


DATE SUBMITTED 5/21/24
 SUBMITTED BY Parks and Recreation
 DATE ACTION REQUIRED 6/5/24

COUNCIL ACTION (X)
 PUBLIC HEARING REQUIRED ()
 RESOLUTION ()
 ORDINANCE 1ST READING ()
 ORDINANCE 2ND READING ()
 CITY CLERK'S INITIALS ()

**IMPERIAL CITY COUNCIL
 AGENDA ITEM**

SUBJECT:	DISCUSSION/ACTION: IRVING PARK RULE 310 FUNDING AGREEMENT BETWEEN IMPERIAL COUNTY AIR POLLUTION CONTROL DISTRICT (ICAPCD) AND CITY OF IMPERIAL		
	<ol style="list-style-type: none"> 1. APPROVE RULE 310 FUNDING AGREEMENT BETWEEN IMPERIAL COUNTY ICAPCD AND CITY OF IMPERIAL FOR THE IRVING PARK PAVING PROJECT 2. AUTHORIZE STAFF TO SEEK BIDS 		
DEPARTMENT INVOLVED:	PARKS AND RECREATION		
BACKGROUND/SUMMARY:	<p>In 2021, the City Council approved resolution 2021-57, authorizing staff to submit an application for Rule 310 funding through Imperial County Air Pollution Control District for CA Irving Park Paving Project. The City has been chosen for award in the amount of \$149,625.00. This Project would eliminate loose fill dirt and replace it with recycled asphalt materials, creating approximately 12,920 SF of parking space on the south and west side of the park. The project would in addition considerably reduce the dust during peak use caused by high winds.</p> <p>Please see attached – Resolution, Funding agreement and project site map</p>		
FISCAL IMPACT: \$149, 625.00 FUNDING SOURCES: RULE 310 GRANT FUNDS	FINANCE INITIALS	<u>VMS</u>	
STAFF RECOMMENDATION: It is the department's recommendation for City Council to approve the funding agreement between Imperial County ICAPCD and City of Imperial	DEPT. INITIALS		
MANAGER'S RECOMMENDATION: <u>approve</u>	CITY MANAGER'S INITIALS	<u>JHM</u>	
MOTION:			
SECONDED:	APPROVED ()	REJECTED ()	
AYES:	DISAPPROVED ()	DEFERRED ()	
NAYES:			
ABSENT:	REFERRED TO:		

RESOLUTION 2021-57

RESOLUTION OF THE CITY COUNCIL OF CITY OF IMPERIAL
Approving the Application for
IMPERIAL COUNTY AIR POLLUTION CONTROL DISTRICT RULE 310 GRANT
FUNDS

WHEREAS, the City Of Imperial City Council has reviewed and hereby approves the submission to the Imperial Air Pollution Control District of one or more applications to the Rule 310 Project Application; and

WHEREAS, the City recognizes that Rule 310 provides a mechanism for the Air District to collect fees to mitigate air quality impacts associated with new commercial and residential land development; and

WHEREAS, successful Applicants will enter into an agreement with Imperial County Air Pollution Control District to complete the Grant Scope Project,

NOW, THEREFORE, BE IT RESOLVED that the CITY COUNCIL hereby:

APPROVES THE FILING OF AN APPLICATION FOR THE CA IRVING PARK PAVING PROJECT AND

1. Certifies that said Applicant has or will have available, prior to commencement of any work on the project included in this application, the sufficient funds to complete the project; and
2. Certifies that if the project is awarded, the Applicant has or will have sufficient funds to operate and maintain the project, and
3. Certifies that the Applicant has reviewed, understands, and agrees to the General Provisions contained in the contract shown in the Project Application Guide; and
4. Delegates the authority to (City Manager) to conduct all negotiations, sign and submit all documents, including, but not limited to applications, agreements, amendments, and payment requests, which may be necessary for the completion of the Grant Scope; and
5. Agrees to comply with all applicable federal, state and local laws, ordinances, rules, regulations and guidelines.

Approved and adopted the ___20___ day of ___October___, 20_21___

I, the undersigned, hereby certify that the foregoing Resolution Number 2021-57 was duly adopted by the CITY COUNCIL by the following vote:

Attest:

Alysa Brown (Clerk)

Karin Eugenio
Karin Eugenio, Mayor

FUNDING AGREEMENT

City of Imperial Paving of Irving Park Parking Lots

THIS FUNDING AGREEMENT ("AGREEMENT") entered into this _____ day of _____, 2024, is by and between the IMPERIAL COUNTY AIR POLLUTION CONTROL DISTRICT, a political subdivision of the State of California ("ICAPCD") and the CITY OF IMPERIAL, a political subdivision of the State of California ("CITY") (individually, "Party" collectively, "Parties").

