



CITY OF CORONA

PLANNING & HOUSING COMMISSION

STAFF REPORT

Agenda Item: D-1

MEETING DATE: May 12, 2014

APPLICATION REQUEST: **DA13-002:** Development Agreement between the City of Corona and Calmat Company dba Vulcan Materials Company establishing the vested right to conduct surface mining operations on approximately 260 acres on a site totaling 336 acres located at 1709 Sherborn Street in the M-3/MR (Heavy Manufacturing/Mineral Resources Overlay) zone, and to establish an extraction royalty payment that Vulcan Materials Company will pay to the City for the duration of the development agreement.

PROJECT LOCATION: 1709 Sherborn Street

APPLICANT: Jim Gore, Permitting Manager
CalMat Co. dba Vulcan Materials Company, West Region
500 N. Brand Boulevard, Suite 500
Glendale, CA 91203

RECOMMENDED ACTION: That the Planning and Housing Commission recommend **APPROVAL OF DA13-002** to the City Council, based on the findings contained in the staff report.

PROJECT SUMMARY:

Vulcan Materials currently operates the Corona Quarry surface mine located at 1709 Sherborn Street in the M-3/MR (Heavy Manufacturing/Mineral Resources Overlay) zone. Vulcan is requesting to amend their existing surface mining permit (SMP93-01) with the city to include the originally intended six phases on 260 acres for mining. Vulcan's current surface mining permit only allows mining on 160 acres. The mining of 260 acres was originally analyzed in the Corona Quarry Environmental Impact Report (EIR) that was certified by Riverside County in 1989. Additionally Vulcan is requesting to extend their surface mining permit for 100 years or until the exhaustion of permitted aggregate reserves, whichever occurs first. Vulcan's current permit will expire in 2023.

Development Agreement 13-002 is being processed in conjunction with Vulcan's amended surface mining permit (SMP12-001) to ensure Vulcan's vested right to conduct surface mining operations on approximately 260 acres until the sooner of exhaustion of permitted

reserves or 100 years. In exchange for the long term permit, Vulcan agrees to pay the city an annual extraction royalty based on the amount of Portland cement concrete (PCC) and Non-PCC material extracted from the site. The Agreement will: 1) guarantee the city an annual minimum extraction royalty if the royalty due from Vulcan is less than amount actually extracted, 2) include an extraction royalty ceiling in which Vulcan shall not be required to pay any extraction royalty in excess of the royalty ceiling, and 3) require Vulcan to submit an advanced payment to the city for the first two years, which will be paid in two one year increments.

BACKGROUND

Historically, the site has been used for surface mining since the 1940s with CalMat (predecessor of Vulcan Materials Company) acquiring the rights to the operation in the 1980s. The surface mining permit was initially approved by Riverside County as the property was located in the unincorporated area of Riverside County. In 1989 CalMat applied for a surface mining permit and reclamation plan in order to incorporate acreage that was not included in the original permit and to allow additional material processing facilities, including an asphaltic concrete plant, a concrete batch plant and a rail load-out facility. The permit requested by CalMat included the mining of 260 acres to be done in six phases. It also included the extraction of 400,000,000 tons of reserves (maximum of 5,000,000 tons per year) over the life of the permit, which was estimated to be 76 years to 102 years. Mining was also expected to go down to a depth of 500 feet above mean sea level, which would result in the digging of 1,000 feet from the site's highest elevation. The surface mining permit and reclamation plan were also accompanied by an Environmental Impact Report for the Corona Quarry which included an analysis of the entire 336 acres and the 260 acres to be disturbed with mining. The Riverside County Board of Supervisors certified the Corona Quarry EIR in its entirety, but did not approve the entire request made by CalMat in their surface mining permit, which was consistent with the acreage covered in the EIR. Instead the Board of Supervisors approved three phases of mining covering only 160 acres and down to a depth of 950 feet above mean sea level.

In 1991 the Corona Quarry and All American Asphalt, a surface mine that abuts the northwesterly property line of the Corona Quarry, was annexed into the City of Corona. Vulcan is now proposing to amend their existing permit and regain the initial acreage and phases sought under their 1989 surface mining permit. Additionally, Vulcan is requesting to extend their permit beyond 2023 and is requesting an extension of 100 years.

The Corona Quarry is located within an area that is primarily surrounded by surface mining operations located within the city and in the adjacent unincorporated areas of Riverside County. Nearby mines include All American Asphalt, 3M and Eagle Valley Quarry (Exhibit A). A nearby cement batch plant is also located in proximity to the Corona Quarry on Sherborn Street.

PROPOSED DEVELOPMENT AGREEMENT

EXTRACTION ROYALTY

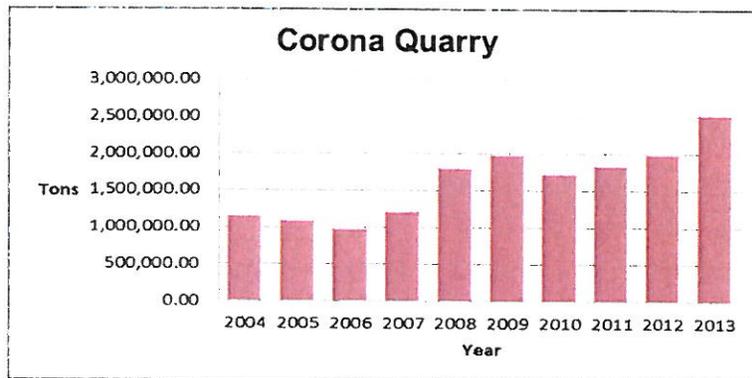
Because Vulcan is requesting an extension of 100 years on their surface mining permit, the Development Agreement confers certain private benefits on Vulcan Materials that should

be balanced by commensurate public benefits. Therefore, the Agreement requires Vulcan Materials to pay an annual extraction royalty to the city. The extraction royalty will be paid on a quarterly basis within a calendar year and will be deposited into the city's General Fund budget. The extraction royalty can be used to fund on-going operating costs for the city, costs associated with the maintenance of public infrastructure, public facilities or city programs. The following describes the extraction royalty to be paid to the city.

Material		Extraction Royalty
Portland Cement Concrete (PCC)	Aggregate material used for construction. Aggregate consists of sand, gravel and crushed stone and is the bulk and strength to PCC, Asphaltic Concrete, plaster and stucco.	\$0.05 per ton
Non-PCC	Material not suitable for PCC use and usually consists of overburden, other waste rock or topsoil.	\$0.03 per ton
Annual Minimum Extraction Royalty Guaranteed to City		\$75,000

The annual minimum extraction royalty is the amount guaranteed to the city if the royalty due from Vulcan is less than amount actually extracted. Therefore, the guaranteed annual minimum payment is \$75,000. The Agreement also establishes a royalty ceiling in the amount of \$500,000 during any calendar year. Vulcan is not required to pay any extraction royalty in excess of the royalty ceiling.

The following table shows the tonnages extracted from the Corona Quarry since 2004. The total tonnages include both PCC and Non-PCC material from the site within a calendar year. Vulcan is required to report the amount of both PCC and Non-PCC materials extracted from the site as the per ton extraction royalty for each material is different. According to Vulcan, the percentage of PCC material extracted annually averages 74% and Non-PCC material averages 26%. However, this percentage can fluctuate annually and as mining progresses into the future the extraction of Non-PCC material will become less.



The Agreement also requires Vulcan to make a one-time advanced payment of the extraction royalty to the city in the amount of \$500,000. The advanced payment will be paid in two installments of \$250,000 each. The first installment will be within 30 days following final approval of Vulcan's amended surface mining permit and amended reclamation plan. The second installment will be required on or prior to the one year date from the payment of the first installment. Thereafter, the annual quarterly payments on the

extraction royalty will occur one year from the date Vulcan paid the second installment.

The Agreement includes the transfer of the extraction royalty to a successor in interest if Vulcan were to sell or transfer the surface mining operation to another operator. Vulcan is required to provide written notice to the city at least 30 days in advance of any sale, transfer or assignment of all or portion of the site.

VESTED RIGHT

The Agreement will give Vulcan the vested right to conduct surface mining operations and other ancillary processing operations set forth in the amended surface mining permit, such as a hot-mix asphalt plant and ready mix concrete batch plant. The Agreement also includes other operational activities all of which have been included in the amended surface mining permit being reviewed as SMP12-001. Therefore, the uses being vested by this Agreement include those listed in Article 1, Section 1.1.

Future discretionary amendments or modifications to SMP12-001, which would be uses not listed under Section 1.1 of the Agreement will be subject to applicable laws and regulations at the time of processing and will not be considered a vested use. However, the Agreement will protect the uses approved by SMP12-001 and future amendments or modifications to the approved permit will only apply to activities on the site subject to future approval and not to the existing uses.

PERIODIC REVIEW

The city will be required to perform a periodic review every 12 months for compliance with this Agreement. The city already does an annual inspection of the site in accordance with the conditions of approval for the surface mining permit and Corona Municipal Code Sections 19.16.010 and 19.16.020 as Vulcan prepares an annual surface mining report for both the city and the Department of Conservation. With this practice already in place, the city will review compliance with this Agreement at the same time it performs its annual inspection of the site.

ENVIRONMENTAL DETERMINATION

The city prepared an environmental evaluation to analyze the potential environmental impacts of the project and whether the environmental impacts of the project were adequately addressed in the Corona Quarry Environmental Impact Report (EIR) previously certified in 1989. The evaluation indicated that the project will not result in impacts beyond what was previously analyzed in the EIR because the project does not have any new or substantially more severe environmental impacts. As permitted by the State of California Environmental Quality Act (CEQA) Guidelines Section 15162 (a), an addendum to the EIR was prepared to address only those issues specific to the amended surface mining permit and reclamation plan.

PUBLIC NOTICE

A public notice was mailed to the properties within the 500-foot radius and the project was also advertised in The Press-Enterprise newspaper and posted on the project site. Although CEQA does not require a review period for an EIR addendum, the addendum was advertised and made available for 20 days prior to the public hearing. As of the preparation of this staff report, the Community Development Department has not received any correspondence in favor or opposition to the proposal.

STAFF ANALYSIS

Vulcan Materials is located adjacent to land predominately used for surface mining. All American Asphalt is located to the north and is 298 acres. Currently All American's surface mining permit will expire in 2025. However, All American does have the ability to extend their permit if aggregate still can be extracted from the site. 3M is located to the south and is 1,320 acres. 3M is located in the unincorporated area of Riverside County and abuts the city's incorporated boundary and Vulcan's property. 3M's surface mining permit with Riverside County does not have an expiration date. 3M is therefore allowed to continue mining on the property until all aggregate is exhausted from the site.

