

RESOLUTION NO. 7640

**CITY OF SOUTH GATE
LOS ANGELES COUNTY, CALIFORNIA**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY
OF SOUTH GATE APPROVING LICENSE AGREEMENT
WITH THE COOPER DRUM COOPERATING PARTIES
GROUP FOR IMPLEMENTATION OF REMEDIAL ACTION
TO DIRECTIONALLY DRILL PIPING UNDER RAYO
AVENUE TO CONVEY EXTRACTED GROUNDWATER
FOR A 25-YEAR TERM**

WHEREAS, the City of South Gate is the owner of certain public rights of way, to wit: the block of Rayo Avenue between Firestone Boulevard and Southern Avenue, together with Southern Avenue, located within the City of South Gate, County of Los Angeles, State of California, a portion (Property) of which is described in Exhibit B to the License Agreement attached hereto and incorporated herein by this reference as Exhibit A; and,

WHEREAS, the Cooper Drum Cooperating Parties Group (CDCPG), an unincorporated association further described in Exhibit A to the attached License Agreement, seeks an encroachment upon the Property to implement remedial action required pursuant to a United States Environmental Protection Agency (EPA) issued Administrative Order, the currently anticipated Consent Decree, and any subsequent orders relating thereto; and,

WHEREAS, the City Council of the City of South Gate desires that the City of South Gate enter into the License Agreement with the CDCPG, the purpose of which is to permit the CDCPG to install and operate a groundwater extraction well under the Property and to directionally drill piping under Rayo Avenue in order to convey extracted groundwater to the former Cooper Drum Company property, located at 9316 South Atlantic Avenue, which is now known as 9313 Rayo Avenue;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF SOUTH GATE DOES HEREBY RESOLVE AS FOLLOWS:

SECTION 1. The City Council hereby finds and determines that the recitals set forth in this Resolution are true and correct.

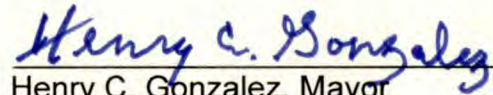
SECTION 2. The City Council hereby authorizes and approves that the City of South Gate enter forthwith into the License Agreement with the CDCPG attached hereto as Exhibit A.

SECTION 3. The City Council hereby authorizes and approves that Mayor Henry C. Gonzalez shall sign the License Agreement forthwith on behalf of the City of South Gate.

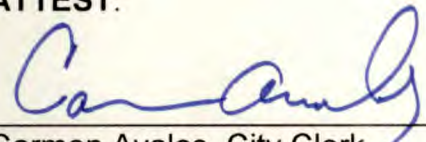
SECTION 4. The City Clerk shall certify to the adoption of this Resolution which shall be effective upon its adoption.

PASSED, APPROVED, and ADOPTED this 25th day of November 2014.


CITY OF SOUTH GATE:


Henry C. Gonzalez, Mayor

ATTEST:


Carmen Avalos, City Clerk
(SEAL)

APPROVED AS TO FORM:


Raul F. Salinas, City Attorney

LICENSE AGREEMENT

The City of South Gate ("CITY") and the Cooper Drum Cooperating Parties Group ("CDCPG"), an unincorporated association consisting of the legal entities listed on Exhibit "A" attached hereto ("LICENSEE"), (CITY and LICENSEE together are "PARTIES") agree as follows:

- (1) RECITALS. This Agreement is made and entered into with respect to the following facts:
 - (a) CITY is the owner of certain public rights of way, to wit: the block of Rayo Avenue between Firestone Boulevard and Southern Avenue, together with Southern Avenue, located within the City of South Gate, County of Los Angeles, State of California, a portion of which is the subject of this Agreement as described in Exhibit "B" (hereinafter "Property" or "Encroachment Area"); and,
 - (b) LICENSEE seeks an encroachment upon CITY Property to implement the remedial action required pursuant to a United States Environmental Protection Agency ("EPA") issued Administrative Order, the currently anticipated Consent Decree, and any subsequent orders relating thereto, all of which are incorporated by reference herein (the "Purpose"). The Purpose of this License is to permit the CDCPG to install and operate a groundwater extraction well under the Property and to directionally drill piping under Rayo Avenue in order to convey extracted groundwater to the former Cooper Drum Company property, located at 9316 South Atlantic Avenue, which is now known as 9313 Rayo Avenue [See, Cooper Drum Superfund Site, EPA, Region 9, August 2011, Cleanup Work Plans incorporated by reference herein]; and,
 - (c) The LICENSEE shall be limited to the above-described Purpose and to the alignment in Exhibit "B" ("Encroachment Area").
- (2) ENCROACHMENT. LICENSEE is hereby granted the right for the above-described Purpose only in and upon the Encroachment Area, subject to the provisions contained herein and subject to the CITY's Public Works Conditions of Approval attached hereto as Exhibit "C". LICENSEE shall not construct or install any building, structure, facility or pipeline in the Encroachment Area unless and until LICENSEE has submitted plans therefor to the CITY for written approval.. No use of any kind shall commence pursuant to this Agreement until the said plans have been approved, in writing, by the CITY, which approval shall not be unreasonably withheld. This Agreement shall not be construed to allow encroachment of any building or structure other than that approved by the CITY pursuant to this paragraph.
- (3) ADMINISTRATIVE FEE. LICENSEE shall pay to CITY an annual license fee of \$3,500 for the use of the Encroachment Area. This fee will cover the City's costs associated with reviewing plans and monitoring and inspecting the work associated with the Purpose.

(4) INDEMNITY.

- (a) LICENSEE agrees to hold CITY, its elected and appointed officers, agents, representatives and employees (collectively, "CITY PARTIES") free and harmless from, and indemnify and defend City from, any and all liabilities, claims, demands, lawsuits, judgments, expenses, and/or attorney's fees including, but not limited to those relating to environmental contamination or hazardous materials, which result from the Purpose of this Agreement, and/or the activities and use thereunder by LICENSEE, except to the extent said liabilities, claims, demands, lawsuits, judgments, expenses, and/or attorney's fees arise out of and relate to the reckless or intentional conduct or criminal acts of the CITY PARTIES (an "Indemnifiable Claim"). CITY and LICENSEE agree that LICENSEE's indemnity obligation shall be secondary to the insurance carrier's obligations pursuant to the insurance policy purchased and maintained pursuant to paragraph (5) below, and LICENSEE shall proceed to defend and indemnify such claim only after such insurance coverage is exhausted. Should the insurance carrier decline coverage, LICENSEE will indemnify and hold harmless the CITY as set out above, it being the intent of the PARTIES that the CITY shall not be financially exposed for Indemnifiable Claims. CITY agrees to notify LICENSEE within thirty (30) days of the CITY's notice of any claim. CITY shall have the right to select counsel to defend CITY in connection with any claim or demand that LICENSEE is obligated to indemnify and defend pursuant to this paragraph.
- (b) This indemnity shall survive for a period of two (2) years from the date LICENSEE permanently ceases operation of the groundwater treatment facility. The indemnity in this paragraph (4) shall not require an advance showing of negligence or wrongdoing by LICENSEE, except as required by law.
- (c) At all times during LICENSEE'S indemnity obligations to CITY as set forth herein, LICENSEE, through its consultants and contractors, shall maintain insurance as set out below.

- (5) INSURANCE. LICENSEE, during construction and during any other times LICENSEE'S contractors perform work under this license, shall require that its contractors take out and maintain in full force and effect Pollution Liability Insurance coverage relating to its activities pursuant to this Agreement. Such liability insurance coverage shall be in a minimum amount of Five Million Dollars (\$5,000,000) and shall name the CITY as an additional insured. LICENSEE shall file with the City Clerk, contemporaneously with the execution of this Agreement, a certificate of insurance evidencing the existence of the insurance coverage required pursuant to this paragraph. LICENSEE shall maintain on file with the City Clerk, current valid certificates at all times during the term of this Agreement. All policies of insurance required to be maintained by LICENSEE'S contractors shall be endorsed to provide that any other insurance maintained by the CITY shall be excess and that neither the CITY nor any of its insurers shall be required to contribute to any loss, except as set forth in this

Agreement. The additional insured coverage required pursuant to this paragraph shall also be primary to the indemnification provided by LICENSEE pursuant to paragraph (4) of this Agreement. The minimum amount of insurance shall be reviewed each five (5) years, and the coverage may be adjusted as necessary.

