

CITY OF IRWINDALE

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



AMENDED NOTICE AND AGENDA FOR THE SPECIAL MEETING OF THE

CITY COUNCIL

**THURSDAY
JANUARY 12, 2023**

PLEASE NOTE
MEETING TIME

**SPECIAL MEETING
5:45 P.M.**

IRWINDALE CITY COUNCIL CHAMBER

Limited Public Access

Pursuant to Irwindale Resolution No. 2022-112-3362

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, if you need special assistance to participate in a City Council meeting or other services offered by this City, please contact City Hall at (626) 430-2200. Assisted listening devices are available at this meeting. Ask the Chief Deputy City Clerk if you desire to use this device. Upon request, the agenda and documents in the agenda packet can be made available in appropriate alternative formats to persons with disabilities. 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 – 5:45 P.M.
CITY COUNCIL**

A. CALL TO ORDER

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

SPONTANEOUS COMMUNICATIONS

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

C. CONSENT CALENDAR

1. 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.

2. Adopting Resolutions Ratifying the Proclamation of Existence of a Local Emergency (Severe Winter Storms) by the Mayor in his Capacity as Director of Emergency Services and Appropriating Funds

Recommendation: 1) Adopt **Resolution No. 2023-07-3385**, entitled: "A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF IRWINDALE, CALIFORNIA, CONFIRMING THE PROCLAMATION OF THE EXISTENCE OF A LOCAL EMERGENCY WITHIN THE CITY OF IRWINDALE (SEVERE WINTER STORMS) BY THE DIRECTOR OF EMERGENCY SERVICES PURSUANT TO IRWINDALE MUNICIPAL CODE CHAPTER 2.44.080", and 2) Adopt **Resolution No. 2023-09-3387**, entitled: "A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF IRWINDALE, CALIFORNIA, APPROVING THE APPROPRIATING OF FUNDS NECESSARY TO RESPOND TO THE SEVERE WINTER STORMS EMERGENCY WITHIN THE CITY OF IRWINDALE PURSUANT TO IRWINDALE MUNICIPAL CODE CHAPTER 2.44.090."

3. Amendment No. 1 to Contract Services Agreement with Iteris Inc. for On-Call As-Needed Traffic Engineering Services

Recommendation: Approve Resolution No. 2023-08-3386 appropriating \$41,000 from the General Fund Reserves and authorize the City Manager to execute Amendment No. 1 to Contract Services Agreement with Iteris Inc. for On-Call As-Needed Traffic Engineering Services to increase the contract amount from \$28,000 to \$92,000, an increase of \$64,000.

D. ADJOURNMENT

AFFIDAVIT OF POSTING

I, Laura Nieto, Chief Deputy City Clerk, certify that I caused the agenda for the special meeting of the Irwindale City Council to be held on Thursday, January 12, 2023, be posted at the City Hall, Library, and Post Office on Wednesday, January 11, 2023.

Laura M. Nieto, MMC

Laura M. Nieto, MMC

Chief Deputy City Clerk

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

City of
IRWINDALE
AGENDA REPORT

Date: January 12, 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:

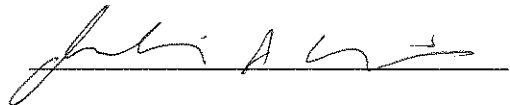
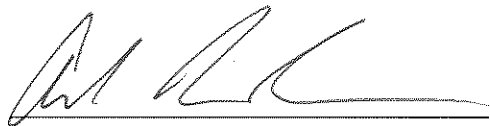
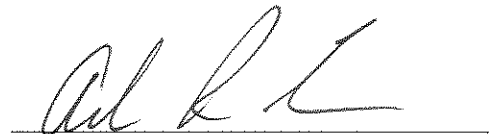
Adrian Guerra, City Attorney

Reviewed by:

Adrian Guerra, City Attorney

Approved by:

Julian Miranda, City Manager



Background and Analysis:

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 Inwindale 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, 2022 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. Trial on this case is currently set for June 26, 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. The parties agree to file a stipulation to continue the trial date, currently set for June 26, 2023 to December 2023 and a formal stay of litigation until the City Council issues its final decision on the proposed development. A stay of litigation would require a ruling by the judge overseeing this case that all litigation is suspended. The judge may later lift the stay and allow the lawsuit to continue proceeding.

