

**SETTLEMENT AGREEMENT AND GENERAL RELEASE OF CLAIMS**

The parties to this SETTLEMENT AGREEMENT AND GENERAL RELEASE OF CLAIMS (“Agreement”) are DOUG VAGIM, DIANE SMITH and STEVE WAYTE (referred to as “Initiative Proponents” or “Proponents” herein), on the one hand, and the CITY OF FRESNO, a California charter city and municipal corporation (sometimes referred to as or “City”), and DOUGLAS SLOAN, in his capacity as City Attorney of the City of Fresno on the other hand. These persons and entity are referred to collectively as “Parties” or separately as “each Party” herein. This Agreement is effective as of the latest date written next to the signature of a Party to this Agreement.

**I. Recitals.**

WHEREAS, The City of Fresno increased its water rates in August 2013; and

WHEREAS, The Initiative Proponents sought to qualify an initiative measure seeking repeal of the City’s 2013 water rates; and

WHEREAS, The City challenged Initiative Proponents’ authority to seek repeal of the water rates by initiative measure; and

WHEREAS, The City filed a Complaint in Declaratory Relief seeking a judicial determination denying Initiative Proponents’ authority to seek repeal of the City’s August 2013 water rates (*City of Fresno, et al., v. Vagim, et al.*, Case No. 13CECG03080); and

WHEREAS, Initiative Proponents filed a Verified Petition for Writ of Mandate compelling the City to issue a title and summary such that the Initiative Proponents could commence collecting signatures on their rate-repeal ballot initiative measure (*Vagim, et al., v. City of Fresno, et al.*, Case No. 13CECG03206); and

WHEREAS, Initiative Proponents were successful in defending against the City’s Complaint in Declaratory Relief, which case remains on appeal before the California Fifth District Court of Appeal, and for which the City recently renewed a Writ of Mandate separate from its appeal of this matter; and

WHEREAS, Initiative Proponents were successful on their Writ Petition matter and related appeals, which case is now fully concluded; and

WHEREAS, Initiative Proponents were awarded attorneys fees by the Fresno County Superior Court in the two litigation cases; and

WHEREAS, The City has before it a duly qualified initiative measure submitted by Initiative Proponents to repeal the August 2013 water rates, and is required, pursuant to operation of law, to either repeal the challenged rates or set the matter of the rate repeal for a vote of the People of Fresno; and

WHEREAS, The Parties wish to immediately resolve the remaining litigation disputes, payment of attorneys' fees, and the issue of the repeal of the City's 2013 water rates.

NOW, THEREFORE, in consideration of the covenants undertaken and the releases herein contained, and for other good and valuable consideration, the receipt of which is hereby acknowledged, as follows:

## **II. Terms and Conditions of the Settlement Agreement.**

**1. Operative Settlement Provisions.** Parties desire to settle the Lawsuits and to fully and finally settle any and all matters between them arising out of, or relating to, the Lawsuits, or any claims that could have been raised in connection with the Lawsuits or the City's August 2013 water rate increase, without any further court proceedings, trial, appeal or adjudication of any issue of fact or law, and without any admission with respect to such matters. This shall also include issues raised by Proponents' qualified Initiative Measure. In consideration of the mutual promises herein, the Parties agree:

- A. All Lawsuits and related motions, appeals, and actions filed and/or pursued by the Parties shall forthwith be dismissed with prejudice.
- B. The August 2013 water rate increases enacted by the City shall be immediately repealed by the City pursuant to Article XIII C, section 3 of the California Constitution.
- C. The City shall delay enactment of any new water rate increases for a minimum of 6 months from the date of this agreement, and thereafter may establish new, lower rates. Such rate increases, if sought by the City, shall fully comply with Proposition 218, the California Constitution, the Elections Code and other applicable provisions of law and legal authority. Any new rate increases sought shall also comply with the new notice and protest provisions of Item No. 1.E. herein.
- D. Any new rate plan enacted by the City shall be set for a period of not less than five years (the current rate plan is for four years), during which time water rates may not be increased by the City.
- E. Starting from the date of this agreement and for a period of 10 years thereafter, all protest notices on proposed utility rate/fee increases shall be transmitted by the City in envelopes with distinguishing markings that it not be mistaken for any other City mail (said notices shall appear similar to notices for jury duty), and have on the outside front face of the transmittal envelope the words "IMPORTANT INFORMATION ABOUT AN INCREASE TO YOUR UTILITY RATES ENCLOSED" in font size not less than 14pt. The notice envelopes shall include inside a ballot card and self-addressed, reply mail envelopes. All property and other information needed to tally a vote shall have been pre-printed on the envelopes and protest ballot cards so that a valid protest is cast by mail with a check mark and signature on the ballot card by either the property owner of or tenant at an affected property. Such notices shall be transmitted to property owners and also all tenant ratepayers for the affected properties. Only one protest per affected rate-payer property will be eligible to be tallied. The ballot return envelopes shall be

