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# **ATTACHMENT A**

**November 23, 2015 Letter,  
IRGI to Dr. Stephen TerMaath  
U.S. AIR FORCE**

**LETTER , NOVEMBER 23, 2015, IRGI TO  
COLORADO DEPARTMENT OF PUBLIC HEALTH AND  
ENVIRONMENT (“CDPHE LETTER”)**

**IRG Redevelopment I, LLC  
c/o Lowry Development Group  
11100 Santa Monica Boulevard, Suite 1850  
Los Angeles, California 90025**

November 23, 2015

Ms. Tracie M. White, P.E., Unit Leader  
Federal Facilities Remediation & Restoration Unit  
Hazardous Waste Management Division  
Colorado Department of Public Health and Environment  
HMWMD-FF-B2  
4300 Cherry Creek Drive South  
Denver, CO 80246-1530  
[tracie.white@state.co.us](mailto:tracie.white@state.co.us)

Mr. Curtis Stovall, P.E., Work Leader  
Solid Waste Permitting Unit  
Hazardous Waste Management Division  
Colorado Department of Public Health and Environment  
HMWMD-B2  
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***Via Regular and Electronic Mail***

Re: Former Lowry Air Force Base OU2 Landfill  
- Application for Approval of Modification of Environmental Covenant  
- Approval of Modification to Deed Restrictive Covenants  
- Execution of Consent Agreement  
- Approval to Implement Work Plans

Dear Ms. White and Mr. Stovall:

This letter seeks to resolve the years-long impasse between the Colorado Department of Public Health and Environment (“Department” or “CDPHE”) and the United States Air Force (Air Force”) regarding the Lowry Vista Project (“Project”) located on Operable Unit 2 (“OU2” or “Landfill”) - the former Lowry Air Force Base landfill. Despite IRG Redevelopment I, LLC’s (“IRGI”) repeated and express willingness to undertake studies, investigations and to provide financial assurances to move the Project forward, this governmental impasse has effectively halted development of the Project.

Ms. Tracie M. White, P.E., Unit Leader  
Mr. Curtis Stovall, P.E., Work Leader  
Colorado Department of Public Health and Environment  
November 23, 2015

To resolve this unfortunate and costly impasse, IRGI, as the owner of the Landfill, hereby submits this formal application to modify relevant provisions of the Environmental Covenant dated January 4, 2006.

IRGI requests that the Department review and approve this application and the supporting information pursuant to C.R.S. §25-15-319(h). The Department has sixty (60) days from receipt of this application to make a determination regarding the Modified EC and any such determination is subject to appeal. C.R.S. § 25-15-321(6) and (7), respectively.

IRGI has notified the United States Air Force (“Air Force”) and other interested persons of this application as required by C.R.S. §25-15-321(5). The AF Letter also requests approval of the Modified EC.

IRGI has also requested that the Air Force approve a modification of the Restrictive Covenants contained in the 2006 Colorado Deed and hereby requests the Department’s approval of same. (See **Attachment A**, Letter from Peter Goffstein to Dr. Stephen TerMaath, November 23, 2015, “**AF Letter**”).

IRGI also requests that the Department sign the Consent Agreement, previously forwarded to CDPHE on August 11, 2015. (See **Attachment B**, Consent Agreement, executed by IRGI on July 29, 2015, “**CA**”).

Approval of the Modified EC and Modified RC by CDPHE and the Air Force will remove the legal hurdles that the Department claims prevent it from using its lawful authority and responsibility to oversee the redevelopment of the Landfill. These approvals will also result in a financial assurances to the Air Force (and, by extension, CDPHE) in the event of the discovery of unknown conditions at the Landfill during and post-development. In addition, these approvals will allow IRGI to move forward with the Work Plans and development of the Project.

We look forward to your earliest response to the application and requests in this letter

## **I. Background**

### **A. Work Plans and Conditional Approvals**

For nearly three years, IRGI has sought approval from the Department and the Air Force to conduct limited pre-development Work Plans. (AF Letter §I.A.) These include the performance of a Revised Plan to Stockpile Soil on the OU2 landfill cap (“SSP”), a Lowry Vista Cap Penetration Plan (“CPP”) and a Field Investigation Work Plan (“FIWP”) (collectively “Work Plans”).

In December, 2013, CDPHE conditionally approved these Work Plans. (See, **Attachment C**, SSP; **Attachment D**, CCP; **Attachment E**, FIWP, respectively, **conditional approval letters**). The Department, however, imposed several conditions on its approval, including,

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Colorado Department of Public Health and Environment  
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among other things, that IRGI sign the Consent Agreement and a Modified Environmental Covenant, as well as provide certain financial assurances. IRGI has signed the Consent Agreement, is proposing a Modified EC, and is prepared to provide the financial assurances approved by the Department.

