

AGREEMENT

Dated as of (July 18,) 2000

between

ROBERTSON'S READY MIX, LTD.
a California Limited Partnership

and

CITY OF REDLANDS

AGREEMENT

This Agreement (this "Agreement") is made as of July 18, 2000, between ROBERTSON'S READY MIX, LTD., a California Limited Partnership, ("Producer") and City of Redlands, ("Redlands", which for purposes of this Agreement shall be the definition for both the governmental entity constituting such city (and any political subdivisions thereof) and the geographic location comprising such city), for the purpose of setting forth the agreement of the parties with respect to the following:

RECITALS

A. Producer is engaged in the extraction of aggregate and the processing of aggregate within the boundaries of Redlands.

B. Redlands has proposed to establish a tax on the commercial businesses of extracting aggregate and processing aggregate within its boundaries, said tax if enacted by the electorate of Redlands to be substantially in the form of proposed Ordinance No. 2441, attached hereto as Exhibit "A" (the "Proposed Ordinance").

C. Redlands acknowledges that if the Proposed Ordinance is enacted, Producer intends to challenge the legality, constitutionality, and other aspects thereof (the "Litigation"), and that one or more of such challenges may be successful, resulting in such ordinance becoming null and void.

D. Producer and Redlands agree that there are benefits to be achieved for each by entering into this Agreement which, among other things, exempts Producer from the provisions of the Proposed Ordinance if it is enacted, limits the tax that may be levied on the businesses of extracting aggregate and processing aggregate, avoids the Litigation, and provides for the payment by Producer to Redlands of a mutually agreeable business licence tax on the extraction and processing of aggregate within the boundaries of Redlands.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing and the mutual agreements set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Producer and Redlands agree as follows:

ARTICLE 1 EFFECTIVE DATE AND TERM

This Agreement shall be effective as of the date first written above, and subject to § 4.22 and the other provisions hereof, shall remain in full force and effect for sixty-six (66) years, at the end of which term this Agreement shall terminate automatically without the need for any action on the part of the parties hereto.

ARTICLE II DEFINITIONS

The following terms and references shall have the meanings indicated below:

- (1) "aggregate" shall mean rock, sand and gravel;
- (2) "Agreement" shall have the meaning ascribed thereto in the introductory paragraph of this Agreement;
- (3) "Business Day" shall have the meaning ascribed thereto in §4.16 of this Agreement;
- (4) "CPI" shall have the meaning ascribed thereto in §3.1 of this Agreement;
- (5) "extracting" or "extraction" shall mean the extracting, mining, or excavating of aggregate;
- (6) "License Tax" shall have the meaning ascribed thereto in Article III of this Agreement;
- (7) "Non-Redlands Tax Credit" shall have the meaning ascribed thereto in §3.5 of this Agreement;
- (8) "processing" shall mean the crushing and screening of aggregate;
- (9) "Producer" shall have the meaning ascribed thereto in the introductory paragraph of this Agreement;
- (10) "Proposed Ordinance" shall have the meaning ascribed thereto in Recital B of this Agreement;
- (11) "Redlands" shall have the meanings ascribed thereto in the introductory paragraph of this Agreement;
- (12) "tax" shall mean any tax, fee, charge, duty, levy, or other assessment of a similar nature, whether imposed directly or through withholding.
- (13) "ton" or "tonnage" shall mean a short ton or two thousand pounds (2000lbs).

ARTICLE III BUSINESS LICENSE TAX

In lieu of paying a tax pursuant to the Proposed Ordinance, Producer hereby agrees to pay a business license tax (the "License Tax") to Redlands, on the following terms and conditions:

3.1. Imposition. The License Tax:

(i) shall be imposed solely on the extraction or processing of aggregate conducted within the boundaries of Redlands;

(ii) shall be applied only once to any ton of aggregate (or portion thereof), so that no ton of aggregate (or portion thereof) is subjected to the License Tax both when extracted within the boundaries of Redlands and when processed within the boundaries of Redlands, or at different times or at different locations within the boundaries of Redlands;

(iii) shall be imposed at the rate of Ten Cents (\$0.10) per ton, which rate shall be adjusted annually in (January) of each year in accordance with the percentage change in the Consumer Price Index for All Urban Consumers for the Los Angeles/Riverside/Orange County Area for All Items (the "CPI") since the last adjustment (or, if the CPI ever ceases to be published, in accordance with such substantially equivalent replacement index as the parties shall agree to);

(iv) shall be subject to adjustment during the term of this Agreement only in accordance with the express provisions of this Agreement; and

(v) shall be the only tax levied by Redlands during the term of this Agreement against the extraction or processing of aggregate by Producer within the boundaries of Redlands, or against any other aspect of Producer's aggregate business, with the sole exception of the sales tax that is levied against the retail sale of items generally and authorized by the laws of the State of California; and such other taxes as are levied on all or substantially all other businesses within the boundaries of Redlands generally, and if Redlands ever collects or attempts to impose any other tax on Producer in connection with the extraction or processing of aggregate (or any other aspect of Producer's aggregate business) during the term hereof, then in addition to all other remedies available to Producer in equity and at law for such breach of this Agreement, Producer shall have the option to terminate this Agreement by providing written notice to Redlands of such termination.

3.2. Commencement and Payment. Imposition of the License Tax shall begin on January 1, 2001, and be paid by Producer to Redlands on a quarterly basis, sixty (60) days after the end of each calendar quarter, beginning on May 31, 2001.

3.3. Reporting. Each License Tax payment shall be accompanied by the following information relating to aggregate extracting and processing activity during the prior quarter:

- (i) the tonnage of aggregate both extracted and processed within the boundaries of Redlands.
- (ii) the tonnage of aggregate extracted within the boundaries of Redlands and processed outside the boundaries of Redlands;
- (iii) the tonnage of aggregate processed within the boundaries of Redlands and extracted outside the boundaries of Redlands;
- (iv) the current rate of the License Tax;
- (v) the tonnage of aggregate described in clause (ii) and (iii) immediately preceding that is subject to tax by any other governmental entity or agency (specifying such amounts by governmental entity and agency), and the rate(s) of such other governmental entity's(ies') or agency's(ies') tax(es); and
- (vi) the amounts of any credits/offsets claimed in accordance with §3.5. below, and if necessary, an explanation of how the credit/offset was determined.

The parties hereto agree that whenever in this Agreement the amount of aggregate extracted or processed is to be calculated or reported, such amounts shall be determined at and as of the time such aggregate is sold, it being acknowledged by the parties that this will result in the most accurate and easily verifiable calculations and reporting.

3.4. Record Keeping and Audits. In addition to the information provided to Redlands pursuant to §3.3, Producer shall maintain detailed weight slips for all aggregate sold by it that is either extracted from within the boundaries of Redlands or processed within the boundaries of Redlands. Such information shall be maintained for a period of three (3) years. During such three (3) year period, Redlands shall be entitled to reasonable audits of the weight slips to verify the accuracy of the License Tax paid and the other information reported to it by Producer. Any such audits shall be conducted at the sole expense of Redlands; provided, however, that if any particular audit discloses a quarterly underpayment of License Tax in excess of 7.5% of the amount finally determined to be payable by Producer, the reasonable cost of such audit shall be borne by Producer.

3.5. Credits/Offsets. The License Tax payable by Producer to Redland for any quarter shall be reduced by an amount equal to the Non-Redlands Tax Credit. The "Non-Redlands Tax Credit" shall mean the amount of tax (with the sole exception of the sales tax that is levied against the retail sale of items generally) paid or payable by Producer to any governmental entity or agency other than Redlands (the "Non-Redlands Taxing Entities") and attributable to aggregate extracted or aggregate processed by Producer within the boundaries of Redlands during such quarter; provided, however, that the amount of such credit during any such quarter shall not exceed the following: (i) the amount of License Tax payable by Producer to Redlands during such quarter prior to application of the Non-Redlands Tax Credit; multiplied by (ii) the fraction that has as its

numerator the number of Non-Redlands Taxing Entities imposing tax on the aggregate business of Producer that quarter, and as its denominator the number of Non-Redlands Taxing Entities imposing tax on the aggregate business of Producer that quarter plus one.

3.6. Reductions. Notwithstanding anything to the contrary contained in this Agreement, in the Proposed Ordinance, or in any other ordinance, law, statute, rule, or regulation promulgated, passed, or enacted by Redlands or its populace, Redlands covenants and agrees with Producer that Producer shall never be required to pay any License Tax at a rate per ton of aggregate extracted or processed that is in excess of the tax on the extraction and processing of aggregate actually paid (after taking into account all credits, rebates, offsets, and other reductions permitted in connection with the payment of such tax) by any other entity engaged in such business within the boundaries of Redlands (and the rate of License Tax payable by Producer shall automatically be reduced hereby (to zero if necessary) to effectuate this provision); it being the intention and agreement of the parties hereto that in consideration of Producer entering into this Agreement, Producer shall never suffer a competitive disadvantage with any other entity who extracts or processes aggregate within the boundaries of Redlands as a result of entering into this Agreement.

