

CLASS ACTION SETTLEMENT AGREEMENT

This Settlement Agreement and Release (“Settlement Agreement” or “Agreement”) is entered into between Plaintiff-Petitioners Ramona Rita Morales and Investment Development Group, LLC (the “Plaintiffs”) on behalf of themselves and Class Members, as defined below, and Defendant the City of Indio (the “City” or “Defendant”), collectively, the “Parties,” to settle, fully and finally, all of the Released Claims (as defined below). Except as otherwise specified, defined terms shall have the meanings set forth in the Recitals and Definitions sections of this Agreement.

RECITALS

A. On February 14, 2018, Plaintiff Ramona Rita Morales filed a lawsuit in the Superior Court of the State of California, County of Riverside (“Court”) entitled *Ramona Rita Morales v. the City of Indio, et al.*, Case No. RIC1803060 (the “Action”) in her individual capacity and seeking to represent a class of similarly situated persons. Morales alleges the City impermissibly delegated its powers of criminal prosecution to the private law firm of Silver & Wright LLP, which Morales alleges has a financial conflict of interest in these prosecutions. Plaintiffs allege this arrangement is prohibited by the Due Process clauses of the California and United States constitutions.

B. Plaintiffs are one individual and one Limited Liability Company that were criminally prosecuted by Silver & Wright LLP, on behalf of the City, for alleged property code violations. After Plaintiffs pleaded guilty and paid criminal fines, Silver & Wright LLP recovered its attorneys’ fees through a cost recovery proceeding. Plaintiffs allege that at the time they pleaded guilty, they were unaware that Silver & Wright LLP had represented to the City that it would seek recovery of 100% of its attorneys’ fees in cost-recovery actions against defendants in code enforcement actions. Plaintiffs also allege they were unaware that Silver & Wright LLP had sole prosecutorial discretion and full control over key decisions in code enforcement prosecutions. Plaintiffs contend that these prosecutions violated due process as a result of a conflict of interest by which Silver & Wright LLP was financially motivated to pursue criminal charges and to recover fees from Plaintiffs and other similarly situated parties.

C. Plaintiff Ramona Rita Morales brought the Action in her individual capacity and seeking to represent a class of similarly situated persons. She asserted three causes of action: (1) violation of the Due Process Clause of the Fourteenth Amendment to the U.S. Constitution; (2) violation of the Due Process Clause of the California Constitution; and (3) for relief in the form of a writ of *coram nobis*.

D. On April 9, 2018, Plaintiffs filed the operative First Amended Class Action Complaint (the “Operative Complaint” or “FAC”), along with two additional plaintiffs who were similarly prosecuted by Silver & Wright LLP on behalf of the City of Coachella. The FAC added as putative class representatives Isabell Sanchez, Cesar Manuel Garcia, and Investment Development Group, LLC. *Ramona Rita Morales, et al. v. the City of Indio, et al.* is currently pending in the Superior Court of the State of California, County of Riverside.

E. On May 4, 2018, counsel for the City sent Plaintiffs' Class Counsel a Settlement Offer. In an effort to reach a resolution of the Action, the Parties participated in additional settlement discussions that resulted in the Parties agreeing to settlement terms.

F. This Agreement is made in consideration of the facts and recitals set forth herein. The Parties understand, acknowledge, and agree that this Agreement constitutes a compromise of all the disputed claims at issue between the Parties in the Action and that it is the desire and intention of each of the Parties to effect a final and complete resolution of the Action and of the Released Claims.

G. Plaintiffs and Class Counsel: (1) have examined and considered the benefits to be provided to Class Members under this Agreement (the "Settlement," as defined below); (2) have considered the applicable law and the claims that have been and could have been asserted in the Complaint arising out of or relating to the prosecution of persons by Silver & Wright LLP on behalf of the City; and (3) believe the Settlement to be fair, reasonable, and adequate, and in the best interest of the Certified Class, taking into account the benefits provided to the members of the Certified Class through the terms of the Settlement Agreement, the decisions rendered in the Action, the risks of litigation, and the length of time that would be required to complete the litigation and any appeals.

H. The Parties further acknowledge that this Settlement is a compromise of disputed claims reached in order to promote good governance and that the City is not in any way admitting liability by entering into this Agreement. The City has at all times disputed, and continues to dispute, the allegations in the Action and denies any liability for any of the claims that have or could have been raised in the Action regarding its retention of Silver & Wright LLP to prosecute code enforcement actions, but believes that the Settlement as provided in this Agreement will avoid the substantial expense and disruption of continued litigation, and will promote public confidence in the City's code enforcement efforts.

I. The Parties believe that the Settlement is fair, reasonable, and adequate. The Settlement was arrived at through arm's-length negotiations, taking into account all relevant factors, and will materially benefit the members of the Certified Class. The Parties recognize the uncertainty, risk, expense, and delay attendant to continuing the Action through trial and any further appeals following trial. Accordingly, the Parties desire to fully, finally, and forever settle, compromise, and discharge all disputes and claims arising from or relating to the Action, as they relate to these Parties and the Class Members.

Therefore, in consideration of the promises and agreements contained herein, the Parties agree and covenant as follows:

AGREEMENT

I. DEFINITIONS

As used in this Agreement, the following definitions (in addition to those set forth elsewhere herein) shall apply:

A. “*Administrative Expenses*” means reasonable fees and expenses incurred for: (1) preparation and mailing of the Full Notice; (2) preparation and mailing of the notice required by California Rules of Court 3.769(f) (“Notice to class of final approval hearing”), 3.770(c) (“Notice to class of dismissal”), and Rule 3.771(b) (“Notice of judgment to class”); (3) receipt and adjudication of Forms submitted by Class Members relating to the payment of settlement funds to them under this Settlement Agreement; (4) processing objections to this Settlement; (5) mailing of settlement payments to Plaintiffs and Class Members; and (6) performance of any other actions specified in this Agreement or mutually requested by the Parties in writing.

