SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SANTA CLARA

MIRIAM GREEN, on behalf of herself, and all others similarly situated, Petitioner and Plaintiff, v. CITY OF PALO ALTO, and DOES 1 through 100, Respondents and Defendants.	Case No. 16CV300760 (Lead) Consolidated with Case No. 18CV336237 *Assigned for all purposes to the Hon. Sunil R. Kulkarni* CLASS ACTION CLASS ACTION SETTLEMENT AGREEMENT AND STIPULATION

EXHIBIT LIST

EXHIBIT "A"	ORIGINAL JUDGMENT
EXHIBIT "B"	ORIGINAL WRIT OF MANDATE
EXHIBIT "C"	PROPOSED LONG FORM CLASS NOTICE
EXHIBIT "D"	PROPOSED SUMMARY CLASS NOTICE
EXHIBIT "E"	PROPOSED PRELIMARY APPROVAL ORDER
EXHIBIT "F"	STIPULATION RE AMENDED CONSOLIDATED COMPLAINT
EXHIBIT "G"	PROPOSED FIRST AMENDED CONSOLIDATED COMPLAINT
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CLASS ACTION SETTLEMENT AGREEMENT AND STIPULATION

Plaintiff Miriam Green, on behalf of herself and the Class Members, on the one hand, and the City of Palo Alto, on the other hand, by and through their respective counsel, in consideration for and subject to the promises, terms, and conditions contained in this Class Action Settlement Agreement and Stipulation, hereby stipulate and agree, subject to Court approval, as follows:

I.

RECITALS

WHEREAS, on October 6, 2016, Petitioner and Plaintiff Miriam Green filed a Class Action Petition for Writ of Mandate and Complaint for Injunctive and Declaratory Relief and Refund of Illegal Tax against Respondent and Defendant the City of Palo Alto in the Superior Court of the State of California for the County of Santa Clara, captioned *Green v. City of Palo Alto*, Case No. 16CV300760 ("2016 Action");

WHEREAS, on June 11, 2018, the City enacted new electric and gas utility rates (the "2018 Rates"). On October 9, 2018, Plaintiff filed a second Class Action Petition for Writ of Mandate and Complaint for Injunctive and Declaratory Relief and Refund of Illegal Tax in the Superior Court of the State of California for the County of Santa Clara, captioned *Green v. City of Palo Alto*, Case No. 18CV336237, challenging the 2018 Rates (the "2018 Action");

WHEREAS, on February 7, 2019, the Court entered an order staying the 2016 Action pending a decision by the California Supreme Court in *Citizens for Fair REU Rates v. City of Redding (Redding)*, striking certain allegations, and certifying a class, defined as follows:

> All customers of the City of Palo Alto Utilities whom the City billed for electric or natural gas from September 23, 2015 through the date on which the Court Orders notice to be sent, excluding (a) all persons who make a timely election to be excluded from the Class, and (b) the judge(s) to whom this case is assigned and any immediate family members thereof.

The Court appointed Plaintiff Miriam Green as the class representative and her attorneys as class counsel. Notice of class certification was delayed until after the court decided the merits of Petitioner's case.

WHEREAS, on February 7, 2019, the court entered an order consolidating the 2016 Action and 2018 Action. The 2016 Action is the lead case. The court also entered an order

amending the certified class, as follows:

> **2012 Gas Rate Class**: All gas utility customers of the City of Palo Alto Utilities whom the City billed for natural gas service between September 23, 2015 and June 30, 2016;
>
> **2016 Gas Rate Class:** All gas utility customers of the City of Palo Alto Utilities whom the City billed for natural gas service between July 1, 2016 and June 30, 2018;
>
> **2016 Electric Rate Class:** All electric utility customers of the City of Palo Alto Utilities whom the City billed for electric service between July 1, 2016 and June 30, 2018;
>
> **2018 Gas Rate Class:** All gas utility customers of the City of Palo Alto Utilities whom the City billed for natural gas service between July 1, 2018 and the date on which the Court orders notice to be sent to class members; and
>
> **2018 Electric Rate Class:** All electric utility customers of the City of Palo Alto Utilities whom the City billed for electric service between July 1, 2018 and the date on which the Court orders notice to be sent to class members

WHEREAS, on February 27, 2019, Plaintiff filed a consolidated class action petition and complaint in the 2016 Action, which is the operative complaint in the case.

WHEREAS, on March 28, 2019, the City filed an answer to the consolidated class action petition and complaint;

WHEREAS, on June 17, 2019, Palo Alto's City Council approved rate changes for the gas utility. The new rates became effective on July 1, 2019 (the "2019 Gas Rates"). The Parties entered into an agreement to toll any and all causes of action Plaintiff has or may have, for herself and on behalf of a class or classes challenging the 2019 Gas Rates, until after the Court ruled on the merits of the 2016 Action. On January 28, 2020, the Parties agreed to amend the 2019 tolling agreement to toll any and all causes of action Plaintiff has or may have, for herself and on behalf of a class or classes, pertaining to the 2019 Gas Rates, until after any appeal in the 2016 Action.

WHEREAS, the Court bifurcated the 2016 Action into a liability and a remedy phase and set the hearing on the liability phase of trial ("Phase I") for September 18, 2019;

WHEREAS, on January 21, 2020, following extensive briefing and oral argument, the Court issued a Statement of Decision for Phase I of trial. The Court found that the City's "electric rates are not taxes under *Redding*, but that the challenged gas rates are to the extent [the City's general fund transfer] and/or market-based rental charges were passed through to ratepayers." The

Court explained that the general fund transfer and market-based rental charges do not correspond to the reasonable costs to the local government of the service provided to ratepayers under article XIII C, section 1, subdivision (e)(2).

WHEREAS, on June 1, 2020, the Court entered an order setting a hearing on the remedy phase of trial ("Phase II") for September 23, 2020;

WHEREAS, on June 22, 2020, Palo Alto's City Council approved rate changes for the gas utility. The new rates became effective on July 1, 2020 (the "2020 Gas Rates"). The Parties entered into an agreement to toll any and all causes of action Plaintiff has or may have, for herself and on behalf of a class or classes to challenge the 2020 Gas Rates, until after any appeal in the 2016 Action.

WHEREAS, on October 27, 2020, following extensive briefing and oral argument, the Court issued a Statement of Decision for Phase II of trial. The Court found Respondent and Defendant the City of Palo Alto liable to gas utility customers and directed it to pay refunds to the class in the following amounts:

- $4,991,510 to the 2012 Gas Rate Class;
- $4,812,000 to the 2016 Gas Rate Class;
- $2,815,000 to the 2018 Gas Rate Class.

The Court further held that "Green is the prevailing party and shall be awarded fees and costs according to law." The Court further noted that the Parties agreed that the 2018 Gas Rate Class should end with bills for gas service sent on or before June 30, 2019.

WHEREAS, on December 17, 2020, the Court entered an order directing the City to provide notice to the Gas Classes and addressing other related issues.

WHEREAS, on March 15, 2021, the Court entered an order approving the form of notice to the 2012-2018 Gas Classes, appointing a class administrator and directing notice to be sent no later than March 25, 2021. Class notice was completed as ordered.

WHEREAS, on June 21, 2021, the Palo Alto City Council approved rate changes for the gas utility. The new rates became effective on July 1, 2021 (the "2021 Gas Rates"). The Parties entered into an agreement to toll any and all causes of action Plaintiff has or may have, for herself

and on behalf of a class or classes challenging the 2021 gas rates, until after any appeal in the 2016 Action.

WHEREAS, on May 14, 2021, the Court entered an Order awarding Plaintiff's attorneys fees in the amount of $3,154,627.50, $6,960 to cover notice costs, $25,000 to cover the cost of distributing the common fund to the individual class members, and $5,000 as an award to Plaintiff, all to be paid from the common fund of the refunds the Court ordered and not in addition to the ordered refunds.

WHEREAS, on June 25, 2021, the Court entered judgment against the Respondent and Defendant the City of Palo Alto on gas rates and for the Respondent and Defendant City on electric rates, attached hereto as Exhibit A. The Clerk of the Court issued a Peremptory Writ of Mandate on August 17, 2021, which, among other things, directed the City to pay the judgment entered by the Court totaling $12,618,510 to the appointed claims administrator, attached hereto as Exhibit B. The judgment also directed that Respondent and Defendant pay Plaintiff's litigation costs pursuant to section 1021 et seq. of the Code of Civil Procedure and Rules 3.1700 and 3.1702 in addition to the common fund;

WHEREAS, on September 7, 2021, the Court entered an order denying the City's motion for new trial and to vacate judgment. The Court also issued an order granting but modifying the City's election to pay the judgment over time and also ordering further notice to the class, 75% of which costs are to be borne by the City;

WHEREAS, on September 21, 2021, the City filed a notice of appeal to the Sixth Appellate District of California, and on October 1, 2021 Plaintiff filed a cross-appeal, case number H049436. The Appeal is currently stayed following the parties' agreement and acceptance of the case into the Court of Appeal's mediation program;

WHEREAS, on June 13, 2022, Palo Alto's City Council approved rate changes for the gas utility. The new rates became effective on July 1, 2022 (the "2022 Gas Rates").

WHEREAS, before entering into this Settlement Agreement, and in addition to fully litigating the 2016 Action through trial and judgment, Plaintiff, by and through her counsel, conducted a thorough examination, investigation, and evaluation of the relevant law, facts, and

allegations to assess the merits of the claims and potential claims to determine the strength of liability, potential remedies, and all defenses thereto;

WHEREAS, Plaintiff, by and through her counsel, conducted an extensive investigation into the facts and law relating to the matters alleged in the complaint and in the Tolled Claims, including review and analysis of the City's charter, Rate Resolutions in 2012, 2016, 2018, 2019, 2020, 2021, and 2022 and related gas utility financial plans, Palo Alto's budgets, the legislative process for the approval of all applicable gas rate resolutions, the lodged administrative record and the City's alleged actions with respect thereto, and the current law and other developments regarding Proposition 26. This investigation included an extensive review and analysis of thousands of pages of the administrative record prepared and submitted by the City with respect to the challenged utility rates, the evaluation of documents and information outside of the administrative record, as well as legal research as to the sufficiency of the claims and appropriateness of class certification, and the preparation of multiple trial briefs and appearance at the hearings on the merits;

WHEREAS, this Settlement was reached as a result of extensive arm's-length negotiations between the Parties and their counsel, including over the course of several weeks and after a mediation with respected mediator, the Mr. Bob Blum, appointed by the Sixth District Court of Appeal to mediate this matter. Before and during these settlement discussions and mediation, the Parties had litigated the 2016 Action through judgment and exchanged sufficient information to permit the Parties and their counsel to evaluate the risks of appeal and to meaningfully conduct informed settlement discussions;

WHEREAS, as a result of extensive arm's-length negotiations, Plaintiff and Class Counsel, on behalf of the 2012-2018 Class, and the City entered into an Agreement to settle and resolve the 2016 Action and all Tolled Claims, including any and all claims that were or could be alleged in the 2016 Action and/or the Tolled Claims;

WHEREAS, based upon their review, investigation, and evaluation of the facts and law relating to the matters alleged in the pleadings, Plaintiff and Class Counsel, on behalf of Plaintiff and the other members of the 2012-2018 Class and proposed Settlement Class, have agreed to

settle the 2016 Action and Tolled Claims pursuant to the provisions of this Settlement and its Exhibits, after considering, among other things: (i) the substantial benefits to the 2012-2018 Class Members under the terms of this Settlement; (ii) the risks, costs, and uncertainty of proceeding through the appellate process and further litigation with respect to the Tolled Claims, especially in complex actions such as this, as well as the difficulties and delays inherent in such litigation; and (iii) the desirability of consummating this Settlement as promptly as possible in order to provide effective relief to class members; and

WHEREAS, the City, for purposes of avoiding burden, expense, risk, and uncertainty of continuing to litigate in the Court of Appeal and the Tolled Claims, and putting to rest all controversies with Plaintiff and the 2012-2018 Class and proposed Settlement Class regarding the 2016 Action and the Tolled Claims, and/or causes of action that were alleged, or could have been alleged, desires to enter into this Settlement Agreement;

NOW, THEREFORE, in consideration of the mutual covenants and terms contained herein, and subject to the reversal of the judgment on Appeal, the court's full performance of the instructions to which the parties agreed in their motion for stipulated reversal of judgment, court approval of this Settlement Agreement, and entry of a new judgment consistent with this Settlement Agreement, the undersigned Plaintiff and Class Counsel, on behalf of the gas classes and the Settlement Class, and the City stipulate and agree to compromise, resolve and otherwise settle their dispute as follows:

II.

DEFINITIONS

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

1. "2012 Rate Resolution" means City of Palo Alto Resolution No. 9261, establishing gas utility rates with an effective date of July 1, 2012.

2. "2016 Rate Resolution" means City of Palo Alto Resolution No. 9596, establishing gas utility rates with an effective date of July 1, 2016

3. "2018 Rate Resolution" means City of Palo Alto Resolution No. 9765, establishing gas utility rates with an effective date of July 1, 2018.

4. "2019 Rate Resolution" means City of Palo Alto Resolution No. 9840, establishing gas utility rates with an effective date of July 1, 2019.

5. "2020 Rate Resolution" means City of Palo Alto Resolution No. 9903, establishing gas utility rates with an effective date of July 1, 2020.

6. "2021 Rate Resolution" means City of Palo Alto Resolution No. 9973, establishing gas utility rates with an effective date of July 1, 2021.

7. "2022 Rate Resolution" means City of Palo Alto Resolution No. 10050, establishing gas utility rates with an effective date of July 1, 2022.

8. "2016 Action" means the class action lawsuit entitled *Green v. City of Palo Alto*, Case No. 16CV300760, filed in the Superior Court of California for the County of Santa Clara.

9. "2018 Action" means the class action lawsuit entitled *Green v. City of Palo Alto*, Case No. 18CV336237, filed in the Superior Court of California for the County of Santa Clara.

10. "Consolidated Action" means the class action lawsuit entitled *Green v. City of Palo Alto*, Case No. 16CV300760, pending in the Superior Court of California for the County of Santa Clara, which is related to and consolidated with *Green v. City of Palo Alto*, Case No. 18CV336237.

11. "Tolled Claims" means any and all causes of action or claims arising out of the 2019 Rate Resolution, 2020 Rate Resolution, 2021 Rate Resolution, and 2022 Rate Resolution as described in the tolling agreements between the Parties.

12. "Tolled Claims Action" means any action filed alleging causes of action relating to the Tolled Claims.

13. "Litigation" shall refer to all causes of action and/or claims that have been or could be asserted in connection with the Consolidated Action and Tolled Claims on behalf of Plaintiff and/or members of the Settlement Class.

14. "Appeal" means the appeal filed in the Consolidated Action by the City on September 21, 2021 and the related cross-appeal filed by Plaintiff. The Appeal is venued in the Sixth Appellate District of California, case number H049436.

15. "Administration Expenses" means any and all fees, costs, charges, advances and expenses of the Settlement Administrator for performance of its duties pursuant to the terms and conditions of this Agreement, including those incurred and/or paid for dissemination of the Class Notice in any form or disbursement of any funds to class members, as ordered by the Court. Administration Expenses do not include such internal costs and expenses incurred by the City of Palo Alto, if any, in carrying out the terms of the Settlement Agreement, including assisting with or effectuating the dissemination of any portion of the Class Notice, calculating any amounts required under this agreement, or fulfilling any of the City's obligations herein.

16. "Agreement" or "Settlement Agreement" means this Class Action Settlement Agreement and Stipulation and the Exhibits attached hereto, including any subsequent amendments and any exhibits to such amendments.

17. "Attorneys' Fees and Expenses" means such funds as may be approved and awarded by the Court to Class Counsel and Plaintiffs' Counsel to compensate them for conferring the benefits upon the Class under this Settlement Agreement and for their professional time, fees, costs, advances and expenses incurred in connection with the Consolidated Action, Tolled Claims and the Settlement Agreement.

18. "2012-2018 Class" means and is comprised of the following certified subclasses:

> **2012 Gas Rate Class**: All gas utility customers of the City of Palo Alto Utilities whom the City billed for natural gas service between September 23, 2015 and June 30, 2016;
>
> **2016 Gas Rate Class:** All gas utility customers of the City of Palo Alto Utilities whom the City billed for natural gas service between July 1, 2016 and June 30, 2018;
>
> **2018 Gas Rate Class:** All gas utility customers of the City of Palo Alto Utilities whom the City billed for natural gas service between July 1, 2018 and June 30, 2019; and

Expressly excluded from the 2012-2018 Class are (a) all persons who make a timely election to be excluded from the 2012-2018 Class, and (b) the judge(s) to whom this case is assigned and any

immediate family members thereof, as reflected in the judgment attached as Exhibit A.

19. "Settlement Class" means and is comprised of the following subclasses:

> **2012 Gas Rate Class**: All gas utility customers of the City of Palo Alto Utilities whom the City billed for natural gas service between September 23, 2015 and June 30, 2016;
>
> **2016 Gas Rate Class:** All gas utility customers of the City of Palo Alto Utilities whom the City billed for natural gas service between July 1, 2016 and June 30, 2018;
>
> **2018 Gas Rate Class:** All gas utility customers of the City of Palo Alto Utilities whom the City billed for natural gas service between July 1, 2018 and June 30, 2019;
>
> **2019 Gas Rate Class**: All gas utility customers of the City of Palo Alto Utilities whom the City billed for natural gas service between July 1, 2019 and June 30, 2020;
>
> **2021 Gas Rate Class:** All gas utility customers of the City of Palo Alto Utilities whom the City billed for natural gas service between July 1, 2021 and June 30, 2022.

Expressly excluded from the Settlement Class are (a) all persons who were excluded from the 2012-2018 Class, as reflected in the judgment attached as Exhibit A; (b) all persons who timely elect to be excluded from the Settlement Class, and (c) the judge(s) to whom this case is assigned and any immediate family members thereof. The Parties agree that gas utility customers of the City of Palo Alto Utilities billed for natural gas service between June 30, 2020 and July 1, 2021 and after June 30, 2022 are not due any refund pursuant to the Original Judgment.

20. "[Year] Gas Sub-Class" shall refer to the sub-class and year within the Settlement Class. For example, the 2012 Gas Sub-Class shall refer to the 2012 Gas Rate Class described as part of the Settlement Class in Paragraph 19 above. Any reference to "Gas Sub-Classes" shall refer to all sub-classes described as part of the Settlement Class in Paragraph 19 above, unless otherwise noted.

21. "Class Period" means the period from September 23, 2015 through June 30, 2023.

22. "Sub-Class Period" means the applicable period identified for each Gas Sub-Class in Paragraph 19 above. For example, the 2012 Sub-Class Period means the period from September 23, 2015 to June 30, 2016.

23. "Gas Utility Customer" means a customer to whom Palo Alto supplies, or has

supplied, gas utility service at rates established by resolution, ordinance or other local law or act during the Class Period.

24. "Gas Customer Account" means an account maintained by the City of Palo Alto to record amounts owed by a Gas Utility Customer for gas service supplied by the City of Palo Alto to a particular service address.

25. "Active Account" means a Gas Customer Account that is open and/or actively used by the City of Palo Alto to record amounts owed by a Gas Utility Customer for ongoing gas service supplied by the City of Palo Alto to a particular service address.

26. "Closed Account" means a Gas Customer Account that is closed and/or inactive and/or where gas service to the service address has ceased.

27. "Class Counsel" means Kearney Littlefield, LLP and Benink & Slavens, LLP.

28. "Class Member" means any member of the Settlement Class who does not elect to be excluded from the Settlement Class or is not an Excluded Person.

29. "Excluded Person" means any person or putative class member who timely and effectively opted out or was otherwise excluded from the 2012-2018 Class, as reflected in the Judgment.

30. "Class Notice" or "Settlement Class Notice" means collectively the proposed Long Form Notice and proposed Summary Notice, and the proposed Preliminary Approval Order (attached in substantial form hereto as Exhibits C, D, and E respectively).

31. "Class Representative," "Petitioner" and "Plaintiff" means Petitioner/Plaintiff Miriam Green and/or any person who appears as a named plaintiff or petitioner on the Complaint.

32. "Consolidated Complaint" or "Complaint" means the Consolidated Verified Petition for Writ of Mandate and Consolidated Complaint for Declaratory Relief and Refund of Illegal Taxes, filed on February 27, 2019 in the Consolidated Action.

33. "First Amended Consolidated Complaint" means the proposed amended consolidated complaint in the form attached hereto as Exhibit G.

34. "Stipulation Re: Amended Consolidated Complaint" means the stipulation between the Parties requesting that the Court grant Plaintiff leave to file the First Amended Consolidated

Complaint, in the form attached hereto as Exhibit F.

35. "Court" means the Superior Court of the State of California for the County of Santa Clara.

36. "Court of Appeal" means the Court of Appeal of the State of California, Sixth Appellate District.

37. "Respondent," "Defendant," "Palo Alto" and/or "City" means the Respondent and Defendant City of Palo Alto.

38. "Respondent's Counsel" means counsel of record for the City: Colantuono, Highsmith & Whatley, PC. and the City of Palo Alto City Attorney's Office, or any other attorneys representing the City in the 2016 Action or Appeal.

39. "Effective Date" means the date on which the Final Order and/or Final Judgment in the Consolidated Action have/has been entered and the time to appeal or otherwise challenge the judgment has expired or, in the event of any appeal, the date upon remittitur following the affirmation of the Final Judgment on appeal.

40. "Exclusion Deadline" or "Opt-Out Deadline" means the date that falls on the day that is sixty (60) calendar days after the Notice Date, or as Ordered by the Court.

41. "Fairness Hearing" means the hearing that is to take place after the entry of the Preliminary Approval Order, the Notice Date, the Exclusion Deadline, and the Objection Deadline for purposes of: (a) entering the Final Order and Final Judgment; (b) determining whether the Settlement should be approved as fair, reasonable, and adequate; (c) ruling upon an application for Service Awards by the Class Representatives; (d) ruling upon an application by Class Counsel for Attorneys' Fees and Expenses; and (e) entering any final order and judgment approving the Settlement, awarding Attorneys' Fees and Expenses and Service Awards.

42. "Final Order and Final Judgment" means the Court's order and judgment finally approving the Settlement, substantially in the proposed form attached hereto as Exhibit H.

43. "Original Judgment" means the judgment duly entered by the Court in the Consolidated Action on June 25, 2021 and currently on appeal, attached hereto as Exhibit A.

44. "Long Form Notice" means the long form notice of settlement, substantially in the

form attached hereto as Exhibit C.

45. "Joint Motion For Stipulated Reversal" means the motion or motions to be jointly filed by the Parties at the Court of Appeal requesting that the Court of Appeal reverse the Original Judgment and remand the Consolidated Action back to the Court pursuant to California Code of Civil Procedure, section 128(a)(8) in a form approved of by the Parties, and it shall include detailed remand instructions in the form set forth in Exhibit I attached hereto, the performance of which the Parties agree is a material condition of this Agreement.

46. "Net Settlement Fund" means the Settlement Fund less (i) Administration Expenses, (ii) any Service Award(s), and (iii) any Attorneys' Fees and Expenses.

47. "Notice Date" means the first date upon which the Settlement Class Notice is disseminated.

48. "Objection Deadline" means the date that falls on the day that is sixty (60) calendar days after the Notice Date, or as otherwise ordered by the Court.

49. "Parties" means, collectively, the City of Palo Alto and Plaintiff Miriam Green.

50. "Plaintiff's Counsel" means counsel for Plaintiff in the Consolidated Action, including Kearney Littlefield, LLP, Benink & Slavens, LLP., Stonebarger Law, APC, and Davidovitz + Bennet.

51. "Preliminary Approval Date" means the date the Court issues the Preliminary Approval Order.

52. "Preliminary Approval Order" means the order preliminarily approving the Settlement, Settlement Class and proposed Class Notice and Notice Plan, substantially in the proposed form attached hereto as Exhibit E.

53. "Refund Period" means a period of time that commences ninety (90) days after the Effective Date and continues for a period of 720 days thereafter.

54. "Release" means the release and waiver set forth in Paragraphs 111 through 121 herein and in the Final Order and Final Judgment.

55. "Released Claims" means any claims that can be or were asserted, or that could reasonably be or have been asserted, in the Litigation against the Released Party and that arise out

of, or relate to any or all of the acts, omissions, facts, matters, transactions, or occurrences that were, or could be or have been directly or indirectly alleged in the Litigation, as more fully described in Paragraph 112 herein.

56. "Released Party" means the City of Palo Alto, including but not limited to its past, present and future officers, council members, directors, employees, subsidiaries, affiliates, partners, predecessors and successors in interest, and assigns.

57. "Service Award" means such funds as may be awarded by the Court to the Class Representative in recognition of her time, effort, and service to the Class, expended in pursuing the Litigation, and in fulfilling her obligations and responsibilities as the Class Representative.

58. "Settlement" means the settlement embodied in this Settlement Agreement and its Exhibits.

59. "Settlement Administrator" means a qualified third party administrator and agent agreed to by the Parties and approved and appointed by the Court in the Preliminary Approval Order to administer the Settlement, including providing the Class Notice and implementing the Notice Plan pursuant to the terms and conditions of this Agreement. The Parties agree to recommend that the Court appoint Phoenix Class Action Administration Solutions as Settlement Administrator subject to the Court's approval.

60. "Settlement Fund" means an amount equal to $17,337,111.00.

61. "Settlement Fund Allocation" means the percentage of the Net Settlement Fund allocated to each of the Gas Sub-Classes. Each Gas Sub-Class's refund is calculated in a manner consistent with the methodology employed by the Court in the Original Judgment, less market-based rental payments applicable to each class. The remaining refund, net of rents, for each Gas Sub-Class was then divided by the sum of all remaining refunds, net of rents, for all sub-classes, to arrive at the percentage of the Net Settlement Fund to be allocated to each Gas Sub-Class ("Settlement Fund Allocation"), as follows:[1]

[1] Specifically, the refunds net of rents for each sub-class are: 2012 ($4,827,111), 2016 ($3,890,000), 2018 ($2,335,000), 2019 ($4,316,000), and 2021 ($3,237,000). The sum of all of these net refund amounts is (footnote continued)

a. The 2012 Gas Sub-Class is to be allocated 26% (twenty-six percent) of the Net Settlement Fund, a calculation based on the amount stated in the Original Judgment less the $164,399, the market-based rent portion of the Original Judgment.[2]

b. 2016 Gas Sub-Class is to be allocated 21% (twenty-one percent) of the Net Settlement Fund, a calculation based on the amount stated in the Original Judgment less $922,000, the market-based rent portion of the Original Judgment.

c. 2018 Gas Sub-Class is to be allocated 13% (thirteen percent) of the Net Settlement Fund, a calculation based on the amount stated in the Original Judgment less $480,000, the market-based rent portion of the Original Judgment.

d. 2019 Gas Sub-Class is to be allocated 23% (twenty-three percent) of the Net Settlement Fund, which has been calculated in a manner consistent to that the court employed in calculating the Original Judgment less market-based rents.

e. 2021 Gas Sub-Class is to be allocated 17% (seventeen percent) of the Net Settlement Fund, which has been calculated in a manner consistent to that the court employed in calculating the Original Judgment less market-based rents.

62. "Summary Notice" means the summary notice of the proposed class action settlement, substantially in the form attached hereto as Exhibit D which shall be disseminated *via* U.S. Mail and e-mail as set forth in Paragraph 94 herein.

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equal to $18,605,111 (($4,827,111 + $3,890,000 + $2,335,000 + $4,316,000 + $3,237,000 = $18,605,111). Each sub-class's net refund is divided by the sum of the net refunds resulting in a percentage. For example, for 2012, the net refund of $4,827,111 is divided by $18,605,111 to arrive at 26%. That percentage is the Settlement Fund Allocation and applied to the Net Settlement Fund to determine the settlement allocation amount for the 2012 Gas Sub-Class.

[2] The total refund, including the rents, was pro-rated for the 2012 Sub-Class because Plaintiff's claim only goes back to September 23, 2015. It was pro-rated by taking the total refund and dividing it by 366 and multiplying the result by 282, the number of calendar days in this sub-class period. The same formula was applied to the rents. The total rents were $213,369. That amount was divided by 366, and the result multiplied by 282, to arrive at $164,399.

III.

COMPROMISE OF HIGHLY CONTESTED ISSUES

63. While judgment has been entered against the City on the gas rate claims, this Settlement nonetheless represents the compromise of highly contested issues in the Litigation, given the Court of Appeal's application of the independent judgment standard for the Appeal. The Parties continue to believe that they can and will prevail on their respective appeals. On the other hand, the Parties acknowledge that a judgment has been entered and they have considered the risks and potential costs of continued litigation of the Consolidated Action and litigation of the Tolled Claims, on the one hand, and the benefits of the proposed settlement, on the other hand, and desire to settle the entire Litigation upon the terms and conditions set forth in this Agreement.

64. The Parties recognize that there exist significant risks and delays inherent in the appellate process and litigation risks relating to the Tolled Claims, and therefore agree to the terms of this Settlement Agreement to resolve this hard-fought, highly-disputed and significant litigation in light of the risks and uncertainties faced by Plaintiff and the City.

IV.

BENEFITS OF SETTLEMENT

65. Class Counsel have fully litigated the Consolidated Action through judgment. To achieve the Original Judgment, Class Counsel investigated the law and the facts and reviewed and analyzed thousands of pages of documents on the key issues in the case, and are now defending the Original Judgment in the Appeal. Class Counsel have taken into account, *inter alia*, the expense and length of the Appeal process that will be necessary to defend the Original Judgment and the time and expense needed to prosecute the Tolled Claims through trial and appeal; the uncertain outcome and the risk of continued and protracted litigation and appeals, especially in complex actions such as the Consolidated Action and Tolled Claims; the difficulties and delays inherent in complex litigation; and the inherent uncertainty and problems of proof of, and available defenses to, the claims asserted in the Litigation. Plaintiff and Class Counsel believe that considering the foregoing, the Settlement set forth herein represents a reasonable compromise of highly disputed and uncertain legal, factual and procedural issues, confers substantial benefits

upon the Class and provides a result and recovery that is certain to be provided to Class Members, when any recovery should the Litigation continue is not certain. Based on their evaluation of all of these factors, Plaintiff and Class Counsel have determined that the settlement of the Litigation, on the terms set forth herein, is in the best interests of the Class and is fair, reasonable, and adequate.

66. The City and the City's Counsel have also considered applicable risks and consequences to them if Plaintiff were prevail in the Appeal and proceed with the Tolled Claims, including certifying additional classes and eventually prevailing on the merits of all class claims on Appeal and at future trials. Respondent has considered and analyzed legal, factual, and procedural defenses to the claims alleged, as well as other options. Respondent and its counsel have determined that the Settlement set forth herein provides a certain result, when the outcome, should the Litigation continue, is uncertain.

