



Agenda # 8.1
Meeting Date: April 7, 2009

CITY COUNCIL

AGENDA REPORT

TO: Honorable Mayor and Members of the City Council

FROM: James DeStefano, City Manager

TITLE: Consideration of a Settlement Agreement with the City of Industry regarding the 2008 Revised Industry Business Center Development Project (NFL Stadium based development project)

RECOMMENDATION:

Approve, contingent upon receipt of a Mutual Release from the Industry Urban Development Agency.

REPORT SUMMARY:

The proposed Settlement Agreement provides commitments by the City of Industry to mitigate impacts of the proposed project and provide additional community benefits, including resources for traffic mitigation, community and recreation facilities and programs, reimbursement of the City's project-related legal fees, and additional benefits as described in the agreement.

BACKGROUND:

In 2004, the City of Industry certified an Environmental Impact Report (EIR) for the 2004 Industry Business Council (IBC) Plan of Development, which included 4.8 million square feet of commercial, industrial, office, and retail uses. In 2008, the project's developer, known as Industry East Business Center, LLC, submitted a request to the City of Industry to modify the 2004 project to include 2.985 million square feet of office, retail and industrial space and a 75,000 seat National Football League stadium with related surface and structured parking facilities (NFL Stadium based development project).

In May 2008, Industry provided notice of its preparation of a Supplemental Environmental Impact Report (SEIR) to evaluate the environmental impacts of the new project, to evaluate alternatives to the project and to identify and develop mitigation measures to address those impacts. Diamond Bar voiced its initial concerns in writing, identifying potential impacts of the project upon the community. In October 2008, the City submitted a 102 page letter outlining detailed concerns related to traffic, visual impacts, noise, and potential impacts to public safety services.

In January 2009 and February 2009, the City of Industry certified the revised Final 2008 Supplemental Environmental Impact Report incorporating a Mitigation Monitoring and Reporting Program and a Statement of Overriding Considerations. On February 26, 2009, Industry approved the revised IBC plan of development. Prior to each Industry action, Diamond Bar's lawyers submitted additional correspondence to Industry raising concerns regarding the adequacy of the EIR and other project approvals.

Following the City of Industry's certification of the Supplemental EIR in February 2009, the statute of limitations to initiate litigation challenging the document was due to expire on March 30, 2009. At the March 17, 2009 Diamond Bar City Council meeting, the Council authorized the City Manager and City Attorney to enter into a Tolling Agreement with the City of Industry and Industry East Business Center to extend the deadline for filing litigation.

On March 26, 2009, the City of Industry City Council approved the Tolling Agreement that extends the date upon which the City of Diamond Bar may file a lawsuit from March 30, 2009 to April 23, 2009. At that same March meeting, the City of Industry approved a proposed Settlement Agreement with Diamond Bar. The purpose of the Tolling Agreement is to protect the City's right to initiate litigation while considering a proposed settlement with the City of Industry that is intended to secure the mitigation of project impacts and to provide additional benefits to Diamond Bar.

DISCUSSION:

The City Council is presented with the following options:

1. Direct legal counsel to Initiate litigation; or
2. Approve the Settlement Agreement: or
3. Continue the matter to a later date

The California Environmental Quality Act (CEQA) requires project developers to prepare an EIR that identifies the proposed project's detrimental environmental impacts, and reduce them, if possible. If Diamond Bar chooses to initiate litigation by the April 23, 2009 deadline, the lawsuit would, among other legal claims, challenge the adequacy of Industry's Supplemental EIR. The City would then litigate its claim that the EIR does not adequately identify the environmental issues associated with the project. Ultimately, the courts would determine if the City's claims were valid. If the trial court found in favor of the City on one or more of the claims, the City of Industry would likely be required to prepare a new EIR and possibly take other actions to cure alleged deficiencies in the project approval. At that point, Industry would decide whether or not to appeal the decision or correct the court-identified deficiencies. These corrections would not necessarily result in additional mitigation measures or provide for a substantially modified project. If the trial court found in favor of the City of Industry, the EIR would stand and Diamond Bar would have to decide whether or not to appeal the decision.

It appears that some persons interested in this matter may have the impression that filing a lawsuit challenging Industry's EIR and project approvals will stop the project. However, the filing of a challenge would not necessarily do so. It would almost certainly delay the project as it is unlikely, but not unlawful, for the developer to proceed while litigation is pending. While CEQA requires the preparation of an EIR that identifies the detrimental environmental impacts of the proposed project and feasible mitigation measures, it does not decide whether or not a project should be built. An EIR is an informational document, designed to inform decision makers of the impacts of a project. As long as the EIR is adequate, a project may be approved, even if it has unmitigable impacts, and in this case, even if the identified environmental impacts associated with a revised project increase.

As the approving authority, the Industry City Council, similar to any other jurisdiction considering the certification of an EIR, could adopt a Statement of Overriding Considerations. In effect, a Statement of Overriding Considerations states that the environmental impacts of the project cannot be fully mitigated but that the overall merits of the project outweigh any negative environmental impacts.

Even a successful lawsuit challenging the validity of the CEQA documentation does not provide any assurance that the City of Diamond Bar will stop the project, or if the project proponents cure alleged deficiencies and re-approve the project, receive additional environmental mitigation measures. Furthermore, if the project ultimately goes forward, Diamond Bar will have lost the enhanced benefits negotiated by City staff and agreed to by the City of Industry in the proposed Settlement Agreement.

In sum, litigation presents risks. The proposed Settlement Agreement, on the other hand, provides certainty that if the project goes forward Diamond Bar residents will enjoy improved mitigation measures and a number of community benefits that would otherwise not be available.

SUMMARY OF SETTLEMENT AGREEMENT

Over the past several months City staff engaged Industry in comprehensive negotiations with the objective to receive enhanced project mitigation and additional benefits for the community. The proposed Settlement Agreement is the product of extensive negotiations between the parties.

In addition to the measures already provided in the conditions of project approval and in the approved mitigation measures, the proposed Settlement Agreement establishes commitments from Industry to enhance certain project related impacts and to provide additional benefits to Diamond Bar. A copy of the Settlement Agreement negotiated by City staff and legal counsel is attached. The Agreement is summarized as follows:

Traffic Mitigation Fund

The City of Industry will pay the City of Diamond Bar a total of \$20 million to mitigate traffic issues generated by the stadium-based development project. The specific use of

these monies is at the sole discretion of the City of Diamond Bar. The City of Industry will be responsible for all roadway improvements in and around the stadium project.

The monies will be provided by Industry in five phases as construction progresses:

1. \$5 million shall be deposited upon issuance of a grading permit for the stadium.
2. \$2.5 million shall be deposited 24 months after the first installment, but no earlier than the first building permit for the stadium.
3. \$2.5 million shall be paid concurrently with the issuance of an occupancy permit for the stadium or when the stadium becomes operational.
4. \$7 million shall be deposited when the second and third installments have been 90 % expended by Diamond Bar.
5. \$3 million shall be paid concurrent with the issuance of the first building permit for any retail store, restaurant, office building other than those directly related to the stadium operation.

Wayfinding Signage

The City of Industry will pay all costs associated with the implementation of a “wayfinding” signage program directing attendees to the project for stadium events, including permanent signage, to be installed at locations agreed upon by both parties.

Public Safety Impacts

- During events which exceed 25,000 attendees, Grand Avenue would retain two open travel lanes at all times to ensure the free flow of emergency vehicles. In addition, public safety personnel and resources will not be diminished in Diamond Bar as a result of the stadium or its related facilities.
- Additional public safety costs associated with the project or a specific event would be borne solely by the City of Industry or stadium operator, including traffic control and a Sheriff’s sub-station located within the stadium.
- Establishment of a Public Safety Oversight committee comprised of representatives from the Sheriff’s and Fire departments, cities of Diamond Bar and Industry and stadium personnel. The committee will provide oversight to the development and implementation of an event-day public safety plan for the stadium and immediately adjacent areas within Diamond Bar.

