

# CITY CLERK ORIGINAL

C-8128  
08/14/2012

## AGREEMENT FOR THE REMOVAL OF MATERIAL AND RELEASE OF CERTAIN PROSPECTIVE FLOODING CLAIMS

This Agreement for the Removal of Material and Release of Certain Prospective Flooding Claims ("Agreement and Release") is entered into this 14th day of August, 2012 ("Effective Date") between the CITY OF GLENDALE, an Arizona municipal corporation ("Glendale") and M.R. TANNER MINING, INC., an Arizona corporation ("Tanner").

### RECITALS

- A. Tanner is the owner of certain real property situated in Maricopa County, Arizona. A legal description of the Tanner property is attached (EXHIBIT A);
- B. Glendale is the owner of certain real property in Maricopa County, Arizona. A legal description of the Glendale property is attached (EXHIBIT B);
- C. Glendale and Tanner recognize the need to alleviate flooding concerns on, and prevent damage to, their respective properties and will work together to obtain the necessary permits to accomplish their shared goal;
- D. As a condition of obtaining and maintaining various permits (the "Permits") from the Flood Control District of Maricopa County (FCDMC), Tanner and Glendale are required to release claims that each may have for the next five years (until June 30, 2017 or upon expiration of the FCDMC Permits, whichever occurs first) against the other arising or relating to the flooding of their respective properties to the extent that such flooding is caused directly or indirectly by the actions of the two parties described above; and
- E. The parties desire to memorialize their agreement with this document.

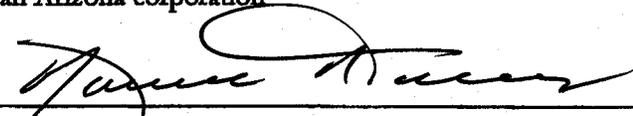
### AGREEMENT

1. For the next five years (until June 30, 2017, or until the expiration date of the FCDMC Permit, whichever occurs first), Glendale and Tanner will mutually release any claims each may have against the other that arise out of, or are related to, the flooding of their respective properties to the extent that the flooding is caused directly or indirectly by the actions of either of the parties (or their respective representatives) upon the following conditions:
  - a. Tanner will remove a certain amount of material from the Glendale property to reduce the potential of flooding or "head cutting" (major erosion of the riverbed) on the Glendale property;
  - b. Tanner will excavate approximately 42,000 tons of material from the Glendale property;

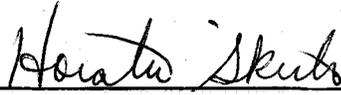
- c. Any excavation must be approved by the FCDMC and the Permit condition will be attached to this Agreement and Release (EXHIBIT C, to be attached upon issuance by the FCDMC);
  - d. Tanner will excavate, grade and contour the entire edge of the Glendale property to fit the surrounding and existing section of the Agua Fria River with a minimum slope of twenty (20) by one (1); and
  - e. All excavation, contouring, and shoring work will be completed in a good and workmanlike manner and in accordance with all applicable federal, state, and local regulations as administered by the FCDMC. The completed earthwork must pass inspection by the FCDMC and Glendale inspectors.
2. Tanner will pay Glendale a royalty rate of \$1.10 per ton of material removed.
  3. All removed material will be weighed on a State-certified scale at the Tanner property.
  4. If, during the course of excavation, grading, or contouring, Tanner discovers effluent "daylighting" or otherwise leaking or leaching through the walls or contoured grounds of the area subject to the FCDMC permit, then Tanner will be responsible for any and all required remediation.
  5. Tanner certifies under A.R.S. §§ 35-391 *et seq.* and 35-393 *et seq.* that it does not have, and during the term of this Agreement and Release, will not have "scrutinized" business operations, as defined in the preceding statutory sections, in the countries of Iran or Sudan.
  6. Tanner affirms that it currently has, and shall maintain, all insurance appropriate and required to perform the excavation, grading and contouring work outlined in this Agreement and Release.
  7. During, or immediately after, a flood event or near-flood event, the City will inspect the Glendale property for erosion or deterioration of the excavated, graded and contoured portion of its property. Should additional excavation, grading, contouring or shoring-up of the Glendale property be required, Tanner will undertake and complete the work to prevent further erosion or deterioration of the Glendale property, all in accordance with this Agreement and Release.
  8. This Agreement and Release may be renewed in writing for one additional five year period only after a City proper inspection and approval of the respective parties' properties to provide reassurance that any flood or near-flood erosion and all flood prevention measures are sufficient under all applicable engineering and landscaping standards, and in accordance with all federal, state and local laws and regulations.
  9. Tanner shall defend, indemnify and hold harmless the City and its elected or appointed officials, agents, boards, commissions, and employees from all loss, damages, or claims of whatever nature, including attorneys' fees, expert witness fees, and costs of any mediation, arbitration, or litigation that arise out of any act or omission of Tanner or its agents, employees, or invitees from any and all third-party claims or proceedings.

