



# SUCCESSOR AGENCY TO THE INDUSTRY URBAN-DEVELOPMENT AGENCY

REGULAR MEETING AGENDA  
JANUARY 26, 2017 8:30 A.M.

Location: City Council Chamber, 15651 East Stafford Street, City of Industry, California

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## **Addressing the Agency:**

- ▶ **Agenda Items:** Members of the public may address the Successor Agency on any matter listed on the Agenda. In order to conduct a timely meeting, there will be a three-minute time limit per person for any matter listed on the Agenda. Anyone wishing to speak to the Successor Agency is asked to complete a Speaker's Card which can be found at the back of the room and at each podium. The completed card should be submitted to the Secretary prior to the Agenda item being called and prior to the individual being heard by the Successor Agency.
- ▶ **Public Comments (Non-Agenda Items):** Anyone wishing to address the Successor Agency on an item not on the Agenda may do so during the "Public Comments" period. In order to conduct a timely meeting, there will be a three-minute time limit per person for the Public Comments portion of the Agenda. State law prohibits the Successor Agency from taking action on a specific item unless it appears on the posted Agenda. Anyone wishing to speak to the Successor Agency is asked to complete a Speaker's Card which can be found at the back of the room and at each podium. The completed card should be submitted to the Secretary prior to the Agenda item being called by the Secretary and prior to the individual being heard by the Successor Agency..

## **Americans with Disabilities Act:**

- ▶ In compliance with the ADA, if you need special assistance to participate in any meeting (including assisted listening devices), please contact the Office of the Secretary to the Successor Agency (626) 333-2211. Notification of at least 72 hours prior to the meeting will assist staff in assuring that reasonable arrangements can be made to provide accessibility to the meeting.

## **Agendas and other writings:**

- ▶ In compliance with Government Code Section 54957.5(b), staff reports and other public records permissible for disclosure related to open session agenda items are available at City Hall, 15625 East Stafford Street, Suite 100, City of Industry, California, at the office of the Secretary of the Successor Agency during regular business hours, Monday through Friday, 9:00 a.m. to 5:00 p.m.

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1. Call to Order
  2. Flag Salute
  3. Roll Call
  4. Public Comment
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5. **BOARD MATTERS**

- 5.1 Consideration of a License Agreement between OHL, USA and the Successor Agency to the Industry Urban-Development Agency for the use of the public right-of-way, to Assessor's Parcel Numbers 8719-007-928 and 8719-007-930, located at 248 North Grand Avenue.

*RECOMMENDED ACTION: Approve the Agreement.*

6. **CLOSED SESSION**

6.1 CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION

Pursuant to Government Code Section 54956.9(d)(1)

Case: Successor Agency to the Industry Urban-Development Agency v. Grand Central Recycling & Transfer Station, Inc., et al.

Los Angeles Superior Court

Case No. BC 550794

7. Adjournment. Next regular Successor Agency meeting will be on Thursday, February 23, 2017, at 8:30 a.m.

*SUCCESSOR AGENCY*

ITEM NO. 5.1



*SUCCESSOR AGENCY TO THE*  
**INDUSTRY URBAN - DEVELOPMENT AGENCY**

**MEMORANDUM**

**TO:** Honorable Chairman and Members of the Successor Agency to the Industry Urban-Development Agency Board

**FROM:** Paul J. Philips, Executive Director *Paul J. Philips*

**STAFF:** Clement N. Calvillo, Agency Engineer, CNC Engineering *CNC*  
Joshua Nelson, Deputy Agency Engineer, CNC Engineering *JN*

**DATE:** January 26, 2017

**SUBJECT:** Consideration of a License Agreement with OHL, USA, Inc. for the Use of Assessor's Parcel No's. 8719-007-928 and 8719-007-930 located at 248 N. Grand Avenue (MP 99-60 #13/MP 99-31 #16)

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OHL, USA, Inc. contacted the Successor Agency to the Industry-Urban Development Agency ("Agency") regarding the use of Assessor's Parcel Numbers 8719-007-928 and 8719-007-930, to temporarily stockpile soil and remove and relocate previously stockpiled soil for various construction activities associated with the Fairway Grade Separation. The License Agreement shall be for a term of 10 months, terminating on November 30, 2017. The Agency may, by written notice, terminate the License Agreement at any time with a 30 day written notice. The Executive Director, at his sole discretion, may grant one 3 month extension to the agreement.

