

## MULTI-GENERATIONAL CENTER DEVELOPMENT GIFT AGREEMENT

This Multi-generational Center Development Gift Agreement (“Agreement”) is made and entered into this 11th day of February, 2019 (the “Effective Date”) between the Town of Superior, an Arizona municipal corporation, (the “Town”) and Resolution Copper Mining LLC, a Delaware limited liability company (“RCML”). The Town and RCML are sometimes hereinafter referred to individually as a “Party” and collectively as the “Parties.”

### RECITALS

- A. RCML is the operator of the Resolution Mine, Mine ID No. 0200152, Pinal County, Arizona, and has operational locations within, adjacent to, and a short distance away from the Town.
- B. The Town and RCML agree that the availability of community services is contributes to the quality of life for the residents of the Town of Superior, and that it is in the mutual interest of both the Town and RCML to optimize and improve existing community services and amenities within the Town.
- C. The Town has initiated preliminary studies for the feasibility and construction of a multi-generational center within the Town. The parties agree that a multi-generational center will (1) improve the overall quality of life for Superior residents, local employers and their employees; (2) expand the quality of life amenities and services that are essential to retaining and attracting residents and employers; (3) allow for consolidation of town services and decrease the overall Town administrative burden; and (4) further develop public, private, civic and educational sectors of the community toward common goals and in support of shared values and interests
- D. The Town has estimated the cost of further studies, design, and construction of the multi-generational center (collectively the “Project”) to be approximately four million dollars (\$4,000,000.00). RCML has agreed to pledge two million dollars (\$2,000,000.00) to the Town to be used for final studies, design, and construction of the multi-generational center.

### AGREEMENT

NOW THEREFORE, for good and valuable consideration, the Town and RCML agree as follows:

1. Pledged Gift. Subject to the terms of this Agreement RCML agrees to gift the Town the sum of Two Million Dollars and No Cents (\$2,000,000.00) to be used for activities and work to further the Project (the “Pledged Gift”). RCML will pay the Pledged Gift to the Town over a period of three (3) years in three (3) installments on the following terms:

- a. First Installment. RCML's first payment will be a cash contribution to the Town in the amount of Three Hundred Thousand Dollars and No Cents (\$300,000.00)(the "First Installment"), to be paid to the Town on or before May 31, 2019 (the "First Contribution Date"). The First Installment shall be used for the relocation of the Senior Center to the Roosevelt School building, and next level study and design of the Project.
- b. Second Installment. RCML's second payment towards the Pledged Gift will be a cash contribution to the Town in the amount of Five Hundred Thousand Dollars and No Cents (\$500,000.00)(the "Second Installment"), to be paid to the Town on or before February 28, 2020 (the "Second Contribution Date"). The Second Installment shall be used for the retention and compensation of the Project Manager as described in Paragraph 5, construction and renovation of the existing Roosevelt School building, completion of the final Project Design, and commencement of construction pre-work and construction (depending on schedule).
- c. Third Installment. RCML's third payment towards the Pledged Gift will be a cash contribution to the Town in the amount of One Million Two Hundred Thousand Dollars and No Cents (\$1,200,000.00), to be paid to the Town on or before February 28, 2021 or such later date as provided in Paragraph 2 (the "Third Contribution Date"). The Third Installment shall be used for construction of the Project.

2. Fundraising Obligation of the Town. As a condition to the receipt of the entirety of the Pledged Gift the Town must solicit or otherwise obtain additional funding for the Project in the amount of Two Million Dollars and No Cents (\$2,000,000.00) in good funds (the "Remaining Building Funds") on or before the Third Contribution Date. The Town Manager or designee will participate in quarterly meetings with RCML leadership to provide status updates on the progress towards obtaining the Remaining Building Funds. If the Town is unable to secure the Remaining Building Funds by the Third Contribution Date, no further installments towards the Pledged Gift will be paid until such time as the Town confirms to RCML that it has secured the Remaining Building Funds (the "Funding Notice"). Upon receipt of the Funding Notice by RCML the Third Installment will be paid by RCML within thirty (30) days of receipt of the Funding Notice.

3. Limitation on use of the Pledged Gift, Deliverables. The Town represents and warrants that the Pledged Gift will only be used for the Project and deliverables associated with the Project, including the planning, development, construction and delivery of a multigenerational center within the current Roosevelt School property boundary that will serve Superior residents and visitors. The Project shall include but not be limited to recreational, educational, and economic development facilities. Within ninety (90) days after the Project receives a Certificate of Occupancy, from either the Town or Pinal County, the Town shall provide a notice of completion to RCML (the "Notice of Completion") along with an accounting which details the expenditure of the Pledged Gift including any remaining funds.

