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DEVELOPMENT AGREEMENT

between

THE CITY OF BANNING

(“City”)

and

ROBERTSON’S READY MIX, LTD.

A California Corporation

(“Robertson’s”)

and

MATICH CORPORATION

A California Corporation

(“Matich”)

## DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (“Agreement”) is entered into on \_\_\_\_\_, 2020, between the CITY OF BANNING (“City”), a municipal corporation, ROBERTSON’S READY MIX, LTD. (“Robertson’s”), a California limited partnership, and MATICH CORPORATION (“Matich”), a California corporation, pursuant to Article 2.5 of Chapter 4 of Division 1 of Title 7, Sections 65864 through 65869.5 of the Government Code and Chapters 15.52 and 17.60 of the Banning Municipal Code. Robertson’s and Matich are collectively referred to as “Developer.” The City and Developer shall be referred to within this Agreement jointly as the “Parties” and individually as a “Party.”

### RECITALS

- A. Capitalized Terms. The capitalized terms used in these Recitals and throughout this Agreement shall have the meaning assigned to them in Section 2 below. Any capitalized terms not defined in Section 2 shall have the meaning otherwise assigned to them in this Agreement or apparent from the context in which they are used.
- B. Banning Quarry. The Banning Quarry (“Quarry”) is an existing aggregate (sand and gravel) mine and processing plant located in the northeastern portion of the City. The Quarry has been owned and operated by Robertson’s since 1997, and currently consists of mining operations across 186 acres comprised of the West Pit, East Pit, South Pit, and Central Area, as shown in Exhibit C hereto. Pursuant to this Agreement, the active mining area (“Mining Area”) will expand to 209 acres with the approvals discussed in Recital F and Section 6 below, which expanded area is shown in Exhibit C hereto, excepting 38 acres of area determined to be non-minable reclaim areas along the northern end of the Quarry. Robertson’s asserts, and the City has not independently verified, that the Quarry has been in continuous operation since the early 1900’s. The existing operations at the Quarry largely predate zoning restrictions and state mining laws, and two permits have been issued by the City in 1965 and 1996, respectively for operations at the Quarry. Robertson’s asserts that the Quarry is considered to have certain “vested rights” granted by continuous mineral extraction use and the approvals for a 1965 Conditional Use Permit (112 acres) and Unclassified Use Permit 1994-01 (57 acres), which have no expiration dates. However, 17 acres of the western portion of the Quarry site (West Pit) were mined outside of the existing permitted areas and may not be included in the scope of any asserted vested rights. The State Mining and Geology Board has classified the area in which the Quarry is located as MRZ-2a, or an area with significant known economic mineral deposits, and has designated the area as a Regionally Significant Construction Aggregate resource. The Quarry is the only aggregate producer in the City and supplies the City and surrounding area with high-quality, graded sand, gravel, and crushed rock products.
- C. Purpose of Agreement. By this Agreement, Robertson’s and the City desire to resolve ongoing litigation between the Parties, as discussed further in Recital D. As resolution of that litigation, Developer wishes to obtain entitlements to adjust the Quarry’s mining boundary to allow Developer to conduct mining operations in areas outside the existing

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boundary, construct and operate an onsite ready mix concrete batch plant and associated maintenance facility, and amend the Quarry's existing reclamation plans into a single amended reclamation plan. In exchange, the City will receive increased assurance of certain financial and other benefits that will allow the City to meet its mining-related revenue and other goals, and that would otherwise be beyond the scope of these entitlements.

D. Litigation and Memorandum of Understanding.

1. In 2014 and 2015, Robertson's filed four lawsuits against the City in the Riverside County Superior Court alleging causes of action against the City relating to Robertson's Quarry operations and numerous other related claims and allegations: (1) Case No. RIC 1409037 ("CEQA/1983 case"), filed on September 19, 2014; (2) Case No. RIC 1409829 ("Brown Act case"), filed on October 16, 2014; (3) Case No. RIC 1500296 ("Public Records Act case"), filed on January 9, 2015; and (4) Case No. RIC 1513475 ("Tax Refund case"), filed on November 13, 2015. Collectively, these four lawsuits are referred to as the "Actions." The Parties acknowledge and agree that, as of December 2016, the first three of the Actions identified in this subsection were and are fully resolved, by court judgment, order, or otherwise, with the exception of post-judgment proceedings in the Public Records Act case regarding Robertson's pending motion for attorney's fees. The Parties further acknowledge and agree that, as of the Effective Date of this Agreement, the only remaining lawsuit between the Parties is the Tax Refund case, which case has been stayed for over four years pursuant to the terms of the Memorandum of Understanding discussed in Recital D-2 below, and mutually agreed-upon extensions of the term thereof.

In the Tax Refund case, Robertson's alleged a cause of action for a refund of all taxes it had paid, and will pay, pursuant to a tax on mining operations that was approved by the City's voters on November 4, 2014 ("Mining Tax"). Robertson's complaint also alleged causes of action for inverse condemnation under California law, and two causes of action under 42 U.S.C. § 1983 for declaratory and injunctive relief, and for damages, asserting violations of federal equal protection and due process. The City denied, and denies, that the Tax Refund case had or has any merit. The City filed a demurrer challenging each of the causes of action alleged in the complaint by Robertson's, which was set for hearing in March 2016. The Court issued a tentative ruling granting in part and denying in part the City's demurrer, but did not issue a final ruling on the matter because the City and Robertson's decided to explore a resolution of their disputes and all still-pending Actions. The culmination of these fruitful efforts was a Memorandum of Understanding, and a court-approved stay of litigation of the Tax Refund case, described in Recital D-2 immediately below.

2. On September 19, 2016, the City and Robertson's entered into a Memorandum of Understanding ("MOU") in order to resolve ongoing disputes concerning: (1) the environmental review and entitlements required to amend the Quarry's reclamation plan, which plan is required under the California Surface Mining and

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Reclamation Act of 1975 (“SMARA”); (2) the Mining Tax imposed by City voters on Quarry operations in November 2014, and subsequently set by the City Council at \$0.80 per ton of mined aggregate; and (3) the two remaining pending Actions filed by Robertson’s against the City described in Recital D-1, above, specifically, post-judgment proceedings in the Public Records Act case and the Tax Refund case. Pursuant to the MOU, the City and Robertson’s agreed to resolve their disputes by agreeing to certain terms, one of which was to work in good faith and with diligence to prepare and enter into this Agreement. Pursuant to Section 1 of the MOU, including its Section 1 and Section 1-c, the City Council adopted Ordinance No. 1545 suspending the full rate of the Mining Tax of \$0.80 and reducing it to \$0.25 per ton of mined aggregate effective July 1, 2016 (Municipal Code Section 3.18.030.E.). The MOU provided, at Section 8-a, that upon adoption and effect of this Agreement, the terms of this Agreement shall supersede in full the MOU. The Parties further agreed, pursuant to the MOU, to resolve the post-judgment proceedings in the Public Records Act case, and to stay the litigation of the Tax Refund case. The Parties agree and acknowledge that the MOU and the stay on the Tax Refund case expire in December 2020.

- E. Benefits to the City. Pursuant to the MOU, and as consideration for the City’s review and processing of Robertson’s application for certain discretionary approvals discussed in Recital F and Section 6 below (defined below as the “Entitlements”), Developer has agreed to pay to the City certain fees, taxes, and revenues, and provide for a replacement well site and public use of a portion of the Quarry post-mining (defined below as the “City Benefits”). Also pursuant to the MOU, and as additional consideration for the City’s review and processing of Developer’s application for the Entitlements, Robertson’s has agreed to dismiss with prejudice the fourth and last remaining of the Actions against the City, Case No. RIC 1513475, described in Recital D-1, above.
- F. Right to Develop the Quarry. Pursuant to the MOU, and as consideration for Developer provision of the City Benefits, Robertson’s dismissal with prejudice of all still-pending Actions, and other benefits to be provided by Developer, the City has agreed to review and process Developer’s applications for the Entitlements. Together these approvals, as well as the actions Developer plans to take at the Quarry pursuant to the approvals (“Development”), are defined as the “Project,” and are discussed more fully in Section 6 below.
- G. Legislation Authorizing Development Agreements. To strengthen the public planning process, encourage private participation in comprehensive planning, and reduce the economic risk of development, the Legislature of the State of California adopted the Development Agreement Statute (Cal. Gov. Code, 65864 *et seq.*) (“Development Agreement Statute”). The Development Agreement Statute authorizes the City to enter into an agreement with any person having a legal or equitable interest in real property providing for the development of such property and establishing certain development rights therein. The legislative findings and declarations underlying the Development Agreement Statute and the provisions governing the contents of development agreements, state, in Government Code § 65864, that “[t]he lack of certainty in the approval of development projects can result in a waste of resources, escalate the cost of housing and

other development to the consumer, and discourage investment in and commitment to comprehensive planning which would make maximum efficient utilization of resources at the least economic cost to the public,” and that allowing a developer to “proceed with the project in accordance with existing policies, rules and regulations, and subject to conditions of approval, will strengthen the public planning process, encourage private participation in comprehensive planning, and reduce the economic costs of development.” In furtherance of and consistent with this legislation, the City has adopted ordinances codified as Municipal Code Chapters 15.52 and 17.60.

- H. Intent of the Parties. Developer and the City have determined that the Project is a development for which a development agreement is appropriate. The Parties desire and intend to define the parameters within which the Parties’ obligations will be met under the MOU, to provide for the orderly use of the Quarry, to assist in attaining the most effective utilization of resources within the City, and to otherwise achieve the goals of the Development Agreement Statute. In consideration of these benefits to the City and the public benefits of the Development of the Quarry, which the Parties acknowledge, Developer will receive assurances that the City shall process all of Developer’s applications and requests for the Entitlements and will, in exchange, provide the City Benefits and other consideration and assistance called for in this Agreement.
- I. Public Benefits of the Project. This Agreement provides assurances that the public benefits identified in this Recital I will be achieved in accordance with the terms of this Agreement. As consideration for reviewing and processing Developer’s application for the Entitlements discussed in Recital F above and Section 6 below, the Project will provide local and regional public benefits to the City, including, without limitation:
1. Financial Benefits. The City will earn revenue from a tax per ton of mined material, a tax on the sale of ready-mixed concrete from a new concrete plant permitted by the entitlements, a rebate on ready-mixed concrete produced by Developer for projects within City limits; and a revenue supplement. The City could not otherwise obtain the rebate and revenue supplement from Developer except by means of this Agreement or voter-approved special legislation.
  2. Resolution of All Litigation. The Tax Refund case, which is the fourth and last of the Actions filed by Robertson’s against the City, will be dismissed with prejudice pursuant to the MOU, and as further set forth in Section 12 of this Agreement. The resolution of the Tax Refund case will avoid the burden on the City’s taxpayers of the costs and expense of litigation.
  3. Post-Mining Public Use. Following the completion of mining and reclamation at the Quarry, Developer will dedicate 25% of the total usable acreage to public use, which use is to be determined by the City.
  4. Reliable Aggregate and Concrete Supply. The Entitlements will permit Developer to continue to operate the Quarry for a period of twenty years, unless extended, which is a period of time the Parties understand to be sufficient to extract the remaining mineable resources, thereby ensuring a long-term, local

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source of high-quality aggregates for construction and to Reclaim the Quarry. The Quarry is a source of construction-grade aggregates, and is within an area that the State Mining and Geology Board has designated as a regionally significant source of such aggregates. The Entitlements will also authorize Developer to construct and operate a new ready-mixed concrete plant within the City limits, which will provide a local, reliable source of concrete. The City will receive a rebate on concrete poured within City limits, and the plant will serve as the point-of-sale for the concrete, ensuring that taxes stay within the City.

5. City Well Site Replacement. Pursuant to the terms of the MOU, the City has obtained a new permanent well site, paid for by Robertson's, to replace the City well site that Robertson's previously mined.
6. Robertson's Well. Developer will pay to the City an excess pumping fee at the highest wholesale rate offered to the City to by San Geronio Pass Water Agency for the prior year for the amount of groundwater pumped by Developer in excess of 250 acre feet from the Robertson's Well. Improvements to Hathaway Street. Developer agrees to undertake improvements to portions of Hathaway Street, Blanchard Street, Repplier Road, and Florida Street, as described further in Section 5.7, below.

- J. Public Hearings: Findings. In accordance with the requirements of the California Environmental Quality Act (Public Resources Code § 21000 *et seq.*) ("CEQA"), the Planning Commission and City Council prepared and considered appropriate studies, analyses, reports and documents. The Planning Commission, after a public hearing on September 2, 2020, recommended, and the City Council, after making appropriate findings, adopt, by Resolution No. [X] adopted on September 22, 2020, a Mitigated Negative Declaration ("MND") and Mitigation Monitoring and Reporting Program ("MMRP") for the Project, more specifically identified as the Environmental Assessment 17-1503, as having been prepared in compliance with CEQA. On September 2, 2020, the Planning Commission, after providing the public notice required by law, held a public hearing on Robertson's application for this Agreement, along with General Plan Amendment 17-2502, Zone Change 17-3502, Conditional Use Permit 16-8007 and Reclamation Plan Amendment 17-9504. At said meeting the Planning Commission adopted Resolution No. 2020-11, recommending City Council approval of General Plan Amendment 17-2502, Zone Change 17-3502, Conditional Use Permit 16-8007 and Reclamation Plan Amendment 17-9504 and finding that the vacation of certain streets within the boundary of the Quarry was consistent with the General Plan. On September 22, 2020, the City Council, after providing the public notice required by law, held a public hearing to consider Developer's application for this Agreement, General Plan Amendment 17-2502, Zone Change 17-3502, Conditional Use Permit 16-8007 and Reclamation Plan Amendment 17-9504 and the street vacation. At said meeting the City Council adopted Resolution 2020-118 approving General Plan Amendment 17-2502, and Conditional Use Permit 16-8007 and Reclamation Plan Amendment 17-9504 and introduced for first reading Ordinance No. 1563 approving Zoning Change 17-3502 and Ordinance No. 1570 approving this Agreement. The City Council also adopted Resolution No. 2020-119 setting the public hearing for the street vacation public hearing.

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The Planning Commission and the City Council have found on the basis of substantial evidence that this Agreement is consistent with all applicable City plans, rules, regulations and official policies.

K. Mutual Agreement. Based on the foregoing and subject to the terms and conditions set forth herein, Developer and the City desire to enter into this Agreement.

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

1. MUTUAL BENEFITS AND ASSURANCES.

1.1 Summary of Project. Developer will Develop the Quarry as generally described in this Section 1.1 and in Section 6, and as further set forth in Exhibit D hereto, Reclaim the Quarry as generally described in Section 6.7, and as further set forth in the Amended Reclamation Plan, and then provide for end uses and a conveyance of title to a portion of the Quarry to the City as described in Section 5.8. The Quarry is currently being mined and reclaimed concurrently on 20 contiguous land parcels totaling approximately 186 acres, although not all parcels are currently being mined. Existing operations are conducted pursuant to Existing Entitlements, including but not limited to a 1965 Conditional Use Permit, a 1994 Unclassified Use Permit (UUP No. 1994-01), and two Existing Reclamation Plans corresponding to the aforementioned permits. Under the Project, which will give Developer the right to Develop the Quarry, the City has reviewed and processed Developer's application for a Conditional Use Permit No. 16-8007 ("CUP") to expand the Mining Area at the Quarry to encompass an additional six (6) parcels totaling roughly twenty-three (23) acres, which are lands currently owned by the Matich Corporation ("Matich Parcels"), as well as paper streets within the Quarry's boundaries. The CUP will also allow the construction and 24-hour operation of a new ready-mixed concrete plant ("RMC Plant") and associated maintenance facility to be located within the southern expansion area of the South Pit, or at another location mutually agreeable to the Parties. The Project also includes the review and processing by the City of an application by Robertson's for a General Plan amendment (General Plan Amendment No. 17-2502) and change under the Zoning Code (Zone Change 17-3502) (collectively "General Plan Amendment/Zoning Code Change") to change the applicable designation from Low Density Residential (LDR) to Industrial-Mineral Resources (I-MR) for the 17 acre unpermitted mining area of the West Pit, to conform the zoning of this area outside the boundaries of the Quarry's vested rights in which mining has occurred and been completed. Further, the following paper streets within the CUP boundary have been or will be considered for street vacation: Summit Drive, Repplier Road, Gilman Street, Hargrave Street, Theodore Street, and Hathaway Street. The Project also includes the preparation of a new Amended Reclamation Plan (Reclamation Plan Amendment 17-9504) ("Amended Reclamation Plan"). Together these new entitlements—Conditional Use Permit No. 16-8007, General Plan Amendment No. 17-2502, Zone Change No. 17-3502, and Reclamation Plan Amendment No. 17-9504—constitute the "Entitlements" for the Project. The Project will occur in two phases: (1) Phase 1: All mining will be conducted in Phase 1. Construction of the RMC Plant and maintenance facility on the floor of the South Pit will also occur during Phase 1; (2) Phase 2: Reclamation of the Quarry. Except as provided in the Schedule of Performance

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addressed in Section E, the timing and rate of the Development of the Project by Developer is within Developer's discretion. Pursuant to Section 6.2, nothing in this Agreement or the Entitlements (or Robertson's application for either): (i) constitutes a waiver or abandonment of the Quarry's vested mining rights or of Robertson's right to seek confirmation of the scope of those vested rights for the remaining mineral resources at the Quarry, or (ii) constitutes the City's concurrence or agreement as to the existence or extent of those asserted rights.