In connection therewith, Redlands further agrees to: (i) promptly advise Producer in writing if the tax per ton on the extraction and processing of aggregate actually paid (after taking into account all credits, rebates, offsets, and other reductions permitted in connection with the payment of such tax) by any other entity engaged in such business within the boundaries of Redlands is lower than that paid by Producer during any period; (ii) promptly return any portion of License Tax previously paid by Producer to Redlands as may be necessary to effectuate the provisions and intentions of this § 3.6 and avoid the overpayment of such tax by Producer; and (iii) permit independent audit of its records by a reputable certified public accounting firm to verify Redlands' compliance with the provisions of this Agreement; provided, however, that such firm shall first agree in writing to hold any non-public information strictly confidential.

If the provisions of §§ 3.5 and 3.6 are both applicable to the calculation of License Tax for any period, the provisions of § 3.5 shall be applied prior to the provisions of § 3.6 in calculating License Tax owing for such period.

3.7. Penalties. Failure by producer to timely pay any License Tax due hereunder shall cause the unpaid amount of License Tax to incur interest at the rate of ten percent (10%) per annum; provided, however, that if such failure is finally adjudicated by a competent court of law to be due to the fraud of Producer, then such unpaid License Tax shall be subject to an additional penalty equal to Twenty-Five percent (25%) of the amount of the fraudulently unpaid License Tax but in no event more than the maximum penalty permitted by law.

3.8. **Sole Recourse.** Notwithstanding the Proposed Ordinance or any other ordinance, law, statute, rule, or regulation promulgated, passed, or enacted by Redlands or its populace, Redlands agrees that the terms of this Agreement shall govern, and shall provide the basis for its sole recourse against Producer in respect of, all matters relating to tax on the extraction and processing of aggregate (and other aspects of the aggregate business) within the boundaries of Redlands, including the imposition of such tax and any reporting requirements, audits, or penalties relating to such tax.

3.9. **Waiver of Right to Challenge.** Producer waives its right to challenge the imposition of the License Tax based on the provisions of Proposition 62 (Government Code §53720 et seq.) or Proposition 218 (Article XIII C of the California Constitution).

ARTICLE IV MISCELLANEOUS

4.1. **Confidentiality.** All non-public information relating to Producer's aggregate extraction, aggregate processing and other aggregate business that is provided to Redlands by Producer, including, without limitation, the information provided pursuant to §3.3, hereof and any information obtained by Redlands pursuant to an audit described in §3.4, shall be held strictly confidential by Redlands and shall not be used for any purpose other than verification of the terms of this Agreement. Redlands hereby acknowledges and agrees that any disclosure or improper use by Redlands of confidential information could cause Producer substantial damages, and also irreparable injury for which there is not an adequate remedy at law. Therefore, in the event of any such action, Producer shall be entitled, in addition to all other remedies which it may have hereunder or at law or in equity, to a temporary and/or permanent injunction with a decree for specific performance of the terms hereof without being required to furnish a bond or other security. Jurisdiction in any action for injunctive relief shall be in a court of competent subject matter jurisdiction in California, with venue in Southern California, but outside of [San Bernardino] County.

Moreover, if Redlands or any party acting on its behalf is subpoenaed or otherwise ordered to produce any confidential information, Redlands shall promptly (and prior to such disclosure) notify Producer of such subpoena or demand whereupon Producer and Redlands shall cooperate and take all reasonable acts (provided Redlands shall not be required to expend any of its own funds in connection therewith) to exhaust the legal avenues available to maintain the confidentiality of such confidential information, unless Producer consents to the production and disclosure of the information. In all events, only that portion of the confidential information specifically requested by the tribunal or party compelling such disclosure shall be provided and no interpretation or analysis of such data shall be prepared by Redlands for the purpose of such disclosure unless approved by Producer or required by law.

4.2. **Other Regulatory Provisions.** Except as expressly provided herein, nothing in this Agreement shall relieve Producer from any applicable regulatory provisions or ordinances otherwise applicable to the business it conducts within the boundaries of Redlands.

4.3. **Notices.** Any communication, notice, or demand of any kind whatsoever that either party may be required or may desire to give to or serve upon the other shall be in writing, addressed to the addresses set forth below, and delivered by personal service, by reputable overnight delivery service, by facsimile transmission, or by registered or certified mail, postage prepaid, return receipt requested.

	Physical Address	Mailing Address
If to Producer	Robertson's Ready Mix, Ltd. 6830 Van Buren Blvd Riverside CA 92509 Attn: President Facsimile: (909) 685-0221)	Robertson's Ready Mix, Ltd. P.O. Box 33140 Riverside CA 92519 Attn: President
With copy to:	Joseph P. Occhiuto, Esq. Law Offices of Joseph P. Occhiuto 6830 Van Buren Blvd Riverside CA 92509 Facsimile: (909) 685-0221	Joseph P. Occhiuto, Esq. Law Offices of Joseph P. Occhiuto P.O. Box 33140 Riverside CA 92519
If to Redlands:	City of Redlands 35 Cajon Street Redlands, CA 92373 Attn: City Attorney Facsimile: (909) 798-7503	City of Redlands P.O. Box 3005 Redlands, CA 92373

With a copy to:

Attn:
Facsimile: ()

Any such notice shall be deemed delivered if sent as follows: (a) if personally delivered, on the date of delivery to the address of the person to receive such notice as evidenced by a signed receipt or notice of refusal thereof; (b) if sent by reputable overnight courier service, on the date of delivery to the address of the person to receive such notice as evidenced by a signed receipt or notice of refusal thereof; (c) if sent by facsimile transmission, on the date transmitted to the person to receive such notice if sent by 5:00 p.m. Pacific Time, and on the next day if sent after 5:00 p.m. Pacific Time; or (d) if mailed, on the date of delivery to the address of the person to receive such

notice as evidenced by a signed receipt or notice of refusal thereof. Any notice sent by facsimile transmission must be confirmed by personally delivering, sending by courier, or mailing a copy of the notice sent by facsimile transmission. Any party may change its address for notice by written notice given to the other at least ten (10) days before the effective date of such change in the manner provided in this §4.3.

4.4. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, administrators, successors, and assigns, including, without limitation, upon any purchaser, manager, operator, subcontractor, lessee, or licensee of Producer's aggregate business operated within the boundaries of Redlands or Producer's aggregate-containing land located within the boundaries of Redlands.

4.5. Amendments. This Agreement may be amended or modified only by a written instrument executed by both parties.

4.6. Interpretation. Words used in the singular shall include the plural, and vice-versa, and any gender shall be deemed to include the other. The captions and headings of the Articles and Sections of this Agreement are for convenience of reference only, and shall not be deemed to define or limit the provisions hereof. Furthermore, each party hereby acknowledges that such party and its counsel, after negotiation and consultation, have reviewed and revised this Agreement. As such, the terms of this Agreement shall be fairly construed and any rule of construction to the effect that ambiguities herein should be resolved against the drafting party shall not be employed in the interpretation of this Agreement or any amendments, modifications, or exhibits hereto or thereto.

4.7. Governing Law. This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of California, without regard to its principles of conflicts of law.

4.8. Entire Agreement. This Agreement including the exhibits attached hereto constitutes the entire agreement between Redlands and Producer pertaining to the subject matter hereof and supersedes all prior agreements, understandings, letters of intent, negotiations, and discussions of the parties, whether oral or written.

4.9. Attorneys' Fees and Costs. If either Redlands or Producer brings any suit or other proceeding with respect to the subject matter or the enforcement of this Agreement or any other document executed in connection herewith, the prevailing party (as determined by the court, agency, or other authority before which such suit or proceeding is commenced), in addition to such other relief as may be awarded, shall be entitled to recover reasonable attorneys' fees, expenses, and costs of investigation actually incurred. The foregoing shall include, without limitation, reasonable attorneys' fees, expenses, and costs of investigation incurred in appellate proceedings and costs incurred in establishing the right to indemnification.

4.10. **Time of the Essence.** Time is of the essence with respect to all matters contemplated by this Agreement.

4.11. **No Waiver.** No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any other provision, whether or not similar, nor shall any waiver constitute a continuing waiver. No waiver shall be binding unless executed in writing by the party making the waiver.

4.12. **Further Acts.** Each party, at the request of the other, shall execute, acknowledge (if appropriate), and deliver such additional documents, and do such other additional acts, as may be reasonably required in order to accomplish the intent and purpose of this Agreement.

4.13. **Exhibits.** Exhibit "A" is attached hereto and incorporated herein by reference.

4.14. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall constitute an original, but all of which when taken together shall constitute one and the same instrument.

4.15. **No Intent to Benefit Third Parties.** Except for any purchaser(s), manager(s), operator(s), subcontractor(s), lessee(s), or licensee(s) of Producer's aggregate business located within the boundaries of Redlands or Producer's aggregate-containing land located within the boundaries of Redlands, which purchaser(s), manager(s), operator(s), subcontractor(s), lessee(s), or licensee(s) shall be entitled to all the benefits of this Agreement, Producer and Redlands do not intend by any provision of this Agreement to confer any right, remedy, or benefit upon any third party, and no third party shall be entitled to enforce, or otherwise shall acquire any right, remedy, or benefit by reason of, any provision of this Agreement.

4.16. **Business Days.** The term "Business Day" shall mean a day that is not a Saturday, Sunday or legal holiday in California. In the event that the date for the performance of any covenant or obligation under this Agreement shall fall on a Saturday, Sunday or legal holiday in California, the date for performance thereof shall be extended to the next Business Day.

