

**SUBMITTAL TO THE BOARD OF SUPERVISORS
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**

980
A



FROM: County Counsel

SUBMITTAL DATE:
December 2, 2010

SUBJECT: Amendment to Settlement and Escrow Agreement Regarding Center for Community Action and Environmental Justice v. Industrial Developments International, Inc. and County of Riverside

RECOMMENDED MOTION: That the Board of Supervisors: Approve the attached Amendment to Settlement and Escrow Agreement and authorize the Chairman of the Board to execute said Amendment.

BACKGROUND: In October of 2000, the County entered into a settlement agreement with the Center for Community Action and Environmental Justice (Center), Linda Spinney and Industrial Development International, Inc. (IDI) to resolve litigation concerning the development by IDI of an industrial warehouse facility on approximately 53 acres in the Mira Loma area.

Pursuant to the terms of the Settlement Agreement, IDI paid the Center through escrow, \$200,000.00 to be used by the Center to acquire real property suitable for the preservation and conservation of the Delhi Sands Flower-Loving Fly and its habitat. Although IDI deposited the money as required, the Center was unable to use this money for its intended purpose.

Continued on Page 2

Karin Watts-Bazan
Karin Watts-Bazan, Principal Deputy County Counsel
for Pamela J. Walls, County Counsel

FINANCIAL DATA	Current F.Y. Total Cost:	\$ 0	In Current Year Budget:	n/a
	Current F.Y. Net County Cost:	\$ 0	Budget Adjustment:	n/a
	Annual Net County Cost:	\$ 0	For Fiscal Year:	n/a

SOURCE OF FUNDS:	Positions To Be Deleted Per A-30	<input type="checkbox"/>
	Requires 4/5 Vote	<input type="checkbox"/>

C.E.O. RECOMMENDATION: APPROVE
BY: *Denise C. Harden*
County Executive Office Signature Denise C. Harden

- Policy
- Policy
- Consent
- Consent

Dep't Recomm.:
Per Exec. Ofc.:

Prev. Agn. Ref.:

District: 2 | Agenda Number:
ATTACHMENTS FILED WITH THE CLERK OF THE BOARD

3.15

RE: Amendment to Settlement and Escrow Agreement Regarding Center for
Community Action and Environmental Justice v. Industrial Developments
International, Inc. and County of Riverside

Date: December 2, 2010

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Consequently, the attached amendment to the aforementioned settlement agreement is proposed to redirect the use of these funds. Thus, the amendment allows for the \$200,000.00 plus accrued interest to be spent as follows: 1. \$100,000.00 to be used for the development of the Glen Avon Heritage Park; 2. \$100,000.00 to the Western Riverside County Regional Conservation Authority to be used for the acquisition of suitable habitat for the Delhi Sands Flower-Loving Fly; 3. \$5,000.00 to Childhelp; 4. \$5,000.00 to Greater Riverside Dollars for Scholars; 5. \$3,500.00 to IDI for attorneys fees; 6. Escrow Agent costs and fees; and 7. any remaining money to IDI.

It is recommended that the Board approve this Amendment to Settlement and Escrow Agreement and authorize the Chairman to execute said Amendment.

AMENDMENT TO SETTLEMENT AND ESCROW AGREEMENT

This Amendment to Settlement and Escrow Agreement (the "Amendment") is entered into as of November 1, 2010 (the "Effective Date"), by and among Linda Spinney ("Spinney"), the Center for Community Action and Environmental Justice ("CCA EJ"), (collectively, Spinney and CEJ are sometimes referred to herein as "Petitioners"), the County of Riverside (the "County"), Industrial Developments International, Inc. ("IDI"), and Chicago Title Co. ("Escrow Agent"). Collectively, Petitioners, the County, and IDI are sometimes referred to herein as the "Parties."

WHEREAS, on or about October 24, 2000, the Parties entered into that certain Settlement and Escrow Agreement to resolve a dispute among the Parties concerning the development by IDI of an industrial warehouse facility upon real property comprising approximately 53 acres located in the Mira Loma area of the County of Riverside, near the southeastern corner of the intersection of Riverside Drive and Hamner Avenue (the "Property"); and

WHEREAS, under the Settlement and Escrow Agreement, IDI paid CEJ, through escrow, the sum of Two Hundred Thousand Dollars (\$200,000.00) (the "DSF Mitigation Funds"), which were to be used by CCA EJ exclusively for the purpose of acquiring real property suitable for the preservation and conservation of the DSF and its habitat. IDI deposited the DSF Mitigation Funds with Escrow Agent, and Escrow Agent has held the DSF Mitigation Funds in compliance with the terms of the Settlement and Escrow Agreement; and

