

CITY OF INDUSTRY

CITY COUNCIL
SPECIAL MEETING
AGENDA

JANUARY 12, 2023
9:00 AM



Mayor Cory C. Moss
Mayor Pro Tem Cathy Marcucci
Council Member Michael Greubel
Council Member Mark D. Radecki
Council Member Newell Ruggles

Addressing the City Council:

NOTICE OF TELEPHONIC MEETING:

- **Pursuant to AB 361 (Government Code Section 54953(e)), this meeting will be held in person and telephonically. Members of the public can attend the hybrid meeting and offer public comments either in person or telephonically by calling the following conference call number: 657-204-3264, then entering the following Conference ID: 192 360 670# Pursuant to the Governor's Executive Order, and in compliance with the Americans with Disabilities Act, if you need special assistance to participate in the City Council meeting (including assisted listening devices), please contact the City Clerk's Office at (626) 333-2211 by 2:00 p.m. on Wednesday, January 11, 2023, to ensure that reasonable arrangements can be made to provide accessibility to the meeting.**
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Addressing the City Council:

Public Comments (Agenda Items Only): During public comments, if you wish to address the Council during this Special Meeting, under Government Code Section 54954.3(a), you may only address the City Council concerning any item that has been described in the notice for the Special Meeting.

Agendas and other writings:

In compliance with Government Code Section 54957.5(b), staff reports and other public records permissible for disclosure related to open session agenda items are available at City Hall, 15625 Mayor Dave Way, City of Industry, California, at the office of the City Clerk of the City Council during regular business hours, Monday through Thursday, 8:00 a.m. to 5:00 p.m., Fridays 8:00 a.m. to 4:00 pm. City Hall doors are closed between 12:00 p.m. to 1:00 p.m. each day. Any person with a question concerning any agenda item may call the City Clerk's Office at (626) 333-2211.

1. Call to Order
2. Flag Salute
3. Roll Call
4. Public Comments

5. **CONSENT CALENDAR**

- 5.1 Consideration of a Settlement Agreement and Mutual Release with Brown Rudnick LLP and William W. Lockyer.

RECOMMENDED ACTION: Approve the Settlement Agreement and Mutual Release

6. **CLOSED SESSION**

- 6.1 CONFERENCE WITH REAL PROPERTY NEGOTIATORS
Pursuant to Government Code Section 54956.8

Property: 1 Industry Hills Parkway, City of Industry, CA, 91744 also known as Assessor Parcel Numbers (portion of) 8247-014-900, (portion of) 8247-013-908, 8262-001-900, 8262-001-902, (portion of) 8262-011-930, 8262-011-931, 8262-012-270, 8262-012-271, 8262-012-272, 8262-012-273, (portion of) 8262-012-274, (portion of) 8262-012-275, 8262-012-276,(portion of) 8262-015-900, (portion of) 8262-015-901, 8262-015-902, 8262-015-904, (portion of) 8262-015-905, 8263-008-270, 8263-008-271, 8263-008-904 and 8263-027-270

Agency Negotiators: Josh Nelson, City Manager
James M. Casso, City Attorney

Negotiating Parties: Majestic Industry Hills, LLC, a Delaware limited liability company

Under Negotiation: Price and terms of payment

7. **CITY MANAGER REPORTS**

8. **AB 1234 REPORTS**

9. **CITY COUNCIL COMMUNICATIONS**

10. Adjournment. The next regular City Council Meeting is Thursday, January 26, 2023, at 9:00 a.m.

CITY COUNCIL

ITEM NO. 5.1

TO: Honorable Mayor Moss and Members of the City Council

FROM: James M. Casso, City Attorney

DATE: January 10, 2023

RE: Consideration of a Settlement Agreement and Mutual Release with Brown Rudnick LLP and William W. Lockyer

Background:

As Council will recall, on January 28, 2016, the California State Controller issued a report reviewing the City's administrative and internal accounting controls systems and made a number of findings with respect to those systems. In response to the State Controller's audit, on May 31, 2016 the City entered into a Professional Services Agreement ("PSA") with Brown Rudnick LLP for William W. Lockyer (collectively, the "BRL Parties") to serve as an "Independent Reform Advisor" to the City. The PSA was amended on July 1, 2017. After Mr. Lockyer served as Independent Reform Advisor for a little over a year and a half, the City terminated the PSA on January 18, 2018.