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 February 27, 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 March 22, 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 June 26, 2023. 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 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 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, 2023, and the City Council hearing by March 22, 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 12, 2023

To: Honorable Mayor and Members of the City Council

From: Julian A. Miranda, City Manager

Issue: Adopting Resolutions Ratifying the Proclamation of Existence of a Local Emergency (Severe Winter Storms) by the Mayor in his Capacity as Director of Emergency Services and Appropriating Funds

City Manager's Recommendation:

- 1) Adopt Resolution No. 2023-07-3385 entitled, "A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF IRWINDALE, CALIFORNIA CONFIRMING THE PROCLAMATION OF THE EXISTENCE OF A LOCAL EMERGENCY WITHING THE CITY OF IRWINDALE (SEVERE WINTER STORMS) BY THE DIRECTOR OF EMERGENCY SERVICES PURSUANT TO IRWINDALE MUNICIPAL CODE CHAPTER 2.44.080", and
- 2) Adopt Resolution No. 2023-09-3387, entitled "A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF IRWINDALE, CALIFORNIA APPROVING THE APPROPRIATIONG OF FUNDS NECESSARY TO RESPOND TO THE SEVERE WINTER STORMS EMERGENCY WITHIN THE CITY OF IRWINDALE PURSUANT TO IRWINDALE MUNICIPAL CODE CHAPTER 2.44.090".

Administrative Action:

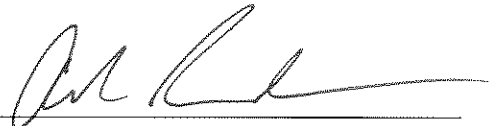
Prepared by/ Submitted by:

Theresa Olivares, Assistant City Manager
(626) 430-2294



Reviewed by:

Adrian R. Guerra, City Attorney

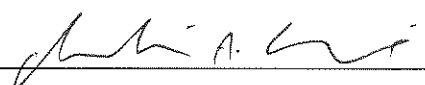


Kambiz Borhani, Finance Director / City Treasurer



Approved by:

Julian A. Miranda, City Manager



Background and Analysis:

Beginning December 27, 2022 and continuing into January, 2023, severe winter storms causing flooding and mudslides occurred in Los Angeles County. On January 9, 2023, the Department of Homeland Security, Federal Emergency Management Agency (FEMA) issued an Emergency Declaration for the state of California, including Los Angeles County, to supplement state, tribal, and local response efforts due to emergency conditions resulting from the severe winter storms, flooding and mudslides due to the winter storm events. On January 10, 2023, the Chair of the Los Angeles County Board of Supervisors proclaimed a local emergency in the County of Los Angeles as a result of winter storms starting as of January 1, 2023, which have caused conditions of disaster and/or extreme peril.

Irwindale Municipal Code (IMC) Section 2.44.050 designates the Mayor as the Director of Emergency Services. Government Code Sections 8558 and 8630, et seq., and IMC Section 2.44.060 empowers the Director of Emergency Services to proclaim the existence or threatened existence of a local emergency where actual or threatened conditions of disaster or peril to safety, that are likely to be beyond the control of the services, personnel, equipment, and facilities of this city, requiring the combined forces of other political subdivisions to combat, including severe winter storms.

On January 11, 2023, the Mayor, acting as the Director of Emergency Services, proclaimed the existence of a local emergency (Attachment "2"). Additionally, the City of Irwindale's Emergency Operations Center (EOC) was activated at the Watch Phase (lowest level). The City's Proclamation was sent to the Los Angeles County Department of Emergency Management and the California Governor's Office of Emergency Services (CalOES). IMC Section 2.44.060 requires that any declaration or proclamation of local emergency and/or local health emergency be ratified by the City Council within seven (7) days of issuance.

While the current, local situation remains stable, staff continues to assess the damages caused by the two severe winter storm events. Today's recommended actions empowers the City to:

- More effectively respond to the two severe winter storm events,
- Seek and utilize mutual aid,
- Potentially obtain reimbursement, and
- Ensure that the City of Irwindale staff have all the necessary tools and powers at their disposal to address the damages caused by the two severe winter storms.