WHEREAS, CCA EJ has been unable to use the DSF Mitigation Funds for the purposes intended under the Settlement and Escrow Agreement, and there remains the sum of approximately \$224,000 (consisting of the original deposit of \$200,000, plus accrued interest, less Escrow Agent fees) held by Escrow Agent; and

WHEREAS, because CCA EJ has been unable to apply the DSF Mitigation Funds in the manner required under the Settlement and Escrow Agreement, Escrow Agent has expressed its desire to resign as Escrow Agent; and

WHEREAS, the Parties agree that IDI and Escrow Agent have fully performed their obligations under the Settlement and Escrow Agreement; and

WHEREAS, the Parties desire to put the DSF Mitigation Funds to use for the public's benefit.

NOW, THEREFORE, the Parties agree as follows:

1. **Disbursement of DSF Mitigation Funds.** Escrow Agent shall disburse the balance of the funds held by it as follows:

(a) Within 30 days of the Effective Date, Five Thousand Dollars (\$5,000) shall be paid to Childhelp, attention Eileen Saul, at 60 Crooked Stick Drive, Newport Beach, California 92660.

(b) Within 30 days of the Effective Date, Five Thousand Dollars (\$5,000) shall be paid to Greater Riverside Dollars for Scholars, attention Kathy Wright, at 4529 Beatty Drive, Riverside, California 92506.

(c) One Hundred Thousand Dollars (\$100,000) shall be paid to such architects, engineers, contractors, and materialmen as are specified by CCAEJ and approved in writing by the County and IDI, for the provision of professional services, labor, or materials to be used in the development of the Glen Avon Heritage Park, located at 7701 Mission Boulevard, Glen Avon, California 92509. Such funds may be used for park improvements only. For purposes of this paragraph, the County's approval may be given by the Planning Director or such other person as the County may hereafter designate in writing. IDI's approval may be given by Alan Sharp or such other person as IDI may hereafter designate in writing.

(d) Within 30 days of the Effective Date, One Hundred Thousand Dollars (\$100,000) shall be paid to the Western Riverside County Regional Conservation Authority ("RCA"), attention Charles Landry, 3403 10th Street, Suite 320, Riverside, California 92501, to be held in trust for the sole purpose of acquiring suitable habitat for the Delhi Sands Flower-Loving Fly.

(e) Within 30 days of the Effective Date, Three Thousand Five Hundred Dollars (\$3,500) shall be paid to IDI as reimbursement for the legal fees and costs expended in connection with the preparation of this Amendment.

(f) All costs and fees of the Escrow Agent shall be paid from the Escrow Account. The Parties acknowledge and agree that the fees of Escrow Agent are \$250.00 per year or portion thereof.

(g) The balance of any funds in the Escrow Account not disbursed within 12 months from the Effective Date, or which remain upon the completion of disbursements in accordance with Sections 1(a), 1(b), 1(c), 1(d), 1(e), and 1(f), shall be paid to IDI.

2. **Escrow Account.** Until the DSF Mitigation Funds are fully disbursed under paragraph 1, above, the Escrow Agent shall continue to hold the DSF Mitigation Funds pursuant to the instructions set forth in the Settlement and Escrow Agreement.

3. **Release of Escrow Agent.** Upon such time as the Escrow Agent has completed its duties under this Amendment, the Escrow Agent shall be released and discharged of its duties and any and all claims that may arise under the Settlement and Escrow Agreement and this Amendment.

4. **Use of Defined Terms.** Unless otherwise defined, any terms defined under the Settlement and Escrow Agreement shall have the same meaning in this Amendment.

5. **Survival of Settlement and Escrow Agreement.** Except as expressly modified by this Amendment, the terms of the Settlement and Escrow Agreement shall remain effective, and shall bind the Parties.

6. **Attorneys Fees.** In the event that any action is brought by any Party hereto to interpret or enforce the terms of this Amendment, the prevailing Party or Parties shall be entitled to reasonable attorneys' fees and costs in addition to all other relief which that Party or those Parties may be entitled.

7. **Successors.** This Amendment shall be binding upon and inure to the benefit of the Parties hereto and their respective officers, directors, shareholders, members, trustees, board members, heirs, executors, administrators, supervisors, managers, insurers, attorneys, agents, servants, representatives, employees, subsidiaries, affiliates, partners, predecessors and successors in interest and assigns, and all other persons, firms or corporations with whom or which any of them have been, are now, or may hereafter be affiliated.

8. **Controlling Law.** This Amendment shall be interpreted in accordance with and governed in all respects by the laws of the State of California.

9. **Terms Not Severable.** If any provision or any part of any provision of this Amendment is for any reason held to be invalid, unenforceable or contrary to public policy, law or statute, then the remainder of this Amendment shall be voidable by any Party for whose benefit the unenforceable provision existed.