4.17. **Expenses of Agreement.** Except as otherwise provided in this Agreement, Producer and Redlands shall each bear its own direct and indirect expenses incurred in connection with the negotiation and preparation of this Agreement and the consummation and performance of the transactions contemplated hereby.

4.18. **Severability.** Any provision or part of this Agreement which is invalid or unenforceable in any situation or in any jurisdiction shall, as to such situation and such jurisdiction, be ineffective only to the extent of such invalidity and shall not affect the enforceability of the remaining provisions hereof or the validity or enforceability of any such provision in any other situation or in any other jurisdiction, unless such invalidity materially changes the transaction set forth herein, in which event this Agreement shall terminate.

4.19. **Dispute Resolution.** The parties hereto acknowledge that it is in their best interest to facilitate the informal resolution of any disputes arising out of this Agreement. As a result, if any dispute so arises, the complaining party shall serve upon the other party a written document setting forth in detail the nature of the complaint and the proposed solution to the complaint, including a specific and reasonable time frame within which the parties must act. The party receiving the complaint shall respond in writing within thirty (30) days upon receipt of the notice with an explanation and response to the proposed solution. Within thirty (30) days of receipt of this response, Redlands and Producer shall meet and discuss options for resolving the dispute. The complaining party shall initiate the scheduling of a resolution meeting.

In the event the parties are unable to reach agreement at any such resolution meeting or meetings, a settlement conference shall be held within thirty (30) days. The settlement conference shall be held in the Los Angeles office of Judicial Arbitration and Mediation Services, Inc. ("JAMS"). The complaining party shall contact JAMS to schedule the conference and the parties may agree on a retired judge from the JAMS panel. If the parties are unable to agree upon such a retired judge, JAMS shall provide a list of three available judges and each party shall strike a separate judge. The remaining judge shall serve as the mediator at the settlement conference.

If the dispute is not settled by the two above-described formats, the parties hereto agree to submit the dispute to the JAMS Los Angeles office for binding arbitration in accordance with California substantive law and the arbitration rules conducted in accordance with Title 9 of the California Code of Civil Procedure §§1280 et. seq. and under the commercial rules of the American Arbitration Association then in effect. One judge will be selected to arbitrate the dispute. JAMS will provide the names of three potential arbitrators, giving each party the opportunity to strike one name. The remaining person will serve as the arbitrator, unless both parties object to the remaining person in which case JAMS will provide the names of three additional potential arbitrators and the process shall begin anew. The parties agree that the arbitration must be initiated within one year after the complaining party first knew or should have known of the existence of the claimed breach of this Agreement, and that failure to initiate arbitration within the one-year period constitutes an absolute bar from the institution of any new proceedings. Arbitration shall be initiated by the aggrieved party by sending written notice of an intent to arbitrate in accordance with the notice provisions contained in § 4.3, and by additionally sending such written notice by registered or certified mail, return receipt requested, to JAMS. The notice must contain a description of the dispute, the amount involved and the remedies sought. If and when a demand for arbitration is made by either party, the parties agree to execute a Submission Agreement provided by JAMS and consistent herewith, setting forth the rights of the parties if the case is arbitrated and the rules and procedures to be followed at the arbitration hearing. The arbitrators shall apply California substantive law in resolving the dispute. However, the parties understand and agree that JAMS shall have no authority to consider or to issue injunctive and/or equitable relief, and that such requests for injunctive and/or equitable relief shall be filed in the Superior Court of the State of California for the County of Los Angeles.

4.20. **Authority.** Each party hereto represents and warrants to the other that the individual executing this Agreement on its behalf is duly authorized to execute and deliver this Agreement on its behalf.

4.21. **Non-Contravention.** Each party hereto represents and warrants to the other that the execution, delivery, and performance of this Agreement does not violate any ordinance, law statute, rule, regulation, judgment, injunction, order or decree, applicable to it, or breach of any agreement to which it is a party.

4.22. **Development Agreement.** From and after the date hereof, Redlands and Producer agree to work diligently and in good faith with each other and to use commercially reasonable efforts to enter into an agreement on the same material terms and conditions as this Agreement but which otherwise meet the requirements of a development agreement under California Government Code §65864 *et seq.* If within one (1) year of the date hereof, such a development agreement has not been fully executed and delivered by both of the parties hereto, then at any time thereafter, either party may terminate this Agreement by providing written notice to the other of such termination.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first written above.

"Producer"

ROBERTSON'S READY MIX, LTD.

a California Limited Partnership

By: Robertson's Ready Mix, Inc.

a California corporation,

its General Partner

By: Kaye Bennett
Kaye Bennett, Treasurer

APPROVED BY:
CITY COUNCIL

By: Lorrie Foyzer
City Clerk, Lorrie Foyzer

"Redlands"

CITY OF REDLANDS

By: Pat Gilbreath
Mayor, Pat Gilbreath

LIST OF EXHIBITS

EXHIBIT A

PROPOSED ORDINANCE

EXHIBIT A
PROPOSED ORDINANCE

AN ORDINANCE OF THE CITY OF REDLANDS ADDING CHAPTER 5.10 TO THE REDLANDS MUNICIPAL CODE ESTABLISHING A BUSINESS LICENSE TAX ON THE EXTRACTION OR PROCESSING OF ROCK, SAND AND GRAVEL (AGGREGATE)

THE CITY COUNCIL OF THE CITY OF REDLANDS DOES ORDAIN AS FOLLOWS:

Section 1. Chapter 5.10, entitled "Business License Tax on Extraction or Processing of Rock, Sand and Gravel (Aggregate)" is hereby added to the Redlands Municipal Code to read as follows:

"Chapter 5.10

Business License Tax on Extraction or Processing of Rock,
Sand and Gravel (Aggregate)

Section	
5.10.010	Purpose
5.10.020	Payment of Business License Tax; Business License Required
5.10.030	Verification of Annual Production
5.10.040	Rock, Sand and Gravel (aggregate) processing and Extraction Tax
5.10.050	Credit for Sales Taxes Generated and Paid
5.10.060	Record keeping: Retention of Records and Right of Inspection
5.10.070	Failure to Remit Tax When Due: Penalty
5.10.080	Payment of Other Fees or Taxes Not Excused
5.10.090	Exemption from Tax
5.10.100	Taxes a Debt to City: Actions for Collection of Taxes
5.10.110	Misrepresentation
5.10.120	Amendments
5.10.130	General Penalty for Violations
5.10.140	Severability
5.10.150	Effective Date

Section 5.10.010 Purpose.

The purpose of this Chapter is to establish a tax on the commercial business of the extraction or processing of rock, sand and gravel (aggregate) within the City, as a means of generating revenue for the City for municipal purposes and not as a regulatory measure. This business license tax is imposed in the interests of the health, safety convenience and welfare of the residents of the City.

A. There is imposed upon any business engaged in the principal business of extracting or processing rock, sand or gravel (aggregate) from or on any real property located within the City, for the purpose of commercial use or sale, a general business license tax in the amount set forth in Section 5.10.040 of this Chapter.

B. Each business which is subject to this Chapter shall, within 45 days of the effective date of the Ordinance establishing this Chapter, apply for and obtain a business license tax certificate, as part of the business license application, from the City Treasurer. The business license tax certificate application shall include a current topographic map of all permitted extraction and processing sites within the City, at a scale of 1"= 200' and shall include the locations of the City limits and permit limits.

C. It is unlawful for any person, whether as principal or agent, or employee, either for himself or for any other person, to transact and carry on any business within the City which is subject to the business license tax established in this Chapter without first having applied for and procured a business license tax certificate from the City to do so, and without having paid the business license tax therefor. Exemptions to this requirement are set forth in Section 5.10.080 of this Chapter.

D. As used in this Chapter, "processed" or "processing" shall include, not be limited to, the utilization of rock, sand or gravel (aggregate) from any source or location, as a primary ingredient as part of a manufacturing or batching process (such as asphalt or concrete batching) within the City.

E. As used in this Chapter, to be "engaged in business" shall include the acts of extracting rock, sand or gravel (aggregate) from or on any real property located within the City, processing rock, sand or gravel (aggregate), or the utilization of rock, sand or gravel (aggregate), from any source or location, as a primary ingredient as part of a manufacturing or batching process within the City. As used in this Chapter, "engaged in business" shall also include the business of extraction and processing of rock, sand or gravel (aggregate) which is sold to a public agency pursuant to bid.

F. Whenever any person is carrying on two or more related activities at the same location and under the same ownership or management, such as extraction and processing of rock, sand or gravel (aggregate), then in that event the business license tax shall be applied once only to each ton of material extracted or processed, whichever is grater, and a single business license shall be issued. Provided, however, that nothing contained in this Section shall be construed to relieve the payment of two or more business license taxes when required, where two or more separate businesses are conducted in the same location by the same owner or management and such businesses are not construed by the City Treasurer to be correlated or allied with each other. An appropriate business license tax as set forth in this Chapter shall be paid for each business.

G. Nothing contained in this Chapter shall be construed to relieve the obligation to obtain

DRAFT

a separate business license and to pay the appropriate business license tax required for each business owned or conducted by a separate owner whether or not under the same management.

Section 5.10.030 Verification of Annual Production.