B. “*Agreement*” or “*Settlement Agreement*” means this Settlement Agreement and Release, and all other documents attached hereto and/or incorporated by reference.

C. “*Certified Class*” means the Class Members provisionally certified by the Court for settlement purposes who meet the criteria for inclusion in the Settlement Class.

D. “*Claimant*” means an Individual who reasonably believes that he or she qualifies as a Class Member and seeks to be included in the Class Settlement.

E. “*Claim Form*” means a form enclosed with the Full Notice, substantially similar to the form attached as Exhibit A, which Claimants may submit to Defendant to request that they be included, or not included, in the Settlement.

F. “*Class Counsel*” means the attorneys from the Institute for Justice and O’Melveny & Myers LLP who have appeared on behalf of Plaintiffs and have not withdrawn their appearance.

G. “*Class Member*” means any person who meets the criteria for inclusion in the Settlement Class, regardless of whether that person files an application for class membership. However, a person is not a Class Member if Defendant denies his or her application for class membership and that decision is not otherwise reversed.

H. “*Class Settlement*” means the settlement of the claims asserted by Plaintiffs in the Complaint against Defendant.

I. “*Complaint*” means the First Amended Complaint filed in this Action on April 9, 2018, unless otherwise stated.

J. “*Court*” means the Superior Court of the State of California, County of Riverside.

K. “**Defendant’s Counsel**” means the attorneys who have appeared on behalf of Defendant and have not withdrawn such appearance.

L. “**Effective Date**” means the first business day after the following has occurred: (1) 30 days have elapsed from the entry by the Court of the Final Approval Order in the Action and the judgment thereon, and no notice of appeal of the judgment or any Order in the Action has been filed, the time provided for in Title 8 of the California Rules of Court to take any such appeal has expired, and any right to take any such appeal from the judgment or from any such Order has been waived or otherwise lost; or (2) if an appeal has been taken, each such appeal has been finally adjudicated and the Final Approval Order and judgment have been upheld in all respects by each such final adjudication, and either the time for initiation of the next step in the appellate process (*e.g.*, a petition for writ of certiorari) has expired without any action by appellant(s) or the next step in the appellate process was invoked and has been concluded without any impact on the Final Approval Order or judgment.

M. “**Exclusion Form**” means the form enclosed with the Full Notice, substantially similar to the form attached as **Exhibit B**, which Claimants who wish to be excluded from the Class Settlement must timely complete, sign, and submit to Defendant. The Exclusion Form (1) instructs the Claimant seeking exclusion that the Exclusion Form must be mailed to Defendant, (2) states the name and address of Defendant, and (3) states the date by which the Exclusion Form must be mailed to Defendant.

N. “**Exclusion Request**” means a request to opt out of the Certified Class by any Unnotified Class Member.

O. “**Final Approval Hearing**” means the hearing at which the Court decides whether to approve the Class Settlement.

P. “**Final Approval Order**” and “**Final Order**” mean a proposed order approving the Class Settlement.

Q. “**Final Settlement Date**” means two calendar days after the Final Order and Judgment become “final.” For the purposes of this paragraph, “final” means (1) if no appeal from the Final Order and Judgment is filed, the expiration of the time for filing or noticing any appeal from the Final Order and Judgment; or (2) if an appeal from the Final Order and Judgment is filed, and the Final Order and Judgment is affirmed or the appeal dismissed, and no petition for review with respect to the appellate court’s judgment affirming the Judgment or dismissing the appeal (“Appellate Judgment”) is filed, the expiration of the time for the filing of a petition for review; or (3) if a petition for review is filed and denied, the denial of the petition; or (4) if a petition for review is filed and granted, the final affirmance of the Appellate Judgment or final dismissal of the review proceeding initiated by the petition for review.

R. “**Full Notice**” means the legal notice of the proposed Class Settlement terms (in English and Spanish), as approved by Class Counsel, Defendant’s Counsel, and the Court, to be provided to Class Members under Section V. The Full Notice must be substantially similar to the

forms attached as **Exhibits A, B, and C**. The Full Notice also includes the following forms: (1) the Claim Form; (2) the Exclusion Form; (3) the Objection Form.

S. **“Individual”** or **“Person”** means both individuals and individuals who were the authorized officer or owner of any business entity (whether partnership, limited liability company, sole proprietorship, corporation, or other business structure) who were criminally prosecuted by Silver & Wright LLP on behalf of the City of Indio and subsequently convicted (whether by guilty plea or court trial).

T. **“Judgment”** means a judgment in this Action that retains jurisdiction to enforce compliance with this Settlement Agreement. The judgment must be substantially similar to the Proposed Judgment attached as **Exhibit D**.

U. **“Notice Plan”** means the plan for providing notice of the Class Settlement to members of the Settlement Class, which shall take a format substantially similar to the form described in Section IV.

V. **“Notified Class Member”** means a Class Member who received notice of his/her/its membership in the Certified Class and did not opt out in the manner and time prescribed.