(6) EXISTING FACILITIES. Prior to commencing any work pursuant to this Agreement, LICENSEE shall make a complete and diligent inquiry with Underground Service Alert of Southern California ("Dig Alert") to identify and mark all existing facilities within the alignment affected by this Agreement. LICENSEE shall also immediately register with Dig Alert to be notified of proposed underground facilities excavation. LICENSEE or its contractors shall maintain membership with Dig Alert at all times during the term of this Agreement.

(7) MAINTENANCE AND RESTORATION OF ENCROACHMENT AREA.

(a) The LICENSEE shall during the life of the Agreement and any extension thereof:

1. comply with the City's Public Works Conditions of Approval, a copy of which is attached as Exhibit "C";
2. construct, install, operate, maintain, and repair any pipes and/or appurtenances in accordance and in conformity with any and all of the ordinances, resolutions, rules and regulations heretofore or hereafter adopted by the City Council of the CITY in the exercise of its police powers and not in conflict with the paramount authority of the United States of America, the State of California and, as to state highways, subject to the provisions of general laws relating to the location and maintenance of such facilities which have general application to pipelines of this nature throughout the City not directed specifically at only this pipeline;
3. repair, or pay to the CITY on demand the reasonable cost of all reasonable repairs to, public property of the CITY made necessary by any operations of the LICENSEE in carrying out the Purpose under this Agreement;
4. Remove or relocate, at the request of CITY and without expense to the CITY, any pipes or appurtenances installed, used and/or maintained under this Agreement if and when such removal or relocation is made necessary by any change of grade, alignment or width of any public street, way, alley or place, including the construction of any subway or viaduct by the CITY; provided, however, that LICENSEE shall not be required to bear the expense of any removal or relocation made at the request of the CITY on behalf of, or for the benefit of, any developer or other third party. Such relocation may only occur after a new pipeline and any appurtenances thereto have been approved by the EPA, have been

constructed in a new location, and are operational.

5. Except in the case of emergency, LICENSEE shall, prior to the construction, installation, inspection, repair, replacement, removal or other modification of any pipeline or appurtenances within a CITY right of way, obtain an excavation/grading Agreement therefor ("Excavation Agreement"). Such construction shall be performed in accordance with the requirements of the Excavation Agreement and in compliance with any and all Federal, State and/or CITY rules, regulations, ordinances, resolutions, standards, specifications and/or municipal code. All street coverings or openings of traps, vaults, and manholes shall at all times be kept flush with the surface of the streets; provided, however, that vents for underground traps, vaults and manholes may extend above the surface of the streets when said vents are located in parkways, between the curb and the property line, subject to the prior written approval of the CITY. In the case of emergency where work on any pipeline or appurtenance must, in the sole discretion of the LICENSEE, be performed immediately due to risk of danger or public harm, LICENSEE shall perform such work and obtain an appropriate Excavation Agreement therefore as soon as practical thereafter.
- (b) If any portion of any street, facility or any other improvement shall be damaged by reason of defect in any of the pipes and appurtenances maintained or constructed under this Agreement on the Property or by reason of any other cause arising from the operation or existence of any pipes or appurtenances constructed or maintained under this Agreement, the LICENSEE shall, at its own cost and expense, immediately repair such damage and restore such street or portion of street, facility or any other improvement, to as good a condition as existed immediately before this Agreement was issued or as agreed in writing with the CITY. Such work is to be done subject to approval of the CITY and in accordance with any and all rules, regulations, ordinances, resolutions, standards, specifications and/or the municipal code of the CITY.
 - (c) Within ninety (90) days following the date on which any pipeline has been laid, constructed or relocated under this Agreement, the LICENSEE shall furnish the CITY as-built plans/Record Drawings which show the accurate location, size, depth and the length of the facilities installed.
 - (d) Except as may be specifically provided for elsewhere in this Agreement, if the LICENSEE shall fail, neglect or refuse to comply with any of the provisions or conditions hereof, and shall not, within thirty (30) business days after written demand for compliance, begin the work of compliance or initiate communications with the CITY regarding same, or after such commencement of work, shall not prosecute the same with due diligence to completion, the CITY may declare this Agreement forfeited and