1.2 Interest and Representation of Robertson's and Match. "Robertson's" is Robertson's Ready Mix, Ltd., and its permitted successors and assigns, with its principal offices at 200 South Main Street, Suite 200, Corona, California, 92882. Match is Match Corporation, and its permitted successors and assigns, with its principal offices at 1596 Harry Sheppard Boulevard, San Bernardino, California, 92408. Robertson's and Match warrant and represent to the City that:

- (a) Robertson's is a limited partnership duly organized and existing under the laws of the State of California and Match is a corporation duly organized and existing under the laws of the State of California;
- (b) By proper action of Robertson's and Match, Robertson's and Match signatories have been duly authorized to execute and deliver this Agreement, acting by and through their respective duly authorized officers;
- (c) Robertson's and Match are duly qualified to do business in good standing under the laws of the State of California and have all requisite power and authority to carry out their business as now and whenever conducted and to enter into and perform their obligations under this Agreement;
- (d) By entering into this Agreement, Robertson's and Match do not violate any provision of any other agreement to which Robertson's or Match is a party;
- (e) Except as may be specifically set forth in this Agreement, no approvals or consents not heretofore obtained by Robertson's and Match are necessary in connection with the execution of this Agreement by Robertson's and Match or with the performance by Robertson's and Match of their obligations hereunder;
- (f) Neither Robertson's or Match, nor the principals of Robertson's or Match, have filed or been the subject of any filing of a petition under the Federal Bankruptcy Law or any insolvency laws, or any laws for the discharge of indebtedness or for the reorganization of debtors;
- (g) No representation, warranty, or covenant of Robertson's and Match in this Agreement, or in any document or certificate furnished or to be furnished to the City pursuant to this Agreement, contains or will contain any untrue statement of a material fact or omits or will omit to state a material fact necessary to make the statements contained herein or therein not misleading;

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

(i) Robertson's is the owner of fee title to the Quarry with the exception of the Matich Parcels, and Matich is the fee title owner of the Matich Parcels, and together, Robertson's and Matich have the right of possession of the Quarry, free from any tenant leases, tenancies, licenses, or other similar occupancy agreements that could reasonably interfere with Robertson's and Matich's right to maintain and operate the Quarry or any Development thereon approved under this Agreement.

1.3 Binding Effect of Agreement. The mutual burdens and benefits of this Agreement inure to and shall be binding upon the successors in interest of the Parties. The City represents and warrants that it is the owner of the Replacement Well Site and/or holds public right-of-way interests in property immediately adjacent to the Quarry ("Public Parcel"). The Public Parcel shall be the benefited parcel for the obligations of Developer herein, and the Quarry shall be the burdened parcel.

1.4 Existing Entitlements and MOU. Prior to this Agreement and the Entitlements, the Quarry has been subject to the Existing Entitlements and MOU, which were approved by the City's City Council and/or Planning Commission. Upon the Effective Date of this Agreement, the Existing Entitlements shall not be voided solely for the purposes of Robertson's reservation of vested rights, but the terms and conditions of the Entitlements shall, from the Effective Date, be applicable to and exclusively control Developer's use, operations and activities within the Mining Area pursuant to the Entitlements. The Existing Reclamation Plans shall be superseded in their entirety by the Amended Reclamation Plan. With respect to the MOU, upon the Effective Date of this Agreement, the MOU shall have no further force and effect.

## 2. DEFINITIONS.

2.1 Actions. "Actions" means those judicial actions filed by Robertson's against the City, as more particularly described in Recital D-1, above.

2.2 Additional Reserves. "Additional Reserves" means the additional mining reserves at the Quarry in the 23-acre Matich Parcels and the paper street rights-of-way within the boundaries of the Mining Area.

2.3 Amended Reclamation Plan. The Quarry's SMARA reclamation plan as modified by the Project, and as more particularly described in paragraph B of Section 6.3. More particularly identified as Reclamation Plan Amendment 17-9504.

2.4 Amendment. "Amendment" has the meaning set forth in Section 8.2.

2.5 Application(s). "Application(s)" means a complete application for this Agreement or the Entitlements meeting all of the current ordinances of the City, provided that any additional or alternate requirements in said ordinances enacted after the Effective Date which affect the Application(s) shall apply only to the extent permitted by this Agreement.

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2.6 Agreed Mining Tax. “Agreed Mining Tax” means the tax imposed per ton on mining operations at a rate agreed to in the MOU and in this Agreement, more particularly described in Section 5.1 as a \$0.25 tax imposed per ton of aggregate mined by Robertson’s from the Quarry, the rate temporarily reduced from the rate of the original Mining Tax imposed per ton on mining operations, approved by the voters on November 4, 2014.

2.7 Agreement. “Agreement” means this Development Agreement.

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

2.9 Authorizing Ordinance. “Authorizing Ordinance” means Ordinance No. 1570 approving this Agreement.

2.10 California Environmental Quality Act. “California Environmental Quality Act” means the California Environmental Quality Act of 1970, California Public Resources Code § 21000 *et seq.*, as amended.

2.11 CEQA. “CEQA” means the California Environmental Quality Act.

2.12 City. “City” means the City of Banning, California, a municipal corporation.

2.13 City Benefits. “City Benefits” means the collective benefits the City will receive from the Project pursuant to this Agreement and the Entitlements, which benefits would otherwise be beyond the scope of the Project and which are more particularly described in Section 5.

2.14 City Council. “City Council” means the governing body of the City.

2.15 City Revenue Goal. “City Revenue Goal” means the total tonnage of aggregate mined by Robertson’s at the Quarry in a given calendar year multiplied by \$0.40 per ton of mined aggregate.

2.16 Conditional Use Permit. “Conditional Use Permit” means the conditional use permit approved concurrently with the approval of this Agreement by the City Council under Resolution No. 2020-118 for the Development of the Quarry. More particularly identified as Conditional Use Permit No. 16-8007.

2.17 CUP. “CUP” means the Conditional Use Permit.

2.18 Default. “Default” refers to any material default, breach, or violation of a provision of this Agreement as defined in Section 10.

2.19 Defaulting Party. “Defaulting Party” has the meaning set forth in Section 10.1.

2.20 Develop. “Develop” means an action taken pursuant to the Entitlements to effectuate the Project.

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2.21 Development. “Development” means the collective actions taken pursuant to the Entitlements to effectuate the Project.

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

2.23 Effective Date. “Effective Date” means the date this Agreement becomes effective, as further described in Section 4.5, which shall be the date thirty (30) days after the adoption of the Authorizing Ordinance if no referendum petition has been timely filed and qualified for a ballot, or if no Claim or Litigation has been filed which would automatically prevent the Authorizing Ordinance from taking effect. If such a Claim or Litigation has been filed, then the Effective Date shall be the date that the Claim or Litigation has been successfully resolved in the City’s favor, and the time for any further judicial review has run, so that the Authorizing Ordinance shall be effective.

2.24 Entitlements. “Entitlements” means entitlements that are approved by the City Council under Resolution No. 2020-118 for the Development of the Quarry, including Conditional Use Permit No. 16-8007, General Plan Amendment No. 17-2502, Zone Change No. 17-3502, and Reclamation Plan Amendment No. 17-9504, in addition to this Agreement.

2.25 Existing Entitlements. “Existing Entitlements” means those entitlements that were in effect prior to the Effective Date of this Agreement, namely all Quarry-specific (meaning specifically applicable to the Quarry only and not generally applicable to some or all other properties within the City) plans, maps, permits, and entitlements to use of every kind and nature. Such entitlements include, but are not limited to, a 1965 Conditional Use Permit, a 1994 Unclassified Use Permit, and two Existing Reclamation Plans, as well as permits to mine to specified depths, reclamation plans, specific plans, site plans, tentative and final subdivision maps, variances, zoning designations, conditional use permits, grading, building, and other similar permits, environmental assessments, including environmental impact reports and negative declarations, and any amendments, supplements or modifications to those plans, maps, permits, assessments and entitlements. “Existing Entitlements” do not include: (i) rules, regulations, policies, and other enactments of general application within the City, or (ii) any matter where the City has reserved authority under Section 9.

2.26 Existing Land Use Regulations. “Existing Land Use Regulations” means those Land Use Regulations applicable to the Quarry in effect on the Effective Date.

2.27 Force Majeure. “Force Majeure” has the meaning set forth in Section 16.1.

2.28 General Plan. “General Plan” means the City’s General Plan as it exists on the Effective Date, and as expressly amended by (i) General Plan Amendment/Zoning Code Change approved by the City Council concurrently with this Agreement; and (ii) future amendments applicable to the Quarry, if permitted under Section 9.

2.29 General Plan Amendment/Zoning Code Change. “General Plan Amendment/Zoning Code Change” means amendment to the General Plan and Zoning Code, pursuant to General Plan Amendment No. 17-2502 and Zone Change No. 17-3502, approved by

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the City Council concurrently with this Agreement, as more particularly described in paragraph C of Section 6.3.

2.30 Land Use Regulations. “Land Use Regulations” means those ordinances, laws, statutes, rules, regulations, initiatives, policies, requirements, guidelines, constraints, codes or other actions of the City which affect, govern, or apply to the Quarry or the implementation of the Project. Land Use Regulations include the ordinances and regulations adopted by the City that govern permitted uses of land, density and intensity of use and the design of buildings, applicable to the Quarry site property, including, but not limited to, the City’s General Plan, zoning ordinances, development moratoria, implementing growth management and phased development programs, ordinances establishing development exactions, subdivision and park codes, any other similar or related codes and building and improvements standards, mitigation measures required in order to lessen or compensate for the adverse impacts of a project on the environment and other public interests and concerns or similar matters. The term Land Use Regulations does not include, however, regulations relating to the conduct of business, professions, and occupations generally; taxes and assessments; regulations for the control and abatement of nuisances; building codes; encroachment and other permits and the conveyances of rights and interests which provide for the use of or entry upon public property; any exercise of the power of eminent domain; or similar matters.

2.31 Matich. “Matich” means the corporation duly organized and existing under the name Matich Corporation, under the laws of the State of California.

2.32 Matich Parcels. “Matich Parcels” means the six (6) parcels at the Quarry totaling roughly twenty-three (23) acres, which are lands currently owned by the Matich Corporation and which are proposed to be conveyed by Matich to Robertson’s subsequent to the Effective Date.

2.33 Memorandum of Understanding. “Memorandum of Understanding” means that memorandum of understanding entered into by the City and Robertson’s on September 19, 2016, in order to resolve ongoing disputes.

2.34 Mining Area. “Mining Area” means the area of active mining at the Quarry, as set forth prior to the Project in certain of the Existing Entitlements and as amended by the Entitlements.

2.35 Mining Revenue. “Mining Revenue” means, for any given year, the combined total of the Agreed Mining Tax plus the Sales Tax Revenue received by the City plus the Rebate for the prior calendar year.

2.36 Mining Tax. “Mining Tax” means the \$0.80 tax imposed per ton on mining operations, approved by the voters on November 4, 2014, the amount of which was thereafter amended following the MOU.

2.37 Minor Modification. “Minor Modification” has the meaning set forth in Sections 8.3 and 8.4.

2.38 MOU. “MOU” means the Memorandum of Understanding.

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- 2.39 Municipal Code. “Municipal Code” means the City’s Municipal Code.
- 2.40 Non-Defaulting Party. “Non-Defaulting Party” has the meaning set forth in Section 10.1.
- 2.41 Party. “Party” means either the City, Developer, Robertson’s, or Matich.
- 2.42 Parties. “Parties” mean both the City and Developer.
- 2.43 Planning Commission. “Planning Commission” means the City’s Planning Commission.
- 2.44 Processing Fees. “Processing Fees” means (i) the City’s normal fees for processing, environmental assessment/review, tentative tracts/parcel map review, plan checking, site review, site approval, administrative review, building permit (plumbing, mechanical, electrical, building), inspection and similar fees imposed to recover the City’s costs associated with processing, review and inspection of applications, plans, specifications, etc., and (ii) fees and charges levied by any other public agency, utility, district or joint powers authority, whether or not City is a member of such body or such fees are collected by the City, and whether or not such fees are used for maintenance or capital outlay purposes.
- 2.45 Project. “Project” means the Development of the Quarry pursuant to this Agreement and the Existing Entitlements and Entitlements. The Project is further detailed in the Scope of Development in Exhibit D.
- 2.46 Quarry. “Quarry” means the 209 acres of land, more or less, described in Exhibit A-1 and depicted in Exhibit A-2, in which Robertson’s holds a legal or equitable interest or in which Matich has authorized Robertson’s to mine, and where the Project will be Developed.
- 2.47 Rebate. “Rebate” means the \$0.15 rebate to paid by Robertson’s to the City per cubic yard of ready-mixed concrete poured for construction projects within City limits, as more particularly described in Section 5.3.
- 2.48 Reclaim. “Reclaim” means complete the required elements and achieve the standards contained in the Amended Reclamation Plan in compliance with SMARA.
- 2.49 Replacement Well Site. “Replacement Well Site” means the new well site that Robertson’s purchased to replace the City well site that Robertson’s previously mined, as more particularly described in Section 5.5.
- 2.50 Reservations of Authority. “Reservation of Authority” shall have the meaning set forth in Section 9.
- 2.51 Revenue Supplement. “Revenue Supplement” means the difference between the Mining Revenue and the City Revenue Goal, except that in no event shall the Revenue Supplement exceed \$125,000 for that calendar year, as more particularly described in Section 5.4.

2.52 RMC Plant. “RMC Plant” means the ready-mixed concrete plant that will be Developed as part of the Project, as more particularly described in Section 5.2.1.

2.53 RMC Plant Sales Tax. “RMC Plant Sales Tax” means the sales tax imposed on sales from the RMC Plant in the ordinary course of business, as more particularly described in Section 5.2.

2.54 Robertson’s. “Robertson’s” means the limited partnership duly organized and existing under the name Robertson’s Ready Mix, Ltd., under the laws of the State of California.

2.55 Robertson’s Well. “Robertson’s Well” means the existing water well located on northern portion of Robertson’s Property and which is currently used by Robertson’s in its operations.

2.56 Sales Tax Revenue. “Sales Tax Revenue” means that portion of the RMC Plant Sales Tax that is allocated by the State of California to the City, as more particularly described in Section 5.2.

2.57 SMARA. “SMARA” means the Surface Mining and Reclamation Act.

2.58 Surface Mining and Reclamation Act. “Surface Mining and Reclamation Act” means the California Surface Mining and Reclamation Act of 1975, California Public Resources Code § 2710 *et seq.*, as amended.

2.59 Tax(es). “Tax” and “Taxes” mean general or special taxes, including but not limited to ad valorem property taxes, sales taxes, transient occupancy taxes, utility taxes or business taxes of general citywide applicability.

2.60 Term. “Term” means that period of time during which this Agreement shall be in effect and bind the Parties, as defined in Section 4.1.

2.61 Transfer. “Transfer” has the meaning set forth in Section 11.

2.62 Tax Refund case. “Tax Refund case” has the meaning set forth in Recital D-1.

2.63 UUP. “UUP” means Unclassified Use Permit.

2.64 West Pit Expansion Area. “West Pit Expansion Area” means the 17-acre area that Robertson’s mined outside the boundaries of the Mining Area under the Existing Entitlements.

