

ATTACHMENT F

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

**CDPHE CONDITIONAL APPROVAL,
DECEMBER 2013, REVISED PLAN TO STOCKPILE
SOIL ON THE OU2 LANDFILL CAP (“SSP”)**

ATTACHMENT G

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

**CDPHE CONDITIONAL APPROVAL,
DECEMBER 2013, LOWRY VISTA CAP
PENETRATION PLAN (“CPP”)**

ATTACHMENT H

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

**CDPHE CONDITIONAL APPROVAL,
DECEMBER 2013, FIELD INVESTIGATION
WORK PLAN (“FIWP”)**

ATTACHMENT I

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

ENVIRONMENTAL COVENANT (“EC”)

This property is subject to an Environmental Covenant held by the Colorado Department of Public Health and Environment pursuant to section 25-15-321, C.R.S.

ENVIRONMENTAL COVENANT

The United States of America, acting by and through the Secretary of the Air Force, under and pursuant to the powers and authority contained in the Defense Base Closure and Realignment Act of 1990, as amended (10 U.S.C. § 2687, note) ("Grantor") grants an Environmental Covenant ("Covenant") this 4th day of January, 2006 to the Hazardous Materials and Waste Management Division of the Colorado Department of Public Health and the Environment ("the Department") pursuant to § 25-15-321 of the Colorado Hazardous Waste Act, § 25-15-101, *et seq.* The Department's address is 4300 Cherry Creek Drive South, Denver, Colorado 80246-1530.

WHEREAS, the Grantor is the owner of certain property associated with the former Lowry Air Force Base ("LAFB"), located in Denver, Colorado, more particularly described in Attachment A, attached hereto and incorporated herein by reference as though fully set forth (hereinafter referred to as the "Property"); and

WHEREAS, pursuant to Consent Agreement Number 01-08-07-02, the Property is the subject of enforcement and remedial action pursuant to the Colorado Hazardous Waste Act, § 25-15-301, *et seq.* ("CHWA"). The Property was the former base landfill (also known as Operable Unit 2 (OU2)). OU2 was historically used for disposal of Air Force waste, and associated construction waste and debris primarily from training activities conducted at LAFB. OU2 has been closed in accordance with the Phase 2 Corrective Action Plan for the Operable Unit 2 Landfill Closure at Lowry; and,

WHEREAS, the purpose of this Covenant is to ensure protection of human health and the environment by minimizing the potential for exposure to any hazardous substance, hazardous waste, hazardous constituents, and/or solid waste that remains in the landfill on the Property. The Covenant will accomplish this by prohibiting those activities that may interfere with the landfill cover or its monitoring or control systems and by creating a review and approval process to ensure that any such intrusive activities are conducted with appropriate precautions to avoid or eliminate any hazards; and

WHEREAS, the Grantor desires to subject the Property to certain covenants and restrictions as provided in Article 15 of Title 25, Colorado Revised Statutes, which covenants and restrictions shall burden the Property and bind the Grantor, and all parties having any right, title or interest in the Property, or any part thereof, its heirs, successors, assigns, and any persons using the land, as described herein, for the benefit of the Department.

NOW, THEREFORE, the Grantor hereby grants this Environmental Covenant to the Department, and declares that the Property as described in Attachment A shall hereinafter be bound by, held, sold, and conveyed subject to the following requirements set forth in paragraphs 1 through 10 below, which shall run with the Property in perpetuity and be binding on Grantor and all parties having any right, title, or interest in the Property, or any part thereof, their heirs,

successors and assigns, and any persons using the land, as described herein. As used in this Environmental Covenant, the term OWNER means the record owner of the Property and, if any, any other person or entity legally authorized to make decisions regarding the transfer of the Property or placement of encumbrances on the Property, other than by the exercise of eminent domain.

1. Use restrictions

- a. 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.
- b. In general, the OWNER shall not use or conduct any activity on OU2 that will adversely affect:
 - i. the integrity of the cover
 - ii. the effectiveness of drainage or erosion controls
 - iii. slope stability, or
 - iv. groundwater or gas monitoring or control systems.

Specifically, no activity shall be conducted or permitted by the OWNER, nor shall the OWNER use OU2 in any manner that is inconsistent with the use designated in the preceding paragraph or that is not in compliance with the requirements of section 3.6.1(A) of 6 CCR 1007-2 or the *Final Closure Plan for the Operable Unit 2 (OU2) Landfill Closure at Lowry*, issued for review August 29, 2003, as finalized after Department review and approval.