Fiscal Impact:

Adoption of these resolutions will facilitate the ability for the City to request resources including financial support and reimbursement from the State Office of Emergency Services (OES) and Federal Emergency Management Agency (FEMA) for costs incurred in preparation and/or response to the two severe winter storm events.

City Staff has prepared a cost estimate totaling \$450,000 to respond to the two severe winter storm events, for which an additional appropriation will be needed from the General Fund Reserves. This total includes estimated costs at this time of \$375,000, plus a 20% contingency of \$75,000. Staff will continue to track all costs relating to the response.

ATTACHMENTS:

1. Resolution 2023-07-3385
2. Resolution 2023-09-3387
3. Proclamation of the Director of Emergency Services of the City of Irwindale Declaring the Existence of a Local Emergency Within the City of Irwindale (severe winter storms)

RESOLUTION NO. 2023-07-3385

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF IRWINDALE,
CALIFORNIA CONFIRMING THE PROCLAMATION OF THE EXISTANCE OF A
LOCAL EMERGENCY WITHIN THE CITY OF IRWINDALE (SEVERE WINTER
STORMS) BY THE DIRECTOR OF EMERGENCY SERVICES PURSUANT TO
IRWINDALE MUNICIPAL CODE CHAPTER 2.44.080**

WHEREAS, beginning December 27, 2022 and continuing into January, 2023, severe winter storms causing flooding and mudslides occurred in Los Angeles County; and

WHEREAS, on January 9, 2023 the Department of Homeland Security, Federal Emergency Management Agency (FEMA) issued an Emergency Declaration for the state of California, including Los Angeles County, to supplement state, tribal, and local response efforts due to emergency conditions resulting from the severe winter storms, flooding and mudslides event beginning January 8, 2023 and continuing; and

WHEREAS, on January 10, 2023, the Chair of the Los Angeles County Board of Supervisors proclaimed a local emergency in the County of Los Angeles as a result of winter storms starting as of January 1, 2023, which have caused conditions of disaster and/or extreme peril, the recitals and findings of which Proclamation are referenced and incorporated herein as though set forth in full; and

WHEREAS, California Government Code Sections 8558 and 8630, et seq., and Irwindale Municipal Code Section 2.44.060 empower the City's Director of Emergency Services to declare a local emergency if the City Council is not in session; and

WHEREAS, the Mayor of the City of Irwindale is designated as the Director of Emergency Services pursuant to Irwindale Municipal Code Section 2.44.050; and

WHEREAS, strict compliance with certain Irwindale Municipal Code and other City regulations could prevent, hinder, or delay appropriate actions to prevent and mitigate the damage caused by the two severe winter storms in Los Angeles County, which issue cannot be timely addressed absent a declaration of emergency; and

WHEREAS, on January 11, 2023, the City's Director of Emergency Services declared a local emergency thereby activation the Emergency Operations Center due to the two severe winter storms in Los Angeles County, which threats are likely to be beyond the control of the services, personnel, equipment and facilities of the City and will likely require combined forces of other political subdivisions of the county, state, and federal government; and

WHEREAS, per Government Code Section 8630 a local emergency declared by the Director of Emergency Services shall not remain in effect for a period in excess of seven days unless it has been ratified by the City Council; and

WHEREAS, the Director of Emergency Services requests that the City Council of the City of Irwindale proclaim the existence of a local emergency; and

WHEREAS, after consideration of all items before it, the City Council of the City of Irwindale desires to declare a state of emergency to make additional resources available to address the two sever winter storms in Los Angeles County.

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

SECTION 1. Conditions of extreme peril to the safety of persons and property have arisen within the City of Irwindale caused by the two sever winter storm events in Los Angeles County beginning on December 27, 2022 and continuing into January, 2023.

SECTION 2. The aforementioned conditions of extreme peril warranted and necessitated the proclamation of the existence of a local emergency by the City's Director of Emergency Services.