In addition to the IRGI conditions, CPDHE imposed three conditions requiring Air Force actions before IRGI could proceed with these Work Plans. The Air Force Conditions are:

First, that the Air Force provide “written confirmation” that the Work Plans are “consistent with the ... Restrictive Covenants in the Deed;”

Second, that the Air Force provide “written confirmation” that the activities proposed under the Work Plans “will not affect the Air Force’s warranties in the Deed;” and,

Third, that the Air Force provide “written approval” of the Work Plans before IRGI may commence the work.

While IRGI does not necessarily agree that the Air Force Conditions are legally required, we have made a good faith effort to obtain the requested approvals from the Air Force. The Air Force has responded that it has no requirement to, and will not, approve the Work Plans and will not provide the written confirmations requested by the Department.

This years-long impasse between the state and federal governments has, unfortunately, halted IRGI’s efforts to proceed with these limited, but important, environmental investigations and effectively halted IRGI’s plans to develop the Lowry Vista Project.

## **B. Environmental Covenant - Use Restrictions**

The 2006 Deed was issued in conjunction with a recorded Environmental Covenant granted to the State of Colorado. (*See Attachment F*, Environmental Covenant, “**EC**,” *see also Attachment G*, Colorado Deed, “**Deed**” §VII.D.1)

The current land Use Restriction in the EC states: “*Unless the Covenant is modified in accordance with the State’s statute and regulations*, OU2 will only be used as open space/non-irrigated park following closure.” (EC§1.a, emphasis added.) In addition, the EC includes restrictions that limit activities that might impact the final cover and remedy on OU2. (EC §1.b)

Under the Deed,<sup>1</sup> the Air Force “recognizes that [IRGI] may change the [EC] in accordance with [Colorado’s] Environmental Covenant Statute including but not limited to providing for limited disturbance of the final cover of OU2.” (Deed §VII.D.2(b)). The Air Force “agrees to consider such changes set forth in the Environmental Covenant for its Restrictive

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<sup>1</sup> The Deed was subsequently transferred to IRGI by Bargain and Sale Deed on January 19, 2006.

Ms. Tracie M. White, P.E., Unit Leader  
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Colorado Department of Public Health and Environment  
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Covenant.” (*Id.*) The Deed also provides that the Air Force is to be notified if IRGI requests a modification of the EC.<sup>2</sup> (Deed §VII.D.1)

### **C. Deed - Restrictive Covenants**

The Deed includes a separate Restrictive Covenant associated with OU2 (“RC”). Under the RC, IRGI, as the owner, “shall not disturb the integrity of the final cover ... unless necessary to comply with the requirements in the regulations of the Colorado Department of Public Health and Environment.” (Deed §VII.D.2(b)).

IRGI may, however, “request that the Air Force approve a modification or termination of any of the Restrictive Covenants” and the Air Force is obligated to “review any submitted information and may request additional information.” (*Id.*) No modification of the RC is effective unless the Air Forces approves of same; provided, however, that such “approval shall not be unreasonably withheld or delayed.” (*Id.*)

### **D. Enforceable Agreement**

The Enforceable Agreement between the Department and the Air Force includes the Air Force’s commitments that “all remedial action necessary to protect human health and the environment ... will be taken.” The EA allows the Department to enforce these commitments against the Air Force. (See, **Attachment H**, Enforceable Agreement, “EA”.)

The EA includes a provision that arguably requires the Department’s review and approval of the particular modification to the Deed RC’s sought by IRGI. (EA §III.F)

Critically, IRGI’s proposed Modified RC and Modified EC do not alter, in any way, the Air Force’s ultimate remedial obligations under the EA (or, for that matter, under CERCLA<sup>3</sup>); nor do the proposed changes modify in any way the Department’s ability to enforce the Air Force’s EA commitments.

## **II. Application for Modification of the Environmental Covenant**

As stated above, IRGI is hereby submitting this letter application for the Department’s review and approval of modifications of the EC. This application is made pursuant to Colorado’s Environmental Covenant Statute (C.R.S. 25-15-317, *et seq.*) and the applicable provisions of the EC, Deed and EA. Concurrently with this application, IRGI has formally notified the Air Force of the Modified EC as required by the Deed.

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<sup>2</sup> The AF Letter provides the required notification to the Air Force.