terminated, and LICENSEE will immediately close and discontinue all operations or uses pursuant to this Agreement.

The CITY may sue in its own name for (a) the forfeiture of this Agreement in the event of breach by the LICENSEE or (b) for any other legal cause it may assert in good faith against LICENSEE. In the event of any such suit or other legal proceeding, the substantially prevailing party shall be entitled to reimbursement of its reasonable attorneys' fees incurred.

- (8) BINDING EFFECT. This Agreement shall be binding upon the heirs, assignees and successors in interest to the PARTIES hereto.
- (9) TERM. This Agreement shall be in full force and effect for a period of twenty-five (25) years from the effective date unless terminated sooner with the concurrence of the EPA or any successor agency with comparable jurisdiction or unless sooner terminated in the manner herein provided. This Agreement may be extended for additional terms of fifteen (15) years beyond the initial twenty-five (25) years unless earlier terminated as set forth herein and upon approval of the South Gate City Council. CITY agrees to use all legal means available to it to extend the term of this Agreement if requested to do so by EPA or LICENSEE.
- (10) TERMINATION. This Agreement may be terminated by mutual agreement of the PARTIES or upon the receipt by LICENSEE of a Certificate of Completion pursuant to a Consent Decree with the US EPA. Upon termination of this Agreement or upon expiration of the term hereof, it shall be the responsibility of the LICENSEE to remove from or decommission at the Property at its sole cost and expense all structures, lines and pipes placed thereon by LICENSEE pursuant to this Agreement or as agreed in writing. LICENSEE shall reasonably restore the Property to the condition in which it existed at the time of the execution of this Agreement or as agreed in writing.

Alternatively, the LICENSEE may, by written notice to the CITY, meet its obligations under this paragraph by abandoning the lines and wells in place in compliance with applicable City ordinances governing the same if, in the reasonable judgment of the CITY, removal of the lines is not required. If removal is required and the LICENSEE fails to remove such structures, lines and pipes within a reasonable period of time, CITY may undertake to do so at the expense of the LICENSEE and LICENSEE shall promptly remit to CITY all reasonable sums incurred by CITY in performance of such work.

- (11) NOTICES. Notices pursuant to this Agreement shall be given by personal service upon the party to be notified or by deposit of the same in the custody of the United States

Postal Service, or its lawful successor postage prepaid, or by email, addressed to the PARTIES hereto as follows:

CITY:
City of South Gate
Attention: Arturo Cervantes, Director of Public Works/City Engineer
8650 California Avenue
South Gate, CA 90280

LICENSEE:
Cooper Drum Cooperating Parties Group
1401 McKinney, Suite 1900
Houston, TX 77010
Attention: Daniel E. Vineyard
dvineyard@jw.com

Notices given pursuant to this Agreement shall be deemed given as of the date of personal service or email or two (2) consecutive calendar days following the deposit for the same in the custody of the United States Postal Service.

- (12) BINDING EFFECT. This Agreement shall be binding upon the successors in interest of the PARTIES hereto.
- (13) EFFECTIVE DATE. This Agreement shall be effective on November 25, 2014.

