

CLASS ACTION SETTLEMENT AGREEMENT

This *Second Amended* Class Action Settlement Agreement is entered into in San Mateo County, California, effective as of the date of the last signature hereon, by and between Plaintiffs CHARLES BOLTON, JOHN LOCKTON, DAVID MARQUARDT, PAUL ROCHESTER, and CHARLES SYERS, individually and on behalf of all other similarly situated persons in the Classes (as defined below), on the one hand (“Plaintiffs”), and DEFENDANT TOWN OF HILLSBOROUGH (“Hillsborough”), on the other hand. Plaintiffs and Hillsborough may be individually referred to as “Party” and collectively referred to as “Parties.” As required by California Rules of Court, Rule 3.769, this Settlement Agreement is subject to approval by the Court pursuant to the notice process identified herein.

RECITALS

A. Whereas, on November 8, 2016, Plaintiffs filed a verified Class Action Complaint and Petition for Writ of Mandate against Hillsborough in San Mateo County Superior Court, Case No. 16C1V02284 (“Action”), alleging past, current, and ongoing violation of California law, including California Constitution, Article XIII D, also known as “Proposition 218” (“Claims”).

B. Whereas, the Action was brought on behalf of “All residential water service customers of the Town of Hillsborough who have received residential water service at any time from July 1, 1997 to the date of class certification” and a Subclass of “All residential water service customers of the Town of Hillsborough who were assessed and paid penalties pursuant to Town of Hillsborough Ordinance No. 725.”

C. Whereas, in the Action, Plaintiffs challenge, among other things, Ordinance No. 725, which was adopted by Hillsborough and went into effect on June 9, 2015, establishing a scheme of water rationing for water customers in the Town of Hillsborough; Ordinance No. 731, which was adopted by Hillsborough and went into effect on February 1, 2016, in part, establishing new water rates for residential water users in the Town of Hillsborough; and Hillsborough’s water rates that were in effect prior to the adoption of Ordinance No. 731.

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D. Whereas, in the Action, Plaintiffs contend that the drought penalties adopted in Ordinance No. 725 violate the procedural and substantive requirements of Proposition 218, that the water rates adopted in Ordinance No. 731 do not comply with Proposition 218, and that the water rates in effect prior to the adoption of Ordinance No. 731 also did not comply with Proposition 218.

F. Whereas, on or about December 14, 2016, Hillsborough filed an answer in the Action denying the Claims.

G. Whereas, on or about August 21, 2020, Plaintiffs filed a motion for class certification and on or about May 17, 2021, the Court granted class certification and issued an order certifying the following classes in connection with the Action (the “Classes”):

- Ratepayer Class: All residential water service customers of the Town of Hillsborough who have paid in excess of Tier 2 in a billing cycle during the time period from June 28, 2015 through April 30, 2017. Plaintiffs Charles Bolton, John Lockton, David Marquardt, Paul Rochester, and Charles Syers were appointed Class Representatives of the Ratepayer Class (“Rate Class Representatives”).
- Drought Penalty Class: All residential water service customers of the Town of Hillsborough, who were assessed and paid penalties pursuant to Town of Hillsborough Ordinance No. 725 and exhausted their administrative remedies. Plaintiffs Charles Bolton, John Lockton, and Charles Syers were appointed Class Representatives of the Drought Penalty Class (“Drought Penalty Class Representatives”), but not Plaintiffs David Marquardt and Paul Rochester .

H. Whereas, the Court designated Attorneys Beau Burbidge, Walter H. Walker, III, and Peter J. Koenig of Walker, Hamilton & Koenig, LLP, as Class Counsel (“Class Counsel”) for both the Ratepayer Class and the Drought Penalty Class.

I. Whereas, on April 29, 2021, the Parties participated in mediation before the Honorable W. Scott Snowden (Ret.) (the “Mediator”). Through the mediation process, the Parties reached a proposed settlement, which is fully set forth below in this Agreement (“Settlement”).

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J. Whereas, the Settlement was the result of extensive arm's length settlement negotiations and discussions between the Parties and their respective counsel with the assistance of the Mediator.

L. Whereas, the Rate Class Representatives and Drought Penalty Class Representatives support and have approved the Settlement.

M. Whereas, the Parties now wish to resolve all disputes between them and the Classes arising out of, or relating to, the facts and circumstances giving rise to the Claims and Action, or arising out of, or relating to, those water rates imposed during the Refund Period and the drought penalties imposed pursuant to Ordinance No. 725.

NOW, THEREFORE, in consideration of the covenants contained herein, and for other good and valuable consideration, the receipt and sufficiency of which is acknowledged, the Parties agree as follows:

AGREEMENT

1. RECITALS.

1.1. The aforementioned Recitals are material terms and conditions of this Agreement.

2. DEFINITIONS.

2.1. As used in this Agreement and the exhibits attached hereto (which are an integral and material part of this Agreement and incorporated in their entirety herein by reference), the following terms have the following meanings, unless this Agreement specifically provides otherwise. The plural of any defined term includes the singular, and the singular of any defined term includes the plural, as the case may be:

2.1.1. "Action" or "Lawsuit" shall mean the class action lawsuit presently captioned as *Baruh, et al. v. Town of Hillsborough*, filed in the Superior Court of California, County of San Mateo, Case No. 16C1V02284.

2.1.2. "Agreement" or "Settlement Agreement" means this Settlement Agreement and the exhibits attached hereto or incorporated herein, including any subsequent amendments and any exhibits to such amendments.