67. The Settlement is the result of extensive arm's-length settlement negotiations and discussion between Class Counsel and Respondent's Counsel with the assistance of Mr. Bob Blum, an experienced mediator appointed by the Sixth District Court of Appeal.

V.

MOTION TO REVERSE JUDGMENT AND REMAND CONSOLIDATED ACTION

68. As soon as practicable, but no more than 30 days, after the Parties fully execute this Agreement, the Parties shall prepare and file a Joint Motion For Stipulated Reversal based upon, inter alia, the court's treatment of the market-based rents in the Original Judgment, inclusive of remand instructions to the trial court (which instructions shall be in the form reflected in the attached Exhibit I), with the Court of Appeal requesting an order reversing the judgment and remanding the Consolidated Action back to the Court for further proceedings as described in the remand instructions. Neither the fact that the Parties agreed to file the Joint Motion For Stipulated Reversal nor any of the arguments or contents of the Joint Motion For Stipulated Reversal shall be used against any Party to the Consolidated Action or Appeal.

69. If the Court of Appeal grants the Joint Motion For Stipulated Reversal, the Parties shall proceed with the settlement process under the terms of this Agreement. If the Court of

Appeal denies the Joint Motion For Stipulated Reversal, the parties shall file another Joint Motion For Stipulated Reversal and address any issues raised by the Court of Appeal in denying the motion. If the Parties' good faith attempts to obtain a stipulated reversal do not result in a reversal of the judgment, either Party shall have the right to terminate the Agreement upon notice to the other Party in writing and, upon giving such notice, the Appeal shall return to the procedural status quo ante in accordance with this Paragraph and the Parties retain all rights, arguments and objections they have regarding the Appeal of the Original Judgment.

VI.

FIRST AMENDED CONSOLIDATED COMPLAINT

70. As soon as practical following the Court of Appeal's grant of the Parties' Joint Motion For Stipulated Reversal and remittitur of the Consolidated Action to the trial court, the Parties shall submit a Stipulation Re: Amended Consolidated Verified Petition for Writ of Mandate and Complaint in the form of Exhibit F, attached hereto, requesting that the Court grant Plaintiff leave to file a First Amended Consolidated Complaint, in the form of Exhibit G, to add allegations addressing the Tolled Claims and related gas customer class allegations.

71. If the Court rejects the Stipulation Re: Amended Consolidated Verified Petition for Writ of Mandate and Complaint, Plaintiff shall proceed with the filing of a separate action covering the Tolled Claims (the "Tolled Claims Action"). The Parties shall further submit a stipulation to the Court requesting that the Tolled Claims Action be consolidated with the Consolidated Action as the lead case.

72. Plaintiff shall submit a written claim form regarding the Tolled Claims pursuant to the California Government Code section 910, *et seq*. prior to filing the First Amended Consolidated Complaint or Tolled Claims Action, whichever applies. The City shall cooperate in expediting the processing of said claim, including by allowing its counsel to accept such claim via email. The claim shall be deemed rejected upon receipt by the City's counsel.

73. The Parties shall work cooperatively and in good faith to ensure that the Consolidated Action and the Tolled Claims are fully resolved through the settlement approval process outlined herein. A material term of this Settlement is that it resolves the claims resolved

in the Original Judgment and the Tolled Claims.

74. Should the Court reject settlement of the claims resolved in the Original Judgment and the Tolled Claims pursuant to this Settlement, fail to implement the stipulated remand instructions included with the Joint Motion for Stipulated Reversal and attached as Exhibit I, or materially change the terms of this Settlement before Final Order and Final Judgment enters, Plaintiff shall seek to dismiss the Tolled Claims, without prejudice, so that the Parties may first litigate the claims resolved in the Original Judgment through final resolution on appeal. If the Court rejects the Settlement as defined in this paragraph, does not implement the stipulated remand instructions included with the Joint Motion for Stipulated Reversal, or materially changes the terms of this Settlement before Final Order and Final Judgment enters, the tolling agreements currently in effect with respect to the Tolled Claims shall remain in effect, and nothing in this Settlement Agreement nor the actions taken by Plaintiff in an attempt to satisfy the conditions of this Settlement Agreement shall be used against Plaintiff in later pursuing the Tolled Claims in a separate action following the dismissal of the Tolled Claims from the Consolidated Action without prejudice.

75. To avoid any doubts, notwithstanding the filing of a First Amended Consolidated Complaint described herein to include the Tolled Claims, the Parties acknowledge and agree that the tolling agreements applicable to the Tolled Claims have remained and do remain in effect unless and until the Court enters the Final Order and Final Judgment, at which time the tolling agreements will be considered void and of no effect. To avoid any further doubts, the Parties acknowledge and agree that the tolling agreements applicable to the Tolled Claims have remained and do remain in effect after dismissal without prejudice, if any, of the Tolled Claims as would be required should the events described in Paragraph 74 occur.

VII.

PROVISIONAL CERTIFICATION OF SETTLEMENT CLASS & DECERTIFICATION OF THE 2012-2018 CLASS

76. After filing the First Amended Consolidated Complaint and/or the Tolled Claims Action as necessary, Plaintiff shall move for preliminary approval of this Settlement forthwith

pursuant to California Code of Civil Procedure Section 382 *et seq*. and California Rules of Court, Rule 3.769(c).

77. Plaintiff shall seek provisional decertification of the 2012-2018 Class and provisional certification of the Settlement Class pursuant to California Rules of Court, Rule 3.769(d), and the City shall not oppose such request. The Parties further agree that Plaintiff should request that the Court make preliminary findings and enter the Preliminary Approval Order (substantially in the form attached as Exhibit E) granting provisional decertification of the 2012-2018 Class and provisional certification of the Settlement Class, both of which are subject to final findings and ratification in the Final Order and Final Judgment, and appointing the Class Representative as the representative of the Settlement Class and Class Counsel as counsel for the Settlement Class.

78. If this Agreement is terminated, disapproved by any court (including any appellate court), and/or not consummated for any reason, or the Effective Date for any reason does not occur, the order provisionally decertifying the 2012-2018 Class and certifying the Settlement Class and all preliminary and/or final findings regarding that decertification order and Settlement Class certification order, shall be automatically vacated upon notice of the same to the Court.

VIII.

THE SETTLEMENT CONSIDERATION

79. In consideration of the entry of the Final Judgment and Final Order in the Consolidated Action and the Release of the Released Claims, Respondent will provide the following considerations, payments and benefits to the Settlement Class:

80. **Distribution of The Settlement Fund.** The Settlement Fund will be distributed in the following manner:

a. First - upon approval of all Parties (which shall not be unreasonably withheld), the City shall use the Settlement Fund to pay to the Settlement Administrator any reasonable Administration Expenses invoiced by the Settlement Administrator as they become due**.**

b. Second - within sixty (60) calendar days after the Effective Date, the City

shall confirm with Class Counsel and the Settlement Administrator (a) the total remaining Net Settlement Fund after deducting all paid Administration Expenses, the Settlement Administrator's anticipated remaining Administration Expenses, court approved Attorneys' Fees and Expenses, and Service Award, and (b) the amounts allocated to each Gas Sub-Class based on each Gas Sub-Class's proportionate Settlement Fund Allocation.

c. Third - within sixty (60) calendar days after the Effective Date, the City shall confirm to Class Counsel and the Settlement Administrator (a) the number of Class Members in each Gas Sub-Class and (b) the per-therm refund amount (calculated by taking each Sub-Class's proportionate Settlement Fund Allocation and dividing the amount by the total therms consumed by each Gas Sub-Class, as shown by bills issued with respect to each account held by Gas Sub-Class members during the respective Sub-Class Periods). By way of example only, suppose the 2012 Gas Sub-Class is owed a total Net Settlement Fund share of $3,500,000 and the 2012 Gas Sub-Class consumed 5,000,000 therms, as shown by bills issued during the 2012 Sub-Class Period, the total refund per therm would be $0.70. For purposes of determining whether a bill pertains to a specific Sub-Class Period, the last service date listed on each bill determines the Sub-Class Period.

d. Fourth - within sixty (60) calendar days after the Effective Date, the City shall confirm to Class Counsel and the Settlement Administrator the total number of Gas Customer Accounts assigned to all Class Members and how many of them are Closed Accounts.

e. Fifth - within sixty (60) calendar days after the Effective Date, the City shall provide to the Settlement Administrator (and confirm such provision to Class Counsel) (a) a list of Closed Account(s) and the Class Members assigned to each such account; (b) the total therms billed for each Closed Account; and (c) the total refund owed to each such Class Member assigned to each Closed Account.

f. Sixth – within ninety (90) calendar days following the Effective Date, the City shall issue a single on-bill gas utility credit equal to 1/3 of the total refund owed for each Active Account assigned to Class Members and confirm said credit with Class Counsel and the Settlement Administrator. The full credit shall be made regardless of the balance owed by the

Class Members as reflected in each Active Account, with any remaining credit amount carried forward to the next billing period until the credit is fully realized. At the City's discretion, if the amount of the credit exceeds the gas utility balance owed by the Class Member, it may apply the credit to any existing balance of any other utility service shown on the same bill, with any remaining credit amount carried forward to the next billing period until the credit is fully realized.

g. Seventh – within ninety (90) calendar days following the Effective Date, the City shall pay to the Settlement Administrator an amount equal to the total refund owed for all Closed Accounts assigned to Class Members. The Settlement Administrator shall, within sixty (60) calendar days thereafter, issue checks to each such Class Member in an amount equal to the total refund owed for each such Closed Account assigned to each such Class Member, less the actual and anticipated additional Administrative Expenses relating to administering the payments, including but not limited to the cost of issuing the checks. As necessary, the Settlement Administrator shall update and maintain Class Member addresses and perform two attempts at skip tracing for those Class Members who are no longer Gas Utility Customers.

h. Eighth - within three-hundred sixty (360) calendar days following the distribution of credits described in paragraph 80(f), the City shall issue a single on-bill gas utility credit equal to 1/3 of the total refund owed for each Active Account assigned to a Class Member at the time of the credit. The full credit shall be made regardless of the balance owed on the Class Member's gas utility bill, with any remaining credit amount carried forward to the next billing period until the credit is fully realized. At the City's discretion, if the amount of the credit exceeds the gas utility balance owed by the Class Member, it may credit the balance of any other utility service shown on the same bill, with any remaining credit amount carried forward to the next billing period until the credit is fully realized.

i. Ninth - within seven-hundred twenty (720) calendar days following the distribution of credits described in paragraph 80(g), the City shall issue a single on-bill gas utility credit equal to 1/3 of the total refund owed for each Active Account assigned to a Class Member at the time of the credit. The full credit shall be made regardless of the balance owed on the Class Member's gas utility bill, with any remaining credit amount carried forward to the next billing

period until the credit is fully realized. At the City's discretion, if the amount of the credit exceeds the gas utility balance owed by the Class Member, it may credit the balance of any other utility service shown on the same bill, with any remaining credit amount carried forward to the next billing period until the credit is fully realized.

j. Should any Class Member begin this process with an Active Gas Customer Account, but closes a Gas Customer Account entitled to credits or otherwise ceases to be a current Gas Utility Customer, the City shall calculate the remaining credits owed to that Class Member and provide a cash refund in the manner described in this paragraph. No later than 360 days following the distribution of credits described in paragraph 80(g), the City shall calculate the total remaining credits owed to all Class Members who have closed a Gas Customer Account and are entitled to credits or who have otherwise ceased to be a current Gas Utility Customer, and provide a list of such Class Members and the amount of such credits they are owed to the Settlement Administrator, and transfer to the Settlement Administrator money sufficient to cover the cash refunds described in this paragraph. The City shall repeat this process no later than 720 days following the distribution of credits described in paragraph 80(g) for additional Class Members who have closed a Gas Customer Account entitled to credits or otherwise ceased to be a current Gas Utility Customer.

81. **Senior Check Requests:** Notwithstanding the preceding refund procedure in paragraphs 80(a)-(j), any Class Member who is age 65 or older, who will reach age 65 during the Refund Period, or who is in ill health may, at any time during the Refund Period, file a request with the City for expedited payment of the full remaining refund owed regardless of whether they are an existing Gas Utility Customer. The City shall deliver an amount sufficient to fund the total remaining refunds owed to such Class Members to the Settlement Administrator within forty-five (45) days of each valid request. The Settlement Administrator shall, within sixty (60) calendar days thereafter, issue checks to each such Class Member in an amount equal to the total remaining refunds owed, less additional Administrative Expenses relating to administering the payments, including but not limited to the cost of issuing the checks. Class Members shall be notified of this Senior Check Request claims process in the Long Form notice and once by the City via an on-bill

notice within three months of the Effective Date.

82. **Uncashed Refund Checks:** Within one-hundred eighty (180) calendar days after issuance of any refund check required by this Agreement, any uncashed checks shall be voided and the funds used to pay any outstanding and approved Settlement Administration Expenses so that the amount charged to Class Members is reduced. If, 180 days after all checks have been distributed at the end of the Refund Period and all outstanding and approved Administration Expenses have been paid, all remaining funds shall be credited to the City's gas utility and used to pay the reasonable cost of providing retail gas utility service.

83. **Source of Refund Payments/Credits:** The City is authorized to pay the refunds required by this Settlement using any lawful source of funds.

84. **Interest and Late Penalties:** No interest of any type shall accrue on any credit or payment identified or referenced in this Agreement.

85. **Accounting and Verification:** Within ninety (90) calendar days after each refund distribution, the City and the Settlement Administrator shall provide an accounting of all credits and refund checks issued for each respective distribution, verified under penalty of perjury. Any discrepancies shall be promptly addressed to ensure that the full refund amounts owed are paid or credited. Such accounting shall not include account information of any discrete customer accounts.

86. **Mutual Cooperation to Ensure Full Distribution of Net Settlement Fund:** The Parties shall act in good faith to employ the foregoing procedures to ensure that the full refund due to each Class Member is paid and/or credited to the benefit of each Class Member. In the event of any unexpected complications or events impacting the distribution of the Net Settlement Fund to Class Members, the Parties shall fully and reasonably cooperate to ensure that all Net Settlement Funds are distributed to Class Members on a timely basis.

87. **Distribution Costs:** The City shall not use any of the Settlement Fund to pay for any internal costs it incurs, including such costs associated with calculating and crediting the amounts set forth in Paragraphs 80 through 82 herein. All such costs shall be borne by the City.

88. **Service Award(s):** Within ninety (90) calendar days after the Effective Date, the

City shall pay to the Class Representative the full amount of any Service Award approved by the Court in a manner as directed by Class Counsel.

89. **Litigation Expenses:** As stated in Paragraphs 17 and 134, the City has no liability for any litigation expenses incurred by Class Counsel other than those considered Attorneys' Fees and Expenses.

90. **Attorney's Fees:** The City shall pay the full amount of Attorney's Fees and Expenses awarded by the Court and payable out of the Settlement Fund to Class Counsel in the manner directed by Class Counsel in three payments as follows:

a. Within ninety (90) calendar days after the Effective Date, the City shall pay to Class Counsel one-third (1/3) of the total Attorney's Fees and Expenses awarded by the Court.

b. No more than three-hundred sixty (360) calendar days after the payment identified in paragraph 90(a), the City shall pay to Class Counsel one-third (1/3) of the total Attorney's Fees and Expenses awarded by the Court.

c. No more than seven-hundred twenty (720) calendar days after the payment identified in paragraph 90(a), the City shall pay to Class Counsel one-third (1/3) of the total Attorney's Fees and Expenses awarded by the Court.

IX.

NOTICE OF SETTLEMENT

91. The Parties shall jointly recommend and retain Phoenix Class Action Administration Solutions to be the Settlement Administrator. Phoenix Class Action Administration Solutions entered a Confidentiality and Non-Disclosure Agreement with the City of Palo Alto pertaining to its work on this case on March 9, 2021. That Agreement, attached as Exhibit J, remains in effect as of the date of this Settlement and will continue to apply to all actions contemplated in this Agreement. In the unlikely event that the Court rejects the Parties' recommendation, any Settlement Administrator appointed by the Court shall sign a Confidentiality and Non-Disclosure Agreement with the City of Palo in the form of Exhibit J.

92. The Settlement Administrator must consent, in writing, to serve and shall abide by the obligations of the Settlement Agreement, and the Orders issued by the Court. Following the

Court's preliminary approval of this Settlement and the Court's appointment of the proposed Settlement Administrator, the Settlement Administrator shall disseminate the Class Notice.

93. Class Notice will be disseminated through a combination of the Summary Notice (substantially in the form of Exhibit D attached hereto), notice through the Settlement Website in the form of the Long Form Notice (substantially in the form of Exhibit C attached hereto), and other applicable notice as ordered by the Court, in order to comply with all applicable laws, including, but not limited to, California Code of Civil Procedure Section 382 *et seq.*, the Due Process Clause of the United States Constitution, and any other applicable statute, law or rule.

94. **Dissemination of the Class Notice**

a. *Class Member Information*: No later than thirty (30) calendar days after entry of the Preliminary Approval Order, Respondent shall provide the Settlement Administrator with every name, physical mailing address, and e-mail address (collectively, "Class Member Information") of each reasonably identifiable Class Member that Respondent possesses. If any Class Member Information was previously provided, the Respondent shall ensure that the previously provided information is up to date and reflects Respondent's most current information. Respondent warrants and represents that it will provide the most current Class Member Information for all Class Members to the Settlement Administrator.

b. *Class Website*: Prior to the Notice Date, the Settlement Administrator shall establish a website, https://phx-green-v-paloalto.web.app, or similar name if this name is taken ("Settlement Website"), that will inform Class Members of the terms of this Settlement, their rights, dates, and deadlines with respect to the Settlement, updated information regarding benefits provided pursuant to this Settlement herein, links to the court's website and information on how to access the online docket, information about electronic filing, the court's mailing address for sending objections and notices to appear, and related information. The Settlement Website shall include, in .pdf format, the following: (i) the Long Form Notice; (ii) the Preliminary Approval Order; (iii) this Agreement (including all of its Exhibits); (iv) all complaints and responses to those complaints; and (v) any other materials agreed upon by the Parties and/or required by the Court. The Settlement Website may also have a section for frequently asked questions, as well as

a portal for Class Members to submit questions *via* confidential e-mail to Class Counsel for a confidential response. Respondent shall have the right to review and consent to the form of the publicly available frequently asked questions and answers section, consent for which shall not be unreasonably withheld. Questions submitted to Class Counsel through the portal shall constitute confidential and privileged communication seeking legal advice, which questions and responses Respondent shall not see.

c. *Toll Free Telephone Number*: Prior to the Notice Date, the Settlement Administrator shall establish a toll-free telephone number, through which Class Members may obtain information about the Action and the Settlement and request a mailed copy of the Long Form Notice, pursuant to the terms and conditions of this Settlement.

d. *Direct Notice*: Within sixty (60) days, or as otherwise ordered by the Court, after the entry of the Preliminary Approval Order and subject to the requirements of this Settlement and the Preliminary Approval Order, the Settlement Administrator, in coordination with the Parties, shall provide notice to the Class as follows:

i. *Direct Notice Via Email:* The Settlement Administrator will send an email to each Class Member whose Class Member Information contains an email address an electronic version of the Summary Notice via email. For all undeliverable email addresses, the Class Member shall be treated as a Class Member for whom no email address was provided under subparagraph (d)(ii), below.

ii. *Direct Notice Via U.S. Mail*: The Settlement Administrator shall send the Summary Notice by First Class U.S. Mail, proper postage prepaid, to each Class Member for whom no email address was provided but a physical mailing address was included in the Class Member Information. Prior to the transmission of any Summary Notice *via* the U.S. Mail, the Settlement Administrator shall cause the address of each Class Member, as provided in the Class Member Information, to be updated using the United States Postal Service's National Change of Address System. Summary Notice will be mailed to the updated addresses. After the mailing, for each Class Member's Summary Notice that is returned by the United States Postal Service with a forwarding address, the Settlement Administrator shall remail the Summary Notice once to such

Class Members.

95. **The Long Form Notice:** The Long Form Notice shall be in a form substantially similar to the document attached to this Agreement as Exhibit C, and shall advise Class Members of, and comport with, the following:

a. *General Terms*: The Long Form Notice shall contain a plain and concise description of the nature of the Actions, the history of the Litigation, the certified class, the preliminary certification of the Settlement Class for settlement purposes, the risks of continued litigation, and the proposed Settlement, including information regarding the Class, how the proposed Settlement would provide relief to the Class and Class Members, what claims are released under the proposed Settlement and other relevant terms and conditions. The Long Form Notice will also include the court's website, information on how to access the online docket and file documents with the court electronically, and the court's mailing address for sending objections and notices to appear.

b. *Opt-Out Rights*: The Long Form Notice shall inform Class Members that they have the right to opt out of the Settlement Class. The Long Form Notice shall provide in summary form the deadlines and procedures for exercising this right, as set forth in Paragraphs 104 and 105 herein. The deadline to opt-out shall be 60 days from the date of the Direct Notice identified in paragraph 94(d), or other deadline as Ordered by the Court, and shall be extended by 7 days for any Class Member whose email address was invalid or for whom a second Summary Notice had to be mailed to a forwarding address.

c. *Objection to Settlement*: The Long Form Notice shall inform Class Members of their right to object to the proposed Settlement and appear at the Final Fairness Hearing. The Long Form Notice shall provide in summary form the deadlines and procedures for exercising these rights, as set forth in Paragraphs 106 through 110 herein. The deadline to object to the settlement shall be 60 days from the date of the Direct Notice identified in paragraph 94(d), or other deadline as Ordered by the Court, and shall be extended by 7 days for any Class Member whose email address was invalid or for whom a second Summary Notice had to be mailed to a forwarding address.

d. *Appearance Through Counsel*: The Long Form Notice shall inform Class Members of their right to enter an appearance through their own counsel of choice, at their own expense, and if they do not, they will be represented by Class Counsel, who will be supporting the Settlement and its approval by the Court.

e. *Professional Fees and Litigation Expenses*: The Long Form Notice shall inform Class Members about the amounts which Class Counsel may petition as Attorneys' Fees and Expenses and the amounts for which the Class Representative may petition for as an individual Service Award. The Long Form Notice will explain that any such amounts awarded will be pursuant to the Court's discretion and approval and be deducted from the Settlement Fund, reducing the amount of monetary benefit to each Class Member.

f. *Dissemination of Long Form Notice*: The Long Form Notice shall be available on the Settlement Website. In addition, the Settlement Administrator shall send *via* first-class mail the Long Form Notice to those persons who request it in writing, by e-mail, or through the dedicated toll-free telephone number established and monitored by the Settlement Administrator for purposes of this Settlement. The mailing address, e-mail and toll-free telephone number to be used to request the Long Form Notice from the Settlement Administrator shall be printed on the Summary Notice and Settlement Website. Additionally, the e-mail and toll-free number to be used to request the Long Form Notice shall be displayed, to the extent possible, on the Settlement Website.

96. The Parties agree that the notice contemplated by this Settlement is valid and effective, that if effectuated, it would provide reasonable notice to the Settlement Class, and that it represents the best practicable notice under the circumstances.

X.

ADMINISTRATION OF THE SETTLEMENT

97. Because the names of Class Members and other personal information about them will be provided to the Settlement Administrator, the Settlement Administrator will cooperate to ensure that the fully executed confidentiality and non-disclosure agreement attached as Exhibit J remains in effect to ensure that any information provided to it by Class Members will be secure

and used solely for the purpose of effecting this Settlement.

98. The Settlement Administrator shall administer the Settlement in accordance with the terms of this Settlement Agreement and in addition to any obligation identified in the Confidentiality and Non-Disclosure Agreement attached as Exhibit J, and, without limiting the foregoing, shall:

a. Treat any and all documents, communications and other information and materials received in connection with the administration of the Settlement as confidential and not disclose any or all such documents, communications or other information to any person or entity except as provided for in this Settlement Agreement or by court order;

b. Promptly provide copies of any requests for exclusion, objections and/or related correspondence to Class Counsel. Specifically, the Settlement Administrator shall receive requests for exclusion or opt out requests from Class Members and provide to Class Counsel and Respondent's Counsel a copy thereof within three (3) business days of receipt. If the Settlement Administrator receives any objections and/or requests for exclusion or opt out requests after the deadline for the submission of such requests, the Settlement Administrator shall promptly provide Class Counsel and Defense Counsel with copies thereof; and

c. Receive and maintain all correspondence from any Class Member regarding the Settlement.

99. The Settlement Administrator shall be responsible for, without limitation: (a) printing and disseminating the Summary Notice and Long Form Notice as described in this Agreement; (b) handling returned mail not delivered to Class Members as described in this Agreement; (c) attempting to obtain updated address information for any Summary Notices returned without a forwarding address; (d) making any additional mailings required under the terms of this Agreement; (e) responding to requests for the Long Form Notice by mail, telephone, e-mail or otherwise; (f) receiving and maintaining on behalf of the Court any correspondence with Class Members regarding requests for exclusion and/or objections to the Settlement; (g) forwarding written inquiries to Class Counsel for a response, if warranted; (h) establishing and maintaining a post-office box, toll-free telephone number as described herein, facsimile number,

and voicemail and electronic mailboxes, as necessary, for the receipt of any correspondence from Class Members; (i) responding to requests from Class Counsel and/or Respondent's Counsel; (j) establishing the Settlement Website (https://phx-green-v-paloalto.web.app/); (k) making any mailings required under the terms of this Settlement; and (l) otherwise implementing and/or assisting with the dissemination of the Notice. The Settlement Administrator shall also be responsible for, without limitation, disbursing payments from the Settlement Fund in accordance with the terms of this Agreement, and related administration activities.

100. In the event the Settlement Administrator fails to perform adequately on behalf of Respondent, Plaintiff, or the Class, the Parties may agree to remove and replace the Settlement Administrator. Under such circumstances, neither Party shall unreasonably withhold consent to remove the Settlement Administrator, but this event shall occur only after Class Counsel or Respondent's Counsel have attempted to resolve any disputes regarding the retention or dismissal of the Settlement Administrator in good faith, and, if they are unable to do so, after the matter has been referred to the Court for resolution.

101. In addition to any obligations identified in the Confidentiality and Non-Disclosure Agreement attached as Exhibit J, all Class Member Information shall be protected as confidential by the Settlement Administrator and will not be disclosed to anyone, except as required by applicable tax authorities, pursuant to the express written consent of an authorized representative of Respondent, or by order of the Court. The Class Member Information shall be used only for the purpose of administering this Settlement.

102. Not later than seven (7) days before the date of the Fairness Hearing, the Settlement Administrator shall file with the Court a declaration: (i) attaching a list of those persons who timely opted out or excluded themselves from the Settlement Class; and (ii) attaching a list of those persons who timely objected to the Settlement, along with a copy of their written objections. The Settlement Administrator shall file with the Court a declaration outlining the scope, method and results of the notice program.

103. The Settlement Administrator shall be reimbursed from the Settlement Fund toward reasonable costs, fees, and expenses of providing notice to the Class and administering the

Settlement in accordance with this Settlement Agreement.

XI.

REQUESTS FOR EXCLUSION

104. Any Class Member who wishes to be excluded from the Settlement Class must do one of the following: (1) mail a written request for exclusion to the Settlement Administrator at the address provided in the Notice, postmarked by the Exclusion Deadline ordered by the Court in the Preliminary Approval Order; (2) send a written request for exclusion to the Settlement Administrator by e-mail or fax, at the address or numbers provided in the Notice, before midnight Pacific Time on the Exclusion Deadline; or (3) fully complete the Request for Exclusion form available for submission on the Settlement Website before the Exclusion Deadline. Except as otherwise ordered by the Court, the request must (a) state the Class Member's name and Palo Alto Gas service account number; (b) reference *Green v. City of Palo Alto*; and (c) clearly state that the Class Member wants to be excluded from the Settlement Class. A list reflecting all requests for exclusion shall be filed with the Court by the Settlement Administrator, *via* declaration, no later than seven (7) days before the Fairness Hearing. If a potential Class Member files a request for exclusion, he or she may not file an objection under Paragraphs 106 through 110 herein. If any Class Member files a timely request for exclusion, he/she will not be a member of the Settlement Class, will not release any Released Claims pursuant to this Settlement or be subject to the Release, and will reserve all Released Claims he or she may have.

105. Any potential Settlement Class Member who does not file a timely written request for exclusion as provided in Paragraph 104 herein shall be bound by all subsequent proceedings, orders and judgments, including, but not limited to, the Release, Final Order and Final Judgment in the Action.

XII.

OBJECTIONS TO THE SETTLEMENT

106. Any Class Member who has submitted a timely written request for exclusion from the Settlement Class, may not object to the Settlement. Any Class Member who has not timely requested exclusion from the Settlement may file objections to the entire Settlement. Any

objections must comply with the procedures set forth herein.

107. Any eligible Class Member who wishes to object to the fairness, reasonableness, or adequacy of this Agreement, or to the award of Attorneys' Fees and Expenses, or to the Service Awards to the Class Representatives, must do one of the following: (1) mail a written statement, describing the Class Member's objections in the specific manner set forth in this Section, to the Settlement Administrator at the address provided in the Notice, postmarked by the Objection Deadline ordered by the Court in the Preliminary Approval Order; or (2) send a written statement, describing the Class Member's objections in the specific manner set forth in this Section, to the Settlement Administrator by e-mail or fax, at the address or numbers provided in the Notice, before midnight Pacific Time on the Objection Deadline. Any such objection shall include: (1) the full name of Objector; (2) the full address of Objector; (3) the specific reason(s), if any, for the objection, including any legal support the Class Member wishes to bring to the Court's attention; (4) copies of any evidence or other information the Class Member wishes to introduce in support of the objections; (5) a statement of whether the Class Member intends to appear and argue at the Fairness Hearing; (6) the individual Class Member's written signature, with date; and (7) reference *Green v. City of Palo Alto, Case No. 16CV300760* on the envelope and written objection. Class Members may personally object or object through an attorney retained at their own expense, however, each individual Class Member objecting to the Settlement, in whole or part, shall personally sign the objection. The objection must also include an explanation of why he or she falls within the definition of the Class. In addition, any Class Member objecting to the Settlement shall provide a list of all other objections submitted by the objector, or the objector's counsel, to any class action settlements submitted in any state or federal court in the United States in the previous five years. If the Class Member, or his, her or its counsel, has not objected to any other class action settlement in the United States in the previous five years, he, she or it shall affirmatively so state in the objection. Class Members who submit an objection may be subject to discovery, including written discovery and depositions, on whether he or she is a class member, and any other topic that the Court deems appropriate.