A. To enable the City to verify annual production reporting, each business which is subject to this Chapter shall submit the following information to the City Treasurer:

- (1) Each year on or before June 30, production quantities shall be submitted, reported in tons by quarter and cumulatively for the reporting year.
- (2) Each year, on or before July 15, a current aerial photograph shall be submitted of the mining area with City limits and mine permit area clearly identified.
- (3) Every five (5) years, on or before July 15, a current topographic map of the business' permitted extractive sites within the City shall be submitted. The topographic map shall be based on aerial photographs taken within 45 days of submittal. The purpose of the topographic maps is to verify reported production quantities.
- (4) Weight slips for aggregate materials shall be made available to the City annually, upon request.

B. If the information submitted pursuant to this Section does not adequately quantify annual production, additional information and documentation, identified by the City, may be required and shall be provided at the expense of the business.

C. In addition to the measures set forth in this Section, the City may conduct an audit to ensure compliance with this Chapter. The expenses incurred in the completion of the audit shall be paid by the City, unless inaccuracies in reporting are identified. Should inaccuracies be identified, the penalties set forth in Section 5.10.130 shall be assessed, including the cost of the audit.

Section 5.10.040 Rock, Sand and Gravel (Aggregate) Extraction and Processing Tax.

A. Every person who engages in the principal business of extracting or processing rock, sand and gravel (aggregate) from or on any real property located within the City, for the purpose of commercial use or sale, shall pay a general business license tax on each ton of material excavated from or processing in the City according to the following schedule:

- \$0.10 per ton for any quantity of rock up to and including one million tons
- \$0.12 per ton for any quantity of rock, sand or gravel in excess of one (1) million tons but less than 2 million tons;
- \$0.14 per ton for any quantity of rock of 2 million tons or more;

The rate of tax commencing shall be adjusted annually in July of each year in accordance with the Consumer Price Index, for all urban consumers for Los Angeles/Anaheim/Riverside (or substantially equivalent index).

B. The tax on the processing or extraction of rock, sand and gravel (aggregate) and businesses as set forth herein, shall begin on January 1, 2001, and shall be paid and collected by the City quarterly, beginning April 1, 2001. The returns for the tax shall be submitted by the persons engaged in said principal business within 15 days following the end of each quarter for which the tax is due, on July 1, October 1, January 1 and April 1 of each calendar year, subject to the penalties for failure to pay the said tax as set forth in this Chapter.

C. The City Treasurer shall provide each person in the principal business with a form for reporting the quarterly return. All returns shall indicate:

- (1) The tonnage of rock, sand and gravel (aggregate) extracted and processed during the prior calendar quarter from property located within the City of Redlands.
- (2) The tonnage of rock, sand and gravel (aggregate) extracted during the prior calendar quarter from property located outside the City, and processed within the City, which is taxed by another city or county, and the rate of tax which has been collected by the other city or county for the same material.
- (3) The tonnage of rock, sand and gravel (aggregate) shipped from extraction or processing facilities located within the City to concrete batch plants, asphalt batch plants and other processing or manufacturing facilities that utilize aggregate materials.
- (4) The tonnage of concrete, asphalt or other processed materials shipped from processing facilities located within the City. Concrete and asphalt materials shall be taxed at a rate to be determined by the City based on approximate aggregate content, per cubic yard of concrete, asphalt or other processed material shipped. Other products processed on the site where aggregate is used as a constituent in an end product will be taxed based on the approximate aggregate content.
- (5) The current tax rate imposed by the City.

D. Information provided on the quarterly return shall not be considered conclusive as to the information it contains, will not prevent the City from collecting the appropriate amount which is actually due and payable, and shall be subject to review, audit and verification.

Section 5.10.050 Credit for Sales Taxes Generated and Paid.

Any person required to pay a business license tax for conducting a business subject to this Chapter shall have credited against the amount of business license tax due and owing for any year, an amount equal to the sales tax generated and paid to the City by that business during the year.

Section 5.10.060 Record Keeping: Retention of Records and Right of Inspection.

It shall be the duty of every person liable for the reporting and payment to the City of any business license tax imposed by this Chapter to keep and preserve, for a period of not less than three (3) years, all records as may be necessary to determine the amount of such tax as he may have been liable for the reporting of and payment to the City. The City Treasurer shall have the right and authority to examine or cause to examine, audit, and inspect such books and records as may be necessary to determine the amount of tax due and payable, and shall have the authority to enforce all provisions of this Chapter.

Section 5.10.070 Failure to Remit Tax When Due: Penalty

A. Any person who engages in a business which is subject to this Chapter who fails to remit any tax imposed hereby within the time required, shall pay a penalty of ten (10) percent per annum, compounded, of the amount of tax in addition to the amount owed. Such penalty shall be added by the City Treasurer on the first day of each month after the due date thereof. In addition to the penalty set forth above, the City shall also collect all of its administrative costs, attorneys' fees and other costs incurred by in enforcing this Chapter.

B. If the City Treasurer determines that the nonpayment or underpayment of any remittance due under this Chapter is due to fraud, a penalty of twenty-five (25) percent of the amount of the tax shall be added thereto in addition to the penalties stated hereinabove.

C. Every penalty imposed and such interest as accrues under the provisions of this Section shall become a part of the tax required to be paid by this Chapter.

D. The penalty set forth herein shall be in addition to any other applicable penalty for a violation of this Chapter, or any other recourse or remedy available to the City by law.

Section 5.10.080 Payment of Other Fees or Taxes Not Excused.

Any person required to pay a business license tax for conducting a business under this Chapter shall not be relieved from the payment of any other permit charge, fee or tax for the privilege of conducting such business required under any other provision of this Code or any other ordinance or regulation of the City or other agency, and such person shall remain subject to all applicable regulatory provisions.

Section 5.10.090 Exemption from Tax.

A. In the event that the extraction of any of the rock, sand and gravel (aggregate) processed by the person responsible for paying the tax is in fact taxed by any other city or county, and the other city or county also allows a reduction in tax under the same circumstances, then the tax so paid on the materials so processed may be reduced by as much as the amount paid to the other city or county, but in no event shall the reduction be more than one-half (½) of the rate charged by the City.

B. No business license tax shall be required under this Chapter of or from any person exempt from the business license tax by virtue of the constitution or any applicable statutes of the United States or the State of California.

C. No business license tax shall be required under this Chapter of or from any governmental agency or subdivision and the employees thereof, but only to the extent they are engaged in the business of such governmental agencies or subdivisions.

D. Any person claiming a business license tax exemption under this Chapter has the burden of furnishing to the City Treasurer such information as the City Treasurer may require to support the claim or eligibility for exemption.

Section 5.10.100 Taxes a Debt to City: Actions for Collection of Taxes.

The amount of any business license tax, penalty or interest, or any combination thereof, imposed by the provisions of this Chapter shall be deemed a debt to the City. An action may be commenced in the name of the City in any court of competent jurisdiction for the amount of any delinquent business tax, penalties, interest, charges and administrative costs incurred in connection therewith, including attorneys' fees.

Section 5.10.110 Misrepresentation.

No person shall knowingly or intentionally misrepresent any material fact in applying or or paying for the business license tax certificate.

Section 5.10.120 Amendments.

The procedural provisions of this Chapter may be amended by ordinance duly enacted by the City Council.

Section 5.10.130 General Penalty for Violations.

No person, whether as principal, agent, employee or otherwise, shall violate, cause the violation of, or otherwise fail to comply with any of the requirements of this Chapter. Every act prohibited or declared unlawful, and every failure to perform an act made mandatory, shall constitute

and be prosecuted as a misdemeanor as set forth in Chapter 1.24 of this Code.

Section 5.10.140 Severability.

If any section, subsection, sentence, clause or phrase of this Chapter or the application thereof is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, the validity of the remaining portions of this Chapter, the application thereof, and the tax imposed shall not be affected thereby but shall remain in full force and effect, it being the intention of the City Council and the voters to adopt each and every section, subsection, part, clause, sentence and phrase regardless of whether any other section, subsection, part, clause, sentence or phrase or the application thereof is held to be invalid or unconstitutional.

Section 5.10.150 Effective Date.

The ordinance enacting this Chapter as a part of this Code and levying the business license tax described herein shall be effective ten (10) days after the date on which the City Council has declared that the voters of the City of Redlands have approved that ordinance by a majority of the votes cast by the electors voting on the tax proposal set forth in the ordinance.

Section 2. The City Attorney is hereby designated and directed to prepare a summary of this ordinance, which shall be published in a newspaper of general circulation in the City of Redlands. A certified copy of the full text of the Ordinance shall be posted and available in the office of the City Clerk.

Section 3. The Mayor shall sign this Ordinance and the City Clerk shall attest and certify the passage and adoption of this Ordinance if a majority of the voters voting in the City's special election on November 7, 2000 approve that measure asking whether the voters approve this ordinance.

ADOPTED, SIGNED AND APPROVED this ____ day of _____, 2000.

Mayor of the City of Redlands

Attest:

City Clerk



July 14, 2000

Dan McHugh
City Attorney's Office
City of Redlands
35 Cajon Street
Redlands, CA 92373-1505

RE: Agreement

Dear Mr. McHugh:

Cemex USA is pleased to enclose a signed copy of an agreement providing for, among other things, payment of an aggregate mining and processing fee to the City of Redlands. Cemex believes this agreement should be acceptable to the City of Redlands. This agreement is being delivered to you to hold and not release unless and until you are irrevocably committed to returning a signed counterpart to Cemex USA, together with the City's resolution authorizing Redlands to enter into such agreement. In addition, unless the offered agreement is signed by the City and returned to Cemex USA, with the authorizing resolution, on or before July 21, 2000, the offer will become null and void, and the documents delivered to you must be returned promptly to Cemex USA. If you have any questions, please do not hesitate to contact me at 713-881-1034 or Len Hersh 213-687-5426.