A dispute later arose between the City and the BRL Parties with respect to Mr. Lockyer's services under the PSA, particularly with respect to the Tres Hermanos solar project that is the subject of the lawsuit *City of Industry v. San Gabriel Valley Water and Power, LLC*, pending in the Superior Court of Los Angeles as Case No. 19STCV10150.

Discussion:

In an effort to resolve the foregoing dispute, the City entered into settlement discussions with the BRL Parties which culminated in the attached Settlement Agreement and Mutual Release ("Settlement Agreement"). To resolve the dispute, the proposed Settlement Agreement provides the following key terms:

- The BRL Parties will pay the City \$350,000. (Paragraph 1(a).)
- The City and the BRL Parties will mutually release each other from any and all claims against each other, known or unknown, related in any way to:
 - The BRL Parties' engagement with or work for or on behalf of City,
 - Tres Hermanos Ranch,
 - William Barkett, Frank Hill, Paul Philips, and/or Anthony Bouza,
 - Any obligations or duties under, pursuant to, or that exist by reason of the PSA,

- Any claims that could have been alleged in connection with the PSA,
- The services or work (whether legal or otherwise) that the BRL Parties provided to or could have provided to or for the benefit of City, and
- The allegations the City had made against the BRL in the November 12, 2021 letter.

(Paragraph 3(a)-(c).)

- No party other than the BRL Parties and the City have any right or benefit under the Settlement Agreement. The Settlement Agreement does not apply to the discharge of any claims against persons other than the BRL Parties and specifically does not discharge any claims the City has against William Barkett, Frank Hill, Paul Philips, or Anthony Bouza. (Paragraph 3(d).)
- The releases in the Settlement Agreement will not apply to any discovery process in any legal proceeding. (Paragraph 3(e).)

Fiscal Impact:

The BRL Parties will pay the City \$350,000 pursuant to the terms of the Settlement Agreement.

Recommendations:

It is recommended that the City Council take the following actions:

1. Authorize the Mayor to execute the Settlement Agreement and Mutual Release on behalf of the City; and
2. Authorize the City Attorney and City staff to take other actions necessary to implement the Settlement Agreement and Mutual Release.

Exhibit:

A: Settlement Agreement and Mutual Release with Brown Rudnick LLP and William W. Lockyer

Exhibit A

Settlement Agreement and Mutual Release with Brown Rudnick LLP and William W. Lockyer

[Attached]

SETTLEMENT AGREEMENT AND MUTUAL RELEASE

This Settlement Agreement and Mutual Release ("**Agreement**") is dated and is effective as of the last signature ascribed below (the "**Effective Date**") and is made and entered into by and among the **CITY OF INDUSTRY** ("**City**"), **BROWN RUDNICK LLP** ("**BRL**"), and **WILLIAM W. LOCKYER** ("**Lockyer**" together with BRL, the "**Brown Rudnick Parties**") (collectively, the "**Parties**").

RECITALS

WHEREAS, City has alleged that BRL and Lockyer provided services to City pursuant to a May 31, 2016 "Professional Services Agreement" between City and BRL, as amended on or about July 1, 2017 ("**PSA**");

WHEREAS, City alleges the PSA was terminated on or around January 18, 2018;

WHEREAS, City has alleged in a November 12, 2021 letter and subsequent correspondence that BRL and Lockyer are liable to City for alleged breaches of the PSA and other statutory and common law claims in connection with the PSA (the "**Correspondence**");

WHEREAS, BRL and Lockyer have denied any and all liability for any breaches or claims in connection with the PSA and/or to City; and

WHEREAS, the Parties, without any admission of fault, liability, or responsibility, desire to fully, finally, and forever resolve all disputes, issues, and claims as between them, including, but not limited to, all disputes, issues, and claims that were raised or asserted, or that could have been raised or asserted, related to, arising from, or in connection with the services or work (whether legal or otherwise) that the Brown Rudnick Parties provided to City or for the benefit of City pursuant to the PSA or otherwise, including City's allegations in the Correspondence (collectively, "**Claims**"), and this Agreement memorializes the terms of such settlement between the Parties.

