



Agenda Report

Date: May 14, 2013
To: Mayor and Members of the City Council
From: Jeffrey W. Collier, City Manager
Subject: Review of Draft Oil Revenue Trust Document

RECOMMENDATION

It is recommended the City Council review the progress of the Mineral Extraction Financial Plan Subcommittee and the enclosed Oil Revenue Trust Document presented herein. Should the City Council decide to move forward with the Trust formation it would be appropriate to schedule a date and time to conduct a Study Session on the details of the potential action.

BACKGROUND

The Mineral Extraction Financial Plan Subcommittee was formed by the City Council on August 28, 2012 to determine an appropriate method to use in implementing the City Council's articulated intent to thoughtfully and intentionally plan in advance for how the potential revenue from the Whittier Main Oil field Mineral Extraction Lease can best be used for the long-term benefit of Whittier residents. Mayor Bob Henderson and Councilmember Joe Vinatieri were selected to serve on the Subcommittee and began their task with a meeting held on September 26, 2012. Since that time the Subcommittee has met 12 times (October 19, 2012, November 27, December 3, December 14, January 25, 2013, February 22, March 1, March 25, April 12, April 26, May 3 and May 7) with a continued effort of research and work product review by Subcommittee members both collectively and individually between meetings. Their efforts were augmented with input from my office and staff along with the City Attorney and Special Counsel (Joel Kuperberg and William Ihrke from Rutan & Tucker) who were retained by the City Council at their December 11, 2012 meeting.

This extensive work effort by the Subcommittee was reported to the entire City Council and the public at the City Council meetings held on November 13, 2012 and March 12, 2013 (held over to March 26) during which a comprehensive PowerPoint presentation was given to the community by the Subcommittee and a White Paper entitled 'Management of Non-Recurring Municipal Revenues' was shared.

Much of the focus of the Subcommittee since the retention of the Special Counsel has been the evaluation of the different options available to the City to safeguard the revenue stream from the Mineral Extraction Lease in order to 1) supplement the funding of current City services, as well as 2) protecting the funds for the continuation of those benefits while providing for infrastructure and capital improvements for future

generations of Whittier residents. Of key interest in the eyes of the Subcommittee was the ability to provide current residents with immediate positive impacts on their service levels from the Mineral Extraction Lease along with both the preservation of the funds for future generations and the ability of the City to use the funding to aid in the recovery from a potential catastrophic loss (i.e. earthquake, fire, flood) should such an event ever strike the City.

To recount the Subcommittee's basic criteria for managing the Mineral Lease revenue, their major goals are:

- Transparency and accountability in deciding how to manage new revenues from extraction of City minerals.
- There must be benefits derived by current residents from income received, however, if the funds are significant it is the responsibility of the City Council to protect and preserve them for the future.
- Revenues should be preserved in a Trust/Endowment Fund that cannot be simply altered by a City Council action. The City's voters would be asked to approve the structure of the Trust and would also have to approve any major changes or dissolution of the Trust.
- The management of the Trust would be the Council's ultimate responsibility but would be aided by a special oversight commission of local residents expert in financial matters.
- All investment allocations would be made by a fund manager(s) within the policy guidelines recommended by the commission and approved by the City Council.
- All recommendations and decisions on investments would be made in public by the oversight commission and the City Council.
- The fund manager(s) would be selected through a public Request For Qualifications (RFQ) process.
- The finance professional(s) would be compensated for his/her work, but no staff member, City Council member, or commissioner would be compensated in any manner from the Trust.
- To insure immediate benefit to the citizens of Whittier, the income from the first test wells (defined as Phase 1 in the CUP) would be allocated directly to the City General Fund to restore services that have been diminished in recent years as a result budget reductions as a result of the economic downturn.
- Additional revenues (if available) would be split between the City General Fund (25%) and the Trust (75%) until the City's allocation is a total \$10,000,000 per year in lease revenue from the Mineral Extraction Lease. After that point, the City General Fund's share would be increased by CPI (with a 3% cap) to maintain its purchasing power.
- There would be the ability (as defined in the Trust) for the commission, fund manager, and City Council to determine that the Trust is sufficiently funded and an additional allocation could be made to the City to be primarily (75%) used for

capital investment in the City's assets and infrastructure. This could include the construction of green energy improvements, modernization of municipal facilities to improve public safety and public service and, continued renovation and revitalization of streets, sidewalks, sewers along with the continued greening of the City with improvements to our urban forest and public landscaping. The Trust would allow for the remainder of the excess distribution (25%) to be used by applying 15% to fund unfunded and underfunded long-term liabilities of the City, which include the need for reserves required for insurance, claims and liability exposure, asset and technological replacement, and post employment cost exposure. The remaining 10% could be used for non-salary and benefit and non-recurring City operating needs. Note: because these allocations could only be made annually based upon the current status of the Trust it would be inappropriate to fund on-going operating needs, such as labor costs, with this non-recurring income source.

- It is the intent of the Subcommittee, and is articulated in the document, that the Trust remains intact in perpetuity to benefit all residents – current and future.
- The Subcommittee believes, and the Trust document allows for use of the Trust assets to meet emergent needs of the City in connection with a catastrophic loss (declared by the Federal and/or State government) directly impacting Whittier in an amount not to exceed 20% of the balance of funds in the Trust after any insurance proceeds have been utilized.

The Subcommittee has worked with staff and Special Counsel to meet their goals for the management of the Lease revenue from the Mineral Extraction project in a Trust document (attached) that they have titled The Trust for Whittier's Future. It is attached to this report to allow for critique and questions from the City Council and the public.

DISCUSSION

The Trust has been drafted by the Special Counsel at the direction of the Subcommittee to allow very limited flexibility to the City Council or staff to modify the allocation or use of the funds in the future. It is the belief of the Subcommittee that this very structured format is the only way to insure that the fund is preserved in perpetuity. While the Trust could be put into effect by a Resolution of the City Council, it is the belief of the working group that this would also allow for substantive changes in the protections drafted into the Trust at the 'whim' of a future City Council. The Subcommittee strongly recommends that any City Council action (resolution) approving the Trust only be conditional and not binding without a vote that puts the matter before the Whittier electorate for a decision. This would bind Council and staff to work within the rules of the Trust unless amended at some point in the future by the voters of Whittier.