IN WITNESS WHEREOF, this Agreement and Release has been executed by the duly authorized representatives of the parties as of the Effective Date first written above.

M.R. TANNER MINING, INC.  
an Arizona corporation

  
Maurice R. Tanner Jr., President

CITY OF GLENDALE, an Arizona  
municipal corporation

  
Horatio Skeete, Acting City Manager

ATTEST:

  
Pamela Hanna, City Clerk (SEAL)

APPROVED AS TO FORM:

  
Craig Tindall, City Attorney

STATE OF ARIZONA        )  
                                          ) ss.  
COUNTY OF MARICOPA    )

SUBSCRIBED AND SWORN TO before me, this 24 day of JULY, 2012 by Maurice R. Tanner, Jr., the President of M.R. TANNER MINING, INC, an Arizona corporation, on behalf of said corporation.



  
Notary Public

My Commission Expires:

8-3-14

EXHIBIT A

M.R. TANNER MINING, INC. PROPERTY  
LEGAL DESCRIPTION

(See attached)

**EXHIBIT "A"**

**PARCEL NO. 1:**

**A portion of the West half of Section 12 and a portion of the East half of the Northwest quarter, Section 13, Township 2 North, Range 1 West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona and more particularly described as follows:**

**BEGINNING at the Northwest corner of said Section 12;**

**Thence South 89 degrees 50 minutes 12 seconds East and along the North line of said Section 12, a distance of 1291.35 feet to the Northeast corner of the Northwest quarter of the Northwest quarter of said Section 12;**

**Thence South 0 degrees 01 minutes 31 seconds East and along the East line of the Northwest quarter of said Northwest quarter, a distance of 1319.06 feet to the Southeast corner of the Northwest quarter of said Northwest quarter;**

**Thence South 89 degrees 48 minutes 52 seconds East and along the North line of the Southeast quarter of the Northwest quarter of said Section 12, a distance of 1291.80 feet to the Northeast corner of the Southeast quarter of said Northwest quarter;**

**Thence South 0 degrees 02 minutes 42 seconds East and along the East line of said Northwest quarter, a distance of 1269.60 feet;**

**Thence North 89 degrees 47 minutes 31 seconds West and departing said East line, a distance of 50.00 feet;**

**Thence South 0 degrees 02 minutes 42 seconds East, a distance of 50.00 feet to a point on the South line of the Southeast quarter of said Northwest quarter;**

**Thence South 89 degrees 47 minutes 31 seconds East and along said South line, a distance of 50.00 feet to the Southeast corner of the Northwest quarter of said Section 12;**

**Thence South 0 degrees 03 minutes 54 seconds East and along the East line of the West half of said Section 12, a distance of 1267.06 feet;**

**Thence North 89 degrees 45 minutes 30 seconds West, a distance of 55.00 feet;**

**Thence South 0 degrees 03 minutes 54 seconds East, a distance of 50.00 feet;**

**Thence South 89 degrees 45 minutes 30 seconds East, a distance of 55.00 feet to a point on the East line of the West half of said Section 12;**

**Thence South 0 degrees 03 minutes 54 seconds East and along said East line, a distance of 1203.14 feet;**

**Thence North 89 degrees 43 minutes 28 seconds West, a distance of 97.00 feet;**

**Thence South 0 degrees 03 minutes 54 seconds East, a distance of 50.00 feet;**

**CONTINUED.....**

**EXHIBIT "A" CONTINUED**

(2)

**Thence South 89 degrees 43 minutes 28 seconds East, a distance of 97.00 feet to a point on the East line of the West half of said Section 12;**

