



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

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AGENDA FOR THE SPECIAL MEETING OF THE PLANNING COMMISSION

February 3, 2021

6:30 P.M.

IRWINDALE COUNCIL CHAMBER

(Closed to the Public)

Pursuant to Executive Order N-29-20

The Governor has declared a State of Emergency to exist in California as a result of the threat of COVID-19 (aka the "Coronavirus"). The Governor also issued Executive Order N-25-20, which directs Californians to follow public health directives including canceling large gatherings. The Executive Order also allows local legislative bodies to hold meetings via conference calls while still meeting state transparency requirements.

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 will also be available through the following options:

Join Webinar at
<https://attendee.gotowebinar.com/register/4390747259632792846>

Webinar ID
182-675-795

Submit public comments by email to baguila@irwindaleca.gov before or during the meeting, prior to the close of public comment on an item. Comments will be read by the Administrative Secretary during public comment. Lengthy public comment may be summarized in the interest of time.



Spontaneous Communications: The public is encouraged to address the Planning Commission on any matter listed on the agenda or on any other matter within its jurisdiction. The Planning Commission will hear public comments on items listed on the agenda during discussion of the matter and prior to a vote. The Planning Commission 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 Planning Commission may request staff to investigate and/or schedule certain matters for consideration at a future Commission or City Council meeting.

Americans with Disabilities Act: In compliance with the ADA, if you need special assistance to participate in a Commission 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 Planning Division Counter, 16102 Arrow Highway or at City Hall, 5050 N. Irwindale Avenue, during regular business hours (8:00 a.m. to 6:00 p.m., Monday through Thursday) by appointment only, and by contacting the Planning Division at 626-430-2208.

Code of Ethics

As City of Irwindale Planning Commissioners, 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 Commissioner.

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

IRWINDALE PLANNING COMMISSION



- A. **CALL TO ORDER**
- B. **PLEDGE OF ALLEGIANCE**
- C. **INVOCATION**
- D. **ROLL CALL: Commissioners: Robert E. Hartman, Loretta Corpis, Richard Chico; Vice-Chair Enoch Y. Burrola; Chair Arthur R. Tapia**
- E. **ANNOUNCEMENTS**

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 Commission discussion or action on such communications unless 1) the Commission by majority vote finds that a catastrophe or emergency exists; or 2) the Commission by at least four votes finds that the matter (and need for action thereon) arose within the last five days. Since the Commission 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.

1. CONSENT CALENDAR

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

Recommendation: No minutes for approval

2. NEW BUSINESS

- A. Alpha Street Update

3. PUBLIC HEARINGS

- A. AMENDMENT NO. 1 TO DEVELOPMENT AGREEMENT NO. 02-06 AND CONDITIONAL USE PERMIT MODIFICATION NO. 01-2021 TO CONDITIONAL USE PERMIT NO. 7-06 (CALMAT COMPANY, DBA AS VULCAN MATERIALS).

A request to amend Development Agreement No. 02-06 and Conditional Use Permit No. 07-06 to remove the Reliance II site from the approved Reclamation Plan and Development Agreement for the Reliance I and Reliance II sites for property located at 15990 Foothill Boulevard, Irwindale, CA 91706 (APNs: 8604-019-001, 8604-019-003, & 8604-019-010). ENVIRONMENTAL REVIEW: The project is Categorically exempt from the provisions of CEQA pursuant to Section 15061 (b)(3), which consist of projects that have no possibility for causing a significant effect on the environment. The proposed amendment merely terminates VMC's rights and obligation under the Development Agreement and Conditional Use Permit pertaining to the Reliance II Site, and therefore, there is no potential for an effect on the environment;

Recommendation: Adopt Resolution No. 796(21), Entitled:

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF IRWINDALE RECOMMENDING APPROVAL TO THE CITY COUNCIL OF ORDINANCE NO. 755 APPROVING AMENDMENT NO. 1 TO DEVELOPMENT AGREEMENT NO. 02-06 FOR PROPERTY LOCATED AT 15990 FOOTHILL BOULEVARD (APNs: 8604-019-001, 8604-019-003, & 8604-019-010)

Recommendation: Adopt Resolution No. 797(21), Entitled:

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF IRWINDALE RECOMMENDING APPROVAL TO THE CITY COUNCIL OF THE CONDITIONAL USE PERMIT MODIFICATION NO. 01-2021 TO CONDITIONAL USE PERMIT NO. 7-06 FOR PROPERTY LOCATED AT 15990 FOOTHILL BOULEVARD (APNs: 8604-019-001, 8604-019-003, & 8604-019-010)

4. **DISCUSSION ITEMS/PRESENTATIONS**
5. **COMMISSIONER COMMENTS/REQUESTS**
6. **LEGAL COUNSEL COMMENTS**
7. **COMMUNITY DEVELOPMENT MANAGER/CITY PLANNER'S REPORT**
9. **ADJOURN**

AFFIDAVIT OF POSTING

I, Berlyn Aguila, Administrative Secretary, certify that I caused the agenda for the special meeting of the Irwindale Planning Commission to be held on February 3, 2021 to be posted at the City Hall, Library, and Post Office on February 1, 2021.

Berlyn Aguila

Berlyn Aguila
Administrative Secretary



**CITY OF IRWINDALE
PLANNING COMMISSION STAFF REPORT**

COMMUNITY DEVELOPMENT DEPARTMENT
PLANNING DIVISION



Date: February 3, 2021 **Agenda Item No. 2-A**

To: Honorable Chair and Members of the Planning Commission

From: Marilyn Simpson, AICP, Community Development Manager/City Planner

Prepared by: Jeff Tyler, Senior Code Enforcement Officer
Randy Silva, Code Enforcement Officer

Project: Alpha Street – Automobile Dismantling Overlay Zone
2020 Monitoring and Compliance Report

Property Owners: Various

Project Location: 700-872 Alpha Street



BACKGROUND/SITE HISTORY

All current automobile dismantling operations within the City are located on Alpha Street. Auto dismantling/salvage yards were established in Irwindale in the 1980s along Alpha Street, a 30+ acre former un-compacted landfill (aka - the "Alpha Pit"). All of the properties along Alpha Street originally were purchased by the Irwindale Community Redevelopment Agency (ICRA) for the purpose of relocating all of the dismantlers previously scattered throughout the City to a single location. According to a memorandum from the City's Finance Director to the City Manager dated September 27, 1993, "The parcels along Alpha Street were sold by the ICRA to the auto dismantlers at favorable terms as an incentive to relocate to this area so that the properties throughout the City occupied by the auto dismantlers could be redeveloped." Each property was given a 25-year use limitation, which began upon recordation of a grant deed from the ICRA to the individual dismantlers with the Los Angeles County Recorder's Office. Due to the staggered recordation of each grant deed over a span of a few years, each property has a different CUP expiration date.

On May 14, 2014, after many years of research, public outreach, and workshops, the City Council approved Ordinance No. 676, which created an "Automobile Dismantling Planned Development Overlay" zoning designation and Ordinance No. 677, which amended Chapters 5.12, 17.08, 17.56 and 17.64 and added Chapter 17.100 of the Irwindale Municipal Code (IMC) pertaining to automobile dismantling, in order to clarify existing standards and establish new standards for automobile dismantling. These changes also restricted automobile dismantling operations outside of Alpha Street.

GENERAL PLAN AND ZONING

The sites are designated in the General Plan as Industrial/Business Park. The sites are currently zoned Automobile Dismantling Planned Development Overlay with a base zone of M-2 (Heavy Manufacturing).

Direction	Existing Land Use	Zoning District
North	Residential	R-1 (Single Family Residential)/ M-1 (Light Manufacturing)/ Unincorporated Los Angeles County (A-1)
South	Mining	Q (Quarry Overlay)
East	Warehouse	M-2 (Heavy Manufacturing)
West	Residential	Unincorporated Los Angeles County (A-1)

2020 YEARLY UPDATE REPORT

The Conditional Use Permits (CUPs) include Conditions of Approval that apply to all of the businesses on Alpha Street. The Community Development Department is providing this update report for the ongoing monitoring and compliance that was conducted by the Code Enforcement Division (CE) in 2020. During this period there were thirty seven businesses operating on Alpha Street consisting of thirty five auto dismantlers, one tow yard and one contractor storage yard. Of these businesses, twenty five had active business licenses and twelve are in the process of getting their business licenses.

Due to the COVID-19 Pandemic, normal routine site inspections were put on hold and Code Enforcement instituted new processes in relation to health and safety protocols in order to address IMC violations, i.e., Conditions of Approval compliance, on Alpha Street. When Code Enforcement made onsite inspections in response to complaints or violations, the CE Alpha Street Check List was used to determine compliance with the CUP Conditions of Approval and IMC Chapter 17.100 - Automobile Dismantling Planned Development Overlay Zone. The dismantling operators on the north side of Alpha Street are subject to additional regulations because they abut residential properties. Inspections were conducted on these fifteen businesses and five of the businesses were issued notices for noncompliance. Notices were sent to the five property owners. Courtesy notices were sent to twelve related businesses that are responsible for the ongoing maintenance of the landscaped berms, to ensure compliance. Other ongoing compliance issues are graffiti abatement and the maintenance of required onsite customer/employee parking on all sites. The exterior fence and wall was installed on the auto dismantling property bordering the entrance of Alpha Street.

ADDITIONAL INFORMATION

The City uses a monitoring company to inspect all of the businesses on Alpha Street to ensure that they comply with National Pollutant Discharge Elimination System (NPDES) requirements and Code Enforcement assists with compliance.

The Irwindale Police Department (IPD) provides parking and traffic enforcement on Alpha Street. In 2020, IPD issued twenty one (21) parking tickets and two (2) moving violations.

The Los Angeles County Fire Department continues to perform ongoing onsite fire inspections as necessary. Code Enforcement continued to work with them when necessary.



**CITY OF IRWINDALE
PLANNING COMMISSION STAFF REPORT**
**COMMUNITY DEVELOPMENT DEPARTMENT
PLANNING DIVISION**



Date: February 3, 2021 **Agenda Item No.** 3-A

To: Honorable Chair and Members of the Planning Commission

From: Marilyn Simpson, Community Development Manager/City Planner

Project Planner: Marilyn Simpson, Community Development Manager/City Planner

Project: Reliance II Development Agreement Amendment & CUP Modification

Applicant: Michael Linton for Calmat Co., dba Vulcan Materials Company
500 N. Brand Boulevard, Suite 500
Glendale, CA 91203

Property Owner: Michael Linton for Calmat Co., dba Vulcan Materials Company
500 N. Brand Boulevard, Suite 500
Glendale, CA 91203

Project Location: 15990 Foothill Boulevard
Irwindale, CA 91706
APNs: 8604-019-001, 8604-019-003, & 8604-019-010

Staff Recommendation: That the Planning Commission take the following actions:

1. Adopt Resolution No. 796(21) recommending that the City Council approve Ordinance No. 755 approving Amendment No. 1 to Development Agreement No. 02-06; and
 2. Adopt Resolution No. 797(21) recommending that the City Council approve CUP Modification No. 01-2021 to CUP No. 7-06.
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REQUEST

Michael Linton, on behalf of Calmat Company, dba as Vulcan Materials Company (Applicant), is requesting Amendment No. 1 to Development Agreement No. 02-06 (DA No. 02-06) and Conditional Use Permit Modification No. 01-2021 to Conditional Use Permit No. 7-06 (CUP No. 7-06) to remove the Reliance II site (Project Site), located at 15990 Foothill Boulevard, from the approved Reclamation Plan and Development Agreement for the Reliance I and Reliance II sites.

BACKGROUND

The Reclamation Plan for the Reliance II Landfill (15990 Foothill Boulevard) and Reliance I Quarry (16001 Foothill Boulevard) was approved on June 11, 2008 by approving the CUP No. 7-06, DA No. 02-06 and Ordinance No. 627. On November 8, 2017, the City Council approved the Reliance II Specific Plan, which serves as the guiding zoning document for the site and provides the specific development standards and uses permitted on the Reliance II site. The California Division of Mine Reclamation (DMR) considers Reliance I and II to be a single mine (California Mine Number Number 91-19-0016). Conditional Use Permits (CUP) and Development Agreements (DA) remain with the property unless modified, amended, or vacated. The Reliance II site has completed filling operations and is now preparing for construction, therefore the conditions of approval, responsibilities and obligations listed in CUP No. 7-06 and DA No. 02-06 need to be modified and amended to reflect completion and fulfillment of those conditions of approval and obligations specific to the Reliance II site at 15990 Foothill Boulevard. CUP No. 7-06 and DA No. 02-06 will still remain in effect for Reliance I. A separate Off-Site Improvement Agreement between the City and the Applicant will be prepared to address any necessary outstanding off-site improvements pertaining to the Reliance II site, which are included as a condition of

approval. The financial assurance bond remains in place as the applicant is not proposing any changes to it.

GENERAL PLAN AND ZONING

The General Plan land use designation for Reliance II site is Reliance II Specific Plan. Reliance II site is zoned RII (Reliance II Specific Plan). The proposed CUP modification and DA amendment will be consistent with the both land use and zoning designations.

Table 1. Surrounding Land Use

Direction	Existing Land Use	Zoning District
North	Reliance I Quarry	Quarry Overlay, M-2, Heavy Manufacturing
South	210 Freeway	Caltrans R-O-W
East	Restaurant/Office Use	M-2, Heavy Manufacturing
West	Santa Fe Dam Recreation Area	A-1, Agricultural

ENVIRONMENTAL REVIEW

In accordance with the California Environmental Quality Act (CEQA) of 1970, as amended, and the City of Irwindale environmental guidelines, the City, as the Lead Agency, has analyzed the project and has determined that the Project is exempt from the provisions of CEQA pursuant to Section 15061 (b)(3), which states that the activity is covered by the general rule that CEQA applies only to projects that have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is NOT subject to CEQA. In this case, the request for a modification to the CUP and amendment of the DA for the Reliance II site terminates the Applicant's rights and obligations under the CUP No. 7-06 and DA No. 02-06 and there is no potential for an effect on the environment.

DEVELOPMENT AGREEMENT

A development agreement is a contract between the City and the developer and sets the standards and conditions that govern the development of the property. It provides certainty to the developer that the project will move forward over the course of development, but it also contracts the developer to provide benefits to the city, such as infrastructure improvements, or monetary payment into funds, such as "in lieu" fees, in exchange for that certainty. Amendment No. 1 to DA No. 02-06 outlines the proposed changes. All other provisions of DA No. 02-06 shall remain in place for the Reliance I site.

Key provisions of Amendment No. 1 to the DA No. 02-06 include the following:

1. From and after the effective date of Amendment No. 1, the Agreement is terminated regarding the Reliance II Landfill site and shall no longer have any force or effect as to the Reliance II Landfill site.

2. The termination of the Agreement as to the Reliance II Landfill site shall have no effect on, or invalidate, any actions taken by the City and/or Vulcan in accordance with or in furtherance of the Agreement prior to the effective date of Amendment No. 1.
3. Land use and development regulations for the Reliance II Landfill site shall be governed the Reliance II Specific Plan, as may be amended from time to time.

The provisions of the proposed amendment to the development agreement are consistent with the general plan, zoning, and the applicable specific plan.

CONDITIONAL USE PERMIT

The Project Site is governed by the Reliance II Specific Plan for development standards, regulations, and permitted uses. The Project Site has been reclaimed in compliance with the Reclamation Plan, and CUP Modification No. 01-2021 removes Reliance II from the existing CUP No. 7-06. CUP No. 7-06 and the attendant Reclamation Plan and DA No. 02-06 will continue to remain in place and in full force for Reliance I.

CONCLUSION

Staff recommends that the Planning Commission adopt the attached Resolutions:

1. Resolution No. 796(21) recommending that the City Council approve Ordinance No. 755 approving Amendment No. 1 to DA No. 02-06; and
2. Resolution No. 797(21) recommending that the City Council approve CUP Modification No. 01-2021 subject to conditions; and

ATTACHMENTS:

- Exhibit A: Resolution No. 796(21) for Amendment No. 1 to Development Agreement No. 02-06 (with Exhibits A – Ordinance No. 755 & B- Draft Amendment No. 1)
- Exhibit B: Resolution No. 797(21) for Conditional Use Permit Modification No. 01-2021
- Exhibit C: Ordinance No. 627 & Development Agreement No. 02-06
- Exhibit D: Resolution Nos. 2008-65-2337 and 2008-29-2301 for CUP No. 7-06

EXHIBIT A**RESOLUTION NO. 796(21)**

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF IRWINDALE RECOMMENDING APPROVAL TO THE CITY COUNCIL OF ORDINANCE NO. 755 APPROVING AMENDMENT NO. 1 TO DEVELOPMENT AGREEMENT NO. 02-06 FOR PROPERTY LOCATED AT 15990 FOOTHILL BOULEVARD (APNs: 8604-019-001, 8604-019-003, & 8604-019-010)

A. RECITALS.

WHEREAS, on September 24, 2008, the City Council approved Ordinance No. 627, which authorized the Development Agreement No. 02-06 between the City and the Applicant, Calmat Co. dba as Vulcan Materials Company ("VMC"), entitled "Development Agreement for Reliance I Quarry and Reliance II Landfill" ("Development Agreement");

WHEREAS, the Development Agreement governs excavation, mining-activity, reclamation, and development of the Reliance I Quarry site and Reliance II Landfill site, which are owned and operated by VMC;

WHEREAS, since the effective date of the Development Agreement, VMC conducted, and has now completed, reclamation of the Reliance II Landfill site;

WHEREAS, on or about November 8, 2017, following the initiative process, the City Council adopted the Reliance II Specific Plan to establish the governing land use regulations for the development of the Reliance II Landfill site;

WHEREAS, by the proposed amendment to the Development Agreement ("Amendment No. 1"), the City and VMC desire to amend the Development Agreement to reflect that reclamation of the Reliance II Landfill site has been completed and development of the Reliance II Landfill site shall be governed by the land use regulations of the Reliance II Specific Plan;

WHEREAS, pursuant to Government Code Section 65868 and Section 9.0 of the Development Agreement, City and VMC may amend the Development Agreement only after notice of the amendment has been provided and the Planning Commission and City Council hold public hearings regarding the amendment;

WHEREAS, Environmental Quality Act (CEQA) of 1970, as amended, and the City of Irwindale environmental guidelines, the City, as the Lead Agency, has analyzed the project and has determined that the Project is Categorically Exempt from the provisions of CEQA pursuant to Section 15061(b)(3), which consist of projects that have no possibility for causing a significant effect on the environment. The proposed amendment merely terminates VMC's rights and obligation under the Development

Agreement pertaining to the Reliance II Site, and therefore, there is no potential for an effect on the environment;

WHEREAS, the Planning Commission finds that an ordinance approving the Amendment No. 1 (the "Ordinance") will allow the City to better regulate the Reliance II Landfill site, and allow VMC to diligently complete the Reliance II Landfill site project;

WHEREAS, on February 3, 2021, the Planning Commission opened a duly noticed public hearing, as required by law, on the Amendment No. 1, took testimony on the Amendment, at which time they received input from staff, the City Attorney, VMC and other interested parties; discussed the Amendment No. 1 and closed the public hearing; and

WHEREAS, all legal prerequisites to the adoption of this Resolution have occurred.

B. RESOLUTION

NOW, THEREFORE, it is hereby found, determined and resolved by the Planning Commission of the City of Irwindale as follows:

SECTION 1. The Planning Commission hereby specifically finds that all of the facts set forth in the Recitals of this Resolution are true and correct.

SECTION 2. The Planning Commission hereby recommends adoption of Ordinance No. 755 approving Amendment No. 1 to the Development Agreement No. 02-06 to provide:

a. From and after the effective date of Amendment No. 1, the Development Agreement is terminated regarding the Reliance II Landfill site and shall no longer have any force or effect as to the Reliance II Landfill site; and

b. The termination of the Development Agreement as to the Reliance II Landfill site shall have no effect on, or invalidate, any actions taken by the City and/or Vulcan in accordance with or in furtherance of the Development Agreement prior to the effective date of Amendment No. 1; and

c. Land use and development regulations for the Reliance II Landfill site shall be governed the Reliance II Specific Plan, as may be amended from time to time.

Ordinance No. 755 is attached hereto as Exhibit "A" and the draft Amendment No. 1 is attached hereto as Exhibit "B," both of which are incorporated herein by reference.

SECTION 3. The Secretary shall:

- a. Certify to the adoption of this Resolution; and
- b. Forthwith transmit a certified copy of this Resolution, by certified mail, to the Applicant at the address of record set forth in the Application.

ADOPTED AND APPROVED this 3rd day of February 2021.

Arthur R. Tapia, Chair
City of Irwindale Planning Commission

ATTEST:

Marilyn Simpson, Secretary

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

I, Marilyn Simpson, Community Development Manager/City Planner of the City of Irwindale, do hereby certify that the foregoing Resolution was adopted at a special meeting of the Planning Commission of the City of Irwindale held on the 3rd day of February 2021 the following vote:

AYES: COMMISSIONERS:

NOES: COMMISSIONERS:

ABSENT: COMMISSIONERS:

ABSTAIN: COMMISSIONERS:

Marilyn Simpson, Secretary

EXHIBIT "A"**ORDINANCE NO. 755****AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF IRWINDALE
APPROVING AMENDMENT NO. 1 TO DEVELOPMENT AGREEMENT NO. 02-06**

WHEREAS, on September 24, 2008, the City Council approved Ordinance No. 627, which authorized the Development Agreement No. 02-06 between the City and the Applicant, Calmat Co. dba as Vulcan Materials Company ("VMC"), entitled "Development Agreement for Reliance I Quarry and Reliance II Landfill" ("Development Agreement"); and

WHEREAS, the Development Agreement governs excavation, mining-activity, reclamation, and development of the Reliance I Quarry site and Reliance II Landfill site, which are owned and operated by VMC;

WHEREAS, since the effective date of the Development Agreement, VMC conducted, and has now completed, reclamation of the Reliance II Landfill site;

WHEREAS, on or about November 8, 2017, following the initiative process, the City Council adopted the Reliance II Specific Plan to establish the governing land use regulations for the development of the Reliance II Landfill site;

WHEREAS, by the proposed amendment to the Development Agreement ("Amendment"), the City and VMC desire to amend the Development Agreement to reflect that reclamation of the Reliance II Landfill site has been completed and development of the Reliance II Landfill site shall be governed by the land use regulations of the Reliance II Specific Plan;

WHEREAS, pursuant to Government Code Section 65868 and Section 9.0 of the Development Agreement, City and VMC may amend the Development Agreement only after notice of the amendment has been provided and the Planning Commission and City Council hold public hearings regarding the amendment;

WHEREAS, on February 3, 2021, the Planning Commission found that this Ordinance and the Amendment will allow the City to better regulate the Reliance II Landfill site and allow VMC to diligently complete the Reliance II Landfill site project;

WHEREAS, the City finds and determines that all actions required of City precedent to approval of this Amendment by this Ordinance of the City Council have been duly and regularly taken; and

WHEREAS, all legal prerequisites to the adoption of this Ordinance have occurred.

NOW, THEREFORE, the City Council of the City of Irwindale ordain as follows:

SECTION 1. The City Council hereby specifically finds that all of the facts set forth in Recitals of this Resolution are true and correct.

SECTION 2. The City Council finds that: (a) the Amendment is consistent with the general plan and any applicable specific plan; and (b) the Amendment does not change the proposed use which is consistent with the land use designation.