2.65 Zoning Code. “Zoning Code” means Title 17 of the Municipal Code as it existed on the Effective Date except (i) as amended by any zone change relating to the Developer’s Property approved concurrently with the approval of this Agreement, and (ii) as the same may be further amended from time to time consistent with Section 9.

3. EXHIBITS.

The following are Exhibits to this Agreement:

Exhibit A-1: Legal Description of Quarry

Exhibit A-2: Map of Quarry

Exhibit B: September 19, 2016, MOU.

Exhibit C: Quarry Mining Area.

Exhibit D: Scope of Development.

Exhibit E: Schedule of Performance.

4. TERM.

4.1 Term. The term of this Development Agreement (“Term”) shall commence on the Effective Date and shall continue until December 31, 2040, when final reclamation is to be completed for the Quarry, or upon earlier completion of final reclamation by Robertson’s, unless extended or terminated earlier pursuant to the terms of this Section and Section 10 of this Agreement.

4.2 Termination Upon End of Term. This Agreement shall terminate, without the execution or recordation of any further document, upon the end of the Term.

4.3 Termination for Default. This Agreement may be terminated due to the occurrence of any default in accordance with the procedures in Section 10.

4.4 Extension of the Term. The Parties recognize that economic conditions may change the rate of extraction of aggregate materials and desire flexibility in extending the Term of the Agreement if there are remaining aggregate materials in the Quarry site upon the expiration of the Term due to a lack of demand for such materials. In such instances, the Term may be extended upon written request of Robertson’s, received by the City no later than ninety (90) days before the expiration of the term, for a period of up to a maximum of five (5) years upon consent by both parties. Extensions shall be reviewed as required by Section 8 and shall be considered Major Amendments for such purposes.

4.5 Effective Date. This Agreement shall become effective on the Effective Date as defined in Section 2.23. The Effective Date is not otherwise tolled for any other Force Majeure as described in Section 16.1.

5. CITY BENEFITS.

Robertson’s has agreed to provide to the City the following City Benefits in connection with the Development of the Quarry under Section 6:

5.1 Agreed Mining Tax.

5.1.1 Agreed Mining Tax. Robertson's shall pay to the City the Agreed Mining Tax of \$0.25 per ton of aggregate mined from the Quarry. The amount of the Agreed Mining Tax shall be adjusted annual per the annual "Producer Price Index for Construction Sand/Gravel/Crushed Stone (WPU1321)," as published by the U.S. Department of Labor, Bureau of Labor Statistics ("Price Index").

5.1.2 Effective Date. The effective date of the Agreed Mining Tax is July 1, 2016.

5.1.3 Duration. The Agreed Mining Tax shall remain in effect until the earlier of: (1) the date Robertson's, including any successor or assign of Robertson's, ceases to operate the Quarry (where "operate" refers to actual mining operations, not reclamation); (2) the expiration of the Term of this Agreement, including any extension to the Term; (3) Robertson's otherwise breaches and fails to cure the terms of the this Agreement; or (4) the termination of this Agreement.

5.1.4 Authority to Increase Mining Tax. Upon the end of the applicable duration period set forth above in Section 5.1.3, the City may increase the mining tax rate, subject to all applicable laws.

5.1.5 Agreed Mining Tax Accounting System. Robertson's accounting system shall comply with the following requirements:

5.1.5.1 For the purposes of calculating the Agreed Mining Tax, Robertson's shall maintain detailed records relating to the volumes of mined materials removed from the Mining Area, which records shall be maintained for a period at least ten (10) years. Robertson's shall keep and maintain accurate records on all vehicles entering or exiting Robertson's facilities carrying mined materials. The records shall contain, at minimum, the following information: (i) the size, empty weight and load capacity of each vehicle operated within the Mining Area that is engaged in activity that could result in generating Agreed Mining Tax payment obligations, (ii) the loaded weight of each vehicle carrying mined materials; (iii) the total weight of the mined materials in each vehicle containing mined materials; and (iv) the total number of trucks transporting mined materials from the Mining Area.

5.1.5.2 Accurate scales shall be located within the Mining Area and shall be kept and maintained in good condition by Robertson's. The scales shall be routinely and regularly tested by Robertson's in order to ensure their accurate calibration. It shall be the responsibility of Robertson's to operate the scales so that accurate weights are made and recorded.

5.1.5.3 Robertson's shall not permit any vehicle carrying any material for which an Agreed Mining Tax payment obligation could be imposed to enter or leave the Mining Area without a weight ticket. A receipt of each ticket shall be kept and maintained. Each weight ticket shall contain, at a minimum, the following information:(i) the size, empty weight and load capacity of the vehicle; (ii) the loaded weight of the vehicle carrying mined materials; and (iii) the cargo weight.

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5.1.5.4 The City shall have the right at any time during regular business hours to inspect such records upon seventy-two hours' notice for purposes of allowing the City, or its duly authorized representative, to conduct a financial review or audit to verify the accuracy of Agreed Mining Tax payments. Should a City audit find that Robertson's has underpaid Agreed Mining Tax obligations by a shortfall of or exceeding one percent of the Rebate actually due in any one-year period, Robertson's shall bear all costs of the City's audit.

5.1.6 Payment. Robertson's shall pay the Agreed Mining Tax to the City on a quarterly basis.

## 5.2 RMC Plant Sales Tax Revenue.

5.2.1 RMC Plant. The City has approved, as part of the Entitlements, the construction and operation by Robertson's of the RMC Plant, a new ready-mixed concrete plant within the City limits. The RMC Plant shall be, like the Robertson's batch plants in Cabazon and Beaumont, a single alley facility with similar throughput capacity as the Cabazon and Beaumont facilities.

5.2.2 RMC Plant Location. The RMC Plant shall be located within the area defined at Lots 127, 128, 133 and 134 of Exhibit A-2 to this Agreement, and shall in no event be within seven hundred (700) feet of the nearest property line of a parcel zoned and used for residential purposes. The RMC Plant shall also utilize Hathaway Street for its ingress and egress route to and from the RMC Plant.

5.2.3 Time within which RMC Plant becomes Operational. Within thirty (30) days from the Effective Date of this Agreement, Developer shall have applied for any necessary permits for the operation of the RMC Plant and shall have begun the process of planning the construction of the facility. Developer shall diligently pursue any and all such permits. The RMC Plant shall be constructed and made operational within six (6) months of the date Developer applies for such permits for the RMC Plant, but in the event that any delays result from agency processing time for permits to operate the RMC Plant, the six (6) month deadline shall be extended to the date that the applicable permitting agency/ies have issued any such permits.

5.2.4 Point-of-Sale. The RMC Plant shall constitute the point-of-sale for ready-mixed concrete manufactured at the RMC Plant regardless of where the concrete is delivered (i.e., within or without City limits).

5.2.5 Payment. Robertson's shall calculate the sales tax ("RMC Plant Sales Tax") generated from the RMC Plant sales in the ordinary course of business and pay the RMC Plant Sales Tax in accordance with the requirements of state law. Robertson's shall adhere to all applicable rules, regulations and statutory law with respect to the calculation and payment of the RMC Plant Sales Tax, including but not limited to Division 2, Parts 1 and 1.5 of the California Revenue and Taxation Code and Title 18, Division 2, Chapter 4 of the California Code of Regulations.

### 5.3 Rebate for Ready-Mixed Concrete Poured Within City Limits.

5.3.1 Rebate. Robertson's shall pay the City a rebate of \$0.15 per cubic yard of ready-mixed concrete poured for construction projects within City limits ("Rebate"), for as long as Robertson's, or any successor or assign, operates the Quarry pursuant to this Agreement and the Entitlements. Robertson's shall provide the Rebate for both public and private projects. The Rebate shall apply to ready-mixed concrete originating from any Robertson's ready-mix plant, whether located within or outside the City limits, that is poured within the City limits. The amount of the Rebate shall be adjusted annually per the Price Index.

5.3.2 Rebate Accounting System. Robertson's accounting system shall comply with the following requirements:

5.3.2.1 For the purpose of calculating Rebate payments, Robertson's shall maintain detailed records relating to sales of ready-mixed concrete poured for construction projects within City limits, which records shall be maintained for a period at least ten (10) years. Robertson's shall keep and maintain accurate records on all vehicles entering or exiting Robertson's facilities engaged in activity pertaining to the delivery of ready-mixed concrete to be poured for construction projects within City limits. The records shall contain, at minimum, the following information: (i) for each day, the number of vehicles engaged in transporting ready-mixed concrete to be poured for construction projects within City limits from any Robertson's facility; (ii) the location or address at which the concrete will be or was poured within the City limits; and (iii) the total volumes in cubic yards of ready-mix concrete poured within the City limits.

5.3.2.2 The City shall have the right at any time during regular business hours to inspect such records upon seventy-two hours' notice for purposes of allowing the City, or its duly authorized representative, to conduct a financial review or audit to verify the accuracy of Rebate payments. Should a City audit find that Robertson's has underpaid Rebate obligations by a shortfall of or exceeding one percent of the Rebate actually due in any one-year period, Robertson's shall bear all costs of the City's audit.

5.3.3 Payment. Robertson's shall pay the Rebate to the City on a quarterly basis.

### 5.4 Revenue Supplement.

5.4.1 When Required. Where the combined total of the Agreed Mining Tax plus the portion of the RMC Plant Sales Tax received by the City plus the Rebate (collectively, "Mining Revenue") in any calendar year while in effect is less than the total tonnage of aggregate mined by Robertson's at the Quarry in that same calendar year multiplied by \$0.40 per ton ("City Revenue Goal"), Robertson's shall pay a monetary supplement to the City ("Revenue Supplement").

5.4.2 Calculation of Revenue Supplement. The amount of the Revenue Supplement is equal to the difference between the Mining Revenue and the City Revenue Goal, except that in no event shall the Revenue Supplement exceed \$125,000 for that calendar year. The Revenue Supplement is a fixed payment not adjusted annually per the Price Index, unless

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the Agreement is extended pursuant to Section 4.4, in which case the Revenue Supplement may be adjusted per the Price Index.

5.4.3 Calculation of City portion of RMC Plant Sales Tax. Both Developer and City shall internally calculate the City's portion of RMC Plant Sales Tax each calendar year, shall share each other's calculations of that City portion of the RMC Plant Sales Tax (to the extent permitted by law) and confirm how much of the total RMC Plant Sales Tax has been remitted by the State to the City each calendar year. In the event of a discrepancy between the two calculations (Developer and City), the amount shall be subject to confirmation by the City's sales tax consulting firm.

5.4.4 Payment. Robertson's shall pay the Revenue Supplement to the City by the end of the final quarter of the calendar year in which it is due.

5.4.5 Revenue Supplement during extended Term. In the event the Term of this Agreement is extended pursuant to Section 4.4, the Revenue Supplement shall be adjusted by the change in the Price Index.

## 5.5 Replacement City Well Site.

5.5.1 Replacement Well Site Requirement. Pursuant to the terms of the MOU, Robertson's agreed to purchase for and on behalf of the City a replacement well site to be located outside the Quarry to replace the property owned by the City upon which surface mining activities have previously occurred ("City Well site") and which damaged the City's then future well site. The MOU required that the replacement well site be: (1) of comparable quality to the City Well site, (2) approximately .75 to 1.5 acre in size, and (3) located within one mile of the Quarry site.

5.5.2 Replacement Well Site Transaction. The Parties agree that the well site transaction, which included a land exchange between Robertson's and the City of Banning, is complete. Robertson's and City staff collaborated on potential locations for a replacement well site and identified a site, which is approximately +/-1.34 acres, rectangular-shaped, adjacent and east of the Pass Valley Park, more particularly described as APNs 541-045-018 and 541-045-019. Pursuant to Resolution No. 2016-97 the City Council approved and accepted fee title interest to said Replacement Well Site. By the same resolution and in exchange for the Replacement Well Site, the City transferred to Robertson's Ready Mix Properties via Quitclaim Deed the former City Well site more specifically identified as APN 534-084-002.

5.6 Robertson's Well. The City has agreed to allow Developer to continue to utilize its onsite water production well on the Property for ongoing operations. Starting in calendar year 2021, Developer may continue to pump up to 250 acre feet per calendar year from the well. If Developer pumps in excess of 250 acre of water feet in any calendar year, Developer shall pay to the City an excess pumping fee at the highest wholesale rate offered to the City to by San Gorgonio Pass Water Agency for the prior year for the amount of groundwater pumped by Developer in excess of 250 acre feet. Developer shall ensure the well is equipped with a working, properly calibrated meter, and shall submit to the City prior to January 31st each year an Annual Report demonstrating the volume of water pumped from the well in the prior year. If

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that Annual Report indicates the amount pumped exceeds 250 acre feet, the City shall invoice Developer for the excess pumping fee, which payment shall be received within thirty (30) days of invoicing. Developer must maintain pumping records for at least five (5) years. By this provision, the City takes no position on, and expressly does not concede that Developer has or can establish any form of appropriative or prescriptive groundwater right with respect to its pumping and use of groundwater on the Property. The Parties may revisit the requirements of this Section following the implementation of the Sustainable Groundwater Management Act in the Coachella Valley Groundwater Basin and the Coachella Valley – San Gorgonio Pass Sub-basin, which amendments may be reflected in a minor amendment to this Agreement as defined in Section 8.4.

## 5.7 Street Improvements.

5.7.1 Improvements to Blanchard Street in satisfaction of Condition No. 31 of Conditional Use Permit No. 16-8007.

5.7.2 Improvements to Replier Road in satisfaction of Condition No. 32 of Conditional Use Permit No. 16-8007.

5.7.3 Improvements to Florida Avenue in satisfaction of Condition Nos. 33 and 34 of Conditional Use Permit No. 16-8007.

5.7.4 Improvements to Hathaway Street and Ramsey Street. The operation of the Quarry has had significant impacts to City street roadways used in providing ingress and egress to the Quarry. Specifically, Hathaway Street from the southern terminus of the Quarry to Ramsey Street, Ramsey Street to Hargrave Street and then Hargrave Street to the I-10 Freeway has been the approved and long-standing truck route used by trucks leaving the Quarry and then accessing the Quarry. Due to the significant truck impacts to these roadways, particularly to Hathaway Street, the current condition of Hathaway Street is poor and in need of rehabilitation. In order to address these impacts and impacts associated with the continued operation and reclamation of the Quarry and the RMC Plant, and provide additional public benefits to the City, Developer agrees to the following:

5.7.4.1 Improvements on Hathaway Street from Quarry to Wilson Street. From the northern terminus of Hathaway Street at the southern end of the Quarry to Wilson Street, Developer shall widen Hathaway Street within the existing right of way limits and install new asphalt concrete (“A/C”) for the full width of the existing street roadbed, and new curbs and gutters on both sides of street to current City standards, if accommodated by the existing right of way. The roadway pavement work shall consist of a full reconstruction including a street section of 6 inches of A/C over 4 inches of aggregate base per City standards.

5.7.4.2 Improvements on Hathaway Street from Wilson Street to Nicolet Street. From Wilson Street to Nicolet Street, Developer shall construct a full street width grind and A/C pavement overlay to a minimum depth of two (2) inches and otherwise comply with City standards.

5.7.4.3 Improvements on Hathaway Street from Nicolet Street to Ramsey Street. The City will reconstruct and improve Hathaway Street from Nicolet Street to

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Ramsey Street and do additional work on Ramsey Street. This is currently planned as part of a four million two hundred thousand dollar (\$4,200,000.00) project for the improvement of these street segments, including relocation of electric power poles and other utilities. On the segments of Hathaway Street from Nicolet Street to Ramsey Street, within thirty (30) days of the City providing a Notice to Proceed to Developer, Developer shall install new A/C for the full width of the existing street roadbed, and new sidewalks, curbs and gutters on both sides of street to current City standards, if accommodated by the existing right of way.

5.7.4.4 Satisfaction of Condition No. 35 of Conditional Use Permit No. 16-8007. Developer's compliance and satisfaction of this Section 5.7 shall be deemed to satisfy Condition No. 35 of the Conditional Use Permit No. 16-8007.

5.7.5 Time for Completion. Except with respect to the improvements described in Section 5.7.4.3, all other improvements described in this Section 5.7 shall be completed by the Developer no later than twelve (12) months from the Effective Date of this Agreement. With respect to the improvements described in Section 5.7.4.3, those improvements shall be commenced within thirty (30) days after the City provides a notice to proceed to the Developer and completed expeditiously thereafter.