Sincerely,

A handwritten signature in cursive script that reads "Christine Jones".

Christine Jones
Director – Environment, Safety & Risk

*Returned 3 originals
to Phyllis 7/19/00*

AGREEMENT

Dated as of July 19, 2000

between

CEMEX U.S.A. CONSTRUCTION MATERIALS, INC.
A ~~DELAWARE~~ CORPORATION
TEXAS

PA
9

and

CITY OF REDLANDS,
A MUNICIPAL CORPORATION
ORGANIZED AND EXISTING UNDER THE LAWS OF THE STATE OF CALIFORNIA

AGREEMENT

This AGREEMENT (this "**Agreement**") is made as of July 19, 2000, between CEMEX U.S.A. CONSTRUCTION MATERIALS, INC., a ^{Texas} Delaware corporation *PS* ("Producer"), and City of Redlands, a municipal corporation organized and existing under the laws of the State of California ("**Redlands**," which for purposes of this Agreement shall be the definition for both the governmental entity constituting such city (and any political subdivisions thereof) and the geographic location comprising such city), for the purpose of setting forth the agreement of the parties with respect to the following:

RECITALS

- A. Producer is engaged in the extraction of aggregate and the processing of aggregate within the boundaries of Redlands.
- B. Redlands has proposed to establish a tax on the commercial businesses of extracting aggregate and processing aggregate within its boundaries, said tax if enacted by the electorate of Redlands to be substantially in the form of proposed Ordinance No. 2441 attached hereto as Exhibit A (the "**Proposed Ordinance**").
- C. Redlands acknowledges that if the Proposed Ordinance is enacted, Producer intends to challenge the legality, constitutionality, and other aspects thereof (the "**Litigation**"), and that one or more of such challenges may be successful, resulting in such ordinance becoming null and void.
- D. Producer and Redlands agree that there are benefits to be achieved for each by entering into this Agreement which, among other things, exempts Producer from the provisions of the Proposed Ordinance if it is enacted, limits the tax that may be levied on Producer's businesses of extracting aggregate and processing aggregate, avoids the Litigation, and provides for the payment by Producer to Redlands of a mutually agreeable business license tax on the extraction and processing of aggregate within the boundaries of Redlands.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing and the mutual agreements set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Producer and Redlands agree as follows:

1

ARTICLE

EFFECTIVE DATE AND TERM

This Agreement shall be effective as of the date first written above, and subject to Section 4.22 and the other provisions hereof, shall remain in full force and effect for sixty-six (66) years, at the end of which term this Agreement shall terminate automatically without the need for any action on the part of the parties hereto.

2

ARTICLE DEFINITIONS

The following terms and references shall have the meanings indicated below:

- (1) "aggregate" shall mean rock, sand, and gravel.
- (2) "Agreement" shall have the meaning ascribed thereto in the introductory paragraph of this Agreement.
- (3) "Business Day" shall have the meaning ascribed thereto in Section 4.16 of this Agreement.
- (4) "CPI" shall have the meaning ascribed thereto in Section 3.1 of this Agreement.
- (5) "extracting" or "extraction" shall mean the extracting, mining, or excavating of aggregate.
- (6) "License Tax" shall have the meaning ascribed thereto in Article III of this Agreement.
- (7) "Non-Redlands Tax Credit" shall have the meanings ascribed thereto in Section 3.5 of this Agreement.
- (8) "processing" shall mean the crushing and screening of aggregate.
- (9) "Producer" shall have the meaning ascribed thereto in the introductory paragraph of this Agreement.
- (10) "Proposed Ordinance" shall have the meaning ascribed thereto in Recital B of this Agreement.

(11) "Redlands" shall have the meanings ascribed thereto in the introductory paragraph of this Agreement.

(12) "tax" shall mean any tax, fee, charge, duty, levy, or other assessment of a similar nature, whether imposed directly or through withholding.

(13) "ton or tonnage" shall mean a short ton or two thousand (2000) pounds.

3

ARTICLE BUSINESS LICENSE TAX

In lieu of paying a tax pursuant to the Proposed Ordinance, Producer hereby agrees to pay a business license tax (the "License Tax") to Redlands on the following terms and conditions:

3.1 Imposition. The License Tax:

(i) shall be imposed solely on the extraction or processing of aggregate conducted within the boundaries of Redlands;

(ii) shall be applied only once to any ton of aggregate (or portion thereof), so that no ton of aggregate (or portion thereof) is subjected to the License Tax both when extracted within the boundaries of Redlands and when processed within the Boundaries of Redlands, or at different times or at different locations within the boundaries of Redlands;

(iii) shall be imposed at the rate of Ten Cents (\$0.10) per ton, which rate shall be adjusted annually in January of each year in accordance with the percentage change in the Consumer Price Index for All Urban Consumers for the Los Angeles/Riverside/Orange County Area for All Items (the "CPI") since the last adjustment (or, if the CPI ever ceases to be published, in accordance with such substantially equivalent replacement index as the parties shall agree to);

(iv) shall be subject to adjustment during the term of this Agreement only in accordance with the express provisions of this Agreement; and

(v) shall be the only tax levied by Redlands during the term of this Agreement against the extraction or processing of aggregate by Producer within the boundaries of Redlands, or against any other aspect of Producer's aggregate business, with the sole exceptions of the sales tax that is levied against the retail sale of items generally and authorized by the laws of the State of California and such other taxes as are levied on all or substantially all other businesses within the boundaries of Redlands generally; and if Redlands ever collects or attempts to

impose any other tax on Producer in connection with the extraction or processing of aggregate (or any other aspect of Producer's aggregate business) during the term hereof, then in addition to all other remedies available to Producer in equity and at law for such breach of this Agreement, Producer shall have the option to terminate this Agreement by providing written notice to Redlands of such termination.

3.2 Commencement and Payment. Imposition of the License Tax shall begin on January 1, 2001, and be paid by Producer to Redlands on a quarterly basis, sixty (60) days after the end of each calendar quarter, beginning on May 31, 2001.

3.3 Reporting. Each License Tax payment shall be accompanied by the following information relating to aggregate extracting and processing activity during the prior quarter:

(i) the tonnage of aggregate both extracted and processed within the boundaries of Redlands;

(ii) the tonnage of aggregate extracted within the boundaries of Redlands and processed outside the boundaries of Redlands;

(iii) the tonnage of aggregate processed within the boundaries of Redlands and extracted outside the boundaries of Redlands;

(iv) the current rate of the License Tax; and

(v) the tonnage of aggregate described in clauses (ii) and (iii) immediately preceding that is subject to tax by any other governmental entity or agency (specifying such amounts by governmental entity and agency), and the rate(s) of such other governmental entity's(ies)' or agency's(ies)' tax(es).

The parties hereto agree that whenever in this Agreement the amount of aggregate extracted or processed is to be calculated or reported, such amounts shall be determined at and as of the time such aggregate is sold, it being acknowledged by the parties that this will result in the most accurate and easily verifiable calculations and reporting.

3.4 Record Keeping and Audits. In addition to the information provided to Redlands pursuant to Section 3.3, Producer shall maintain detailed weight slips for all aggregate sold by it that is either extracted from within the boundaries of Redlands or processed within the boundaries of Redlands. Such information shall be maintained for a period of three years. During such three year period, Redlands shall be entitled to reasonable audits of the weight slips to verify the accuracy of the License Tax paid and the other information reported to it by Producer. Any such audits shall be conducted at the sole expense of Redlands; provided, however, that if any particular audit discloses a quarterly underpayment

of License Tax in excess of 7.5% of the amount finally determined to be payable by Producer, the reasonable cost of such audit shall be borne by Producer.

3.5 Credits. The License Tax payable by Producer to Redlands for any quarter shall be reduced by an amount equal to the Non-Redlands Tax Credit. The "**Non-Redlands Tax Credit**" shall mean the amount of tax (with the sole exception of the sales tax that is levied against the retail sale of items generally) paid or payable by Producer to any governmental entity or agency other than Redlands (the "**Non-Redlands Taxing Entities**") and attributable to aggregate extracted or aggregate processed by Producer within the boundaries of Redlands during such quarter; provided, however, that the amount of such credit during any such quarter shall not exceed the following: (i) the amount of License Tax that would be payable by Producer to Redlands during such quarter if it were calculated prior to application of the Non-Redlands Tax Credit; multiplied by (ii) the fraction that has as its numerator the number of Non-Redlands Taxing Entities imposing tax on the aggregate business of Producer that quarter, and as its denominator the number of Non-Redlands Taxing Entities imposing tax on the aggregate business of Producer that quarter plus one.