SECTION 3. The City Council does hereby find that the Project is Categorically Exempt from the provisions of CEQA pursuant to Section 15061(b)(3), which consist of projects that have no possibility for causing a significant effect on the environment. The proposed amendment terminates VMC's rights and obligation under the Development Agreement pertaining to the Reliance II Site, and therefore, there is no potential for an effect on the environment.

SECTION 4. Based on the above finding, the City Council approves the adoption of this Ordinance approving Amendment No. 1 to the Development Agreement No. 02-06, attached hereto as Exhibit "A," and incorporated herein by reference, to provide:

a. From and after the effective date of Amendment No. 1, the Development Agreement is terminated regarding the Reliance II Landfill site and shall no longer have any force or effect as to the Reliance II Landfill site; and

b. The termination of the Development Agreement as to the Reliance II Landfill site shall have no effect on, or invalidate, any actions taken by the City and/or Vulcan in accordance with or in furtherance of the Development Agreement prior to the effective date of Amendment No. 1; and

c. Land use and development regulations for the Reliance II Landfill site shall be governed the Reliance II Specific Plan, as may be amended from time to time.

SECTION 5. If any section, subsection, sentence, clause or phrase of this ordinance is, for any reason, held to be invalid or unconstitutional, such decision shall not affect the validity or constitutionality of the remaining portions of this ordinance. The City Council hereby declares that it would have passed this ordinance, and each section, subsection, sentence, clause or phrase hereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared unconstitutional due to the writs of mandate issued by the Court.

SECTION 6. The City Clerk shall certify to the passage and adoption of this ordinance; and forthwith prepare a certified copy of this ordinance to be submitted to the Court in compliance with the writs of mandate.

PASSED, APPROVED, AND ADOPTED at a regular meeting of the City Council of the City of Irwindale this 24th day of February 2021.

H. Manuel Ortiz, Mayor

ATTEST:

Laura M. Nieto, MMC
Chief Deputy City Clerk

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

I, Laura M. Nieto, Chief Deputy City Clerk of the City of Irwindale, do hereby certify that the foregoing Ordinance No. 755 was duly introduced by the City Council of the City of Irwindale, at a regular meeting held on the 24th day of February 2021, and was duly approved and adopted on second reading at its regular meeting held on the 10th day of March 2021, by the following vote of the Council:

AYES: Councilmembers:

NOES: Councilmembers:

ABSENT: Councilmembers:

ABSTAIN: Councilmembers:

Laura M. Nieto, MMC
Chief Deputy City Clerk

EXHIBIT “B”

AMENDMENT NO. 1 TO DEVELOPMENT AGREEMENT FOR RELIANCE I QUARRY AND RELIANCE II LANDFILL

This **AMENDMENT NO. 1 TO DEVELOPMENT AGREEMENT FOR RELIANCE I QUARRY AND RELIANCE II LANDFILL (“Amendment No. 1”)** is entered into as of _____, 2021, by and between the City of Irwindale, a municipal corporation (the “City”), and CALMAT CO., a Delaware corporation, dba VULCAN MATERIALS COMPANY, WESTERN DIVISION (“Vulcan”). The City and Vulcan may be referred to collectively as the “Parties” and individually as a “Party”.

RECITALS

A. On September 24, 2008, the Parties entered into that agreement entitled “Development Agreement for Reliance I Quarry and Reliance II Landfill” (“Agreement”).

B. The Agreement governs excavation, mining-activity, reclamation, and development of the Reliance I Quarry site and Reliance II Landfill site, which are owned and operated by Vulcan.

C. Since the effective date of the Agreement, Vulcan conducted, and has now completed, reclamation of the Reliance II Landfill site.

D. On or about November 8, 2017, following the initiative process, the City Council adopted the Reliance II Specific Plan to establish the governing land use regulations for the development of the Reliance II Landfill site.

E. By this Amendment No. 1, the Parties desire to amend the Agreement to reflect that reclamation of the Reliance II Landfill site has been completed and development of the Reliance II Landfill site shall be governed by the land use regulations of the Reliance II Specific Plan; therefore, the Agreement shall have no further force or effect as to the Reliance II Landfill site.

TERMS

1. Amendments to Agreement. The Agreement is amended as provided herein:

a. From and after the effective date of Amendment No. 1, the Agreement is terminated regarding the Reliance II Landfill site and shall no longer have any force or effect as to the Reliance II Landfill site.

b. The termination of the Agreement as to the Reliance II Landfill site shall have no effect on, or invalidate, any actions taken by the City and/or Vulcan in accordance with or in furtherance of the Agreement prior to the effective date of Amendment No. 1.

c. Land use and development regulations for the Reliance II Landfill site shall be governed the Reliance II Specific Plan, as may be amended from time to time.

2. Continuing Effect of Agreement on Reliance I Quarry Site. Except as amended by this Amendment No. 1, all provisions of the Agreement, as amended by Amendment No. 1, shall remain unchanged and in full force and effect regarding the Reliance I Quarry site. From and after the date of this Amendment, whenever the term “Agreement” appears in the Agreement, it shall mean the Agreement, as amended by Amendment No. 1.

3. Affirmation of Agreement; Warranty Re Absence of Defaults. City and Vulcan 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.

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 No. 1.

5. Authority. The persons executing this Amendment No. 1 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 No. 1 on behalf of said party, (iii) by so executing this Amendment No. 1, such party is formally bound to the provisions of the Agreement, as amended and (iv) the entering into this Amendment No. 1 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 No. 1 on the date and year first-above written.

CITY:

CITY OF IRWINDALE,
a California 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

VULCAN:

CALMAT CO., a Delaware corporation, dba
VULCAN MATERIALS COMPANY,
WESTERN DIVISION

By:_____

Name:

Title:

APPROVED AS TO FORM:

Signature

Name, Title

EXHIBIT B**RESOLUTION NO. 797(21)**

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF IRWINDALE RECOMMENDING APPROVAL TO THE CITY COUNCIL OF THE CONDITIONAL USE PERMIT MODIFICATION NO. 01-2021 TO CONDITIONAL USE PERMIT NO. 7-06 FOR PROPERTY LOCATED AT 15990 FOOTHILL BOULEVARD (APNs: 8604-019-001, 8604-019-003, & 8604-019-010)

A. RECITALS.

WHEREAS, the Applicant, Calmat Co. dba as Vulcan Materials Company ("VMC"), has made a request for a Modification to Conditional Use Permit No. 7-06 ("CUP No. 7-06"), pursuant to Chapters 17.60 and 17.63 of the Irwindale Municipal Code ("IMC") and the provisions of the California Surface Mining and Reclamation Act ("SMARA") to remove the Reliance II landfill site, consisting of an 89.6 -acre site located at 15990 Foothill Boulevard ("Reliance II Site") from the approved CUP No. 7-06 and the Reclamation Plan.

WHEREAS, the Reclamation Plan describes the methods for reclaiming the Reliance I Quarry Site, consisting of a 124.2 -acre sand and gravel quarry located in the City of Irwindale, Los Angeles County, at 16001 Foothill Boulevard ("Reliance I Site"), and the Reliance II Site for industrial and commercial uses (collectively, "Project Site").

WHEREAS, on June 11, 2008, the City Council adopted Resolution No. 2008-29-2301, conditionally approving CUP No. 7-06, the Reclamation Plan and Financial Assurances and Ordinance No. 627 conditionally approving Development Agreement No. 2-06, related to the Project Site, which included both Reliance I Site and Reliance II Site.

WHEREAS, on September 24, 2008, the City Council adopted Resolution No. 2008-65-2337, granting final approval of CUP No. 7-06 and the Reclamation Plan.

WHEREAS, the California Division of Mine Reclamation considers Reliance I Site and Reliance II Site to be a single mine (California Mine Number 91-19-0016).

WHEREAS, on November 8, 2017, following the initiative process, the City Council adopted Resolution No. 2017-88-2896, approving the Reliance II Specific Plan, to establish the governing land use regulations for the development of the Reliance II Site.

WHEREAS, VMC conducted, and has now completed, reclamation of the Reliance II Site, and is now preparing the Reliance II Site for development which shall be governed by the Reliance II Specific Plan.

WHEREAS, the conditions of approval, responsibilities and obligations listed in CUP No. 7-06 and the Reclamation Plan need to be modified and amended to reflect completion and fulfillment of the conditions of approval and obligations specific to the Reliance II Site so that CUP No. 7-06 and the Reclamation Plan only apply to Reliance I Site and no longer applies to Reliance II Site.

WHEREAS, Environmental Quality Act (CEQA) of 1970, as amended, and the City of Irwindale environmental guidelines, the City, as the Lead Agency, has analyzed the project and has determined that the Project is Categorically Exempt from the provisions of CEQA pursuant to Section 15061(b)(3), which consist of projects that have no possibility for causing a significant effect on the environment. The requested modification to Conditional Use Permit No. 7-06 merely terminates VMC's rights and obligation under CUP No. 7-06 pertaining to the Reliance II Site, and therefore, there is no potential for an effect on the environment.

WHEREAS, on February 3, 2021, the Planning Commission opened a duly noticed public hearing, as required by law, on the Application, took testimony on the application, at which time they received input from staff, the City Attorney, the Applicant and other interested parties; discussed the requested modification to CUP No. 7-06 and closed the public hearing.

WHEREAS, all legal prerequisites to the adoption of this Resolution have occurred.

B. RESOLUTION.

NOW, THEREFORE, it is hereby found, determined and resolved by the Planning Commission of the City of Irwindale as follows:

1. The Planning Commission hereby specifically finds that all of the facts set forth in Recitals of this Resolution are true and correct.
2. Based upon substantial evidence presented to this Planning Commission during the public hearing conducted with regard to the proposed modification to the CUP including written staff reports, verbal testimony, and existing Conditions of Approval to CUP No. 7-06 attached hereto as Exhibit "A," this Planning Commission:
 - a. Re-affirms the findings in CUP No. 7-06 as to Reliance I since there are no changes or modifications to Reliance I; and

- b. Determines that CUP No. 7-06 as applicable to Reliance I shall not be modified or in any way affected by this modification; and
- c. Because Reliance II has been fully reclaimed and the Reliance II Specific Plan has been adopted to govern the development of the Reliance II site, CUP No. 7-06 no longer has any applicability to Reliance II and should be removed from coverage therein.

3. For any outstanding offsite improvements required by CUP No. 7-06 as to Reliance II, the Applicant shall enter into an offsite improvements agreement with the City for completion of those improvements.

4. The Planning Commission hereby specifically finds and determines that the project, as proposed, is exempt from the provisions of the California Environmental Quality Act (CEQA), per the general rule under Section 15061(b)(3) of the CEQA Guidelines that CEQA only applies to projects that have the potential for causing a significant effect on the environment.

5. Based upon the substantial evidence and conclusions set forth herein above, this Planning Commission hereby recommends approval of the Conditional Use Permit Modification No. 01-2021 to CUP No. 7-06, which amends the CUP No. 7-06 and the Reclamation Plan in that they no longer have any effect regarding the Reliance II Site. The CUP No. 7-06 and Reclamation Plan shall still remain in effect and unchanged as it applies to Reliance I Site. As of the effective date of the Conditional Use Permit Modification No. 01-2021 to CUP No. 7-06, Reliance II Site shall be governed by the land use regulations established in Reliance II Specific Plan.

6. The Secretary shall:

- a. Certify to the adoption of this Resolution; and
- b. Forthwith transmit a certified copy of this Resolution, by certified mail, to the Applicant at the address of record set forth in the Application.

ADOPTED AND APPROVED this 3rd day of February 2021.

Arthur R. Tapia, Chair
City of Irwindale Planning Commission

ATTEST:

Marilyn Simpson, Secretary

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

I, Marilyn Simpson, Community Development Manager/City Planner of the City of Irwindale, do hereby certify that the foregoing Resolution was adopted at a special meeting of the Planning Commission of the City of Irwindale held on the 3rd day of February 2021 the following vote:

AYES: COMMISSIONERS:

NOES: COMMISSIONERS:

ABSENT: COMMISSIONERS:

ABSTAIN: COMMISSIONERS:

Marilyn Simpson, Secretary

EXHIBIT C**ORDINANCE NO. 627**

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF IRWINDALE, COUNTY OF LOS ANGELES, CALIFORNIA, APPROVING DEVELOPMENT AGREEMENT NO. 2-06 AND CERTIFYING A FINAL ENVIRONMENTAL IMPACT REPORT TO ALLOW VULCAN MATERIALS COMPANY, INC. TO CONTINUE MINING AND TO RECLAIM THE RELIANCE I QUARRY SITE LOCATED AT 16001 FOOTHILL BOULEVARD FOR INDUSTRIAL AND COMMERCIAL USES UPON COMPLETION OF MINING; AND TO CONTINUE FILLING THE RELIANCE II LANDFILL LOCATED AT 15990 FOOTHILL BOULEVARD FOR RETAIL COMMERCIAL USES UPON COMPLETION OF FILLING

A. RECITALS

(i) California Government Code Sections 65864 *et seq.* ("Development Agreement Law") authorizes cities to enter into binding development agreements with persons having a legal or equitable interest in real property for the development of such property, all for the purpose of strengthening the public planning process, encouraging private participation and comprehensive planning and identifying the economic costs of such development.

(ii) Attached to this Ordinance, Marked Exhibit "A" and incorporated herein by reference, is a Development Agreement, which hereinafter is referred to as "the Development Agreement."

(iii) Vulcan Materials Company, Inc., hereinafter in this Ordinance referred to as "VMC", owns real property located at 16001 Foothill Boulevard, legally described within the Development Agreement, and situated on property in the City of Irwindale, County of Los Angeles, California, commonly known as the Reliance I Quarry, as described within the Development Agreement (the "Site"). VMC wishes to extend its existing mining entitlement to 440 feet below ground surface (bgs) or to December 31, 2038, whichever event occurs first. At the conclusion of mining, VMC intends to reclaim the quarry site for commercial/ recreational, and/ or commercial uses (the "Project").

(iv) Vulcan Materials Company, Inc., hereinafter in this Ordinance referred to as "VMC", owns real property located at 15990 Foothill Boulevard, legally described within the Development Agreement, and situated on property in the City of Irwindale, County of Los Angeles, California, commonly known as the Reliance II Landfill, as described within the Development Agreement (the "Site"). VMC wishes to continue filling the Class "U" Inert Landfill. At the conclusion of filling, VMC intends to reclaim the quarry site for retail commercial uses (the "Project").

(v) Both Sites are located within the City's M-2 Zone (Heavy Manufacturing) and are designated by the Land Use Element of the General Plan as Industrial. To accommodate the proposed commercial uses, the City will process appropriate General Plan and Zone Change amendments within the times set forth in the Development Agreement.

(vi) On February 7, 2008, the Planning Commission opened a duly noticed public hearing, as required by law on the Application, took testimony, and continued the public hearing to the March 6, 2008 Planning Commission meeting.

(vii) On March 6, 2008, the Planning Commission resumed the public hearing, took testimony, and continued the public hearing to the April 3, 2008 Planning Commission meeting.

(viii) On April 3, 2008, the Planning Commission resumed the public hearing, took testimony, and continued the public hearing to the May 1, 2008 Planning Commission meeting.

(ix) On May 1, 2008 the Planning Commission of the City of Irwindale conducted a duly noticed public hearing on the Application, Reclamation Plan, Financial Assurances, and Final Environmental Impact Report (FEIR) and concluded said public hearing.

(x) City finds and determines that all actions required of City precedent to approval of this Agreement by Ordinance No. 627 of the City Council have been duly and regularly taken.

(xi) All legal prerequisites to the adoption of this Ordinance have occurred.

B. ORDINANCE

NOW, THEREFORE, the City Council of the City of Irwindale hereby does ordain as follows:

(i) Pursuant to the authority and criteria contained in the California Environmental Quality Act of 1970 (CEQA), as amended (Public Resources Code, Section 2100 *et seq.*), the State CEQA Guidelines (California Code of Regulations, Title 14, Section 1500 *et seq.*), and the CEQA Guidelines of the City of Irwindale, the City, as the Lead Agency, has prepared a Draft Environmental Impact Report (DEIR) and a Final Environmental Impact Report (FEIR) for the Proposed Project. The DEIR identified no significant impacts after implementation of the recommended Mitigation Measures. The DEIR, State Clearinghouse Number 2006051107, was circulated for review and comment from December 6, 2007 to January 21, 2008. The City received comments on the DEIR from one (1) reviewing agency (the State of California Native American Heritage Commission). Responses to the comments have been prepared and, together with the comments; have been included in the FEIR. The FEIR has been made available for review by the public at the City of Irwindale Planning Department.

(ii) Pursuant to Section 17.60.050 of the IMC, the City Council has final approval authority for any use permit, including the approval of reclamation plans and financial assurances, to allow for mining to a depth exceeding one hundred and fifty feet (150').

(iii) On February 7, 2008, the Planning Commission, at a noticed public hearing, at which time they received input from staff, the City Attorney, and the Applicant; heard public testimony; discussed the proposed Project; closed the public hearing; and, after discussion, approved Resolution No. 429(08) recommending that the City Council certify the FEIR; conditionally approve this Application; conditionally approve the Conditional Use Permit; conditionally approve the Reclamation Plan and Financial Assurances; and direct staff to forward the Reclamation Plan and Financial Assurances to the State Department of Conservation for their review and comment.

(iv) The proposed project will improve road infrastructure surrounding the project site, including Foothill Boulevard and Irwindale Avenue;

(v) The City Council hereby specifically finds and determines that, having considered the record as a whole, there is no evidence that the Project contemplated by the Development Agreement, and as conditioned, will have a potential for an adverse impact on wildlife resources or the habitat upon which the wildlife depends. Based upon substantial evidence presented in the record before this Council, this Council rebuts the presumption of adverse effect contained in Subsection 753.5 (d) of Title 14, California Code of Regulations. Notwithstanding the provisions of this paragraph, the Applicant shall pay all fees required for the filing of a Notice of Determination and any fees imposed by the California Department of Fish and Game.

(vi) The City Council has found that this Agreement is in the best public interest of the City and its residents, adopting this Agreement constitutes a present exercise of the City's police power, and this Agreement is consistent with the City's General Plan. This Agreement and the proposed Project will achieve a number of City objectives including assuring a revenue stream to the City, both in the form of mining taxes and, after reclamation, in the form of sales tax monies and tax increment revenues.

(vii) It is expressly found that the public necessity, general welfare and good zoning practice require the approval of the Development Agreement.

(viii) This City Council hereby certifies the Final Environmental Impact Report.

(ix) This City Council hereby conditionally approves the Development Agreement attached hereto as Exhibit "A," subject to its receipt and consideration of comments on same from the Department of Conservation on the Reclamation Plan.

(x) The City Council hereby authorizes and directs the Mayor and the City Clerk to execute the Development Agreement on behalf of the City of Irwindale forthwith upon adoption of this Ordinance.

(xi) Upon the City Council's final approval of the Ordinance, following the consideration of any comments from the Department of Conservation, the City Clerk

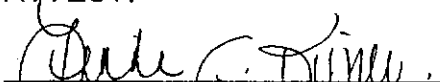
shall certify to the passage of this Ordinance and shall cause the same to be published and/or posted at the designated locations in the City of Irwindale.

(xii) The City Clerk shall certify to the passage of this Ordinance and shall cause the same to be published and/or posted at the designated locations in the City of Irwindale.

PASSED, APPROVED, and ADOPTED this 24th day of September 2008.


 State of California
 County of Los Angeles
 City of Irwindale
 Larry G. Burrola, Mayor

ATTEST:


 Linda J. Kimbro, MMC
 Deputy City Clerk

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

I, Linda J. Kimbro, Deputy City Clerk, do hereby certify that the attached is a full, true and correct copy of the original,

Ordinance No. 627

and on file in the City files of the City of Irwindale, and that I have carefully compared the same with the original.


 Deputy City Clerk

I, Linda J. Kimbro, Deputy City Clerk of the City of Irwindale, do hereby certify that the foregoing Ordinance No. 627 was duly introduced at a regular meeting of the Irwindale City Council held on the 11th day of June 2008, and was duly approved and adopted on second reading at its regular meeting held on the 24th day of September 2008, by the following vote of the Council:

AYES: Councilmembers: Breceda, Ortiz, Mayor Burrola

NOES: Councilmembers: None

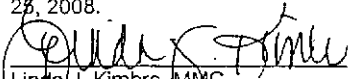
ABSENT: Councilmembers: Fuentes, Garcia

ABSTAIN: Councilmembers: None


 Linda J. Kimbro, MMC
 Deputy City Clerk

AFFIDAVIT OF POSTING

I, Linda J. Kimbro, Deputy City Clerk, certify that I caused a copy of Ordinance No. 627 adopted by the City Council of the City of Irwindale at its regular meeting held August 13, 2008, to be posted at the City Hall, Library, and Post Office on September 25, 2008.


 Linda J. Kimbro, MMC
 Deputy City Clerk

Dated: September 25, 2008

EXHIBIT "A"
DEVELOPMENT AGREEMENT NO. 2-06

RECEIVED

DEC 19 2008

CITY OF RIVERSIDE
PUBLIC WORKS DEPARTMENT

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California

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TITLE(S) : AGREEMENT



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THIS FORM IS NOT TO BE DUPLICATED

cc: Finance
Planning
Public Works
01-06-09

✓

RECORDING REQUESTED BY
AND WHEN RECORDED, MAIL TO:



Irwindale Public Works/Engineering
5050 N. Irwindale Ave.
Irwindale, CA 91706

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

DEVELOPMENT AGREEMENT FOR
RELIANCE I QUARRY AND RELIANCE II LANDFILL

between

THE CITY OF IRWINDALE

and

CALMAT CO., dba VULCAN MATERIALS COMPANY, WESTERN DIVISION

3

DEVELOPMENT AGREEMENT FOR RELIANCE I QUARRY AND RELIANCE II LANDFILL

THIS DEVELOPMENT AGREEMENT FOR RELIANCE I QUARRY AND RELIANCE II LANDFILL ("Development Agreement" or "Agreement") is entered into on September 24, 2008, by and between the CITY OF IRWINDALE, a municipal corporation (the "City"), and CALMAT CO., a Delaware corporation, dba VULCAN MATERIALS COMPANY, WESTERN DIVISION ("Vulcan"). The City and Vulcan may be referred to collectively as the "Parties" and individually as a "Party."

R E C I T A L S:

A. Vulcan Properties. Vulcan owns and operates two active mining quarries, the Reliance I (formerly known as "Azusa Largo") and Durbin Quarries and one landfill site, the Reliance II Landfill, in the City of Irwindale, California, of which the Reliance I Quarry and Reliance II Landfill are the only parcels that are the subject of this Agreement. Concurrently herewith, the City and Vulcan are entering into a separate Development Agreement addressing the Durbin Quarry. The "Site" or "Sites" for the purpose of this Agreement consists solely of the Reliance I Quarry and Reliance II Landfill (Site or Sites as the case may be) of approximately 124.2 and 91.51 gross acres respectively, as shown in the "Site Map" attached hereto as **Exhibit A** and incorporated herein by this reference. Further, the Reliance I Quarry is composed of two portions; a 2.1 acre parcel adjacent to and at grade with Foothill Boulevard and not subject to further mining, and a 122.1 acres site which is the current active Reliance I Quarry's mining area.