Noise and Light Impacts

- A six foot block wall and landscaped berm will be constructed to lessen visual impacts to residential neighborhoods immediately adjacent to the eastern parking area.
- A “quiet zone” will be constructed at the Lemon Avenue railway crossing located just north of Lycoming Street to eliminate the locomotive horn noise for the community.

Community Facility Fund

- The City of Diamond Bar will establish a Diamond Bar Community Facility Fund. The City of Industry will provide resources annually to the City of Diamond Bar based upon a specific detailed formula as described in the agreement. Use of these monies is at the sole discretion of the City of Diamond Bar and will be used for parks, programs and services throughout the community.
- Payments from Industry will be received annually in any year that the stadium is in operation. The terms of the payments are as follows:
 - When a minimum of 24 total events occur in the stadium the base payment shall be \$700,000 or in any year that a minimum of 10 or more NFL games are played in the stadium the base payment shall be \$700,000.
 - If the number of events exceeds 24, the base payment shall increase by \$100,000.
 - In any year that the number of events exceeds 29, the base payment shall increase by an additional \$100,000.
 - In any year that the number of events exceeds 34, the base payment shall be increased by an additional \$100,000. For example, if the number of events in the NFL stadium in the second year of operation is 35 events, the base payment is \$1,000,000.
- The payment terms will be reviewed every five years based upon the cumulative annual changes in the NFL ticket price for games in the stadium. For example, if the beginning ticket price is \$50.00 and the cumulative increases and decreases in the average ticket price for each of the first five years is \$5.00, the percentage change is 10 percent. Therefore, the base payment of \$700,000 would increase to \$770,000 for years 6 through 10.

The annual contributions improve each year based upon the number of events and the increases as described within the agreement. The community facility resources received from Industry are substantial and remain for as long as the stadium is operating with events, as described in detail within the agreement. The proposed annual contributions result in tens of millions of dollars expressly for the benefit of Diamond Bar residents.

Recreation Facilities Fund

- In addition to the Community Facility Fund proposal, the City of Industry will pay \$1 million to Diamond Bar for the creation of a new athletic field at Lorbeer Middle School. If for any reason the athletic field project is not approved or completed, the monies will be placed within the Community Facility Fund.

Former Honda Site

- Traffic mitigation for the proposed project will require improvements to Grand Avenue and the ramps at the freeway intersection. The agreement outlines a proposal to maintain the former Honda site to a minimum of 5 acres for future development opportunities. The agreement outlines the conveyance of an

adjacent 1.33 acres of property to the City of Diamond Bar. A copy of the potential site plan is incorporated within the detailed agreement. Should a hotel be built on the site, transient occupancy tax revenue to Diamond Bar could equal \$500,000 annually.

Most Favored Entities Clause

- In the event the City of Industry enters into or proposes to enter into a NFL stadium related revenue-sharing agreement with one or more municipalities that exceeds this agreement the City of Diamond Bar would be entitled to the same terms.

Reimbursement of Legal Fees

- The agreement with Industry provides for reimbursement of Diamond Bar's legal and consultant costs up to \$300,000.

The provisions described within the agreement only arise if Industry commences and proceeds with development of the 2008 Revised IBC plan incorporating the NFL stadium or any other substantially comparable plan of development. In exchange for the Settlement Agreement, Diamond Bar agrees not to sue Industry or the Industry East Business Center or support any other legal challenge concerning the 2004 IBC plan of Development or the 2008 Revised IBC Plan of Development or the EIRs prepared for such plans. A Mutual Release has been received from Industry East Business Center, LLC. An additional release is forthcoming from the Industry Urban Development Agency (IUDA).

Additional provisions are contained within the document attached. We believe the summary provided above provides the Council with an accurate description of the substance of the document under consideration.

RECOMMENDATION:

Since the initial announcement of the Industry proposal, the City of Diamond Bar has vigorously communicated its concerns to the City of Industry and participated actively in the process in order to protect the residents of Diamond Bar from the impacts of the proposed project on our community. Recognizing the project's size and scope, we have remained engaged in the process at every step, providing on-the-record correspondence and testimony outlining issues of concern to the community.

We have engaged expert consultants and outside legal counsel to help guide us through this process and to protect our legal position. Extensive information regarding the proposed project has been made available at City Hall and on the City website. Diamond Bar has kept all its options open at all times, so that the City can take the action determined by the City Council to best and most prudently protect and serve Diamond Bar residents.

The City of Industry's willingness to enter into negotiations with Diamond Bar is significant. The agreement demonstrates their understanding of the project impacts upon Diamond Bar and needs of the Diamond Bar community. The agreement provides mitigation of impacts and revenue sharing not specifically required in the EIR. The terms of the proposed agreement will ultimately benefit the City of Diamond Bar and its residents for generations.

City staff and legal staff have negotiated the settlement agreement in considerable detail. The agreement has received the approval of the City Council of the City of Industry. Any proposed modification to the agreement provides Industry with the opportunity to change any of the obligations they have already approved.

On balance, as between the relative merits and disadvantages of suing versus settling discussed above, Staff recommends the approval of the settlement agreement, as submitted, as it provides for enhanced mitigation measures and significant long term benefits to the residents of Diamond Bar.

Attachments:

1. Summary of Settlement Agreement
2. Settlement Agreement
3. Tolling Agreement

Summary of Proposed Settlement Agreement Submitted by the City of Industry

The following is a summary of the proposed settlement agreement submitted by the City of Industry regarding the City of Industry/Majestic Realty proposed NFL Stadium based development project. To view this and all documents related to the project in their entirety, visit www.cityofdiamondbar.com. For questions or comments, please contact the City of Diamond Bar at 909.839.7010 or email at info@ci.diamond-bar.ca.us.

Background

Tolling Agreement

On March 26, 2009, the City of Industry City Council approved a Tolling Agreement that extends the date upon which the City of Diamond Bar may file a lawsuit from March 30, 2009 to April 23, 2009.

Proposed Settlement Agreement

At that same March meeting, Industry also approved a proposed Settlement Agreement. After extensive negotiations between the two cities, the proposed Settlement Agreement reflects measures to mitigate the impacts of the proposed stadium based development upon the City of Diamond Bar.

The City of Diamond Bar City Council will consider the proposed agreement at its April 7 meeting. At this meeting, the City Council has the option to take the following course of action to: approve the proposed settlement agreement, continue the matter to a later date; or not accept the terms of the proposed settlement agreement and direct legal counsel to file litigation against the City of Industry.

Terms of Proposed Settlement Agreement

Traffic Mitigation Fund

The City of Industry will pay the City of Diamond Bar a total of \$20 million to mitigate traffic issues generated by the stadium based development. Use of these monies is at the sole discretion of the City of Diamond Bar and will only be used for projects located within city boundaries. The City of Industry will be responsible for all roadway improvements in and around the stadium project.

The monies will be paid in five phases as construction progresses:

1. \$5 million shall be deposited upon issuance of a grading permit for the stadium.
2. \$2.5 million shall be deposited 24 months after the first installment, but no earlier than the first building permit for the stadium.

3. \$2.5 million shall be paid concurrently with the issuance of an occupancy permit for the stadium or when the stadium becomes operational.
4. \$7 million shall be deposited when the second and third installments have been 90 % expended by Diamond Bar.
5. \$3 million shall be paid concurrent with the issuance of the first building permit for any retail store, restaurant, office building other than those directly related to the stadium operation.

Wayfinding Signage

The City of Industry will pay all costs associated with the implementation of a “wayfinding” signage program for stadium events, including permanent signage, to be installed at locations agreed upon by both parties.