- c. The OWNER shall not extract or utilize in any manner whatsoever any water from the upper aquifer below the surface of the ground within OU2 for any purpose whatsoever, unless the OWNER shall first have obtained the prior written approval of the Department.
- d. For the duration of this covenant, the Air Force shall perform all of the requirements set forth in sections 3 and 4 of the Post-Closure Operation and Maintenance Plan, Appendix E of the *Final Closure Plan for the Operable Unit 2 (OU2) Landfill Closure at Lowry*, issued for review August 29, 2003, as finalized after Department review and approval.

2. Modifications This Covenant runs with the land and is perpetual, unless modified or terminated pursuant to this paragraph. The OWNER or its successors and assigns may request that the Department approve a modification or termination of the Covenant. The request shall contain information showing that the proposed modification or termination shall, if implemented, ensure protection of human health and the environment. The Department shall review any submitted information and may request additional information. If the Department determines that the proposal to modify or terminate the Covenant will ensure protection of human health and the environment, it shall approve the proposal. No modification or termination of this Covenant shall be effective unless the Department has approved such modification or termination in writing. Information to support a request for modification or termination may include one or more of the following:

- a) a proposal to perform additional remedial work;
- b) new information regarding the risks posed by the residual contamination;
- c) information demonstrating that residual contamination has diminished;

d) information demonstrating that the proposed modification would not adversely impact the remedy and is protective of human health and the environment; and,
e) other appropriate supporting information.

3. Conveyances The OWNER shall notify the Department at least fifteen (15) days in advance of any proposed grant, transfer, or conveyance of any interest in any or all of the Property.

4. Notice to Lessees The OWNER agrees to incorporate, either in full or by reference the restrictions of this Covenant in any leases, licenses, or other instruments granting a right to use the Property.

5. Notification for proposed construction and land use The OWNER and/or its transferees shall notify the Department simultaneously when submitting any application to a local government for a building permit or change in land use at the Property.

6. Inspections The Department shall have the right of entry to the Property at reasonable times with prior notice for the purpose of determining compliance with the terms of this Covenant. Nothing in this Covenant shall impair any other authority the Department may otherwise have to enter and inspect the Property.

7. No Liability The Department does not acquire any liability under State law by virtue of accepting this Covenant, nor does any other named beneficiary of this Covenant acquire any liability under State law by virtue of being such a beneficiary.

8. Enforcement The Department may enforce the terms of this Covenant pursuant to §25-15-322, C.R.S. The Grantor and any named beneficiary of this Covenant may file suit in district court to enjoin actual or threatened violations of this Covenant.

9. Owner's Compliance Certification OWNER shall submit an annual Report to the Department, on the anniversary of the date this Covenant was signed by Grantor, detailing OWNER's compliance, and any lack of compliance, with the terms of this Covenant.

10. Notices Any document or communication required under this Covenant shall be sent or directed to:

Hazardous Waste Corrective Action Unit Leader
Hazardous Materials and Waste Management Leader
Colorado Department of Public Health and the Environment
4300 Cherry Creek Drive South
Denver, Colorado 80246-1530

IN WITNESS WHEREOF, I have hereunto set my hand at the direction of the Secretary of the Air Force, the day and year first above written.

THE UNITED STATES OF AMERICA

By: Kathy M. Halvorson
KATHRYN M. HALVORSON
Director
Air Force Real Property Agency

Witness:

Kathryn Halvorson

Commonwealth of Virginia :
ss.
County of Arlington :

The foregoing instrument was acknowledged before me this 4th day of JANUARY, 2006, by Kathryn M. Halvorson as the Director of Air Force Real Property Agency.

Witness my hand and official seal

[Signature]

Notary Public
My Commissions Expires on SEPTEMBER 30, 2009



PAUL C. MACPHERSON
NOTARY PUBLIC
COMMONWEALTH
OF VIRGINIA
My Commission Expires
September 30, 2009

Accepted by the Colorado Department of Public Health and Environment this 13th day of January 2006.

By: Gary W. Baughman
GARY BAUGHMAN
Director
Hazardous Materials Waste Management Division

STATE OF COLORADO)
) ss:
COUNTY OF DENVER)

The foregoing instrument was acknowledged before me this 15th day of January 2006 by Gary W. Baughman on behalf of the Colorado Department of Public Health and Environment

[Signature]
Notary Public
Address 4301 Cherry Creek North Avenue
My commission expires: 2-29-08

STATE OF COLORADO

John W. Hickenlooper, Governor
Larry Wolk, MD, MSPH
Executive Director and Chief Medical Officer

Dedicated to protecting and improving the health and environment of the people of Colorado

4300 Cherry Creek Dr. S. Laboratory Services Division
Denver, Colorado 80246-1530 8100 Lowry Blvd.
Phone (303) 692-2000 Denver, Colorado 80230-6928
Located in Glendale, Colorado (303) 692-3090
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Colorado Department
of Public Health
and Environment

