

BISHOP DRIVE STORM DRAIN REPAIR SETTLEMENT AGREEMENT

This Storm Drain Repair Settlement Agreement (“Agreement”) is made and entered into by the City of La Habra (“City”) and **Clay and Joanne Morgan** who resides and owns the property located at **431 Bishop Drive** La Habra, CA 90631 (“Property Owner” or “Settling Party”). Property Owner and City are at times herein collectively referred to as the “Parties.”

RECITALS

- A. The City hired a contractor to perform Storm Drain Repairs (“Repairs”) at and in the vicinity of Property Owner’s residence at **431 Bishop Drive** La Habra, CA 90631 (“Property”).
- B. While the Repairs to the storm drain are mostly complete, the Property remains in need of several repairs (“Remaining Work”).
- C. The Parties intend, by this Agreement, to settle any and all claims in connection with the Repairs and Remaining Work, and the events arising therefrom, whether alleged or unalleged in exchange for the City’s actions described in this agreement (the “Dispute”). This includes any and all damage to the Property, including without limitation, any damage to any walls, plants, any subsurface structure (e.g., pipes, conduit, footings, wiring), and any and all fixtures, structures, and anything in any way related or connected to the Property.
- D. Property Owner acknowledges that the City owns an easement where the Repairs are located and Property Owner shall not construct or erect any structure within the easement area. Any structures that encroach upon the easement area that are damaged during any future repairs to the City’s Storm Drain will not be restored by the City.
- E. This Agreement shall not constitute evidence of, or be considered as, an admission of any liability or wrongdoing by any Party.

SETTLEMENT

In full satisfaction of any and all disputes and claims, and in consideration of the exchange of full, general, and mutual releases, and upon the terms and conditions, the premises and promises, and the covenants stated below, the Parties agree as follows:

1. **Recitals.** The Recitals are incorporated into and are a part of this Agreement.
2. **Remaining Work.** Property Owner will commence the Remaining Work as set forth in Exhibit A within 30 days of execution of this agreement.
3. **Compensation.** The City shall compensate Property Owner in the amount of Ninety-Four Thousand Seventy-Three Dollars and Fifty-Seven Cents (\$94,073.57) as reimbursement for the

cost of expenses already incurred and completion of the Remaining Work. The City shall have no responsibility to complete any of the Remaining Work in connection with the Emergency Repairs or compensate Property Owner any further for the Remaining Work beyond the compensation set forth in this paragraph.

4. No Representations or Warranties by the City. The City makes no representations or warranties concerning any matter set forth herein and assumes no liability for any representations or warranties made in connection with this Agreement. Further, the City shall not be held liable for any alleged breach by Property Owner of any representation or warranty contained herein.

5. Authority to Execute Agreement. Property Owner declares that each has read this Agreement and understands and knows the contents thereof, and represents and warrants that Property Owner is empowered to do so and hereby binds himself, and all their successors, assigns, principles, agents, employees, consultants, representatives, attorneys, bonding companies and insurers to the terms hereunder.

6. Mutual Release Agreement. In further consideration of this Agreement and in recognition of the benefits to be derived therefrom, and except as to the rights, duties, and obligations of the Parties as set forth in this Agreement, the City and Property Owner hereby release, and fully and finally and forever discharge each other, and each of their associates, owners, subsidiaries, parent companies, affiliates, predecessors, successors, heirs, executors, administrators, assigns, agents, directors, officers, partners, employees, representatives, lawyers, and all persons acting by, through, under, or in concert with them or any of them of and from any and all manner of actions or causes of action, in law or in equity, suits, debts, liens, liabilities, claims, demands, and damages of any nature whatsoever, known or unknown, fixed or contingent, which Property Owner and the City now or may in the future have against each other arising out of, or related to this Agreement. Nothing in this section precludes Property Owner from filing future claims against the City.

7. Waiver of Civil Code Section 1542. It is specifically understood and agreed that the Mutual Release Agreement referenced in paragraph 6 is a full and final release applying to all unknown and unanticipated claims arising out of this Agreement, and as a further consideration and inducement for the settlement, Property Owner hereby expressly waives all rights or benefits which he may in the future have under the provisions of § 1542 of the Civil Code of the State of California, which section provides:

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 to him must have materially affected his settlement with the debtor.