SECTION 3. The City Council does hereby ratify and confirm the declaration of a local emergency by the Director of Emergency Services.

SECTION 4. During the existence of said local emergency, the powers, functions and duties of the Director of Emergency Services and the City's Disaster Council shall be those prescribed by State Law, City ordinances, charter, resolutions, and approved plans of the City to mitigate the effects of said local emergency. In this regard, the Council desires to make clear the powers, functions, and duties include:

PASSED, APPROVED and ADOPTED this 12th day of January, 2023.

H. Manuel Ortiz, Mayor

ATTEST:

Laura M. Nieto, MMC
Chief Deputy City Clerk

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

I, Laura M. Nieto, Chief Deputy City Clerk of the City of Irwindale, do hereby certify that the foregoing Resolution No. 2023-07-3385 was duly and regularly passed and adopted by the City Council of the City of Irwindale at its regular meeting held on the 12th day of January 2023, by the following vote:

AYES: Councilmembers:

NOES: Councilmembers:

ABSENT: Councilmembers:

ABSTAIN: Councilmembers:

Laura M. Nieto, MMC
Chief Deputy City Clerk

RESOLUTION NO. 2023-09-3387

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF IRWINDALE, CALIFORNIA
APPROVING THE APPROPRIATION OF FUNDS NECESSARY TO RESPOND
TO THE SEVERE WINTER STORMS EMERGENCY WITHIN THE CITY OF IRWINDALE
PURSUANT TO IRWINDALE MUNICIPAL CODE CHAPTER 2.44.090**

WHEREAS, on January 9, 2023 the Department of Homeland Security, Federal Emergency Management Agency (FEMA) issued an Emergency Declaration for the state of California, including Los Angeles County, to supplement state, tribal, and local response efforts due to emergency conditions resulting from the severe winter storms, flooding and mudslides event beginning January 8, 2023 and continuing; and

WHEREAS, on January 11, 2023, the Mayor of the City of Irwindale, designated as the City's Director of Emergency Services, declared a local emergency; and

WHEREAS, it is imperative for the City to prepare and respond to the effects of the severe winter storms wherever possible in the City; and

WHEREAS, the declaration of a local emergency thereby has activated the City's Emergency Operations Center (EOC) and will aid in making additional resources available to the City to respond to the two severe winter storms emergency; and

WHEREAS, resources required to respond to the two severe winter storms emergency are likely to increase beyond the scope of the services, personnel, equipment and facilities of the City, and will require the combined forces of the other political subdivisions of the county, state and federal government; and

WHEREAS, the City's has estimated a total of \$450,000 is necessary to be appropriated at this time from the General Fund Reserves to carry out the City's emergency response. This amount includes estimates from City's departments totaling \$375,000 plus a 20% contingency of \$75,000; and

WHEREAS, the City will follow all requirements and submit all necessary documentation to seek reimbursement from both the Federal Emergency Management Agency (FEMA) and California Office of Emergency Services (Cal OES) to recover as much as possible of the City's costs incurred in responding to the two severe winter storms emergency.

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

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

SECTION 2. The City Council does hereby approve the appropriation of \$1,025,000 from the General Fund Reserves to cover the City's estimated costs to respond to the two sever winter storms emergency.

SECTION 3. SECTION 3. The City Council does hereby approve the appropriation of \$450,000 from the General Fund Reserves to cover the City's estimated costs to respond to the two sever winter storms emergency.

SECTION 4. The Chief Deputy City Clerk shall certify to the adoption of this Resolution.

PASSED, APPROVED AND ADOPTED this 12th day of January, 2023.