pre-printed with the City's recipient/return address, include the APN on the outside of said envelope, and include proper business reply postage or similar provided by the City, such that a ballot card may be returned by a voter at no direct cost to the voter. The notice requirements herein shall apply to any rate increase sought by the City for water, garbage, and sewer rates.

- F. The City commits that it will seek the most efficient and equitable legal funding mechanisms for any new water projects to minimize cost increases or reduce costs for rate payers, including pursuit of the most cost effective means to save on infrastructure costs.
- G. Proponents agree to refrain from participating in any manner, directly or indirectly, in a new initiative or referendum following the next water rate establishment.
- H. During the 6 month interim period discussed in Item No. 1.C. herein, the City shall sponsor and publicize a bona fide, open, participatory roundtable process involving City leaders, rate-payers (both City and Co Island), taxpayers, taxpayer organizations, initiative proponents, experts, media and interest groups. The purpose of the roundtable process is to foster and undertake serious discussions relative to all project issues, including but not limited to the regional water issue, the scope of city projects, alternatives of financing capital costs both on new development and system-wide infrastructure, alternatives to City's current policy on water, process and methods of low or fixed income subsidy (including, but not limited to, CDBG and PACE program elements). The City shall publicize each of these roundtable meetings on the City's website and on all the public media sites available. Prior to the conclusion of this six-month period, the resulting findings discussed through this process will be put out for further public review by the City for a 45-day period, and at the conclusion of the 45-day period, the findings and summary of discussions and will be placed before the City Council for final review and consideration.
- I. The City shall pay Proponents' attorney fees and legal costs in the amount of \$150,000, which shall be payable by the City within 10 business days of the execution of this agreement to "Bell, McAndrews & Hiltachk, LLP Client Trust Account," 455 Capitol Mall, Suite 600, Sacramento, CA 95814.
- J. The City shall refund the Initiative Proponents' \$200 within 10 business days of the execution of this agreement.

**2. Release of Claims.** In return for the mutual promises and other consideration provided in this Agreement, Proponents, for themselves and their past, present or future heirs, beneficiaries, executors, administrators, officers, directors, agents, partners, successors and assigns ("Releasers"), do hereby fully release, acquit, waive and forever discharge the City and its past, present or future council members, mayors, administrators, officers, employees, agents, successors and assigns ("Releasees"), from any and all claims, actions, causes of action, factual allegations, demands (including without limitation demands for equitable and injunctive relief), debts, damages, costs, expenses including expert fees, losses, or attorney's fees of whatever nature involving the City's August 2013 rate increases and Proponents' subsequent ballot Initiative Measure effort, whether or

not known, suspected or claimed arising out of, based on, or in any way related to the facts alleged (or facts that could have been alleged) in the Lawsuits and related actions, appeals and/or motions (“Claims”), which Claims the Releasors have or may have against the Releasees except for rights to enforce this Agreement. In this Paragraph, the conjunctive includes the disjunctive.

**3. Express Waiver of All Claims Under California Civil Code Section 1542.** It is further understood and agreed that this Agreement extends to all of the above-described Claims and potential Claims, and that all rights under California Civil Code § 1542 are hereby expressly waived by Proponents for themselves with respect to all such Claims. Section 1542 provides as follows:

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

Notwithstanding these provisions of Section 1542, the Parties expressly acknowledge that this Agreement is intended to include in its effect, without limitation, all Claims as described in Paragraph 2 based on the facts alleged (or that could have been alleged) in the Lawsuits, which they do not know or suspect to exist in their favor at the time of execution hereof and that the settlement reflected in this Agreement contemplates the extinguishment of all such Claims, except for rights to enforce this Agreement.