10. **Fair Interpretation.** This Amendment is the product of negotiations between the Parties and their respective attorneys, and shall be given fair interpretation. Each of the Parties hereto expressly acknowledges and agrees that this Amendment shall be deemed to have been mutually prepared so that the rule of construction to the effect that ambiguities are to be resolved against the drafting Party shall not be employed in the interpretation of this Amendment.

11. **Parties Advised by Counsel.** The Parties hereto represent and warrant to each other that they have been represented by counsel with respect to this Amendment and all matters covered by and relating to it, that they have been fully advised by such counsel with respect to their rights and with respect to the execution of this Amendment, and that such counsel are authorized and directed to take all action necessary to effect the purposes of this Amendment.

12. **Integration.** This Amendment constitutes the entire agreement among the Parties hereto, and it is expressly understood and agreed that this Amendment may not be altered, amended, modified, or otherwise changed in any respect or particular whatsoever, except by a writing duly executed by the Parties hereto, or their authorized representatives, and the Parties hereto, and each of them, acknowledge and agree that none of them will make any claim at any time or place that this Amendment has been orally altered or modified in any respect whatsoever.

13. **Authority to Enter Into Amendment.** Each individual executing this Amendment on behalf of any party hereto represents and warrants to the other Parties that such individual is authorized to enter into this Amendment on behalf of that Party and that this Amendment binds that Party.

14. **Notices.** Any notices, accountings, or other communications required to be provided under this Amendment shall be provided to the entity so specified at its address listed

below, or at such other address as that entity may designate in writing:

Mr. Alan J. Sharp
Industrial Developments International, Inc.
26632 Towne Centre Drive, Suite 320
Foothill Ranch, California 92610

The Center for Community Action and Environmental Justice
Post Office Box 33124
Riverside, California 92519

Office of County Counsel
County of Riverside
3535 Tenth Street, Suite 300
Riverside, California 92501-3674

Chicago Title Co.
Attn: Dennis Chaplin
4041 MacArthur Boulevard, Suite 490
Newport Beach, California 92660

15. **Counterparts.** This Amendment may be executed in one or more counterparts, each of which shall constitute a duplicate original.

16. **Effective Date.** This Amendment shall not be binding or of any force or effect unless and until it is executed by all Parties, and approved by the County's Board of Supervisors.

17. **Cooperation.** All Parties agree to cooperate fully and execute any and all supplementary documents and to take all additional actions which may be necessary or appropriate to give full force and effect to the basic terms and intent of this Amendment.

Dated: August __, 2010

Linda Spinney

Dated: August __, 2010

CENTER FOR COMMUNITY ACTION AND
ENVIRONMENTAL JUSTICE

By: _____
Its: _____

below, or at such other address as that entity may designate in writing:

Mr. Alan J. Sharp
Industrial Developments International, Inc.
26632 Towne Centre Drive, Suite 320
Foothill Ranch, California 92610

The Center for Community Action and Environmental Justice
Post Office Box 33124
Riverside, California 92519

Office of County Counsel
County of Riverside
3535 Tenth Street, Suite 300
Riverside, California 92501-3674

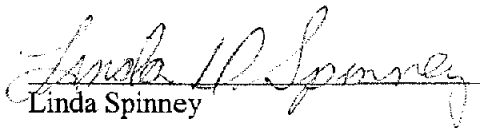
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Dated: August 28, 2010


Linda Spinney

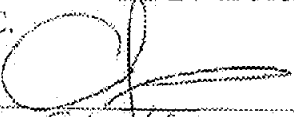
Dated: August 28, 2010

CENTER FOR COMMUNITY ACTION AND
ENVIRONMENTAL JUSTICE

By: 
Its: Executive Director

Dated: 21 August 25, 2010

INDUSTRIAL DEVELOPMENTS INTERNATIONAL,
INC.

By: 
Its: SVP/KOU

Dated: August __, 2010

COUNTY OF RIVERSIDE

By: _____
Its: _____

Dated: August __, 2010

CHICAGO TITLE CO.

By: _____
Its: _____

Dated: August __, 2010

INDUSTRIAL DEVELOPMENTS INTERNATIONAL,
INC.

By: _____
Its: _____

Dated: August __, 2010

COUNTY OF RIVERSIDE

By: _____
Its: _____

October
Dated: ~~August~~ 25, 2010

CHICAGO TITLE CO.

By: *[Signature]*
Its: *Senior Escrow Officer*

FORM APPROVED COUNTY COUNSEL

BY: *[Signature]*
KARIN L. WATTS-BAZAN DATE: *12/2/10*