WITNESSETH

NOW, THEREFORE, for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, and in consideration of these premises and of the promises, agreements, representations, warranties, covenants, and conditions contained herein, including the avoidance of further costs, inconvenience, and uncertainties, the Parties hereby agree, covenant, and warrant as follows:

1. CONSIDERATION

a. In consideration for the compromise of claims, mutual releases, and other terms described in this Agreement herein below, the Brown Rudnick Parties agree to pay City a total sum of Three Hundred Fifty Thousand Dollars and no cents (\$350,000.00) ("**Settlement Proceeds**"). The Brown Rudnick Parties shall cause the full Settlement Proceeds to be paid to City by check within thirty (30) calendar days following whichever is latest: (a) the execution of this Agreement by the Parties, (b) each Party's transmittal of their respective execution copies of this Agreement to the other Parties, and (c) receipt by BRL of a W-9 and payment instructions from City. Upon the City's receipt of the check for the Settlement Proceeds, the Brown Rudnick Parties shall be deemed to have satisfied all payment obligations under this Agreement and shall

have no further responsibility related to the Settlement Proceeds (including related to any distribution, allocation, and use of the Settlement Proceeds).

b. The releases in this Agreement shall be effective as of City's receipt of the payment of the Settlement Proceeds (the "**Effective Release Date**"); provided, however, that this Agreement shall be otherwise fully effective and binding on the Parties immediately upon its execution by the Parties. Upon the Effective Release Date, BRL and Lockyer shall have no further obligation to City regarding the Settlement Proceeds and shall have no responsibility for the disposition of the Settlement Proceeds by City.

2. TAX CONSEQUENCES OF THE PAYMENT OF THE SETTLEMENT PROCEEDS

No Party, nor their counsel, nor any of their agents, representatives, or insurers, have made any representations regarding the tax consequences (including whether any such tax consequences exist) to any other Party or any other person or entity regarding the Settlement Proceeds. Each Party represents that they have had and/or will have an opportunity to receive independent legal and accounting advice regarding tax consequences, if any, of this Agreement and the Settlement Proceeds and that they have not relied upon any representation of any other Party, nor their counsel, agents, representatives, or insurers, on that subject. Each Party shall be responsible for its own tax liabilities or obligations, if any, that arise from or relate to this Agreement.

3. MUTUAL RELEASES

a. Release of Claims by City. For and in consideration of and reliance on the agreements, covenants, warranties, and representations herein, the mutual releases herein, to be effective on the Effective Release Date, and other consideration herein, and except for the obligations to be performed by BRL or Lockyer or their counsel pursuant to this Agreement, City, for itself and all of its past and present (1) departments, boards, and commissions, (including any corporations, companies, partnerships, and entities that City controls or owns); (2) its past and present Council members, officials, officers, employees, consultants, managers, contractors, agents, and representatives (but only in their official capacities and roles with the City and not in their individual capacities); and (3) any successors, predecessors, and assigns of any of the foregoing ("**City's Releasers**") does hereby fully, finally, and forever release, acquit, and discharge BRL and Lockyer, as well as their past and present owners, members, partners, associates, officers, directors, shareholders, investors, employees, consultants, managers, contractors, agents, parents, subsidiaries, corporate affiliates (including any corporations, companies, and partnerships that BRL or Lockyer control or own), successors, predecessors, administrators, trusts, trustees, trustors, beneficiaries, assigns, heirs, spouses, testators, insurers, reinsurers, attorneys (including, but not limited to, Gibson, Dunn & Crutcher LLP and its current and former partners, associates, and employees), and representatives (the "**Brown Rudnick Parties' Releasees**") from any and all causes of action, claims, liabilities, demands of every kind and nature, damages, suits, arbitration claims, sanctions, debts, judgments, liens, costs, and expenses of whatever kind or nature arising out of, in connection with, or related in any way to (a) the Brown Rudnick Parties' engagement with or work for or on behalf of City, (b) Tres Hermanos Ranch; (c) William Barkett, Frank Hill, Paul Philips, and/or Anthony Bouza; (d) any obligations or duties under, pursuant to, or that exist by reason of the PSA; and/or (e) the Claims, including any claims alleged, described, or identified or which could have been alleged, described, or identified in any action, including, but not limited to, those that could be asserted in any action, whether at law or in equity, based upon alleged tort, contract, or any other legal or equitable theory