Public Safety Impacts

- During events which exceed 25,000 attendees, Grand Avenue would retain two open travel lanes at all times to ensure the free flow of emergency vehicles. In addition, public safety personnel and resources are not be diminished in Diamond Bar as a result of the stadium or its related facilities.
- Additional public safety costs associated with the project or a specific event would be borne solely by the City of Industry or stadium operator, including traffic control and a Sheriff’s sub-station located within stadium.
- Establishment of a Public Safety Oversight committee comprised of representatives from the Sheriff’s and Fire departments, cities of Diamond Bar and Industry and stadium personnel. The committee will provide oversight to the development and implementation of an event-day public safety plan for the stadium and immediately adjacent areas within Diamond Bar.

Noise and Light Impacts

- A six foot block wall and landscaped berm will be constructed to lessen visual impacts to residential neighborhoods immediately adjacent to the eastern parking area.
- A “quiet zone” will be constructed at the Lemon Avenue railway crossing located just north of Lycoming Street.

Community Facility Fund

- Establishment of a Diamond Bar Community Facility Fund. Use of these monies is at the sole discretion of the City of Diamond Bar and may be used for parks, programs and services for the community.
- Payments will be received annually in any year that the stadium is in operation. The terms of the payments are as follows:
 - When a minimum of 24 total events occur in the stadium the base payment shall be \$700,000 or in any year that a minimum of 10 or more NFL games are played in the stadium the base payment shall be \$700,000.
 - If the number of events exceeds 24, the base payment shall increase by \$100,000.

- In any year that the number of events exceeds 29, the base payment shall increase by an additional \$100,000.
- In any year that the number of events exceeds 34, the base payment shall be increased by an additional \$100,000.
- The payment terms will be reviewed every five years based upon the cumulative annual changes in the NFL ticket price for games in the stadium. For example, if the beginning ticket price is \$50.00 and the cumulative increases and decreases in the average ticket price for each of the first five years is \$5.00, the percentage change is 10 percent. Therefore, the base payment of \$700,000 would increase to \$770,000 for years 6 through 10.

Recreation Facilities Fund

- Utilized for the development, operation, and maintenance of community facilities in Diamond Bar. In addition, the City of Industry will pay \$1 million to Diamond Bar for the creation of a new athletic field at Lorbeer Middle School. If for any reason the project is not completed, the monies will be utilized for other City facility projects.

Former Honda Site

- Maintain site to a minimum of 5 acres for future development.

Most Favored Entities Clause

- In the event the City of Industry enters into or proposes to enter into a revenue-sharing agreement with one or more municipalities related to revenues generated by the NFL stadium, the City of Diamond Bar would be entitled to same agreement.

Reimbursement of Legal Fees

- Reimbursement up to \$300,000 for legal and consultant fees.

SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT (“Agreement”) is made effective and entered into as of the Effective Date (as set forth on the signature page) by and between the CITY OF DIAMOND BAR, a municipal corporation (“Diamond Bar”) and the CITY OF INDUSTRY, a municipal corporation (“Industry”) (individually referred to herein as “Party” and collectively referred to herein as the “Parties”).

RECITALS

A. The Industry Business Center (“IBC”) comprises 592 acres of vacant land on the eastern edge of Industry (“Property”). The Property is owned by Industry Urban Development Agency (“IUDA”) and leased to Industry East Business Center LLC, a Delaware limited liability corporation (“Industry East Business Center”).

B. In 2004, Industry prepared pursuant to the California Environmental Quality Act (“CEQA”) an Environmental Impact Report for the proposed development of approximately 4.8 million square feet of office, commercial, industrial, retail and other uses on the Property (the “2004 IBC Plan of Development”).

C. In November, 2004, Industry certified the Industry Business Center EIR (State Clearing House No. 2003121086) (the “2004 EIR”).

D. In connection with the certification of the 2004 EIR, Industry adopted mitigation measures for impacts of the 2004 IBC Plan of Development.

E. In 2008, Industry East Business Center filed a request with Industry for approval of a revised Plan of Development with 2.985 million square feet of office, retail and industrial space and a new NFL stadium (the “NFL Stadium”) and related facilities as part of the proposed revised project (the “2008 Revised IBC Plan of Development”).

F. Industry prepared and circulated for public comment a Draft Supplemental EIR for the 2008 Revised IBC Plan of Development (State Clearing House No. 2003121086).

G. On January 22, 2009, the Industry City Council considered the certified 2004 EIR and the 2008 Supplemental EIR, certified the Final 2008 Supplemental EIR, and adopted a revised Mitigation Monitoring and Reporting Program and Statement of Overriding Considerations for the 2008 Revised IBC Plan of Development.

H. On February 26, 2009, after consideration of additional comments submitted by Diamond Bar and others, the Industry City Council certified the revised Final 2008 Supplemental EIR (the “2008 Supplemental EIR”), adopted a revised Mitigation Monitoring and Reporting Program (the “MMRP”) and revised Statement of Overriding Considerations for the 2008

Revised IBC Plan of Development, and approved the 2008 Revised IBC Plan of Development pursuant to Chapter 17.24 of the Industry Municipal Code.

I. Diamond Bar has provided written comments on the 2008 Supplemental EIR and the 2008 Revised IBC Plan of Development.

J. Diamond Bar intends to file a petition for writ of mandate challenging on various grounds Industry's certification of the 2008 Supplemental EIR and entitlements for the 2008 Revised IBC Plan of Development.

K. Were Diamond Bar to file the petition for writ of mandate, Industry would claim that the lawsuit claims are without merit.

L. It is now the mutual desire of the Parties by this Agreement to fully and forever to resolve their differences and the lawsuit claims without the necessity of further investigation or litigation, and without an admission of liability by either Party.

M. This Agreement, together with the 2008 Supplemental EIR, the revised MMRP and Resolution No. 2265, approving the 2008 Revised IBC Plan of Development ("Resolution No. 2265"), are intended to provide commitments of Industry regarding the mitigation of impacts from the 2008 Revised IBC Plan of Development, in addition to providing benefits to Diamond Bar unrelated to such mitigation.

N. This Agreement is intended to provide an assurance to Industry that Diamond Bar will not legally challenge the 2004 EIR, the 2004 Plan of Development, the 2008 Supplemental EIR or the 2008 Revised IBC Plan of Development (the "Project Approvals").

NOW, THEREFORE, for good and valuable consideration, the receipt, sufficiency, and fairness of which are hereby acknowledged, the Parties agree as follows:

I.
TERMS OF SETTLEMENT AGREEMENT

1.1 Mitigation Measures Identified in the 2008 Supplemental EIR. Industry agrees to implement or cause to be implemented the mitigation measures identified in the 2008 Supplemental EIR and the MMRP as required by Resolution No. 2265, except to the extent they are otherwise provided for herein.

The Parties understand and acknowledge that in connection with the implementation of the MMRP and the 2008 Revised IBC Plan of Development, it may be necessary to revise or modify one or more mitigation measures in Resolution No. 2265 and the revised MMRP or it may be determined that one or more such mitigation measures is infeasible or unnecessary due to changed circumstances. Nothing herein shall prevent Industry from modifying or amending mitigation measures or from determining that particular mitigation measures are infeasible or unnecessary as provided in the MMRP and the 2008 Revised IBC Plan of Development provided that (i) any such actions shall be undertaken in a manner consistent with CEQA, (ii) no such changes will create any new or increased environmental impact within Diamond Bar and (iii)

that no such changes to the mitigation measures shall affect the obligations of Industry pursuant to Sections 1.2 through 1.9 of this Agreement.