108. Any eligible Class Member may appear at the Fairness Hearing, either in person or

through personal counsel hired at the Class Member's own expense, to object to the fairness, reasonableness, or adequacy of this Agreement or the proposed Settlement, or to the award of Attorneys' Fees and Expenses, or Service Awards to the individual Plaintiffs and/or the Class Representatives.

109. Plaintiff designated as Class Representative by the Court maintains her right to support or object to the Settlement terms and may petition the Court for a Service Award, which is not guaranteed in any amount, but awarded, if at all, by the Court in its discretion.

110. Any Class Member (including any Plaintiff or Class Representative) who objects to the Settlement shall be entitled to all benefits of the Settlement if this Agreement and the terms contained herein are approved, as long as the objecting Class Member complies with all requirements of this Agreement applicable to Class Members.

XIII.

RELEASE AND WAIVER

111. The Parties agree to the following release and waiver, which shall take effect upon the Effective Date.

112. In consideration for the Settlement, Plaintiff, Class Representative, and each Class Member, on behalf of themselves and any other legal or natural persons who may claim by, through or under them, agree to fully, finally and forever release, relinquish, acquit, discharge and hold harmless the Released Parties from any and all claims, demands, suits, petitions, liabilities, causes of action, rights, and damages of any kind and/or type relating to the subject matter of the Action arising during the period between January 1, 2012 and June 30, 2023, including, but not limited to, compensatory, exemplary, punitive, expert, and/or attorneys' fees, or by multipliers, whether past, present, or future, mature, or not yet mature, known or unknown, suspected or unsuspected, contingent or non-contingent, derivative or direct, asserted or unasserted, whether based on federal, state or local law, statute, ordinance, regulation, code, contract, common law, or any other source, or any claim of any kind related, arising from, connected with, and/or in any way involving the Litigation, that are, or could have been, defined, alleged or described in the Litigation, including, but not limited to, claims that the City's gas and/or electric utility rates

during the period of January 1, 2012 to June 30, 2023 violate Article XIII-C of the California Constitution (commonly known as Proposition 218 or Proposition 26) and claims that the City's transfer of funds from its gas and electric utility enterprise funds to the City's general fund based on article XII, section 2 of the City's Charter violates Article XIII C of the California Constitution.

113. Notwithstanding the broad release in paragraph 112, any Class Member who timely opted out of the Settlement Class, shall not be deemed to release any claims, rights or other causes of action, with respect to the City's gas rates charged for gas service during the period of January 1, 2012 to June 30, 2023.

114. Plaintiff, Class Members and the Class Representative expressly agree that this Release, the Final Order, and/or the Final Judgment is, will be, and may be raised as a complete defense to, and will preclude any action or proceeding encompassed by, this Release.

115. Plaintiff, Class Members and the Class Representative shall not, now or hereafter, institute, maintain, prosecute, and/or assert, any suit, action, and/or proceeding, against the Released Parties, either directly or indirectly, on their own behalf, on behalf of a class or on behalf of any other person or entity with respect to the claims, causes of action and/or any other matters released through this Settlement.

116. In connection with this Agreement, Plaintiff, Class Members and the Class Representative acknowledge that they may hereafter discover claims presently unknown or unsuspected, or facts in addition to or different from those that they now know or believe to be true concerning the subject matter of the Action and/or the Release herein. Nevertheless, Plaintiff, the Class Representative, and Class Members intend to, and do hereby, fully, finally and forever settle, release, discharge, and hold harmless the Released Parties from all such matters, and all claims relating thereto which exist, hereafter may exist, or might have existed (whether or not previously or currently asserted in any action or proceeding) with respect to the Action.

117. Without in any way limiting its scope, and, except to the extent otherwise specified in the Agreement, this Release covers by example and without limitation, any and all claims for attorneys' fees, costs, expert fees, consultant fees, interest, litigation fees, costs or any other fees, costs, and/or disbursements incurred by any attorneys, Class Counsel, Class Representative,

Settlement Administrator, or Class Members who claim to have assisted in conferring the benefits under this Settlement upon the Class.

118. In consideration for the Settlement, Respondent and their past or present officers, directors, council members, employees, agents, attorneys, predecessors, successors, affiliates, subsidiaries, divisions, and assigns shall be deemed to have, and by operation of the Final Approval Order shall have, released Plaintiff, Class Counsel, Class Representative and each Class Member from any and all causes of action that were or could have been asserted pertaining solely to the conduct in filing and prosecuting the Litigation or in settling the Litigation.

119. To avoid doubt, nothing in this Release shall release or otherwise relieve any Party of any of the terms or obligations set forth in this Settlement Agreement or preclude any action to enforce the terms of the Agreement, including participation in any of the processes detailed herein. Any motion or proceeding to enforce the terms of the Settlement Agreement, in whole or in part, shall be before the Court, which shall retain jurisdiction over the matter for such purposes. Moreover, the Court retains jurisdiction to adjudicate any dispute between the Parties regarding the terms and conditions of this Agreement.

120. Plaintiff, Class Representative and Class Counsel hereby agree and acknowledge that the provisions of this Release together constitute an essential and material term of the Agreement and shall be included in any Final Order and Final Judgment entered by the Court.

121. Persons who are not Class Members, or Class Members who timely exclude themselves from the Class in the manner set forth in Paragraphs 104 and 105 herein, release no claims, and any and all claims of such persons are reserved and unaffected by this Settlement.

XIV.

REVIEW, APPROVAL AND RELATED ORDERS

122. As soon as practicable following the filing of the amended Consolidated Complaint that includes the Tolled Claims or the filing of the Tolled Claims Action, Class Counsel shall apply to the Court for entry of the Preliminary Approval Order (substantially in the form attached as Exhibit E), for the purpose of, among other things:

a. Approving the Class Notice, substantially in the form set forth at Exhibits

(Long Form Notice) C and (Summary Notice) D attached hereto;

b. Finding that the requirements for provisional certification of the Settlement Class have been satisfied, appointing Plaintiff as the representatives of the Class and Class Counsel as counsel for the Class, and preliminarily approving the Settlement as being within the range of reasonableness such that the Class Notice should be provided pursuant to this Agreement;

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

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

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

f. Appointing the Settlement Administrator;

g. Directing that Class Notice shall be given to the Settlement Class as provided in Paragraphs 91 through 96 herein;

h. Providing that any objections by any Class Member to the certification of the Settlement Class and the proposed Settlement contained in this Agreement, and/or the entry of the Final Order and Final Judgment, shall be heard and any papers submitted in support of said objections shall be considered by the Court at the Fairness Hearing only if, on or before the date(s) specified in the Class Notice and Preliminary Approval Order, such objector submits to the Court a written objection, and otherwise complies with the requirements in Paragraphs 106 through 110 herein;

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

j. Providing that all Class Members will be bound by the Final Order and Final Judgment unless such Class Members timely file valid written requests for exclusion or opt

out in accordance with this Settlement and the Class Notice;

k. Providing that Class Members wishing to exclude themselves from the Settlement will have until the date specified in the Class Notice and the Preliminary Approval Order to submit a valid written request for exclusion or opt out to the Settlement Administrator;

l. Providing a procedure for Class Members to request exclusion or opt out from the Settlement;

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

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

o. Authorizing the Parties, Class Counsel, Respondent's Counsel and the Claims Administrator to take all necessary and appropriate steps to establish the means necessary to implement the Agreement;

p. Adopting all deadlines set forth herein; and

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

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

124. Any motion or petition in support of final approval of this Settlement shall be filed at least sixteen Court days before the Final Fairness Hearing and be made available on the Settlement Website. Class Counsel may file a supplement to any motion or petition in support of final approval seven (7) days prior to the Fairness Hearing.

125. At the Fairness Hearing, the Parties shall seek to obtain from the Court a Final Order and Final Judgment. The Final Order and Final Judgment shall, among other things:

a. Enter judgment for the City on all claims in the Litigation, First Amended Consolidated Complaint, Tolled Claims Action, and/or any other complaint Plaintiff might file

under this Settlement Agreement challenging the City's electric rates;

b. Enter judgment for Plaintiff and the Settlement Class on all claims in the Litigation, First Amended Complaint, Tolled Claims Action, and/or any other complaint Plaintiff might file under this Settlement Agreement challenging the City's gas rates;

c. Find that the Court has jurisdiction over Plaintiff and all Class Members and that venue is proper;

d. Finally approve the Agreement and Settlement, pursuant to California Code of Civil Procedure Sections 382 *et seq*, as fair, adequate and reasonable to the Class;

e. Decertify the 2012-2018 Class effective as of the date of the Final Order and Final Judgment;

f. Finally certify the Class for settlement purposes only pursuant to California Code of Civil Procedure Section 382 *et seq.* and appoint Plaintiff as Class Representative and Class Counsel as counsel for the Class;

g. Find that the Class Notice and the Notice Plan comply with all laws, including, but not limited to, the Due Process Clause of the United States Constitution;

h. Preserve all claims of persons not within the Settlement Class definition as well as those who have timely excluded themselves from the Settlement Class;

i. Adjudicate any objections that have been presented to the Settlement;

j. Incorporate the Release set forth in the Agreement and make the Release effective as of the date of the Final Order and Final Judgment;

k. Award Service Awards and Attorneys' Fees and Expenses in amounts deemed fair, adequate and reasonable in the circumstances;

l. Authorize the Parties to implement the terms of the Agreement;

m. Retain jurisdiction relating to the administration, consummation, enforcement, and interpretation of the Agreement, the Final Order and Final Judgment, and for any other necessary purpose; and,

n. Issue related orders necessary to effectuate the final approval of the Agreement and its implementation.

126. To avoid any doubt, if the Settlement Agreement is not finally approved or the Effective Date does not occur for any reason, this Agreement shall terminate and the Consolidated Action (excluding the Tolled Claims) shall return to the procedural status quo ante as of the date of remittitur of the Appeal and the Parties retain all rights, arguments and objections they have regarding the Appeal of the Original Judgment, excluding the rent issue. The Parties shall meet and confer in good faith to cause the trial court to enter a new judgment consistent with this paragraph, the terms of this Agreement, and the remand instructions.

XV.

MODIFICATION OR TERMINATION OF THIS AGREEMENT

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

XVI.

SERVICE AWARDS AND ATTORNEYS' FEES AND EXPENSES

128. In recognition of the time and effort the representative Plaintiff expended in pursuing this action and in fulfilling her obligations and responsibilities as class representative, and of the benefits conferred on all Class Members by the Settlement, Class Counsel may ask the Court for the payment of a Service Award from the Settlement Fund to the Class Representative. Respondent will not take a position on the application for Service Award by Class Counsel to the extent that the award requested does not exceed Seven Thousand Five Hundred Dollars and No Cents ($7,500.00). Class Counsel may apply to the Court for a Service Award to be paid from the Settlement Fund for the Class Representative's time, effort and risk in connection with the Action. No amount has been guaranteed or promised to the Class Representative. The Court shall determine the final amount of any such Service Award, in its discretion, based on the request filed

by or on behalf of the Class Representative. Any Service Award made by the Court shall be paid by the Settlement Administrator from the Settlement Fund.

129. The Class Representative acknowledges that she: (i) supports the Settlement as fair, adequate and reasonable to the Class, whether or not the Court appoints her as Class Representative or awards her any Service Award; (ii) has not asserted any individual, non-class claims against Respondent in the operative complaint; (iii) has not entered into any separate settlement agreement with Respondent for a release of any reserved claims; (iv) has not received any additional consideration from Respondent that other Class Members are not in a position to receive should this settlement be approved, other than the Service Award, which the Court may, in its discretion, award to Class Representative; and (v) has read and considered this Agreement.

130. The ability of the Class Representative to apply to the Court for a Service Award is not conditioned on her support of the Settlement.

131. The amount of the Service Award payment to be applied for as set forth herein was negotiated independently from the other terms of the Settlement. The negotiation was supervised, in part, by Mr. Bob Blum, with Blum Mediation, as mediator. Further, the allowance or disallowance by the Court of a Service Award will be considered and determined by the Court separately from the Court's consideration and determination of the fairness, reasonableness, and adequacy of the Settlement.

132. Class Counsel will make an application to the Court for an award of Attorneys' Fees and Expenses prior to the Fairness Hearing. The amount of the Attorneys' Fees and Expenses will be determined by the Court.

133. Class Counsel shall apply to the Court for payment of Attorneys' Fees and Expenses to be paid from the Settlement Fund in an amount not to exceed twenty-five percent (25%) of the amount of the Settlement Fund. The City will not object or otherwise comment to any fee request up to and including Four Million Three Hundred Thirty-Four Thousand Two Hundred Seventy-Eight Dollars and No Cents ($4,334,278.00) ("Floor Amount"). The City reserves its right to object to or otherwise comment on any Attorneys' Fees and Expenses sought in excess of the Floor Amount, but only that portion of any such request that is in excess of the

Floor Amount.

134. The amount of the Attorneys' Fees and Expenses to be applied for by Class Counsel was negotiated independently from the other terms of the class Settlement. The Parties negotiated the Attorneys' Fees and Expenses to be sought by Class Counsel only after reaching an agreement upon the relief provided to the Class. The negotiation was supervised, in part, by Mr. Bob Blum, with Blum Mediation, as mediator.

135. Any Attorneys' Fees and Expenses awarded by the Court shall be paid from the Settlement Fund. Such payment will be in lieu of statutory fees Plaintiff and/or their attorneys might otherwise have been entitled to recover from Respondent. Unless otherwise ordered by the Court, this amount shall be inclusive of all fees and costs of Plaintiff's Counsel and Class Counsel to be paid by Respondent and/or the Settlement Fund in the Action. Plaintiff, Plaintiff's Counsel and Class Counsel agree that Respondent shall not pay, or be obligated to pay, in excess of any award of Attorneys' Fees and Expenses by the Court, and that in no event shall Respondent be obligated to pay any amount in excess of the Settlement Fund.

136. Any Attorneys' Fees and Expenses awarded by the Court shall be paid in accordance with Paragraph 90 above. Class Counsel shall have the sole and absolute discretion to allocate the Attorneys' Fees and Expenses amongst Class Counsel and any other attorneys for Plaintiff, including Plaintiff's Counsel. Respondent shall have no liability or other responsibility for allocation of any such Attorneys' Fees and Expenses awarded, and, in the event that any dispute arises relating to the allocation of fees, Class Counsel agree to defend, indemnify and hold Respondent harmless from any and all such liabilities, costs, and expenses of such dispute.

137. The procedure for and the allowance or disallowance by the Court of any application for attorneys' fees, costs, expenses, or reimbursement to be paid to Class Counsel are not part of the settlement of the Released Claims as set forth in this Settlement Agreement, and are to be considered by the Court separately from the Court's consideration of the fairness, reasonableness, and adequacy of the settlement of the Released Claims as set forth in this Settlement Agreement. Any such separate order, finding, ruling, holding, or proceeding relating to any such applications for attorneys' fees and expenses, or any separate appeal from any separate

order, finding, ruling, holding, or proceeding relating to them or reversal or modification of them, shall not operate to terminate or cancel this Settlement Agreement or otherwise affect or delay the finality of the Final Order and Final Judgment or the Settlement.

138. Any petition for Attorneys' Fees and Expenses or for a Class Representative Service Award shall be filed at least sixteen (16) Court days before the Final Fairness Hearing and made available for viewing and download on the Settlement Website. Updated or supplemental petition(s) by those making initial timely petitions only, limited to reporting new and additional professional time and expenses incurred in relation to the Settlement and claims administration process after the filing of the initial petition, shall be permitted to be filed after that date to ensure that the new professional time, costs and expenses on a going-forward basis in the Litigation are fairly accounted for by the Court and remain compensable, subject to the Court's approval.

XVII.

GENERAL MATTERS AND RESERVATIONS

139. The Parties understand and agree that this Settlement Agreement may be subject to final approval by City officers and/or officials, including, but not limited to, the City Council. The execution of this Settlement Agreement is subject to and conditioned upon the granting of all such approvals as needed to make this Settlement Agreement final and binding.

140. Except as provided in the Final Order and Final Judgment, Respondent has denied and continues to deny each and all of the claims and contentions alleged in the Litigation, and has denied and continues to deny that it has committed any violation of law or engaged in any wrongful act that was alleged, or that could have been alleged, in the Litigation. Respondent believes that it has valid and complete defenses to the claims asserted against it in the Litigation and denies that it violated any law, engaged in any unlawful act or conduct, or that there is any basis for liability for any of the claims that have been, are, or might have been, alleged in the Litigation. Nonetheless, Respondent has concluded that it is desirable that the Litigation be fully and finally settled in the manner and upon the terms and conditions set forth in this Agreement.

141. Class Counsel shall take all necessary actions to accomplish approval of the Settlement, the Class Notice, and entry of the Final Order and Final Judgment. The Parties

(including their counsel, successors, and assigns) agree to cooperate fully and in good faith with one another and to use their best efforts to effectuate the Settlement, including without limitation in seeking preliminary and final Court approval of this Agreement and the Settlement embodied herein, carrying out the terms of this Agreement, and promptly agreeing upon and executing all such other documentation as may be reasonably required to obtain final approval by the Court of the Settlement. In the event that the Court fails to approve the Settlement or fails to issue the Final Order and Final Judgment, the Parties agree to use all reasonable efforts, consistent with this Settlement Agreement to cure any defect identified by the Court.

142. All Class Members have the right to enter an appearance in the Action through their own counsel of choice, at their own expense. If they do not enter an appearance through their own counsel, they will be represented by Class Counsel, who will support the Settlement and argue in favor of its approval by the Court.

143. Plaintiff represents that she: (1) has agreed to serve as representative of the Class proposed to be certified herein; (2) is willing, able, and ready to perform all of the duties and obligations of a representative of the Class, including, but not limited to, being involved in discovery and fact finding; (3) has read the relevant pleadings in the Action, or has had the contents of such pleadings described to her; (4) is generally familiar with the results of the fact-finding undertaken by Plaintiff's Counsel; (5) has been kept apprised of settlement negotiations among the Parties, and has either read this Agreement, including the exhibits annexed hereto, or has received a detailed and adequate description of it from Plaintiff's Counsel, and she has agreed to its terms; (6) has consulted with Plaintiff's Counsel about the Action and this Agreement and the obligations imposed on representatives of the Class; (7) has authorized Plaintiff's Counsel to execute this Agreement or any amendments thereto on her behalf; and, (8) shall remain and serve as the representative of the Class until the terms of this Agreement are effectuated, this Agreement is terminated in accordance with its terms, or the Court at any time determines that Plaintiff cannot represent the Class.

144. Without affecting the finality of the Final Order and Final Judgment in any way and even after the Effective Date, pursuant to Code of Civil Procedure Section 664.6, the Court

shall retain continuing jurisdiction over (a) implementation of the Settlement; and (b) the Parties for the purpose of enforcing and administering this Agreement.

145. The Parties acknowledge and agree that no opinion concerning the tax consequences of the proposed Settlement to Class Members is given or will be given by the Parties, nor are any representations or warranties in this regard made by virtue of this Agreement. Each Class Member's tax obligations, and the determination thereof, are the sole responsibility of the Class Member, and it is understood that the tax consequences may vary depending on the particular circumstances of each individual Class Member.

146. Respondent represents and warrants that the individual(s) executing this Agreement is/are authorized to enter into this Agreement on behalf of Respondent and to bind Respondent to the terms, conditions, and obligations of this Agreement. Respondent represents and warrants that the execution and delivery of this Agreement and the performance of such party's obligations hereunder have been duly authorized and that the Agreement is a valid and legal agreement binding on the Respondent and enforceable in accordance with its terms.

147. This Agreement, complete with its exhibits, sets forth the sole and entire agreement among the Parties with respect to its subject matter, and it may not be altered, amended, or modified except by written instrument of the Parties. The Parties expressly acknowledge that no other agreements, arrangements, or understandings not expressed in this Agreement exist among or between them, and that in deciding to enter into this Agreement, they rely solely upon their judgment and knowledge. This Agreement supersedes any prior agreements, understandings, or undertakings (written or oral) by and between the Parties regarding the subject matter of this Agreement.

148. In the event that any of the benefits and/or obligations are implemented or completed prior to the Effective Date, the Parties expressly agree and hereby acknowledge that said benefits and/or obligations are a result of arm's-length negotiation and settlement of this Action.

149. This Agreement and any amendments thereto shall be governed by and interpreted according to the law of the State of California notwithstanding any conflict of laws issues.

150. Any disagreement and/or action to enforce this Agreement shall be commenced and maintained only in the Superior Court of the State of California for the County of Santa Clara.

151. The Parties agree that the recitals are contractual in nature and form a material part of this Settlement Agreement.

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

Upon Class Counsel:
KEARNEY LITTLEFIELD, LLP
Prescott W. Littlefield, Esq.
3051 Foothill Blvd., Suite B
La Crescenta, CA 91214
Tel: (213) 473-1900; Fax: (213) 473-1919
E-mail: *pwl@kearneylittlefield.com*

Upon Defense Counsel:
COLANTUONO, HIGHSMITH & WHATLEY, PC
Michael G. Colantuono, Esq.
420 Sierra College Drive, Suite 140
Grass Valley, CA 95945-5091
Tel: (530) 432-7357; Fax: 530) 432-7356
E-mail: *mcolantuono@chwlaw.us*

153. All time periods set forth herein shall be computed in calendar days unless otherwise expressly provided. In computing any period of time prescribed or allowed by this Agreement or by order of the Court, the day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or any holiday observed by the court.

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

155. The Class, Plaintiff, Plaintiff's Counsel, Respondent and/or Respondent's Counsel shall not be deemed to be the drafter of this Agreement or of any particular provision, nor shall they argue that any particular provision should be construed against its drafter. All Parties agree

that this Agreement was drafted by counsel for the Parties during extensive arm's-length negotiations. No parol or other evidence may be offered to explain, construe, contradict, or clarify its terms, the intent of the Parties or their counsel, or the circumstances under which this Agreement was made or executed.

156. The Parties expressly acknowledge and agree that this Agreement and its exhibits, along with all related drafts, motions, pleadings, conversations, negotiations, and correspondence, constitute an offer of compromise and a compromise within the meaning of California Evidence Code Section 1152. In no event shall this Agreement, any of its provisions or any negotiations, statements or court proceedings relating to its provisions in any way be construed as, offered as, received as, used as, or deemed to be evidence of any kind in the Action, any other action, or in any judicial, administrative, regulatory or other proceeding, except in a proceeding to enforce this Agreement or the rights of the Parties or their counsel. Without limiting the foregoing, neither this Agreement nor any related negotiations, statements, or court proceedings shall be construed as, offered as, received as, used as, or deemed to be evidence of, an admission or concession of any liability or wrongdoing whatsoever on the part of any person or entity, including, but not limited to, the Released Parties, Plaintiff, or the Class or as a waiver by the Released Parties, Plaintiff or the Class of any applicable privileges, claims or defenses.

157. Plaintiff expressly affirms that the allegations contained in the complaint filed were made in good faith, but considers it desirable for the Action to be settled and dismissed because of the substantial benefits that the proposed Settlement will provide to Class Members.

158. The Parties, their successors and assigns, and their counsel undertake to implement the terms of this Agreement in good faith, and to use good faith in resolving any disputes that may arise in the implementation of the terms of this Agreement.

159. The waiver by one Party of any breach of this Agreement by another Party shall not be deemed a waiver of any prior or subsequent breach of this Agreement.

160. If one Party to this Agreement considers another Party to be in breach of its obligations under this Agreement, that Party must provide the breaching Party with written notice of the alleged breach and provide a reasonable opportunity to cure the breach before taking any

action to enforce any rights under this Agreement.

161. The Parties, their successors and assigns, and their counsel agree to cooperate fully with one another in seeking Court approval of this Agreement and to use their best efforts to effect the prompt consummation of this Agreement and the proposed Settlement.

162. This Agreement may be signed with a facsimile or PDF signature, or other form of electronic signature and in counterparts, each of which shall constitute a duplicate original.

163. The terms "he" or "she" and "his" or "her" include "it" or "its" where applicable.

164. In the event any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision if Respondent's Counsel, on behalf of Respondent, and Plaintiff's Counsel, on behalf of Plaintiff and Class Members, mutually agree in writing to proceed as if such invalid, illegal, or unenforceable provision had never been included in this Agreement. Any such agreement shall be reviewed and approved by the Court before it becomes effective.

165. The Parties agree that Respondent is a "public entity," as defined in California Government Code section 811.2, and therefore the provisions of California Code of Civil Procedure section 384 do not apply to this Settlement.

[signature pages to follow]

IN WITNESS WHEREOF, the Parties hereto, by and through their respective attorneys, and intending to be legally bound hereby, have duly executed this Class Action Settlement Agreement and Stipulation as of the date set forth below.

PLAINTIFF

Dated: 9/1/2022

Miriam Green
Miriam Green
Plaintiff/Class Representative

THE CITY OF PALO ALTO

Dated: 9/8/2022

DocuSigned by:
Ed Shikada
E2D3A1B0CC8D4E9...
THE CITY OF PALO ALTO
By:

CLASS COUNSEL

Dated: 9/1/2022

Prescott W. Littlefield
By: Prescott W. Littlefield
KEARNEY LITTLEFIELD, LLP
Attorneys for Plaintiff and the Class

Dated: 9/1/2022

By: Vincent D. Slavens
BENINK & SLAVENS, LLP
Attorneys for Plaintiffs and the Class

DEFENSE COUNSEL

Dated: Sept. 9, 2022

By: Michael G. Colantuono
COLANTUONO, HIGHSMITH & WHATLEY, PC
Attorneys for Defendant and Respondent City of Palo Alto

Dated: 9/7/2022

DocuSigned by:
Molly Stump
[illegible]

By: Molly S. Stump
CITY OF PALO ALTO, OFFICE OF THE CITY ATTORNEY
Attorneys for Defendant and Respondent City of Palo Alto

Exhibit A

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SANTA CLARA

MIRIAM GREEN, on behalf of herself, and all others similarly situated, Petitioner and Plaintiff, v. CITY OF PALO ALTO, and DOES 1 through 100, Respondents and Defendants.	Case No. 16CV300760 (Consolidated with Case No. 18CV336237) *Assigned for all purposes to the Hon. Sunil R. Kulkarni* CLASS ACTION **JUDGMENT**

On October 6, 2016, Petitioner and Plaintiff Miriam Green ("Plaintiff") filed a class-wide petition for writ of mandate and complaint for injunctive and declaratory relief against Respondent and Defendant City of Palo Alto ("Defendant") (Case No. 16CV300760), challenging Defendant's gas and electric utility rates (the "2016 Action"). On March 10, 2017, Defendant answered.

Then on October 9, 2018, Plaintiff filed a class-wide petition for writ of mandate and complaint for injunctive and declaratory relief challenging Defendant's June 2018 gas and electric rates (Case No. 18CV336237) ("2018 action"). The Court consolidated the 2016 Action and the 2018 Action, and assigned the 2016 Action as the lead case.

On February 27, 2019, Plaintiff filed a consolidated petition and complaint. On March 28, 2019, Defendant answered. The Court bifurcated the trial of this case into a liability phase (Phase I) and a remedy phase (Phase II). On February 13, 2019, the Court certified the following utility rate classes:

> **2012 Gas Rate Class**: All gas utility customers of the City of Palo Alto Utilities whom the City billed for natural gas service between September 23, 2015 and June 30, 2016;
>
> **2016 Gas Rate Class:** All gas utility customers of the City of Palo Alto Utilities whom the City billed for natural gas service between July 1, 2016 and June 30, 2018;
>
> **2018 Gas Rate Class:** All gas utility customers of the City of Palo Alto Utilities whom the City billed for natural gas service between July 1, 2018 and June 30, 2019.[1]
>
> **2016 Electric Rate Class**: All electric utility customers of the City of Palo Alto Utilities whom the City billed for electric service between July 1, 2016 and June 30, 2018;
>
> **2018 Electric Rate Class**: All electric utility customers of the City of Palo Alto Utilities whom the City billed for electric service between July 1, 2018 and June 30, 2019.

(collectively, the "Classes," with the gas rate classses referred to collectively as the "Gas Classes"). Excluded from the Gas Classes are all judicial officers assigned to this case and their immediate family members, as well as any class member who timely opted out. Members of the

[1] Defendant set new gas utility rates that became effective July 1, 2019, meaning the challenged rates for the 2018 Class ended on that date.

Gas Classes who timely opted out, and all judicial officers that have been assigned to the case, are listed in the attached Exhibit A. The Court appointed Plaintiff as the class representative and her attorneys as Class Counsel. The Court-approved notice to the Gas Classes was sent on March 25, 2021, and the opt-out period expired on April 24, 2021.

On January 2, 2020, the Court issued a Statement of Decision re: Phase I Trial ruling that Palo Alto's gas utility rates set in 2012, 2016, and 2018 are taxes imposed without voter approval in violation of article XIII C. The Court further ruled that Defendant's electric rates set in 2016 and 2018 are lawful. The Statement of Decision re: Phase I is incorporated herein and attached hereto as Exhibit B. On October 27, 2020, the Court issued a Statement of Decision re: Phase II Trial ruling that Defendant is liable to the Gas Classes for refunds totaling $12,618,510 and that the Court would issue a writ of mandate directing payments to the three Gas Classes. The Statement of Decision re: Phase II is incorporated herein and attached hereto as Exhibit C.

Having ruled in favor of Plaintiff and the Gas Classes, the Court now ORDERS, ADJUDGES, and DECREES that:

1. The Court has jurisdiction over all members of the certified Gas Classes;

2. All judicial officers and their immediate family members, as well as all gas utility customers who timely and properly opted out of the Gas Classes, as reflected in the attached Exhibit A, are not members of the Gas Classes and are not bound by this judgment;

3. Judgment is entered against Defendant, and in favor of Plaintiff and the Gas Classes in the following amounts:

- $4,991,510 to the 2012 Gas Rate Class;
- $4,812,000 to the 2016 Gas Rate Class; and
- $2,815,000 to the 2018 Gas Rate Class.

Defendant shall pay the above amounts into a common fund ("Common Fund") to be managed, administered and processed by a claims administrator pursuant to further orders of this court;

4. Class Counsel is awarded attorneys' fees in the amount of $3,154,627.50, to be paid out of the Common Fund;

5. Plaintiff is awarded class notice costs in the amount of $6,960.00 and class claims

administration costs in the amount of $25,000.00, to be paid out of the Common Fund;

6. Plaintiff is awarded $5,000.00 to be paid out of the Common Fund in recognition of her participation as the representative class member in this action;

7. Defendant shall pay additional litigation costs to Plaintiff in a yet-to-be-determined amount pursuant to section 1021 et seq. of the Code of Civil Procedure and Rules 3.1700 and 3.1702 of the California Rules of Court. These costs shall not be paid out of the Common Fund;

8. The judgment shall be paid pursuant to Government Code section 970.2, from Defendant's general fund or another fund containing monies appropriate for the payment of judgments and settlements, and not from the utility.