December 31, 2013

Mr. Brent Anderson, Esq.
President
IRG Redevelopment I, LLC
7991 Shaffer Parkway, Suite 300
Littleton, CO 80127

RE: CDPHE Approval with Modifications and Conditions of the Field Investigation Work Plan and Financial Assurance Cost Estimate for the Operable Unit 2 Landfill Zone Lowry Vista Redevelopment Project, Denver, Colorado

File: DMA LWY 13 OU2 15.8

Dear Mr. Anderson:

The Colorado Department of Public Health and Environment (“CDPHE”), Hazardous Materials and Waste Management Division (“the Department”) has completed its review of the following two documents: (1) *Field Investigation Work Plan, Operable Unit 2 Landfill Zone, Lowry Vista Redevelopment Project, Denver, Colorado* (dated December 6, 2013, received December 10, 2013) [“FIWP”], and (2) *Field Investigation Work Plan Financial Assurance Cost Estimate, OU2 Landfill Zone, Lowry Vista Redevelopment Project, Denver, Colorado* (dated December 19, 2013, received December 23, 2013) [“FA Cost Estimate”]. The FIWP was prepared by IRG Assumptions, LLC for IRG Redevelopment I, LLC (“IRGI”). The FA Cost Estimate was prepared by Walsh Environmental Scientists and Engineers, LLC.

As background, the Department and IRGI are negotiating a Consent Agreement to establish a regulatory framework between the Department and IRGI. Additionally, the Department and IRGI are negotiating a Modified Environmental Covenant in accordance with the Colorado Environmental Covenants Statute, Colorado Revised Statute §25-15-317 to §25-15-326, that would allow IRGI to execute the FIWP under the conditions of approval and modifications described herein.

As additional background, the former Lowry Air Force Base Landfill Zone, Operable Unit 2 (“OU2”) was transferred by deed from the United States Air Force (“the Grantor”) to Lowry Economic Redevelopment Authority (“the Grantee”) via a Finding of Suitability for Early Transfer (“FOSET”) in January 2006 (“the Deed”). In addition to the above-referenced Modified Environmental Covenant, the FOSET and the Deed include environmental protection provisions to ensure protection of human health and the environment and to preclude any interference with ongoing or completed remediation activities.

Section VII.B. of the Deed includes the following United States Air Force warranty on OU2:

Pursuant to section 120(h)(3)(A)(ii)(II) of CERCLA, the United States covenants and warrants that any additional remedial action found to be necessary after the date of this Deed for contamination

on the Property existing prior to the date of this Deed will be conducted by the United States. This warranty will not apply in any case in which any grantee of the Property, or any part thereof, is a potentially responsible party with respect to the Property before the date on which any grantee acquired an interest in the Property, or is a potentially responsible party as a result of an act or omission affecting the Property. For the purposes of this warranty, the phrase "remedial action necessary" does not include any performance by the United States, or payment to the Grantee from the United States, for additional remedial action that is required to facilitate use of the Property for uses and activities prohibited by those environmental use restrictive covenants set forth in section VII.D. below, as may be modified or released pursuant to section VII.D(3).

Section VII.D(2)(b)(i) of the Deed places the following Restrictive Covenants on OU2:

The Grantee shall not disturb the integrity of the final cover, liner(s), or any other components of the containment system, or the function of the monitoring systems unless necessary to comply with the requirements in the regulations of the Colorado Department of Public Health and Environment.

It is the intent of the Grantor and Grantee that these Restrictive Covenants bind the Grantee and shall run with the land and are perpetual, unless modified or terminated pursuant to this paragraph. It is also the intent of the Grantor and the Grantee that the Grantor will retain the right to enforce the Restrictive Covenants through the chain of title, in addition to any State law that permits the State to enforce the Restrictive Covenants. The Grantee or its successors and assigns may request that the Air Force approve a modification or termination of any of the Restrictive Covenants. The Air Force shall review any submitted information and may request additional information. Grantor recognizes that future Grantees may change the Environmental Covenants in accordance with the Environmental Covenant Statute including but not limited to providing for limited disturbance of the final cover of OU2. Grantor agrees to consider such changes set forth in the Environmental Covenant for its Restrictive Covenant. No modification or termination of a Restrictive Covenant shall be effective unless the Air Force has approved such modification or termination in writing, which approval shall not be unreasonably withheld or delayed.