W. **“Objection Form”** means the form enclosed with the Full Notice, substantially similar to the form attached as **Exhibit C**, which Claimants who wish to object to the Class Settlement must timely complete, sign, and submit to the Court and counsel for the Parties. The Objection Form (1) instructs the objecting class member that the objection must be mailed to Defendant, (2) states the name and address of Defendant, and (3) states the date by which the Objection Form must be mailed to Defendant. The Objection Form only requires that the objecting Class Member (a) identify the objector as a person entitled to object to the settlement and (b) describe the nature of and basis for the objection.

X. **“Plaintiffs”** means Plaintiffs Ramona Rita Morales and Investment Development Group, LLC, both in their capacity as representatives of the Class Members and individually.

Y. **“Preliminary Approval and Provisional Class Certification Order”** and **“Preliminary Approval Order”** mean a proposed order preliminarily approving the Class Settlement and provisionally certifying the Certified Class.

Z. **“Released Claims”** means (1) any claims of alleged violations of civil rights guaranteed under the Due Process clauses of the federal and California constitutions that resulted from financial conflicts of interest held by the law firm of Silver & Wright LLP arising out of prosecutions brought on behalf of the City of Indio, and (2) any other claims that Plaintiffs, on behalf of themselves and the Class Members (including their affiliated business entities, if any), may have arising out of prosecutions brought on behalf of the City of Indio.

AA. **“Restitution”** means the fees collected as a result of criminal prosecutions and subsequent criminal conviction of Individuals by Silver & Wright LLP. Such fees include what

has been referred to as “cost recovery,” that is, payment by Individuals of Silver & Wright LLP’s attorneys’ fees, as is further described in Section II of this Agreement.

BB. “**Settlement**” means the settlement of the Action, including the collective rights and duties of the Parties under this Agreement and the processes for approval and payment to Class Members described in this Agreement.

CC. “**Settlement Class**” means all “all natural and legal persons who were criminally prosecuted by Silver & Wright LLP, or one or more of its agents, acting as City Prosecutor for the City of Indio and who were subsequently criminally convicted (whether by guilty plea or court trial).”

DD. “**Settlement Notice**” means, individually or collectively as the context may indicate, the proposed written notices attached hereto as Exhibit A, to be approved by the Court and mailed to Class Members in accordance with Section V of this Agreement.

EE. “**Settlement Payment**” means the amount set forth in Section II of this Agreement that the City will send to the Settlement Class in accordance with the Settlement Agreement.

FF. “**Unnotified Class Member**” means a Class Member who is not a Notified Class Member.

II. RELIEF FOR INDIVIDUALS, INCLUDING CLASS RELIEF

A. Individuals Eligible for Relief

The following Individuals are eligible for the relief outlined in this section:

1. Plaintiffs:
 - a. Ramona Rita Morales
 - b. Investment Development Group, LLC
2. All Class Members

B. Settlement Relief for Individuals

1. Restitution of Fees Collected

The City will pay back all fees listed on the Nuisance Abatement and Code Enforcement Cost Recovery Invoice (“Cost Recovery Invoice”) that were collected from Plaintiffs and Class Members who were criminally prosecuted by Silver & Wright LLP and subsequently criminally convicted (whether by guilty plea or court trial) and paid the sums in the Cost Recovery Invoice or such other amount as set forth in the order issued by the Administrative Hearing Officer in

those cases where the Cost Recovery Invoice was appealed by the Plaintiffs or Class Members. This is often referred to as “cost recovery.”

2. Relinquishment of Claims to Unpaid Fees

The City will relinquish all claims to fees set forth in the Cost Recovery Invoice that are outstanding and have not been paid from Plaintiffs and Class Members who were criminally prosecuted by Silver & Wright LLP and subsequently criminally convicted (whether by guilty plea or court trial). The City shall not seek any interest payments or other incidental charges arising out of unpaid fines or fees.

3. Lien Removal

The City will remove any liens, and relinquish any claim to any liens, placed on Plaintiffs’ properties or the properties of potential Class Members as a result of being criminally prosecuted by Silver & Wright LLP and subsequently criminally convicted (whether by guilty plea or court trial).

4. *Coram Nobis*

The City agrees not to oppose any efforts by Plaintiffs or Class Members to vacate convictions entered as a result of criminal prosecution by Silver & Wright LLP. Without admitting fault or liability, and solely for purposes of settlement, the City stipulates that the elements of *coram nobis* are met as to the Class Members.

5. Reform

The City will no longer seek to recover its attorneys’ fees in criminal prosecutions. It will also set oversight benchmarks to monitor any deputized city prosecutor. At minimum, any city prosecutor whose private law firm contracts with the City will be required to submit a monthly report to the City Manager, Chief of Police, and City Council. Last, the City will amend its municipal code with respect to the recovery of attorneys’ fees so it is clear that such recovery is not available in the context of criminal prosecutions.

6. The Amount of Restitution

The amount of Restitution to which each Class Member is entitled under this Agreement is equal to the amount of fees paid by each Class Member to the City or Silver & Wright LLP in the manner described in Section II.B.1 (Restitution of Fees Collected) based on the records held by the City.

Further, in the event that Class Members who were prosecuted on or after December 17, 2014 (the date the City of Indio enacted Ordinance Number 1668) are unable to obtain a return of the fines paid to the court pursuant to their criminal convictions, then an amount equal to the fines actually paid by each such Class Member will be added to the Restitution to which each

such Class Member is entitled. If a Class Member believes the amount as determined by the City is incorrect, such Class Member shall provide evidence of the amount of the payment made to the City or Silver & Wright LLP (*e.g.*, in the form of a receipt or other evidence of a financial transaction between the Class Member and the City or Silver & Wright LLP) along with the Claim Form attached as **Exhibit A** or notification that he or she wishes to receive restitution under this Agreement. Based on that new evidence, the City will reconsider its decision on the amount owed to that Class Member.