H. Manuel Ortiz, Mayor

ATTEST:

Laura M. Nieto, MMC
Chief Deputy City Clerk

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

I, Laura M. Nieto, Chief Deputy City Clerk of the City of Irwindale, do hereby certify that the foregoing Resolution No. 2023-09-3387 adopted by the City Council of the City of Irwindale, at a regularly meeting held on the 12th day of January, 2023 by the following vote:

AYES: Councilmembers:

NOES: Councilmembers:

ABSENT: Councilmembers:

ABSTAIN: Councilmembers:

Laura M. Nieto, MMC
Chief Deputy City Clerk

**PROCLAMATION OF THE DIRECTOR OF EMERGENCY
SERVICES OF THE CITY OF IRWINDALE DECLARING THE
EXISTENCE OF A LOCAL EMERGENCY WITHIN THE CITY
OF IRWINDALE (Severe Winter Storms)**

WHEREAS, beginning December 27, 2022, and continuing into January, 2023, severe winter storms causing flooding and mudslides occurred in Los Angeles County; and

WHEREAS, on January 4, 2023, Governor Newsom proclaimed a state of emergency to exist throughout the state of California due to the severe winter storms and a series of atmospheric river systems that struck California, bringing high winds, substantial precipitation, and river, stream and urban flooding, the recitals and findings of which Proclamation are referenced and incorporated herein as though set forth in full; and

WHEREAS, On January 8, 2023, President Joseph R. Biden, declared that an emergency exists in the State of California and ordered Federal assistance to supplement State, tribal, and local response efforts due to the emergency conditions resulting from successive and severe winter storms, flooding and mudslides, the recitals and findings of which Declaration are referenced and incorporated herein as though set forth in full; and

WHEREAS, on January 9, 2023, the Department of Homeland Security, Federal Emergency Management Agency (FEMA) issued an Emergency Declaration for the state of California, including Los Angeles County, to supplement state, tribal, and local response efforts due to emergency conditions resulting from the severe winter storms, flooding and mudslides event beginning January 8, 2023 and continuing, the recitals and findings of which Declaration are referenced and incorporated herein as though set forth in full; and

WHEREAS, on January 10, 2023, the Chair of the Los Angeles County Board of Supervisors proclaimed a local emergency in the County of Los Angeles as a result of winter storms starting as of January 1, 2023, which have caused conditions of disaster and/or extreme peril, the recitals and findings of which Proclamation are referenced and incorporated herein as though set forth in full; and

WHEREAS, it is imperative to prepare for and respond to the damages caused by the severe winter storms; and

WHEREAS, strict compliance with certain Irwindale Municipal Code ("IMC") and other City regulations would prevent, hinder, or delay appropriate actions to prevent and mitigate the effects of the severe winter storms, which issue cannot be timely addressed absent a declaration of emergency; and

WHEREAS, the mobilization of local resources, ability to coordinate interagency response, accelerate procurement of vital supplies, use mutual aid, and allow for future reimbursement by the state and federal governments will be critical to successfully responding to the severe winter storms; and

WHEREAS, California Government Code Sections 8558 and 8630, et seq., and Subsection 2.44.050, A. of the IMC authorizes the Mayor of the City to serve as the Director of Emergency Services, and Subsection 2.44.060, A.1 empowers such Director of Emergency Services to issue an emergency proclamation if the City Council is not in session; and

WHEREAS, per Subsection 2.44.060, A. of the IMC and Government Code Section 8630, a local emergency declared by the Director of Emergency Services shall not remain in effect for a period in excess of seven days unless it has been ratified by the City Council; and

WHEREAS, after consideration of all items the Director of Emergency Services now desires to proclaim the existence of a state of emergency to make additional resources available to address the effects of the severe winter storms.

NOW, THEREFORE, the Director of Emergency Services for the City of Irwindale does hereby find and proclaim as follows:

1. The above recitals true and correct and incorporated herein as findings by the Director of Emergency Services.

2. The Director of Emergency Services finds that the conditions of extreme peril to the safety of persons and property have arisen within the City of Irwindale, caused by the effects of the severe winter storm events that have occurred and that are continuing.

3. The Director of Emergency Services further finds that the City Council is not currently in session.

4. The aforementioned conditions of extreme peril warrant and necessitate the proclamation of the existence of a local emergency by the City's Director of Emergency Services. Pursuant to the authority granted by City ordinance, I hereby proclaim that a local emergency now exists throughout the City.

5. It is further proclaimed and ordered that during the existence of said local emergency, the powers, functions and duties of the Emergency Services Director and the Irwindale Disaster Council shall be those prescribed by State Law, City ordinances, resolutions, and approved plans of the City in order to mitigate the effects of said local emergency.