4. Multi-generational Center Use by RCML. As a condition of the Pledged Gift the following benefits shall accrue to RCML and its employees:

- a. RCML shall receive at no cost use of facility meeting spaces and associated amenities for business purposes at least twelve (12) times per year] for twenty years after the Town provides the Notice of Completion.
- b. Current employees of RCML shall also receive discounted rates for membership or use of recreational and fitness facilities within the multi-generational center for the life of the facility.

Following the issuance of the Notice of Completion the Parties shall agree to terms governing these benefits and memorialize the same in a separate written agreement.

5. Project Manager. By no later than the end of year two of the Agreement, the Town and RCML will work cooperatively to identify and retain a qualified project manager with experience in the management of public works projects and/or commercial construction who will work under the direction of the Town Council and Manager and be solely dedicated to the Project (the “Project Manager”). For the avoidance of doubt, the Project Manager may not be the same person as the economic development consultant who is retained pursuant to the Entrepreneurship and Innovation Center Gift Agreement.

6. Community Development Committee. Within thirty (30) days of execution of this Agreement the Town and RCML shall establish a Community Development Committee (the “Committee”). This Committee shall be the same committee that is provided for in the Entrepreneurship and Innovation Center Gift Agreement. The Committee shall be comprised of a minimum of seven (7) members, as follows:

- a. One member of the Town Council;
- b. One member appointed by the Board of the Superior Unified School District;
- c. One member appointed by the Superior Chamber of Commerce;
- d. Two members appointed by RCML
- e. Two members who are residents of the Town of Superior who are not elected officials. If the nominated citizen is an employee of government or RCML, or organization member the employer or organization and additional entities described above will be given opportunity to approve appointment unanimously. These persons will be appointed by the Town Council.

The terms of each member shall be two years in length and expire on December 31st of each year. No compensation shall be paid to the Committee members for their service. The Committee shall, as its first order of business, establish rules of order governing the manner in which the Committee shall operate, including meeting schedules and protocols. The Parties agree that the Arizona Open Meetings Law, Ariz. Rev. Stat. §§ 38.431 et. seq., shall apply to the Committee.

7. Community Development Committee Responsibilities. The Committee shall work with the Project Manager and the Town to oversee Project progress and security of funding. Specifically, the Committee’s scope will include but not be limited to:

- a. Provide guidance and recommendations to the Superior Town Council for capital expenditures to be made for the Project.
  - b. For each Agreement Year the Committee shall develop a Project expenditure plan based on project schedule and in consultation with the Project Manager.
  - c. Enhance and promote opportunities within the Town through collaboration with other Town committees and boards.
  - d. Support Town staff and organizations within the Town to obtain State, Federal, and private grants related to community and economic development.
  - e. Provide recommendations for economic development opportunities related to community development and tourism.
  - f. Assist with community planning projects.
8. Communications between RCML and the Town and Reporting. The parties recognize that close cooperation is required to maximize the benefits of this Agreement.
- a. No less than biannually the Town Council and RCML senior management will meet to discuss community development, ensure continuing alignment between Town's plans and RCML's needs, and reviewing the success of the work undertaken together.
  - b. Within 45 days at the end of each fiscal year during the term of this Agreement the Town shall provide a public report to RCML that shows the planned (budgeted) versus actual expenditure of funds related to the Project for the fiscal year. The report should be sufficiently detailed such that RCML may readily see the purpose and amount of expenditures.
  - c. Within 90 days of the end of each fiscal year during the term of this agreement the Project Manager shall present a report to the Town and RCML detailing Project status based on key Project metrics.
  - d. Within ninety (90) days after the Project receives a Certificate of Occupancy, from either the Town or Pinal County, the Town shall provide a notice of completion to RCML (the "Notice of Completion") along with an accounting which details the expenditure of the Pledged Gift including any remaining funds.
9. Joint communications with the public. The parties recognize the importance of communicating their work under this Agreement with the residents of the Town of Superior and other constituents. Following execution of this Agreement, the Town and RCML will develop a joint press release announcing the Agreement and its significance. During the course of this agreement, the Town and RCML will jointly and publicly acknowledge the achievement of major milestones.