The Department approves the FIWP and FA Cost Estimate with the following modifications:

Modification 1. Section 2.0, Site Background, on page 4 of the FIWP includes the following:

IRGI conducted an extensive review of historical aerial photographs of the Lowry Vista site to identify trenching/disposal locations. Based on this analysis approximately 14% of the overall area of the OU2 Landfill Zone is covered with waste disposal trenches (see Figure 2). It is assumed that the remaining area outside of the trenches is native or disturbed fill materials. In addition, major investigations were conducted at the OU2 Landfill Zone during the 1990 Remedial Investigation (RI), 1995 Supplemental Remedial Investigation (SRI), and the 1998 Focused Feasibility Study (FFS) to determine the nature and extent of the contamination present in soil, soil gas, surface water, and groundwater."

The Department does not concur with IRGI's aerial photograph analysis as described in the FIWP (i.e., approximately 14% of the overall area of the OU2 Landfill Zone contains waste disposal trenches). The Department agrees with the interpretations and conclusions presented by Versar, Inc., in the referenced FFS. As part of the FFS, Versar conducted landfill test trenching and a detailed aerial photograph

analysis to confirm the areal extent of historical waste disposal activities. Versar concluded the following (from Appendix O of the FFS, page O-1): *“Review of the aerial photographs indicates that trenching operations were conducted throughout the entire area roughly bounded by the Building 1390 complex to the west, the wetlands to the north, Westerly Creek to the east, and Alameda Avenue to the south. Figure O-1 shows the observed horizontal extent of landfilling.”* Versar’s Figure O-1 (which is also Versar’s Figure 3.14) is reproduced as Figure 4 in the Revised CPP. While the Division is herewith conditionally approving the FIWP, the Department does not concur with IRGI’s conclusions resulting from IRGI’s aerial photographic review.

Modification 2. Section 3.0, Scope/Specified Procedures, of the FIWP states that all subsurface exploration will be conducted “inside” of the environmental covenant boundary. However, some of the boring locations shown on Figure 3 are outside of the covenant boundary. The Department confirmed with IRGI during a meeting held on December 19, 2013 that the subsurface exploration will be conducted at boring locations shown on Figure 3 of the FIWP with some subsurface exploration to occur on IRGI property located outside of the environmental covenant boundary.

Modification 3. Section 3.0, Scope/Specified Procedures, of the FIWP includes the following statement: *“Initial locations of all borings will be surveyed and staked prior to mobilization.”* In addition to surveying initial boring locations, ground surface elevation at each boring location also must be surveyed prior to mobilization.

Modification 4. The FA Cost Estimate contains two errors. First, the text of the document indicates that CDPHE will procure a consultant and review their work plan in 40 hours at \$125 per hour. However, the cost estimate spreadsheet shows this line item as 30 hours at \$125 per hour. Second, the spreadsheet contains a math error. After consultation with IRGI with respect to the first item, it was determined that the document text contains the correct number (i.e., 40 hours). IRGI also confirmed the math error. Therefore, the correct financial assurance cost estimate total is \$32,000.

The Department’s conditions of approval for the FIWP are as follows:

- Condition 1.** The Air Force must provide written confirmation that the proposed activities contemplated under the FIWP are consistent with the above-referenced Restrictive Covenants in the Deed.
- Condition 2.** The Air Force must provide written confirmation that the proposed activities contemplated under the FIWP will not affect the Air Force’s warranties in the Deed.
- Condition 3.** The Air Force must provide written approval of the FIWP before any work under the FIWP can commence.
- Condition 4.** IRGI submitted to the Department under separate cover a Revised Cap Penetration Plan dated December 10, 2013 [“Revised CPP”]. The Department approved the Revised CPP with conditions set forth in its letter dated December 23, 2013. Following satisfaction of the conditions herein and the conditions in the Department’s December 23, 2013 letter, all work under the FIWP must be performed in accordance with the requirements of the FIWP and the Revised CPP.
- Condition 5.** The above-referenced Consent Agreement must be fully executed before any work under the FIWP can commence.

Condition 6. The above-referenced Modified Environmental Covenant (Attachment A of the Revised CPP) must be fully executed and recorded in the real property records before any work under the FIWP can commence.

Condition 7. IRGI must provide financial assurance in the amount of \$32,000 to the Department in accordance with the Colorado Regulations Pertaining to Solid Waste Sites and Facilities ("the Regulations"), 6 CCR 1007-2, Part 1, prior to commencement of any work under the FIWP (see Modification 4).

Condition 8. IRGI must provide proof of its environmental insurance policy (referenced on page 6 of the Revised CPP) to the Department prior to commencement of any work under the FIWP.

Condition 9. Following satisfaction of Conditions 1 through 8 (above), IRGI must provide the Department with written notification of at least five calendar days identifying the planned start date for any work under the FIWP. Additionally, as part of the written notification, IRGI must provide the name, phone number, address, and email address of the IRGI Project Manager (described on page 12 of the Revised CPP).

