



SUCCESSOR AGENCY TO THE INDUSTRY URBAN-DEVELOPMENT AGENCY

REGULAR MEETING AGENDA SEPTEMBER 26, 2019 8:30 A.M.

Chair Cory C. Moss
Vice Chair Cathy Marcucci
Board Member Abraham Cruz
Board Member Mark D. Radecki
Board Member Newell Ruggles

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

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 Only):** *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 Thursday, 8:00 a.m. to 5:00 p.m., Fridays 8:00 a.m. to 4:00 p.m. Any person with a question concerning any agenda item may call the City Clerk's Office at (626) 333-2211*

1. Call to Order
2. Flag Salute
3. Roll Call
4. Public Comments

5. **BOARD MATTERS**

5.1 Consideration of the Register of Demands for September 12, 2019

RECOMMENDED ACTION: Ratify the Register of Demands for September 12, 2019.

5.2 Consideration of the Register of Demands for September 26, 2019

RECOMMENDED ACTION: Approve the Register of Demands and authorize the appropriate Agency Officials to pay the bills.

5.3 Consideration of the minutes of August 22, 2019 regular meeting

RECOMMENDED ACTION: Approve as submitted.

5.4 Consideration of Amendment No. 2 to the Professional Services Agreement with Advanced Avant-Garde, Inc., to perform grant administration services through March 31, 2022 (MP 99-31 #22)

RECOMMENDED ACTION: Approve the Amendment.

5.5 Consideration of Amendment No. 1 to the Traffic Mitigation Agreement with the City of Walnut for certain property acquisition payments (MP 99-31 #65)

RECOMMENDED ACTION: Approve the Amendment.

6. Adjournment. Next regular Successor Agency meeting will be on Thursday, October 24, 2019 at 8:30 a.m.

SUCCESSOR AGENCY

ITEM NO. 5.1

**Successor Agency To The
Industry Urban-Development Agency
Authorization For Payment of Bills
September 12, 2019**

<u>FUND</u>	<u>DESCRIPTION</u>	<u>DISBURSEMENTS</u>
	IUDA ADMIN	0.00
221	IUDA PROJECT 1	43,000.00
222	IUDA PROJECT 2	180,096.73
	IUDA PROJECT 3	0.00
	TOTAL ALL FUNDS	223,096.73

<u>BANK</u>	<u>NAME</u>	<u>DISBURSEMENTS</u>
WFBK	WELLS FARGO BANK	180,096.73
BOFA	BANK OF AMERICA	43,000.00
	TOTAL ALL BANKS	223,096.73

**Successor Agency To The
Industry Urban Development Agency**

Wells Fargo Bank

September 12, 2019

Check	Date			Payee Name	Check Amount
IUDAADM.WF.CHK - IUDA Admin WF Checking					
32476	09/12/2019			AVANT-GARDE, INC	\$1,735.00
	Invoice	Date	Description	Amount	
	5628	08/01/2019	GRAND AVE/SR60 OFF-RAMP	\$1,040.00	
	5629	08/01/2019	LEMON AVE/60FWY INTERCHANGE	\$555.00	
	5569	07/01/2019	GRAND AVE/SR60 OFF-RAMP	\$140.00	
32477	09/12/2019			CNC ENGINEERING	\$133,066.25
	Invoice	Date	Description	Amount	
	459247	08/29/2019	GRAND AVE/GOLDEN SPRINGS DR IMPROVEMENTS	\$722.50	
	459248	08/29/2019	IBC-EAST SIDE ROADWAYS	\$53,261.25	
	459249	08/29/2019	IBC-WEST SIDE ROADWAYS	\$76,500.00	
	459251	08/29/2019	IBC-FUTURE PHASES AND STUDIES	\$1,875.00	
	459246	08/29/2019	BAKER PKY SLOPE MAINT	\$707.50	
32478	09/12/2019			CNC ENGINEERING	\$305.00
	Invoice	Date	Description	Amount	
	459250	08/29/2019	LEMON AVE/60 FWY INTERCHANGE	\$305.00	
32479	09/12/2019			ENVIRONS, INC.	\$7,692.50
	Invoice	Date	Description	Amount	
	3307	08/14/2019	LANDSCAPE PLANS-IBC PROJ	\$7,692.50	
32480	09/12/2019			INDUSTRY PUBLIC UTILITY	\$80.56
	Invoice	Date	Description	Amount	
	2020-00000238	08/19/2019	7/10-8/10/19 SVC-370 GRAND AVE SOUTH	\$79.61	

**Successor Agency To The
Industry Urban Development Agency**

Wells Fargo Bank

September 12, 2019

Check	Date		Payee Name	Check Amount
IUDAADM.WF.CHK - IUDA Admin WF Checking				
	2020-00000239	08/19/2019	8/6-8/10/19 SVC-#1 B ST, IBC EAST	\$0.19
	2020-00000240	08/19/2019	8/6-8/10/19 SVC-#2 B ST, IBC EAST	\$0.19
	2020-00000241	08/19/2019	8/6-8/10/19 SVC-#3 B ST, IBC EAST	\$0.19
	2020-00000242	08/19/2019	8/6-8/10/19 SVC-#4 B ST, IBC EAST	\$0.19
	2020-00000243	08/19/2019	8/6-8/10/19 SVC-#5 B ST, IBC EAST	\$0.19
32481	09/12/2019		JACOBS ENGINEERING	\$19,340.00
	Invoice	Date	Description	Amount
	121	08/09/2019	LEMON AVE/60FWY INTERCHANGE	\$19,340.00
32482	09/12/2019		PBLA ENGINEERING, INC.	\$12,840.00
	Invoice	Date	Description	Amount
	108-2-0819	08/01/2019	DRAINAGE DESIGN-IBC PROJ	\$12,840.00
32483	09/12/2019		WKE, INC	\$5,037.42
	Invoice	Date	Description	Amount
	14001-67B	08/16/2019	57/60 FWY CONFLUENCE PROJECT	\$5,037.42

Checks	Status	Count	Transaction Amount
	Total	8	\$180,096.73

**Successor Agency To The
Industry Urban Development Agency**

Bank of America

September 12, 2019

Check	Date	Payee Name		Check Amount
PJ1.BOFA.CHK - Project 1 BofA Checking				
1150	08/20/2019	IUDA-ADMINISTRATIVE ACCOUNT		\$42,000.00
	Invoice	Date	Description	Amount
	A2 REG 8/22/19	08/19/2019	TRANSFER OF FUNDS REGISTER 8/22/19	\$42,000.00
1151	09/12/2019	CITY OF INDUSTRY		\$1,000.00
	Invoice	Date	Description	Amount
	08/16/2019	08/16/2019	WALNUT CREEK ENERGY RENT-JULY 19/20-	\$1,000.00

Checks	Status	Count	Transaction Amount
	Total	2	\$43,000.00

**Successor Agency To The
Industry Urban-Development Agency
Authorization For Payment of Bills
September 12, 2019**

Reviewed By: _____ Date _____

Approved By: _____ Date _____

SUCCESSOR AGENCY

ITEM NO. 5.2

**Successor Agency To The
Industry Urban-Development Agency
Authorization For Payment of Bills
September 26, 2019**

<u>FUND</u>	<u>DESCRIPTION</u>	<u>DISBURSEMENTS</u>
	IUDA ADMIN	0.00
221	IUDA PROJECT 1	1,000.00
222	IUDA PROJECT 2	1,388,292.72
	IUDA PROJECT 3	26,417.42
	TOTAL ALL FUNDS	1,415,710.14

<u>BANK</u>	<u>NAME</u>	<u>DISBURSEMENTS</u>
WFBK	WELLS FARGO BANK	1,388,292.72
BOFA	BANK OF AMERICA	27,417.42
	TOTAL ALL BANKS	1,415,710.14

**Successor Agency To The
Industry Urban Development Agency**

Wells Fargo Bank

September 26, 2019

Check	Date	Payee Name		Check Amount
IUDAADM.WF.CHK - IUDA Admin WF Checking				
32484	09/26/2019	ALL AMERICAN ASPHALT		\$337,670.66
	Invoice	Date	Description	Amount
	#25IBC-0384A	09/01/2019	IBC-ROADWAYS AND SEWERS	\$179,072.80
	#25IBC-0384H51	09/01/2019	IBC-ROADWAYS AND SEWERS	\$65,800.00
	#25IBC-0384H	09/01/2019	IBC-ROADWAYS AND SEWERS	\$110,570.00
32485	09/26/2019	COMMUNITY BANK		\$17,772.14
	Invoice	Date	Description	Amount
	#25IBC-0384A-R	09/01/2019	RETENTION-IBC ROADWAYS AND SEWERS	\$8,953.64
	#25IBC-0384H-R	09/01/2019	RETENTION-IBC ROADWAYS AND SEWERS	\$5,528.50
	#25IBC-0384H51-R	09/01/2019	RETENTION-IBC ROADWAYS AND SEWERS	\$3,290.00
32486	09/26/2019	BRIGHTVIEW LANDSCAPE		\$26,100.00
	Invoice	Date	Description	Amount
	#55GCD-0382	09/01/2019	BAKER PKY SLOPE MAINT	\$26,100.00
32487	09/26/2019	CNC ENGINEERING		\$72,405.00
	Invoice	Date	Description	Amount
	459403	09/12/2019	GRAND AVE/GOLDEN SPRINGS DR IMPROVEMENTS	\$403.75
	459404	09/12/2019	IBC-EAST SIDE ROADWAYS	\$18,790.00
	459405	09/12/2019	IBC-WEST SIDE ROADWAYS	\$49,781.25
	459406	09/12/2019	IBC-FUTURE PHASES AND STUDIES	\$3,075.00
	459402	09/12/2019	BAKER PKY SLOPE MAINT	\$355.00
32488	09/26/2019	CNC ENGINEERING		\$740.00