<sup>3</sup> The Comprehensive Environmental Response Compensation and Liability Act, a/k/a, Superfund.

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IRGI's proposed modification to the land use provision of the EC states: "Unless this Environmental Covenant is modified in accordance with the State's statute and regulations, the Property (OU2) may be developed in accordance with land use and development plans approved by local governments with jurisdiction over the Property." (*See Attachment I "Modified EC," §1.a.*)

The Modified EC also includes provisions previously proposed by the Department that would allow IRGI to conduct investigation activities on OU2. These provisions are intended to allow the disturbance of the final cover and other components of the OU2 remedy, *where such activities are allowed and approved by CDPHE* pursuant to applicable laws and regulations. (Modified EC §§1.c. and d.).

If the Department determines that the proposal to modify the environmental covenant will ensure protection of human health and the environment, it *shall approve* the proposal. (C.R.S §25-15-319(h), emphasis added.)

#### **A. Supporting Information – Modified EC**

In support of its application, IRGI is submitting the following information to demonstrate that the Modified EC will protect human health and the environment. IRGI is prepared to meet, at the Department's earliest convenience, and discuss any additional information the Department believes it may need.

##### **1. Benefits Memorandum**

The modification to the Use Restrictions in the EC will allow development of the Lowry Vista Project. This Project, when completed, not only ensures protection of human health and the environment, it will reduce the risks inherent in the current undeveloped status of the Landfill. (*See, Attachment J, Memorandum from IRGI to Steve TerMaath, USAF, December 9, 2014 "Benefits Memorandum"*). The Benefits Memorandum is submitted in support of this application for a modification of the Use Restriction in the EC.

Development of Lowry Vista will essentially create "two impermeable caps over much of the surface area of the landfill," which will, in turn, reduce pathways from residual waste materials to the public. Moreover, once the Project is completed, long-term risks will be addressed with mitigation measures such as vapor barriers, no groundwater use, no surface ponding of water, and on-going monitoring. (Benefits Memorandum, pp. 2, 5.)

##### **2. Work Plans**

The Modified EC also includes provisions to allow IRGI to conduct investigation activities on OU2, such as those identified in the Work Plans. This modification is intended to restate the Department's existing oversight authority and to allow disturbance of the final cover

Ms. Tracie M. White, P.E., Unit Leader  
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and other components of the OU2 remedy without further Air Force approvals. (Modified EC §§1.c. and d.). IRGI is prepared to begin implementation of the Work Plans, which we believe will provide additional and confirming data that will ensure that development of the Lowry Vista Project will enhance protection of human health and environment.

### **3. Special District Taxing Authority For Environmental Matters**

In addition, long-term operation and monitoring costs will be borne by the Lowry Vista Metro District, which has statutory authority to impose taxes to pay for environmental obligations related to development and future uses of the Landfill. (Benefits Memorandum §2) In short, the current remedy for OU2 will be significantly enhanced and improved by development of the Project and provide long-term protection of human health and environment. This information is submitted in support of the application to modify the EC.

### **4. Financial Assurances – Work Plans**

As you know, the Department's approvals of the SSP and the FIWP included conditions for IRGI to provide financial assurances in the amount of \$395,000 or \$813,000 (depending on the volume of soil delivered to the Landfill) and \$32,000, respectively. The Department's approval of the CCP included a similar condition, with the precise amount to be determined. IRGI will provide the financial assurances for the SSP and the FIWP and discuss with the Department the amount for the CCP. These financial assurances provide additional protection of human health and the environment and must be considered by the Department when evaluating the application for the Modified EC.

### **5. Financial Assurances – Unknown Conditions**

To further ensure protection of human health and the environment during development and post-development, over and above the Air Force's CERCLA §120 obligations (and over and above the Work Plan financial assurances), IRGI has prepared a financial assurance cost estimate. (See **Attachment K**, Letter from Burns & McDonnell to Peter Goffstein, IRGI, July 24, 2015, "**Assurance Letter**") The Assurance Letter has been provided to the Air Force with the AF Letter.

The Assurance Letter develops worst case scenarios that assume: (i) a "reasonable maximum likelihood" of discoveries of contaminants during, and post, development; and, (ii) that IRGI abandons the Project. Cost estimates are established for each of these worst case scenarios. Prior to beginning Project development, *and* once substantial development is complete, IRGI will submit to CDPHE and the Air Force financial instruments suitable to cover the cost estimates for each scenario.

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Mr. Curtis Stovall, P.E., Work Leader  
Colorado Department of Public Health and Environment  
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The Assurance Letter and IRGI's commitment to provide financial assurances are submitted to the Department in support of the application for the Modified EC and must be considered by the Department when evaluating the Modified EC.

