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County of Los Angeles**

**APR 19 2018**

**Sherri R. Carter, Executive Officer/Clerk of Court  
By: Brittany Smith, Deputy**

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1 HOLLY O. WHATLEY, State Bar No. 160259  
HWhatley@chwlaw.us

2 AMY C. SPARROW, State Bar No. 191597  
ASparrow@chwlaw.us

3 JON R. di CRISTINA, State Bar No. 2282278  
JdiCristina@chwlaw.us

4 COLANTUONO, HIGHSMITH & WHATLEY, PC  
790 E. Colorado Blvd., Suite 850  
Pasadena, California 91101-2109  
Telephone: (213) 542-5700  
Facsimile: (213) 542-5710

7 MICHELE BEAL BAGNERIS, State Bar No. 115423  
City Attorney

8 JAVAN N. RAD, State Bar No. 209722  
JRad@cityofpasadena.net

9 CITY OF PASADENA  
100 North Garfield Avenue, Suite N210  
Pasadena, California 91109

11 Attorneys for Defendant CITY OF PASADENA

**Colantuono, Highsmith & Whatley, PC**  
790 E. COLORADO BOULEVARD, SUITE 850  
PASADENA, CA 91101-2109

**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF LOS ANGELES, SPRING STREET COURTHOUSE**

HOWARD JARVIS TAXPAYERS ASSN.;  
LINNEA WARREN; THOMAS WOLFE;  
EDWARD HENRY; AND ALL OTHERS  
SIMILARLY STITUTED,

Plaintiffs,

v.

CITY OF PASADENA,

Defendant.

**CASE NO. BC550394**  
*Unlimited Jurisdiction*

(Case assigned to Hon. Elihu M. Berle)

CLASS ACTION

**JOINT SUPPLEMENTAL BRIEF  
IN SUPPORT OF PRELIMINARY  
APPROVAL OF SETTLEMENT**

Complaint Filed: July 21, 2014

Hearing Date: May 3, 2018

Time: 2:00 p.m.

Department: *SS* 6

1 At the hearing on Plaintiffs’ Unopposed Motion for Preliminary Approval of Class Action  
2 Settlement, held March 27, 2018, the Court ordered the parties to prepare supplemental briefing on  
3 several questions: (1) How does the proposed settlement benefit the class when it calls on Defendant  
4 City of Pasadena (the “City”) to consider adjustments to its water rates as distinct from committing  
5 to adopt such rates? (2) If the City adopts the new water rates called for in the settlement agreement,  
6 will those rates apply to all customers, regardless of whether those customers opt out of the  
7 settlement? (3) Approximately how many persons are covered by the settlement class?  
8 (4) Approximately how much would the City have paid in refunds if the case went to trial and  
9 Plaintiffs prevailed? (5) What is the approximate cost to administer this settlement?

10 Plaintiffs and Defendant City of Pasadena (the “City”) address each of these below.

11 **I. The Settlement Is Genuine**

12 The Court expressed concern that the settlement agreement commits the City to consider new  
13 water rates but does not obligate them to adopt such rates. However, the law requires the settlement  
14 agreement be so structured for two reasons. First, it complies with rules that prohibit the City  
15 Council from committing to adopt certain water rates before completing the Proposition 218 notice  
16 and public hearing requirements. (See *Trancas Property Owners Assn. v. City of Malibu* (2006) 138  
17 Cal.App.4th 172 (*Trancas*.) And second, it complies with the Brown Act. (Gov. Code, § 54950 et  
18 seq.)

19 The principles in *Trancas* dictate this structure. In *Trancas*, a developer challenged Malibu’s  
20 disapproval of the developer’s residential development subdivision map. (*Id.* at p. 175.) Following  
21 negotiations, Malibu’s city council approved a settlement agreement that included these terms:

- 22 • Malibu would not enact “zoning or other ordinances applicable to the property that  
23 prohibit the construction of the residential units depicted in the final map, as limited by  
24 the terms of the covenant;” and,
- 25 • Trancas would revise its project in a way that “shall conform to the City’s zoning code in  
26 effect as of the date of the recordation of said covenant, except any limitations on density  
27 which vary from the terms of the covenant.”

28 (*Id.* at pp. 178–179.)

1 A neighborhood association sued to invalidate the settlement. The Court of Appeal  
2 determined the agreement “intrinsicly invalid because it includes commitments to take or refrain  
3 from regulatory actions regarding the zoning of Trancas’ development project, which may not  
4 lawfully be undertaken by contract.” (*Id.* at pp. 180–181.) The court explained the Malibu City  
5 Council could not tie a future council’s hands by promising not to exercise its authority over land  
6 use in a particular way. (*Id.* at p. 181 [“it is settled that the government may not contract away its  
7 right to exercise its police power in the future”].) The court also noted that an exemption from the  
8 city’s density restrictions “functionally resembles a variance,” which requires “administrative  
9 proceedings, including public hearings [citations], followed by findings for which the instant density  
10 exemption might not qualify.” (*Id.* at p. 182.) The settlement agreement circumvented via contract  
11 “the substantive qualifications and the procedural means for a variance” the law required to protect  
12 the public interest. (*Ibid.*) This was impermissible. The city could commit to consider such  
13 restrictions at a public hearing, but it could not commit to adopt such restrictions before it completed  
14 the requisite public notice and hearing process.

15 The Court in *Trancas* also determined the settlement invalid because, in violation of the  
16 Brown Act, the city agreed in closed session to promise certain land use decisions that must be  
17 preceded by public hearings. (*Trancas, supra*, at p. 186–187.) The Court ruled the Brown Act  
18 permits the City Council to discuss with their attorneys in closed sessions “settlement proposals or  
19 terms they deem worthy of consideration” that otherwise must follow a public hearing and notice  
20 process. (*Ibid.*) “And they generally may agree to such terms and settlement in closed session.  
21 What they may not do is decide upon or adopt in closed session a settlement that accomplishes or  
22 provides for action for which a public hearing is required by law, without such a hearing.” (*Id.* at  
23 p. 187.) The Court lauded the principles favoring settlement and noted that settlements that protect  
24 statutory procedures and public involvement “should be pursued and commended.” (*Ibid.*) Where  
25 certain actions must be accomplished at or following a public hearing, the Court noted with approval  
26 the model where the litigation is tolled pending the public hearing, “after which the settlement is  
27 effective or the litigation is resumed.” (*Ibid.*)

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1 The proposed settlement here follows that structure. Though this case involves no land use  
2 decision as did *Trancas*, the decision to adopt new water rates also requires notice and a hearing and  
3 the principles in *Trancas* apply. Under Proposition 218, before the City may adopt water rates, it  
4 must provide public notice of its proposed rates and conduct a protest hearing on them. (Cal. Const.,  
5 art. XIII D, § 6, subd. (a).) If a majority of the City’s water customers protest those rates, the City  
6 “shall not” impose them. (*Ibid.*) Approving new rates in a settlement, absent Proposition 218’s  
7 notice and protest procedures, would circumvent public interests at least as strong as those in  
8 *Trancas*. It is not permissible.

9 Following the guidance in *Trancas*, the parties structured the settlement to be contingent on  
10 the City taking action consistent with the parameters of the agreement, but only after the required  
11 public hearing. Specifically, the City has committed itself to consider water rates with certain  
12 characteristics within one year “in compliance with Proposition 218 and applicable public notice and  
13 protest hearing requirements.” (Settlement Agr., ¶¶ 2.1, 2.2.) If the City does not approve rates with  
14 the parameters dictated in the settlement agreement within that one-year period, the settlement  
15 agreement is void, no release provided, and Plaintiffs may resume this action on behalf of the class.  
16 (*Id.*, ¶ 2.3.) And because the entire settlement agreement will be void in such a scenario, Plaintiffs’  
17 counsel would have no right to seek attorney fees that agreement provides them if the City adopts  
18 the rates. (*Id.*, ¶ 2.7.)

19 Far from being illusory, the settlement agreement provides a path to the only process  
20 available to achieve new water rates — compliance with Proposition 218’s requirements for notice  
21 and a protest hearing. It also complies with the Brown Act to ensure that any new rates are adopted  
22 at such public hearing. The class claims are preserved in their entirety if the new rates that are  
23 adopted do not comply with the settlement agreement. This structure protects the class and the  
24 public, and also the City’s interests in obtaining a class-wide release of the class claims in exchange  
25 for adopting rates that comply with the settlement agreement’s terms. If the City adopts such rates  
26 before the final approval of the settlement agreement, then it will have provided the class the  
27 prospective relief it seeks, obtaining nothing in return for consideration. In a more typical class  
28 action, this would be akin to requiring a defendant to pay damages to class members before final

1 approval and before the class commits to release their claims. This is not done and would deny the  
2 defendant any benefit of a settlement bargain. Here, structuring the agreement as contingent ensures  
3 each side obtains a benefit from the agreement but only if the rates ultimately adopted by the City  
4 comply with the settlement.

5 **II. Any New Rates the City Adopts Will Apply to All Customers**

6 Any new water rates the City adopts under the proposed settlement agreement will apply to  
7 all of its water customers in Area B — regardless of whether they are part of the settlement class or  
8 opt out of that class. This is because the City’s water rates must apply equally to customers within  
9 the same user classification. Because of this and to protect the City from mass opt outs, which would  
10 destroy the benefit of the settlement to the City, the City has the option to void that agreement and  
11 rescind its commitment to submit new rates that comply with the settlement parameters to its  
12 customers under Proposition 218 if over 1.5 percent of the notices delivered opt out. (Settlement  
13 Agr., ¶ 2.11.)

14 **III. Estimated Impacts of Settlement**

15 The settlement class includes approximately 25,294 people (customers) with 6,490 water  
16 meters. The cost to administer settlement (e.g., to mail notices, process responses) is estimated to be  
17 \$19,958. (Di Cristina Decl., Exh. A.)

18 The dollar amount of refunds the City might have paid, had the case gone to trial varies  
19 depending on how the Court would have resolved the questions before it. Plaintiffs challenge the  
20 25% differential charged to Area B customers for two components of the City’s water rates — the  
21 commodity charge and the distribution and customer charge (“D&C charge”). If the City persuaded  
22 the Court that both charges were valid, no refund would be due. If the Court invalidated only the  
23 commodity charge, a refund of approximately \$2,689,596 would be due. If the Court invalidated  
24 only the D&C charge, a refund of approximately \$2,451,717 would be due. And if the Court  
25 invalidated both charges, the refund due would be the sum of these amounts: approximately  
26 \$5,141,313.

27 The estimated annual value of eliminating the commodity and D&C charge differential is  
28 approximately \$1,136,571 annually prospectively. Eliminating the 25% differential for the

1 indefinite future dwarfs the value of potential refunds many times over.

2 **IV. Changes to the Settlement Agreement and Class Notice**

3 In line with the Court's order of March 27, 2018, the parties have also changed their  
4 proposed Settlement Agreement and the proposed Class Action Settlement Notices. "Redlined" and  
5 "clean" versions of these documents are attached as Exhibits B, C, D, and E. The parties will lodge  
6 final versions, including a fully executed Settlement Agreement, before the final settlement hearing.