3.6 Reductions. Notwithstanding anything to the contrary contained in this Agreement, in the Proposed Ordinance, or in any other ordinance, law, statute, rule, or regulation promulgated, passed, or enacted by Redlands or its populace, Redlands covenants and agrees with Producer that Producer shall never be required to pay any License Tax at a rate per ton of aggregate extracted or processed by Producer that is in excess of the rate of tax per ton actually paid on the extraction and processing of aggregate (after taking into account all credits, rebates, offsets, and other reductions permitted in connection with the payment of such tax) by any other entity engaged in such business within the boundaries of Redlands (and the rate of License Tax payable by Producer shall automatically be reduced hereby (to zero if necessary) to effectuate this provision); it being the intention and agreement of the parties hereto that in consideration of Producer entering into this Agreement, Producer shall never suffer a competitive disadvantage with any other entity who extracts or processes aggregate within the boundaries of Redlands as a result of entering into this Agreement.

In connection therewith, Redlands further agrees to: (i) promptly advise Producer in writing if the tax per ton on the extraction and processing of aggregate actually paid (after taking into account all credits, rebates, offsets, and other reductions permitted in connection with the payment of such tax) by any other entity engaged in such business within the boundaries of Redlands is lower than that paid by Producer during any period; (ii) promptly return any portion of License Tax previously paid by Producer to Redlands as may be necessary to effectuate the provisions and intentions of this Section 3.6 and avoid the overpayment of such tax by Producer; (iii) require such reporting from and maintain such records for entities other than Producer that are engaged in the extracting or processing of aggregate within the boundaries of Redlands as may be reasonably necessary to allow the parties to this Agreement to implement this Section 3.6 (and in no event shall Redlands allow

lesser reporting or maintenance of records than that required of Producer or Redlands hereunder); and (iv) permit independent audit of its records by a reputable certified public accounting firm to verify Redlands' compliance with the provisions of this Agreement; provided, however, that such firm shall first agree in writing to hold any non-public information strictly confidential.

If the provisions of Sections 3.5 and 3.6 are both applicable to the calculation of License Tax for any period, the provisions of Section 3.5 shall be applied prior to the provisions of Section 3.6 in calculating License Tax owing for such period.

3.7 Penalties. Failure by Producer to timely pay any License Tax due hereunder shall cause the unpaid amount of License Tax to incur interest at the rate of ten percent (10%) per annum; provided, however, that if such failure is finally adjudicated by a competent court of law to be due to the fraud of Producer, then such unpaid License Tax shall be subject to an additional penalty equal to twenty-five percent (25%) of the amount of the fraudulently unpaid License Tax but in no event more than the maximum penalty permitted by law.

3.8 Sole Recourse. Notwithstanding the Proposed Ordinance or any other ordinance, law, statute, rule, or regulation promulgated, passed, or enacted by Redlands or its populace, Redlands agrees that the terms of this Agreement shall govern, and shall provide the basis for its sole recourse against Producer in respect of, all matters relating to tax on the extraction and processing of aggregate (and other aspects of the aggregate business) within the boundaries of Redlands, including the imposition of such tax and any reporting requirements, audits, or penalties relating to such tax.

4

ARTICLE MISCELLANEOUS

4.1 Confidentiality. All non-public information relating to Producer's aggregate extraction, aggregate processing, and other aggregate business that is provided to Redlands by Producer, including, without limitation, the information provided pursuant to Section 3.3 hereof and any information obtained by Redlands pursuant to an audit described in Section 3.4, shall be held strictly confidential by Redlands and shall not be used for any purpose other than verification of the terms of this Agreement. Redlands hereby acknowledges and agrees that any disclosure or improper use by Redlands of confidential information could cause Producer substantial damages, and also irreparable injury for which there is not an adequate remedy at law. Therefore, in the event of any such action, Producer shall be entitled, in addition to all other remedies which it may have hereunder or at law or in equity, to a temporary and/or permanent injunction with a decree for specific performance of the terms hereof without being required to furnish a bond or other security. Jurisdiction in any action for injunctive relief shall be in a court of competent subject matter jurisdiction in California, with venue in Los Angeles County, California.

4.2 Other Regulatory Provisions. Except as expressly provided herein, nothing in this Agreement shall relieve Producer from any applicable regulatory provisions or ordinances otherwise applicable to the businesses it conducts within the boundaries of Redlands.

If to Producer: Cemex U.S.A. Construction Materials, Inc.
1 Riverway, Suite 2200
Houston, Texas 77056
Attention: Director of Environmental Safety and Risk
and
General Counsel
Facsimile: (713) 881-1165

If to Redlands: City of Redlands
35 Cajon Street
Redlands, California 92373
Attention: City Attorney
Facsimile: (909) 798-7503

Any such notice shall be deemed delivered if sent as follows: (a) if personally delivered, on the date of delivery to the address of the person to receive such notice as evidenced by a signed receipt or notice of refusal thereof; (b) if sent by reputable overnight courier service, on the date of delivery to the address of the person to receive such notice as evidenced by a signed receipt or notice of refusal thereof; (c) if sent by facsimile transmission, on the date transmitted to the person to receive such notice if sent by 5:00 p.m., Central time, and on the next day if sent after 5:00 p.m., Central time; or (d) if mailed, on the date of delivery to the address of the person to receive such notice as evidenced by a signed receipt or notice of refusal thereof. Any notice sent by facsimile transmission must be confirmed by personally delivering, sending by courier, or mailing a copy of the notice sent by facsimile transmission. Any party may change its address for notice by written notice given to the other at least ten (10) days before the effective date of such change in the manner provided in this Section 4.3.

4.4 Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, administrators, successors, and assigns, including, without limitation, upon any purchaser, manager, operator, subcontractor, lessee, or licensee of Producer's aggregate business operated within the boundaries of Redlands or Producer's aggregate-containing land located within the boundaries of Redlands.

4.5 Amendments. This Agreement may be amended or modified only by a written instrument executed by both parties.

4.6 Interpretation. Words used in the singular shall include the plural, and vice-versa, and any gender shall be deemed to include the other. The captions and headings of the Articles and Sections of this Agreement are for convenience of reference only, and shall not be deemed to define or limit the provisions hereof. Furthermore, each party hereby acknowledges that such party and its counsel, after negotiation and consultation, have reviewed and revised this Agreement. As such, the terms of this Agreement shall be fairly construed and any rule of construction to the effect that ambiguities herein should be resolved against the drafting party shall not be employed in the interpretation of this Agreement or any amendments, modifications, or exhibits hereto or thereto.

4.7 Governing Law. This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of California, without regard to its principles of conflicts of law.

4.8 Entire Agreement. This Agreement including the exhibits attached hereto constitutes the entire agreement between Redlands and Producer pertaining to the subject matter hereof and supersedes all prior agreements, understandings, letters of intent, negotiations, and discussions of the parties, whether oral or written.

4.9 Attorneys' Fees and Costs. If either Redlands or Producer brings any suit or other proceeding with respect to the subject matter or the enforcement of this Agreement or any other document executed in connection herewith, the prevailing party (as determined by the court, agency, or other authority before which such suit or proceeding is commenced), in addition to such other relief as may be awarded, shall be entitled to recover reasonable attorneys' fees, expenses, and costs of investigation actually incurred. The foregoing shall include, without limitation, reasonable attorneys' fees, expenses, and costs of investigation incurred in appellate proceedings and costs incurred in establishing the right to indemnification.

4.10 Time of the Essence. Time is of the essence with respect to all matters contemplated by this Agreement.

4.11 No Waiver. No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any other provision, whether or not similar, nor shall any waiver constitute a continuing waiver. No waiver shall be binding unless executed in writing by the party making the waiver.

4.12 Further Acts. Each party, at the request of the other, shall execute, acknowledge (if appropriate), and deliver such additional documents, and do such other additional acts, as may be reasonably required in order to accomplish the intent and purpose of this Agreement.

4.13 Exhibits. Exhibit A is attached hereto and incorporated herein by reference.

4.14 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall constitute an original, but all of which when taken together shall constitute one and the same instrument.

4.15 No Intent to Benefit Third Parties. Except for any purchaser(s), manager(s), operator(s), subcontractor(s), lessee(s), and licensee(s) of Producer's aggregate business located within the boundaries of Redlands or Producer's aggregate-containing land located within the boundaries of Redlands, which purchaser(s), manager(s), operator(s), subcontractor(s), lessee(s), and licensee(s) shall be entitled to all the benefits of this Agreement, Producer and Redlands do not intend by any provision of this Agreement to confer any right, remedy, or benefit upon any third party, and no other third party shall be entitled to enforce, or otherwise shall acquire any right, remedy, or benefit by reason of, any provision of this Agreement.

4.16 Business Days. The term "Business Day" shall mean a day that is not a Saturday, Sunday or legal holiday in California or Texas. In the event that the date for the performance of any covenant or obligation under this Agreement shall fall on a Saturday,

Sunday or legal holiday in California or Texas, the date for performance thereof shall be extended to the next Business Day.

4.17 Expenses of Agreement. Except as otherwise provided in this Agreement, Producer and Redlands shall each bear its own direct and indirect expenses incurred in connection with the negotiation and preparation of this Agreement and the consummation and performance of the transactions contemplated hereby.

4.18 Severability. Any provision or part of this Agreement which is invalid or unenforceable in any situation or in any jurisdiction shall, as to such situation and such jurisdiction, be ineffective only to the extent of such invalidity and shall not affect the enforceability of the remaining provisions hereof or the validity or enforceability of any such provision in any other situation or in any other jurisdiction, unless such invalidity materially changes the agreements set forth herein, in which event this Agreement shall terminate.

