

CONDITIONAL SETTLEMENT AGREEMENT AND RELEASE

This Conditional Settlement Agreement and Release (the "Settlement Agreement") is made and entered as of the date of the last of the signatures below by and between Summer Parada and Vincent Parada on the one hand (together, "the Paradas") and the City of Riverside ("City") on the other. The Paradas and the City are sometimes referred to in this Settlement Agreement as the "Parties."

RECITALS

A. The Parties desire to enter into this Settlement Agreement to settle and discharge all claims arising out of, resulting from, or any way connected with the alleged Proposition 26 violation more fully described in *Parada et al. v. City of Riverside*, Riverside Superior Court case number RIC 1818642 (the "Lawsuit") and the documents, pleadings, and administrative record filed in that case.

B. Specifically, the Paradas have asserted that the City set electric rates on May 22, 2018 at a level greater than the reasonable cost of providing electric utility service and thus that those electric rates are taxes under Proposition 26 (Cal. Const., art. XIII C, § 1, subd. (e)). By stipulation, the City agreed that any relief, damages, refunds, or remedies awarded in the Lawsuit would inure to any and all retail electric customers.

C. The Paradas acknowledge that the City intends this Settlement Agreement to bind all potential future challengers to the General Fund Transfer and to preclude any future litigation of the General Fund Transfer or the City's electric rate-setting practices that consider the General Fund Transfer to be a "reasonable cost" of providing electric service as defined in article XIII C, section 1, subdivisions (e)(1) and (e)(2), in reliance on *Citizens for Open Access to Sand and Tide, Inc. v. Seadrift Ass'n* (1998) 60 Cal.App.4th 1053.

D. This settlement is conditioned on: (1) the Riverside City Council's placement of a ballot measure on City ballots in November 2021 to approve the City's General Fund Transfer practices as a general tax ("Ballot Measure"); and (2) voter approval of the Ballot Measure. The Parties intend to stay the Lawsuit until certification of the results of the Ballot Measure. If the City Council does not place a Ballot Measure meeting the specifications stated in section 1.2.1 on City ballots in November 2021, or if voters do not approve the Ballot Measure, the Parties intend the litigation to resume.

AGREEMENT

The Parties agree as follows:

1. Parties' Obligations

1.1. The Parties' Joint Obligations

1.1.1. No later than May 17, 2021, the Parties will agree on a form of statement to the press as to the fact and terms of this Settlement Agreement and release that statement.

1.1.2. No later than May 28, 2021, the Parties will file a joint motion to stay the case pending the November 2021 election on the Ballot Measure. The Parties agree to submit this Settlement Agreement to the Court in support of the motion upon the Court's request.

1.1.2.1. If the Court does not grant Parties' joint motion to stay the case pending the election on the Ballot Measure, the Settlement Agreement will remain in effect and the Parties will honor the Court's desire to continue the litigation while the outcome of the Ballot Measure election is determined.

1.1.3. If voters adopt the Ballot Measure, no later than 15 days after certification of the results of the Ballot Measure, the Parties will submit a stipulated judgment to the Court substantially in the form attached to this Settlement Agreement as Exhibit A. If voters adopt the Ballot Measure and the Court refuses to enter the stipulated judgment on the terms substantially set forth therein, the Paradas shall file a request for dismissal of the entire Lawsuit with prejudice. Whether the case terminates by stipulated judgment or by voluntary dismissal, the obligations set forth in sections 1.2.2, 1.3.2, and 2 shall remain in effect if voters adopt the Ballot Measure.

1.2. The City's Obligations

1.2.1. The City will draft the Ballot Measure, and resolutions placing the Ballot Measure on City of Riverside ballots in November 2021, to state that: (1) the City's General Fund Transfer policies subject to voter approval in the Ballot Measure are a general tax requiring voter approval under California Constitution, article XIII C, section 2, subdivision (b); and (2) the revenues the City collects from retail customers for electric service may fund, in whole or

part, transfers from the City's electric utility to its general fund under the General Fund Transfer policies.

1.2.1.1. The City agrees that, within 3 business days of its final determination of language for the Ballot Measure, it will provide a copy of the Ballot Measure to the Paradas. Should the Paradas believe that the Ballot Measure language does not comply with section 1.2.1, within 10 calendar days of the Paradas' receipt of the Ballot Measure from the City, the Parties shall meet and confer regarding the Paradas' concern. If the Parties are unable to agree as to whether the Ballot Measure complies with section 1.2.1, the Parties shall submit their disagreement to Hon. Richard M. Silver (Ret.), to resolve the dispute. Hon. Richard M. Silver (Ret.) shall issue a written statement regarding whether the Ballot Measure complies with section 1.2.1, which the Parties agree shall be binding. The Parties shall equally share the costs incurred in requesting Judge Silver's determination of any dispute identified in this section.

1.2.2. If voters adopt the Ballot Measure:

1.2.2.1. The City waives all rights to appeal from any judgment, ruling or order entered in the Lawsuit through the date the stipulated judgment is entered, including the stipulated judgment.