- 7 • Section 2.7 of the Settlement Agreement clarifies that Plaintiffs' counsel will only be  
8 entitled to attorneys' fees if the City Council adopts water rates that eliminate the  
9 differential between residents and nonresidents as agreed to by the parties. The  
10 Settlement Notices include a similar clarification.
- 11 • Section 3.2 of the Settlement Agreement eliminates the waiver of Civil Code section  
12 1542 except for class representatives.
- 13 • The definitions of the class in the Settlement Agreement and in the Settlement Notices  
14 have been harmonized to include all persons covered by the settlement.
- 15 • Section 2.9 of the Settlement Agreement, and corresponding paragraphs in the Settlement  
16 Notices, allow class members to file an objection to the settlement terms without  
17 appearing at the final settlement hearing, and to participate in the final settlement hearing  
18 even if they filed no objection.
- 19 • Section 2.10 of the Settlement Agreement, and corresponding paragraphs in the  
20 Settlement Notices, provide that the deadline to request exclusion from the settlement  
21 class corresponds with the deadline to file and objection to the settlement terms — 30  
22 calendar days before the final fairness hearing. The exact deadlines will be filled in once  
23 such hearing date is set.

24 DATED: April 19, 2018

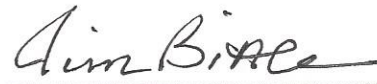
**COLANTUONO, HIGHSMITH &  
WHATLEY, PC**



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HOLLY O. WHATLEY  
JON R. di CRISTINA  
Attorneys for Defendant CITY OF PASADENA

1 DATED: April 18, 2018

**HOWARD JARVIS TAXPAYERS  
FOUNDATION**



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TIMOTHY A. BITTLE  
Attorneys for Plaintiffs

Colantuono, Highsmith & Whatley, PC  
790 E. COLORADO BOULEVARD, SUITE 850  
PASADENA, CA 91101-2109

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## **EXHIBIT B**



## SETTLEMENT AGREEMENT AND RELEASE

**THIS SETTLEMENT AGREEMENT AND RELEASE** (the “Agreement”) is entered into by the Howard Jarvis Taxpayers Association, a California nonprofit corporation, Linnea Warren, an individual, Thomas Wolfe, an individual, Edward Henry, an individual, (collectively, “Plaintiffs”), individually and in their capacities as class representatives, and the City of Pasadena, a California municipal corporation (“City”).

### RECITALS

**A.** City operates Pasadena Water & Power (“PWP”), which provides water service to both the City’s residents and to certain areas outside the City’s boundaries.

**B.** The City’s water rates consist of three primary components: (1) a distribution and customer charge (“D&C”), (2) a commodity rate; and, (3) a capital improvements charge (“CIC”).

**C.** For customers outside the City’s boundaries, the City imposes a 25% surcharge on both the D&C charge and the commodity rate.

**D.** On March 24, 2014, Plaintiffs submitted a Claim for Refund to the City Clerk on behalf of all property owners and tenants whose owned or rented real property is located outside the boundary of territory incorporated as the City of Pasadena, whose owned or rented real property receives water service from the City of Pasadena, who are subject to the D&C charges and commodity rates and who have paid such rates and charges at any time since March 24, 2013. The Claim for Refund was denied by operation of law pursuant to Government Code section 911.6(c).

**E.** On July 1, 2014, Plaintiffs filed suit against the City in *Howard Jarvis Taxpayers Association, et al. v. City of Pasadena*, Los Angeles Superior Court Case No. BC550394 (the “Lawsuit”). The Lawsuit challenges the D&C charge and the commodity rate, but not the CIC, and includes causes of action for declaratory relief and refund.

**F.** On January 29, 2015, Plaintiffs moved to certify a class action against the City, and on July 10, 2015, the Court granted the Plaintiffs’ class certification motion. Trial was set for November 6, 2017.

**G.** The parties have reached a tentative agreement whereby Plaintiffs will waive their claim for water service charge refunds if the City agrees to take steps to equalize certain water rates for customers of PWP inside and outside the City’s boundaries and to limit the projected costs that can be included in any differential in the CIC charged to customers of PWP outside the City’s boundaries

**H.** Accordingly, it is now the intention of the parties and the objective of this Agreement to settle and dispose of, fully and completely and forever, any and all claims and causes of action in the Lawsuit.

**1. DEFINITIONS.** This Section includes definitions that are defined as follows:

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1.1. “Area A” means the water service territory of PWP that is within the City of Pasadena’s incorporated territory.

1.2. “Area B” means the water service territory of PWP that is outside the City of Pasadena’s incorporated territory.

1.3. “Class” or “Class Member” means all persons who currently or formerly are property owners and tenants whose owned or rented real property is located outside the boundary of the territory incorporated as the City of Pasadena, whose owned or rented real property receives water service from the City of Pasadena, who are subject to the water rates applicable to customers outside the City’s incorporated territory, and who have paid said rates and charges at any time since March 24, 2013.

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1.4. “Class Period” means March 24, 2013 through the effective date of the revised water rates that may be adopted pursuant to Section 2.1 below.

1.5. “Class Counsel” or “Plaintiffs’ Counsel” means the Howard Jarvis Taxpayers Foundation.

1.6. “Court” means the Superior Court of California for the County of Los Angeles.

1.7. “City” means the City of Pasadena.

1.8. “City’s Counsel” means the law firm Colantuono, Highsmith & Whatley, PC.

1.9. “Effective Date” means the date on which the Final Approval Order has been entered and has become final. For the purposes of this Section, “final” means (a) if no objection is raised to the proposed settlement at the Fairness Hearing, the date on which the Final Approval Order is entered; or (b) if any objections are raised to the proposed settlement at the Fairness Hearing, the latest of (i) the expiration date of the time for filing notice of any appeal from the Final Approval Order, (ii) the date of final affirmance of any appeal of the Final Approval Order, (iii) the expiration of the time for, or the denial of, a petition for writ of certiorari to review the Final Approval Order or, if certiorari is granted, the date of final affirmance of the Final Approval Order following review pursuant to that grant; or (iv) the date of final dismissal of any appeal from the Final Approval Order or the final dismissal of any proceeding on certiorari to review the Final Approval Order.

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1.10. “Fairness Hearing” means the hearing at which the Court decides whether to approve this Agreement as fair, reasonable, and adequate.

1.11. “Final Approval Order” means an order by the Court finally approving the Settlement and entering a judgment thereon.

1.12. “Full Class Notice” means the full legal notice of the terms of the proposed Settlement, as approved by Plaintiffs’ Counsel, City’s Counsel, and the Court, to be provided to Class Members pursuant to Section 2.8 of this Agreement and attached hereto as Exhibit B, or such other form to which the parties mutually agree, in writing, as it may be approved by order of

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the Court.

**1.13.** “Lawsuit” means *Howard Jarvis Taxpayers Association, et al. v. City of Pasadena*, Los Angeles Superior Court Case No. BC550394.

**1.14.** “PWP” means Pasadena Water & Power, a municipal utility operated by the City.

**1.15.** “Plaintiffs” means the Howard Jarvis Taxpayers Association, a California nonprofit corporation, Linnea Warren, an individual, Thomas Wolfe, an individual, Edward Henry, an individual, in their individual capacities and in their capacities as representatives of the Class.

**1.16.** “Preliminary Approval Order” means a Court order substantially in the form of **Exhibit A** hereto, preliminarily approving the proposed Settlement in accordance with the terms of this Agreement, providing for notice of the proposed Settlement to Class Members by means of the Full Class Notice, and setting the date of the Fairness Hearing.

**1.17.** “Publication Notice” means the Court-approved form of Notice of this Agreement to the Settlement Class for publication in the Pasadena Star News or as otherwise ordered by the Court substantially in the form of **Exhibit C** hereto.

**1.18.** “Related Parties” means all of the City’s past, present, and future Mayor, council members, city managers, city clerks, finance directors, employees, agents, attorneys, and all their respective predecessors and successors in interest and legal representatives.

**1.19.** “Released Claims” means and includes any and all claims, demands, rights, damages, obligations, suits, and causes of action of every nature and description whatsoever, ascertained or unascertained, suspected or unsuspected, existing or claimed to exist, including both known and unknown claims of the Plaintiffs and all Class Members, that were or could have been brought against the City and/or its Related Parties, or any of them, during the Class Period, arising from the facts alleged in the Complaint and also including claims arising from the thirty-five percent (35%) CIC differential charged to the City’s water customers in Area B.

**1.20.** “Response Period” means the time period commencing with the City’s mailing of the Full Class Notice under [Section 2.8](#) and ending forty-five (45) calendar days thereafter.

**1.21.** “Settlement” means the settlement of the Lawsuit and related claims and Released Claims in accordance with the terms of this Agreement.

**1.22.** “Settlement Administrator” means the qualified, third party selected by the Parties and approved by the Court in the Preliminary Approval Order to administer this Agreement. The Parties agree to recommend that the Court appoint KCC, LLC, formerly known as “Gilardi & Co., LLC”, as Settlement Administrator and the City shall pay all costs and reasonable expenses of the Settlement Administrator, as additional consideration for this Agreement.

**1.23.** “Settlement Class” means all property owners and tenants whose owned or rented real property is located outside the boundary of territory incorporated as the City of Pasadena, whose owned or rented real property receives water service from the City of Pasadena, who are subject to the D&C charges, the CIC and commodity rates imposed on customers in Area B and

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who have paid said rates and charges at any time since March 24, 2013.

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**1.24.** The term "Settlement Class Member" means an individual Class Member who has not excluded himself or herself from the Settlement.

**2. SETTLEMENT TERMS.**

**2.1 Equalization of D&C Charge and Commodity Rates.** No later than one year after the Final Approval Order and in compliance with Proposition 218 and applicable public notice and protest hearing requirements, the City Council shall consider adjustment to water rates that eliminate the 25% differential in its D&C charge and Commodity rates imposed on customers in Area B. If the 25% differential is eliminated, the City thereafter shall not adopt a rate differential or surcharge for its D&C charge and Commodity rates unless the rationale for such differential or surcharge is applied consistently to each pressure zone and identifiable customer class throughout both Area A and Area B. For example, if the differential or surcharge is based on pumping costs, then the City shall set rates based on pumping costs for each pressure zone and identifiable customer class in both Area A and Area B. If the differential or surcharge is based on peaking factors, then the City shall set rates based on peaking factors for each pressure zone and identifiable customer class in both Area A and Area B. The City shall not base any differential or surcharge on a theory that Area A customers have a superior right to receive groundwater, or that Area A customers are entitled to a rate of return as investors or owners of infrastructure.

**2.2 CIC Differential.** Within the same one year described in Section 2.1, the differential between the Area A and Area B Capital Improvements Charge (if any) shall be calculated so that the differential is based upon the variation in projected costs of capital improvements to serve Area B, as supported by a cost analysis and the Water System Capital Improvement Plan in compliance with Proposition 218. Projected costs to be included in any Area B CIC differential are limited to those bona fide costs that the City would not otherwise incur when it makes capital improvements but for the fact that such improvements are located in unincorporated County of Los Angeles.

**2.3 Agreement Void.** If the City Council does not approve rates within the one year period in the manner described in Sections do not 2.1 and 2.2, then this Agreement is void and the matter returns to court for a trial.

**2.4 Future Rate Challenges.** Plaintiffs are free to challenge future rates, differentials or surcharges (if any).

**2.5 No Refunds.** Plaintiffs waive any right to and will not seek distribution of refunds to the Class.

**2.6 No Incentive Payments.** The named Plaintiffs will not seek any incentive payments to Plaintiffs in their capacities as representatives of the Class.