CITY OF SOUTH GATE:

LICENSEE: COOPER DRUM
COOPERATING PARTIES (CDCPG)

By: _____
Henry C. Gonzalez, Mayor

By: _____

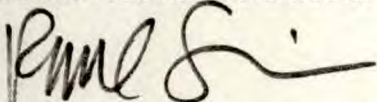
Print: _____

ATTEST:

Title: _____

Carmen Avalos, City Clerk
(SEAL)

APPROVED AS TO FORM:



Raul F. Salinas, City Attorney

EXHIBIT A
COOPER DRUM COOPERATING PARTIES GROUP

1.	Ashland Inc.
2.	Baker Petrolite Corporation
3.	BP Industries (including ARCO and Castrol)
4.	Cargill, Inc.
5.	Chemical Waste Management, Inc.
6.	Chevron U.S.A. Inc., Texaco Downstream Properties Inc., and Union Oil Company of California
7.	Coral Chemical Company
8.	Dunn-Edwards Corporation
9.	ExxonMobil Oil Corporation/Hasco Oil Company, Inc.
10.	Lonza Inc.
11.	Lubricating Specialties Company
12.	Quaker Chemical Company (including AC Products)
13.	Shell Oil Company, Shell Chemical LP, and Pennzoil-Quaker State Company (on behalf of Pennzoil-Quaker State Co. & and Penreco)
14.	SOCO West, Inc.
15.	Southern Counties Oil Co., a California Corporation
16.	The Valspar Corporation and its wholly owned subsidiary, Engineered Polymer Solutions, Inc.
17.	Univar USA Inc.