Condition 10. Within five calendar days following completion of the field work under the FIWP, IRGI must provide written notification to the Department identifying the completion date of the field work. Pursuant to the requirements of the Revised CPP and FIWP, the written report(s) must be submitted to the Department within 90 calendar days from the completion of field work.

Please note that the Department is authorized to bill for its review of technical submittals. The Department will bill its time pursuant to Section 1.7 of the Regulations. An invoice for the Department's review of the above-referenced documents will be transmitted under separate cover.

If there are any questions concerning this letter, or if you would like to discuss this letter, please contact Curt Stovall at (303) 692-2295 (e-mail: curtis.stovall@state.co.us).

Sincerely,



Digitally signed by Curt Stovall
Date: 2013.12.31 09:01:18 -07'00'

Curt Stovall, P.E., Project Manager
Federal Facilities Remediation and Restoration Unit
Remediation Program

cc: Tom Berger, LRA
Brad Coleman, Burns & McDonnell
Monty Force, LRA
Jeannine Natterman, CDPHE
Lee Pivonka, CDPHE
Donald Roche, City of Aurora
Patricia Smith, EPA – Region 8
Steve Termaath, USAF AFCEC/CIB
John Yerton, IRGI and LAC
Paul Carroll, USAF AFCEC/CIBE
David Erickson, City and County of Denver
Enrique Martinez, CDPHE
Stanley Pehl, USAF AFCEC/CIBW
Jennifer Robbins, AGO
Sam Rupe, Office of Air Force General Counsel
Cynthia Stephens, USAF SAF/GCN-SA
Tracie White, CDPHE

STATE OF COLORADO

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Colorado Department
of Public Health
and Environment

December 23, 2013

Mr. Brent Anderson, Esq.
President
IRG Redevelopment I, LLC
7991 Shaffer Parkway, Suite 300
Littleton, CO 80127

RE: *CDPHE Approval with Conditions of the Revised Lowry Vista Cap Penetration Plan for Subsurface Soil Borings on the Landfill Zone, Operable Unit 2 (OU2), Former Lowry Air Force Base, Colorado*

File: DMA LWY 13 OU2 15.8

Dear Mr. Anderson:

The Colorado Department of Public Health and Environment (“CDPHE”), Hazardous Materials and Waste Management Division (“the Department”) has completed its review of the above-referenced revised Cap Penetration Plan (dated December 10, 2013, received via email December 10, 2013) [“Revised CPP”]. The Revised CPP was prepared by IRG Assumptions, LLC for IRG Redevelopment I, LLC (“IRGI”). The Revised CPP was prepared in response to the Department’s letter dated February 26, 2013, which provided comments on IRGI’s original CPP (an undated document received by the Department on February 6, 2013).

As background, the Department and IRGI are negotiating a Consent Agreement to establish a regulatory framework between the Department and IRGI. Additionally, the Department and IRGI are negotiating a Modified Environmental Covenant in accordance with the Colorado Environmental Covenants Statute, Colorado Revised Statute §25-15-317 to §25-15-326, that would allow IRGI to execute the Revised CPP under the conditions of approval described herein. A draft version of the Modified Environmental Covenant is included as Attachment A to the Revised CPP.

The former Lowry Air Force Base Landfill Zone, Operable Unit 2 (“OU2”) was transferred by deed from the United States Air Force (“the Grantor”) to Lowry Economic Redevelopment Authority (“the Grantee”) via a Finding of Suitability for Early Transfer (“FOSET”) in January 2006 (“the Deed”). In addition to the above-referenced draft Modified Environmental Covenant, the FOSET and the Deed include environmental protection provisions to ensure protection of human health and the environment and to preclude any interference with ongoing or completed remediation activities.

Section VII.B. of the Deed includes the following United States Air Force warranty on OU2:

Pursuant to section 120(h)(3)(A)(ii)(II) of CERCLA, the United States covenants and warrants that any additional remedial action found to be necessary after the date of this Deed for contamination on the Property existing prior to the date of this Deed will be conducted by the United States. This warranty will not apply in any case in which any grantee of the Property, or any part thereof, is a potentially responsible party with respect to the Property before the date on which any grantee acquired an interest in the Property, or is a potentially responsible party as a result of an act or omission affecting the Property. For the purposes of this warranty, the phrase "remedial action necessary" does not include any performance by the United States, or payment to the Grantee from the United States, for additional remedial action that is required to facilitate use of the Property for uses and activities prohibited by those environmental use restrictive covenants set forth in section VII.D. below, as may be modified or released pursuant to section VII.D(3).

Section VII.D(2)(b)(i) of the Deed places the following Restrictive Covenants on OU2:

The Grantee shall not disturb the integrity of the final cover, liner(s), or any other components of the containment system, or the function of the monitoring systems unless necessary to comply with the requirements in the regulations of the Colorado Department of Public Health and Environment.