5.8 Buffer from Residents West of Expanded South Pit Expansion Area. Any property owned by Developer that is within the boundaries of parcels known as APN 534-241-003 and 534-241-004 and which lies westerly of the existing 10 foot high earthen berm is not approved for mining operations and shall not be mined by Developer and shall be not be used by Developer for any use or associated use in the mining of the Quarry.

5.9 Quarry End Use - Dedicated Public Use. Robertson's shall retain ownership of the Quarry, but following the cessation of mining but not later than one (1) year prior to expiration of the Term, Robertson's agrees to convey fee title by grant deed, and subject to environmental indemnity provisions and other terms acceptable to the City, to 25% of the total usable acreage (approximately 70-85 acres; see Exhibit A-2) to public use. The specific portion of the total usable acreage to be conveyed to the City shall be selected by the City from the area or areas depicted on Exhibit A-2, in the City's sole and absolute discretion and communicated in writing to Robertson's not later than 18 months prior to the expiration of the Term. No specific public use is required for this portion of the Quarry dedicated to public use, but possible end uses include, but are not limited to, permanent uses (such as (a) a recreational lake with recreational shore front and park area adjacent to the lake, (b) off-road track, (c) entertainment use, such as concert venue, water park, amusement center, golf course, or adventure park), (d) seasonal uses (such as Christmas tree/pumpkin patch area), or (e) weekend uses (such as farmer's market, swap meet, etc.). Future end use of the portion of the Quarry not dedicated to the City shall be subject to future review and approval of the City under standards then in effect.

## 6. DEVELOPMENT AND RECLAMATION OF THE QUARRY.

6.1 Right to Develop. During the Term of this Agreement, Robertson's shall have a right to Develop the Quarry (subject to Section 6.6 below), including by conducting mining and reclamation in the expanded areas and including the development of the RMC Plant, to the full extent permitted by the Entitlements and this Agreement. Except as provided within this

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Agreement, the Entitlements shall exclusively control the Development of the Quarry. The maximum approximate acreage of mining shall be limited to 209 acres. Robertson's shall mine the Quarry in accordance with the Entitlements and this Agreement and Reclaim the Quarry in accordance with the Amended Reclamation Plan, this Agreement, including the Schedule of Performance as provided in Exhibit E, and in the manner described in the Scope of Development, as described in Exhibit D.

6.1.1 Vested Right to Entitlements. Robertson's shall specifically have a vested right to mine and reclaim the Quarry in a manner consistent with such Entitlements, the Existing Land Use Regulations, and this Agreement.

6.1.2 Governing Law. Developer's use of the Quarry shall be governed by the Entitlements and this Agreement. Notwithstanding any other provision of this Agreement, Developer shall have the right, but not the obligation, to mine and reclaim the Quarry for the uses specified in the Entitlements.

6.1.3 Conflicts; Priority of Entitlements and this Agreement. The City has determined that the Entitlements are consistent with the City's General Plan and the Zoning Code. As such, the Entitlements shall be the primary documents governing the use of the Quarry and, in the event of a conflict, shall prevail over any other of the Existing Land Use Regulations or Existing Entitlements except for this Agreement, which prevails over the Entitlements. In the event of a conflict between the Conditional Use Permit and the Amended Reclamation Plan, the terms of Conditional Use Permit shall control. The conditions of the Entitlements shall be interpreted insofar as possible to prevent such conflicts, and in the event this Agreement is silent concerning an issue, the conditions of the Entitlements shall govern. If any of the Existing Entitlements are now or hereafter found to be in conflict with or inconsistent with any of the Entitlements, such conflicting or inconsistent provisions contained in the Existing Entitlements shall be deemed deleted or modified in order to conform same to the Entitlements.

6.1.4 Later-Enacted Measures. This Agreement is a legally binding contract that will supersede any initiative, measure, moratorium, statute, ordinance, or other limitation enacted after the Effective Date, except as provided in Section 9. Any such enactment which restricts, impairs, delays, conditions, or otherwise affects the implementation of this Agreement shall not apply to the Project unless otherwise provided by state law.

6.2 Reservation of Vested Mining Rights. The City acknowledges that Robertson's asserts: (i) the vested right to Develop the Quarry established pursuant to this Agreement and described in Section 6.1 above is separate from and does not affect the pre-existing vested right to mine the Quarry; (ii) the Quarry has been in continuous operation since the early 1900s; (iii) the existing operations at the Quarry largely predate zoning restrictions and state mining laws, and have been sanctioned by two permits issued by the City; (iv) because of the long-standing, continuous nature of the operations, the Quarry has vested mining rights; (v) these vested rights cannot be extinguished until all of the resources have been recovered or the vested right is abandoned; and (vi) Robertson's applications for and securing of the Entitlements and this Agreement do not constitute a waiver or abandonment of either the Quarry's vested mining rights or Robertson's right to seek confirmation of the scope of those vested rights for the remaining mineral resources at the Quarry. By this Agreement, the City is neither validating nor

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disputing Robertson's assertions and by this Agreement, each Party is reserving its rights to claim or dispute the existence or non-existence of those rights.

6.3 Entitlements. Subject to the City's exercise of certain authority as specified in Section 9, the City has, concurrent with the approval of this Agreement, processed Robertson's applications and requests for the following Entitlements:

- A. A Conditional Use Permit ("CUP") to:
  - (1) Mine 12 million cubic yards (15 million tons) of total mining reserves at Quarry. Currently approximately 10.5 million cubic yards of mining reserves are vested. The additional reserves would include the 23-acre South Pit Expansion Area ("Additional Reserves") and the Repplier Road right-of-way.
  - (2) Construct the new RMC Plant within the City limits.

The specifics of such mining, including maximum depth and production levels, and of the RMC Plant, including plant dimensions and operating hours, are set forth in Exhibit D attached hereto and incorporated by reference into this Agreement.

- B. An amended SMARA reclamation plan ("Amended Reclamation Plan") that (1) combines the Quarry's two existing Reclamation Plans; (2) amends the existing Reclamation Plans to include the 23-acre Additional Reserves and the 17-acre West Pit Expansion Area, to cover all 209 acres of the Quarry; (3) complies with SMARA and other applicable laws and standards; and (4) provides for 25% of the total usable acreage post-reclamation to be dedicated to a public use, as provided for in Section 5.9;
- C. A General Plan Amendment/Zoning Code Change from Low Density Residential ("LDR") to Industrial-Mineral Resources ("I-MR") for the West Pit Expansion Area; and
- D. All other entitlements, approvals, permits or authorizations, whether discretionary or ministerial, that may be required to complete the Development of the Quarry as contemplated by this Agreement and the Entitlements.

6.4 Amended Reclamation Plan. Any action or inaction on the part of the City concerning the Amended Reclamation Plan may be appealed to the State Mining and Geology Board pursuant to SMARA. If required pursuant to SMARA, the preparation of the Amended Reclamation Plan created pursuant to this Agreement shall be submitted to the Director of the Department of Conservation for review, consistent with Public Resources Code Section 2774, as may be amended from time to time, and shall be compliant with the requirements of SMARA.

6.5 Financial Assurances. Within the time required under the CUP approved concurrently herewith or as otherwise required by law, whichever occurs first, Robertson's shall post financial assurance bonds or other security meeting the requirements of SMARA.

6.6 Processing of Robertson's Applications and Requests.

6.6.1 Generally. In processing Robertson's applications and requests for the Entitlements, the City may impose only those conditions, exactions, and restrictions that are allowed by the Existing Land Use Regulations and this Agreement. Upon satisfactory completion by Robertson's of all required preliminary actions, meetings, submittal of required information and payment of appropriate Processing Fees, if any, the City shall promptly commence and diligently proceed to complete all required steps necessary for the implementation of this Agreement and the Development by Robertson's of the Project. In this regard, each Party will (a) provide, in a timely manner, all documents, applications, plans and other information necessary for the other Party to carry out its obligations hereunder, and (b) cause the Party's own planners, engineers and all other consultants to submit in a timely manner all required materials and documents therefor. It is the express intent of this Agreement that the Parties cooperate and diligently work to review and process Robertson's applications and requests for Entitlements.

6.6.2 CEQA Review. The City shall be responsible for any and all processing required under CEQA in connection with the Project. Robertson's shall reimburse the City for the reasonable costs of any required CEQA review; provided that, Robertson's shall have the sole right to select the consultant hired by the City to conduct such CEQA review, which right Robertson's shall exercise following Robertson's evaluation of the scope of work and budget for such CEQA review, and which Robertson's acknowledges has occurred. Said CEQA review has been completed and the City Council has adopted an MND and MMRP as set forth in Recital J.

6.6.3 Processing Fees. During the Term of this Agreement, the City may require Robertson's to pay all Processing Fees for the City's review and processing of Robertson's applications and requests for Entitlements at the rates in effect on the applicable application or request date or as described in this Agreement unless a specific amount is stated herein.

6.6.4 Expedited Processing. Robertson's may elect, in its sole and absolute discretion, to request the City to incur overtime or additional consulting services to receive expedited processing by the City of Robertson's applications and requests for Entitlements. Robertson's shall pay all overtime costs, charges, and fees incurred by City for such expedited processing.

6.7 Reclamation of Quarry. Robertson's shall complete the reclamation of the Quarry in compliance with the Amended Reclamation Plan during the Term of this Agreement and in accordance with the Schedule of Performance, attached hereto as Exhibit E.

7. TIME FOR COMPLETION OF PROJECT; ANNUAL REVIEW.

7.1 Timing of Project. The Parties acknowledge that the public benefits to be provided by Robertson's to the City pursuant to this Agreement are in consideration for, and in

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reliance upon, assurances that the City will permit the Development of the Quarry in accordance with the terms of this Agreement. Accordingly, the City shall not attempt to restrict or limit the Development and use of the Quarry in any manner that would conflict with the provisions of this Agreement. The City acknowledges that Robertson's cannot at this time predict the timing or rate at which the Quarry will be Developed. The timing and rate of such Development depend on numerous factors such as market demand, costs, interest rates, and other factors, which are not within the control of Robertson's or the City. The parties acknowledge that Robertson's shall have the vested right to mine and reclaim the Quarry in such order and at such rate and at such time as Robertson's deems appropriate, but in accordance with the Entitlements and this Agreement, including the Schedule of Performance. In addition to, and not in limitation of, the foregoing, but except as set forth in the following sentence, it is the intent of the Parties that no City moratorium or other similar limitation relating to the rate or timing of the Development of the Quarry or any portion thereof, whether adopted by initiative, referendum or otherwise, shall apply to the Quarry to the extent that such moratorium, referendum or other similar limitation is in conflict with this Agreement. Notwithstanding the foregoing, Developer acknowledges that nothing herein is intended or shall be construed as (i) overriding any provision of the Existing Land Use Regulations to the phasing of the Project; or (ii) restricting the City from exercising the police powers described in Section 9.1 of this Agreement to regulate the use of the Quarry.

## 7.2 Annual Review.

7.2.1 Annual Review. In order to ensure that Development of the Quarry is proceeding in accordance with SMARA, the Existing Land Use Regulations, and the terms of this Agreement, Robertson's shall comply with the annual reporting, inspection, and financial assurance update requirements of SMARA pursuant to Sections 2773.4 and 2774 of the California Public Resources Code. If the City believes Robertson's has violated any provisions of SMARA, the exclusive City remedies shall be the enforcement and remedy provisions in SMARA with respect to such alleged violations and the remedies contained in this Agreement. The burden shall be on the Robertson's or its successor to demonstrate compliance with the Development Agreement to the full satisfaction of, and in a manner as prescribed by the City. As part of such annual monitoring review, within thirty (30) days after each anniversary of the Effective Date of this Agreement, Robertson's shall deliver to City an annual fee determined by the City's Director of Finance, which shall be set to cover the City's reasonable costs associated with the review of the annual monitoring report, as well as all information reasonably requested by City (i) regarding Robertson's performance under this Agreement demonstrating that Robertson has complied in good faith with terms in this Agreement and (ii) as required by the Existing Land Use Regulations. If the City determines that Robertson's has substantially complied with the terms and conditions of this Agreement, the review shall be concluded. If the City finds and determines that Robertson's has not substantially complied with the terms and conditions of this Agreement for the period under review, the City shall provide Robertson's with a written notice of Default by Robertson's in accordance with Section 10, explaining the grounds upon which the City has based its determination. The City shall inform Robertson's of the annual review fee at least thirty (30) days before the deadline set for the annual report to be submitted. If the City does not inform Robertson's of the annual fee within that timeframe, Robertson's shall make a deposit of Five Thousand Dollars (\$5,000) with the City against which staff time will be billed for such review with any unused portion of the deposit returned to Robertson's within thirty (30) days after completion of the annual review process. City staff, in

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their discretion, may coordinate the annual SMARA inspection to coincide with the annual review required under this Section.

7.2.2 Certificate of Compliance. If, at the conclusion of an annual review, the City finds that Robertson's is in substantial compliance with this Agreement, the City shall, upon request by Robertson's, issue an Estoppel Certificate of Compliance.

7.2.3 Failure to Conduct Annual Review. The failure of the City to conduct an annual monitoring review shall not be a Default by Robertson's, provided Robertson's initiates the annual monitoring review with a timely submittal of documents pursuant to Section 7.2.1.

## 8. AMENDMENT AND MODIFICATION OF AGREEMENT.

8.1 No Other Changes to Entitlements or Project. Other than changes made pursuant to this Section 8, during the Term, no changes to the Entitlements or the Project may be made by the City without the express written consent of Robertson's. However, nothing herein shall restrict the City's reservations of rights under Section 9.1.

8.2 Amendments. Either Party may propose an Amendment to this Agreement. Except as set forth in Section 10.4 below, the procedure for proposing and adopting an Amendment to this Agreement shall be the same as the procedure required for entering into this Agreement in the first instance, and shall meet the requirements of the Development Agreement Statute § 65867. Except as expressly provided in this Agreement, no Amendment to all or any provision of this Agreement shall be effective unless set forth in writing and signed by duly authorized representatives of each of the Parties hereto and recorded in the Official Records of Riverside County. Except as expressly set forth in any such Amendment, an Amendment to this Agreement will not alter, affect, impair, modify, waive, or otherwise impact any other rights, duties, or obligations of either Party under this Agreement.

8.3 Tiered Amendment Review. Pursuant to Municipal Code Section 17.60.040(a)(6), the following City official or body may review and provide written consent necessary to amend the Agreement as follows.

- (a) The Planning Department Director's written consent may be provided for small amendments or minor amendments as defined in Section 8.4;
- (b) Large and major amendments, defined as those not subject to Section 8.4, shall be reviewed by the Planning Commission and approved by the City Council.

### 8.4 Minor Modifications.

8.4.1 Flexibility Necessary. Implementation of the Project may require refinements to the Project by Robertson's. Those refinements may demonstrate that clarifications to this Agreement and the Existing Land Use Regulations are appropriate. The Parties desire to retain a certain degree of flexibility with respect to those items covered in general terms under this Agreement. Therefore, Minor Modifications to the Project and/or this Agreement by Robertson's shall not require Amendment of this Agreement, nor shall they constitute discretionary actions within the meaning CEQA.

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8.4.2 Minor Modifications Defined. A modification will be presumed minor if it does not result in more than a ten percent (10%) change in fees, cost, density, volume, time, intensity of use, permitted uses, the maximum height and size of buildings, the reservation or dedication of land for public purposes, or the improvement and specifications for the Project.

8.4.3 Hearing Rights Protected. Notwithstanding the foregoing, the City will process any change to this Agreement consistent with state law and will hold public hearings thereon if so required by state law. The parties expressly agree that nothing herein is intended to deprive any party or person of due process of law.

## 9. RESERVATIONS OF AUTHORITY.

9.1 Limitations, Reservations and Exceptions. Notwithstanding anything to the contrary set forth hereinabove, in addition to the Existing Land Use Regulations, only the following Future Land Use Regulations adopted by City after the Effective Date shall apply to and govern the use of the Quarry (“Reservation of Authority”):

9.1.1 Future Land Use Regulations. Future Land Use Regulations include laws, ordinances, codes, or regulations adopted by the City after the Effective Date that: (i) are reasonably technically supported; and (ii) are within the City’s police power and are required to protect public health and safety; and (iii) are not in conflict with the Existing Land Use Regulations; and (iv) if they are in conflict with the Existing Land Use Regulations, the application of which to the use of the Quarry has been consented to in writing by Robertson’s; and (v) would be applicable under the Development Agreement Statute (Government Code § 65866).