1.2. Traffic Mitigation Fund. In connection with the development of the NFL Stadium, Industry agrees that it shall pay or cause to be paid to Diamond Bar a total of \$20 million (“Traffic Mitigation Fund”) to be used by Diamond Bar to provide traffic improvements in Diamond Bar to address traffic to be generated by the 2008 Revised IBC Plan of Development. The Traffic Mitigation Fund shall be paid in five installments as follows: (i) the first installment in the amount of \$5 million shall be paid to Diamond Bar concurrent with the issuance of the first grading permit for the NFL Stadium; (ii) the second installment in the amount of \$2.5 million shall be paid to Diamond Bar 24 months following the issuance of the first installment but no earlier than the issuance of the first building permit for the NFL Stadium; (iii) the third installment in the amount of \$2.5 million shall be paid to Diamond Bar concurrent with the issuance of the temporary or permanent certificate of occupancy for the NFL Stadium (or, if no certificate of occupancy is issued, when the NFL Stadium becomes operational and begins hosting events) (“Certificate of Occupancy”); (iv) the fourth installment of \$7 million shall be paid to Diamond Bar when the second installment of \$2.5 million and the third installment of \$2.5 million have been 90% expended by Diamond Bar but no earlier than the issuance of the Certificate of Occupancy for the NFL Stadium; and (v) the fifth installment of \$3 million shall be paid to Diamond Bar concurrent with the issuance of the first building permit for any retail store, restaurant or office building other than retail stores, restaurants and offices in the NFL Stadium or the NFL team practice facilities.

Diamond Bar agrees that the payment of the Traffic Mitigation Fund provided by this Section 1.2 is in full satisfaction of Industry’s obligation to fund transportation improvements in Diamond Bar in connection with the 2008 Revised IBC Plan of Development, including without limitation any “fair share” obligation and Diamond Bar shall indemnify, defend and hold Industry and Industry East Business Center harmless from and against any third party claims, liabilities, actions, causes of action, proceedings, suits, damages, liabilities, judgments, levies, costs and expenses of whatever nature, including reasonable attorneys’ fees (collectively “Claims”) arising from or related to Claims that the utilization of the funds provided to Diamond Bar as provided by this Section 1.2 have been utilized by Diamond Bar for purposes other than providing transportation improvements in Diamond Bar to mitigate traffic impacts related to the 2008 Revised IBC Plan of Development.

1.3. Public Safety Impacts. As provided for in Mitigation Measure 12-1, Industry will provide open access lanes (preliminarily determined in the 2008 Supplemental EIR to be the northbound and southbound curb lanes from Valley Boulevard to the SR57/60) for emergency vehicles along Grand Avenue during events in the NFL Stadium which exceed 25,000 attendance. In addition, the NFL Stadium operator shall provide all staffing required by the Sheriff’s Department and Fire Department for events occurring at the NFL Stadium. Industry shall pay or cause to be paid funding for a way-finding program for NFL Stadium events including permanent way-finding signage, to be installed in locations agreed upon by Industry and Diamond Bar. Industry agrees that it shall form a Public Safety working group to provide oversight to the development and implementation of an event-day public safety plan for the NFL Stadium and immediately adjacent areas within Diamond Bar. The working group shall include

representatives from the Sheriff's Department, the Fire Department, Industry, Diamond Bar and the NFL Stadium operator. The working group may include additional governmental agency members as reasonably determined appropriate by Industry.

1.4. Noise and Light Impacts. As provided for in the 2008 Supplemental EIR and Resolution No. 2265, Project Design Feature 1-7 provides for the installation of a berm with trees or shrub massing to screen views of the parking lots prior to the issuance of a Certificate of Occupancy. As provided for in the 2008 Supplemental EIR and Resolution No. 2265, Mitigation Measure 10-4 requires construction of a six foot sound wall prior to the first NFL Stadium event, to be located along the eastern edge of the Property near the residences. As provided for in the 2008 Supplemental EIR and Resolution No. 2265, Project Design Feature 10-17 also requires funding for improvement to the existing wall located along the west side of Brea Canyon Road beginning just north of SR-60 and extending to the northern edge of residential property south of Lycoming Street, which shall be released to Diamond Bar upon receipt of completed improvement plans. Industry shall pay or cause to be paid all costs associated with the construction or improvement of the berm, walls and landscaping as provided for in Project Design Features 1-7 and 10-17 and Mitigation Measure 10-4. Attached as Exhibit A is the conceptual plan for the berm, new sound wall and landscaping.

Industry shall pay or cause to be paid up to \$1 million for construction of a quiet zone at the railroad crossing north of the intersection of Lemon Avenue and Lycoming Street, as defined in 49 CFR Parts 222 and 229 [Use of Locomotive Horns at Highway-Rail Grade Crossings]. Industry shall use reasonable efforts to construct or cause to be constructed the quiet zone improvements (up to the maximum costs set forth in this Section 1.4) no later than the issuance of the Certificate of Occupancy for the NFL Stadium.

1.5. Former Honda Site. In connection with the development of the final site plan for the 2008 Revised IBC Plan of Development, Industry shall work with Diamond Bar to maintain a minimum 5-acre site at the former automotive dealership Honda site, as identified on Exhibit B (the "Honda Site"). The Honda Site shall be designed to retain access from Old Brea Canyon Road, which is to be realigned in connection with the 2008 Revised IBC Plan of Development. A copy of the proposed site plan for the Honda Site is attached as Exhibit C. Industry shall not object to the deannexation from Industry and annexation to Diamond Bar of the portions of the reconfigured Honda Site property not within Diamond Bar as of the Effective Date. Industry shall execute or caused to be executed such applications to be submitted to the Local Agency Formation Commission ("LAFCO") to effectuate such annexation as are reasonably requested by Diamond Bar. Industry also shall cooperate with Diamond Bar on the entitlement process for the Honda Site (although the Honda Site will be within Diamond Bar and not subject to an entitlement process in Industry).

Industry agrees that it will use reasonable efforts to enter into negotiations with the property owner of the Honda Site to transfer 1.42 acres of adjacent property owned or controlled by Industry located along the northwest edge of the Honda Site, as shown on Exhibit D for property of comparable value owned by the property owner of the Honda Site or the cash value of the Industry property transferred. Industry shall use reasonable efforts to complete the exchange or sale or cause the exchange or sale to be completed as provided for in this Section 1.5. In addition, Industry shall convey or cause to be conveyed to Diamond Bar, at no land cost

to Diamond Bar, 1.33 acres of property to the west of the Honda Site, as identified on Exhibit D. Diamond Bar acknowledges that the property conveyance will require separate actions by City Council of Industry and the Agency Board of IUDA. Except as expressly provided for in this Section 1.5, nothing herein shall require Industry to acquire any land or convey any other property to Diamond Bar.

The Parties agree that the application to LAFCO for the deannexation of the applicable portion of the Honda Site will not be submitted to LAFCO until the issuance of the first building permit for the NFL Stadium. In addition, Industry's shall cause the exchange of the 1.42 acres of Industry land and cause the conveyance of the 1.33 acres of Industry land no later than the issuance of the first building permit for the NFL Stadium.

1.6. Community Facility Fund. In connection with the operation of the NFL Stadium, Industry shall pay or caused to be paid to Diamond Bar an amount, as hereinafter provided, for placement in the Diamond Bar Community Facility Fund (the "Community Facility Annual Payment"). The Community Facility Annual Payment shall be paid in any year that the NFL Stadium is in operation and hosting "events," as hereinafter defined.

The Community Facility Annual Payment payable to Diamond Bar shall be determined based on a number of factors, including the number of events occurring in the NFL Stadium, the number of NFL games played in the NFL Stadium, and an adjustment based on a "Five Year Index" (as hereinafter defined), all as hereinafter provided.