8. Defense and Indemnity. Residents agree to release, indemnify and hold harmless the City, and all of its officers, agents, assigns, associates, affiliates, predecessors, successors, heirs, executors, administrators, partners, employees, representatives, lawyers, and all persons acting by, through, under, or in concert with them or any of them ("Indemnified Persons") of and from any liability, claims, losses or causes of action arising in any way out of this Dispute or related claims,

including any and all actions which relate to actions taken by the Indemnified Persons to further the purposes of this Agreement including paragraphs 2 and 3.

9. No Admission of Liability. The Parties understand and agree that this Agreement is not to be construed as an admission of liability whatsoever on the part of the City, its employee(s), agent(s), or representative(s), and that this Agreement is made solely for the purpose of avoiding the burden that would be imposed upon the Parties by litigating any disputes or related claims or by the City completing the Remaining Work.

10. No Assignment of Claim. Property Owner represents and warrants that he has not heretofore assigned or transferred or purported to assign or transfer to any person, firm, association, corporation or other entity, any right, claim or cause of action based on or arising out of, or in connection with any matter that is the subject of this Settlement Agreement as of the date of execution of this Settlement Agreement.

11. Governing Law. This Agreement shall in all respects be interpreted, enforced and governed by and under the laws of the State of California and be applicable to instruments, persons and transactions as having legal contacts and relations solely within the State of California.

12. Independent Representation by Counsel. The Parties represent and declare that in executing this Agreement they rely solely upon their own judgment, belief and knowledge, and the advice and recommendations of their own independently-selected counsel, if any, concerning the nature, extent and duration of their rights and claims hereunder, and that, except as provided herein, they have not been influenced to any extent whatsoever in executing this Agreement, by any representations, statements or omission pertaining to any of the matters herein contained by any Party or by any persons representing any Party. The Parties further acknowledge that they have had a reasonable opportunity to consult legal counsel for the purpose of obtaining recommendations and advice regarding this Agreement.

13. Construction. This Agreement has been jointly negotiated and drafted. The language of this Agreement shall be construed as a whole according to its fair meaning, and not strictly for or against any of the Parties.

14. Execution in Counterparts. This Settlement Agreement may be executed in two or more counterparts by the Parties and shall become effective and binding upon the Parties at such time as all of the signatories hereto have signed the original or a counterpart original of this Settlement Agreement. All counterparts so executed shall constitute one Agreement, binding upon all of the Parties hereto, notwithstanding that all of the Parties are not signatory to the original or the same counterpart. This Agreement may be executed and delivered by email or facsimile and shall become effective and binding upon the Parties at such time as all of the signatories hereto have signed the original or a counterpart original of this Agreement.

15. Attorneys' Fees. The Parties shall bear their own attorney's fees and costs incurred regarding this matter, including the negotiation and finalization of this Agreement. However, should any Party retain counsel for the purpose of instituting any action or proceeding to enforce any provision of this Agreement, then, if said matter is settled by arbitration or judicial

determination, the prevailing party shall be entitled to be reimbursed by the losing party for all their reasonable attorneys' fees and costs incurred therein.

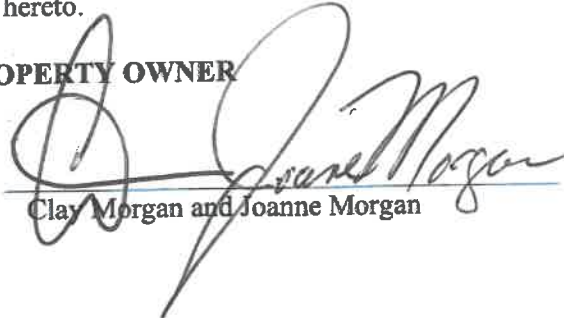
16. Integrated Agreement. This Agreement is the final and entire agreement between the Parties and it supersedes all prior written and oral agreements and understandings of the Parties concerning the subject matter of this Settlement Agreement. This Settlement Agreement cannot be modified except by a written document signed by all of the Parties. None of the Parties are relying upon any other negotiations, discussions or agreements in connection with the subject matter of this Agreement. This is a fully integrated agreement.

17. Severability. If any provision of this Agreement is held invalid, the invalidity shall not affect other provisions of the Agreement which can be given effect without the invalid provision or application. To this end, the provisions of this Agreement are severable.

WHEREFORE, the undersigned having read the foregoing Agreement and General Release of Claims, and fully understanding it, and agreeing to its terms, hereby execute this Agreement and make it effective on the date of the last signature hereto.

DATED: 5/29/24

PROPERTY OWNER

By: 
Clay Morgan and Joanne Morgan

CITY OF LA HABRA

DATED: _____

By: _____
Jim Sadro, City Manager