**2.7 Attorneys' Fees and Costs.** City will not object to Class Counsel's claim for fees and costs in any amount not to exceed in total \$485,000, subject to the Court's approval following a noticed motion. City shall pay this amount or any lesser amount otherwise ordered by the Court within ten (10) days of the adoption of the City's new water rates consistent with Sections 2.1 and

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2.2. Class Counsel's attorneys' fees will not be paid if the City does not adopt new water rates or if the adopted rates do not comply with the conditions in Sections 2.1 and 2.2.

**2.8 Notice.** Subject to Court approval, within thirty (30) days after entry of the Preliminary Approval Order, the City, or at its direction the Settlement Administrator, shall issue the Full Class Notice via, i) a separate mailing from the Settlement Administrator to the City's current customers who are Class Members and (ii) a mailing to former customers who are Class Members at the addresses for those former customers last known to the City. The Full Class Notice shall be substantially in the form attached hereto as **Exhibit B**. The Settlement Administrator, shall publish in the Pasadena Star News the Publication Notice substantially in the form attached hereto as **Exhibit C**. Such publication shall be in such form, size, manner and prominence as class action notices of this type are customarily published within Los Angeles County and in no event shall be less than one-half page in length.

**2.9 Objections to the Settlement.** Objections by any Class Member to: (a) the proposed settlement contained in the Settlement Agreement and described in the Notice; (b) the payment of Attorneys' Fees and Expenses; and/or (c) entry of the Final Order and the Final Judgment shall be heard at the Fairness Hearing. Any papers submitted in support of said objections shall be considered by the Court, at the Fairness Hearing if, at least thirty (30) calendar days before the Fairness Hearing, such Class Member delivers to the Settlement Administrator, at an address to be specified by the Settlement Administrator, the following:

- (a) Notice of his, her or its objection, which shall contain:
  - (i) A heading referring to this Action;
  - (ii) A statement of the legal and factual bases for the objection;
  - (iii) The objector's name, address, telephone number, and email address;
  - (iv) Copies of at least one water bill or other evidence of Class membership; and
  - (v) The signature of the Class Member and his, her or its counsel (if the Class Member is represented by counsel).

(b) The Settlement Administrator will record the date of receipt of the objection and forward it to both Lead City Counsel and Class Counsel no later than three (3) business days after receipt. The Settlement Administrator will also file the original objections with the Clerk of the Court no later than twenty (20) days before the date of the Fairness Hearing. A Class Member need not appear, in person or by counsel, at the Fairness Hearing in order for his, her or its objection to be considered, and a Class Member need not file an objection to participate in the Fairness Hearing.

**2.10 Exclusion from the Settlement Class.** Any Class Member who does not want to be bound by this Agreement, and who thus wishes to be excluded from the Settlement, must submit a written request to opt out with the Settlement Administrator at least thirty (30) calendar days before the Fairness Hearing and as specified in the Preliminary Approval Order. The Settlement

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Administrator will record the date of receipt of the request for opt-out and forward it to both Lead City Counsel and Class Counsel no later than three (3) business days after receipt. The Settlement Administrator will also file the original requests to opt out with the Clerk of the Court no later than twenty (20) days before the scheduled Fairness Hearing date. The Settlement Administrator shall retain copies of all written requests to opt out until such time as it has completed its duties and responsibilities under this Agreement. The request to opt out shall be signed by the Class Member, and include his/her/its name, address, telephone number and Pasadena Water and Power customer account number, if known, with a statement that includes the Class Member's desire to opt out of the class action involving the City of Pasadena's water rates charged to customers outside its incorporated territory. The opt-out request may be, but is not required to be, submitted on the form included in the Full Class Notice.

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(a) Class Members who opt out of the Settlement shall relinquish their rights to benefit under the terms of this Agreement and will not release their claims under Section 3.2, below. However, Class Members who fail to submit a valid and timely request or exclusion on or before the date specified in the Preliminary Approval Order shall be bound by all of the terms of this Agreement and the Final Order and the Final Judgment, regardless of whether they have otherwise attempted to request exclusion from the Settlement.

(b) Any Class Member who submits a timely request for exclusion or opt-out may not file an objection to the Settlement and shall be deemed to have waived any rights or benefits under this Agreement.

**2.11 Excessive Opt-Out Rate.** If the number of Class Members who opt out exceeds one and one-half (1.5) percent of the Full Class Notice forms mailed by the Settlement Administrator, the City shall have the option to declare the Settlement void and to rescind its agreement. The City shall notify Class Counsel and the Court in writing no later than twenty days (20) before the Fairness Hearing if it intends to invoke its option to rescind the Settlement under this Section.

**2.12 Costs of Notice and Administration.** The City shall bear all notice and Settlement administration expenses regardless of when they are incurred. All notice and Settlement administration expenses remain the sole responsibility of the City, regardless of whether the Court enters the Final Approval Order. However, if the Agreement is deemed void pursuant to Section 2.3 above and the City prevails at trial, it is entitled to seek to recover such costs upon noticed motion to the Court.

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**2.13 Final Approval Order.** At least twenty court days before the Fairness Hearing, Plaintiffs shall move the Court for a Final Approval Order. At the same time, Plaintiffs' Counsel shall file with the Court a complete list of all Class Members who have submitted valid and timely requests for exclusion from the Settlement.

**2.14 Action Status If Settlement Not Approved.** This Agreement is being entered into for settlement purposes only. If the Court does not approve the Settlement or enter the Final Approval Order for any reason, or if the Effective Date does not occur for any reason, then this Agreement will be deemed null and void *ab initio*. In that event (a) the Preliminary Approval Order and all of its provisions will be vacated by its own terms, (b) the Lawsuit will revert to the status that existed before the Agreement's execution date, (c) no term or draft of this Agreement, or any

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part of the parties' settlement discussions, negotiations or documentation will have any effect or be admissible into evidence, for any purpose, in the Lawsuit or any other proceeding, other than a proceeding to enforce this Agreement or involving any other dispute arising out of or relating to this Agreement.

### 3. JUDGMENT AND RELEASES.

**3.1 Judgment and Enforcement.** Pursuant to California Rules of Court, Rule 3.769(h), the Parties agree that should the Court grant final approval of the proposed settlement and enter judgment, the judgment shall include a provision for the retention of the Court's jurisdiction over the Parties to enforce the terms of the judgment. In the event of a dispute arising out of or relating to this Agreement or its interpretation, breach or enforcement, the prevailing party shall be entitled to recover reasonable attorneys' fees and costs, as awarded by the Court.

**3.2 Release of Claims by the Plaintiff and the Settlement Class.** It is hereby agreed that, upon the Effective Date, Plaintiffs and all Class Members and their executors, estates, predecessors, successors, assigns, agents and representatives, shall be deemed to have jointly and severally released and forever discharged the City and the Related Parties from any and all Released Claims, whether known or unknown, arising from the facts alleged in the Complaint plus those arising from the thirty-five percent (35%) CIC differential charged to customers in Area B. Class Members provide this release conditioned upon the City's compliance with all provisions of this Agreement. The Court shall retain jurisdiction to enforce the terms of this Agreement by any and all means available. All Class Members shall be fully and forever barred from instituting or prosecuting in any court or tribunal, either directly or indirectly, individually or representatively, any and all Released Claims against the City or any of the Related Parties.

Named Plaintiffs, but not other Class Members, hereby acknowledge and waive the protections afforded by California Civil Code Section 1542, solely as they relate to the allegations contained in Plaintiff's Complaint and relating to the CIC differential, which provides:

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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.

Upon entry of the Final Judgment, Plaintiffs shall have fully, finally and forever released, relinquished and discharged as against City and City's Released Persons, all claims arising out of, relating to or in connection with the institution, prosecution, assertion, defense, settlement or resolution of the Action.

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Deleted: Plaintiff

Deleted: Plaintiff's

This Release shall be void and of no force and effect if the water rates ultimately adopted by the City as set forth in Sections 2.1 and 2.2 do not comply with the conditions in those Sections.

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### 4. ADDITIONAL PROVISIONS.

**4.1 Confidentiality.** To protect the private information of the City's utility customers, any data regarding the names and addresses of Pasadena Water and Power's current or former

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customers is subject to the protective order entered in this case on September 25, 2015, which is attached hereto as **Exhibit D**. The Settlement Administrator shall treat as confidential the names, addresses, and other information about the specific Class Members supplied by the City or City's Counsel and shall use this information only as required by this Agreement.

**4.2 Notices.** Any notice, request, or instruction or other document to be given by any party to this Agreement shall be in writing and delivered personally or sent by registered or certified mail, postage prepaid to:

City's Counsel: Holly O. Whatley  
Shareholder  
Colantuono, Highsmith & Whatley, P.C.  
790 East Colorado Boulevard, Suite 850  
Pasadena, California 91101

With Copy To: Michele Beal Bagneris  
City Attorney  
City of Pasadena  
100 North Garfield Avenue, Suite N210  
Pasadena, California 91109

Class Counsel: Jonathan M. Coupal  
Timothy Bittle  
Howard Jarvis Taxpayers Association  
921 Eleventh Street, Suite 1201  
Sacramento, California 95814

**4.3 No Admission of Liability.** This Agreement reflects the compromise and settlement of disputed claims among the parties. Its constituent provisions, and any and all drafts, communications and discussions relating thereto, shall not be construed as or deemed to be evidence of an admission or concession of any point of fact or law (including, but not limited to, any allegations of wrongdoing or any matters regarding class certification) by any person, including the City, and shall not be offered or received in evidence or requested in discovery in this Lawsuit or any other action or proceeding as evidence of an admission or concession.

**4.4 Change of Time Periods.** All time periods and dates described in this Agreement are subject to the Court's approval. These time periods and dates may be changed by the Court or by the parties' written agreement without notice to the Class Members.

**4.5 Real Parties in Interest.** In executing this Agreement, the parties warrant and represent that neither the claims asserted in this Lawsuit, nor any part of these claims, have been assigned, granted or transferred in any way to any other person, firm or entity.

**4.6 Voluntary Agreement.** The parties executed this Agreement voluntarily and without duress or undue influence.



**4.7 Binding on Successors.** This Agreement binds and benefits the parties' respective successors, assigns, legatees, heirs, executors, administrators, and personal representatives.

**4.8 Parties Represented by Counsel.** The parties acknowledge that (a) they have been represented by independent counsel of their own choosing during the negotiation of this Settlement and the preparation of this Agreement, (b) they have read this Agreement and are fully aware of its contents, and (c) their respective counsel fully explained to them the Agreement and its legal effect.

**4.9 Authorization.** Each party warrants and represents that there are no liens or claims of lien or assignments, in law or equity, against any of the claims or causes of action released by this Agreement and, further, that each party is fully entitled and duly authorized to give this complete and final release and discharge.

**4.10 Entire Agreement.** This Agreement and attached exhibits contain the entire agreement between the parties and constitute the complete, final and exclusive embodiment of their agreement with respect to the Action and supersede all prior proposals, negotiations, agreements and understandings concerning the subject matter of this Agreement. This Agreement is executed without reliance on any promise, representation or warranty by any party or any party's representative other than those expressly set forth in this Agreement.