9. The Court shall issue a writ of mandate directing Defendant to pay the judgment entered herein;

10. All other relief is denied, including any relief arising from Plaintiffs' challenges to the City's electric rates; and

11. The Court retains jurisdiction to enforce the judgment and administer the payment of the judgment to the Gas Classes.

IT IS SO ORDERED.

DATED: 6/24/21

By: _____
Hon. Sunil R. Kulkarni
Judge of the Superior Court

JUDGMENT – EXHIBIT 1

LIST OF PERSONS EXCLUDED FROM THE CLASS

The following persons are excluded from the class:

1. Honorable Peter H. Kirwan, judge of the Superior Court and his immediate family members.
2. Honorable Thomas E. Kuhnle, judge of the Superior Court and his immediate family members
3. Honorable Brian C. Walsh (Ret.), judge of the Superior Court and his immediate family members.
4. Honorable Sunil R. Kulkarni, judge of the Superior Court and his immediate family members.
5. Kendra Hornbostel
6. William Perron

JUDGMENT – EXHIBIT 2

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SANTA CLARA

MIRIAM GREEN, Plaintiff/Petitioner, vs. CITY OF PALO ALTO, et al., Defendants/Respondents.	Case No. 16CV300760 (Consolidated with Case No. 18CV336237) STATEMENT OF DECISION RE: PHASE I TRIAL

The Court, having considered the record and the arguments of counsel, issues the following Tentative and Proposed Statement of Decision which will become the Statement of Decision unless within fifteen (15) days either party specifies controverted issues, makes proposals not covered in the this decision, or serves objections. (See Code Civ. Proc., § 632; see also Cal. Rules of Ct., rule 3.1590.)

This is a consolidated class action for writ of mandate, declaratory judgment, and refunds of gas and electric fees imposed by defendant/respondent the City of Palo Alto in 2012, 2016, and 2018. Phase I of the proceedings addressed the merits and liability issues raised by

plaintiff/petitioner Miriam Green's consolidated petition and complaint. The matter came on for hearing before the Honorable Brian C. Walsh on October 9, 2019 at 1:30 p.m. in Department 1 of the Santa Clara County Superior Court. The appearances are as stated in the record. Pursuant to a stipulated order filed on October 23, 2019, the parties submitted supplemental briefing on certain issues related to the record. Following the completion of the supplemental briefing on November 15, 2019, the matter was taken under submission. The Court, having fully considered the record and the parties' papers and arguments, now finds and orders as follows:

Factual and Procedural Background

The City operates a utilities department known as the City of Palo Alto Utilities ("CPAU") that provides electricity and natural gas services to its citizens, among other services. The City accounts for revenues and expenses associated with it electric and gas utilities in separate enterprise funds. The City does not generate its own gas, but buys it on monthly and daily "spot" markets shortly before customers need it. To supply electricity, it buys some energy and generates the rest through jointly owned hydroelectric facilities. Hydropower production varies with the weather: during droughts, the City produces less hydroelectric power and must purchase more energy, but in wet years, it generates excess hydroelectric power, which it sells.

The City collects fees from users of its electric and gas services on a monthly basis. Its Charter requires that this rate revenue be used for certain expenses, including the utilities' operating and maintenance expenses and capital expenditures, and provides that "[t]he remainder be paid into the general fund by quarterly allotments." (Palo Alto City Charter, art. VII, § 2, subd. (f).) The Charter has provided for this general fund transfer, or "GFT," since 1950, and the Charter language authorizing the GFT has not been amended since voters adopted it that year. The City last adjusted its methodology to calculate the GFT in 2009, based on a consultant's recommendation. Green challenges gas and electric rates imposed by the City over several years. In each of these years, the City made transfers from its relevant enterprise funds to its general fund through the GFT.

During the first ratemaking challenged by Green, the City retained Utility Financial Solutions, LLC ("UFS") to draft a Gas Utility Cost of Service Study analyzing its revenue requirements and proposing new rates. In light of lower prices in the gas market, the City enacted new, lower gas rates based on UFS's proposal on June 18, 2012. These rates became effective on July 1, 2012. Prior to enacting them, the City held three public hearings on the proposed rate changes and allowed public comment. Plaintiff/petitioner Green did not participate in the public hearings.

In 2016—following a series of dry years that led the City to draw down its rate-stabilization reserve—the City engaged EES Consulting to draft a cost of service analysis supporting new electric rates. The analysis reflects that the City would fund its electric service costs, in part, through transfers from reserves and non-rate revenues. Even so, EES concluded the City would need to generate almost $12 million in additional rate revenue. Based on this analysis, the City proposed a relatively large, two-year rate increase: 11 percent in the first year and 10 percent in the second. The City also proposed a gas rate increase in 2016, continuing to rely on the 2012 UFS methodology. As in 2012, the City held a series of hearings to consider the new rates and invite public comment, but Green did not participate. The City Council adopted the new electric rates recommended by ESS and the new gas rates on June 13, 2016. These rates went into effect on July 1, 2016.

Green filed the original petition and complaint in this action, which challenged the City's gas and electric rates from the preceding three years, on October 6, 2016. She amended her complaint after the City denied her administrative claim, and the City answered. Subsequently, the Court entered a stipulated order certifying a class and partially staying the case pending a decision by the Supreme Court of California in *Citizens for Fair REU Rates v. City of Redding* (2018) 6 Cal.5th 1, discussed below.

Meanwhile, the City proposed increased gas and electric rates in 2018. It again relied on the 2012 UFS methodology to support the gas rates and the 2016 EES cost of service model to support the electric rates. On June 11, 2018, the City adopted the new rates, effective July 1, 2018, following a series of hearings which Green did not attend. Green submitted a new

administrative claim challenging the 2018 rates and filed a new action following the denial of that claim, *Green v. City of Palo Alto, et al.* (Santa Clara Super. Ct., Case No. 18-CV-336237). The City again denied her administrative claim.

On August 27, 2018, the Supreme Court issued its opinion in *Redding*. The stay in Green's original action was lifted. In a stipulated order filed on February 15, 2019, the Court consolidated Green's 2016 and 2018 actions and amended the class definition to encompass the following classes:

> the "2012 Gas Rate Class" of "[a]ll gas utility customers of the City of Palo Alto Utilities whom the City billed for natural gas service between September 23, 2015 and June 30, 2016";
>
> the "2016 Gas Rate Class" of "[a]ll gas utility customers of the City of Palo Alto Utilities whom the City billed for natural gas service between July 1, 2016 and June 30, 2018";
>
> the "2016 Electric Rate Class" of "[a]ll electric utility customers of the City of Palo Alto Utilities whom the City billed for electric service between July 1, 2016 and June 20, 2018";
>
> the "2018 Gas Rate Class" of "[a]ll gas utility customers of the City of Palo Alto Utilities whom the City billed for natural gas service between July 1, 2018 and the date on which the Court orders notice to be sent to class members"; and
>
> the "2018 Electric Rate Class" of "[a]ll electric utility customers of the City of Palo Alto Utilities whom the City billed for electric service between July 1, 2018 and the date on which the Court orders notice to be sent to class members."[1]

On February 27, 2019, Green filed the operative Consolidated Verified Petition for Writ of Mandate and Complaint for Declaratory Relief and Refund of Illegal Tax, asserting causes of action for (1) petition for writ of mandate pursuant to Code of Civil Procedure section 1085, (2) declaratory relief, and (3) refund of illegal tax. The City answered and, at a case management conference, the Court bifurcated the trial into a merits/liability phase (Phase I) and a remedy phase (Phase II). The Court received briefing and conducted the trial on Phase I on

[1] The parties have agreed that notice of class certification will issue after the Court issues a ruling on the merits.

October 9. As reflected in a stipulated order filed on May 9, 2019, a trial on remedies for any liability found in the first phase of trial will follow if necessary.

Discussion

Green contends that the fees imposed on each of the classes violate article XIII C of the California Constitution, which prohibits the imposition of "any levy, charge, or exaction of any kind imposed by a local government" without voter approval, unless (among other exceptions) the fee corresponds to a government service and "does not exceed the reasonable costs to the local government" of providing that service. She urges that the fees violate this provision because they incorporate a transfer to the City's general fund (the "GFT"), market-based rental payments for City-owned utilities' use of City property, and costs associated with wholesale and other non-rate revenues. The City argues that these costs are properly passed on to ratepayers and, in any event, are largely covered by non-rate revenues under *Redding*; plaintiff responds that wholesale revenues, reserves, and other non-rate revenues must be used for the benefit of the utility rather than passed through to the City's general fund.

I. Constitutional Framework Governing the Claims at Issue

"Over the past four decades, California voters have repeatedly expanded voter approval requirements for the imposition of taxes and assessments." (*Jacks v. City of Santa Barbara* (2017) 3 Cal.5th 248, 257.) In 1978, Proposition 13 defined the assessed value of real property and limited increases to this value, along with limiting the rate of taxation on real property. (*Id.* at p. 258.) In addition, to prevent other tax increases from offsetting real property tax savings, Proposition 13 required approval by two-thirds of the Legislature to increase state taxes and by two-thirds of local electors to impose special taxes. (*Ibid.*) In 1986, Proposition 62 required that all new local taxes be approved by a vote of the local electorate. (*Ibid.*)

Against this background, state voters approved Proposition 218, known as the "Right to Vote on Taxes Act," in 1996. (*Jacks v. City of Santa Barbara, supra,* 3 Cal.5th at p. 259.) Proposition 218 added article XIII C to the Constitution, imposing voter approval requirements for general and special taxes. (*Ibid.*) This ensured that charter jurisdictions (which were not

clearly bound by Proposition 62) were subject to these requirements. (*Ibid.*) In addition, Proposition 218 responded to Proposition 13's failure to address traditional benefit assessments, as subsequently recognized by the California courts. (*Ibid.*) To that end, it added article XIII D to the Constitution, which

> imposes certain substantive and procedural restrictions on taxes, assessments, fees, and charges "assessed by any agency upon any parcel of property or upon any person as an incident of property ownership." (Cal. Const., art. XIII D, § 3, subd. (a).) Among other things, article XIII D instructs that the amount of a "fee or charge imposed upon any parcel or person as an incident of property ownership shall not exceed the proportional cost of the service attributable to the parcel." (*Id.*, § 6, subd. (b)(3).)

(*City of San Buenaventura v. United Water Conservation Dist.* (2017) 3 Cal.5th 1191, 1200.) Proposition 218's substantive restrictions, reflected in article XIII D, apply to "property-related services, such as sewer and water services," but expressly do not apply to "fees for the provision of electrical or gas service." (*Jacks v. City of Santa Barbara, supra,* 3 Cal.5th at p. 260, fn. 3.)

"Most recently, in 2010, ... state voters approved Proposition 26." (*Jacks v. City of Santa Barbara, supra,* 3 Cal.5th at p. 260.) Proposition 26 "further expanded the reach of article XIII C's voter approval requirement by broadening the definition of ' "tax" ' to include 'any levy, charge, or exaction of any kind imposed by a local government.' (Cal. Const., art. XIII C, § 1, subd. (e).)" (*City of San Buenaventura v. United Water Conservation Dist., supra,* 3 Cal.5th at p. 1200.)

> The definition contains numerous exceptions for certain types of exactions, including for "property-related fees imposed in accordance with the provisions of Article XIII D" (*id.*, § 1, subd. (e)(7)), as well as for charges for "a specific benefit conferred or privilege granted," or "a specific government service or product" that is provided[] "directly to the payor that is not provided to those not charged, and which does not exceed the reasonable costs to the local government" (*id.*, § 1, subd. (e)(1) & (2)). To fall within one of these exemptions, the amount of the charge may be "no more than necessary to cover the reasonable costs of the governmental activity," and "the manner in which those costs are allocated to a payor" must "bear a fair or reasonable relationship to the payor's burdens on, or benefits received from, the governmental activity." (*Id.*, § 1, subd. (e).)

(*City of San Buenaventura v. United Water Conservation Dist.*, *supra*, 3 Cal.5th at p. 1200.) Under both article XIII C as amended by Proposition 26 and article XIII D as established by Proposition 218, the government bears the burden to show its charges satisfy the Constitution. (See *Jacks v. City of Santa Barbara*, *supra*, 3 Cal.5th at pp. 259-260.)

The California Supreme Court recently interpreted Proposition 26 in *Citizens for Fair REU Rates v. City of Redding* (2018) 6 Cal.5th 1. The court held that a budgetary transfer from a city-owned utility's enterprise fund to the city's general fund is not itself a "levy, charge, or exaction" subject to Proposition 26. Rather, a reviewing court must analyze whether the resulting utility *fees* imposed on ratepayers constitute taxes or else fall within an exception to Proposition 26, such as the exception for charges that do not exceed the reasonable costs of providing a service to ratepayers. In *Redding*, the court held that the rates at issue qualified for the previously stated exception, because the charges did not exceed the costs of providing service to ratepayers and the city's enterprise fund had sufficient non-rate revenues to fund the challenged budgetary transfer.

II. Legal Standard Governing Challenges to Fees Under Article XIII C

> Based on article XIII C's structure, it is apparent that a challenge to an alleged tax involves three questions: (1) Is the alleged tax a levy, charge, or exaction imposed by a local government?; (2) Does it satisfy an exception to the definition of tax?; and (3) If it does not, was it properly approved by the voters? If a levy, charge, or exaction is imposed by a local government and does not fit within an exception, it is a tax which must be approved by the voters in order to be valid.

(*Citizens for Fair REU Rates v. City of Redding*, *supra*, 6 Cal.5th at p. 12.) There is no dispute that the utility fees at issue here were not approved by voters,[2] so the outcome of this action depends on the answers to the first two questions.

"Whether a government imposition is ... a tax is a legal question decided on an independent review of the facts the [defendant] is now required to prove by a preponderance of the evidence under Proposition 26." (*California Building Industry Association v. State Water Resources Control Board* (2018) 4 Cal.5th 1032, 1050, citation omitted.) To fall within the relevant exemption to Proposition 26, "the amount of [a] charge may be 'no more than necessary

[2] The City does argue that its general fund transfer was approved by voters through an amendment to its Charter in 1950, but this argument lacks merit for the reasons discussed below.

to cover the reasonable costs of the governmental activity,' and 'the manner in which those costs are allocated to a payor' must 'bear a fair or reasonable relationship to the payor's burdens on, or benefits received from, the governmental activity.' "[3] (*City of San Buenaventura v. United Water Conservation Dist., supra,* 3 Cal.5th at p. 1200, quoting Cal. Const., art. XIII C, § 1, subd. (e).) Although the City disputes this point, it is clear that the defendant bears the burden of proving these requirements by a preponderance of the evidence. (See *Citizens for Fair REU Rates v. City of Redding, supra,* 6 Cal.5th at p. 11 and *Newhall County Water Dist. v. Castaic Lake Water Agency* (2016) 243 Cal.App.4th 1430, 1441, both citing Art. XIII C, § 1, subd. (e), final par.; see also *Silicon Valley Taxpayers' Assn., Inc. v. Santa Clara County Open Space Authority* (2008) 44 Cal.4th 431, 448-449 [construing parallel burden under Proposition 218/article XIII D and rejecting Court of Appeal's application of a substantial evidence standard in an action for writ of mandate and declaratory relief].)[4] There is no requirement that the party bringing a challenge under Proposition 26 establish a "prima facie case"; however, the challenging party must at least identify the expense he or she contends is unreasonable or unfairly allocated. (See *Citizens for Fair REU Rates v. City of Redding, supra,* 6 Cal.5th at p. 17 [where plaintiffs challenged only one expense, they conceded the defendant's other costs were reasonable].)

"[R]easonable costs include expenditures to generate and acquire electricity and other costs typical of utility operations." (*Citizens for Fair REU Rates v. City of Redding, supra,* 6 Cal.5th at pp. 15-16.) Permissible costs encompass "all the required costs of providing service, short-term and long-term, including operation, maintenance, financial, and capital expenditures." (*Howard Jarvis Taxpayers Ass'n v. City of Roseville* (2002) 97 Cal.App.4th 637, 648.) This includes debt service and administrative costs. (See *Griffith v. Pajaro Valley Water Management Agency* (2013) 220 Cal.App.4th 586, 598, disapproved of on another ground

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[3] Here, Green does not challenge the City's allocation of costs *among* ratepayers, but she does challenge its practice of allocating wholesale and other costs to ratepayers, rather than to its general fund.

[4] The Court notes that questions of law are always reviewed de novo. (*Duncan v. Department of Personnel Admin.* (2000) 77 Cal.App.4th 1166, 1174.) Pure legal questions include the interpretation of constitutional rights (*Smith v. Fresno Irrigation Dist.* (1999) 72 Cal.App.4th 147, 157) and municipal laws (*Woo v. Superior. Court (Carey)* (2000) 83 Cal.App.4th 967, 974).

by *City of San Buenaventura v. United Water Conservation Dist., supra,* 3 Cal.5th 1191.) It also includes "the street, alley and right-of-way costs attributed to" a utility, which may be transferred to an entity's general fund. (*Howard Jarvis Taxpayers Ass'n v. City of Roseville, supra,* 97 Cal.App.4th at p. 648.) "Such costs are real, even if minimal and difficult to calculate precisely." (*Howard Jarvis Taxpayers Assn. v. City of Fresno* (2005) 127 Cal.App.4th 914, 922 ["for example, there is an added cost of repair required by the transit of garbage trucks over streets and highways"].)[5]

Moreover, as held in *Redding*,

> the mere existence of an unsupported cost in a government agency's budget does not always mean that a fee or charge imposed by that agency is a tax. The question is not whether each cost in the agency's budget is reasonable. Instead, the question is whether the charge imposed *on ratepayers* exceeds the reasonable costs of providing the relevant service. If the agency has sources of revenue other than the rates it imposes, then the total rates charged may actually be lower than the reasonable costs of providing the service.

(*Citizens for Fair REU Rates v. City of Redding, supra,* 6 Cal.5th at p. 17, italics original.) Significantly, "Article XIII C does not compel a local government utility to use other non-rate revenues to lower its customers' rates." (*Id.* at p. 18.)

III. Issues Concerning the Record

Green asserts claims for writ of mandate under Code of Civil Procedure section 1085, declaratory judgment, and a refund of taxes she contends were imposed in violation of article

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[5] As discussed below, *Roseville* and *Fresno* applied article XIII D/Proposition 218 as opposed to article XIII C/Proposition 26. However, there is no indication that the "reasonable cost" analysis under these related provisions would differ. (See *Town of Tiburon v. Bonander* (2009) 180 Cal.App.4th 1057, 1075 [applying independent review standard to analysis under article XIII D/Proposition 218].) As explained in *Fresno*, "[b]efore Proposition 218, a city did not need to be too precise in accounting for all of the costs of a utility enterprise, since the city was permitted (unless otherwise restricted by its charter) to make a profit on its utility operations in any event and rates were permitted to reflect the 'value' of the service, not just the cost of providing the service." (*Howard Jarvis Taxpayers Assn. v. City of Fresno, supra,* 127 Cal.App.4th at p. 922.) "Proposition 218 changed all that with its constitutional requirement that '[r]evenues derived from the fee or charge shall not exceed the funds required to provide the property related service.' " (*Ibid.*) As discussed in *City of Redding*, Proposition 26 similarly superseded the former rule "that a municipal utility's 'rates need not be based purely on costs' " by providing that "for any service charge to which the article applies, a local government must either charge a rate that does not exceed the reasonable costs of providing the service or obtain voter approval for rates that exceed costs." (*Citizens for Fair REU Rates v. City of Redding, supra,* 6 Cal.5th at p. 18.)

XIII C.[6] At the Phase I trial, Green urged that it would be appropriate for the Court to issue relief on all three causes of action, while the City maintained that only the claim for writ of mandate was properly asserted. The parties stipulated that as to all three causes of action—regardless of the form of relief the Court ultimately issues—the administrative record would be admitted into evidence without need of further foundation. Accordingly, the Court will determine liability based on the administrative record and defer ruling on the proper form of relief in this action until Phase II of the proceedings.

The City also submitted a request for judicial notice of several documents. Its request is GRANTED as to City Council resolutions from 2019 (Exs. A and B), which merely show that new gas and electric rates were adopted in 2019, a fact that is not in dispute. (Evid. Code, § 452, subds. (c) and (f).) Its request for judicial notice is also GRANTED as to the existence and contents of other City documents (Exs. C, E, F, and G), but not as to the truth of any factual statements they include. (Evid. Code, § 452, subd. (c); see *Ragland v. U.S. Bank National Assn.* (2012) 209 Cal.App.4th 182, 193 ["Although the audit report is a government document, we may not judicially notice the truth of its contents."]; *Licudine v. Cedars-Sinai Medical Center* (2016) 3 Cal.App.5th 881, 902 ["Although the Bureau's report is an official act of a federal executive agency, this ground for taking judicial notice extends to the official act itself (that is, the fact that the Bureau has published a report on attorney salaries), but not the truth of the facts relayed through that official act (that is, the fact that median salary was $113,530)."].) Finally, the City's request is GRANTED as to a statement by the Governmental Accounting Standards Board defining the term "net position" (Ex. D), which is akin to a dictionary definition. (Evid. Code, § 452, subd. (f).)

In addition to its request for judicial notice, the City asks the Court to augment the administrative record with Exhibits D, F, and G, urging that it did not include these documents in the administrative record because they pertain to the rents it charges its utilities—an issue Green

[6] *Redding* and other Proposition 26 cases have addressed combined petitions for writ of mandate and complaints for declaratory relief, like the pleading at issue here, without ruling on the proper form in which to bring a claim for violation of Proposition 26 or the scope of the record in such a case. (See *Citizens for Fair REU Rates v. City of Redding, supra,* 6 Cal.5th at p. 5 [noting plaintiffs filed a "writ petition and complaint"]; see also *Griffith v. City of Santa Cruz* (2012) 207 Cal.App.4th 982, 988-989 [same].)

did not raise until she filed her opening brief. It is unnecessary to augment the administrative record with Exhibit D as the Court takes judicial notice of that document. As to the other evidence, the Court finds it appropriate to consider Exhibits F and G as background information relevant to the manner in which the City calculates rental charges. (See *Town of Tiburon v. Bonander* (2009) 180 Cal.App.4th 1057, 1076 [considering record supporting special benefit determinations as to an original district in proceedings regarding a supplemental district extending the original district]; see also *Western States Petroleum Assn. v. Superior Court (Air Resources Board)* (1995) 9 Cal.4th 559, 578 [extra-record evidence may be admissible in traditional mandamus actions challenging quasi-legislative administrative decisions for purposes such as providing background, citing *Asarco, Inc. v. U.S. Environmental Protection Agency* (9th Cir. 1980) 616 F.2d 1153, 1160].) Notably, it is undisputed that the City calculates rental charges using market-based appraisals, and Green does not challenge the specific methodology supporting these appraisals. Rather, she urges that the City must utilize a cost-based methodology to charge utility ratepayers for the use of City property. Thus, the Court's admission of these documents for background purposes will not meaningfully impact its resolution of the parties' dispute on the issue of rent.

Finally, the City moves to strike portions of plaintiff's reply brief or, alternatively, seeks leave to file a sur-reply. The arguments that the City objects to were raised in plaintiff's opening brief. Consequently, the City's motion to strike and alternative request to file a sur-reply are DENIED.

VI. Notice and Administrative Exhaustion

The City contends that Green failed to exhaust her administrative remedies with regard to her challenge to its allocation of rental charges to its utilities, because her administrative claims do not mention rent. Green's administrative claims were submitted pursuant to the Government Claims Act, Government Code section 910 et seq. (See *Ardon v. City of Los Angeles* (2011) 52 Cal.4th 241, 251 ["[A] class claim by taxpayers for a tax refund against a local governmental entity is permissible under section 910 in the absence of a specific tax refund procedure set forth in an applicable governing claims statute."].) Section 910 requires that a claim "state the 'date,

place, and other circumstances of the occurrence or transaction which gave rise to the claim asserted' and provide '[a] general description of the ... injury, damage or loss incurred so far as it may be known at the time of presentation of the claim.' " (*Stockett v. Association of Cal. Water Agencies Joint Powers Ins. Authority* (2004) 34 Cal.4th 441, 445, quoting statute.)

> The purpose of these statutes is to provide the public entity sufficient information to enable it to adequately investigate claims and to settle them, if appropriate, without the expense of litigation. Consequently, a claim need not contain the detail and specificity required of a pleading, but need only fairly describe what the entity is alleged to have done. As the purpose of the claim is to give the government entity notice sufficient for it to investigate and evaluate the claim, not to eliminate meritorious actions, the claims statute should not be applied to snare the unwary where its purpose has been satisfied.

(*Stockett v. Association of Cal. Water Agencies Joint Powers Ins. Authority, supra,* 34 Cal.4th at pp. 445-446, internal citations and quotations omitted.) "Only where there has been a 'complete shift in allegations, usually involving an effort to premise civil liability on acts or omissions committed at different times or by different persons than those described in the claim,' have courts generally found the complaint barred" for failure to satisfy section 910. (*Id.* at p. 447, quoting *Blair v. Superior Court (Department of Transportation)* (1990) 218 Cal.App.3d 221, 226.) Here, Green's administrative claims urge that the City violated article XIII C, section 1, subdivision (e) of the California Constitution by imposing electric and gas fees without voter approval, because the City's rates exceeded its reasonable costs to provide each service.[7] This is adequate: a claimant need not identify every theory supporting her claim to satisfy section 910. (See *id.* at p. 447 [claim was adequate where plaintiff "stated the date and place of his termination, named those [individuals] he believed responsible, and ... stated the termination had been wrongful because it was effected in violation of California public policy," even though he

[7] Specifically, Green's first administrative claim states that (1) charges to electric and gas ratepayers "include monies not required to meet valid and reasonable costs of City to provide [service] to them" (namely, the GFT), (3) "[t]he electrical and gas utilities also paid the City excessive amounts for services provided by City to those utilities," and (6) "[t]o the extent there are other cross-category subsidies or illegal transfers unknown to Plaintiff, which are not based on a valid cost study or studies, the excess tax paid, plus interest, is claimed for three years under law." Her second claim states that charges to electric and gas customers constitute illegal taxes because the charges on the rate base "include monies not required to meet valid and reasonable costs of City to provide [service] to them. The rates charged to the rate base for electricity and gas include amounts that are then transferred to the City's General Fund ...."

did not specify the public policies at issue]; see also *Blair v. Superior Court, supra,* 218 Cal.App.3d at pp. 224-255 [complaint alleging accident was caused by "lack of guard rails ... dangerous slope of the road ... [and] failure to warn" of ice build-up was not barred where administrative claim asserted only "negligent maintenance and construction of highway; failure to sand and care for highway"].)[8]

The City also contends that "failure to participate in Proposition 218 hearings may constitute failure to exhaust administrative remedies," citing *Plantier v. Ramona Municipal Water Dist.* (2019) 7 Cal.5th 372. *Plantier*, however, held that a party was *not* required to participate in a Proposition 218 hearing pursuant to article XIII D where the hearing pertained only to a rate increase applying an existing methodology, and not to the underlying methodology that the party sought to challenge. It discussed the purposes underlying the administrative exhaustion requirement and noted that the requirement does not apply where the administrative remedy "is inadequate to resolve a challenger's dispute." (*Id.* at pp. 383-384.) The City utterly fails to address this concept, and it is not apparent that the issues Green raises here could have been addressed at the public hearings associated with the challenged ratemakings. For example, it seems unlikely that Green would have been able to meaningfully challenge the GFT at these hearings: more likely, as in *Plantier*, the hearings addressed the application of existing policies and methodologies to establish new rates.

Finally, also under the heading of "exhaust[ion]," the City notes that Green's complaints do not specifically mention rent as a challenged cost. However—particularly given that there is no dispute over the manner in which the City calculates its rental charges and the Court has admitted the background documents on this subject offered by the City—there is no indication that the City was prejudiced by Green's failure to raise this issue until she filed her opening brief. (See Code Civ. Proc., § 469 ["Variance between the allegation in a pleading and the proof shall

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[8] The authorities cited by the City in its supplemental brief are not to the contrary. (See *Watson v. State of California* (1993) 21 Cal.App.4th 836, 844 [inmate's claim that inadequate medical care was provided barred where his notice of claim stated that he had been *refused* care]; *Greene v. California Coastal Com.* (2019) 40 Cal.App.5th 1227, 1238 [administrative exhaustion not satisfied where plaintiffs' presentation "concerned the Commission's historic reliance on the City's zoning to approve a one-foot setback on similar properties [and] did not reference an unconstitutional taking"].)

not be deemed material, unless it has actually misled the adverse party to his or her prejudice in maintaining his or her action or defense upon the merits."].)

The City thus fails to show that the issue of rental charges is not properly before the Court, whether because Green's complaints or administrative claims were inadequate or due to failure to exhaust administrative remedies.

V. Analysis

On the merits, the Court must apply its independent judgment to determine whether the charges and transfers challenged by Green are covered by non-rate revenues pursuant to *Redding*, and, if not, whether they do not exceed the reasonable costs to the City of providing services to ratepayers. It must also address the City's preliminary argument that the GFT was approved by voters prior to the adoption of Proposition 26 and consequently need not comply with that proposition.

A. "Retroactive" Application of Proposition 26 to the GFT

As an initial matter, the City contends that because voters added a GFT "mandate" to its charter in 1950, and the City last adjusted its methodology for calculating the GFT in 2009—both before Proposition 26 was adopted—the GFT is a grandfathered cost to which Proposition 26 does not apply.

However, as urged by Green, the charter provision to which the City cites (article VII, section 2, discussed further below) does not "mandate" any specific GFT, but merely authorizes a transfer to the general fund in the event that there is a remainder of utility revenue following the payment of the utility's operating and maintenance expenses, debt, and capital expenditures, and the funding of its reserves. This general charter provision does not conflict with the specific requirements of Proposition 26 (see *Howard Jarvis Taxpayers Ass'n v. City of Roseville*, *supra*, 97 Cal.App.4th at pp. 649-650) or give rise to any specific pre-existing tax or fee. Moreover, *Redding* squarely rejected the argument that a pre-existing transfer to a city's general fund immunizes the resulting *rates* imposed on customers from scrutiny under Proposition 26. There, as here, the defendant had adopted an annual transfer from the utility's enterprise fund to the city's general fund before Proposition 26 was enacted, and last amended the calculation

governing the transfer—called the "PILOT"—in 2005, five years before Proposition 26 became effective. (*Citizens for Fair REU Rates v. City of Redding, supra,* 6 Cal.5th at p. 6.) Rejecting the defendant's argument that Proposition 26 could not be retroactively applied to the PILOT, the court explained that "the PILOT itself is not [the] tax" subject to scrutiny under Proposition 26: rather, the utility *rates* imposed on customers were at issue. (*Id.* at p. 15.) Because the utility increased its rates after the effective date of Proposition 26, "[n]o issue of retroactive application [was] presented." (*Ibid.*) The same is true here, as it is undisputed that the City imposed new utility rates in 2012, 2016, and 2018, after Proposition 26 became effective.[9]

The City's arguments regarding the retroactive application of Proposition 26 accordingly lack merit.