It is the intent of the Grantor and Grantee that these Restrictive Covenants bind the Grantee and shall run with the land and are perpetual, unless modified or terminated pursuant to this paragraph. It is also the intent of the Grantor and the Grantee that the Grantor will retain the right to enforce the Restrictive Covenants through the chain of title, in addition to any State law that permits the State to enforce the Restrictive Covenants. The Grantee or its successors and assigns may request that the Air Force approve a modification or termination of any of the Restrictive Covenants. The Air Force shall review any submitted information and may request additional information. Grantor recognizes that future Grantees may change the Environmental Covenants in accordance with the Environmental Covenant Statute including but not limited to providing for limited disturbance of the final cover of OU2. Grantor agrees to consider such changes set forth in the Environmental Covenant for its Restrictive Covenant. No modification or termination of a Restrictive Covenant shall be effective unless the Air Force has approved such modification or termination in writing, which approval shall not be unreasonably withheld or delayed.

The Department's conditions of approval for the Revised CPP are as follows:

Condition 1. The Air Force must provide written confirmation that the proposed activities contemplated under the Revised CPP, including the draft Modified Environmental Covenant (Attachment A of the Revised CPP), are consistent with the above-referenced Restrictive Covenants in the Deed.

Condition 2. The Air Force must provide written confirmation that the proposed activities contemplated under the Revised CPP, including the draft Modified Environmental Covenant (Attachment A of the Revised CPP), will not affect the Air Force's warranties in the Deed.

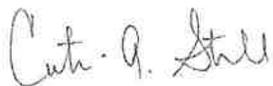
Condition 3. The Air Force must provide written approval of the Revised CPP before any work under the Revised CCP can commence.

- Condition 4.** The above-referenced Consent Agreement and Modified Environmental Covenant must be fully executed and recorded before any work under the Revised CPP can commence.
- Condition 5.** IRGI must provide financial assurance to the Department in accordance with the Colorado Regulations Pertaining to Solid Waste Sites and Facilities ("the Regulations"), 6 CCR 1007-2, Part 1, prior to commencement of any work under the Revised CPP.
- Condition 6.** IRGI must provide proof of its environmental insurance policy (referenced on page 6 of the Revised CPP) to the Department prior to commencement of any work under the Revised CPP.
- Condition 7.** Following satisfaction of Conditions 1 through 6 (above), IRGI must provide the Department with written notification of at least five calendar days identifying the planned start date for any work under the Revised CPP. Additionally, as part of the written notification, IRGI must provide the name, phone number, address and email address of the IRGI Project Manager (described on page 12 of the Revised CPP).
- Condition 8.** Condition 8 is a modification to the Revised CPP. The first sentence of Section 4.4.1, IDW Containers, of the Revised CPP states the following: "*Soil destined for off-site disposal will be placed in lined, U.S. Department of Transportation (DOT) approved 55 gallon drums that will be kept in the designated area.*" The word "soil" in this sentence may be misleading. As stated in Section 4.4 of the Revised CPP, "*All material brought to the surface below the upper two feet from ground surface will be considered IDW.*" As such, it is not only "soil" that requires containerization, characterization, and off-site disposal; rather, it is all material brought to the surface below the upper two feet that must be containerized and properly disposed.

Please note that the Department is authorized to bill for its review of technical submittals. The Department will bill its time pursuant to Section 1.7 of the Regulations. An invoice for the Department's review of the above-referenced document will be transmitted under separate cover.

If there are any questions concerning this letter, or if you would like to discuss this letter, please contact Curt Stovall at (303) 692-2295 (e-mail: curtis.stovall@state.co.us).

Sincerely,



Digitally signed by Curt Stovall
Date: 2013.12.23 08:52:05 -07'00'

Curt Stovall, P.E., Project Manager
Federal Facilities Remediation and Restoration Unit
Remediation Program

cc: Tom Berger, LRA
Brad Coleman, Burns & McDonnell
Monty Force, LRA
Jeannine Natterman, CDPHE
Lee Pivonka, CDPHE
Donald Roche, City of Aurora
Patricia Smith, EPA – Region 8
Tracie White, CDPHE
Paul Carroll, AFCEC/CIBE
David Erickson, City and County of Denver
Enrique Martinez, CDPHE
Stanley Pehl, USAF AFCEC/CIBW
Jennifer Robbins, AGO
Sam Rupe, Office of Air Force General Counsel
Cynthia Stephens, USAF SAF/GCN-SA
John Yerton, IRGI and LAC

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Colorado Department
of Public Health
and Environment