The Subcommittee further recommends that the voters be asked for their support or rejection of the Trust at the earliest possible date so as to ensure that the revenues

generated from the Mineral Extraction Lease be allocated and protected pursuant to the terms and conditions of the Trust. Only minor revenues have been received by the City thus far and actual revenues are expected to begin flowing during the last quarter of this current calendar year as a part of Phase 1 of the project. To meet this goal, the Subcommittee would propose that the election be held on November 5, 2013.

If the voters endorse and accept the Trust, the terms and conditions of the Trust would dictate all allocations and distributions from the Trust and, realistically, the revenue from the Mineral Extraction Lease. However, if the voters rejected the Trust, the receipt, allocation, and expenditure of the Mineral Extraction Lease revenue would be made in the sole and absolute discretion of the Whittier City Council as the revenue is received.

Should the City Council desire to move forward with a Special Election on November 5 it would be necessary to request that the City staff return on or about June 11, 2013 with the appropriate documents to initiate the process. Those documents would include:

1. The final version of the Trust Agreement creating The Trust for Whittier's Future
2. A resolution of the City Council of the City of Whittier conditionally approving The Trust Agreement for the Trust for Whittier's Future
3. Other implementing actions as recommended by the City Attorney and Special Counsel
4. The tentative time schedule for this process would be as follows:
 - June 11, 2013 The City Council would call the Special Election
 - June 18, 2013 The City Clerk would post the Notice of the deadline for ballot arguments
 - July 1, 2013 The arguments would have to be submitted to the Clerk
 - July 11, 2013 The rebuttal to the argument would have to be submitted to the Clerk
 - Oct. 21, 2013 Voters could register to vote up until this date and be entitled to vote
 - Nov. 5, 2013 Election Day

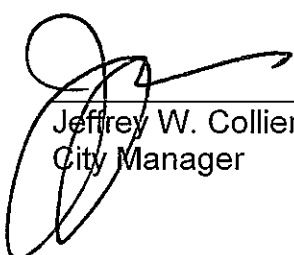
The Subcommittee believes that the complexity of the proposed Trust for Whittier's Future necessitates additional consideration and study by the City Council and would strongly recommend a Study Session prior to the June 11th meeting. Only upon the thorough review of the Trust by the City Council would you have before you for consideration and action the items required to either call for the Special Election or reject the idea of a Special Election. Staff believes that a Study Session could be held on May 28th if the members of the Council would like to discuss the Trust in more detail as we have a relatively light agenda for that evening.

Both the City Attorney and Special Counsel will be in attendance at this meeting to answer any questions from the City Council related to the establishment of The Trust for Whittier's Future.

FISCAL IMPACT

All costs associated with the Subcommittee's work, including the retention of legal Counsel has been paid by lease revenue collected in connection with the Mineral Extraction Lease. Should the City Council decide to bring the matter to a vote the costs of same would also be paid from accumulated and/or future lease revenue.

Submitted by:



Jeffrey W. Collier
City Manager

Attachment: Draft Trust Agreement creating The Trust for Whittier's Future

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Trust Agreement Creating

THE TRUST FOR WHITTIER'S FUTURE

DATED _____, 2013

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TRUST AGREEMENT CREATING THE TRUST FOR WHITTIER'S FUTURE

The City of Whittier, a charter city and political subdivision of the State of California, ("City"), as Settlor, hereby declares that it has transferred to the Trustees this day all of its rights as Lessor under the "Whittier Main 2008 Mineral Extraction Oil, Gas and Mineral Lease" entered into as of October 28, 2008 between the City and Matrix Oil Corporation, as amended, or its successor instrument, (the "Lease") including, but not limited to, the City's right to receive the mineral revenues payable under the Lease, and the Trustees hereby acknowledge receipt thereof. Such rights, and any other property subsequently transferred to the Trustees or their successors, shall be held and administered as provided below. Capitalized terms not defined in the body of this Trust Agreement are defined in Section 1.2 hereof.

ARTICLE 1 NAME AND PURPOSES

1.1 **Name of Trust.** The name of the trust created under this Trust Agreement shall be THE TRUST FOR WHITTIER'S FUTURE (the "Trust"). The name of this Trust may be changed only by the unanimous vote of the Trustees.

1.2 **Definitions.** For the purposes of this Trust Agreement, the following terms shall have the meanings set forth below unless otherwise provided in this Trust Agreement.

(a) **Code.** References to "Code" mean the Internal Revenue Code of 1986, as amended, and corresponding provisions of any subsequent federal internal revenue law.

(b) **Commission.** References to "Commission" mean the Investment Advisory Commission more particularly described in Section 7.2(c) below.

(c) **Dollar Amount.** Reference to "Dollar Amount" means the sum of ten million dollars (\$10,000,000).

(d) **CPI Adjusted Dollar Amount.** For the period between the date of this Trust and June 30 of the first Year in which the Trust is funded, reference to "CPI Adjusted Dollar Amount" means the Dollar Amount increased or decreased by a percentage of such Dollar Amount as is equal to any percentage increase or decrease in consumer prices during such period, determined as of the last day of such period; and for the next and each succeeding Year during which the Trust is in existence, references to "CPI Adjusted Dollar Amount" mean the CPI Adjusted Dollar Amount for the immediately preceding Year increased or decreased by a percentage of such CPI Adjusted Dollar Amount that is equal to the annual rate of change in consumer prices during the preceding Year determined as of the end of such preceding Year (Year-over-Year), provided, however, that the percentage increase in any Year may not exceed three percent (3%). For purposes of the foregoing, changes in consumer prices shall be determined by reference to the Consumer Price Index For All Urban Consumers for the Los Angeles-Riverside-Orange County, CA metropolitan area for All Items (base period,

1982-1984=100) (hereinafter "CPI-U"), or, if the CPI-U is not then published, the next closest appropriate index published by the Bureau of Labor Statistics of the U.S. Department of Labor or comparable agency selected by the Trustees.

(e) **Investment Income.** References to "Investment Income" mean all gross income of the Trust of any kind other than Mineral Revenue.