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- 2.1.3. “Attorneys’ Fees and Costs” means such funds as may be approved and awarded by the Court to Class Counsel to compensate them for conferring the benefits upon the Class under this Settlement Agreement and for their professional time, fees, costs, advances and expenses incurred in connection with the Action and the Agreement.
- 2.1.4. “Claim Form” shall mean the form that certain Class Members who are no longer Customers may submit to the Claims Administrator in the form attached hereto as **Exhibit C**.
- 2.1.5. “Claims Administrator” or “Settlement Administrator” shall mean Phoenix Settlement Administrators, or if not approved by the Court, any other qualified third-party administrator and agent agreed to by the Parties and approved and appointed by the Court in the Preliminary Approval Order to receive objections, opt-out notices, and to process claims for refunds of Class Members.
- 2.1.6. “Class” means the Ratepayer Class as defined in the above Recitals.
- 2.1.7. “Class Counsel” means Beau Burbidge, Walter H. Walker, III, and Peter J. Koenig of Walker, Hamilton & Koenig, LLP.
- 2.1.8. “Class Member” or “Settlement Class Member” means any member of the Class who does not timely and properly exclude themselves from the Class as provided in this Agreement.
- 2.1.9. “Class Notice” means the Summary Notice, Publication Notice, and Long Form Notice.
- 2.1.10. “Class Representatives” or “Plaintiffs” means Petitioners/Plaintiffs Charles Bolton, John Lockton, David Marquardt, Paul Rochester, and Charles Syers.
- 2.1.11. “Court” means the Superior Court of California, County of San Mateo.
- 2.1.12. “Customers” means those persons and entities who held an account for water service with the Town of Hillsborough during the Refund Period.
- 2.1.13. “Defendant” or “Hillsborough” means the Respondent/Defendant Town of Hillsborough.

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- 2.1.14. “Distribution Plan” means the manner by which the Net Settlement Fund will be distributed to the Class as set forth in Paragraph 6.3 below.
- 2.1.15. “Effective Date” means 30 calendar days from the date on which the Court enters the Final Order and/or Final Judgment in this Action.
- 2.1.16. “Exclusion Deadline” means the date that falls on the day that is 60 calendar days after the Notice Date.
- 2.1.17. “Fairness Hearing” or “Final Approval Hearing” means the hearing that is to take place after the entry of the Preliminary Approval Order, the Notice Date, the Exclusion Deadline, and the Objection Deadline for purposes of: (a) entering the Final Order and Final Judgment; (b) determining whether the Settlement should be approved as fair, reasonable, and adequate; (c) ruling upon an application for Service Award by the Class Representative; (d) ruling upon an application by Class Counsel for Attorneys’ Fees and Costs; and (e) entering any final order awarding Attorneys’ Fees and Costs and Service Awards.
- 2.1.18. “Final Order and Final Judgment” means the Court’s order and judgment finally approving the Settlement.
- 2.1.19. “Long Form Notice” means the notice of the proposed class action that shall be posted on a settlement website in the form attached hereto as **Exhibit B**.
- 2.1.20. “Net Settlement Fund” means the Settlement Fund less (i) any Service Award awarded by the Court, and (ii) any Attorneys’ Fees and Costs awarded by the Court.
- 2.1.21. “Notice Date” means the date upon which the Summary Notice is mailed.
- 2.1.22. “Objection Deadline” means the date that falls on the day that is 60 calendar days after the Notice Date.
- 2.1.23. “Objection Form” means the form that Class Members may submit to lodge objections to the proposed Settlement Agreement, Service Award, and Attorney’s Fees and Costs substantially in the form attached hereto as **Exhibit E**.

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- 2.1.24. “Opt-Out Form” means the form that Class Members may submit to request exclusion from the Class substantially in the form attached hereto as **Exhibit D**.
- 2.1.25. “Preliminary Approval Date” means the date the Court issues the Preliminary Approval Order.
- 2.1.26. “Preliminary Approval Order” means the order preliminarily approving the Settlement and proposed Class Notice.
- 2.1.27. “Publication Notice” means the notice of the proposed class action settlement to be published for two consecutive weeks in the San Mateo Daily Journal in the form attached hereto as **Exhibit F**.
- 2.1.28. “Release” means the release and waiver set forth in Section 7 of this Agreement and in the Final Order and Final Judgment.
- 2.1.29. “Released Claims” means any claims that were asserted, or that could reasonably have been asserted in the Action against the Released Parties as more fully described in Paragraph 7.2.
- 2.1.30. “Released Party” or “Releasee” means Hillsborough and all of its employees, council members, officers, representatives, attorneys, and agents.
- 2.1.31. “Refund Period” means June 28, 2015 through April 30, 2017.
- 2.1.32. “Service Award” means such funds as may be awarded by the Court to the Class Representatives in recognition of their time, effort, and service to the Class expended in pursuing the Action and in fulfilling their obligations and responsibilities as the Class Representatives.
- 2.1.33. “Settlement Fund” means the sum of **\$1,229,329.00** that Hillsborough has agreed to pay to settle this matter pursuant to the terms and conditions set forth herein. The Settlement Fund consists of \$779,329.00 designated for customer refunds pursuant to the formula described *infra* in Paragraph 6.3 as well as Appendix 1, and \$450,000 for payment of Attorneys’ Fees and Costs and Service Awards as may be awarded by the Court.

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2.1.34. “Summary Notice” means the summary notice of the proposed class action settlement, substantially in the form attached hereto as **Exhibit A**, which shall be disseminated via U.S. Mail.