**Successor Agency To The
Industry Urban Development Agency**

Wells Fargo Bank

September 26, 2019

Check	Date		Payee Name	Check Amount
IUDAADM.WF.CHK - IUDA Admin WF Checking				
	Invoice	Date	Description	Amount
	459407	09/12/2019	57/60 FWY CONFLUENCE PROJECT	\$740.00
32489	09/26/2019		LEIGHTON CONSULTING INC	\$28,897.13
	Invoice	Date	Description	Amount
	36898	09/05/2019	GEOTECHNICAL SVC-IBC PROJECT	\$12,236.35
	36899	09/05/2019	GEOTECHNICAL SVC-IBC PROJECT	\$16,660.78
32490	09/26/2019		RKA CONSULTING GROUP	\$26,953.75
	Invoice	Date	Description	Amount
	29114	08/20/2019	INTERSECTION IMPROVEMENT-CITY OF WALNUT	\$26,953.75
32491	09/26/2019		SHAWNAN	\$831,504.27
	Invoice	Date	Description	Amount
	#13IBC-0386A	09/01/2019	IBC-WEST SIDE ROADWAYS	\$147,266.00
	#13IBC-0386C	09/01/2019	IBC-WEST SIDE ROADWAYS	\$30,500.00
	#13IBC-0386F	09/01/2019	IBC-WEST SIDE ROADWAYS	\$118,930.00
	#13IBC0386G1-116	09/01/2019	IBC-WEST SIDE ROADWAYS	\$310,325.00
	#13IBC0386G3-216	09/01/2019	IBC-WEST SIDE ROADWAYS	\$76,646.65
	#13IBC-0386K	09/01/2019	IBC-WEST SIDE ROADWAYS	\$191,600.00
32492	09/26/2019		AMERICAN BUSINESS BANK	\$43,763.38
	Invoice	Date	Description	Amount
	#13IBC-0386A-R	09/01/2019	RETENTION-IBC WEST SIDE ROADWAYS	\$7,363.30
	#13IBC-0386C-R	09/01/2019	RETENTION-IBC WEST SIDE ROADWAYS	\$1,525.00

**Successor Agency To The
Industry Urban Development Agency**

Wells Fargo Bank

September 26, 2019

Check	Date		Payee Name	Check Amount
IUDAADM.WF.CHK - IUDA Admin WF Checking				
	#13IBC-0386F-R	09/01/2019	RETENTION-IBC WEST SIDE ROADWAYS	\$5,946.50
	#13IBC386G1-116R	09/01/2019	RETENTION-IBC WEST SIDE ROADWAYS	\$15,516.25
	#13IBC386G3-216R	09/01/2019	RETENTION-IBC WEST SIDE ROADWAYS	\$3,832.33
	#13IBC-0386K-R	09/01/2019	RETENTION-IBC WEST SIDE ROADWAYS	\$9,580.00
32493	09/26/2019		SOUTH COAST A.Q.M.D.	\$2,486.39
	Invoice	Date	Description	Amount
	3516361	08/16/2019	FLAT FEE EMISSIONS-400 GRAND AVE (IBC)	\$136.40
	3512759	08/16/2019	LANDFILL GAS COLLECTIONS-400 GRAND AVE (IBC)	\$2,349.99

Checks	Status	Count	Transaction Amount
	Total	10	\$1,388,292.72

**Successor Agency To The
Industry Urban-Development Agency
Authorization For Payment of Bills
September 26, 2019**

Reviewed By: _____ Date _____

Approved By: _____ Date _____

SUCCESSOR AGENCY

ITEM NO. 5.3

SUCCESSOR AGENCY TO THE INDUSTRY URBAN-DEVELOPMENT AGENCY
REGULAR MEETING MINUTES
CITY OF INDUSTRY, CALIFORNIA
AUGUST 22, 2019
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CALL TO ORDER

The Regular Meeting of the Successor Agency to the Industry Urban-Development Agency was called to order by Chair Moss at 8:42 a.m. in the City of Industry Council Chamber, 15651 East Stafford Street, California.

FLAG SALUTE

The flag salute was led by Chair Cory C. Moss.

ROLL CALL

PRESENT: Cory C. Moss, Chair
Cathy Marcucci, Vice Chair
Abraham Cruz, Board Member
Mark D. Radecki, Board Member
Newell Ruggles, Board Member

STAFF PRESENT: Troy Helling, Executive Director; James M. Casso, Legal Counsel; Bianca Sparks, Assistant Legal Counsel; Joshua Nelson, Director of Public Works/City Engineer; and Julie Robles, Assistant Secretary.

PUBLIC COMMENTS

Dan Fox, City Manager of Diamond Bar, spoke in regards to item No. 5.4. He came to thank the members and the City for their support on the State Route 57/60 Confluence Project.

BOARD MATTERS

5.1 CONSIDERATION OF THE REGISTER OF DEMANDS FOR AUGUST 8, 2019

RECOMMENDED ACTION: Ratify the Register of Demands for August 8, 2019.

MOTION BY BOARD MEMBER RUGGLES, AND SECOND BY VICE CHAIR MARCUCCI TO RATIFY THE REGISTER OF DEMANDS FOR AUGUST 8, 2019.
MOTION CARRIED 5-0, BY THE FOLLOWING VOTE:

SUCCESSOR AGENCY TO THE INDUSTRY URBAN-DEVELOPMENT AGENCY
REGULAR MEETING MINUTES
CITY OF INDUSTRY, CALIFORNIA
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AYES: BOARD MEMBERS: CRUZ, RADECKI, RUGGLES, VC/MARCUCCI,
C/MOSS
NOES: BOARD MEMBERS: NONE
ABSENT: BOARD MEMBERS: NONE
ABSTAIN: BOARD MEMBERS: NONE

5.2 CONSIDERATION OF THE REGISTER OF DEMANDS FOR AUGUST 22, 2019

RECOMMENDED ACTION: Approve the Register of Demands and authorize the appropriate Agency Officials to pay the bills.

MOTION BY BOARD MEMBER RADECKI, AND SECOND BY VICE CHAIR MARCUCCI TO APPROVE THE REGISTER OF DEMANDS AND AUTHORIZE THE APPROPRIATE AGENCY OFFICIALS TO PAY THE BILLS. MOTION CARRIED 5-0, BY THE FOLLOWING VOTE:

AYES: BOARD MEMBERS: CRUZ, RADECKI, RUGGLES, VC/MARCUCCI,
C/MOSS
NOES: BOARD MEMBERS: NONE
ABSENT: BOARD MEMBERS: NONE
ABSTAIN: BOARD MEMBERS: NONE

5.3 CONSIDERATION OF THE MINUTES OF JULY 25, 2019 SPECIAL MEETING

RECOMMENDED ACTION: Approve as submitted.

MOTION BY BOARD MEMBER CRUZ, AND SECOND BY BOARD MEMBER RUGGLES TO APPROVE AS SUBMITTED. MOTION CARRIED 5-0, BY THE FOLLOWING VOTE:

AYES: BOARD MEMBERS: CRUZ, RADECKI, RUGGLES, VC/MARCUCCI,
C/MOSS
NOES: BOARD MEMBERS: NONE
ABSENT: BOARD MEMBERS: NONE
ABSTAIN: BOARD MEMBERS: NONE

SUCCESSOR AGENCY TO THE INDUSTRY URBAN-DEVELOPMENT AGENCY
REGULAR MEETING MINUTES
CITY OF INDUSTRY, CALIFORNIA
AUGUST 22, 2019
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5.4 CONSIDERATION OF A RESOLUTION ADOPTING AN ADDENDUM TO THE 2013 STATE ROUTE 57/STATE ROUTE 60 CONFLUENCE AT GRAND AVENUE PROJECT FINAL ENVIRONMENTAL IMPACT REPORT, AND AWARDED A CONTRACT TO LOS ANGELES ENGINEERING, INC., FOR GRAND AVENUE AND GOLDEN SPRINGS DRIVE INTERSECTION IMPROVEMENTS IN THE AMOUNT OF \$16,007,000.00

RECOMMENDED ACTION: Adopt the resolution adopting the addendum and awarding the contract to Los Angeles Engineering, Inc., in the amount of \$16,007,000.00.

Director of Public Works/City Engineer Josh Nelson, provided a staff report and Assistant Legal Counsel Bianca Sparks, provided additional information regarding the addendum and both were available to answer any questions.