Vulcan Materials is a recognized member of the city's business community and has been part of the city since the annexation of the property in 1991. Vulcan Materials generates sales revenue for the material extracted and sold from their site and also from their processing facilities. Therefore, the city receives one percent sales tax from Vulcan's sales revenue. The following table demonstrates Vulcan's sales revenue from 2011 to 2013.

Year	2011	2012	2013
Sales Revenue*	\$21,308,081	\$13,918,587	\$26,046,295

*Source: Vulcan Materials.

The extraction royalty being established by this Agreement will be independent from the sales tax revenue allocated to the city. However, both revenues will be included in the city's General Fund budget which helps pay for the city's on-going operating costs.

All American Asphalt and Vulcan Materials are the only two surface mining operations located in the city. Vulcan Materials will be the first mining operator required to pay an extraction royalty to the city. Aside from the existing surface mines located adjacent to Vulcan, additional surface mines are located farther south in the unincorporated county area known as Temescal Valley. The mining operations in the Temescal Valley do not pay an extraction royalty to the county. Therefore, Vulcan Materials will be the first in this general area to pay an extraction royalty.

Vulcan Materials has negotiated in good faith with the city on the extraction royalty in order to provide a public benefit to the city in exchange for extending their surface mine permit until permitted aggregate reserves are exhausted or 100 years, whichever occurs first.

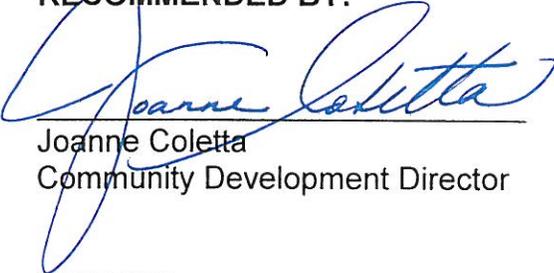
FINDINGS FOR APPROVAL FOR DA13-002

1. The city prepared an environmental evaluation to analyze the potential environmental impacts of the project and whether the environmental impacts of the project were adequately addressed in the Corona Quarry Environmental Impact Report (EIR) previously certified in 1989. The evaluation indicated that the project will not result in impacts beyond what was previously analyzed in the EIR because the project does not have any new or substantially more severe environmental impacts. As permitted by the State of California Environmental Quality Act (CEQA) Guidelines Section 15162 (a), an addendum to the EIR was prepared to address only those issues specific to the amended surface mining permit and reclamation plan.
2. Development Agreement 13-002 is consistent with the City's General Plan for the following reasons:
 - a. *General Plan Goal 10.14 is to encourage exploration of mineral resources within the City of Corona's boundaries and Sphere of Influence.*
 - b. *General Plan Goal 10.16 is to recognize and protect valuable mineral resources in a manner that does not create land use conflicts.*
3. Development Agreement 13-002 is compatible with the uses authorized in and the density and regulations prescribed for the land use district in which the real property is located for the following reason:
 - a. *The subject site is zoned M-3 (Heavy Manufacturing) with a Mineral Resources (MR) overlay zone. The MR overlay designates properties in the city that contain mineral resources suitable for extraction with an approved surface mining permit.*
4. Development Agreement 13-002 is in conformity with the public convenience, general welfare and good land use practice for the following reason:
 - a. *The extraction royalty being considered as part of the Agreement is intended to provide some form of public benefit to the city in exchange for extending an existing surface mining permit. The Corona Quarry is located within an area of the city designated for mineral resources and surrounded by land predominately used for surface mining.*
5. Development Agreement 13-002 will not be detrimental to health, safety and general welfare for the following reason:
 - a. *The Corona Quarry is required to comply with applicable state laws for surface mining, the city's Zoning Ordinance and conditions of approval for Surface Mining Permit 12-001.*
6. Development Agreement 13-002 will not adversely affect the orderly development of property or the preservation of property values for the following reason:
 - a. *The Corona Quarry is located in an area of the city designated for mineral resources and surrounded by land predominately used for surface mining.*

FISCAL IMPACT:

The Development Agreement will establish an annual extraction royalty that will be paid by Vulcan Materials to the city. The extraction royalty will remain in effect for as long as active surface mining is being done on the property. The city is guaranteed an annual minimum payment of \$75,000 per year which will have a positive impact to the General Fund.

RECOMMENDED BY:

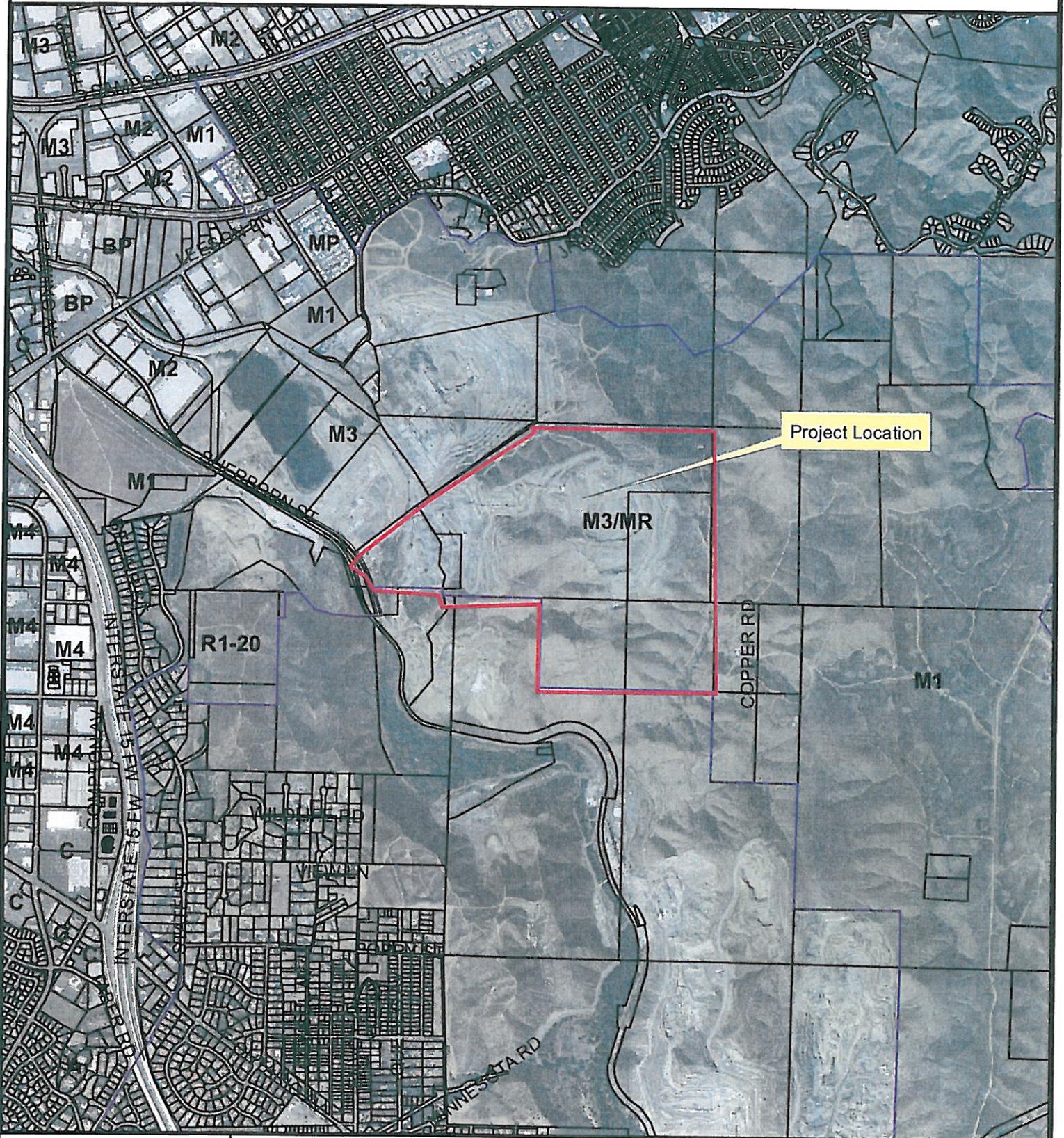


Joanne Coletta
Community Development Director

EXHIBITS

1. Locational and Zoning Map.
2. Exhibit A – Surrounding Land Use Map.
3. Exhibit B - Development Agreement.
4. Exhibit C - Environmental Documentation.

Locational Exhibit

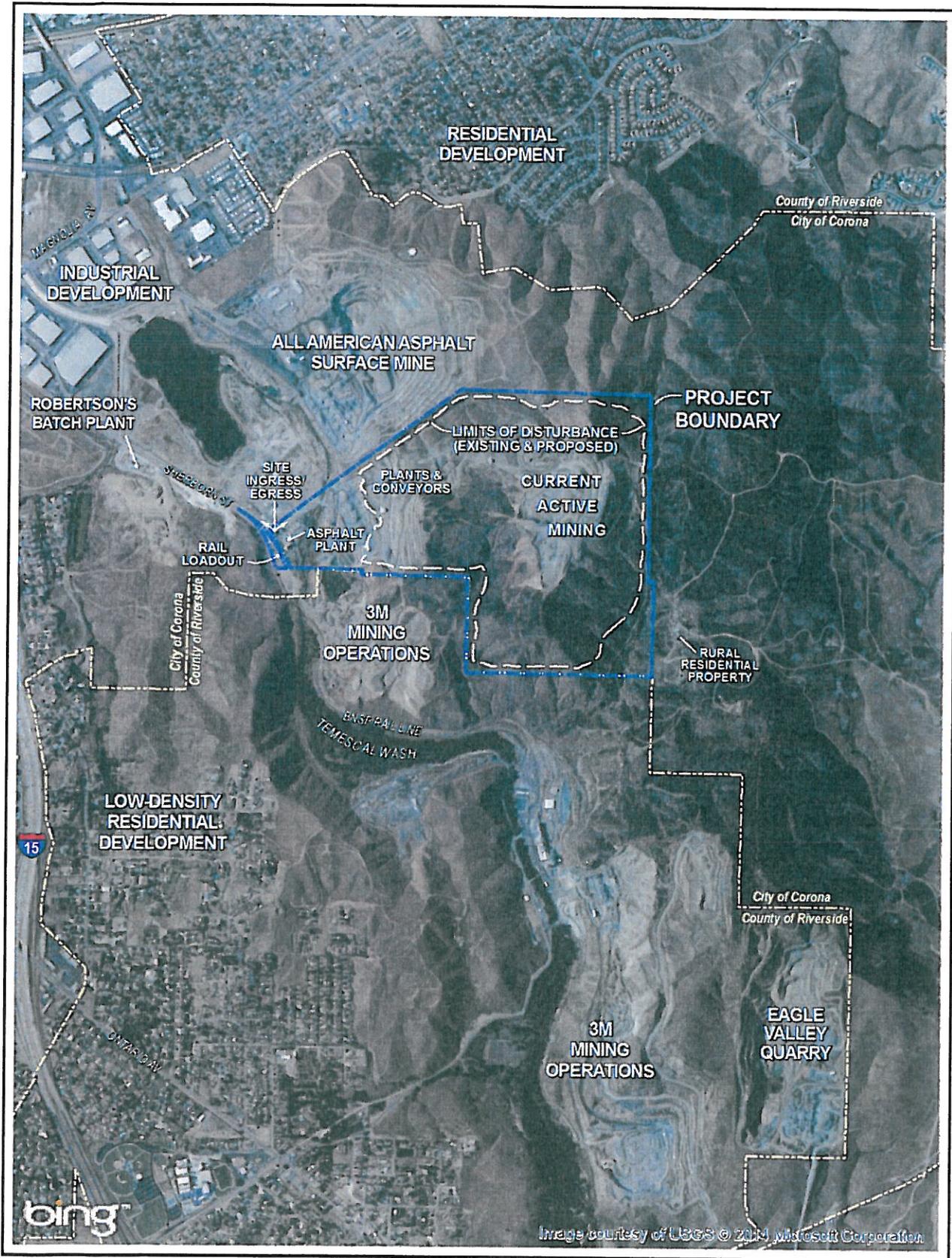


Date: 04/24/2014

Vulcan Materials Company
DA13-002, SMP12-001 and SMPR12-001



EXHIBIT 1



Surrounding Land Uses

RECORDED AT REQUEST OF
AND WHEN RECORDED RETURN TO:

City of Corona
400 S. Vicentia Ave
Corona, California 92882
Attn: City Clerk

APN: 107-070-015
278-120-001
278-130-001
135-270-002
135-270-003
135-270-005
135-270-006

(SPACE ABOVE FOR RECORDER'S USE)
FEE EXEMPT – GOVERNMENT CODE §27383
DOCUMENTARY TRANSFER TAX EXEMPT - R&T CODE § 11922

DEVELOPMENT AGREEMENT

By and Between

The City of Corona
a California Municipal Corporation

and

CalMat Co., a Delaware corporation
dba Vulcan Materials Company, West Region

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**DEVELOPMENT AGREEMENT
BY AND BETWEEN THE
CITY OF CORONA AND CALMAT CO, DBA VULCAN MATERIALS COMPANY,
WEST REGION**

THIS DEVELOPMENT AGREEMENT (this “**Agreement**”) is made and entered into this _____ day of _____, 2014, by and between the CITY OF CORONA, a California municipal corporation (“**City**”), and CALMAT CO., a Delaware corporation dba VULCAN MATERIALS COMPANY, WEST REGION (“**VMC**”), pursuant to the authority of Article 2.5, Chapter 4, Division I, Title 7 (commencing with section 65864) of the Government Code, relating to development agreements (the “**Development Agreement Statute**”) and to Section 17.87.210 *et seq.* of the Corona Municipal Code (“**City Development Agreement Requirements**”).

RECITALS

This Development Agreement is entered into on the basis of the following facts, understandings and intentions of the parties:

1. This Agreement relates to the mining and reclamation of certain real property leased and operated by VMC consisting of approximately 336 acres (the “**Site**”), situated in the City of Corona, County of Riverside, State of California, as shown in **Exhibit “A”** (“**Site Map**”) and described in **Exhibit “B”** (“**Legal Description**”).

2. Over time, the following entitlements have been approved authorizing mining and mining-related activities on the Site (collectively, the “**Original Approvals**”):

a. Surface Mining Permit M3-269, issued by the County of Riverside (“**County**”) issued in 1956 after a noticed public hearing and authorizing mineral extraction, crushing and screening on approximately 800 acres, which includes all but approximately the western-most 23.6 acres of the present Site. Surface mining permit M3-269 does not include a production limit or expiration date.

b. Reclamation plan 117, approved by the County in 1978, addressing ongoing drill-and-blast, multi-bench, side-hill quarry operations as authorized by surface mining permit M3-269, and covering approximately 310 acres coterminous with the present Site boundaries except for the western-most approximately 23.6 acres extending to Cajalco Road.

c. Surface mining permit 93-01 (“**SMP 93-01**”) (**Exhibit “C**”), originally approved by the County in 1990 as SMP 168 and amended by City on February 17, 1993 (SMP

92-01) and on May 19, 1993 (SMP 93-01) and an accompanying reclamation plan also approved by the County in 1990 (“**1990 Reclamation Plan**”) (**Exhibit “D”**). The County prepared and certified a Final Environmental Impact Report (“**1990 FEIR**”) in connection with SMP 168 and the 1990 Reclamation Plan. (**Exhibit “E”**.)

d. The Pre-Annexation Agreement, which the City entered into in 1991 with VMC’s predecessor, and which establishes certain additional rights and obligations regarding the Site. (**Exhibit “F”**.)

3. City approved amendments to SMP 93-01 and the 1990 Reclamation Plan (the “**Revised SMP**” and “**Revised Reclamation Plan**”, respectively) on _____, 2014. (**Exhibit “G”** and **Exhibit “H”**.) City approved an addendum to the 1990 FEIR (“**Addendum**”) in connection with the Revised SMP and Revised Reclamation Plan on _____, 2014. (**Exhibit “I”**.) The Revised SMP, Revised Reclamation Plan, and Addendum are collectively referred to herein as the “**Revised Approvals**”.

4. VMC has made substantial investment in the Site pursuant to the Original Approvals, and VMC will make further substantial investment in the Site pursuant to the Revised Approvals. VMC desires certainty regarding its vested rights under all its entitlements on the Site.

5. Having duly considered this Agreement and having held the required noticed public hearings, the City finds and declares that the provisions of this Agreement are consistent with the maps and text of the City’s General Plan, pursuant to Section 65867.5(b) of the Government Code, with the Development Agreement Statute, and with the City Development Agreement Requirements.

NOW, THEREFORE, in consideration of the mutual covenants and promises of the parties herein contained and other valuable consideration, the receipt and adequacy of which the parties hereby acknowledge the parties agree as follows:

ARTICLE 1. VESTED RIGHTS

1.1 **Vested Rights.** VMC shall have a vested right to the following, pursuant to the Revised Approvals and this Agreement:

(a) **Area.** VMC shall have the vested right to conduct surface mining operations on and disturb approximately 260 acres of the Site. Notwithstanding the approximate acreage to be disturbed by surface mining operations under the Revised Approvals, the total acreage of the Site is approximately 336 acres.

(b) Volume. VMC shall have the vested right to extract approximately 400 million tons of material, total, from the Site.

(c) Annual Production. VMC shall have the vested right to produce approximately 5 million tons of aggregate material per year including hot-mix asphalt and ready-mix concrete (collectively “**Aggregate Material**”) in those quantities as more specifically set forth in the Revised SMP.

(d) Depth. VMC shall have the vested right to mine the Site to the approximate level of 500 feet above mean sea level.

(e) Processing. VMC shall have the vested right to transport, process, store and load out by truck and rail Aggregate Material from the Site as more specifically set forth in the Revised SMP. VMC shall further have the vested right to operate a hot-mix asphalt plant and ready-mix concrete batch plant on Site.

(f) Mining Method. VMC shall have the vested right to drill, blast, excavate, doze, and use other similar methods to extract the material on the Site.

(g) Phasing. VMC shall have the vested right to mine the Site in six-phases, and to mine in multiple phases concurrently as operations may require and to increase efficiency, as more specifically set forth in the Revised Approvals.

(h) Sale. VMC shall have the vested right to install and maintain facilities to sort and contain market-ready construction Aggregate Material, and to sell and distribute construction aggregate material via truck and rail.

(i) Operations Support. VMC shall have the vested right to all ancillary and related uses as needed to conduct vested operations on the Site including the installation, maintenance and realignment of internal access and mine roads on the Site, the placement and utilization of portable and permanent structures for administrative offices, employee support functions, and for other operational uses, including shop and lab functions, and to modernize and replace any and all facilities on the Site approved as part of the Revised Approvals, including without limitation equipment, machinery, rolling stock, processing facilities, material silos and containment structures, conveyors, scales, loading facilities, office, storage, and other structures (collectively, “**Ancillary Activities**”).

(j) Operating Hours. VMC shall have the vested right to conduct surface mining operations during those hours as set forth more specifically in the Revised SMP.

(k) Access. VMC shall have the vested right to access the Site from City streets as more specifically set forth in the Revised SMP.

(l) Reclamation. VMC shall have the vested right to reclaim the Site using a step benching or traditional benching method, as set forth more specifically in the Revised Reclamation Plan.

(m) Time. VMC shall have the vested right to conduct surface mining operations on the Site until the sooner of exhaustion of permitted reserves or 100 years from the date of Final Approval as defined in Section 4.6.

1.1.1 Survivability. The parties agree that if this Agreement is terminated for any reason, vesting of the entitlements under the Revised SMP and the Revised Reclamation Plan shall be determined using legal principles applicable to mining use entitlements generally. The fact that this Agreement was entered into previously in connection with the issuance of the Revised Approvals is not intended to change the application of vesting law to the Site. The Revised Approvals shall be viewed in a manner consistent with any other mining site that had been permitted and had operated without the adoption of a development agreement in the first instance.

1.2 Ancillary Activities – Ministerial Permits. The parties acknowledge that Ancillary Activities may require VMC to obtain ministerial permits from, and pay applicable processing fees for such ministerial permits to, the City (“**Ancillary Permits**”). Ancillary Permits do not include Future Approvals, as defined in Section 2.1.2 herein, associated with uses or activities that are not vested under the Revised Approvals or this Agreement.

ARTICLE 2. APPLICABLE LAW

2.1 Applicable Law. Pursuant to Section 65866 of the Government Code, for the term of this Agreement, the rules, regulations, and official policies governing VMC’s vested use of the Site, as set forth in Section 1.1 herein, the density and intensity of use, design, improvement and construction standards and specifications, and environmental mitigation measures, shall be those rules, regulations, and official policies in force on the date this Agreement is executed by all parties (“**Applicable Law**”, attached in part as **Exhibit “J”**). The parties acknowledge that consistent with Section 65869.5 of the Government Code, each is required to comply with changes in state or federal laws or regulations, including without limitation changes to the Uniform Building Code adopted by the state, the state Surface Mining and Reclamation Act (“**SMARA**”), and regulations adopted pursuant to SMARA, to the extent such laws or changes to such laws are applicable to VMC’s operations on the Site.