B. Use of Non-Rate Revenues to Fund the GFT and Rental Charges

Turning to the first of the core issues governing liability, the City urges that, as in *Redding*, non-rate revenues fund all of the challenged expenses with regard to its electric utility and most of them with regard to its gas utility. Green responds that in *Redding*, the City's projected rate revenue was far less than the cost of providing service, excluding the challenged PILOT transfer. Moreover, the plaintiffs in *Redding* conceded that all of the utility's costs other than the PILOT were reasonable costs of providing electric service to its customers. (See *Citizens for Fair REU Rates v. City of Redding, supra,* 6 Cal.5th at pp. 17-18.) Here, Green challenges the City's allocation of costs associated with non-rate revenues to ratepayers and its practice of tapping reserves and non-rate revenues to fund the GFT and rental payments. An examination of the City's financial documents concerning its electric and gas utilities is necessary to evaluate these arguments and determine whether *Redding* governs this case. During the Phase I trial, the parties agreed that the Court should focus its analysis on the financial projections the City used in setting the challenged rates, with actual, retrospective financials

[9] *California Chamber of Commerce v. State Air Resources Bd.* (2017) 10 Cal.App.5th 604 is not to the contrary. It held that cap-and-trade allowances constituted "the voluntary purchase of a valuable commodity and [were] not a tax [or fee] under any test." (*Id.* at p. 614; see also 639-640 ["The Board's regulations do not purport to impose a regulatory fee on polluters, but instead call for the auction of allowances, a different system entirely."].) To the extent that the opinion's discussion of the retroactive application of Proposition 26 conflicts with *Redding*, the Court is bound to follow *Redding*.

serving at most as secondary evidence supporting or undermining the reasonableness of the City's projections.

1. Electric Rates

With regard to the challenged electric rates (enacted in 2016 and 2018), the City is correct that, following the methodology used in *Redding*, the utility's total projected expenses exceeded its rate revenue by more than the combined total of the GFT and the challenged rental charges for each year at issue (2017-2020). The projected expenses are reflected in Appendix A to the City's "FY 2017 Electric Utility Financial Plan" and Appendix A to its "FY 2019 Electric Utility Financial Plan," which supported its rate-settings in 2016 and 2018, respectively. Similar projected expenses are also reflected in the "City of Palo Alto Electric Cost of Service and Rate Study" prepared by EES Consulting in 2016. Relevant portions of these documents, with highlighting added by the Court, are found in Exhibit A to this Statement of Decision.

As reflected in the financial plans, in 2016, the electric utility's total projected expenses were $166,952,654 for 2017 and $164,503,726 for 2018. Transfers including the GFT were projected to be $11,781,400 in 2017 and $11,784,460 in 2018. Rent was projected to be $5,141,068 in 2017 and $5,295,300 in 2018. Thus, total expenses excluding the GFT and rent were projected to be $150,030,186 in 2017 and $147,423,966 in 2018. Rate revenues, including the increases adopted in 2016, would be $122,721,963 in 2017 and $135,111,161 in 2018. Rates accordingly would be insufficient to cover total expenses, excluding the challenged GFT and rental expenses.[10] These projections are consistent with a retrospective analysis as well.[11]

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[10] The consultant's report projects total expenses to be $148,740,905 in 2017 and $152,427,512 in 2018 and the GFT to be $12,101,000 in 2017 and $12,343,020 in 2018. The report reflects rate revenues of $122,487,979 for 2017 and $134,876,275 for 2018. It indicates that "Rent – Electric Properties" may provide revenue, but does not associate any dollar value with this item. Green's calculations, reflected in Attachment B to her opening brief, appear to rely on the consultant's expense and GFT projections, but include rent projections of $5,314,643 and $5,420,935 from an unknown source. In their briefing, neither party expressly states whether they rely on figures from the City's financial plan or from the consultant's rate study with regard to the 2017 and 2018 projections. Relying on the consultant's study would result in rates slightly exceeding expenses for 2018 if the GFT and actual rental charges were excluded from the expenses; however, given that the City's more complete financial plan and a retrospective analysis both show expenses exceeding rates, the Court finds that the preponderance of the evidence demonstrates this was the case.

[11] The City's "FY 2019 Electric Utility Financial Plan" reflects a total of $145,059,572 in expenses for 2017 and $159,871,498 in expenses for 2018. The plan shows that transfers including the GFT were $12,702,945 in 2017 and $13,041,626 in 2018. Rent was $5,121,102 in 2017 and $5,284,977 in 2018. Thus, total expenses excluding

In 2018, the utility's total projected expenses were $170,937,668 for 2019 and $170,434,169 for 2020. Transfers including the GFT were projected to be $13,305,787 in 2019 and $14,190,505 in 2020. Rent was projected to be $5,443,527 in 2019 and $5,606,832 in 2020. Total expenses minus the GFT and rent were $152,188,354 for 2019 and $150,636,832 for 2020. Rate revenues were projected at $137,836,311 for 2019 and $141,304,121 for 2020. Again, rates would not cover total expenses even excluding the GFT and rent.[12]

These analyses mirror the one conducted by the Supreme Court in *Redding*:

> The city prepared a five-year financial plan for REU in 2009. In fiscal year 2010 to 2011, when the city council adopted the rate increase, REU was projected to collect $102.1 million in rate revenues. REU's expenses were projected as follows: power supply ($82.3 million); operations and maintenance ($28.5 million); debt service ($13.9 million); revenue-funded capital projects ($5.2 million); rolling stock and major plant maintenance ($0.8 million); and the PILOT ($6.0 million). These projected expenses would result in a $34.6 million shortfall between rate revenues and projected expenses. That gap was to be bridged with the surplus in the enterprise fund and revenues from a variety of non-rate sources.

(*Citizens for Fair REU Rates v. City of Redding, supra,* 6 Cal.5th at p. 17.)

As in *Redding*, here, the shortfall between rate revenues and projected expenses was bridged with transfers from reserves and non-rate revenues. *Redding* approved this practice, and rejected the premise, fundamental to the argument of the plaintiffs in that case and Green here, that "the city was required to subsidize [the utility's] rates by using its non-rate revenues." (*Citizens for Fair REU Rates v. City of Redding, supra,* 6 Cal.5th at p. 18.) The opinion explained that

> such subsidization is not required by California law. Before the adoption of Propositions 218 and 26, the rule in California was that a municipal utility's "rates need not be based purely on costs." Article XIII C changed that rule, but it does not operate to require subsidization. Instead, for any service charge to which the article applies, a local government must either charge a rate that does not exceed the reasonable costs of providing the service or obtain voter approval for rates that

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transfers and rent were $127,235,525 in 2017 and $141,544,895 in 2018, while rate revenues were $114,624,726 in 2017 and $129,258,435 in 2018. As projected, rates were insufficient to cover total expenses even without the GFT and rental charges.

[12] These figures match Green's calculations in her Attachment B. Thus, Green relied largely on the consultant's report with respect to the 2017 and 2018 rates, but she relied on the City's financial plan with regard to the 2019 and 2020 rates. She does not explain these choices in her briefing.

> exceed costs. Article XIII C does not compel a local government utility to use other non-rate revenues to lower its customers' rates.
>
> Plaintiffs cite no authority for their assertion that REU was "legally required" to subsidize its rates with non-rate revenues. Settled authority runs to the contrary. "[T]here is no ... mandate that municipally owned public utilities pass along to the ratepayers any savings in its costs of providing service." In addition, when "a governmental entity is authorized to exercise a power purely proprietary, the law leans to the theory that it has full power to perform it in the same efficient manner as a private person would." The majority below was wrong to reject, as irrelevant, the city's argument that REU's rates were not taxes because the PILOT was not paid out of rate revenues.

(*Citizens for Fair REU Rates v. City of Redding, supra,* 6 Cal.5th at p. 18, citations omitted.)

Green contends that she does have authority showing that the City was required to apply its reserves and non-rate revenues to subsidize rates, pointing to article VII, section 2 of the Palo Alto City Charter[13] and discussion of City policy in various documents within and beyond the administrative record.[14] However, Green does not allege any claim for violation of the Palo Alto

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[13] That section provides:

> Sec. 2. Public utilities revenue.
>
> The revenue of each public utility shall be kept in a separate fund from all other receipts and shall be used for the purposes and in the order as follows:
>
> (a) For the payment of the operating and maintenance expenses of such utility, including the necessary contribution to retirement of its employees.
>
> (b) For the payment of interest on the bonded debt incurred for the construction or acquisition of such utility.
>
> (c) For the payment of the principal of said debt, as it may become due.
>
> (d) For capital expenditures of such utility.
>
> (e) For the annual payment into a reserve fund for contingencies, of an amount not to exceed ten percent of the expenditure for capital outlay for the year, exclusive of bond fund expenditures. The total accumulated in this reserve for contingencies shall at no time exceed five percent of the book value of the utility's capital in service. This reserve fund shall be available for use by the utility, only for replacements or emergency repairs and after special appropriation by the council.
>
> (f) The remainder shall be paid into the general fund by quarterly allotments.

[14] Specifically, Green also contends that cap and trade revenues must be "used for the primary benefit of retail electricity ratepayers," but cites only a web site in support of that conclusion. She further contends that interest on utility reserve accounts is restricted for use by the utility and "operating transfers in" are dedicated to capital improvement projects, citing various documents in the administrative record, but no legal authority.

City Charter or any authority other than the California Constitution. In her petition and complaint, she alleges that the rates imposed by the City violate article XIII C of the California Constitution, and *Redding* holds that article XIII C does not compel a local government utility to use reserves or non-rate revenues to lower its customers' rates.

At any rate, article VII, section 2 of the Charter imposes no limitation on utilities' ability to raise revenues, and expressly allows revenues to be paid into the general fund after other specified obligations are satisfied. Moreover, while the Charter imposes restrictions on a reserve fund for "replacements or emergency repairs," it does not prohibit the City from establishing additional reserves—of which it has several (see 107 AR 07239, 07241-07245)—or restrict the use of such reserves. While reserves may have been funded through prior rate increases, any challenge to prior rates is untimely. Finally, to the extent Green claims the City has violated its own internal policies with regard to its reserves, this is not alleged in the petition and complaint, and Green does not clearly identify the policies at issue or explain how reserve restrictions would impact the rate revenue to expense comparison set forth above.[15]

Finally, Green contends that the City fails to properly account for costs incurred in generating wholesale and other non-rate revenues. She argues that article XIII C prohibits the City from shifting these costs to ratepayers while using associated revenues to fund the GFT and rental payments to the City. While the City urges that *Redding* included wholesale revenues in its calculation of overall non-rate revenues, Green correctly responds that the expenses associated with generating those revenues were unchallenged by the *Redding* plaintiffs.

The City argues that its wholesale costs are properly allocated to ratepayers because its wholesale revenues largely result from "sales of surplus hydroelectric energy during wet years." (FY 2017 Electric Utility Financial Plan, 64 AR 04184.) In the mid-1980s, Palo Alto and other members of the Northern California Power Agency (a joint action agency formed by Palo Alto and other small municipal utilities to reduce their dependence on private utilities and invest in

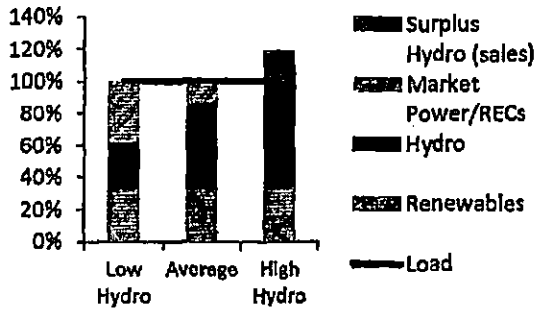
[15] Even if Green had properly alleged violations of the City Charter and City policy, article XIII C imposes a unique burden on the City to justify the reasonableness of costs imposed on ratepayers when faced with allegations of an *unconstitutional* tax. Presumably, the burden to show a violation of the City Charter or City policy would rest with Green: a burden her counsel acknowledged at the Phase I trial.

energy supply projects) invested in the construction and operation of the Calaveras Hydroelectric Project, which began to operate in 1990. (FY 2017 Electric Utility Financial Plan, 64 AR 04180.) Hydroelectric generation now supplies a substantial portion of the energy used by the utility, which uses market purchases to fill the gap in drier years.

As explained in the City's financial plan,

> While average year purchase costs for the electric utility are predictable due to its long-term contracts, variability in hydroelectric generation can result in increased or decreased costs. This is by far the largest source of variability the utility faces. Figure 3 shows the difference in costs under high, average, and low hydroelectric generation scenarios. Additional costs associated with a very low generation scenario can range from $10-12 million per year. For the current hydroelectric risk assessment see *Section 5F: Risk Assessment and Reserves Adequacy*.

Figure 3: Hydroelectric Variability (FY 2016)



(FY 2017 Electric Utility Financial Plan, 64 AR 04183.)

"Since ***the utility's costs for its hydroelectric resources are almost entirely fixed,*** costs do not decline when the output of those resources are low, but the utility needs to buy power to replace the lost output." (FY 2017 Electric Utility Financial Plan, 64 AR 04192, emphasis added.) When hydroelectric output is higher than average, "[t]he converse happens": costs do not increase, and the utility may generate surplus power. (*Ibid.*) Thus, the record refutes Green's argument that additional costs are incurred to generate surplus hydroelectric output.

The City also acknowledges that it purchases some amount of "supply cushion to avoid brownouts," and resells any such supply that is ultimately not used. (Opp., p. 20.) However, there is no evidence that it engages in speculation to fund the GFT as Green suggests: while Green points to the increase in projected wholesale revenues between 2017 and 2020, this is explained by weather conditions leading to increased revenues from the sale of surplus hydroelectric power. (See 102 AR 0651 [projecting an increase in wholesale revenues of $5.5 million in 2018 due to "hydro conditions," following an even larger increase in 2017].) The

Court finds that costs associated with securing an adequate "cushion" of energy supply are reasonably and appropriately allocated to ratepayers, while profits derived from selling unused "cushion" purchases are non-rate revenues that need not be applied to subsidize rates

Notably, Green does not identify any type of non-rate revenue other than wholesale revenue that she contends creates costs that are improperly allocated to ratepayers. While it is the City's burden to justify its rates, it is not required to address every entry on its financial statements in the absence of a challenge by Green. (See *Citizens for Fair REU Rates v. City of Redding, supra,* 6 Cal.5th at p. 17 [where "[t]he only expense plaintiffs challenged was the PILOT," they conceded the defendant's other costs were reasonable].) Green has thus waived any argument that the City's other costs are unreasonable.

For these reasons, the electric utility's total projected expenses exceeded its rate revenue by more than the combined total of the GFT and the challenged rental charges for each year at issue; consequently, the rates do not violate article XIII C under *Redding*.

2. Gas Rates

The City acknowledges that *Redding* does not end the inquiry with regard to its gas rates: "If the Court does not find that the GFT from its gas utility is a 'reasonable' cost under Proposition 26, or as voter-approved legislation that was not preempted by it, the City admits it does not generate sufficient non-rate revenues to cover it under the *Redding* logic." (Opp., p. 26.)[16] An examination of the gas utility's financial documents confirms this.

For the 2012 rate-setting, the City retained Utility Financial Solutions, LLC to draft a "Gas Utility Cost of Service Study," which reflects the financial projections utilized by the City. For the 2016 and 2018 rate-settings, the City relied on its "FY 2017 Gas Utility Financial Plan" and "FY 2019 Gas Utility Financial Plan," respectively. Relevant portions of these documents are found in Exhibit B to this Statement of Decision.

As an initial matter, the 2012 financial documents are presented in a different manner than the other financials. The Court appreciates the parties' discussion of these documents at the

[16] Green's arguments regarding wholesale costs do not apply to the City's rate-setting with regard to its gas utility. (See Mot., pp. 13, 16 [arguing wholesale costs are improperly included with regard to electricity rates only, noting that the City does not engage in wholesale gas transactions].)

Phase I trial. However, it will defer a detailed analysis of the 2012 documents to the next phase of the proceedings, in light of the parties' apparent agreement that if rent and the GFT are excluded from the total projected expenses for FY 2016 (the only year included in the 2012 ratemaking at issue), projected rate revenues would exceed projected expenses, as with the 2016 and 2018 ratemakings discussed below.

Turning to the 2016 ratemaking, the gas utility's total projected expenses were $40,418,000 for 2017 and $41,721,000 for 2018. The GFT was projected to be $6,722,000 in 2017 and $6,945,000 in 2018. Rent was projected to be $455,000 in 2017 and $467,000 in 2018. Rate revenues were projected at $33,259,000 for 2017 and $37,038,000 for 2018. If both rent and the GFT were excluded, rates would exceed projected expenses in both years: excluding these items, projected expenses were only $33,241,000 in 2017 and $34,309,000 in 2018. Even if only the GFT were excluded, rates would still exceed expenses for 2018: the reduced expenses would be $33,696,000 for 2017 and $34,776,000 for 2018. (On the other hand, excluding just rent from the projected expenses, rates would not cover expenses for either year.)[17]

In 2018, total expenses were projected to be $38,728,000 for 2019 and $44,202,000 for 2020. The GFT was estimated to be $6,888,000 for 2019 and $7,069,000 for 2020, and rent was estimated at $480,000 for 2019 and $492,000 for 2020. Rate revenues were forecast to be $33,096,000 for 2019 and $34,849,000 for 2020. If only the GFT were excluded from these projections, rates would exceed expenses for 2019 only: the reduced expenses would be $31,840,000 for 2019 and $37,133,000 for 2020. The result is the same if both rent and the GFT were excluded: rates would exceed expenses for 2019 but not for 2020. (Again, excluding only rent from the projected expenses, rates would not cover expenses for either year.)

[17] Retrospectively, the "FY 2019 Gas Utility Financial Plan" shows that total expenses in 2017 were $32,690,000. Total expenses in 2018 were $42,243,000. The GFT was $6,594,000 in 2017 and $7,035,000 in 2018, and rent was $455,000 in 2017 and $467,000 in 2018. Rate revenues were $34,110,000 in 2017 and $34,012,000 in 2018. Thus, from a retrospective perspective, rate revenues exceeded total expenses, including both the GFT and rent, in 2017, but revenues fell short of expenses even excluding both these items in 2018.

Thus, *Redding* does not end the inquiry with regard to the gas rates imposed by the City. As acknowledged by the City, the Court must address whether the GFT and rental charges were permissibly passed through to ratepayers with regard to at least some subset of the gas rates.[18]

C. Is the GFT a Reasonable Cost of the City's Gas Service?

It is undisputed that the GFT is calculated as a percentage of each utility's adjusted total assets, representing a rate of return on the assets (sometimes referred to as the "Return on Rate Base" or "Utility Enterprise Method"/"UEM"). (See "Recommendation to City Council to Change the Methodology Used to Calculate the Equity Transfer from Utilities Funds to the General Fund," 13 AR 00554-00572.) Since 2009, the rate of return has been based on PG&E's rate of return, with downward adjustments to account for differences in taxation and risk experienced by investors in a municipally owned utility versus an investor owned utility. (*Id.* at 00555-00556.)

As urged by Green, this type of lost-profits-based charge was held not to be a reasonable cost of service in *Howard Jarvis Taxpayers Ass'n v. City of Roseville*, *supra*, 97 Cal.App.4th 637 and *Howard Jarvis Taxpayers Assn. v. City of Fresno*, *supra*, 127 Cal.App.4th 914. In *Roseville*, the charge at issue was an in-lieu franchise fee comprising a flat 4 percent of the utilities' yearly budgets, which was established " 'by a process that considered (1) what [Roseville] collects as franchise fees from private enterprises [(to use government land and right-of-ways)], (2) what other communities collect as franchise fees, and (3) what would be a reasonable rate of return for use of [Roseville's] rights[-]of[-]way.' " (*Howard Jarvis Taxpayers Ass'n v. City of Roseville*, *supra*, 97 Cal.App.4th at p. 648.) The Court of Appeal found this approach was not cost-based: "[N]ot one of these factors aligns with an identified cost of providing utility service ...." (*Ibid.*) "[I]nstead, they all ask, ' "What will the market bear?" ' While Roseville may be free to impose franchise fees on private utilities on the basis of contractual negotiation rather than costs, it is not free ... to impose franchise-like fees on a noncost basis regarding its municipal utilities." (*Ibid.*) Similarly, *Fresno* rejected an in-lieu property tax fee set at "1 percent of the assessed value of fixed assets of the utility department or division." (*Howard Jarvis Taxpayers Assn. v. City of*

[18] To be clear, the calculations set forth above are only preliminary. The parties agree that it is appropriate to defer final calculations to the remedy phase of the proceedings, and the Court adopts this approach.

Fresno, supra, 127 Cal.App.4th at p. 917.) Citing *Roseville*, the Court of Appeal held that "if Fresno wishes to recover all of its utilities costs from user fees," it must "reasonably determine the unbudgeted costs of utilities enterprises" and recover those costs "through rates proportional to the cost of providing service to each parcel." (*Id.* at p. 923.) The court acknowledged that "[u]ndoubtedly this is a more complex process than the assessment of the in lieu fee and the blending of that fee into the rate structure," but concluded that "[n]evertheless, such a process is now required by the California Constitution." (*Ibid.*; cf. *Moore v. City of Lemon Grove* (2015) 237 Cal.App.4th 363, 372 [distinguishing *Roseville* where transfer to the general fund was based on reliable estimates of time spent by City workers on sanitation issues].)

The fee at issue in *Fresno* is indistinguishable from the GFT here: to the extent such a fee is passed on to ratepayers, it is a tax. The City urges that both *Roseville* and *Fresno* were decided under article XIII D/Proposition 218 rather than article XIII C/Proposition 26, correctly noting that *Redding* distinguished both cases on the ground that article XIII D expressly prohibits transferring "property-related fees" to a general fund to pay for general government services. (See *Citizens for Fair REU Rates v. City of Redding, supra,* 6 Cal.5th at p. 14 ["[I]n *Roseville* and *Fresno*, the fact that the utilities were transferring rate proceeds to the cities' general funds, where those proceeds could be used for general government services, created an independent violation of article XIII D. Article XIII C contains no such restriction."].) Notably, however, *Redding* also distinguished *Roseville* and *Fresno* on the basis that "[i]n those cases, it was clear the interfund transfers directly increased customer rates." (*Id.* at p. 15.) Moreover, it did *not* distinguish *Roseville* and *Fresno* with reference to their "reasonable costs" analysis, nor did it suggest that a different standard would apply to that analysis under article XIII C. To the contrary, *Redding* explained that "[b]efore the adoption of Propositions 218 and 26, the rule in California was that a municipal utility's 'rates need not be based purely on costs.' " (*Id.* at p. 18, quoting *Hansen v. City of San Buenaventura* (1986) 42 Cal.3d 1172, 1182.) However, "Article XIII C changed that rule." (*Ibid.*)

Ultimately, the City acknowledges that the GFT reflects a "return on investment to the general fund ...." (Opp., p. 30.) Still, it urges that the general fund "invested in the

infrastructure necessary to provide electric and gas service to City residents" and is entitled to recover all of its associated *costs*. This argument ignores the difference between costs and a return on investment. As discussed above, there is no evidence that the GFT is based on the City's actual costs. Rather, it is based on PG&E's return on investment. The City's argument that *Hansen* allowed utilities to recover a return on its capital investment is unavailing: as stated above, *Redding* specifically recognized that *Hansen* has been superseded on this point by "Article XIII C," as implemented by both "Propositions 218 *and* 26." While it cited *Hansen* for the proposition that "reasonable costs include expenditures to generate and acquire electricity and other costs typical of utility operations" (*Citizens for Fair REU Rates v. City of Redding*, *supra*, 6 Cal.5th at pp. 15-16), *Redding* in no way endorsed *Hansen*'s holding with regard to profit- versus cost-based charges.

To the extent the GFT is passed on to gas ratepayers, it is a tax.

D. Are Rental Charges a Reasonable Cost of the City's Gas Service?

With regard to the rental charges imposed by the City on its utilities, there is again no dispute that these charges are "market-based" rather than cost-based. (See Opp., p. 31; 35 AR 02136 [enterprise funds pay market-based rent based on an annual independent appraisal]; 116 AR 07756 [same].) The City contends that *Redding*, *Roseville*, and *Fresno* support this practice, while Green urges that *Roseville* specifically disapproves it.

As an initial matter, *Redding* provides no guidance on this issue. While it did approve the transfer of non-rate revenues to a city's general fund, it is unclear whether rental charges contributed to the utility's non-rate revenues in that case: the issue is never discussed in the *Redding* opinion. Certainly, *Redding* does not address whether a market-based, as opposed to a cost-based, rental charge is permissible under article XIII C.

Roseville and *Fresno* do support the conclusion that some form of a rental charge is permissible. As urged by Green, however, they support a "cost"-based charge, rather than a lost profits, market-based one. In *Roseville*, the Court of Appeal explained that the "theme" of article XIII D/Proposition 218

> is that fee or charge revenues may not exceed what it ***costs*** to provide fee or charge services. Of course, what it costs to provide such services includes all the

> required ***costs*** of providing service, short-term and long-term, including operation, maintenance, financial, and capital expenditures. The key is that the revenues derived from the fee or charge are ***required to provide the service***, and may be used only for the service. In short, the ... fee or charge must reasonably represent the ***cost of providing service***.

(*Howard Jarvis Taxpayers Ass'n v. City of Roseville, supra,* 97 Cal.App.4th at pp. 647-648, emphasis added.) The opinion continues:

> In line with this theme, Roseville may charge its water, sewer, and refuse utilities for the street, alley and right-of-way ***costs*** attributed to the utilities; and Roseville may transfer these revenues to its general fund to pay for such ***costs*** (the general fund supports or pays for Roseville's streets, alleys, and rights-of-way). Here, however, there has been no showing that the in-lieu fee reasonably represents these ***costs***.

(*Howard Jarvis Taxpayers Ass'n v. City of Roseville, supra,* 97 Cal.App.4th at p. 648, emphasis added.)

Roseville went on to reject the defendant's argument that the 4 percent in-lieu franchise fee it imposed was properly based on concepts such as what the defendant would charge a private enterprise for the use of its rights-of-way or "reasonable rent":

> Roseville concedes that the in-lieu fee was set at 4 percent "of utility expenses by a process that considered (1) what [Roseville] collects as franchise fees from private enterprises, (2) what other communities collect as franchise fees, and (3) what would be a reasonable rate of return for use of [Roseville's] rights[-]of[-] way." As plaintiffs point out, however, not one of these factors aligns with an identified cost of providing utility service, as required by Proposition 218; instead, they all ask, " 'What will the market bear?' " While Roseville may be free to impose franchise fees on private utilities on the basis of contractual negotiation rather than costs, it is not free, under section 6(b) of Proposition 218, to impose franchise-like fees on a noncost basis regarding its municipal utilities.
>
> Relying on a valuation analysis it commissioned regarding the in-lieu fee (the Sierra West Report), Roseville notes the fee constitutes "[reasonable] compensation or rent paid to the General Fund by each of the municipal utilities as an expense for the costs of [Roseville's] streets, alleys, and rights-of-way used by such utilities in providing each separate utility service"; this report also characterizes the fee "as a reasonable economic return to the General Fund on the investment made by General Fund support of and contributions to each municipal utility." While the Sierra West Report may provide a theoretical foundation for imposing the in-lieu fee-at least with respect to compensation paid for the street, alley and right-of-way costs attributed to the utilities-the report fails to show those

> costs. Under section 6(b) of Proposition 218, the fee or charge must reasonably represent the cost of providing service.
>
> Furthermore, the reliance by Roseville and by the Sierra West Report on aspects of the state Supreme Court's 1986 decision in *Hansen v. City of San Buenaventura* is problematic. *Hansen* observed that a municipal utility is entitled to a reasonable rate of return and that utility rates need not be based purely on costs. To support these observations, *Hansen* noted that nothing in the California Constitution forecloses a local governmental entity from " 'using the *net proceeds* of enterprises such as municipal utility systems for the benefit of its own general fund.' " *Hansen*'s observations, however, were made 10 years before Proposition 218 added article XIII D to the state Constitution.

(*Howard Jarvis Taxpayers Ass'n v. City of Roseville* (2002) 97 Cal.App.4th at pp. 648-649, footnotes omitted.)

Fresno similarly rejected an in-lieu fee of one percent of the assessed value of utilities' assets, which was meant to replace "property and other taxes normally placed upon private business." (*Howard Jarvis Taxpayers Assn. v. City of Fresno, supra,* 127 Cal.App.4th at p. 917.) It held that article XIII D/Proposition 218 requires a city to "reasonably determine the unbudgeted costs of utilities enterprises" to recover those costs through rates. (*Id.* at p. 923, citation omitted.) Where Fresno had "not made any attempt to establish the actual cost of services provided to the utilities but not set forth in the enterprise fund budget," the in-lieu fee could not be justified. (*Id.* at p. 927.)

Here, the City has similarly made no attempt to show that its rental charges reflect costs it incurs by permitting its utilities to use its properties. Rather, it admits that these charges represent "market-based" rents. The City cites no support for its argument that this type of charge is a "cost" of providing services under article XIII C, subdivision (e)(2).

Thus, to the extent market-based rental charges are passed on to gas ratepayers, these charges are a tax.

Conclusion and Order

With regard to liability, the Court finds that the challenged electric rates are not taxes under *Redding*, but that the challenged gas rates are to the extent the GFT and/or market-based

rental charges were passed through to ratepayers. The GFT and market-based rental charges do not correspond to the "reasonable costs to the local government" of the service provided to ratepayers under article XIII C, subdivision (e)(2).

While it has set forth preliminary calculations above, the Court will conclusively determine the extent to which the GFT and market-based rental charges were passed through to gas ratepayers, and the dollar value of the refund to which class members may be entitled, during Phase II of these proceedings. Phase II shall also address the proper form of relief to be issued with regard to the gas rates, be it a writ of mandate, declaratory relief, and/or a money judgment, as well as the issue of whether any of the causes of action asserted herein are moot. The parties shall brief these issues to the Court prior to the Phase II trial. They shall be prepared to discuss the parameters and schedule for the Phase II briefing, as well as the scheduling of the Phase II trial, at their next case management conference.