1.2.2.2. The City will refund to customers of its electric utility an amount equal to \$24,000,000 less the amount awarded to Plaintiffs' counsel in fees and less the incentive payments identified in section 1.2.2.3. No part of the \$24,000,000 to be refunded or credited to customers shall be funded by the proceeds of retail electric rates.

1.2.2.2.1. The City will pay these refunds by on-bill credits to existing customers over a period beginning no later than February 1, 2022 not to exceed five years. The City will distribute refunds to each customer in reasonable proportion to each customer's contribution to the rate proceeds to be refunded.

1.2.2.2.2. The City will provide an opportunity for former customers to claim refunds after giving them notice by mail or email to such addresses as the City has for those former customers or can obtain from the U.S. Postal Service National Change of Address database. The City will honor such claims if presented to the City in writing

within a year of the date the City first gives notice of the claiming opportunity.

1.2.2.2.3. Refunds shall not accrue post-judgment interest.

1.2.2.2.4. The Parties agree the Court shall retain jurisdiction to decide any dispute arise related to section 1.2.2.2.1 or 1.2.2.2.2.

1.2.2.3. The City will make two service awards of \$5,000, one to Summer Parada, and one to Vincent Parada which shall be deducted from the amount the City refunds to ratepayers.

1.2.2.4. If the Court does not require review and approval of a fee award to Paradas' counsel, the City shall pay Paradas' counsel based on the following formula: \$700 per hour times the number of hours the Paradas' counsel have worked on this matter times a multiplier of 4.0. The total attorney fees shall not exceed \$2,240,000 (the amount to which the Paradas' counsel would be entitled for 800 hours of work). However, if, the Court requires that it review and/or approve Paradas' counsels' fee, Paradas' counsel agree to submit their fee request to the Court as directed.

1.2.2.4.1. The Paradas' counsel shall provide counsel for the City timekeeping records documenting the hours worked on this matter no later than 15 days after certification of the results of the Ballot Measure. The City shall remit payment of any attorney fees under this Agreement no later than 45 days after the later of (i) entry of the stipulated judgment, or (ii) dismissal of the Lawsuit with prejudice. Should the Court require that it review and/or approve Paradas' counsel's fee, whether in connection with the entry of the stipulated judgment or in connection with the dismissal of the Lawsuit with prejudice, the City shall remit payment of any attorney fees awarded no later than 45 days after a Court order authorizing fees to the Paradas' counsel.

1.2.2.4.2. If a court requires the Paradas to move for approval of a fee award, the City will not oppose such a motion if that motion: (1) seeks fees less than or equal to the amount identified in section 1.2.2.4; and (2) includes timekeeping records documenting the hours for which fees are claimed.

1.2.2.4.3. As stated in section 1.2.2.2, any amount the City pays in attorney fees shall be deducted from the amount the City refunds to ratepayers.

1.2.2.4.4. Except as provided in section 1.2.2.4 and its subsections, the Parties shall bear their own fees and costs.

1.2.3. If voters do not adopt the Ballot Measure:

1.2.3.1. If the voters of the City do not approve the Ballot Measure, or if the Ballot Measure is found noncompliant pursuant to section 1.2.1.1 of this Agreement, the provisions of section 1.2.2 and its subsections are void and of no effect, and the City will have all rights to continue defending the Lawsuit, including but not limited to all rights to appeal any final judgment.

1.3. The Paradas' Obligations

1.3.1. The Paradas release all rights to challenge the validity of the Ballot Measure, whether before the election on the Ballot Measure or after the election, except as provided for in section 1.2.1.1. As further consideration for this Settlement Agreement, the Paradas agree to make no public statements regarding this Settlement Agreement or the Ballot Measure beyond the agreed statement referenced in section 1.1.1.

1.3.2. If voters adopt the Ballot Measure:

1.3.2.1. In consideration of the terms identified in section 1.2.2 and its subsections, the Paradas release all claims arising out of the Lawsuit, including but not limited to all claims seeking refunds, writ relief, declaratory relief, litigation costs, and attorney fees related to their challenge to the validity of the electric rates the City set on May 22, 2018 and the General Fund Transfer. The Paradas forever discharge the City, a California charter city and municipal corporation, and all of its boards, bureaus, officers, agents, employees and all persons who acted on its behalf in the past, present, or future, with relation to the claims in the Lawsuit, from any and all past, present or future claims, demands, obligations, actions, causes of action, wrongful death claims, rights, damages, costs, losses of services, expenses and compensation of any nature whatsoever, whether based on a tort, contract or other theory of recovery, which the Paradas now have, or which may hereafter accrue or

otherwise be acquired, on account of, or may in any way grow out of the Lawsuit, including, without limitation, any and all known or unknown claims of the Paradas, which have resulted or may result from the alleged acts or omissions of the City.