MOTION BY VICE CHAIR MARCUCCI, AND SECOND BY BOARD MEMBER CRUZ TO ADOPT THE RESOLUTION ADOPTING THE ADDENDUM AND AWARDED THE CONTRACT TO LOS ANGELES ENGINEERING, INC., IN THE AMOUNT OF \$16,007,000.00. MOTION CARRIED 5-0, BY THE FOLLOWING VOTE:

AYES:	BOARD MEMBERS:	CRUZ, RADECKI, RUGGLES, VC/MARCUCCI, C/MOSS
NOES:	BOARD MEMBERS:	NONE
ABSENT:	BOARD MEMBERS:	NONE
ABSTAIN:	BOARD MEMBERS:	NONE

5.5 CONSIDERATION OF AMENDMENT NO. 1 TO COOPERATIVE AGREEMENT 07-5100 BETWEEN THE SUCCESSOR AGENCY TO THE INDUSTRY URBAN-DEVELOPMENT AGENCY AND CALTRANS TO PERFORM INDEPENDENT QUALITY ASSURANCE (IQA) ON THE LEMON AVENUE INTERCHANGE PROJECT (MP 03-10) (AGREEMENT 07-5100A1)

RECOMMENDED ACTION: Approve the Amendment.

Director of Public Works/City Engineer Josh Nelson provided a staff report and was available to answer any questions.

SUCCESSOR AGENCY TO THE INDUSTRY URBAN-DEVELOPMENT AGENCY
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CITY OF INDUSTRY, CALIFORNIA
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MOTION BY VICE CHAIR MARCUCCI, AND SECOND BY BOARD MEMBER RUGGLES TO APPROVE THE AMENDMENT. MOTION CARRIED 5-0, BY THE FOLLOWING VOTE:

AYES:	BOARD MEMBERS:	CRUZ, RADECKI, RUGGLES, VC/MARCUCCI, C/MOSS
NOES:	BOARD MEMBERS:	NONE
ABSENT:	BOARD MEMBERS:	NONE
ABSTAIN:	BOARD MEMBERS:	NONE

5.6 CONSIDERATION OF AMENDMENT NO. 1 TO THE PROFESSIONAL SERVICES AGREEMENT WITH C & C ENGINEERING, INC., FOR ENGINEERING SERVICES TO AMEND THE SCOPE OF SERVICES AND ADD RENTAL OF OFFICE SPACE (CITY, SAIUDA, IPUC)

RECOMMENDED ACTION: Approve the Amendment.

MOTION BY BOARD MEMBER CRUZ, AND SECOND BY BOARD MEMBER RADECKI TO APPROVE THE AMENDMENT. MOTION CARRIED 5-0, BY THE FOLLOWING VOTE:

AYES:	BOARD MEMBERS:	CRUZ, RADECKI, RUGGLES, VC/MARCUCCI, C/MOSS
NOES:	BOARD MEMBERS:	NONE
ABSENT:	BOARD MEMBERS:	NONE
ABSTAIN:	BOARD MEMBERS:	NONE

CLOSED SESSION

Assistant Secretary, Julie Robles announced there was a need for Closed Session as follows:

6.1 CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION

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

Case: San Gabriel Valley Water and Power, LLC v. City of Chino Hills; et al.

Superior Court of California, County of San Bernardino

Case No.: CIVDS 1904434

SUCCESSOR AGENCY TO THE INDUSTRY URBAN-DEVELOPMENT AGENCY
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CITY OF INDUSTRY, CALIFORNIA
AUGUST 22, 2019
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6.2 Conference with real property negotiators pursuant to Government Code Section 54956.8

Property: 17647 Gale Avenue, City of Industry
Agency Negotiators: Troy Helling, Executive Director
James M. Casso, General Counsel
Negotiating Party: PT Enterprises, LLC
Under Negotiation: Price & Terms of payment

Mayor Moss recessed the meeting at 8:58 a.m.

Mayor Moss reconvened the meeting at 9:32 a.m., and entered into Closed Session.

Mayor Moss reconvened the meeting at 10:11 a.m. All members of the Successor Agency were present.

Legal Counsel Casso reported out of Closed Session.

With regard to Closed Session item 6.1, this item was pulled and not discussed.

With regard to Closed Session item 6.2, direction was given to Agency Negotiators, no further action taken. Nothing further to report.

ADJOURNMENT

There being no further business, the Successor Agency to the Industry Urban-Development Agency adjourned at 10:12 a.m.

Cory C. Moss, Chair

Julie Robles, Assistant Secretary

SUCCESSOR AGENCY

ITEM NO. 5.4



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

MEMORANDUM

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

FROM: Troy Helling, Executive Director *TH*

STAFF: Joshua Nelson, Agency Engineer *JN*

DATE: September 26, 2019

SUBJECT: Consideration of Amendment No. 2 to the Professional Services Agreement with Avant-Garde, Inc. to perform grant administration services through March 31, 2022 (MP 99-31 #22)

Background:

On March 10, 2016, the Successor Agency and Avant-Garde entered into a Professional Services Agreement ("Agreement") to perform grant administration services in the amount of \$200,000 through March 31, 2019. Avant-Garde has been providing TIGER grant reporting, Metro grant reporting and all associated close-out activities, such as final project audits and correspondence with the granting agencies. The Agreement includes grant administration services the Phase 1 of the Grand Avenue/SR-60 on ramp, Phase II of the Grand Avenue/SR-60 off ramp and the Grand Avenue and Golden Springs Drive intersection improvements projects.

Amendment No. 1 was approved on January 25, 2018 to expand the scope of services to include the project management and funding administration for the Westbound On/Off Ramps of the SR-57/60 and Golden Springs Drive as part of the Phase 1 On Ramp project. A budget increase of \$150,000 was also included as part of Amendment No. 1.

Discussion:

The term for the Agreement expired on March 31, 2019. Avant-Garde is continuing to provide the aforementioned grant administration services to the Successor Agency. Amendment No. 2 extends the term through March 31, 2022. There is no fiscal impact for this term extension as there is adequate budget remaining.

Fiscal Impact:

There is no fiscal impact associated with Amendment No. 2.

Recommendation:

Staff recommends that the Successor Agency approve and execute Amendment No. 2 to the Professional Services Agreement with Avant-Garde, Inc.

Exhibit:

- A. Amendment No. 2 to the Professional Services Agreement with Avant-Garde, Inc.

TH/JN:jv

EXHIBIT A

Amendment No. 2 to the Professional Services Agreement with Avant-Garde,
Inc.

[Attached]

**AMENDMENT NO. 2
TO PROFESSIONAL SERVICES AGREEMENT WITH AVANT-GARDE, INC.**

This Amendment No. 2 to the Professional Services Agreement (“Agreement”), is made and entered into this 26th day of September, 2019, by and between the Successor Agency to the Industry Urban-Development Agency, a public body, corporate and politic (“Agency”) and Avant-Garde, Inc., a California Corporation (“Consultant”). The Agency and Consultant are hereinafter collectively referred to as the “Parties.”

RECITALS

WHEREAS, on or about March 10, 2016, the Agreement was entered into and executed between the Agency and Consultant to provide grant administration services; and

WHEREAS, on or about January 25, 2018, Amendment No. 1 was entered into to increase compensation of the Agreement by \$150,000.00 and expand the Scope of Services to include assisting with the project management and funding administration support services for the Westbound On/Off Ramp SR-57/60 and Golden Springs; and

WHEREAS, the Parties desire to amend the Agreement to extend the term of the Agreement through March 31, 2022 to continue providing grant administration services to the Agency; and

WHEREAS, for the reasons set forth herein, the Agency and Consultant desire to enter into this Amendment No. 2, as set forth below.

AMENDMENT

NOW, THEREFORE, in consideration of the mutual covenants, promises and agreements set forth herein, it is agreed the aforesaid Agreement, a copy of which is attached hereto as Exhibit A, and incorporated herein by reference, shall remain in full force and effect except as otherwise hereinafter provided:

Section 1. TERM

This Agreement shall commence on April 2, 2019, and shall remain and continue in effect until tasks described herein are completed, but in no event later than March 31, 2022, unless sooner terminated pursuant to the provisions of this Agreement.

Section 14. NOTICES

The address for James M. Casso is hereby revised to read in its entirety as follows:

James M. Casso, City Attorney
Casso & Sparks, LLP
13300 Crossroads Parkway North, Suite 410
City of Industry, CA 91746

IN WITNESS WHEREOF, the Parties have executed this Amendment No. 2 to the Agreement as of the Effective Date.

“AGENCY”
**Successor Agency to the Industry Urban-
Development Agency**

“CONSULTANT”
Avant-Garde, Inc.

By: _____
Troy Helling, Executive Director

By: _____
Ana Marie LeNoue, President

Attest:

By: _____
Julie Gutierrez-Robles, Agency Secretary

APPROVED AS TO FORM

By: _____
James M. Casso, Agency General Counsel

EXHIBIT A TO AMENDMENT NO. 2

**PROFESSIONAL SERVICES AGREEMENT WITH AVANT-GARDE, INC DATED
MARCH 10, 2016**

SUCCESSOR AGENCY TO THE INDUSTRY URBAN-DEVELOPMENT AGENCY
PROFESSIONAL SERVICES AGREEMENT

This PROFESSIONAL SERVICES AGREEMENT ("Agreement"), is made and effective as of March 10, 2016 ("Effective Date"), between the Successor Agency to the Industry Urban-Development Agency, a public body, corporate and politic ("Agency") and Avant-Garde, Inc., a California corporation company ("Consultant"). The Agency and Consultant are hereinafter collectively referred to as the "Parties".

RECITALS

WHEREAS, Agency desires to engage Consultant to perform the services described herein, and Consultant desires to perform such services in accordance with the terms and conditions set forth herein.

NOW, THEREFORE, for and in consideration of the mutual covenants and conditions herein contained, Agency and Consultant agree as follows:

1. TERM

This Agreement shall commence on the Effective Date, and shall remain and continue in effect until tasks described herein are completed, but in no event later than **March 31, 2019**, unless sooner terminated pursuant to the provisions of this Agreement.