10. Default. The occurrence of any of the following events shall constitute an Event of Default, irrespective of how or why such events come about or occur, and shall be cause for termination of this Agreement:

- a. A party's failure to make any payment due under this Agreement when such payment is required, and which is not cured within ten (10) business days after written notice of nonperformance has been given by the non-defaulting party.
- b. A party's failure to observe or perform any of its other covenants under this Agreement and which is not cured within thirty (30) days after written notice of nonperformance has been given by the non-defaulting party.
- c. If any representation or warranty of a party in this Agreement, or in any document or certificate furnished to the other party in connection or pursuant to this Agreement, proves to be incorrect in any material respect; and
- d. If a party shall (i) become insolvent; (ii) generally not able to pay its debts as they become due; (iii) file, or consent by answer otherwise to the filing against it, a petition in bankruptcy for relief, reorganization, or liquidation; (iv) make an assignment for the benefit of its creditors outside the ordinary course of business; (v) consent to the appointment of a custodian, receiver, trustee, or other officer with similar powers over itself or of any substantial part of its assets; or (vi) take corporate action for the purpose of any of the above; or (vii) if a court or other governmental of competent jurisdiction shall enter an order appointing, without the consent of a party, a custodian, receiver, trustee, or other officer with similar powers over the party or its assets, or an order for relief, or an order approving a petition for relief, reorganization, or any other petition in bankruptcy or for liquidation, or an order for the dissolution, winding-up or liquidation of a party.

11. Remedies. Upon the occurrence of any Event of Default, and at any time thereafter so long as the Event of Default continues, the non-defaulting party may, at its option, declare this Agreement to be in default, except in the case of any event in Section 12(d) occurring, in which case this Agreement shall automatically be in default and shall automatically terminate without notice to the non-defaulting party. Except with respect to an event described in Section 12(d), at any time after an Event of Default, and so long as the same is continuing, the non-defaulting party may do one or more of the following with respect to all or any part of this Agreement, within its sole discretion, to the extent permitted by law:

- a. The non-defaulting party may initiate a proceeding in a court of competent jurisdiction for specific performance of this Agreement, in all or in part, for the Agreement Year in which such Event of Default occurs, or for damages for any breach of this Agreement; provided, however, the amount of damages that may be recovered is capped at the Annual Allocation designated under this Agreement for the Agreement Year in which the Event of Default occurs;
- b. Where RCML is the non-defaulting party, RCML may suspend any payment contemplated by this Agreement pending any cure of such Event of Default;
- c. The non-defaulting party may terminate this Agreement.

- d. Each and every remedy available to a non-defaulting party shall be in addition to every other remedy specifically so given, and each and every remedy may be exercised from time to time individually or simultaneously and as often and in such order as determined by the non-defaulting party in its sole discretion. All such remedies shall be cumulative and the exercise of one shall not be deemed a waiver of the right to exercise any other.

12. Annexation. The parties expressly agree and acknowledge the purpose of this Agreement is for the Town to provide community development services. If at any such time during this Agreement a lawful annexation process results in all or part of the RCML Service Area being incorporated into the Town, and RCML did not request or agree to the annexation, then this agreement shall continue to be in force and effect, but RCML shall receive a tax credit equal to any sums paid under this Agreement subsequent to any such annexation, which credit shall be applied against any existing or future (1) real property taxes levied by the Town (including primary and secondary property taxes), or (2) any other tax levied by the Town for the funding of community development, which are imposed by the Town as a result of the annexation or inclusion of the Resolution Service Area within the Town boundaries. If RCML agrees or requests the annexation or the annexation occurs during the Term of this Agreement such annexation shall not be a cause for modification of the monetary obligations set forth in this Agreement.

13. Business Integrity and Standards

- a. RCML Business Standards. The Town agrees that it will, at its cost, comply with, and ensure its personnel comply with, all laws, regulations, rules, and orders of any local, state, and federal governmental agency, and Rio Tinto Group policies, including “The Way We Work,” “The Supplier Code of Conduct,” the “Business Integrity Standard,” and all applicable compliance policies and standards, including any site specific terms, and other policies available at <http://www.riotinto.com/aboutus/policies-standards-and-guidance-5243.aspx>, (collectively “RCML Standards”) the provisions of which are incorporated by this reference. Town shall report to RCML all actual, alleged or suspected non-compliance with the requirements of the RCML Standards and cooperate promptly and fully with RCML in any investigation of an alleged or suspected breach.
- b. Illegal Information Brokering. The term Illegal Information Brokering means the practice by which an individual or entity approaches a contractor, subcontractor, vendor or other supplier, and offers confidential information or illegal or illicit influence in order to obtain business through bribery, fraud, or corruption of a competitive bidding process or other dishonest activity. Town recognizes that the practice of Illegal Information Brokering or any other form of corruption is not permitted by RCML and Town represents and warrants that it has not and will not utilize Illegal Information Brokering in connection with this expenditures funded by this Agreement.
- c. Compliance with Business Integrity Requirements.