December 31, 2013

Mr. Brent Anderson, Esq.
President
IRG Redevelopment I, LLC
7991 Shaffer Parkway, Suite 300
Littleton, CO 80127

RE: CDPHE Approval with Conditions of the *Stockpile Financial Assurance Cost Estimate and Stockpile Removal Timeframe Extension, OU2 Landfill Cap Stockpiling, Lowry Vista Project, Denver, Colorado*

File: DMA LWY 13 OU2 15.8

Dear Mr. Anderson:

The Colorado Department of Public Health and Environment (“CDPHE”), Hazardous Materials and Waste Management Division (“the Department”) has completed its review of the above-referenced document dated December 2, 2013 (received via email December 2, 2013) [“Stockpile FA Cost Estimate document”]. The Stockpile FA Cost Estimate was prepared by Walsh Environmental Scientists and Engineers, LLC on behalf of IRG Redevelopment I, LLC (“IRGI”).

As background, on behalf of IRGI, Walsh Environmental Scientists and Engineers, LLC prepared and submitted a document to the Department titled *Revised Request to Stockpile Soil on OU2 Landfill Cap, Lowry Vista Project, Denver, Colorado* dated November 12, 2012 (“Revised Stockpile Plan”). The Revised Stockpile Plan was prepared in response to the Department’s letter dated October 19, 2012, which provided comments on IRGI’s original request to stockpile soil dated September 28, 2012. By its letter dated February 26, 2013, the Department provided conditional approval of the Revised Stockpile Plan. Condition 6 from the Department’s February 26, 2013 letter states the following:

“The Revised Stockpile Plan includes the following statement: *“It is anticipated that the stockpile will be removed or graded into the redevelopment under a Revised Closure Plan by January 1, 2015.”* Prior to January 1, 2015, the stockpile must be removed from OU2 or utilized at OU2 in accordance with an approved Revised Closure Plan.”

As part of the Stockpile FA Cost Estimate document, IRGI has requested that the Department approve a time extension from the above-referenced January 1, 2015 deadline to a new deadline of January 1, 2017. Additionally, IRGI has indicated to the Department that it would likely be cost prohibitive to remove stockpiled soil from OU2 should the Lowry Vista project become delayed or abandoned. As such, the Stockpile FA Cost Estimate document contemplates a revised site grading plan for OU2 rather than

December 31, 2013

Mr. Brent Anderson, Esq.

CDPHE Approval with Conditions of the Revised Stockpile Plan as Modified by the Stockpile FA Cost Estimate Document

Page 2 of 4

stockpile removal. Because stockpile removal is not contemplated by the Revised Stockpile Plan as modified by the Stockpile FA Cost Estimate document, and stockpiled soil is likely to remain at OU2, the Department's conditions of approval presented herein supersede and replace those presented in the above-referenced Department letter dated February 26, 2013.

As additional background, the Department and IRG Redevelopment I, LLC ("IRGI") are negotiating a Consent Agreement to establish a regulatory framework between the Department and IRGI. Additionally, the Department and IRGI are negotiating a Modified Environmental Covenant in accordance with the Colorado Environmental Covenants Statute, Colorado Revised Statute §25-15-317 to §25-15-326, that would allow IRGI to execute the Revised Stockpile Plan as modified by the Stockpile FA Cost Estimate document under the conditions of approval described herein.

The former Lowry Air Force Base Landfill Zone, Operable Unit 2 ("OU2") was transferred by deed from the United States Air Force ("the Grantor") to Lowry Economic Redevelopment Authority ("the Grantee") via a Finding of Suitability for Early Transfer ("FOSET") in January 2006 ("the Deed"). In addition to the above-referenced Modified Environmental Covenant, the FOSET and the Deed include environmental protection provisions to ensure protection of human health and the environment and to preclude any interference with ongoing or completed remediation activities.

Section VII.B. of the Deed includes the following United States Air Force warranty on OU2:

Pursuant to section 120(h)(3)(A)(ii)(II) of CERCLA, the United States covenants and warrants that any additional remedial action found to be necessary after the date of this Deed for contamination on the Property existing prior to the date of this Deed will be conducted by the United States. This warranty will not apply in any case in which any grantee of the Property, or any part thereof, is a potentially responsible party with respect to the Property before the date on which any grantee acquired an interest in the Property, or is a potentially responsible party as a result of an act or omission affecting the Property. For the purposes of this warranty, the phrase "remedial action necessary" does not include any performance by the United States, or payment to the Grantee from the United States, for additional remedial action that is required to facilitate use of the Property for uses and activities prohibited by those environmental use restrictive covenants set forth in section VII.D. below, as may be modified or released pursuant to section VII.D(3).