III. CLASS SETTLEMENT PROCEDURES

The events set forth in this Section III, in addition to the occurrence of the “Effective Date” as described in Section I, are conditions precedent to this Agreement becoming effective.

A. Cooperation to Obtain Court Approval

The Parties shall cooperate and jointly make reasonable and good faith efforts to secure the Court’s approval of the Class Settlement.

B. The City to Provide Case Information for Class Members

The City will provide Class Counsel and the Court with case information for all Class Members including the names, last known addresses, and contact information of Class Members.

C. Preliminary Approval and Provisional Class Certification

Plaintiffs shall prepare and file a motion seeking preliminary approval of the Class Settlement and provisional class certification and set the preliminary approval hearing. The motion for preliminary approval of the Class Settlement and provisional class certification shall request the Court to enter a Preliminary Approval Order that:

1. preliminarily approves the Class Settlement as being within the range of a fair, reasonable, and adequate settlement within the meaning of Cal. Rule of Court 3.769(g) and applicable law, and consistent with due process;
2. approves the provisional certification of the Settlement Class;
3. appoints Plaintiffs as class representatives;
4. appoints the Institute for Justice and O’Melveny & Myers LLP as Class Counsel;
5. sets the date and time of the Final Approval Hearing;
6. stays all proceedings in the Action against Defendant until the Court renders a final decision on approval of the Class Settlement; and

7. establishes the Notice Period and Application Period described in Sections IV.A and IV.B, respectively.

D. Preliminary Timeline for Completion of the Settlement

The proposed deadlines to be established in the Preliminary Approval Order for notice, approval, and payment procedures carrying out this Settlement is as follows. The schedule may be modified depending on whether and when the Court grants necessary approvals and orders notice to the class, sets further hearings, or otherwise orders modifications to this schedule. In the event of such modification, the Parties shall cooperate in order to complete the settlement procedures as expeditiously as reasonably practicable. To the extent this Section III.D conflicts with one or more other provisions of this Agreement, the other provision(s) shall supersede this Section III.D.

30 days after preliminary approval	Deadline to mail Notice
90 days after notice mailed	Deadline to submit a Claim Form;
	Deadline to Opt Out;
	Deadline to submit Objection to Settlement

E. Final Approval

At the Final Hearing, Plaintiffs shall request the Court to enter the Final Approval Order, substantially in the form of the Proposed Judgment in **Exhibit D** to this Agreement, which: (1) grants final approval to the Settlement and this Agreement as fair, reasonable, and adequate to the Certified Class; (2) provides for the release of all Released Claims and enjoins Plaintiffs and Class Members from asserting, filing, maintaining, or prosecuting any of the Released Claims in the future; (3) orders the dismissal with prejudice of all claims in the Complaint against the City and incorporates the releases and covenant not to sue stated in this Agreement, with each of the Parties to bear its or their own costs and attorneys' fees; (4) authorizes the City to issue settlement payment checks to Plaintiffs and Class Members in accordance with the terms of this Agreement; and (5) preserves the Court's continuing jurisdiction over the administration of the settlement and enforcement of the Agreement.

IV. PROCEDURES FOR OBTAINING RELIEF FOR INDIVIDUALS

A. 30-Day Notice Period

During the 30-day period after the entry of the Preliminary Approval Order, the City shall provide a list of all known Class Members to Class Counsel. Class Counsel shall engage in reasonable efforts to verify the list of Class Members is complete and accurate. The City shall then disseminate information about the procedures an Individual must follow in order to apply for recognition as a Class Member to the Individuals identified through the City's and Class

Counsel's efforts. The City shall mail, by first-class United States Mail, the Settlement Notice (with the Final Hearing date and deadlines established by the Court in the Preliminary Approval Order) to all Class members who can be identified through a reasonable effort. The City shall provide Class Counsel with a list of the names and addresses of all Class Members and Unnotified Class Members who submit documents indicating that they wish to object to the Settlement. The City shall also provide Class Counsel with a list of the names and addresses of all Class Members and Unnotified Class Members who have submitted Exclusion Requests to opt out of the Certified Class.

B. 90-Day Application Period

For 90 days after the close of the 30-day notice period, the City shall accept applications for class membership that are submitted by Class Members. Defendant may reject, or decline to consider, any untimely application for class membership. Defendant shall accept and consider any premature applications for class membership as if such applications were received on the first day of the 90-day application period. An application's timeliness shall be determined based on the timestamp on the email submitting the application and shall be based on Pacific Time. Class Members may amend, supplement, or correct an application for class membership at any time within the 90-day application period before the City issues a decision on the application, but the date of such amendment, supplementation, or correction shall be treated as the submission date.

C. Application Procedure for Class Membership and Relief

1. Any Individual who reasonably believes that he or she qualifies as a Class Member may submit a Claim Form to Defendant at a designated address and email address.

2. Each and every Claim Form, in order to be considered for approval by Defendant, must include the following information:

- a) Proof of identity; and
- b) Proof of address.

3. Defendant will consider and process Claim Forms submitted in English or Spanish.

4. Each Claimant bears the burden of showing by a preponderance of the evidence that he or she meets the requirements for class membership.

D. Processing Applications for Class Membership and Relief

1. Class Counsel shall serve as the primary point of contact for all communications by Defendant regarding all applications for class membership.