9.1.2 State and Federal Laws and Regulations. Where state or federal laws or regulations enacted after the Effective Date prevent or preclude compliance with one or more provisions of this Agreement, those provisions shall be modified by Amendment under Section 8.2 to the extent necessary to comply with such state or federal laws or regulations.

### 9.1.3 Public Health and Safety/Uniform Codes.

9.1.3.1 Adoption Automatic Regarding Uniform Codes. This Agreement shall not prevent the City from adopting Future Land Use Regulations or amending the Existing Land Use Regulations which are uniform codes and are based on recommendations of a multi-state professional organization and become applicable throughout the City, such as, but not limited to, the Uniform Building, Electrical, Plumbing, Mechanical, or Fire Codes.

9.1.3.2 Adoption Regarding Public Health and Safety/Uniform Codes. This Agreement shall not prevent the City from adopting Future Land Use Regulations respecting public health and safety to be applicable throughout the City that directly result from findings by the City that failure to adopt such Future Land Use Regulations would result in a condition injurious or detrimental to the public health and safety, and that such Future General Regulations are the only reasonable means to correct or avoid such injurious or detrimental condition.

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

9.2 Objections to Regulation. In evaluating the reservation of authority to the City and applying the standards described above, in the event Robertson's believes that a Future Mining Land Use Regulation does not satisfy such standards, Robertson's shall give written notice of its objections and the grounds therefor to City, City shall duly consider Robertson's objections during a noticed public hearing and provide a written response within thirty (30) days after the conclusion of the noticed public hearing. If the City finds the objections well founded, the City shall suspend the application of the Regulation to the Quarry. The City shall have the obligation to make such findings only if Robertson's position is supported by clear and convincing evidence. If the City does not find the objections well-founded, Robertson's may pursue all available remedies under Section 10 of this Agreement.

9.3 Regulation by Other Public Agencies. The Parties acknowledge that other public agencies not within the control of the City may possess authority to regulate aspects of the use of the Quarry separately from, or jointly with, the City, and that this Agreement does not limit the reasonable, valid authority of such other public agencies.

9.4 Fees, Taxes, and Assessments. Notwithstanding any other provision herein to the contrary, the City retains the right to impose those fees and taxes specifically allowed under Section 5. During the term of this Agreement, the City shall not, without the prior written consent of Robertson's, impose any additional fees, taxes or assessments on all or any portion of the Project or the Quarry site, except such fees, taxes and assessments as are described in or required by this Agreement and/or the Entitlements pursuant to development of the Quarry for the ultimate end uses. This Development Agreement shall not prohibit the application of fees, taxes or assessments as follows:

- a. Fees, taxes or City assessments which exist as of the Effective Date or entitlements approved concurrently herewith and any increases in same, as provided herein.
- b. Any fees or taxes, and increases thereof, imposed on a City-wide basis for activities such as business license fees or taxes or sales or use taxes.
- c. Fees applicable to a permit application as charged by City at the time such application is filed.
- d. Any future fees or assessments imposed on an area-wide basis, (such as landscape and lighting assessments and community services assessments)

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provided that the fees and assessments levied against the Quarry do not constitute more than fifty percent (50%) of the total fees or assessment levied within the applicable area, unless otherwise consented to in writing by Robertson's. Robertson's reserves its right to protest the establishment or amount of any such fees or assessments through the method prescribed by law. The City may not levy any such fee or assessment against the Quarry unless the Quarry benefits directly from the purpose for which the fee or assessment is established.

- e. Any fees imposed pursuant to any assessment district established within the Project otherwise proposed or consented to by Robertson's.
- f. Any future fees or assessments imposed as a condition of a modification of an Entitlement, even if such modification is processed and approved after the Effective Date.
- g. Any fees imposed pursuant to any Uniform Code, as the term is used in Section 9.1.3.
- h. Any fees, assessments, or taxes imposed by an area -wide or multijurisdictional entity of which City is a member, including but not limited to a sewer sanitation district, transportation district, water replenishment district, or similar entities.

9.5 Right of Access. Representatives of the City shall have the reasonable right of access to the Quarry without charges or fees, at any time during the period of excavation, reclamation and development, for the purpose of assuring compliance with this Agreement, including but not limited to the inspection of excavation, reclamation and development work being performed by or on behalf of Robertson's. Such representatives of the City shall be those who are so identified by the City Manager. Each such representative of the City shall identify himself or herself at the job site office upon his or her entrance to the Quarry. City inspectors or designees must be accompanied by Robertson's personnel at all times. The City's inspectors shall behave in a manner so as to not interfere with Robertson's operations or usage of the Quarry, subject to Robertson's safety requirements and policies, and in full compliance with California Division of Occupational Safety and Health ("CalOSHA") regulations and Federal Mining Safety and Health Administration ("MSHA") statutory and regulatory requirements.

9.6 Security for Performance. No later than the Effective Date, Robertson's shall provide a performance bond in the amount of one million five hundred thousand dollars (\$1,500,000.00) representing the estimate of the security required to assure Robertson's faithful performance of all obligations hereunder. The performance bond shall apply to all obligations hereunder, regardless of whether additional security for the performance of any obligation as to any or all portions of the Quarry is provided elsewhere in this Agreement. The performance bond shall be issued in favor of the City in case of breach of any obligation by Robertson's hereunder (following the notice and cure provisions of Section 10.4 herein) to guarantee compensation for any costs and damages incurred by the City in performing Robertson's obligations hereunder. However, if the SMARA bond referenced in Section 9.7 is increased above nine hundred ninety

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eight thousand nine hundred and seventy two dollars (\$998,972.00), the amount of the performance bond under this Section shall be reduced by a dollar for dollar amount, though in no event shall the performance bond hereunder be less than one million dollars (\$1,000,000.00.)

9.7 SMARA Financial Assurance Bonds. In addition to the security required in Section 9.6, Robertson's shall post financial assurance bonds or other security meeting the requirements of SMARA Regulations, at Section 3803 in an amount deemed reasonable and appropriate by the City Engineer/Public Works Director, in consideration of any opinions provided Division of Mine Reclamation of the California Department of Conservation, and adjusted as necessary pursuant to the applicable Public Resources Code Sections, including Sections 2773.1 and 2773.4, and SMARA Regulations, including Section 3804.

## 10. DEFAULT, REMEDIES, AND TERMINATION.

10.1 Default. A Non-Defaulting Party in its discretion may elect to declare, in accordance with the procedures hereinafter set forth, a failure or breach of the other Party ("Defaulting Party") to perform any material duty or obligation of the Defaulting Party under the terms of this Agreement. The Defaulting Party shall be deemed in Default under this Agreement if the Defaulting Party has breached or otherwise failed to perform a material duty or obligation under this Agreement and the breach or failure can be cured, but the Defaulting Party has failed to take such actions and cure such breach or failure within thirty (30) days after the date of such notice or ten (10) days for monetary Defaults. A violation of SMARA shall not be a breach of this Agreement, and the exclusive remedy for such a violation shall be the enforcement and remedy provisions in SMARA.

10.2 Rights of Non-Defaulting Party after Default. The Parties acknowledge that both Parties shall have hereunder all legal and equitable remedies as provided by law following the occurrence of a Default or to enforce any covenant or agreement herein except as provided in Section 10.3.2 below. Robertson's specifically reserves right to appeal any action or inaction by City with respect to the Entitlements to the State Mining and Geology Board under SMARA or by judicial action filed in a court of competent jurisdiction. Before this Agreement may be terminated or action may be taken to obtain relief from the SMGB or a court of competent jurisdiction, the Party seeking relief ("Non-Defaulting Party") shall comply with the notice and cure provisions of Section 10.4. Nothing in this Agreement shall abridge Robertson's rights under SMARA, including in connection with rights derived from the designation, by the State Mining and Geology Board, of the mineral reserves of which the Quarry is part as a regionally significant construction aggregate resource area.

### 10.3 Remedies.

10.3.1 Generally. The Parties shall have the equitable remedies of specific performance, injunctive and declaratory relief, or a mandate or other action determining that the City has exceed its authority, and similar remedies, other than recovery of monetary damages, to enforce their rights under this Agreement. The Parties shall have the right to recover their attorneys' fees and costs pursuant to Section 16.7 in such action. Moreover, Robertson's shall have the right to a public hearing before the City Council before any Default can be established under this Agreement, as provided in Section 10.5.3. Nothing in this Agreement shall abridge

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Robertson's rights under SMARA, including in connection with rights derived from the designation, by the State Mining and Geology Board, of the mineral reserves of which the Quarry is part as a regionally significant construction aggregate resource area.

10.3.2 No Recovery for Monetary Damages. The remedy of monetary damages is not available to either Party.

10.3.3 Recovery of Monies Other Than Damages.

10.3.3.1 Monetary Default. In the event Robertson's fails to perform any monetary obligation under this Agreement, the City may sue Robertson's for the payment of such sums to the extent due and payable. Robertson's shall pay interest thereon at the lesser of: (i) ten percent (10%) per annum, or (ii) the maximum rate permitted by law, from and after the due date of the monetary obligation until payment is actually received by the City.

10.4 Notice and Opportunity to Cure. Where a Non-Defaulting Party declares a failure or breach of the other Party ("Defaulting Party") to perform a material duty or obligation of the Defaulting Party under the terms of this Agreement, the Non-Defaulting Party must provide written notice to the Defaulting Party setting forth the nature of the alleged breach or failure and the actions, if any, required by the Defaulting Party to cure such alleged breach or failure. The Defaulting Party shall be deemed in Default under this Agreement if the breach or failure can be cured, but the Defaulting Party has failed to take such actions and cure such breach or failure within thirty (30) days after the date of such notice or ten (10) days for monetary Defaults (or such lesser time as may be specifically provided in this Agreement). However, if such non-monetary Default cannot be cured within such thirty (30) day period, and if and, as long as the Defaulting Party does all of the following:

- A. Notifies the Non-Defaulting Party in writing with a reasonable explanation as to the reasons the asserted Default is not curable within the thirty (30) day period;
- B. Notifies the Non-Defaulting Party of the Defaulting Party's proposed actions to cure the Default;
- C. Promptly commences to cure the Default within the thirty-(30)-day period and specifies a date when the Default will be cured;
- D. Makes periodic reports to the Non-Defaulting Party as to the progress of the program of cure; and
- E. Diligently prosecutes such cure to completion by the date specified by the Defaulting Party, and
- F. The date for curing the Default is accepted, in writing, by the Non-Defaulting Party, which acceptance shall not be unreasonably withheld, then the Defaulting Party shall not be deemed in breach of this Agreement.

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Notwithstanding the foregoing, the Defaulting Party shall be deemed in Default under this Agreement if the breach or failure involves the payment of money but the Defaulting Party has failed to completely cure the monetary default within ten (10) days (or such other time as may be specifically provided in this Agreement) after the date of such notice.

## 10.5 Dispute Resolution.

10.5.1 Meet and Confer. Prior to any Party issuing a Default Notice hereunder, the Non-Defaulting Party shall inform the Defaulting Party either orally or in writing of the Default and request a meeting to meet and confer over the alleged default and how it might be corrected. The Parties through their designated representatives shall meet within ten (10) days of the request therefore. The Parties shall meet as often as may be necessary to correct the conditions of default, but after the initial meeting either Party may also terminate the meet and confer process and proceed with the formal Default Notice.

10.5.2 Termination Notice. Upon receiving a Default Notice, should the Defaulting Party fail to timely cure any default, or fail to diligently pursue such cure as prescribed above, the Non-Defaulting Party may, in its discretion, provide the Defaulting Party with a written notice of intent to terminate this Agreement and other Agreements (“Termination Notice”). The Termination Notice shall state that the Non-Defaulting Party will elect to terminate the Agreement and such other Agreements as the Non-defaulting Party elects to terminate within thirty (30) days and state the reasons therefor (including a copy of any specific charges of default) and a description of the evidence upon which the decision to terminate is based. Once the Termination Notice has been issued, the Non-Defaulting Party’s election to terminate the Agreement will be waived only if (i) the Defaulting Party fully and completely cures all defaults prior to the date of termination, or (ii) pursuant to Section 10.5.3 below.

10.5.3 Hearing Opportunity Prior to Termination. Prior to any termination, a termination hearing shall be conducted as provided herein (“Termination Hearing”). The Termination Hearing shall be scheduled as an open public hearing item at a regularly-scheduled City Council meeting within thirty (30) days of the Termination Notice, subject to any legal requirements including but not limited to the Ralph M. Brown Act, Government Code §§ 54950-54963. At said Termination Hearing, the Defaulting Party shall have the right to present evidence to demonstrate that it is not in default and to rebut any evidence presented in favor of termination. Based upon substantial evidence presented at the Termination Hearing, the Council may, by adopted resolution, act as follows:

- A. Decide to terminate this Agreement;
- B. Determine that the alleged Defaulting Party is innocent of a default and, accordingly, dismiss the Termination Notice and any charges of default; or
- C. Impose conditions on a finding of default and a time for cure, such that Defaulting Party’s fulfillment of said conditions will waive or cure any default.

Findings of a default or a condition of default must be based upon substantial evidence supporting the following three findings: (i) that a default in fact occurred and has continued to

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exist without timely cure, (ii) that the Non-Defaulting Party's performance has not excused the default; and (iii) that such default has, or will, cause a material breach of this Agreement and/or a substantial negative impact upon public health, safety and welfare, or the financial terms established in the Agreement, or such other interests arising from the Project. Notwithstanding the foregoing, nothing herein shall vest authority in the City Council to unilaterally change any material provision of the Agreement.

Following the decision of the City Council, any Party dissatisfied with the decision may seek judicial relief consistent with this Section 10.

10.6 Waiver of Breach. By not challenging any Future Entitlement approval within ninety (90) days of the action of City enacting the same, Robertson's shall be deemed to have waived any claim that any condition of any such approval is improper or that the Future Entitlement, as approved, constitutes a breach of the provisions of this Agreement.

10.7 Remedies Cumulative. Except as otherwise expressly stated in this Agreement, the rights and remedies of the parties are cumulative, and the exercise by either Party of one or more of its rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the other party.

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

10.9 Venue. In the event of any judicial action under this Section 10, proper venue shall be in the Superior Court of Riverside County.

10.10 Compliance with the Claims Act. Compliance with this Section 10 shall constitute full compliance with the requirements of the Claims Act, Government Code § 900 *et seq.*, pursuant to Government Code § 930.2 in any action brought by Robertson's.

## 11. ASSIGNMENT.

11.1 General. Neither Party shall assign its interests, rights or obligations under this Agreement without the prior written consent of the other, which consent shall not be unreasonably withheld or delayed, with the exception of an assignment of all interests, rights, duties and obligations under this Agreement from Matich to Robertson's, which assignment is authorized under this Agreement and shall fully release and extinguish any and all duties, rights and obligations Matich may have under this Agreement. The term "assignment" as used in this Agreement shall include, but not be limited to, successors-in-interest to the City that may be created by operation of law. Notwithstanding the foregoing, the City shall have the right to sell, assign or transfer its interest in any real property dedicated or transferred to the City pursuant to the terms of this Agreement or to another public agency or private entity.

11.2 City Approval Not Required. Notwithstanding any provision of this Agreement to the contrary, the City's approval of an assignment of any portion of the Quarry under this

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Agreement shall not be required in connection with any of the following provided that such person or entity assignee assumes in writing all of Robertson's obligations under this Agreement and notifies the City in writing of the same:

- A. Any mortgage, deed of trust, sale/lease-back, or other form of conveyance for financing and any resulting foreclosure therefrom;
- B. The granting of easements or dedications to any appropriate governmental agency or utility or permits to facilitate the use of the Quarry;
- C. A sale or transfer resulting from, or in connection with, a reorganization as contemplated by the provisions of the Internal Revenue Code of 1986, as amended or otherwise, in which the ownership interests of a corporation are assigned directly or by operation of law to a person or persons, firm or corporation which acquires the control of the voting capital stock of such corporation or all or substantially all of the assets of such corporation; or
- D. Any transfer to an entity or entities in which Robertson's retains a minimum of 51% of the ownership or beneficial interest and retains management and control of the transferee entity or entities.