3. **EXHIBITS.**

3.1. This Agreement includes the following exhibits which are incorporated herein by reference:

- 3.1.1. Exhibit A – Summary Notice
- 3.1.2. Exhibit B – Long Form Notice
- 3.1.3. Exhibit C – Refund Claim Form
- 3.1.4. Exhibit D – Opt-Out Form
- 3.1.5. Exhibit E – Objection Form
- 3.1.6. Exhibit F – Publication Notice

4. **CONTINGENT SETTLEMENT.**

- 4.1. This Settlement is contingent upon final approval by the Court pursuant to California Rules of Court, Rule 3.769.
- 4.2. Following execution of this Agreement by the Plaintiffs and Hillsborough, the Parties shall submit the Settlement to the Court for preliminary approval and get authority to issue a Summary Notice, substantially in the form attached hereto as **Exhibit A**, to the Class Members.
- 4.3. The Parties will set a hearing and serve and file a written notice of motion for preliminary approval of the Settlement. The Settlement Agreement and a proposed notice to Class Members will be filed with the motion, and the proposed order lodged with the motion.
- 4.4. If the Court grants preliminary approval of the Settlement, the time, date, and place for a Final Approval Hearing will be set and notice will be given to the Class. Before final approval, the Court will conduct an inquiry into the fairness of the Settlement. If the Court approves the Settlement Agreement after the Final Approval Hearing, the Court will make

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and enter judgment. The judgment will include a provision for the retention of the Court's jurisdiction over the parties to enforce the terms of the judgment.

5. **COMPROMISE OF DISPUTED ISSUES.**

- 5.1. This settlement represents the compromise of highly-contested issues in the Action. Hillsborough has vigorously denied and continues to dispute all of the claims and contentions alleged in the Action, and denies any and all allegations of wrongdoing, fault, liability, or damage of any kind to Plaintiffs and/or both Classes.
- 5.2. The Parties recognize that there exist substantial and significant risks regarding their claims, defenses, and/or the ability of the Classes to recover and/or collect any settlement or judgment from Hillsborough, among other things, and therefore agree to the terms of this Settlement Agreement to resolve this hard-fought, highly-disputed Action and Claims in light of the risks and uncertainties faced by Plaintiffs, the Classes, and Hillsborough.
- 5.3. The Settlement was the result of extensive arms'-length settlement negotiations and discussions between the parties and their respective counsel with the assistance of the Mediator.

6. **SETTLEMENT CONSIDERATION.**

- 6.1. In consideration of the entry of the Final Order and Final Judgment in the Action and the Release of the Released Claims, as set forth in Section 7 below, Hillsborough will provide the following consideration and payments to the Class:
- 6.2. **Settlement Fund.** Within thirty (30) days after the Preliminary Approval Date, Hillsborough will deposit \$1,229,329.00 (the "Settlement Fund") into a separate interest-bearing bank account administered by the Settlement Administrator for the benefit of the Class. The Settlement Fund consists of \$779,329.00 designated for customer refunds pursuant to the formula described *infra* in Paragraph 6.3 as well as Appendix 1, and \$450,000 for payment of Attorneys' Fees and Costs and Service Awards as may be awarded by the Court. Within three (3) court days of the Effective Date, Hillsborough shall distribute the Settlement Fund as follows:

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6.2.1. First, to the Class Representatives in the amount approved as the Service Award by the Court in the Final Order.

6.2.2. Second, to Class Counsel in the amount approved as Attorneys' Fees and Costs ordered by the Court after the Final Approval Hearing.

6.2.3. Third, the balance ("Net Settlement Fund") according to the Distribution Plan set forth in Paragraph 6.3 below.

6.3. **Rate Refunds and Distribution Plan.** From the Net Settlement Fund, Hillsborough will pay refunds to Class Members. The amount of each Class Member's refund will be based upon the difference between the rates paid by the member of the Class for Tiers 3, 4, & 5 water and \$11.09/hcf during the Rate Stabilization Period [February 10, 2016 through November 14, 2016] and \$9.06/hcf during the rest of the Refund Period. (A full description and example of these refunds may be found in **Appendix 1**, which is incorporated as if fully set forth herein.) The calculation of the refunds due to each customer has been performed by Hillsborough and will be provided to the Settlement Administrator and Plaintiffs and included in the Summary Notice.

6.3.1. **Automatic Refunds for Current and Known Former Customers.** Current customers and former customers whose addresses can be located through a skip trace search performed by the Settlement Administrator will be paid refunds via check mailed by the Settlement Administrator in the amount calculated by Hillsborough and stated in the Summary Notice. Such payments shall be made automatically with no claim or claim form submission required. Any returned checks will be re-sent by the Settlement Administrator following a skip trace search performed by the Settlement Administrator. Any checks returned after this process will become part of the *cy pres* distribution described in Paragraph 6.3.4 below.

6.3.2. **Refund Claims Procedure for Former Customers Not Located.** Former Customers whose addresses cannot be located through the process described above and who want to receive a refund must submit a Refund Claim Form to the Settlement

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Administrator as set forth below. The Refund Claim Form must be mailed to the Settlement Administrator at the address provided on the Refund Claim Form, and postmarked by the Exclusion Deadline or submitted to an online claim portal by the Exclusion Deadline.

6.3.3. **Verification of Claims for Former Customers Not Located.** For each person who returns a timely and completed Claim Form, Hillsborough shall verify whether the person was a Customer and is entitled to a refund. For each valid refund claim, Hillsborough shall pay a refund via check through the Settlement Administrator in the amount calculated by Hillsborough and stated in the Summary Notice.