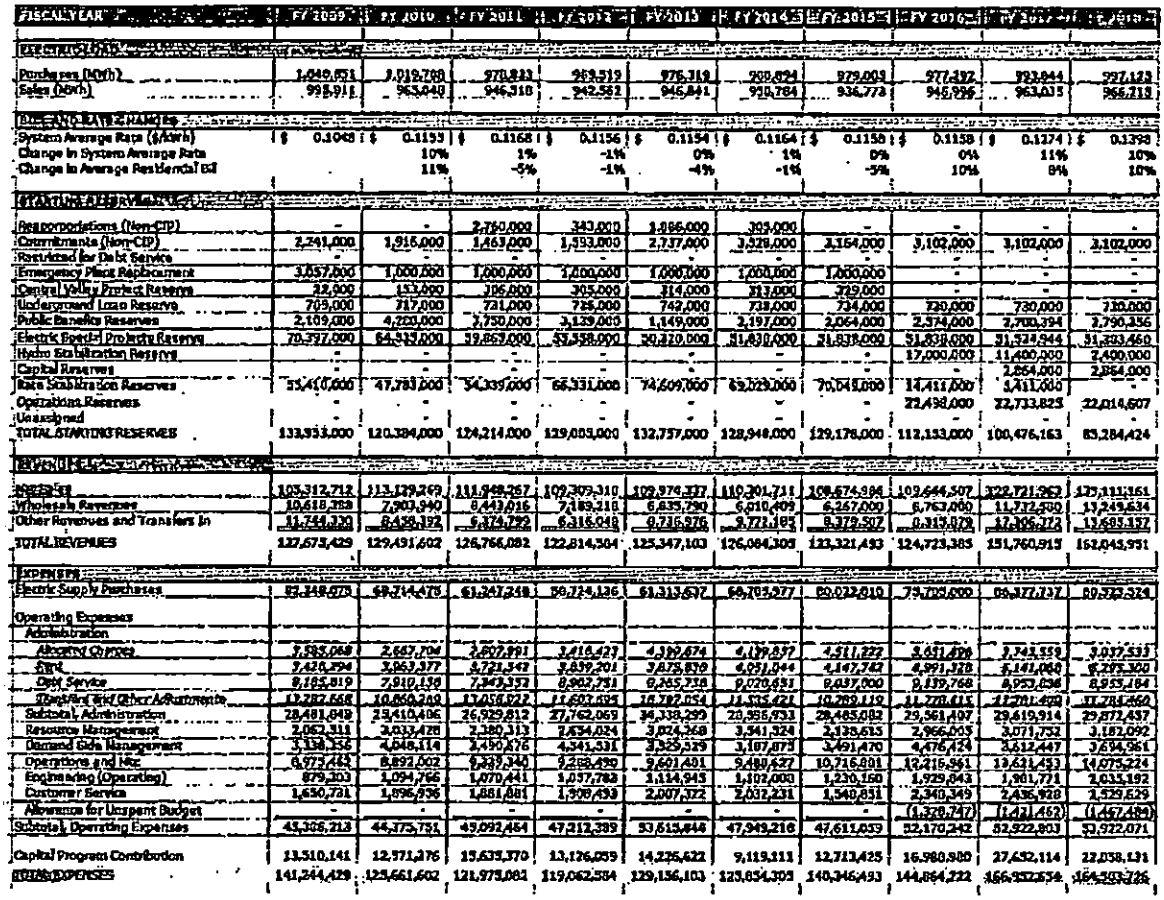
IT IS SO ORDERED.

January 2, 2020

Brian C. Walsh
Judge of the Superior Court

EXHIBIT A

EXHIBIT A: ELECTRIC UTILITY PROJECTIONS AND FINANCIALS



FISCAL YEAR	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015	FY 2016	FY 2017	FY 2018
ELECTRIC UTILITY										
Purchases (MWh)	1,049,651	1,019,788	970,833	969,519	976,319	999,824	979,003	977,497	973,944	997,123
Sales (MWh)	995,911	965,040	946,310	942,562	946,841	950,784	936,773	946,996	963,035	966,218
RATES AND RATE CHANGES										
System Average Rate ($/kWh)	$ 0.1048	$ 0.1155	$ 0.1168	$ 0.1156	$ 0.1154	$ 0.1164	$ 0.1158	$ 0.1158	$ 0.1174	$ 0.1298
Change in System Average Rate		10%	1%	-1%	0%	1%	0%	0%	1%	10%
Change in Average Residential Bill		11%	-5%	-1%	-4%	-1%	-5%	10%	8%	10%
STATUTORY RESERVES										
Appropriations (Non-CIP)	-	-	2,750,000	343,000	3,986,000	305,000	-	-	-	-
Commitments (Non-CIP)	2,241,000	1,916,000	1,463,000	1,593,000	2,737,000	3,529,000	3,164,000	3,102,000	3,102,000	3,102,000
Restricted for Debt Service	-	-	-	-	-	-	-	-	-	-
Emergency Plant Replacement	3,557,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	-	-	-
Capital Valley Project Reserve	22,000	153,000	206,000	305,000	314,000	313,000	319,000	-	-	-
Underground Loss Reserve	705,000	717,000	731,000	736,000	742,000	738,000	734,000	730,000	730,000	730,000
Public Benefits Reserves	2,109,000	4,220,000	3,750,000	3,129,000	1,149,000	2,197,000	2,064,000	2,574,000	2,700,394	2,790,356
Electric Special Projects Reserve	70,797,000	64,519,000	59,869,000	53,558,000	50,820,000	51,630,000	21,838,000	51,838,000	31,524,844	31,203,460
Hydro Stabilization Reserve	-	-	-	-	-	-	-	17,000,000	11,400,000	7,400,000
Capital Reserves	-	-	-	-	-	-	-	-	2,864,000	2,864,000
Rate Stabilization Reserves	35,470,000	47,783,000	54,339,000	66,331,000	74,609,000	69,229,000	70,045,000	14,411,000	1,411,000	-
Operations Reserves	-	-	-	-	-	-	-	22,498,000	22,733,825	22,014,607
Unassigned	-	-	-	-	-	-	-	-	-	-
TOTAL STATUTORY RESERVES	133,933,000	120,384,000	124,214,000	129,055,000	132,757,000	128,940,000	129,178,000	112,153,000	100,476,163	85,284,424
REVENUES										
Sales	103,312,712	113,129,249	111,949,267	109,309,310	109,979,327	110,301,711	108,674,996	103,644,507	122,721,262	125,111,161
Wholesale Revenues	10,618,359	7,903,940	8,443,016	7,189,218	6,835,790	6,010,409	6,267,000	6,763,000	11,732,500	13,249,634
Other Revenues and Transfers In	11,744,330	8,458,192	6,374,722	6,316,048	9,716,576	9,772,185	9,379,507	9,317,878	17,306,272	13,685,137
TOTAL REVENUES	127,675,429	129,491,602	126,766,982	122,814,564	126,547,103	126,084,305	123,321,493	124,725,385	151,760,915	152,045,931
EXPENSES										
Electric Supply Purchases	52,348,079	59,714,479	61,247,248	58,724,126	61,313,637	66,705,277	60,032,810	79,725,000	86,377,737	89,332,324
Operating Expenses										
Administration										
Allocated Charges	2,585,068	2,647,704	2,807,991	3,416,427	4,199,674	4,179,877	4,311,222	3,651,806	3,743,559	3,837,533
Taxes	3,426,394	3,963,377	4,724,542	3,839,201	3,875,879	4,051,044	4,147,742	4,991,328	5,141,068	5,295,300
Debt Service	8,165,819	7,910,159	7,843,353	8,902,751	9,265,728	9,020,651	9,037,000	9,139,768	8,953,036	8,959,164
Transfers and Other Adjustments	12,287,668	10,860,249	13,056,027	11,603,695	10,782,054	11,535,421	10,269,119	11,778,615	12,701,499	11,784,460
Subtotal, Administration	28,481,949	25,410,406	26,929,912	27,762,069	26,338,299	28,955,933	28,465,082	29,561,497	29,619,914	29,877,457
Resource Management	2,062,311	3,033,428	2,380,313	2,634,024	3,024,268	3,341,324	2,338,615	2,966,005	3,071,752	3,181,092
Demand Side Management	3,338,356	4,646,114	3,490,476	4,341,531	3,525,529	3,107,073	3,491,470	4,476,424	3,612,447	3,694,961
Operations and Mtc	9,975,442	8,892,002	9,239,340	9,288,490	9,601,491	9,480,627	10,716,891	12,215,961	13,631,453	14,075,224
Engineering (Operating)	879,203	1,094,766	1,070,441	1,037,782	1,114,945	1,107,000	1,230,160	1,929,843	1,901,771	2,035,192
Customer Service	1,650,721	1,896,936	1,881,881	1,908,493	2,007,372	2,032,231	1,540,851	2,340,349	2,436,928	2,529,629
Allowance for Unspent Budget	-	-	-	-	-	-	-	(1,328,747)	(1,421,462)	(1,467,484)
Subtotal, Operating Expenses	45,386,213	44,375,751	45,092,464	47,212,389	53,615,844	47,949,216	47,611,039	52,170,242	52,922,903	53,922,071
Capital Program Contribution	13,510,141	12,771,276	15,639,370	13,126,059	14,225,622	9,119,111	12,713,425	16,980,880	27,652,114	23,058,131
TOTAL EXPENSES	141,244,429	123,661,602	121,979,082	119,062,584	129,156,103	123,654,393	140,346,493	144,864,222	166,952,754	166,312,526

(Source: Appendix A to FY 2017 Electric Utility Financial Plan found at 64 AR 04210 and 69 AR 04521.)

Table 1 Summary of the Revenue Requirement FY: 2016-2017	
Revenue Requirement	
Production (Purchased Power)	$90,065,328
Distribution	$19,195,107
Customer Accounts and Services	$5,946,916
Administration and General	$13,931,304
Capital Projects from Rates	$13,501,250[2]
~~Utility Fund Transfer~~	~~$12,405,000~~
~~Total Expenses~~	~~$145,746,905~~
Transfers from Reserves and Allowance for Unspent Budget	$17,870,017
Other Revenues	8,382,909
~~Total Revenue Required from Rates (Revenue Requirement)~~	~~$122,993,979~~
Revenues Based on Rates Currently in Effect	$110,531,481
Additional Rate Revenue Needed	$11,956,498
Total Required Rate Revenue Increase (Decrease)	10.8%

(Source: City of Palo Alto Electric Cost of Service and Rate Study Draft, found at 64 AR 04222 and 69 AR 04533)

PROJECTED REVENUE REQUIREMENTS
Schedule 3.2

		Total 2015 Expenses	2016	2017	2018
	Production				
	Transmission				
	Distribution	$7,781,000	$14,666,639	$13,501,250	$16,306,888
	General				
	Total Capital Projects Funded From Rates	$7,781,000	$14,666,639	$13,501,250	$16,306,888
	Revenue Requirement Before Transfers and Other Revenu				
	Other Contributions				
	Transfers from Reserves and Allowances for Unspent Budget			-$17,870,017	-$9,245,124
	General Fund Transfer	$11,397,790	$11,725,000	$12,101,000	$12,343,020
	Total Other Contributions	$11,397,790	$11,725,000	-$5,769,017	$3,097,896
	Revenue Requirement Before Reserve Transfers and Other	$123,519,749	$139,273,446	$148,740,805	$152,427,512
	Revenue Req. Before Taxes, Reserve Transfers and Other I	$123,519,749	$139,273,446	$148,740,905	$152,427,512
	Other Revenues				
450.00	Forfeited Deposits				
451.00	Misc. Service Revenues	$167,200	$167,200	$167,200	$170,544
454.00	Rent - Electric Properties				
456.00	Misc. Revenue (Other)	$11,000	$11,000	$2,507,700	$2,557,854
457.00	Transfer Credits	$666,667	$135,386	$135,386	
458.00	Low Hydro Transfers		$15,000,000		
4198424	Dividends from Affiliates, Interest				
449.00	Other Revenue	$300,676	$198,500		
4158416	Income (Loss) from Equity Investments			$198,500	$202,470
444.20	Street Light Revenue				
4218429	Traffic Signal Transfer from General Fund		$233,984	$233,984	$233,984
446.00	Green Power	$165,900	$56,000	$45,085	$45,987
XXXX	Surplus Energy Revenues	$2,316,000	$3,684,054	$5,084,054	$5,084,054
	Total Other Revenues	$6,325,543	$21,993,824	$8,382,909	$8,306,113
	REVENUE REQUIREMENT for COST ALLOCATION	$117,194,206	$117,279,622	$122,787,979	$134,876,275

(Source: City of Palo Alto Electric Cost of Service and Rate Study Draft, found at 64 AR 04279 and 69 AR 04590)

ELECTRICITY								
Purchases (MWh)	976,319	980,894	979,005	977,292	945,703	939,991	942,995	940,694
Sales (MWh)	946,841	950,784	936,773	937,157	917,607	909,595	910,803	907,697
BILL AND RATE CHANGES								
System Average Rate ($/kWh)	$ 0.1154	$ 0.1164	$ 0.1158	$ 0.1156	$ 0.1249	$ 0.1421	$ 0.1513	$ 0.1557
Change in System Average Rate	0%	1%	0%	0%	10%	14%	6%	3%
Change in Average Residential Bill	-4%	-1%	-3%	3%	11%	11%	6%	2%
STARTING RESERVES								
Reappropriations (Non-CIP)	1,886,000	303,000	-	-	-	-	-	-
Commitments (Non-CIP)	2,737,000	3,526,000	3,164,000	3,102,695	3,777,205	2,970,955	2,970,955	2,970,955
Restricted for Debt Service	-	-	-	-	-	-	-	-
Emergency Plant Replacement	1,000,000	1,000,000	1,000,000	-	-	-	-	-
Central Valley Project Reserve	214,000	313,000	329,000	-	-	-	-	-
Underground Loan Reserve	742,000	738,000	734,000	730,000	725,000	730,147	730,147	730,147
Public Benefits Reserves	1,149,000	2,197,000	2,064,000	2,374,000	1,839,000	681,330	-	-
Electric Special Projects Reserve	30,320,000	31,038,000	31,038,000	31,037,955	31,037,955	31,037,955	45,037,955	45,066,955
Hydro Stabilization Reserve	-	-	-	17,000,000	11,400,000	11,400,000	10,400,000	10,400,000
Capital Reserves	-	-	-	-	-	879,964	879,964	879,964
Rate Stabilization Reserves	74,609,000	69,029,000	70,049,000	14,410,040	9,010,840	9,010,840	-	-
Operations Reserves	-	-	-	22,497,607	21,050,107	29,912,981	37,884,461	32,033,564
Unassigned	-	-	-	-	-	-	-	-
TOTAL STARTING RESERVES	132,757,000	128,948,000	129,178,000	112,152,297	100,444,086	107,424,072	98,703,382	92,101,485
REVENUES								
Net Sales	109,974,337	110,246,264	108,873,377	108,312,917	114,634,726	129,258,435	127,836,311	141,804,121
Wholesale Revenues	6,639,790	6,010,409	6,267,000	4,101,366	16,188,920	19,119,996	13,710,160	14,366,366
Other Revenues and Transfers In	9,624,213	13,669,185	9,688,480	11,714,494	11,229,911	13,776,378	12,781,199	13,649,312
TOTAL REVENUES	126,234,340	129,925,858	124,828,858	124,128,776	142,039,557	161,150,809	154,328,778	169,819,799
EXPENSES								
Electric Supply Purchases	61,313,637	68,785,977	80,022,010	78,709,060	80,467,136	83,505,086	91,924,961	94,232,563
Operating Expenses								
Administration								
Allocated Charges	*4,599,674*	*4,139,697*	*4,511,222*	*4,934,195*	*3,990,872*	*4,304,278*	*4,412,096*	*4,522,617*
Rent	*3,875,835*	*4,051,044*	*4,147,742*	*4,997,101*	*5,121,102*	*5,284,977*	*5,443,527*	*5,606,832*
Debt Service	*9,263,738*	*9,020,651*	*9,027,000*	*8,805,994*	*8,953,803*	*8,955,168*	*8,808,619*	*8,818,349*
Transfers and Other Adjustments	*16,797,054*	*11,529,973*	*11,004,435*	*11,708,865*	*12,702,845*	*13,041,626*	*13,305,787*	*14,190,505*
Subtotal, Administration	34,336,299	28,741,306	28,700,600	30,616,155	30,768,762	31,586,048	31,970,029	33,138,304
Resource Management	3,024,260	3,541,524	2,138,615	2,081,812	1,985,620	3,446,899	3,969,330	3,697,954
Demand Side Management	3,529,529	3,107,875	3,491,470	3,848,924	4,271,786	4,327,095	4,214,905	3,935,387
Operations and Mtc	9,601,401	9,488,627	10,716,881	11,523,801	11,811,016	13,349,204	13,790,502	14,247,793
Engineering (Operating)	1,114,943	1,102,908	1,230,160	1,592,074	1,656,523	1,963,752	2,016,369	2,070,836
Customer Service	2,007,322	2,032,221	1,548,851	1,540,804	2,540,424	2,253,647	2,338,475	2,426,869
Allowance for Unspent Budget	-	-	-	-	-	(1,523,291)	(1,571,650)	(1,621,727)
Subtotal, Operating Expenses	53,613,644	47,093,770	47,026,576	51,009,680	53,034,130	55,404,345	56,728,449	57,914,337
Capital Program Contribution	15,113,659	13,016,111	14,005,915	9,331,357	11,558,306	20,961,467	22,684,250	18,287,069
TOTAL EXPENSES	120,043,340	129,595,858	141,854,501	126,037,047	145,059,572	159,871,498	171,337,660	170,434,159

(Source: Appendix A to FY 2017 Electric Utility Financial Plan, found at 102 AR 06972 and 107 AR 07239.) *Note that an earlier and somewhat different version is found at 96 AR 06724.

EXHIBIT B

EXHIBIT B: GAS UTILITY PROJECTIONS AND FINANCIALS

Table 11 –Supply Fund Projected Statement of Revenues, Expenditures and Cash Flows

	Projected 2013	Projected 2014	Projected 2015	Projected 2016	Projected 2017
Market Based Commodity Revenues	13,717,197	15,002,557	16,879,921	17,764,611	18,569,520
PG&E Local Transport	646,118	2,262,103	2,397,898	2,014,746	1,591,026
Rate Change	1,615,294	135,726	(383,664)	(423,097)	63,641
Proration Impact	(67,304)	(5,655)	15,986	17,629	(2,652)
Administrative Fee Revenue	691,834	117,648	121,181	124,848	127,295
Rate Change	(574,222)	3,529	3,635	2,497	3,819
Proration Impact	23,926	(147)	(151)	(104)	(159)
Total Revenues	$ 16,052,843	$ 17,515,761	$ 18,934,806	$ 19,501,130	$ 20,348,489
Expenses					
Commodity Purchases	14,813,936	15,021,656	16,587,734	17,723,722	18,550,452
PG&E Transportation	1,472,458	1,650,273	1,267,970	843,726	868,697
Allocated Administration & Overhead	226,802	231,338	235,964	240,684	245,497
General Management and Overhead	517,973	528,333	538,899	549,677	560,671
Alternate Energy Programs	199,920	203,918	207,997	212,157	216,400
Rent, Other Transfers	41,068	41,890	42,727	43,582	44,454
Total O&M	$ 17,272,157	$ 17,677,408	$ 18,881,292	$ 19,613,848	$ 20,486,171
Operating Income	$ (1,219,314)	$ (161,646)	$ (46,486)	$ (112,417)	$ (137,681)
Other Revenue & Expenses					
Interest Income	175,026	144,027	143,829	147,079	148,449
Other Revenue	11,000	11,000	11,000	11,000	11,000
Total Other Income & Expenses	$ 186,026	$ 155,027	$ 154,829	$ 158,079	$ 159,449
Net Change in Cash Reserves	$ (1,033,288)	$ (6,619)	$ 108,343	$ 45,662	$ 21,768

*Proration Impact – when rates are modified, often at the beginning of a month, part of a customer's charges is billed at the previous rates and part on the new rates. The proration impact quantifies this timing difference.

Projected Cash Flow and Reserve Balances

Table 12 shows Gas Supply Fund projected cash reserves, and the current Gas Supply Rate Stabilization Reserve minimum and maximum guideline levels. Cash reserves are projected to remain stable for the period from FY 2013 – FY 2017 within a range of $4.8 - $5.0 million.

(Source: Gas Utility Cost of Service Study, found at 26 AR 01758 and 29 AR 01878.)

Table 14 –Projected Statement of Distribution Fund Income and Expenses (FY 2013 – FY 2017)

Projected Rate Adjustments - CPAU	15.0%	0.0%	3.0%	4.0%	5.0%
	Projected 2013	Projected 2014	Projected 2015	Projected 2016	Projected 2017
Revenue					
Sales Revenues	17,807,372	22,265,142	22,266,730	22,941,008	23,849,867
Rate Adjustment	4,451,433		668,002	917,024	715,466
Pro-ration Impact	(185,493)	-	(27,833)	(38,234)	(29,811)
Service Connections & Transfers	720,000	730,000	792,000	789,600	812,000
Discounts and Uncollectables	(250,000)	(250,000)	(250,000)	(250,000)	(250,000)
Total Revenues	$ 22,543,312	$ 22,745,142	$ 23,408,898	$ 24,359,997	$ 25,096,522
Expenses					
Allocated Administration & Overhead	3,049,823	3,110,819	3,173,036	3,236,497	3,301,227
Engineering Support & Administration	857,957	875,116	892,619	910,471	928,680
Gas Operations	3,648,985	4,762,365	3,817,212	3,893,557	3,971,428
Customer Service & Administration	722,940	737,399	752,147	767,190	782,534
Meter Reading	274,764	280,259	285,864	291,581	297,413
Billing and Collections	365,598	372,910	380,368	387,975	395,735
Gas Demand Side Management	1,334,349	1,452,677	1,577,307	1,629,749	1,682,115
General Fund Transfers	5,994,800	6,395,775	6,622,707	6,860,944	7,104,311
Other Transfers	178,472	182,042	185,683	189,396	193,184
Rent	169,787	169,787	169,787	169,787	169,787
Depreciation	1,855,620	2,044,000	2,215,010	2,382,025	2,562,597
Total O&M	$ 18,498,095	$ 20,383,149	$ 20,071,740	$ 20,719,173	$ 21,389,010
Operating Income	$ 4,090,217	$ 2,361,993	$ 3,337,159	$ 3,640,824	$ 3,707,512
Interest Income	936,614	468,431	958,492	353,211	356,948
Other Revenues and Transfers	84,680	84,680	84,680	84,680	84,680
Interest Expense	296,725	281,545	265,953	249,865	227,755
Total Other Income & Expenses	$ 924,569	$ 271,566	$ 177,220	$ 188,026	$ 213,873
Net Income	$ 4,414,786	$ 2,633,559	$ 3,514,379	$ 3,828,850	$ 3,921,384

**Slight rounding differences exist between CPAU's projections and Table 14.*

***Proration Impact – when rates are modified, often at the beginning of a month, part of a customer's charges is billed at the previous rates and part on the new rates. The proration impact quantifies this timing difference.*

(Source: Gas Utility Cost of Service Study, found at 26 AR 01761 and 29 AR 01881.)

Table 25 lists the cost category, projected expenditure, and shows the classification into the appropriate cost components (pools).

Table 25 – Gas Supply Fund - Classification into Functional Cost Components

		Cost Pool			
Category	Expenditure	Gas Commodity Purchases	Transportation	Commodity Purchase Administration
Commodity Purchases	14,813,936	14,813,936		
Commodity Transportation	1,472,458		1,472,458	
Allocated Administration & Overhead	226,802			226,802
General Management and Overhead	517,979		517,979	
Alternate Energy Programs	199,920		199,920	
Rent, Other Transfers	41,068		41,068	
Proration Impact	43,378		43,378	
Interest Income	(175,026)		(175,026)	
Other Revenue	(11,000)		(11,000)	
Reserve Funding	(1,033,288)	(1,033,288)		
Gas Supply Fund Revenue Requirements	$ 16,096,221	$ 13,780,648	$ 2,088,772	$ 226,802

(Source: Gas Utility Cost of Service Study, found at 26 AR 01771 and 29 AR 01891.)

Table 27 – Gas Distribution Fund - Classification into Functional Cost Components

Category	Expenditure	Distribution Expense	RBV	SVC Distribution	Avg & Excess	Weighted Services Distribution	Meter Costs	Weighted Services
DISTRIBUTION SYSTEM:								
Overhead and Allocated Charges	3,049,823	3,049,823						
Operations Administration	404,615	404,615						
Engineering Administration	453,342		453,342					
Operations and Maintenance	3,648,885	600	48,915	1,663,358	1,210,109	469,137	266,871	
CUST., MARKETING & FINANCIAL SERVICES								
Customer Service Administration	88,884							88,884
Customer Service Operations	619,528							619,528
Meter Reading	274,764							274,764
Billing	309,828							309,828
Key Accounts	114,530							114,530
Credit & Collections	59,770							59,770
Demand Side Management	1,530			1,530				
Efficiency Programs	1,033,402			1,033,402				
Low Income Programs	287,288			287,288				
Research & Development Programs	32,130			32,130				
General Fund Transfers	5,994,800			5,994,800				
Other Transfers	169,787		169,787					
Rent	178,472		178,472					
Adjustments								
Discounts and Uncollectables	250,000	250,000						
(Less) Non-Rate Revenue								
Reimbursement from Other Funds	(84,680)		(84,680)					
Subtotal	16,762,795	3,705,038	763,036	9,992,508	1,210,105	469,137	266,871	1,353,302
Depreciation Expense	1,869,620	39,007		827,858	597,888	231,386	169,481	
Revenue Financed Capital	3,640,390		3,640,390					
Total Distribution Fund	$ 22,258,805	$ 3,744,045	$ 4,404,229	$ 9,820,394	$ 1,807,993	$ 690,523	$ 436,353	$ 1,353,302

(Source: Gas Utility Cost of Service Study, found at 26 AR 01773 and 29 AR 01893.)

APPENDIX A: GAS FINANCIAL FORECAST DETAIL

City of Palo Alto
Gas Utility

	Fiscal Year	2011	2012	2013	2014	2015	2016	2017	2018
1	RATE CHANGE (%)	0%	0%	12%	0%	0%	0%	8%	9%
2	SALES IN THOUSAND THERMS	30,914	30,447	28,901	28,117	28,881	27,201	28,053	28,680
3									
4	Utilities Retail Sales	42,855	41,034	33,759	34,843	29,515	28,808	33,259	37,038
5	Service Connection & Capacity Fees	516	592	731	654	802	655	1,017	1,048
6	Other Revenues & Transfers In	203	103	830	313	866	1,026	1,373	1,517
7	Interest plus Gain or Loss on Investment	821	1,119	(239)	706	450	376	288	223
8	Total Sources of Funds	44,396	42,847	35,081	36,517	31,233	30,865	35,938	39,825
9									
10	Purchases of Utilities:								
11	Supply Commodity	20,732	15,356	12,461	12,992	9,537	8,693	9,393	10,141
12	Supply Transportation	706	879	994	1,333	982	2,566	2,944	3,152
13	Total Purchases	21,438	16,235	13,455	14,325	10,519	9,258	12,337	13,293
14									
15	Administration (CIP + Operating)	2,895	3,473	4,273	3,988	4,007	4,114	4,243	4,370
16	Customer Service	1,230	1,270	1,358	1,338	1,195	1,232	1,266	1,335
17	Demand Side Management	563	614	630	438	632	648	665	683
18	Engineering (Operating)	280	333	340	352	369	380	396	411
19	Operations and Maintenance	3,297	5,032	4,940	4,119	4,403	4,534	5,720	5,918
20	Resource Management	1,039	729	506	516	809	1,302	1,327	1,350
21	Debt Service Payments	488	406	298	805	804	804	803	802
22	Rent	230	230	219	419	431	443	455	467
23	Transfers to General Fund	5,304	6,008	5,971	5,811	5,730	6,126	6,722	6,945
24	Other Transfers Out	614	170	207	606	151	154	158	163
25	Capital Improvement Programs	8,325	7,821	7,620	1,026	1,832	6,889	6,305	5,985
26	Total Uses of Funds	45,704	42,320	39,814	33,743	30,881	35,888	40,418	41,721
27									
28	Into/ (Out of) Reserves	(1,308)	528	(4,733)	2,773	352	(5,221)	(4,480)	(1,896)

(Source: Appendix A to FY 2017 Gas Utility Financial Plan, found at 65 AR 04418 and 70 AR 04705.)

APPENDIX A: GAS FINANCIAL FORECAST DETAIL

City of Palo Alto Gas Utility

	Fiscal Year	2013	2014	2015	2016	2017	2018	2019	2020
1	RATE CHANGE (%)*	12%	0%	0%	0%	8%	0%	4%	8%
2	SALES IN THOUSAND THERMS	28,901	28,117	28,881	26,719	27,829	27,434	27,289	28,752
3									
4	Utilities Retail Sales	33,759	34,843	29,515	28,085	34,110	34,012	33,096	34,849
5	Service Connection & Capacity Fees	731	654	748	981	940	1,048	1,079	1,111
6	Other Revenues & Transfers In	839	313	414	2,346	694	1,508	1,818	2,281
7	Interest plus Gain or Loss on Investment	(239)	706	450	730	13	545	368	304
8	Total Sources of Funds	35,081	36,517	31,127	32,102	35,758	37,112	36,361	38,528
9									
10	Purchases of Utilities:								
11	Supply Commodity	12,461	12,992	9,537	6,648	9,720	9,998	8,587	8,226
12	Supply Transportation	994	1,333	982	(1,051)	2,843	3,331	3,507	3,473
13	Total Purchases	13,455	14,325	10,519	5,597	12,563	13,329	12,094	11,699
14									
15	Administration (CIP + Operating)	4,273	3,988	4,007	3,337	2,450	2,519	2,577	2,640
16	Customer Service	1,358	1,338	1,195	1,097	1,581	1,643	1,700	1,781
17	Demand Side Management	630	438	632	566	855	879	900	922
18	Engineering (Operating)	340	352	389	426	355	367	377	390
19	Operations and Maintenance	4,940	4,119	4,403	4,153	4,321	5,482	5,651	5,871
20	Resource Management	506	516	556	3,002	566	1,393	1,530	1,777
21	Debt Service Payments	296	805	804	249	227	802	801	801
22	Rent	219	419	431	443	455	467	480	492
23	Transfers to General Fund	5,971	5,811	5,730	6,194	6,594	7,035	6,888	7,069
24	Other Transfers Out	207	606	151	303	510	523	533	543
25	Capital Improvement Programs	7,620	1,026	1,832	6,889	2,214	7,804	5,197	10,217
26	Total Uses of Funds	39,814	33,743	30,629	32,256	32,690	42,243	38,728	44,202
27									
28	Into/ (Out of) Reserves	(4,733)	2,773	498	(154)	3,067	(5,131)	(2,367)	(5,676)

(Source: Appendix A to FY 2019 Gas Utility Financial Plan, found at 101 AR 06898 and 107 AR 07328.)