of recovery, whether based upon statute or common law or otherwise, known or unknown, past, present, or future, anticipated or not anticipated, which have arisen or are now arising or hereafter may arise, including, but not limited to, those that arise prior to and through and including the Effective Release Date only (collectively, "**City's Released Claims**"). City represents and warrants that it is currently not aware of any claims other than the City's Released Claims it has or may have against the Brown Rudnick Parties' Releasees.

b. Release of Claims by BRL and Lockyer. For and in consideration of and reliance on the agreements, warranties, covenants, and representations herein, the mutual releases herein, to be effective on the Effective Release Date, and other consideration herein, and except for the obligations to be performed by City or its counsel pursuant to this Agreement, the Brown Rudnick Parties, for themselves and all of their past and present owners, members, partners, associates, officers, directors, shareholders, investors, employees, consultants, managers, contractors, agents, parents, subsidiaries, corporate affiliates (including any corporations, companies, and partnerships that BRL or Lockyer control or own), successors, predecessors, administrators, trusts, trustees, trustors, beneficiaries, assigns, heirs, spouses, testators, insurers, reinsurers, representatives, and all those who do or may assert any claim by, on behalf of, or through either of the Brown Rudnick Parties (the "**Brown Rudnick Parties' Releasers**") do hereby fully, finally, and forever release, acquit and discharge City, as well as its past and present departments, boards, commissions, Council members, officials, officers, employees, consultants, managers, contractors, agents, corporate affiliates (including any corporations, companies, and partnerships that City controls or owns), successors, predecessors, administrators, trusts, trustees, trustors, beneficiaries, assigns, insurers, reinsurers, attorneys (including, but not limited to, Casso & Sparks, LLP and its current and former partners, associates, and employees), and representatives (the "**City's Releasees**") from any and all causes of action, claims, liabilities, demands of every kind and nature, damages, suits, arbitration claims, sanctions, debts, judgments, liens, costs, and expenses of whatever kind or nature, arising out of, in connection with, or related in any way to (a) the Brown Rudnick Parties' engagement with or work for or on behalf of City, (b) Tres Hermanos Ranch; (c) William Barkett, Frank Hill, Paul Philips, and/or Anthony Bouza; (d) any obligations or duties under, pursuant to, or that exist by reason of the PSA; and/or (e) the Claims, including any claims alleged, described, or identified or which could have been alleged, described, or identified in any action, including, but not limited to, those that could be asserted in any action, whether at law or in equity, based upon alleged tort, contract, or any other legal or equitable theory of recovery, whether based upon statute or common law or otherwise, known or unknown, past, present, or future, anticipated or not anticipated, which have arisen or are now arising or hereafter may arise, including, but not limited to, those that arise prior to and through and including the Effective Release Date only (collectively, the "**Brown Rudnick Parties' Released Claims**"). The Brown Rudnick Parties represent and warrant that they are currently not aware of any claims other than the Brown Rudnick Parties' Released Claims they have or may have against City's Releasees.

c. Without limiting the generality of the foregoing, the claims released pursuant to this Paragraph 3 include, but are not limited to: (a) any and all claims which were, or might have been, or could have been, alleged in connection with the PSA and (b) any and all claims arising from or out of, or based upon, or relating to, any services which BRL, Lockyer, and each of them rendered, or could have rendered, or should have rendered, prior to the execution of this Agreement, to, or for the benefit of, City.

d. The releases set forth in this Paragraph 3 and the covenants not to sue set forth in Paragraph 5 shall not release or discharge any cause of action or claim which City, BRL, or Lockyer have or may have against any other person or entity other than the Parties to this