**Thence South 0 degrees 03 minutes 54 seconds East, and along said East line, a distance of 49.94 feet to the Southeast corner of the Northwest quarter of said Section 12, said point also being the Northeast corner of the Northwest quarter of said Section 13;**

**Thence South 0 degrees 22 minutes 57 seconds East and along the East line of the Northwest quarter of said Section 13, a distance of 1189.25 feet;**

**Thence North 89 degrees 47 minutes 10 seconds West, a distance of 127.01 feet;**

**Thence South 0 degrees 22 minutes 57 seconds East, a distance of 50.00 feet;**

**Thence South 89 degrees 47 minutes 10 seconds East, a distance of 127.01 feet to a point on the East line of the Northwest quarter of said Section 13;**

**Thence South 0 degrees 22 minutes 57 seconds East, and along said East line a distance of 1309.04 feet;**

**Thence North 89 degrees 50 minutes 49 seconds West, a distance of 50.00 feet;**

**Thence South 0 degrees 22 minutes 57 seconds East, a distance of 50.00 feet;**

**Thence South 89 degrees 50 minutes 49 seconds East, a distance of 50.00 feet to a point on the East line of the Northwest quarter of said Section 13;**

**Thence South 0 degrees 22 minutes 57 seconds East and along said East line, a distance of 40.00 feet to the Southeast corner of said Northwest quarter;**

**Thence North 89 degrees 50 minutes 49 seconds West and along the South line of the Northwest quarter of said Section 13, a distance of 1303.17 feet;**

**Thence North 0 degrees 10 minutes 05 seconds West, a distance of 40.00 feet;**

**Thence South 89 degrees 50 minutes 49 seconds East, a distance of 50.00 feet;**

**Thence North 0 degrees 10 minutes 05 seconds West, a distance of 50.00 feet;**

**Thence North 89 degrees 50 minutes 49 seconds West, a distance of 50.00 feet to a point on the West line of the East half of the Northwest quarter of said Section 13;**

**Thence North 0 degrees 10 minutes 05 seconds West and along said West line, a distance of 2550.88 feet to the Northwest corner of the East half of the Northwest quarter of said Section 13, said point also being the Southwest corner of the Southeast quarter of the Southwest quarter of said Section 12;**

**CONTINUED .....**

Thence North 0 degrees 02 minutes 32 seconds West and along said West line, a distance of 1319.31 feet to the Northwest corner of the Southeast quarter of the Southwest quarter of said Section 12;

Thence North 89 degrees 45 minutes 30 seconds West and along the South line of the Northwest quarter of the Southwest quarter of said Section 12, a distance of 1187.78 feet;

Thence North 0 degrees 01 minutes 10 seconds West, a distance of 50.00 feet;

Thence North 89 degrees 45 minutes 30 seconds West, a distance of 50.00 feet;

Thence South 0 degrees 01 minutes 10 seconds East, a distance of 50.00 feet to a point on the South line of the Northwest quarter of the Southwest quarter of said Section 12;

Thence North 89 degrees 45 minutes 30 seconds West, a distance of 55.00 feet to the Southwest corner of the Northwest quarter of the Southwest quarter of said Section 12;

Thence North 0 degrees 01 minutes 10 seconds West along the West line of said Section 12, a distance of 1318.55 feet to the Southwest corner of the Northwest quarter of said Section 12;

Thence North 0 degrees 00 minutes 21 seconds West and along the West line of said Section 12, a distance of 2637.16 feet to the POINT OF BEGINNING;

EXCEPT BEGINNING at the West quarter corner of said Section 12;

Thence North 53 degrees 55 minutes 13 seconds East, a distance of 505.59 feet to the TRUE POINT OF BEGINNING;

Thence North 0 degrees 00 minutes 00 seconds East, a distance of 50.00 feet;

Thence North 90 degrees 00 minutes 00 seconds East, a distance of 50.00 feet;

Thence South 0 degrees 00 minutes 00 seconds West, a distance of 50.00 feet;

Thence South 90 degrees 00 minutes 00 seconds West, a distance of 50.00 feet to the TRUE POINT OF BEGINNING; and also

EXCEPT BEGINNING at the West quarter corner of said Section 12;

Thence South 0 degrees 01 minutes 10 seconds East and along the West line of said Section 12, a distance of 752.73 feet;

Thence North 51 degrees 09 minutes 59 seconds East, a distance of 63.59 feet;

Thence North 64 degrees 37 minutes 06 seconds East, a distance of 103.54 feet to the point of curve, concave Northwestly, having a radius of 282.00 feet;

CONTINUED.....