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. Purpose of Agreement. Vulcan wishes to obtain an entitlement to continue its mining operations at the Reliance I Quarry to the Maximum Safe Depth ($\pm$ 440 feet below ground surface), which is estimated to take until the year 2047. The City is prepared to grant such additional entitlement, provided that Vulcan agrees (1) not to mine the Reliance II Landfill; (2) to reclaim the Site in the manner set forth herein and in the approved Reclamation Plan; (3) to post adequate financial assurances in compliance with SMARA by posting bonds in the amount set forth herein and participating in the alternative financial assurances mechanism established by the Irwindale Reclamation Authority; (4) to develop uses on the Site in accordance with the City's proposed General Plan Update and zoning; (5) to fund the cost for all mitigation measures as identified in the EIR, and (6) to grant to the City a perpetual easement for storm drain purposes across the entire southern portion of the Reliance II Landfill.

D. Public Hearings; Findings. On May 1, 2008 the City's Planning Commission, after a duly noticed public hearing, adopted Resolution No. 529(08) recommending City Council certification of the EIR, City Council approval of the Conditional Use Permit, the Reclamation

cc: Finance
Planning
Public Works 01-06-09

Plan, Financial Assurances and this Agreement. On May 27, 2008, the City Council, after making appropriate findings at a duly noticed public hearing, adopted Resolution No. 2008-29-2301 certifying the EIR and conditionally approving the Conditional Use Permit, Reclamation Plan, Financial Assurances, SMARA Transfer Agreement, and this Agreement, subject to comment from the California Department of Conservation, and on September 24, 2008, after considering all comments from the Department of Conservation, adopted Ordinance No. 623 approving this Agreement. These actions included the approval of Conditional Use Permit and this Agreement for the continued mining of the Site and amended Reclamation Plan and Financial Assurances for the Site, along with appropriate environmental, grading and/or backfilling permits and documents for the mining and reclamation activities specified in this Agreement.

E. Department of Conservation Comments. The parties acknowledge that the Department of Conservation, Office of Mine Reclamation ("OMR"), by letters dated July 11 and September 17, 2008, commented upon the Reclamation Plan, which comments have been substantially incorporated into the Reclamation Plans approved with this Agreement. Additionally, OMR recommends that the City, pursuant to State Mining and Geology Board Regulation section 3502, require the Reclamation Plan covering the Reliance I Quarry be combined with the reclamation plan concerning that certain quarry immediately east of the Reliance I Quarry, known as the Azusa-Reliance Quarry in the City of Azusa, bearing Mine ID No. 91-19-0018. This comment is based upon OMR's contention that the two sites physically appear to be a single quarry. OMR further suggests that lead agency responsibilities over reclamation in the combined Reliance I and Azusa-Reliance Quarry should be transferred to the City of Irwindale. The parties herein contemplate addressing OMR's comment in this regard pursuant to the terms of this Agreement, at Section 9.5 and Single Reclamation Plan Schedule, at **Exhibit E** hereto.

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 Development of Site(s) in Phases.

Vulcan owns and operates three non-contiguous mining quarries totaling approximately 547.8 acres in the City and described as follows: (a) the 334.6 acre Durbin Quarry, where mining commenced in approximately 1900 and active mining and concurrent reclamation operations continue, located at 13000 East Los Angeles Street, lying adjacent and contiguous to the 605 Freeway and Los Angeles Street; (b) the 124.2 acre Reliance I Quarry (comprised of 2.1 acre and 122.1 acre parcels), where mining commenced in approximately 1900 and active mining and concurrent reclamation operations continue on the 122.1 acre parcel, located at 16001 Foothill Boulevard, at the northernmost portion of Irwindale Avenue; and (c) the approximately 91.51 gross acre Reliance II Landfill where mining commenced in 1972 and ceased in 1986/87 and reclamation continues, located at 15990 Foothill Boulevard. This Agreement encompasses the Reliance I Quarry and Reliance II Landfill only. Where the term "Site" or "Sites" is used in this Agreement, it shall be construed to apply to the Reliance I Quarry

and/or Reliance II Landfill only. The Parties intend that the Sites ultimately be developed for future industrial use (Reliance I Quarry 122.1 acre parcel) and retail-commercial uses (Reliance I Quarry 2.1 acre parcel and the Reliance II Landfill) in accordance with the terms of this Agreement, which is envisioned to occur after the completion of the mining and reclamation of the Project described herein. The parties further intend that Vulcan's transfer of any portions of the Site for development shall include a Water Supply Assessment, and, an assurance that sufficient water supply will be available, which may include a reservation or transfer of water, so that the Site may be fully developable, as contemplated by this Agreement. This Article 1.0 outlines the parties' general intent as to the timeframe and sequence for the development of the Sites. The intended mining, reclamation and developments 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.

Vulcan proposes development of the Sites as generally described in Section 1.1. This Section 1.2 proposes developments, as further set forth in **Exhibit B** hereto, which shall be further refined and shall be the subject of development applications submitted by Vulcan to the City and considered for approval by the City separate from the approvals provided in this Agreement in accordance with the then applicable regulations and within the times set forth in the Schedule of Performance **Exhibit C**.

(a) Reliance I Quarry

The Reliance I Quarry (122.1 acre parcel) is currently being mined and reclaimed concurrently, with mining operations occurring in phases (as such phases are described in Section 5 of **Exhibit B**), namely in the western portion of the parcel, as depicted in **Exhibit B-1** attached hereto. Vulcan currently operates the Processing Plant at the eastern portion of the Site and abutting the City of Azusa jurisdiction line. Vulcan will continue concurrent mining and reclamation following the approval of this Agreement and in the manner set forth in **Exhibit B** attached hereto. Within the time set forth in the Schedule of Performance, Vulcan will mine the Reliance I Quarry in two phases. In Phase 1, Vulcan will mine approximately 28,839,000 tons, which consists of 10,670,000 net tons of previously permitted reserves as of January 1, 2005, and 18,169,000 new net tons of reserves derived directly from Phase I deeper mining. Phase I mining will be substantially completed by the year 2017, with market conditions variability as to date. As part of Phase 1 mining, Vulcan will create a Site Development Fill pad for the possible future relocation of the Processing Plant to the Phase 1 Development Fill at a minimum Elevation 310 mean sea level ("msl"). Vulcan shall relocate its Processing Plant operations to the Phase 1 Development Fill, or other alternative locations, prior to the commencement of Phase 2 (as described in Section 5 of **Exhibit B**) mining operations, in approximately 2038, but with market condition variability as to specific date. In the event that Vulcan relocates its Processing Plant operations outside the City of Irwindale, Vulcan shall pay the City an in-lieu fee equal to the Processing Tax due to the City had the Processing Plant remained in the City of Irwindale during such Phase 2 mining operations. Vulcan may continue mining operations during Phase 2 of an additional

approximately 20,175,000 tons in the eastern portion of the Reliance I Quarry and under the old Processing Plant location until December 31, 2047, when Maximum Safe Depth is reached, which is nominally 440 feet below ground surface ("bgs") to a level pit floor at Elevation 150 feet msl. Throughout the mining operation, Vulcan shall continue reclamation and Site Development Fill activities in accordance with the Schedule of Performance, except after the Phase 1 Site Development Fill is completed and Phase 2 mining has advanced sufficiently to allow filling of that area (Phase 2 Site Development Fill) to commence. Vulcan shall reclaim and conduct Site Development Fill activities to achieve a depth of no more than 280 feet bgs or minimum Elevation 310 msl. The Processing Plant shall be removed by 2049, in accordance with the Reclamation Plan and as defined in Section 3.1 below, unless otherwise separately approved by the City, in its discretion, for use as a post-mining industrial facility in accordance with the intended end use. All mining shall terminate by 2047. Within 18 to 24 months thereafter (not later than December 31, 2049), the Processing Plant will be removed and, Vulcan shall continue backfilling with Site Development Fill to create a 121.1 acre Reliance I Development Parcel, containing approximately 42 acres (minimum) of "developable building pads". The Reliance I Development Parcel shall be completed by December 31, 2059, or as extended pursuant to this Agreement. The remainder of the 122.1 acre parcel shall be improved with an access road, other infrastructure, reclaimed mine slopes, landscaping and open space, which will provide aesthetic features, to support the Reliance I Development Parcel. The "developable building pads" shall contain approximately 11 acres (Phase 1) and 31 acres (Phase 2) at a depth of not more than 280 ft bgs or a minimum Elevation 310 msl.

The Reliance I Quarry 2.1 acre parcel located adjacent to and at grade level with Foothill Boulevard, may be developed by Vulcan in accordance with its intended retail-commercial end use at such time that Vulcan may choose to do so; provided, however, that upon the City's request, Vulcan will meet with the City to discuss potential development opportunities on the 2.1 acre Reliance I Quarry parcel.

All Site Development Fill shall be pursuant to the Guidelines. When each portion of the 121.1 acre Reliance I Development Parcel is geotechnically capable of supporting industrial uses, Vulcan shall develop such portion for said uses in accordance with provisions in the Agreement. Vulcan shall install all infrastructure and security measures as may be necessary and provided in the Reclamation Plan to protect any exposed groundwater therein.

(b) Reliance II Landfill

No further excavation or mining activity shall be permitted in the Reliance II Landfill; provided that excavation incidental and necessary for reclamation shall be permitted. Vulcan will continue to operate a Class U (Inert Debris Engineered Fill) operation at the Site. Vulcan will fill the Reliance II Landfill to street grade along Foothill Boulevard and in accordance with the Scope of Development (**Exhibit B**) and Reclamation Plan to create an approximate 89.56 net acre development pad for development of a retail-commercial center in accordance with the City's commercial, regional zone, as may be amended from time to time before entitlements are issued for

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development. Vulcan may develop a portion of the site below grade approximately at a low point of Elevation 518 msl (35 ft bsg), as provided for in the Reclamation Plan. Vulcan may develop the Reliance II Landfill with rail access for a distribution center. Site Development Fill will be completed by December 31, 2020. The reclaimed parcel will be developed for a freeway-visible retail center in accordance with the City's then applicable commercial, regional zone.

1.3 Interest and Representation of Vulcan.

"Vulcan" is CalMat Co., a Delaware corporation, dba Vulcan Materials Company, Western Division, and its permitted successors and assigns, with its principal offices at 3200 San Fernando Road, Los Angeles, CA 90065. Vulcan warrants and represents to City that:

(a) Vulcan is a Delaware corporation duly organized and existing under the laws of the State of Delaware;

(b) By proper action of Vulcan, Vulcan's signatories have been duly authorized to execute and deliver this Agreement, acting by and through its duly authorized officers;

(c) Vulcan 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) The entering into this Agreement by Vulcan does not violate any provision of any other agreement to which Vulcan is a party;

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

(f) Neither Vulcan, nor the principals of Vulcan, 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 Vulcan 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;

(h) Vulcan 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

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(i) Vulcan is the owner of fee title to the Site and has the right of possession of the Site, free from any tenant leases, tenancies, licenses, or other similar occupancy agreements that could reasonably interfere with Vulcan's right to maintain and operate the Site or any development thereon approved under this Agreement.

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 or holds public right-of-way interests in property immediately adjacent to the Site, including the public rights of way over those areas now commonly known as Foothill Boulevard, more particularly depicted in the Site Map ("Public Parcel") and incorporated herein at **Exhibit A**. The Public Parcel shall be the benefited parcel for the obligations on Vulcan herein, and the Site shall be the burdened parcel.

1.5 Superseded Mining Agreements.

Prior to this Agreement, the Site was subject to several approvals and agreements that were approved by City's City Council, Planning Commission, and/or Redevelopment Agency (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, unless such approvals and agreements are described and listed herein as the Continuing Mining Agreements. The Superseded Mining Agreements include the following:

(a) Mining Depth. Vulcan is currently entitled to excavate the Reliance I Quarry to a depth of 200 feet bgs, or to a level pit floor at Elevation of 390 and to fill the Reliance II Landfill under the entitlements issued pursuant to CUP No. 70-1-CU, approved by Resolutions 70-9-693 and 90-16-1189 approved on June 4, 1970 and June 28, 1990, respectively.

(b) Existing Reclamation Plan. A Reclamation Plan was previously approved by City for the Reliance I Quarry and Reliance II Landfill by way of the 1988 Reliance Mining and Reclamation Plan, as amended per the 1990 Amendment to Plan for Reclamation, which amendment was adopted on June 28, 1990 by Resolution No. 90-16-1189 ("Existing Reclamation Plan"). The Existing Reclamation Plan authorizes reclamation of lands that are mined to a depth of 200 feet bgs. The Existing Reclamation Plan is superseded by the Reclamation Plan approved concurrently herewith.

(c) Memorandum of Understanding. Vulcan and the City entered into that certain Memorandum of Understanding, dated September 6th, 2005. This Agreement supersedes such Memorandum of Understanding with respect to the Site, including any amendment thereto.

(d) Owner Participation Agreement. The Site is subject to an Owner Participation Agreement dated October 19, 1977 with subsequent amendments issued by the City for such Site adopted and approved June 28, 1990 (collectively, "OPA"). This Agreement shall supersede such OPA with respect to the Site.

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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 Agency.

"Agency" means the Community Redevelopment Agency of the City of Irwindale.

2.2 Anticipated High Water Level.

"Anticipated High Water Level" means the anticipated high groundwater level of approximately Elevation 295 feet above mean sea level (msl) for the Site, measured in wells located in Irwindale and vicinity. 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.

2.3 Applications.

"Application(s)" shall mean a complete application for the applicable land use approvals (such as a subdivision map, conditional use permit, etc., but not including building, electrical, mechanical, grading or similar permits) meeting all of the current ordinances of the City provided that any additional or alternate requirements in said ordinances enacted after the Effective Date which affect the Application shall apply only to the extent permitted by this Agreement.

2.4 Assignment.

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

2.5 Authorizing Ordinance.

"Authorizing Ordinance" means Ordinance No. 623 approving this Agreement.

2.6 Azusa-Reliance Quarry.

"Azusa-Reliance Quarry" shall have the meaning set forth in Recital E above.

2.7 Azusa Rock Quarry.

"Azusa Rock Quarry" means that hard rock quarry located north of the San Gabriel River.

2.8 City.

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

2.9 City Council.

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

2.10 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. Vulcan has agreed to participate in this process. Accordingly, without the written approval of the City Manager, Vulcan 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 United, Hanson's 40 acre portion along the 605 freeway, and United's Pit No. 2. Vulcan understands and acknowledges the contractual obligations of City to United and Hanson 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 Vulcan from commencing or carrying out reclamation through noncommercial filling operations by utilizing fill from its own internal operations on the Site or from Vulcan'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 United and Hanson.

2.11 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 of the Site, as specified in this Agreement and the Guidelines, and creates no danger to public health or safety. The process may extend to affected lands surrounding the mined lands and 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 Reliance I and II development pads 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.

2.12 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 Conditional

Use Permit, Reclamation Plan, EIR and agreements addressing Financial Assurance obligations, including, but not limited to, the SMARA Conveyance Agreement.

2.13 Conditional Use Permit.

“Conditional Use Permit” means the conditional use permit approved concurrently with the approval of this Agreement by the City Council under Resolution No. 2008-29-2301 for mining and reclamation of the Reliance I Quarry.

2.14 Conditions of Approval.

“Conditions of Approval” means those conditions regulating the mining and reclamation activities authorized by the Conditional Use Permit and attached to the Resolution approving the Conditional Use Permit.

2.15 Default.

“Default” refers to any material default, breach, or violation of a provision of this Agreement as defined in Section 13.0. “City Default” refers to a Default by the City, while “Vulcan Default” refers to a Default by Vulcan.

2.16 Design Guidelines.

“Design Guidelines” shall mean those general and specific development standards applicable to the post-reclamation industrial and retail-commercial development of the Site relating to lot size, building square footages, lot coverage, parking, building height, setbacks, landscaping, access, etc., as they currently exist and as they may be subsequently updated and revised in the sole discretion of the City.

2.17 Development.

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

2.18 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.

2.19 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 9.0.

2.20 Development Plan.

“Development Plan” means the Existing Development Approvals, Future Development Approvals, Existing Land Use Regulations, and Future Land Use Regulations and permitted Future Mining Land Use Regulations.

2.21 Durbin Quarry.

“Durbin Quarry” shall mean that certain real property located at 13000 East Los Angeles Street, Irwindale, California 91706 lying adjacent and contiguous to the 605 Freeway and Los Angeles Street in the City of Irwindale, consisting of approximately 334.6 acres, which is the subject of the Development Agreement approved by the City concurrently with the approval of this Agreement and is more specifically described therein.

2.22 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.

2.23 EIR or “environmental documents”.

“EIR” or “environmental documents” means the final Environmental Impact Report or other environmental documents certified by City Council Resolution No. 2008-29-2301 in accordance with the requirements of CEQA and processed in accordance with Section 4.6.

2.24 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 “Guidelines” herein.

(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.

2.25 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.

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2.26 Existing Land Use Regulations.

"Existing Land Use Regulations" means those certain Land Use Regulations applicable to the Site in effect on the Effective Date. This term includes all Existing Mining Land Use Regulations.

2.27 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 13.2 and 13.3.

2.28 Future Development Approvals.

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

2.29 Future Land Use Regulations.

"Future Land Use Regulations" means those certain Land Use Regulations applicable to the Site approved by the City after the Effective Date, but does not include Future Mining Land Use Regulations.

2.30 Future Mining Land Use Regulations.

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

2.31 Guidelines.

"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:

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

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

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

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

2.32 Inert Materials.

“Inert Materials” shall have the meaning as provided in the Guidelines.

2.33 Land Use Regulations.

The “Land Use Regulations” means those ordinances, laws, statutes, rules, regulations, initiatives, policies, requirements, guidelines, constraints, codes or other actions of the City, as may be amended from time-to-time, which affect, govern, or apply to the Site or the implementation of the Development Plan as pertaining to “land use”. Land Use Regulations include the ordinances and regulations adopted by the City which govern permitted uses of land, density and intensity of use and the design of buildings, applicable to the Site, including, but not limited to, the General Plan, specific plans, zoning ordinances, development moratoria, implementing growth management and phased development programs, ordinances establishing development exactions, subdivision and park codes, any other similar or related codes or building and improvements standards, mitigation measures required in order to lessen or compensate for the adverse impacts of land use on the environment and other public interests and concerns or similar matters. The term Land Use Regulations does not include, however, regulations relating to the conduct of business, professions, and occupations generally; fees, taxes and assessments; regulations for the control and abatement of nuisances; Uniform Codes; utility easements; encroachment and other permits and the conveyances of rights and interests which provide for the use of or entry upon public property; any exercise of the power of eminent domain; health and safety regulations; environmental regulations; or similar matters or any other matter reserved to City pursuant to Article 9. The term “Land Use Regulations” does not include any of the Superseded Mining Agreements.

2.34 Maximum Safe Depth.

“Maximum Safe Depth” shall have the meaning set forth at **Exhibit B**, Section 4 herein which shall provide for the maximum safe yield of aggregate reserves in accordance with the Guidelines.

2.35 Mining Development Approvals.

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

2.36 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.

2.37 Mining Tax.

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"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.

2.38 Mortgage.

"Mortgage" means a mortgage, deed of trust, or sale and leaseback arrangement or other transaction in which all or any portion of or interest in the Site is pledged as security. "Mortgagee" refers to the holder of a beneficial interest under a Mortgage.

2.39 Project Improvements.

"Project Improvements" means those improvements required by Section 4.10 of this Agreement to be constructed or installed by Vulcan in conjunction with the post-reclamation development of the Site. The parties acknowledge that such Public 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.

2.40 Processing Plant.

"Processing Plant" means the plant operating at Reliance I as of the Effective Date, used for processing and crushing of materials mined from Reliance I, production of ready mixed concrete ("RMC") asphalt products, crushed miscellaneous base ("CMB") and other related ancillary activities, which facilities include every accessory structure and activity pertaining thereto, including storage, transportation, conveyor, dredge or other underwater mining equipment, maintenance servicing, mechanical and administration-related facilities; provided such authorized activities to be conducted in relation to the use of the Processing Plant are those that are necessary for the sale of mined materials from Reliance I or placement of Site Development Fill at Reliance I or II. The Processing Plant shall not be authorized for recycling or other uses where the processed materials do not include mined materials from Reliance I or materials to be used for Site Development Fill at Reliance I or II, although incidental recycling necessary to process materials not suitable for Site Development Fill is authorized.

2.41 Project.

"Project" means the excavation, reclamation, and placement of Site Development Fill for rough-grade pads at the Site for retail-commercial uses pursuant to the Development Plan and 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 Conditional Use Permit or 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. Development construction shall be subject to Future Development Approvals to be secured by Vulcan from the City after the Effective Date.

2.42 Reclamation Plan.

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"Reclamation Plan" shall mean the September 10, 2008 Reclamation Plan prepared by RGP Planning & Development Services for the Reliance I Quarry and Reliance II Landfill and approved concurrently herewith by the City as part of this Development Agreement.

2.43 Reliance I Quarry.

"Reliance I Quarry" means that certain real property located at 16001 Foothill Avenue, Irwindale, California 91706 lying north of the intersection of Foothill Boulevard and Irwindale Avenue and which is comprised of a 122.1 acre (active mining and reclamation) parcel and a 2.1 acre parcel that is adjacent to and at the grade level with Foothill Boulevard.

2.44 Reliance I Development Parcel(s).

"Reliance I Development Parcel(s)" means either or both (as used in context) the developable building pads (minimum 42 acres) for the Reliance I Quarry 122.1-acre portion or a maximum of 2.1 acres for the Reliance I Quarry 2.1 acre portion, which are intended to be developed for industrial uses and retail-commercial use, respectively, consistent with the City's then existing manufacturing zones, when geotechnically stable, in accordance with the Guidelines and Scope of Development.

2.45 Reliance II Landfill.

"Reliance II Landfill" means that certain real property located at 15990 Foothill Avenue, Irwindale, California 91706 lying adjacent and contiguous to the 210 Freeway to the south, the LAMTA railroad and Irwindale Avenue to the east and Foothill Boulevard to the north, consisting of approximately 91.51 gross acres (a portion of which underlays Foothill Boulevard), which is intended to be developed for retail-commercial uses consistent with the then existing commercial, regional zone, in accordance with the Guidelines and Scope of Development.

2.46 Reliance II Drainage Easement.

The term "Reliance II Drainage Easement" shall have the meaning set forth in Section 12.0 of this Agreement.

2.47 Reservations of Authority.

"Reservations of Authority" shall have the meaning set forth in Section 9.0 of this Agreement.

2.48 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.

2.49 Scope of Development.

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

2.50 Site(s).

"Site(s)" means the Reliance I Quarry and Reliance II Landfill collectively (Site or Sites) and or individually (Site or Sites) as used in context herein and as shown on the Site Map, attached hereto as **Exhibit A**, and more specifically described in the Legal Description attached hereto as **Exhibit A-1**. The Reliance I Quarry site is divided into two parcels, one containing 122.1 acres of active mining and reclamation use and one of 2.1 acres adjacent to Foothill Boulevard, and Reliance II Landfill containing 91.51 gross acres, a portion of which underlays Foothill Boulevard.

2.51 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.

2.52 SMARA Conveyance Agreement.

"SMARA Conveyance Agreement" shall mean that certain agreement entitled the "SMARA Operation Rights Transfer and Conveyance Agreement," which addresses Vulcan's financial assurance obligations for the Project, as approved by the parties concurrently with this Agreement.