OHL, USA, Inc. had previously been permitted by the Agency to dispose of excess soil in an area that the Agency needed soil. However, at this time the Agency needs a portion of that removed for the westbound on ramp. OHL, USA, Inc. will relocate that dirt elsewhere on the property in exchange for the use of the property.

Fiscal Impact:

OHL, USA, Inc. will be using approximately 1.5 acres (roughly 200' x 300') in exchange for relocating soil in the vicinity of the west bound on ramp.

Recommendation:

Staff recommends that the Agency approve the License Agreement.

Exhibit:

A. License Agreement with OHL, USA, Inc. dated January 26, 2017

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PJP/CC/JN:af

**EXHIBIT A**

License Agreement with OHL, USA, Inc. dated January 26, 2017

[Attached]

## LICENSE AGREEMENT

THIS LICENSE AGREEMENT (“**Agreement**”), dated January 26, 2017, (“**Effective Date**”) is entered into by and between the Successor Agency to the Industry Urban-Development Agency, a public body, corporate and politic (“**Licensor/Agency**”), and OHL USA, Inc., dba Group OHL USA, Inc., a Delaware Corporation (“**Licensee**”) (Licensor and Licensee are individually referred to as “**Party**” and collectively referred to as the “**Parties**”).

### RECITALS

**WHEREAS**, the Agency is the owner of certain property located at 284 N. Grand Avenue, City of Industry, CA 91765 and Licensee desires to enter the portion of the property generally described as a lot, **Assessor’s Parcel No. 8719-007-928 and 8719-007-930**, as set forth in Exhibit A, attached hereto and incorporated herein by reference (“**Premises**”).

**WHEREAS**, Licensee desires to enter the Premises to temporarily stockpile soil, and remove and relocate previously stockpiled soil; and

**WHEREAS**, Licensee acknowledges that Licensee is entering onto the Premises at its sole risk and expense, and Licensor does not have any liability to Licensee under this Agreement.

**NOW, THEREFORE**, for valuable consideration, the sufficiency of which is hereby acknowledged, the Parties agree as follows:

### TERMS

1. License to Enter the Premises. Licensor hereby grants to Licensee a non-exclusive license (the “**License**”) granting permission to enter upon the Premises as of the Effective Date of this Agreement, and to use the Premises as a temporary soil stockpile for various construction activities associated with the Fairway Grade Separation Project, and to relocate previously stockpiled soil (collectively, “**Permitted Use**”); provided, that Licensee’s use of the Premises shall not interfere with the operation of business activities, if any, then being conducted on the Premises and provided Licensee provides written notice to the Licensor at least five (5) days prior to Licensee first entering upon the Premises (said written notice shall state the purpose for the entry upon the Premises, and said entry shall not exceed the stated purpose). Prior to any initial entry pursuant to the License, Licensee shall provide to Licensor proof of insurance as set forth in Section 6 of this Agreement. Licensee shall not permit any other party, except the duly-authorized representatives, agents, employees and contractors (collectively “**Representatives**”) of Licensee to enter or use the Premises during the term of this License, without Licensor’s prior written consent, and in all events the sole reason for entry and use of the Premises shall be for the performance of Licensee’s Permitted Use.

2. Permitted Use. The Permitted Use is hereby further defined to include the storage and relocation of soil on the Premises. The relocation of soil shall be limited to removal from Area A to Area B, as depicted in Exhibit A. Licensee shall exercise due care in the performance of the Permitted Use and such use shall be exercised in a manner which complies with all applicable laws.