2. Defendant shall promptly consider all properly filed Claim Forms for class membership. Defendant shall provide notice by email to Class Counsel every two weeks regarding final decisions on applications for class membership made since the last such notice. If Defendant has not made a decision on an application within forty-five (45) days of the date of submission of the application, Class Counsel may seek to compel a decision on the application. Any dispute regarding Defendant's failure to render a decision on an application shall become moot if and when Defendant makes a decision on the application at issue.

3. If Defendant determines that an Individual does not meet the criteria for inclusion in the Settlement Class, they shall identify the basis for that determination (*e.g.*, by identifying the class membership criteria that the applicant failed to meet) in writing at the time that they provide notice to Class Counsel that the application was denied.

E. Disputes about Class Membership

1. Class Counsel may challenge a decision by Defendant denying an application for class membership by submitting within 30 days of Defendant's decision a written statement to Defendant's Counsel detailing the reasons for their disagreement and requesting to meet and confer with Defendant's Counsel regarding the dispute. If the dispute is not otherwise resolved, counsel for the Parties shall meet and confer telephonically and/or in person, in a good faith effort to resolve any disagreement about whether an Individual meets the criteria for inclusion in the Settlement Class. The meeting of counsel shall occur within 30 days of Defendant's Counsel's receipt of Plaintiffs' written statement, unless the parties otherwise agree.

2. In the event that any disagreement cannot be resolved through the meet-and-confer process described in Section IV.E.1, Class Counsel or Defendant's Counsel may request a ruling from the assigned Judge to resolve the dispute.

F. *Cy Pres*

Upon occurrence of the Effective Date, the City shall distribute settlement payments in accordance with Section II of the Agreement. To the extent a check is not cashed within one hundred and eighty (180) days of the date it is mailed, the funds shall be deposited with an appropriate non-profit legal services entity that provides services for persons who reside in the City of Indio. This recipient shall be mutually agreed upon by the Parties.

G. Objections

Any Class Member who wishes to object to the fairness, reasonableness, or adequacy of the class relief set forth in Section II of this Agreement, must (1) deliver written objections to Class Counsel and Defendant's Counsel, or (2) file them with the Court, no later than 90 calendar days after entry of the Preliminary Approval Order. The delivery date is deemed to be the date the objection is deposited in the U.S. Mail or international mail as evidenced by the postmark, or if the objection is submitted electronically to Class Counsel and Defendant's

Counsel , or to the Court, the date indicated by the automated timestamp on that electronic submission.

Written objections must be verified by a declaration under penalty of perjury or a sworn affidavit and must include: (1) the name and case number of the Action, (2) the full name, address, and telephone number of the person objecting; (3) a statement of each objection; and (4) a written brief detailing the specific reasons, if any, for each objection, including any legal and factual support the objector wishes to bring to the Court's attention and any evidence the objector wishes to introduce in support of the objection(s). Any Class Member who submits a written objection, as described in this paragraph, has the option to appear at the Final Hearing, either in person or through counsel hired at the Class Member's expense, to object to the fairness, reasonableness, or adequacy of the Class Settlement, or to the amount of attorneys' fees. However, Class Members (with or without their attorneys) intending to make an appearance at the Final Hearing must also deliver to either (a) Class Counsel, or (b) file with the Court, a "Notice of Intention to Appear" no later than 90 days after entry of the Preliminary Approval Order. Only Class Members who deliver timely Notices of Intention to Appear in accordance with this paragraph may speak at the Final Hearing. If a Class Member makes an objection through an attorney, the Class Member shall be responsible for his or her personal attorneys' fees and costs.

H. Payment to Plaintiffs and Class Members

Upon occurrence of the Effective Date, the City shall, as soon thereafter as reasonably practicable, but within no more than 45 calendar days: mail, by first-class United States Mail, to Plaintiffs and Class Members checks in the amounts determined pursuant to Section II of this Agreement. To the extent a check issued is not cashed within one hundred and eighty (180) days of the date it is mailed, the City shall send a check in the amount equal to the sum of the uncashed check to the *cy pres* recipient specified in Section IV.F of this Agreement. The City may, at its discretion, send to the *cy pres* recipient a single check in the amount equal to the sum of all uncashed checks, instead of sending seriatim payments in the amount of individual uncashed checks.

V. SETTLEMENT NOTICE

The Parties agree that the Settlement Notice provides information sufficient to inform the Class Members of the material terms of the Settlement, the appropriate means for obtaining additional information regarding this Agreement and the Action, the appropriate means for and information about obtaining a settlement payment pursuant to the Settlement, and the procedures for objecting to the Settlement. To facilitate the efficient administration of this Settlement, and to facilitate the making of settlement payments to Class Members under the Settlement, the City shall provide all Class Members with copies of the Settlement Notice pertaining to the Action, as well as contact information for Class Counsel in the event they have questions. Plaintiffs will request the Court to approve the Settlement Notice and Forms in the Preliminary Approval Order.

As soon as practicable, but no later than 30 days after the Court's entry of the Preliminary Approval Order unless otherwise ordered by the Court, the City shall send or cause to be sent, by first-class United States Mail, a copy of the Settlement Notice and Forms to every Class Member who can be identified through reasonable effort. Before the mailing of such Settlement Notice and Forms, the City will obtain or cause to be obtained address updates utilizing the U.S. Postal Service's National Change of Address Database.

The Parties agree that the dissemination of the Settlement Notice and Forms by mail in the manner specified in this Section V satisfies the notice requirements of due process and Rule 3.766 of the California Rules of Court. Plaintiffs will request the Court to approve, in the Preliminary Approval Order, the direct mailing of the Settlement Notice and Forms as set forth in this Section V.