2.53 Superseded Mining Agreements.

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

2.54 Term.

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

2.55 Uniform Codes.

The term "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."

2.56 Water Supply Assessment.

The term "Water Supply Assessment" shall mean an analysis conducted by the water utility purveyor in compliance with the California Water Code. The cost of said analysis shall be borne by Vulcan. The Water Supply Assessment shall at a minimum: (1) Provide information on the City of Irwindale's water supplies consistent with Water Code Sections 10620 et. seq. (the Urban Water Management Act) and 10910 et. seq. (Water Supply Planning to Support Existing

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and Planned Future Uses); (2) provide information on current water demands and projected water demands based on the City of Irwindale's General Plan and specific project proposals; (3) compare water supplies and water demands for the normal, single-dry and multiple-dry years; (4) provide the data to make the sufficiency findings required by the California Environmental Quality Act (CEQA); and (5) identify water supply and infrastructure mitigation measures required by the proposed project and analyze the cumulative impacts of said mitigation measures.

3.0 TERM.

3.1 Term.

The term of this Agreement (the "Term") shall commence on the Effective Date and shall continue for the Reliance I Quarry until: (i) December 31, 2047 for all mining of Reliance I Quarry Phase 1 and Phase 2 reserves, (ii) December 31, 2049 for the removal and Processing Plant reclamation unless otherwise extended by City approval in accordance with the intended end use of the Site, (iii) December 31, 2059 for completion of all Reliance I Development Parcel.

The Term shall commence on the Effective Date and shall continue for the Reliance II Landfill until: December 31, 2020 if Vulcan's approval from the City of Azusa for mining at Vulcan's Azusa Rock Quarry is obtained by December 31, 2009, or for each year after December 31, 2009 that such approval is delayed, Vulcan shall have an extension of time equal to such delay, but no later than December 31, 2038, if such approval is not obtained.

However, mining operations and reclamation authorized by this Agreement, the approved Conditional Use Permit and Reclamation Plan for the Reliance I Quarry and for the Reliance II Landfill shall be conducted during the times set forth in the Schedule of Performance. In the event Vulcan has not completed its performance hereunder upon expiration of the Term as to each respective portion of the Site, the City Council may extend the Term in its sole 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. Notwithstanding the foregoing, this Agreement shall terminate with respect to any portion of the Site for which Vulcan secures Future Development Approvals for development of the improvements consistent with the ultimate end uses identified for the Site.

3.2 Force Majeure.

Vulcan 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, Vulcan shall provide written notice to the City specifically describing the nature and extent of the delay and Vulcan's detailed efforts to avoid such delay, which references this Section and deliver such notice either within 30 days of discovering such delay or along with the annual mining reports provided to the City, and Vulcan's obligations shall be extended for such time as the City deems reasonable as a result of the delay if and only if Vulcan provides such written notice to the City within such time; and (ii) the time within which Vulcan shall be required to perform any act under this Development Agreement shall be extended by a period of

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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, unusually severe weather, or any other similar causes beyond the control of Vulcan or without the fault of Vulcan. 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 Vulcan claiming such extension is sent to the City within thirty (30) days of knowledge of the commencement of the cause; provided, however, that any extension of time shall be for a maximum of one hundred eighty (180) days; except for delays of reclamation at the Reliance I Quarry caused by a proportional shortfall in the actual accumulated import fill in comparison to the minimum of 500,000 cubic yards per year. Any extension granted herein shall not amend the Term as to reclamation if Vulcan 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 Reliance I Quarry, and not to the mining phase of any portion of the Reliance I Quarry. To the extent the creation of the Reliance I Development Parcel is so delayed, its total area of approximately 42 acres (of developable building pads) may be reduced and/or reconfigured to comply with the reclamation completion date of the Reliance I Quarry of December 31, 2059, or such date shall be extended as necessary to complete the intended parcel.

4.0 DEVELOPMENT OF THE SITE.

4.1 Right to Develop.

During the Term, Vulcan shall have a vested right to develop the Site (subject to Section 5.0 below) to the full extent permitted by the Development Plan and this Agreement. Except as provided within this Agreement, as may be amended, the Development Plan as related to the Project shall exclusively control the mining, reclamation and development of the Site.

4.2 Later Enacted Measures.

Vulcan 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 9.0 below.

4.3 Superseded Mining Agreements.

Over a number of years Vulcan and City have had disagreements regarding the extent to which the Site should be excavated, the application of mining taxes, regulatory standards affecting mining, the timing and plans for reclamation, and the ultimate land uses to be developed. City and Vulcan wish to resolve these disputes with respect to the Site through this Agreement. Further, the previously envisioned uses for the Site are not the highest and best uses under anticipated future market conditions and the City's General Plan. Therefore, it is in the interest of Vulcan to surrender its previous entitlements to obtain the rights set forth in this Agreement, including the statutory protections granted by the Development Agreement Statute. The Parties acknowledge that this Agreement shall, with respect to the Reliance Sites only, all of the Superseded Mining Agreements. With respect to these Sites, the Superseded Mining

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Agreements are hereby expressly repealed and superseded by the provisions hereof. The Superseded Mining Agreements related to the Sites are therefore not applicable to the Project and are excluded from the definitions of Land Use Regulations or Development Approvals, with respect to the Sites. Vulcan voluntarily foregoes these rights in consideration of the rights granted hereunder and waives any claims against City whatsoever therefor.

4.4 Priority of Regulations and Approvals.

Notwithstanding anything in this Agreement to the contrary, this Section shall govern the application of Land Use Regulations to the land use components of the Development Approvals. Except as provided in this Section, nothing in Section 4.2 or any other provision of this Agreement shall limit the City's ability to adopt Future Land Use Regulations, nor to review and process Future Development Approvals and regulate and condition such Future Development Approvals consistent with Future Land Use Regulations. However, except as provided in Article 9, no Future Land Use Regulations may be applicable to the Site and no Future Development Approvals may be granted if they are inconsistent with this Agreement or the Concurrent Mining Approvals, except with the written consent of Vulcan. Any alleged inconsistency shall be resolved pursuant to Sections 4.5 and Article 9 below. Nothing herein shall limit the City's right to adopt Future Mining Land Use Regulations with respect to other mining operations in the City, nor limit the rights reserved to City pursuant to Article 9.

4.5 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 9 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.

4.6 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 shall review and process new environmental documents for this Agreement, the Conditional Use Permit and the Reclamation Plan for mining and reclaiming the Site.
- (b) City has selected HCG, LLC to serve as its environmental consultant in the preparation of the new environmental documents.
- (c) Vulcan shall pay the cost of preparing the new environmental documents.

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(d) As of the date of this Agreement, Vulcan has deposited with the City the sum of \$248,620 as a deposit against the total estimated cost for the preparation of the new environmental documents (for Durbin and Reliance). Should the actual costs required to complete the environmental documents exceed this estimated total cost, Vulcan acknowledges that it is responsible for paying such difference.

(e) City shall pay the environmental consultant selected under subsection 4.6(b) above pursuant to the environmental services contract between City and such consultant, using funds deposited by Vulcan with the City under subsection 4.6(d) above and the City funds, as described therein. Should the funds deposited by Vulcan with City be depleted, Vulcan 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. Within fifteen (15) days after the City's payment of the last invoice to the environmental consultant, the City shall return to Vulcan any unused funds deposited by Vulcan with the City hereunder. No interest shall be paid or credited to Vulcan on such deposit.

4.7 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, including any Development Approval or Future Development Approval, Vulcan shall be responsible for 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, and shall defend, indemnify and hold harmless the City for any award of damages, costs, attorney's fees, undertakings, or any other liability which may be assigned to the City.

The City will promptly notify Vulcan of any such claim, action or proceeding against the City and Vulcan 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 Vulcan, 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 Vulcan in a timely manner of any such claim, action or proceeding, so that the City's and/or Vulcan's rights are prejudiced, Vulcan 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 Vulcan's consent as to the City's liabilities or rights only, so long as the City's actions do not affect Vulcan's material entitlements under the Agreement and even with those entitlements that are not material, the City will enter into good faith discussions with Vulcan 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.

4.8 Rights of Access.

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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 Vulcan. 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 Vulcan personnel at all times per Federal MSHA. The City's inspectors shall behave in a manner so as to not interfere with Vulcan's operations or usage of the Site, subject to Vulcan's safety requirements pursuant to Vulcan's policy, California OSHA requirements and Federal MSHA requirements.

4.9 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 and the Scope of Development (**Exhibit B**) and within the times set forth in the Schedule of Performance (**Exhibit C**). Vulcan understands and acknowledges that the development of the Site shall require separate discretionary and administrative approvals, as applicable, from the City. Vulcan further understands that the City may amend the allowable uses and development regulations affecting the Site from time-to-time, including, but not limited to, requiring additional infrastructure improvements; provided that the allowable uses and development regulations applicable to the Site remain consistent with Vulcan's investment in the filling and grading work in preparation for development performed at the Site under this Agreement. For example, if the end use contemplated herein was retail-commercial and the fill was being placed to permit such development, the City could change the use to commercial-professional, but not open space. The current regulations concerning mining and reclamation are specified in this Section. Vulcan agrees that the City may amend the regulations applicable to mining and reclamation, provided such amendments are in accordance with Article 9.0 herein.

4.10 Relocation of Processing Plant.

Should Vulcan relocate the Processing Plant, or install a replacement or additional processing plant at the Reliance I Quarry or to any site outside of the City of Irwindale, such relocation, replacement or additional processing activities elsewhere shall be revenue neutral to the City such that Vulcan shall continue to pay the City an in-lieu fee equal to the processing tax otherwise applicable to materials processed at the Plant under Chapter 3.18 of the Irwindale Municipal Code as if the Processing Plant were in the City of Irwindale. The parties contemplate that for Phase 1 mining at the Reliance I Quarry, Vulcan shall pay both the applicable mining and processing tax to the City; during any mining operations at the Azusa Rock Quarry when no mining is occurring within the Reliance I Quarry, Vulcan shall pay the processing tax only to the City, and, thereafter, during Phase 2 mining, Vulcan shall pay the applicable mining tax to the City, plus the applicable processing tax or the in-lieu fee equivalent for any processing operations at either the Reliance I Quarry or outside of the City.

4.11 Release of Mining Rights for Reliance II Landfill.

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No further excavation or mining activity shall be permitted in the Reliance II Landfill; provided that excavation incidental and necessary for reclamation shall be permitted. In entering into this Agreement, Vulcan forever waives, releases and relinquishes all right whatsoever to mine the Reliance II Landfill as set forth above and agrees to waive any claims against the City for a taking of property, inverse condemnation, impairment of contract or any other claim as a consequence thereof.

4.12 Project Improvements.

The Project Improvements described in this Section shall be constructed or installed by Vulcan in conjunction with the post-reclamation development of the Site in accordance with the approvals granted by the City at the time.

(a) Drainage.

The design of the storm drain system shall be approved as to design and sizing by the City's engineer, which approval shall not be unreasonably withheld provided the design and sizing is consistent with the standards of the County of Los Angeles. The storm drain system shall be owned, operated, and maintained by Vulcan until ownership is transferred to the Los Angeles County Department of Public Works. Vulcan shall ensure the storm drain system is constructed in accordance with Los Angeles County specifications, and the City and Vulcan shall cooperate to affect the transfer of the storm drain system to the County. It is expressly understood that for those portions of the Site not reclaimed to street level, the storm drain system may incorporate retention basins, overflow facilities, and pumping capacity to insure protection of public safety, all to be developed and maintained by Vulcan or the County, if such improvements are accepted by the County. It is understood that Vulcan may transfer all of its obligations under this Section 4.12(a) pursuant to Section 14.1 of this Agreement.

(b) Streets.

(1) For improvements to Foothill Boulevard and Irwindale Avenue, Vulcan shall pay Two Million Six Hundred Sixty Thousand and 00/100 Dollars (\$2,660,000.00). Such payments shall be made as follows:

- a. The first payment of One Million One Hundred Forty Thousand (\$1,140,000) shall be made sixty (60) days after the effective date of this Agreement.
- b. The second payment of Seven Hundred Sixty Thousand (\$760,000) shall be made twelve (12) months after the effective date of this Agreement.
- c. The third payment of Seven Hundred Sixty Thousand (\$760,000) shall be made twenty four (24) months after the effective date of this Agreement.

(2) In the event the City increases the Mining Tax within fifteen (15) years of the effective date of the Agreement, the sum of the above payments shall be credited against such increase in the Mining Tax attributable to Vulcan up to the amount in (1) above.

(c) Walls, Fences and Landscaping.

Vulcan, at its expense, will construct and 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. Continued maintenance may be assured through recorded covenant agreements enforceable by City as provided herein. However, such walls and fences may be removed and/or modified in accordance with Future Development Approvals affecting the Site.

(d) Undergrounding of Utilities.

Vulcan, at its expense, shall underground all utility lines located adjacent to the Project along Foothill Boulevard (West of Irwindale Avenue) in conjunction with the post reclamation development of this Site.

(e) Other Infrastructure Requirements.

Vulcan, at its expense, shall install all necessary infrastructures as identified in the EIR and any subsequent environmental documentation prepared before development for post-reclamation development of the Site.

4.13 Selection of Developer.

The parties will work together for a joint process to select a developer of the Site, which development will be consistent with the terms of this Agreement. Vulcan shall have the ultimate decision on the selection of the developer, but the parties will participate in a joint process for the solicitation and interview of prospective developers. To this end, Vulcan shall provide the City notice of its desire to solicit developers and the list of such prospective developers. Should the City provide Vulcan with any additional suggested developers to consider for solicitation and interview within twenty (20) days of Vulcan's notice, Vulcan shall include such developers in the solicitation. If the City can provide financial incentives for the development, such incentives will be included in the solicitation process, subject to the City's sole discretion on the decision to provide any incentive. Vulcan shall provide City with a copy of the development proposals received in response to the solicitation and meet with City to evaluate same. Thereafter, the parties will schedule a time to interview those developers mutually accepted by the parties. Thereafter, the parties will mutually interview the selected developers and discuss the developer or developers best suited to develop the Site, as contemplated in this Agreement. Should the parties fail to mutually accept a list of developers to be interviewed or selected for development, following the parties' good faith efforts to do so, Vulcan shall have the ultimate decision on such matters.

5.0 TIME FOR CONSTRUCTION AND COMPLETION OF PROJECT.

5.1 Schedule of Performance.

Vulcan 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 4.9, 5.2 and 6.2 of this Agreement. Vulcan shall submit to the City applications and provide supporting documentation as needed by the City for the Future Development Approvals upon

completion of reclamation on the Site where such developments are contemplated to take place under this Agreement. Upon the City's approval of any Future Development Approval, Vulcan shall commence and complete development in accordance with the Schedule of Performance. 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.

5.2 Right of Vulcan to Control Timing of Development.

Vulcan may conduct the post-reclamation development of the Site or may convey the Site, or a portion thereof, to a development entity. The excavation and reclamation of the Reliance I Quarry and reclamation of the Reliance II Landfill Sites as allowed under this Agreement shall be accomplished in accordance with the Schedule of Performance. However, given that the earliest portion of the Site available for such development will not occur for approximately twelve (12) years, and potentially thirty (30) years, as provided in Scope of Development and Schedule of Performance, it is impractical to precisely regulate the timing, phasing, or sequencing in which the development will occur. Such decisions depend upon numerous factors of construction, the state of the general economy and the geotechnical condition of the fill. The parties shall develop a precise phasing plan within a period of 1-3 years prior to completion of reclamation. Moreover for any of the Sites, Vulcan agrees that no later than one (1) year before completion of reclamation of any portion of the Site, Vulcan shall submit an amendment to the Development Plan as applicable to such parcel, including subdivision maps for the City's approval through its then applicable approval process. Within three (3) years following completion of reclamation of any portion of the Reliance I Development Parcel or Reliance II Landfill that is not subject to the active uses of the Project, Vulcan will file application(s) for development. Such development shall be accomplished within either five (5) years of commencement or in accordance with any phasing plan approved by the City of the reclaimed portion of the Reliance I Development Parcel or Reliance II Landfill, which phasing plan shall be based on a schedule of development supported by a market study describing the optimum timing for development of such parcels, which market study shall be performed by Vulcan at its expense and reviewed and approved by the City within the aforementioned three (3)-year timeline. Should Vulcan identify a proposed development concept or opportunity before the time described in this schedule, Vulcan may submit an application to the City for such development and any necessary amendment to this Agreement to accommodate such development.

5.3 Public Improvements.

Notwithstanding any provision herein to the contrary, the City shall retain the right to condition any post-reclamation Future Development Approvals to require Vulcan to dedicate necessary land, pay any required development fees, and/or to construct the required public infrastructure ("Exactions") at such time as City shall determine subject to the following conditions:

- (a) The dedication, payment or construction must be to alleviate an impact caused by the post-reclamation development or be of benefit to same; and

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(b) The timing of the Exaction should be reasonably related to the infrastructure needs of the phasing of the post-reclamation development per the Scope of Development, including infrastructure improvements needed before the commencement of such development, and said public improvements shall be phased to be commensurate with the logical progression of the post-reclamation activities and development as well as the reasonable needs of the public.

When Vulcan is required by this Agreement and/or the Development Plan to construct any public works facilities which will be dedicated to the City or any other public agency upon completion, Vulcan shall perform such work in the same manner and subject to the same construction standards as would be applicable to the City or such other public agency should it have undertaken such construction work.

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 Processing.

Upon satisfactory completion by Vulcan of (i) all required preliminary actions and meetings, (ii) submittal of required information, and (iii) payment of appropriate processing fees, if any, the City shall promptly commence and diligently proceed to complete all required steps necessary for the processing of this Agreement. In this regard, Vulcan, in a timely manner, shall provide City with all documents, applications, plans and other information necessary for the City to carry out its obligations hereunder and shall cause Vulcan's planners, engineers and all other consultants to submit in a timely manner all required materials and documents therefor. It is the express intent of this Agreement that the parties cooperate and diligently work to implement any zoning or other land use, site plan, subdivision, grading, building, reclamation, or other approvals for Development of the Site, or any further developments for the ultimate end use of the Site. The City will undertake all acts necessary to rezone the Site to permit the industrial and retail-commercial end uses proposed in this Agreement. In the interim, a Quarry Overlay Zone, including any duly approved amendments, will prescribe standards for mining operations at the Site; provided, however, nothing herein shall prohibit Vulcan from pursuing its legal rights to challenge such Quarry Overlay Zone. In the case of any material inconsistencies between this Development Agreement and standards prescribed for a Quarry Overlay Zone, this Agreement shall govern, as to Vulcan's entitlements to (i) mining quantities, (ii) mine to the Maximum Safe Depth, (iii) reclamation quantities, and (iv) the end uses. Notwithstanding the foregoing, nothing contained herein shall be construed to require City to process Vulcan's applications ahead of other projects in process in the City and City's obligations hereunder shall be subject to the

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City's workload and staffing at any given time. If Vulcan elects, in its sole discretion, to request the City to incur overtime or additional consulting services to receive expedited processing by the City, Vulcan shall pay all such overtime costs, charges or fees incurred by City for such expedited processing.

6.3 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 Vulcan, (ii) interfere with Vulcan's ability to satisfy its obligations hereunder, or (iii) be inconsistent with the provisions of Section 10.1(b).

6.4 Phased Final Maps.

Vulcan may file as many phased final maps for the Project as it deems appropriate and consistent with this Agreement.

6.5 Other Governmental Permits.

Vulcan 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 Vulcan in its efforts to obtain such permits and approvals.

6.6 Public Agency Coordination.

The City and Vulcan 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.

6.7 Waiver of Permit Streamlining Act.

Sections 65950, et seq., of the Government Code, generally known as the "Permit Streamlining Act" (the "Act"), requires timely processing of development applications and

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provides specified time periods for such processing, which if not met, and subject to notice and other procedural requirements, may result in the project being deemed approved. The parties hereby expressly waive the provisions of the Act, and agree that the Project shall be processed in accordance with the Schedule of Performance and this Agreement. Failure to meet any time period established in this Agreement or the Act shall not result in the determination that the Project is "deemed approved." In the event that the time periods provided in this Agreement are not met, the parties' remedies shall be as otherwise provided herein. In the event this Agreement is terminated for any reason, then Vulcan may submit a new development application, and the provisions of the Act shall be reinstated and all applicable time provisions for processing shall commence to run as of the date of the new submittal. Waiver of the requirements of the Act shall not apply with respect to the processing of applications for matters outside the scope of this Agreement.

7.0 RECLAMATION INCENTIVES, 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, Vulcan will fill the Site with Engineered Fill within the times set forth in the Schedule of Performance, subject to the following:

7.1 Fill Requirements and Specifications.

All Site Development Fill used for the Site shall meet the requirements of this Section 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. 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 Site 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.

7.2 Commencement Date/Prioritization of Fill.

Vulcan shall not commence Commercial Filling Operations at the Reliance I Quarry until such time as fill operations at (i) Pit-1, formerly owned by United Rock Products Corporation ("United"), now owned by J.H. Holdings 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, and (iii) United'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 (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 acknowledges that the Reliance II Landfill is a

pre-existing fill operation, not subject to the Commercial Filling Operations limitation described in Section 2.10 or this Section 7.2 and that Vulcan remains free to continue its Commercial Filling Operations thereon. As to any filling activities at the Reliance I Quarry, however, 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 thereon shall be deferred until the Priority Quarries have been reclaimed; subject to the provisions of Section 3.2 above. Reclamation operations shall commence at the Reliance I Quarry within 180 days after Vulcan's receipt of the City's authorization to commence the Commercial Filling Operations and other required permits and authorizations. At such time, Vulcan shall obtain all required permits for the reclamation backfill of the Site 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. Failure to commence within such time shall cause Vulcan to lose its position on the priority list for Commercial Filling Operations. Notwithstanding the foregoing, nothing herein shall prevent Vulcan from operating a filling operation at the Reliance I Quarry that is not a Commercial Filling Operation at any time, provided Vulcan secures all necessary permits therefor.

7.3 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 and Hanson, 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 Vulcan, 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) Vulcan 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) Vulcan 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;
- (c) Vulcan shall be obligated to pay all fees applicable to a permit application as charged by City at the time such application is filed by Vulcan;

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(d) Vulcan 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 Vulcan. Vulcan reserves its right to protest the establishment or amount of any such fees or assessments through the method prescribed by law;

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

(f) Vulcan 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) Vulcan shall be obligated to pay any fees imposed pursuant to any Uniform Code; and

(h) Vulcan 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.

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, Vulcan shall not contest the existing mining taxes imposed by the City or the use of the special mining tax permitted under such ordinance. Vulcan 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 Vulcan from challenging the new tax. Notwithstanding the foregoing, Vulcan shall only be obligated to pay mining 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 Agreement Costs.

In addition to the amounts deposited by Vulcan pursuant to Section 4.6(d) above, City acknowledges receipt of seventy-five thousand dollars (\$75,000) from Vulcan to cover the costs and expenses for the preparation of this Agreement, including attorneys' fees.

8.4 Accord and Satisfaction.

No payment by Vulcan or receipt by City of a lesser amount than established by City 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 City may accept such check or payment without prejudice to City's right to recover the balance due or pursue any other remedy herein provided.