6. Consistent with Subsection 2.44.060, A. of the IMC and Government Code Section 8630(b) the local emergency shall not remain in effect for a period in excess of seven days unless it has been ratified by the City Council.

7. It is further proclaimed and ordered that in accordance to the California Disaster Assistance Act and the Stafford Act, a copy of this proclamation be forwarded to the Director of California Governor's Office of Emergency Services requesting that the Director find it acceptable in accordance with State law; that the Governor of California, pursuant to the Emergency Services Act, issue a proclamation declaring an emergency in Los Angeles County; that the Governor waive regulations that may hinder response and recovery efforts; that recovery assistance be made available under the California Disaster Assistance Act; and that the State expedite access to State and Federal resources and any other appropriate federal disaster relief programs

8. This proclamation and its contents will be published and promulgated in as widespread a manner as is reasonably feasible under the conditions prevailing during this local emergency.

9. This proclamation of a local emergency shall take effect immediately as of the date first set forth below.

Dated: _____

H. Manuel Ortiz, Mayor,
Acting as Director of Emergency
Services

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

City of
IRWINDALE
AGENDA REPORT

CC ITEM C-3

Date: January 12, 2023
To: Honorable Mayor and Members of the City Council
From: Julian A. Miranda, City Manager
Issue: Amendment No. 1 to Contract Services Agreement with Iteris Inc. for On-Call As-Needed Traffic Engineering Services

City Manager's Recommendation:

That the City Council approve Resolution No. 2023-08-3386 appropriating \$41,000 from the General Fund Reserves and authorize the City Manager to execute Amendment No. 1 to Contract Services Agreement, subject to City Attorney approval as to form, with Iteris Inc. for On-Call As-Needed Traffic Engineering Services to increase the contract amount from \$28,000 to \$60,000, an increase of \$32,000.

Administrative Action:

Submitted by:
Arsanious M. Hanna, City Engineer/ Building Official

Electronically Approved

Prepared by:
Luis Pimentel, Assistant Engineer
(626) 430-2259

Electronically Approved

Reviewed by:
Adrian R. Guerra, City Attorney

Kambiz Borhani, Finance Director / City Treasurer

Approved by:
Julian Miranda, City Manager

Background and Analysis:

On July 1, 2022, the City entered into contract service agreement with Iteris Inc. for On-Call As-Needed Traffic Engineering Services for the city in the amount of \$28,000.

Since the initial contract award, City staff has had an increase in services required from Iteris. With the departure of the Assistant City Engineer last year, Iteris has been relied upon for additional support for routine traffic engineering tasks and many traffic concerns and issues within the city.

With this increase in support required, the original contract will need to be amended to cover the remaining contract for the 2022/2023 fiscal year and increase the contract amount from \$28,000 to \$60,000.

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

Fiscal Impact:

An appropriation of \$32,000 from the General Fund Reserves is required for the contract amendment.

Attachment(s):

- Amendment No. 1 to Contract Agreement for Professional Services
- Resolution No. 2023-08-3386

**AMENDMENT NO. 1
TO CONTRACT SERVICES AGREEMENT FOR ON-CALL AS-NEEDED TRAFFIC
ENGINEERING SERVICES**

THIS AMENDMENT NO. 1 TO CONTRACT SERVICES AGREEMENT FOR ON-CALL AS-NEEDED TRAFFIC ENGINEERING SERVICES ("Amendment No. 1") is dated January 12, 2023, by and between the CITY OF IRWINDALE, a California Charter city and municipal corporation ("City") and ITERIS, INC. 1700 Carnegie Avenue, Suite 100, Santa Ana, California, 92705 ("Consultant") is effective as of the 12th day of January, 2023.

RECITALS

A. City and Consultant entered into that certain Agreement for Contractual Services dated July 1, 2022 ("Agreement") whereby Consultant agreed to provide professional services for On-Call As-Needed Traffic Engineering Services ("Services").