**4.11 Construction and Interpretation.** Neither party nor any of the parties' respective attorneys will be deemed the drafter of this Agreement for purposes of interpreting any provision in this Agreement in any judicial or other proceeding that may arise between them. This Agreement has been, and must be construed to have been, drafted by all the parties to it, so that any rule that construes ambiguities against the drafter will have no force or affect.

**4.12 Headings.** The various headings used in this Agreement are solely for the parties' convenience and may not be used to interpret this Agreement. The headings do not define, limit, extend or describe the parties' intent or the scope of this Agreement.

**4.13 Exhibits.** The exhibits to this Agreement are integral parts of the Agreement and Settlement and are incorporated into this Agreement.

**4.14 Modifications and Amendments.** No amendment, change or modification to this Agreement will be valid unless in writing signed by the parties or their counsel.

**4.15 Governing Law.** This Settlement Agreement shall be governed by, interpreted under, and enforced in accordance with the internal, substantive laws of the State of California, without giving effect to that State's choice of law principles.

**4.16 Further Assurances.** The parties must execute and deliver any additional papers, documents and other assurances, and must do any other acts reasonably necessary to perform their obligations under this Agreement and to carry out this Agreement's expressed intent.

**4.17 Agreement Constitutes a Complete Defense.** To the extent permitted by law, this Agreement may be pled as a full and complete defense to, and may be used as the basis for an

injunction against, any action, suit or other proceedings that may be instituted, prosecuted or attempted in breach of or contrary to this Agreement.

**4.18 Counterparts.** This Agreement may be executed in counterparts, each of which constitutes an original, but all of which together constitutes one and the same instrument. Several signature pages may be collected and annexed to one or more documents to form a complete counterpart. Photocopies of executed copies of this Agreement may be treated as originals.

**4.19 Recitals.** The Recitals are incorporated by this reference and are part of the Agreement.

**4.20 Severability.** Should any [section](#), paragraph, sentence, clause or provision of this Agreement be held invalid or unenforceable, the remaining Agreement will remain valid and enforceable.

**4.21 Inadmissibility.** This Agreement (whether approved or not approved, revoked, or made ineffective for any reason) and any proceedings or discussions related to this Agreement are inadmissible as evidence of any liability or wrongdoing whatsoever in any court or tribunal in any state, territory, or jurisdiction. Notwithstanding the foregoing, however, this Agreement shall be admissible in any court, tribunal or proceeding arising out of or relating to any dispute arising out of or relating to this Agreement or its interpretation, breach or enforcement.

**4.22 No Conflict Intended.** Any inconsistency between this Agreement and any exhibits will be resolved in favor of this Agreement.

IN WITNESS WHEREOF, the parties hereto have so AGREED.

Dated: \_\_\_\_\_

**HOWARD JARVIS TAXPAYERS ASSOCIATION**

\_\_\_\_\_

By: \_\_\_\_\_

Its: \_\_\_\_\_

Dated: \_\_\_\_\_

**LINNEA WARREN**

\_\_\_\_\_  
LINNEA WARREN, Plaintiff

Dated: \_\_\_\_\_

**THOMAS WOLFE**

\_\_\_\_\_  
THOMAS WOLFE, Plaintiff

Dated: \_\_\_\_\_

**EDWARD HENRY**

\_\_\_\_\_  
EDWARD HENRY, Plaintiff

Dated: \_\_\_\_\_

**CITY OF PASADENA**

\_\_\_\_\_

By: \_\_\_\_\_

Its: \_\_\_\_\_

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## **EXHIBIT C**

## SETTLEMENT AGREEMENT AND RELEASE

**THIS SETTLEMENT AGREEMENT AND RELEASE** (the “Agreement”) is entered into by the Howard Jarvis Taxpayers Association, a California nonprofit corporation, Linnea Warren, an individual, Thomas Wolfe, an individual, Edward Henry, an individual, (collectively, “Plaintiffs”), individually and in their capacities as class representatives, and the City of Pasadena, a California municipal corporation (“City”).

### RECITALS

**A.** City operates Pasadena Water & Power (“PWP”), which provides water service to both the City’s residents and to certain areas outside the City’s boundaries.

**B.** The City’s water rates consist of three primary components: (1) a distribution and customer charge (“D&C”), (2) a commodity rate; and, (3) a capital improvements charge (“CIC”).

**C.** For customers outside the City’s boundaries, the City imposes a 25% surcharge on both the D&C charge and the commodity rate.

**D.** On March 24, 2014, Plaintiffs submitted a Claim for Refund to the City Clerk on behalf of all property owners and tenants whose owned or rented real property is located outside the boundary of territory incorporated as the City of Pasadena, whose owned or rented real property receives water service from the City of Pasadena, who are subject to the D&C charges and commodity rates and who have paid such rates and charges at any time since March 24, 2013. The Claim for Refund was denied by operation of law pursuant to Government Code section 911.6(c).

**E.** On July 1, 2014, Plaintiffs filed suit against the City in *Howard Jarvis Taxpayers Association, et al. v. City of Pasadena*, Los Angeles Superior Court Case No. BC550394 (the “Lawsuit”). The Lawsuit challenges the D&C charge and the commodity rate, but not the CIC, and includes causes of action for declaratory relief and refund.

**F.** On January 29, 2015, Plaintiffs moved to certify a class action against the City, and on July 10, 2015, the Court granted the Plaintiffs’ class certification motion. Trial was set for November 6, 2017.

**G.** The parties have reached a tentative agreement whereby Plaintiffs will waive their claim for water service charge refunds if the City agrees to take steps to equalize certain water rates for customers of PWP inside and outside the City’s boundaries and to limit the projected costs that can be included in any differential in the CIC charged to customers of PWP outside the City’s boundaries

**H.** Accordingly, it is now the intention of the parties and the objective of this Agreement to settle and dispose of, fully and completely and forever, any and all claims and causes of action in the Lawsuit.

**1. DEFINITIONS.** This Section includes definitions that are defined as follows:

**1.1.** “Area A” means the water service territory of PWP that is within the City of Pasadena’s incorporated territory.

**1.2.** “Area B” means the water service territory of PWP that is outside the City of Pasadena’s incorporated territory.

**1.3.** “Class” or “Class Member” means all persons who currently or formerly are property owners and tenants whose owned or rented real property is located outside the boundary of the territory incorporated as the City of Pasadena, whose owned or rented real property receives water service from the City of Pasadena, who are subject to the water rates applicable to customers outside the City’s incorporated territory, and who have paid said rates and charges at any time since March 24, 2013.

**1.4.** “Class Period” means March 24, 2013 through the effective date of the revised water rates that may be adopted pursuant to Section 2.1 below.

**1.5.** “Class Counsel” or “Plaintiffs’ Counsel” means the Howard Jarvis Taxpayers Foundation.

**1.6.** “Court” means the Superior Court of California for the County of Los Angeles.

**1.7.** “City” means the City of Pasadena.

**1.8.** “City’s Counsel” means the law firm Colantuono, Highsmith & Whatley, PC.

**1.9.** “Effective Date” means the date on which the Final Approval Order has been entered and has become final. For the purposes of this Section, “final” means (a) if no objection is raised to the proposed settlement at the Fairness Hearing, the date on which the Final Approval Order is entered; or (b) if any objections are raised to the proposed settlement at the Fairness Hearing, the latest of (i) the expiration date of the time for filing notice of any appeal from the Final Approval Order, (ii) the date of final affirmance of any appeal of the Final Approval Order, (iii) the expiration of the time for, or the denial of, a petition for writ of certiorari to review the Final Approval Order or, if certiorari is granted, the date of final affirmance of the Final Approval Order following review pursuant to that grant; or (iv) the date of final dismissal of any appeal from the Final Approval Order or the final dismissal of any proceeding on certiorari to review the Final Approval Order.

**1.10.** “Fairness Hearing” means the hearing at which the Court decides whether to approve this Agreement as fair, reasonable, and adequate.

**1.11.** “Final Approval Order” means an order by the Court finally approving the Settlement and entering a judgment thereon.

**1.12.** “Full Class Notice” means the full legal notice of the terms of the proposed Settlement, as approved by Plaintiffs’ Counsel, City’s Counsel, and the Court, to be provided to Class Members pursuant to Section 2.8 of this Agreement and attached hereto as **Exhibit B**, or such other form to which the parties mutually agree, in writing, as it may be approved by order of

the Court.

**1.13.** “Lawsuit” means *Howard Jarvis Taxpayers Association, et al. v. City of Pasadena*, Los Angeles Superior Court Case No. BC550394.

**1.14.** “PWP” means Pasadena Water & Power, a municipal utility operated by the City.

**1.15.** “Plaintiffs” means the Howard Jarvis Taxpayers Association, a California nonprofit corporation, Linnea Warren, an individual, Thomas Wolfe, an individual, Edward Henry, an individual, in their individual capacities and in their capacities as representatives of the Class.

**1.16.** “Preliminary Approval Order” means a Court order substantially in the form of **Exhibit A** hereto, preliminarily approving the proposed Settlement in accordance with the terms of this Agreement, providing for notice of the proposed Settlement to Class Members by means of the Full Class Notice, and setting the date of the Fairness Hearing.

**1.17.** “Publication Notice” means the Court-approved form of Notice of this Agreement to the Settlement Class for publication in the Pasadena Star News or as otherwise ordered by the Court substantially in the form of **Exhibit C** hereto.

**1.18.** “Related Parties” means all of the City’s past, present, and future Mayor, council members, city managers, city clerks, finance directors, employees, agents, attorneys, and all their respective predecessors and successors in interest and legal representatives.

**1.19.** “Released Claims” means and includes any and all claims, demands, rights, damages, obligations, suits, and causes of action of every nature and description whatsoever, ascertained or unascertained, suspected or unsuspected, existing or claimed to exist, including both known and unknown claims of the Plaintiffs and all Class Members, that were or could have been brought against the City and/or its Related Parties, or any of them, during the Class Period, arising from the facts alleged in the Complaint and also including claims arising from the thirty-five percent (35%) CIC differential charged to the City’s water customers in Area B.

**1.20.** “Response Period” means the time period commencing with the City’s mailing of the Full Class Notice under Section 2.8 and ending forty-five (45) calendar days thereafter.

**1.21.** “Settlement” means the settlement of the Lawsuit and related claims and Released Claims in accordance with the terms of this Agreement.

**1.22.** “Settlement Administrator” means the qualified, third party selected by the Parties and approved by the Court in the Preliminary Approval Order to administer this Agreement. The Parties agree to recommend that the Court appoint KCC, LLC, formerly known as “Gilardi & Co., LLC”, as Settlement Administrator and the City shall pay all costs and reasonable expenses of the Settlement Administrator, as additional consideration for this Agreement.

**1.23.** “Settlement Class” means all property owners and tenants whose owned or rented real property is located outside the boundary of territory incorporated as the City of Pasadena, whose owned or rented real property receives water service from the City of Pasadena, who are subject to the D&C charges, the CIC and commodity rates imposed on customers in Area B and



who have paid said rates and charges at any time since March 24, 2013.

**1.24.** The term “Settlement Class Member” means an individual Class Member who has not excluded himself or herself from the Settlement.