8.5 Payment Made by City on Behalf of Vulcan.

In the event that:

- (a) Vulcan 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 Vulcan, Vulcan having been given the opportunity to cure pursuant to Section 13.5, and
- (c) City incurs the expense thereof on behalf of Vulcan,

then Vulcan shall reimburse the City for all such costs and expenses. If the City is not reimbursed for such costs by Vulcan 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 13.8 until paid. Any and all delinquent amounts, together with said interest, costs and reasonable attorney's fees shall be a personal obligation of the Vulcan as well as a lien and charge, with power of sale, upon that portion of the Site upon which Vulcan has any interest, legal or equitable, and the rents, issues and profits of the Site. The City may bring an action at law against the Site to pay any such sums or foreclose the lien against the Site. Any such lien may be enforced by sale by the City following recordation of a Notice of Default of Sale given in the manner and time required by law as in the case of a deed of trust; such sale to be conducted in accordance with the provisions of Section 2924, 2924(b), and 2924(c) of the California Civil Code, applicable to the exercise of powers of sale in mortgages and deeds of trust, or in any other manner permitted by law.

9.0 AMENDMENT OF DEVELOPMENT AGREEMENT.

9.1 Initiation of Amendment.

Either Party may propose an amendment to this Agreement.

9.2 Procedure.

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

9.3 Consent.

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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 Vulcan 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 Amendment to Combine Reliance I and Azusa-Reliance Reclamation Plans.

In response to the written comments from OMR, by letters to the City dated July 11 and September 17, 2008, recommending that the City require the Reclamation Plan, as it pertains to the Reliance I Quarry, be combined with the reclamation plan for Azusa-Reliance ("Single Reclamation Plan") pursuant to State Mining and Geology Board Regulation section 3502, the parties contemplate that this Agreement shall be amended by mutual approval of the parties to adopt the Single Reclamation Plan pursuant to the terms of this Section 9.5. Within the times set forth in the Single Reclamation Plan Schedule, at **Exhibit E**, Vulcan shall initiate the process of requesting the City of Azusa to consent to the creation of the Single Reclamation Plan and transfer lead agency responsibilities over reclamation of Azusa-Reliance thereunder to the City of Irwindale. Upon receipt of a formal response from the City of Azusa, Vulcan and the City will pursue the following:

(a) If the City of Azusa is amenable to transferring lead agency responsibilities for the Reliance-Azusa Quarry, Vulcan shall formally request that the City of Azusa approve a resolution approving the transfer to the City of Irwindale within

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the times set forth in the Single Reclamation Plan Schedule. Thereafter, Vulcan shall prepare an amendment to the Reclamation Plan to include the Azusa-Reliance Quarry and pay for the City's costs to have the City's environmental consultant prepare an appropriate amendment or supplement to the EIR. Thereafter, the City and Vulcan shall cooperate in processing and considering the approval of the Single Reclamation Plan, securing a resolution from the City of Azusa transferring lead agency responsibilities, and effecting such transfer, as required by SMARA and State Mining and Geology Board Regulations to the City of Irwindale, all in accordance with the Single Reclamation Plan Schedule.

(b) If the City of Azusa is not amenable to transferring lead agency responsibilities, Vulcan and the City of Irwindale shall so inform OMR. In such case, the City of Irwindale and Vulcan will take no further action, unless the State Mining and Geology Board schedules a hearing on the issue, at which time City of Irwindale will support any transfer of lead agency responsibilities of the Reliance-Azusa pit to the City of Irwindale. The parties understand that the City of Irwindale retains the right to challenge, in any manner within its discretion, any transfer of lead agency responsibilities over the combined quarry to the City of Azusa. If the State Mining and Geology Board transfers lead agency responsibilities to the City of Irwindale, Vulcan and the City shall cooperate in processing the approval of the Single Reclamation Plan in accordance with the Single Reclamation Plan Schedule and beginning with paragraph 9 of such schedule.

The parties agree that any extension to the times provided in the Single Reclamation Plan Schedule shall be governed by Section 3.2 or the terms set forth in the Single Reclamation Plan Schedule.

9.6 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 Land Use Regulations to the Project is governed by Sections 4.2, 6.1 and this Article. In addition to the Existing Land Use Regulations, only the following Land Use 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 Land Use Regulations. All Future Land Use Regulations shall apply, except for (i) Future Mining Land Use Regulations and (ii) approvals of an amended Development Plan as set forth in Section 5.2.

(b) 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.

(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 or amending Existing 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 Vulcan's operations nor Vulcan'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 7. This Agreement shall not prevent the City from adopting fees, taxes and assessments per Section 7.0.

10.2 Multi-Jurisdictional Programs.

This Agreement shall not prevent the City from adopting Future Land Use Regulations or amending Existing Land Use Regulations which are area-wide or multi-jurisdictional codes and are based on recommendations of a county or multi-jurisdictional organization and become widely applicable, such as the San Gabriel Valley Council of Governments; provided, however,

that in the case of any material inconsistencies between this Development Agreement and standards prescribed for a such area-wide or multi-jurisdictional codes, this Agreement shall govern as to Vulcan's entitlements to (i) mining quantities, (ii) mine to the Maximum Safe Depth, (iii) reclamation quantities, and (iv) the end uses.

10.3 Objections to Regulation.

In evaluating the reservation of authority to the City and applying the standards described above, in the event Vulcan believes that such Future Mining Land Use Regulation does not satisfy such standards, Vulcan shall give written notice of its objections and the grounds therefor to City, City shall duly consider Vulcan'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 Vulcan's position is supported by clear and convincing evidence.

10.4 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.

City and Vulcan shall review the performance of this Agreement, and the development of the Project, at least once during each twelve (12) month period from the Effective Date and concurrently with the review of Vulcan's financial assurances. The cost of the annual monitoring review shall be borne by Vulcan, but in no event shall such reimbursable costs exceed Fifteen Thousand Dollars (\$15,000) 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, Vulcan 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 Vulcan's performance under this Agreement demonstrating that Vulcan 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 Vulcan has substantially complied with the terms and conditions of this Agreement, the review shall be concluded. If the City finds and determines that Vulcan has not substantially complied with the terms and conditions of this Agreement for the period under review, the City may declare a Default by Vulcan in accordance with Section 13.0.

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11.2 Estoppel Compliance.

If at the conclusion of an annual monitoring review the City finds that Vulcan is in substantial compliance with this Agreement, the City shall, upon request by Vulcan, issue an Estoppel Certificate pursuant to Section 16.2.

11.3 Failure to Conduct Annual Review.

The failure of the City to conduct an annual monitoring review shall not be a Vulcan Default, provided Vulcan initiates annual monitoring review in accordance with Section 10.1.

12.0 EASEMENT AT RELIANCE II LANDFILL FOR DRAINAGE PURPOSES.

Within the times set forth herein and at no cost to the City, Vulcan shall grant to City a perpetual twenty (20) foot wide drainage easement running along and parallel to the southerly property line of the Reliance II Landfill, along with all necessary temporary construction easements (collectively, "Reliance II Drainage Easement") using a Grant of Easement form as set forth at **Exhibit D** herein. The Reliance II Drainage Easement shall encompass approximately 1.5 acres and is anticipated to be for the purpose of providing future storm water drainage from the City's property known as the North Kincaid Pit and adjacent sites and roadways (collectively, "Kincaid Property"), located east of Irwindale Avenue and adjacent to the north side of the 210 Freeway, as well as for future storm water drainage from the Reliance II Landfill site, and tributaries thereto (when developed in the future for retail-commercial development). The drainage system, within Vulcan's property, is anticipated to be a buried gravity flow pipe of sufficient size and slope to accommodate storm water flows from the Kincaid Property and future development upon the Reliance II Landfill. It is anticipated by both City and Vulcan that the storm water drainage from the Kincaid Property and the Reliance II Landfill will extend to the San Gabriel River for final discharge of the drainage flow from these sites.

Vulcan shall grant to City the Reliance II Drainage Easement at least twelve (12) months before the City has, based on reasonable estimates, approved all final engineering plans for the construction of the drainage system. At least six (6) months before commencing such engineering design, the City shall notify Vulcan of this schedule. Within four (4) months of Vulcan's receipt of such notice, Vulcan shall provide the City with an assessment of the storm water drainage capacity required for the future development of the Reliance II Landfill, including all tributary flows thereto. These storm water drainage capacities will be the City's and Vulcan's proportional flow components of the total design flow capacity of the drainage system. The City shall then proceed to entitle, permit, design and build the drainage system necessary for the Kincaid Property; provided that Vulcan and the City shall use reasonable best efforts to achieve economies of scale regarding their respective proportional costs for those portions of the drainage system that will be utilized by both the Reliance II Landfill and the Kincaid Property. In either event, the cost of the parts (based on its proportional flow capacity requirements) of the drainage system required for the Reliance II Landfill and its flow tributaries shall be the sole responsibility of Vulcan or developers of the Reliance II Landfill site.

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In the event the development upon the Reliance II Landfill requires the drainage system before the City requires the system to drain the Kincaid Property, then Vulcan shall notify the City at least eighteen (18) months in advance of such need. Vulcan shall then proceed to entitle, permit, design and build the drainage system necessary for the Reliance II Landfill; provided that Vulcan and the City shall use reasonable best efforts to achieve economies of scale regarding their respective proportional costs for those portions of the drainage system that will be utilized by both the Reliance II Landfill and the Kincaid Property. In either event, the cost of the parts (based on its proportional flow capacity requirements) of the drainage system required for the Kincaid Property and its flow tributaries shall be the sole responsibility of the City or developers of the Kincaid Property; provided that Vulcan shall not charge City any cost for the grant of the Reliance II Drainage Easement.

Should City decide that it does not require the Reliance II Drainage Easement for the Kincaid Property, neither party shall have any further obligation under this Section 12.0, and Vulcan shall not be required to build the storm water drainage system to accommodate the added capacity required for the Kincaid Property drainage; provided that the Reliance II Drainage Easement, unless specifically relinquished by action of the City Council, shall remain in place in perpetuity for future needs of the City to drain the Kincaid Property, at which time any costs to accommodate such future needs of the City shall be borne by the City or developer or operator of the Kincaid Property.

13.0 DEFAULT, REMEDIES AND TERMINATION.

13.1 Security for Performance.

No later than the Effective Date, Vulcan shall provide a performance bond in the amount of Five Millions Dollars (\$5,000,000) representing the estimate of the security required to assure Vulcan's faithful performance of all obligations hereunder. The performance bond 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 bond shall be issued in favor of the City in case of breach of any obligation by Vulcan hereunder (following the notice and cure provisions of Section 13.5 herein) to guarantee compensation for any costs and damages incurred by the City in performing Vulcan's obligations hereunder.

13.2 Financial Assurance Bonds.

Within the time required under the Conditional Use Permit approved concurrently herewith, Vulcan shall post financial assurance bonds or other security meeting the requirements of SMARA Regulations, at Section 3803 in the amount required under the Conditional Use Permit.

13.3 Transfer and Conveyance of SMARA Operation Rights.

(a) Concurrently with this Agreement, Vulcan shall execute the SMARA Operation Rights Transfer and Conveyance Agreement ("SMARA Transfer Agreement"), pursuant to which Vulcan shall participate in the alternative financial assurances mechanism established by the Irwindale Reclamation Authority ("JPA").

Specifically, for purposes of complying with Sections 3803 and 3806 of the regulations promulgated by the State Mining and Geology Board ("SMGB"), allowing greater flexibility to public agencies in providing financial assurance mechanisms for reclamation than to private entities, and to assure that fill revenues from filling activities at the Site with Inert Materials that shall accrue to Vulcan in conducting the operations of the Site shall be counted toward the financial assurance obligations for each of the Site, Vulcan shall transfer to the JPA its rights to operate the Site pursuant to SMARA, including the right to receive revenues from fill operations conducted at the Site.

(b) Simultaneously with the transfer specified in (a) above, the JPA will convey to Vulcan its actual operating rights to the mining and reclamation operations for the Site.

(c) The operating rights transferred to the JPA under the SMARA Transfer Agreement shall be in the nature of a transfer in trust, and confer no title or interest in or to any real or personal property of Vulcan. The actual operating rights to the Site conveyed under the SMARA Transfer Agreement to Vulcan of any nature whatsoever shall remain with Vulcan until and unless Vulcan defaults in its obligations (i) to reclaim the Site as required in this Agreement, or (ii) under the Reclamation Plan, or (iii) to maintain financial assurances, as required by this Agreement. In such event, the JPA shall have the right to enter the Site to cure defaults in reclamation and exercise all other rights under the SMARA Transfer Agreement, including the right to receive fill revenues pursuant thereto.

13.4 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 13.5 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 13.5.

13.5 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 ("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 completely 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.

13.6 Waiver of Breach.

By recordation of a final map on all or any portion of the Vulcan's Site, Vulcan shall be deemed to have waived any claim that any condition of approval of the map and the Development Approvals is improper or that the map or the Development Approvals as approved constitutes a breach of the provisions of this Agreement.

13.7 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. Vulcan specifically acknowledges and agrees that the City's remedies under the performance bond described at Section 13.1 are cumulative to other remedies available to City hereunder.

13.8 Interest.

In the event Vulcan fails to perform any monetary obligation under this Agreement, Vulcan 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.

13.9 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

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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.

14.0 RESTRICTIONS ON TRANSFER.

14.1 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.

Vulcan shall not transfer this Agreement or any of Vulcan's rights hereunder, or any interest in the Site 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 Vulcan, 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 Vulcan'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 14.1 and, furthermore, the City's consent to a transfer shall not be deemed to release Vulcan 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) Any mortgage, deed of trust, sale/lease-back, or other form of conveyance for financing and any resulting foreclosure therefrom.
- (b) The granting of easements or dedications to any appropriate governmental agency or utility or permits to facilitate the development of the Site.
- (c) 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.

(d) A sale or transfer of the Site or Vulcan to any entity controlling, controlled by or under common control with Vulcan Material Company, a New Jersey corporation.

(e) A sale or transfer of Vulcan to another publicly-traded company, so long as the purchaser entity executes an assumption agreement assuming all of Vulcan's duties and obligations hereunder.

14.2 Subject to Terms of Agreement.

Following any such assignment or transfer of any of the rights and interests of Vulcan under this Agreement, in accordance with Section 14.1 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 Vulcan.

14.3 Release of Vulcan.

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

14.4 No Approval of Terms of Loan by the City.

Notwithstanding anything to the contrary set forth herein with regards to the approval by the City of hypothecation, encumbrances or mortgages, the City shall only have the right to approve the identity of Vulcan's lender, which approval will not be unreasonably withheld, taking into consideration such lender's financial strength, reputation, and other relevant factors. The City shall not have any right to approve any of the terms or conditions of Vulcan's financing arrangements with third party lenders.

15.0 INSURANCE, INDEMNIFICATION, WAIVERS.

15.1 Insurance.

(a) Types of Insurance.

(1) Public Liability Insurance. Beginning on the Effective Date hereof and until completion of construction by Vulcan on the Site, Vulcan shall at its sole cost and expense keep or cause to be kept in force for the mutual benefit of the City and Vulcan 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

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

(4) Other Insurance. Vulcan 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 Vulcan.

(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, Vulcan 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 Vulcan 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 Vulcan 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 15.1; (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. Vulcan 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.

Vulcan 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 Vulcan 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.

15.2 Indemnification.

(a) General.

Vulcan 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, the Conditional Use Permit, 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 Vulcan's acts or omission on the Site, whether or not such act or omission resulted or was undertaken pursuant to this Agreement, the Conditional Use Permit, Reclamation Plan, and related approvals. The City will promptly notify Vulcan of any such claim, action or proceeding against the City and Vulcan 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 Vulcan, 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 Vulcan in a timely manner of any such claim, action or proceeding, so that the City's and/or Vulcan's rights are prejudiced, Vulcan 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 Vulcan's consent as to the City's liabilities or rights only, so long as the City's actions do not affect Vulcan's material entitlements under the Agreement, and even with those entitlements that are not material, the City will enter into good faith discussions with Vulcan 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.

(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.

(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 Vulcan to comply with performance of all of the provisions of this Agreement;

(4) Vulcan'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, including but not limited to, the presence of buried debris, hazardous materials, hydrocarbons, or any form of soil contamination.

(d) Loss and Damage.

The City shall not be liable for any damage to property of Vulcan or of others located on the Site, nor for the loss of or damage to any property of Vulcan 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 15.2 shall begin upon the Effective Date and shall terminate upon termination of Development Agreement, provided that indemnification shall apply to all claims or liabilities arising during that period even if asserted at any time thereafter.

15.3 Waiver of Subrogation.

Vulcan 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 Vulcan or to any person or property,

except as specifically provided hereunder and Vulcan 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.

16.0 EFFECT OF AGREEMENT ON TITLE.

16.1 Covenants Run with the Land.

Subject to the provisions of Sections 14.0 and 17.0:

(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.

16.2 Estoppel Certificate.

Either Party (or a lender approved by City under Section 14.4) 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.

17.0 **OPTION TO PROPERTY AND PRESCRIPTIVE WATER RIGHTS: TRANSFER AND RIGHT OF FIRST NOTICE**

17.1 Prescriptive Water Rights.

(a) Sale of Any Parcel of the Site.

As to any portion of the Site ("Parcel") intended for future development, before transfer of such Parcel to any third party purchaser, Vulcan shall, at its sole expense, have a Water Supply Assessment prepared; assessing the water needs for the proposed development of such Parcel, which Water Supply Assessment shall be subject to the review and written approval of the City Engineer. Vulcan shall not transfer any such Parcel, without assuring Vulcan will provide the necessary Water Supply Assessment information necessary to complete the development of such Parcel, and in the event the transferee of such Parcel is unable to obtain a water supply sufficient to meet the requirements of the proposed development, Vulcan will assure that the water supply needs of such Parcel can be met, which may include a reservation or transfer by Vulcan of such water rights.

(b) Notification of Sale and Opportunity to Purchase.

Subject to Section 17.1(c) below, at any time during the Term of this Agreement, Vulcan may sell or otherwise transfer the balance of any of its prescriptive water rights, and not required by the future development of any portion of the Site pursuant to Section 17.1(a) ("Balance of Water Rights"); provided Vulcan complies with the provisions of this Section 17.1(b). Should Vulcan desire to sell or otherwise transfer any portion of the Balance of Water Rights, Vulcan shall notify the City at least ten (10) days before any offer to a third party. Within such time, City may offer to purchase, lease or otherwise acquire such Balance of Water Rights, or portion thereof, and Vulcan shall negotiate in good faith with City regarding such sale or transfer, provided that Vulcan shall have no obligation to sell the Balance of Water Rights. City shall have the right, as a contingency to its acquisition, if any, to conduct due diligence regarding any environmental conditions and fair market valuation related to such Balance of Water Rights.

(c) City of Azusa Right of First Refusal.

Should Vulcan decide to sell or otherwise transfer any portion of the Balance of Water Rights during the period starting on the Effective Date and ending five (5) years from such date ("Azusa ROFR Period"), the City of Azusa shall have a first right of refusal to lease the Balance of Water Rights in accordance with the terms of the City Council of the City of Azusa, Resolution No. 99-C75, dated June 7, 1999. If Vulcan makes or receives an offer to transfer any portion of the Balance of Water Rights during the Azusa ROFR Period, Vulcan shall have no obligation to negotiate or make an offer to the City of Irwindale regarding the transfer of such Balance of Water Rights. However, Vulcan shall notify the City of Irwindale of any sale or other transfer of any portion of Balance of Water Rights during the Azusa ROFR Period.

17.2 Notice of Sale of Site.

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Vulcan shall notify the City in writing, on the first occasion that Vulcan determines that Vulcan shall commence the marketing of any property it owns in the City, including but not limited to the Site portions thereof ("Sale Property") for sale to third parties ("Vulcan Notice"). If the City notifies Vulcan in writing within thirty (30) days ("City Notice") after receiving the Vulcan Notice that it is interested in purchasing the Sale Property, Vulcan agrees to meet with the City to discuss terms regarding a possible sale of the Sale Property to the City, provided that (i) in no event shall Vulcan be obligated to sell the Sale Property to the City or enter into any other arrangement with the City with respect to the Sale Property, and (ii) Vulcan shall remain free to enter into an agreement with any other party regarding the sale or transfer of any interest in the Sale Property to such party on terms acceptable to Vulcan; provided, however, that if City timely delivers the City Notice, Vulcan shall first provide City sixty (60) days to appraise and inspect the Sale Property to develop any offer the City deems appropriate. After the expiration of that time period, Vulcan is free to sell or transfer the Sale Property to any entity it so desires. Any purchase and sale agreement between Vulcan and the City will only be entered into by Vulcan if it decides, in its sole and absolute discretion, that such a purchase and sale agreement is on terms and conditions acceptable to Vulcan, in its sole and absolute discretion.

18.0 GENERAL.

18.1 Non-liability of City Officers and Employees.

No official, agent, contractor, or employee of the City shall be personally liable to Vulcan, 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 Vulcan or to its successor, or for breach of any obligation of the terms of this Agreement.

18.2 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.

18.3 Covenant Against Discrimination.

Vulcan 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. Vulcan 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.

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18.4 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.

18.5 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.

18.6 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, 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.

18.7 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 Vulcan and City as set forth in this Agreement.

18.8 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.

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18.9 No Third Party Beneficiaries.

The only parties to this Agreement are Vulcan 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.

18.10 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.

18.11 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.

18.12 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.

18.13 Notices, Demands and Communications Between the Parties.

Notices, demands, submission of documents, and communications between City and Vulcan 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, #400
Irvine, CA 92612
Telecopier No. (949) 223-1180
Attn: Fred Galante, Esq.

Vulcan: CALMAT CO., dba
VULCAN MATERIALS CO., WESTERN DIVISION
3200 San Fernando Road
Los Angeles, California 90065
Telecopier No. (323) 258-1583
Attn: David B. Pasley

A copy to: JEFFER, MANGELS, BUTLER & MARMARO LLP
1900 Avenue of the Stars, Seventh Floor
Los Angeles, CA 90067-5010
Telecopier No. (310) 203-0567
Attn: Joel D. Deutsch, 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.

18.14 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.

18.15 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.

18.16 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.

18.17 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

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and Vulcan is that of a government entity regulating the development of private property and the owner of such private property.

18.18 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 Vulcan which pertain to the Project. The parties agree that Vulcan'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.

18.19 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 Vulcan 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.

19.0 EXHIBITS.

The following are the Exhibits to this Agreement:

- Exhibit A: Site Map
- Exhibit A-1 Legal Description of Sites
- Exhibit B: Scope of Development
- Exhibit B-1 Manner of Reclamation
- Exhibit B-2 Typical Slope Cross Sections
- Exhibit C: Schedule of Performance
- Exhibit D: Form Easement Deed for Reliance II Drainage Easement
- Exhibit E: Single Reclamation Plan Schedule
- Exhibit F: Reliance Reclamation Plan Drawings

[SIGNATURE PAGE FOLLOWS]

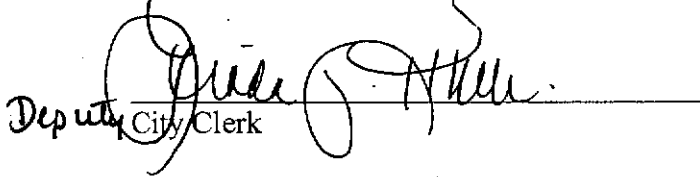
IN WITNESS WHEREOF, the City and Vulcan have executed this Development Agreement on the date first above written.

