
5	10/1/77	ISSUED FOR REVIEW	
6	10/1/77	ISSUED FOR REVIEW	
7	10/1/77	ISSUED FOR REVIEW	
8	10/1/77	ISSUED FOR REVIEW	
9	10/1/77	ISSUED FOR REVIEW	
10	10/1/77	ISSUED FOR REVIEW	



- LEGEND
- FLAT AREA (SEEDED 100% DENSE GRASS 1' FROM MOORE DETAILS)
 - SLOPE AREA (SEEDED 100% DENSE GRASS 1' FROM MOORE DETAILS)
 - NOTES REPRESENTATION TO OCCUR FROM ELEVATION 250 ANGL AND ABOVE

EXHIBIT D

SCALE: 1" = 200'

PRINDALE COMMUNITY DEVELOPMENT AGENCY OLIVE PT PHASE 1 - RECLAMATION PRINDALE, CALIFORNIA		DWG. NO. SHEET 4 OF 7
CITY OF PRINDALE ATTACHED BY: PRINDALE COMMUNITY DEVELOPMENT AGENCY / CITY ENGINEER DATE:		
ChangKwanDams DATE: 01/15/2010 PROJECT: PRINDALE COMMUNITY DEVELOPMENT AGENCY PROJECT NO: 10000000000000000000 PROJECT NAME: PRINDALE COMMUNITY DEVELOPMENT AGENCY PROJECT LOCATION: PRINDALE, CALIFORNIA PROJECT SIZE: 10000000000000000000		
REFERENCES		
REVISIONS		

AMENDMENT TO DEVELOPMENT AGREEMENT FOR OLIVE PIT

THIS AMENDMENT TO DEVELOPMENT AGREEMENT FOR OLIVE PIT ("Amendment") is entered into as of March 14th, 2017, by and between the **CITY OF IRWINDALE**, a municipal corporation (the "City"), and **UNITED ROCK PRODUCTS CORPORATION**, a Delaware corporation ("Developer"). The City and Developer may be referred to collectively as the "Parties" and individually as a "Party."

RECITALS

WHEREAS, on December 9, 2015, the City and Developer entered into that certain Development Agreement for Olive Pit (the "Development Agreement") to excavate and reclaim the inactive 189.74 acre mining site known as the Olive Pit and identified as APN 8415-001-906, as such Site is further described in the Development Agreement;

WHEREAS, Section 9.1 of the Development Agreement, entitled "Initiation of Amendment," states as follows, "... should Developer determine in its sole discretion, and be able to document such determination to the City, that commercial production warrants an increase in the average annual excavation rate designated for the Project, Developer shall have the right to apply for an amendment to such average production rate and the City agrees to amend this Agreement to accomplish such revised average rate, subject to compliance with CEQA and implementation of any required mitigation measures;"

WHEREAS, on September 27, 2016, Developer submitted a request for an increase in the average annual rate of mining from 1 million to 1.5 million tons per year (the "Application"), which will reduce the overall timeline of mining and reclamation of the Site by approximately ten (10) years, from approximately thirty-two (32) years to between twenty-two (22) and twenty-three (23) years;

WHEREAS, on December 14, 2016, the City Council received and filed Addendum No. 1 ("Addendum No. 1") to the Certified Final Environmental Impact Report prepared by Harvey Consulting Group, LLC, and reviewed by City staff, which concludes that no further environmental impacts arise from the request to increase the average annual rate of mining at the Site requested in the Application, subject to some minor revisions to mitigation measures;

WHEREAS, Section 9.4 (a) of the Development Agreement further provides that "Implementation of the Project may require minor modifications of the details of the Development Plan and performance of the Parties under this Agreement. The parties desire to retain a certain degree of flexibility with respect to those items covered in general terms under this Agreement. Therefore, modifications of the Development Plan agreed to by both Developer and City, which are found by the City Manager to be non-substantive and procedural consistent with the terms of this Section 9.4 shall not require modification of this Agreement, but, instead, may be approved administratively by the City Manager in writing;"

WHEREAS, although Section 9.4 (b) provides general guidance of what changes are presumed to be minor modification as those that do not change certain aspects of the Project by

more than 10%, in light of the Addendum's finding that no environmental impacts result triggering the preparation of additional CEQA documentation by the revised annual rate of mining and reduced timeline for the Project sought in the Application, the City Manager has concluded that the Application qualifies as a non-substantive and procedural change consistent with the terms of Section 9.4 (a); and

WHEREAS, the Parties wish to enter into this Amendment to amend certain provisions of the Development Agreement.

AMENDMENT

NOW, THEREFORE, the City and Developer hereby agree to amend the Development Agreement as follows:

1. **Recitals.** The parties find that the above recitals are true and correct and incorporate them herein.
2. **Section 3.1.** Section 3.1 of the Development Agreement, entitled "Term," shall be amended by deleting the first sentence and replacing it with the following:

"Provided the parties duly approve the License on or before the Effective Date, the term of this Agreement (the "Term") shall commence on the Effective Date and shall continue until no later than December 31, 2041, when final reclamation shall be accomplished for the Site, in accordance with Article 7.0., when final reclamation shall be accomplished for the Site, in accordance with Article 7.0. The parties agree that the effectiveness of this Agreement shall be void if the License approved by the parties terminates for any reason at any time during the Term. Mining operations and reclamation authorized by this Agreement and the Reclamation Plan shall be conducted during the times set forth in the Schedule of Performance. In the event Developer has not completed its performance hereunder upon expiration of the term, the City Council may extend the Term in its reasonable discretion and seek specific performance in lieu of accepting termination but this right shall not preclude City from exercising any other rights hereunder for such violation. Additionally, based on Developer's access and inspection of the available aggregate reserves at the Site before the Effective Date, should the parties desire to have Developer continue to mine beyond the permitted depth to secure the additional reserves at the Site, this Agreement may be amended, subject to the mutual agreement of the parties, separate negotiation of the extension and amendment to the License, subject to compliance with CEQA. Notwithstanding the foregoing, this Agreement shall terminate when reclamation, as described in this Agreement and the Reclamation Plan, as may be duly amended by the parties, is complete."

3. **Exhibit B, Section A.2.a.** Section A.2.a. of Exhibit B to the Development Agreement, entitled "Mining Phase 1," shall be amended by deleting the first sentence of the last paragraph and replacing it with the following:

“Developer shall extract an average of one million five hundred thousand (1,500,000) tons per year during Phase I but no more than the total amount approved per the certified EIR, or any duly-approved amendment, addendum or supplement thereto, including but not limited to Addendum No. 1. Developer further agrees to abide by all conditions and mitigation measures in the EIR and Addendum No.1.”

4. **Exhibit B, Section A.2.b.** Section A.2.b. of Exhibit B to the Development Agreement, entitled “Mining Phase II,” shall be amended by adding the following paragraph at the end of the Section:

“Developer shall extract an average of one million five hundred thousand (1,500,000) tons per year during Phase II, but no more than the total amount approved per the certified EIR, or any duly approved amendment, addendum or supplement thereto, including but not limited to Addendum No. 1.”

5. **Full Force and Effect.** Except as expressly modified herein, all other provisions of the Development Agreement shall remain unmodified and in full force and effect.

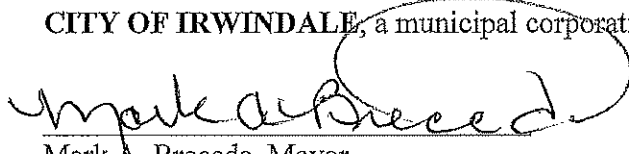
6. **Corporate Authority.** The persons executing this Amendment on behalf of the parties hereto warrant that (i) such party is duly organized and existing, (ii) they are duly authorized to execute and deliver this Amendment on behalf of said party, (iii) by so executing this Amendment, such party is formally bound to the provisions of this Amendment, and (iv) the entering into this Amendment does not violate any provision of any other agreement to which said party is bound.

[SIGNATURES APPEAR ON FOLLOWING PAGE]

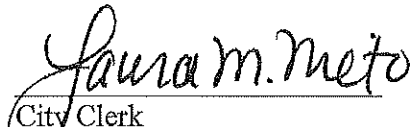
IN WITNESS WHEREOF, the City and Developer have executed this Amendment on the date first above written.