1.3.2.2. This release and discharge shall also apply to the City's past, present and future officers, directors, employees, subsidiaries, affiliates, partners, predecessors and successors in interest, and assigns and all other persons, firms or corporations with whom any of the former have been, are now, or may hereafter be affiliated.

1.3.2.3. This release, on the part of the Paradas, shall be a fully binding and complete settlement among the Paradas, the City, and their respective heirs, assigns and successors regarding the Lawsuit and the claims it asserts described in the recitals above.

1.3.2.4. The Paradas acknowledge and agree that the release and discharge set forth above is a general release regarding the Lawsuit and the claims it asserts described in the recitals above. The Paradas expressly waive and assume the risk of any and all claims for damages which exist as of this date, but of which they do not know or suspect to exist, whether through ignorance, oversight, error, negligence, or otherwise, and which, if known, would materially affect the Paradas' decision to enter into this Settlement Agreement.

1.3.2.5. The Paradas hereby waive any and all rights based upon California Civil Code section 1542, which reads as follows:

"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."

1.3.3. If voters do not adopt the Ballot Measure:

1.3.3.1. If the voters of the City do not approve the Ballot Measure, or if the Ballot Measure is found noncompliant pursuant to section 1.2.1.1 of this Agreement, the provisions of section 1.3.2 and its subsections are void and of no effect and the Paradas retain all rights to continue pursuing the

Lawsuit, including but not limited to all rights to appeal any final judgment.

2. Other Terms

- 2.1. **No admission of liability.** The Parties agree that this Settlement Agreement is entered into for the sole purpose of resolving contested claims and disputes and avoiding the costs, expenses, and uncertainties associated with litigating the released claims. It is also expressly agreed and acknowledged that this Settlement Agreement, its execution, the performance of any of its terms, and its contents shall not constitute or be construed or offered as evidence in any proceeding (other than proceedings to enforce this Agreement) as an admission of any liability or of any fact or any indication that any of the claims or allegations made by one party against any other party has any merit.
- 2.2. **Headings.** The section headings used in this Settlement Agreement are intended solely for the convenience of reference and shall not in any manner amplify, limit, modify, or otherwise be used in the interpretation of any of the provisions of the Settlement Agreement.
- 2.3. **Warranties of capacity to execute Settlement Agreement.** The Paradas represent and warrant that no other person or entity has, or has had, any interest in the claims, demands, obligations, or causes of action referred to in this Settlement Agreement, except as otherwise set forth herein; that the Paradas have the sole right and exclusive authority to execute this Settlement Agreement; and that the Paradas have not sold, assigned, transferred, conveyed or otherwise disposed of any of the claims, demands, obligations or causes of action referred to in this Settlement Agreement.
- 2.4. **Additional documents.** The Parties agree to fully cooperate in implementing this Settlement Agreement, including but not limited to executing all documents and taking all additional actions which may be necessary or appropriate to give full force and effect to the terms and intent of this Settlement Agreement.
- 2.5. **Entire agreement.** This Settlement Agreement contains the entire agreement between the Paradas and the City with regard to its subject. All prior discussions, understandings, agreements, and representations, if any, are merged into this document. This Parties may not amend, alter, modify, or supersede this Settlement Agreement except by a written agreement so stating and signed by both Parties or their representatives.

- 2.6. **Agreement binds successors in interest.** The Settlement Agreement shall be binding upon, and inure to the benefit of, the executors, administrators, personal representatives, heirs, successors and assigns of each Party.
- 2.7. **Representation of comprehension of document.** In entering this Settlement Agreement, the Paradas represent that they have relied upon the advice of their attorneys, who are the attorneys of their own choice; that the terms of the Settlement Agreement and Release have been completely read and explained to the Paradas by their attorneys; and that they fully understand and voluntarily accept the terms of this Settlement Agreement.
- 2.8. **Governing law.** This Settlement Agreement shall be construed and interpreted in accordance with the law of the State of California.
- 2.9. **Construction of agreement.** The Parties acknowledge that they have had the opportunity to review and participate in the negotiation and drafting of this Settlement Agreement. Accordingly, the Parties agree that this Settlement Agreement and its terms should be construed as a whole, with a fair meaning and interpretation given to its language. The Parties further agree that this Settlement Agreement and its terms should not be construed more favorably or more adversely to either party, and that the rule of construction that ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Settlement Agreement.
- 2.10. **Counterparts.** This Settlement Agreement may be executed as separate counterparts, each of which, when so executed and delivered, shall be deemed an original as against any party whose signature appears on this Settlement Agreement. Counterparts may be effective if transmitted by the Parties or their counsel by e-mail or facsimile, and any such e-mail or facsimile counterpart shall be deemed an original.
- 2.11. **Enforcement.** The Paradas and the City agree that the Court shall retain jurisdiction pursuant to California Code of Civil Procedure section 664.6 to enforce the terms of the Settlement Agreement.

[SIGNATURES ON FOLLOWING PAGE.]