(f) **Mineral Revenue.** References to "Mineral Revenue(s)" mean all revenue from minerals, including but not limited to crude oil, natural gas and other hydrocarbons, and water, which City has a right to receive under the Lease.

(g) **Phase 1 Period.** References to "Phase 1 Period" mean the period of time in which Phase 1 of the Whittier Main Mineral Extraction Project is in effect, as such Phase 1 is described in Resolution No. 8424 approving Conditional Use Permit No. CUP09-004 for that project, adopted by the City Council on November 28, 2011.

(h) **Phase 1 Production.** References to "Phase 1 Production" mean the amount of mineral production that is equal to the average number of barrels per day of crude oil production under the Mineral Lease during the ninety (90) calendar days immediately preceding the end of the Phase 1 Period.

(i) **Probate Code.** References to "Probate Code" mean the California Probate Code, as amended, and corresponding provisions of any subsequent state law.

(j) **Settlor.** References to "Settlor" mean only City.

(k) **Trust Corpus.** References to "Trust Corpus" shall mean the accumulation of Mineral Revenue and Investment Income held by the Trust.

(l) **Year.** References to "Year" mean City's fiscal year, commencing on July 1 and ending on June 30.

1.3 **Purpose.** This Trust is organized and shall be operated by the Trustees exclusively to accomplish an essential governmental function of City within the meaning of Section 115 of the Code, namely, to exercise the rights of the Lessor under the Lease and to distribute a portion of the Mineral Revenue and a portion of such other income as may be received by this Trust to City to meet its expenses and finance capital improvements and infrastructure projects, and to accumulate and hold the remainder of the Mineral Revenue and other income as an endowment to provide for the future needs of City.

1.4 **Irrevocable Dedication.** All of the property of this Trust is irrevocably dedicated exclusively to the purposes set forth in this Trust Agreement, and no part of its net income or assets shall ever inure to the benefit of any private person.

1.5 **Distribution on Dissolution.** Upon termination, dissolution and winding up of this Trust, the assets of this Trust shall be distributed to City for uses and in allocated amounts to

be determined by a vote of the City electorate deciding the question of whether to terminate this Trust as set forth in Section 1.8 below.

1.6 Prohibition Against Certain Activities by Trust.

(a) **Generally.** Notwithstanding any other provision of this Trust Agreement, this Trust shall not carry on any activities not permitted to be carried on by City.

(b) **Certain Political Activities.** Without limiting the generality of the prohibitions described in Section 1.6(a) above, no substantial part of the activities of this Trust shall consist of carrying on propaganda or otherwise attempting to influence legislation, and this Trust shall not participate or intervene in any political campaign (including the publishing or distribution of statements) on behalf of or in opposition to any candidate for public office.

1.7 Additions of Property to Trust Estate. City may transfer additional property to this Trust by any legal means. The Trustees are hereby authorized to accept such additions to the Trust estate. All property transferred to the Trust estate which is accepted by the Trustees in accordance with this Section 1.7, and the income from and appreciation in such property, shall form the Trust estate of this Trust, and shall be held, administered and distributed as set forth herein.

1.8 Perpetual Trust. This Trust shall continue forever so long as it has assets, unless terminated by a vote of the City electorate.

ARTICLE 2

REVOCATION, ALTERATION AND AMENDMENT

2.1 Trust Irrevocable. This Trust Agreement and the Trust created under this Trust Agreement are irrevocable and may not be revoked or terminated except by means of distributions provided or permitted pursuant to Article 3 hereof or by a vote of the City electorate.

2.2 Power of Amendment. No material substantive change may be made by amendment to this Trust Agreement and the Trust created under this Trust Agreement without a vote of the City electorate. Material substantive changes include, but are not limited to:

- (a) A change in number or qualifications of Trustees; or
- (b) A change in the beneficiary of the Trust (i.e., City); or
- (c) A change in the maximum allowable amount or proportion of Trust funds that may be transferred annually to the City for current year allocations.

The Trustees, however, acting by majority vote, shall have the power to amend this Trust Agreement if necessary to enable this Trust to qualify for exclusion of its gross income under Section 115 of the Code, and to amend the procedural and administrative provisions of this Trust

Agreement (such as, but not limited to, accounting procedures and meeting schedules) if necessary or advisable to advance the purpose of this Trust.

2.3 **Records of Amendments.** Any amendment to this Trust Agreement shall be in writing, shall be attached to this original Agreement, and shall be maintained with the permanent records of the Trust.

ARTICLE 3 **TRUST DISTRIBUTIONS**

3.1 Distribution of Mineral Revenue.

(a) Mineral Revenue received by this Trust, net of expenses properly chargeable thereto, shall be distributed not later than the sixtieth (60th) day after each receipt by the Trust of Mineral Revenue in accordance with the Lease as follows:

(i) With respect to each receipt by the Trust of Mineral Revenue prior to and including the Year in which the Phase 1 Period ends, one hundred percent (100%) distributed to City.

(ii) Commencing with the Year immediately following the Year in which the Phase 1 Period ends, and each Year thereafter: (a) one hundred percent (100%) distributed to City of such Mineral Revenue generated from the Phase 1 Production; plus (b) twenty-five percent (25%) distributed to City of such Mineral Revenue generated from barrels over the Phase 1 Production until City has received from the revenues in subparagraphs (a) and (b) of this Paragraph 3.1(a)(i) for the applicable Year, the CPI Adjusted Dollar Amount; plus (c) that amount, distributed to City, necessary to satisfy City's obligations, if any, to the Puente Hills Habitat Authority and any other obligations that the City has incurred prior to December 31, 2016 with respect to the use, distribution or transfer of any portion of the Mineral Revenue. For illustrative purposes only, a depiction of Mineral Revenue distributions under hypothetical circumstances during years prior to and following the date that the CPI Adjusted Dollar Amount becomes applicable, is set forth in Exhibit "A" hereto (specifically, from Year 5 to Year 6, and shown by the distribution amounts in columns f & g therein).

(b) Any undistributed Mineral Revenue shall be accumulated and added to the Trust Corpus.

3.2 Distribution of Investment Income; Distribution from Trust Corpus if Mineral Revenues Insufficient.

(a) Investment Income received by this Trust, net of expenses properly charged thereto, shall be accumulated and added to the Trust Corpus not later than the thirtieth (30th) day after the end of each Year.