"CITY"

CITY OF IRWINDALE, a municipal corporation

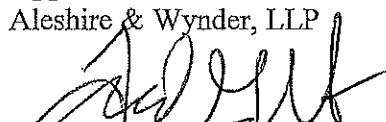

Mark A. Breceda, Mayor

Attest:


City Clerk

Approved as to form:

Aleshire & Wynder, LLP


Fred Galante, City Attorney

"DEVELOPER"

UNITED ROCK PRODUCTS CORPORATION, a
Delaware corporation


By: _____
Name: David Martinez
Title: President

[END OF SIGNATURES]



A COLAS COMPANY

United Rock Products
1245 E. Arrow Hwy.
Irwindale, CA 91706
(714) 578-9600 Phone
(626) 357-9508 Fax
www.unitedrock.com

November 16, 2022

Marilyn Simpson
Community Development Director
City of Irwindale
5050 N. Irwindale Ave
Irwindale, CA 91706

RE: United Rock Olive Pit – CA Mine ID #91-19-0052
Approval for Application Submittal

Dear Mrs. Simpson,

United Rock Products (URP) requests the City of Irwindale's (Property Owner) approval to submit an application to modify the Development Agreement (DA) for the Olive Pit. URP seeks to modify the existing conditions of the DA as follows:

Exhibit B, Section A.2.a "Mining Phase I"

- Increase the annual tonnage from an average of 1.5 million tons per year to a maximum of 2.0 million tons per year.

Exhibit B, Section A.2.b "Mining Phase II"

- Increase the annual tonnage from an average of 1.5 million tons per year to a maximum of 2.0 million tons per year.

Exhibit B, Section A.1 "Access Road Relocation"

- Modify the entrance of the site to allow for trucks to enter off of Azusa Canyon Road by the Los Angeles County Flood Control gate.

This request is for the City to approve the signing of the application as the Property Owner. This request does not grant URP the approval of a project but would allow URP to submit an application to the City to evaluate and conduct the proper environmental review of the proposed modifications to the DA. URP understands that this request would also include the modification of any other land use entitlements related to the site, which may include the Reclamation Plan and Environmental Impact Report (EIR).

If you have any questions or require further information, please let me know.

Sincerely,

United Rock Products

A handwritten signature in black ink, appearing to be 'JC' or similar, written in a cursive style.

Jeff Cameron

Environmental Manager

cc: Julian Miranda, City Manager
Lisa Chou, Associate Planner
Bill Boyd
Mark Pachura

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

City of
IRWINDALE
AGENDA REPORT

Date: January 25, 2023
To: Honorable Mayor and Members of the City Council
From: Julian Miranda, City Manager
Issue: Settlement Agreement between Five Points, LP and City of Irwindale regarding settlement of the lawsuit Five Points, LP vs. City of Irwindale, Los Angeles County Superior Court, Case No. 22STCV01394

City Manager's Recommendation:

1) Approve the Settlement Agreement between the City of Irwindale and Five Points, LP regarding settlement of the lawsuit Five Points, LP vs. City of Irwindale, Los Angeles County Superior Court, Case No. 22STCV01394; 2) Authorize the City Manager to execute the Settlement Agreement subject to City Attorney approval as to form with authorization to the City Manager to approve any non-substantive changes to the agreement prior to execution

Administrative Action:

Prepared and Submitted by:

Adrian Guerra, City Attorney

Electronically Approved

Reviewed by:

Adrian Guerra, City Attorney

Electronically Approved

Approved by:

Julian Miranda, City Manager



Background and Analysis:

This Item was presented to the City Council at its special meeting of January 12, 2023. By unanimous vote of the City Council, the Item was continued to a date uncertain. Therefore, this Item is being presented to the City Council for further consideration, and includes modified dates for further consideration of the Revised Project, as set forth herein.

In November 2015, the City and M&A Gabae, LLC (predecessor to Five Points, LP as developer) entered into a Purchase and Sale and Development Agreement for the property located at 5175 Vincent Avenue. The agreement provided for the sale of the property by the City as Successor Agency to the Irwindale Community Redevelopment Agency to Five Points for future development of the property for light industrial and/or commercial facilities.

Five Points, LP ("Five Points") as the developer of the property submitted applications to the City for the development and construction of a single-story ±545,735 square-foot speculative concrete tilt-up building located at 5175 Vincent Avenue. The developer submitted an Environmental Impact Report (SCH #2018121056) for approval by the City Council and applied for (1) Site Plan and Design Review to approve the proposed site plan, which includes site configuration, design, location, and impact of the proposed use, and the compliance of the Project with the established Zoning Code standard and the "City of Irwindale Commercial and Industrial Design Guidelines"; (2) a General Plan Amendment to approve the change of the current General Plan designation from "Residential" to "Industrial/Business Park"; and (3) Approval of the Lot Line Adjustment.

On October 13, 2021, the City Council held a public hearing on the same, and denied the permit applications with a finding that the benefits did not outweigh the significant unavoidable environmental impacts on air quality identified in the Environmental Impact Report, and declined to adopt a Statement of Overriding Considerations.

On November 19, 2021, Five Points submitted a claim for damages to the City for \$20 million, alleging claims for (1) breach of contract, (2) breach of implied-in-fact contract; (3) breach of the covenant of good faith and fair dealing; (4) promissory estoppel based on the purchase and sale agreement. On December 8, 2021, the City Council denied the claim.

On January 12, 2022, Five Points filed suit against the City in Los Angeles County Superior Court, Case No. 22STCV01394, alleging (1) breach of contract, (2) breach of the implied covenant of good faith and fair dealing, (3) promissory estoppel, declaratory relief, and (4) taking of property without just compensation in violation of the 5th & 14th Amendments of the U.S. Constitution, claiming that the City breached its contractual obligations and harmed Five Points by refusing to certify the Final Environmental Impact Report ("FEIR"), and approve the site plan and design review for the proposed Project. Five Points is claiming approximately \$20 million in damages resulting from the City's denial.

Five Points filed a First Amended Complaint on June 22, 2022. On August 8, 2022, the City filed a demurrer to Five Points' First Amended Complaint, which was set for hearing on January 11, 2023 at 8:30 a.m. In order to facilitate the Parties' drafting and approval of the settlement agreement, the City filed a Notice of Withdrawal of Hearing Reservation Date and Continuance of Hearing Date, withdrawing the January 11, 2023 demurrer date and continuing it to March 27, 2023.

City Staff and Five Points have been working together for the past year to come to a settlement of the litigation. The parties have now agreed to a conceptual settlement framework, subject to approval by the City Council of a formal settlement agreement. As part of settlement discussions, Five Points has designed and proposed a revised version of the Project that reduces the square footage of the proposed structure to 495,000 square feet and includes additional features to address concerns raised during prior City hearings (the "Revised Project").

The attached settlement agreement encompasses the following terms of the proposed settlement:

1. The parties agreed to continue the demurrer hearing date, which was set for January 11, 2023. The City reserved March 27, 2023 as the new hearing date for the demurrer and withdrew the January 11, 2023 date to allow finalization of the settlement terms. The City will re-file its demurrer under the March 27, 2023 date. The parties have agreed that the demurrer date can be continued thereafter as needed to accommodate the settlement.

2. Pursuant to the Parties' stipulation, the trial date for this matter was continued to November 27, 2023 and litigation was stayed until March 22, 2023.

3. The City agrees to consider the Revised Project under the following schedule:

a) The City's CEQA consultant will prepare an amended air quality analysis and produce a Revised Final Environmental Impact Report ("Revised FEIR") that does not require recirculation.

b) On March 15, 2023, the Planning Commission will hold a duly noticed public hearing and consider whether to recommend approval or denial of the Revised Project to the City Council.

c) On April 12, 2023, the City Council will hold a duly noticed public hearing and consider whether to approve or deny the Revised Project.

d) Five Points agrees that the City will utilize its best efforts to meet these dates, however these dates may be continued a total of four times due to the discretion and police power authority of the Planning Commission and/or City Council.

4. Five Points agrees to indemnify the City for any challenges to the settlement and project, and continue its legal obligations to cover and reimburse the City for any and all CEQA costs, and costs of processing the Revised Project, including consultants on behalf of the City, and agrees to continue its indemnity obligations for any challenge to the City's approval of the Revised Project.

5. Five Points will hold a community outreach meeting sometime prior to City Council consideration of the project.

6. Upon the City Council's approval of the Revised Project, Five Points will dismiss the lawsuit with prejudice.

7. The terms of the PSDA remain intact.

8. Both parties bear their own attorneys' fees and costs.

It is recommended that the City Council approve the proposed settlement agreement. Following approval of the settlement agreement, the City will commence processing the Revised Project in accordance with the agreed upon schedule. All associated costs regarding the development will be reimbursed by Five Points.

Fiscal Impact:

None

Attachments:

Settlement Agreement between Five Points and City of Irwindale

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (“Agreement”) is made by and between Five Points, LP, formerly known as Five Points, LLC (“Five Points”), on the one hand, and the City of Irwindale (the “City”), on the other hand. Each party individually is referred to as a “Party” and collectively they are referred to as the “Parties.”