3. Maintenance of Premises. Prior to commencement of the relocation of the soil, Licensee shall install wooden planks across the surface of the location of the relocated stockpile. When the relocated stockpile is removed, Licensee shall not remove any soil below the wooden planks.

Licensee shall install dust control measures, including, but not limited to, covering of the stockpiles, and shall implement best practices on the Premises to ensure that the excavated materials do not have an impact on air quality. In no event shall any stockpile of excavated materials exceed a height of 20 feet, and all stockpiles shall be a minimum of 10 feet from the back of any sidewalk, or any other existing hardscape or landscaped area. Upon termination of the License, Licensee shall repair any damage done to the Premises by Licensee or its duly authorized Representatives, and shall restore the Premises to its condition as of the Effective Date of this Agreement, which shall include removal of the wooden planks and all stockpiled materials.

4. Government Regulations and Other Obligations of Licensee. As a condition precedent to commencement of the Permitted Use, if required, Licensee shall obtain at its sole cost and expense all governmental permits and authorizations of whatever nature required, if any (“Permits”) by any and all governmental authorities having jurisdiction over the Premises for Licensee’s exercise of the Permitted Use. Licensor shall use commercially reasonable efforts to cooperate with Licensee and to support any and all applications or request for said Permits submitted by Licensee or on Licensee’s behalf. Licensee shall, in all activities undertaken pursuant to this Agreement, comply and cause its Representatives to comply with all federal, state and local laws, statutes, orders, ordinances, rules, regulations, plans, policies and decrees.

5. Liens.

5.1 Licensee shall not cause or permit to be filed, recorded or enforced against the Premises, or any part thereof, any mechanics’, material men’s, contractors’ or subcontractors’ liens arising from the Permitted Use or any claim or action affecting the title to the Premises arising from the Permitted Use, and Licensee shall pay or cause to be paid, or otherwise removed or bonded over, the full amount of all such liens or claim within fifteen (15) days of receiving written notice thereof. In addition to and not in limitation of Licensor’s other rights and remedies under this Agreement or under law, should Licensee fail within fifteen (15) business days of a written notice from Licensor to pay and discharge or bond over any lien arising out of Licensee’s use of the Premises, then a material breach under this Agreement shall be deemed to have occurred which, at Licensor’s election, shall entitle Licensor to terminate this License effective upon notice by Licensor to Licensee so stating.

5.2 If Licensee desires to contest in good faith the validity of any lien or any claim or demand that could result in a lien against the Premises or any portion thereof for which Licensor could become liable if not successfully resolved, as a condition to such contest, Licensee shall notify Licensor of Licensee’s intent to contest the lien or claim and the grounds for such contest. Notwithstanding anything to the contrary set forth herein, Licensee shall pay and satisfy any adverse judgment that may be rendered thereon before the enforcement thereof against Licensor or the Premises.

6. Insurance. Prior to entering the Premises and until the termination of this Agreement, Licensee shall maintain at its sole expense insurance limits as stipulated in this section.

6.1 Minimum Scope and Limit of Insurance. Coverage shall be at least as broad as:

(a) Commercial General Liability (CGL): Insurance Services Office Form CG 00 01 covering CGL on an “occurrence” basis, including products and completed operations,

property damage, bodily injury and personal and advertising injury with limits no less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate.

(b) Automobile Liability: Insurance Services Office Form Number CA 0001 covering, Code 1 (any auto), or if Licensee has no owned autos, Code 8 (hired) and 9 (non-owned), with limits no less than \$1,000,000 per accident for bodily injury and property damage.

(c) Workers' Compensation insurance as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than \$1,000,000 per accident for bodily injury or disease.

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

6.2 Other Insurance Provisions. The insurance policies are to contain, or be endorsed to contain, the following provisions:

(a) Additional Insured Status. The Licensor and Agency Representatives, (as defined in Section 7, below) are to be additional insureds on the CGL policy with respect to liability arising out of Licensee's use of the Premises. General liability coverage can be provided in the form of an endorsement to the Licensee's insurance (at least as broad as ISO Form CG 20 10 11 85 or both CG 20 10 and CG 20 37 forms if later revisions used).

