

WARNING: THIS AGREEMENT IS CONFIDENTIAL. THIS SETTLEMENT AGREEMENT AND TERMS ARE NOT TO BE DISTRIBUTED OR OTHERWISE DISCLOSED TO THIRD PARTIES.

SETTLEMENT AGREEMENT AND RELEASE

The Settlement Agreement and Release (the “Settlement Agreement”), effective as of the ____ day of _____, 2017 (“Effective Date”), is entered by and between the City of Pomona (collectively “City”), Southern California Gas Company and Southern California Edison (collectively “Utilities”). City and Utilities shall collectively be referred to herein as “Parties.”

WHEREAS, at various times from approximately 1887 to 1955, various companies, including the Utilities, engaged in various businesses on real property located at 148 North Huntington Street in Pomona, California, which was later developed by the City for City use as the City Yard (“City Property”). Utilities, among others, have conducted limited testing of the soil on and in the vicinity of the City Property. Such testing has revealed that the City Property has detectable levels of polycyclic aromatic hydrocarbons and other contaminants in soil on the City Property that may have been caused by former uses of the City Property. As of the date of the Settlement Agreement, the applicable governmental agencies have reviewed a draft Removal Action Workplan dated October 24, 2016, which sets forth certain removal activities to be performed by Utilities.

WHEREAS, City has made a claim against Utilities and their related corporate entities alleging that as a result of the prior site use described above, the City Property is contaminated and may be otherwise impacted by Contamination;

WHEREAS, Utilities contend that Utilities have no liability to City and deny any wrongdoing, misconduct or liability;

WHEREAS, the Parties to this Settlement Agreement wish to finally and forever resolve all of the claims or potential claims of City, as set forth below; and

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NOW, THEREFORE, in consideration of the promises and other valuable consideration as set forth in this Settlement Agreement, the sufficiency of which are hereby acknowledged, the Parties agree as follows to resolve, settle and dispose of the claims or potential claims between the Parties on the following terms:

1. Definitions.

1.1 City. As used herein, “City” shall mean the City of Pomona and any of its successors, agents, assigns, and anyone else claiming by and through it.

1.2 Utilities. As used herein, “Utilities” shall mean Southern California Gas Company, wholly owned subsidiary of Sempra Energy, and Southern California Edison, and any of their affiliated entities.

1.3 Parties. As used herein, “Parties” shall mean City and Utilities.

1.4 Effective Date. As used herein, “Effective Date” shall mean the date first written above.

1.5 Settlement Agreement. As used herein, “Settlement Agreement” shall mean this agreement among the Parties.

1.6 Settlement Payments to City. As used herein, “Settlement Payment to City,” shall be the payments to City referenced in Sections 2, 5 and 6 herein.

1.7 City Property. As used herein, “Property” shall mean the property located at 148 North Huntington Street, Pomona, California, which is owned by City, as more particularly described in Exhibit “A” attached hereto.

1.8 Completion Letter. As used herein, “Completion Letter” shall mean a letter from the Lead Agency indicating that the performance of the RAW has been completed, or similar correspondence from the Lead Agency.

1.9 Utility Contamination. As used herein, “Utility Contamination” shall mean any substance, contaminant or waste resulting from prior use by Utilities, including but not limited to polycyclic aromatic hydrocarbons detected on or adjacent to the City Property for

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which the Lead Agency requires investigation or remediation by Utilities.

1.10 City Contamination. As used herein, “City Contamination” shall mean any substance, contaminant or waste resulting from current or prior operations of the City.

1.11 Lead Agency. As used herein, “Lead Agency” shall mean the California Department of Toxic Substances Control (“DTSC”) acting as lead agency and having jurisdiction over Contamination at the City Property.

1.12 RAW. As used herein, “RAW” shall mean the Draft Removal Action Workplan for the City Property dated October 24, 2016.

2. Settlement Payments to City.

2.1 Past Costs Settlement Payment. In consideration of the agreements and covenants contained within this Settlement Agreement, Utilities shall pay to City the lump sum of FIVE HUNDRED TWENTY THOUSAND and 00/100 DOLLARS (\$520,000.00) (the “Past Costs Settlement Payment.”), within thirty (30) days from the date of execution of this Settlement Agreement for all past costs incurred by City related to the City Property.