RECITALS

A. On or about November 15, 2015, the City and M&A Gabae, a California limited partnership (M&A), entered into the Agreement for Purchase, Sale & Development of Real Property and Joint Escrow Instructions (the “PSDA”) under which M&A agreed to purchase 25.4 acres in the City of Irwindale more particularly described and depicted in Exhibit A thereto (the “Property”) pursuant to the terms and conditions of the PSDA.

B. M&A assigned its interest in the PSDA to Five Points prior to the close of escrow.

C. Pursuant to the PSDA, in or around May and September 2017, Five Points submitted to the City applications for entitlements for the development of a new concrete tilt-up warehouse/office building of approximately 545,735 square feet with dock loadings on the east and west sides of the structure (the “Project”). The entitlement applications included a Land Use, Development & Subdivision Application with a Site Plan and Design Review Supplemental Form seeking approval of a site plan and design review; a Legislative Action Application seeking approval of a General Plan Amendment to amend the land use designation for a portion of the Property; and an Environmental Assessment for environmental review under the California Environmental Quality Act (“CEQA”) (collectively, the “Entitlement Applications”).

D. The City prepared an Environmental Impact Report (“EIR”), SCH #2018121056, to analyze the environmental impacts of the Project under CEQA.

E. On August 9, 2021, the City’s Planning Commission conducted a duly noticed public hearing on the Project and the Entitlement Applications. The Planning Commission found that the Project benefits do not outweigh the significant and unavoidable air quality impact disclosed in the EIR and recommended that the EIR not be certified and directed City staff to prepare resolutions for a recommendation of denial of the Entitlement Applications.

F. On October 13, 2021, the City Council conducted a duly noticed public hearing on the Project and the Entitlement Applications. At the conclusion of the hearing, the City Council upheld the recommendation of the Planning Commission, declined to certify the EIR and thus declined to approve the Project and the Entitlement Applications.

G. On January 12, 2022, Five Points filed suit against the City in Los Angeles County Superior Court, Case No. 22STCV01394, alleging various claims arising out of the facts set forth in Recitals A-F (the “Lawsuit”).

H. The Lawsuit remains pending. The trial date ~~is currently scheduled for~~ continued to June 26/November 27, 2023 pursuant to the Parties’ stipulation filed in the Lawsuit -

~~That Parties have agreed to stipulate to continue the trial date~~ to facilitate the settlement procedures set forth in this Agreement.

I. As part of settlement discussions, Five Points has designed and proposed a revised version of the Project that reduces the square footage of the proposed structure to 495,000 square feet and includes additional features to address concerns raised during prior City hearings (the "Revised Project").

J. The Parties believe that it is in their respective best interests to establish a process for the City to consider the Revised Project and thereby potentially resolve the claims by and between them related to the Project, the Entitlement Applications, and the Lawsuit in order to avoid the burden, expense, uncertainty, risk, and delay associated with litigation, as set forth below.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing recitals, which are incorporated by reference, and the following consideration, provisions, mutual promises, and agreements contained herein, the Parties agree to the following terms:

1. Continuance of Trial Date and Stay of Lawsuit: ~~Concurrently with the drafting of this Agreement, the Parties are filing~~ filed a Stipulation and [Proposed] Order to ~~subject to the approval of the Court,~~ stay all proceedings and deadlines in the Lawsuit and continue the trial date to November 27, 2023 to facilitate the City hearings contemplated by this Agreement. ~~The Parties agree that they shall use their best efforts to ensure that the Stipulation is entered as an order of the Court. The City shall also ensure that the demurrer hearing, currently scheduled to take place on January 11, 2023 is continued.~~ The City has reserved March 27, 2023, for the continued demurrer hearing and will continue the hearing date further as needed to accommodate the hearings contemplated by this Agreement.

2. City Hearings on Revised Project and Entitlement Applications: The City agrees that through approval of this Agreement, the City Council is directing the Planning Commission to consider the Revised Project under the original Entitlement Applications in accordance with applicable laws and regulations. The City shall notice and hold public hearings before the Planning Commission and City Council to consider approving the Revised Project under the original Entitlement Applications. The City agrees that it shall use its best efforts to ensure that the Planning Commission hearing take place by ~~February 27~~ March 15, 2023, and the City Council hearing by ~~March 22~~ April 12, 2023. The Parties agree and understand that circumstances may occur beyond the City's control and thus the Parties agree that, in those circumstances, continuances of such City hearings may occur up to a total of four times for the Planning Commission and City Council. The City cannot promise or guarantee any general or particular outcome of the hearings or final decision on the Revised Project and Entitlement Applications, which are within the discretion of the Planning Commission and City Council, including in accordance with the PSDA and applicable law. Nothing herein shall commit the City Council to any specific discretionary decision.

In order for the City to consider the Revised Project per the schedule set forth in this Agreement, Five Points agrees that it will deliver to the City in a reasonable time period the following for the Revised Project: (1) ten sets of conceptual plans, size 11" x 17" in addition to one set of full size (24" x 36") plan set, to include the site plan, floor plan, elevations, landscaping; (2) an additional site plan that includes the surrounding land uses – not just labels – but drawing the areas (the purpose of which is to provide a visual setting of the project within the area); (3) color set of documents for the meetings. Five Points further agrees that it will submit plans directly to Los Angeles County Fire Department via EPIC LA necessary for the Revised Project, as well as provide to the City a 500" Radius map and property owner labels (2 sets) for mailing.

3. Dismissal of the Lawsuit with Prejudice: In the event that the City Council approves at the hearing required by Paragraph 2 of this Agreement the Revised Project and Entitlement Applications, or a version of the Revised Project and Entitlement Applications substantially similar to that which is currently proposed by Five Points and is acceptable to Five Points, Five Points agrees that it shall file a dismissal of the Lawsuit with prejudice within five business days of the adoption by the City Council of a binding and final Resolution approving the Entitlement Applications.

4. Community Outreach Meeting. Five Points agrees that it shall hold one community outreach meeting to present the Modified Project prior to the City Council hearing required by Paragraph 2 of this Agreement. Five Points agrees to provide at the Community Outreach Meeting an information sheet listing the differences between the original site plan and the reduced size of the project.

5. Environmental Review, Reimbursement Costs, and Indemnification. The Parties agree and understand that the City intends to conduct additional environmental review to supplement the EIR for presentation at the Planning Commission and City Council hearings. Five Points agrees that it shall be responsible for, and shall reimburse the City for, the costs of such additional environmental review on the same terms and conditions as the preparation of the original EIR including CEQA consultant costs and preparation of a supplemental environmental analysis. Five Points further understands that it shall be responsible for reimbursing the City for all other costs for the City's review and processing of the Revised Project consistent with the manner and types of costs previously reimbursed by Five Points for the Entitlement Applications.

Five Points agrees to defend, indemnify, and hold harmless the City its officers, employees, agents and representatives, heirs, and successors from and against any and all legal challenges related to the City's approval of discretionary entitlements including in connection with the Revised Project, Entitlement Applications, and/or this Settlement Agreement

Five Points also understands that standard conditions of project approval include a condition requiring that the applicant defend, indemnify, and hold harmless the City against legal challenges to the approval of discretionary entitlements including in connection with the Revised Project and/or this Settlement Agreement. Five Points has no objection to such a condition and, in the event the City Council approves the Project and the Entitlement Applications, agrees that it shall comply with the condition if a legal challenge is filed.

6. No Amendment of PDSA. Nothing in this Agreement is intended nor shall be construed to amend any part of the PDSA, which shall survive the execution of this Agreement and the Releases of Paragraph 8 hereto.

7. Resolution of Dispute Without Admission of Fault or Liability. The Parties agree that the terms of this Agreement shall in no way be construed to be an admission of fault or liability, whatsoever, by any Party.

8. Release and Discharge: Effective only in the event of a dismissal of the Lawsuit pursuant to Paragraph 3 above, in consideration of the mutually dependent promises and representations herein, and except for the obligations created by this Agreement, the Parties hereby waive its rights pursuant to California Civil Code section 1542 and fully release and forever discharge each other and each other's respective successors, assigns, employees, agents, representatives, and attorneys from and against any and all claims, demands, actions, causes of action, proceedings, obligations, liabilities, damages, losses, costs, and expenses of any nature whatsoever, in law or in equity, known or unknown, foreseen or unforeseen, contingent or non-contingent, that the Parties now have based upon or in any way arising out of or in connection with the City's disapproval of the original Project, the consideration of the Revised Project, and/or this Settlement Agreement. Civil Code section 1542 provides:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR THE RELEASED PARTY.

9. Termination of Agreement. This Agreement shall terminate in the event that the City Council declines to approve the Revised Project and Entitlement Applications at the hearing required by Paragraph 2 of this Agreement or a version of the Modified Project and Entitlement Applications substantially similar to that which is currently proposed by Five Points and is acceptable to Five Points. In such event, Five Points shall have no obligation to dismiss the Lawsuit, the Releases provided by Paragraph 5 of this Agreement shall have no force or effect, the stay of the Lawsuit shall immediately be deemed lifted, and the Parties shall have no further obligation hereunder.