### **III. Modification - Deed Restrictive Covenant**

In addition, IRGI is formally requesting that the Air Force approve a modification of the Restrictive Covenant in the Deed. (*See Attachment L, "Modified RC"*).

Although the EA is somewhat ambiguous regarding the Department's review and approval of the specific Deed modification sought by IRGI,<sup>4</sup> in the interests of transparency and cooperation in this matter, IRGI is requesting that the Department review and approve the Modified RC.

The Modified RC, if approved by the Air Force and CDPHE, expressly authorizes the Department to approve, *without further involvement of the Air Force*, work plans that may disturb the integrity of the final OU2 remedy, as long as such plans *are allowed and approved by CDPHE* pursuant to applicable laws and regulations. (Modified RC §VII.D.2(b)(i))

Note that this modification is similar to revisions in the Modified EC. (Modified EC §§1.c. and d.).

We believe that approval by the Air Force and CDPHE of the Modified RC, would address the Department's condition that the Work Plans would be "consistent" with the RC and obviate any need for the Air Force to approve the Work Plans or future work plans and activities.

IRGI believes that Air Force and Department approval of the Modified EC and RC will resolve the Department's first and third Air Force Conditions and remove these hurdles to development of the Project.

### **IV. Deed Warranties**

With regard to the Department's second Air Force Condition, we note that the Deed essentially restates the law as set forth in CERCLA §120(h)(3)(A)(ii)(II), namely, that "any additional remedial action found to be necessary after the date of ...transfer shall be conducted by the [Air Force]." The Air Force's obligation to comply with CERCLA §120's warranty requirements are statutory and perpetual; these obligations cannot be obviated by the Air Force.

Although IRGI does not believe any further Air Force confirmation is necessary, it appears that the Air Force can readily satisfy the Department's second Air Force Condition by reaffirming the Air Forces obligation to comply with CERCLA §120. We have asked the Air Force to provide such written confirmation to the Department. (Air Force Letter §III.A.)

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<sup>4</sup> Enforceable Agreement, §III.F.

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Mr. Curtis Stovall, P.E., Work Leader  
Colorado Department of Public Health and Environment  
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In addition, as indicated above, IRGI is prepared to provide financial assurances to the Department and the Air Force, over and above the Air Force's CERCLA warranties, as an additional level of financial protection for the development of the Project. (Air Force Letter §III.B.) IRGI's supplemental financial assurances are an additional reason for the Department to resolve the second Air Force Condition.

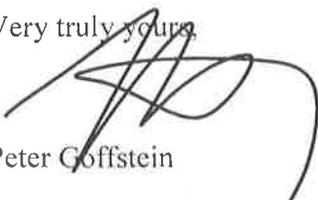
**V. Conclusion**

IRGI hereby formally requests that the Department:

- (i) Approve the Modified EC;
- (ii) Approve the Modified RC;
- (iii) Execute the Consent Agreement;
- (iv) Accept the Air Force's affirmation of its CERCLA §120 obligations to satisfy the second Air Force Condition; and,
- (iv) Approve the immediate implementation of the Work Plans.

Of course, IRGI is available at your earliest convenience to meet and discuss this application with you, your legal counsel and the Air Force.

Very truly yours,



Peter Goffstein

cc via email only:

Dr. Stephen TerMaath, USAF  
Cynthia A. Stephens, Esq., USAF  
Jennifer Robbins, Esq., Colorado Attorney General's Office  
Dr. Wayne Doband, dr.ecolonomics  
Ira Star, IRAMCo, LLC  
Howard Kenison, Esq., Lindquist & Vennum, LLP

# **ATTACHMENT B**

**November 23, 2015 Letter,  
IRGI to Dr. Stephen TerMaath  
U.S. AIR FORCE**

**EMAIL, DECEMBER 27, 2012, J. ROBBINS  
(ASSISTANT ATTORNEY GENERAL) TO P. CARROLL  
AND S. RUPE, USAF, ATTACHING PRELIMINARY  
LIST OF DOCUMENTS**

Thu, Dec 27, 2012 at 1:34 PM

Jennifer Robbins <Jennifer.Robbins@state.co.us>

To: "CARROLL, PAUL F GS-13 USAF AFRPA AFRPA/BPM" <paul.carroll.1@us.af.mil>, "sam.rupe@us.af.mil" <sam.rupe@us.af.mil>

Cc: "Monica Sheets (monica.sheets@state.co.us)" <monica.sheets@state.co.us>, "Stovall, Curtis" <curtis.stovall@state.co.us>

Sam and Paul -

As per our conversation on December 10, 2012, please find attached a preliminary list of documents that the CDPHE anticipates it will require to move forward with the Lowry Vista proposed development. The list is split into 2 phases, the 1st phase (site investigation) is for the approval of the soil stockpile and cap penetration plans and the 2nd phase is for future development.