11.3 Subject to Terms of Agreement. Following any assignment of any of Robertson's rights or interests under this Agreement, in accordance with Section 11, the exercise, use and enjoyment of such rights and interests shall continue to be subject to the terms of this Agreement to the same extent as if the assignee were Robertson's.

11.4 Release of Robertson's. Upon the written consent of the City to the complete assignment of this Agreement or the transfer of any portion of the Quarry and the express written assumption of the assigned obligations of Robertson's under this Agreement by the assignee, Robertson's shall be relieved of its legal duty to fulfill the assigned obligations under this Agreement with respect to the portion of the Quarry transferred, except to the extent Robertson's is in Default under the terms of this Agreement prior to the transfer.

## 12. DISMISSAL OF LITIGATION, RELEASES, AND RELATED PROVISIONS.

12.1 Dismissal of All Pending Litigation. As set forth in Recital D, Robertson's and the City agree and acknowledge that as of the Effective Date of this Agreement, only one of the four Actions filed by Robertson's against the City remains pending, all others having been fully and finally resolved, with the exception of Robertson's pending post-judgment attorney's fee motion in the Public Records Act case. The Tax Refund case is the surviving lawsuit, which has been stayed by operation of the MOU and subsequent extensions of its term, and pursuant to Court orders approving stipulations for stay. The stay of the litigation in the Tax Refund case expires on December 15, 2020, and a joint status report is due to be filed on the status of the Agreement on or before November 16, 2020.

12.1.1 Within thirty (30) calendar days after the adoption of the Authorizing Ordinance, Robertson's shall file a Request for Dismissal, with prejudice, of the entire action in the Tax Refund case, and shall serve a conformed copy thereof upon counsel for the City.

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Robertson's hereby also agrees to permanently abandon and not, at any time or for any reason, reinstate its attorney's fees motion in the Public Records Act case.

12.1.2 Immediately upon the approval of this Agreement by all Parties or by November 16, 2020, whichever occurs earlier, Robertson's and the City shall file a Joint Status Report when due, advising that the Agreement has been approved and/or hearing on its approval is imminent, and that dismissal of the Tax Refund case will be filed pursuant to the terms of the Agreement, and jointly seek a brief extension of the stay beyond its current December 15, 2020 expiration, to allow time for the Agreement to be approved and become effective in accordance with its terms.

12.2 Releases. Effective immediately upon the Effective Date of this Agreement, the Parties agree as follows:

12.2.1 Release by Robertson's and Match. This Agreement in its entirety, and in particular this Section 12.2.1, shall serve as a full release, waiver, and discharge by Robertson's, and by Match, on behalf of themselves, and each of their respective principals, officers, board members, agents, insurers, attorneys, representatives, assigns, employees, administrators, trustees, heirs, beneficiaries, successors in interest, parent companies, and related entities (collectively the Releasing Parties), in consideration of the mutual covenants and promises contained herein, of the City, the City Council, and the City's present and former Council members, officials, boards, commissions, agents, insurers, attorneys, representatives, assigns, employees, administrators, trustees, heirs, beneficiaries, and successors in interest, (collectively the City Releasees) from any and all claims or cross-claims, and from all causes of action, including but not limited to claims, cross-claims, demands, obligations, subrogation claims, damages, attorneys' fees, costs, expenses, liens, actions, causes, and causes of action of whatever kind, known or unknown, suspected or unsuspected, liquidated or unliquidated, fixed or contingent, at law or in equity, that the Releasing Parties ever had, now have or may hereafter claim to have against any of the City Releasees relating to, arising out of, or in any manner based upon the allegations in the Actions, including but not limited to the Tax Refund case, and/or the Existing Entitlements, the Entitlements, the Quarry, the Mining Tax, and/or any and all acts or omissions of the City Releasees that occurred, or are alleged to have occurred, at any time up to the Effective Date. This general release includes, but is not limited to, any and all claims under the Federal or California Constitutions, statutory or decisional law, breach of contract, estoppel, or any other claim for damages on any theory, writs of mandate under Code of Civil Procedure § 1094.5, § 1085, or otherwise, claims for declaratory or injunctive relief, any and all claims for attorneys' fees and costs; and any other actual or potential claims that the Releasing Parties have asserted, could have asserted or could assert against the City Releasees at any time up to the Effective Date. This release does not include Robertson's claims to vested mining rights referenced in Sections 1.1 and 6.2, above.

12.2.2 Section 1542 Waiver. Robertson's and Match, and each of them, hereby waive all rights under California Civil Code § 1542, which provides as follows:

A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of

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executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.

Robertson's: \_\_\_\_\_ [Initials] Match: \_\_\_\_\_ [Initials]

12.2.3 Release by City. The City forever discharges, releases and expressly waives as against Robertson's and its attorneys and employees any and all claims, liens, demands, causes of action, excuses for nonperformance (including but not limited to claims and/or defenses of unenforceability, lack of consideration, and/or violation of public policy), losses, damages, and liabilities, known or unknown, suspected or unsuspected, liquidated or unliquidated, fixed or contingent, based in contract, tort, or other theories of direct and/or of agency liability (including but not limited to principles of respondent superior) that it has now or has had in the past, arising out of or relating to the Actions, this Agreement and/or the Existing Entitlements or any portion thereof.

12.2.4 Survival of Release and Waiver Provisions. The releases and waiver of Civil Code Section 1542 contained in this Section 12.2 shall survive the termination or expiration of this Agreement.

12.3 Additional Provision related to Resolution of the Litigation. In addition to the warranties and other provisions contained in Section 1.2, above, and in Sections 16.2, 16.3, 16.8, 16.11.1, 16.11.3, and 16.12, below, which are incorporated, the following additional provisions shall govern the resolution of all litigation set forth in this Section 12.

12.3.1 No Admission of Liability. Each of the Parties agrees and understands that this Agreement, including but not limited to this Section 12, resolves disputes that have been contested by Robertson's and the City, and that the terms of this Agreement shall in no way be construed to be an admission of fault, or liability, whatsoever.

12.3.2 Legal Representation. The Parties, and each of them, acknowledge that in connection with the negotiation and execution of this Agreement, including this Section 12, they have each been represented by independent counsel of their own choosing and the Parties executed the Agreement after review by such independent counsel, or, if they were not so represented, said non-representation is and was the voluntary, intelligent, and informed decision and election of any of the Parties not so represented.

12.3.3 Attorneys' Fees & Costs. The Parties shall each bear their own attorneys' fees and costs incurred in connection with or otherwise related to the Actions, including but not limited to the Tax Refund case, and any and all events referred to in the Recitals, the negotiation of this Section 12, and all related matters.

12.3.4 Construction and Governing Law. This Agreement, including this Section 12, shall be construed as though all Parties participated equally in its drafting and, it shall be interpreted, wherever possible, to make it valid and effective. Any uncertainty or ambiguity herein shall not be interpreted against the drafter, but rather, if such uncertainty or ambiguity exists, shall be interpreted according to the applicable rules of interpretation of contracts under the laws of the State of California, and not the substantive law of another state or the United States or federal common law, without regard to conflicts of law. The Parties acknowledge they

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have had an adequate opportunity to conduct an independent investigation of all the facts and circumstances with respect to the matters that are the subject of this Agreement, including this Section 12. The Parties further acknowledge that they are aware that they may hereafter discover claims or facts in addition to or different from those they now know or believe to be true with respect to the Action resolved hereby. Nevertheless, this Agreement shall be, and remain, in effect as a full and complete release as to the Action as provided in this Section 12, notwithstanding the discovery or existence of any such additional claims or facts.

12.3.5 Warranties regarding other litigation or adversary proceedings. Other than the last remaining of the Actions (i.e. the Tax Refund case), Robertson's has not, directly or by and through a third party, including but not limited to Matich, initiated any action against the City and/or the City Council, and that neither Robertson's nor Matich is aware of any action of any kind (other than the Actions including the pending Tax Refund case) that previously were brought, in any federal or state court or before any governmental or administrative agency or arbitrator, relative to the matters that are the subject of this Agreement;

12.3.6 Warranties regarding execution of this Section 12. Robertson's and Matich each represent and warrant that they are the present owners of all rights, title, and interest, if any, in and to every matter that they purport to release in Section 12 of this Agreement, and that they have not heretofore assigned, transferred, conveyed, or encumbered, or purported to assign, transfer, convey, or encumber, to any person or entity, any matters released herein.

### 13. INDEMNITIES AND INSURANCE

#### 13.1 Indemnities.

##### 13.1.1 Third-Party Litigation Concerning the Agreement and/or Entitlements.

13.1.1.1 Non-liability of the City. The City has determined that this Agreement is consistent with the General Plan and that the General Plan and, to the extent they are approved, the Entitlements meet all of the requirements of state law. The Parties acknowledge the following: (i) in the future there could be challenges to the legality, validity and adequacy of the General Plan, the Entitlements, and/or this Agreement; and (ii) if successful, such challenges could delay or prevent the performance of this Agreement and the Development of the Quarry. In addition to the other provisions of this Agreement, including, without limitation, the provisions of this Section 13.1.1, the City shall have no liability under this Agreement for any failure of the City to perform under this Agreement or the inability of Robertson's to mine and reclaim the Quarry as contemplated by the Entitlements or this Agreement as the result of a judicial determination that the General Plan, the Existing Land Use Regulations, the Entitlements, this Agreement, or any portion thereof, are invalid, inadequate, or not in compliance with law.

13.1.1.2 Effect of Judicial Decision. If, for any reason, the General Plan, Existing Land Use Regulations, Entitlements, and/or this Agreement, or any portion thereof, is hereafter judicially determined to not be in compliance with applicable laws and, if such noncompliance can be cured by an appropriate amendment thereof otherwise conforming to the provisions of this Agreement, then this Agreement shall remain in full force and effect to the

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extent permitted by law. Any Entitlements and this Agreement shall be amended, as necessary, in order to comply with such judicial decision.

13.1.1.3 Indemnity. Developer shall defend, indemnify and hold harmless the City, its elected and appointed officials, boards, commissions, and its officers, agents, consultants, and employees, from and against any claim, action or proceeding against the City or its agents, officers, consultants, or employees to attack, set aside, void or annul the approval of this Agreement by the City, and/or the approval by the City, its City Council, Planning Commission, or other advisory agencies, or administrative officers of the Entitlements and related approvals contemplated by this Agreement, and from any liabilities, judgments, damages, losses, costs and expenses, including attorneys' fees and court costs, which City may incur as a result of such claim, action or proceeding. The City shall promptly provide Robertson's with notice of any such claim, action, or proceeding, and shall cooperate fully in the defense. If the City fails to notify Developer in a timely manner of any such claim, action or proceeding, Developer shall not, thereafter, be responsible to defend, indemnify or hold harmless the City. At the time of the execution of this Agreement, the City has no actual knowledge of any pending or threatened claim, action or proceeding which would trigger the duty to indemnify under this Section 13.1.1.3.

13.1.1.4 Cooperation in Good Faith. In the event of any third-party litigation concerning this Agreement or any of the Entitlements, the Parties shall confer in good faith as to how to proceed. Such cooperation shall include, but not be limited to, conferring in good faith regarding any potential settlement of such litigation and, after any judgment in a trial court, regarding whether any appeal will be taken or defended.

13.1.1.5 Settlement Within First Forty-Five (45) Days. Notwithstanding any other provision in this Section 13.1.1, Developer shall have the right, within the first forty-five (45) days of service of summons and petition or complaint upon the City, to determine that it does not want to defend any litigation challenging the Agreement and/or the Entitlements, or any portion thereof. In such case, Robertson's shall have the right to settle the litigation on whatever terms Developer determines, in Developer sole and absolute discretion, but Developer shall confer with the City before acting, and shall take appropriate action to ensure no default is entered in the litigation against the City. In the event Developer elects to exercise its rights under this Section 13.1.1.5, Developer shall be liable for any costs and attorneys' fees incurred by the City up to the date of settlement but shall have no further indemnity obligation to the City beyond the payment of those costs and attorneys' fees in settlement of such litigation matter.

### 13.1.2 Other Third Party Litigation.

13.1.2.1 Indemnity. Developer shall defend, indemnify and hold harmless the City, and its elected officials, employees, officers, consultants, and agents from any claim, action or proceeding for damages, personal injury, death, property damage, losses, costs, penalties, obligations, or liabilities which may arise, directly or indirectly, from Developer operations, acts, or omissions at or related to the Quarry site, and from any liabilities, judgments, damages, losses, costs and expenses, including attorneys' fees and court costs, which City may incur as a result of such claim, action or proceeding. This indemnity obligation shall arise whether or not such operations, acts or omissions (1) resulted or were undertaken pursuant to this

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Agreement, the Entitlements, and related approvals, and/or (2) were committed, or alleged to have been committed, by Developer or by its agents, contractors, subcontractors, employees, consultants, or by any person directly or indirectly employed by or acting as agent for Developer. Without limiting the generality of the foregoing, said indemnity shall include any liability arising by reason of: (1) Any claim made by any occupant, subtenant, assignee, employee, agent, visitor, invitee, or user of any portion of the Quarry; (2) Any accident or other occurrence in or on the Quarry, or related to the Quarry operations, causing injury to any person or property whatsoever; (3) Any failure of Developer to comply with performance of all of the provisions of this Agreement; (4) Developer failure to prevent any employee or any invitee or any other person from entering upon or remaining in any place upon the Quarry which is not safe and/or does not comply with all laws pertaining thereto as they may now or hereafter exist; or (5) Any harm, delays, injuries or other damages incurred by any person as a result of any subsurface conditions on the Quarry, including but not limited to, the presence of buried debris, hazardous materials, hydrocarbons, or any form of soil contamination.

13.1.2.2 Exception to Indemnity Obligation. Notwithstanding the provisions of this Section 13.1.2, Developer shall have no indemnity obligation for third party litigation as to claims based solely on the City's gross negligence or willful misconduct.

13.1.3 Environmental Assurances and Indemnity. Developer shall defend, indemnify and hold harmless the City, and its elected officials, employees, officers, consultants, agents, predecessors-in-interests, successors-in-interest, assigns, and independent contractors ("City Indemnitees") for any violation of any federal, state or local law, ordinance or regulation relating to industrial hygiene or to environmental conditions on, under or about the Quarry site, including but not limited to soil and groundwater conditions, and shall defend, at its expense including attorneys' fees, the City Indemnitees in any judicial, regulatory, administrative, or other action or proceeding based or asserted upon any such alleged act, omission, condition, or violation. The City may in its discretion participate in the defense of any such action or proceeding.

13.1.4 City's Options regarding Defense Counsel. With respect to the indemnity obligations under Section 13.1, the City has the option to either (1) approve the attorney(s) that the indemnifying party selects, hires or otherwise engages to defend the City, City Indemnitees, and City-related indemnitees hereunder, which approval shall not be unreasonably withheld, or (2) conduct its own defense, provided, however, that the indemnifying party shall reimburse the City for any and all reasonable expenses and costs incurred for such defense, including attorneys' fees, upon billing and accounting therefor. The City has the right, upon reasonable notice, to change its election at any time.

13.1.5 Survival of Indemnity Obligations. All indemnity provisions set forth in this Agreement, including in this Section 13.1, shall survive termination or expiration of this Agreement for any reason.

## 13.2 Insurance.

13.2.1 Types of Insurance. Beginning on the Effective Date hereof and until the termination or expiration of this Agreement, Developer shall at its sole cost and expense keep or

cause to be kept in force, for the mutual benefit of the City and Developer, the following policies of insurance for the operations and/or the use, occupancy, disuse or condition of the Quarry, and improvements or adjoining areas or ways affected by use of the Quarry:

13.2.1.1 General Liability Insurance. Comprehensive broad form general liability insurance against claims and liability for bodily injury, personal injury, or death, and for property damage, providing protection of at least at least One Million Dollars (\$1,000,000) bodily injury, personal injury, or death to any one person or for any one accident or occurrence, and at least One Million Dollars (\$1,000,000) for property damage, or alternatively, a combined single limit policy for both personal injury and property damage in the amount of Two Million Dollars (\$2,000,000), which limits shall be subject to such increases in amount as the City may reasonably require from time to time.

13.2.1.2 Automobile Liability Insurance. Automobile Liability Insurance for any owned, non-owned or hired vehicle used in connection with the performance of this Agreement with a combined single limit of Two Million Dollars (\$2,000,000) per accident for bodily injury and property damage

13.2.1.3 Worker's Compensation. Developer shall maintain, and shall require any contractors who perform work at the Quarry to maintain, workers' compensation insurance as required by law. Developer shall furnish or cause to be furnished to the City evidence reasonably satisfactory to the City of the contractor's compliance with its workers' compensation insurance requirement.