10. Police Power. The City shall maintain its police powers at all times with respect to its consideration of the Revised Project and Entitlement Applications. Nothing contained in this Agreement shall be deemed to limit, restrict, amend or modify, or to constitute a waiver or release of, any valid and applicable ordinances, resolutions, notices, orders, rules, regulations, or requirements of the City, including its departments, commissions, agencies, and boards, and the officers thereof, or any of the City's duties, obligations, rights, or remedies, or the general police powers, rights, privileges, and discretion of the City in furtherance of the public health, welfare, and safety of the inhabitants thereof, including any code enforcement actions. In the event of any conflict, inconsistency, or contradiction between any terms, conditions, or provisions of this Agreement on the one hand, and any of the aforementioned City's rules and powers on the other hand, the provisions of the latter shall prevail and govern in each case.

11. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the Parties, and their respective employees, agents, attorneys, successors, devisees, executors, administrators, assigns, and insurance carriers.

12. Entire Agreement and Amendments. This Agreement constitutes the entire agreement between the Parties hereto and recites the sole consideration of the promises and agreements contained within it. The Parties have read this Agreement and are fully aware of its contents and legal effect. It is expressly understood and agreed that this Agreement may not be altered, amended, modified, or otherwise changed in any respect except by a writing duly executed and authorized by each of the Parties.

13. Attorneys' Fees and Costs. Effective only in the event of a dismissal of the Lawsuit pursuant to Paragraph 3 above, each Party shall bear their own attorneys' fees and/or costs in connection with the Lawsuit and this Settlement Agreement.

14. Interpretation. The provisions of this Agreement shall be liberally construed to effectuate its purpose. The title headings of the respective paragraphs of this Agreement are inserted for convenience only, and shall not be deemed to be part of this Agreement or considered in construing this Agreement. In the event of any dispute concerning this Agreement, the prevailing party shall be entitled to recover its court costs and attorneys' fees, which may be set by the court in the same action or in a separate action brought for that purpose, in addition to any other relief to which such Party may be entitled.

15. Waiver. No provision of this Agreement may be waived unless in a writing signed by each Party. Waiver of any one provision shall not be deemed to be a waiver of any other provision.

16. California Law and Venue. This Agreement shall be deemed to have been executed and delivered within the State of California, and the rights and obligations of the Parties shall be governed by, and construed and enforced in accordance with, the laws of the State of California. The Parties further agree that the venue for all legal proceedings concerning this Agreement shall be in the Superior Court of California of the County of Los Angeles.

17. Agreement Is Voluntary. The Parties acknowledge and agree that they have read this Agreement, that they fully understand their rights, privileges and duties under this Agreement and that they entered into this Agreement voluntarily, on the basis of their own judgment and without coercion, and not in reliance on any promises, representations, or statements made by the other Party other than those contained in this Agreement.

18. Legal Representation and Construction. Each Party acknowledges that it has been represented by counsel, or has had counsel available to it, throughout the pendency of the negotiations of this Agreement. The Parties agree that this Agreement is the product of arms-length negotiations between them, and that this Agreement is executed voluntarily by each of them without being subjected to any duress or undue influence. The Parties further agree that they are to be considered mutual authors of this Agreement.

19. Authority to Execute. Each individual executing this Agreement represents and warrants that it is duly authorized to execute this Agreement and that it is binding in accordance

with its terms. Each Party warrants that it is the true holder of all rights and remedies which it purports to release, and that it has not assigned or transferred any of those rights or remedies to any other individuals and/or entities. Further, by entering into this Agreement, neither Party hereto shall have breached the terms or conditions of any other contract or agreement to which such Party is obligated, which such breach would have a material effect hereon.

20. Good Faith and Further Assurances. The Parties agree that they will act in good faith in abiding by the terms of this Agreement, and in carrying out the obligations of each Party set forth herein and shall not do anything to interfere with or inhibit the ability of the other Party to comply with their respective obligations under the terms of this Agreement. So long as authorized by applicable laws to do so, each of the Parties to this Agreement will do such further acts and execute, acknowledge, and deliver all further documents as may be necessary to fully effectuate the provisions of this Agreement.

21. Notices. Any notice or communication required hereunder between the Parties must be in writing to the following addresses:

For Five Points:

JEFFER MANGELS BUTLER & MITCHELL LLP
Attn: Matthew D. Hinks, Esq.
1900 Avenue of the Stars, 7th Floor
Los Angeles, California 90067
Email: mhinks@jmbm.com

For the City:

ALESHIRE & WYNDER LLP
Attn: Adrian R. Guerra, Esq., City Attorney
18881 Von Karman Avenue, Suite 1700
Irvine, California 92612
Email: aguerra@awattorneys.com

All notices must be in writing and delivered by email, mail (postage prepaid), or by a recognized courier service to the appropriate Party's address or email address set out in this Agreement.

22. Severability: If a court of competent jurisdiction holds any section of this Agreement to be illegal, unenforceable, or invalid for any reason, the validity and enforceability of the remaining sections of this Agreement shall not be effected.

23. Execution: This Agreement may be executed in counterparts which, when taken together, shall constitute one original agreement. An electronic or facsimile signature shall be deemed the same as, and valid as if it were, an original signature.

24. Effectiveness of Agreement. This Agreement shall be effective upon the execution of this Agreement by all Parties.

[Signatures on following page]

DATED: January ____, 2023

FIVE POINTS, LP

By: _____

Name: _____

Title: _____

DATED: January ____, 2023

CITY OF IRWINDALE

By: _____

Name: _____

Title: _____

APPROVED AS TO FORM

DATED: January ____, 2023

JEFFER MANGELS BUTLER & MITCHELL LLP

By: _____

Matthew D. Hinks, Esq.

Attorneys for FIVE POINTS, LP

DATED: January ____, 2023

ALESHIRE & WYNDER LLP

By: _____

Adrian Guerra, Esq., City Attorney

Attorneys for CITY OF IRWINDALE

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RECITALS

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B. M&A assigned its interest in the PSDA to Five Points prior to the close of escrow.

C. Pursuant to the PSDA, in or around May and September 2017, Five Points submitted to the City applications for entitlements for the development of a new concrete tilt-up warehouse/office building of approximately 545,735 square feet with dock loadings on the east and west sides of the structure (the "Project"). The entitlement applications included a Land Use, Development & Subdivision Application with a Site Plan and Design Review Supplemental Form seeking approval of a site plan and design review; a Legislative Action Application seeking approval of a General Plan Amendment to amend the land use designation for a portion of the Property; and an Environmental Assessment for environmental review under the California Environmental Quality Act ("CEQA") (collectively, the "Entitlement Applications").

D. The City prepared an Environmental Impact Report ("EIR"), SCH #2018121056, to analyze the environmental impacts of the Project under CEQA.

E. On August 9, 2021, the City's Planning Commission conducted a duly noticed public hearing on the Project and the Entitlement Applications. The Planning Commission found that the Project benefits do not outweigh the significant and unavoidable air quality impact disclosed in the EIR and recommended that the EIR not be certified and directed City staff to prepare resolutions for a recommendation of denial of the Entitlement Applications.

F. On October 13, 2021, the City Council conducted a duly noticed public hearing on the Project and the Entitlement Applications. At the conclusion of the hearing, the City Council upheld the recommendation of the Planning Commission, declined to certify the EIR and thus declined to approve the Project and the Entitlement Applications.

G. On January 12, 2022, Five Points filed suit against the City in Los Angeles County Superior Court, Case No. 22STCV01394, alleging various claims arising out of the facts set forth in Recitals A-F (the "Lawsuit").

H. The Lawsuit remains pending. The trial date was continued to November 27, 2023 pursuant to the Parties' stipulation filed in the Lawsuit to facilitate the settlement procedures set forth in this Agreement.

I. As part of settlement discussions, Five Points has designed and proposed a revised version of the Project that reduces the square footage of the proposed structure to 495,000 square feet and includes additional features to address concerns raised during prior City hearings (the “Revised Project”).

J. The Parties believe that it is in their respective best interests to establish a process for the City to consider the Revised Project and thereby potentially resolve the claims by and between them related to the Project, the Entitlement Applications, and the Lawsuit in order to avoid the burden, expense, uncertainty, risk, and delay associated with litigation, as set forth below.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing recitals, which are incorporated by reference, and the following consideration, provisions, mutual promises, and agreements contained herein, the Parties agree to the following terms:

1. Continuance of Trial Date and Stay of Lawsuit: The Parties filed a Stipulation and [Proposed] Order to stay all proceedings and deadlines in the Lawsuit and continue the trial date to November 27, 2023 to facilitate the City hearings contemplated by this Agreement. The City has reserved March 27, 2023, for the continued demurrer hearing and will continue the hearing date further as needed to accommodate the hearings contemplated by this Agreement.