2. SERVICES

(a) Consultant shall perform the tasks ("Services") described and set forth in Exhibit A, attached hereto and incorporated herein as though set forth in full. ("Scope of Services"). Tasks other than those specifically described in the Scope of Services shall not be performed without prior written approval of the Agency. The Services shall be performed by Consultant, unless prior written approval is first obtained from the Agency. In the event of conflict or inconsistency between the terms of this Agreement and Exhibit A, the terms of this Agreement shall prevail.

(b) Agency shall have the right to request, in writing, changes to the Services. Any such changes mutually agreed upon by the Parties, and any corresponding increase or decrease in compensation, shall be incorporated by written amendment to this Agreement.

(c) Consultant shall perform all Services in a manner reasonably satisfactory to the Agency and in a first-class manner in conformance with the standards of quality normally observed by an entity providing environmental engineering and consulting services, serving a municipal agency.

(d) Consultant shall comply with all applicable federal, state, and local laws, regulations and ordinances in the performance of this Agreement, including but not limited to, the conflict of interest provisions of Government Code Section 1090 and the Political Reform Act (Government Code Section 81000 *et seq.*). During the term of this Agreement, Consultant shall not perform

any work for another person or entity for whom Consultant was not working on the Effective Date if both (i) such work would require Consultant to abstain from a decision under this Agreement pursuant to a conflict of interest statute or law; and (ii) Agency has not consented in writing to Consultant's performance of such work. No officer or employee of Agency shall have any financial interest in this Agreement that would violate California Government Code Sections 1090 *et seq.* Consultant hereby warrants that it is not now, nor has it been in the previous twelve {12} months, an employee, agent, appointee, or official of the Agency. If Consultant was an employee, agent, appointee, or official of the Agency in the previous twelve (12) months, Consultant warrants that it did not participate in any manner in the forming of this Agreement. Consultant understands that, if this Agreement is made in violation of Government Code §1090 *et. seq.*, the entire Agreement is void and Consultant will not be entitled to any compensation for Services performed pursuant to this Agreement, and Consultant will be required to reimburse the Agency for any sums paid to the Consultant. Consultant understands that, in addition to the foregoing, it may be subject to criminal prosecution for a violation of Government Code § 1090 and, if applicable, will be disqualified from holding public office in the State of California.

(e) Consultant represents that it has, or will secure at its own expense, all licensed personnel required to perform the Services. All Services shall be performed by Consultant or under its supervision, and all personnel engaged in the Services shall be qualified and licensed to perform such services.

3. MANAGEMENT

The Executive Director or his designee shall represent the Agency in all matters pertaining to the administration of this Agreement, review and approval of all products submitted by Consultant, but shall have no authority to modify the Services or the compensation due to Consultant.

4. PAYMENT

(a) The Agency agrees to pay Consultant monthly, in accordance with the payment rates and terms and the schedule of payment as set forth in Exhibit B ("Rate Schedule"), attached hereto and incorporated herein by this reference as though set forth in full, based upon actual time spent on the above tasks. This amount shall not exceed **Two Hundred Thousand Dollars (\$200,000.00)** for the total Term of the Agreement unless additional payment is approved as provided in this Agreement.

(b) Consultant shall not be compensated for any services rendered in connection with its performance of this Agreement which are in addition to those set forth herein, unless such additional services are authorized in advance and in writing by the Agency. Consultant shall be compensated for any additional services in the amounts and in the manner as agreed to by Agency and Consultant at the time Agency's written authorization is given to Consultant for the performance of said services.

(c) Consultant shall submit invoices monthly for actual services performed. Invoices shall be submitted on or about the first business day of each month, or as soon thereafter as practical, for services provided in the previous month. Payment shall be made within thirty

(30) days of receipt of each invoice as to all non-disputed fees. If the Agency disputes any of Consultant's fees it shall give written notice to Consultant within thirty (30) days of receipt of an invoice of any disputed fees set forth on the invoice. Any final payment under this Agreement shall be made within 45 days of receipt of an invoice therefore.

5. SUSPENSION OR TERMINATION OF AGREEMENT

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

(b) In the event this Agreement is terminated pursuant to this Section, the Agency shall pay to Consultant the actual value of the work performed up to the time of termination, provided that the work performed is of value to the Agency. Upon termination of the Agreement pursuant to this Section, the Consultant shall submit an invoice to the Agency pursuant to Section 5 of this Agreement.

6. OWNERSHIP OF DOCUMENTS

(a) Consultant shall maintain complete and accurate records with respect to sales, costs, expenses, receipts, and other such information required by Agency that relate to the performance of services under this Agreement. Consultant shall maintain adequate records of services provided in sufficient detail to permit an evaluation of services. All such records shall be maintained in accordance with generally accepted accounting principles and shall be clearly identified and readily accessible. Consultant shall provide free access to the representatives of Agency or its designees at reasonable times to review such books and records; shall give Agency the right to examine and audit said books and records; shall permit Agency to make transcripts or copies therefrom as necessary; and shall allow inspection of all work, data, documents, proceedings, and activities related to this Agreement. Such records, together with supporting documents, shall be maintained for a period of three (3) years after receipt of final payment.

(b) Upon completion of, or in the event of termination or suspension of this Agreement, all original documents, designs, drawings, maps, models, computer files, surveys, notes, and other documents prepared in the course of providing the services to be performed pursuant to this Agreement shall become the sole property of the Agency and may be used, reused, or otherwise disposed of by the Agency without the permission of the Consultant. With respect to computer files, Consultant shall make available to the Agency, at the Consultant's office, and upon reasonable written request by the Agency, the necessary computer software and hardware for purposes of accessing, compiling, transferring, copying and/or printing computer files. Consultant hereby grants to Agency all right, title, and interest, including any copyright, in and to the documents, designs, drawings, maps, models, computer files, surveys, notes, and other documents prepared by Consultant in the course of providing the services under this Agreement. All reports, documents, or

other written material developed by Consultant in the performance of the Services pursuant to this Agreement, shall be and remain the property of the Agency.

7. INDEMNIFICATION

(a) Indemnity for professional liability

When the law establishes a professional standard of care for Consultant's Services, to the fullest extent permitted by law, Consultant shall indemnify, protect, defend and hold harmless the Agency and any and all of its officials, employees and agents ("Indemnified Parties") from and against any and all losses, liabilities, damages, costs and expenses, including legal counsel's fees and costs caused in whole or in part by any negligent or wrongful act, error or omission of Consultant, its officers, agents, employees or Subconsultants (or any agency or individual that Consultant shall bear the legal liability thereof) in the performance of professional services under this Agreement.

(b) Indemnity for other than professional liability

Other than in the performance of professional services and to the full extent permitted by law, Consultant shall indemnify, defend and hold harmless Agency, and any and all of its employees, officials and agents from and against any liability (including liability for claims, suits, actions, arbitration proceedings, administrative proceedings, regulatory proceedings, losses, expenses or costs of any kind, whether actual, alleged or threatened, including legal counsel fees and costs, court costs, interest, defense costs, and expert witness fees), where the same arise out of, are a consequence of, or are in any way attributable to, in whole or in part, the performance of this Agreement by Consultant or by any individual or agency for which Consultant is legally liable, including but not limited to officers, agents, employees or subcontractors of Consultant.

(c) Duty to Defend

In the event the Agency, its officers, employees, agents and/or volunteers are made a party to any action, claim, lawsuit, or other adversarial proceeding arising from the performance of the services encompassed by this Agreement, and upon demand by Agency, Consultant shall have an immediate duty to defend the Agency at Consultant's cost or at Agency's option, to reimburse the Agency for its costs of defense, including reasonable attorney's fees and costs incurred in the defense of such matters.

Payment by Agency is not a condition precedent to enforcement of this indemnity. In the event of any dispute between Consultant and Agency, as to whether liability arises from the sole negligence of the Agency or its officers, employees, or agents, Consultant will be obligated to pay for Agency's defense until such time as a final judgment has been entered adjudicating the Agency as solely negligent. Consultant will not be entitled in the absence of such a determination to any reimbursement of defense costs including but not limited to attorney's fees, expert fees and costs of litigation.

8. INSURANCE

Consultant shall maintain prior to the beginning of and for the duration of this Agreement insurance coverage as specified in Exhibit C attached hereto and incorporated herein by reference.

9. INDEPENDENT CONSULTANT

(a) Consultant is and shall at all times remain as to the Agency a wholly independent consultant and/or independent contractor. The personnel performing the services under this Agreement on behalf of Consultant shall at all times be under Consultants exclusive direction and control. Neither Agency nor any of its officers, employees, or agents shall have control over the conduct of Consultant or any of Consultant's officers, employees, or agents, except as set forth in this Agreement. Consultant shall not at any time or in any manner represent that it or any of its officers, employees, or agents are in any manner officers, employees, or agents of the Agency. Consultant shall not incur or have the power to incur any debt, obligation, or liability whatever against the Agency, or bind the Agency in any manner.

(b) No employee benefits shall be available to Consultant in connection with the performance of this Agreement. Except for the fees paid to Consultant as provided in the Agreement, Agency shall not pay salaries, wages, or other compensation to Consultant for performing services hereunder for Agency. Agency shall not be liable for compensation or indemnification to Consultant for injury or sickness arising out of performing services hereunder.