6.3.4. **Cy Pres Distribution of Unclaimed Funds.** The Parties recognize that there likely will be some amount of unclaimed funds after disbursement of the Net Settlement Fund, whether by checks returned as undeliverable or checks not cashed prior to their 90-day expiration period. The Parties agree any and all unclaimed funds remaining in the Net Settlement Fund after one-hundred-eighty (180) days from the Effective Date shall be distributed to *cy pres* recipients as set forth hereinafter. The portion of the Net Settlement Fund distributed to *cy pres* recipients shall be referred to as "Recipient's Share." The parties have agreed the unclaimed funds available for *cy pres* recipients shall be paid to the following organization: Water Education Foundation.

6.4. **Administration Cost.** All costs of settlement administration, including costs of providing notice, administering claims, objections, and opt-outs, and distributing refunds will be borne solely by Hillsborough and such costs shall not be paid from the Settlement Fund.

7. **DISMISSAL AND RELEASE OF CLAIMS.**

7.1. **Dismissal of Drought Penalty Claims.** Plaintiffs, as consideration for the Settlement, will seek Court approval to dismiss with prejudice the claims made by the Drought Penalty Class ("Drought Penalty Claims").

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7.2. **Release.** In consideration for the Settlement, Plaintiffs and each member of the Class, on behalf of themselves and their heirs, executors, administrators, assigns, agents, servants, representatives, predecessors, and successors (hereafter collectively “Releasors”) fully release and discharge Hillsborough and all of the Releasees from all rights, claims, and actions they and any of the Releasors have had, now have, or may have in the future, against the Releasees arising out of, or relating to, the facts and circumstances giving rise to the Action or Claims, or arising out of, or relating to, those water rates imposed pursuant to Ordinance Nos. 725 or 731.

7.3. **Civil Code § 1542 Waiver.** The Parties acknowledge that they are releasing unknown claims related to the Action and any other claims, defenses, or causes of action related to the Action, and expressly waive all rights under California Civil Code section 1542. California Civil Code section 1542 provides:

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

The Parties acknowledge, except for matters expressly represented or recited herein, the facts and law in relation to this matter and the claims released by the terms of this Agreement may turn out to be different from the facts or law as now known to each Party or their counsel. Each Party, therefore, expressly assumes the risk of the existence of different or presently unknown facts or law and agrees that this Agreement shall be in all respects effective and binding as to such Party, despite the possibility of new or different facts or law. *However, should the Court, in its order on preliminary approval or final approval of the Settlement, deem this waiver to be against the interests of absent Class Members, this waiver provision shall be deemed null and void and stricken from this Agreement.*

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7.4. Nothing in this Release shall preclude any action to enforce the terms of the Agreement, including participation in any of the processes detailed herein. Any motion or proceeding to enforce the terms of the Settlement Agreement, in whole or in part, shall be before the Court, which shall retain jurisdiction over the matter for such purposes.

7.5. Plaintiffs, members of the Class, and Class Counsel hereby agree and acknowledge that the provisions of this Release together constitute an essential and material term of the Agreement and shall be included in any Final Order and Final Judgment entered by the Court. The Release shall become effective on the Effective Date.

7.6. Persons who are not members of the Class do not release any claims they may have and such claims are reserved and unaffected by this Settlement.

8. **NOTICE OF SETTLEMENT.**

8.1. Within ten (10) calendar days of the Court's entry of the Preliminary Approval Order, Hillsborough, through the Settlement Administrator, shall send via first-class mail to all of its current Customers at the property address that receives water service and to all of its former Customers whose addresses can be located through a skip trace search performed by the Settlement Administrator or, if no address can be located, to the last known address, a Summary Notice substantially in the form attached hereto as **Exhibit A**, which shall reference a website in which Class Members may obtain further detailed information about the Settlement. This informational web page shall be created and maintained by Hillsborough through the Settlement Administrator.

8.2. Any returned notices will be re-sent by the Settlement Administrator following a skip trace performed by the Settlement Administrator.

8.3. Within ten (10) calendar days of the Court's entry of the Preliminary Approval Order, Hillsborough, through the Settlement Administrator, shall cause to be published in the San Mateo Daily Journal, a publication notice in the form attached hereto as **Exhibit F** on two dates that are seven (7) days apart. The costs of this publication notice shall be paid by Hillsborough as part of the costs of the Settlement Administrator.

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8.4. Hillsborough shall, no later than ten (10) calendar days after the Court enters the Preliminary Approval Order, cause a website to be created and published on the Internet that shall include a copy of this Agreement, a Summary Notice substantially in the form attached hereto as **Exhibit A**, a Long Form Notice substantially in the form attached hereto as **Exhibit B**, a Refund Claim Form for former customers whose addresses cannot be found substantially in the form attached hereto as **Exhibit C**, an Opt-Out Form substantially in the form attached hereto as **Exhibit D**, an Objection Form substantially in the form attached hereto as **Exhibit E**, and the Preliminary Approval Order. The website shall be updated with Class Counsel's application for Attorney's Fees and Reimbursement of Costs, the Motion for Final Approval of Settlement, and with any other information as required by the Court in its Preliminary Approval Order or as agreed to by the Parties. Class Counsel shall cause a portal through which Refund Claim Forms may be submitted by Class Members to be included on the website.

8.5. The Parties and/or their respective Counsel shall file an affidavit of compliance with these notice requirements no later than five (5) court days prior to the Fairness Hearing.