13.2.1.4 Other Insurance. Developer may procure and maintain any additional insurance not required by this Agreement.

13.2.2 Insurance Policy Form, Content, and Insurer. All insurance required by express provisions hereof shall be carried only by responsible insurance companies licensed to do business in the State of California, rated "A" or better in the most recent edition of Best Rating Guide, The Key Rating Guide or in the Federal Register, and only if they are of a financial category Class VIII or better, unless such requirements are waived by the City due to unique circumstances. In the event the City determines that the work or services to be performed under this Agreement creates an increased or decreased risk of loss to the City, Developer agrees that the minimum limits of the insurance policies required by this Section 13.2 may be changed accordingly upon receipt of written notice from the City; provided that Developer shall have the right to appeal a determination of increased coverage by the City to the City Council within ten (10) days of receipt of notice from the City, where the decision of the City Council is a final agency action upon which Developer may exercise all available legal rights, including without limitation the filing of a writ action. All such policies shall be non-assessable and shall contain language, to the extent obtainable, to the effect that (i) any loss shall be payable notwithstanding any act of negligence of the City or Developer that might otherwise result in the forfeiture of the insurance, (ii) the insurer waives the right of subrogation against the City and against the City's agents and representatives, except as provided in this Section 13.2; (iii) the policies are primary and noncontributing with any insurance that may be carried by City; and (iv) the policies cannot be canceled or materially changed except after thirty (30) days' written notice by the insurer to the City or the City's designated representative.

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13.2.3 City named as Additional Insured. The City, its officers, employees, agents, representatives, and attorneys, shall be named as additional insureds on all policies of insurance required to be procured by the terms of this Agreement.

13.2.4 Proof of Compliance. Developer shall deliver to the City, in the manner required for notices, copies of all policies required by this Section 13.2 promptly upon receipt thereof. Roberson's shall also deliver copies of certificates of all insurance policies required hereunder together with evidence satisfactory to the City of payment required for procurement and maintenance of each policy within the following time limits:

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

13.2.4.2 Any renewal or replacement of a policy already in existence, must be obtained at least ten (10) days before expiration or termination of the existing policy, and Developer shall deliver copies of certificates of such renewal or replacement to the within fifteen (15) days of receipt.

13.2.5 Failure to Maintain Insurance and Proof of Compliance. If Developer fails or refuses to procure or maintain insurance as required hereby, or fails or refuses to furnish the City with required proof that the insurance has been procured and is in force and paid for, such failure or referral shall be a default hereunder subject to the provision of Section 10.

#### 14. EFFECT OF AGREEMENT ON TITLE.

14.1 Covenants Run with the Land. Subject to the provisions of Section 11.0:

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

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

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

14.2 Estoppel Certificate. Either Party (or a lender approved by City) may at any time deliver written notice to the other Party requesting an estoppel certificate ("Estoppel Certificate of Agreement") stating:

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

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

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

#### 15. CITY OFFICERS AND EMPLOYEES: NON-DISCRIMINATION.

15.1 Non-liability of City Officers and Employees. No official, agent, contractor, or employee of the City shall be personally liable to Developer, or any successor-in-interest, in the event of any Default by the City or for any amount which may become due to Developers or to its successor-in-interest.

15.2 Conflict of Interest. No officer or employee of the City shall have any financial interest, direct or indirect, in this Agreement, nor shall any such officer or employee participate in any decision relating to this Agreement which affects the financial interest of any corporation, partnership or association in which he or she is, directly or indirectly, interested, in violation of any state statute or regulation.

15.3 Covenant Against Discrimination. Developer covenants that, by and for itself, its heirs, executors, assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of race, color, creed, religion, sex, marital status, national origin, or ancestry in the performance of this Agreement. Developer shall take affirmative action to insure that employees are treated during employment without regard to their race, color, creed religion, sex, marital status, national origin or ancestry.

#### 16. MISCELLANEOUS.

16.1 Force Majeure. The time within which Developer or the City shall be required to perform any act under this Agreement shall be extended by a period of time equal to the number of days during which performance of such act is delayed due to war, insurrection, strikes, lock-outs, riots, floods, earthquakes, fires, casualties, natural disasters, acts of God, acts of the public enemy, epidemics, quarantine restrictions, freight embargoes, governmental restrictions on priority, initiative or referendum, moratoria, processing with governmental agencies other than the City, unusually severe weather, third-party litigation as described in Section 12.2 above, or any other similar causes beyond the control or without the fault of the Party claiming an extension of time to perform. An extension of time for any such cause shall be for the period of

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the enforced delay and shall commence to run from the time of the commencement of the cause, if written notice by the party claiming such extension is sent to the other Party within thirty (30) days of knowledge of the commencement of the cause. Any act or failure to act on the part of a Party shall not excuse performance by that Party.

## 16.2 Interpretation.

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

16.2.2 Entire Agreement. This Agreement constitutes the entire agreement between the Parties with respect to the subject matter of this Agreement, and this Agreement supersedes all previous negotiations, discussions, and agreements between the Parties. No parol evidence of any prior or other agreement shall be permitted to contradict or vary the terms of this Agreement.

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

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

16.3 Severability. If any provision of this Agreement is adjudged invalid, void or unenforceable, that provision shall not affect, impair, or invalidate any other provision, unless such judgment affects a material part of this Agreement, in which case the Parties shall comply with the procedures set forth in Section 12.2.2 above.

16.4 No Third-Party Beneficiaries. The only Parties to this Agreement are Robertson's, Matich and the City and their successor and assigns. There are no third-party beneficiaries, and this Agreement is not intended, and shall not be construed, to benefit or be enforceable by any other person whatsoever.

## 16.5 Notice.

16.5.1 To Robertson's and/or Matich. Any notice required or permitted to be given by the City to Robertson's and/or Matich under this Development Agreement shall be in writing and delivered personally to Robertson's and/or Matich or mailed, with postage fully prepaid, registered or certified mail, return receipt requested, addressed as follows:

Robertson's Ready Mix, Ltd.  
200 S. Main St., Suite 200  
Corona, CA 92882  
Attention: Legal Department

9/17/2020

Matich Corporation  
1596 Harry Sheppard Boulevard  
San Bernardino, California, 92408  
Attention: Legal Department

or such other address(es) as Robertson's and Matich may designate in writing to the City. Notices provided pursuant to this Section shall be deemed received at the date of delivery as shown on the affidavit of personal service or the Postal Service receipt.

16.5.2 To the City. Any notice required or permitted to be given by Robertson's or Matich to the City under this Development Agreement shall be in writing and delivered personally to the City Clerk or mailed with postage fully prepaid, registered or certified mail, return receipt requested, addressed as follows:

City of Banning  
99 E. Ramsey Street  
Banning, CA 92220  
Attention: Planning Director

With a copy to:

Kevin Ennis, Esq., City Attorney  
Richards Watson Gershon  
350 S. Grand Avenue, 37th Floor  
Los Angeles, CA 90071-3101

or such other address(es) as the City may designate in writing to Robertson's or Matich. Notices provided pursuant to this Section shall be deemed received at the date of delivery as shown on the affidavit of personal service or the Postal Service receipt.

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

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

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

16.9 Time of Essence. Time is of the essence in the performance of the provisions of this Agreement as to which time is an element, and in the resolution of any dispute which may arise concerning the obligations of Developer and the City as set forth in this Agreement.

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

16.11 Execution.

16.11.1 Counterparts. This Agreement may be executed by the Parties in counterparts which counterparts shall be construed together and have the same effect as if both Parties had executed the same instrument. Signatures delivered by facsimile or electronic transmission shall be accepted as though originals.

16.11.2 Recording. The City Clerk shall cause a copy of this Agreement to be executed by the City and recorded in the Official Records of Riverside County no later than ten (10) days after the Effective Date (Gov't Code § 65868.5). The recordation of this Agreement is deemed a ministerial act, and the failure of the City to record the Agreement as required by this Section and the Development Agreement Statute does not make this Agreement void or ineffective.

16.11.3 Authority to Execute. The persons executing this Agreement on behalf of the Parties hereto warrant that (i) such Party is duly organized and existing, (ii) they are duly authorized to sign and deliver this Agreement on behalf of the Party he or she represents, (iii) by so executing this Agreement, such Party is formally bound to the provisions of this Agreement, (iv) the entering into of this Agreement does not violate any provision of any other Agreement to which the Party is bound, and (v) there is no litigation or legal proceeding that would prevent the Parties from entering into this Agreement.

16.12 Integration Clause. It is understood that there are no oral agreements between the parties hereto affecting this Agreement and this Agreement supersedes and cancels any and all previous negotiations, arrangements, brochures, agreements, and understandings, if any, between the parties hereto or displayed by the City to Developer with respect to the subject matter thereof, except for the Entitlements, and none shall be used to interpret or construe this Agreement. This Agreement includes all attachments attached hereto, which by this reference are incorporated herein. Said documents shall be interpreted insofar as possible to prevent any inconsistency and to effectuate the terms thereof, without one prevailing over the other.

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**SIGNATURES**

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

CITY OF BANNING

BY: \_\_\_\_\_  
DANIELA ANDRADE, MAYOR

ATTEST:

\_\_\_\_\_  
SONJA DE LA FUENTE, DEPUTY CITY  
CLERK

Approved as to form

\_\_\_\_\_  
KEVIN G. ENNIS, CITY ATTORNEY

ROBERTSON'S READY MIX, LTD.,  
a California limited partnership

BY: \_\_\_\_\_  
TITLE

BY: \_\_\_\_\_  
TITLE

MATICH CORPORATION  
a California corporation

BY: \_\_\_\_\_  
TITLE

BY: \_\_\_\_\_  
TITLE

9/17/2020

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

State of California )  
County of Riverside )

On \_\_\_\_\_, before me, \_\_\_\_\_,  
(insert name and title of the officer)

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

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

WITNESS my hand and official seal.

Signature \_\_\_\_\_

(Seal)

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

State of California )  
County of Riverside )

On \_\_\_\_\_, before me, \_\_\_\_\_,  
(insert name and title of the officer)

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

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the foregoing paragraph is true and correct.

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Signature \_\_\_\_\_

(Seal)

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State of California )  
County of Riverside )

On \_\_\_\_\_, before me, \_\_\_\_\_,  
(insert name and title of the officer)

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

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

WITNESS my hand and official seal.

Signature \_\_\_\_\_

(Seal)

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

State of California )  
County of Riverside )

On \_\_\_\_\_, before me, \_\_\_\_\_,  
(insert name and title of the officer)

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

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

WITNESS my hand and official seal.

Signature \_\_\_\_\_

(Seal)

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

State of California )  
County of Riverside )

On \_\_\_\_\_, before me, \_\_\_\_\_,  
(insert name and title of the officer)

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

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

WITNESS my hand and official seal.

Signature \_\_\_\_\_

(Seal)

## EXHIBIT A-1

### LEGAL DESCRIPTION OF QUARRY

The property encompasses 26 parcels, approximately 209 acres located in the City of Banning.

1. Parcel 534-100-001: Block 107, of Banning colony lands, in the city of Banning, county of Riverside, State of California, as shown by map on file in book 3, page 149, of maps, records of Riverside County, California.
2. Parcel 534-100-002: That portion of lot 108 of Banning colony lands, in the City of Banning, County of Riverside, State of California, as shown by map on file in book 3, page 149, of maps, records of San Diego County, California, described as follows: beginning at the northwest corner of lot 108; thence east on the north boundary 63.40 feet; thence southeasterly to a point 30.40 feet west of the southeast corner; thence west on the south boundary to the southwest corner of said lot; thence north on the west boundary thereof, to the point of beginning. Except any portion included within the land described by deed to Edison securities company, a corporation, recorded July 19, 1947 in book 846, page 232, of official records of Riverside County, California.
3. Parcel 534-100-006: Block 109, the south half of block 110, blocks 115 and 116 of Banning colony lands, in the City of Banning, County of Riverside, State of California, as shown by map on file in book 3, page 149, of maps, records of San Diego County, California.
4. Parcel 534-100-005: The north half of Block 110 of the Banning colony lands, as shown by map on file in book 3, page 149, of maps, records of San Diego County, California.
5. Parcel 534-050-003: Block 112 of Banning colony lands, in the City of Banning, County of Riverside, State of California, as per map filed in book 5, page 186, of maps, in the office of the County recorder of said Riverside County. Excepting there from, those portions of block 112 lying northerly of the southerly line of the land shown as "parcels 5060-2a" on a map filed in book 44, page 85 of records of survey, in the office of the County recorder of said Riverside County.
6. Parcel 534-100-003: Block 113, of Banning colony lands, in the city of Banning, county of Riverside, State of California, as shown by map on file in book 3, page 149, of maps, records of San Diego County, California.
7. Parcel 534-100-004: Block 114, of Banning colony lands, in the City of Banning, County of Riverside, State of California, as shown by map on file in book 3, page 149, of maps, records of San Diego County, California.
8. Parcel 534-100-007: Block 115 of Banning colony lands, in the City of Banning, County of Riverside, State of California, as shown by map on file in book 3, page 149, of maps, records of San Diego County, California.
9. Parcel 534-100-008: Block 116, of Banning colony lands, in the City of Banning, County of Riverside, State of California, as shown by map on file in book 3, page 149, of maps, records of San Diego County, California.

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10. Parcel 534-084-001: block 118 of Banning colony lands, as shown by map on file in book 3, page 149 of maps, records of Riverside County, California; excepting there from those portions as conveyed to the City of Banning by quitclaim deed recorded August 16, 1994 as instrument no. 319367, of official records of Riverside, California.
11. Parcel 534-084-002: that portion of block 118 of Banning colony lands per map recorded in book 3, page 149 of maps, records of San Diego County and in book 5, page 186 of maps, records of Riverside County, California, described as follows: parcel no. 2: tank site beginning at point of the intersection of the centerline of Repplier road and the prolongation of the west line of said block 118, said west line of block 118 also being the centerline of Florida Street; thence N 00° 04' 16" W along said westerly line of block 118, a distance of 305.02 feet; thence S 89° 55' 44" E, a distance of 30.00 feet to the true point of beginning; thence S 89° 55' 44" E, a distance of 170.00 feet; thence S 00° 04' 16" E, a distance of 279.91 feet; thence S 89° 53' 49" W, a distance of 154.99 feet; thence N 00° 06' 11" W, a distance of 5.00 feet; thence N 45° 05' 14" W, a distance of 21.22 feet; thence N 00° 04' 16" W, a distance of 259.99 feet to the true point of beginning.
12. Parcel 534-110-001: Block 119, of Banning colony lands, in the City of Banning, County of Riverside, State of California, as shown by map on file in book 3, page 149, of maps, records of San Diego County, California.
13. Parcel 534-110-002: Block 120, of Banning colony lands, in the City of Banning, County of Riverside, State of California, as shown by map on file in book 3, page 149, of maps, records of San Diego County, California.
14. Parcel 534-110-003: Blocks 121 and 122 of Banning colony lands, as shown by map on file in book 3, page 149, of maps, San Diego County records, and in book 5, page 186, of maps, Riverside County records.
15. Parcel 534-123-002: Block 126, of Banning colony lands, as shown by map on file in book 3, page 149, of maps, records of San Diego County, California.
16. Parcel 534-110-004: Block 127, of Banning colony lands, in the City of Banning, County of Riverside, State of California, as shown by map on file in book 3, page 149, of maps, records of San Diego County, California.
17. Parcel 534-110-005: Lot 128 of Banning colony lands, as shown by map on file in book 5, page 186, of maps, records of Riverside County, California.
18. Parcel 534-213-002: Block 132 of Banning colony lands, as shown by map on file in book 3, page 149, of maps, records of San Diego County, California. Excepting there from the westerly 30 feet of said block 132 as conveyed to the City of Banning, a municipal corporation, by deed recorded May 5, 1988 as instrument no. 119574, of official records of Riverside County, California.
19. Parcel 534-230-001: Block 133 of Banning colony lands, as shown by map on file in book 3, page 149 of maps, records of San Diego County, California.
20. Parcel 534-230-002: Block 134 of Banning colony lands, as shown by map on file in book 3, page 149 of maps, records of San Diego County, California.