(b) Primary Coverage. For any claims related to this Agreement, the Licensee's insurance coverage shall be primary insurance as respects the Licensor/Agency Representatives. Any insurance or self-insurance maintained by the Licensor/Agency Representatives, shall be excess of the Licensee's insurance and shall not contribute with it.

(c) Contractors and Subcontractors. Licensee shall require and verify that all contractors and subcontractors maintain insurance meeting all the requirements stated herein, and Licensee shall ensure that Licensor/Agency Representatives are additional insureds on insurance required from contractors/subcontractors. For CGL coverage contractors and subcontractors shall provide coverage with a format least as broad as CG 20 38 04 13.

(d) Notice of Cancellation. Each insurance policy required above shall state that coverage shall not be canceled, except with notice to the Agency.

(e) Waiver of Subrogation. Licensee hereby grants to Agency a waiver of any right to subrogation which any insurer of said Licensee may acquire against the Agency by virtue of the payment of any loss under such insurance. Licensee agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation provided such endorsement is available on commercially reasonable terms, but this provision applies regardless of whether or not the Agency has received a waiver of subrogation endorsement from the insurer.



(f) Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions must be declared to and approved by the Agency. The Agency may require the Licensee to provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention.

(g) Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII, unless otherwise acceptable to the Agency.

(h) Deductibles. All such insurance shall have deductibility limits of not greater than \$50,000.00 unless otherwise approved by the Agency.

(i) Verification of Coverage. Licensee shall furnish the Agency with original certificates and amendatory endorsements or copies of the applicable policy language providing the insurance coverage required above. All certificates and endorsements are to be received and approved by the Agency before exercise of the Permitted use commences. However, failure to obtain the required documents prior to the exercise of the Permitted Use shall not waive the Licensee's obligation to provide them. The Agency reserves the right to require complete copies of all required insurance policies, including endorsements, required by these specifications, at any time.

(j) Occurrence Basis Coverage. All policies shall be written on an occurrence basis unless otherwise approved by the Agency.

7. Indemnification. From and after the execution of this Agreement, Licensee hereby agrees to indemnify, defend, protect and hold harmless, with counsel of the Licensor's choosing, the Agency and any and all predecessors, successors, assigns, agents, officials, employees, members, independent contractors, affiliates, principals, officers, directors, attorneys, accountants, representatives, staff, and council members of the Agency collectively, the "**Agency Representatives**", and each of them, from and against all claims, including any claims from any third party beneficiary to this Agreement, causes of action, liabilities, losses, damages, injuries, expenses, charges, penalties, or costs, of whatsoever character, nature and kind, (including attorney's fees and costs incurred by the indemnified Party with respect to legal counsel of its choice, and remediation of any Hazardous Materials deposited on the Premises by Licensee), whether to property or to person(s), and whether by direct or derivative action, known or unknown, suspected or unsuspected, latent or patent, existing or contingent (collectively "**Losses and Liabilities**"), related directly or indirectly to, or arising out of or in any way connected with any of the activities of Licensee, its agents, employees, licensees, lessees, representatives, invitees, contractors, subcontractors or independent contractors on the Premises. This indemnification requires Licensee to indemnify the Agency and any and all Agency Representatives from and against all Losses and Liabilities, including attorneys' fees, arising out of the use or release of any Hazardous Substances on the Premises by Licensee. Licensee's obligation to defend shall arise regardless of any claim or assertion that the Agency caused or contributed to the Losses and/or Liabilities, provided, however, that Licensee's liability under this Section 7 will be limited to the extent of any contributory negligence of Licensor.