9. **OPT OUT OF CLASS & SETTLEMENT.**

9.1. Any Class Member who does not wish to participate in the Class and wishes to opt out of the Settlement may file an Opt Out Notice in the form attached hereto as **Exhibit D** with the Claims Administrator who shall notify Class Counsel, Hillsborough, and the Court of those who opt out. Any persons who opt out of the Class and the Settlement will not be entitled to a Refund, will not release any claims pursuant to this Settlement or be subject to the release set forth herein, and will reserve all claims he or she may have, and may not file an objection to the Settlement. Opt Outs must be postmarked no later than the Exclusion Deadline.

10. **OBJECTIONS TO THE SETTLEMENT.**

10.1. Any member of the Class who wishes to object to the fairness, reasonableness, or adequacy of the Settlement Agreement, or to the award of Attorneys' Fees and Costs, must

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deliver to the Settlement Administrator a completed Objection Form, in the form attached hereto as **Exhibit E** which shall include: (1) the full name of the objector; (2) the mailing address of the objector; (3) the property address where the objector has received domestic water service; and (4) the specific reason(s), if any, for the objection, including any legal support the Class Member wishes to bring to the Court's attention. Such objections must be postmarked no later than the Objection Deadline. The Settlement Administrator shall notify Class Counsel, Hillsborough, and the Court of those who object to the Settlement.

10.2. Any Class Member who files and serves a written objection may, but is not required to, appear at the Fairness Hearing, either in person or through personal counsel hired at the Class Member's own expense, to object to the fairness, reasonableness, or adequacy of this Agreement or the award of Attorneys' Fees and Costs.

10.3. Class Members or their attorneys who intend to make an appearance at the Fairness Hearing must deliver a notice of intention to appear to Class Counsel identified in the Class Notice and to Hillsborough's counsel, and file said notice with the Court, on or before the Objection Deadline. The notice of intention to appear must include copies of any papers, exhibits, or other evidence that the objecting Class Member (or the objecting Class Member's counsel) will present to the Court in connection with the Fairness Hearing.

10.4. Any Class Member who fails to timely submit an objection to the Settlement Agreement pursuant to and complying with the Provisions of Paragraphs 10.1-10.3 shall be deemed to have waived and forfeited any and all rights he or she may have to appear separately and/or to object at or during the Fairness Hearing or in any other proceeding in this Action, and shall be bound by all terms of this Agreement and by all proceedings, orders and judgments, including, but not limited to, the Release, the Final Order, and the Final Judgment in the Action.

10.5. The exclusive means for objecting to the Settlement shall be through the provisions of Paragraphs 10.1 to 10.3 of this Agreement.

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10.6. Any Class Member who objects to the Settlement shall be entitled to all benefits of the Settlement if this Agreement and the terms contained herein are approved, as long as the objecting Class Member complies with all requirements of this Agreement applicable to Class Members. Similarly, such objecting Class Member shall be bound by all the terms of this Agreement, including the Release.

11. **MODIFICATION OR TERMINATION OF THIS AGREEMENT.**

11.1. The terms and provisions of this Agreement may be amended, modified, or expanded by written agreement of the Parties and approval of the Court; provided, however, that after entry of the Final Order and Final Judgment, the Parties may by written agreement effect such amendments, modifications, or expansions of this Agreement and its implementing documents (including all exhibits hereto) without further notice to the Class or approval by the Court if such changes are consistent with the Court's Final Order and Final Judgment and do not limit the rights of Class Members under this Agreement.

11.2. In the event the terms or conditions of this Settlement Agreement, other than the terms pertaining to the Attorneys' Fees and Costs, are materially modified by any court, either party in its sole discretion to be exercised within fourteen (14) calendar days after such a material modification may declare this Settlement Agreement null and void and previously-complied with provisions will be unwound.

11.3. In the event that the Court refuses or fails to give final approval to the Settlement, or if a Party exercises his/its option to withdraw from and terminate this Settlement Agreement, then the Settlement proposed herein shall become null and void (with the exception of Paragraph 11.4 herein) and shall have no force or effect, the Parties and the Class shall not be bound by this Agreement, and the Action shall proceed to trial. In this event, the parties agree that the requirement that the Action be brought to trial within five years after commencement (Code of Civil Procedure sections 583.310, *et seq.*) will be extended by one year beyond the date of the Court's refusal or failure to give final approval to the Settlement or the date of termination of the Settlement Agreement, which extension

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is permitted pursuant to Code of Civil Procedure section 583.330(a). The Parties agree to meet and confer if the Settlement Agreement is terminated or not approved to determine how to proceed with the litigation, including setting of a new briefing schedule and trial date.

11.4. Notwithstanding the foregoing, if this Settlement Agreement is not approved by the Court, or the Settlement herein is declared null and void, Class Members, Plaintiffs, and Class Counsel shall not in any way be responsible or liable for any costs of notice incurred by Hillsborough associated with this Settlement and Hillsborough shall likewise not be responsible or liable in any way for any costs of notice incurred by Class Members, Plaintiffs or Class Counsel associated with the Settlement.