Please add any additional items that USAF will require as part of IRG's request for site investigation and development. Please also note that this document is still a working draft and as new information is presented the list may be modified at any time.

If you have any questions about the attached document, please don't hesitate to contact me.

Happy holidays!

Jennifer Robbins  
Assistant Attorney General  
Natural Resources & Environment Section  
1525 Sherman Street  
Denver, CO 80218  
303-866-5361

Notice of Address Change

Effective January 22, 2013, the Colorado Department of Law will operate from the Ralph L. Carr Colorado Judicial Center. The new address and phone number will be:

Colorado Department of Law  
Natural Resources & Environment Section  
Ralph L. Carr Colorado Judicial Center  
1300 Broadway,  
Denver, Colorado 80203  
(720) 508-6000 Main  
(720) 508-6257 Direct

Below a list of preliminary requirements established by CDPHE for the Lowry Vista redevelopment. This list has been developed for internal purposes only and is subject to change at the discretion of CDPHE.

1. USAF require IRG to purchase an environmental insurance policy to provide coverage for potential environmental damage that could result from the proposed soil stockpiling and/or proposed cap penetration activities (USAF mentioned Mike Hill insurance broker). This insurance coverage would be in addition to financial assurance requirements that CDPHE requires for stockpile removal, cover revegetation, surveying, IDW characterization and disposal, etc. (The USAF asked for CDPHE's opinion regarding the amount of coverage - a reasonable starting point for coverage would be on the order of about \$ 5 million to \$10 million, based on a very rough estimate/guess at possible groundwater remediation costs. Impacts to groundwater could occur as a result of soil stockpiling, drilling of exploratory borings, or during site disturbance activities that would occur during site development).
2. USAF and CDPHE draft and execute a revised Enforceable Agreement or Addendum to existing Agreement to provide the "ultimate financial backstop" that includes USAF liability for change in use for soil stockpiling and cap penetration that USAF described during the conference call. This is necessary as the environmental covenant needs to be modified to allow for the proposed activities, which changes the approved remedy.
3. USAF provide CDPHE an opportunity to review and comment on the "cooperative agreement with IRG" that USAF mentioned during the conference call. USAF provide CDPHE with a time frame in which it anticipates completion of this Agreement. Alternatively, if Addendum to the existing agreement is used instead, USAF provide CDPHE an opportunity to review and comment.
4. USAF and CDPHE review and approve a revision to the post-closure monitoring and maintenance plan to address the stockpiling and cap penetration plans.
5. USAF and CDPHE review and approve the soil stockpile plan and the cap penetration plan.
6. USAF and CDPHE review and approve and record a modified environmental covenant.
7. USAF and CDPHE review and approve financial assurance cost estimates.
8. IRG or USAF provide and CDPHE approve an acceptable financial assurance mechanism.

Following the site investigation activities by IRG, should IRG wish to proceed with site development, the following tasks should be required:

1. Enforceable Agreement between USAF and IRG detailing the parties responsibilities for future or additional remedial action necessary on the property that address DoD's *Policy on Responsibility for Additional Environmental Cleanup After Transfer of Real Property*, which states: "where additional remedial action is required only to facilitate a use

prohibited by deed restriction or other appropriate institutional control, DoD will neither perform nor pay for such additional remedial action. It is DOD's position that such additional remedial action is not "necessary" within the meaning of CERCLA Section 120(h)(3)."