JUDGMENT – EXHIBIT 3

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SANTA CLARA

MIRIAM GREEN, Plaintiff/Petitioner, vs. CITY OF PALO ALTO, et al., Defendants/Respondents.	Case No. 16CV300760 (Consolidated with Case No. 18CV336237) **STATEMENT OF DECISION RE: PHASE II TRIAL**

The Court issued its Tentative and Proposed Statement of Decision in this matter on October 8, 2020. The City of Palo Alto filed a Response on October 23, 2020, which the Court has received and reviewed. Having considered the record and the arguments of counsel, and having received no other response to the Tentative and Proposed Statement of Decision, the Court adopts its Tentative and Proposed Statement of Decision, with the corrections proposed in the City's Response, as follows:

This is a consolidated class action for writ of mandate, declaratory judgment, and refunds of gas and electric fees imposed by defendant/respondent the City of Palo Alto in 2012, 2016,

and 2018. Phase I of the proceedings addressed the merits and liability issues raised by plaintiff/petitioner Miriam Green's consolidated petition and complaint. The Court rejected Green's challenges to the City's electric rates, but found that its gas rates constituted unapproved taxes in violation of article XIII C of the California Constitution "to the extent [the City's General Fund Transfer ("GFT")] and/or market-based rental charges were passed through to ratepayers." Phase II of the trial addressed the proper form of relief to be issued with regard to the gas rates, as well as a conclusive determination of the extent to which the GFT and market-based rental charges were passed through to gas ratepayers and the dollar value of the refund to which class members may be entitled.

The Court, having fully considered the record and the parties' papers and arguments, now finds and orders as follows:

I. Allegations of the Operative Complaint and Procedural Background[1]

On October 6, 2016, Green filed the original complaint in this action, challenging the City's then-most-recent gas and electric rates. She amended her complaint after exhausting her administrative remedies concerning certain claims, and the City answered. The Court subsequently entered a stipulated order certifying a class and partially staying the case pending a decision by the Supreme Court of California in *Citizens for Fair REU Rates v. City of Redding* (2018) 6 Cal.5th 1 ("*Redding*").

On June 11, 2018, the City increased its gas and electric rates. Green submitted a new administrative claim challenging the 2018 rates and filed a new action following the denial of that claim, *Green v. City of Palo Alto, et al.* (Santa Clara Super. Ct., Case No. 18-CV-336237). The Supreme Court issued its opinion in *Redding*, and the stay in Green's original action was lifted. In a stipulated order filed on February 15, 2019, the Court consolidated Green's 2016 and 2018 actions and amended the class definition to encompass the following classes with respect to the gas rates:

[1] A fuller factual and procedural background is set forth in the Court's Statement of Decision re: Phase I Trial, and is not repeated here.

> the "2012 Gas Rate Class" of "[a]ll gas utility customers of the City of Palo Alto Utilities whom the City billed for natural gas service between September 23, 2015 and June 30, 2016";
>
> the "2016 Gas Rate Class" of "[a]ll gas utility customers of the City of Palo Alto Utilities whom the City billed for natural gas service between July 1, 2016 and June 30, 2018"; and
>
> the "2018 Gas Rate Class" of "[a]ll gas utility customers of the City of Palo Alto Utilities whom the City billed for natural gas service between July 1, 2018 and the date on which the Court orders notice to be sent to class members."[2]

On February 27, 2019, Green filed the operative Consolidated Verified Petition for Writ of Mandate and Complaint for Declaratory Relief and Refund of Illegal Tax, asserting causes of action for (1) petition for writ of mandate pursuant to Code of Civil Procedure section 1085, (2) declaratory relief, and (3) refund of illegal tax. The City answered, and, at a case management conference, the Court bifurcated the trial into a "merits/liability" phase and a remedy phase.

The hearing on liability was held on October 9, 2019.[3] Following the submission of supplemental briefing by the parties, the Court issued its Tentative and Proposed Statement of Decision on January 2, 2020. No party specified controverted issues, made proposals not covered in the decision, or served objections, and the Statement of Decision became final on January 21, 2020.

II. Legal Standard Governing Challenges to Fees Under Article XIII C

As discussed in more detail in the Phase I Statement of Decision, "in 2010, ... state voters approved Proposition 26." (*Jacks v. City of Santa Barbara (2017)* 3 Cal.5th 248, 260.) Proposition 26 "expanded the reach of article XIII C's voter approval requirement by broadening

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[2] The parties have agreed that notice of class certification will issue after the Court rules on the merits of Green's claims. Because the City has enacted new gas rates in the meantime, the parties agree that the class period for the 2018 Gas Rate Class should end on June 30, 2019. The City's request for judicial notice of city council resolutions reflecting its enactment of new gas rates (Exhibits A and B to the request supporting its opening brief) is GRANTED. (Evid. Code, § 452, subd. (c).)

[3] The City's request for judicial notice of the transcript of this hearing (Ex. F to the request supporting its reply brief) is GRANTED. (Evid. Code, § 452, subd. (d).)

the definition of ' "tax" ' to include 'any levy, charge, or exaction of any kind imposed by a local government.' (Cal. Const., art. XIII C, § 1, subd. (e).)" (*City of San Buenaventura v. United Water Conservation Dist.* (2017) 3 Cal.5th 1191, 1200.)

> The definition contains numerous exceptions for certain types of exactions, including for "property-related fees imposed in accordance with the provisions of Article XIII D" (*id.*, § 1, subd. (e)(7)), as well as for charges for "a specific benefit conferred or privilege granted," or "a specific government service or product" that is provided[] "directly to the payor that is not provided to those not charged, and which does not exceed the reasonable costs to the local government" (*id.*, § 1, subd. (e)(1) & (2)). To fall within one of these exemptions, the amount of the charge may be "no more than necessary to cover the reasonable costs of the governmental activity," and "the manner in which those costs are allocated to a payor" must "bear a fair or reasonable relationship to the payor's burdens on, or benefits received from, the governmental activity." (*Id.*, § 1, subd. (e).)

(*City of San Buenaventura v. United Water Conservation Dist., supra,* 3 Cal.5th at p. 1200.)

"Whether a government imposition is a fee or a tax is a legal question decided on an independent review of the facts the [defendant] is now required to prove by a preponderance of the evidence under Proposition 26." (*California Building Industry Association v. State Water Resources Control Board* (2018) 4 Cal.5th 1032, 1050, citation omitted; see also *Citizens for Fair REU Rates v. City of Redding, supra,* 6 Cal.5th at p. 11 and *Newhall County Water Dist. v. Castaic Lake Water Agency* (2016) 243 Cal.App.4th 1430, 1441, both citing Art. XIII C, § 1, subd. (e), final par.) Here, it is the City's burden to show that it charges its gas customers " 'no more than necessary to cover the reasonable costs of the governmental activity' ...." (*City of San Buenaventura v. United Water Conservation Dist., supra,* 3 Cal.5th at p. 1200, quoting Cal. Const., art. XIII C, § 1, subd. (e).)

The California Supreme Court recently interpreted Proposition 26 in *Redding*, addressing facts similar to those at issue here. The court held that a budgetary transfer from a city-owned utility's enterprise fund to the city's general fund is not itself a "levy, charge, or exaction" subject to Proposition 26. Rather, a reviewing court must analyze whether the resulting utility *fees* imposed on ratepayers constitute taxes or else fall within an exception to Proposition 26, such as the exception for charges that do not exceed the reasonable costs of providing a service to ratepayers. In *Redding*, the court held that the rates at issue qualified for that exception,

because the charges did not exceed the costs of providing service to ratepayers and the city's enterprise fund had sufficient non-rate revenues to fund the challenged budgetary transfer. The opinion explained that

> the mere existence of an unsupported cost in a government agency's budget does not always mean that a fee or charge imposed by that agency is a tax. The question is not whether each cost in the agency's budget is reasonable. Instead, the question is whether the charge imposed *on ratepayers* exceeds the reasonable costs of providing the relevant service. If the agency has sources of revenue other than the rates it imposes, then the total rates charged may actually be lower than the reasonable costs of providing the service.

(*Redding, supra,* 6 Cal.5th at p. 17, italics original.) Significantly, the Supreme Court held that "Article XIII C does not compel a local government utility to use other non-rate revenues to lower its customers' rates." (*Id.* at p. 18.)

III. Summary of the Court's Ruling in Phase I

After rejecting the City's preliminary argument that the issue of rental charges was not properly before the Court (whether because Green's complaints or administrative claims were inadequate or due to failure to exhaust administrative remedies),[4] the Court applied the analysis conducted by the Supreme Court in *Redding* to the challenged electric and gas rates. As in *Redding*, the Court relied on the City's financial projections used to set the rates—an approach to which the parties agreed at the Phase I hearing.[5]

The *Redding* court undertook the following analysis:

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[4] The Court declines the City's request that it "revisit its decision that Green properly exhausted her challenges to the City's rental challenges before suit" in light of new authority, *Hill RHF Housing Partners, L.P. v. City of Los Angeles* (2020) 51 Cal.App.5th 621. The California Supreme Court has granted review in *Hill*, which therefore has no precedential value. (Cal. Rules of Court, rule 8.1115(e)(1).) In any event, *Hill* does not impact the Court's analysis of this issue as reflected in its Phase I Statement of Decision.

[5] In a message issued six days prior to the Phase I hearing, the Court specifically directed the parties to be prepared to address this issue. ("In determining whether Article XIII C has been violated, should the Court rely on utilities' financial projections used to set rates or on its actual financial results, reported later?") As stated in the Phase I Statement of Decision, "[d]uring the Phase I trial, the parties agreed that the Court should focus its analysis on the financial projections the City used in setting the challenged rates, with actual, retrospective financials serving at most as secondary evidence supporting or undermining the reasonableness of the City's projections." The City did not object to this characterization of the parties' agreement when the Court issued its Tentative and Proposed Statement of Decision, which subsequently became final.

> The city prepared a five-year financial plan for REU in 2009. In fiscal year 2010 to 2011, when the city council adopted the rate increase, REU was projected to collect $102.1 million in rate revenues. REU's expenses were projected as follows: power supply ($82.3 million); operations and maintenance ($28.5 million); debt service ($13.9 million); revenue-funded capital projects ($5.2 million); rolling stock and major plant maintenance ($0.8 million); and the PILOT ($6.0 million). These projected expenses would result in a $34.6 million shortfall between rate revenues and projected expenses. That gap was to be bridged with the surplus in the enterprise fund and revenues from a variety of non-rate sources.

(*Redding, supra,* 6 Cal.5th at p. 17.)

Applying *Redding*, the Court found that with regard to the City's electric rates, "the shortfall between rate revenues and projected expenses was bridged with transfers from reserves and non-rate revenues." The Court held that "*Redding* approved this practice, and rejected the premise, fundamental to the argument of the plaintiffs in that case and Green here, that 'the city was required to subsidize [the utility's] rates by using its non-rate revenues.' (*Redding, supra,* 6 Cal.5th at p. 18.)" The Court rejected plaintiff's argument that the City failed to properly account for costs incurred in generating wholesale and other non-rate revenues, finding that the City had satisfied its burden to show that costs associated with generating wholesale revenues were appropriately allocated to ratepayers, and plaintiff had failed to identify any other non-rate revenues giving rise to costs that were improperly allocated to ratepayers.[6]

With regard to its gas rates, the City conceded in its opposition—as quoted in the Statement of Decision—that "[i]f the Court does not find that the GFT from its gas utility is a 'reasonable' cost under Proposition 26, … the City admits it does not generate sufficient non-rate revenues to cover it under the *Redding* logic." The Court addressed the financial projections supporting the gas rates in a preliminary analysis. It concluded that, unlike the electric rates, the challenged gas rates exceeded the reasonable costs of the service provided to ratepayers, in light of the Court's holding that the challenged GFT and market rental expenses must be excluded from the reasonable costs of service. Per the parties' agreement, the Court relied on the financial

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[6] The Court explained that "[w]hile it is the City's burden to justify its rates, it is not required to address every entry on its financial statements in the absence of a challenge by Green. (See *Redding, supra,* 6 Cal.5th at p. 17 [where '[t]he only expense plaintiffs challenged was the PILOT,' they conceded the defendant's other costs were reasonable].) Green has thus waived any argument that the City's other costs are unreasonable."

projections used to determine the challenged gas rates for purposes of assessing liability, although it noted how the analysis might change if retrospective financials were used.

The Statement of Decision concluded:

> With regard to liability, the Court finds that the challenged electric rates are not taxes under *Redding*, but that the challenged gas rates are to the extent the GFT and/or market-based rental charges were passed through to ratepayers. The GFT and market-based rental charges do not correspond to the "reasonable costs to the local government" of the service provided to ratepayers under article XIII C, subdivision (e)(2).
>
> While it has set forth preliminary calculations above, the Court will conclusively determine the extent to which the GFT and market-based rental charges were passed through to gas ratepayers, and the dollar value of the refund to which class members may be entitled, during Phase II of these proceedings. Phase II shall also address the proper form of relief to be issued with regard to the gas rates, be it a writ of mandate, declaratory relief, and/or a money judgment, as well as the issue of whether any of the causes of action asserted herein are moot.

IV. Extent to Which the GFT and Market-Based Rental Charges Were Passed Through to Ratepayers and Dollar Value of the Refund

Green urges the Court to calculate the refunds owed to the class by subtracting the non-rate revenues, including reserves, that the utility projected it would utilize in each year at issue from the combined GFT and market-based rental charges imposed on its ratepayers as an expense. This is consistent with, although not identical to, the method employed in *Redding* and with the Court's own preliminary calculations.

Despite its admissions and concessions on these points during Phase I,[7] the City now urges the Court to rely on actual financial results in calculating any refund to which gas customers may be entitled—if using the actual financials results in a lower refund. Moreover, the City now appears to take the position that it never actually passed any portion of the GFT or market rental charges on to its gas customers, who consequently should receive no refund. In

[7] In its reply brief, the City denies that it "stipulate[d]" to try remedy on projected financial data alone. It explains that "[i]n the first phase, counsel for the City agreed 'that rates are evaluated on the basis of financial projections[,]' but also noted '[a]ctual financial data may be secondary evidence suggesting or undermining the reasonableness of a projection[.]' " Now, however, the City urges the Court to rely on actual financial data, not as secondary evidence supporting the reasonableness of its projections, but as primary evidence used to calculate the refund owed to the class.

this regard, the City urges the Court to evaluate its finances over several years rather than on a fiscal-year-to-fiscal-year basis, with an eye to the City's use of its reserve accounts to manage "the unpredictable ebbs and flows of its revenues and gas market prices."[8] Green responds that if correct actual financials were used, the total refund owed to the class would actually ***increase***.

A. The City's Proposed Calculation

The City proposes that the Court adopt the following approach to calculating a potential refund:

Step 1 Potential Remedy Calculation: Calculate Potential Remedy

[Projected revenue from retail gas rates] *minus* [Projected "reasonable costs" incurred to serve retail customers] = Step 1 Potential Remedy

This first step is consistent with the analysis in *Redding*, which was adopted by the Court in its Phase I Statement of Decision. Plaintiff indicates that she generally agrees with the calculations presented by the City as to this step (with limited exceptions, discussed below).

However, the City proposes that the Court perform the following additional steps in calculating a potential refund:

Step 2 Potential Remedy Calculation: Apply Projected Non-Rate Sources

[Step 1 Potential Remedy] *minus*

[Projected non-rate revenue sources and reserves]

The City contends that this second step is necessary to "consider[] non-rate sources, which the Court and *Redding* hold the City need not use to subsidize retail rates and the City can therefore use them to fund expenses not deemed 'reasonable' under Proposition 26." However, as urged by Green, it would be inappropriate to deduct non-rate revenues and reserves from the potential remedy calculated in Step 1. This is because the Step 1 calculation ***already excludes*** such revenues, since it begins with ***retail*** revenues, not total revenues. Put differently, Step 1

[8] The City asks the Court to take judicial notice of the concept of "rate shock," which relates to "the economic dislocation that occurs when utility prices change suddenly, unsettling expectations across the economy...," and of the concept that utility providers, including the City, use reserves to avoid rate shock and "to cover unexpected or rising costs without immediately raising rates." Green does not oppose the City's request, which is GRANTED. (Evid. Code, § 452, subd. (h).) The Court does not take judicial notice of any other facts or propositions reflected in Exhibits C–E to the City's request for judicial notice supporting its opening brief.

already credits the City for non-rate revenues: it does not hold the City liable for the entire amount of the GFT and market rental charges, but only for that portion of those transfers that was actually projected to be passed through to ratepayers. Thus, the Court will not adopt the City's proposed Step 2.

Regardless of whether the Step 1 or Step 2 potential refund is considered, the City contends that the Court should compare any potential remedy based on projections to its actual financial results, and should limit any potential refund to the amount by which ratepayers were actually overcharged:

Step 3 Potential Remedy Calculation:

Compare Step 2 Potential Remedy and Actual Over-Collection

Lesser of: (1) [Step 2 Potential Remedy] *and (2)* Actual Over-Collection [Actual revenue from retail gas rates minus actual "reasonable costs" to serve retail customers][9]

Focusing on this third step, the City contends that its gas utility "operated at a loss for most years shown in this record due to difficulties in adapting to rates that passed through to customers savings in gas wholesale prices, which fell far and fast as the U.S. became a net exporter of energy." It urges that "[c]ustomers were undercharged, not overcharged, so no remedy is due," and argues that any "overcharges merely restored reserves drawn down earlier when rates were below costs." Green disputes the City's calculations in this third step, and contends that relying on its actual financial results would result in an even larger total refund to class members than relying on its projections.

B. Use of Actual Versus Projected Financials

As reflected by the discussion above, a fundamental issue raised by the parties is whether the Court should calculate a refund based on the financial projections used by the City to set rates, or whether it should limit any refund based on the City's actual financial results. The Court will analyze that issue with reference to the authorities relied on by the parties and identified in its own research.

[9] Notably, the City does not contend that the Court should subtract non-rate revenues from the "actual over-collection" calculated in this step, even though it would seem that projected and actual over-collections should be calculated in the same manner.

1. The City's Authorities

In support of its argument that the Court should look to actual financial results rather than relying on the financial projections used to establish rates, the City cites three cases: *California Building Industry Association v. State Water Resources Control Board* (2018) 4 Cal.5th 1032 ("*CBIA*"), *Moore v. City of Lemon Grove* (2015) 237 Cal.App.4th 363 ("*Moore*"), and *Morgan v. Imperial Irrigation Dist.* (2014) 223 Cal.App.4th 892 ("*Morgan*").

In *CBIA*, the Supreme Court rejected an article XIII A challenge to a fee schedule imposed by the State Water Resources Control Board.[10] Applying *Sinclair Paint Co. v. State Bd. of Equalization* (1997) 15 Cal.4th 866, which it stated had been "codified in article XIII A," the court held that "[t]he first question under *Sinclair Paint* is whether the approved fees ***would exceed*** the reasonable, ***estimated costs*** of administering the permit program," and found that the record refuted this conclusion. (At pp. 1050–1051, emphases added.) Contrary to the City's position, this focus on the "estimated costs" at the time the challenged fees were approved supports reliance on financial projections, consistent with *Redding*. *CBIA* continued, "the second question under *Sinclair Paint* is whether the fee is used to generate *excess revenue*, that is, to generate more revenue than necessary to pay for the regulatory program." (*Id.* at p. 1051, italics original.) The court found there was no evidence to support this conclusion, reasoning that "all fees are deposited in the Permit Fund and can only be spent to implement the Porter-Cologne Water Quality Control Act" and "cannot be spent for unrelated purposes." (*Ibid.*) Here, by contrast, gas utility funds are admittedly transferred to the City's general fund through the GFT and market rental charges. *CBIA* thus undermines rather than supports the City's position.

The City contends that *CBIA* looked "to the utility's actual financial performance to determine remedy." This is incorrect: since no constitutional violation was found by the Supreme Court in that case, it provided no direction on how a remedy would be calculated. The City further emphasizes *CBIA*'s discussion, while analyzing whether fees were fairly ***allocated*** among ratepayers in several different permit categories or "program areas," of a "gap between

[10] Similar to article XIII C, article XIII A deems a tax "any levy, charge, or exaction of any kind imposed by the State," with exceptions including for charges "imposed for the reasonable regulatory costs to the State incident to issuing licenses and permits, performing investigations, inspections, and audits ... and the administrative enforcement and adjudication thereof."

stormwater permit fee revenues and stormwater program area expenses" that narrowed over time. (*CBIA, supra,* 4 Cal.5th at pp. 1052–1053.) While the court emphasized "flexibl[ity]" and "the imprecision inherent in predictions" in this context, it was applying a different standard to its analysis, since "all that is required" with regard to allocation under article XIII A "is that the record demonstrate a ***reasonable basis*** for the manner in which the fee is allocated among those who pay it." (*Id.* at p. 1053, emphasis added.) Here, Green does not challenge how the City allocated its gas rates among customers: the issue is whether it charged customers, as a group, " '***no more than necessary*** to cover the reasonable costs of the governmental activity' ...." (*City of San Buenaventura v. United Water Conservation Dist., supra,* 3 Cal.5th at p. 1200, quoting Cal. Const., art. XIII C, § 1, subd. (e), emphasis added.) As discussed during the Phase I hearing, while the Court might properly rely on actual financials as "secondary evidence" to assess whether an allocation or projection of costs was ***reasonable***, here, the City did not establish that the GFT or rental charges were cost-based at all.

Turning to the second case cited by the City, in *Moore*, the Court of Appeal rejected an article XIII D challenge to sewer service charges, a portion of which the City of Lemon Grove transferred to its general fund. However, in that case, the City presented evidence that the general fund transfer represented a "reimburse[ment]" for the City's provision of services to its Sanitation District. (*Moore, supra,* 237 Cal.App.4th at p. 369 ["The District presented evidence showing most functions required for it to operate are provided by City employees that divide their time among various activities," who provide the District with "support staff, accounting software, accounts payable staff, computer and geographic information systems," etc.].) *Moore* distinguished *Howard Jarvis Taxpayers Ass'n v. City of Roseville* (2002) 97 Cal.App.4th 637 ("*Roseville*") and *Howard Jarvis Taxpayers Ass'n. v. City of Fresno* (2005) 127 Cal.App.4th 914 ("*Fresno*")—discussed at length in the Court's Phase I Statement of Decision—on the ground that, in those cases, "each city made no attempt to show that the flat fees represented the actual cost of providing the service as required by article XIII D...." (*Id.* at p. 372.) Because the City had presented such evidence in *Moore*, the plaintiff's challenge was "to Respondents' method of showing they used the fees collected for only the purpose for which the fees were charged," a

challenge which the Court of Appeal rejected. (*Ibid.*) Here, the City contends that *Moore*'s discussion of "post hoc interviews of staff supporting [the City of Lemon Grove's] allocation of overhead" to the District supports the Court's reliance on actual as opposed to projected financials in this case; again, however, *Moore* was addressing the distinct issue of whether the cost-based method of calculating the transfer to the general fund in that case was "reasonable," an inquiry not at issue here, where the challenged transfers are undisputedly not cost-based. (*Id.* at p. 374.) Like *CBIA*, *Moore* ultimately did not address the issue of how to calculate a refund where transfers to a general fund were not cost-based or fully funded with non-rate revenues. However, it did state that "[t]o show a fee is not a special tax, the government should prove (1) the ***estimated costs*** of the service or regulatory activity...." (*Moore, supra,* 237 Cal.App.4th at p. 375.) Like *CBIA*, *Moore* thus supports the conclusion that the Court should rely on the City's financial projections.

Finally, *Morgan* rejected an article XIII D challenge to water rates, based on the trial court's finding that the cost of service study on which the increase was based was reliable. Again, the plaintiffs in that case challenged the allocation of costs among parcels based on the cost of service study. The City contends that *Morgan*'s "comparing [of] ratemaking records to actual field measurements" in that context supports the Court's reliance on actual financials in issuing a refund here, but, like *CBIA* and *Moore*, *Morgan* simply does not address the issue before the Court.

2. Other Authorities

Green urges that "no published case addresses damages specifically in a Proposition 26 case." She therefore cites to authorities addressing tax refunds in unrelated contexts, which apply the general principles that "[a]ctions to recover taxes paid under protest are equitable in nature," and one "seeking to challenge the validity of a tax must pay or offer to pay the portion of the tax to which the taxing authority is entitled in equity and good conscience." (*Simms v. Los Angeles County* (1950) 35 Cal.2d 303, 316.) Based on these principles, any recovery in a tax refund action is limited "to the difference between the tax actually paid and that which properly ***should have been exacted.***" (*Ibid.*, emphasis added.) As urged by Green, this focus on the tax

that "should have been exacted" suggests that the Court should look to the financial projections relied on by the City, consistent with *Redding*.[11]

As discussed above, *CBIA* and *Morgan* state that courts should look to "estimated costs" in assessing whether a purported fee is a tax under both article XIII A and article XIII D. In *Griffith v. City of Santa Cruz* (2012) 207 Cal.App.4th 982, the Court of Appeal for the Sixth District reasoned that the same analysis should apply in an action under article XIII C:

> As pertinent here, Proposition 26 added subdivision (e) to article XIII C, section 1 of the California Constitution. The new subdivision expanded the definition of "tax," to include "any levy, charge, or exaction of any kind imposed by a local government." (Cal. Const., art. XIII C, § 1, subd. (e).) Expressly excepted from that definition is "A charge imposed for the reasonable regulatory costs to a local government for issuing licenses and permits, performing investigations, inspections, and audits, enforcing agricultural marketing orders, and the administrative enforcement and adjudication thereof." (Cal. Const., art. XIII C, § 1, subd. (e)(3).)
>
> The concluding sentence of the newly added subdivision provides: "The local government bears the burden of proving by a preponderance of the evidence that a levy, charge, or other exaction is not a tax, that the amount is no more than necessary to cover the reasonable costs of the governmental activity, and that the manner in which those costs are allocated to a payor bear a fair or reasonable relationship to the payor's burdens on, or benefits received from, the governmental activity." (Cal. Const., art. XIII C, § 1, subd. (e).) This language repeats nearly verbatim the language of prior cases assessing whether a purported regulatory fee was indeed a fee or a special tax. As stated in *San Diego Gas & Electric Co. v. San Diego County Air Pollution Control Dist.* (1988) 203 Cal.App.3d 1132, 1145–1146 [250 Cal.Rptr. 420], "A 'special tax' under section 4 [of California Constitution article XIII A] does not embrace fees charged in connection with regulatory activities which do not exceed the reasonable cost of providing services necessary to the activity for which the fee is charged and are not levied for unrelated revenue purposes. [Citations.] [¶] ... [T]o show a fee is a regulatory fee and not a special tax, the government should prove (1) ***the estimated costs of the service or regulatory activity***, and (2) the basis for determining the manner in which the costs are apportioned, so that charges allocated to a payor bear a fair or reasonable relationship to the payor's burdens on or benefits from the regulatory activity." (See *Sinclair Paint Co. v. State Bd. of Equalization* (1997) 15 Cal.4th 866, 878 [64 Cal.Rptr.2d 447, 937 P.2d 1350].)

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[11] Green notes that this language from *Simms* was quoted in dicta in *Water Replenishment Dist. of Southern California v. City of Cerritos* (2013) 220 Cal.App.4th 1450, which held that a City must pay its groundwater assessment during the pendency of its article XIII D challenge to the assessment in a related action. (At p. 1464 ["while the City might ultimately prevail in the Proposition 218 Lawsuit, it is not likely that even after a final judgment the City will be allowed to continue to produce groundwater without having paid any assessment whatsoever"].)

(*Griffith v. City of Santa Cruz, supra,* 207 Cal.App.4th at pp. 995–996, emphasis added.) *Griffith* (which ultimately held that the fees at issue were not taxes) provides additional support for the conclusion that the standard described in *Sinclair Paint* should be applied to the reasonable costs analysis under article XIII C, as with related constitutional provisions.

3. Analysis

It would be straightforward and logical to calculate the refund to which class members may entitled using the financial projections that the City relied on in setting rates. This approach is consistent with *Redding*'s—and this Court's—analysis as to liability, and with dicta in other types of tax refund actions to the effect that a refund should be limited "to the difference between the tax actually paid and that which properly ***should have been exacted.***" (*Simms v. Los Angeles County, supra,* 35 Cal.2d at p. 316, emphasis added.) Also, it is supported by authorities applying *Sinclair Paint*'s focus on "***estimated costs***" beyond the context of article XIII A, in cases under related articles XIII C and XIII D. As urged by Green, it could create a bad incentive to allow a municipality to impose a "tax" that is unconstitutional at the time it is imposed, by knowingly adopting inaccurate projections that reasonable costs will meet or exceed projected revenues, while avoiding liability to taxpayers based on later developments. Moreover, consistent with such an approach, taxpayers would be entitled to a refund if the situation were reversed, and rates that did not exceed costs at the time they were imposed turned out to exceed actual costs in retrospect. (Of course, permitting taxpayers to obtain a refund under these circumstances would create an intolerable amount of uncertainty and unavoidable litigation costs for municipalities.) As discussed below, refunds issued in this case should be paid from the City's general fund, not from the gas utility. Thus, the utility itself will not have to bear the cost of a larger refund based on financial projections coupled with poorer actual financial results.

Still, there is some force to the City's argument that it should not be required to effectively subsidize rates that did not actually exceed costs of service, contrary to the central principle stated in *Redding*. Complicating the Court's choice between these two alternatives is

the fact that the parties do not agree on the impact of considering actual financial results. Setting aside the City's erroneous "Step 2" calculation, discussed above, the parties are in relative agreement with regard to the refund that would issue based on financial projections. With regard to actual financials, the picture is muddier. The City urges that relying on the actual results from FY 2016 would eliminate any refund owed to the 2012 Gas Rate Class, while Green contends it would merely reduce the refund. The City does not take a position on how using actual financials would impact refunds owed to the 2016 and 2018 Gas Rate Classes,[12] while Green urges that this would result in a larger refund to these classes and a larger overall refund to ratepayers in this case.

As a threshold matter, the parties disagree as to which documents reflect the City's actual financial results, and whether the Court may consider them. As to FY 2016, the City relies on 65 AR 4418, a document entitled "Gas Financial Forecast Detail" that was attached to the gas utility's FY 2017 financial plan. As urged by Green, this document was presented at an April 12, 2016 Utilities Advisory Committee Meeting, and thus predates the end of FY 2016. As stated on the face of the document, it is simply an updated "forecast" and does not purport to reflect the City's actual financial results.