(b) In the event that Mineral Revenue distributed to City according to Section 3.1(a) above is insufficient to cover 100% of the CPI Adjustment Dollar Amount for the applicable Year, then a portion of the Trust Corpus shall be distributed not later than the thirtieth (30th) day after the end of that applicable Year in an amount equal to the difference between the CPI Adjusted Dollar Amount for such Year and the Mineral Revenue distributed, if any, to City under Section 3.1(a) above. For illustrative purposes only, a depiction of how a portion of the Trust Corpus is distributed for a Year in which Mineral Revenue is insufficient to cover 100% of the CPI Adjustment Dollar Amount, is set forth in Exhibit "B" hereto. [SEPARATE SPREADSHEET TO BE INSERTED]

3.3 Extraordinary Distributions. The primary intent of the Trust is the creation and maintenance of the Trust Corpus of sufficient size to generate significant Investment Income in perpetuity for the benefit of the City. In furtherance of this primary intent, Mineral Revenue and Investment Revenue are accumulated and added to the Trust Corpus after distributions are made by the Trust to the City in accordance with this Trust Agreement, due to the recognition that, over time, Mineral Revenue will decrease and eventually cease. However, it is recognized that there is a possibility that Mineral Revenue and/or Investment Income in a particular Year or Years may significantly exceed any projections of the Trust Corpus that were developed at the time that this Trust was created. Therefore, as a secondary and subsidiary intent of this Trust, the provisions of this Section 3.3 authorize the distribution of a portion of the Trust Corpus in the event that the Trust Corpus exceeds the financial value that clearly allows for the maintenance of the Trust Corpus at a size sufficient to generate significant Investment Income in perpetuity for the benefit of the City.

(a) Notwithstanding Section 3.1 and Section 3.2 above, after making the express findings that, (i) as of the last day of the previous Year, the aggregate fair market value of the Trust Corpus is twenty times (20x) greater than the CPI Adjusted Dollar Amount for that same previous Year, and (ii) the amount of Mineral Revenue and/or Investment Income contributed to the Trust Corpus at the end of that previous Year is sufficient to ensure that the Trust Corpus will generate significant Investment Income in perpetuity for the benefit of the City, then the Trustees may, but have no obligation to, distribute to the City in the current Year an amount not to exceed the difference between (a) the aggregate amount of the Trust Corpus (including Investment Income) in the previous Year, and (b) the amount that equals twenty times (20x) the CPI Adjusted Dollar Amount for that same previous Year; provided, however, that such distribution shall in no event exceed ____ times (____x) the amount distributed in such Year to the City in accordance with Section 3.1 or Section 3.2 above. The amount calculated in the previous sentence for distribution shall be, for the applicable Year in which such distribution is made, defined as the "Extraordinary Twenty Times Distribution Amount." For illustrative purposes only, a depiction of the application of the distribution pursuant to this Section 3.3(a) and the amount of an Extraordinary Twenty Times Distribution Amount under hypothetical circumstances, is set forth in Exhibit "A" hereto.

(b) In the event that the Trustees authorize a distribution pursuant to Section 3.3(a) above, then the Extraordinary Twenty Times Distribution Amount for the applicable Year shall be allocated by the City according to the following percentage

allocations: (i) Seventy-five percent (75%) of the Extraordinary Twenty Times Distribution Amount shall be used for non-recurring, "one-time," costs connected to designated capital improvement/public infrastructure projects approved by the City Council of City (the "City Council"); (ii) Fifteen percent (15%) of the Extraordinary Twenty Times Distribution Amount shall be used to pay for any unfunded or underfunded liabilities of the City and/or to provide reserves for potential contingencies and liabilities; and (iii) Ten percent (10%) of the Extraordinary Twenty Times Distribution Amount shall be used at the discretion of the City Council.

3.4 **Commission Report and Recommendation.** Prior to approving a distribution pursuant to either Section 3.2(b) or Section 3.3 above, the Trustees shall receive and consider a written report from the Commission appointed pursuant to Section 7.2(e) hereof, recommending whether the Trustees should make the proposed distribution in light of the effect of the proposed distribution on the Trust, and the performance of the Trust investments, and finding that the Trust Corpus remaining after such distribution(s) shall be sufficient to ensure that the Trust Corpus will generate significant Investment Income in perpetuity for the benefit of the City. The Trustees shall have the authority, but not the obligation, to reduce the maximum amount of Investment Income that otherwise would be distributed pursuant to any or all of Section 3.2(a) or Section 3.3 above, if such a reduction is supported by the written report from the Commission.

3.5 **Distribution of Trust Corpus in Catastrophic Emergencies.** The Trust Corpus may be distributed only with the express written consent of at least eighty percent (80%) of the Trustees voting on the matter, and then (i) must be distributed only in response to a specific catastrophic emergency, which must be a Federal emergency declared as such by the President of the United States or an authorized Federal official or a State emergency declared as such by the Governor of the State of California or his or her designee; (ii) must be used within the municipal boundary of City; and (iii) the specific use of such portion of the Trust Corpus must be approved by the Council. Any single distribution pursuant to this Section 3.5 may not exceed twenty percent (20%) of the Trust Corpus at the time of the distribution, and the Trustees may not make a distribution of the Trust Corpus pursuant to this Section 3.5 more frequently than two catastrophic events in any five-Year period.

ARTICLE 4

APPOINTMENT, RESIGNATION AND REMOVAL OF TRUSTEES

The provisions of this Article shall govern the appointment, resignation, and removal of Trustees of the Trust established under this Trust Agreement.

4.1 **Number of Trustees.** The number of Trustees of this Trust shall always be equal to the number of members of the Council ("Councilmembers").

4.2 **Terms of Trustees.** Trustees shall not serve for a particular term. Rather, a Trustee shall serve until such Trustee is no longer a Councilmember.

4.3 **Trustees.** Owen Newcomer, Bob Henderson, Joe Vinatieri, Cathy Warner and Fernando Dutra (or such City resident elected or appointed to the office held by any such

Councilmember by reason of the Council declaring such Councilmember's seat vacant pursuant to law) are hereby appointed the initial Trustees of this Trust. The Trustees shall always be the Councilmembers then in office.