## **2. SETTLEMENT TERMS.**

**2.1 Equalization of D&C Charge and Commodity Rates.** No later than one year after the Final Approval Order and in compliance with Proposition 218 and applicable public notice and protest hearing requirements, the City Council shall consider adjustment to water rates that eliminate the 25% differential in its D&C charge and Commodity rates imposed on customers in Area B. If the 25% differential is eliminated, the City thereafter shall not adopt a rate differential or surcharge for its D&C charge and Commodity rates unless the rationale for such differential or surcharge is applied consistently to each pressure zone and identifiable customer class throughout both Area A and Area B. For example, if the differential or surcharge is based on pumping costs, then the City shall set rates based on pumping costs for each pressure zone and identifiable customer class in both Area A and Area B. If the differential or surcharge is based on peaking factors, then the City shall set rates based on peaking factors for each pressure zone and identifiable customer class in both Area A and Area B. The City shall not base any differential or surcharge on a theory that Area A customers have a superior right to receive groundwater, or that Area A customers are entitled to a rate of return as investors or owners of infrastructure.

**2.2 CIC Differential.** Within the same one year described in Section 2.1, the differential between the Area A and Area B Capital Improvements Charge (if any) shall be calculated so that the differential is based upon the variation in projected costs of capital improvements to serve Area B, as supported by a cost analysis and the Water System Capital Improvement Plan in compliance with Proposition 218. Projected costs to be included in any Area B CIC differential are limited to those bona fide costs that the City would not otherwise incur when it makes capital improvements but for the fact that such improvements are located in unincorporated County of Los Angeles.

**2.3 Agreement Void.** If the City Council does not approve rates within the one year period in the manner described in Sections do not 2.1 and 2.2, then this Agreement is void and the matter returns to court for a trial.

**2.4 Future Rate Challenges.** Plaintiffs are free to challenge future rates, differentials or surcharges (if any).

**2.5 No Refunds.** Plaintiffs waive any right to and will not seek distribution of refunds to the Class.

**2.6 No Incentive Payments.** The named Plaintiffs will not seek any incentive payments to Plaintiffs in their capacities as representatives of the Class.

**2.7 Attorneys’ Fees and Costs.** City will not object to Class Counsel’s claim for fees and costs in any amount not to exceed in total \$485,000, subject to the Court’s approval following a noticed motion. City shall pay this amount or any lesser amount otherwise ordered by the Court within ten (10) days of the adoption of the City’s new water rates consistent with Sections 2.1 and

2.2. Class Counsel's attorneys' fees will not be paid if the City does not adopt new water rates or if the adopted rates do not comply with the conditions in Sections 2.1 and 2.2.

**2.8 Notice.** Subject to Court approval, within thirty (30) days after entry of the Preliminary Approval Order, the City, or at its direction the Settlement Administrator, shall issue the Full Class Notice via, i) a separate mailing from the Settlement Administrator to the City's current customers who are Class Members and (ii) a mailing to former customers who are Class Members at the addresses for those former customers last known to the City. The Full Class Notice shall be substantially in the form attached hereto as **Exhibit B**. The Settlement Administrator, shall publish in the Pasadena Star News the Publication Notice substantially in the form attached hereto as **Exhibit C**. Such publication shall be in such form, size, manner and prominence as class action notices of this type are customarily published within Los Angeles County and in no event shall be less than one-half page in length.

**2.9 Objections to the Settlement.** Objections by any Class Member to: (a) the proposed settlement contained in the Settlement Agreement and described in the Notice; (b) the payment of Attorneys' Fees and Expenses; and/or (c) entry of the Final Order and the Final Judgment shall be heard at the Fairness Hearing. Any papers submitted in support of said objections shall be considered by the Court, at the Fairness Hearing if, at least thirty (30) calendar days before the Fairness Hearing, such Class Member delivers to the Settlement Administrator, at an address to be specified by the Settlement Administrator, the following:

- (a) Notice of his, her or its objection, which shall contain:
  - (i) A heading referring to this Action;
  - (ii) A statement of the legal and factual bases for the objection;
  - (iii) The objector's name, address, telephone number, and email address;
  - (iv) Copies of at least one water bill or other evidence of Class membership; and
  - (v) The signature of the Class Member and his, her or its counsel (if the Class Member is represented by counsel).

(b) The Settlement Administrator will record the date of receipt of the objection and forward it to both Lead City Counsel and Class Counsel no later than three (3) business days after receipt. The Settlement Administrator will also file the original objections with the Clerk of the Court no later than twenty (20) days before the date of the Fairness Hearing. A Class Member need not appear, in person or by counsel, at the Fairness Hearing in order for his, her or its objection to be considered, and a Class Member need not file an objection to participate in the Fairness Hearing.

**2.10 Exclusion from the Settlement Class.** Any Class Member who does not want to be bound by this Agreement, and who thus wishes to be excluded from the Settlement, must submit a written request to opt out with the Settlement Administrator at least thirty (30) calendar days before the Fairness Hearing and as specified in the Preliminary Approval Order. The Settlement

Administrator will record the date of receipt of the request for opt-out and forward it to both Lead City Counsel and Class Counsel no later than three (3) business days after receipt. The Settlement Administrator will also file the original requests to opt out with the Clerk of the Court no later than twenty (20) days before the scheduled Fairness Hearing date. The Settlement Administrator shall retain copies of all written requests to opt out until such time as it has completed its duties and responsibilities under this Agreement. The request to opt out shall be signed by the Class Member, and include his/her/its name, address, telephone number and Pasadena Water and Power customer account number, if known, with a statement that includes the Class Member's desire to opt out of the class action involving the City of Pasadena's water rates charged to customers outside its incorporated territory. The opt-out request may be, but is not required to be, submitted on the form included in the Full Class Notice.

(a) Class Members who opt out of the Settlement shall relinquish their rights to benefit under the terms of this Agreement and will not release their claims under Section 3.2, below. However, Class Members who fail to submit a valid and timely request or exclusion on or before the date specified in the Preliminary Approval Order shall be bound by all of the terms of this Agreement and the Final Order and the Final Judgment, regardless of whether they have otherwise attempted to request exclusion from the Settlement.

(b) Any Class Member who submits a timely request for exclusion or opt-out may not file an objection to the Settlement and shall be deemed to have waived any rights or benefits under this Agreement.

**2.11 Excessive Opt-Out Rate.** If the number of Class Members who opt out exceeds one and one-half (1.5) percent of the Full Class Notice forms mailed by the Settlement Administrator, the City shall have the option to declare the Settlement void and to rescind its agreement. The City shall notify Class Counsel and the Court in writing no later than twenty days (20) before the Fairness Hearing if it intends to invoke its option to rescind the Settlement under this Section.

**2.12 Costs of Notice and Administration.** The City shall bear all notice and Settlement administration expenses regardless of when they are incurred. All notice and Settlement administration expenses remain the sole responsibility of the City, regardless of whether the Court enters the Final Approval Order. However, if the Agreement is deemed void pursuant to Section 2.3 above and the City prevails at trial, it is entitled to seek to recover such costs upon noticed motion to the Court.

**2.13 Final Approval Order.** At least twenty court days before the Fairness Hearing, Plaintiffs shall move the Court for a Final Approval Order. At the same time, Plaintiffs' Counsel shall file with the Court a complete list of all Class Members who have submitted valid and timely requests for exclusion from the Settlement.

**2.14 Action Status If Settlement Not Approved.** This Agreement is being entered into for settlement purposes only. If the Court does not approve the Settlement or enter the Final Approval Order for any reason, or if the Effective Date does not occur for any reason, then this Agreement will be deemed null and void *ab initio*. In that event (a) the Preliminary Approval Order and all of its provisions will be vacated by its own terms, (b) the Lawsuit will revert to the status that existed before the Agreement's execution date, (c) no term or draft of this Agreement, or any

part of the parties' settlement discussions, negotiations or documentation will have any effect or be admissible into evidence, for any purpose, in the Lawsuit or any other proceeding, other than a proceeding to enforce this Agreement or involving any other dispute arising out of or relating to this Agreement.

### **3. JUDGMENT AND RELEASES.**

**3.1 Judgment and Enforcement.** Pursuant to California Rules of Court, Rule 3.769(h), the Parties agree that should the Court grant final approval of the proposed settlement and enter judgment, the judgment shall include a provision for the retention of the Court's jurisdiction over the Parties to enforce the terms of the judgment. In the event of a dispute arising out of or relating to this Agreement or its interpretation, breach or enforcement, the prevailing party shall be entitled to recover reasonable attorneys' fees and costs, as awarded by the Court.

**3.2 Release of Claims by the Plaintiff and the Settlement Class.** It is hereby agreed that, upon the Effective Date, Plaintiffs and all Class Members and their executors, estates, predecessors, successors, assigns, agents and representatives, shall be deemed to have jointly and severally released and forever discharged the City and the Related Parties from any and all Released Claims, whether known or unknown, arising from the facts alleged in the Complaint plus those arising from the thirty-five percent (35%) CIC differential charged to customers in Area B. Class Members provide this release conditioned upon the City's compliance with all provisions of this Agreement. The Court shall retain jurisdiction to enforce the terms of this Agreement by any and all means available. All Class Members shall be fully and forever barred from instituting or prosecuting in any court or tribunal, either directly or indirectly, individually or representatively, any and all Released Claims against the City or any of the Related Parties.

Named Plaintiffs, but not other Class Members, hereby acknowledge and waive the protections afforded by California Civil Code Section 1542, solely as they relate to the allegations contained in Plaintiff's Complaint and relating to the CIC differential, which provides:

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.

Upon entry of the Final Judgment, Plaintiffs shall have fully, finally and forever released, relinquished and discharged as against City and City's Released Persons, all claims arising out of, relating to or in connection with the institution, prosecution, assertion, defense, settlement or resolution of the Action.

This Release shall be void and of no force and effect if the water rates ultimately adopted by the City as set forth in Sections 2.1 and 2.2 do not comply with the conditions in those Sections.

### **4. ADDITIONAL PROVISIONS.**

**4.1 Confidentiality.** To protect the private information of the City's utility customers, any data regarding the names and addresses of Pasadena Water and Power's current or former

customers is subject to the protective order entered in this case on September 25, 2015, which is attached hereto as **Exhibit D**. The Settlement Administrator shall treat as confidential the names, addresses, and other information about the specific Class Members supplied by the City or City's Counsel and shall use this information only as required by this Agreement.

**4.2 Notices.** Any notice, request, or instruction or other document to be given by any party to this Agreement shall be in writing and delivered personally or sent by registered or certified mail, postage prepaid to:

City's Counsel: Holly O. Whatley  
Shareholder  
Colantuono, Highsmith & Whatley, P.C.  
790 East Colorado Boulevard, Suite 850  
Pasadena, California 91101

With Copy To: Michele Beal Bagneris  
City Attorney  
City of Pasadena  
100 North Garfield Avenue, Suite N210  
Pasadena, California 91109

Class Counsel: Jonathan M. Coupal  
Timothy Bittle  
Howard Jarvis Taxpayers Association  
921 Eleventh Street, Suite 1201  
Sacramento, California 95814

**4.3 No Admission of Liability.** This Agreement reflects the compromise and settlement of disputed claims among the parties. Its constituent provisions, and any and all drafts, communications and discussions relating thereto, shall not be construed as or deemed to be evidence of an admission or concession of any point of fact or law (including, but not limited to, any allegations of wrongdoing or any matters regarding class certification) by any person, including the City, and shall not be offered or received in evidence or requested in discovery in this Lawsuit or any other action or proceeding as evidence of an admission or concession.