Agreement and their respective Releasees, subject to the below.

i. It is the intent of the Parties hereto that the releases and discharges set forth herein and the covenants not to sue set forth in Paragraph 5 shall not directly or indirectly release or in any way discharge any claims or other causes of action whatsoever which City has or may have against the following adverse persons and entities (which shall not include the Brown Rudnick Parties or the Brown Rudnick Parties' Releasees): (1) any of the defendants named or who may be named in the action pending Los Angeles County Superior Court entitled *City of Industry v. San Gabriel Valley Water and Power, LLC, et al.* (Case No. 19STCV10150), including any officers, members, shareholders, agents, or representatives of any such defendants and any persons or entities who may have received any funds from any such defendants; (2) the defendant(s) named in the action pending Los Angeles County Superior Court entitled *City of Industry v. Abraham Cruz* (Case No. 20STCV25407); (3) the plaintiff(s) named in the action pending Los Angeles County Superior Court entitled *Concerned Citizens of City of Industry, LLC v. Mark Radecki, et al.* (Case No. BC700716); (4) Abraham Cruz; (5) Paul J. Philips; or (6) Anthony S. Bouza (collectively, such adverse parties, as well as any corporations, companies, entities, and partnerships that any of these foregoing persons or entities control or own and any successors, predecessors, administrators, trusts, trustees, trustors, beneficiaries, assigns, heirs, spouses, testators, insurers, reinsurers, and representatives of any of these foregoing persons or entities, are referred to as "**Adverse Parties**"). The parties hereto expressly acknowledge that the Adverse Parties are not parties to this Agreement nor beneficiaries thereof in any respect. Further, this Agreement shall not release or discharge any cause of action or claim which City has against the Adverse Parties, whether arising out of the facts and incidents involved in the lawsuits referred to above or relating in any way to the PSA or otherwise.

ii. Nothing in this Agreement, whether express or implied, is intended to confer any rights or remedies under or by reason of this Agreement on any persons or entities other than the Parties and releasees hereto, nor shall any provision in this Agreement give any third person who is not a Party or releasee any right or subrogation or action over or against any Party to this Agreement. The Parties hereto expressly acknowledge that any other such other persons and entities (other than the Parties and releasees herein) are neither parties to this Agreement nor beneficiaries hereof in any respect. Each of the Parties expressly reserves any and all rights (including, but not limited to, any right to contribution), defenses, claims, demands, and causes of action which each Party may have against any person not a Party hereto or one of their respective releasees (including, but not limited to, the Adverse Parties) with respect to any matter, transaction, or occurrence relating in any way to the PSA.

e. Notwithstanding the releases in this Paragraph 3 and the covenants not to sue set forth in Paragraph 5, the Parties expressly agree and intend to reserve and retain their rights to issue, respond, and object to legal process designed to obtain documents, information, tangible things, land, property, or oral or written testimony to any other Party in any legal proceeding ("Discovery"). The releases set forth herein expressly do not include any procedures or proceedings the Parties' may initiate, maintain, or defend in connection with any such Discovery. No position taken by a Party in any Discovery dispute in any legal proceeding—including the Parties' right and ability to compel compliance with or to seek to quash, modify, or protect against Discovery—shall constitute a breach of this Agreement.

4. PUBLIC ANNOUNCEMENTS

Neither Party shall issue any press release or other public statement, or invite communications with the media or press, concerning the this Agreement, any of the terms and

conditions and facts thereof, and/or the Settlement Proceeds to be paid hereunder, without the prior written approval of the other Party, except as such Party is required to disclose (a) by applicable Law, (b) as reasonably necessary to conduct the business of the Parties, or (c) in connection with enforcing its rights under this Agreement. This Paragraph 4 expressly does not apply to disclosure as required: (a) by the California Public Records Act (Government Code §§ 6250 et seq.); (b) by the Ralph M. Brown Act (Government Code §§ 54950, et seq.), specifically including but not limited to the provisions that require public agencies to provide agendas and agenda packets to any person who so requests a copy and/or to the media or press; and (c) in response to discovery request, subpoena, search warrant, civil or criminal investigation, or similar process.