2.1.1 **Fees, Assessments and Charges.** City may not impose any fee, assessment or charge, including without limitation environmental mitigation fees, traffic impact fees, and monitoring fees (collectively, “**Fees**”) in relation to VMC’s vested use of the Site, as set forth in Section 1.1 herein, in excess of those Fees either already assessed or for which VMC is liable under Applicable Law on the date this Agreement is executed by all parties, unless any such Fee, if not yet paid, is decreased after the date this Agreement is executed by all parties, in which case City shall impose the decreased Fee. The Fees subject to this Section shall not include (a) any Fees assessed in connection with Future Approvals, as set forth in Section 2.1.2 herein; (b) Fees assessed to cover City administrative costs, including without limitation annual inspection fees and staff costs; (c) design review and permit fees required for structures allowed under Section 1.1 herein; (d) regional pass-through fees and (e) water and sewer capacity fees.

2.1.2 **Future Approvals.** Future discretionary amendments or modifications of the Revised Approvals to permit uses or activities on the Site not vested as set out in Section 1.1 herein (“**Future Approvals**”), shall be subject to those laws, rules, regulations and official policies, as well as those Fees, in force on the date VMC applies for such Future Approvals (collectively, “**Future Laws and Fees**”), provided, however, that Future Laws and Fees shall only apply to activities on the Site subject to the Future Approvals, and shall not be applied to any vested uses, as set out in Section 1.1 herein. The Extraction Royalty, Annual Minimum Royalty, Royalty Ceiling, Advance Payment, and Ceiling Adjustment, as each is defined and set out in Article 4 herein and applicable to those vested uses set out in Section 1.1 herein, shall not be increased or modified to increase VMC’s liability to City as a condition of City’s approval of any Future Approval or approval of Offsite Activities as set forth in Section 8.3. The City may, however, require a separate royalty or other form of public benefit as consideration for and applicable to any Future Approval or approval of Offsite Activities as set forth in Section 8.3 herein.

2.2 **State or Federal Laws.** Pursuant to Section 65869.5 of the Government Code, if any state or federal law or regulation enacted or adopted after the date of this Agreement prevents or precludes compliance with any of the provisions hereof, such provisions shall be modified or suspended only to the extent and for the time necessary to achieve compliance with said state or federal law or regulation and the remaining provisions of this Agreement shall continue in full force and effect. Upon repeal of said law or regulation or occurrence of other circumstances removing the effect thereof upon this Agreement, the provisions hereof shall be restored to their full original effect.

2.3 **Subsequent City Actions.** This Agreement is a legally binding contract that shall supersede any initiative, measure, moratorium, statute, ordinance, or other measure or limitation enacted by the City or any agency of the City after the date this Agreement is executed by all parties that conflicts with this Agreement except as permitted and reserved in Section 2.2.

ARTICLE 3. FUTURE APPROVAL PROCESS

3.1 **Future Approvals.** The parties acknowledge that VMC may apply for and seek Future Approvals, as defined in Section 2.1.2 herein and may apply for and seek Ancillary Permits under Section 1.2 as needed for the conduct of any of the vested rights set forth in Section 1.1.

3.2 **Ancillary Permits.** If the City rejects an application for an Ancillary Permit it shall provide, in good faith, a detailed list of the grounds for its rejection, along with a description of specific and reasonable measures to correct each basis for rejection (“**Measures to Correct**”). Such Measures to Correct shall take into account the economic viability of VMC instituting such Measures to Correct, however economic viability alone shall not deem Measures to Correct as unreasonable or in bad faith. If VMC resubmits its application incorporating all the Measures to Correct, the City shall approve VMC’s application for the Ancillary Permit.

3.3 **Future Approval.** The City shall review and process all Future Approvals in a timely manner consistent with standards generally utilized for other projects in the City. Provided, however, that the City shall utilize the 1990 FEIR, the Addendum, and any other CEQA documents that may be approved as of the date VMC applies for any Future Approval to the fullest extent permitted by law in processing and analyzing the request for Future Approvals.

3.4 **Expedited Processing.** VMC may request that the City expedite its processing of any Future Approvals and related environmental review. In such cases where the City has the resources to accommodate VMC’s request for expedited processing, VMC shall pay any processing fees necessary to cover the additional expense associated with its expedited processing, in addition to other applicable Fees.

3.5 **Cooperation between City and VMC.** City agrees to cooperate with and assist VMC in securing all Future Approvals and VMC agrees to cooperate with and assist City in submitting documentation to support approval of all Future Approvals that may be required by City.

3.6 **Entitlements from Governmental Authorities.** City agrees to reasonably cooperate with and assist VMC, at no cost or expense to City, to secure entitlements from other governmental authorities necessary or desirable in connection with any existing entitlements, the Revised Approvals, Future Approvals or Ancillary Permits. The City may require VMC to pay any costs incurred by City for activities under this Section.

ARTICLE 4. EXTRACTION ROYALTY

4.1 **Intent.** The parties acknowledge and agree that this Agreement confers certain private benefits on VMC that should be balanced by commensurate public benefits. VMC shall accordingly pay an Extraction Royalty to City, as defined and set out in this Article 4, to provide consideration to the public for the benefits conferred to VMC under this Agreement.

4.2 **Extraction Royalty – PCC Material.** VMC shall pay to City a royalty of \$0.05 per ton of Portland cement concrete – grade aggregate material (“**PCC Material**”) extracted from the Site and either (a) sold as a finished product and transported off the Site; or (b) transported off the Site for further processing and sale off-Site.

4.3 **Extraction Royalty – Non-PCC Material.** VMC shall pay to City a royalty of \$0.03 per ton of material not suitable for Portland cement concrete use (“**Non-PCC Material**”), including without limitation overburden, other waste rock, or topsoil, extracted from the Site and either (a) sold as a finished product and transported off the Site; or (b) transported off the Site for further processing and sale off-Site. The extraction royalty for PCC material and the extraction royalty for Non-PCC Material shall be referred to as “**Extraction Royalty**”. PCC Material and Non-PCC Material sold to the City at a discount pursuant to Section 10.3 shall not be subject to the Extraction Royalty.

4.4 **Non-Royalty Material.** VMC shall not be assessed or liable for any royalty on topsoil, overburden, rock, sand, gravel, or other material that is extracted and retained on Site, or that is imported to the Site, for reclamation or other operational use on Site.

4.5 **Payment Schedule.** VMC shall pay the Extraction Royalty to City on a quarterly basis, with payments due January 15, April 15, July 15, and October 15 of each year. Payments of the Extraction Royalty shall commence one year after the Advance Payment Second Installment is paid by VMC to City, as specified by Section 4.7 herein. Payments shall be considered late and in default of this Agreement if not received by the last day of each respective month in which an Extraction Royalty payment is due.

4.6 **Annual Minimum Extraction Royalty.** Subject to Section 4.7 herein, following final approval and grant by City to VMC of the Revised Approvals, which shall be deemed to occur for purposes of this Article only after expiration of all applicable appeal or reconsideration periods, whether under the Corona Municipal Code or other law, and final resolution of any administrative appeals and appeals in any court of law, including actions that may be associated with a return of writ or otherwise (“**Final Approval**”), VMC shall make minimum annual Extraction Royalty payments to City (“**Annual Minimum Royalty**”) in the amount of \$75,000.00 per calendar year during the term of this Agreement, subject to the

provisions set forth elsewhere in this Article 4. The Annual Minimum Royalty for each calendar year shall be due and payable by VMC in four equal quarterly installments, with payments in the amount of \$18,750.00 due on January 15, April 15, July 15, and October 15 of each year (“**Quarterly Annual Minimum Royalty Payment**”). In the event that the amount of Extraction Royalty actually due from VMC to City in any quarter is less than the Quarterly Annual Minimum Royalty Payment, VMC shall notwithstanding pay to City the full Quarterly Annual Minimum Royalty due. In the event that the amount of Extraction Royalty actually due from VMC to City exceeds the Annual Minimum Royalty, VMC shall pay the difference between the Annual Minimum Royalty and the total Extraction Royalty due, inclusive of the Annual Minimum Royalty, to City on January 15 of each year, which payment shall be for the calendar year immediately preceding.

4.7 **Advance Payment.** Upon Final Approval of the Revised Approvals, VMC shall make a one-time advance payment of Extraction Royalties to City in the amount of \$500,000.00 (the “**Advance Payment**”). The Advance Payment shall be paid in two installments of \$250,000.00 each (“**Advance Payment First Installment**” and “**Advance Payment Second Installment**”, respectively). The Advance Payment First Installment shall be made by VMC within thirty (30) days following City’s written notice to VMC in a form satisfactory to VMC that Final Approval has occurred. The Advance Payment Second Installment shall be made by VMC on or prior to the date that is one calendar year following the date on which VMC paid the Advance Payment First Installment or the date on which the Advance Payment First Installment was otherwise due hereunder, whichever occurs first. The parties acknowledge that the Extraction Royalty or Annual Minimum Royalty shall accrue and be due or payable commencing on the date that is one calendar year following the date on which VMC paid the Advance Payment Second Installment or the date on which the Advance Payment Second Installment was otherwise due hereunder, whichever occurs first.

4.8 **Royalty Ceiling.** Notwithstanding anything herein to the contrary, a ceiling in the amount of \$500,000.00 (Five Hundred Thousand Dollars) shall apply to the Extraction Royalty due during any calendar year (“**Royalty Ceiling**”). VMC shall not be required to pay any Extraction Royalty in excess of the Royalty Ceiling.

4.9 **Extraction Royalty and Ceiling Adjustment.** The Extraction Royalties and Royalty Ceiling provided in Article 4 herein shall each be adjusted annually in accordance with this Section 4.9 (“**Ceiling Adjustment**”). The index that shall be used to calculate the Ceiling Adjustment is the Consumer Price Index for All Urban Consumers, All Items Less Food and Energy Los Angeles-Riverside-Orange County area, published by the U.S. Bureau of Labor Statistics (base year 1982-1984=100) (the “**Index**”). The first Ceiling Adjustment shall be made on January 1 in the year following the second year of Final Approval, and on each January 1 thereafter during the time this Agreement remains effective (the “**Adjustment Date**”). The

Index in effect for each November immediately preceding the Adjustment Date (the “**Adjustment Index**”) shall be used for purposes of calculating the amount of the Ceiling Adjustment, if any, to the Extraction Royalties and Royalty Ceiling. The Extraction Royalties and Royalty Ceiling shall be increased by the same percentage as the Adjustment Index bears to the Base Index. By way of illustration, if the Adjustment Index states a 1.5 percent increase, the Extraction Royalties and Royalty Ceiling then in effect shall be increased by 1.5 percent for the following 12-month period ending on December 31. In no event shall the Extraction Royalties and Royalty Ceiling be increased by more than 4.5 percent on any single Adjustment Date. If at any Adjustment Date the Index no longer exists in the form described herein, VMC shall substitute such other source of information which is substantially equivalent to the Index.

