

## Exhibit E

2015-9-10 Clean Consent Agreement

**THE HAZARDOUS MATERIALS AND WASTE MANAGEMENT DIVISION**

**DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT**

**STATE OF COLORADO**

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**CONSENT AGREEMENT**

**Number:**

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**IN THE MATTER OF IRG REDEVELOPMENT I, LLC**

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1. This Consent Agreement ("Consent Agreement") is issued and entered into by the Colorado Department of Public Health and Environment, Hazardous Materials and Waste Management Division (the "Department") pursuant to the Department's authority under the Colorado Hazardous Waste Act ("the Act"), sections 25-15-301 to 327, C.R.S., and Part 100, Section 100.10(d) of the Colorado Hazardous Waste Regulations ("the Regulations"), 6 CCR 1007-3, with IRG Redevelopment I, LLC ("IRGI").

**STATEMENT OF PURPOSE**

2. The purpose of this Consent Agreement is to establish the regulatory framework between the Department and IRGI related to: (1) the performance of limited initial pre-development activities on property owned by IRGI known as Lowry Vista, in which a portion overlies the former Lowry Air Force Base landfill known as Operable Unit 2 or OU2; (2) the additional post closure care obligations required from IRGI under the Regulations based on the closure status of OU2; IRGI and (3) to ensure that such limited pre-development activities are protective of human health and the environment.

**SCOPE OF THIS CONSENT AGREEMENT**

3. Lowry Assumption, LLC (LAC) is currently performing the post closure care requirements for OU2, pursuant to Consent Agreement 01-08-07-02 between the Department and LAC dated August 7, 2002 (the "2002 Consent Agreement"), the Regulations and the *Post-Closure Operations and Maintenance Plan (Appendix E)* and the *Post-Closure Monitoring Plan (Appendix G)* of the *Phase 2 Corrective Action Plan for the Operable Unit 2 Landfill Closure at Lowry*, dated November 5, 2003 (the "Post Closure Plan").

4. IRGI is not a party to the 2002 Consent Agreement or the Post Closure Plan. Remediation and post closure of OU2 is conducted by LAC and financed by the United States Air Force (“USAF”) in accordance with the Cooperative Agreement for Environmental Services between USAF, Lowry Economic Redevelopment Authority, and Lowry Assumption, LLC (the “Cooperative Agreement”). The Post Closure Plan and Cooperative Agreement do not contemplate the limited initial pre-development activities proposed by IRGI.

5. On December 10, 2013, IRGI submitted a *Revised Cap Penetration Plan for Subsurface Soil Borings* (“CPP”) to the Department for review and approval. The CPP proposes to penetrate the current OU2 cap to collect geotechnical, soils, groundwater, and soil gas data related to IRGI’s anticipated redevelopment of the site. The Department approved the CPP with conditions on December 23, 2013..

6. On September 28, 2012, IRGI submitted a *Request to Stockpile Soil on OU2 Landfill Cap*. (“SSP”) to the Department for review and approval. This request was revised on November 12, 2012. On December 2, 2013, IRGI submitted a *Stockpile Financial Assurance Cost Estimate and Stockpile Removal Timeframe Extension*. The SSP proposes to stockpile soil on the landfill cover for IRGI’s anticipated redevelopment of the site. The Department approved the SSP with conditions on December 31, 2013.

7. On December 6, 2013, IRGI submitted to the Department a *Field Investigation Work Plan* for OU2 and on December 19, 2013, IRGI submitted a *Field Investigation Work Plan Financial Assurance Cost Estimate for OU2* (“FIWP”). The FIWP outlines a scope of subsurface boring investigations on OU2. The Department approved the FIWP with conditions on December 31, 2013.

8. The CPP, SSP, SSP Assurances and the FIWP comprise all of the limited pre-development activities contemplated by this Consent Agreement. These limited pre-development activities proposed by IRGI may have an impact on OU2 in relation to the integrity of the landfill cap; the effectiveness of drainage and erosion controls; slope stability and groundwater control systems.

9. This Consent Agreement intends for IRGI to assume the additional post closure obligations, which are directly related to IRGI’s limited pre-development activities.

#### **FINANCIAL RESPONSIBILITY**

10. IRGI shall provide financial assurance in accordance with the Colorado Hazardous Waste Regulations (“the Regulations”), 6 CCR 1007-3, Part 266, related to its activities associated with its CPP and SSP, both, as approved by the Department. The mechanism for IRGI’s financial assurance must be approved by the

Department prior to commencement of any pre-development activities. The amount of financial assurance required will be the amount necessary to: (1) restore OU2 to its current closure condition, as set forth in the Phase 2 Corrective Action Plan, (2) cover the costs to repair and restore OU2 in response to the activities performed under the CPP, (3) cover the costs to repair and restore OU2 in response to the activities performed under the SSP, and (4) include costs that will be incurred by the Department for regulatory oversight to repair and restore OU2.

11. IRGI shall comply with the requirements of Section 266.13, regarding the cost estimate for activities associated with the CPP, SSP and FIWP required by this Consent Agreement.

2. IRGI shall provide and maintain liability coverage pursuant to Part 266.16 for claims arising from activities conducted pursuant to this Consent Agreement. IRGI shall provide liability coverage for sudden and non-sudden occurrences arising from activities conducted pursuant to this Consent Agreement.

13. IRGI shall comply with the requirements of Section 266.17, regarding the incapacity of IRGI, guarantors, or financial institutions issuing financial instruments required by this Consent Agreement.

## **DISPUTE RESOLUTION**

14. It is the intention of the parties that all disputes are resolved at the lowest possible level of authority as expeditiously as possible within the following framework. All timeframes for resolving disputes below may be lengthened by mutual consent.

15. Should the parties be unable to agree regarding any matter subject to this Consent Agreement, either party may submit a notice of dispute in writing as soon as practicable, but in no event to exceed ten (10) days of the failure to agree, to the designated representative of IRGI and the Hazardous Materials and Waste Management Remediation & Restoration Program Manager.

16. Should the designated representatives of IRGI and the Hazardous Materials and Waste Management Division Remediation & Restoration Program Manager be unable to agree within ten (10) days of the other Party's receipt of the Notice of Dispute, the matter shall be elevated to the designated representatives of IRGI and the Division Director, Hazardous Materials and Waste Management Division, Colorado Department of Public Health and Environment. If agreement cannot be reached within twenty (20) days, the Department shall confirm or modify its decision within an additional fourteen (14) days, and the confirmed or modified decision shall be deemed effective and subject to appeal in accordance with the Act.



21. IRGI shall submit a Notice of Completion to the Department upon completion of the CPP and SPP activities subject to this Consent Agreement.

**TERMINATION**

22. The parties may terminate this Consent Agreement upon one of the following:

- (a) Completion of the activities contemplated by this Consent Agreement and restoration of OU2 as required by the Department;
- (b) The Department and IRGI entering into a subsequent agreement; or
- (c) Mutual agreement of the parties.

**AUTHORIZATION TO SIGN**

23. The undersigned warrant that they are authorized to legally bind their respective principals to this Consent Agreement. This Consent Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same Consent Agreement.

FOR THE DEPARTMENT:

Gary Baughman	Date
(Title)	

FOR IRGI:

Peter Goffstein	Date
Senior Vice President	