12. REVIEW, APPROVAL AND RELATED ORDERS.

12.1. As soon as is practicable following the signing of this Settlement Agreement, Class Counsel shall apply to the Court for entry of the Preliminary Approval Order for the purpose of, among other things:

12.1.1. Approving the Class Notice, substantially in the form set forth at **Exhibits A & B**, the Refund Claim Form substantially in the form set forth at **Exhibit C**, the Opt Out Notice substantially in the form set forth at **Exhibit D**, and the Objection Form substantially in the form set forth at **Exhibit E**;

12.1.2. Scheduling the Fairness Hearing on a date ordered by the Court, provided in the Preliminary Approval Order, and in compliance with applicable law, to determine whether the Settlement should be approved as fair, reasonable, and adequate, and to determine whether a Final Order and Final Judgment should be entered;

12.1.3. Determining that the notice of the Settlement and of the Fairness Hearing, as set forth in this Agreement, complies with all legal requirements, including but not limited to the Due Process Clause of the United States Constitution;

12.1.4. Preliminarily approving the form of the Final Order and Final Judgment;

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12.1.5. Directing that Class Notice shall be given to the Class as provided in this Agreement;

12.1.6. Providing that any objections by any Class Member to the Settlement contained in this Agreement, and/or the entry of the Final Order and Final Judgment, shall be heard, and any papers submitted in support of said objections shall be considered by the Court, at the Fairness Hearing only if, on or before the date(s) specified in the Class Notice and Preliminary Approval Order, such objector submits to the Court a written objection, and otherwise complies with the requirements in Paragraph 8 of this Agreement;

12.1.7. Establishing dates by which the Parties shall file and serve all papers in support of the application for final approval of the Settlement and in response to any valid and timely objections;

12.1.8. Providing that all Class Members will be bound by the Final Order and Final Judgment unless such Class Members did elect to opt out of the Class in accordance with this Settlement Agreement and the Class Notice;

12.1.9. Directing the Parties, pursuant to the terms and conditions of this Agreement, to take all necessary and appropriate steps to establish the means necessary to implement the Settlement Agreement;

12.1.10. Pending the Fairness Hearing, staying all proceedings in the Action, other than proceedings necessary to carry out or enforce the terms and conditions of this Agreement and the Preliminary Approval Order;

12.1.11. Adopting all deadlines set forth herein; and

12.1.12. Issuing other related orders to effectuate the preliminary approval of the Settlement Agreement.

12.2. Following the entry of the Preliminary Approval Order, Class Notice shall be given in the manner directed and approved by the Court.

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- 12.3. Class Counsel will move for final approval and file such motion fourteen (14) days before the Fairness Hearing. The parties may file responses to any objections not less than five (5) court days before Fairness Hearing.
- 12.4. At the Fairness Hearing, the Parties will seek to obtain from the Court a Final Order and Final Judgment. The Final Order and Final Judgment shall, among other things:
- 12.4.1. Find that the Court has jurisdiction over all Plaintiffs and Class Members and that venue is proper;
- 12.4.2. Finally approve the Agreement and Settlement, pursuant to California Code of Civil Procedure sections 382, et seq., as fair, adequate and reasonable to the Class;
- 12.4.3. Find that the Class Notice and the Notice Plan comply with all laws, including, but not limited to, the Due Process Clause of the United States Constitution;
- 12.4.4. Dismiss all claims, including, but not limited to, the Released Claims of Plaintiffs, Class Representatives, and Class Members in the Action, with prejudice and without costs (except as provided herein as to costs);
- 12.4.5. Preserve all claims of persons not within the Class definition as well as those who have timely excluded themselves from the Class;
- 12.4.6. Adjudicate any objections that have been presented to the Settlement;
- 12.4.7. Incorporate the Releases set forth in the Agreement and make the Releases effective as of the date of the Final Order and Final Judgment;
- 12.4.8. Award Attorneys' Fees and Costs in amounts deemed fair, adequate and reasonable in the circumstances;
- 12.4.9. Authorize the Parties to implement the terms of the Agreement;
- 12.4.10. Retain jurisdiction relating to the administration, consummation, enforcement, and interpretation of the Agreement, the Final Order and Final Judgment, and for any other necessary purpose; and
- 12.4.11. Issue related Orders necessary to effectuate the final approval of the Agreement and its implementation.

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13. SERVICE AWARD

13.1. In recognition of the time and effort the Class Representatives have expended in pursuing the Action and fulfilling their obligations and responsibilities as Class Representatives, and of the benefits conferred on all Class Members by the Settlement, Class Counsel may ask the Court for payment of a Service Award to be paid to the Class Representatives.

13.2. It is Class Counsel's intention to apply to the Court for payment of a Service Award in amounts not exceeding the following: \$8,000.00 to John Lockton, \$8,000.00 to David Marquardt, \$5,000.00 to Charles Syers, \$5,000.00 to Charles Bolton, and \$5,000.00 to Paul Rochester. Hillsborough will not object to Service Awards in these amounts or less to the Class Representatives. No amount has been guaranteed or promised to the Class Representatives.

13.3. The Court shall determine the final amount of any Service Awards to the Class Representatives, in its discretion, based on the request filed by or on behalf of the Class Representatives. Such application will be made for determination at the Final Approval Hearing.

13.4. The Class Representatives acknowledge that they (i) support the Settlement as fair, adequate and reasonable to the Class, whether or not the Court awards any Service Awards; (ii) have not asserted any individual non-class claims against Hillsborough in the operative complaint; (iii) have not entered into any separate settlement agreement with Hillsborough; (iv) have not received any additional consideration from Hillsborough that other Class Members are not in a position to receive should this Settlement be approved, other than the Service Award, which the Court may, in its discretion, award to the Class Representatives; and (v) have reviewed and considered this Agreement.

13.5. The ability of the Class Representatives to apply to the Court for Service Awards is not conditioned on their support of the Settlement.