2.2 Payment for Work Undertaken by City. In addition to the Past Costs Settlement Payment, Utilities shall pay to City the lump sum of THREE MILLION THREE HUNDRED FIVE THOUSAND and 00/100 DOLLARS (\$3,305,000.00)(“Future Costs Payment”) within thirty (30) days from the date of execution of this Settlement Agreement, which the Parties each agree represents a fair and reasonable payment to address any current and future costs incurred by City in connection with: (i) certain City Property improvements to be demolished by City in accordance with the RAW and Exhibit “A” attached hereto; (ii) certain City operations and employees that will be relocated from the City Property by City on a temporary basis or permanent basis; and (iii) any other costs that incurred by City in connection with its actions, activities or obligations under the RAW and Exhibit “A” attached hereto.

2.2.1 Future Cost Contingency Allowance. In addition to the amount indicated in section 2.2 above, the Parties recognize that costs for the items identified in Exhibit

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“B” relating to, among other things, rental of temporary structures and loss of efficiency due to extension of time frames outside the Parties’ control, may increase. In order to resolve any future claims by the City for such cost increases, the Utilities shall pay to City the lump sum of FIFTY THOUSAND and 00/100 DOLLARS (\$50,000.00) (“Future Cost Contingency Allowance”) to address such potential cost increases.

2.3 Full Payment for City Action. The Settlement Payments to the City, described in Sections 2.1, 2.2, and 2.2.1 represent the full payment to City for the City’s Past Costs and the City’s respective actions, activities and obligations (“Future Costs”) under the RAW and Exhibit “C”.

3. Attorneys’ Fees and Costs. Each Party hereto shall bear its own attorneys’ fees and costs incurred in connection with entering into and enforcing this Settlement Agreement, including any mediation or arbitration pursuant to Section 6 of this Settlement Agreement.

4. General Waivers and Releases.

4.1 City Release of Utilities. City, for itself and its assigns, successors, affiliates, predecessors, and for anyone claiming by, through or with it, does hereby fully and forever remise, release and discharge Utilities, and any of their affiliated entities and individuals and each of their subsidiary companies, predecessors, successors and assigns, related partnerships and companies, and any and all of their past, present and future officers, directors, members, shareholders, agents, attorneys and employees, and their respective successors, assigns, heirs, executors and administrators, from any and all actual or potential claims, demands or causes of action of any kind whatsoever, whether accrued or unaccrued, at law or equity, known or unknown, fixed or contingent arising out of or related in any way to the City Property, (including but not limited to claims relating to loss of use, loss of value of real property, loss of value of improvements, attorneys’ fees, past and future investigation or remediation of Contamination or costs relating thereto) except to enforce this Settlement Agreement and any

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claims related to future DTSC orders regarding contamination on the remainder of the site or in any deed restricted area after the completion of the RAW. The exclusive mechanism for enforcing this Settlement Agreement shall be under the Streamlined Dispute Resolution Process described in Section 6, below.

4.2 Utilities' Release of City. Utilities, for themselves and their assigns, successors, affiliates, predecessors, heirs and for anyone claiming by, through or with them, do hereby fully and forever remise, release and discharge City and each of their predecessors, successors and assigns, related partnerships and companies, and any and all of its past, present and future officers, directors, members, shareholders, agents, attorneys and employees, and their respective successors, assigns, heirs, executors and administrators, from any and all actual or potential claims, demands or causes of action of any kind whatsoever, whether accrued or unaccrued, at law or equity, known or unknown, fixed or contingent arising out of or related in any way to the City Property, except to enforce this Settlement Agreement and the Deed Restriction, and any claims related to future DTSC orders regarding contamination on the remainder of the site or in any deed restricted area after the completion of the RAW restricted area.. The exclusive mechanism for enforcing this Settlement Agreement shall be under the Streamlined Dispute Resolution process described in Section 6, below.

4.3 California Civil Code §1542 Waiver. The Parties hereto acknowledge that they are familiar with and understand the provisions of California Civil Code § 1542, which provides as follows:

A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.

With respect to only those claims released and discharged by and through this Settlement Agreement in Sections 4.1 and 4.2, the Parties expressly waive and relinquish all rights and

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benefits under California Civil Code § 1542 or any other federal or state statute or common law principle of similar effect. Any waiver herein shall not be construed to prevent City or Utilities from enforcing this Settlement Agreement. Any waiver herein shall only be construed in regard to contamination at the City Property to the depth and extent required to be remediated by the DTSC in the RAW, and the costs covered by the payments to the City pursuant to this agreement.