"CITY"

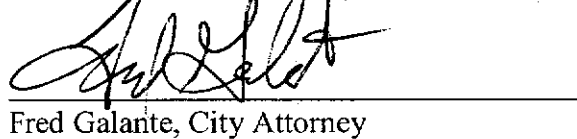
CITY OF IRWINDALE, a municipal corporation


Mayor

Attest:

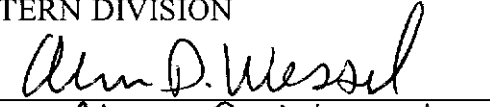

Deputy City Clerk

Approved as to form:
ALESHIRE & WYNDER, LLP


Fred Galante, City Attorney

"VULCAN"

CALMAT CO., a Delaware corporation, dba
VULCAN MATERIALS COMPANY,
WESTERN DIVISION

By: 
Name: Alan D. Wessel
Title: President

By: 
Name: BRIAN W. FERRIS
Title: V.P., ASST. SEC.

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

RESOLUTION NO. 2008-65-2337

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF IRWINDALE, LOS ANGELES COUNTY, GRANTING FINAL APPROVAL OF CONDITIONAL USE PERMIT NO. 7-06 CUP AND THE ATTENDANT RECLAMATION PLAN AND FINANCIAL ASSURANCES TO ALLOW VULCAN MATERIALS COMPANY, INCORPORATED, TO CONTINUE MINING AND TO RECLAIM THE RELIANCE I QUARRY SITE AND TO CONTINUE FILLING THE RELIANCE II LANDFILL FOR RETAIL COMMERCIAL AND INDUSTRIAL USES UPON COMPLETION OF MINING

RECITALS.

- (i) The Applicant, Vulcan Materials Company Incorporated (VMC), pursuant to Chapters 17.60 and 17.63 of the Irwindale Municipal Code (IMC) and the provisions of the California Surface Mining and Reclamation Act (SMARA), is requesting final approval of a conditional use permit for the continued mining of the Reliance I Quarry until December 31, 2037, or until reaching the maximum permitted depth of 440 feet below ground surface (bgs), whichever event occurs first, and approval of the continued filling of the Reliance II Landfill. The Applicant also seeks approval of the required Reclamation Plan and Financial Assurances (the "Proposed Project"). The Reclamation Plan describes the methods for reclaiming the Quarry Site and the Landfill Site for industrial and commercial uses. Development Agreement (DA) No. 2-06 and Conditional Use Permit (CUP) No. 7-06 supersede all of the prior entitlements granted by the City to VMC or to any of its predecessors. Hereinafter in this Resolution, the subject Conditional Use Permit shall be referred to as the "Application."
- (ii) The Reliance I Quarry consists of a 124.2-acre sand and gravel quarry located in the City of Irwindale, Los Angeles County, at 16001 Foothill Boulevard and is generally bounded by the industrial uses on the north, a sand and gravel quarry located in the City of Azusa on the east, commercial and industrial uses on the south, and a flood control channel on the west. The access to the Site is from Foothill Boulevard. The Project Site is zoned M-2 (Heavy Manufacturing).
- (iii) The Reliance II Landfill consists of an 89.6-acre site located in the City of Irwindale, Los Angeles County, at 15990 Foothill Boulevard and is generally bounded by the Reliance I Quarry on the north, commercial and industrial uses on the east, the I-210 Freeway on the south, and a flood control channel on the west.

Access to the site is from Foothill Boulevard. The Project Site is zoned M-2 (Heavy Manufacturing).

- (iv) Pursuant to the authority and criteria contained in the California Environmental Quality Act of 1970 (CEQA), as amended (Public Resources Code, Section 2100 *et seq.*), the State CEQA Guidelines (California Code of Regulations, Title 14, Section 1500 *et seq.*), and the CEQA Guidelines of the City of Irwindale, the City, as the Lead Agency, has prepared a Draft Environmental Impact Report (DEIR) and a Final Environmental Impact Report (FEIR) for the Proposed Project. The DEIR identified no significant impacts after implementation of the recommended Mitigation Measures. The DEIR, State Clearinghouse Number 2006051107, was circulated for review and comment from December 6, 2007 through January 21, 2008. The City received comments on the DEIR from one (1) public agency (the State of California Native American Heritage Commission). Responses to the comments have been prepared and, together with the comments, have been included in the FEIR. The FEIR has been made available for review by the public at the City of Irwindale Planning Department. The FEIR was certified by the City Council on June 11, 2008.
- (v) Pursuant to Section 17.60.050 of the IMC, the City Council has final approval authority for any use permit, including the approval of reclamation plans and financial assurances, to allow for mining to a depth exceeding one hundred and fifty feet (150').
- (vi) On February 7, 2008, the Planning Commission opened a duly noticed public hearing, as required by law on the Application, took testimony, and continued the public hearing to the March 6, 2008 Planning Commission meeting.
- (vii) On March 6, 2008, the Planning Commission resumed the public hearing, took testimony, and continued the public hearing to the April 3, 2008 Planning Commission meeting.
- (viii) On April 3, 2008, the Planning Commission resumed the public hearing, took testimony, and continued the public hearing to the May 1, 2008 Planning Commission meeting.
- (ix) On May 1, 2008 the Planning Commission of the City of Irwindale conducted a duly noticed public hearing on the Application, Reclamation Plan, Financial Assurances, and Final Environmental Impact Report (FEIR) and concluded said public

hearing and approved Resolution No. 528(08) recommending that the City Council conditionally approve Conditional Use Permit No. 7-06; Development Agreement No. 2-06; the attendant Reclamation Plan and Financial Assurances; and certify the Final Environmental Impact Report (SCH # 2006051107); and direct staff to forward the Reclamation Plans and Financial Assurances to the OMR.

- (x) On May 28, 2008, the City Council of the City of Irwindale opened a duly noticed public hearing, as required by law on the Application, took testimony, and continued the public hearing to the June 11, 2008 City Council meeting.
- (xi) On July 11, 2008, the City Council of the City of Irwindale resumed the public hearing, took testimony and concluded said public hearing and adopted Resolution No. 2008-28-2300 conditionally approving Conditional Use Permit No. 7-06; the attendant Reclamation Plan and Financial Assurances; certifying the Final Environmental Impact Report (SCH # 2006051107); Ordinance No. 627 conditionally approving Development Agreement No. 2-06; and directing staff to forward the Reclamation Plans and Financial Assurances to the OMR.
- (xii) On September 24, 2008, the City Council, having received the comment letters from OMR concerning the proposed Reclamation plan, held a final public hearing, took testimony and concluded said public hearing to consider final approval of Conditional Use Permit No. 7-06 and the attendant Reclamation Plan and Financial Assurances and directing staff to send the Reclamation Plan and Financial Assurances to the OMR.
- (xiii) All legal prerequisites to the adoption of this resolution have occurred.

B. RESOLUTION.

NOW THEREFORE, it is hereby found, determined and resolved by the City Council of the City of Irwindale as follows:

1. The City Council hereby specifically finds that all of the facts set forth in the Recitals, Part A, of this Resolution are true and correct.
2. Based upon substantial evidence presented to this City Council during the public hearing conducted with regard to the Application, including written staff reports, the Reclamation Plan and Financial Assurances, the FEIR, and verbal testimony, this City Council hereby specifically finds as follows:

- a. The Reclamation Plan complies with SMARA, Sections 2772 and 2773, and any other applicable provision.
- b. The Reclamation Plan complies with applicable State Regulations.
- c. The Reclamation Plan and potential uses of reclaimed land pursuant to the plan are consistent with Chapter 17.63 of the IMC, the General, and any applicable resource plan or element.
- d. The Reclamation Plan has been revised pursuant to CEQA and the City's environmental review, and there will be no significant adverse impacts from reclamation of the surface mining operations that cannot be mitigated to a less than significant level.
- e. The land and/ or resources such as water bodies to be reclaimed, will be restored to a condition that is compatible with, and blends in with, the surrounding natural environment, topography and other resources.
- f. The Reclamation Plan will restore the mined lands to a usable condition which is readily adaptable for alternative land uses consistent with the General Plan and any applicable resource plan.
- g. A written response to the State Department of Conservation, Office of Mine Reclamation (OMR) has been prepared, describing the disposition of major issues raised by that department. Where the City's position varies from the recommendations or any objections raised by the State Department of Conservation, the City's response shall address in detail why specific comments and suggestions by that Department were not accepted. OMR's response to the City's responsive letter was received by the City on September 17, 2008, confirming that the City has addressed most comments. The City will continue to work with Vulcan to address any remaining comments raised in OMR's September 17 letter.
- h. As a result of OMR's comment supporting the merger of the Reliance 1 Quarry and Reliance-Azusa quarries into a single reclamation plan, with transfer of lead agency responsibilities over reclamation from the City of Azusa to the City of Irwindale, the approval provided by the City Council herein shall be amended, as needed, to address the single reclamation plan for the aforementioned 2 quarries upon approval of the revised reclamation plan and transfer of lead agency duties to the City of Irwindale over the Reliance-Azusa portion of the combined reclamation plan quarries in accordance with the schedule attached hereto as Attachment "B".

3. The City Council hereby specifically finds and determines that the Reclamation Plan and Financial Assurances prepared for the Reliance I Quarry and Reliance II Landfill comply with the provisions of the California Surface Mining and Reclamation Act.

4. The City Council hereby specifically finds and determines that, after their review and consideration of the Final Environmental Impact Report, prepared in compliance with the provisions of the California Environmental Quality Act (CEQA) of

1970, as amended, and guidelines promulgated thereunder, for the Proposed Project, the Proposed Project will not have any significant impact on the environment after the implementation of the recommended Mitigation Measures during the mining and reclamation phases of the project. This City Council further finds that said FEIR reflects the independent judgment of the City of Irwindale, as the Lead Agency. The FEIR was certified by the City Council on June 11, 2008.

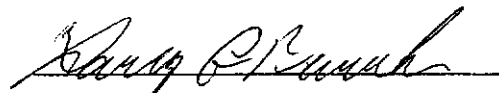
5. Based upon the substantial evidence and conclusions set forth hereinabove, this City Council hereby grants final approval of Conditional Use Permit No. 7-06 subject to the Conditions of Approval set forth in Exhibit "A" attached hereto and the requirement that this Resolution be amended upon the submission by Vulcan of a revised reclamation plan for the combined quarries of Reliance I Quarry and Reliance-Azusa and transfer of lead agency responsibilities over reclamation to the City of Irwindale for the combined reclamation plan of such 2 quarries in accordance with the schedule attached hereto as Attachment "B"; and grant final approval of the Reclamation Plan and Financial Assurances.

6. The Deputy City Clerk shall:

a. Certify to the adoption of this Resolution; and

b. Forthwith transmit a certified copy of this Resolution, by certified mail, return receipt requested, to the Applicant at the address as set forth on the Application.

PASSED, APPROVED, AND ADOPTED this 24th day of September 2008.


Larry G. Burrola, Mayor

ATTEST:


Linda J. Kimbro, MMC
Deputy City Clerk

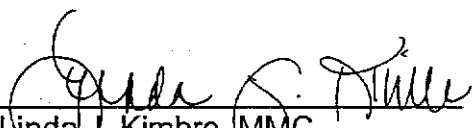
I, Linda J. Kimbro, MMC, Deputy City Clerk of the City of Irwindale, do hereby certify the foregoing Resolution No. 2008-65-2337 was adopted at a regular meeting of the City Council held on the 24th day of September 2008, by the following vote:

AYES: Councilmembers: Breceda, Ortiz, Mayor Burrola

NOES: Councilmembers: None

ABSENT: Councilmembers: Fuentes, Garcia

ABSTAINED: Councilmembers: None

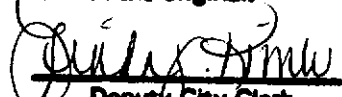

Linda J. Kimbro, MMC
Deputy City Clerk

State of California
County of Los Angeles
City of Irwindale

I, Linda J. Kimbro, Deputy City Clerk, do hereby certify that the attached is a full, true and correct copy of the original.

Resolution No. 2008-65-2337

and on file in the City files of the City of Irwindale, and that I have carefully compared the same with the original.


Deputy City Clerk

ATTACHMENT "A"
CONDITIONAL USE PERMIT NO. 7-06
CONDITIONS OF APPROVAL

Final Conditions of Approval

(September 16, 2008)

Vulcan Materials Company, Inc. (VMC) Reliance I Quarry and Reliance II Landfill

CONDITIONAL USE PERMIT No. 7-06

Before final acceptance of the use authorized under this CONDITIONAL USE PERMIT ("CUP"), all conditions listed below, which are at that time due to be performed, shall be completed to the satisfaction of the appropriate City department or its designee, depending upon which department recommended the condition.

Any agreements, easements or covenants required to be entered into between the parties shall be in a form reasonably approved by the City Attorney.

GENERAL CONDITIONS:

1. This CUP No. 7-06 modifies and supersedes all previous entitlements in that CUP No. 7-06 permits mining until (i) a maximum allowable mining depth in the Reliance I Quarry (together with the Reliance II Landfill, the "Site") as depicted in the Mine Slope Profile, attached as Exhibit "A" hereto, based on a maximum depth of 440 feet (to a level pit floor at elevation 150 mean sea level ("msl")), or (ii) until December 31, 2047, whichever occurs first. Reclamation backfill of the Reliance I site may continue after completion of mining until backfill is completed or 2059, whichever occurs first. CUP No. 7-06 also permits continued fill operations at the Reliance II Landfill. All backfill for these sites shall be in accordance with the City's "Guidelines For Above Water Backfilling Of Open-Pit Mines, Irwindale, California, November 23, 2005; and "Guidelines For Underwater Backfilling Of Open-Pit Mines, Irwindale, California, May 20, 2005".
2. 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 CUP is in operation.
3. 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 CUP. The Applicant's full cooperation shall be at no cost to the City.

4. If the use authorized by this CUP 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.
5. This CUP may be revoked for any material violation of or noncompliance with any of the conditions of approval of this CUP or Applicable Law in accordance with Sections 17.80.140 and 17.63.140 of the Zoning Ordinance, as it may be amended.
6. 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 of Irwindale or its agents, officers, consultants or employees to attach, set aside, void or annul any approval of the City of Irwindale, its legislative body, Planning Commission, or other advisory agencies, or administrative officers concerning CUP No. 7-06, 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 CUP. The City of Irwindale will promptly notify the Applicant of any such claim, action or proceeding against the City of Irwindale 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 of Irwindale shall cooperate fully in the defense of any such action. If the City of Irwindale 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 of Irwindale. 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 CUP, the

City has no actual knowledge of any pending or threatened claim which would result in indemnification under this condition.

7. The Applicant shall at all times maintain the Site and its use and appearance thereof in full compliance with Applicable Law.
8. 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.
9. Any and all fees required to be paid to any public agency shall be paid promptly when due.
10. Approval of this application shall not excuse compliance with Applicable Law.
11. The use approved by this CUP shall be operated completely upon the Site and there shall be no on-street maneuvering, except as necessary for street sweeping.
12. 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.
13. 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 CUP (collectively, as limited, "Hazardous Materials"). Any Hazardous Materials lawfully used on the Site will be handled in accordance with Applicable Law.
14. The end of the overall mining phase will occur when either of the following conditions occurs: (a) the mining depth reaches the maximum depths and lateral extent shown on the Mine Slope Profiles attached hereto as Exhibit A", based on a maximum depth of 440 feet (to a level pit floor at elevation

150 msl), or (b) by December 31, 2047, whichever occurs first. Reclamation backfilling shall continue after mining and shall be completed by December 31, 2059, unless extended pursuant to the Development Agreement.

15. For all excavation approved by this CUP, the Applicant shall comply with the December 24, 2003 Guidelines for Slope Stability Analyses For Open-Pit Mines, Irwindale, CA.
16. 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.
17. 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.
18. 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 Irwindale-Reliance Amended Reclamation Plan, State of California Mine ID# 91-19-0016, dated September 10, 2008 approved by the City concurrently herewith ("Reclamation Plan").
19. Applicant shall adhere to all terms, conditions and recommendations in the Reclamation Plan as may be amended from time to time. The Reclamation Plan shall be reviewed every five years and subject to revision pursuant to the terms of the Development Agreement approved concurrently with this CUP ("Development Agreement").
20. Financial Assurances Mechanism. Applicant shall at all times provide sufficient financial assurances in accordance with the State Mining and Reclamation Act of 1975 ("SMARA") and regulations promulgated thereunder ("SMARA Regulations").
21. Alternative Financial Assurances. SMARA Regulation sections 3803 and 3806 authorize governmental operators to utilize "pledges of revenue or

budget set-asides" as financial assurance mechanisms to secure reclamation of its quarries. To take advantage of this SMARA Regulation, the City and Irwindale Community Redevelopment Agency ("Redevelopment Agency") have considered establishing a joint powers authority formed pursuant to Government Code Section 6500, *et seq.*, the Irwindale Reclamation Authority ("JPA") to assist Applicant in meeting its financial assurances obligations through an alternative financial assurances mechanism ("Alternative Mechanism"). The effectiveness of the Alternative Mechanism shall be contingent on two conditions: (i) formation of a JPA by the City and Redevelopment Agency; and (ii) a written acceptance by the California Department of Conservation ("State") that this Alternative Mechanism is an adequate substitute for the financial assurances which would otherwise be required. The Applicant shall not be required to provide the Alternative Mechanism if these two conditions are not fulfilled. If the conditions are met, Applicant shall provide the following:

- i. Transfer and Conveyance of Operation Rights. Applicant shall execute a document ("SMARA Operation Rights Transfer and Conveyance Agreement") transferring to the JPA and conveying from the JPA to Applicant its operation rights. The assignment and conveyance shall be deemed not to be an interest in real estate but instead to be a transfer solely for purposes of assigning primary reclamation responsibility back to Applicant for the Reliance I Quarry and Reliance II Landfill to the JPA and shall carry no other consequence other than as specifically set forth herein.
- ii. Amounts Posted by Applicant. Applicant shall post financial assurances instruments in favor of the City and State in the amount of \$3,500,000 million (updated on an annual basis) for Reliance I Quarry and Reliance II Landfill. Such financial assurances shall remain in place for each quarry until the quarry has been fully reclaimed in accordance with the reclamation plans for the respective quarries and then shall be fully exonerated unless there is a default. Although the City shall retain all rights to annually adjust the financial assurances amounts under SMARA section 2773.1(a)(3), the financial assurance posted by Applicant currently reflects the amounts required to reclaim the site based on the maximum depth expected to be reached. As such, any increase in the financial instruments posted by Applicant shall require an amendment to this CUP, subject to the mutual approval of City and Applicant.
- iii. Termination of JPA. In the event the JPA is terminated for any reason, at least 2 years prior written notice of termination shall

be given to the Applicant before such termination shall be effective. This provision shall be included in the SMARA Operation Rights Transfer and Conveyance Agreement. During said 2 year period, the reclamation plan shall be reviewed pursuant to condition nos. 19 and 20, and revised in a manner such that the then posted financial assurances will be sufficient for reclamation.

- iv. Right to Enter Site to Take Over Fill Operations: In the event of a material default in Applicant's filling operations, should the City wish to enter Applicant's site and use revenue from reclamation activity to cure the default by taking control of fill operations, the City shall first provide 60 days notice to Applicant of the intent to do so. Before implementing such measures, however, the City shall cause an impact report ("Impact Report") to be prepared analyzing the anticipated costs and benefits and impacts of the City taking over fill operations. A draft of the Impact Report shall be circulated to Applicant and other interested parties. Applicant shall have 30 days to comment on the draft. The City shall consider and respond to any comments in writing. At the City's discretion, any comments may be incorporated into the Impact Report. The City Council shall consider the Impact Report at a public hearing. If approved by the City Council, the City may take over Applicant's fill operations, receive revenue from the reclamation activity, expend such measures as addressed in the approved Impact Report, but only for as long as necessary to achieve compliance with the Reclamation Plan. When the default has been cured, Applicant shall resume its filling and other operations under the Reclamation Plan.
- v. Applicant shall at all times maintain ownership and control of the Site and shall continue the conduct of refilling activity, as may be further provided in the SMARA Operation Transfer and Conveyance Agreement. However, in the event the City exercises its rights under Condition No. 21(iii) or 21(iv) above, Applicant shall give the City, its contractors and agents access to the Site so that the City may cause additional filling and reclamation to occur in accordance with these conditions. Such access shall be in accordance with Applicant's normal safety requirements and the City shall indemnify and hold Applicant harmless from any liability arising from such access, including injury or death of the employees of City, its contractors and/ or agents, unless such injury or death is caused by the negligence of Applicant.

- vi. Without limitation of its other legal remedies, Applicant shall have the right to appeal to the State any decision by the City to exercise its remedies under this Condition (in accordance with the appeal provisions under SMARA Regulation Section 3650(b), referencing SMARA Section 2770(e), which authorizes an appeal to the State of a determination by a lead agency under Section 2773.1(b) that an operator is incapable of performing its reclamation obligations).
- 22. In the event Applicant fails to perform any obligations under the Reclamation Plans, the City shall have the right to take any action permitted under Applicable Law to compel compliance, including all equitable and legal remedies, whether specific performance, injunctive relief, or legal damages, and may impose any fines and penalties as may be permitted by law.
- 23. It is understood that the implementation of this CUP places unique and costly burdens on the City of Irwindale, therefore: Applicant shall be responsible for reimbursing, within thirty (30) days after the City's invoice therefore, to the City of Irwindale all actual and reasonable costs incurred by the City in enforcing, or otherwise seeing that any and all conditions of this CUP are met. Applicant shall, at the beginning of each calendar year, deposit an amount specified by the City for the above described reimbursement. Deposits in excess of actual City cost will be refunded to Applicant.
- 24. No storage of equipment or materials in the setbacks along the perimeter of the Site shall be permitted.
- 25. Applicant agrees that it shall adhere to the following requirements pertaining to the provision of preference in employment to residents of the City of Irwindale and further recognizes that such preference and continuing adherence to the requirements hereof are a material part of the approval of this permit. Nothing in this provision shall prohibit Applicant from transferring employees into Reliance Quarry or the Reliance Landfill to meet business and production needs. Furthermore, nothing in this section shall supersede any requirements that Applicant has under collective bargaining agreements. These employment preference provisions are also subject to Federal and State law as well as Union contracts.
 - a. Applicant shall prior to any advertisement or other announcement of positions becoming available at Applicant's facility, provide written notice to the City Manager of the City of Irwindale and the Irwindale Chamber of Commerce of all pertinent information

relative to each such position. Such information shall include, but is not limited to, minimum requirements, skills, experience and training involved for the position, whether the same is full-time, part-time or seasonal and wage or pay rate therefore.

- b. Applicant shall offer the employment position in question to qualified Irwindale residents prior to offering the same to non-residents when, after all testing and screening have been completed, the Irwindale resident is as qualified for the position as the non-resident applicant. Applicant has sole discretion to determine qualifications of all applicants. All decisions are final. Resident applicants hired by Applicant are subject to all policies, procedures and practices of Applicant. Residents hired by Applicant have no preferential employment rights.
- c. For the purpose of this requirement, the term "employment position" shall include training, intern and apprenticeship programs instituted or operated by Applicant.
- d. Notwithstanding the provisions of subparagraph a. above, Applicant shall not be required to give two (2) weeks notice in the event a bona fide need arises, to fill the position in a lesser period of time due to an emergency. In such event, Applicant shall provide the maximum notice possible under the circumstances.
- e. Applicant may, at Applicant's option and expense, prepare an employment preference program, subject to written approval by the City Council of the City of Irwindale, which preference program provides alternative methods for providing employment preference to Irwindale residents.