- a. See recorded deed covenant as well.
2. Agreement or Affidavit from USAF demonstrating all conditions to modify the Land Use Controls for either Scenario #1 (attain all clean up goals) or Scenario #2 (cleanup to higher standards) in DoD *Guidance on Land Use Controls Associated with Environmental Restoration Activities for Property Planned for Transfer Out of Federal Control* have been met, including the surety bond and financial assurance; or alternatively that USAF is not requiring IRG from meeting either of these scenarios or that this policy does not apply.
3. MOU or other document between USAF and CDPHE related to the CERCLA 120(h) warranty and covenant and future USAF liability under CERCLA 107 and 120(a)(1).
  - a. USAF to provide assurance to CDPHE that USAF remains final "backstop" for remedial actions on the property.
4. Risk assessment to make a determination about the site suitability for residential development.
  - a. USAF to determine what type of risk assessment will be required. While CERCLA was the original method of approval, it makes more sense to follow the state procedures under CHWA or those of RCRA now. Both of which are as effective.
  - b. USAF may require CERCLA - see *Office of the Under Secretary of Defense memorandum titled Policy on Land Use Controls Associated with Environmental Restoration Activities* which states: "LUC's shall be modified or terminated through the same process used to establish the LUC." – this policy implies that the CERCLA process may be required to meet USAF requirements.
  - c. This assessment is required because original assessment was based on a Presumptive Remedy in accordance with *EPA Presumptive Remedy for CERCLA Municipal Landfills* as applied to military landfills pursuant to the *Application of the CERCLA Municipal Landfill Presumptive Remedy to Military Landfills*
5. USAF and CDPHE require IRG to implement the USAF/LAC community involvement plan (this is probably a requirement of the cooperative agreement reference in Item #3, part 1, above).
6. USAF and CDPHE review and approve a revised remedy (site development plan) after ample opportunity for community involvement.
7. IRG and CDPHE enter into new enforceable agreement (possibly under 100.26 or new RCRA Order)

8. LAC and CDPHE revise the existing Consent Agreement related to OU2 based on revised remedy, liabilities and obligations of LAC, IRG, USAF and CDPHE.
9. USAF and CDPHE review and approve and record a second modification to the environmental covenant.
10. USAF and CDPHE review and approve new financial assurance cost estimates for development activities that will temporarily disturb the integrity of the landfill cap.
11. IRG provide and CDPHE approve an acceptable financial assurance mechanism.
12. USAF and CDPHE review and approve a second revision to the post-closure monitoring and maintenance plan to account for site development monitoring requirements.

# **ATTACHMENT C**

**November 23, 2015 Letter,  
IRGI to Dr. Stephen TerMaath  
U.S. AIR FORCE**

**LETTER, NOVEMBER 18, 2013, J. ROBBINS TO  
S. RUPE, USAF**



**John W. Suthers**  
Attorney General

**Cynthia H. Coffman**  
Chief Deputy Attorney General

**Daniel D. Domenico**  
Solicitor General

**STATE OF COLORADO**  
**DEPARTMENT OF LAW**

**Natural Resources and  
Environment Section**

**Ralph L. Carr**  
Colorado Judicial Center  
1300 Broadway, 7th Floor  
Denver, Colorado 80203  
Phone (720) 508-6000

November 18, 2013

Sam Rupe  
SAF/GCN-SA  
2261 Hughes Avenue, Suite 121  
JB SA Lackland, TX 78236-9853

**RE: Lowry Vista**

Dear Mr. Rupe:

IRG Redevelopment I, LLC (IRG) has requested the Colorado Department of Public Health and Environment (CDPHE) approve a Soil Stockpile Plan and Cap Penetration Plan for the property referred to as Operable Unit 2 (OU2) under the Cooperative Agreement for Environmental Services between the United States of America and the Lowry Economic Redevelopment Authority (LERA) dated August 13, 2004, and as amended (the "Cooperative Agreement"). As part of this process, IRG requested that I prepare an explanation of documentation required from the United States Air Force (USAF) for IRG to proceed under the Soil Stockpile Plan and Cap Penetration Plan. I provided this summary explanation to IRG and wanted to provide you with the same information in order for you to have an understanding of the documentation required. Below is a brief background and description of why CDPHE needs documentation from USAF.

Active remediation at OU2 was completed in 2006 in accordance with the Consent Agreement, the Cooperative Agreement and Lowry Remediation Agreement. The Enforceable Agreement between CDPHE and the United State Air Force (USAF) authorizes CDPHE to enforce against the USAF remaining remediation obligations set forth in the Consent Agreement and the Cooperative Agreement.

The activities proposed by IRG in the Soil Stockpile Plan and Cap Penetration Plan may have an impact on the existing remedy at OU2, which may result in additional remedial obligations in the future. However, as the proposed activities are not included as part of the remediation agreement, the Consent Agreement or Cooperative Agreement, they may not be covered under the existing Enforceable Agreement. Accordingly, CDPHE needs additional assurances from USAF to provide final approval of the Soil Stockpile Plan and Cap Penetration Plan.

Additionally, the transfer deed from USAF to LERA dated January 4, 2006 (the "Deed") includes Restrictive Covenants that require USAF approval to modify or terminate. CDPHE

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cannot provide final approval of either plan without the USAF's written documentation that the Restrictive Covenants in the Deed have been modified and or terminated.