RECITALS

WHEREAS, CITY submitted an application, and was selected, for Rule 310 mitigation funding in the amount of one hundred forty-nine thousand, six hundred twenty-five (\$ 149,625.00) from ICAPCD to assist with the paving (asphalt grindings) of two (2) dirt parking lots ("PROJECT") operated by the City of Imperial, in an attempt to mitigate PM₁₀ pollutants resulting from the CITY; and

WHEREAS, ICAPCD believes the CITY request is both cost-effective and provides air quality and health benefits to a large number of citizens in Imperial County.

NOW THEREFORE, for and in consideration of the mutual promises set out herein, ICAPCD and CITY have and hereby agree as follows:

1. That this AGREEMENT shall begin upon the execution, signed by both Parties, and shall terminate upon completion of **Exhibit "A,"** attached hereto and incorporated herein by this reference.

2. CITY represents and warrants that the people executing this AGREEMENT on behalf of CITY have the authority of CITY to sign this AGREEMENT and bind CITY to the performance of all duties and obligations assumed by CITY herein.

3. CITY shall provide all materials and labor to perform the work outlined in this AGREEMENT and as set forth on **Exhibit "A."**

4. CITY shall construct, install, place, and perform all described work in conformance with the California Uniform Building Code and all other applicable statutes, rules and regulations. CITY shall have the unfettered discretion to not move forward with PROJECT if deemed not feasible by the City of Imperial City Council. In the event that CITY does not move forward with PROJECT, CITY shall not submit requests for funds nor shall CITY receive any funds from ICAPCD. There shall be no financial penalty if the PROJECT is deemed not feasible by the City of Imperial Council.

5. CITY, on its own behalf, and on the behalf of its agents and employees, agrees that CITY is acting as an independent agency/contractor and not as an agent, officer, or employee of ICAPCD. In no event shall ICAPCD be obligated to pay out funds to, or on behalf of, CITY in an amount greater than one hundred forty-nine thousand, six hundred twenty-five (\$ 149,625.00) for the paving of the PROJECT, payable upon full execution of this AGREEMENT and Exhibit "A." Payment of the award amount shall be made directly to CITY. CITY also agrees that work done prior to the execution of this AGREEMENT is at CITY's own cost and expense.

6. CITY represents and warrants that any employee, contractor, subcontractor, or agent who will be performing any of the duties and obligations required by this AGREEMENT shall possess all required licenses and authorities, as well as the experience and training, to perform such tasks.

7. The Parties agree that time is of the essence in the completion of the PROJECT, and that ICAPCD shall monitor all progress related to the CITY to ensure it is completed in a timely fashion. For purposes of this AGREEMENT, "timely fashion" shall mean the PROJECT shall be completed as specified in Exhibit "A." Any requests for extensions of time to perform in a timely fashion shall be in writing and forwarded to the attention of the ICAPCD's Air Pollution Control Officer. All requests shall outline the factual basis for the extension request.

8. CITY shall submit periodic status reports to ICAPCD's Air Pollution Control Officer that illustrate CITY's progress toward completion of the PROJECT.

9. As between ICAPCD and CITY, CITY is deemed responsible and liable for, and CITY shall indemnify and hold harmless and defend, ICAPCD and any and all of its officers, agents, servants, or employees, against any and all claims, loss, damage, charge, or expense, including attorney's fees and costs, whether direct or indirect, to which ICAPCD or such officers, agents, servants, or employees may be put or subject, by reason of any damage, loss, or injury of any kind or nature whatever, to persons or property, caused by or resulting from or in connection with any negligent act or action, or any neglect, or failure to act, when under a duty to act, on the part of CITY, in its performance hereunder. In addition to any remedy authorized by law, so much of the money due to the CITY under this AGREEMENT as shall be considered necessary by ICAPCD, may be retained until disposition has been made of any claim for damages.

10. Nothing herein contained shall be construed to create, and the Parties hereto expressly disclaim any intent to create, any form of agency relationship, joint venture or partnership.

11. If any term or provision of this AGREEMENT, or the application of such provision to a particular situation, is held by a court of competent jurisdiction to be void, invalid, or otherwise unenforceable, the remaining terms and provisions shall continue in full force and effect.

12. If any material provision of this AGREEMENT, or the application of such provision to a particular situation, is held by a court of competent jurisdiction to be void, invalid or otherwise unenforceable, then the Party claiming the benefit of such provision may, upon written notice to the other party, terminate this AGREEMENT.