VI. COSTS OF NOTICE AND CLAIMS ADMINISTRATION

The Parties agree that (1) all costs of disseminating the Settlement Notices and Forms provided for in Section V of this Agreement, and (2) all other Administration Expenses, shall be paid by Defendant. Unless otherwise specifically agreed in writing, Defendant shall not be responsible for any cost, including but not limited to attorneys' fees, that may be incurred by, on behalf of, or at the direction of Plaintiffs or Class Counsel in (a) defending the Agreement or the Settlement against any challenge to them, (b) defending against any challenge to any order or judgment entered pursuant to the Agreement, or (c) for any other reason.

VII. RELEASE

By executing this Agreement, Plaintiffs, on behalf of themselves and the Class Members (including their affiliated business entities, if any), acknowledge that, upon entry of the Final Order by the Court, the Action shall be dismissed with prejudice, an order of dismissal with prejudice shall be entered, and all Released Claims (as defined herein) shall thereby be conclusively settled, compromised, satisfied, and released as to the City of Indio.

In connection with such release of claims, Plaintiffs and the Class Members hereby acknowledge that they are aware that they or their attorneys may hereafter discover claims or facts in addition to or different from those which they now know or believe to exist with respect to the Released Claims, but that it is their intention to hereby fully, finally, and forever settle and release all of the Released Claims, known or unknown, suspected or unsuspected, that they may have against the City of Indio. In furtherance of such intention, the release herein given to the City of Indio by the Plaintiffs and Class Members shall be and remain in effect as a full and complete general release of all Released Claims.

Notwithstanding the above, the Court shall retain jurisdiction over the Parties, the Class Members, and the Settlement with respect to the future performance of the terms of this Settlement Agreement, and to assure that all payments and other actions required by the Settlement are properly carried out.

VIII. COVENANT NOT TO SUE

Plaintiffs, on behalf of themselves, the Class Members, and their affiliated business entities (if any), (1) covenant and agree that neither Plaintiffs nor any of the Class Members, nor any of Plaintiffs' or Class Members' affiliated business entities (if any), nor anyone authorized to act on behalf of any of them, will commence, authorize, or accept any benefit from any judicial or administrative action or proceeding, other than as expressly provided for in this Settlement, against the City, or any of them, in either their personal or corporate capacity, with respect to any claim, matter, or issue that in any way arises from, is based on, or relates to any alleged loss, harm, or damages allegedly caused by the City, or any of them, in connection with the Released Claims; (2) waive and disclaim any right to any form of recovery, compensation, or other remedy in any such action or proceeding brought by or on behalf of any of them; and (3) agree that this Settlement shall be a complete bar to any such action.

IX. THE COURT'S CONTINUING JURISDICTION

As set forth in supra Section II.B.5, the City of Indio agrees to discontinue its practice of recovering attorneys' fees from criminal defendants and to enhance oversight over private attorneys who serve as deputy city prosecutors. For that reason, this Court shall maintain jurisdiction over the terms of this Agreement, and any violations of this Agreement shall be resolved before this Court.

X. REPRESENTATIONS AND WARRANTIES

Each of the Parties represents and warrants to, and agrees with, each of the other Parties as follows:

A. Each of the Parties has had the opportunity to receive, and has received, independent legal advice from its attorneys regarding the advisability of making the Settlement, the advisability of executing this Agreement, and the legal and income-tax consequences of this Settlement, and fully understands and accepts the terms of this Settlement.

B. Plaintiffs represent and warrant that no portion of any claim, right, demand, action, or cause of action against the City that Plaintiffs are releasing in this Agreement, and no portion of any payment to which Plaintiffs may be entitled, has been assigned, transferred, or conveyed by or for Plaintiffs in any manner; and no person other than the Plaintiffs and the Class Members have any legal or equitable interest in the claims, demands, actions, or causes of action to be released in this Agreement.

C. Any other person or entity (including, but not limited to, insurers, lien holders, business partners, related or associated business entities, or other creditors) that has any judgments, liens, subrogation interests, or related claims which arise out of the Released Claims or the damages alleged by the Plaintiffs and the Certified Class as a result of the Released Claims must be satisfied from the payments to claimants as detailed in Section III herein. Plaintiffs and Class Members agree that they are liable for, and will release, hold harmless, defend, and

indemnify the City from and against any and all Released Claims, known or unknown, that may be brought by any person, firm, corporation, or other entity, including any lien holders, against the City for any such judgments, liens, interests, or claims that exist arising out of the Released Claims.

D. Defendant represents that no prosecutions commenced by Silver & Wright LLP or one or more of its agents, acting as City Prosecutor for the City of Indio prior to December 17, 2014 (the date the City of Indio enacted Ordinance Number 1668) resulted in any later “cost recovery” invoice from Silver & Wright LLP or any other source. No “cost recovery” was ever paid in connection with prosecutions that commenced in 2014 or prior to the enactment of Ordinance Number 1668.

E. None of the Parties relies or has relied on any statement, representation, omission, inducement, or promise of any other party (or any officer, agent, employee, representative, or attorney for any other party) in executing this Agreement, or in making the Settlement provided for herein, except as expressly stated in this Agreement.

F. Each of the Parties has investigated the facts pertaining to the Settlement and this Agreement, and all matters pertaining thereto, to the full extent deemed necessary by that party and its attorneys.