5. COVENANT NOT TO SUE

Subject to the provisions of Paragraphs 3(d) and 3(e), the Parties and each of them shall forever refrain from prosecuting, initiating, maintaining, or pressing any action, suit, claim, cross-claim, counterclaim, demand, action, or cause of action known or unknown against another Party to this Agreement based or related to any of the City's Released Claims or Brown Rudnick Parties' Released Claims, except for claims for breach of the terms of this Agreement. This Agreement may be pleaded as a full and complete defense to any action, suit, or other proceeding that may be instituted or prosecuted by any Party based on or related to any matters released by the Agreement. The Parties agree that any such proceeding would cause irreparable injury to the Party against whom it is brought and that any court of competent jurisdiction may enter an injunction restraining prosecution thereof.

6. WAIVER OF CIVIL CODE SECTION 1542

Subject to the provisions of Paragraphs 3(d) and 3(e), this Agreement is a full and final mutual release and compromise which shall apply to all unknown, unanticipated, and undisclosed claims, injuries, or damages arising out of, related to, or in connection with City's Released Claims and the Brown Rudnick Parties' Released Claims. The Parties and each of them hereby expressly waive all rights and benefits to which each may be entitled pursuant to the provisions of Section 1542 of the California Civil Code, which provides as follows:

SEC. 1542. GENERAL RELEASE; EXTENT. A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

Brown Rudnick LLP

William W. Lockyer

City of Industry

The Parties hereby waive and relinquish every right or benefit that they have or might have under Section 1542 to the fullest extent that they may lawfully waive such right or benefit with regard to the subject matter of this Agreement. In connection with such waiver and relinquishment, the Parties acknowledge that they are aware that they might later discover facts in addition to or different from those which they now know or believe to be true with respect to the subject matter of this Agreement, but that it is their intention hereby fully, finally, and forever to

settle and release all the City's Released Claims and Brown Rudnick Parties' Released Claims, which now exist, might exist, previously existed, or might exist prior to and through and including the Effective Release Date between the Parties as set forth above. In furtherance of such intention, the releases given pursuant to this Agreement shall be in, and shall remain in, effect as a full and complete release, notwithstanding the discovery or existence of any such additional or different facts.

7. DENIAL OF LIABILITY

The Parties expressly acknowledge that the terms and conditions of this Agreement constitute a compromise and settlement of disputed claims and an accord and satisfaction of contested matters. BRL and Lockyer each expressly deny any wrongdoing. Solely to avoid the expense of continued litigation, the Parties have each concluded that it would be better to fully and finally resolve all disputes between them in the manner and upon the terms and conditions set forth herein rather than litigate or arbitrate the disputed claims. Nothing in this Agreement is intended to be, or shall be construed as, an admission by any Party or a finding of any liability, fault, or wrongdoing, nor an admission of, or finding with respect to, any disputed fact or legal contention. This Agreement effectuates a resolution of contested claims and, by entering into this Agreement, the Parties are motivated solely by the desire to avoid protracted and expensive litigation.

8. REPRESENTATIONS AND WARRANTIES

a. The BRL Parties and each of them represent and warrant that they do not have and have never had any economic, investment, consulting, or business relationship, deal, contract, or agreement (either written or oral) with any of William Barkett, Frank Hill, Paul Philips, and/or Anthony Bouza concerning the City of Industry, the PSA, or Tres Hermanos Ranch. Other than campaign contributions, of which there have not been any in at least the 20 years prior to the Effective Date of this Agreement, the BRL Parties and each of them further represent and warrant that they do not have and have never had any economic relationship of any type or nature with any of William Barkett, Frank Hill, Paul Philips, and/or Anthony Bouza and that they have never received any payments or other consideration from any of William Barkett, Frank Hill, Paul Philips, and/or Anthony Bouza of any kind whatsoever.