**EXHIBIT "A" CONTINUED**

**(4)**

Thence **Northeasterly** along the arc of said curve, through a central angle of 30 degrees 53 minutes 02 seconds, an arc length of 141.22 feet;

Thence **North 33 degrees 44 minutes 06 seconds East**, a distance of 915.96 feet;

Thence **South 85 degrees 06 minutes 14 seconds East**, a distance of 459.10 feet;

Thence **South 85 degrees 42 minutes 23 seconds East**, a distance of 182.25 feet;

Thence **South 87 degrees 21 minutes 55 seconds East**, a distance of 559.34 feet;

Thence **North 2 degrees 38 minutes 05 seconds East**, a distance of 21.00 feet to the **TRUE POINT OF BEGINNING**;

Thence **continuing North 2 degrees 38 minutes 05 seconds East**, a distance of 50.00 feet;

Thence **South 87 degrees 21 minutes 55 seconds East**, a distance of 75.00 feet;

Thence **South 2 degrees 38 minutes 05 seconds West**, a distance of 50.00 feet;

Thence **North 87 degrees 21 minutes 55 seconds West**, a distance of 75.00 feet to the **TRUE POINT OF BEGINNING**; and also

**EXCEPT BEGINNING** at the Northwest corner of said Section 12;

Thence **South 0 degrees 00 minutes 21 seconds East** and along the West line of said Section 12, a distance of 75.10 feet;

Thence **North 89 degrees 59 minutes 39 seconds East** and perpendicular to the West line of said Section 12, a distance of 33.00 feet to the **TRUE POINT OF BEGINNING**;

Thence **South 89 degrees 50 minutes 12 seconds East** parallel to and 75.00 feet South of the North line of said Section 12, a distance of 52.00 feet;

Thence **South 45 degrees 04 minutes 43 seconds West**, a distance of 42.36 feet;

Thence **South 0 degrees 00 minutes 21 seconds East** parallel to and 55.00 feet East of the West line of said Section 12, a distance of 1446.25 feet;

Thence **South 89 degrees 59 minutes 39 seconds West**, a distance of 22.00 feet;

Thence **North 0 degrees 00 minutes 21 seconds West** parallel to and 33.00 feet East of the West line of said Section 12, a distance of 1476.31 feet to the **TRUE POINT OF BEGINNING**; and also

**EXCEPT** the following described parcel:

**CONTINUED.....**

**EXHIBIT "A" CONTINUED**

**(5)**

**BEGINNING at the Southwest corner of the Northwest quarter of said Section 12;**

**Thence South 89 degrees 47 minutes 31 seconds East and along the South line of said Northwest quarter, a distance of 55.00 feet to the TRUE POINT OF BEGINNING of the herein described exception parcel;**

**Thence North 0 degrees 00 minutes 21 seconds West, a distance of 50.00 feet;**

**Thence South 89 degrees 47 minutes 31 seconds East, a distance of 50.00 feet;**

**Thence South 0 degrees 00 minutes 21 seconds East, a distance of 50.00 feet;**

**Thence North 89 degrees 47 minutes 31 seconds West, a distance of 50.00 feet to the TRUE POINT OF BEGINNING.**

**PARCEL NO. 2 (as described in Deed recorded at 2000-0781375, records of Maricopa County, Arizona):**

**The West half of the West Half of the Southeast quarter of Section 12, Township 2 North, Range 1 West, Maricopa County, Arizona;**

**INCLUDING a 50 foot strip of land containing 1.38 acres more or less as described in Deed recorded in Docket 440, Page 352.**

EXHIBIT B

CITY OF GLENDALE PROPERTY  
LEGAL DESCRIPTION

(See attached)

EXHIBIT "B"

PARCEL NO. 1:

The Northeast quarter of the Northwest quarter of Section 12, Township 2 North, Range 1 West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona;

EXCEPT any vein or lode of quartz or other rock in place bearing gold, silver, cinnabar, lead, tin, copper or other valuable deposits, claimed or known to exist within the above described premises on March 4, 1948, as reserved in Patent recorded in Docket 418, Page 270; and

EXCEPT that part of the Northeast quarter of the Northwest quarter of Section 12, Township 2 North, Range 1 West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, which lies within the following described area:

BEGINNING at the Northwest corner of said Section 12;

THENCE East (assumed bearing) 941.87 feet along the North line of said Section 12;

THENCE South 30°00' East 115.37 feet to the TRUE POINT OF BEGINNING;

THENCE continuing South 30°00' East 1547.36 feet;

THENCE North 60°00' East 560.00 feet;

THENCE North 30°00' West 1224.03 feet;

THENCE West 646.63 feet along a line 100 feet South of and parallel to the North line of said Section 12 to the TRUE POINT OF BEGINNING, for the public use as a waterway only; and also

EXCEPT all land in said Northeast quarter of the Northwest quarter of said Section 12 lying Southwesterly of the above described parcel, for the public use as a waterway only.

PARCEL NO. 2:

The West half of the West half of the Northeast quarter of Section 12, Township 2 North, Range 1 West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona.

PARCEL NO. 3:

The North half of the East half of the West half of the East half of Section 12, Township 2 North, Range 1 West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona;

EXCEPT the East 208 feet of the North 416 feet thereof.

CONTINUED .....

**PARCEL NO. 4:**

The East half of the West half of the Southeast quarter of Section 12, Township 2 North, Range 1 West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona;

EXCEPT any portion lying within the following two Tracts described in that certain Declaration of Taking by the United States of America, recorded June 27, 1945, in Book 440 of Deeds, Page 352:

**TRACT NO. 10:**

A strip of land 50 feet wide located in the Northwest quarter of the Southeast quarter of Section 12, Township 2 North, Range 1 West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, said strip of land lying 25 feet on each side of the following described center line:

BEGINNING at a point which bears South 89°50' East along the East-West quarter section line, 80.2 feet from the center of said Section 12, the TRUE POINT OF BEGINNING of said strip of land and Tract No. 10;

THENCE South 41°36'49" East, 61.3 feet to a point;

THENCE South 37°16'23" East, 478.33 feet to a point;

THENCE South 18°37'07" East, 664.57 feet to the point of ending, which point is 3795 feet South 00°14' West of the Northwest corner of the East half of the West half of the East half of said Section 12.

The side lines of the above described strip of land are to be prolonged or shortened so as to intersect at their angle points and to terminate Northerly in the East-West quarter section line and Southerly in the East line of the West half of the West half of the Southeast quarter of said Section 12.

**TRACT NO. 11:**

A strip of land 50 feet wide located in the South half of the East half of the West half of the East half of Section 12, Township 2 North, Range 1 West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, said strip of land lying 25 feet on each side of the following described center line:

BEGINNING at a point which bears South 00°14' West, a distance of 3795.0 feet from the Northwest corner of the East half of the West half of the East half of said Section 12, the TRUE POINT OF BEGINNING of said strip of land and Tract No. 11;

THENCE South 18°37'07" East, 60.13 feet to a point;

THENCE South 27°34'06" East, 746.90 feet to the point of ending, which point bears South 42°41'24" West 2324.39 feet from a point 2804.44 feet South on the East line from the Northeast corner of said Section 12.

The side lines of the above described strip of land are to be prolonged or shortened at all angle points so as to terminate at their points of intersection and also to terminate in the West line of the East half of the West half of the Southeast quarter of said Section 12.

EXHIBIT C

PERMIT CONDITION

(See attached)