Included with this correspondence is a summary of the documentation that CDPHE needs from the USAF in order to provide final approval of IRG's Soil Stockpile Plan and Cap Penetration Plan.

If you have any questions regarding this matter, please contact me at 720-508-6257.

Sincerely,

A handwritten signature in black ink, appearing to read "J. Robbins", written over a faint circular stamp.

JENNIFER ROBBINS  
FOR THE ATTORNEY GENERAL

Enclosure

ecc: Tracie White  
Curt Stovall  
Brent Anderson

# **ATTACHMENT D**

**November 23, 2015 Letter,  
IRGI to Dr. Stephen TerMaath  
U.S. AIR FORCE**

**LETTER, DECEMBER 12, 2013,  
B. ANDERSON (IRGI) TO S. PEHL, USAF**

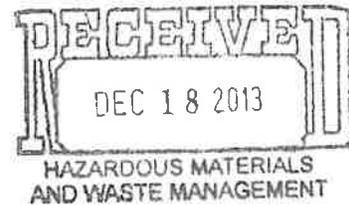


# Redevelopment I, LLC

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December 12, 2013

Stanley G. Pehl, REM  
BRAC Environmental Coordinator  
AFCEE/EXC  
2261 Hughes Avenue, Suite 155  
Lackland AFB, TX 78236-9853



RE: Lowry Vista Redevelopment, Denver, Colorado

Dear Stanley:

## 1. Introduction

As you know, IRG Redevelopment I, LLC (IRGI) has been working for several years to redevelop a part of the former Lowry Air Force Base (LAFB) along Alameda that is comprised of the former base landfill area (OU2) and an adjacent parcel to the west (collectively "Lowry Vista"). After extensive entitlement work and ongoing discussions with CDPHE, IRGI is ready to move forward with a subsurface investigation, final site remedial designs and integrated site development approvals. This letter outlines where IRGI is in the process and the anticipated path forward. At this time, IRGI has developed, with significant input from CDPHE, a Cap Penetration Plan, Soil Stockpile Plan, Subsurface Investigation Work Plan, and Modified Environmental Covenant that would allow for the next steps toward redevelopment. IRGI is ultimately seeking Air Force approval of these plans and the Restrictive Covenant in anticipation of future redevelopment of the site.

## 2. Background and History

IRGI became the owner of Lowry Vista as a result of the second privatization at LAFB in early 2006 as part of the Negotiated Sale Property between the Lowry Economic and Redevelopment Authority (LERA) and the Air Force and further transfer of a portion of this property to IRGI from the LERA through the Purchase and Sale Agreement (Section 1.2 Use) between the LERA and IRGI. While there were no specific development plans in place at the time, IRGI took ownership of the site with the clear understanding from all parties that redevelopment of the property was a possibility. In 2008, IRGI invested a significant amount of time and resources to seek necessary entitlement and zoning approvals to redevelop Lowry Vista. IRGI's activities resulted in the:



- a. Formation of the Lowry Vista Metropolitan District ("LVMD");
- b. Approval of a Master Plan for development in the Westerly Creek Basin from Urban Drainage;
- c. Approval of a revised General Development Plan ("GDP") consistent with Denver's Master Plan and other planning documents such as Blueprint Denver;
- d. Rezoning of the Lowry Vista consistent with the GDP; and
- e. Execution of a Redevelopment Agreement with Denver providing for construction of certain improvements on the site including a fire station.

Information regarding the GDP and zoning, and the proposed activities mentioned above were discussed on multiple occasions over the years with Air Force representatives in order to keep them updated on the progress of the plans for the site.

IRGI understands that any future site use must be integrated with the historic use and the current Air Force remedy. IRGI has been particularly mindful of the Air Force's desire not to penetrate the existing cap as set forth in the Air Force Deed and restrictive Environmental Covenant. In addition, any redevelopment of the site must be protective of human health and the environment not only to obtain CDPHE approval, but to attract buyers to the property. With these concepts in mind, IRGI's primary engineering objective has been to further isolate waste on the site from the environment and to the minimum extent possible, potential interference with the current remedy. IRGI's proposed redevelopment plan (as previously discussed with the Air Force) contemplates raising the elevation of the site and the construction of virtually the entire site infrastructure (footings, foundations, and site utilities) in new fill placed above the existing cap. Through a number of revisions and innovations, IRGI's current redevelopment plan calls for very limited cap penetrations near the south side (near Alameda) of the site to tie in site infrastructure (i.e. wet utilities) into the existing Denver system. The redevelopment plan will be completed once information from the IRGI's Subsurface Investigation has been collected and evaluated by IRGI and CDPHE.