2. City Hearings on Revised Project and Entitlement Applications: The City agrees that through approval of this Agreement, the City Council is directing the Planning Commission to consider the Revised Project under the original Entitlement Applications in accordance with applicable laws and regulations. The City shall notice and hold public hearings before the Planning Commission and City Council to consider approving the Revised Project under the original Entitlement Applications. The City agrees that it shall use its best efforts to ensure that the Planning Commission hearing take place by March 15, 2023, and the City Council hearing by April 12, 2023. The Parties agree and understand that circumstances may occur beyond the City’s control and thus the Parties agree that, in those circumstances, continuances of such City hearings may occur up to a total of four times for the Planning Commission and City Council. The City cannot promise or guarantee any general or particular outcome of the hearings or final decision on the Revised Project and Entitlement Applications, which are within the discretion of the Planning Commission and City Council, including in accordance with the PSDA and applicable law. Nothing herein shall commit the City Council to any specific discretionary decision.

In order for the City to consider the Revised Project per the schedule set forth in this Agreement, Five Points agrees that it will deliver to the City in a reasonable time period the following for the Revised Project: (1) ten sets of conceptual plans, size 11” x 17” in addition to one set of full size (24” x 36”) plan set, to include the site plan, floor plan, elevations, landscaping; (2) an additional site plan that includes the surrounding land uses – not just labels – but drawing the areas (the purpose of which is to provide a visual setting of the project within the area); (3) color set of documents for the meetings. Five Points further agrees that it will submit plans directly to Los Angeles County Fire Department via EPIC LA necessary for the Revised

Project, as well as provide to the City a 500" Radius map and property owner labels (2 sets) for mailing.

3. Dismissal of the Lawsuit with Prejudice: In the event that the City Council approves at the hearing required by Paragraph 2 of this Agreement the Revised Project and Entitlement Applications, or a version of the Revised Project and Entitlement Applications substantially similar to that which is currently proposed by Five Points and is acceptable to Five Points, Five Points agrees that it shall file a dismissal of the Lawsuit with prejudice within five business days of the adoption by the City Council of a binding and final Resolution approving the Entitlement Applications.

4. Community Outreach Meeting. Five Points agrees that it shall hold one community outreach meeting to present the Modified Project prior to the City Council hearing required by Paragraph 2 of this Agreement. Five Points agrees to provide at the Community Outreach Meeting an information sheet listing the differences between the original site plan and the reduced size of the project.

5. Environmental Review, Reimbursement Costs, and Indemnification. The Parties agree and understand that the City intends to conduct additional environmental review to supplement the EIR for presentation at the Planning Commission and City Council hearings. Five Points agrees that it shall be responsible for, and shall reimburse the City for, the costs of such additional environmental review on the same terms and conditions as the preparation of the original EIR including CEQA consultant costs and preparation of a supplemental environmental analysis. Five Points further understands that it shall be responsible for reimbursing the City for all other costs for the City's review and processing of the Revised Project consistent with the manner and types of costs previously reimbursed by Five Points for the Entitlement Applications.

Five Points agrees to defend, indemnify, and hold harmless the City its officers, employees, agents and representatives, heirs, and successors from and against any and all legal challenges related to the City's approval of discretionary entitlements including in connection with the Revised Project, Entitlement Applications, and/or this Settlement Agreement

Five Points also understands that standard conditions of project approval include a condition requiring that the applicant defend, indemnify, and hold harmless the City against legal challenges to the approval of discretionary entitlements including in connection with the Revised Project and/or this Settlement Agreement. Five Points has no objection to such a condition and, in the event the City Council approves the Project and the Entitlement Applications, agrees that it shall comply with the condition if a legal challenge is filed.

6. No Amendment of PDSA. Nothing in this Agreement is intended nor shall be construed to amend any part of the PDSA, which shall survive the execution of this Agreement and the Releases of Paragraph 8 hereto.

7. Resolution of Dispute Without Admission of Fault or Liability. The Parties agree that the terms of this Agreement shall in no way be construed to be an admission of fault or liability, whatsoever, by any Party.

8. Release and Discharge: Effective only in the event of a dismissal of the Lawsuit pursuant to Paragraph 3 above, in consideration of the mutually dependent promises and representations herein, and except for the obligations created by this Agreement, the Parties hereby waive its rights pursuant to California Civil Code section 1542 and fully release and forever discharge each other and each other's respective successors, assigns, employees, agents, representatives, and attorneys from and against any and all claims, demands, actions, causes of action, proceedings, obligations, liabilities, damages, losses, costs, and expenses of any nature whatsoever, in law or in equity, known or unknown, foreseen or unforeseen, contingent or non-contingent, that the Parties now have based upon or in any way arising out of or in connection with the City's disapproval of the original Project, the consideration of the Revised Project, and/or this Settlement Agreement. Civil Code section 1542 provides:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR THE RELEASED PARTY.

9. Termination of Agreement. This Agreement shall terminate in the event that the City Council declines to approve the Revised Project and Entitlement Applications at the hearing required by Paragraph 2 of this Agreement or a version of the Modified Project and Entitlement Applications substantially similar to that which is currently proposed by Five Points and is acceptable to Five Points. In such event, Five Points shall have no obligation to dismiss the Lawsuit, the Releases provided by Paragraph 5 of this Agreement shall have no force or effect, the stay of the Lawsuit shall immediately be deemed lifted, and the Parties shall have no further obligation hereunder.

10. Police Power. The City shall maintain its police powers at all times with respect to its consideration of the Revised Project and Entitlement Applications. Nothing contained in this Agreement shall be deemed to limit, restrict, amend or modify, or to constitute a waiver or release of, any valid and applicable ordinances, resolutions, notices, orders, rules, regulations, or requirements of the City, including its departments, commissions, agencies, and boards, and the officers thereof, or any of the City's duties, obligations, rights, or remedies, or the general police powers, rights, privileges, and discretion of the City in furtherance of the public health, welfare, and safety of the inhabitants thereof, including any code enforcement actions. In the event of any conflict, inconsistency, or contradiction between any terms, conditions, or provisions of this Agreement on the one hand, and any of the aforementioned City's rules and powers on the other hand, the provisions of the latter shall prevail and govern in each case.

11. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the Parties, and their respective employees, agents, attorneys, successors, devisees, executors, administrators, assigns, and insurance carriers.

12. Entire Agreement and Amendments. This Agreement constitutes the entire agreement between the Parties hereto and recites the sole consideration of the promises and agreements contained within it. The Parties have read this Agreement and are fully aware of its

contents and legal effect. It is expressly understood and agreed that this Agreement may not be altered, amended, modified, or otherwise changed in any respect except by a writing duly executed and authorized by each of the Parties.

13. Attorneys' Fees and Costs. Effective only in the event of a dismissal of the Lawsuit pursuant to Paragraph 3 above, each Party shall bear their own attorneys' fees and/or costs in connection with the Lawsuit and this Settlement Agreement.

14. Interpretation. The provisions of this Agreement shall be liberally construed to effectuate its purpose. The title headings of the respective paragraphs of this Agreement are inserted for convenience only, and shall not be deemed to be part of this Agreement or considered in construing this Agreement. In the event of any dispute concerning this Agreement, the prevailing party shall be entitled to recover its court costs and attorneys' fees, which may be set by the court in the same action or in a separate action brought for that purpose, in addition to any other relief to which such Party may be entitled.

15. Waiver. No provision of this Agreement may be waived unless in a writing signed by each Party. Waiver of any one provision shall not be deemed to be a waiver of any other provision.

16. California Law and Venue. This Agreement shall be deemed to have been executed and delivered within the State of California, and the rights and obligations of the Parties shall be governed by, and construed and enforced in accordance with, the laws of the State of California. The Parties further agree that the venue for all legal proceedings concerning this Agreement shall be in the Superior Court of California of the County of Los Angeles.

17. Agreement Is Voluntary. The Parties acknowledge and agree that they have read this Agreement, that they fully understand their rights, privileges and duties under this Agreement and that they entered into this Agreement voluntarily, on the basis of their own judgment and without coercion, and not in reliance on any promises, representations, or statements made by the other Party other than those contained in this Agreement.

18. Legal Representation and Construction. Each Party acknowledges that it has been represented by counsel, or has had counsel available to it, throughout the pendency of the negotiations of this Agreement. The Parties agree that this Agreement is the product of arms-length negotiations between them, and that this Agreement is executed voluntarily by each of them without being subjected to any duress or undue influence. The Parties further agree that they are to be considered mutual authors of this Agreement.