B. Pursuant to section 2.3 of the Agreement, the City is requesting additional work be done by Iteris, Inc. exceeding the maximum contract sum of Twenty-Eight Thousand Dollars (\$28,000)

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

TERMS

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

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

For the services rendered pursuant to this Agreement, Consultant shall be compensated in accordance with the "Schedule of Compensation" attached hereto as Exhibit "C" and incorporated herein by this reference, but not exceeding the maximum contract amount of ***Sixty Thousand and 00/100 Dollars (\$60,000)*** ~~Twenty-Eight Thousand Dollars (\$28,000)~~ ("Contract Sum"), unless additional compensation is approved pursuant to Section 2.3.

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

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

represents and warrants to the other that the Agreement is currently an effective, valid, and binding obligation.

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

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

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

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

[SIGNATURES ON FOLLOWING PAGE]

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

CITY:

CITY OF IRWINDALE, a municipal corporation

Julian A. Miranda, City Manager

ATTEST:

Laura M. Nieto, Chief Deputy City Clerk

APPROVED AS TO FORM:
ALESHIRE & WYNDER, LLP

Adrian R. Guerra, City Attorney

CONSULTANT:

ITERIS, INC

By: _____
Name: _____
Title: _____
Address: 1700 Carnegie Ave, Ste. 100
Santa Ana, CA 92705

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

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

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

STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

On _____, 2022 before me, _____, personally appeared _____, proved to me on the basis of satisfactory evidence to be the person(s) whose names(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature: _____

OPTIONAL

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

CAPACITY CLAIMED BY SIGNER	DESCRIPTION OF ATTACHED DOCUMENT
☐ INDIVIDUAL	
☐ CORPORATE OFFICER	
☐ PARTNER(S) TITLE(S) _____	_____ TITLE OR TYPE OF DOCUMENT
☐ ATTORNEY-IN-FACT ☐ LIMITED	
☐ TRUSTEE(S) ☐ GENERAL	
☐ GUARDIAN/CONSERVATOR	_____ NUMBER OF PAGES
☐ OTHER _____	
SIGNER IS REPRESENTING: (NAME OF PERSON(S) OR ENTITY(IES)) _____ _____	_____ DATE OF DOCUMENT
	_____ SIGNER(S) OTHER THAN NAMED ABOVE

RESOLUTION NO. 2023-08-3386

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF IRWINDALE
AUTHORIZING THE APPROPRIATION OF \$32,000 FROM THE GENERAL FUND
RESERVES FOR ON-CALL AS-NEEDED TRAFFIC ENGINEERING SERVICES
BETWEEN THE CITY OF IRWINDALE AND ITERIS, INC.**

WHEREAS, on July 1, 2022, the City entered into a contract service agreement with Iteris, Inc. for On-Call As-Needed Traffic Engineering Services for the city in the amount of \$28,000; and

WHEREAS, since the award of contract, City staff has increased the services required from Iteris, Inc. due to the departure of the Assistant City Engineer; and

WHEREAS, Iteris, Inc. has been relied upon for additional support for routine traffic engineering tasked and many traffic concerns and issues within the city; and

WHEREAS, with the increase in support, the original contract of \$28,000 will need to be amended and increased to \$60,000 to cover the remaining 2022/2023 fiscal year contract; and

WHEREAS, \$32,000 of the amended contract amount of \$60,000 will need to be appropriated from the General Fund Reserves.

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

SECTION 1. The City Council of the City of Irwindale hereby approves the appropriation of \$32,000 from the General Fund.

SECTION 2. That the Chief Deputy City Clerk shall attest to the adoption of this resolution, which shall, in turn, have immediate effect.

PASSED, APPROVED and ADOPTED this 12th day of January 2023.

H. Manuel Ortiz, Mayor

ATTEST:

Laura M. Nieto, MMC
Chief Deputy City Clerk

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

I, Laura M. Nieto, Chief Deputy City Clerk of the City of Irwindale, do hereby certify that the foregoing Resolution No. 2023-08-3386 as duly adopted by the City Council of the City of Irwindale, at a special meeting held on the 12th day of January 2023, by the following vote:

AYES: Councilmembers:

NOES: Councilmembers:

ABSENT: Councilmembers:

ABSTAIN: Councilmembers:

Laura M. Nieto, MMC
Chief Deputy City Clerk