5. Covenants of the Parties.

5.1 Cooperation of Parties. In consideration of this Settlement Agreement, City agrees that it will cooperate fully with any reasonable request to further assess or remediate the City Property, including but not limited to, providing access to the Property pursuant to a written license agreement to be entered into concurrently with the execution of this Settlement Agreement, in the form attached hereto as Exhibit “D”. Utilities agree to use reasonable efforts to avoid adversely impacting City use of City Property not being remediated, by such activities as trucks blocking driveways at egress and ingress at such City Property or scheduling remediation activities to prevent such access for unreasonable periods of time.

5.2 Performance of Activities Required by the RAW. The Utilities agree to undertake and perform their respective actions, activities and obligations as set forth in the RAW and obtain a Completion Letter for the City Property. Additionally, the Parties agree to undertake their respective actions and activities as set forth in Exhibit “B” attached hereto and incorporated by this reference.

The Parties agree that the draft version of the RAW submitted to the DTSC may require certain additional revisions as well as subsequent approval by DTSC. City further agrees that the cleanup target goal of PAHs to regional PAH background levels of B(a)PE as set forth in the July 1, 2009 DTSC Advisory titled, “Use of the Northern and Southern California Polynuclear Aromatic Hydrocarbon (PAH) Studies in the Manufactured Gas Plant Site Cleanup Process” is an acceptable cleanup target goal for the performance of the RAW as a final remedy

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of the City Property.

5.3 Covenant to Restrict Use

5.3.1 City acknowledges and agrees that the Parties may determine that it is infeasible or inadvisable to remove the Contamination from all portions of the City Property where such Contamination exists. City agrees that it will execute and record against the portion of the City Property where Contamination is left in place following completion of the RAW (the “Deed Restricted Parcel”) a Covenant to Restrict the Use of the Deed Restricted Parcel (“City Deed Restriction”), following completion of the RAW work pursuant to the RAW and this Agreement. The City Deed Restriction shall be in a form reasonably acceptable to the Parties hereto and approved by the DTSC; and the restrictions set forth in the City Deed Restriction shall cover only the Deed Restricted Parcel. The Parties agree that, upon completion of the RAW and a determination by the Utilities of the extent of the Deed Restricted Parcel, there shall be a metes and bounds legal description of the Deed Restricted Parcel prepared by Utilities and reasonably approved by City (the “Deed Restricted Parcel Legal Description”) (provided, however, that City shall not disapprove the Deed Restricted Parcel Legal Description so long as it is a correct legal description of all portions of the City Property where Contamination is left in place after completion of the RAW). The Deed Restricted Parcel Legal Description shall be attached to, and incorporated into, the Deed Restriction. It is the intent of the Parties that the restrictions set forth in the City Deed Restriction shall apply only to the areas of the City Deed Restricted Parcels and not the balance of the City Property.

5.3.2 The Parties anticipate that the City Deed Restriction will not prohibit the use of the Deed Restricted Parcel for industrial or commercial uses now existing on the City Property. However, the Parties agree that if the City Deed Restriction prohibits the industrial or commercial uses now existing on the City Property, the City shall be entitled to reasonable compensation to address the lost uses and value. The Parties agree that the City is not entitled to compensation for costs associated with returning the City Property to clean-up level other than to allow industrial or commercial uses (i.e., not entitled to require remediation to

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allow to residential level uses at site. Areas subject to the City Deed Restriction are indicated in Exhibit “A”, and are generally described as those areas under the Central Stores Building, and the Water Operations Building, both such buildings will be removed and the surface used for parking areas by the City.

5.4 Resolution of Offsite Contamination. As part of its actions, activities and obligations under the RAW, Utilities agree to expand the removal of contaminated soils on the City Property during performance of the RAW to include contaminated soils encompassed by any layer of lampblack on any such lot as may be required by DTSC. Utilities may also perform additional offsite removal of contaminated soils subject to the conditions set forth in Section 3.2.2. of the RAW and as required by DTSC. If the Parties are not able to resolve any material issues relating to the performance of the Parties’ obligations under this Section 5.4, the Parties agree to resolve any such disputes pursuant to Section 6 herein.