The base payment payable to Diamond Bar shall be determined based on the total number of events in the NFL Stadium that has occurred in a "year," as hereinafter defined (the "Base Payment"). The Base Payment also shall be subject to adjustment based on the Five Year Index, as hereinafter defined. In any year that a minimum of 24 total events occur in the NFL Stadium (whether or not there are any NFL games played in the NFL Stadium), the Base Payment shall be \$700,000, as adjusted by the Five Year Index. In any year that there are 10 or more NFL games played in the NFL Stadium (whether or not there is a minimum of 24 events in the NFL Stadium), the Base Payment shall be \$700,000, as adjusted by the Five Year Index. In addition, the Base Payment shall be increased (whether or not there are any NFL games played in the NFL Stadium) if the total number of events in the NFL Stadium exceeds 24 events as follows: (i) in any year that the total number of events at the NFL Stadium exceeds 24, the Base Payment shall be increased by an additional \$100,000, as adjusted by the Five Year Index; (ii) in any year that the total number of events at the NFL Stadium exceeds 29, the Base Payment shall be increased by an additional \$100,000, as adjusted by the Five Year Index; and (iii) in any year that the total number of events at the NFL Stadium exceeds 34, the Base Payment shall be increased by an additional \$100,000, as adjusted by the Five Year Index. For example, if the number of events at the NFL Stadium in the second year of NFL Stadium operations is 30 events, the Base Payment would be \$900,000; if the number of events at the NFL Stadium that year is 35 events, the Base Payment would be \$1 million.

The actual Community Facility Annual Payment paid to Diamond Bar shall be based on the Base Payment and shall be subject to adjustment if (i) there are less than 10 or there are no NFL games played in the NFL Stadium in any year and (ii) there are less than 24 events in the NFL Stadium. If there are less than 10 or there are no NFL games played in the NFL Stadium in

a year and there are less than 24 events held in the NFL Stadium in that year, the Base Payment shall be subject to adjustment based on the ratio of the total number of events held in the NFL Stadium divided by 24. For example, if in any year of the NFL Stadium operation the NFL Team played between zero and 9 games in that year and there were a total of 19 events held at the NFL Stadium, the Base Payment shall be 19/24ths times \$700,000. For the purposes of this Section 1.6, if an NFL game is a regularly scheduled home game for the NFL team playing in the NFL Stadium (pre-season or regular season) and the NFL game is played at an off-site location (e.g., the NFL team plays what would have been a regularly scheduled home game in Beijing), the NFL game shall be deemed to be an NFL game played in the NFL Stadium.

The Base Payment shall be changed every five years based on the cumulative annual changes (increase or decrease) in the average NFL ticket price (as defined by the NFL) over the prior five-year period for NFL games in the NFL Stadium (excluding club seat and luxury box premium and Super Bowl tickets) (the "Five Year Index"). Ticket price shall not include any ticket taxes or facility surcharges. For example, if the average ticket price at the beginning of year 1 is \$50.00 and the cumulative increases and decreases in the average NFL ticket price for each of the years in the five year period is an increase of \$5.00, the percentage change is 10%. As a result, the Base Payment would increase from \$700,000 to \$770,000 in year 6 through year 10.

The Recreation Fund shall be utilized by Diamond Bar for development, operation and maintenance of community facilities in Diamond Bar. The selection of locations for the facilities in Diamond Bar and the design and construction of the facilities shall be in the sole discretion of and the responsibility of Diamond Bar.

For the purposes of this Section 1.6, a "year" shall begin on August 1 and shall end on July 31. An "event" for the purposes of this Section 1.6 shall mean an activity utilizing the NFL Stadium field and seating (e.g., athletic events including NFL games, concerts, public assemblies, etc.) and shall not include (i) use of the NFL Stadium for non-profit or community events with attendance of fewer than 15,000 persons, (ii) use of the NFL Stadium for team practices, and (iii) use of the offices, restaurants, retail stores and other facilities within the NFL Stadium.

The first payment shall be paid or caused to be paid to Diamond Bar no later than August 1 following the commencement of the first season of NFL games in the NFL Stadium, and shall thereafter be paid no later than August 1 of each year.

1.7. Recreational Facilities. Industry shall pay or cause to be paid \$1 million to Diamond Bar Recreation Fund for construction of a new athletic field at Lorbeer School. If the Pomona Unified School District does not permit the construction of a new athletic field at Lorbeer School, Diamond Bar may utilize the funds for the construction of community facilities as provided by Section 1.6. This payment shall be made concurrent with the issuance of the Certificate of Occupancy for the NFL Stadium.

1.8. Most Favored Entities Clause. In the event that Industry enters into or proposes to enter into a revenue-sharing agreement with one or more municipalities (excluding Industry related entities) in connection with the revenues generated by the NFL Stadium, the terms of the

most favorable such agreement shall be extended to Diamond Bar, provided that to the extent any such revenue-sharing agreements provide for obligations to be undertaken by the municipality, Diamond Bar shall, to the extent that such more favorable terms are extended to Diamond Bar, Diamond Bar shall agree to undertake all such obligations under the agreement. This provision shall not apply to fee for service arrangements where by an entity is provided fees for service (e.g., Sheriff's Department, County Fire Department, water agency, etc).

1.9 Reimbursement of Diamond Bar's Fees. Industry shall pay or cause to be paid up to \$300,000 based on the total actual invoice amounts billed to Diamond Bar for its legal and consultant fees by way of a lump sum payment payable to the "City of Diamond Bar" delivered to Diamond Bar's City Manager within thirty (30) days following the receipt of copies of summary invoices and documentation of payment thereof by Diamond Bar.

1.10. Condition Precedent to Obligations in Sections 1.1 through 1.8 Above. It shall be a condition precedent to any and all of Industry's obligations described in Sections 1.1 through 1.8, inclusive, that there be no pending litigation against the 2004 IBC Plan of Development, the 2008 Revised IBC Plan of Development, the 2004 EIR or 2008 Supplemental EIR or any required, necessary or desired discretionary actions or approvals related to the Industry Business Center Project. In the event that there is pending litigation, Industry's obligations under this Agreement shall be suspended unless and until such litigation is concluded; provided, however, that if Industry or Industry East Business Center elects to proceed with the development of the NFL Stadium during the pendency of any such litigation, Industry's obligations under this Agreement shall not be suspended.

1.11. Obligations for 2008 Revised IBC Plan of Development Only. Industry's obligations described in Sections 1.1 through 1.8, inclusive, shall only arise if Industry and Industry East Business Center commence development of and proceed with an NFL Stadium whether such NFL Stadium is constructed pursuant to the 2008 Revised IBC Plan of Development or any other substantially comparable Plan of Development approved by Industry. In the event Industry or Industry East Business Center proceeds with a Plan of Development that does not include an NFL Stadium, including the 2004 IBC Plan of Development, Industry shall have further no obligations under this Agreement.

1.12. Retention of Payments. Any payments actually made to Diamond Bar pursuant to this Agreement shall not be refundable for any reason, except that if Diamond Bar materially breaches this Agreement, then Industry may seek repayment of any payments that Industry has made or caused to be made to Diamond Bar under this Agreement.

II. **RELEASES**

2.1. Diamond Bar Covenant Not To Sue Industry or Industry East Business Center. Diamond Bar covenants that it shall not directly or indirectly file, join in or support any legal challenge, including without limitation any legal challenge against Industry, IUDA, or Industry East Business Center, concerning the 2004 IBC Plan of Development, the 2008 Revised IBC Plan of Development, the 2004 EIR or 2008 Supplemental EIR or any required, necessary or

desired discretionary actions or approvals related to the 2004 Plan of Development or 2008 Revised IBC Plan of Development and shall not thereafter oppose, challenge, or seek to hinder in any way whatsoever, whether by public opposition, petition to government authorities, or otherwise, the 2004 Plan of Development or the 2008 Revised IBC Plan of Development. Diamond Bar further covenants that it shall not support, directly or indirectly any such legal challenge by a third party, by the provision of funds, assistance of Diamond Bar staff or any other form of support to such third party.