4.4 **No Bond Required.** No bond or other security shall be required of any Trustee designated pursuant to this Trust Agreement.

4.5 **Meetings of the Trustees.**

(a) **Place of Meetings.** Meetings of the Trustees shall be held at the first of the places set forth in the following sentence of this Section which is applicable. Such meetings shall be held at anyplace within the corporate limits of City or as otherwise allowed under State laws governing the location of Council meetings in California which has been designated: (a) in the notice of the meeting, if any; (b) by resolution of a majority of the Trustees; or (c) at the principal office of the trust.

(b) **Annual Meetings.** The Trustees shall hold a meeting at least annually at such time and date as may be designated by the Trustees.

(c) **Special Meetings.** Special meetings of the Trustees maybe called for any purpose at any time by any two Trustees. Notice of a special meeting shall be delivered personally or by telephone or telegraph or sent to the Trustees by mail. In case notice is given by mail, facsimile or telegram, it shall be sent, charges prepaid, addressed to the Trustee at the address appearing on the trust records, or if it is not on these records or is not readily ascertainable, at the principal office of the trust. If notice is delivered personally or given by telephone, facsimile or telegraph, it shall be given, faxed with confirmation of receipt or delivered to the telegraph office at least twenty-four (24) hours before the meeting. If notice is mailed, it shall be deposited in the United States mail at least five (5) business days before the meeting. Any such notice shall state the date, place and hour of the meeting and the general nature of the business to be transacted, and no other business may be transacted at the meeting without the consent of all of the Trustees.

(d) **Meetings By Conference Telephone.** The Trustees may participate in a meeting through use of conference telephone, video conference, or similar communications equipment, so long as all members participating in such meeting can hear one another. Participation in a meeting in the manner provided in this Section shall constitute presence in person at such meeting.

(e) **Action at a Meeting: Quorum.** Presence of a majority of the Trustees at a duly convened meeting of the Trustees shall constitute a quorum permitting the meeting to continue. The presence of a quorum, however, will not reduce the number of Trustees required to approve an action in accordance with the terms of this Trust Agreement. For example, if there are five (5) Trustees serving, and three (3) Trustees are present at a duly convened meeting of the Trustees to vote on an action which, pursuant to the terms of this Trust Agreement must be approved by a majority of the Trustees, then the vote of all three (3) Trustees present at such meeting will be required to approve such action.

Further, a meeting at which a quorum is initially present may continue to transact business notwithstanding the withdrawal of one or more Trustees, provided that any action taken is approved by the number of Trustees required to approve such action under the terms of this Trust Agreement, regardless of the number of Trustees present at the meeting. The Trustees shall keep written minutes or memoranda of actions taken at meetings and copies of such minutes shall be distributed to all Trustees within a reasonable time after each meeting.

(f) **Action Without Meeting.** Any action by the Trustees may be taken without a meeting if the number of Trustees required to approve the action under the terms of this Trust Agreement consent in writing to such action and all Trustees are informed of such written consent within five (5) business days of its execution. Such written consent shall be filed with the minutes of the proceedings of the Trustees. Such action by written consent shall have the same force and effect as if it was the unanimous vote of all Trustees present at a meeting of the Trustees duly convened but attended only by the Trustees who signed the written consent. A Trustee who does not sign the written consent shall nevertheless be deemed to have consented to the action unless such Trustee objects to the same in writing within thirty (30) days of receipt of notice in accordance with this paragraph. Nonconcurring Trustees, if any, shall not be liable for the act or failure to act of the other Trustees.

ARTICLE 5

PROTECTION PROVIDED THE TRUSTEES

5.1 **Expenses and Compensation.** Trustees shall be reimbursed for expenses reasonably incurred in the administration of this Trust in accordance with City policy for Council member reimbursement. Trustees shall not be entitled to any compensation for the performance of their duties as Trustees.

5.2 **Right of Indemnification and Reimbursement.** A Trustee shall be entitled to indemnification (including advancement of reasonable costs of defense) or reimbursement from the Trust estate for any expense, loss, damage, or claim by reason of any act performed or omitted to be performed by the Trustee in good faith on behalf of this Trust and in a manner reasonably believed by the Trustee to be within the scope of his or her authority and in the best interest of this Trust and City (including acts or omissions committed as a result of simple negligence) or by reason of the Trustee's control of Trust property or for torts committed by a co-Trustee during the course of the Trustee's administration of this Trust unless the Trustee is personally at fault. Notwithstanding the foregoing, a Trustee shall not be indemnified or reimbursed with respect to any expense, loss, damage, or claim incurred by reason of his or her breach of trust or other acts or omissions committed intentionally, with gross negligence, in bad faith, or with reckless indifference to the interests of City.

5.3 **Disclosure of Trust Provisions.** This Trust instrument, and all of the documents relating to the Trustees' activities in carrying out this Trust, are public records and available for public review. In addition, the Trustees are specifically authorized to disclose the provisions of

this Trust Agreement and the nature of this Trust's assets if the Trustees, in their discretion, determine such disclosure is advisable or required by state or federal law.

5.4 **Extent of Liability.**

(a) **In General.** A Trustee shall not be personally liable to this Trust or to City for any act or omission taken in good faith on behalf of this Trust and in a manner reasonably believed by the Trustee to be within the scope of his or her authority and in the best interest of this Trust and City (including acts or omissions committed as a result of simple negligence). Further, a Trustee shall not be personally liable for obligations arising from the Trustee's ownership or control of Trust property or for torts committed by a co-Trustee during the course of the Trustee's administration of this Trust unless the Trustee is personally at fault. Notwithstanding the foregoing, a Trustee shall be personally liable for his or her breach of trust or other acts or omissions committed intentionally, with gross negligence, in bad faith, or with reckless indifference to the interests of City. Additionally, a Trustee shall be personally liable as to any personal financial benefit that the Trustee derives from a breach of trust.

(b) **As to Previous Trustees.** No successor Trustee shall be liable or responsible for the acts, omissions or defaults of a predecessor Trustee. No successor Trustee shall be required to investigate the actions of his or her predecessor and shall be relieved of all liability therefor and may accept the accounting records of such predecessor. If requested to investigate any action of the predecessor Trustee, all Trustee's fees, attorneys' fees, accounting fees and other fees and costs so incurred shall be paid by and charged against the Trust estate, subject to any right of reimbursement or contribution.