4.19 Dispute Resolution. The parties hereto acknowledge that it is in their best interest to facilitate the informal resolution of any disputes arising out of this Agreement. As a result, if any dispute so arises, the complaining party shall serve upon the other party a written document setting forth in detail the nature of the complaint and the proposed solution to the complaint, including a specific and reasonable time frame within which the parties must act. The party receiving the complaint shall respond in writing within thirty (30) days upon receipt of the notice with an explanation and response to the proposed solution. Within thirty (30) days of receipt of this response, Redlands and Producer shall meet and discuss options for resolving the dispute. The complaining party shall initiate the scheduling of a resolution meeting.

In the event the parties are unable to reach agreement at any such resolution meeting or meetings, a settlement conference shall be held within thirty (30) days. The settlement conference shall be held in the Los Angeles office of Judicial Arbitration and Mediation Services, Inc. ("JAMS"). The complaining party shall contact JAMS to schedule the conference and the parties may agree on a retired judge from the JAMS panel. If the parties are unable to agree upon such a retired judge, JAMS shall provide a list of three available judges and each party shall strike a separate judge. The remaining judge shall serve as the mediator at the settlement conference.

If the dispute is not settled by the two above-described resolution formats, the parties hereto agree to submit the dispute to the JAMS Los Angeles office for binding arbitration in accordance with California substantive law and the arbitration rules conducted in accordance with Title 9 of the California Code of Civil Procedure §§ 1280 et seq. and under the commercial rules of the American Arbitration Association then in effect. One judge will be selected to arbitrate the dispute. JAMS will provide the names of three potential arbitrators, giving each party the opportunity to strike one name. The remaining person will serve as the

arbitrator, unless both parties object to the remaining person in which case JAMS will provide the names of three additional potential arbitrators and the selection process shall begin anew. The parties agree that the arbitration must be initiated within one year after the complaining part first knew or should have known of the existence of the claimed breach of this Agreement, and that failure to initiate arbitration within the one-year period constitutes an absolute bar from the institution of any new proceedings. Arbitration shall be initiated by the aggrieved party by sending written notice of an intent to arbitrate in accordance with the notice provisions contained in Section 4.3, and by additionally sending such written notice by registered or certified mail, return receipt requested, to JAMS. The notice must contain a description of the dispute, the amount involved and the remedies sought. If and when a demand for arbitration is made by either party, the parties agree to execute a Submission Agreement provided by JAMS and consistent herewith, setting forth the rights of the parties if the case is arbitrated and the rules and procedures to be followed at the arbitration hearing. However, the parties understand and agree that JAMS shall have no authority to consider or to issue injunctive and/or equitable relief, and that such requests for injunctive and/or equitable relief shall be filed in the Superior Court of the State of California for the County of Los Angeles.

4.20 Authority. Each party hereto represents and warrants to the other that the individual executing this Agreement on its behalf is duly authorized to execute and deliver this Agreement on its behalf.

4.21 Non-Contravention. Each party hereto represents and warrants to the other that the execution, delivery, and performance of this Agreement does not violate any ordinance, law, statute, rule, regulation, judgment, injunction, order, or decree, applicable to it, or breach any agreement to which it is a party.

4.22 Development Agreement. From and after the date hereof, Redlands and Producer agree to work diligently and in good faith with each other and to use commercially reasonable efforts to enter into an agreement on the same material terms and conditions as this Agreement but which otherwise meet the requirements of a development agreement under California Government Code §65864 et seq. If within one (1) year of the date hereof, such a development agreement has not been fully executed and delivered by both of the parties hereto, then at any time thereafter, either party may terminate this Agreement by providing written notice to the other of such termination.

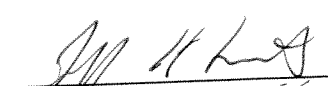
4.23 Challenges. Producer and Redlands each agree that during the pendency of this Agreement it shall not challenge this Agreement or any of the terms hereof on the specific basis that this Agreement or any of its terms violate California Proposition 218 or the provisions of any other California state law which provides that Redlands may not enact a tax without an affirmative vote of its populace; provided, however, that Producer reserves and retains all rights to challenge any and all taxes imposed or sought to be imposed by Redlands on it or its aggregate business from and after the expiration or termination of this Agreement

(including, without limitation, termination of this Agreement as a result of the parties inability to obtain a development agreement as provided in Section 4.22), and to challenge such taxes on any basis whatsoever, including, without limitation, on the basis that such taxes violate California Proposition 218 or the provisions of another California state law which provides that Redlands may not enact a tax without an affirmative vote of its populace.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first written above.

"Producer"

CEMEX U.S.A. CONSTRUCTION MATERIALS, INC.,
a Delaware corporation
Texas

By: 

Print Name: Jeff Smith

Print Title: VP

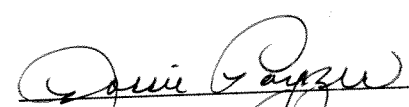
"Redlands"

CITY OF REDLANDS,
a municipal corporation organized and existing under the laws
of the State of California

By: 

Print Name: Pat Gilbreath

Print Title: Mayor

By: 

Print Name: Lorrie Poyzer

Print Title: City Clerk

APPROVED AS TO FORM:

By: n/a

Print Name:

Print Title: City Attorney

LIST OF EXHIBITS

EXHIBIT A

PROPOSED ORDINANCE

ORDINANCE NO. 2441

AN ORDINANCE OF THE CITY OF REDLANDS ADDING CHAPTER 5.10 TO THE REDLANDS MUNICIPAL CODE ESTABLISHING A BUSINESS LICENSE TAX ON THE EXTRACTION OR PROCESSING OF ROCK, SAND AND GRAVEL (AGGREGATE)

THE CITY COUNCIL OF THE CITY OF REDLANDS DOES ORDAIN AS FOLLOWS:

Section 1. Chapter 5.10, entitled "Business License Tax on Extraction or Processing of Rock, Sand and Gravel (Aggregate)" is hereby added to the Redlands Municipal Code to read as follows:

"Chapter 5.10

Business License Tax on Extraction or Processing of Rock, Sand and Gravel (Aggregate)

Section	Purpose
5.10.010	Purpose
5.10.020	Payment of Business License Tax; Business License Required
5.10.030	Verification of Annual Production
5.10.040	Rock, Sand and Gravel (aggregate) processing and Extraction Tax
5.10.050	Credit for Sales Taxes Generated and Paid
5.10.060	Record keeping: Retention of Records and Right of Inspection
5.10.070	Failure to Remit Tax When Due: Penalty
5.10.080	Payment of Other Fees or Taxes Not Excused
5.10.090	Exemption from Tax
5.10.100	Taxes a Debt to City: Actions for Collection of Taxes
5.10.110	Misrepresentation
5.10.120	Amendments
5.10.130	General Penalty for Violations
5.10.140	Severability
5.10.150	Effective Date

Section 5.10.010 Purpose.

The purpose of this Chapter is to establish a tax on the commercial business of the extraction or processing of rock, sand and gravel (aggregate) within the City, as a means of generating revenue for the City for municipal purposes and not as a regulatory measure. This business license tax is imposed in the interests of the health, safety convenience and welfare of the residents of the City.

Section 5.10.120 Payment of Business License Tax and Business License Required.

A. There is imposed upon any business engaged in the principal business of extracting or processing rock, sand or gravel (aggregate) from or on any real property located within the City, for the purpose of commercial use or sale, a general business license tax in the amount set forth in Section 5.10.040 of this Chapter.

B. Each business which is subject to this Chapter shall, within 45 days of the effective date of the Ordinance establishing this Chapter, apply for and obtain a business license tax certificate, as part of the business license application, from the City Treasurer. The business license tax certificate application shall include a current topographic map of all permitted extraction and processing sites within the City, at a scale of 1"= 200' and shall include the locations of the City limits and permit limits.

C. It is unlawful for any person, whether as principal or agent, or employee, either for himself or for any other person, to transact and carry on any business within the City which is subject to the business license tax established in this Chapter without first having applied for and procured a business license tax certificate from the City to do so, and without having paid the business license tax therefor. Exemptions to this requirement are set forth in Section 5.10.080 of this Chapter.

D. As used in this Chapter, "processed" or "processing" shall include, not be limited to, the utilization of rock, sand or gravel (aggregate) from any source or location, as a primary ingredient as part of a manufacturing or batching process (such as asphalt or concrete batching) within the City.

E. As used in this Chapter, to be "engaged in business" shall include the acts of extracting rock, sand or gravel (aggregate) from or on any real property located within the City, processing rock, sand or gravel (aggregate), or the utilization of rock, sand or gravel (aggregate), from any source or location, as a primary ingredient as part of a manufacturing or batching process within the City. As used in this Chapter, "engaged in business" shall also include the business of extraction and processing of rock, sand or gravel (aggregate) which is sold to a public agency pursuant to bid.

F. Whenever any person is carrying on two or more related activities at the same location and under the same ownership or management, such as extraction and processing of rock, sand or gravel (aggregate), then in that event the business license tax shall be applied once only to each ton of material extracted or processed, whichever is grater, and a single business license shall be issued. Provided, however, that nothing contained in this Section shall be construed to relieve the payment of two or more business license taxes when required, where two or more separate businesses are conducted in the same location by the same owner or management and such businesses are not construed by the City Treasurer to be correlated or allied with each other. An appropriate business license tax as set forth in this Chapter shall be paid for each business.