b. The Parties hereto warrant and represent to each other that:

i. each Party is authorized to make the representations and agreements herein set forth by or on behalf of each such Party;

ii. each Party has the exclusive right to prosecute and compromise the claims released herein by this Agreement, and that none of the claims released herein have been sold, assigned, consigned, conveyed, or otherwise transferred or subrogated;

iii. each Party has full power, authority, and capacity to release the Claims which are the subject of this Agreement and has not previously transferred, assigned, or encumbered any claims released herein to any other person or entity;

iv. each party has had a full and complete opportunity to review this Agreement and to make suggestions or other changes, and the terms of this Agreement have been bargained for after negotiations between the Parties;

v. each Party has freely and voluntarily entered into this Agreement and is not entering into this Agreement because of any duress, fear, or undue influence; and

vi. the respective representations made by each of the Parties in this Agreement are true and correct as of the Effective Date of this Agreement, to the best of the knowledge of the Party making such representation.

c. The warranties and representations set forth in this Agreement shall survive and shall continue following the execution and delivery hereof.

9. BINDING ON SUCCESSORS

The obligations and terms of this Agreement are binding upon each of the Parties and their respective successors-in-interest, assigns, legal representatives, insurers, and all other persons or entities who may take any interest through the Parties in the matters herein released.

10. COMPROMISE AND CONSTRUCTION OF AGREEMENT

The terms of this Agreement are contractual, and not merely recitals. This Agreement is the result of negotiation among the Parties, and shall not be deemed prepared or drafted by one Party or another, or its attorneys, and will be construed accordingly.

11. GOVERNING LAW AND VENUE

This Agreement shall be construed, interpreted, and enforced in accordance with the laws of the State of California, without regard to California's conflict of laws jurisprudence, and venue shall be the County of Los Angeles.

12. BENEFIT OF COUNSEL

Each Party has cooperated in the drafting and preparation of this Agreement, and in any construction to be made of this Agreement, the same shall not be construed against any such Party. The Parties have carefully read and understand the contents of this Agreement, having been fully advised by their respective attorneys as to each provision herein, and the effect thereof. Having fully considered the ramifications of signing this Agreement, the Parties have willfully, without compulsion, signed and entered into this Agreement.

13. SEVERABILITY

The Parties agree not to challenge this Agreement, nor any provision thereof, as illegal, invalid, or unenforceable (except to the extent this Agreement is unenforceable because the Brown Rudnick Parties have not paid the Settlement Proceeds). With the exception of releases contained herein, in the event any provision of this Agreement shall be held to be void, voidable, or unenforceable, each such portion, provision, or part shall be severed from the remaining portions, provisions, or parts of this Agreement and shall not affect the validity or enforceability of such remaining portions, provisions, or parts of this Agreement. The Parties expressly agree that the terms of this Agreement shall be construed in a manner designed to make it valid and enforceable to the fullest extent possible.

14. ENTIRE AGREEMENT

This Agreement constitutes the entire understanding between the Parties, and supersedes and replaces all other prior discussions, negotiations, commitments, proposed agreements, agreements, and understandings, whether written or oral, with respect to the PSA, the Claims, the terms and conditions of this Agreement, and all matters released herein. The Parties represent, understand, and expressly agree that this Agreement supersedes all other prior and contemporaneous oral and written agreements, discussions, or promises, if any. The Parties agree that no other agreements or covenants will be binding upon the Parties unless set forth in a writing signed by the Parties or their authorized representatives.

15. AMENDMENT OR MODIFICATION

This Agreement cannot be orally amended, modified, revised, waived, or terminated. No provision of this Agreement may be amended, modified, revised, waived, or terminated, except in a writing signed by all of the Parties to this Agreement.

16. ATTORNEYS' FEES

In the event that any action, suit, motion, or other proceeding is instituted to remedy, prevent, or obtain relief from a breach of this Agreement, or the covenants, conditions, warranties, and promises herein, the prevailing party shall recover attorneys' fees and costs incurred in connection with such action, suit, motion, or other proceeding, including any and all appeals or petitions therefrom. This Paragraph shall not apply to any Discovery dispute between the Parties in any other proceeding.

17. CAPTIONS

The captions appearing at the commencement of the sections or paragraphs hereof, and in any paragraph thereof, are descriptive only and shall have no significance in the interpretation of this Agreement.