10. LEGAL RESPONSIBILITIES

The Consultant shall keep itself informed of State and Federal laws and regulations which in any manner affect those employed by it or in any way affect the performance of its service pursuant to this Agreement. The Consultant shall at all times observe and comply with all such laws and regulations. The Agency, and its officers and employees, shall not be liable at law or in equity occasioned by failure of the Consultant to comply with this Section.

11. UNDUE INFLUENCE

Consultant declares and warrants that no undue influence or pressure was used against or in concert with any officer or employee of the Agency in connection with the award, terms or implementation of this Agreement, including any method of coercion, confidential financial arrangement, or financial inducement. No officer or employee of the Agency has or will receive compensation, directly or indirectly, from Consultant, or from any officer, employee or agent of Consultant, in connection with the award of this Agreement or any work to be conducted as a result of this Agreement. Violation of this Section shall be a material breach of this Agreement entitling the Agency to any and all remedies at law or in equity.

12. NO BENEFIT TO ARISE TO LOCAL OFFICERS AND EMPLOYEES

No member, officer, or employee of Agency, or their designees or agents, and no public official who exercises authority over or responsibilities with respect to the Project during his/her tenure or for one year thereafter, shall have any interest, direct or indirect, in any agreement or sub-agreement, or the proceeds thereof, for work to be performed in connection with the Project performed under this Agreement.

13. RELEASE OF INFORMATION/CONFLICTS OF INTEREST

(a) All information gained by Consultant in performance of this Agreement shall be considered confidential and shall not be released by Consultant without Agency's prior written authorization. Consultant, its officers, employees, agents, or subconsultants, shall not without written authorization from the Agency, voluntarily provide declarations, letters of support, testimony at depositions, response to interrogatories, or other information concerning the work performed under this Agreement or relating to any project or property located within the Agency, unless otherwise required by law or court order.

(b) Consultant shall promptly notify Agency should Consultant, its officers, employees, agents, or subconsultants be served with any summons, complaint, subpoena, notice of deposition, request for documents, interrogatories, request for admissions, or other discovery request ("Discovery"), court order, or subpoena from any person or party regarding this Agreement and the work performed there under or with respect to any project or property located within the Agency, unless Consultant is prohibited by law from informing the Agency of such Discovery, court order or subpoena. Agency retains the right, but has no obligation, to represent Consultant and/or be present at any deposition, hearing, or similar proceeding as allowed by law. Unless Agency is a party to the lawsuit, arbitration, or administrative proceeding and is adverse to Consultant in such proceeding, Consultant agrees to cooperate fully with the Agency and to provide the opportunity to review any response to discovery requests provided by Consultant. However, Agency's right to review any such response does not imply or mean the right by Agency to control, direct, or rewrite said response.

14. NOTICES

Any notices which either party may desire to give to the other party under this Agreement must be in writing and may be given either by (i) personal service, (ii) delivery by a reputable document delivery service, such as but not limited to, Federal Express, which provides a receipt showing date and time of delivery, or (iii) mailing in the United States Mail, certified mail, postage prepaid, return receipt requested, addressed to the address of the party as set forth below or at any other address as that party may later designate by notice:

To Agency:	Successor Agency to the Industry Urban-Development Agency 15625 E. Stafford, Suite 100 City of Industry, CA 91744 Attention: Executive Director
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With a Copy To: James M. Casso, General Counsel
Casso & Sparks, LLP
13200 Crossroads Parkway North, Suite 345
City of Industry, CA 91746

To Consultant: Ana Marie LeNoue, President
Avant-Garde, Inc.
3670 W. Temple Avenue, Suite 278
Pomona, CA 91768

15. ASSIGNMENT

The Consultant shall not assign the performance of this Agreement, nor any part thereof, nor any monies due hereunder, without prior written consent of the Agency.

Before retaining or contracting with any subconsultant for any services under this Agreement, Consultant shall provide Agency with the identity of the proposed subconsultant, a copy of the proposed written contract between Consultant and such subconsultant which shall include an indemnity provision similar to the one provided herein and identifying Agency as an indemnified party, or an incorporation of the indemnity provision provided herein, and proof that such proposed subconsultant carries insurance at least equal to that required by this Agreement or obtain a written waiver from the Agency for such insurance.

Notwithstanding Consultant's use of any subconsultant, Consultant shall be responsible to the Agency for the performance of its subconsultant as it would be if Consultant had performed the Services itself. Nothing in this Agreement shall be deemed or construed to create a contractual relationship between the Agency and any subconsultant employed by Consultant. Consultant shall be solely responsible for payments to any subconsultants. Consultant shall indemnify, defend and hold harmless the Indemnified Parties for any claims arising from, or related to, the services performed by a subconsultant under this Agreement.

16. GOVERNING LAW/ATTORNEYS' FEES

The Agency and Consultant understand and agree that the laws of the State of California shall govern the rights, obligations, duties, and liabilities of the parties to this Agreement and also govern the interpretation of this Agreement. Any litigation concerning this Agreement shall take place in the municipal, superior, or federal district court in Los Angeles County, California. If any action at law or suit in equity is brought to enforce or interpret the provisions of this Agreement, or arising out of or relating to the Services provided by Consultant under this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees and all related costs, including costs of expert witnesses and consultants, as well as costs on appeal, in addition to any other relief to which it may be entitled.

17. ENTIRE AGREEMENT

This Agreement contains the entire understanding between the Parties relating to the obligations of the Parties described in this Agreement. All prior or contemporaneous agreements, understandings, representations, and statements, oral or written and pertaining to the subject of this Agreement or with respect to the terms and conditions of this Agreement, are merged into this Agreement and shall be of no further force or effect. Each party is entering into this Agreement based solely upon the representations set forth herein and upon each party's own independent investigation of any and all facts such party deems material.

18. SEVERABILITY

If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, then such term or provision shall be amended to, and solely to, the extent necessary to cure such invalidity or unenforceability, and in its amended form shall be enforceable. In such event, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

19. COUNTERPARTS

This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.

20. CAPTIONS

The captions appearing at the commencement of the sections hereof, and in any paragraph thereof, are descriptive only and shall have no significance in the interpretation of this Agreement.

21. WAIVER

The waiver by Agency or Consultant of any breach of any term, covenant or condition herein contained shall not be deemed to be a waiver of such term, covenant or condition or of any subsequent breach of the same or any other term, covenant or condition herein contained. No term, covenant or condition of this Agreement shall be deemed to have been waived by Agency or Consultant unless in writing.

22. REMEDIES

Each right, power and remedy provided for herein or now or hereafter existing at law, in equity, by statute, or otherwise shall be cumulative and shall be in addition to every other right, power, or remedy provided for herein or now or hereafter existing at law, in equity, by statute, or otherwise. The exercise, the commencement of the exercise, or the forbearance of the exercise by any party of any one or more of such rights, powers or remedies shall not preclude the simultaneous or later exercise by such party of any of all of such other rights, powers or remedies.

23. AUTHORITY TO EXECUTE THIS AGREEMENT

The person or persons executing this Agreement on behalf of Consultant represents and warrants that he/she has the authority to execute this Agreement on behalf of the Consultant and has the authority to bind Consultant to the performance of its obligations hereunder.

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

"AGENCY"

**Successor Agency to the Industry
Urban-Development Agency**

By: 
Mark D. Radecki, Chairman

"CONSULTANT"

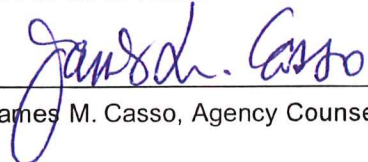
Avant-Garde, Inc

By: 
Ana Marie LeNoue, President

Attest:

By: 
Diane M. Schlichting, Assistant Secretary

Approved as to form:

By: 
James M. Casso, Agency Counsel

- | | | |
|--------------|-----------|------------------------|
| Attachments: | Exhibit A | Scope of Services |
| | Exhibit B | Rate Schedule |
| | Exhibit C | Insurance Requirements |

EXHIBIT A

SCOPE OF SERVICES

The Scope of Services shall include the following tasks as directed by the Successor Agency:

- Serve as the Successor Agency liaison on the projects and/or activities set forth herein;
- Assist in preparation of agreements and miscellaneous project related documents as requested by the Successor Agency;
- Coordinate with Caltrans on project delivery and prepare funding requests;
- Coordination with Successor Agency Attorney for preparation of agreements;
- Prepare agenda reports for Successor Agency meetings as needed;
- Coordination with Metro for programming and preparation of fund requests
- Prepare quarterly reports as needed;
- Coordination with the engineering team as required;
- Attend scheduled project development team meetings;
- Provide support for community relations and preparation of informational materials; and
- Prepare miscellaneous reports and assist the Successor Agency staff as needed.

Services to be provided include:

A. TIGER Grant Reporting:

- 1) Conduct pre-report and final project outcomes; coordinate with the engineer to establish tracking system; submit quarterly progress reports and the Federal Financial Report (SF-425) to the Federal Highway Administration (FHWA).
- 2) Submit an Annual Budget Review and Program Plan to Federal Highway Administration (FHWA).
- 3) Attend project development meetings; coordinate with Caltrans and the engineering team.