4.10 **Timing of Mining.** The parties acknowledge that mining of the Site depends upon numerous factors, such as market orientation and demand, interest rates, competition, and similar factors, and that generally it will be most economically beneficial to the parties hereto for VMC to be the sole determinant of the rate of mining on the Site. Accordingly, the timing and sequencing of mining are solely the responsibility of VMC and, except as expressly set forth herein and in the Original Approvals and Revised Approvals, City shall not impose, by ordinance, resolution, initiative or otherwise, any restrictions on such timing and sequencing of mining of the Site.

4.11 **Termination of Extraction Royalty Liability.** VMC’s obligation to pay the Extraction Royalty shall terminate if VMC discontinues the extraction and sale of PCC Material and Non-PCC Material at the Site for a period of one (1) year or more, upon one hundred eighty (180) days advance notice to the City. The Annual Minimum Royalty shall nonetheless be due for any partial year in which there was any production of PCC Material or Non-PCC Material. Notwithstanding the foregoing, VMC’s obligation to pay the Extraction Royalty shall recommence upon resumption of production of PCC Material or Non-PCC Material. VMC’s obligation to pay the Extraction Royalty shall also terminate if VMC sells or transfers the Site or any portion thereof to a successor in interest, upon which occurrence VMC shall have no further obligation to pay any Extraction Royalty as to the entire Site or any portion thereof, as the case may be; provided that the successor in interest assumes in writing the obligations under this Agreement, including, without limitation, VMC’s obligation to pay the Extraction Royalty. In the event that VMC’s obligation to pay the Extraction Royalty terminates for any reason, City shall be entitled to and VMC shall pay to City all Extraction Royalties accrued as of the date VMC’s obligation to pay the Extraction Royalty terminates.

4.12 **Pre-Annexation Agreement.** Notwithstanding certain terms of the Pre-Annexation Agreement referenced in Recital 2(d), VMC agrees to pay the Extraction Royalty, the Annual Minimum Royalty and the Advance Payment required by this Article 4 even though such payments may not be required of all surface mining operations within the City.

VMC's agreement under this Article 4, or under any other provision of this Agreement, shall not abrogate or be deemed to waive any of VMC's rights under the Pre-Annexation Agreement not in conflict with this Agreement, which rights VMC hereby expressly reserves.

4.13 **Successors Bound.** In the event VMC transfers the Site or any portion thereof to a successor in interest, such successor in interest shall be bound by the terms of this Agreement, including without limitation, the obligation to pay the Extraction Royalty.

4.14 **Extraction Royalty Applicability.** This Agreement, and VMC's obligation to pay the Extraction Royalty, Annual Minimum Royalty and the Advance Payment as provided in this Article 4 herein, shall become operative only upon Final Approval of Revised Approvals that authorize surface mining operations on the Site consistent with those rights intended to be vested as set forth in Section 1.1, as incorporated into the Revised Approvals.

4.15 **Survivability.** The parties agree that VMC's obligation to pay the Extraction Royalty, Annual Minimum Extraction Royalty, and Advance Payment as provided in Article 4 of this Agreement, shall survive and remain effective in the event that this Agreement is cancelled or terminated pursuant to the provision of Article 6 herein. The Revised SMP shall include conditions incorporating Article 4 of this Agreement, and expressly stating that the payment provisions contained therein shall remain effective notwithstanding the cancellation or termination of this Agreement.

ARTICLE 5. REVIEW AND DEFAULT

5.1 **Periodic Review.** Pursuant to Section 65865.1 of the Government Code, City shall review VMC's compliance with this Agreement every twelve months. VMC shall demonstrate good faith compliance with the terms of this Agreement by submitting to the City by March 30 of each year a report in a form acceptable to the City's Community Development Director. The Community Development Director shall review the report and report to the City Council as required in Section 17.87.310(B) of the Corona Municipal Code. If, following the periodic review, City reasonably determines in good faith that, based on substantial evidence, VMC is not in substantial compliance with this Agreement, City shall provide VMC with notice and an opportunity to cure in accordance with Section 5.2 below.

5.1.1 **Surface Mining and Reclamation Act.** In the event that City, during the periodic review required under Section 5.1 herein or otherwise, determines that VMC may be in noncompliance with the Surface Mining and Reclamation Act ("SMARA") or Title 19 of the City Municipal Code, City shall provide VMC with notice and opportunity to cure in accordance with Section 5.2. City shall not issue VMC a notice of violation or pursue other remedies available under SMARA until and unless City first complies with Section 5.2. A

violation shall be deemed not to have occurred if VMC cures the noncompliance or commences diligent action to cure the noncompliance within the time periods set out in Section 5.2.

5.2 **Opportunity to Cure.** In the event of an alleged default, the party alleging such default shall provide the other party a notice of default (“**Default Notice**”) promptly following discovery of the default. The party alleged to be in default shall have at least forty-five (45) days after the date of such Default Notice to cure the default, or in the event that the default cannot be cured within the forty-five (45) day period, to commence diligent action to cure the default. Provided that the party in default timely cures the default or commences diligent action to cure the default, the party charged shall not be considered in default of this Agreement or entitlements, including without limitation the Original Approvals and Revised Approvals to which the default may relate.

5.2.1 **Amendments or Modifications Required to Cure Default.** The parties acknowledge that amendments or modifications to any entitlements existing on the Site at the time of default may be necessary to cure the default. Such amendments or modifications shall be treated as Future Approvals in accordance with Article 3 of this Agreement.

5.3 **Unavoidable Delay and Extension of Time of Performance.** Whenever performance is required of a party hereunder, that party shall use all due diligence and take all necessary good-faith measures to perform, but if completion of performance is subject to delay caused by the elements, fire, earthquakes or other acts of God, war strikes, picketing or other labor disputes, third-party litigation, lockouts, acts of the public enemy, riots, insurrections or governmental regulation of the sale or transportation of materials, supplies or labor or by other cause beyond the reasonable control of the party (“**Unavoidable Delay**”), then the specified time for performance shall be extended by at least the amount of the Unavoidable Delay, or other mutually agreed-upon longer period.

5.4 **Failure to Cure.** After providing notice and opportunity to cure pursuant to this Article 5, either party may pursue the remedies set forth in Article 6 herein.

5.5 **Limitation / Severability of VMC Default.** Notwithstanding anything to the contrary in this Agreement, no default by VMC hereunder with respect to a particular portion of the Site shall constitute a default applicable to any other portion of the Site, and any remedy to the City arising by reason of such default shall be applicable solely to the portion of property where the default has occurred. Similarly, the obligations of VMC and a successor in interest to whom a portion of the Site is transferred or assigned shall be several and no default hereunder in performance of a covenant or obligation by VMC or such successor in interest shall constitute a default by the other party, and any remedy to City arising by reason of such default shall be solely applicable to the defaulting party and the portion of the Site owned thereby. No default

by VMC under this Agreement shall inure to any other property within the City that VMC may own or operate upon the Effective Date as defined in Section 10.4 or in the future.

ARTICLE 6. DISPUTE RESOLUTION

6.1 **Arbitration / Mediation.** Except as provided herein, no legal action or equitable proceeding to enforce the provisions herein with respect to any dispute, claim or controversy arising out of or relating to this Agreement may be commenced until the matter has been submitted to the Inland Empire office of Judicial Arbitration & Mediation Services, Inc. (“JAMS”) for nonbinding mediation. Any party may commence mediation by providing to JAMS and the other party or parties involved in the dispute a written request for mediation, setting forth the subject of the dispute and the relief requested. The parties covenant that they will participate in the mediation in good faith, and that they will share equally in its costs.

6.1.1 **Confidentiality.** All offers, promises, conduct and statements, whether oral or written, made in the course of mediation by any of the parties, their agents, employees, experts and attorneys and by the mediator and any JAMS employees, are confidential, privileged and inadmissible for any purpose, including impeachment, in any litigation or other proceeding involving the parties, provided that evidence that is otherwise admissible or discoverable shall not be rendered inadmissible or non-discoverable as a result of its use in the mediation.

6.1.2 **Equitable Relief.** Any party may seek equitable relief prior to the mediation to preserve the status quo pending the completion of that process. Except for such an action to obtain equitable relief, none of the parties may commence a civil action with respect to the matters submitted to mediation until after the completion of the initial mediation session, or forty-five (45) days after the date of filing the written request for mediation, whichever occurs first. Mediation may continue after the commencement of a civil action, if the parties so desire.

6.1.3 **Selection of Mediator.** The parties will cooperate with JAMS and with one another in selecting a mediator from JAMS’ panel of neutrals and in scheduling the mediation proceedings. In the event that the parties are unable to agree upon a mediator within the greater of ten (10) days or the period of time allowed by JAMS for them to select a mediator, JAMS will provide a list of three available retired judges and each party may strike one provided that, if more than two parties are involved in the mediation, JAMS will provide a list with a number of judges equal to the number of parties involved in the mediation. The remaining judge (or if there are more than one, the one selected by the administrator of the Inland Empire office of JAMS) will serve as the mediator.

6.1.4 **Enforceability of Mediation Requirement.** The provisions of Section 6.1 may be enforced by any Court of competent jurisdiction, and the party seeking enforcement shall be entitled to an award of all costs, fees and expenses, including attorneys' fees, to be paid by the party against whom enforcement is ordered.

6.2 **Other Remedies.** Either party may, consistent with the requirements of Article 6 herein, institute legal or equitable proceedings to cure, correct or remedy any default under this Agreement, to specifically enforce any covenant or agreement herein, to seek declaratory relief, to enjoin any threatened or attempted violation of the provisions of this Agreement or to seek damages from any other party as a result of any breach or alleged breach of such party's obligations hereunder.

6.2.1 **Termination.** City may terminate this Agreement for default under Section 65865.1 of the Government Code only after first pursuing mediation of the default, as set out in Section 6.1, and thereafter seeking specific performance in superior court. VMC shall have no unilateral right to terminate this agreement.

6.2.2 **Mutual Cancellation.** The parties may mutually agree to cancel this Agreement pursuant to Section 65868 of the Government Code.

6.3 **Effect of Termination or Cancellation.** The parties agree that if this Agreement is terminated for any reason, vesting of the entitlements under the Revised Approvals shall be determined using legal principles applicable to mining use entitlements generally. The fact that this Agreement may be entered into prior to Final Approval of the Revised Approvals is not intended to change the application of vesting law to the Site. The Revised Approvals shall be viewed in a manner consistent with any other mining site that may have been permitted and operated without the adoption of a development agreement.

6.3.1 **Survival of Reclamation Requirements.** VMC's reclamation obligations under the Revised Reclamation Plan shall be governed by applicable law notwithstanding termination or cancellation of this Agreement.