8. Hazardous Materials means any chemical, material or substance now or hereafter defined as or included in the definition of "hazardous substances," "hazardous wastes," "hazardous materials," "extremely hazardous waste," "restricted hazardous waste," "toxic substances," "pollutant or contaminant," "imminently hazardous chemical substance or mixture," "hazardous air pollutant," "toxic pollutant," or words of similar import under any local, state or federal law or under the

regulations adopted or publications promulgated pursuant thereto applicable to the Property, including, without limitation: the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. § 9601, et seq. (“CERCLA”); the Hazardous Materials Transportation Act, as amended, 49 U.S.C. § 1801, et seq.; the Federal Water Pollution Control Act, as amended, 33 U.S.C. § 1251, et seq.; and the Resource Conservation and Recovery Act of 1976, 42 U.S.C. § 6901, et seq. The term “Hazardous Materials” shall also include any of the following: any and all toxic or hazardous substances, materials or wastes listed in the United States Department of Transportation Table (49 CFR 172.101) or by the Environmental Protection Agency as hazardous substances (40 CFR Part 302) and in any and all amendments thereto in effect as of the date of the close of any escrow; oil, petroleum, petroleum products (including, without limitation, crude oil or any fraction thereof), natural gas, natural gas liquids, liquefied natural gas or synthetic gas usable for fuel, not otherwise designated as a hazardous substance under CERCLA; any substance which is toxic, explosive, corrosive, reactive, flammable, infectious or radioactive (including any source, special nuclear or by-product material as defined at 42 U.S.C. § 2012, et seq.), carcinogenic, mutagenic, or otherwise hazardous and is or becomes regulated by any governmental authority; asbestos in any form; urea formaldehyde foam insulation; transformers or other equipment which contain dielectric fluid containing levels of polychlorinated biphenyls; radon gas; or any other chemical, material or substance (i) which poses a hazard to the Premises, to adjacent properties, or to persons on or about the Premises, (ii) which causes the Premises to be in violation of any of the aforementioned laws or regulations, or (iii) the presence of which on or in the Premises requires investigation, reporting or remediation under any such laws or regulations.

9. Term, Termination and Remedies. The License shall commence as of the Effective Date of this Agreement, and shall automatically terminate on **November 30, 2017**. Notwithstanding the foregoing, upon written request by Licensee, the Executive Director, at his sole discretion, may grant one, three-month extension to this Agreement. Notwithstanding the foregoing, at any time, for any reason, the Licensor may, at its sole and absolute discretion, terminate this Agreement without cause, upon 30 days’ written notice to Licensee. Further, in the event Licensor sells or transfers the Premises during the term of this Agreement, this Agreement shall terminate upon seven (7) days written notice to Licensee. In addition, if Licensee shall be in breach of any of its obligations under this Agreement and shall fail to cure such breach within ten (10) business days of written notice from Licensor specifying the nature of any such breach, Licensor shall have the right to terminate this Agreement upon written notice to Licensee. Licensee acknowledges that this License is solely a license, and that Licensee has no rights as an owner, purchaser or tenant by virtue thereof. Upon termination of the Agreement, Licensee shall promptly vacate the Premises and comply with the provisions of Section 3 above. No termination or expiration of this License shall relieve Licensee of its obligations hereunder.

10. Inspection and Access to Premises. Licensor and any of its duly authorized representatives, employees, agents or independent contractors shall be entitled to enter the Premises, to show the Premises to potential purchasers, to inspect the premises, to inspect Licensee’s use of the Premises, and for any other purpose, at any time.

11. Assignability. This License cannot be assigned by Licensee whether voluntarily or by operation of law, and Licensee shall not permit any use of the Premises, or any part thereof during the Term of this License in violation of the provisions of this License, except with the consent of Licensor (which shall not be unreasonably withheld, conditioned or delayed), and any attempt to do so shall be null and void.

12. Cost of Enforcement. In the event it is necessary for either Party to employ an attorney or other person or commence an action to enforce or interpret any of the provisions of this License or for Licensor to remove Licensee from the Premises, the non-prevailing party agrees to pay to the prevailing party, in addition to such other relief as may be awarded by the court, Agency or other authority before which such suit or proceeding is commenced, all reasonable costs of enforcement in connection therewith including, but not limited to, reasonable attorneys' fees, expenses and costs of investigation.

