TO: Mayor and Common Council
John Dougherty, City Manager
From: Carl Cooper, City Attorney
Date: September 20, 2016
Re: KAA Dross Site Litigation Update

The Kingman Airport (KIA) is owned by the City and operated by the Kingman Airport Authority ("KAA") pursuant to a lease agreement. The KIA is located along Route 66, approximately 5 miles northeast of Kingman, Arizona. The Dross Disposal Area is located on the south western corner of the airport.

Between 1942 and 1945, the Department of Defense ("DoD") acquired 4,145 acres of land for the KAAF. The U.S. Army Air Force used the property as an air field and the Kingman Aerial Gunnery School training facilities. The site was declared DoD surplus on November 15, 1945, and the War Assets Administration ("WAA") assumed management responsibility for the facility on March 31, 1946. On August 9, 1946, the Wunderlich Company purchased 5,437 surplus aircraft from the WAA for salvage. In November 1946, a license was granted by the U.S. Army, through the WAA, to the Wunderlich Company, a government contractor, to develop and operate an aluminum smelting operation at the site to demolish World War I- and World War II- surplus war planes from the 7th Air Force for recovery of their aluminum content. The smelting operations took place between May 1947 and March 1948. Three furnaces located near Taxiway 3 (currently Taxiway B) were used during the operation. Aluminum dross was produced as a waste product from the recycling or smelting of the aluminum components. It consists of metal, salts oxides, and other non-metallic substances.

Dross tends to be granular, sand like material that has an extremely high metal content and smaller amounts of oxides and salts. The aluminum dross product includes waste ash and slag from the smelting furnace. This waste contains elevated levels of aluminum and heavy metals including copper, lead, cadmium, zinc, and chromium. This dross was left in mounds/piles and buried in numerous shallow pits and placed in trenches in the area surrounding the smelting furnaces on the north side of Taxiway 3.

The KAAF dross disposal area was initially proposed for listing on the EPA's National Priority List ("NPL") in 1982, as part of the Kingman Municipal Airport and Industrial Park Site. In or around 1984, the Kingman Municipal Airport and Industrial Park Site was dropped from consideration for the NPL.

USEPA Region IX Waste Compliance Division representatives conducted a site visit on January 11, 1991, and the Arizona Department of Environmental Quality ("ADEQ") conducted a follow-up site visit on August 7, 1991. ADEQ recommended that an investigation of the dross waste piles be undertaken. Various investigations of the aluminum smelting operations and dross disposal have occurred under the direction of the United States Army Corps of Engineers ("USACE"). An initial cursory assessment was conducted in 1995–1996 and a Remedial Investigation ("RI") report was compiled from 1997 to 1999 and resulted in a RI and supplemental RI in 1999. The RI report, dated June 8, 1999, reported the volume of dross material to be approximately 35,000 cubic yards. The RI report also reported that slag with embedded ferrous metal aircraft parts was observed across the site.

In February 2000, under a USACE contract, there was an attempt to excavate the dross material at the site and relocate it into a series of pits. According to the completion report, the dross material was placed in a total of eight pits, with a typical pit measuring 40 feet wide by 200 feet long by 20 feet deep. Those pits and the surrounding area were to be capped with 1.5 inches of

hot-mixed asphalt ("HMA") over an 8-inch base course of soil stabilized with lime and fly ash. An initial survey at the time of the dross pit construction indicated that the site area was 15.33 acres (the "Site").

A Supplemental RI prepared in 2000, included a 1999 risk assessment. The risk assessment identified arsenic, barium, cadmium, chromium, copper, lead, selenium, silver, aluminum, magnesium, mercury, nickel, zinc, and ammonia as contaminants of potential concern ("COPCs"). Over the five years following installation of the HMA cap, the cap developed a number of features indicative of failure, and those continued to worsen with time.

In 2006, the USACE investigated the HMA cap failure. The investigation was designed to quantify and characterize the nature, possible causes, and extent of the cap failure. The Final Cap Failure Report, which summarized the investigation to discover the mechanism for the subsurface failure of the HMA cap, was issued in May 2010. That report identified gases caused by the material buried beneath the cap as the reason for the failure of the cap. That report opined that without corrective action the cap failure would worsen. That report offered several potential corrective actions.

A Draft Feasibility Study ("FS") was issued that evaluated and compared five potential corrective actions needed to provide a remedy at the site to address protection of human health and the environment. The report identified arsenic, aluminum, barium, cadmium, chromium, copper, lead, magnesium, mercury, nickel, selenium, silver, zinc, and ammonia (which is evolved when unreacted dross is exposed to water) as COPCs.

The KAA has contacted representatives of the USACE and representatives of the U. S. Department of Justice (through the General Services Administration (the "GSA")), and explained the problem and requested that the USACE remedy the situation pursuant to the recommendations contained in the FS.

The City has contacted ADEQ and been advised that although the Site is currently under the jurisdiction and administration of ADEQ, ADEQ has no current plans to remediate the Site or order USACE to remediate the Site. It is clearly the responsibility of the Federal Government to remedy the problem. The DoD contaminated the site. The USACE took responsibility for remediating the site. The USACE's remediation didn't work.

The City of Kingman began receiving complaints from those working in the industrial park about the unsafe conditions at the Airport caused by the USACE's activities. The firm of Gust Rosenfeld was retained in March 2013 and investigated potential litigation options. Chief among those options were claims under the Comprehensive Environmental Response Compensation and Liability Act ("CERCLA") and the Resource Conservation and Recovery Act ("RCRA"). We also investigated potential claims under Arizona's Water Quality Assurance Fund, the Defense Base Closure and Realignment Act, claims under the Clean Air Act, common law claims and claims under local regulations for which we found no substantial basis for bringing a claim and/or issues relating to the applicable statutes of limitation.

On August 16, 2013 we filed an action under RCRA against the United States Army Corps of Engineers ("USACE") in the United States District Court for the District of Arizona seeking declaratory and injunctive relief requiring USACE to abate an imminent and substantial endangerment to health or the environment and an award of costs and attorneys' fees. The action brought is not one for damages, but rather to compel USACE to take all actions necessary to abate the eminent and substantial endangerment, including the restoration of the taxiway and airport facilities.

On April 1, 2016, the court entered a Partial Consent Decree by which the United States has agreed to pay Investigation Costs to determine the nature and volume of dross material at the Site and to prepare a Work Plan and Cost Estimate to remediate the Site. The Kingman Airport Authority was designated as the Work Party. Once the investigation phase is completed and the consultants retained on behalf of the Work Party have prepared a Cost Estimate for remediation, it is the stated intent of the parties to enter into a second consent decree for the purpose of remediation of the Site and Site closure.

Assuming good faith on the part of the United States, we will begin during the investigation phase the negotiation of the final consent decree for Site remediation and closure, leaving the dollar number for the remediation blank until such time as the investigation phase has been completed and the Cost Estimate is compiled and approved. It is expected for the remediation to cost approximately $30 to $35 million.