19. Authority to Execute. Each individual executing this Agreement represents and warrants that it is duly authorized to execute this Agreement and that it is binding in accordance with its terms. Each Party warrants that it is the true holder of all rights and remedies which it purports to release, and that it has not assigned or transferred any of those rights or remedies to any other individuals and/or entities. Further, by entering into this Agreement, neither Party hereto shall have breached the terms or conditions of any other contract or agreement to which such Party is obligated, which such breach would have a material effect hereon.

20. Good Faith and Further Assurances. The Parties agree that they will act in good faith in abiding by the terms of this Agreement, and in carrying out the obligations of each Party set forth herein and shall not do anything to interfere with or inhibit the ability of the other Party to comply with their respective obligations under the terms of this Agreement. So long as authorized by applicable laws to do so, each of the Parties to this Agreement will do such further acts and execute, acknowledge, and deliver all further documents as may be necessary to fully effectuate the provisions of this Agreement.

21. Notices. Any notice or communication required hereunder between the Parties must be in writing to the following addresses:

For Five Points:

JEFFER MANGELS BUTLER & MITCHELL LLP
Attn: Matthew D. Hinks, Esq.
1900 Avenue of the Stars, 7th Floor
Los Angeles, California 90067
Email: mhinks@jmbm.com

For the City:

ALESHIRE & WYNDER LLP
Attn: Adrian R. Guerra, Esq., City Attorney
18881 Von Karman Avenue, Suite 1700
Irvine, California 92612
Email: aguerra@awattorneys.com

All notices must be in writing and delivered by email, mail (postage prepaid), or by a recognized courier service to the appropriate Party's address or email address set out in this Agreement.

22. Severability: If a court of competent jurisdiction holds any section of this Agreement to be illegal, unenforceable, or invalid for any reason, the validity and enforceability of the remaining sections of this Agreement shall not be effected.

23. Execution: This Agreement may be executed in counterparts which, when taken together, shall constitute one original agreement. An electronic or facsimile signature shall be deemed the same as, and valid as if it were, an original signature.

24. Effectiveness of Agreement. This Agreement shall be effective upon the execution of this Agreement by all Parties.

[Signatures on following page]

DATED: January ____, 2023 **FIVE POINTS, LP**

By: _____

Name: _____

Title: _____

DATED: January ____, 2023

CITY OF IRWINDALE

By: _____

Name: _____

Title: _____

APPROVED AS TO FORM

DATED: January ____, 2023

JEFFER MANGELS BUTLER & MITCHELL LLP

By: _____

Matthew D. Hinks, Esq.
Attorneys for FIVE POINTS, LP

DATED: January ____, 2023

ALESHIRE & WYNDER LLP

By: _____

Adrian Guerra, Esq., City Attorney
Attorneys for CITY OF IRWINDALE

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

City of
IRWINDALE
AGENDA REPORT

Date: January 25, 2023

To: Honorable Mayor and Members of the City Council

From: Julian A. Miranda, City Manager

Issue: Request to approve Amendment No. 3 to the professional consulting contract with De Novo Planning Group for the preparation of additional air quality analysis for the Environmental Impact Report for the construction of a ±495,000 square-foot concrete tilt-up building and associated parking at 5175 Vincent Avenue [APNS: 8417-034-015 and 8417-034-016 as per the 2018 Assessor's Parcel Map. (Formerly APNS: 8417-034-904, 8417-034-910, 8417-034-911)].

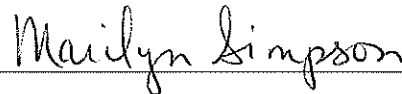
City Manager's Recommendation:

- 1) Approve the attached contract amendment No. 3 with De Novo Planning Group for the preparation of additional air quality analysis for the proposed project at 5175 Vincent Avenue. This analysis is being prepared as part of the Environmental Impact Report.

Administrative Action:

Submitted & Prepared by:

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



Reviewed by:

Adrian R. Guerra, City Attorney

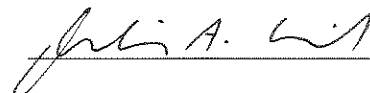
Electronically Approved

Kambiz Borhani, Finance Director / City Treasurer



Approved by:

Julian A. Miranda, City Manager



Background and Analysis:

On March 28, 2018, the City Council approved a professional consulting contract with De Novo Planning Group to prepare an Initial Study and Mitigated Negative Declaration (MND) or Environmental Impact Report (EIR) for a proposed project at 5175 Vincent Avenue. An MND was prepared for the project. Staff received comments from several agencies. Staff and the consultant carefully considered the comments received and determined that an EIR should be prepared for the project.

The original contract amount was \$144,545.00 to cover the cost for preparation of an EIR. Upon the decision that an EIR should be prepared for the project, it was determined that the scope of work needed to be revised and on April 24, 2019, the City Council approved Amendment No. 1 to the original professional consulting contract with De Novo Planning Group for a budget increase of \$56,900.00 for a contract total of \$201,445.00 to complete the preparation of the EIR. Additional analyses included an update to the traffic study with an expanded traffic impact analysis and detailed alternatives analysis.

On April 22, 2020, the City Council approved Amendment No. 2 to the professional consulting contract with De Novo Planning Group for a budget increase of \$24,900 for a contract total of \$226,345. The increase was required as a result of the updated CEQA guidelines pertaining to traffic analysis. The preparation of a Vehicle Miles Traveled (VMT) Impact Assessment was prepared in addition to Level of Service (LOS) analysis.

The applicant has been working with City staff and has designed and proposed a revised version of the Project that reduces the square footage of the proposed building to 495,000 square feet and includes additional features to address concerns raised during prior City hearings. Amendment No. 3 with De Novo Planning Group will reanalyze air quality implications and update the Final EIR. The cost for the analysis is \$45,450, bringing the cumulative contract total to \$271,795.00.

Fiscal Impact:

The entire cost for this consultant work will be covered by the Applicant/Developer. There will be no impact on the City's budget.

Attachment:

A – Contract Amendment No. 3 for services with De Novo Planning Group

ATTACHMENT "A"

AMENDMENT NO. 3 TO CONTRACT SERVICES AGREEMENT FOR ENVIRONMENTAL CONSULTING BETWEEN THE CITY OF IRWINDALE AND DE NOVO PLANNING GROUP

THIS AGREEMENT FOR CONTRACT SERVICES (herein "Agreement") is made and entered into this 25th day of January 2023 by and between the City of Irwindale, a California municipal corporation ("City") and De Novo Planning Group ("Consultant"). City and Consultant are sometimes hereinafter individually referred to as "Party" and hereinafter collectively referred to as the "Parties".

RECITALS

WHEREAS, on or about March 28, 2018, the City and Consultant entered into that certain Contract Services Agreement for environmental consulting services ("Agreement") for the preparation of an Initial Study and subsequent environmental document required to process; and

WHEREAS, pursuant to the City of Irwindale's Municipal Code, City has authority to enter into and execute this Agreement; and

WHEREAS, on or about April 15, 2019, Consultant requested an additional increase in the contract sum of fifty-six thousand nine hundred dollars (\$56,900.00) to pay for additional analyses to be included in the preparation of a Draft and Final Environmental Impact Report (EIR). These analyses included an update to the traffic study with an expanded traffic impact analysis and detailed alternatives analysis; and

WHEREAS, on or about April 24, 2019, the City and the Consultant amended the Agreement to increase the contract sum by the aforementioned \$56,900.00 to allow for the timely completion of the Draft EIR and specify the additional duties to be performed by Consultant.

WHEREAS, on or about March 25, 2020, the Consultant requested an additional increase in the contract sum of twenty-four thousand nine hundred dollars (\$24,900.00) to pay for the preparation of a Vehicle Miles Traveled (VMT) Impact Assessment for compliance with recently updated CEQA guidelines that require VMT as the primary metric for transportation impact analysis by July 1, 2020. This analysis was prepared as part of the Environmental Impact Report.

WHEREAS, on or about April 22, 2020, the City and the Consultant amended the Agreement to increase the contract sum by the aforementioned \$24,900.00 to allow for the timely preparation and completion of the VMT analysis.

WHEREAS, on or about October 13, 2021, the City Council voted to deny the Project and not certify the Final EIR prepared by the Consultant due to impacts associated with Air Quality emissions;

WHEREAS, the Applicant for the Project (Five Points) has filed a lawsuit against the City, and in settlement discussions, they have considered an option to reduce the square footage of the industrial building and add enhanced mitigation measures to reduce the Air Quality emissions of the Project;

WHEREAS, the City has requested that the Consultant reanalyze Air Quality emissions based on the reduced square footage of the industrial building and based on additional enhanced mitigation measures, for a total cost of \$45,450.00.

WHEREAS, the City and the Consultant wish to amend the Agreement to increase the contract sum by the aforementioned \$45,450.00 to allow for the timely preparation and completion of the revised Final EIR, and to modify the agreement language to limit the Consultant's indemnity to technical analysis performed.