# Flood Control District

## of Maricopa County

SAND AND GRAVEL FLOODPLAIN USE PERMIT

**FLOODPLAIN USE PERMIT**

Page 1 of 2

**FA 94-029A MR Tanner Mining – Glendale site****Permit expiration date: February 14, 2017****General Stipulations:**

1. The permittee agrees to comply with State water quality standards adopted by the State Water Quality Control Council (401) as administered by the Arizona Department of Environmental Quality before beginning excavation, if necessary. Permittee agrees to obtain a 404 permit from the United States Army Corps of Engineers, before beginning excavation, if necessary.
2. The permittee shall be responsible for being informed of any flooding that may be imminent, and for removing any portable equipment and structures.
3. Any substantial change, addition alteration, modification, or deviation from the approved Plan of Development shall have prior written approval of the Flood Control District of Maricopa County ("District").
4. The use is subject to post-flood review and possible modification, if necessary, due to flood related changes in river morphology.
5. The permittee shall notify the District of any change in ownership of any permitted parcel and/or change of operator within 30 days.
6. The permittee agrees to make application to renew the permit (at least six (6) months is recommended) prior to the permit expiration date, and will be subject to current Floodplain Regulations. The renewal is not automatic and the stipulations for development may change.
7. In the event the permittee decides not to process a renewal of the Floodplain Use Permit for mining; the permittee will submit a Floodplain Use Permit Application for reclamation in accordance with the approved reclamation plan in this permit or present an alternative plan that is acceptable to the District.
8. The permittee agrees to allow access to the FCD mine inspector(s) to the entire site at least semi-annually.
9. The permittee agrees to establish the property corners and to establish and maintain for the duration of the mining operation a temporary benchmark (TBM) on the NAVD 88 datum certified by a licensed surveyor. This TBM shall be made available to District staff for each semi-annual inspection. In addition, the permittee will provide control markers as shown in the Plan of Development.
10. Approval of this Floodplain Use Permit does not convey any property rights, either real estate or material, and is not to be construed as consent, approval or authorization to cause any injury to property or invasion of rights or infringement of any Federal, State, or other local laws, rules or regulations nor does it obviate the requirement to obtain other permits.

FCD Init

 1/18/2012

Permittee Init

 1/24/12



# Flood Control District of Maricopa County

SAND AND GRAVEL FLOODPLAIN USE PERMIT

FA 94-029A

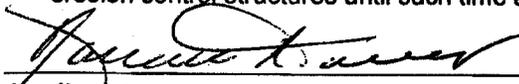
Page 2 of 2

**General Stipulations continued:**

Furthermore, the plan review by the District has been solely for the purpose of determining that your application conforms with the written requirements of the Floodplain Regulations for Maricopa County and is not to be taken as a warranty that structural plans and specifications meet engineering requirements or standards or are free from failure to perform as described or designed in the application, reports or plans, as submitted. Approval does not imply that the drainage concept for this site has been reviewed or approved by our office.

**Specific Stipulations:**

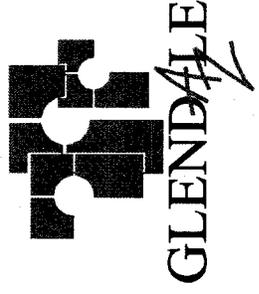
11. This Floodplain Use Permit is being issued by the Flood Control District of Maricopa County (District) for sand and gravel mining on the following parcels of land as recorded by the Maricopa County Tax Assessors Office: 501-63-002-D; 501-63-002-B; 501-55-007-D; 501-55-011-C.
12. Parcels 501-55-005-A & 501-55-011A are located within the City of Glendale annexation area. The permittee will need to get approval from the City of Glendale for development within these parcels.
13. Parcel 501-63-002-A is located within the City of Phoenix annexation area. The permittee will need to get approval from the City of Phoenix for development within this parcel.
14. This permit expires on February 14, 2017.
15. Excavation within the erosion hazard limits can be authorized for the areas 100 feet north of the southernmost part of the certified portion of the erosion protection berm. The certified portion of the erosion protection berm will be that part of the berm for which the District has received a letter from a Professional Engineer certifying that the berm or portion thereof has been constructed in accordance with the Plan of Development. However, excavation within the erosion hazard limits will not take place until bank slopes that were over excavated as discussed in the Plan of Development and the pit within the floodway have been restored to the District's satisfaction. The District will provide written notification about which portions within the erosion hazard limits can be excavated.
16. Within 12 months (by January 23, 2013) the permittee will submit for a modification to this permit to resolve the compliance issues with the unpermitted pit located in the Floodway. The submittal will include an agreement from the City of Glendale with the resolution and, if needed, the City of Glendale will be a permittee on the modification.
17. Development shall be in compliance with the approved Plan of Development prepared by CMG Drainage Engineering, Inc as revised on April 6, 2011. The excavation and associated berm will be phased as shown in the approved Plan of Development.
18. The site will be reclaimed by filling with compacted inert landfill material. Once mining operations have been completed, the permittee will need to apply for Floodplain Use Permit to maintain the erosion control structures until such time as the site has been fully reclaimed.

  
 Applicant

  
 Floodplain Administrator

1/24/12  
 Date

1/18/2012  
 Date



**MR TANNER MINING AGREEMENT**