2.2. Mutual Release. The Parties, for themselves and their predecessors, directors, officials, employees, departments, agencies, boards, commissions, successors, assigns, agents, representatives and attorneys, hereby fully release and forever discharge each other from any and all claims, demands, actions, causes of action, liens, judgments, losses, liabilities, costs, expenses, and attorneys' fees, of whatever nature, past or present or future, whether in law or in equity, whether under state or federal law, and whether known or unknown, suspected or unsuspected and whether asserted or not asserted, arising from or in connection with the Project Approvals (the "Released Claims"); provided, however, that nothing in this Agreement shall release either Party from liability for failure to perform the terms, conditions, covenants and promises set forth in this Agreement.

2.3. Waiver of Civil Code §1542. It is the express intention of the Parties in executing this Agreement that this Agreement shall be effective as a full and final accord and satisfaction and release of each other from any and all of the Released Claims. In furtherance of this intention, the Parties acknowledge that they are familiar with Section 1542 of the California Civil Code, which provides as follows:

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

The Parties hereby waive and relinquish all rights and benefits that they have or may have under Section 1542 of the California Civil Code or under any other law of the State of California or any federal law to the same or similar effect with respect to the Released Claims released herein.

III. ADDITIONAL PROVISIONS

3.1. Effectiveness of this Agreement. The Parties acknowledge and agree that no term or provision of this Agreement shall take effect or be binding on the Parties unless and until this Agreement has been fully signed and delivered by the Parties.

3.2. Advice of Counsel. In executing this Agreement, each Party acknowledges that it has consulted with and had the advice and counsel of an attorney duly admitted to practice in the State of California, and each Party further acknowledges that it has executed this Agreement after independent investigation, of its own free choice and will, and without fraud, duress or undue influence. Each Party has investigated the facts pertaining to this Agreement to the extent

such Party deems necessary, assumes the risk of mistake with respect to such facts and acknowledges that this Agreement is intended to be final and binding upon the Parties regardless of any claim of mistake.

3.3. No Admission of Fault. This Agreement pertains to disputed claims and is the result of compromise. Neither Party admits any fault or liability with respect to the lawsuit claims, and this Agreement does not constitute, and shall not in any circumstance be deemed to constitute, an admission of fault or liability by either Party. In addition, the reference to any action by any Party shall not be interpreted as evidence that such action is related to or necessary to mitigate the impacts of the 2008 Revised IBC Plan of Development.

3.4. Sole Agreement. This Agreement constitutes the entire agreement and understanding between the Parties concerning the subject matter of this Agreement, and supersedes and replaces any and all prior or contemporaneous negotiations, offers, proposals, terms, representations, warranties, and agreements, whether written or oral, concerning the subject matter of this Agreement, including without limitation, the lawsuit claims. The Parties acknowledge that no other party, nor any agent or attorney of any Party, has made any promise, representation, warranty, or other inducement of any kind or nature whatsoever, written or oral, express or implied, concerning the subject matter of this Agreement, to induce the Party to execute this Agreement or for any other purpose, and each Party acknowledges that it has not executed this Agreement in reliance on any promise, representation, warranty or other inducement that is not expressly set forth in this Agreement.

3.5. Governing Law. This Agreement is made and entered into in the State of California and the Parties agree that this Agreement shall in all respects be interpreted, enforced and governed by and under the internal laws of the State of California, without resort to choice of law principles.

3.6. Enforcement of Agreement. This Agreement shall not be subject to challenge on the grounds that any or all of the legal theories or factual assumptions used for negotiating purposes are for any reason inappropriate or inaccurate. The Parties acknowledge that the terms and conditions of this Agreement have resulted from the negotiations of the Parties and that no Party shall be deemed to be the drafter or author of this Agreement, nor shall either Party be subject to any legal rules of contract interpretation which may apply to any Party that participated in the drafting of this Agreement. The language in all parts of this Agreement shall, in all cases, be construed as a whole according to its meaning and not strictly for or against any Party. Should any provision of this Agreement be declared or determined by any court to be illegal or invalid, the validity of the remaining parts, terms or provisions shall not be affected thereby and said illegal or invalid part, term or provision shall not be deemed to be a part of this Agreement, unless such severance shall frustrate the fundamental purpose and intent of this Agreement.

3.7. Execution of Agreement. This Agreement may be executed in counterparts with the same force and effect as if executed in one complete, original document. Signatures delivered by facsimile or electronic transmission shall be accepted as though originals.

3.8. Representations and Warranties. Industry represents and warrants that the person who has signed this Agreement on behalf of Industry is authorized to execute and enter into this Agreement for and on behalf of Industry, and to bind Industry to the terms set forth herein, and Industry further represents and warrants that no other or further consent, approval, or signature is required to authorize the undersigned to sign for and bind Industry. Diamond Bar warrants and represents that the person who has signed this Agreement on behalf of Diamond Bar is authorized to execute and enter into this Agreement for and on behalf of Diamond Bar and to bind Diamond Bar to the terms set forth herein and Diamond Bar further represents and warrants that no other or further consent, approval, or signature is required to authorize the undersigned to sign for and bind Diamond Bar. All representations and warranties contained in this Agreement shall survive the execution, delivery and effectiveness hereof.

3.9. Third Party Beneficiaries, Obligors and Parties. This Agreement shall be binding upon and inure to the benefit of each of the Parties, and their respective representatives, heirs, devisees, successors and assigns. The only parties to this Agreement are those specifically named in this Agreement who have signed the Agreement in their own name. There are no third party beneficiaries or obligors to this Agreement, except that Industry East Business Center and IUDA are third party beneficiaries. Other than Industry East Business Center and IUDA, this Agreement shall not be enforceable by any person not a Party to this Agreement, or their respective representatives, heirs, devisees, successors and assigns.

3.10. Obligation to Proceed With Project. Nothing in this Agreement shall require the City of Industry or Industry East Business Center to proceed with grading, construction and operation of the 2008 Revised IBC Plan of Development or the NFL Stadium, and the Parties recognize that the timing of grading, construction and operation of such development shall be exclusively within the discretion of Industry and Industry East Business Center, and that such grading, construction and operation of the development may not occur.

3.11. Legal Expenses. In any judicial proceeding, arbitration, or mediation (collectively, "Action") between Industry and Diamond Bar seeking enforcement of any of the terms and provisions of this Agreement, the prevailing Party in such Action shall be awarded all of its actual and reasonable costs and expenses (whether or not the same would be recoverable pursuant to Code of Civil Procedure Section 1033.5 or Civil Code Section 1717 in the absence of this Agreement), including expert witness fees, attorney's fees, and costs of investigation and preparation prior to the commencement of the Action. The right to recover such costs and expenses shall accrue upon commencement of the Action, regardless of whether the Action is prosecuted to a final judgment or decision.

3.12. Relationship of the Parties. The Parties hereby renounce the existence of any joint venture or partnership among them and agree that nothing contained in this Agreement shall be construed as making the Parties joint venturers or partners of the other Party to this Agreement.

3.13. Amendment to Agreement. Any amendment to this Agreement must be in writing and signed by duly authorized representatives of the Parties hereto and state the intent of the Parties to amend this Agreement.

3.14. Covenant Not to Sue. The Parties covenant and agree not to institute any action or other dispute-resolution proceeding based on any of the lawsuit claims that it has released under this Agreement.

3.15. Further Assurances. The Parties agree that each of them will execute and deliver to the other Party all such further documents and instruments as may be necessary and appropriate to effectuate the terms and conditions of this Agreement.