(i) Town shall comply with all laws, regulations, rules, and orders of any local, state, and federal governmental agency, and has not violated, and will not violate, the Foreign Corrupt Practices Act of 1977 or any other similar laws.

(ii) Town represents and warrants that it has not offered, paid, promised to pay, authorized the payment of or transferred money or anything of value to any person (including a public official or private individual or enterprise) to secure any improper advantage or benefit in relation to the matters contemplated by this Agreement, either directly or indirectly through a third party. It is the intent of the Parties that no payments or transfers of value will be made that have the purpose or effect of public or commercial bribery, or acceptance of or acquiescence in, extortion, kickbacks, or other unlawful or improper means of obtaining business.

(iii) Town covenants that should RCML notify it of any concerns that there has been a breach of the provisions of this Paragraph 13, it shall cooperate in good faith with RCML in determining whether such a breach has occurred. If RCML determines in its sole discretion that there has been such a breach or that Town has taken any action that would create a material risk of liability for RCML under any laws, regulations, rules, and orders of any local, state, and federal governmental agency, it may treat the breach as an event of default and to exercise any rights it may have under this Agreement upon the occurrence of an event of default, but without regard to any waiting periods or cure periods specified in this Agreement.

- d. Notification Obligations and Cooperation. Town shall immediately notify RCML if any person approaches Town for the purpose of any bribery or other corrupt activity concerning this Agreement. Town agrees to notify RCML promptly upon discovery of any instance where Town or any of its agents or sub-contractors fail to comply with this Paragraph 13. Town must, on request by RCML, confirm in writing that it has complied with its obligations under this Paragraph 13 and provide any information reasonably requested by RCML in support of such compliance. RCML may monitor Town's compliance with the RCML Standards and its Business Integrity Requirements. Town will give all necessary assistance to any request for information from RCML during the term of this Agreement and for period of three years after termination.

14. General.

- a. Entire agreement. This Agreement shall constitute the sole understanding of the parties with respect to the subject matter hereof, and supersedes any prior understandings, agreements, or representations, verbal or written. No modification or amendment of the terms of this Agreement shall be binding unless such modification or amendment is in writing and executed by both parties. In the case of the Town, such amendment shall be made pursuant to a lawful vote of the Town Council.
- b. Counterparts. This Agreement may be executed in counterparts and each counterpart shall constitute an original of this Agreement.

- c. Further assurances. Each party agrees to undertake and perform all further acts that are reasonably necessary to carry out the intent and purposes of the Agreement.
- d. Construction and severability. The Section and section headings contained in this Agreement are inserted for convenience only and shall not affect in any way the meaning or interpretation of this Agreement. This Agreement has been reviewed by the parties with their respective counsel, and no presumption or rule that ambiguities shall be construed against the drafting party shall apply to the interpretation or enforcement of this Agreement. If any provision of this Agreement shall be held to be invalid or unenforceable, the remaining provisions shall remain valid and enforceable to the fullest extent permitted by law.
- e. No agency, joint venture, or partnership, no third party beneficiaries, and no assumption of obligations. It is specifically understood and agreed to by the parties that RCML is a private venture, and that the Town is a municipal corporation, and that this Agreement does not create any type of agency relationship, joint venture, or partnership between the parties. Nothing in this Agreement is intended to create duties, obligations to, or rights in third parties not parties to this Agreement, and as such this Agreement shall not be construed as or deemed to be an agreement for the benefit of any third party or parties. For the avoidance of doubt, independent obligations of the Town, including but not limited to, financial or other obligations that the Town may have under any reciprocal mutual aid agreements with other emergency services providers, shall remain solely the responsibility of the Town.
- f. Assignment and Inurement. This Agreement shall inure to the benefit and shall be binding upon the Town and RCML and their respective successors and assigns.
- g. Force majeure. The performance of either party and the duration of this Agreement shall be extended by any causes that are beyond the control of the party required to perform, such as an act of God, civil or military disturbance and labor or material shortage.
- h. Choice of law, mediation, venue, waiver of jury trial, attorneys' fees. This Agreement shall be governed and interpreted in accordance with the laws of the State of Arizona, excluding any conflict of law principles that would require the application of the law of any other jurisdiction. If a dispute arises out of or relates to this Agreement, or the breach thereof, the parties agree to try to settle the dispute through mediation before resorting to litigation provisions set forth in this Agreement. In the event that the parties cannot agree upon the selection of a mediator within seven (7) days after a party makes a written request for mediation to the other party, either party may request the presiding judge of the Superior Court of Pinal County to assign a mediator from a list of mediators maintained by the Arizona Municipal Risk Retention Pool. The costs of the mediator shall be shared equally between the parties. The mediator's findings shall be non-binding unless otherwise stipulated by the parties. The mediation process in this paragraph shall not exceed one-hundred and twenty (120) days, at which time, if the dispute is not resolved, either party may institute a proceeding in a court of competent jurisdiction. The