**4. Interpretation.** The interpretation of this Agreement shall be governed by the laws of the State of California and any applicable laws of the United States. This Agreement shall be construed as though jointly prepared by the Parties and any uncertainty or ambiguity shall not be construed against any one Party.

**5. Admissibility of this Agreement.** This Agreement constitutes a compromise of disputed claims and shall not be treated as an admission of liability by the City or any of the Releasees at any time or for any reason. This Agreement shall not be admissible in any legal or administrative proceeding, including proceedings between the City and the Proponents or proceedings involving the City and any other party. Notwithstanding the generality of the foregoing, the Parties agree that once it is signed by the Parties, this Agreement shall be fully binding and admissible in any judicial or administrative proceeding to enforce the terms of this Agreement and/or for breach of this Agreement’s provisions.

**6. Jurisdiction and Venue.** Venue over any dispute that may arise under this Agreement shall be in the Superior Court in and for the County of Fresno and shall be pursued as a related case to the prior Lawsuits. In the event that Proponents are compelled to and thereafter prevail in an action in law or equity to enforce the provisions of this Agreement, to obtain a declaration of rights and obligations in conjunction therewith, or otherwise arising out of this Agreement, the Proponents shall be entitled to recovery of their reasonable attorney’s fees and costs, including any costs incurred to retain expert witnesses in connection therewith.

**7. Execution in Counterparts.** This Agreement may be executed in counterparts, and facsimile or scanned signatures will have the same force and effect as the original.

**8. Entire Agreement.** The Parties acknowledge that no representations, inducements, promises or agreements, oral or otherwise, have been made by any Party or anyone acting on behalf of a Party which are not embodied herein, and that no other agreement, representation, inducement or promise not contained in this Agreement shall be valid or binding. Any modification, waiver or amendment of this Agreement will be effective only if it is in writing and signed by the Party to be charged.

**9. Representation by Counsel.** Each of the Parties expressly acknowledges and represents that it has been represented by counsel in the negotiations culminating in this Agreement. Each of the Parties has read this Agreement, reviewed the same with counsel, and fully understands the meaning and effect of each and every provision of this Agreement, in particular the meaning and effect of the releases and the waiver of rights under California Civil Code§ 1542.

**10. Mayor's Authority to Sign on Behalf of City.** The City hereby confirms that upon approval of this Agreement by the City Council, the Mayor is authorized pursuant to the City's Charter to sign this Agreement on the City's behalf.

**11. Severability.** If any term of this Agreement is declared invalid for any reason, that determination shall not affect the validity of the remainder of the Agreement. The remaining parts of this Agreement shall remain in effect as if the Agreement had been executed without the invalid term.

DATE: \_\_\_\_\_

\_\_\_\_\_  
DOUG VAGIM

DATE: \_\_\_\_\_

\_\_\_\_\_  
DIANE SMITH

DATE: \_\_\_\_\_

\_\_\_\_\_  
STEVE WAYTE

CITY OF FRESNO,  
A California Charter City and municipal  
corporation

DATE: \_\_\_\_\_

\_\_\_\_\_  
By: ASHLEY SWEARENGIN  
Mayor


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DATE: 7/31/14

  
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DOUG VAGIN

DATE: \_\_\_\_\_

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DIANE SMITH

DATE: \_\_\_\_\_

\_\_\_\_\_  
STEVE WAYTE

CITY OF FRESNO,  
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DATE: 7-31-14

  
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DIANE SMITH

DATE: \_\_\_\_\_

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DATE: \_\_\_\_\_

\_\_\_\_\_  
DIANE SMITH

DATE: 7/31/14

  
\_\_\_\_\_  
STEVE WAYTE

CITY OF FRESNO,  
A California Charter City and municipal  
corporation

DATE: \_\_\_\_\_

\_\_\_\_\_  
By: ASHLEY SWEARENGIN  
Mayor



Approved as to form:



Bell, McAndrews & Hiltachk, LLP  
*Counsel for Initiative Proponents*

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Doug Sloan  
City Attorney, City of Fresno  
*Counsel for City of Fresno, et al.*