WHEREAS, the payment obligation for the aforementioned amount is addressed in the Settlement Agreement between Five Points and City of Irwindale.

NOW, THEREFORE, the parties hereto agree as follows:

1. Section 2.1 of the Agreement entitled "Compensation and Method of Payment" shall be amended in its entirety to increase the Contract Sum by \$45,450.00 to read as follows:

2.1 Contract Sum. Subject to any limitations set forth in this Agreement, City agrees to pay Consultant the amounts specified in the "Schedule of Compensation/Budget" attached hereto as Exhibit "B" and incorporated herein by this reference. The total compensation, including reimbursement for actual expenses, shall not exceed TWO HUNDRED AND SEVENTY ONE THOUSAND SEVEN HUNDRED AND NINETY FIVE DOLLARS (\$271,795.00.) (the "Contract Sum"), for the completion of a Final EIR, unless additional compensation is approved pursuant to Section 1.9.

2. Section 3.4 of the Agreement entitled "Term" shall be amended in its entirety to read as follows:

"3.4 Term. Unless earlier terminated in accordance with Article 7, "Enforcement of Agreement and Termination" of the contract, this Agreement shall continue in full force and effect until completion of the services but not to exceed August 1, 2023.

3. Exhibit "A" of the Agreement entitled "Scope of Services" shall be supplemented to include the Scope of Services and Budget Amendment contained in Exhibit "A" hereto.

4. Exhibit "B" of the Agreement entitled "Schedule of Compensation" shall be supplemented to include the Budget Amendment contained in Exhibit "B" hereto.

5. Exhibit "C" of the Agreement entitled "Schedule of Performance" shall be supplemented to include the Schedule of Performance contained in Exhibit "C" hereto.

6. Article 5, Section 5.4 of the Agreement entitled "Indemnification" shall be amended to add Subsection (c) as follows:

5.4 Indemnification.

(c) Indemnity from any Liability. Consultant's indemnity under Section 5.4 (a) and (b) shall not extend to procedural or scheduling decisions made by the City as the lead agency.

7. Full Force and Effect. Except as expressly modified herein all other provisions of the Agreement shall remain unmodified and in full force and effect.

8. Corporate Authority. The person executing this Amendment on behalf of the parties hereto warrant that (i) such party is duly organized and existing, (ii) they are duly authorized to execute and deliver this Amendment on behalf of said party, (iii) by so executing this Amendment, such party is formally bound to the provisions of this Amendment, and (iv) the entering into this Amendment does not violate any provision of any other agreement to which said party is bound.

[SIGNATURES ON FOLLOWING PAGE]

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

CITY:

CITY OF IRWINDALE, a municipal corporation

H. Manuel Ortiz, Mayor

ATTEST:

Laura M. Nieto, MMC, Chief Deputy City Clerk

APPROVED AS TO FORM:

ALESHIRE & WYNDER, LLP

Adrian R. Guerra, City Attorney

CONSULTANT:

De Novo Planning Group
180 E. Main Street, Suite 108
Tustin, CA 92780

By: _____
Name: Ben Ritchie, Principal
Title: President

By: _____
Name: Steve McMurtry, Principal
Title: Chief Financial Officer

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

EXHIBIT "A"

SCOPE OF SERVICES

Proposal Dated January 19, 2023

Scope of Work and Approach

TASK 1 – PROJECT INITIATION

Within one week of project commencement, the De Novo team will hold a conference call with City Staff to discuss the following:

- Define the Enhanced Mitigation Measures
- Define the updated Project/Alternative and other proposed revisions;
- Refinement of project work scope and schedule,

TASK 2 UPDATED HEALTH RISK ASSESSMENT (HRA)

We will update the existing HRA to reflect the enhanced mitigation measures and any updates to the Project/Alternative. The objective of the HRA is to determine the public health risks from existing emissions from nearby rail and other toxic air sources, combined with the new public health risks from project-related traffic. The HRA consists of two main tasks: 1. Exposure Assessment, and 2. Risk Calculations. This section will provide an analysis including the methodology, thresholds of significance, a consistency analysis, cumulative impact analysis, and a discussion of feasible mitigation measures that should be implemented to reduce impacts on air quality.

TASK 3 UPDATE AIR QUALITY ANALYSIS

The previous analysis included extensive coordination with the APCD. Our intention is to update the existing model to reflect the enhanced mitigation measures and any updates to the Project/Alternative. We do not intend to perform coordination with the APCD on the enhanced mitigation measures, as it is presumed that they would be agreeable to improvements to the project to reduce air emissions. However, at the City's request we can take the additional time to coordinate these updates with the APCD prior to publication. The previous analysis was presented as an EIR Section, as opposed to a standalone report. As such, we will update the AQ Section of the EIR in track changes which can be incorporated into an EIR errata.

TASK 4 UPDATED ADMINISTRATIVE FINAL EIR

We intend to update the Final EIR that was previously prepared by De Novo. Below is a discussion of the updates.

Section 1.0 Introduction: This would include updates to Section 1.0 Introduction to provide a background summary of the hearing process at Planning Commission and City Council, including their concerns over the Air Quality emissions generated from the proposed Project. We will describe the desire of the City and Applicant to respond to the Planning Commission and City Council's concerns in the updated Final EIR by incorporated enhanced mitigation to reduce air emissions.

Section 2.0 Response to Comments: We will include updates to Section 2.0 Response to Comments that will incorporate the Planning Commission and City Council's comments

related to Air Quality impacts. Here we will present mitigation enhancements that are intended to reduce air quality impacts. We will discuss the results of the Updated HRA and Air Quality Analysis.

Section 3.0 Errata: We will include updates to Section 3.0 Errata that will include track change revisions to the Air Quality Chapter, as well as tracked change revisions to the HRA included as an appendix to the Draft EIR.

Section 4.0 Mitigation Monitoring and Reporting Program: We will include updates to Section 4.0 MMRP to reflect any changes to mitigation measures as a result of the enhanced mitigation.

Deliverables:

- *Updated Administrative Final EIR, inclusive of the Task 2 and 3 documents (One electronic copy)*

TASK 5 UPDATED PUBLIC FINAL EIR

Comments received from City staff regarding the Updated Administrative Final EIR will be incorporated into the Final EIR for public circulation. De Novo will generate a "Screen-check" Final EIR for a final staff review before we finalize the document for public review. After the document is finalized, we will deliver an electronic copy of the document to the City for distribution and production of any hard copies that the City may desire.

Deliverables:

- *Updated Final EIR (One electronic copy)*

TASK 6 UPDATED FINDINGS OF FACT/STATEMENT OF OVERRIDING CONSIDERATIONS

De Novo will update the existing Findings of Fact and Statement of Overriding Considerations to reflect the enhanced mitigation and updated analysis update the Air Quality topic.

Deliverables:

- *Updated Findings of Fact/Statement of Overriding Considerations (One electronic copy)*

TASK 7 NOTICE OF DETERMINATION

If the City Council approves the proposed Project and certifies the EIR, De Novo will prepare a Notice of Determination for filing with the State Clearinghouse. The City will be responsible for paying the CDFW filing fee and the Clerk fee and filing the NOD at the County Clerk.

Deliverables:

- *Notice of Determination (One electronic copy)*

OPTIONAL TASK—Attendance at Planning Commission/City Council Meetings

As an optional task we can attend public hearings at the Planning Commission and one with City Council. The cost of attendance will vary depending on whether we are requested to be present in person or via Zoom.