Section VII.D(2)(b)(i) of the Deed places the following Restrictive Covenants on OU2:

The Grantee shall not disturb the integrity of the final cover, liner(s), or any other components of the containment system, or the function of the monitoring systems unless necessary to comply with the requirements in the regulations of the Colorado Department of Public Health and Environment.

It is the intent of the Grantor and Grantee that these Restrictive Covenants bind the Grantee and shall run with the land and are perpetual, unless modified or terminated pursuant to this paragraph. It is also the intent of the Grantor and the Grantee that the Grantor will retain the right to enforce the Restrictive Covenants through the chain of title, in addition to any State law that permits the State to enforce the Restrictive Covenants. The Grantee or its successors and assigns may request that the Air Force approve a modification or termination of any of the Restrictive Covenants. The Air Force shall review any submitted

December 31, 2013

Mr. Brent Anderson, Esq.

CDPHE Approval with Conditions of the Revised Stockpile Plan as Modified by the Stockpile FA Cost Estimate Document

Page 3 of 4

information and may request additional information. Grantor recognizes that future Grantees may change the Environmental Covenants in accordance with the Environmental Covenant Statute including but not limited to providing for limited disturbance of the final cover of OU2. Grantor agrees to consider such changes set forth in the Environmental Covenant for its Restrictive Covenant. No modification or termination of a Restrictive Covenant shall be effective unless the Air Force has approved such modification or termination in writing, which approval shall not be unreasonably withheld or delayed.

The Department's conditions of approval for the Revised Stockpile Plan as modified by the Stockpile FA Cost Estimate document are as follows:

- Condition 1.** The Air Force must provide written confirmation that the proposed activities contemplated under the Revised Stockpile Plan as modified by the Stockpile FA Cost Estimate document are consistent with the above-referenced Restrictive Covenants in the Deed.
- Condition 2.** The Air Force must provide written confirmation that the proposed activities contemplated under the Revised Stockpile Plan as modified by the Stockpile FA Cost Estimate document will not affect the Air Force's warranties in the Deed.
- Condition 3.** The Air Force must provide written approval of the Revised Stockpile Plan as modified by the Stockpile FA Cost Estimate document before any soil stockpiling at OU2 can commence.
- Condition 4.** The above-referenced Consent Agreement must be fully executed before any work under the Revised Stockpile Plan as modified by the Stockpile FA Cost Estimate document can commence.
- Condition 5.** The above-referenced Modified Environmental Covenant must be fully executed and recorded in the real property records before any work under the Revised Stockpile Plan as modified by the Stockpile FA Cost Estimate document can commence.
- Condition 6.** IRGI must provide financial assurance initially in the amount of \$395,000 to the Department in accordance with the Colorado Regulations Pertaining to Solid Waste Sites and Facilities ("the Regulations"), 6 CCR 1007-2, Part 1, prior to commencement of any work under the Revised Stockpile Plan as modified by the Stockpile FA Cost Estimate document. Before the stockpile size exceeds 100,000 bank cubic yards, IRGI must increase the financial assurance amount by \$418,000 to a total financial assurance amount of \$813,000.
- Condition 7.** IRGI must provide proof of its environmental insurance policy to the Department prior to commencement of any work under the Revised Stockpile Plan as modified by the Stockpile FA Cost Estimate document.
- Condition 8.** Following satisfaction of Conditions 1 through 7 (above), IRGI must provide the Department with written notification of at least five calendar days identifying the planned start date for any work under the Revised Stockpile Plan as modified by the Stockpile FA Cost Estimate document.

December 31, 2013

Mr. Brent Anderson, Esq.

CDPHE Approval with Conditions of the Revised Stockpile Plan as Modified by the Stockpile FA Cost Estimate Document

Page 4 of 4

Condition 9. In addition to all of the monitoring, maintenance, documentation, and reporting requirements under the Revised Stockpile Plan as modified by the Stockpile FA Cost Estimate document, IRGI must provide a quarterly report to the Department that summarizes the volume of stockpiled soil and footprint of the stockpile at OU2.

Condition 10. Stockpile removal, stockpile grading (including restoration), or stockpile incorporation into the redevelopment project must be completed by January 1, 2017.

Please note that the Department is authorized to bill for its review of technical submittals. The Department will bill its time pursuant to Section 1.7 of the Regulations. An invoice for the Department's review of the above-referenced document will be transmitted under separate cover.

If there are any questions concerning this letter, or if you would like to discuss this letter, please contact Curt Stovall at (303) 692-2295 (e-mail: curtis.stovall@state.co.us).

Sincerely,



Digitally signed by Curt Stovall

Date: 2013.12.31 08:59:56 -07'00'

Curt Stovall, P.E., Project Manager
Federal Facilities Remediation and Restoration Unit
Remediation Program

cc: Tom Berger, LRA
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