B. Metro Grant Reporting:

- 1) Coordinate with Metro for programming and prepare fund requests to include updating the RTIP and FTIP.
- 2) Prepare quarterly reimbursement claims and quarterly reports required by Metro.
- 3) Coordination with Metro on extension requests and presentation to the Technical Advisor Committee as needed.
- 4) Track project expenses for reimbursement submittals; reconcile expenditures with finance.
- 5) Coordinate and assist with the Successor Agency's finance department during Metro's audit process.
- 6) Coordinate with engineering team to secure deliverables required for funding compliance.

C. Close-out Activities:

- 1) Conduct final project audits.
- 2) Finalize correspondence with granting agencies.
- 3) Final project closeout.

Consultant shall provide all necessary grant administration services for the following improvements:

1) Phase I - Grand Avenue/SR-60 On Ramp:

Work Description:

The project proposes construction of an on-ramp from southbound Grand Avenue to westbound SR-60, extend the on-ramp lane as an auxiliary lane to southbound SR-57 add lane, reconfiguring the lanes at the westbound SR-60 intersections on Grand Avenue and removing the raised median to add a southbound left turn lane to eastbound SR-60. Construction contract was awarded and construction should start in March 2016.

2) Phase II – Grand Avenue/SR-60 Off Ramp:

Work Description:

The project proposes to construct improvements to the SR-60/SR-57 Confluence. The major items of work include extending a southbound SR-57 lane to the Grand off-ramp, reconstructing the westbound on and off-ramps from Grand Avenue, and reconstructing the westbound loop on-ramp and off-ramp from Grand Avenue, and reconstructing the westbound SR-60 Grand Avenue intersection. Construction contract will bid in May 2016 with construction to start in June 2016.

3) Grand Avenue at Golden Springs Road:

Work Description:

The project proposes to widen the intersection of Grand Avenue and Golden Springs Drive, widen Grand Avenue from the intersection to the Caltrans right-of-way of the SR-60/SR-57 confluence and construct a new golf cart tunnel under Grand Avenue south of the existing tunnel. The work on Grand Avenue and Golden Springs Drive shall be under the jurisdiction of the City of Diamond Bar and the work on the tunnel and golf course shall be under the jurisdiction of the Los Angeles County Department of Parks and Recreation. The project is currently at the 50% design stage.

EXHIBIT B

RATE SCHEDULE

The total compensation shall not exceed two hundred thousand dollars (\$200,000.00) and will be based on the hourly rates set forth below.

Hourly rate schedule

Program Director.....	\$130
Program Manager	\$110
Program Coordinator	\$85
Program Assistant.....	\$65

EXHIBIT C

INSURANCE REQUIREMENTS

Without limiting Consultant's indemnification of Agency, and prior to commencement of the Services, Consultant shall obtain, provide and maintain at its own expense during the term of this Agreement, policies of insurance of the type and amounts described below and in a form satisfactory to Agency.

General liability insurance. Consultant shall maintain commercial general liability insurance with coverage at least as broad as Insurance Services Office form CG 00 01, in an amount not less than \$1,000,000.00 per occurrence, \$2,000,000.00 general aggregate, for bodily injury, personal injury, and property damage. The policy must include contractual liability that has not been amended. Any endorsement restricting standard ISO "insured contract" language will not be accepted.

Automobile liability insurance. Consultant shall maintain automobile insurance at least as broad as Insurance Services Office form CA 00 01 covering bodily injury and property damage for all activities of the Consultant arising out of or in connection with Work to be performed under this Agreement, including coverage for any owned, hired, non-owned or rented vehicles, in an amount not less than \$1,000,000.00 combined single limit for each accident.

Professional liability (errors & omissions) insurance. Consultant shall maintain professional liability insurance that covers the Services to be performed in connection with this Agreement, in the minimum amount of \$1,000,000 per claim and in the aggregate. Any policy inception date, continuity date, or retroactive date must be before the effective date of this agreement and Consultant agrees to maintain continuous coverage through a period no less than three years after completion of the services required by this agreement.

Workers' compensation insurance. Consultant shall maintain Workers' Compensation Insurance (Statutory Limits) and Employer's Liability Insurance (with limits of at least \$1,000,000.00).

Consultant shall submit to Agency, along with the certificate of insurance, a Waiver of Subrogation endorsement in favor of Agency, its officers, agents, employees and volunteers.

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

Duration of coverage. Consultant shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property, which may

arise from or in connection with the performance of the Services hereunder by Consultant, his agents, representatives, employees or subconsultants.

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

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

Acceptable insurers. All insurance policies shall be issued by an insurance company currently authorized by the Insurance Commissioner to transact business of insurance in the State of California, with an assigned policyholders' Rating of A- (or higher) and Financial Size Category Class VI (or larger) in accordance with the latest edition of Best's Key Rating Guide, unless otherwise approved by the Agency's Risk Manager.

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

Enforcement of contract provisions (non estoppel). Consultant acknowledges and agrees that any actual or alleged failure on the part of the Agency to inform Consultant of non-compliance with any requirement imposes no additional obligations on the Agency nor does it waive any rights hereunder.

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

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

Additional insured status. General liability policies shall provide or be endorsed to provide that Agency and its officers, officials, employees, and agents, and volunteers shall be additional insureds under such policies. This provision shall also apply to any excess liability policies.

Prohibition of undisclosed coverage limitations. None of the coverages required herein will be in compliance with these requirements if they include any limiting endorsement of any kind that has not been first submitted to Agency and approved of in writing.

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

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

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

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

Timely notice of claims. Consultant shall give the Agency prompt and timely notice of claims made or suits instituted that arise out of or result from Consultant's performance under this Agreement, and that involve or may involve coverage under any of the required liability policies.

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

SUCCESSOR AGENCY

ITEM NO. 5.5



SUCCESSOR AGENCY TO THE
INDUSTRY URBAN - DEVELOPMENT
AGENCY
MEMORANDUM

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

FROM: Troy Helling, Executive Director *TH*

STAFF: Joshua Nelson, Agency Engineer *JN*

DATE: September 26, 2019

SUBJECT: Consideration of Amendment No. 1 to the Traffic Mitigation Agreement with the City of Walnut for certain property acquisition payments (MP 99-31 #65)

Background:

As the owner of the Industry Business Center and Industry East properties and as a condition of the certified Environmental Impact Report ("EIR") for each project pursuant to the California Environmental Quality Act ("CEQA"), the Successor Agency is responsible to comply with the Mitigation Monitoring and Reporting Programs ("MMRP") adopted by the City. The Successor Agency entered into a lease agreement for each property, and pursuant to the terms of each of those leases, the Successor Agency is required to provide the mitigations required to satisfy the requirements of CEQA, the EIR and the MMRP. The EIR for both the Industry East and IBC Projects specified percentages of project mitigation that are the responsibility of the Successor Agency, and the percentages that are the responsibility of Walnut.

In March 2016, to comply with the terms of the leases and fulfill the mitigation measures set forth in the MMRPs and required by CEQA, the Successor Agency retained RKA Consulting Group to design and prepare preliminary conceptual plans and final plans, specifications, and estimates at certain intersections affected by the Industry East and IBC Projects, all located in Walnut. Cost estimates were prepared for all the mitigations and the specified project percentages were applied to those estimates to determine the Successor Agency's financial obligations within Walnut. Walnut had proposed combining all of the Successor Agency's responsibilities for construction into two construction projects that are located at Grand Avenue and La Puente Road, and Lemon Avenue at Valley Boulevard.

On September 28, 2016, the Successor Agency and Walnut entered into a Traffic Mitigation Agreement ("Agreement"). The Agreement states that Walnut accepts the Successor Agency's share of the mitigation measures required in Walnut through the plans prepared by RKA and the construction of the projects at Grand Avenue and La Puente Road, and Lemon Avenue at Valley Boulevard.

Discussion:

Walnut proceeded with the right of way acquisition necessary for the future construction of the mitigation projects. The process of acquiring certain property, located in Walnut, requires payment to the property owners. This Amendment will provide the Successor Agency a means to pay Walnut for these purchases as Walnut will be paying the owners directly. This cost has already been budgeted in the Recognized Obligation Payment Schedule 19-20 under Line Item No. 291. Additionally, the Indemnification section is revised to provide indemnification for the property acquisitions.

Fiscal Impact:

There is no fiscal impact for Amendment No. 1.

Recommendation:

Staff recommends that the Successor Agency approve and execute Amendment No. 1 to the Traffic Mitigation Agreement with the City of Walnut.

Exhibits:

- A. Amendment No. 1 to the Traffic Mitigation Agreement with the City of Walnut
- B. Traffic Mitigation Agreement dated September 28, 2016

TH/JN:jv

EXHIBIT A

Amendment No. 1 to the Traffic Mitigation Agreement with the City of Walnut

[Attached]

AMENDMENT NO. 1
TRAFFIC MITIGATION AGREEMENT BETWEEN THE SUCCESSOR AGENCY TO
THE INDUSTRY URBAN-DEVELOPMENT AGENCY AND THE CITY OF WALNUT

This Amendment No. 1 to the Traffic Mitigation Agreement (“Agreement”) is made and entered into this ___ day of September, 2019, (“Effective Date”) by and between the Successor Agency to the Industry Urban Development Agency, a public body (“Agency”) and the City of Walnut, a California municipal corporation (“Walnut”). The Agency and Walnut are hereinafter collectively referred to as the “Parties”.