EXHIBIT "B"
SCHEDULE OF COMPENSATION/BUDGET

Cost and Fee

Task #	Task Description	McMurtry Project Manager \$175	Smith Senior Planner \$195	DeNovo Admin GIS \$125	Direct Costs	Totals
1	Project Initiation					
1.1	Define Enhanced Mitigation, updated Project	0.5				0.5
1.2	Call with City/Refine scope/schedule	0.5				0.5
	<i>Subtotal</i>	1.0	0.0	0.0		1.0
	<i>Task 1</i>	\$ 175.00	\$ -	\$ -	\$ -	\$ 175.00
2	Update HRA					
2.1	HRA Update	8.0	75.0			83.0
	<i>Subtotal</i>	8.0	75.0	0.0		83.0
	<i>Task 2</i>	\$ 1,400.00	\$ 14,625.00	\$ -	\$ -	\$ 16,025
3	Update Air Quality Analysis					
3.1	AQ Analysis Update	8.0	28.0			36.0
	<i>Subtotal</i>	8.0	28.0	0.0		36.0
	<i>Task 3</i>	\$ 1,400.00	\$ 5,460.00	\$ -	\$ -	\$ 6,860
4	Updated Admin Final EIR					
4.1	Prepare Admin FEIR	18.0	28.0	8.0		54.0
	<i>Subtotal</i>	18.0	28.0	8.0		54.0
	<i>Task 4</i>	\$ 3,150.00	\$ 5,460.00	\$ 1,000.00	\$ -	\$ 9,610
5	Updated Public Final EIR					
5.1	Document Revisions/Screencheck	6.0	10.0	2.0		18.0
5.2	Document Preparation	4.0	2.0	1.0		7.0
	<i>Subtotal</i>	10.0	12.0	3.0		25.0
	<i>Task 5</i>	\$ 1,750.00	\$ 2,340.00	\$ 375.00	\$ -	\$ 4,465
6	Updated FOF/SOC					
6.1	Prepare Admin FOF/SOC	2.0	2.0			4.0
6.2	Document Revisions	1.0	1.0			2.0
	<i>Subtotal</i>	3.0	3.0	0.0		6.0
	<i>Task 6</i>	\$ 525.00	\$ 585.00	\$ -	\$ -	\$ 1,110.00
7	NOD					
7.1	Planning Commission Hearings (2 in person)	16.0			\$ 200.00	16.0
7.2	City Council Hearings (2 in person)	16.0			\$ 200.00	16.0
7.3	Prepare NOD	0.5	0.5			1.0
	<i>Subtotal</i>	32.5	0.5	0.0		33.0
	<i>Task 7</i>	\$ 5,687.50	\$ 97.50	\$ -	\$ 400.00	\$ 6,185.00
8	Administration/Management					
8.1	Admin/Management	4.0	1.0	1.0		6.0
	<i>Subtotal</i>	4.0	1.0	1.0		6.0
	<i>Task 8</i>	\$ 700.00	\$ 195.00	\$ 125.00	\$ -	\$ 1,020.00
Project Totals						
	Project Hours	84.5	147.5	12.0		244.0
	Project Cost	\$ 14,787.50	\$ 28,762.50	\$ 1,500.00	\$ 400.00	\$ 45,450.00

EXHIBIT "C"

SCHEDULE OF PERFORMANCE/TIMELINE

Proposal Dated January 19, 2023

1. Schedule

<i>Project Task</i>	<i>Time Period (days)</i>	<i>Start</i>	<i>Finish</i>
Contract Award/Notice to Proceed	--	19-Jan-23	19-Jan-23
Task 1 – Project Initiation			
<i>Define Enhanced Mitigation, updated Project</i>	2	19-Jan-23	21-Jan-23
<i>Call with City/Refine scope/schedule</i>	1	21-Jan-23	22-Jan-23
Task 2 – Updated HRA			
HRA Update	24	22-Jan-23	15-Feb-23
Task 3 – Update Air Quality Analysis			
AQ Analysis Update	24	22-Jan-23	15-Feb-23
Task 4 – Updated Admin Final EIR			
Prepare Admin FEIR	7	15-Feb-23	22-Feb-23
<i>City Staff Administrative Review</i>	1	22-Feb-23	23-Feb-23
Task 5 – Updated Public Final EIR			
Prepare Screencheck FEIR	6	23-Feb-23	1-Mar-23
<i>City Staff Administrative Review</i>	1	1-Mar-23	2-Mar-23
Prepare Public FEIR	3	2-Mar-23	5-Mar-23
<i>City Public Release of FEIR</i>	--	5-Mar-23	5-Mar-23
Task 6 – Updated FOF/SOC			
Prepare Admin FOF/SOC	6	23-Feb-23	1-Mar-23
<i>City Staff Administrative Review</i>	1	1-Mar-23	2-Mar-23
Prepare Public FOF/SOC	3	2-Mar-23	5-Mar-23
<i>City Public Release of FOF/SOC</i>	--	5-Mar-23	5-Mar-23
Task 7 – Notice of Determination			
Planning Commission	10	15-Mar-23	15-Mar-23
City Council	TBD	TBD	TBD
File NOD with SCH/County Clerk	TBD	TBD	TBD

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

SA Item 1A2 **DECEMBER 14, 2022
WEDNESDAY
8:53 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; Arsanious Hanna, Director of Engineering / Building Official; Marilyn Simpson, Community Development Director; Mary Hull, Human Resources Manager, Elizabeth Rodriguez, Public Services Director; and Laura Nieto, Chief Deputy City Clerk

**SPONTANEOUS
COMMUNICATIONS**

There were no speakers.

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. 1A1
MINUTES**

MINUTES

The following minutes were approved:

- 1) Special Joint Meeting held November 9, 2022
- 2) Regular meeting held November 9, 2022
- 3) Special Joint Meeting held November 17, 2022

**ITEM NO. 1B
WARRANTS**

WARRANTS

The warrants were approved.

**ITEM NO. 1C
RESOLUTION
APPROVING A ROPS
AND ADMINISTRATIVE
BUDGET**

CONSIDERATION OF RESOLUTION NO. SA 2022-124-3374 OF THE CITY OF IRWINDALE AS SUCCESSOR AGENCY TO THE IRWINDALE COMMUNITY REDEVELOPMENT AGENCY APPROVING A RECOGNIZED OBLIGATION PAYMENT SCHEDULE AND ADMINISTRATIVE BUDGET FOR JULY 1, 2023, THROUGH JUNE 30, 2024

**RESOLUTION NO.
SA 2022-124-3374
ADOPTED**

Resolution No. SA 2022-124-3374, entitled:

"A RESOLUTION OF THE CITY OF IRWINDALE AS SUCCESSOR AGENCY TO THE IRWINDALE COMMUNITY REDEVELOPMENT AGENCY APPROVING A RECOGNIZED OBLIGATION PAYMENT SCHEDULE AND ADMINISTRATIVE BUDGET FOR THE TWELVE-

MONTH FISCAL PERIOD BEGINNING JULY 1, 2023, AND ENDING
JUNE 30, 2024," was adopted.

END OF CONSENT CALENDAR

NEW BUSINESS None.

PUBLIC HEARINGS None.

ADJOURNMENT There being no further business to conduct, the meeting was
adjourned at 8:54 p.m.

Laura M. Nieto, MMC
Chief Deputy City Clerk

SA Item 1B

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
78688	ROSENO	Rosenow Spevacek Group Inc	12/15/2022	50.00
Report Total (1 checks):				50.00

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
78825	USBANK03	US Bank Trust N.A.	01/12/2023	4,235.00
Report Total (1 checks):				4,235.00

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

HA Item 1A2

DECEMBER 14, 2022
WEDNESDAY
8:54 P.M.

The Irwindale **HOUSING AUTHORITY** met in regular session at the above time and place.

ROLL CALL:

Present: Board Members Mark A. Breceda, Larry G. Burrola, Manuel R. Garcia; Vice Chair Albert F. Ambriz; Chair H. Manuel Ortiz

Also present: Julian A. Miranda, Executive Director; Adrian Guerra, General Counsel; Robert Castro, Interim Chief of Police; Theresa Olivares, Assistant Executive Director; Kambiz Borhani, Director of Finance / City Treasurer; Arsanious Hanna, Director of Engineering / Building Official; Marilyn Simpson, Community Development Director; Mary Hull, Human Resources Manager, Elizabeth Rodriguez, Public Services Director; and Laura Nieto, Chief Assistant Authority Secretary

SPONTANEOUS
COMMUNICATIONS

DENA ZEPEDA

Responding to several questions by Dena Zepeda, Housing Coordinator Lopez provided a brief update on the status of the processing of the applications received for the vacant "Las Casitas" senior apartments. He noted that staff is providing seniors with ample time to submit any pending documentation, and that staff anticipates awarding the vacant apartments around February or March.

CHAIR ORTIZ

Chair Ortiz requested that staff try to expedite the process, to which Coordinator Lopez stated that staff is moving forward as quickly as possible, while simultaneously looking out for the best interests of the applicants.

CONSENT CALENDAR

MOTION

A motion was made by Board Member Breceda, seconded by Board Member Garcia, to approve Consent Calendar. The motion was unanimously approved.

ITEM NO. 1A
MINUTES

MINUTES

The following minutes were approved:

- 1) Regular meeting held August 25, 2021
- 2) Special Joint Meeting held November 9, 2022

ITEM NO. 1B
IRWINDALE HOUSING
AUTHORITY ANNUAL
REPORT FOR FY

IRWINDALE HOUSING AUTHORITY ANNUAL REPORT FOR
FISCAL YEAR (FY) 2021-2022

2021-2022

The FY 2021-2022 Irwindale Housing Authority Annual Report was received and filed and the Board directed that such report be filed with the City of Irwindale City Clerk's Office and the Department of Housing and Community Development.

NEW BUSINESS

None.

PUBLIC HEARINGS

None.

ADJOURNMENT

There being no further business to conduct, the meeting was adjourned at 8:58 p.m.

Laura M. Nieto, MMC
Chief Assistant Authority Secretary