**4.4 Change of Time Periods.** All time periods and dates described in this Agreement are subject to the Court's approval. These time periods and dates may be changed by the Court or by the parties' written agreement without notice to the Class Members.

**4.5 Real Parties in Interest.** In executing this Agreement, the parties warrant and represent that neither the claims asserted in this Lawsuit, nor any part of these claims, have been assigned, granted or transferred in any way to any other person, firm or entity.

**4.6 Voluntary Agreement.** The parties executed this Agreement voluntarily and without duress or undue influence.

**4.7 Binding on Successors.** This Agreement binds and benefits the parties' respective successors, assigns, legatees, heirs, executors, administrators, and personal representatives.

**4.8 Parties Represented by Counsel.** The parties acknowledge that (a) they have been represented by independent counsel of their own choosing during the negotiation of this Settlement and the preparation of this Agreement, (b) they have read this Agreement and are fully aware of its contents, and (c) their respective counsel fully explained to them the Agreement and its legal effect.

**4.9 Authorization.** Each party warrants and represents that there are no liens or claims of lien or assignments, in law or equity, against any of the claims or causes of action released by this Agreement and, further, that each party is fully entitled and duly authorized to give this complete and final release and discharge.

**4.10 Entire Agreement.** This Agreement and attached exhibits contain the entire agreement between the parties and constitute the complete, final and exclusive embodiment of their agreement with respect to the Action and supersede all prior proposals, negotiations, agreements and understandings concerning the subject matter of this Agreement. This Agreement is executed without reliance on any promise, representation or warranty by any party or any party's representative other than those expressly set forth in this Agreement.

**4.11 Construction and Interpretation.** Neither party nor any of the parties' respective attorneys will be deemed the drafter of this Agreement for purposes of interpreting any provision in this Agreement in any judicial or other proceeding that may arise between them. This Agreement has been, and must be construed to have been, drafted by all the parties to it, so that any rule that construes ambiguities against the drafter will have no force or effect.

**4.12 Headings.** The various headings used in this Agreement are solely for the parties' convenience and may not be used to interpret this Agreement. The headings do not define, limit, extend or describe the parties' intent or the scope of this Agreement.

**4.13 Exhibits.** The exhibits to this Agreement are integral parts of the Agreement and Settlement and are incorporated into this Agreement.

**4.14 Modifications and Amendments.** No amendment, change or modification to this Agreement will be valid unless in writing signed by the parties or their counsel.

**4.15 Governing Law.** This Settlement Agreement shall be governed by, interpreted under, and enforced in accordance with the internal, substantive laws of the State of California, without giving effect to that State's choice of law principles.

**4.16 Further Assurances.** The parties must execute and deliver any additional papers, documents and other assurances, and must do any other acts reasonably necessary to perform their obligations under this Agreement and to carry out this Agreement's expressed intent.

**4.17 Agreement Constitutes a Complete Defense.** To the extent permitted by law, this Agreement may be pled as a full and complete defense to, and may be used as the basis for an

injunction against, any action, suit or other proceedings that may be instituted, prosecuted or attempted in breach of or contrary to this Agreement.

**4.18 Counterparts.** This Agreement may be executed in counterparts, each of which constitutes an original, but all of which together constitutes one and the same instrument. Several signature pages may be collected and annexed to one or more documents to form a complete counterpart. Photocopies of executed copies of this Agreement may be treated as originals.

**4.19 Recitals.** The Recitals are incorporated by this reference and are part of the Agreement.

**4.20 Severability.** Should any section, paragraph, sentence, clause or provision of this Agreement be held invalid or unenforceable, the remaining Agreement will remain valid and enforceable.

**4.21 Inadmissibility.** This Agreement (whether approved or not approved, revoked, or made ineffective for any reason) and any proceedings or discussions related to this Agreement are inadmissible as evidence of any liability or wrongdoing whatsoever in any court or tribunal in any state, territory, or jurisdiction. Notwithstanding the foregoing, however, this Agreement shall be admissible in any court, tribunal or proceeding arising out of or relating to any dispute arising out of or relating to this Agreement or its interpretation, breach or enforcement.

**4.22 No Conflict Intended.** Any inconsistency between this Agreement and any exhibits will be resolved in favor of this Agreement.

**IN WITNESS WHEREOF**, the parties hereto have so AGREED.

Dated: \_\_\_\_\_

**HOWARD JARVIS TAXPAYERS  
ASSOCIATION**

\_\_\_\_\_  
By: \_\_\_\_\_

Its: \_\_\_\_\_

Dated: \_\_\_\_\_

**LINNEA WARREN**

\_\_\_\_\_  
LINNEA WARREN, Plaintiff

Dated: \_\_\_\_\_

**THOMAS WOLFE**

\_\_\_\_\_  
THOMAS WOLFE, Plaintiff

Dated: \_\_\_\_\_

**EDWARD HENRY**

\_\_\_\_\_  
EDWARD HENRY, Plaintiff

Dated: \_\_\_\_\_

**CITY OF PASADENA**

\_\_\_\_\_  
By: \_\_\_\_\_

Its: \_\_\_\_\_





## **EXHIBIT D**

## **LEGAL NOTICE OF CLASS ACTION SETTLEMENT**

### **IF YOU ARE OR WERE A CUSTOMER OF PASADENA WATER & POWER, YOUR RIGHTS MAY BE AFFECTED**

A class action settlement may affect you if you received water service from Pasadena Water & Power (“PWP”) on property located outside the jurisdictional limits of the City of Pasadena (“City”) at any time since March 24, 2013 to the present. If you qualify, you may exercise one of three options: (1) do nothing and be bound by the terms of the settlement, (2) exclude yourself from the settlement, or (3) object to the settlement. The Los Angeles County Superior Court has given preliminary approval to this settlement and will have a final hearing on [DATE], 2018 to consider whether to approve the settlement.

### **ARE YOU A MEMBER OF THE AFFECTED CLASS?**

You are a member of the class if both of the following are true:

- (1) You own or rent real property located outside the boundaries of the City which receives water service from Pasadena Water & Power, and
- (2) You are subject to and have paid water rates and charges applicable to non-residents at any time since March 24, 2013.

### **WHAT IS THIS CLASS ACTION CASE ABOUT?**

The Howard Jarvis Taxpayers Association, Linnea Warren, Thomas Wolfe, and Edward Henry (“Plaintiffs”) filed a class action lawsuit titled *Howard Jarvis Taxpayers Association, et al. v. City of Pasadena*, Los Angeles County Superior Court Case No. BC550394. The Plaintiffs challenge both the Commodity and Distribution & Customer (“D&C) rates charged for water service by the City’s water utility, PWP, as excessive under Article XIID of the California Constitution (Proposition 218) as to those customers who reside outside the City. The Commodity and D&C charges to customer who reside outside the City are 25% higher than the charges to customers who reside inside the City. The Capital Improvements Charges (CIC) to customer who reside outside the City are 35% higher than the CIC imposed on customers who reside inside the City. The City denies the rates were unlawful under Proposition 218. The Court has not decided who is right.

### **WHAT IS THE SETTLEMENT AGREEMENT?**

A settlement agreement is a way for parties to avoid or limit the cost of and unpredictability of litigation. The parties in this case have agreed to enter into a settlement agreement whereby the

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Plaintiffs waive their claim for water service charge refunds if following the public notice and hearing procedure required by Proposition 218 the City agrees to: 1) Eliminate the 25% rate differential between customers of Pasadena Water & Power inside and outside the City's limits for Commodity and D&C rates; and, 2) limit any CIC differential imposed on customers who reside outside the City to be calculated based on bona fide projected costs that the City would not otherwise incur when it makes capital improvements but for the fact such improvements are located in unincorporated County of Los Angeles. The settlement agreement provides that the City will not object to Class Counsel's claim for attorneys' fees and costs in any amount not to exceed in total \$485,000, subject to the Court's approval following a noticed motion but if, and only if, the City actually adjusts its water rates as just described. The settlement agreement binds all members of the class and may bar future claims against the City.

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## WHAT ARE YOUR OPTIONS IN THIS SETTLEMENT?

You may exercise one of three options: (1) do nothing and be bound by the terms of the settlement, (2) exclude yourself from the settlement, or (3) object to the settlement. If you would like to exclude yourself from the settlement, or if you would like to object to the settlement, you must do so by **[DATE], 2018**. If you stay in the Class, you may, but are not required to, file an objection, but any objections you do wish to file must be in writing and delivered by [DATE]. The notice on the settlement website, [www.howardjarviscityofpasadena.com](http://www.howardjarviscityofpasadena.com) describes how to exclude yourself or object.

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On **[DATE]** at **[TIME]**, the court will hold a Fairness Hearing to consider whether to issue final approval of the settlement and requested attorneys' fees and expenses of up to \$485,000. You may attend at your own expense, and you may ask to speak, but you are not required to do so. If the Fairness Hearing is rescheduled, a notice of the new date or time will be posted on the settlement website.

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## HOW CAN YOU GET MORE INFORMATION?

The pleadings and all other records of this litigation may be examined and copied any time during regular office hours at the office of the Clerk of the Court.

For more detail, please visit [www.howardjarviscityofpasadena.com](http://www.howardjarviscityofpasadena.com) or call toll-free: **[NUMBER]**. To update your contact information, please contact the claims administrator via the website.

**[NUMBER]**

**[www.howardjarviscityofpasadena.com](http://www.howardjarviscityofpasadena.com)**

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## **LEGAL NOTICE OF CLASS ACTION SETTLEMENT**

PLEASE CAREFULLY READ THIS ENTIRE NOTICE. IF YOU ARE OR WERE A CUSTOMER OF PASADENA WATER & POWER, YOUR RIGHTS MAY BE AFFECTED

You are receiving this notice by Order of the Los Angeles County Superior Court.

This is not a solicitation from a lawyer. This is not a communication from the City of Pasadena.

IF YOU RECEIVED WATER SERVICE FROM THE CITY OF PASADENA ON PROPERTY LOCATED OUTSIDE CITY LIMITS AT ANY TIME SINCE MARCH 24, 2013, YOUR RIGHTS MAY BE AFFECTED BY THIS CASE.

### **SUMMARY OF SETTLEMENT**

- Within one year of the court's approval of the settlement and following preparation of a water rate study, the City will consider eliminating the existing twenty-five percent (25%) surcharge imposed on customers of Pasadena Water and Power (PWP) who reside outside the City of Pasadena for Commodity and Distribution & Customer (D&C) charges.
- Within that same one year, the City will consider a Capital Improvements Charge (CIC) differential, if any, imposed on customers of PWP who reside outside the City of Pasadena to be calculated based on bona fide projected costs that the City would not otherwise incur when it makes capital improvements but for the fact such improvements are located in unincorporated County of Los Angeles.
- The City Council's consideration of these rate changes will take place after the required public notice, hearing and protest procedures required by Proposition 218.
- Plaintiffs' attorneys will be awarded attorneys' fees and expenses of up to \$485,000.
- If the approved rates: 1) Do not eliminate the existing twenty-five percent (25%) surcharge imposed on customers of PWP who reside outside the City of Pasadena for Commodity and D&C charges following the Proposition 218 public notice procedure or 2) calculate the CIC differential based on costs other than the bona fide projected costs that the City would not otherwise incur when it makes capital improvements but for the fact such improvements are located in unincorporated County of Los Angeles, then the settlement will be void and the matter will return to court for trial, and Plaintiffs' attorneys will not be entitled to the attorneys' fees and expenses noted above.
- If the approved rates do eliminate the twenty-five percent (25%) surcharge, the City agrees it will not adopt a rate differential for Commodity or D&C charges unless the rationale for the differential applies consistently to customer classes without regard to whether the customers are located inside or outside the City limits. The City also agrees not to base any differential on the theory that inside City customers have superior rights

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to the City’s adjudicated groundwater rights.