(c) **Liability Insurance.** The Trustees may carry liability insurance and may charge the premiums to the Trust Corpus as a cost of administration.

ARTICLE 6 **THE OBLIGATION OF THE TRUSTEES**

In accordance with Probate Code Sections 16000 through 16015, every Trustee, upon acceptance of a Trustee position, shall administer this Trust according to the terms of this Trust Agreement, and, except as this Trust Agreement otherwise provides, according to the provisions of the Probate Code.

6.1 **Standard of Care.** A Trustee must use at least ordinary care and diligence in the performance of his or her duties as Trustee. When acting as Trustee, the Trustee shall act with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with these matters would use in the conduct of an enterprise of like character and with like aims, to accomplish the purposes of the Trust.

6.2 **Compliance with Law.** Notwithstanding any other provision of this Trust to the contrary, the Trustees shall at all times comply with the following statutory requirements or the requirements of successor statutory provisions:

- (a) The Ralph M. Brown Act, Government Code Section 54950, et seq.;
- (b) The Political Reform Act, Government Code Section 81000, et seq.;
- (c) Government Code Section 1090, et seq.; and
- (d) The California Public Records Act, Government Code Section 6250, et seq.

6.3 **Accountings.** The Trustees shall cause audited financial statements of this Trust to be prepared by an independent firm of public accountants; and within ninety (90) days after the end of each Year shall furnish City with such audited statements.

ARTICLE 7 **THE AUTHORITY OF THE TRUSTEES**

7.1 **Voting.** Except as otherwise provided herein, actions of the Trustees shall be taken by decision of a majority of the Trustees. In any vote of the Trustees, the nonconcurring Trustees, if any, shall not be liable for the action or failure to act of the other Trustees.

7.2 **Delegation of Authority by Trustees.** In accordance with Probate Code Section 16012, a Trustee has a duty not to delegate to others the performance of acts that the Trustee can reasonably be required to perform personally and may not transfer the office of Trustee to another person nor delegate the entire administration of this Trust to a co-Trustee or other person. Notwithstanding the foregoing, a Trustee is expressly authorized under the terms of this Trust Agreement to do all of the following:

- (a) **Delegation by All Trustees.** The Trustees may delegate their powers to one or more of the Trustees in a writing signed by all of them. The writing must state the powers delegated to the particular Trustees and provide a date within a reasonable time when the delegation will terminate automatically if not previously revoked. Any such delegation shall be revocable by any one Trustee in a writing delivered to the Trustee delegate. Trustees acting pursuant to such a delegation shall have the authority to bind this Trust, and third persons may rely on their authority to act for this Trust. Any act by or instrument executed by Trustees acting pursuant to such delegation shall constitute the action of the Trustees as if done by all Trustees. The Chair of the Trustees shall be the Trustee then serving as City's Mayor; the Vice-Chair of the Trustees shall be the Trustee then serving as City's Mayor Pro Tem; the Chief Executive Officer of the Trust shall be the person then serving as the City's City Manager; the Secretary of the Trust shall be the person then serving as City's Clerk/Treasurer; and the Chief Financial Officer of the Trust shall be the person then serving as City's Controller. The Trustees may in their discretion assign other titles and roles to individual Trustees as they deem appropriate.

(b) **Delegation by Trustees to Others.** The Trustees, acting by majority vote, may delegate to an agent or other person, the performance of actions requiring special skills or expertise, whether or not one or more of the Trustees may have such skills, and the performance of actions requiring special personnel or equipment not otherwise available to the Trustees at a reasonable cost. In each case where the Trustees have properly delegated a matter to an agent or other person, the Trustees have a duty to exercise general supervision over the person performing the delegated matter.

(c) **Delegation of Investment Authority.** In accordance with the provisions of Probate Code Section 16052, and subject to the restrictions and limitations thereof, the Trustees shall appoint an Investment Advisory Commission (the "Commission") to oversee the financial and investment policies, and the investments, of this Trust. This includes development of investment policies, review of asset allocation, and review of outside investment managers. The Commission shall consist of five (5) residents and registered voters of City who are neither City employees nor members of a City Commission at the time of appointment, and who have one or more of the following skill sets acquired from education and/or experience, as determined by the Trustees in their sole and absolute discretion:

- (i) An understanding of investment principles, strategies, transactions and performance;
- (ii) Experience with and understanding of investment statements and reporting;
- (iii) Experience with investment consultants and/or fund managers; and
- (iv) An understanding of investment markets.

The Trustees, in their sole and absolute discretion, may also deem a resident and registered voter of City to be qualified to serve on the Commission if that person is a licensed certified public accountant, an officer of a Whittier bank, savings & loan association, or investment management company; a certified financial planner; an accredited investment fiduciary; the holder of a Masters degree in business administration with a major in finance or accounting; or an attorney licensed to practice law in the State of California with a demonstrated practice in the area of finance and investments.

Each member of the Commission ("Commissioner") shall serve for a term of four (4) years, and no Commissioner may serve for a total of more than ten (10) years. Two (2) of the five (5) initial Commissioners may be appointed for a shorter or longer initial term, to stagger the Commission terms. The Trustees may remove a Commissioner without cause, and fill vacancies on the Commission.

The duties of the Commission shall include the following:

- (i) The development and periodic revision of an investment policy for adoption by the Trustees consistent with the California Uniform Prudent Investor

Act (Probate Code Sections 16045-16054), as it may be amended from time to time;

- (ii) The development of criteria for the selection of fund managers;
- (iii) Interviewing a short-list of proposed fund managers prepared by the City Manager or his or her designee and a subcommittee of the Commission, and making recommendations to the Trustees for the retention of one or more of such fund managers;
- (iv) Making quarterly reviews of the investment performance of fund managers and providing quarterly written reports to the Trustees; and
- (v) Making and transmitting to the Trustees for their consideration a written report on the effect any proposed distribution of Mineral Revenue and/or Investment Income pursuant to Section 3.4 above, in light of the effect of the proposed distribution on the Trust, and the performance of the Trust investments, and making a recommendation to the Trustees whether to make the proposed distribution.