13. This AGREEMENT is made and entered into in Imperial County, California. This AGREEMENT shall be construed and enforced in accordance with the laws of the State of California, except that the Parties agree that any action brought by either Party regarding this AGREEMENT shall be brought in a court of competent jurisdiction in Imperial County or, if appropriate, in the Federal District Court serving Imperial County.

14. The Parties hereto agree to act in good faith and deal fairly with the other Party in the performance of this AGREEMENT.

15. Notices required hereunder shall be in writing and may be given either personally or U.S. Mail. Notice personally given shall be deemed given when delivered to the Party to whom the notice is addressed. Any Party may upon ten (10) days written notice to the other Party, change the address where notices are to be sent.

NOTICES TO COUNTY

Imperial County Air Pollution Control District
150 South Ninth Street
El Centro, CA 92243
Telephone: 442/265-1800
Facsimile: 442/265-1799
Attn: Belen Leon, Air Pollution Control Officer

Clerk of the Board of Supervisors
940 Main Street Ste. 209
El Centro, CA 92243
Telephone: 442/265-1020
Facsimile: 442/265-1027
Attn: Blanca Acosta, Clerk of the Board of Supervisors

NOTICES TO CITY

City of Imperial
420 S. Imperial Ave
Imperial, CA 92251
Telephone: (760) 355-3134
Attn. Tony Lopez, Parks Director

16. This AGREEMENT constitutes the full and complete agreement between the Parties. All prior agreements and understandings with respect to the subject matter of this AGREEMENT are merged herein. This AGREEMENT may be executed in counterparts.

17. The Parties have and hereby agree that the indemnification provision set forth at Paragraph 10 of this AGREEMENT is a material factor in the ICAPCD Board of Directors' approval of this AGREEMENT. Notwithstanding anything in this AGREEMENT to the contrary, the full execution by CITY and the delivery of this AGREEMENT to ICAPCD is a condition precedent to the effectiveness of this AGREEMENT.

18. Any failure by either Party to perform any term or provision of this AGREEMENT, which failure continues uncured for a period of thirty (30) days following written notice of such failure from the other Party, unless such period is extended by mutual written consent, shall constitute a default under this AGREEMENT. Any notice given pursuant to this section shall specify the nature of the alleged failure and, where possible, the manner in which the failure may be satisfactorily cured.

19. Upon failure to cure as herein provided, the party alleging the failure may terminate this AGREEMENT or institute legal or equitable proceedings to enforce this AGREEMENT.

20. CITY shall not have the right to transfer all or any portion of its interest, rights and obligations under this AGREEMENT except in conjunction with the transfer of a like interest in the CITY. Any transfer of an equity interest in the CITY shall require assumption by the transferee of a proportional part of the rights and obligations hereunder. Notwithstanding such transfer, CITY shall remain responsible for the full performance of the rights and obligations imposed upon CITY herein.

21. The Parties acknowledge that this AGREEMENT has been negotiated at arm's length. Legal counsel for both ICAPCD and CITY have been provided the opportunity to review this

AGREEMENT, and no presumption or rule that ambiguities shall be construed against the drafting Party shall apply to the interpretation or enforcement of the same or any subsequent amendments thereto.

IN WITNESS WHEREOF, the parties have executed this AGREEMENT on the day and year first above written.

**IMPERIAL COUNTY AIR
POLLUTION CONTROL DISTRICT**

CITY OF IMPERIAL

LUIS A. PLANCARTE, Chairman
Board of Directors

DENNIS MORITA
City Manager

ATTEST:

By: _____
BLANCA ACOSTA
Clerk of the Board

APPROVED AS TO FORM:
_____, County Counsel

By: _____
County Counsel

By: _____



**RULE 310 OPERATIONAL DEVELOPMENT FEE
FUNDING PROJECT**



EXHIBIT A
CITY OF IMPERIAL

Exhibit A is intended to provide direction and specific requirements necessary to fully execute the proposed project(s) described as the following:

Requesting review of the attached "Funding Agreement" and "Exhibit A" for paving (asphalt grindings) of two (2) dirt parking lots at Irving Park.