- 26. Material changes to phasing and operations shall only occur upon notification to and approval by the City and, if required by SMARA, approval of the State of California Department of Conservation.

PLANNING DEPARTMENT CONDITIONS:

Landscaping/ Fencing.

- 27. The Applicant shall ensure that the existing six-foot high concrete block wall along the Foothill Boulevard frontage and the chain link fencing

around the remainder of the perimeter are maintained in a satisfactory condition. The fence shall be topped per Condition of Approval No. 34 Security (e).

28. 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 CUP, and shall be subject to the review and approval by the City Engineer and Director of Planning.
29. **Landscaping Along Walls and Fences Adjacent to Foothill Boulevard.** Applicant shall install and maintain a continuous landscape strip along these perimeters west of Irwindale Avenue. This landscape strip shall consist of groundcover and self-clinging vines that are non-deciduous and have a permanent automatic irrigation system. All the required plant material to be installed shall be drought tolerant low water. The self-clinging vines shall be a minimum five gallon container and shall be planted five feet on center or as provided for in the Landscape Plan (see Condition 28) approved by the City of Irwindale. Groundcover shall be planted in quantities that ensure complete coverage within three months after planting assuming planting occurs in early spring. Such landscaping shall be installed within twelve months of approval of this CUP.

Zoning Code Changes.

30. 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.

Hours of Operation.

31. The hours of operation for the Reliance I Quarry are 24 hours per day, Monday through Saturday including holidays. Repair operations are allowed 24 hours per day, 7 days per week including holidays. The hours of operation for the Reliance II Landfill are 5:00 a.m. to 7:00 p.m. Monday through Saturday, with repair operations permitted 24 hours per day, 7 days per week including holidays. Night time landfill operations for special night time demolition projects are subject to the City's prior written approval. Fill from mining operations will be subject to the Reliance I Quarry operating hours, with additional hours for that fill and for other

mining operations to be requested by Vulcan and reviewed by the City on a case by case basis, with any City approval of such request to be in writing.

Noise Control.

32. Applicant shall at all times comply with the Irwindale Municipal Code Noise Standards (as may be amended) as measured at the Site boundary. If noise impacts exceed the applicable noise standard under the Irwindale Municipal Code, Applicant shall take necessary actions and implement procedures to bring the operations into compliance with this Code.

PUBLIC WORKS DEPARTMENT CONDITIONS:

Security Plan.

33. The applicant shall, within one hundred twenty (120) days of the adoption of this CUP , prepare and submit an updated Site Management and Security Plan to the City Engineer. Such plan shall indicate how the routine business operation of the Applicant shall be conducted, shall describe security measures at the public access point which ensure that the general public is excluded from the Site and shall identify the Plant Manager who is available on a twenty-four (24) hour basis to respond to emergencies and unlawful access to the site, in addition to additional matters specified in this CUP. The City Engineer or his designee shall review and comment upon such plan within thirty (30) calendar days. Thereafter, Applicant shall have one hundred twenty (120) days to prepare a final plan that complies with such comments. Applicant shall include other relevant studies or plans required by this CUP as components of this plan, which shall also be consistent with this condition.
34. 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:

Controlled Access.

- (a) Restrict Site areas to authorized vehicles and equipment directly related to Applicant's operation;
- (b) Place continuous security provisions to monitor and safeguard all access point to the Site;
- (c) Secure all access points with locks, except at entrances during business hours.

Security.

- (a) Construct and maintain in good, appropriate condition, appropriate berms in accordance with the MSHA requirement for safety berms. The design and construction of these berms shall meet the City's Drainage and Erosion Guidelines if also used to control surface runoff.
 - (b) Repair any damage to berms within two days of discovery.
 - (c) Inspect MSHA berms on a daily basis.
 - (d) Police Site and remove any deleterious or hazardous materials in accordance with government requirements.
 - (e) Secure the Site with a combination of berms, 6-foot high walls and a minimum 6-foot high chain link fence, and such fence shall be topped with an extension that is at a 45 degree angle to the Site in accordance with the Site Security Plan. This extension shall be strung with barbed wire placed to discourage entry per APWA Standards.
34. 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 notify the City and other responsible Agencies and shall take all necessary remedial actions.

Traffic and Circulation.

35. The Applicant, at its sole cost, shall implement all mitigation measures as described in the final Environmental Impact Report. A summary of these traffic improvements is listed in Exhibit "B". The improvements as described therein shall be designed and constructed to City standards and/or other applicable State and County standards pursuant to the schedule contained in Exhibit "B". All improvements shall be based on construction plans and specifications prepared by professional consultants retained by the City. The Applicant shall deposit sufficient funds to the City, based on cost estimates prepared by the City Engineer's office, prior to the City awarding contract for the design and construction services for these improvements.
36. The Applicant, at its sole cost, shall complete construction of the traffic signal modification at the intersection of Irwindale Avenue and Foothill Boulevard as shown in Exhibit "B". This improvement shall be designed and constructed in accordance with City standards and/or other State and

County standards pursuant to the schedule contained in Exhibit "B". All improvements shall be based on construction plans and specifications prepared by professional consultants retained by the City. The Applicant shall deposit sufficient funds to the City, based on public bid amount and cost estimates prepared by the City Engineer's office, prior to the City's awarding contracts for the construction services for this improvement.

Drainage/ Runoff.

37. 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 the City for review and approval by the City Engineer within one hundred twenty day (120) days of the adoption of this CUP.

Slope Revegetation

39. 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 as generally shown on Exhibit C hereto.
40. 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.
41. The Applicant shall grant the City a twenty (20) foot strip of land along the southerly property line of Reliance II Pit for the construction of a storm drain facility in accordance with the Development Agreement.

Air Quality/ Dust Control.

42. 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.
43. Applicant shall comply with all requirements of the Site's South Coast Air Quality Management District (SCAQMD) permits, including Rule 403 and 1157.
44. Within 120 days of notification by the City, all truckloads leaving the Site, except those carrying asphalt or equipment, must be covered, so as to prevent materials from spilling, blowing off, or otherwise leaving the trucks.
45. Applicant shall incorporate additional BMPs or modified BMP measures if other BMPs are adopted by ordinance or policy of the City.
46. 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.
47. 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.
48. The Applicant shall apply for and maintain all appropriate permits from the SCAQMD.

Water Quality.

49. 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.
50. Applicant shall implement necessary measures to ensure protection of the groundwater quality as stated in the Main San Gabriel Basin Watermaster Resolution No 3-88-57.
51. 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 the

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.

52. Applicant shall provide to the City Engineer's office all surface and groundwater testing results from samples collected from upgradient and downgradient groundwater monitoring wells at the Site. Water samples collected from the site shall be tested in accordance with the Regional Water Quality Control Board and the San Gabriel Basin Watermaster requirements.
53. 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..

Soils.

54. 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 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:

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

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

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

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

55. Applicant shall continuously monitor all the pit slopes that are subjected to wave-lap erosion and apply the following remediation methods as required by the Guidelines: Reduce slope steepness to slope inclination not subject to wave lap erosion.
- i. Armor the slope to prevent wave lap erosion.
 - ii. Implement other procedures approved by the City Engineer's office.

Reclamation.

56. 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. All unpermitted backfills shall be removed, recompactd or otherwise remediated per the City's Appendix J Grading, a local amendment of the City's adoption of the grading appendix of the California Building Code.
57. 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.
58. 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 this fund to the City on or before July 10th of each year. Deposits in excess of actual City cost will be refunded to the Applicant. To the extent the City obtains aerial photographs, ground based photographs, topographic 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 maps shall be provided in AutoCAD compatible electronic form as well.
59. 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 properly in accordance with applicable State law.
60. Applicant shall not conduct any waste trash recycling operations at the Site, except as allowed under the Development Agreement.

61. No permanent waste disposal locations or tailings ponds are permitted To remain as tailings ponds upon the Site after completion of mining and reclamation.
62. Applicant shall remediate the unpermitted fill in both Reliance I Quarry and the Reliance II Landfill. The remediation of this unpermitted fill shall be included as part of the reclamation of the Site and shall be required to obtain a special grading permit for mine reclamation backfill from the City for such remediation.
63. Applicant shall be responsible for City's cost to monitor (1) the mining depth of the Reliance I Quarry and (2) the depth of Reliance II Landfill during reclamation. At a minimum, the City will conduct an annual bathymetric/ topographic survey of Reliance I Site, to the extent underwater mining is conducted, to determine whether the mined depth in the Reliance I Quarry is in compliance with the permitted depth. The Applicant shall deposit sufficient funds based on an annual cost estimate prepared by the City Engineer's office to cover the monitoring cost. The Applicant shall deposit this fund to the City on or before July 10th of each year. Deposits in excess of actual City cost will be refunded to the Applicant. Areas found to be out of compliance shall be corrected by the Applicant pursuant to a schedule and method of correction approved by the City Engineer. To the extent the City obtains aerial photographs, ground based photographs, topographic 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 maps shall be provided in AutoCAD compatible electronic form as well.
64. 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, unless otherwise approved by the City of Irwindale to remain as post-mining industrial facilities.

Creation of a Single Reclamation Plan (Reliance I and Reliance – Azusa).

65. In response to the Department of Conservation's September 17, 2008 letter requesting that the reclamation plans for Reliance I Quarry in the City of Irwindale and Azusa-Reliance Quarry in the City of Azusa be combined to comply with State Mining and Geology Board ("SMGB") Regulation Section 3502, Applicant shall initiate the process of amending the Reclamation Plan to include the Azusa-Reliance Quarry in accordance with Section 9.5 and Exhibit E of the Development Agreement: Such combined reclamation plan shall be subject to the City of Irwindale's

approval in accordance with applicable provisions of the Irwindale Municipal Code.

66. In response to the Department of Conservation's letter comments on Geomatrix Consultants, Inc. slope stability evaluation of the Reclamation Plan for Reliance I Quarry, the applicant shall submit, within 120 days of approval of the Reclamation Plan, a detailed geotechnical evaluation of the slope stability of the north pit wall adjacent to the Duarte Fault with respect to the potential high groundwater levels and the possible presence of sheared materials. New mitigation measures might be required to ensure that the final slope configuration conforms with California Code of Regulations Section 3704(e). Within 30 days of receiving a written notice from the City, the applicant shall initiate the process of an amended reclamation plan to incorporate necessary mitigation measures as a result of the City's review of this detailed geotechnical evaluation of the north pit wall. Provided the results of the geotechnical evaluation may be obtained before the timeline for the City's consideration of the amended Reclamation Plan to combine the Reliance I and Azusa-Reliance reclamation plans ("Combined Reclamation Plan"), as provided in Schedule E of the Development Agreement, the applicant may include such mitigation measures as part of the City's consideration of the Combined Reclamation Plan. Otherwise, the applicant shall process a separate amendment to the Reclamation Plan to incorporate such mitigation measures in accordance with the applicable provisions of the City's Municipal Code.

ENVIRONMENTAL IMPACT REPORT ("EIR") MITIGATION MEASURES:

Aesthetics:

- 3.1.1. The Applicant shall provide City-approved perimeter landscaping and aesthetic improvements surrounding the Reliance I Quarry and Reliance II Landfill, including Foothill Boulevard, for the duration of mining and reclamation activities.
- 3.1.2. The Applicant shall maintain all perimeter landscaping surrounding the Reliance I Quarry and Reliance II Landfill properties in a manner to maintain aesthetic appearance.
- 3.1.3. The Applicant shall provide landscaping and re-vegetation of graded areas occurring as soon as feasible after reclamation activities to reduce the potential for aesthetic impacts and minimize the potential for erosion.

Air Quality:

- 3.2.1 The Applicant shall utilize off-road equipment used for placing imported fill material shall be 2006 model year or later, at the Reliance I Quarry.

3.2.2. Per State requirements, on-road haul truck idling shall be limited to five (5) minutes or less by the conspicuous posting of signs near the fill area (s).

3.2.3 The Project shall comply with fugitive dust control measures in Rule 1157.

Biological Resources:

3.3.1 Where appropriate, the Applicant shall sign a Streambed Alteration Agreement (ASA) if required, prior to any direct or indirect impact to a lake or streambed, bank or channel or associated riparian resources, as required by the California Department of Fish and Game Section 1600 et seq. and outlined in the NOP comment letter.

Hydrology and Drainage:

3.5.1. The City shall implement recommended measures by the Watermaster on the types of groundwater analyses and reporting the Applicant would need to perform as part of the continued groundwater monitoring program.

Public Safety and Hazards:

3.7.1. The Applicant shall confirm with the Main San Gabriel Watermaster whether on-site generated inert material represents a landfill operation at the Reliance I Quarry requires compliance with Resolution No. 3-88-57.

3.7.2. The Applicant shall confirm with the Main San Gabriel Watermaster whether on- or off-site aggregate mined inert material used for reclamation activities requires compliance with Resolution No. 3-88-57.

Traffic and Circulation:

3.8.1. The Applicant shall construct a 400-foot dual westbound left turn pocket, a minimum 150-foot eastbound left turn pocket and a minimum 500-foot northbound right and left turn pockets at the intersection of Foothill Boulevard and Irwindale Avenue.

3.8.2 The Applicant shall be responsible for the design and construction of the modification t the traffic signal at the intersection of Foothill Boulevard and Irwindale Avenue to add a protected (eastbound) right turn phasing and any necessary striping changes required to implement this additional right turn phasing.

ACCEPTANCE

I/We, the undersigned, have read and do hereby accept all of the conditions on this document and all other conditions imposed by Conditional Use Permit No. 7-06 CUP, and do agree that I/We shall conform with and abide by such conditions.

David Pasley
Applicant's Signature

BY: *David Pasley*

Property Owner's Signature
CalMat Co.

DAVID PASLEY
Applicant's Name

VICE PRESIDENT OPERATIONS
SERVICES

11/18/08
Date

DAVID PASLEY
Property Owner's Name

CalMat Co.
VICE PRESIDENT OPERATIONS
SERVICE

11/18/08
Date

EXHIBITS

Exhibit "A" Mine Slope Profile
Exhibit "B" Traffic Improvements
Exhibit "C" Slope Reclamation Sequence Phasing

Exhibit "A"

Mine Slope Profile

EXHIBIT "A"

Azusa Largo
3/12/08

P08102 Pnts.txt

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528 6582100.0000 1873400.0000 487.4880 "FG"
529 6582200.0000 1873400.0000 504.8548 "FG"
530 6582300.0000 1873400.0000 522.2217 "FG"
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536 6581700.0000 1873500.0000 613.6240 "FG"
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539 6582000.0000 1873500.0000 548.2133 "FG"
540 6582100.0000 1873500.0000 565.5802 "FG"
541 6582200.0000 1873500.0000 582.9470 "FG"
542 6582300.0000 1873500.0000 600.3139 "FG"
543 6582400.0000 1873500.0000 617.6807 "FG"
544 6581800.0000 1873600.0000 605.1830 "FG"
545 6581900.0000 1873600.0000 608.9387 "FG"

EXHIBIT D**RESOLUTION NO. 2008-29-2301**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF IRWINDALE, LOS ANGELES COUNTY, CONDITIONALLY APPROVING CONDITIONAL USE PERMIT NO. 7-06 CUP AND THE ATTENDANT RECLAMATION PLAN AND FINANCIAL ASSURANCES; AND CERTIFYING THE FINAL ENVIRONMENTAL IMPACT REPORT (SCH # 2003011084) TO ALLOW VULCAN MATERIALS COMPANY, INCORPORATED, TO CONTINUE MINING AND TO RECLAIM THE RELIANCE I QUARRY SITE AND TO CONTINUE FILLING THE RELIANCE II LANDFILL FOR COMMERCIAL RECREATIONAL, AND/OR COMMERCIAL USES UPON COMPLETION OF MINING

A. RECITALS.

- (i) The Applicant, Vulcan Materials Company Incorporated (VMC), pursuant to Chapters 17.60 and 17.63 of the Irwindale Municipal Code (IMC) and the provisions of the California Surface Mining and Reclamation Act (SMARA), is requesting approval of a conditional use permit for the continued mining of the project site until December 31, 2037, or until reaching the maximum permitted depth of 440 feet below ground surface (bgs), whichever event occurs first, and approval of the required Reclamation Plan and Financial Assurances (the "Proposed Project"). The Reclamation Plan describes the methods for reclaiming the Quarry Site and the Landfill Site for industrial and commercial uses. Development Agreement (DA) No. 2-06 and Conditional Use Permit (CUP) No. 7-06 supersede all of the prior entitlements granted by the City to VMC or to any of its predecessors. Hereinafter in this Resolution, the subject Development Agreement shall be referred to as the "Application."
- (ii) The Reliance I Quarry consists of a 124.2-acre sand and gravel quarry located in the City of Irwindale, Los Angeles County, at 16001 Foothill Boulevard and is generally bounded by the industrial uses on the north, a sand and gravel quarry located in the City of Azusa on the east, commercial and industrial uses on the south, and a flood control channel on the west. The access to the Site is from Foothill Boulevard. The Project Site is zoned M-2 (Heavy Manufacturing).
- (iii) The Reliance II Landfill consists of an 89.6-acre site located in the City of Irwindale, Los Angeles County, at 15990 Foothill Boulevard and is generally bounded by the Reliance I Quarry on the north, commercial and industrial uses on the east, the I-210 Freeway on the south, and a flood control channel on the west.

Access to the site is from Foothill Boulevard. The Project Site is zoned M-2 (Heavy Manufacturing).

- (iv) Pursuant to the authority and criteria contained in the California Environmental Quality Act of 1970 (CEQA), as amended (Public Resources Code, Section 2100 *et seq.*), the State CEQA Guidelines (California Code of Regulations, Title 14, Section 1500 *et seq.*), and the CEQA Guidelines of the City of Irwindale, the City, as the Lead Agency, has prepared a Draft Environmental Impact Report (DEIR) and a Final Environmental Impact Report (FEIR) for the Proposed Project. The DEIR identified no significant impacts after implementation of the recommended Mitigation Measures. The DEIR, State Clearinghouse Number 2006051107, was circulated for review and comment from December 6, 2007 through January 21, 2008. The City received comments on the DEIR from one (1) public agency (the State of California Native American Heritage Commission). Responses to the comments have been prepared and, together with the comments, have been included in the FEIR. The FEIR has been made available for review by the public at the City of Irwindale Planning Department.
- (v) Pursuant to Section 17.60.050 of the IMC, the City Council has final approval authority for any use permit, including the approval of reclamation plans and financial assurances, to allow for mining to a depth exceeding one hundred and fifty feet (150').
- (vi) On February 7, 2008, the Planning Commission opened a duly noticed public hearing, as required by law on the Application, took testimony, and continued the public hearing to the March 6, 2008 Planning Commission meeting.
- (vii) On March 6, 2008, the Planning Commission resumed the public hearing, took testimony, and continued the public hearing to the April 3, 2008 Planning Commission meeting.
- (viii) On April 3, 2008, the Planning Commission resumed the public hearing, took testimony, and continued the public hearing to the May 1, 2008 Planning Commission meeting.
- (ix) On May 1, 2008 the Planning Commission of the City of Irwindale conducted a duly noticed public hearing on the Application, Reclamation Plan, Financial Assurances, and Final Environmental Impact Report (FEIR) and concluded said public hearing.

- (x) All legal prerequisites to the adoption of this resolution have occurred.

B. RESOLUTION.

NOW THEREFORE, it is hereby found, determined and resolved by the City Council of the City of Irwindale as follows:

1. The City Council hereby specifically finds that all of the facts set forth in the Recitals, Part A, of this Resolution are true and correct.

2. On May 1, 2008, the Planning Commission, at a noticed public hearing, at which time they received input from staff, the City Attorney, and the Applicant; heard public testimony; discussed the proposed Project; closed the public hearing; and, after discussion, approved Resolution No. 529(08) recommending that the City Council certify the FEIR; conditionally approve this Application; conditionally approve the Conditional Use Permit; conditionally approve the Reclamation Plan and Financial Assurances; and direct staff to forward the Reclamation Plan and Financial Assurances to the State Department of Conservation for their review and comment.

3. Based upon substantial evidence presented to this City Council during the public hearing conducted with regard to the Application, including written staff reports, the Reclamation Plan and Financial Assurances, the FEIR, and verbal testimony, this City Council hereby specifically finds as follows:

a. That the proposed continued mining of the quarry and the reclamation and proposed future development of the Project Site, as described in the Reclamation Plan and as conditioned and restricted herein, are consistent with the M-2 (Heavy Manufacturing) zone designation and consistent with the City's General Plan Land Use Designation of "Industrial" for the Project Site. To accommodate the proposed commercial uses, the City will process appropriate General Plan and Zone Change amendments within the times set forth in the Development Agreement.

b. That the Project Site is adequate in size, shape, topography, location, utilities and other factors to accommodate the use requested under this Application. Furthermore, mining activity has occurred at the quarry since 1927 and the Project Site is surrounded by active mining and industrial uses.

c. That adequate street access and traffic capacity is available to serve the needs for the continued mining of the quarry and for the reclamation and future development of the Project Site for commercial recreational, industrial and/or commercial uses, as proposed in the Reclamation Plan since the Project Site takes access from Foothill Boulevard, and is located less than one-quarter mile from the on- and off-ramps of the I-210 Freeway.

d. That the continuation of mining and the reclamation and future development of the Project Site for industrial, and/or commercial uses, and retail commercial uses, as proposed in the Reclamation Plan and as conditioned and restricted herein, will not be materially detrimental to the public or injurious to the adjacent properties since the Project Site as well as most of the surrounding properties are used for mining and processing of mining products and for industrial and commercial activities.

4. The City Council hereby specifically finds and determines that the Reclamation Plan and Financial Assurances prepared for the Reliance I Quarry and Reliance II Landfill comply with the provisions of the California Surface Mining and Reclamation Act.

5. The City Council hereby specifically finds and determines that, after their review and consideration of the Final Environmental Impact Report, prepared in compliance with the provisions of the California Environmental Quality Act (CEQA) of 1970, as amended, and guidelines promulgated thereunder, for the Proposed Project, the Proposed Project will not have any significant impact on the environment after the implementation of the recommended Mitigation Measures. This Commission further finds that said FEIR reflects the independent judgment of the City of Irwindale, as the Lead Agency.

6. The proposed project will improve and construct road infrastructure surrounding the project site, including Foothill Boulevard;

7. Based upon the substantial evidence and conclusions set forth hereinabove, this City Council hereby: (1) certifies the Final Environmental Impact Report; (2) certifies to the California Department of Conservation (DOC) that the Reclamation Plan and the Financial Assurances comply with SMARA; (3) conditionally approves the Reclamation Plan and Financial Assurances; (4) conditionally approves Conditional Use Permit No. 7-06 subject to the Conditions of Approval set forth in Exhibit "A" attached hereto and by this reference incorporated herein and subject to receipt and consideration of DOC comments, if any; and (6) direct staff to forward the Reclamation Plan and Financial Assurances to DOC for their review and comment.

8. The Deputy City Clerk shall:

a. Certify to the adoption of this Resolution; and

b. Forthwith transmit a certified copy of this Resolution, by certified mail, return receipt requested, to the Applicant at the address as set forth on the Application.

PASSED, APPROVED AND ADOPTED this 11th day of June, 2008.