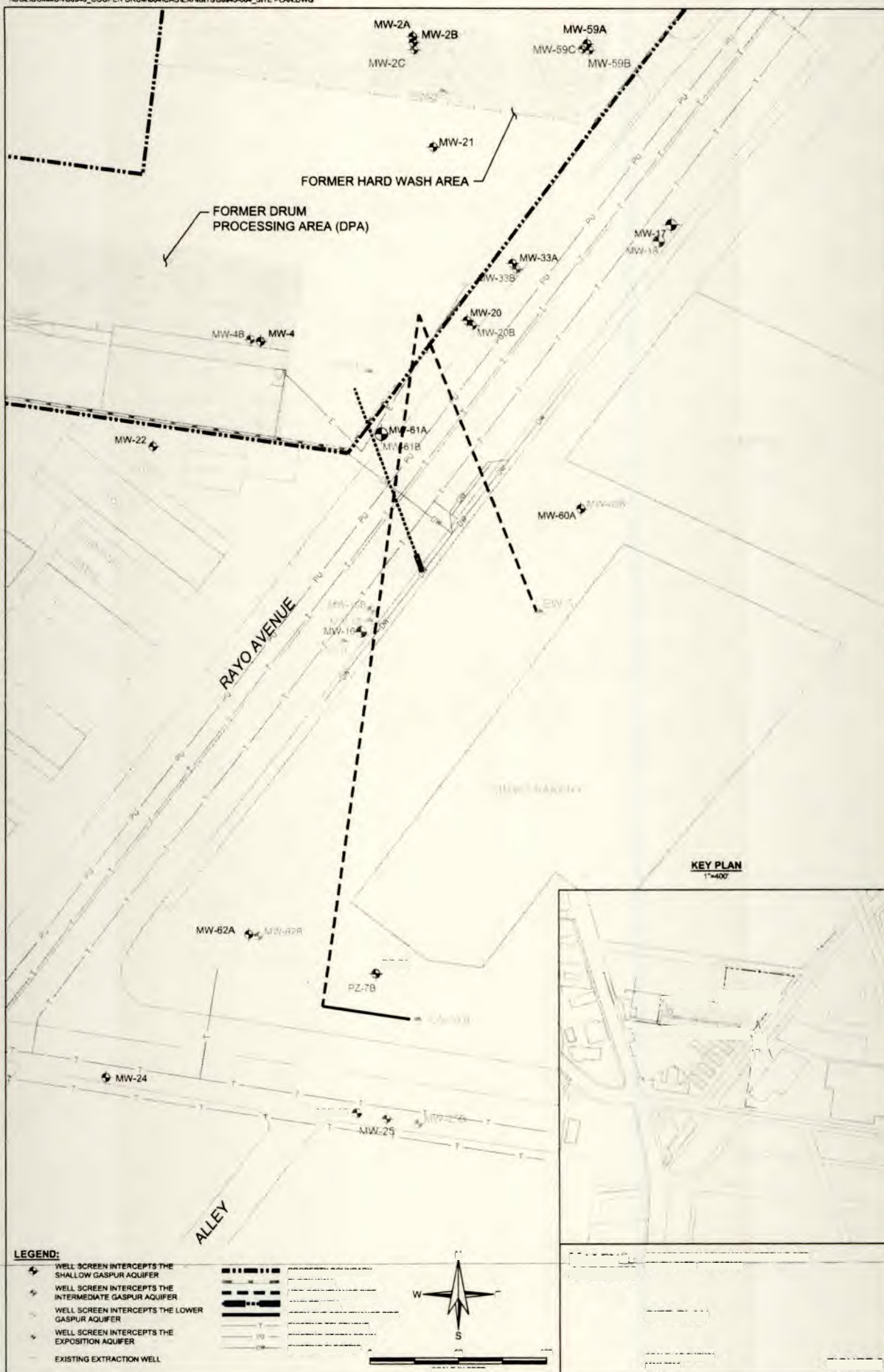


EXHIBIT C
CITY OF SOUTH GATE
PUBLIC WORKS CONDITIONS OF APPROVAL

1. At least 60 days prior to any proposed above-ground structure construction on private property, licensee will agree to be bound by the substantive terms of a "No Fee" Building Permit from the Community Development Department and will be subject to all standard plan check requirements and permit conditions. Work on the above-ground structure cannot begin until such agreement by licensee.
2. At least 30 days prior to any proposed encroachment or excavation in the public right-of-way, licensee will agree to be bound by the substantive terms of a "No Fee" Public Works Permit from the Public Works Department and will be subject to all standard submittal requirements and conditions of approval. Work cannot begin until such agreement by licensee. Where terms and conditions of the "No Fee" Public Works Permit are different from those established in the license agreement, the license agreement shall prevail.
3. All proposed facilities shall comply with Health Department requirements for both Los Angeles County and the State of California, particularly when it comes to separation of utilities.
4. Licensee must maintain and be in compliance with a valid Industrial Wastewater Discharge Permit with the Los Angeles County Sanitation District.
5. It has been demonstrated that no measurable land settlement has occurred with pumping at rates as high as 31 gallons per minute (gpm). No extraction well will be pumped at a rate higher than 31 gpm without approval by the City of South Gate.
6. The transportation of any contaminated soil excavated during construction must comply with applicable local, regional, state, and/or federal rules, regulations, and laws. Any required permits for said transportation shall be secured by licensee.
7. No new extraction wells may be constructed in the future right-of-way width of Rayo Avenue (72 feet per the South Gate General Plan 2035).
8. Any increase in total pumping rates above 12.5 gpm must be approved by Los Angeles County Sanitation District and the City in advance.
9. Leak detection procedures will be implemented to shut-down the system if a leak is detected. Any soil or water testing results to be shared with the City.
10. Provide annual maintenance and inspection reports as specified in the license agreement.
11. When groundwater extraction at off-Property locations is no longer required, licensee will request from the Environmental Protection Agency (EPA) a letter approving cessation of groundwater extraction at the off-Property wells. The licensee will provide a

copy of this letter to the City of South Gate Public Works Department. With EPA approval, the licensee may terminate pumping and properly decommission the proposed facilities and terminate the license in accordance with the terms set forth in the license agreement.


RESOLUTION CERTIFICATION PAGE

STATE OF CALIFORNIA)
COUNTY OF LOS ANGELES) SS
CITY OF SOUTH GATE)

I, Carmen Avalos, City Clerk of the City of South Gate, California, hereby certify that the whole number of Members of the City Council of said City is five; that Resolution No. 7640 was adopted by the City Council at their Regular Meeting held on November 25, 2014, by the following vote:

Ayes: Council Members: Gonzalez, Davila and Hurtado
Noes: Council Members: None
Absent: Council Members: Morales and De Witt
Abstain: Council Members: None

Witness my hand and the seal of said City on December 1, 2014.



Carmen Avalos, City Clerk
City of South Gate, California