- Plaintiffs are free to challenge future rates, differentials or surcharges, if any.
- Plaintiffs waive their claim to any past refunds.
- **This settlement affects your legal rights, regardless of whether you act or don’t act. Please read this notice carefully!**

### **WHAT THE LAWSUIT IS ABOUT**

The Lawsuit, *Howard Jarvis Taxpayers Association et al v. City of Pasadena* (Los Angeles Superior Court Case No. BC 550394) was filed by Howard Jarvis Taxpayers Association, Linnea Warren, Thomas Wolfe and Edward Henry (“Plaintiffs”) to challenge twenty-five percent (25%) surcharge imposed on the Commodity and D&C rates charged by the City of Pasadena for water service to customers who are not residents of the City. Plaintiffs alleged that the 25% surcharge was excessive under Article XIII D of the California Constitution (Proposition 218). Plaintiffs filed the lawsuit on behalf of themselves and all other similarly situated taxpayers. Plaintiffs also seek a refund of the alleged overcharges from March 24, 2013, to the date refunds are paid. Plaintiffs did not originally challenge the thirty-five (35%) surcharge imposed on the CIC charged to customers who are not residents of the City, but after the lawsuit was filed, Plaintiffs alleged that the 35% CIC surcharge was excessive under Proposition 218.

The City of Pasadena disagrees with the Plaintiffs and asserts that its rates comply with Proposition 218 and therefore no refund or other relief is warranted.

The Court has not decided who is right.

### **WHY WAS THIS NOTICE ISSUED?**

The Court issued this notice because you have a right to know about the proposed class action settlement which the Court has preliminarily approved and your rights and deadlines to act. If the Court grants final approval, the settlement becomes final pursuant to its terms.

### **AM I A CLASS MEMBER?**

The Settlement Class includes:

Property owners and tenants whose owned or rented real property is located outside the boundary of territory incorporated as the City of Pasadena, whose owned or rented real property receives water service from the City of Pasadena, who are subject to the water rates and charges applicable to non-residents, and who have paid said rates and charges at

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any time since March 24, 2013.

### WHAT ARE YOUR OPTIONS IN THIS SETTLEMENT?

You may exercise one of three options: (1) do nothing and be bound by the terms of the settlement, (2) exclude yourself from the settlement, or (3) object to the settlement. If you would like to exclude yourself from the settlement, or if you would like to object to the settlement, you must do so by [DATE], 2018. If you stay in the Class, you may, but are not required to, file an objection, but any objections you do wish to file must be in writing delivered by [DATE], 2018.

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On [DATE] at [TIME], the court will hold a Fairness Hearing to consider whether to issue final approval of the settlement and requested attorneys' fees and expenses of up to \$485,000. You may attend at your own expense, and you may ask to speak, but you are not required to do so. If you object by the deadline, you must appear at the Fairness Hearing. If you do not object to the settlement, you need not appear. If the Fairness Hearing is rescheduled, a notice of the new date or time will be posted on the settlement website.

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### WHAT DO I HAVE TO DO TO RECEIVE THE BENEFITS OF THE SETTLEMENT?

You do not need to submit a claim or any paperwork to receive the settlement benefits. If following the Proposition 218 public notice, hearing and protest procedures, the City Council eliminates the 25% surcharge on the Commodity and D&C charges and also limits any CIC differential to the costs described above, you will receive the benefit of lower water rates indefinitely.

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### EXCLUDING YOURSELF FROM THE SETTLEMENT

If you don't want to participate in the settlement, and you want to keep the right to sue or continue to sue the City of Pasadena about the water charges at issue in this lawsuit on your own, then you must exclude yourself by submitting online at [www.howardjarvisvcityofpasadena.com](http://www.howardjarvisvcityofpasadena.com) no later than XXXXXX XX, 2018 or by U.S. Mail postmarked no later than XXXXXX XX, 2018 a completed Opt-Out Form. If you timely opt-out, you will not be legally bound by the settlement or any judgment in this action and you can independently pursue whatever claims you believe you may have outside of the Case.

To pursue your claims separately against the District, you may have to comply with the California Governmental Claims Act (Cal. Gov. Code §§ 900 *et seq* and/or 940 *et seq.*) The Governmental Claim Act has certain timing requirements that could eliminate or reduce the amount you may recover.

### OBJECTING TO THE SETTLEMENT

You may only object if you are a Class member and you do not exclude yourself from the settlement. You can object on your own or you may hire a lawyer. You can tell the Court that you don't agree with the settlement or some part of it by sending a letter to the Claims Administrator so that it is received **on or before** xxxxxx, 2018, saying that you object to the

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settlement. Your objection must contain all of the following: (1) a heading referring to: *Howard Jarvis Taxpayers Association et al v. City of Pasadena* (Los Angeles Superior Court Case No. BC 550394); (2) a statement of the legal and factual bases for your objection; (3) your name, address, telephone number, and email address; (4) copies of water bills dated during the Class Period or other evidence of membership in the Class; and (5) your signature and the signature of your counsel (if you are represented by counsel). The Court will consider your objection. If your objection is mailed in time, you do not have to attend the Final Settlement Hearing described below.

Any objection to the Settlement must be served by first class mail, or email, or otherwise delivered to the Claims Administrator so that it is received by **xxxxxxx**, 2018. The Claims Administrator is KCC, LLC, **XXXXXXXXX**.

### THE COURT'S **FAIRNESS HEARING**

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The Court will hold a hearing at **[TIME]** on **[DATE]**, at **XXXXXXXXX** to decide whether the proposed settlement is fair and reasonable. You may attend at your own expense, and you may ask to speak, but you are not required to do so. If the **Fairness Hearing** is rescheduled, a notice of the new date or time will be posted on the settlement website, [www.howardjarvisvcityofpasadena.com](http://www.howardjarvisvcityofpasadena.com). After the hearing, the Court will decide whether to approve the settlement. We do not know how long the decision will take. Please be patient.

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### GETTING MORE INFORMATION

This notice summarizes the proposed settlement. More details are in the Settlement Agreement. All court records in this litigation, including complete copies of the Settlement Agreement, may be examined during regular court hours at the office of the Clerk of the Court, 600 South Commonwealth Avenue, Los Angeles, CA 90005. You can also get a copy of the Settlement Agreement by visiting the settlement website at [www.howardjarvisvcityofpasadena.com](http://www.howardjarvisvcityofpasadena.com). **DO NOT CONTACT THE COURT DIRECTLY WITH ANY QUESTIONS ABOUT THE SETTLEMENT.**

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### THE LAWYERS REPRESENTING YOU

The Court has appointed the following Class Counsel to represent the Class:

Timothy A. Bittle  
Howard Jarvis Taxpayers Foundation  
921 Eleventh Street, Suite 1201  
Sacramento, CA 95814

[Date]

The Honorable Elihu M. Berle  
Judge of the Superior Court, Dept. 323

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Los Angeles County

**OPT-OUT FORM**

IF YOU WISH TO BE EXCLUDED FROM THE CLASS SETTLEMENT, YOU MUST EITHER COMPLETE, SIGN AND RETURN THIS FORM NO LATER THAN **XXXXXX**, 2018, OR VISIT THE WEB SITE AT [WWW.HOWARDJARVISVCITYOFPASADENA.COM](http://WWW.HOWARDJARVISVCITYOFPASADENA.COM) AND FOLLOW THE INSTRUCTIONS TO OPT-OUT ONLINE NO LATER THAN **XXXXXX**, 2018

I hereby assert my right to be excluded from the settlement class in *Howard Jarvis Taxpayers Association, et al., v. City of Pasadena*, Los Angeles County Superior Court Case No. BC550394.

Print Name: .....

Address Line 1: .....

Address Line 2: .....

Pasadena Water & Power Account Number: .....

Date: .....

Signature: .....

Return this form by mail to: *HJTA v. City of Pasadena*, c/o KCC, LLC, **[INSERT ADDRESS]**

## **EXHIBIT E**

# **LEGAL NOTICE OF CLASS ACTION SETTLEMENT**

## **IF YOU ARE OR WERE A CUSTOMER OF PASADENA WATER & POWER, YOUR RIGHTS MAY BE AFFECTED**

A class action settlement may affect you if you received water service from Pasadena Water & Power (“PWP”) on property located outside the jurisdictional limits of the City of Pasadena (“City”) at any time since March 24, 2013 to the present. If you qualify, you may exercise one of three options: (1) do nothing and be bound by the terms of the settlement, (2) exclude yourself from the settlement, or (3) object to the settlement. The Los Angeles County Superior Court has given preliminary approval to this settlement and will have a final hearing on [DATE], 2018 to consider whether to approve the settlement.

## **ARE YOU A MEMBER OF THE AFFECTED CLASS?**

You are a member of the class if both of the following are true:

- (1) You own or rent real property located outside the boundaries of the City which receives water service from Pasadena Water & Power, and
- (2) You are subject to and have paid water rates and charges applicable to non-residents at any time since March 24, 2013.

## **WHAT IS THIS CLASS ACTION CASE ABOUT?**

The Howard Jarvis Taxpayers Association, Linnea Warren, Thomas Wolfe, and Edward Henry (“Plaintiffs”) filed a class action lawsuit titled *Howard Jarvis Taxpayers Association, et al. v. City of Pasadena*, Los Angeles County Superior Court Case No. BC550394. The Plaintiffs challenge both the Commodity and Distribution & Customer (“D&C) rates charged for water service by the City’s water utility, PWP, as excessive under Article XIID of the California Constitution (Proposition 218) as to those customers who reside outside the City. The Commodity and D&C charges to customer who reside outside the City are 25% higher than the charges to customers who reside inside the City. The Capital Improvements Charges (CIC) to customer who reside outside the City are 35% higher than the CIC imposed on customers who reside inside the City. The City denies the rates were unlawful under Proposition 218. The Court has not decided who is right.

## **WHAT IS THE SETTLEMENT AGREEMENT?**

A settlement agreement is a way for parties to avoid or limit the cost of and unpredictability of litigation. The parties in this case have agreed to enter into a settlement agreement whereby the

Plaintiffs waive their claim for water service charge refunds if following the public notice and hearing procedure required by Proposition 218 the City agrees to: 1) Eliminate the 25% rate differential between customers of Pasadena Water & Power inside and outside the City's limits for Commodity and D&C rates; and, 2) limit any CIC differential imposed on customers who reside outside the City to be calculated based on bona fide projected costs that the City would not otherwise incur when it makes capital improvements but for the fact such improvements are located in unincorporated County of Los Angeles. The settlement agreement provides that the City will not object to Class Counsel's claim for attorneys' fees and costs in any amount not to exceed in total \$485,000, subject to the Court's approval following a noticed motion but if, and only if, the City actually adjusts its water rates as just described. The settlement agreement binds all members of the class and may bar future claims against the City.