7.3 Dealing with the Trustees. In accordance with Probate Code Section 18100, if a third person dealing with the Trustees or assisting them in the conduct of a transaction acts in good faith and for a valuable consideration and without actual knowledge that the Trustees are exceeding the Trustees' powers or improperly exercising them, the third person is not bound to inquire whether the Trustees have power to act or are properly exercising a power and may assume without inquiry the existence of a trust power and its proper exercise. Such third person shall be fully protected in dealing with or assisting the Trustees just as if the Trustees have and are properly exercising the powers the Trustees purport to exercise. In addition, such person has no duty to see to the application of any money paid or property transferred to or upon the order of one or more Trustees.

A third person dealing with the Trustees shall also be fully protected in relying on written statements of fact, made in accordance with Probate Code Section 18100.5 or otherwise, certified or declared under penalty of perjury by any one or more of the persons who appear from the original or certified copy of this Trust Agreement (or documents of appointment) to be Trustees or successor Trustees, regarding the Trustees' authority to act under this Trust Agreement, the calling of any meeting of the Trustees, the giving of any notice of such a meeting, the action taken at such a meeting, and actions taken by the Trustees without a meeting, and other facts concerning the trusts established under this Trust Agreement. Anyone may rely on a copy of all or a portion of this Trust Agreement certified by a Trustee, or by an attorney, to be a counterpart or true copy of all or such portion of this Agreement.

7.4 Reliance on Authority of Trustees. No persons or organizations employed by the Trustees or retained by the Trustees as authorized under the foregoing provisions of this Article, shall be required to oversee or supervise the activities of the Trustees or to inquire into the Trustees' powers, authority, or discretion. Each person or organization so employed or

retained may rely implicitly upon the written instructions of the Trustees with respect to the property and business of the Trust, including instructions of the Trustees to deal directly with investment counsel employed by the Trustees. In no event shall any person or organization so employed or retained be liable for any act or omission of any Trustee in which such person or organization may also have participated.

ARTICLE 8

THE POWERS OF THE TRUSTEES

Except as may be otherwise provided in this Trust Agreement, and subject in all instances to their fiduciary duties with regard to the entire Trust estate and this Trust, the Trustees shall have all the powers described below, all powers granted by law (including all the automatic powers set forth in Probate Code Sections 16220 et seq.), and all powers reasonably necessary to carry out their duties as Trustees to administer, manage, protect, and invest the Trust estate, which may be exercised by the Trustees in their discretion, without court authorization or supervision except as expressly required in this Trust Agreement.

8.1 **Collecting and Holding Property.** To collect, hold, and retain Trust property received from City or any other person or entity until, in the judgment of the Trustees, disposition of the property should be made. Notwithstanding Probate Code Sections 16048 and 16049, the Trustees shall have no duty to dispose of any part of the property contributed to this Trust without consideration at the time of its creation, or later contributed to the Trust without consideration by the City that would not be a proper investment for the Trustees to make. The Trustees may, without liability, continue to hold such property.

8.2 **Investments.** Subject to any applicable limitations under law, and in accordance with the adopted investment policy, to invest and reinvest trust property in any kind of property, whether real, personal, or mixed, including (a) real property (including leaseholds; royalty interests; interests in mines, oil and gas wells, timberlands, and other wasting assets); and (b) intangible personal property (including common and preferred stock and all other kinds of securities (but not on margin); investment company shares, mutual funds, index funds, common trust funds and other collective investment vehicles; interests in general and limited partnerships (whether as a general or limited partner) and limited liability companies; commodities and entities which invest in commodities or futures; obligations of corporations or unincorporated associations; and patents, copyrights, trademarks. The Trustees are authorized to establish and maintain brokerage accounts for the purpose of purchasing, acquiring, possessing, pledging, hypothecating, selling, and otherwise disposing of, and generally dealing in and with any of the foregoing types of investments.

8.3 **Acquisition and Disposition of Property.** To buy, purchase, acquire, sell, dispose of, exchange, or otherwise transfer any trust property, or any interest therein, for cash or on credit, at public or private sale, and for such prices and upon such terms as the Trustees determine. The Trustees may grant options and rights of first refusal to Trust property. The Trustees may also grant easements or dedicate real property to the public use with or without consideration.

8.4 **Management of Property.** To manage, control, divide, develop, improve, exchange, partition, change the character of, repair, or abandon Trust property or any interest therein. The Trustees may also demolish or remove buildings or other improvements on Trust property.

8.5 **Leases.** To enter into a lease for any purpose as lessor or lessee with or without the option to purchase or renew.

8.6 **Abandonment of Property.** To abandon any real or personal property which the Trustees shall deem to be worthless or not of sufficient value to warrant keeping or protecting; to abstain from the payment of taxes, water rents, assessments, and the expenses of repairs, maintenance and upkeep of any such property; to permit any such property to be lost by tax sale or other proceedings, or to convey any such property for a nominal consideration or without consideration.

8.7 **Reorganizations, Recapitalizations and Similar Transactions.** With respect to any investment held by the Trustees, to participate in and consent to any corporate or financial reorganization, dissolution, liquidation, merger, consolidation, sale or lease, or in and to any other change in its financial structure; and to become a depositor with any protective, reorganization, or similar committee, and to make any necessary payments incident to the foregoing; to organize or participate in the organization of corporations or other business entities, and to transfer to them any part or all of the Trust assets in exchange for an investment therein; to exercise or to sell any conversion, subscription, or similar rights; and in general to exercise in respect to any investment the unrestricted rights of a personal owner, including voting in person and granting proxies, discretionary, general, or otherwise.

8.8 **Liability Insurance and Bonds.** To purchase and pay the premiums on fidelity, fiduciary, honesty and other bonds protecting the Trust from the effects of errors, omissions and misconduct, directors and officers liability and fidelity insurance policies, and policies to insure the property of the Trust estate against damage or loss and to insure the Trustees against liability with respect to third persons. The Trustees shall not be liable for any omission to purchase any bond of any type or amount of insurance. All such premiums shall be a proper expense to be charged against the Trust.

8.9 **Payment and Settlement of Claims.** To pay or contest any claim; to settle a claim by or against the Trust by compromise, arbitration, or otherwise; to release, in whole or in part, any claim belonging to the Trust.