G. Each of the Parties has carefully read, and knows and understands, the full contents of this Agreement and is voluntarily entering into this Agreement after having had the opportunity to consult with, and having in fact consulted with, its attorneys.

H. Section titles or captions contained herein are inserted as a matter of convenience and for reference, and in no way define, limit, extend, or describe the scope of this Settlement or any provision hereof.

I. Each of the Parties has participated in the drafting of all provisions of this Agreement, has had an adequate opportunity to read, review, and consider the effect of the language of this Agreement, and has agreed to its terms.

J. It is understood and agreed that this Agreement is for the compromise of disputed claims and is not to be construed as or deemed to be an admission of any liability, fault, or responsibility on the part of the City.

K. It is understood and agreed that the terms and conditions of this Agreement are the result of lengthy, intensive, arm’s-length negotiations between the Parties and that this Agreement shall not be construed in favor of or against any party by reason of the extent to which any party or its counsel participated in the drafting of this Agreement.

L. This Agreement constitutes and comprises the entire agreement among the Parties with respect to the subject matter hereof. It supersedes all prior and contemporaneous oral and written agreements and discussions. It may be amended only by an agreement in writing, signed by all Parties hereto.

M. The Parties agree that any dispute regarding the interpretation or enforcement of the terms of this Settlement or in connection with this Agreement shall be resolved by the Court.

XI. MISCELLANEOUS

A. Conditional Nature of Agreement

At the Plaintiffs' option, expressed in written notice to the City's counsel, this Agreement shall become null and void, and no obligation on the part of any of the Parties will accrue, if the Court materially alters any of the terms of this Agreement to the detriment of Plaintiffs or the Certified Class, or fails to enter the Preliminary Approval Order, Final Approval Order, or the Final Approval Order in the Action in substantially the form submitted by the Parties. At the City's option, expressed in written notice to Class Counsel, this Agreement shall become null and void, and no obligation on the part of any of the Parties will accrue, if the Court materially alters any of the terms of this Agreement to the detriment of the City, or fails to enter the Preliminary Approval Order, Final Approval Order, or the Final Approval Order in the Action in substantially the form submitted by the Parties. If this Agreement becomes null and void, the Parties shall move forward with the Action as though no settlement had been reached, all of the Parties to the Action being placed in the same position they were before this Settlement was proposed, negotiated, and agreed upon.

B. Severability

None of the terms of this Agreement is severable from the others. However, if the Court should rule that any term is void, illegal, or unenforceable for any reason, the City, in its sole discretion, and Plaintiffs, in their sole discretion (but acting in accord with their duties and obligations to the Certified Class), may elect to waive any such deficiency and proceed with the Settlement under the terms and conditions ultimately approved by the Court.

C. Effectiveness, Amendments, and Binding Nature

This Agreement may be amended only by written agreement signed by the Parties. Except as otherwise stated above, each of the Parties, including Plaintiffs on behalf of themselves and the Certified Class, expressly accepts and assumes the risk that, if facts or laws pertinent to matters covered by this Agreement are hereafter found to be other than as now believed or assumed by that party to be true or applicable, this Agreement shall nevertheless remain effective.

This Agreement is binding on, and shall inure to the benefit of, the Parties in the Action and the Class Members and their respective agents, employees, representatives, officers, directors, parents, subsidiaries, assigns, executors, administrators, insurers, and successors in interest.

D. Cooperation in Implementation

The City, Plaintiffs, and their respective counsel (including Class Counsel) agree to prepare and execute any additional documents that may reasonably be necessary to effectuate the terms of this Agreement.

E. Governing Law

This Agreement shall be governed by, construed, and enforced in accordance with the laws of the state of California without giving effect to doctrines related to conflicts of law.

F. No Admission of Liability

The Parties are entering into this Settlement for the purpose of compromising and settling disputed claims. Nothing in this Agreement or in the documents relating to the Settlement shall be construed, deemed, or offered as an admission by any of the Parties, or by any member of the Certified Classes, for any purpose in any judicial or administrative action or proceeding, whether in law or in equity, and regardless of whether this Agreement ultimately becomes effective.

G. Income Tax Obligations

No representation has been made to the Plaintiffs, Class Members, or their attorneys by the City regarding the taxability of any portion of the payments under this Agreement. Plaintiffs, Class Members, and Class Counsel are solely responsible for their own tax filing and payment obligations arising from this Agreement.

H. Signatures

This Agreement may be executed in counterparts, and, when so executed, shall constitute a binding original. A signature, or copy of a signature, transmitted electronically, including by facsimile or email, shall serve as an original for all purposes.

Plaintiffs:	Defendant:
Ramona Rita Morales	By:
<i>Ramona Rita Morales</i>	The City of Indio
Date:	Its:
	Date:
Investment Development Group, LLC	
Date: <i>12-12-18</i>	

D. Cooperation in Implementation

The City, Plaintiffs, and their respective counsel (including Class Counsel) agree to prepare and execute any additional documents that may reasonably be necessary to effectuate the terms of this Agreement.

E. Governing Law

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H. Signatures

This Agreement may be executed in counterparts, and, when so executed, shall constitute a binding original. A signature, or copy of a signature, transmitted electronically, including by facsimile or email, shall serve as an original for all purposes.

Plaintiffs:	Defendant:
Ramona Rita Morales	By: The City of Indio
Date:	Its:
Investment Development Group, LLC	Date:
<i>Lew Blackwell</i>	
Date: 12/11/2013	

D. Cooperation in Implementation

The City, Plaintiffs, and their respective counsel (including Class Counsel) agree to prepare and execute any additional documents that may reasonably be necessary to effectuate the terms of this Agreement.