18. COUNTERPARTS

This Agreement, and all amendments to it (if any), may be executed in counterparts, each of which shall be deemed an original, and all of which, taken together, shall constitute a single instrument.

19. COOPERATION AND FACILITATION

The Parties agree to cooperate fully and execute and deliver any and all supplementary documents and to take all additional actions which reasonably may be necessary or appropriate to give full force and effect to the terms and intent of this Agreement without the receipt of further consideration.

20. USE OF THIS AGREEMENT IN OTHER PROCEEDINGS

The Brown Rudnick Parties' Releasees and City Releasees may plead this Agreement if it is relevant to a defense to any action, suit, or other proceeding that may be instituted or prosecuted by any person or entity based on or related to any matters released by this Agreement. The Parties further agree that they may plead this Agreement as necessary for purposes of

enforcing this Agreement and that they may file this Agreement with the court or other appropriate adjudicative body for purposes reasonably related thereto. Nothing in this paragraph is intended to limit the public announcements provisions set forth elsewhere in this Agreement, including, but not limited to, Paragraph 4 herein.

21. FAILURE OR DELAY NOT A WAIVER

No failure or delay on the part of any Party to exercise any right hereunder, nor any other indulgence of such Party, shall operate as a waiver of any other rights hereunder, nor shall any single exercise by any Party of any right hereunder preclude any other or further exercise thereof. The rights and remedies provided by this Agreement are cumulative and not exclusive of any rights or remedies provided by law.

22. ELECTRONIC SIGNATURES

This Agreement may be executed by electronic signature and/or through signatures reflected on scanned copies of signed pages (or by DocuSign or other electronic form signifying a Party's consent in the same fashion as a printed signature inscribed by hand). This Agreement, regardless of whether it has original, facsimile, copy, scanned, or electronic signatures, shall be binding and enforceable upon the affixing of such signatures by the Parties to this Agreement.

23. NOTICES

All deliveries, notices and other communications required by or relating to this Agreement shall be in writing and shall be deemed given when delivered by a nationally recognized overnight courier service to the Parties at the following addresses (or at such other address for a Party as shall be specified by like notice, provided that a notice of change of address(es) shall be effective only from the date of its receipt by the other Party or Parties). The Parties agree that they will contemporaneously e-mail to counsel for the opposing Party, or Parties (at the respective address set forth below), a courtesy copy of any notices or communications sent concerning this Agreement.

- a. if to City, then to:

James M. Casso
CASSO & SPARKS, LLP
13300 Crossroads Parkway North, Suite 410
City of Industry, CA 91746
jcasso@cassosparks.com

- b. if to BRL or Lockyer, then to:

Joel S. Miliband
BROWN RUDNICK LLP
2211 Michelson Drive, 7th Floor
Irvine, CA 92612
jmiliband@brownrudnick.com

With a copy to:

Kevin S. Rosen
Michael Dore
GIBSON, DUNN & CRUTCHER, LLP
333 South Grand Avenue
Los Angeles, CA 90071
krosen@gibsondunn.com
mdore@gibsondunn.com

24. AUTHORITY AND EFFECT

In signing below, each of the Parties represents each has all the requisite power to carry out its obligations under this Agreement, and that execution, delivery, and performance of this Agreement have been duly authorized by such Party.

IN WITNESS WHEREOF, this Agreement has been executed as of and is effective as of the Effective Date.

Dated: January ____, 2023

CITY OF INDUSTRY

By: _____
Cory C. Moss
Mayor

ATTEST:

By: _____
Julie Gutierrez-Robles, City Clerk

Dated: January ____, 2023

BROWN RUDNICK LLP

By: _____
Joel S. Miliband
Partner and General Counsel

Dated: January ____, 2023

WILLIAM W. LOCKYER

By: _____
William W. Lockyer

APPROVED AS TO FORM AND CONTENT:

Dated: January ____, 2023

CASSO & SPARKS LLP

By: _____
James M. Casso
City Attorney for the CITY OF INDUSTRY

Dated: January ____, 2023

GIBSON, DUNN & CRUTCHER LLP

By: _____
Kevin S. Rosen
Attorneys for BROWN RUDNICK LLP
and WILLIAM W. LOCKYER