8.10 **Dealing with the Governmental Agencies.** To enter into any and all agreements with the Internal Revenue Service or any other governmental body and to execute, from time to time, any declarations of policy or disclaimers restricting the powers, authority and discretion granted to the Trustees.

8.11 **Payment of Trust Expenses.** To pay taxes, assessments, reasonable compensation of agents of this Trust, and other expenses incurred in the collection, care, administration, and protection of this Trust.

8.12 **Hiring Persons.** To hire persons or organizations, including accountants, attorneys, auditors, investment advisors, or other agents, to advise or assist the Trustees in the performance of their duties and obligations and to pay such persons reasonable compensation for their services. The Trustees may not delegate either the administration of the Trust or acts which are not delegable except as expressly provided under the provisions of this Trust Agreement. No persons or organizations employed in any such capacity, however, shall be required to oversee or supervise the activities of the Trustees or to inquire into the Trustees' powers, authority, or discretion. Each person or organization so employed may rely implicitly upon the written instructions of the Trustees with respect to the property and business of the Trust including instructions of the Trustees to deal directly with such investment managers as may be employed by the Trustees. In no event shall any person or organization so employed be liable for any act or omission of any Trustee in which such person or organization may also have participated.

8.13 **Maintaining Custody.** To keep any or all of the Trust property at any place in California or elsewhere, within the United States or abroad, or with a depository or custodian at such places. The Trustees are authorized to appoint a bank or trust company as custodian for the securities and any other Trust assets. The custodian shall keep the deposited property; collect and receive the income and principal; and hold, invest, disburse, or otherwise dispose of the property or its proceeds (specifically including selling and purchasing securities and delivering securities sold and receiving securities purchased) upon the order of the Trustees.

8.14 **Execution and Delivery of Instruments.** To execute and deliver all documents and instruments (including checks withdrawing or disbursing Trust funds, stock powers, deeds and other conveyances, receipts, releases, contracts, and other agreements and transfer documents) which are needed to accomplish or facilitate the exercise of the powers vested in the Trustees, and to disclose the provisions of this Trust Agreement whenever in the Trustees' discretion such disclosure is appropriate.

8.15 **Actions and Proceedings.** In accordance with their duties to enforce claims and defend actions as set forth in Probate Code Sections 16010 and 16011, to prosecute or defend actions, claims, or proceedings for the protection of the Trust estate and the Trustees in the performance of their duties.

Notwithstanding any other provision of this Trust, the Trustees shall not have the power to borrow money for any Trust purpose, nor to either (i) encumber, mortgage, or pledge Trust property in connection with the exercise of any power vested in the Trustees, or (ii) create restrictions, easements, or other servitudes on Trust property.

ARTICLE 9

GENERAL PROVISIONS

9.1 **Gender and Number.** Unless the context clearly requires a different construction, the masculine, feminine, and neuter genders shall each include the others, and the singular and plural numbers shall include the other.

9.2 **Titles and Headings.** The table of contents, titles, and headings used in this Trust Agreement are for convenience of reference only, and shall not be construed to have any legal effect.

9.3 **Statutory References.** All statutory references in this Trust Agreement shall be construed to refer to that statutory Section mentioned and any successor and corresponding Sections of subsequent law, including all amendments to such sections.

9.4 **Governing Law.** The meaning and effect of the terms of this Trust Agreement, and the administration of this Trust, shall be construed and governed in accordance with the laws of the state of California.

9.5 **Determination of Principal and Income.** Except as expressly provided otherwise herein, the Trustees shall be governed by the provisions of the then existing California Uniform Principal and Income Act in determining which receipts shall be classified as income or principal and which expenses shall be chargeable to income or principal, but if any matter related to such determination is not provided for herein or in said law, the Trustees shall have the authority to determine such matter, according to the recognized rules of good trust accounting practice. The Trustees may rely upon the statement of a payor as to the source or character of dividends or other distributions or the time when they were earned. Notwithstanding the foregoing, the Trustees shall charge all audit, legal, accounting, publication, filing, consulting, insurance, and investment manager expenses to income.

9.6 **Severability.** If any provision or provisions of this Trust Agreement are determined to be invalid or unenforceable, the remaining provisions shall nevertheless be carried into effect and continue to be fully operative.

9.7 **Court Supervision.** Under California law the California courts have jurisdiction to consider petitions concerning this Trust, and the City intends that the provisions of Probate Code Sections 17000 et seq. shall be applicable to this Trust.

9.8 **Interpretation of Trustees' Authority.** Except as specifically provided otherwise in this Trust Agreement, all powers, authority and discretion exercisable by the Trustees under this Trust or by law shall be binding and conclusive on all interested parties; shall be exercisable by the Trustees in their sole and absolute discretion; shall be construed in the broadest possible manner; and shall be exercisable without prior or subsequent application to any court under the jurisdiction of which this Trust may be administered.

ARTICLE 10

COUNTERPARTS AND CERTIFIED COPIES

This Trust Agreement may be executed in one or more counterparts. Upon execution by Settlor and the initial Trustees, this Trust Agreement shall be effective. To the same effect as if it were the original, anyone may rely upon a copy certified by a Trustee or an attorney to be a counterpart of this Trust Agreement, or of any document required to be filed with, or to be kept at, the office of the Trustees. Anyone may rely upon any statements of fact concerning this Trust

certified by anyone who appears from an original document, or a certified copy, to be a Trustee or successor Trustee under this Trust Agreement.

The undersigned declares that the foregoing Trust Agreement was executed by it as Settlor of the TRUST FOR WHITTIER'S FUTURE on the date set forth below:

CITY OF WHITTIER

Dated: _____, 2013

By: _____

By: _____

DRAFT

I hereby join in the foregoing Trust Agreement and agree to serve as a Trustee of the Trust created thereunder.

_____, 2013

Owen Newcomer

_____, 2013

Bob Henderson

_____, 2013

Joe Vinatieri

_____, 2013

Cathy Warner

_____, 2013

Bernardo Dutra

DRAFT

Trust Agreement Creating
THE TRUST FOR WHITTIER'S FUTURE

DATED _____, 2013

DRAFT

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