RECITALS

WHEREAS, the Agency is the owner of certain real property generally located at Grand Avenue and the intersections of State Routes 60 and 57, in the City of Industry (“Property”); and

WHEREAS, in or about 2000, the City of Industry (“Industry”) certified an Environmental Impact Report (“EIR”) pursuant to the California Environmental Quality Act (Cal. Pub. Resources Code §§ 21000, *et seq.*) (“CEQA”) for the Industry East Project, for the development of an industrial park, at the Property; and

WHEREAS, as part of the EIR, in or about 2000, Industry adopted a Mitigation Monitoring Program (“MMP”) for the Industry East Project to ensure the implementation of the measures used to mitigate the environmental effects of the Industry East Project; and

WHEREAS, in or about 2004, Industry certified an EIR for the Industry Business Center (“IBC”) Project, which included the development of industrial, retail, and office space at the Property; and

WHEREAS, in or about April 2005, the Agency entered into a lease agreement (“Lease”) for the Property, whereby the Agency would allow a third party to develop the Industry East and IBC Projects at the Property, and manage the development thereof; and

WHEREAS, pursuant to the terms of the Lease, the Agency is required to provide the mitigation required for the Industry East Project and the IBC Project, to satisfy the requirements of CEQA, the EIRs and the MMP; and

WHEREAS, in or about 2009, Industry adopted a MMP for the Industry Business Center Revised Plan of Development, which served to ensure the implementation of the measures used to mitigate the environmental effects of the IBC Project, located at the Property, and

WHEREAS, the EIRs for both the Industry East and IBC Projects specified percentages of project mitigation that are the responsibility of Industry and/or Agency, and the percentages that are the responsibility of Walnut; and

WHEREAS, in September 2016, the Parties entered into the Agreement whereby Walnut accepted the Agency’s share of the mitigation measures required in Walnut through plans prepared by a consultant, and the construction of traffic mitigation projects at Grand Avenue and La Puente Road, and Lemon Avenue at Valley Boulevard; and

WHEREAS, given the need to acquire certain property to facilitate construction of the traffic mitigation projects, the Parties desire to amend the Agreement to permit the Agency to pay for the acquisition of property located in Walnut, and to revise the indemnification section to provide indemnification for such property acquisition; and

WHEREAS, for the reasons set forth herein, the Agency and Walnut desire to enter into this Amendment No. 1, as set forth below.

AMENDMENT

NOW, THEREFORE, in consideration of the mutual covenants, promises and agreements set forth herein, it is agreed the aforesaid Agreement shall remain in full force and effect except as otherwise hereinafter provided:

SECTION 2. AGENCY'S RESPONSIBILITIES

Section 2(d) is hereby amended to read in its entirety as follows:

(d) In addition to the completion of the Plans and submission of the Plans to Walnut, Agency shall be responsible for acquiring, or causing to be acquired (which shall include payment therefor), any necessary property and constructing or causing to construct the traffic mitigations set forth in the EIRs and MMPs for the Industry East and IBC Projects for the intersections located at Grand Avenue and La Puente Road (Project A), and Lemon Avenue at Valley Boulevard (Project B), all in accordance with the approved Plans and at no cost to Walnut. Project A and Project B shall be collectively referred to herein as the "Construction Projects".

SECTION 6. INDEMNIFICATION

The second paragraph of Section 6 is hereby amended to read in its entirety as follows:

Walnut shall indemnify, protect, defend and hold harmless the Agency, and Industry and any and all of their officials, employees and agents ("Indemnified Parties") from and against any and all claims, losses, liabilities, damages, fines, penalties, actions, causes of action, judgments, costs and expenses (including, without limitation, attorneys' fees and costs) (collectively "**Claims**") arising out of or relating to any challenges concerning the Agency's and/or Industry's compliance with their CEQA obligations located in Walnut under the MMPs and EIRs for the Industry East and IBC Projects, and for any Claims arising from the Agency's and/or Industry's acquisition of property located in Walnut required under this Agreement, which includes payment for any property acquisition by Walnut. If any action or proceeding is brought against the Agency or Industry by reason of any of the matters against which Walnut has agreed to indemnify the Agency and/or Industry as provided above, Walnut, upon notice from the Agency and/or Industry, must defend the Agency and/or Industry at Walnut's expense by counsel acceptable to the Agency and/or Industry, such acceptance not to be unreasonably withheld. The indemnity obligations of Walnut in this Section 6 will survive the expiration or termination of this Agreement.

SECTION 7. NOTICES

The address for James M. Casso is hereby revised to read in its entirety as follows:

James M. Casso, Agency General Counsel
Casso & Sparks, LLP
13300 Crossroads Parkway North, Suite 410
City of Industry, CA 91746

IN WITNESS WHEREOF, the Parties have executed this Amendment No. 1 to the Agreement as of the Effective Date.

“AGENCY”

Successor Agency to the Industry
Urban-Development Agency

By: _____
Troy Helling, Executive Director

Attest:

By: _____
Julie Gutierrez-Robles, Agency Secretary

Approved as to form:

By: _____
James M. Casso, Agency General Counsel

“WALNUT”

City of Walnut

By:  _____
Rob Wishner, City Manager

Attest:

By:  _____
Teresa De Dios, City Clerk

Approved as to form:

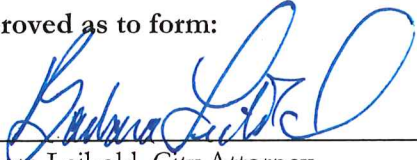
By:  _____
Barbara Leibold, City Attorney

EXHIBIT B

Traffic Mitigation Agreement dated September 28, 2016

[Attached]

**TRAFFIC MITIGATION AGREEMENT BETWEEN THE
SUCCESSOR AGENCY TO THE INDUSTRY URBAN-DEVELOPMENT AGENCY AND
THE CITY OF WALNUT**

This TRAFFIC MITIGATION AGREEMENT ("Agreement"), is made and effective as of September 28, 2016 ("Effective Date"), between the Successor Agency to the Industry Urban-Development Agency, a public body ("Agency") and the City of Walnut, a municipal corporation ("Walnut"). Agency and Walnut are hereinafter collectively referred to as the "Parties."

RECITALS

WHEREAS, the Agency is the owner of certain real property generally located at Grand Avenue and the intersections of State Routes 60 and 57, in the City of Industry ("Property"); and

WHEREAS, in or about 2000, the City of Industry ("Industry") certified an Environmental Impact Report ("EIR") pursuant to the California Environmental Quality Act (Cal. Pub. Resources Code §§ 21000, *et seq.*) ("CEQA") for the Industry East Project, for the development of an industrial park, at the Property; and

WHEREAS, as part of the EIR, in or about 2000, Industry adopted a Mitigation Monitoring Program ("MMP") for the Industry East Project to ensure the implementation of the measures used to mitigate the environmental effects of the Industry East Project; and

WHEREAS, in or about 2004, Industry certified an EIR for the Industry Business Center ("IBC") Project, which included the development of industrial, retail, and office space at the Property; and

WHEREAS, in or about April 2005, the Agency entered into a lease agreement ("Lease") for the Property, whereby the Agency would allow a third party to develop the Industry East and IBC Projects at the Property, and manage the development thereof; and

WHEREAS, pursuant to the terms of the Lease, the Agency is required to provide the mitigation required for the Industry East Project and the IBC Project, to satisfy the requirements of CEQA, the EIRs and the MMP; and

WHEREAS, in or about 2009, Industry adopted a MMP for the Industry Business Center Revised Plan of Development, which served to ensure the implementation of the measures used to mitigate the environmental effects of the IBC Project, located at the Property, and

WHEREAS, the EIRs for both the Industry East and IBC Projects specified percentages of project mitigation that are the responsibility of Industry and/or Agency, and the percentages that are the responsibility of Walnut; and

WHEREAS, in March 2016, to comply with the terms of the Lease and fulfill the mitigation measures set forth in the MMPs and required by CEQA, the Agency retained

RKA Consulting Group to design and prepare preliminary conceptual plans and final plans, specifications, and estimates at certain intersections affected by the Industry East and IBC Projects, located in Walnut and as listed on Attachment No. 1 hereto, "List of Traffic Mitigation Measures" and incorporated herein; and

WHEREAS, cost estimates were prepared for all the mitigations and the specified project percentages were applied to those estimates to determine the Agency's financial obligations within Walnut; and

WHEREAS, Walnut proposes combining all of the Agency's construction responsibilities into two projects at: Grand Avenue and La Puente Road (Attachment No. 1, Project A and Lemon Avenue at Valley Boulevard (see Attachment No. 1, Project B); and

WHEREAS, Walnut agrees to accept the Agency's share of the mitigation measures required in Walnut through the plans prepared by RKA for Projects A through F as shown on Attachment No. 1 and the construction of traffic mitigation projects at Grand Avenue and La Puente Road (Project A), and Lemon Avenue at Valley Boulevard (Project B); and

WHEREAS, the Parties desire to memorialize this plan to comply with the mitigation measures through this Agreement.

NOW, THEREFORE, for and in consideration of the mutual covenants and conditions herein contained, Agency and Walnut agree as follows:

1. **TERM**

This Agreement shall commence on the Effective Date, and shall remain and continue in effect until tasks described herein are completed, unless sooner terminated pursuant to the provisions of this Agreement.

2. **AGENCY'S RESPONSIBILITIES**

(a) As fulfillment of its percentage of mitigation responsibilities located in Walnut, under the EIRs and MMPs for the Industry East and IBC Projects, Agency shall act as the lead agency with respect to the planning, construction and completion of the Construction Projects (as defined below).