ARTICLE 7. TRANSFERS AND ASSIGNMENTS

7.1 **Assignment of Interests, Rights and Obligations.** VMC may assign its rights to the Site, or any portion thereof, or any activities permitted thereon, to any successor in interest, which rights shall run with the Site. Each successor in interest to VMC shall be bound by all of the terms and provisions hereof applicable to that portion of the Site acquired by it. Subject to the foregoing, this Agreement shall be binding upon and inure to the benefit of the parties' successors and assigns.

7.2 **Notice to City.** VMC shall provide City with written notice of any sale, transfer or assignment of all or any portion of the Site at least thirty (30) days in advance of such action.

7.3 **Release of VMC.** Upon the sale, transfer, or assignment, in whole or in part, of VMC's rights and interests in the Site, VMC shall be released from its obligations under this Agreement, the Original Approvals, the Revised Approvals, and any Future Approvals, with respect to the portion of the Site transferred, provided that VMC provides written notice of such transfer to City, and the successor in interest expressly assumes in writing VMC's obligations under this Agreement, including without limitation VMC's obligation to pay the Extraction Royalty.

ARTICLE 8. AMENDMENT

8.1 **Amendment to Agreement.** This Agreement may be amended or voluntarily canceled only by mutual consent of the parties in writing, in accordance with the provisions of Section 65868 of the Government Code. This Agreement may also be amended, subject to the provisions of Section 65868 of the Government Code, between a successor in interest who has acquired a portion of the Site from VMC and City as to the portions of the Site then owned by such successor in interest.

8.2 **Amendments or Modifications to Entitlements.** The parties acknowledge and agree that amendments or modifications to existing entitlements on the Site, including without limitation the Revised Approvals, may be necessary or beneficial from time to time. City shall not require an amendment to this Agreement for any amendment or modification to VMC's existing entitlements on the Site unless such amendment or modification alters any of the rights or uses vested under Section 1.1 herein, except that the parties may mutually agree to an amendment pursuant to Section 8.1 above.

8.3 **Other VMC Properties and Entitlements.** The parties acknowledge and agree that VMC may currently and during the term of this Agreement acquire, operate, entitle, transfer and otherwise control other property within the City, including for the purpose of benefiting operations on the Site ("**Offsite Activities**"). City shall not require an amendment to this Agreement or the Revised Approvals as a condition to reviewing, approving, amending, or modifying any Offsite Activities, except that the parties may mutually agree to an amendment pursuant to Section 8.1 above.

8.4 **Amendments to Article 4.** Article 4 of this Agreement shall not be amended except by mutual consent of the parties pursuant to Section 8.1 above.

ARTICLE 9. LEGAL CHALLENGE

9.1 **Third Party Legal Challenge.** In the event any legal action, referendum, or special proceeding is commenced by any person or entity other than a party to this Agreement challenging this Agreement, the Revised Approvals or Future Approvals, including the sufficiency of any environmental review in connection therewith, VMC shall defend, indemnify and hold City, its directors, officials, officers, employees, volunteers and agents free and harmless from any and all claims demands, causes of action, costs, expenses, liability, loss, damage or injury of any kind, in law or equity, in any manner arising out of or pertaining to such legal action, referendum, or special proceeding. The parties agree to cooperate with each other in good faith as VMC defends and indemnifies City from such claims or lawsuits. In addition, the City must obtain VMC's consent to settle or otherwise resolve any such legal action or special proceeding that requires or contemplates changes to any entitlements on the Site or this Agreement. Notwithstanding, and in addition to, the foregoing, and to the fullest extent permitted by law, VMC shall defend, indemnify and hold the City, its directors, officials, officers, employees, volunteers and agents free and harmless from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury of any kind, in law or equity, to property or persons, including wrongful death, in any manner arising out of, pertaining to, or incident to any alleged acts, errors or omissions of VMC, its officials, officers, employees, subcontractors, consultants or agents in connection with the performance of VMC under this Agreement or the entitlements on the Site, including without limitation the payment of all consequential damages, expert witness fees and attorney's fees and other related costs and expenses. VMC shall defend, at VMC's own cost, expense and risk, any and all claims, suits, actions or other proceedings of every kind covered by this Section 9.1 that may be brought or instituted against City or its directors, officials, officers, employees, volunteers and agents. VMC shall pay and satisfy any judgment, award or decree that may be rendered against City or its directors, officials, officers, employees, volunteers and agents as part of any such claim, suit, action or other proceeding. VMC shall also reimburse City for the cost of any settlement paid by City or its directors, officials, officers, employees, agents or volunteers as part of any such claim, suit, action or other proceeding. Such reimbursement shall include payment for City's attorney's fees and costs, including expert witness fees. VMC shall reimburse City and its directors, officials, officers, employees, agents, and/or volunteers, for any and all legal expenses and costs incurred by each of them in connection therewith or in enforcing the indemnity herein provided. VMC's obligation to indemnify shall survive expiration or termination of this Agreement, and shall not be restricted to insurance proceeds, if any, received by the City, its directors, officials, officers, employees, agents, or volunteers.

9.2 **Effect of Successful Legal Challenge.**

9.2.1 **Revised Approvals.** A successful challenge to the Revised Approvals and/or a determination that the Revised Approvals are invalid for any reason shall not affect the validity of the Original Approvals according to the terms thereof.

9.2.2 **Agreement.** A decision invalidating or limiting this Agreement for any reason shall not affect any entitlement or improvement on the Site if otherwise vested under established law.

ARTICLE 10. GENERAL PROVISIONS

10.1 **Parties to Agreement.** The parties to this Agreement are:

10.1.1 **City.** The City of Corona, a political subdivision of the State of California, exercising general governmental functions and power.

10.1.2 **VMC.** CalMat Co., dba Vulcan Materials Company, West Region, a California corporation, which leases the Site and any successors in interest.

10.2 **Enforceability.** This Agreement is only enforceable by the parties hereto, unless specified otherwise herein.

10.3 **Pricing Discount.** VMC shall, upon request from City, provide City with a ten percent (10%) discount on the price for aggregate product purchased by City for City projects undertaken directly by City. The discount shall apply to the current selling price for the requested product at the time of purchase or the average selling price for the product during the three (3) calendar months preceding the City's request, whichever is less. As provided in Section 4.3, PCC Material and Non-PCC Material sold to the City at a discount pursuant to this Section shall not be subject to the Extraction Royalty.

10.4 **Effective Date.** Notwithstanding Section 17.87.280 of the Corona Municipal Code, the date this Agreement is executed by the parties, and the date this Agreement is recorded by VMC pursuant to Section 10.20 herein, this Agreement shall become effective only following (a) City approval of the Revised Approvals ("**Effective Date**").

10.5 **Term of Agreement.** This Agreement shall commence upon the Effective Date as set forth in Section 10.4 herein, and shall continue in full force and effect for so long as the Revised Approvals remain in effect, which is for the life of material reserves on the Site or 100 years, whichever is shorter, unless terminated earlier as provided herein. Upon terminations or

expiration of the term, this Agreement shall have no force and effect, subject, however, to post-termination obligations, if any, of the parties as set forth herein.

10.6 Covenants Run with the Land. Each and every purchaser, successor, assignee or transferee of an interest in the Site, or any portion thereof, shall be obligated and bound by the terms and conditions of this Agreement, and shall be the beneficiary thereof and a party thereto, but only with respect to the Site, or such portion thereof, sold, assigned, or transferred to it.

10.7 No Conflicting Enactment. The City shall not support or adopt any initiative, referendum, moratorium, ordinance, or policy, or take any other action, if such support, adoption, or other action would violate the terms or intent of this Agreement, unless such action is otherwise permitted or required by law. VMC reserves the right to challenge any such ordinance or other measure in a court of law should it become necessary to protect its rights under this Agreement or the Revised Approvals.

10.7.1 State and Federal Laws. As provided in California Government Code Section 65869.5, and notwithstanding any other provisions of this Agreement, this Agreement shall not preclude the application to the Site of changes in the City laws, regulations, plans or policies, to the extent that such changes in the City laws, regulations, plans or policies are specifically mandated and required to be applied to the Site by changes in state or federal laws or regulation.

10.7.2 Further Consistent Discretionary Actions. Nothing in this Agreement shall be construed to limit the authority or the obligation of the City to hold legally required public hearings, or to limit the discretion of the City and any of its officers or officials in complying with its adopted rules, regulations and policies which require the City officials or officers to exercise discretion, which may include, without limitation, the discretion to approve, impose conditions upon or deny any Offsite Activities or Future Approvals.

10.8 Notice. Any notice, request, direction, demand, consent, waiver, approval or other communication required or permitted to be given hereunder shall not be effective unless it is given in writing and shall be delivered (a) in person, (b) by certified mail, postage prepaid, return receipt requested, (c) by facsimile, or (d) by a commercial overnight courier that guarantees next day delivery and provides a receipt and addressed to the parties at the addresses stated below:

To City: Joanne Coletta
Community Development Director
City of Corona
400 S. Vicentia Avenue
Corona, CA 92882
Tel: (951) 736-2262

With copies to: Dean R. Derleth, Esq.
City Attorney
City of Corona
400 S. Vicentia Avenue
Corona, CA 92882
Tel: (951) 279-3523

To VMC: Jim Gore
Permitting Manager
CalMat Co., dba Vulcan Materials Company, West Region
500 N. Brand Blvd., Suite 500
Glendale, CA 91203
Tel: (818) 553-8813

With copies to: Brian Ferris, Esq.
Vice President, Assistant General Counsel
CalMat Co., dba Vulcan Materials Company, West Region
500 N. Brand Blvd., Suite 500
Glendale, CA 91203
Tel: (818) 553-8813

Service of any such notice or other communications so made shall be deemed effective on the day of actual delivery (whether accepted or refused) as evidenced by answerback if by facsimile, as shown by the addressee's return receipt if by certified mail, or as confirmed by the courier service if by courier; provided, however, that if such actual delivery occurs after 5:00 p.m. (local time where received) or on a non-business day, then such notice or demand so made shall be deemed effective on the first business day following the day of actual delivery. Any party may change its address for notice by giving ten (10) days' notice of such change in the manner provided for in this Section.

10.9 **VMC Release.** Except for non-damage remedies, including the remedy of specific performance, VMC, for itself, its successors and assignees, hereby releases City, its officers, agents and employees from any and all claims, demands, actions or suits of any kind or nature arising out of any liability, known or unknown, present or future, including but not limited to, any claim or liability, based or asserted, pursuant to Article I, Section 19 of the

California Constitution, the Fifth and Fourteenth Amendments to the United States Constitution, or any other law or ordinance which seeks to impose any other liability or damage, whatsoever, upon City because it entered into this Agreement or because of the terms of this Agreement. In connection with the release outlined in this Section, VMC waives and relinquishes any rights and benefits it may have 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 FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR.