3.16. Conflict of Interest. Diamond Bar agrees that all work product, not otherwise in the public domain, prepared by its attorneys and consultants concerning the 2004 IBC Plan of Development, the 2008 Revised IBC Plan of Development, the 2004 EIR or 2008 Supplemental EIR or any required, necessary or desired discretionary actions or approvals related to the 2008 Revised IBC Plan of Development shall not be made available for any third parties opposing the 2008 Supplemental EIR or the 2008 Revised IBC Plan of Development, except as may be required by law. Further, Diamond Bar agrees that if its consent is requested to permit its attorneys or consultants to represent or work for any third parties opposing the 2008 Supplemental EIR or the 2008 Revised IBC Plan of Development, Diamond Bar agrees to withhold its consent to such representation or work.

3.17 Letter Withdrawal. Diamond Bar hereby requests the withdrawal of that certain letter dated February 25, 2009 from Jack Rubens, Esq. of Sheppard Mullin to Mr. Michael Kissell, Planning Director of Industry, together with all attachments.

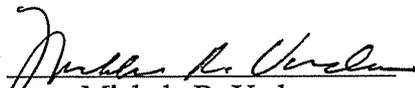
3.18. Time Of the Essence. Time is of the essence of this Agreement and the performance by each Party of the obligations on that Party's part to be performed.

IN WITNESS WHEREOF, the Parties hereto have executed this Settlement Agreement on the dates indicated below, effective when executed by the last of the Parties to sign the (the "Effective Date").

ATTEST:

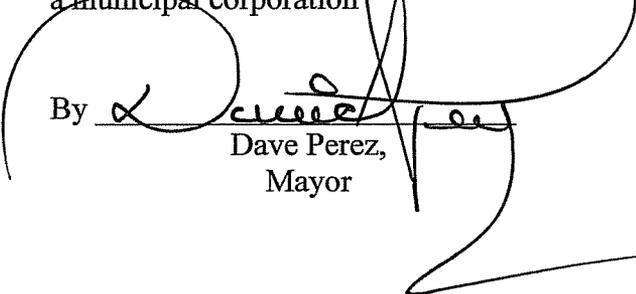

City Clerk

APPROVED AS TO FORM:

By 
Michele R. Vadon,
City Attorney

"Industry":

CITY OF INDUSTRY,
a municipal corporation

By 
Dave Perez,
Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:

By _____
Michael Jenkins,
City Attorney

"Diamond Bar":

CITY OF DIAMOND BAR,
a municipal corporation

By _____
Ron Everett,
Mayor

TOLLING AGREEMENT

This Tolling Agreement ("Agreement"), dated as of March 26, 2009 (the "Effective Date"), is entered into by and among CITY OF DIAMOND BAR, a municipal corporation ("Diamond Bar"), CITY OF INDUSTRY, a municipal corporation ("Industry"), and INDUSTRY EAST BUSINESS CENTER, LLC, a Delaware limited liability company ("IEBC"). Diamond Bar, Industry and IEBC are sometimes individually referred to herein as a "Party" and collectively as the "Parties". This Agreement is entered into with reference to the following facts and circumstances:

RECITALS

A. On October 28, 2004, the Industry City Council certified a Final Environmental Impact Report (the "2004 FEIR") for a mixed-use project on 592 acres of land at the eastern edge of Industry (the "IBC Site"), which project included 4,779,000 square feet of industrial, retail, office and commercial improvements (the "2004 Plan of Development").

B. In 2008, IEBC proposed a plan of development (the "2008 Plan of Development") on approximately 512 acres of the IBC Site for a project that includes a 75,000-seat stadium and stadium-related facilities that meet the programmatic requirements of the National Football League, 2,985,000 square feet of retail, office and other commercial improvements, and three parking structures (the "Project").

C. On September 8, 2008, Industry circulated a Draft Supplement to Industry Business Center Environmental Impact Report (the "Draft SEIR") for the Project. On January 22, 2009, the Industry City Council certified a Final Supplement to Industry Business Center Environmental Impact Report (the "Original Final SEIR") for the Project pursuant to Resolution No. 2263. On February 26, 2009, the Industry City Council certified a revised Final Supplement to Industry Business Center Environmental Impact Report (the "Revised Final SEIR") for the Project, which superseded the Original Final SEIR, pursuant to Resolution No. 2264.

D. On February 26, 2009, following its certification of the Revised Final SEIR, the Industry City Council certified the 2008 Plan of Development pursuant to Resolution No. 2265.

E. Diamond Bar contends that during the administrative proceedings with respect to the Project, Diamond Bar objected to the 2004 FEIR, the Water Supply Assessment prepared by the Walnut Valley Water District with respect to the 2004 Plan of Development, the Draft SEIR, the Original Final SEIR, the Revised Final SEIR and the 2008 Plan of Development and the Industry City Council's certification or approval of, or reliance on, the same (collectively, the "Project Documents/Approvals") on numerous grounds, both orally and in writing.

F. Industry filed a Notice of Determination ("NOD") with respect to the 2008 Plan of Development on February 26, 2009.

G. Various disputes exist among the parties to this Agreement regarding the Project Documents/Approvals. Representatives of the Parties have negotiated the terms of a Settlement Agreement (the "Settlement Agreement") pursuant to which Diamond Bar would agree not to assert any legal challenge with respect to any of the Project Documents/Approvals in consideration of certain agreements by Industry and IEBC. On March 26, 2009, the Industry City Council approved Industry's execution of the Settlement Agreement. Authorized representatives of Industry have executed and delivered to Diamond Bar three (3) originals of the Settlement Agreement. A true and correct copy of the partially-executed Settlement Agreement is attached hereto as Exhibit "A". The Diamond Bar City Council currently intends to consider the approval of the Settlement Agreement at its regularly scheduled meeting on April 7, 2009, but has not yet approved, executed or delivered to Industry the Settlement Agreement.

H. Diamond Bar has informed Industry and IEBC that it intends to file a lawsuit prior to the expiration of the applicable statutes of limitation in order to preserve its rights pending its consideration of the Settlement Agreement. Industry and IEBC have requested that Diamond Bar defer filing a lawsuit and instead enter into this Agreement tolling the statutes of limitation, thereby avoiding commencement of an adversarial judicial process while consideration of a settlement is pending. Diamond Bar is agreeable to tolling the statutes of limitation in consideration for Industry's agreement that the partially executed Settlement Agreement constitutes an irrevocable offer of settlement for the term of this Agreement.

I. By this Agreement, the Parties desire and intend to toll the statutes of limitations with respect to any legal claims that Diamond Bar may have that relate to any of the Project Documents/Approvals and any other discretionary or ministerial approvals with respect to the Project (collectively, the "Project Actions"), so that Diamond Bar can consider whether to approve the Settlement Agreement and the Parties can potentially avoid litigation with respect to the Project Actions. Diamond Bar desires to (i) preserve its rights to commence and proceed with judicial proceedings in connection with any or all of the Project Actions in the event that, for any reason, Diamond Bar elects not to approve and execute the Settlement Agreement and (ii) ensure that Industry cannot revoke, rescind or withdraw its approval, execution or delivery to Diamond Bar of the Settlement Agreement prior to the Diamond Bar City Council's consideration of the Settlement Agreement as specified herein.