NOW THEREFORE, the CITY agrees with the following:

- 1. PM₁₀ Reduction Project: The CITY agrees that Project was selected by ICAPCD for funding. The following information describes the PM₁₀ reduction project(s):

PROJECT NAME AND DESCRIPTION	REQUESTED GRANT AMOUNT
City of Imperial Irving Park Paving Project	\$149,625.00

- 2. The CITY agrees that if the project(s) identified and set forth in Section No.1 is/are funded or considered for funding by any other incentive program sponsored by either State, federal, or any local jurisdiction, another ICAPCD or State program, the CITY will notify the ICAPCD immediately.
- 3. CITY agrees that the ICAPCD will be contacting the CITY to set up a pre-inspection of the identified project(s) described and set forth in Section No.1. The inspection is composed of the following:
 - a. Photographic evidence sufficient to identify the project(s) as the project(s) described in Section No.1. The photographic evidence may include but is not limited to the photographing of different angular directions identifying the roads, public access ways, signs etc., such that the location of the project(s) is clearly identifiable.



- b. Formal Notice of Pre-Inspection Completeness. The ICAPCD will inform the CITY of the completed pre-inspection process in one of the following manners.
 - i. In person
 - ii. Electronic Mail with a request "Request a Read Receipt" and/or request within the body of the electronic mail for verification of receipt.

- 4. The CITY agrees that time is of the essence and that an essential part of the funding process is the verification of continued progress towards the completion of the project(s) described and set forth in section No.1.
 - a. Tentative Timeline. The CITY shall provide to the ICAPCD a tentative timeline indicating the process required for the completion of the project(s). The tentative timeline may be remitted in the following manner:
 - i. In person
 - ii. Electronic Mail with a request "Request a Read Receipt" and/or request within the body of the electronic mail for verification of receipt.

 - b. Periodic Updates. The CITY shall remit to the ICAPCD periodic updates that indicate whether the project(s) described and set forth in section No.1 is (are) on schedule or are delayed. Periodic updates shall be remitted on a monthly basis beginning one month after the execution of the MOU. Should a delay occur or is anticipated to occur the CITY shall remit the following information:
 - i. Reasonable Delays. The CITY agrees that there are circumstances beyond their reasonable control that may cause an inadvertent delay towards completion of the project(s). Reasonable delays are delays that occur which cause the project(s) not to conform to its tentative timeline by days but not months. Such reasonable delays shall be included within the periodic update with a brief summary describing the delay. Depending on the nature of the delay the ICAPCD may request from the CITY the remittance of an adjusted "Timeline".
 - ii. Long Term Delays. Long term delays are delays that occur which cause the project(s) not to conform to its tentative timeline by months as opposed to days. Such long term delays shall be included within the periodic update with a brief summary describing the delay and the submission of an extension of time (form provided by the ICAPCD), approvable by the Air Pollution Control Officer.



- c. Remittance of the Periodic Update. The periodic update described in this Section shall be remitted in the following manner to the ICAPCD:
 - i. In person
 - ii. Electronic Mail with a request "Request a Read Receipt" and/or request within the body of the electronic mail for verification of receipt.
5. CITY agrees that for the "Final Inspection":
- a. Notification by the CITY. The CITY agrees to notify the ICAPCD of the completion of the described project(s) set forth in Section No. 1. This will allow the ICAPCD an opportunity to schedule and conduct a final inspection. Notification by the CITY may be in the following manner:
 - i. In person
 - ii. Electronic Mail with a request "Request a Read Receipt" and/or request within the body of the electronic mail for verification of receipt.
 - b. Final Inspection. The CITY agrees that vital to the final inspection is the verification of the completion of the project(s) as described and set forth in Section No.1. Once notice has been received by the CITY that the project(s) has (have) been completed, the ICAPCD shall conduct a final inspection which shall include but is not limited to:
 - i. Photographic evidence sufficient enough to identify the project(s) as the original complete project(s) described in Section No.1. The photographic evidence may include but is not limited to the photographing of different angular directions identifying the roads, public access ways, signs, etc., such that the location of the project(s) is clearly identifiable.
 - c. Formal Notice of Final Inspection Completeness. The CITY agrees that once the ICAPCD receives verification from the inspector that all material aspects of the newly completed project(s) as described and set forth in Section No.1 are true and correct notification by the ICAPCD to the CITY that the project(s) is (are) complete shall be in the following manner:
 - i. In person
 - ii. Electronic Mail with a request "Request a Read Receipt" and/or request within the body of the electronic mail for verification of receipt.



6. The CITY affirmatively states that he or she has legal authority to agree sign to the terms of this Agreement.

CITY OF IMPERIAL

AIR POLLUTION CONTROL DISTRICT

Date: _____

Date: _____

Dennis Morita
City Manager

Curtis Blondell
APC Environmental Coordinator

CA IRVING PARK

Write a description for your map.

Legend

Irving Park

Irving Park
Irving Park

150'

60'

98'

147'

80 ft

Google Earth

Image © 2021 Maxar Technologies