5.5 Resolution of Costs Related to City Contamination. The Parties further agree that in the event contamination is discovered during the performance of additional assessment or the RAW on the City Property that is attributable to operations of the City (“City Contamination”), the Utilities will remove such City Contamination after first obtaining City approval, during the performance of the RAW. City shall be fully responsible for reimbursing the Utilities for all incremental costs that are incurred by the Utilities and are reasonable and necessary costs associated with the assessment and remediation of such City Contamination. By entering into this Agreement, and by performing the RAW work, Utilities in no manner accept financial responsibility or liability for City Contamination found on the City Property and expressly deny any responsibility related to any contamination other than Utility Contamination. Utilities’ responsibilities under this Agreement are related solely to Utility Contamination. If the Parties are not able to resolve any material issues relating to the performance of the Parties’ obligations under this Section 5.5, the Parties agree to resolve any such disputes pursuant to Section 6 herein.

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5.6 Performance of RAW. The Utilities agree to undertake and perform their respective actions, activities and obligations as set forth in the RAW and obtain a Completion Letter (or equivalent issued by DTSC) for the City Property. Additionally, the Parties agree to cooperatively undertake their respective actions and activities as set forth in Exhibit “B.” During remediation, the parties and their contractors and staff shall work collaboratively to ensure performance of the RAW while at the same time the City is not adversely impacted in their work taking place on the non-remediated areas.

6. Dispute Resolution. Prior to commencing any legal action against a party concerning any issue pertaining to this Agreement, the aggrieved party shall inform the other parties in writing of the issues giving rise to the dispute, and the parties shall work cooperatively to resolve such issues.

7. Confidentiality. This City Settlement Agreement and the settlement terms shall be treated as confidential, and the Parties agree not to disseminate such information in any medium whatsoever or to any person except as follows: (i) as required by applicable law, regulation, court order, or other governmental authority; (ii) to a Party’s insurer; (iii) with the prior written consent of all Parties hereto; or (iv) to a Party’s attorney, accountant, financial and investment advisors, as reasonably necessary.

8. Representations and Warranties; No Assignment. The Parties, and each of them, hereby represent and warrant to each other that the Parties, and each of them, has the right and authority to compromise the claims referenced herein, as set forth in this Settlement Agreement, and that the Parties have not, as of the effective date of the Settlement Agreement, assigned or transferred, or purported to assign or transfer, to any other person or entity any claim or other matter herein released. Further, each of the Parties represents and warrants that to the best of their knowledge, no other person or entity has or asserts any interest in the claims, litigations,

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causes of action, obligations, damages or suits released by and through this Agreement.

9. Further Assurances. The Parties agree to execute such other documents and take such other actions, if any, as are reasonably necessary to comply with and carry out the provisions and obligations of this Settlement Agreement. City agrees that it will apply for and diligently process a Conditional Use Permit, Public Use Permit, or such other discretionary approvals required to be issued by the City of Pomona and/or its commissions required to complete the terms of this Settlement Agreement. The Parties acknowledge that performance of the respective duties addressed in this Settlement Agreement is predicated on the issuance of a Conditional Use Permit, Public Use Permit, or such other discretionary approvals required to be issued by the City of Pomona and/or its commissions. Further, the Parties acknowledge that such discretionary approvals by the City and/or its commissions are quasi-judicial in nature, with terms that cannot be addressed, imposed, or agreed-to without consideration of a processed application (7 outside of duly noticed and properly conducted public hearing by all appropriate boards, commissions, and bodies.

10. Miscellaneous.

10.1 Joint Drafting. This Settlement Agreement has been drafted jointly by the Parties hereto, and it is not to be construed against any of the Parties.

10.2 Integration. This Settlement Agreement constitutes an entire single, integrated written contract expressing the entire agreement of the Parties hereto relative to the subject matter contained herein, and supersedes all prior communications, negotiations or agreements between them pertaining to the subject matter hereof, and represents their full and complete understanding.

10.3 No Amendment Except by Writing. This Settlement Agreement may not be amended, modified or changed except by a writing signed by all Parties.

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10.4 Successors in Interest. Except as otherwise provided herein, this Agreement shall, to the extent permitted by law and to the extent the Parties may obligate persons and entities other than themselves, inure to the benefit of and be binding upon each of the Parties and their respective heirs, legal representative, successors (including but not limited to unrelated subsequent owners or other persons or entities with any interest in the City Property), predecessors, assignees, partners, directors, shareholders, officers, employees, agents, managers, tenants, and investigators.

10.5 Choice of Law. This Settlement Agreement shall be governed in all respects by the laws of the State of California. Venue for any dispute arising out of or relating to this Settlement Agreement shall be in the State Courts for the State of California, County of Los Angeles.