14. REQUEST FOR ATTORNEYS' FEES & COSTS.

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- 14.1. Class Counsel will make an application to the Court for an award of Attorneys' Fees and Costs.
- 14.2. It is Class Counsel's intention to apply to the Court for payment of Attorneys' Fees in an amount not to exceed thirty-three percent (33%) of the Settlement Fund.
- 14.3. It is Class Counsel's intention to apply to the Court for payment of Attorneys' Costs in an amount estimated to be \$20,000 but to be determined at the time of application, to be paid from the Settlement Fund.
- 14.4. This Settlement is inclusive of attorneys' fees, expenses and costs.
- 14.5. Any Attorneys' Fees and Costs awarded by this Settlement or the Court shall be deducted from the Settlement Fund. Such payment will be in lieu of statutory fees Plaintiffs, their attorneys, and/or Class Counsel might otherwise have been entitled to recover from Hillsborough.
- 14.6. The Attorney's Fees and Costs award amount shall be inclusive of all attorneys' fees, costs, advances and expenses incurred by the Class Members, the Class Representatives, or Class Counsel to be paid by Hillsborough and/or the Settlement Fund. Plaintiffs and Class Counsel agree that Hillsborough shall not pay, or be obligated to pay, in excess of any Court award of Attorneys' Fees and Costs, and that in no event shall Hillsborough be obligated to pay any amount in excess of the Settlement Fund.
- 14.7. Pursuant to California Rules of Court, Rule 3.769(b), Class Counsel is required to submit an application for the approval of attorney's fees and costs to the Court. Class Counsel will make an application to the Court as part of the application for final approval of settlement. Updated or supplemental application(s), by those making initial timely petitions only, limited to reporting new and additional professional time and expenses incurred in relation to the Settlement and claims administration process after the filing of the initial petition, shall be permitted to be filed after that date to ensure that the new attorneys' fees and costs on a going-forward basis in this Action are fairly accounted for by the Court and remain compensable, subject to the Court's approval.

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14.8. The procedure for, and the allowance or disallowance by the Court of, any application for attorneys' fees and expenses, or reimbursement to be paid to Class Counsel are not part of the settlement of the Released Claims as set forth in this Settlement and are to be considered by the Court separately from the Court's consideration of the fairness, reasonableness, and adequacy of the settlement of the Released Claims as set forth herein. Any such separate order, finding, ruling, holding, or proceeding relating to any such applications for attorneys' fees and expenses, or any separate appeal from any separate order, finding, ruling, holding, or proceeding relating to them or reversal or modification of them, shall not operate to terminate or cancel this Settlement Agreement or otherwise affect or delay the finality of the Final Order and Final Judgment or the Settlement.

15. GENERAL MATTERS AND RESERVATIONS

15.1. To protect the private information of Hillsborough's water customers, any data regarding the names and addresses of any Class Members shall be kept confidential by the Parties, their Counsel, and any third-parties retained to assist in the administration of the Settlement, and this information shall be used only as required by this Agreement. The Parties agree to enter into a stipulated protective order to protect the confidentiality of this information if one or more Parties determines such an order is necessary at any time.

15.2. Each Party to this Agreement hereby represents and warrants that no other Party, and no other person, has made any statement or representation to him or it other than as is set forth in this Agreement and each Party has not relied upon any statement, representation, or promise of any other Party or person in executing this Agreement in making the settlement provided for herein.

15.3. Each Party specifically acknowledges this Agreement, except as provided herein, supersedes any prior agreement between the Parties, whether written or oral, and this Agreement constitutes the entire, integrated understanding of the Parties. This Agreement may only be amended by a writing signed by all Parties. The Parties reserve the right,

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subject to the Court's approval, to agree to any reasonable extensions of time that might be necessary to carry out any of the provisions of this Agreement.

15.4. The Class, Class Representatives, Class Counsel, Hillsborough and/or Hillsborough's Counsel shall not be deemed to be the drafter of this Agreement or of any particular provision, nor shall they argue that any particular provision should be construed against its drafter. All Parties agree that this Agreement was drafted by counsel for the Parties during extensive arm's length negotiations. No parole or other evidence may be offered to explain, construe, contradict, or clarify its terms, the intent of the Parties or their counsel, or the circumstances under which this Agreement was made or executed.

15.5. The Parties expressly acknowledge and agree that this Agreement and its exhibits, along with all related drafts, motions, pleadings, conversations, negotiations, and correspondence, constitute an offer of compromise and a compromise within the meaning of California Evidence Code section 1152. In no event shall this Agreement, any of its provisions, or any negotiations, statements, or court proceedings relating to its provisions in any way be construed as, offered as, received as, used as, or deemed to be evidence of any kind in the Action or in any other action or proceeding, except in a proceeding to enforce this Agreement. Without limiting the foregoing, neither this Agreement nor any related negotiations, statements, or court proceedings shall be construed as, offered as, received as, used as, or deemed to be evidence of, an admission or concession of any liability or wrongdoing whatsoever on the part of the Released Parties, Plaintiffs, Hillsborough, or the Class, or as a waiver by the Released Parties, Plaintiffs, Hillsborough, or the Class of any applicable privileges, claims or defenses.

15.6. Each Party hereby represents and warrants he or it has not previously assigned or transferred, or purported to assign or transfer, any of the indebtedness, rights, claims, causes of action, or obligations disposed of by this Agreement.