parties agree that the exclusive venue for any claims or litigation between them is a court of competent jurisdiction, state or federal, located within the Pinal County, Arizona. EACH PARTY FURTHER WAIVES TO THE FULL EXTENT PERMITTED BY LAW THE RIGHT TO TRIAL BY JURY. In the event a party to this Agreement brings suit to enforce or interpret any portion of this Agreement, the substantially prevailing party in such action shall be entitled to recover all costs incurred in such action, including without limitation reasonable attorneys' fees.

- i. No waiver. No delay in exercising any right or remedy under this Agreement shall constitute a waiver thereof, and no waiver by the Town or RCML of the breach of any covenant of this Agreement shall be construed as a waiver of any preceding or succeeding breach of the same or any other covenant or condition of this Agreement
  
- j. Notice. All notices required or permitted under this Agreement shall be set forth in writing and shall be sent either by personal delivery, or a reputable overnight courier which keeps receipts of such delivery (UPS, or Federal Express), through the United States Mail, postage prepaid, certified or registered mail, return receipt requested. Any such notice shall be effective upon delivery, if delivered by personal delivery or overnight courier, and seventy-two (72) hours after dispatch, if sent by United States Mail. Notices shall be sent to the respective parties as follows unless written notice of a change of address has been previously provided pursuant to this paragraph:

To Town:

Town of Superior  
199 N. Lobb Ave.  
Superior, AZ 85173  
Attn: Mayor

To RMCL:

Resolution Copper Mining LLC  
c/o Resolution Copper Company  
102 Magma Heights – P.O. Box 1944  
Superior, AZ 85173  
Attn: Project Director

16. Signatures. The parties have executed this Agreement on the date set forth below.

[SIGNATURES ON FOLLOWING PAGES]

IN WITNESS WHEREOF, the parties hereto, have executed this Agreement of the day and year set forth below.

**Town of Superior**

Town of Superior, a municipal corporation

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Dated: \_\_\_\_\_

ATTEST:

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

APPROVED AS TO FORM:

\_\_\_\_\_  
Town Attorney

**ACKNOWLEDGEMENT**

STATE OF ARIZONA        )  
  ) ss.  
COUNTY OF PINAL        )

The foregoing Multi-generational Center Development Gift Agreement was acknowledged before me this \_\_\_\_\_ day of February, 2019, by \_\_\_\_\_ and \_\_\_\_\_, the \_\_\_\_\_ and \_\_\_\_\_, respectively of the Town of Superior, a municipal corporation, who being authorized to do so, executed the foregoing instrument on behalf of said entity for the purposes stated therein.

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_

**Resolution Copper Mining LLC**

Resolution Copper Mining LLC  
a Delaware limited liability company

By: Resolution Copper Company, as Manager and  
not on its own behalf.

\_\_\_\_\_  
Andrew Lye  
Vice President

Dated: \_\_\_\_\_

**ACKNOWLEDGEMENT**

STATE OF ARIZONA        )  
  ) ss.  
COUNTY OF PINAL        )

The foregoing Multi-generational Center Development Gift Agreement was acknowledged before me this \_\_\_\_ day of February, 2019 by Andrew Lye, the Vice President of Resolution Copper Company.

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_