10.6 Compromise/No Admission. This Settlement Agreement effects the compromise and settlement of disputed and con tested claims, and nothing contained herein shall be construed as an admission by any Party hereto of any liability, wrongdoing or fault of any kind by any other Party. The Utilities' obligations under this Settlement Agreement do not extend beyond the express terms of this Settlement Agreement, and the Utilities expressly deny any obligation for, among other things, any special, indirect or consequential damages, including, but not limited to, claims for loss of use, rents, or business opportunity, or business interruption, diminution in value, personal injury, medical monitoring, or mental or emotional distress or fear of injury or disease, or to any cost or expense for construction, engineering, operation or maintenance requirements for any development of the City Property. This Settlement Agreement may not be used for any evidentiary purpose in any other litigation or proceeding, other than one conducted under the Confidential Streamlined Dispute Resolution Rules and Procedures pursuant to Section 6 of this Settlement Agreement.

10.7 Third Party Claims. The releases set forth in Section 4 shall not prevent Utilities from pursuing claims against City, or City from pursuing claims seeking indemnification against Utilities regarding any other bodily injury claims which may be asserted

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against the Parties, individually or collectively, related to the City Property or Contamination. However, the releases herein shall apply to any third party property claims which may be asserted against the Parties, individually or collectively, related to the City Property or Contamination (“third party property claims”). Accordingly, Utilities shall not seek indemnification or any other claims, from City, and City shall not seek indemnification or any other claims, from Utilities regarding any third party property claims. Likewise, each Party shall be responsible for paying its own costs of defending against third party property claims, and each Party shall be responsible for its own liability, if any, resulting from third party property claims.

10.8 Severability. In the event that one or more of the covenants, agreements, terms or provisions contained in this Settlement Agreement shall be declared invalid, illegal or unenforceable in any respect, the validity of the remaining covenants, agreements, terms or provisions contained herein shall be in no way affected, prejudiced or disturbed thereby.

10.9 Waiver. No breach of any provision hereof can be waived by any party hereto unless such waiver is in writing and signed by each party hereto. Waiver of any one breach shall not be deemed to be a waiver of any other breach of the same or any other provision hereof.

10.10 Counterparts. This Settlement Agreement may be executed in one or more counterparts, including facsimile copies hereof, each of which shall be deemed an original, and will become effective and binding upon the Parties at such time as all of the Parties hereto have signed a counterpart of this Settlement Agreement. All counterparts so executed shall constitute one agreement binding on all of the Parties hereto, notwithstanding that all of the Parties are not signatory to the same counterpart.

10.11 Captions. Section titles or captions contained in this Settlement Agreement are used for convenience or reference only and are not intended to and shall not in any way enlarge, define, limit, extend or describe the rights or obligations of the Parties or affect the meaning or construction of this Settlement Agreement, or any provision hereof.

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10.12 Warrant of Authority. Each Party warrants that the person executing this Settlement Agreement on its behalf has the authority to do so.

10.13 Allocation of Costs Between Utilities. By signing this Agreement, Utilities do not waive any rights which they may have with respect to the allocation between themselves of the costs which may be incurred herein.

10.14 Reservation of Rights. By signing this Agreement, Utilities do not waive any rights they may have under federal or state statutory or common law as to any action taken by DTSC, and Utilities reserve all rights to object, contest or defend against any action taken by DTSC

10.15 Notices. Any notice sent pursuant to this Settlement Agreement shall be in writing and sent by fax and mail to the Parties at the following addresses:

If to Utilities:

If to City:

(Signatures appear on the following page.)

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IN WITNESS WHEREOF, the Parties shall be deemed to have executed this Settlement Agreement as of the date first written above.

City of Pomona

By: _____

Name: _____

Its: _____

Dated: _____

Southern California Gas Company

By: _____

Name: _____

Its: _____

Dated: _____

Southern California Edison

By: _____

Name: _____

Its: _____

Dated: _____

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EXHIBIT "A"

[insert map/ site plan]

EXHIBIT "B"

[insert list of duties and obligations: "City of Pomona & the Utilities (SCG & SCE) MGP Cleanup Technical Roles/Responsibilities]

EXHIBIT "C"

[list of costs: "The Costs listed in this exhibit were developed cooperatively..."]

Totals \$3,305,000.00]

Plus indicate \$50k in contingency for rent and loss of efficiency

EXHIBIT "D"

Written license agreement to be entered into concurrently with the execution of this Settlement Agreement