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21\*. Parcel 534-241-003: North half of Block 139 of Banning colony lands, as shown by map on file in book 3, page 149 of maps, records of Riverside County, California. Excepting those portions thereof granted to City of Banning by deed recorded April 29, 1977 as instrument no. 74972 of official records of Riverside County, California.

22\*. Parcel 534-241-004: South half of Block 139 of Banning colony lands, as shown by map on file in book 3, page 149 of maps, records of Riverside County, California. Excepting the Westerly 30 feet for street purposes. Also, excepting the South 30 feet of the West 195 feet of the South half of Block 139. Also, excepting any interest of the City of Banning by deed recorded April, 29, 1977 as instrument no. 74972 of official records of Riverside County, California.

23\*. Parcel 534-242-001: Lot 1 as shown on Amended Map of Desert Edge Subdivision no. 2, as shown by map on file in book 19, page 54 of maps, records of Riverside County, California.

24\*. Parcel 534-273-006: Parcel 1: The east 100.00 feet of the west half of lot 146 of Banning Colony Lands, as per map recorded in Book 3, page 149 of maps, in the office of the County Recorder of Riverside County, and recorded in Book 5, page 186 of maps, in the office of the County Recorder of said county. Except any portion lying within Hoffer Street.

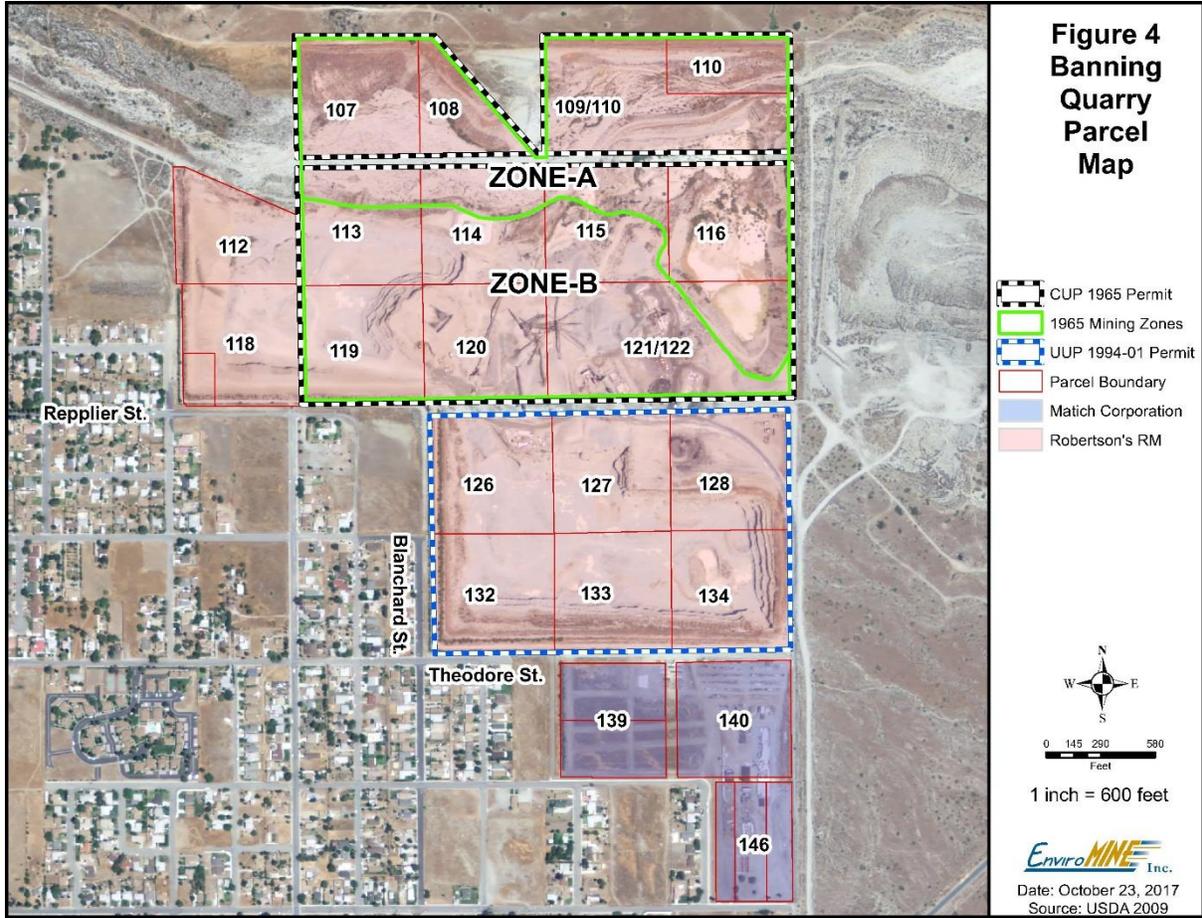
Parcel 2: The west half of lot 146 of Banning Colony Lands as per map recorded in Book 3, page 149 of maps in the office of the County Recorder of Riverside County and recorded in Book 5 page 186 of maps in the office of the County Recorder of said county. Except the east 100 feet, Also except the westerly 200 feet of said west half. Also except any portion lying within Hoffer Street and Evans Street

25\*. Parcel 534-273-002: The east half of block 146, Banning Colony Lands, as shown by map on file in Book 5, page 186 of maps, records of Riverside County, California

26\*. Parcel 534-273-003: The east half of block 146, Banning Colony Lands, as shown by map on file in Book 5, page 186 of maps, records of Riverside County, California

\* denotes parcels being added to project area - also known as "South Pit Expansion area."

**EXHIBIT A-2**  
**MAP OF QUARRY**



**EXHIBIT B**  
**SEPTEMBER 19, 2016, MOU**

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EXHIBIT C  
QUARRY MINING AREAS



## EXHIBIT D

### SCOPE OF DEVELOPMENT

#### 1. Introduction.

Robertson's shall mine the Quarry in accordance with the Conditional Use Permit and this Agreement and Reclaim and develop the Quarry in accordance with the Reclamation Plan and this Agreement and in the manner described below.

A. Existing Operations. Before the Effective Date of this Agreement, Robertson's has conducted mining operations at the Quarry consistent with its asserted "vested rights" granted by continuous mineral extraction use and the approvals for a 1965 Conditional Use Permit (112 acres) and Unclassified Use Permit 1994-01 (57 acres), which have no expiration dates. 17 acres of the western portion of the site (West Pit) were mined outside of the existing permitted areas and are not included in the scope of any asserted vested rights. Robertson's operates a processing plant, which is located within the South Pit and lies on approximately 10 acres. Currently the Quarry has two separate reclamation plans that cover operations on lots 107, 108, 109, 110, 113, 114, 115, 116, 119, 120, 121/122 (CUP 1965); and lots 126, 127, 128, 132, 133, and 134 (UUP 1994-01).

B. General Approvals. Following the approval of the Conditional Use Permit 16-8007, the Amended Reclamation Plan and this Agreement, as well as related approvals of General Plan Amendment 17-2502, Zone Change 17-3502, and street vacations of Summit Drive, Repplier Road, Gilman Street, Hargrave Street, Theodore Street, and Hathaway Street, Robertson's shall continue concurrent mining and reclamation at the Quarry, as described below.

#### 2. Phases of Development.

Robertson's will continue concurrent mining and reclamation following the approval of this Agreement and in the manner set forth in this Exhibit D and accordance with the schedule set forth in the Agreement and Exhibit E. Reclamation will occur within a given mining area as these areas become available. As reserves are depleted and mining has ceased, reclamation will be completed. Within the time set forth in the Schedule of Performance, Robertson's will mine and Reclaim the Quarry in two phases.

A. Proposed Mining and Reclamation — Phase 1. In Phase 1, Robertson's will reclaim:

- (i) West Pit - construct buttress fill on the northwest corner;
- (ii) East Pit - construct buttress fills on north and east.

B. Proposed Mining and Reclamation — Phase 2. Robertson's shall complete mining operations, in approximately December 31, 2037, but with market condition variability as to specific date. Throughout the mining operation, Robertson's shall continue reclamation in accordance with the Schedule of Performance. Once all reserves have been extracted final reclamation can begin on entire site, including the South, West and East Pits. All mining and

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processing equipment shall be removed at the completion of mining, in accordance with the Reclamation Plan. Robertson's shall preform revegetation in accordance with the Amended Reclamation Plan, but revegetation shall commence no later than in the months of October through December of the year in which final Reclamation is completed. Within three (3) years after cessation of mining, Reclamation shall be complete in accordance with the Reclamation Plan. If economic or other reasonable circumstances prevent the completion of Reclamation within three (3) years of the cessation of mining, the Parties shall work in good faith to develop a completion plan that seeks to finalize Reclamation as soon as practicable, but in no event shall such period exceed two (2) additional years.

### **3. Specific Approvals and Operational and Reclamation Assumptions.**

A. Maximum Anticipated Depth of Quarrying. Mining of all areas of the site to  $\pm 150'$  below the original ground surface elevation. Actual pit floor elevations are dependent upon depth of resources within each mining area.

B. Site Fill. To accomplish full reclamation as contemplated in, and pursuant to the terms of, this Agreement and the Reclamation Plan, Robertson's will import inert fill to correct over steepened slope conditions and for stabilization.

C. Rate of Mining. Annual production at the site is approximately 1.6 million tons, but varies with market demand.

D. Grading. The central portions of the West and East pits (lots 113-122; parcels 534100-003, 004 and 007 and 534-110-001, 002, and 003; approximately 23 acres), areas will be graded to a nearly level pad. The South Pit lots 126-134, slopes will be trimmed and final graded at a maximum of 1.25:1 inclinations. The pit bottom will be nearly level and will be graded prior to revegetation. Additionally, and as specified therein, the Quarry shall be graded as specified in the Reclamation Plan.

E. Weed Control, Maintenance, and Revegetation. Weed control and maintenance on the site will continue to be monitored throughout the life of the mining activity and during the reclamation process. Revegetation of mined slopes using native species, pursuant to the performance standards and requirements identified in the Reclamation Plan, shall begin as soon as final slopes, landforms, and soils conditions have been established in each area of the Quarry. Monitoring must be performed to document revegetation success. Following seeding operations, and prior to requesting the release of financial assurances, individual revegetation sites will be monitored for a minimum of 5 years and in conformance with the revegetation performance standards.

F. Years to completion of Mining. Robertson's shall terminate all mining by December 31, 2037.

G. Years to completion of Reclamation. Reclamation of the Site will be completed within 3 years of completion of Phase 2 mining (2040). Robertson's shall complete the installation and proper establishment periods for vegetation coverage, as required in the Reclamation Plan.

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H. Table of Phases.

Phase	Completion
Phase 1	2037
Phase 2	2037
Complete Reclamation	2040

4. **Description of End Condition.**

A. Dedicated Public Use Area. Not later than one (1) year prior to expiration of the Agreement, Robertson's agrees to convey fee title by grant deed, and subject to environmental indemnity provisions and other terms acceptable to the City, 25% of the total usable acreage (approximately 70-85 acres) for public use. No specific public use is required for this portion of the site dedicated to public use, but possible end uses include, but are not limited to, permanent uses (such as (a) a recreational lake with recreational shore front and park area adjacent to the lake, (b) off-road track, (c) entertainment use, such as concert venue, water park, amusement center, golf course, or adventure park), (d) seasonal uses (such as Christmas tree/pumpkin patch area), or (e) weekend uses (such as farmer's market, swap meet, etc.).

B. Open Space Area. Reclamation in the northeastern portion of the site where wash fines are disposed and the 38-acre area in and adjacent to the San Gorgonio River is to be dedicated to open space uses as set forth in the Amended Reclamation Plan.

C. Remaining Area. Robertson's shall retain ownership of the remaining portion of the Quarry. Future end use of the portion of the Quarry not dedicated to the City shall be subject to future review and approval of the City under standards then in effect.

D. Access Point. The access point to the City's Dedicated Public Use Area shall be from the terminus of Hathaway Street at the Quarry or at such other location as determined by the City at the time that the end use is determined by the City.

E. RMC Plant Location, Size and Operation. The RMC Plant shall be located within the area defined at Lots 127, 128, 133 and 134 of Exhibit A-2 to this Agreement, and shall in no event be within seven hundred (700) feet of the nearest property line of a parcel zoned and used for residential purposes. The RMC Plant shall also utilize Hathaway Street as its ingress and egress route to and from the RMC Plant. The RMC Plant shall be fully installed and operational no later than six (6) months from the date Developer applies for necessary permits for the operation of the RMC Plant, but in the event that any delays result from processing time for permits to operate the RMC Batch, the six (6) month deadline shall be extended by the date that the applicable permitting agency/ies have issued any such permits. The RMC Plant and maintenance shop will remain following completion of mining. The RMC Plant shall be permitted to operate Monday through Sunday: 24 hours/day, as required.

**5. Priority of Provisions.**

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

**6. Amendments.**

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

**EXHIBIT E**

**SCHEDULE OF PERFORMANCE**

Item to be Performed		Time for Performance	Agreement Reference
0	Effective Date of Agreement	30 days after the adoption of the Authorizing Ordinance (Ordinance No. 1570, estimated to be adopted October 13, 2020).*	§ 4.5
1	City records Agreement	Within 10 days of execution by all parties	§ 16.11.2
2	Robertson's shall provide a performance bond in the amount of \$1,500,000 representing the estimate of the security required to assure Robertson's faithful performance of all obligations under the Agreement.	By the Effective Date.	§ 9.6
3	Robertson's shall obtain required insurance.	Within 30 days after the Effective Date	§ 13.2
4	Robertson's delivers to City quarterly Agreed Mining Tax and Rebate, and pays RMC Plant Sales Tax pursuant to applicable state law	Quarterly until expiration of Agreement	§§ 5.1.6; 5.2.5; 5.3.3
5	Robertson's delivers to City annually Revenue Supplement	Annually until expiration of Agreement	§ 5.4.4
6	Robertson's completes improvement to portions of Hathaway street from Quarry to Nicolet Street	No later than twelve (12) months from the Effective Date of this Agreement	§ 5.7.5
7	Robertson's commences improvements to Hathaway Street from Nicollet Street to Ramsey Street	Within 30 days of the City providing a Notice to Proceed	§§ 5.7.5; 5.7.4.3
8	All ground-mounted utility appurtenances, such as transformers and A/C condensers, are located out of public view and adequately screened through the use of a combination of concrete or masonry walls, berms, and/or landscaping to the satisfaction of the Community Development Director	Through the duration of CUP 16-8007	Condition of Approval 15

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9	The applicant and property owner shall continually maintain all existing and future landscaped areas at the perimeter of the Quarry site	Through the duration of CUP 16-8007. Any damaged, dead, diseased, or decaying plant material shall be replaced within 30 calendar days of notice from the City.	Condition of Approval 16
10	Six (6) foot chain link fence or wall constructed around the perimeter of the construction sites in the Quarry	During all phases of construction.	Condition of Approval 17
11	RMC Plant Permits. Any necessary permit applications for the operation of the RMC Plant must be filed with the appropriate permitting agency/ies.	Within thirty (30) days of the Effective Date	§ 5.2.3
12	RMC Plant will be installed, made fully operational and commence operations	No later than six (6) months from the date Developer applies for permits for the RMC Plant, which may be extended to the date the permitting agency/ies issues such permits.	§ 5.2.3
13	Robertson's ceases surface mining operations	No later than December 31, 2037, depending on market demand	Final Reclamation Plan § 2.2.3
14	Robertson's to convey fee title by grant deed, and subject to environmental indemnity provisions and other terms acceptable to the City, to the City 25% of the total usable acreage to be used for public use	Not later than one (1) year prior to expiration of the Agreement	§5.9
15	Robertson's completes Phase I reclamation, provided any portion may be completed earlier	No later than two (2) years following the commencement of Reclamation.	Final Reclamation Plan § 6.4
16	Robertson's completes Phase II reclamation, provided any portion may be completed earlier	No later than three (3) years following the commencement of Reclamation, subject to Exhibit D, Section 2.	Final Reclamation Plan § 6.4
17	Agreement expires	December 31, 2040, unless otherwise extended.	§ 4.1

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

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

\*Timing dependent on the Effective Date of the Agreement assumes the Banning City Council will approve the Authorizing Ordinance at the October 13, 2020 meeting, establishing the Agreement Effective Date as November 12, 2020. These time periods shall be automatically adjusted to reflect the actual date the Authorizing Ordinance is adopted.