G. Nothing contained in this Chapter shall be construed to relieve the obligation to obtain

a separate business license and to pay the appropriate business license tax required for each business owned or conducted by a separate owner whether or not under the same management.

Section 5.10.030 Verification of Annual Production.

A. To enable the City to verify annual production reporting, each business which is subject to this Chapter shall submit the following information to the City Treasurer:

- (1) Each year on or before June 30, production quantities shall be submitted, reported in tons by quarter and cumulatively for the reporting year.
- (2) Each year, on or before July 15, a current aerial photograph shall be submitted of the mining area with City limits and mine permit area clearly identified.
- (3) Every five (5) years, on or before July 15, a current topographic map of the business' permitted extractive sites within the City shall be submitted. The topographic map shall be based on aerial photographs taken within 45 days of submittal. The purpose of the topographic maps is to verify reported production quantities.
- (4) Weight slips for aggregate materials shall be made available to the City annually, upon request.

B. If the information submitted pursuant to this Section does not adequately quantify annual production, additional information and documentation, identified by the City, may be required and shall be provided at the expense of the business.

C. In addition to the measures set forth in this Section, the City may conduct an audit to ensure compliance with this Chapter. The expenses incurred in the completion of the audit shall be paid by the City, unless inaccuracies in reporting are identified. Should inaccuracies be identified, the penalties set forth in Section 5.10.130 shall be assessed, including the cost of the audit.

Section 5.10.040 Rock, Sand and Gravel (Aggregate) Extraction and Processing Tax.

A. Every person who engages in the principal business of extracting or processing rock, sand and gravel (aggregate) from or on any real property located within the City, for the purpose of commercial use or sale, shall pay a general business license tax on each ton of material excavated from or processing in the City according to the following schedule:

- \$0.10 per ton for any quantity of rock up to and including one million tons
- \$0.12 per ton for any quantity of rock, sand or gravel in excess of one (1) million tons but less than 2 million tons;
- \$0.14 per ton for any quantity of rock of 2 million tons or more;

The rate of tax commencing shall be adjusted annually in July of each year in accordance with the Consumer Price Index, for all urban consumers for Los Angeles/Anaheim/Riverside (or substantially equivalent index).

B. The tax on the processing or extraction of rock, sand and gravel (aggregate) and businesses as set forth herein, shall begin on January 1, 2001, and shall be paid and collected by the City quarterly, beginning April 1, 2001. The returns for the tax shall be submitted by the persons engaged in said principal business within 15 days following the end of each quarter for which the tax is due, on July 1, October 1, January 1 and April 1 of each calendar year, subject to the penalties for failure to pay the said tax as set forth in this Chapter.

C. The City Treasurer shall provide each person in the principal business with a form for reporting the quarterly return. All returns shall indicate:

- (1) The tonnage of rock, sand and gravel (aggregate) extracted and processed during the prior calendar quarter from property located within the City of Redlands.
- (2) The tonnage of rock, sand and gravel (aggregate) extracted during the prior calendar quarter from property located outside the City, and processed within the City, which is taxed by another city or county, and the rate of tax which has been collected by the other city or county for the same material.
- (3) The tonnage of rock, sand and gravel (aggregate) shipped from extraction or processing facilities located within the City to concrete batch plants, asphalt batch plants and other processing or manufacturing facilities that utilize aggregate materials.
- (4) The tonnage of concrete, asphalt or other processed materials shipped from processing facilities located within the City. Concrete and asphalt materials shall be taxed at a rate to be determined by the City based on approximate aggregate content, per cubic yard of concrete, asphalt or other processed material shipped. Other products processed on the site where aggregate is used as a constituent in an end product will be taxed based on the approximate aggregate content.
- (5) The current tax rate imposed by the City.

D. Information provided on the quarterly return shall not be considered conclusive as to the information it contains, will not prevent the City from collecting the appropriate amount which is actually due and payable, and shall be subject to review, audit and verification.

Section 5.10.050 Credit for Sales Taxes Generated and Paid.

Any person required to pay a business license tax for conducting a business subject to this Chapter shall have credited against the amount of business license tax due and owing for any year, an amount equal to the sales tax generated and paid to the City by that business during the year.

Section 5.10.060 Record Keeping: Retention of Records and Right of Inspection.

It shall be the duty of every person liable for the reporting and payment to the City of any business license tax imposed by this Chapter to keep and preserve, for a period of not less than three (3) years, all records as may be necessary to determine the amount of such tax as he may have been liable for the reporting of and payment to the City. The City Treasurer shall have the right and authority to examine or cause to examine, audit, and inspect such books and records as may be necessary to determine the amount of tax due and payable, and shall have the authority to enforce all provisions of this Chapter.

Section 5.10.070 Failure to Remit Tax When Due: Penalty

A. Any person who engages in a business which is subject to this Chapter who fails to remit any tax imposed hereby within the time required, shall pay a penalty of ten (10) percent per annum, compounded, of the amount of tax in addition to the amount owed. Such penalty shall be added by the City Treasurer on the first day of each month after the due date thereof. In addition to the penalty set forth above, the City shall also collect all of its administrative costs, attorneys' fees and other costs incurred by in enforcing this Chapter.

B. If the City Treasurer determines that the nonpayment or underpayment of any remittance due under this Chapter is due to fraud, a penalty of twenty-five (25) percent of the amount of the tax shall be added thereto in addition to the penalties stated hereinabove.

C. Every penalty imposed and such interest as accrues under the provisions of this Section shall become a part of the tax required to be paid by this Chapter.

D. The penalty set forth herein shall be in addition to any other applicable penalty for a violation of this Chapter, or any other recourse or remedy available to the City by law.

Section 5.10.080 Payment of Other Fees or Taxes Not Excused.

Any person required to pay a business license tax for conducting a business under this Chapter shall not be relieved from the payment of any other permit charge, fee or tax for the privilege of conducting such business required under any other provision of this Code or any other ordinance or regulation of the City or other agency, and such person shall remain subject to all applicable regulatory provisions.

Section 5.10.090 Exemption from Tax.

A. In the event that the extraction of any of the rock, sand and gravel (aggregate) processed by the person responsible for paying the tax is in fact taxed by any other city or county, and the other city or county also allows a reduction in tax under the same circumstances, then the tax so paid on the materials so processed may be reduced by as much as the amount paid to the other city or county, but in no event shall the reduction be more than one-half (½) of the rate charged by the City.

B. No business license tax shall be required under this Chapter of or from any person exempt from the business license tax by virtue of the constitution or any applicable statutes of the United States or the State of California.

C. No business license tax shall be required under this Chapter of or from any governmental agency or subdivision and the employees thereof, but only to the extent they are engaged in the business of such governmental agencies or subdivisions.

D. Any person claiming a business license tax exemption under this Chapter has the burden of furnishing to the City Treasurer such information as the City Treasurer may require to support the claim or eligibility for exemption.

Section 5.10.100 Taxes a Debt to City: Actions for Collection of Taxes.

The amount of any business license tax, penalty or interest, or any combination thereof, imposed by the provisions of this Chapter shall be deemed a debt to the City. An action may be commenced in the name of the City in any court of competent jurisdiction for the amount of any delinquent business tax, penalties, interest, charges and administrative costs incurred in connection therewith, including attorneys' fees.

Section 5.10.110 Misrepresentation.

No person shall knowingly or intentionally misrepresent any material fact in applying or paying for the business license tax certificate.

Section 5.10.120 Amendments.

The procedural provisions of this Chapter may be amended by ordinance duly enacted by the City Council.

Section 5.10.130 General Penalty for Violations.

No person, whether as principal, agent, employee or otherwise, shall violate, cause the violation of, or otherwise fail to comply with any of the requirements of this Chapter. Every act prohibited or declared unlawful, and every failure to perform an act made mandatory, shall constitute

DRAFT

and be prosecuted as a misdemeanor as set forth in Chapter 1.24 of this Code.

Section 5.10.140 Severability.

If any section, subsection, sentence, clause or phrase of this Chapter or the application thereof is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, the validity of the remaining portions of this Chapter, the application thereof, and the tax imposed shall not be affected thereby but shall remain in full force and effect, it being the intention of the City Council and the voters to adopt each and every section, subsection, part, clause, sentence and phrase regardless of whether any other section, subsection, part, clause, sentence or phrase or the application thereof is held to be invalid or unconstitutional.

Section 5.10.150 Effective Date.

The ordinance enacting this Chapter as a part of this Code and levying the business license tax described herein shall be effective ten (10) days after the date on which the City Council has declared that the voters of the City of Redlands have approved that ordinance by a majority of the votes cast by the electors voting on the tax proposal set forth in the ordinance.

Section 2. The City Attorney is hereby designated and directed to prepare a summary of this ordinance, which shall be published in a newspaper of general circulation in the City of Redlands. A certified copy of the full text of the Ordinance shall be posted and available in the office of the City Clerk.

Section 3. The Mayor shall sign this Ordinance and the City Clerk shall attest and certify the passage and adoption of this Ordinance if a majority of the voters voting in the City's special election on November 7, 2000 approve that measure asking whether the voters approve this ordinance.

ADOPTED, SIGNED AND APPROVED this ____ day of _____, 2000.

Mayor of the City of Redlands

Attest:

City Clerk