City's Initials: _____ VMC's Initials: _____

10.10 Expenses and Costs. Unless a separate agreement is duly executed by both VMC and the City and only to the extent as set forth in such separate agreement, each party hereto shall be solely responsible for such party's own expenses and costs, including attorneys' fees, incurred in connection with the analysis, negotiation and preparation of this Agreement.

10.11 Governing Law and Venue. This Agreement shall be construed and enforced in accordance with the laws of the State of California, and venue shall be in Riverside County.

10.12 Project Is A Private Undertaking. It is agreed between the parties that the Project is a private development, that neither party is acting as the agent of the other, that each party is an independent contracting entity with respect to the terms, covenants and conditions contained in this Agreement, and that City has no interest therein except as authorized in the exercise of its governmental functions. No partnership, joint venture or other association of any kind is formed by this Agreement. The only relationship between City and VMC is that of a governmental entity regulating the development of private property and the owner of such property.

10.13 Attorneys' Fees. If legal action by either party is brought against the other party because of an alleged default under the terms and conditions of this Agreement or to enforce a provision of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees and court costs.

10.14 Invalidity of Agreement / Severability. If this Agreement in its entirety is determined by a Court to be invalid or unenforceable, this Agreement shall automatically terminate as of the date of final entry of judgment. If any provision of this Agreement is determined by a Court to be invalid and unenforceable, or if any provision of this Agreement is rendered invalid or unenforceable according to the terms of any state or federal law that became effective after the date this Agreement is executed by all parties, the remaining provisions shall

continue in full force and effect. Provided, however, notwithstanding the foregoing, if VMC determines such provision or provisions are material to its entering into this Agreement, then VMC in its sole and absolute discretion, may elect to terminate this Agreement by giving written notice to City.

10.15 **Time.** Time is of the essence of this Agreement.

10.16 **Entire Agreement.** This Agreement, including the Recitals set forth above and exhibits attached hereto, constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior negotiations, discussions and agreements between the parties in connection therewith, and no parol evidence of any prior or other agreement shall be permitted to contradict or vary the terms hereof. All exhibits are incorporated herein by this reference.

10.17 **No Third-Party Beneficiaries.** This Agreement is for the exclusive benefit of City, VMC and its successors in interest, and shall not be construed to be for the benefit of, or be enforceable by, any third party.

10.18 **Good Faith and Fair Dealing.** No party shall do anything that shall have the effect of materially harming or injuring the right of the other party to receive the benefits provided for in this Agreement; each party shall refrain from doing anything that would render its performance, or the performance by the other party, under this Agreement impossible; and each party shall do everything that this Agreement contemplates that such party shall do in order to accomplish the goals and purposes of this Agreement.

10.19 **Recordation of Agreement.** VMC shall record this Agreement and any amendment or cancellation thereof with the Riverside County Recorder within ten (10) days of the date this Agreement is executed by all parties hereto, or, in the case of an amendment, within ten (10) days after such amendment is fully executed by the parties, in accordance with Section 65865.5 of the Government Code. When recording this Agreement, VMC shall record this Agreement and Exhibits A (Site Map) and B (Legal Description) only. The remaining exhibits, while incorporated in and made a part of this Agreement pursuant to Section 10.16 herein, shall not be recorded due to their volume. This Agreement and all exhibits shall be bound and retained by the City Clerk and Community Development Department for the term of this Agreement, with a copy provided to VMC.

10.20 **Counterparts.** This Agreement may be executed in one or more counterparts each of which shall be deemed an original, but all of which shall constitute one and the same document.

CITY'S SIGNATURE PAGE FOR
DEVELOPMENT AGREEMENT
BY AND BETWEEN THE
CITY OF CORONA AND CALMAT CO, DBA VULCAN MATERIALS COMPANY,
WEST REGION

CITY OF CORONA
a California municipal corporation

By: _____
Karen Spiegel
Mayor

ATTEST:

By: _____
Lisa Mobley
Chief Deputy City Clerk

APPROVED AS TO FORM:

By: _____
Dean Derleth
City Attorney

**VMC'S SIGNATURE PAGE FOR
DEVELOPMENT AGREEMENT
BY AND BETWEEN THE
CITY OF CORONA AND CALMAT CO, DBA VULCAN MATERIALS COMPANY,
WEST REGION**

CALMAT CO.,
a Delaware corporation
dba VULCAN MATERIALS COMPANY, WEST REGION

By: _____

Its: _____

By: _____

Its: _____

APPROVED AS TO FORM:

By: _____

Brian Ferris, Esq.
Vice President, Assistant General Counsel
CalMat Co., dba Vulcan Materials Company, West Region

EXHIBIT "A"
TO
DEVELOPMENT AGREEMENT
BY AND BETWEEN THE
CITY OF CORONA
AND
CALMAT CO, DBA VULCAN MATERIALS COMPANY, WEST REGION

SITE MAP

[SEE ATTACHED ONE (1) PAGE]

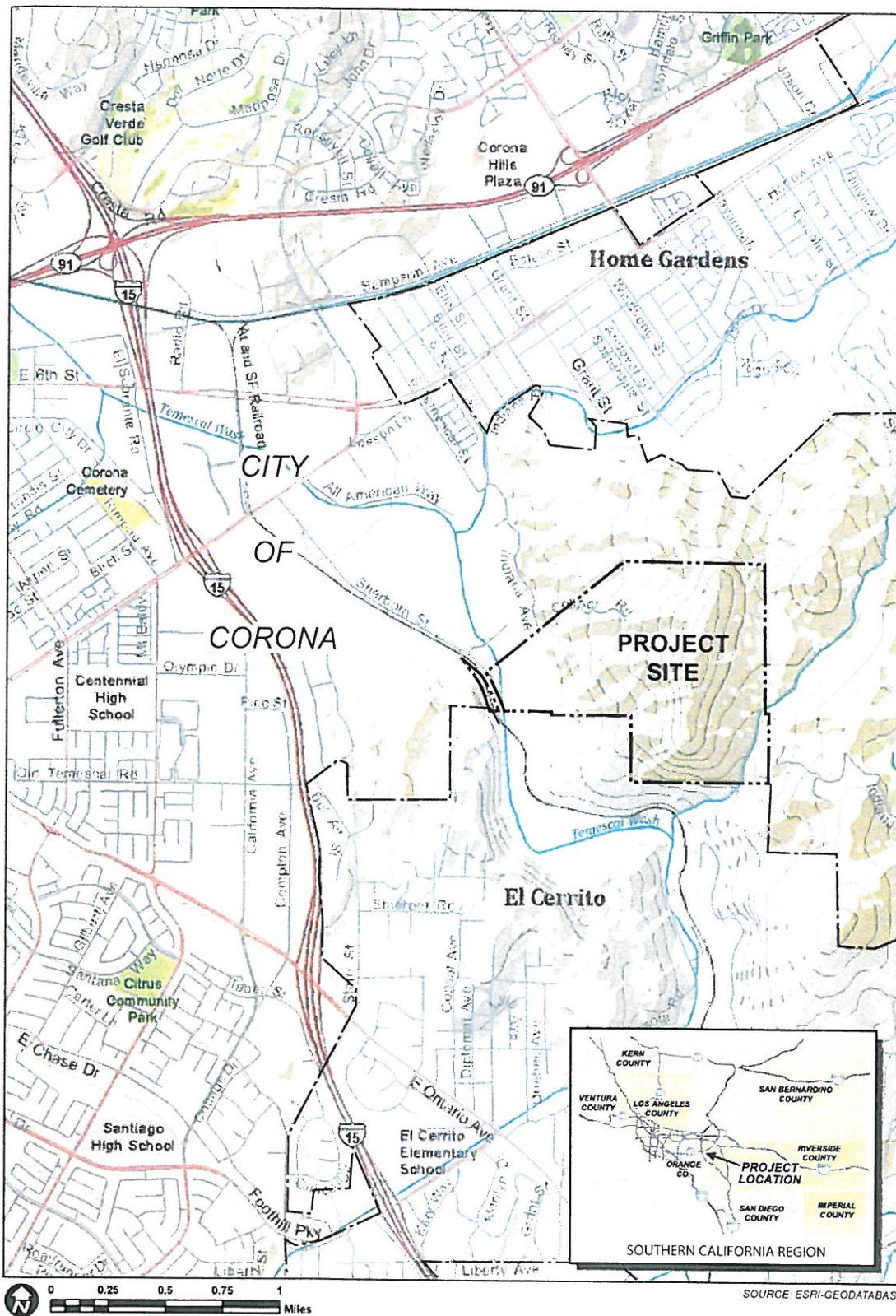


EXHIBIT "B"
TO
DEVELOPMENT AGREEMENT
BY AND BETWEEN THE
CITY OF CORONA
AND
CALMAT CO, DBA VULCAN MATERIALS COMPANY, WEST REGION

LEGAL DESCRIPTION

[SEE ATTACHED TWO (2) PAGES]

LEGAL DESCRIPTION

DIVISION I:

THAT PORTION OF SECTION 33, TOWNSHIP 3 SOUTH, RANGE 6 WEST, SAN BERNARDINO MERIDIAN, IN THE CITY OF CORONA, STATE OF CALIFORNIA, ACCORDING TO THE OFFICIAL PLAT THEREOF, DESCRIBED AS FOLLOWS:

BEGINNING AT THE CENTER OF SECTION 33;
THENCE NORTH $88^{\circ} 59' 46''$ EAST ON THE NORTH LINE OF THE SOUTHEAST 1/4 OF SAID SECTION 2635.60 FEET TO THE EAST 1/4 CORNER OF SAID SECTION;

THENCE ALONG THE EASTERLY LINE OF SAID SECTION, SOUTH $0^{\circ} 09' 48''$ WEST TO THE SOUTHEAST CORNER OF SAID SECTION 33;

THENCE WESTERLY, ALONG THE SOUTHERLY LINE OF SAID SECTION 33, 3900.17 FEET TO THE NORTHWEST CORNER OF THE NORTHEAST 1/4 OF THE NORTHWEST 1/4 OF SECTION 4, TOWNSHIP 4 SOUTH, RANGE 6 WEST, SAN BERNARDINO BASE AND MERIDIAN;

THENCE CONTINUING WESTERLY, ALONG THE SOUTHERLY LINE OF SAID SECTION 33 TO THE SOUTHERLY EXTENTION OF THE EASTERLY LINE OF LOT 7 OF CAJALCO TRACT NO. 1, AS SHOWN BY MAP ON FILE IN BOOK 8, PAGE 38 OF MAPS, RECORDS OF RIVERSIDE COUNTY, CALI FORNIA;

THENCE NORTH $12^{\circ} 05' 30''$ EAST, ON SAID SOUTHERLY EXTENSION OF THE EAST LINE OF LOT 7, 58.41 FEET TO THE SOUTHEAST CORNER OF LOT 7;

THENCE NORTH $88^{\circ} 40' 31''$ EAST, 250 FEET;
THENCE NORTH $0^{\circ} 09' 12''$ EAST, 800 FEET;
THENCE SOUTH $88^{\circ} 40' 31''$ WEST, 373.79 FEET TO THE EAST LINE OF LOT 7 OF CAJALCO TRACT NO. 1;
THENCE NORTH $33^{\circ} 25' 13''$ WEST, ON THE EASTERLY LINE OF SAID LOT 7, 505.26 FEET TO THE MOST EASTERLY CORNER OF LOT 6 OF SAID CAJALCO TRACT NO. 1;
THENCE NORTH $53^{\circ} 26' 36''$ EAST, 2247.06 FEET TO THE POINT OF BEGINNING.