(b) Agency shall retain a consultant to design and prepare street improvement and intersection plans, which shall include, but is not limited to, traffic signals, signing and striping plans for Projects A through F as shown on Attachment No. 1 (the "Plans").

(c) Upon completion of the Plans, Agency shall provide all Plans to Walnut for review and approval.

(d) In addition to the completion of the Plans and submission of the Plans to Walnut, Agency shall be responsible for acquiring any necessary property and constructing or causing to construct the traffic mitigations set forth in the EIRs and MMPs for the Industry East and IBC Projects for the intersections located at Grand Avenue and La Puente Road

(Project A), and Lemon Avenue at Valley Boulevard (Project B), all in accordance with the approved Plans and at no cost to Walnut. Project A and Project B shall be collectively referred to herein as the "Construction Projects".

3. WALNUT'S RESPONSIBILITIES

(a) Walnut shall promptly review the Plans and, following such review, notify Agency that such Plans are either approved or subject to revision to satisfy the Walnut City Engineer.

(b) Walnut shall accept the Plans and the completed Construction Projects as full consideration, acknowledgment and acceptance of the Agency's and Industry's fulfillment of their CEQA mitigation obligations located in Walnut, as set forth in the EIRs and MMPs for the Industry East and IBC Projects. Notwithstanding the requirement that Walnut accept the Construction Projects upon completion of such projects in accordance with the Plans, ownership and title to all materials, equipment, and appurtenances installed within the public right of way as part of this Agreement will automatically be vested with Walnut and no further agreement will be necessary to transfer ownership.

(c) Upon acceptance, Walnut shall be responsible for maintenance of the Construction Projects.

4. FULFILLMENT OF OBLIGATIONS UNDER CEQA

The Parties hereby acknowledge and agree that upon receipt and acceptance by Walnut of the Plans and Construction Projects from the Agency, Agency and Industry shall be deemed to have fully satisfied, and completed, all of their mitigation measures located in Walnut, as set forth in the EIRs and MMPs for the Industry East and IBC Projects. Agency and Industry shall then be relieved of any further CEQA mitigation obligations located in Walnut related to the Industry East and IBC Projects.

5. TIME OF PERFORMANCE; TERMINATION

(a) Agency shall submit Plans to Walnut no later than nine (9) months following the approval of this Agreement by the California Department of Finance.

(b) Agency shall complete the Construction Project within 18 months following Walnut's approval of the Plans. Notwithstanding the foregoing, in the event that any property acquisition is necessary to complete the Construction Project, the Parties shall, at the request of Industry, extend the period to complete the Construction Project.

(c) In the event that either party defaults in the performance of any of its obligations under this Agreement or materially breaches any of the provisions of this Agreement, the non-defaulting party shall have the option to terminate this Agreement upon 30 days written notice.

6. INDEMNIFICATION AND INSURANCE OF CONSULTANTS, CONTRACTORS AND CONSULTANT.

To the extent commercially reasonable, Agency shall require that all of its consultants, contractors and subcontractors retained by Agency and/or Industry for the

purpose of preparing the Plans and/or work related to the Construction Project indemnify the Agency and Walnut equally as indemnified parties and, further, that Agency require reasonable provisions for insurance, including general liability insurance naming both the Agency and Walnut as additional insureds.

Walnut shall indemnify, protect, defend and hold harmless the Agency, and Industry and any and all of their officials, employees and agents ("Indemnified Parties") from and against any and all claims, losses, liabilities, damages, fines, penalties, actions, causes of action, judgments, costs and expenses (including, without limitation, attorneys' fees and costs) (collectively "**Claims**") arising out of or relating to any challenges concerning the Agency's and/or Industry's compliance with their CEQA obligations under the MMPs and EIRs for the Industry East and IBC Projects. If any action or proceeding is brought against the Agency or Industry by reason of any of the matters against which Walnut has agreed to indemnify the Agency and/or Industry as provided above, Walnut, upon notice from the Agency and/or Industry, must defend the Agency and/or Industry at Walnut's expense by counsel acceptable to the Agency and/or Industry, such acceptance not to be unreasonably withheld. The indemnity obligations of Walnut in this Section 6 will survive the expiration or termination of this Agreement.

7. NOTICES

Any notices which either party may desire to give to the other party under this Agreement must be in writing and may be given either by (i) personal service, (ii) delivery by a reputable document delivery service, such as but not limited to, Federal Express, which provides a receipt showing date and time of delivery, or (iii) mailing in the United States Mail, certified mail, postage prepaid, return receipt requested, addressed to the address of the party as set forth below or at any other address as that party may later designate by notice:

To Agency: Successor Agency to the Industry Urban
Development Agency
15625 E. Stafford, Suite 100
City of Industry, CA 91744
Attention: Executive Director

With a Copy To: James M. Casso, City Attorney
Casso & Sparks, LLP
13200 Crossroads Parkway North, Suite 345
City of Industry, CA 91746

To Walnut: City of Walnut
21201 La Puente Road
P.O. Box 682
Walnut, CA 91789
Attention: City Clerk

With a Copy To: Barbara Leibold, City Attorney
Leibold McClendon & Mann, PC
9841 Irvine Center Drive, Suite 230

Irvine, CA 92618

8. ASSIGNMENT

The rights and obligations of the Parties under this Agreement may not be assigned or transferred without the prior written consent of the other party or Parties, which consent may be withheld in such party's reasonable discretion due to the unique, personal rights and obligations under this Agreement.

9. GOVERNING LAW/ATTORNEYS' FEES

The Agency and Walnut understand and agree that the laws of the State of California shall govern the rights, obligations, duties, and liabilities of the parties to this Agreement and also govern the interpretation of this Agreement. Any litigation concerning this Agreement shall take place in the municipal, superior, or federal district court in Los Angeles County, California. If any action at law or suit in equity is brought to enforce or interpret the provisions of this Agreement, or arising out of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees and all related costs, including costs of expert witnesses and consultants, as well as costs on appeal, in addition to any other relief to which it may be entitled.

10. ENTIRE AGREEMENT

This Agreement contains the entire understanding between the Parties relating to the obligations of the Parties described in this Agreement. All prior or contemporaneous agreements, understandings, representations, and statements, oral or written and pertaining to the subject of this Agreement or with respect to the terms and conditions of this Agreement, are merged into this Agreement and shall be of no further force or effect. Each party is entering into this Agreement based solely upon the representations set forth herein and upon each party's own independent investigation of any and all facts such party deems material.

11. SEVERABILITY

If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, then such term or provision shall be amended to, and solely to, the extent necessary to cure such invalidity or unenforceability, and in its amended form shall be enforceable. In such event, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

12. COUNTERPARTS

This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.

13. CAPTIONS

The captions appearing at the commencement of the sections hereof, and in any paragraph thereof, are descriptive only and shall have no significance in the interpretation of this Agreement.

14. WAIVER

The waiver by Agency or Walnut of any breach of any term, covenant or condition herein contained shall not be deemed to be a waiver of such term, covenant or condition or of any subsequent breach of the same or any other term, covenant or condition herein contained. No term, covenant or condition of this Agreement shall be deemed to have been waived by Agency or Walnut unless in writing.

15. REMEDIES

Each right, power and remedy provided for herein or now or hereafter existing at law, in equity, by statute, or otherwise shall be cumulative and shall be in addition to every other right, power, or remedy provided for herein or now or hereafter existing at law, in equity, by statute, or otherwise. The exercise, the commencement of the exercise, or the forbearance of the exercise by any party of any one or more of such rights, powers or remedies shall not preclude the simultaneous or later exercise by such party of any of all of such other rights, powers or remedies.

16. AUTHORITY TO EXECUTE THIS AGREEMENT

The person or persons executing this Agreement represent and warrant that he/she has the authority to execute this Agreement on behalf of his/her respective party, and has the authority to bind his/her respective party to the performance of its obligations hereunder.

(SIGNATURES ON FOLLOWING PAGE)

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

"AGENCY"

Successor Agency to the Industry
Urban-Development Agency

By: Paul J. Phillips
Paul Phillips, Executive Director

Attest:

By: Diane Schlichting
Diane Schlichting, Agency Secretary

Approved as to form:

By: James M. Casso
James M. Casso, Agency General Counsel

"WALNUT"

City of Walnut

By: Rob Wishner
Rob Wishner, City Manager

Attest:

By: Teresa De Dios
Teresa De Dios, City Clerk

Approved as to form:

By: Barbara Leibold
Barbara Leibold, City Attorney

ATTACHMENT NO. 1

LIST OF TRAFFIC MITIGATION MEASURES

Agency to provide Plans and Construct Improvements/Signals/Signage/Etc.:

- A. Valley Boulevard and Lemon Avenue intersection:
 - Add west bound third lane
- B. Grand Avenue and La Puente Road intersection:
 - Add third north bound lane.
 - Add second north bound left turn lane.

Agency to provide Plans Only:

- C. Grand Avenue and San Jose Hills Road/ Mt. San Antonio College Entrance intersection
 - Add one north bound through lane on Grand Avenue
 - Add one south bound through lane on Grand Avenue
 - Add one south bound exclusive right turn lane.
- D. Grand Avenue and Mountaineer Road intersection
 - Add one north bound through lane on Grand Avenue.
- E. Grand Avenue and Shadow Mountain Road/ College Vista Avenue intersection
 - Add one south bound through lane on Grand Avenue.
- F. Nogales Street and Amar Road intersection
 - Add second west bound left turn lane.