Larry G. Burrola, Mayor

ATTEST:


Linda J. Kimbro, MMC
Deputy City Clerk

I, Linda J. Kimbro, MMC, Deputy City Clerk of the City of Irwindale, do hereby certify the foregoing Resolution No. 2008-29-2301 was adopted at a special meeting of the City Council held on the 11th day of June 2008, by the following vote:

AYES: Councilmembers: Breceda, Fuentes, Ortiz, Garcia, Burrola

NOES: Councilmembers: None

ABSENT: Councilmembers: None

ABSTAINED: Councilmembers: None


Linda J. Kimbro, MMC
Deputy City Clerk

ATTACHMENT "A"
CONDITIONAL USE PERMIT NO. 7-06
CONDITIONS OF APPROVAL

Conditions of Approval

(April 23, 2008)

Vulcan Materials Company, Inc. (VMC) Reliance I Quarry and Reliance II Landfill CONDITIONAL USE PERMIT No. 7-06

Before final acceptance of the use authorized under this CONDITIONAL USE PERMIT ("CUP"), all conditions listed below, which are at that time due to be performed, shall be completed to the satisfaction of the appropriate City department or its designee, depending upon which department recommended the condition.

Any agreements, easements or covenants required to be entered into between the parties shall be in a form reasonably approved by the City Attorney.

GENERAL CONDITIONS:

1. This CUP No. 7-06 modifies and supersedes all previous entitlements in that CUP No. 7-06 permits mining until (i) a maximum allowable mining depth in the Reliance I Quarry (together with the Reliance II Landfill, the "Site") as depicted in the Mine Slope Profile, attached as Exhibit "A" hereto, based on a maximum depth of 440 feet (to a level pit floor at elevation 150 mean sea level ("msl"), or (ii) until December 31, 2047, whichever occurs first. Reclamation backfill of the Reliance I site may continue after completion of mining until backfill is completed or 2059, whichever occurs first. CUP No. 7-06 also permits continued fill operations at the Reliance II Landfill. All backfill for these sites shall be in accordance with the City's "Guidelines For Above Water Backfilling Of Open-Pit Mines, Irwindale, California, November 23, 2005; and "Guidelines For Underwater Backfilling Of Open-Pit Mines, Irwindale, California, May 20, 2005".
2. 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 CUP is in operation.
3. 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 CUP. The Applicant's full cooperation shall be at no cost to the City.

4. If the use authorized by this CUP 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.
5. This CUP may be revoked for any material violation of or noncompliance with any of the conditions of approval of this CUP or Applicable Law in accordance with Sections 17.80.140 and 17.63.140 of the Zoning Ordinance, as it may be amended.
6. 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 of Irwindale or its agents, officers, consultants or employees to attach, set aside, void or annul any approval of the City of Irwindale, its legislative body, Planning Commission, or other advisory agencies, or administrative officers concerning CUP No. 7-06, 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 CUP. The City of Irwindale will promptly notify the Applicant of any such claim, action or proceeding against the City of Irwindale 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 of Irwindale shall cooperate fully in the defense of any such action. If the City of Irwindale 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 of Irwindale. 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 CUP, the

City has no actual knowledge of any pending or threatened claim which would result in indemnification under this condition.

7. The Applicant shall at all times maintain the Site and its use and appearance thereof in full compliance with Applicable Law.
8. 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.
9. Any and all fees required to be paid to any public agency shall be paid promptly when due.
10. Approval of this application shall not excuse compliance with Applicable Law.
11. The use approved by this CUP shall be operated completely upon the Site and there shall be no on-street maneuvering, except as necessary for street sweeping.
12. 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.
13. 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 CUP (collectively, as limited, "Hazardous Materials"). Any Hazardous Materials lawfully used on the Site will be handled in accordance with Applicable Law.
14. The end of the overall mining phase will occur when either of the following conditions occurs: (a) the mining depth reaches the maximum depths and lateral extent shown on the Mine Slope Profiles attached hereto as Exhibit A", based on a maximum depth of 440 feet (to a level pit floor at elevation

150 msl), or (b) by December 31, 2047, whichever occurs first. Reclamation backfilling shall continue after mining and shall be completed by December 31, 2059, unless extended pursuant to the Development Agreement.

15. For all excavation approved by this CUP, the Applicant shall comply with the December 24, 2003 Guidelines for Slope Stability Analyses For Open-Pit Mines, Irwindale, CA.
16. 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.
17. 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.
18. 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 Irwindale-Reliance Amended Reclamation Plan, State of California Mine ID# 91-19-0016, dated _____2008_ approved by the City concurrently herewith ("Reclamation Plan").
19. Applicant shall adhere to all terms, conditions and recommendations in the Reclamation Plan as may be amended from time to time. The Reclamation Plan shall be reviewed every five years and subject to revision pursuant to the terms of the Development Agreement approved concurrently with this CUP ("Development Agreement").
20. Financial Assurances Mechanism. Applicant shall at all times provide sufficient financial assurances in accordance with the State Mining and Reclamation Act of 1975 ("SMARA") and regulations promulgated thereunder ("SMARA Regulations").
21. Alternative Financial Assurances. SMARA Regulation sections 3803 and 3806 authorize governmental operators to utilize "pledges of revenue or budget set-asides" as financial assurance mechanisms to secure

reclamation of its quarries. To take advantage of this SMARA Regulation, the City and Irwindale Community Redevelopment Agency ("Redevelopment Agency") have considered establishing a joint powers authority formed pursuant to Government Code Section 6500, *et seq.*, the Irwindale Reclamation Authority ("JPA") to assist Applicant in meeting its financial assurances obligations through an alternative financial assurances mechanism ("Alternative Mechanism"). The effectiveness of the Alternative Mechanism shall be contingent on two conditions: (i) formation of a JPA by the City and Redevelopment Agency; and (ii) a written acceptance by the California Department of Conservation ("State") that this Alternative Mechanism is an adequate substitute for the financial assurances which would otherwise be required. The Applicant shall not be required to provide the Alternative Mechanism if these two conditions are not fulfilled. If the conditions are met, Applicant shall provide the following:

- i. Transfer and Conveyance of Operation Rights. Applicant shall execute a document ("SMARA Operation Rights Transfer and Conveyance Agreement") transferring to the JPA and conveying from the JPA to Applicant its operation rights. The assignment and conveyance shall be deemed not to be an interest in real estate but instead to be a transfer solely for purposes of assigning primary reclamation responsibility back to Applicant for the Reliance I Quarry and Reliance II Landfill to the JPA and shall carry no other consequence other than as specifically set forth herein.
- ii. Amounts Posted by Applicant. Applicant shall post financial assurances instruments in favor of the City and State in the amount of \$3,500,000 million (updated on an annual basis) for Reliance I Quarry and Reliance II Landfill. Such financial assurances shall remain in place for each quarry until the quarry has been fully reclaimed in accordance with the reclamation plans for the respective quarries and then shall be fully exonerated unless there is a default. Although the City shall retain all rights to annually adjust the financial assurances amounts under SMARA section 2773.1(a)(3), the financial assurance posted by Applicant currently reflects the amounts required to reclaim the site based on the maximum depth expected to be reached. As such, any increase in the financial instruments posted by Applicant shall require an amendment to this CUP, subject to the mutual approval of City and Applicant.
- iii. Termination of JPA. In the event the JPA is terminated for any reason, at least 2 years prior written notice of termination shall be given to the Applicant before such termination shall be

effective. This provision shall be included in the SMARA Operation Rights Transfer and Conveyance Agreement. During said 2 year period, the reclamation plan shall be reviewed pursuant to condition nos. 19 and 20, and revised in a manner such that the then posted financial assurances will be sufficient for reclamation.

- iv. Right to Enter Site to Take Over Fill Operations: In the event of a material default in Applicant's filling operations, should the City wish to enter Applicant's site and use revenue from reclamation activity to cure the default by taking control of fill operations, the City shall first provide 60 days notice to Applicant of the intent to do so. Before implementing such measures, however, the City shall cause an impact report ("Impact Report") to be prepared analyzing the anticipated costs and benefits and impacts of the City taking over fill operations. A draft of the Impact Report shall be circulated to Applicant and other interested parties. Applicant shall have 30 days to comment on the draft. The City shall consider and respond to any comments in writing. At the City's discretion, any comments may be incorporated into the Impact Report. The City Council shall consider the Impact Report at a public hearing. If approved by the City Council, the City may take over Applicant's fill operations, receive revenue from the reclamation activity, expend such measures as addressed in the approved Impact Report, but only for as long as necessary to achieve compliance with the Reclamation Plan. When the default has been cured, Applicant shall resume its filling and other operations under the Reclamation Plan.
- v. Applicant shall at all times maintain ownership and control of the Site and shall continue the conduct of refilling activity, as may be further provided in the SMARA Operation Transfer and Conveyance Agreement. However, in the event the City exercises its rights under Condition No. 21(iii) or 21(iv) above, Applicant shall give the City, its contractors and agents access to the Site so that the City may cause additional filling and reclamation to occur in accordance with these conditions. Such access shall be in accordance with Applicant's normal safety requirements and the City shall indemnify and hold Applicant harmless from any liability arising from such access, including injury or death of the employees of City, its contractors and/ or agents, unless such injury or death is caused by the negligence of Applicant.

- vi. Without limitation of its other legal remedies, Applicant shall have the right to appeal to the State any decision by the City to exercise its remedies under this Condition (in accordance with the appeal provisions under SMARA Regulation Section 3650(b), referencing SMARA Section 2770(e), which authorizes an appeal to the State of a determination by a lead agency under Section 2773.1(b) that an operator is incapable of performing its reclamation obligations).
- 22. In the event Applicant fails to perform any obligations under the Reclamation Plans, the City shall have the right to take any action permitted under Applicable Law to compel compliance, including all equitable and legal remedies, whether specific performance, injunctive relief, or legal damages, and may impose any fines and penalties as may be permitted by law.
- 23. It is understood that the implementation of this CUP places unique and costly burdens on the City of Irwindale, therefore: Applicant shall be responsible for reimbursing, within thirty (30) days after the City's invoice therefore, to the City of Irwindale all actual and reasonable costs incurred by the City in enforcing, or otherwise seeing that any and all conditions of this CUP are met. Applicant shall, at the beginning of each calendar year, deposit an amount specified by the City for the above described reimbursement. Deposits in excess of actual City cost will be refunded to Applicant.
- 24. No storage of equipment or materials in the setbacks along the perimeter of the Site shall be permitted.
- 25. Applicant agrees that it shall adhere to the following requirements pertaining to the provision of preference in employment to residents of the City of Irwindale and further recognizes that such preference and continuing adherence to the requirements hereof are a material part of the approval of this permit. Nothing in this provision shall prohibit Applicant from transferring employees into Reliance Quarry or the Reliance Landfill to meet business and production needs. Furthermore, nothing in this section shall supersede any requirements that Applicant has under collective bargaining agreements. These employment preference provisions are also subject to Federal and State law as well as Union contracts.
 - a. Applicant shall prior to any advertisement or other announcement of positions becoming available at Applicant's facility, provide written notice to the City Manager of the City of Irwindale and the Irwindale Chamber of Commerce of all pertinent information

relative to each such position. Such information shall include, but is not limited to, minimum requirements, skills, experience and training involved for the position, whether the same if full-time, part-time or seasonal and wage or pay rate therefore.

- b. Applicant shall offer the employment position in question to qualified Irwindale residents prior to offering the same to non-residents when, after all testing and screening have been completed, the Irwindale resident is as qualified for the position as the non-resident applicant. Applicant has sole discretion to determine qualifications of all applicants. All decisions are final. Resident applicants hired by Applicant are subject to all policies, procedures and practices of Applicant. Residents hired by Applicant have no preferential employment rights.
- c. For the purpose of this requirement, the term "employment position" shall include training, intern and apprenticeship programs instituted or operated by Applicant.
- d. Notwithstanding the provisions of subparagraph a. above, Applicant shall not be required to give two (2) weeks notice in the event a bona fide need arises, to fill the position in a lesser period of time due to an emergency. In such event, Applicant shall provide the maximum notice possible under the circumstances.
- e. Applicant may, at Applicant's option and expense, prepare an employment preference program, subject to written approval by the City Council of the City of Irwindale, which preference program provides alternative methods for providing employment preference to Irwindale residents.

- 26. Material changes to phasing and operations shall only occur upon notification to and approval by the City and, if required by SMARA, approval of the State of California Department of Conservation.

PLANNING DEPARTMENT CONDITIONS:

Landscaping/ Fencing.

- 27. The Applicant shall ensure that the existing six-foot high concrete block wall along the Foothill Boulevard frontage and the chain link fencing

around the remainder of the perimeter are maintained in a satisfactory condition. The fence shall be topped per Condition of Approval No. 34 Security (e).

28. 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 CUP, and shall be subject to the review and approval by the City Engineer and Director of Planning.
29. **Landscaping Along Walls and Fences Adjacent to Foothill Boulevard.** Applicant shall install and maintain a continuous landscape strip along these perimeters west of Irwindale Avenue. This landscape strip shall consist of groundcover and self-clinging vines that are non-deciduous and have a permanent automatic irrigation system. All the required plant material to be installed shall be drought tolerant low water. The self-clinging vines shall be a minimum five gallon container and shall be planted five feet on center or as provided for in the Landscape Plan (see Condition 28) approved by the City of Irwindale. Groundcover shall be planted in quantities that ensure complete coverage within three months after planting assuming planting occurs in early spring. Such landscaping shall be installed within twelve months of approval of this CUP.

Zoning Code Changes.

30. 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.

Hours of Operation.

31. The hours of operation for the Reliance I Quarry are 24 hours per day, Monday through Saturday including holidays. Repair operations are allowed 24 hours per day, 7 days per week including holidays. The hours of operation for the Reliance II Landfill are 5:00 a.m. to 7:00 p.m. Monday through Saturday, with repair operations permitted 24 hours per day, 7 days per week including holidays. Night time landfill operations for special night time demolition projects are subject to the City's prior written approval. Fill from mining operations will be subject to the Reliance I Quarry operating hours, with additional hours for that fill and for other

mining operations to be requested by Vulcan and reviewed by the City on a case by case basis, with any City approval of such request to be in writing.

Noise Control.

32. Applicant shall at all times comply with the Irwindale Municipal Code Noise Standards (as may be amended) as measured at the Site boundary. If noise impacts exceed the applicable noise standard under the Irwindale Municipal Code, Applicant shall take necessary actions and implement procedures to bring the operations into compliance with this Code.

PUBLIC WORKS DEPARTMENT CONDITIONS:

Security Plan.

33. The applicant shall, within one hundred twenty (120) days of the adoption of this CUP, prepare and submit an updated Site Management and Security Plan to the City Engineer. Such plan shall indicate how the routine business operation of the Applicant shall be conducted, shall describe security measures at the public access point which ensure that the general public is excluded from the Site and shall identify the Plant Manager who is available on a twenty-four (24) hour basis to respond to emergencies and unlawful access to the site, in addition to additional matters specified in this CUP. The City Engineer or his designee shall review and comment upon such plan within thirty (30) calendar days. Thereafter, Applicant shall have one hundred twenty (120) days to prepare a final plan that complies with such comments. Applicant shall include other relevant studies or plans required by this CUP as components of this plan, which shall also be consistent with this condition.
34. 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:

Controlled Access.

- (a) Restrict Site areas to authorized vehicles and equipment directly related to Applicant's operation;
- (b) Place continuous security provisions to monitor and safeguard all access point to the Site;
- (c) Secure all access points with locks, except at entrances during business hours.

Security.

- (a) Construct and maintain in good, appropriate condition, appropriate berms in accordance with the MSHA requirement for safety berms. The design and construction of these berms shall meet the City's Drainage and Erosion Guidelines if also used to control surface runoff.
 - (b) Repair any damage to berms within two days of discovery.
 - (c) Inspect MSHA berms on a daily basis.
 - (d) Police Site and remove any deleterious or hazardous materials in accordance with government requirements.
 - (e) Secure the Site with a combination of berms, 6-foot high walls and a minimum 6-foot high chain link fence, and such fence shall be topped with an extension that is at a 45 degree angle to the Site in accordance with the Site Security Plan. This extension shall be strung with barbed wire placed to discourage entry per APWA Standards.
34. 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 notify the City and other responsible Agencies and shall take all necessary remedial actions.

Traffic and Circulation.

35. The Applicant, at its sole cost, shall implement all mitigation measures as described in the final Environmental Impact Report. A summary of these traffic improvements is listed in Exhibit "B". The improvements as described therein shall be designed and constructed to City standards and/or other applicable State and County standards pursuant to the schedule contained in Exhibit "B". All improvements shall be based on construction plans and specifications prepared by professional consultants retained by the City. The Applicant shall deposit sufficient funds to the City, based on cost estimates prepared by the City Engineer's office, prior to the City awarding contract for the design and construction services for these improvements.
36. The Applicant, at its sole cost, shall complete construction of the traffic signal modification at the intersection of Irwindale Avenue and Foothill Boulevard as shown in Exhibit "B". This improvement shall be designed and constructed in accordance with City standards and/or other State and

County standards pursuant to the schedule contained in Exhibit "B". All improvements shall be based on construction plans and specifications prepared by professional consultants retained by the City. The Applicant shall deposit sufficient funds to the City, based on public bid amount and cost estimates prepared by the City Engineer's office, prior to the City's awarding contracts for the construction services for this improvement.

Drainage/ Runoff.

37. 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 the City for review and approval by the City Engineer within one hundred twenty day (120) days of the adoption of this CUP.

Slope Revegetation

38. 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 as generally shown on Exhibit C hereto.
39. 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.
40. The Applicant shall grant the City a twenty (20) foot strip of land along the southerly property line of Reliance II Pit for the construction of a storm drain facility in accordance with the Development Agreement.

Air Quality/ Dust Control.

41. 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.
42. Applicant shall comply with all requirements of the Site's South Coast Air Quality Management District (SCAQMD) permits, including Rule 403 and 1157.
43. Within 120 days of notification by the City, all truckloads leaving the Site, except those carrying asphalt or equipment, must be covered, so as to prevent materials from spilling, blowing off, or otherwise leaving the trucks.
44. Applicant shall incorporate additional BMPs or modified BMP measures if other BMPs are adopted by ordinance or policy of the City.
45. 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.
46. 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.
47. The Applicant shall apply for and maintain all appropriate permits from the SCAQMD.

Water Quality.

49. 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.
50. Applicant shall implement necessary measures to ensure protection of the groundwater quality as stated in the Main San Gabriel Basin Watermaster Resolution No 3-88-57.
51. 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 the

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.

52. Applicant shall provide to the City Engineer's office all surface and groundwater testing results from samples collected from upgradient and downgradient groundwater monitoring wells at the Site. Water samples collected from the site shall be tested in accordance with the Regional Water Quality Control Board and the San Gabriel Basin Watermaster requirements.
53. 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..

Soils.

54. 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 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:

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

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

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

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

55. Applicant shall continuously monitor all the pit slopes that are subjected to wave-lap erosion and apply the following remediation methods as required by the Guidelines: Reduce slope steepness to slope inclination not subject to wave lap erosion.
- i. Armor the slope to prevent wave lap erosion.
 - ii. Implement other procedures approved by the City Engineer's office.

Reclamation.

56. 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. All unpermitted backfills shall be removed, recompacted or otherwise remediated per the City's Appendix J Grading, a local amendment of the City's adoption of the grading appendix of the California Building Code.
57. 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.
58. 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 this fund to the City on or before July 10th of each year. Deposits in excess of actual City cost will be refunded to the Applicant.
59. 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 properly in accordance with applicable State law.
60. Applicant shall not conduct any waste trash recycling operations at the Site, except as allowed under the Development Agreement.
61. No permanent waste disposal locations or tailings ponds are permitted To remain as tailings ponds upon the Site after completion of mining and reclamation.

62. Applicant shall remediate the unpermitted fill in both Reliance I Quarry and the Reliance II Landfill. The remediation of this unpermitted fill shall be included as part of the reclamation of the Site and shall be required to obtain a special grading permit for mine reclamation backfill from the City for such remediation.
63. Applicant shall be responsible for City's cost to monitor (1) the mining depth of the Reliance I Quarry and (2) the depth of Reliance II Landfill during reclamation. At a minimum, the City will conduct an annual bathymetric/ topographic survey of Reliance I Site, to the extent underwater mining is conducted, to determine whether the mined depth in the Reliance I Quarry is in compliance with the permitted depth. The Applicant shall deposit sufficient funds based on an annual cost estimate prepared by the City Engineer's office to cover the monitoring cost. The Applicant shall deposit this fund to the City on or before July 10th of each year. Deposits in excess of actual City cost will be refunded to the Applicant. Areas found to be out of compliance shall be corrected by the Applicant pursuant to a schedule and method of correction approved by the City Engineer.
64. 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, unless otherwise approved by the City of Irwindale to remain as post-mining industrial facilities.

ENVIRONMENTAL IMPACT REPORT ("EIR") MITIGATION MEASURES:

Aesthetics:

- 3.1.1. The Applicant shall provide City-approved perimeter landscaping and aesthetic improvements surrounding the Reliance I Quarry and Reliance II Landfill, including Foothill Boulevard, for the duration of mining and reclamation activities.
- 3.1.2. The Applicant shall maintain all perimeter landscaping surrounding the Reliance I Quarry and Reliance II Landfill properties in a manner to maintain aesthetic appearance.
- 3.1.3. The Applicant shall provide landscaping and re-vegetation of graded areas occurring as soon as feasible after reclamation activities to reduce the potential for aesthetic impacts and minimize the potential for erosion.

Air Quality:

- 3.2.1 The Applicant shall utilize off-road equipment used for placing imported fill material shall be 2006 model year or later, at the Reliance I Quarry.

3.2.2. Per State requirements, on-road haul truck idling shall be limited to five (5) minutes or less by the conspicuous posting of signs near the fill area (s).

3.2.3 The Project shall comply with fugitive dust control measures in Rule 1157.

Biological Resources:

3.3.1 Where appropriate, the Applicant shall sign a Streambed Alteration Agreement (ASA) if required, prior to any direct or indirect impact to a lake or streambed, bank or channel or associated riparian resources, as required by the California Department of Fish and Game Section 1600 et seq. and outlined in the NOP comment letter.

Hydrology and Drainage:

3.5.1. The City shall implement recommended measures by the Watermaster on the types of groundwater analyses and reporting the Applicant would need to perform as part of the continued groundwater monitoring program.

Public Safety and Hazards:

3.7.1. The Applicant shall confirm with the Main San Gabriel Watermaster whether on-site generated inert material represents a landfill operation at the Reliance I Quarry requires compliance with Resolution No. 3-88-57.

3.7.2. The Applicant shall confirm with the Main San Gabriel Watermaster whether on- or off-site aggregate mined inert material used for reclamation activities requires compliance with Resolution No. 3-88-57.

Traffic and Circulation:

3.8.1. The Applicant shall construct a 400-foot dual westbound left turn pocket, a minimum 150-foot eastbound left turn pocket and a minimum 500-foot northbound right and left turn pockets at the intersection of Foothill Boulevard and Irwindale Avenue.

3.8.2 The Applicant shall be responsible for the design and construction of the modification t the traffic signal at the intersection of Foothill Boulevard and Irwindale Avenue to add a protected (eastbound) right turn phasing and any necessary striping changes required to implement this additional right turn phasing.

EXHIBITS

Exhibit "A" Mine Slope Profile
Exhibit "B" Traffic Improvements
Exhibit "C" Slope Reclamation Sequence Phasing