### 3. Purpose of the Cap Penetration Plan, Subsurface Investigation Work Plan and Soil Stockpile Plan

IRGI submitted several work plans to CDPHE over the past year. Copies of each of the plans are attached for your review and summarized below.

- a. Cap Penetration Plan
  1. This plan establishes procedures for all predesign/design investigations that will be needed to gain the information that will ultimately support redevelopment. This entails all necessary actions that will need to take place



in order to protect the existing cap and properly repair the existing cap should it be damaged in any way by such investigative activities.

b. IRGI Subsurface Investigation Work Plan

1. Evaluate the geotechnical considerations associated with the proposed infrastructure and end uses for the site. This information is necessary to develop roadway, utility and foundation designs, and refine building envelope locations.
2. Evaluate the potential soil gas implications associated with the trenches. Historic soil gas information indicates that soil gas is not a major consideration at the site. While IRGI will require active mitigation systems in all structures on the site, the current information is not detailed enough for development design and risk evaluation purposes. Thus, the Subsurface Investigation Plan calls for collection of additional soil gas information to evaluate and document this risk.
3. Evaluate the extent to which portions of the northern part of OU2 can be used as a borrow source for clean fill that can be incorporated to achieve the new site grading plan. IRGI's grading plan contemplates the excavation of clean fill from the northern portion of the site for beneficial reuse in order to raise the developed part of the site out of the Westerly Creek Dam flood pool and meet compensatory volume requirements. Information obtained from the Subsurface Investigation will confirm whether this material is available for reuse and will ultimately provide information to refine the final grading plan.

c. Soil Stockpile Plan

This plan provides for stockpiling soil on site for establishing the site grade. The grading plan contemplates the import of substantial clean fill material as part of this process. This plan identifies the proposed location of the stockpiling activities and outlines parameters for regrading and revegetating the stockpile in the event development is delayed for any reason.

IRGI has been with coordinating CDPHE for over a year in developing these plans and identifying numerous actual and potential impacts. Through this collaboration, IRGI anticipates CDPHE will provide conditional approval of the above referenced plans. In addition, CDPHE and IRGI have spent significant time evaluating necessary financial assurance for the activities proposed in IRGI's plans. IRGI will post financial assurance with CDPHE for each of these plans before initiating activities.



#### 4. Request to the Air Force

To move the project forward, IRGI is requesting the following approvals from the Air Force:

- a. Acknowledgement that the proposed activities outlined in the attached work plans do not alter the Air Force's obligations as set forth in the Enforceable Agreement.
- b. Acknowledgement that the proposed activities outlined in the attached work plans are consistent with the Restrictive Covenant in the Deed.
- c. Approve the Soil Stockpiling Plan, Cap Penetration Plan, Subsurface Investigation Work Plan(s), and the Revised Environmental Covenant to allow such site activity as provided for in the Deed.

#### 5. Timeline

IRGI anticipates starting soil stockpiling activities as soon as it receives all necessary approvals. IRGI anticipates initiating the site investigation activities in February 2014. With that timeline in mind, IRGI and CDPHE suggest a meeting in December to discuss any outstanding issues and move the project forward.



6. Conclusions

The groundwork to move the Lowry Vista Project forward was set forth in various documents almost seven years ago. The project entitlement process, CDPHE approval process and market have now reached a point where the project needs to move forward in earnest. We look forward to doing so. If you have any questions regarding the attached documents please call Brent Anderson at 303-972-6633. We will be reaching out to you separately to schedule a meeting with IRGI the Air Force and CDPHE.

Best regards,

A handwritten signature in black ink, appearing to read "Brent C. Anderson", is written over a horizontal line. The signature is stylized and somewhat cursive.

Brent C. Anderson

cc:

Jennifer Robbins  
Curtis Stovall  
Tracie White  
John Yerton, IRGI  
Paul Weaverling, LAC  
Cynthia Stephens  
Paul Carroll

Attachments:

Revised Request to Stockpile Soil on OU2 Landfill Cap, Lowry Vista Project,  
Denver, CO  
CDPHE Approval with Conditions of the Revised Request to Stockpile Soil on OU2  
Landfill Cap, Lowry Vista Project, Denver, CO dated November 12, 2012  
Lowry Vista Cap Penetration Plan for Subsurface Soil Borings on the Landfill Zone,  
OU2, Former Lowry Air Force Base, Colorado  
Field Investigation Work Plan, OU2 Landfill Zone, Lowry Vista Redevelopment Project  
Denver, Colorado