## **WHAT ARE YOUR OPTIONS IN THIS SETTLEMENT?**

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On **[DATE]** at **[TIME]**, the court will hold a Fairness Hearing to consider whether to issue final approval of the settlement and requested attorneys' fees and expenses of up to \$485,000. You may attend at your own expense, and you may ask to speak, but you are not required to do so. If the Fairness Hearing is rescheduled, a notice of the new date or time will be posted on the settlement website.

## **HOW CAN YOU GET MORE INFORMATION?**

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For more detail, please visit [www.howardjarvisvcityofpasadena.com](http://www.howardjarvisvcityofpasadena.com) or call toll-free: **[NUMBER]**. To update your contact information, please contact the claims administrator via the website.

**[NUMBER]**

**[www.howardjarvisvcityofpasadena.com](http://www.howardjarvisvcityofpasadena.com)**

## **LEGAL NOTICE OF CLASS ACTION SETTLEMENT**

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### **SUMMARY OF SETTLEMENT**

- Within one year of the court's approval of the settlement and following preparation of a water rate study, the City will consider eliminating the existing twenty-five percent (25%) surcharge imposed on customers of Pasadena Water and Power (PWP) who reside outside the City of Pasadena for Commodity and Distribution & Customer (D&C) charges.
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- The City Council's consideration of these rate changes will take place after the required public notice, hearing and protest procedures required by Proposition 218.
- Plaintiffs' attorneys will be awarded attorneys' fees and expenses of up to \$485,000.
- If the approved rates: 1) Do not eliminate the existing twenty-five percent (25%) surcharge imposed on customers of PWP who reside outside the City of Pasadena for Commodity and D&C charges following the Proposition 218 public notice procedure or 2) calculate the CIC differential based on costs other than the bona fide projected costs that the City would not otherwise incur when it makes capital improvements but for the fact such improvements are located in unincorporated County of Los Angeles, then the settlement will be void and the matter will return to court for trial, and Plaintiffs' attorneys will not be entitled to the attorneys' fees and expenses noted above.
- If the approved rates do eliminate the twenty-five percent (25%) surcharge, the City agrees it will not adopt a rate differential for Commodity or D&C charges unless the rationale for the differential applies consistently to customer classes without regard to whether the customers are located inside or outside the City limits. The City also agrees not to base any differential on the theory that inside City customers have superior rights

to the City's adjudicated groundwater rights.

- Plaintiffs are free to challenge future rates, differentials or surcharges, if any.
- Plaintiffs waive their claim to any past refunds.
- **This settlement affects your legal rights, regardless of whether you act or don't act. Please read this notice carefully!**

### **WHAT THE LAWSUIT IS ABOUT**

The Lawsuit, *Howard Jarvis Taxpayers Association et al v. City of Pasadena* (Los Angeles Superior Court Case No. BC 550394) was filed by Howard Jarvis Taxpayers Association, Linnea Warren, Thomas Wolfe and Edward Henry ("Plaintiffs") to challenge twenty-five percent (25%) surcharge imposed on the Commodity and D&C rates charged by the City of Pasadena for water service to customers who are not residents of the City. Plaintiffs alleged that the 25% surcharge was excessive under Article XIII D of the California Constitution (Proposition 218). Plaintiffs filed the lawsuit on behalf of themselves and all other similarly situated taxpayers. Plaintiffs also seek a refund of the alleged overcharges from March 24, 2013, to the date refunds are paid. Plaintiffs did not originally challenge the thirty-five (35%) surcharge imposed on the CIC charged to customers who are not residents of the City, but after the lawsuit was filed, Plaintiffs alleged that the 35% CIC surcharge was excessive under Proposition 218.

The City of Pasadena disagrees with the Plaintiffs and asserts that its rates comply with Proposition 218 and therefore no refund or other relief is warranted.

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any time since March 24, 2013.

### **WHAT ARE YOUR OPTIONS IN THIS SETTLEMENT?**

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On [DATE] at [TIME], the court will hold a Fairness Hearing to consider whether to issue final approval of the settlement and requested attorneys' fees and expenses of up to \$485,000. You may attend at your own expense, and you may ask to speak, but you are not required to do so. If you object by the deadline, you must appear at the Fairness Hearing. If you do not object to the settlement, you need not appear. If the Fairness Hearing is rescheduled, a notice of the new date or time will be posted on the settlement website.

### **WHAT DO I HAVE TO DO TO RECEIVE THE BENEFITS OF THE SETTLEMENT?**

You do not need to submit a claim or any paperwork to receive the settlement benefits. If following the Proposition 218 public notice, hearing and protest procedures, the City Council eliminates the 25% surcharge on the Commodity and D&C charges and also limits any CIC differential to the costs described above you will receive the benefit of lower water rates indefinitely.

### **EXCLUDING YOURSELF FROM THE SETTLEMENT**

If you don't want to participate in the settlement, and you want to keep the right to sue or continue to sue the City of Pasadena about the water charges at issue in this lawsuit on your own, then you must exclude yourself by submitting online at [www.howardjarvisvcityofpasadena.com](http://www.howardjarvisvcityofpasadena.com) no later than XXXXXX XX, 2018 or by U.S. Mail postmarked no later than XXXXXX XX, 2018 a completed Opt-Out Form. If you timely opt-out, you will not be legally bound by the settlement or any judgment in this action and you can independently pursue whatever claims you believe you may have outside of the Case.

To pursue your claims separately against the District, you may have to comply with the California Governmental Claims Act (Cal. Gov. Code §§ 900 *et seq* and/or 940 *et seq*.) The Governmental Claim Act has certain timing requirements that could eliminate or reduce the amount you may recover.

### **OBJECTING TO THE SETTLEMENT**

You may only object if you are a Class member and you do not exclude yourself from the settlement. You can object on your own or you may hire a lawyer. You can tell the Court that you don't agree with the settlement or some part of it by sending a letter to the Claims Administrator so that it is received **on or before** xxxxxx, 2018, saying that you object to the

settlement. Your objection must contain all of the following: (1) a heading referring to: *Howard Jarvis Taxpayers Association et al v. City of Pasadena* (Los Angeles Superior Court Case No. BC 550394); (2) a statement of the legal and factual bases for your objection; (3) your name, address, telephone number, and email address; (4) copies of water bills dated during the Class Period or other evidence of membership in the Class; and (5) your signature and the signature of your counsel (if you are represented by counsel). The Court will consider your objection. If your objection is mailed in time, you do not have to attend the Final Settlement Hearing described below.

Any objection to the Settlement must be served by first class mail, or email, or otherwise delivered to the Claims Administrator so that it is received by **xxxxxxx**, 2018. The Claims Administrator is KCC, LLC, **XXXXXXXXXX**.

### **THE COURT'S FAIRNESS HEARING**

The Court will hold a hearing at [**TIME**] on [**DATE**], at **XXXXXXXXXX** to decide whether the proposed settlement is fair and reasonable. You may attend at your own expense, and you may ask to speak, but you are not required to do so. If the Fairness Hearing is rescheduled, a notice of the new date or time will be posted on the settlement website, [www.howardjarvisvcityofpasadena.com](http://www.howardjarvisvcityofpasadena.com). After the hearing, the Court will decide whether to approve the settlement. We do not know how long the decision will take. Please be patient.

### **GETTING MORE INFORMATION**

This notice summarizes the proposed settlement. More details are in the Settlement Agreement. All court records in this litigation, including complete copies of the Settlement Agreement, may be examined during regular court hours at the office of the Clerk of the Court, 600 South Commonwealth Avenue, Los Angeles, CA 90005. You can also get a copy of the Settlement Agreement by visiting the settlement website at [www.howardjarvisvcityofpasadena.com](http://www.howardjarvisvcityofpasadena.com). **DO NOT CONTACT THE COURT DIRECTLY WITH ANY QUESTIONS ABOUT THE SETTLEMENT.**

### **THE LAWYERS REPRESENTING YOU**

The Court has appointed the following Class Counsel to represent the Class:

Timothy A. Bittle  
Howard Jarvis Taxpayers Foundation  
921 Eleventh Street, Suite 1201  
Sacramento, CA 95814

[Date]

The Honorable Elihu M. Berle  
Judge of the Superior Court, Dept. 323



Los Angeles County

**OPT-OUT FORM**

IF YOU WISH TO BE EXCLUDED FROM THE CLASS SETTLEMENT, YOU MUST EITHER COMPLETE, SIGN AND RETURN THIS FORM NO LATER THAN **XXXXXX**, 2018, OR VISIT THE WEB SITE AT [WWW.HOWARDJARVISVCITYOFPASADENA.COM](http://WWW.HOWARDJARVISVCITYOFPASADENA.COM) AND FOLLOW THE INSTRUCTIONS TO OPT-OUT ONLINE NO LATER THAN **XXXXXX**, 2018

I hereby assert my right to be excluded from the settlement class in *Howard Jarvis Taxpayers Association, et al., v. City of Pasadena*, Los Angeles County Superior Court Case No. BC550394.

Print Name: .....

Address Line 1: .....

Address Line 2: .....

Pasadena Water & Power Account Number: .....

Date: .....

Signature: .....

Return this form by mail to: *HJTA v. City of Pasadena*, c/o KCC, LLC, [**INSERT ADDRESS**]

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**PROOF OF SERVICE**  
**Howard Jarvis Taxpayers Assn., et al. v. City of Pasadena**  
**Case No. BC550394**

I, Angelo McCabe, declare:

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 790 E. Colorado Boulevard., Suite 850, Pasadena, California 91109.

Pursuant to the Court's Order Authorizing Electronic Service of Documents dated **February 15, 2018**, I instituted service of the attached document described as follows:

**JOINT SUPPLEMENTAL BRIEF IN SUPPORT OF PRELIMINARY APPROVAL OF SETTLEMENT**

on the interested parties in this action (**See Attached Service List**) as follows:

**BY ELECTRONIC MAIL:** I electronically transmitted a copy of the within document in a PDF or word processing format to those persons noted on the attached list at their respective electronic mailbox addresses **using CaseHomePage** in accordance with the Cal. Rules of Court rule 2.251(g) on the date set forth above.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on **April 19, 2018**, at Pasadena, California.



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ANGELO MCCABE

**SERVICE LIST**

**Howard Jarvis Taxpayers Association, et al. v. City of Pasadena**  
Los Angeles County Superior Court Case No. BC550394 - Hon. Elihu M. Berle, Dept. 323

<p>Jonathan M. Coupal, Esq. Trevor A. Grimm, Esq. Timothy A. Bittle, Esq. Laura E. Murray, Esq. <b>HOWARD JARVIS TAXPAYERS FOUNDATION</b> 921 Eleventh Street, Suite 1201 Sacramento, CA 95814 Tel: (916) 444-9950 Tgrimm.kg@gmail.com tim@hjta.org ryan@hjta.org</p>	<p><i>Attorneys for Plaintiffs, Howard Jarvis Taxpayers Association; Linnea Warren; Thomas Wolfe; Edward Henry; and all others similarly situated</i></p>
<p>Michele Beal Bagneris, Esq. <b>CITY OF PASADENA</b> 100 North Garfield Avenue, Suite N210 Pasadena, CA 91109 mbagneris@ci.pasadena.ca.us Tel: (626) 744-4141 Fax: (626) 744-4190</p>	<p><i>Counsel for Defendant, City of Pasadena</i></p>

Colantuono, Highsmith & Whatley, PC  
300 S. GRAND AVENUE, SUITE 2700  
LOS ANGELES, CA 90071-3137