

WAIVER, RELEASE AND INDEMNITY AGREEMENT

For and in consideration of the City of Redlands ("City") providing access to its property located at 1950 Nevada Street (the "Property") to B.R Frost Company ("BR Frost") for BR Frost's removal of approximately forty thousand (40,000) gallons of mixed liquid suspended solids ("MLSS") from the Property, the undersigned hereby voluntarily offers to pay to City the sum of two thousand dollars (\$2,000), and voluntarily releases, discharges, waives, and relinquishes any and all actions or causes of action for claims, losses, damages, and liability, including but not limited to, personal injury, property damage, or wrongful death occurring to it, or its personnel, arising as a result of BR Frost's entry onto the Property for the removal of the MLSS and BR Frost's, or others, subsequent use thereof and any activities incidental thereto, wherever or however the same may occur. Further, the undersigned does, for BR Frost, and its officers, employees, successors and assigns, hereby release, waive, discharge, and relinquish any action or causes of action, which it may have, or which may hereafter arise for BR Frost, and agrees that under no circumstances will BR Frost prosecute or present any claim for and claim, loss, damage, or liability, including but not limited to, personal injury, property damage, or wrongful death, against City or any of its elected or appointed officials, officers, agents, or employees (collectively, the "Released Parties") for any of said causes of action, whether the same shall arise by the passive or active negligence of the Released Parties, or otherwise.

IT IS THE INTENTION OF THE UNDERSIGNED BY THIS INSTRUMENT TO ASSUME ALL RISKS ATTENDANT WITH BR FROST'S REMOVAL AND SUBSEQUENT USE BY IT, AND OTHERS, OF THE MLSS, AND TO EXEMPT AND RELIEVE THE RELEASED PARTIES FROM ANY AND ALL LIABILITY FOR CLAIMS, LOSSES, DAMAGES, AND LIABILITY, INCLUDING BUT NOT LIMITED TO, PERSONAL INJURY, PROPERTY DAMAGE, AND WRONGFUL DEATH CAUSED BY BR FROST

The undersigned further agrees that in the event any claim for losses, damages, or liability, including but not limited to, personal injury, property damage, or wrongful death, shall be prosecuted against any of the Released Parties by any other person or entity as a result of BR Frost's removal and subsequent use by it, or others, of the MLSS, BR Frost shall defend, indemnify, and hold harmless the Released Parties from any and all claims and causes of action by whomever or wherever made or presented for losses, damages, liability, personal injuries, property damage, or wrongful death. In this respect, BR Frost expressly waives the benefits and provisions of Section 1542 of the Civil Code of the State of California, which provides as follows:

"A general release does not extend to claims which the creditor does not know or expect 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."

BR Frost shall pay City the aforementioned sum of two thousand dollars (\$2000) concurrent with BR Frost's execution of this Waiver, Release and Indemnity Agreement. The undersigned Vice President and General Counsel of BR Frost represents that he has the legal authority to represent BR Frost, and to execute and bind BR Frost to the terms and conditions of this Waiver, Release, and Indemnity Agreement.

Any notice or other communication required, or which may be given, pursuant to this Agreement, shall be in writing. Any such notice shall be deemed delivered (i) on the date of delivery in person; (ii) five (5) days after deposit in first class registered mail, with return receipt requested; (iii) on the actual delivery date if deposited with an overnight courier; or (iv) on the date sent by facsimile, if confirmed with a copy sent contemporaneously by first class, certified, registered or express mail; in each case properly posted and fully prepaid to the appropriate address set forth below, or such other address as a Party may provide notice in accordance with this section:

CITY:

Jeanne Donaldson
City Clerk
35 Cajon Street, Suite 4
Redlands, CA 92373
Telephone: (909)798-7531
Email: jdonaldson@cityofredlands.org

B.R. FROST COMPANY:

Craig S. Frost
Vice President & General Counsel
5172 Sisson Drive
Huntington Beach, CA 92646
Telephone: (949) 278-6196
Email: c-frost@cox.net

This Waiver, Release, and Indemnity Agreement contains the entire understanding between City and BR Frost with respect to the subject matter herein. There are no representations, agreements, or understandings (whether oral or written) between or among the City and BR Frost relating to the subject matter of this agreement which are not fully expressed herein. In witness whereof, and in order to bind themselves legally to the terms and conditions of this agreement, the duly authorized representatives of City and BR Frost have executed this agreement as of its Effective Date.

This Agreement shall be governed and construed by and in accordance with the laws of the State of California, without reference to its conflicts of law principles. If suit is brought by a party to this agreement, City and BR Frost agree that trial of such action shall be vested exclusively in the state courts of San Bernardino County, California or in the United States District Court for the Central District of California.

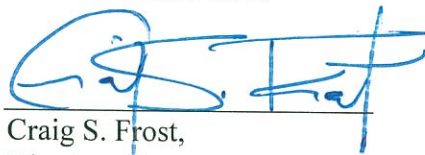
In the event any action is commenced to enforce or interpret any of the terms or provisions of this Agreement, the prevailing party in such action shall be entitled to recover, in addition to any costs and other relief, its reasonable attorneys' fees, including fees for the use of in-house counsel by a party.

Dated: July 8, 2020 ("Effective Date")

CITY OF REDLANDS

By: 
Charles M. Duggan, Jr.,
City Manager

B.R. FROST COMPANY

By: 
Craig S. Frost,
Vice President & General Counsel

ATTEST:

By: 
Jeanne Donaldson, City Clerk