E. Governing Law

This Agreement shall be governed by, construed, and enforced in accordance with the laws of the state of California without giving effect to doctrines related to conflicts of law.

F. No Admission of Liability


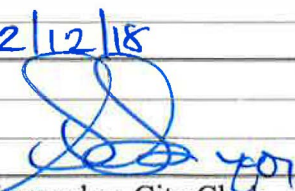
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G. Income Tax Obligations

No representation has been made to the Plaintiffs, Class Members, or their attorneys by the City regarding the taxability of any portion of the payments under this Agreement. Plaintiffs, Class Members, and Class Counsel are solely responsible for their own tax filing and payment obligations arising from this Agreement.

H. Signatures

This Agreement may be executed in counterparts, and, when so executed, shall constitute a binding original. A signature, or copy of a signature, transmitted electronically, including by facsimile or email, shall serve as an original for all purposes.

Plaintiffs:	Defendant: The City of Indio
	
Ramona Rita Morales	By: Mark Scott, City Manager
Date:	Date: 12/12/18
	
Investment Development Group, LLC	Cynthia Hernandez, City Clerk
Date:	

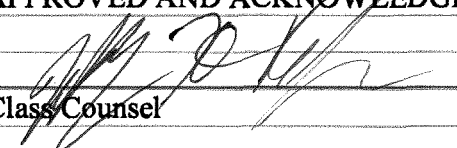
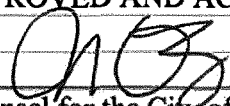
APPROVED AND ACKNOWLEDGED:	APPROVED AND ACKNOWLEDGED:
	
Class Counsel	Counsel for the City of Indio

EXHIBIT A
Claims Form

**[PROPOSED CLAIMS FORM TO BE FILED
SEPARATELY FROM THE SETTLEMENT
AGREEMENT (*SEE* CMO Section H.11)]**

EXHIBIT B
Exclusion Form

SUPERIOR COURT OF THE STATE OF CALIFORNIA FOR THE COUNTY OF RIVERSIDE

Morales, et al. v. The City of Indio, et al.

Case No. RIC1803060

REQUEST FOR EXCLUSION FROM CLASS ACTION SETTLEMENT

PLEASE READ THE FOLLOWING IMPORTANT INSTRUCTIONS ABOUT WHETHER YOU SHOULD COMPLETE THIS EXCLUSION FORM.

YOU SHOULD NOT COMPLETE THIS FORM IF YOU WANT TO BE INCLUDED IN THIS CLASS ACTION SETTLEMENT. IF YOU DO NOT WANT TO BE INCLUDED IN THE SETTLEMENT, COMPLETE THIS FORM IN ITS ENTIRETY, SIGN THE FORM UNDER PENALTY OF PERJURY, AND RETURN IT, VIA FIRST CLASS MAIL, EMAIL, OR FAX, TO THE ADDRESS BELOW NOT LATER THAN [DATE], 2018.

IF YOU ARE REQUESTING EXCLUSION FROM THE SETTLEMENT, PLEASE CERTIFY THE FOLLOWING:

- I am a natural or legal person who pleaded guilty or no content in a criminal case where Silver & Wright LLP, or one or more of its agents, acted as prosecuting city attorney for the City of Indio.
- I wish to be **excluded** from the Class and to **not** participate in the proposed settlement. I confirm that I have received the Notice of Class Action Settlement and Hearing Date for Court Approval, and the claims procedure in the above-referenced litigation. I have decided NOT to participate in the proposed settlement and I understand that I will not receive any benefit from the Settlement.

REQUESTOR INFORMATION (Please Type or Print in Black or Blue Ink)

(First Name) (MI) (Last Name) (Telephone Number)

(Mailing Address) (Street, P.O. Box, Suite or Office Number, as applicable)

(City) (State) (Zip Code)

SIGNATURE & CERTIFICATION

By filling in this request for exclusion, I hereby declare under penalty of perjury that I have read and reviewed the Class Notice and that the information I am providing in this request for exclusion is true and correct.

Signature: _____ Date: _____

Print Name: _____

Mail, email, or fax your request to: Address: [ADDRESS LINE 1]
[ADDRESS LINE 2]
Fax Number: [FAX]
Email: [EMAIL ADDRESS]

EXHIBIT C
Objection Form

NOTICE OF OBJECTION TO CLASS ACTION SETTLEMENT FORM
(“NOTICE OF OBJECTION”)

If you wish to object to the class settlement in the above-referenced litigation, you must timely complete, sign, and mail this Notice of Objection to the Court and counsel for the parties to the class settlement at the addresses listed below.

I, (Type or Print Name) _____, confirm that I have received the Notice of Class Action Settlement in the above-referenced litigation outlining the settlement terms, the hearing data for court approval of the class settlement, as well as the procedures to timely request to be excluded or object to the class settlement. Having read said materials, I hereby object to the class settlement in the above-referenced litigation. The grounds for my objection are as follows:

[Briefly describe the nature of your objection(s). You may attach separate pages if necessary.]

Signature: _____ Dated: _____

Current Address: _____

City, State, and Zip Code: _____

Current Telephone Number: _____

Please mail or deliver this Objection Form to the Clerk of the Superior Court at the address listed below:

Attn: Morales v. City of Indio Class Settlement
Institute for Justice
901 N. Glebe Road, Suite 900
Arlington, VA 22203

EXHIBIT D
Proposed Judgment

[PROPOSED JUDGMENT: *SEE* SECTION III.E]