13. Notices. All notices, consents, approvals, requests, demands and other communications provided for herein shall be in writing and shall be deemed to have been duly given upon the earlier of when personally delivered or served or twenty-four (24) hours after being deposited with FedEx or any other established overnight courier service to the intended party addressed as follows:

Licensor: Paul J. Philips  
Executive Director  
15625 East Stafford Street, Suite 100  
City of Industry, CA 91744  
Tel: (626) 333-2211  
[paul@cityofindustry.org](mailto:paul@cityofindustry.org)

With a Copy to: James M. Casso, City Attorney  
Casso & Sparks, LLP  
13200 Crossroads Parkway North, Suite 345  
City of Industry, CA 91746  
Tel: (626) 269-2980  
[jcasso@cassosparks.com](mailto:jcasso@cassosparks.com)

Licensee: Tony Dagheri, Executive Vice President, Western USA  
OHL, USA, Inc.  
1920 Main Street, Suite 310  
Irvine, CA 92614  
Tel: (949) 242-4432

14. No Liability of Licensor. Licensee and Licensor acknowledge and agree that Licensee is entering into the Premises prior to the transfer of the Premises to Licensee and that Licensee does so at its sole risk and expense. The provisions hereof shall inure to the benefit of Licensor's and Licensee's successors and assigns including any Mortgagee.

15. Miscellaneous. This Agreement constitutes the entire agreement between the Parties hereto pertaining to the subject matter hereof, and all prior and contemporaneous agreements, representations and understandings of the Parties hereto, oral or written, are hereby superseded and merged herein. No supplement, modification or amendment of this Agreement shall be binding unless in writing and executed by the Parties hereto. No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any other provisions, whether or not similar, nor shall any waiver be a continuing waiver. No waiver shall be binding unless executed in writing by the Party making the waiver. The indemnifications under this Agreement, the obligations of Licensee hereunder to remove liens and Licensee's obligations hereunder with respect to vacating and repairing the Premises shall survive the expiration or termination of the License Term. This Agreement shall be

construed and enforced in accordance with, and governed by, the laws of the State of California. Any action brought concerning this Agreement shall be brought in the appropriate court for the County of Los Angeles, California. Each Party hereby irrevocably consents to the jurisdiction of said court. Licensee hereby expressly waives all provisions of law providing for a change of venue due to the fact that the Agency may be a party to such action, including, without limitation, the provisions of California Code of Civil Procedure Section 394. Licensee further waives and releases any right it may have to have any action concerning this Agreement transferred to Federal District Court due to any diversity of citizenship that may exist between Agency and Licensee. The headings of this Agreement are for purposes of reference only and shall not limit or define the meaning of the provisions hereof. This Agreement may be executed in any number of counterparts, each of which shall be an original, and all of which shall constitute one and the same instrument. Neither this instrument nor a short form memorandum or assignment hereof shall be filed or recorded in any public office without Licensor's or Licensee's prior written consent.

16. Authority. Each person executing this Agreement hereby represents and warrants (i) their authority to do so, and (ii) that such authority has been duly and validly conferred.

**(SIGNATURES ON FOLLOWING PAGE)**

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the Effective Date.

“LICENSOR”

**SUCCESSOR AGENCY TO THE  
INDUSTRY-URBAN DEVELOPMENT  
AGENCY**

By: \_\_\_\_\_  
Paul J. Philips, Executive Director

“LICENSEE”

**OHL, USA, Inc. dba Group OHL USA,  
Inc.**

By: \_\_\_\_\_  
Tony Dagheri, Executive Vice President,  
Western USA

ATTEST:

\_\_\_\_\_  
Diane M. Schlichting, Agency Secretary

APPROVED AS TO FORM:

\_\_\_\_\_  
James M. Casso, General Counsel

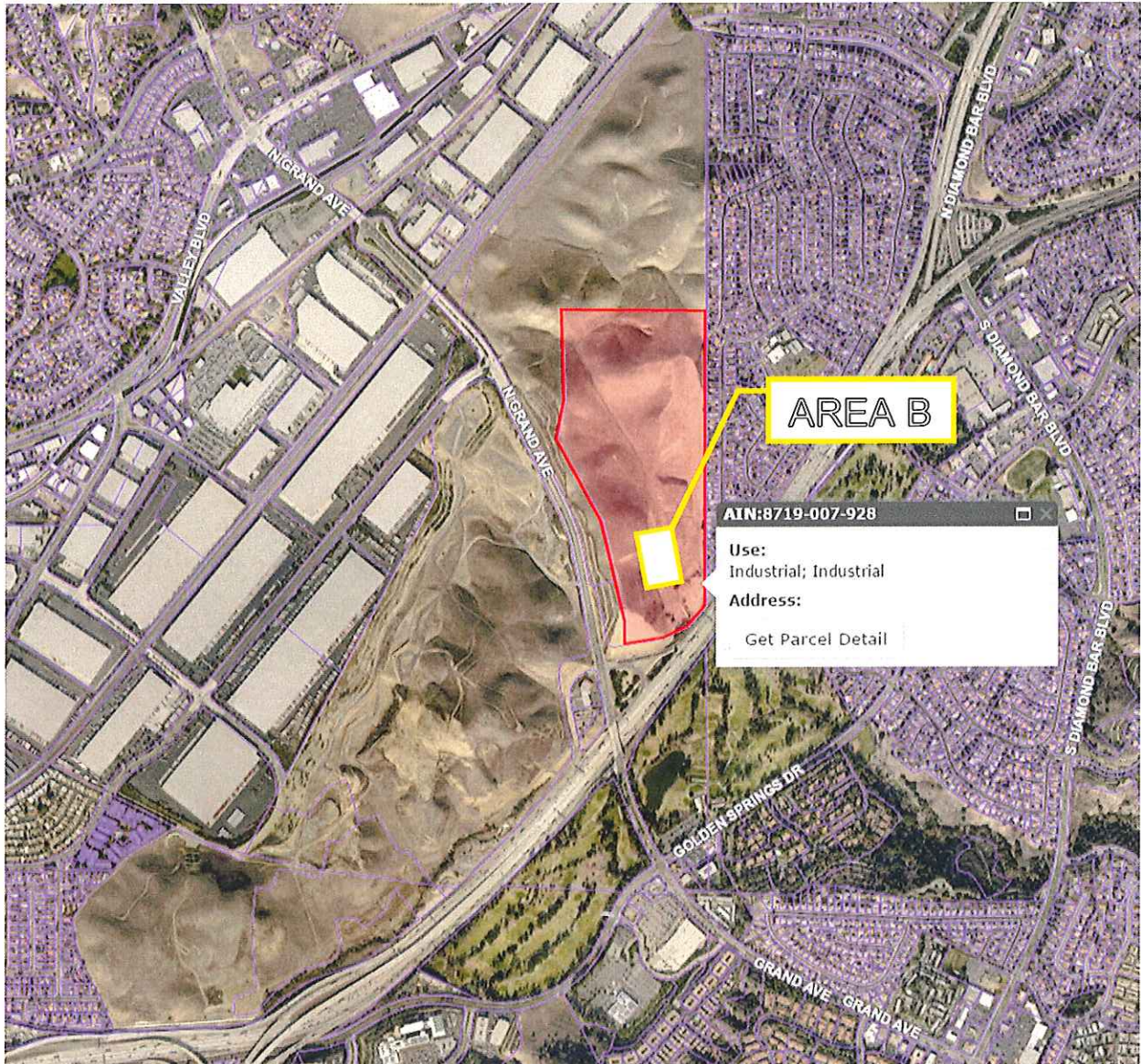


# EXHIBIT A

## Legal Description

Assessor's Parcel Number (APN) No. 8719-007-928 and 8719-007-930 located at 248 N. Grand Avenue, City of Industry, CA 91765.

### Location Map – APN No. 8719-007-928





Location Map – APN No. 8719-007-930