15.7. This Agreement shall in all respects be interpreted, enforced, and governed exclusively by and under the laws of the State of California. Should any dispute arise

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concerning the enforcement or interpretation of this Agreement, the Parties agree that jurisdiction and venue of such dispute shall reside exclusively in the Superior Court for the County of San Mateo. The Parties further agree that this Agreement shall be enforceable under Code of Civil Procedure section 664.6, and that the Court shall have jurisdiction over the Parties and over this Agreement for that purpose.

15.8. This Agreement has been negotiated by and between parties of equal bargaining power, each represented or having the opportunity to be represented by independent counsel, and each has contributed to its drafting and it is not to be construed in favor of or against any Party hereto.

15.9. If any provision of this Agreement is found to be illegal or invalid, such provision shall be severed and such illegality or invalidity shall remain in full force and effect if the Parties so mutually agree in writing.

15.10. This Agreement affects the settlement and release of claims which are denied and contested, and nothing contained in this Agreement shall be construed as an admission by any of the Parties of any liability asserted in the Action or the Claims. The Parties further agree and acknowledge that this Agreement is intended to resolve differences between the Parties with respect to the Action and the Claims.

15.11. Each Party to this Agreement agrees to act in good faith and to do any and all acts, and execute any and all documents, reasonably necessary to implement the terms of this Agreement and promptly complete the Settlement as contemplated herein.

15.12. The Parties and their respective counsel will not make any public statement that disparages the Settlement or the Parties or their counsel with respect to the Action or Settlement.

15.13. Whenever this Agreement requires or contemplates that one of the Parties shall or may give notice to the other, notice shall be provided by e-mail and/or next-day (excluding Saturdays, Sundays and Federal Holidays) express delivery service as follows:




Upon Class Counsel:

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WALKER, HAMILTON & KOENIG, LLP
 Beau R. Burbidge
beau@whk-law.com
serena@whk-law.com
 50 Francisco Street, Suite 460
 San Francisco, California 94133
 Telephone: (415) 986-3339
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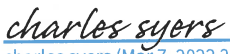
Upon Defense Counsel:
 BEST BEST & KRIEGER LLP
 Harriet A. Steiner, Bar No. 109436
harriet.steiner@bbklaw.com
 James B. Gilpin, Bar No. 151466
James.Gilpin@bbklaw.com
 500 Capitol Mall, Suite 1700
 Sacramento, California 95814
 Telephone: (916) 325-4000
 Facsimile: (916) 325-4010

- 15.14. Upon compliance with the terms hereof, the Parties agree to execute and deliver all documents necessary to effectuate the purposes of this Agreement.
- 15.15. This Agreement may be signed in counterpart original, including facsimile/electronic signatures, each of which shall be deemed an original, and shall be deemed duly executed upon the signing of a counterpart by all Parties.


Dated: Mar 8, 2022	 Charles Bolton (Mar 8, 2022 07:35 EST) <hr/> CHARLES BOLTON
Dated: Mar 8, 2022	 John Lockton (Mar 8, 2022 16:02 PST) <hr/> JOHN LOCKTON
Dated: Mar 4, 2022	 DFMarquardt (Mar 4, 2022 10:45 PST) <hr/> DAVID MARQUARDT

j

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Dated: Mar 8, 2022	 _____ PAUL ROCHESTER
Dated: Mar 7, 2022	 <small>charles syers (Mar 7, 2022 20:48 PST)</small> _____ CHARLES SYERS
Dated:	TOWN OF HILLSBOROUGH By: _____ Town Manager

Second Amended Settlement Agreement

Dated:	<hr/> PAUL ROCHESTER
Dated:	<hr/> CHARLES SYERS
Dated:	TOWN OF HILLSBOROUGH DocuSigned by:  By: <hr/> BE9B46676D3C413... Town Manager

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APPENDIX 1

The following provides a description of the refund procedure agreed to by this Settlement Agreement and an illustrative example meant to aid in interpretation of the Agreement.

The Refunds will be based upon the difference between the amounts customers paid for water at Tiers 3, 4, & 5 rates during the Refund Period and a negotiated settlement rate of \$11.09/hcf during Rate Stabilization Period [February 10, 2016 through November 16, 2016] and \$9.06/hcf during the rest of the Refund Period.

For water used by a customer during the Refund Period, the customer's Tier 3, 4, and 5 rates incurred by the customer at any time during the Refund Period will be recalculated by Hillsborough to one of the negotiated settlement rates (depending on the date of water usage, as described above). Any amount that customer paid for water in excess of these recalculated rates will be refunded to that customer, provided the customer has opted into the Class.

Thus, for example, if in August 2015, a customer used 105 units of water and was billed as follows:

Tier	Monthly Use	Rate (per ccf)	Charge per Tier
1	10	\$7.14	\$71.40
2	15	\$8.44	\$126.60
3	25	\$9.68	\$242.00
4	50	\$11.58	\$579.00
5	5	\$14.18	\$70.09
TOTAL	CHARGE	=	\$1,089.90

The customer's charges would be recalculated using the settlement rates as follows:

Tier	Monthly Use	Rate (per ccf)	Charge per Tier
1	10	\$7.14	\$71.40
2	15	\$8.44	\$126.60
3	25	\$9.06	\$226.50
4	50	\$9.06	\$453.00
5	5	\$9.06	\$45.30
TOTAL	CHARGE	=	\$922.80

Then the customer would be entitled to a refund for that month of the difference between \$1,089.90 and \$922.80, or \$167.10.

This calculation has been completed for every month (or portion thereof) of every customer's water usage during the Refund Period to calculate each customer's total refund.