NOW, THEREFORE, in furtherance of the mutual desires set forth above, and in consideration of the mutual covenants and conditions set forth below, the Parties hereby agree as follows:

AGREEMENT

1. Tolling Agreement. Each Party agrees that the running of time under any statute of limitations, or by way of estoppel or laches or any other time-related defense, with respect to any legal claim that Diamond Bar has the right to assert with respect to the Project or any Project Action, and whether such Project Action occurs prior to or following the Effective Date of this Agreement, is hereby tolled from the Effective Date until 5:00 p.m., California time, on April 23, 2009 (the "Tolling Period"). Each Party further agrees that, (a) if Diamond Bar commences any litigation or any other judicial proceeding of any kind, nature or description against Industry and/or IEBC with respect to any of the Project Actions (a "Diamond Bar Judicial Proceeding"),

the Tolling Period shall not be asserted or relied upon in any way by Industry or IEBC to compute the running of time under any statute of limitations or other time-related defense to such Diamond Bar Judicial Proceeding, and (b) with respect to any Project Action for which the applicable statute of limitations has commenced to run prior to the expiration of the Tolling Period, such statute of limitations shall be deemed suspended for the entire duration of the Tolling Period.

2. Justifiable Reliance. Industry and IEBC acknowledge and agree that Diamond Bar is justifiably and reasonably relying upon the terms and conditions set forth in this Agreement, that the statutes of limitation at issue here are subject to being tolled, and that this Agreement is enforceable in accordance with its terms.

3. No Limitations. Nothing in this Agreement shall (a) prevent or otherwise limit Diamond Bar's right to commence a Diamond Bar Judicial Proceeding during the Tolling Period, or (b) shorten or otherwise limit the statutory period for the commencement of any Diamond Bar Judicial Proceeding.

4. No Revocation Of Offer. Industry agrees that it shall not, and shall have no right or authority to, revoke, rescind or withdraw its approval, execution or delivery to Diamond Bar of the Settlement Agreement at any time prior to 5:00 p.m., California time, on April 23, 2009, in order to provide the Diamond Bar City Council with an opportunity to consider whether to approve the Settlement Agreement at a regularly scheduled meeting conducted on or before April 23, 2009. Notwithstanding the foregoing, if Diamond Bar proposes any new or different terms, conditions, or provisions from those set forth in the Settlement Agreement, Industry will have to right to similarly propose new or different terms, conditions, or provisions from those set forth in the Settlement Agreement in response to Diamond Bar's counteroffer.

5. No Commitment. Nothing in this Agreement shall constitute a commitment on the part of Diamond Bar to approve the Settlement Agreement. Diamond Bar reserves all of its discretion to evaluate the Settlement Agreement on its merits and without regard to Industry's or IEBC's expectations. It is understood and agreed that this Agreement preserves Diamond Bar's right to commence a Diamond Bar Judicial Proceeding while its City Council considers whether to approve the Settlement Agreement, but does not provide to Industry or IEBC an expectation as to the outcome of Diamond Bar's discretionary review process.

6. Miscellaneous.

6.1 Governing Law. This Agreement is made and entered into in the State of California, and the rights and obligations of the Parties shall in all respects be construed and enforced in accordance with, and governed by, the laws of the State of California.

6.2 Integration. It is expressly understood and agreed that this Agreement contains the entire agreement and understanding of the Parties concerning the specific subject matter of this Agreement, and merges, supersedes and replaces all prior discussions, understandings, negotiations, agreements, representations, conditions, warranties, covenants and all other communications between the Parties, whether written or oral, relating to such subject matter; provided, however, that nothing in this Agreement shall affect the agreements and

understandings of the Parties with respect to the negotiations concerning the Settlement Agreement, except to the extent such negotiations relate specifically to the tolling arrangement and covenants set forth in this Agreement.

6.3 Waiver. No provision herein may be waived unless in writing and signed by the Party or Parties whose rights are thereby waived. Waiver of any one provision herein shall not be deemed to be a waiver of any other provision herein. This Agreement may be modified or amended only by written agreement executed by all of the Parties.

6.4 Binding Effect. This Agreement shall bind, and shall inure to the benefit of, the Parties and their respective successors and assigns.

6.5 No Third Parties Benefited. Nothing in this Agreement, express or implied, is intended to confer upon any person or entity, other than the Parties or their respective successors and assigns, any rights or benefits under or by reason of this Agreement. This Agreement is for the sole benefit of the Parties.

6.6 Preparation of Document. Each Party has cooperated in the drafting and preparation of this Agreement and, accordingly, the normal rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement.

6.7 Attorneys' Fees. In the event that any litigation shall be commenced concerning this Agreement or any Party's alleged breach of this Agreement, the prevailing party in such litigation shall be entitled to recover, in addition to such other relief as may be granted, its reasonable costs and expenses, including without limitation attorneys' fees and court costs, whether or not taxable, as awarded by a court of competent jurisdiction.

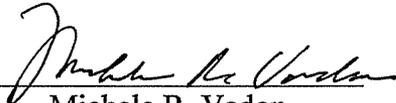
6.8 No Admission. Neither the execution of this Agreement nor any of the provisions herein shall operate in any way as an admission of fact, liability or responsibility by any Party in any way regarding the subject matter of this Agreement; provided, however, that the foregoing restriction on admissions of fact shall not apply with respect to (a) any legal action to enforce the terms of this Agreement or (b) Diamond Bar's response or defense to any claim by Industry and/or IEBC that any Diamond Bar Judicial Proceeding was not filed in a timely manner. In addition, this Agreement may not be introduced into or be admissible in any judicial proceeding other than (c) a judicial proceeding to enforce the terms of this Agreement or (d) a Diamond Bar Judicial Proceeding in which Industry and/or IEBC alleges that such Diamond Bar Judicial Proceeding was not filed in a timely manner.

6.9 Counterparts. This Agreement may be executed in counterparts, and when each Party has signed and delivered at least one such counterpart, each counterpart shall be deemed an original and, when taken together with other signed counterparts, shall constitute one Agreement, which shall be binding upon and effective as to all Parties.

6.10 Authority. Each Party represents and warrants that all legal action necessary for effectuation and execution of this Agreement has been validly taken and that the individuals whose signatures appear below on behalf of each Party are duly authorized to execute this Agreement on behalf of the respective Parties, and to bind them to the terms hereof.

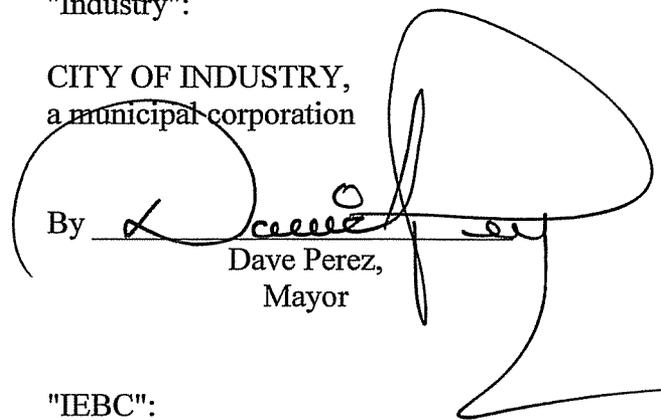
IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first above written.

APPROVED AS TO FORM:

By 
Michele R. Vadon,
City Attorney

"Industry":

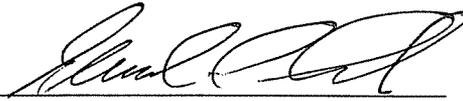
CITY OF INDUSTRY,
a municipal corporation

By 
Dave Perez,
Mayor

"IEBC":

INDUSTRY EAST BUSINESS CENTER,
a Delaware limited liability company

By Majestic Realty Co., a California
corporation, its manager

By 

By _____

APPROVED AS TO FORM:

By _____
Michael Jenkins,
City Attorney

"Diamond Bar":

CITY OF DIAMOND BAR,
a municipal corporation

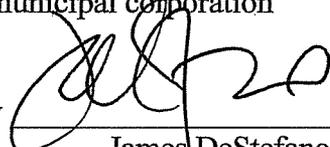
By 
James DeStefano,
City Manager

EXHIBIT "A"

PARTIALLY-EXECUTED SETTLEMENT AGREEMENT