DIVISION II:

LOT 7 OF CAJALCO TRACT NO. 1, AS SHOWN BY MAP ON FILE IN BOOK 8, PAGE 38 OF MAPS, IN THE CITY OF CORONA, STATE OF CALIFORNIA, ACCORDING TO THE RECORDS OF THE COUNTY OF RIVERSIDE.

DIVISION III:

A PORTION OF THE SOUTHWEST 1/4 OF SECTION 33, TOWNSHIP 3 SOUTH, RANGE 6 WEST, SAN BERNARDINO AND MERIDIAN, IN THE CITY OF CORONA, STATE OF CALIFORNIA, ACCORDING TO THE OFFICIAL PLAT THEREOF, DESCRIBED AS FOLLOWS :

BEGINNING AT THE SOUTHEAST CORNER OF LOT 7 OF CAJALCO TRACT NO. 1, AS SHOWN BY MAP ON FILE IN BOOK 8, PAGE 38 OF MAPS, RECORDS OF SAID COUNTY;

THENCE EASTERLY, PARALLEL WITH THE SOUTHERLY LINE OF SAID SECTION 33, 250 FEET;
THENCE NORTHERLY, PARALLEL WITH THE EAST LINE OF THE SOUTHWEST 1/4 OF SAID SECTI ON, 800 FEET;
THENCE WESTERLY, PARALLEL WITH THE SOUTHERLY LINE OF SAID SECTION TO THE EASTERLY LINE OF LOT 7 CAJALCO TRACT NO. 1;
THENCE SOUTHERLY ALONG THE EASTERLY LINE OF SAID LOT TO THE POINT OF BEGINNING.

DIVISION IV:

THE NORTHEAST 1/4 OF THE NORTHWEST 1/4 OF SECTION 4, TOWNSHIP 4 SOUTH, RANGE 6 WEST, SAN BERNARDINO AND MERIDIAN, IN THE CITY OF CORONA, STATE OF CALIFORNIA, ACCORDING TO THE OFFICIAL PLAT THEREOF.

DIVISION V:

THE NORTHWEST 1/4 OF THE NORTHEAST 1/4 OF SECTION 4, TOWNSHIP 4 SOUTH, RANGE 6 WEST, SAN BERNARDINO BASE AND MERIDIAN, IN THE CITY OF CORONA, STATE OF CALIFORNIA, ACCORDING TO THE OFFICIAL PLAT THEREOF.

DIVISION VI:

ALL OF THAT PROPERTY DESCRIBED IN DOCUMENT #2003-520940 OF OFFICIAL RECORDS, IN THE COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, RECORDED ON JULY 14, 2003; IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, SAID PROPERTY DESCRIBED IN SAID DOCUMENT IS ALSO DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEAST CORNER OF SAID PROPERTY DESCRIBED IN SAID DOCUMENT, SAID POINT ALSO BEING ON THE SOUTHWESTERLY RIGHT OF WAY LINE OF SHERBORN STREET, SAID RIGHT OF WAY LINE BEING 30 FEET SOUTHWESTERLY OF, AND PARALLEL AND CONCENTRIC WITH, THE CENTERLINE OF SHERBORN STREET, THENCE WESTERLY ALONG THE SOUTH LINE OF SAID PROPERTY, N89°00'19"W, 139.52 FEET, TO THE SOUTHWESTERLY CORNER OF SAID PROPERTY, SAID POINT ALSO BEING ON THE NORTHEASTERLY LINE OF THE ATCHISON, TOPEKA, AND SANTA FE RAILWAY COMPANY RIGHT OF WAY, SHOWN AS S.B.E. PARCEL NO. 804-33-27A-PARCEL 1 OF RIGHT OF WAY AND TRACK MAP OF THE LOS ANGELES DIVISION-TEMECULA DISTRICT, ON FILE IN THE OFFICE OF THE COUNTY ASSESSOR OF SAID RIVERSIDE COUNTY;

THENCE NORTHWESTERLY ALONG SAID RAILWAY RIGHT OF WAY LINE AND SOUTHWESTERLY PROPERTY LINE, N18°19'37"W, 286.06 FEET, TO THE BEGINNING OF A TANGENT CURVE, CONCAVE SOUTHWESTERLY, HAVING A RADIUS OF 979.93 FEET;

THENCE CONTINUING NORTHWESTERLY ALONG SAID RAILWAY RIGHT OF WAY AND SOUTHWESTERLY PROPERTY LINE ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 42°01'52", A DISTANCE OF 718.86 FEET, TO THE MOST NORTHWESTERLY CORNER OF SAID PROPERTY, SAID POINT ALSO BEING ON THE AFORE DESCRIBED SOUTHWESTERLY RIGHT OF WAY LINE OF SHERBORN STREET;

THENCE SOUTHEASTERLY ALONG SAID STREET RIGHT OF WAY LINE AND NORTHEASTERLY PROPERTY LINE OF SAID PROPERTY, S60°21'30"E, 74.98 FEET, TO THE BEGINNING OF A TANGENT CURVE, CONCAVE SOUTHWESTERLY, HAVING A RADIUS OF 1,298.57 FEET;

THENCE CONTINUING SOUTHEASTERLY ALONG SAID STREET RIGHT OF WAY LINE AND NORTHEASTERLY PROPERTY LINE ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 42°32'11", A DISTANCE OF 964.06 FEET;

THENCE CONTINUING SOUTHEASTERLY ALONG SAID STREET RIGHT OF WAY LINE AND NORTHEASTERLY PROPERTY LINE, S17°49'19"E, 51.74 FEET, TO THE POINT OF BEGINNING.

CONTAINING 1.568 ACRES, MORE OR LESS.

**EXHIBIT "C"
TO
DEVELOPMENT AGREEMENT
BY AND BETWEEN THE
CITY OF CORONA
AND
CALMAT CO, DBA VULCAN MATERIALS COMPANY, WEST REGION

SURFACE MINING PERMIT 93-01**

[SEE ATTACHED TEN (10) PAGES]

[This exhibit is on file with the City Clerk and the Community Development Department]

EXHIBIT "D"
TO
DEVELOPMENT AGREEMENT
BY AND BETWEEN THE
CITY OF CORONA
AND
CALMAT CO, DBA VULCAN MATERIALS COMPANY, WEST REGION

1990 RECLAMATION PLAN

[SEE ATTACHED TWENTY-SEVEN (27) PAGES]

[This exhibit is on file with the City Clerk and the Community Development Department]

EXHIBIT "E"
TO
DEVELOPMENT AGREEMENT
BY AND BETWEEN THE
CITY OF CORONA
AND
CALMAT CO, DBA VULCAN MATERIALS COMPANY, WEST REGION

1990 FINAL ENVIRONMENTAL IMPACT REPORT

[SEE ATTACHED FIVE HUNDRED FIFTY (550) PAGES]

[This exhibit is on file with the City Clerk and the Community Development Department]

**EXHIBIT "F"
TO
DEVELOPMENT AGREEMENT
BY AND BETWEEN THE
CITY OF CORONA
AND
CALMAT CO, DBA VULCAN MATERIALS COMPANY, WEST REGION

PRE-ANNEXATION AGREEMENT**

[SEE ATTACHED EIGHT (8) PAGES]

[This exhibit is on file with the City Clerk and the Community Development Department]

**EXHIBIT "G"
TO
DEVELOPMENT AGREEMENT
BY AND BETWEEN THE
CITY OF CORONA
AND
CALMAT CO, DBA VULCAN MATERIALS COMPANY, WEST REGION

REVISED SURFACE MINING PERMIT**

[SEE ATTACHED FIFTY (50) PAGES]

[This exhibit is on file with the City Clerk and the Community Development Department]

EXHIBIT "H"
TO
DEVELOPMENT AGREEMENT
BY AND BETWEEN THE
CITY OF CORONA
AND
CALMAT CO, DBA VULCAN MATERIALS COMPANY, WEST REGION

REVISED RECLAMATION PLAN

[SEE ATTACHED FIFTEEN (15) PAGES]

[This exhibit is on file with the City Clerk and the Community Development Department]

EXHIBIT "I"
TO
DEVELOPMENT AGREEMENT
BY AND BETWEEN THE
CITY OF CORONA
AND
CALMAT CO, DBA VULCAN MATERIALS COMPANY, WEST REGION

ADDENDUM TO 1990 FINAL ENVIRONMENTAL IMPACT REPORT

[SEE ATTACHED EIGHTY-SEVEN (87) PAGES]

[This exhibit is on file with the City Clerk and the Community Development Department]

**EXHIBIT “J”
TO
DEVELOPMENT AGREEMENT
BY AND BETWEEN THE
CITY OF CORONA
AND
CALMAT CO, DBA VULCAN MATERIALS COMPANY, WEST REGION**

APPLICABLE LAW

Contents

1. City of Corona Municipal Code Title 15 – Buildings and Construction
2. City of Corona Municipal Code Title 16 – Subdivisions
3. City of Corona Municipal Code Title 17 – Zoning
4. City of Corona Municipal Code Title 18 – Floodplain Management
5. City of Corona Municipal Code Title 19 – Surface Mining and Regulations
6. City of Corona General Plan
7. Western Riverside County Multiple Species Habitat Conservation Plan/Natural Community Conservation Plan
8. Implementing Agreement for the Western Riverside County Multiple Species Habitat Conservation Plan/Natural Community Conservation Plan

[SEE ATTACHED EIGHT THOUSAND TWENTY-FOUR (8,024) PAGES]

[This exhibit is on file with the City Clerk and the Community Development Department]

DA13-002
EXHIBIT C
ENVIRONMENTAL DOCUMENTATION

A COPY IS LOCATED AT
THE COMMUNITY DEVELOPMENT
FRONT COUNTER
FOR PUBLIC REVIEW

EXHIBIT C