In its reply brief, the City urges that "[u]sing the gas utility financial plan published near the end of FY16 — the most up-to-date information available to rate-makers when they set rates for FY17 — to determine the remedy owed to the class for that year is most accurate and equitable. These data reflect what the City had collected to that date in FY16 and its then-best estimates of what it would collect in the balance of that year and into the future, and thus determined the rate increase needed in FY17." The City does not further explain its apparent new position that that Court should rely not on final actual financial results—which would reflect how much of the GFT and rental charges were ***actually passed through*** to ratepayers—but rather on updated projections used to set the following year's rates. Presumably, lower than expected revenues in one year might have caused the City to dip into reserves, and to raise rates the

[12] While it maintains that the Court need not rely on actual financials for these years, the City states in its reply brief that the Court should hypothetically "look to the utility financial plan prepared in FY18 (when it set rates for FY19) for data on FYs 17 and 18, and the plan prepared in FY19, when it set FY20 rates, for FY19 data." The City does not provide the Court with an analysis of what refund would result based on those documents.

following year to replenish them; however, the Court has declined to scrutinize the City's management of its reserves in this case, and this outcome consequently would not be held against the City in any event. Per *Redding*, the Court's calculation of the amount of the GFT and market rental charges passed through to ratepayers will exclude amounts covered by reserves. Thus, while there is some logic to the City's original argument that the Court should look to actual financial results in fashioning a remedy, the City does not satisfactorily explain its new position that the Court should rely on updated projections used to set future rates.

Ultimately, the City asks the Court to rely on a document that admittedly does not reflect final, actual revenues and costs for FY 2016: thus, it fails to meet its burden to show that gas rates did not exceed actual reasonable costs of service by as much as it estimated when setting rates, even assuming that it would be appropriate for the Court to reduce the refund owed to the class in these circumstances. The City does not even attempt to show that relying on actual financial results would reduce the refund owed to the class for the remaining years at issue. The Court will accordingly rely on the City's financial projections to calculate the refunds owed to the class.[13]

C. Calculation of Refunds Owed to the Class

As discussed during the Phase I hearing, with regard to the 2012 Gas Rate Class only, the utility's financial projections are set forth in separate documents for the "supply fund" and the "distribution fund," which must be combined to find the projections for the utility as a whole. The parties agree that the combined total revenues set forth at 29 AR 1878 and 29 AR 1881 are the retail rate revenues, excluding the revenues from "Service Connections and Transfers" set

[13] Green contends that if the Court considers actual financials, it should rely on those set forth in the City's audited Consolidated Annual Financial Reports, Exhibits B–E to Green's request for judicial notice. The City objects to using these documents because they were "unavailable to ratemakers" setting the next years' rates and were "absent from the administrative record." The City further contends that "the income statement accounts for 'depreciation and amortization' (non-cash accounting expenses) and ignores the City's significant capital investments, which rates may fund." Because the City objects to the Court's consideration of its Consolidated Annual Financial Reports and otherwise fails to meet its burden regarding the refund that would issue if actual financial results were considered, the Court will rely on the financial projections used to set rates and will not consider the Consolidated Annual Financial Reports. Green's request for judicial notice of these reports is accordingly DENIED. Green's request for judicial notice of the City's March 2020 Gas Financial Forecast Detail, reflected in its FY 2021 Gas Utility Financial Plan, (Exhibit A to Green's request for judicial notice) is similarly DENIED.

forth at 29 AR 1881.[14] This results in total projected rate revenues of $43,071,528 for FY 2016, the only period at issue from the 2012 rate setting. The parties also agree that the total non-rate revenues for FY 2016 were projected to be $595,970 (per the City's calculation at page 18 of its opening brief, Interest Income + Other Revenues (29 AR 1878); Interest Income + Other Revenues and Transfers (29 AR 1881); no transfers from reserves as reflected in 29 AR 1877). Finally, the parties appear to agree that the projected GFT was $6,860,944 (29 AR 1881) and market rental charges were $213,369 (29 AR 1878 and 29 AR 1881), for a total of $7,074,313.[15] Green arrives at her potential remedy of $6,478,343 by subtracting non-rate revenues from the GFT and market rental charges, recognizing that the City may fund such transfers with non-rate revenues. The City arrives at its potential revenue in a different manner, by subtracting the asserted reasonable costs of service—calculated in the manner described in footnote 15, which does exclude the GFT and market rental charges—from the rate revenues. However, the City nowhere explains the calculation described in footnote 15, nor does it introduce any expert declaration or other evidence that would justify it.

The parties agree that because Green's claim only goes back to September 23, 2015, it is necessary to pro-rate the potential refund amount, dividing it by 366 days to get a daily value, which must then be multiplied by 282 days to arrive at the pro-rated refund.

Green provides the following chart comparing the parties' calculations (using the City's "Step 1" calculation):

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[14] The City confirms in its reply brief that it "does not suggest [that non-rate proceeds of service connection and capacity fees] offset the GFT or rent (Opening Brief, pp. 18–21)."

[15] In its Step 1 calculation for FY 2016, the City calculates that Projected Reasonable Expenses (Projected Operating Expenses [Total O&M (29 AR 1878); Total O&M + Interest Expense - Depreciation (29 AR 1881); Debt Principal + Estimated Capital Additions (29 AR 1882)] minus Rent (29 AR 1878; 29 AR 1881) minus General Fund Transfers (29 AR 1878; 29 AR 1881) equal $37,295,903. Total O&M as reflected on 29 AR 1878 is $19,613,548. Total O&M + Interest Expense - Depreciation as reflected on 29 AR 1881 is $18,587,013. Debt Principal + Estimated Capital Additions as reflected on 29 AR 1882 is $6,169,655. Thus, projected operating expenses as calculated by the City are $44,370,216, minus the GFT and rent totaling $7,074,313, or $37,295,903.

FY 2016	City Calculations (ROB p. 18, Figure 4)	Correct Calculations:
Retail Rate Revenues:	$43,071,528	$43,071,528
Expenses Less GFT/ Rent:	*($37,295,903)*	*($36,593,185)*
Potential Remedy:	$5,775,625	$6,478,343
Pro-Rated Refund:	$4,450,071	**$4,991,510**

The parties' estimated expenses differ by $702,718, a difference which Green attributes "in part" to the City's inclusion of $5,616,905 in estimated capital additions, but which neither party clearly explains. Ultimately, it is the City's burden to show what portion of the GFT and market rental charges was not a tax because it was not passed to ratepayers. The City has failed to meet that burden or to demonstrate why Green's calculation is incorrect. Given these circumstances—and considering that the parties agree that only $595,970 in non-rate revenue was projected to be available to fund these undisputed charges—the Court will adopt Green's refund calculation for the 2012 Gas Rate Class.

With regard to the 2016 and 2018 Gas Rate Classes, the parties both rely on the projections set forth at 65 AR 4418 and 107 AR 7328, respectively. They agree that the retail rate revenues are $33,259,000 for FY 2017; $37,038,000 for FY 2018; and $33,096,000 for FY 2019. They agree that the GFT and rent are $6,722,000 + $455,000 for FY 2017, for a total of $7,177,000; $6,945,000 + $467,000 for FY 2018, for a total of $7,412,000; and $6,888,000 + $480,000 for 2019, for a total of $7,368,000.[16] Finally, they agree that non-rate revenues (Other Revenues & Transfers In + Interest plus Gain or Loss on Investment) and transfers from reserves

[16] In its Step 1 calculations for these fiscal years, the City calculates "Projected Reasonable Expenses" by subtracting "Rent" and "Transfers to General Fund" from "Total Uses of Funds." These calculations confirm that the City used the same values for "Rent" and "Transfers to General Fund" as Green did:

- For FY 2017, Total Uses of Funds is $40,418,000, minus the GFT and rent ($6,722,000 + $455,000, for a total of $7,177,000), results in "Projected Reasonable Expenses" of $33,241,000.
- For FY 2018, Total Uses of Funds is $41,721,000, minus the GFT and rent ($6,945,000 + $467,000, for a total of $7,412,000), yields "Projected Reasonable Expenses" of $34,309,000.
- For FY 2019, Total Uses of Funds is $38,728,000, minus the GFT and rent ($6,888,000 + $480,000, for a total of $7,368,000), yields "Projected Reasonable Expenses" of $31,360,000.

are $1,661,000 + $4,480,000 for FY 2017, for a total of $6,141,000; $1,740,000 + $1,896,000 for FY 2018, for a total of $3,636,000; and $2,186,000 + $2,367,000 for FY 2019, for a total of $4,553,000.

The parties calculate the remedies owed to these classes differently, consistent with their respective approaches to the 2012 Gas Rate Class. Again, Green subtracts non-rate revenues and transfers from reserves from the combined GFT and market rental charges, resulting in refunds of $1,036,000 for FY 2017; $3,776,000 for FY 2018; and $2,815,000 for FY 2019. The City utilizes the calculation described in footnote 16 to determine the "Projected Reasonable Expenses" for each year, which it subtracts from the retail revenues.

Green provides the following charts comparing the parties' calculations (using the City's "Step 1" calculations):

FY 2017	**City Calculations (ROB p. 20, Figure 6)**	**Correct Calculations:**
Retail Rate Revenues:	$33,259,000	$33,259,000
Expenses Less GFT/ Rent:	*($33,241,000)*	*($32,224,000)*
Potential Remedy:	$18,000	**$1,035,000**

FY 2018	**City Calculations (ROB p. 20, Figure 6)**	**Correct Calculations:**
Retail Rate Revenues:	$37,038,000	$37,038,000
Expenses Less GFT/ Rent:	*($34,309,000)*	*($33,261,000)*
Refund:	$2,729,000	**$3,777,000**

FY 2019	**City Calculations (ROB p. 20, Figure 7)**	**Correct Calculations:**
Retail Rate Revenues:	$33,096,000	$33,096,000
Expenses Less GFT/ Rent:	*($31,360,000)*	*(30,281,000)*
Refund:	$1,736,000	**$2,815,000**

As to these fiscal years, Green correctly urges that the difference between the parties' refunds for each year ($1,017,000 for FY 2017; $1,048,000 for FY 2018; and $1,079,000 for FY

2019) are equal to the revenues associated with "Service Connection & Capacity Fees." This supports Green's argument that the costs associated with these revenues—which the City agreed during oral argument are paid from this associated revenue stream[17]—are essentially equal to the revenues, both of which should be excluded from the calculations of the refunds in this action. Notably, Green has raised this argument repeatedly in her briefing in connection with both phases of trial,[18] and the City has failed to respond in its briefing: it concedes that revenues associated with "Service Connection & Capacity Fees" should not be used to fund the GFT and rent, but does not explain how it accounts for the associated costs, and does not argue that it is entitled to impose such costs on ratepayers. The record reflects that costs associated with "Customer Connections" are included in the utility's capital costs in the projections used to set rates for the 2016 and 2018 Gas Rate Classes. (See 65 AR 4411, 4412, and 4418; 107 AR 7321, 7322, and 7328.) In any event, it is the City's burden to show what portion of the GFT and market rental charges did not constitute a tax because it was not passed on to ratepayers. The City does not explain the difference between the refunds produced by Green's calculations—which are based on the undisputed GFT, market rental charges, and non-rate revenues—and its own calculations based on disputed "Projected Reasonable Expenses." Accordingly, the Court will adopt Green's refund calculations for the 2016 and 2018 Gas Rate Classes as well.

D. Conclusion

For the reasons discussed above, the Court will adopt Green's refund calculations for the 2012, 2016 and 2018 Gas Rate Classes, based on the financial projections that the City relied on in adopting the challenged gas rates.

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[17] Counsel explained during oral argument that the City is "required to segregate the proceeds of connection charges and capacity charges, and spend them only on capital costs which benefit new customers as a class. Therefore, we cannot use those revenue streams to cover any portion of the cost of service to existing customers."

[18] In her opening brief on liability, Green urged that "[a]s with rates, ['service connection and capacity fees'] must be no more than their associated costs. Thus, their inclusion in the revenue requirement is a wash." In her responsive brief on remedy, she squarely raised the issue of these costs:

> As Green argued in her opening and reply briefs in phase I of trial, gas "Service Connection & Capacity Fees" are cost recovery fees imposed on customers for gas utility service. [Citations.] The City has offered no rebuttal to Green's argument and the Court did not address connection and capacity fees in its Statement of Decision. Because the City concedes such fees should be excluded from non-rate revenue charged against any refund, it is erroneous to ignore costs recovered by such fees in the analysis.

V. Proper Form of Relief

Green contends that the Court should issue a writ of mandate directing the City to pay the refunds owed to class members immediately from its general fund—not from the utility. She further urges that class members are entitled to pre-judgment interest. Finally, she asks the Court to issue a declaratory judgment stating "that Palo Alto's gas rates are taxes and that the GFTs and rents are not valid costs of service for purposes of article XIII C, section 1, subdivision (e)(2)."

The City proposes that any refund to the class be issued over a three-year period in the form of credits to their gas bills. It also asks the Court to issue declaratory relief in its favor on three points.

The parties agree that Green's request for a writ of mandate directing the City to cease collecting any of the unlawful rates is moot, because the City enacted new rates that went into effect on July 1, 2019.

A. Refund

As urged by Green, the California Supreme Court held in *Ardon v. City of Los Angeles* (2011) 52 Cal.4th 241 that "[c]lass claims for tax refunds against a local governmental entity are permissible under [Government Code] section 910 in the absence of a specific tax refund procedure set forth in an applicable governing claims statute." (At p. 253.) Neither party contends that a more specific claims statute applies here.

Government Code section 970.2 provides that "[a] local public entity shall pay any judgment in the manner provided in this article. A writ of mandate is an appropriate remedy to compel a local public entity to perform any act required by this article."

> Except as provided in Section 970.6, the governing body of a local public entity shall pay, to the extent funds are available in the fiscal year in which it becomes final, any judgment, with interest thereon, out of any funds to the credit of the local public entity that are:
>
> (a) Unappropriated for any other purpose unless the use of such funds is restricted by law or contract to other purposes; or
>
> (b) Appropriated for the current fiscal year for the payment of judgments and not previously encumbered.

(Gov. Code, § 970.4.) Government Code section 970.5 provides that, "[e]xcept as provided in Section 970.6, if a local public entity does not pay a judgment, with interest thereon, during the fiscal year in which it becomes final, the governing body shall pay the judgment, with interest thereon, during the ensuing fiscal year immediately upon the obtaining of sufficient funds for that purpose."

The Court will order issuance of refunds in this action pursuant to the above authorities cited by Green. In support of its credit approach, the City cites a treatise on class actions that does not address the Government Code provisions at issue here, as well as the Court's "equitable power to frame relief." However, while there may be efficiencies to be gained by issuing refunds in the form of credits, Green correctly responds that it would not be equitable for the utility to fund such credits in this case. Here, the issue is the City's improper transfer of funds from the gas utility to its general fund. Consequently, allowing the City to issue refunds to class members without directing that those refunds be paid from the general fund (or another fund containing monies appropriated for the payment of judgments) would not remedy the wrong that occurred here: without this direction, the City could presumably recover any credits issued to ratepayers from future ratepayers, who should not be required to fund these illegal taxes any more than past ratepayers. There may be a method of refund that could be achieved through a transfer from the general fund to the utility in a manner that does not create the inequity that petitioner points out, but neither party proposes such an approach.

To the extent that paying refunds to class members in the manner provided by the Government Code would cause the City financial hardship, the Government Code specifies a procedure to address this through installment payments. (See Gov. Code, § 970.6, subd. (a).) Finally, given the Government Code's mandatory language (Gov. Code, § 970.2 ["[a] local public entity shall pay any judgment in the manner provided in this article"]), it is not clear that the Court has discretion to issue relief in a manner different than the one specified by the statute, and the City provides no authority suggesting that it does.

The Court will thus order the City to pay the refunds at issue as provided by Government Code section 970.2.

B. Prejudgment Interest

Pursuant to Civil Code section 3287, subdivision (a), plaintiffs who recover damages from a government entity are entitled to prejudgment interest under the same circumstances as other plaintiffs:

> (a) A person who is entitled to recover damages certain, or capable of being made certain by calculation, and the right to recover which is vested in the person upon a particular day, is entitled also to recover interest thereon from that day, except when the debtor is prevented by law, or by the act of the creditor from paying the debt. This section is applicable to recovery of damages and interest from any debtor, including the state or any county, city, city and county, municipal corporation, public district, public agency, or any political subdivision of the state.[19]

"[S]ection 3287, subdivision (a), has been applied consistently to allow the recovery of prejudgment interest in causes of action other than those in contract," including in mandamus actions. (*Levy-Zentner Co. v. Southern Pac. Transportation Co.* (1977) 74 Cal.App.3d 762, 796.)

The City contends that Green's claim for prejudgment interest fails because her damages are not "certain," citing *Esgro Central, Inc. v. General Ins. Co.* (1971) 20 Cal.App.3d 1054 for the proposition that "[d]amages are deemed certain or capable of being made certain within the provisions of subdivision (a) of section 3287 where there is essentially no dispute between the parties concerning the basis of computation of damages if any are recoverable but where their dispute centers on the issue of liability giving rise to damage." (At p. 1060.) However, this is only one situation where damages are deemed certain.

Ultimately, "liability for prejudgment interest occurs only when the defendant knows or can calculate the amount owed and does not pay." (*Watson Bowman Acme Corp. v. RGW Construction, Inc.* (2016) 2 Cal.App.5th 279, 293.) Any entitlement to prejudgment interest

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[19] Green submits a declaration by her counsel, which computes prejudgment interest based on the assumption that "the right to recovery vested at least at the end of each class period." Because an award of prejudgment interest is not appropriate here for the reasons discussed below, Green's request for judicial notice of the Daily Treasury Yield Curve Rates her counsel used to calculate prejudgment interest is DENIED.

commences from the day when "damages were certain or capable of being made certain by calculation." (*KGM Harvesting Co. v. Fresh Network* (1995) 36 Cal.App.4th 376, 391.) "[W]here the amount of damages cannot be resolved except by verdict or judgment, prejudgment interest is not appropriate." (*Children's Hosp. and Medical Center v. Bonta* (2002) 97 Cal.App.4th 740, 774.) Specifically, "damages that must be judicially determined based on conflicting evidence are not ascertainable"; however, "[a] legal dispute concerning the defendant's liability or uncertainty concerning the measure of damages does not render damages unascertainable." (*Uzyel v. Kadisha* (2010) 188 Cal.App.4th 866, 919; but see *Canavin v. Pacific Southwest Airlines* (1983) 148 Cal.App.3d 512, 524 ["because there was considerable dispute between the parties concerning the relevant elements by which to compute damages, rendering them not reasonably susceptible to ready and certain calculation, prejudgment interest may not be awarded under section 3287, subdivision (a)"].) Consistent with these principles, "courts have reasoned that where an accounting is required in order to arrive at a sum justly due, interest is not allowed." (*Chesapeake Industries, Inc. v. Togova Enterprises, Inc.* (1983) 149 Cal.App.3d 901, 908–909, internal citation and quotations omitted [noting, however, that "we do not foreclose the possibility of prejudgment interest in an accounting action where equity demands such an award"].) Similarly, where there is a large discrepancy between the amount of damages demanded in the complaint and the amount of the eventual award, this militates against a finding of certainty. (*Wisper Corp. v. California Commerce Bank* (1996) 49 Cal.App.4th 948, 961 [noting that the lack of a significant disparity conversely supports a finding of certainty; "[t]he greater the disparity between the complaint and the damages, … the less likely prejudgment interest is appropriate"].)

Here, the amount of the refunds to which the class is entitled was hotly disputed, to the degree that the parties agreed to address this issue in a separate phase of trial. Some of the parties' disputes in this regard related to the City's underlying liability under *Redding* and to the appropriate measure of damages under *Redding* in a legal sense. However, other disputes—such as the issue of whether costs associated with wholesale revenues were reasonably allocated to ratepayers based on the City's argument that it purchased only a reasonable "cushion" of extra

supply to ensure uninterrupted service for its gas customers—were factual in nature and required the Court to evaluate the record evidence. Consequently, the damages in this action are not certain for purposes of section 3287, subdivision (a). Moreover, the City correctly urges that Green's administrative claims acknowledged that the value of the claims was "unknown."[20] Similarly, her complaint sought damages in an amount to be determined at trial. These circumstances lend support to the conclusion that the damages here are uncertain.

In light of this conclusion, the Court will not award prejudgment interest to the class.

C. Declaratory Relief

"Any person ... who desires a declaration of his or her rights or duties with respect to another ... may, in cases of actual controversy relating to the legal rights and duties of the respective parties" bring an action for declaratory relief, "and the court may make a binding declaration of these rights or duties, whether or not further relief is or could be claimed at the time." (Code Civ. Proc., § 1060.)

> That the constitutionality of an ordinance can be a proper subject for declaratory relief is without doubt. "An action for declaratory relief lies when the parties are in fundamental disagreement over the construction of particular legislation, or they dispute whether a public entity has engaged in conduct or established policies in violation of applicable law." (*Alameda County Land Use Assn. v. City of Hayward* (1995) 38 Cal.App.4th 1716, 1723, 45 Cal.Rptr.2d 752.)

(*City of Cotati v. Cashman* (2002) 29 Cal.4th 69, 79.) Still, declaratory relief "operates prospectively to declare future rights, rather than to redress past wrongs." (*Lee v. Silveira* (2016) 6 Cal.App.5th 527, 549, quoting *Canova v. Trustees of Imperial Irrigation Dist. Employee Pension Plan* (2007) 150 Cal.App.4th 1487, 1497.)

Both parties contend that the Court should issue declaratory relief in this action, but they differ as to the declarations they seek. Green asks the Court to issue a declaratory judgment stating "that Palo Alto's gas rates are taxes and that the GFTs and rents are not valid costs of service for purposes of article XIII C, section 1, subdivision (e)(2)." However, because the portion of the City's gas rates that are taxes is equal only to the portion of charges that do not correspond to reasonable costs of service that are passed through to ratepayers, it would be too

[20] The City's request for judicial notice of Green's administrative claims (Exs. G and H to its request supporting its reply brief) are GRANTED. (Evid. Code, § 452, subds. (c) and (h).)

broad for the Court to declare that the City's "gas rates are taxes." Similarly, while it would be accurate to declare that "the GFTs and rents are not valid costs of service for purposes of article XIII C, section 1, subdivision (e)(2)" assuming that these charges continue to be calculated by the City in the manner at issue in this action, this declaration is too broad insofar as it implies the City could not calculate GFTs or rent in a different, cost-based manner without running afoul of the constitution. Ultimately, because the City has imposed new gas rates superseding the ones at issue in this action, it is not clear that the GFT and market rents are still imposed on ratepayers or that they are calculated in the same manner as they were in the past. For all these reasons, the Court declines to issue the declarations that Green seeks.

The City asks the Court to issue the following declaratory relief in its favor:

- The City need not subsidize utility rates with non-rate revenues and reserves not proven to be derived from retail rates;
- The City's use of transfers from reserves to fund challenged expenses does not violate Proposition 26 absent proof (not present here) those reserves derive from retail rates; and
- Wholesale supply costs are "reasonable costs" which Proposition 26 permits to be funded by rates for service, and proceeds of sale of excess supply are non-rate revenues that need not be used to subsidize rates.

These declarations essentially restate the holdings of *Redding* and the Court's Phase I Statement of Decision in this case in ways that are not entirely accurate. The Court accordingly declines to issue the declaratory relief requested by the City.

D. Conclusion

The Court will issue monetary relief in the form requested by Green, and will not issue declaratory relief. The Court will not award prejudgment interest.

VI. Remaining Issues

Green proposes that the parties meet and confer on "procedural issues" and the form of judgment following the Court's decision on Phase II of the trial:

> [T]here remain procedural issues to be addressed after the Court issues a Statement of Decision at Phase II. These issues largely revolve around the parties' agreement to postpone notice to the classes until after the Court's decision at

> Phase II. Because that process may impact the judgment, Green believes it is appropriate for the parties to meet and confer and to appear before the Court for a further status conference prior to submitting a proposed judgment to address those issues.

The Court agrees with this approach, and schedules a case management conference for October 22, 2020 at 10:00 a.m. In addition to meeting and conferring on the form of judgment and the issue of notice to the class, the parties shall meet and confer regarding when payment will issue to the class, how this process will be administered, how the refund ordered by the Court should be allocated among individual class members, and the impact of any appeal. They shall address their respective positions on each of these issues in a joint case management conference statement of up to fifteen pages, to be filed by end of day October 19, 2020.

VII. Conclusion and Order

The Court will issue a writ of mandate directing the City to pay refunds to the class in the following amounts:

- $4,991,510 to the 2012 Gas Rate Class;
- $4,812,000 to the 2016 Gas Rate Class; and
- $2,815,000 to the 2018 Gas Rate Class.

The refunds shall be paid pursuant to Government Code section 970.2, from the City's general fund or another fund containing monies appropriated for the payment of judgments, and not from the utility.

Green's request for a writ of mandate directing the City to cease collecting any of the unlawful rates is moot. The Court will not issue declaratory relief or award prejudgment interest to the class.

Green is the prevailing party and shall be awarded fees and costs according to law. Fees and costs shall be fixed pursuant to the procedures set forth in California Rules of Court, rules

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3.1700 and 3.1702.

IT IS SO ORDERED.

October 27, 2020

Brian C. Walsh
Judge of the Superior Court

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SANTA CLARA

DOWNTOWN COURTHOUSE
191 NORTH FIRST STREET
SAN JOSÉ, CALIFORNIA 95113
CIVIL DIVISION

FILED
JUN 25 2021
Clerk of the Court
Superior Court of CA County of Santa Clara
BY _____ DEPUTY
FARRIS BRYANT

RE: **Green v. City of Palo Alto (Lead Case/Consolidated With 18CV336237)**
Case Number: **16CV300760**

PROOF OF SERVICE

ORDER CONCERNING PROPOSED JUDGMENT AND PEREMPTORY WRIT OF MANDATE was delivered to the parties listed below the above entitled case as set forth in the sworn declaration below.

If you, a party represented by you, or a witness to be called on behalf of that party need an accommodation under the American with Disabilities Act, please contact the Court Administrator's office at (408) 882-2700, or use the Court's TDD line (408) 882-2690 or the Voice/TDD California Relay Service (800) 735-2922.

DECLARATION OF SERVICE BY MAIL: I declare that I served this notice by enclosing a true copy in a sealed envelope, addressed to each person whose name is shown below, and by depositing the envelope with postage fully prepaid, in the United States Mail at San Jose, CA on June 25, 2021. CLERK OF THE COURT, by Farris Bryant, Deputy.

cc: Thomas Andrew Kearney 3051 Foothill Blvd Suite B La Crescenta CA 91214
Prescott Wayne Littlefield 3051 Foothill Blvd Suite B La Crescenta CA 91214
Terence Jacques Howzell 1390 Market St 5FL San Francisco CA 94102
Ryan Thomas Dunn 300 S Grand Ave Ste 2700 Los Angeles CA 90071

Exhibit B

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SANTA CLARA

MIRIAM GREEN, on behalf of herself, and all others similarly situated, Petitioner and Plaintiff, v. CITY OF PALO ALTO, and DOES 1 through 100, Respondents and Defendants.	Case No. 16CV300760 (Lead) Consolidated with Case No. 18CV336237 *Assigned for all purposes to the Hon. Sunil R. Kulkarni* CLASS ACTION ~~[PROPOSED]~~ **PEREMPTORY WRIT OF MANDATE**

To Respondent City of Palo Alto:

WHEREAS, on June 25, 2021, the court entered judgment in this action ordering that a peremptory writ of mandamus be issued from this court,

YOU ARE HEREBY COMMANDED within six (6) months of receipt of this writ to pay, in full, the judgment entered by this Court totaling **$12,618,510.00** ("Common Fund") to a claims administrator designated by this court to manage, administer and process class refunds, and to pay attorneys' fees, incentive award and any costs in accordance with the judgment and further orders of this court.

YOU ARE FURTHER COMMANDED to pay to Plaintiff all litigation costs awarded pursuant to section 1021 et seq. of the Code of Civil Procedure and Rules 3.1700 and 3.1702 of the California Rules of Court within 30 days after notice that such costs have been entered in the

judgment. These costs shall not be paid out of the Common Fund.

The judgment shall be paid pursuant to Government Code section 970.2, from the City of Palo Alto's general fund or another fund containing monies appropriate for the payment of judgments and settlements, and not from the City of Palo Alto's gas utility.

YOU ARE FURTHER COMMANDED to file a return to this writ no later than nine (9) months from the date this writ is issued setting forth what the City has done to comply with the writ set forth herein.

LET THE WRIT OF MANDATE ISSUE.

DATED: AUG 17 2021

Clerk of the Court

By H. TIEN
Deputy Clerk

Exhibit C

The Superior Court of California for the County of Santa Clara Authorized this Notice

NOTICE OF CLASS ACTION SETTLEMENT

Green v. City of Palo Alto, Case No. 16CV300760
(Consolidated with Case No. 18CV336237)

A court authorized this notice. This is not a solicitation from a lawyer.

Please Read This Notice Carefully – Your Legal Rights are Affected Even if You Do Not Act

Palo Alto Gas Utility Customer:

Miriam Green (hereafter, "Plaintiff"), a customer of Palo Alto's natural gas utility, has sued the City of Palo Alto (the "City") on behalf of herself and all others similarly situated, claiming that the City has violated California Constitution article XIII C ("Propositions 26/218") by imposing rates, fees, and charges for natural gas utility service that are taxes, because the City's charges exceed the reasonable cost of providing that service, without voter approval. In particular, Plaintiff alleges that the City designs its gas rates to finance annual transfers of money from its gas utility to its general fund for general government services unrelated to the provision of gas service, and that this practice, in the absence of voter approval, violates Propositions 26/218.

During the relevant time periods between September 23, 2015 to June 30, 2022, as detailed below, the City imposed five different sets of gas utility rates alleged to violate the law. Under this Settlement, the following classes of ratepayers will receive refunds:

- The 2012 Gas Rate Class: All gas utility customers of the City of Palo Alto Utilities whom the City billed for natural gas service between September 23, 2015 and June 30, 2016;
- The 2016 Gas Rate Class: All gas utility customers of the City of Palo Alto Utilities whom the City billed for natural gas service between July 1, 2016 and June 30, 2018; and
- The 2018 Gas Rate Class: All gas utility customers of the City of Palo Alto Utilities whom the City billed for natural gas service between July 1, 2018 and June 30, 2019.
- The 2019 Gas Rate Class: All gas utility customers of the City of Palo Alto Utilities whom the City billed for natural gas service between July 1, 2019 and June 30, 2020.
- The 2021 Gas Rate Class: All gas utility customers of the City of Palo Alto Utilities whom the City billed for natural gas service between July 1, 2021 and June 30, 2022.

The parties have settled this case without the City admitting fault, and the City has agreed to provide a sum of $17,337,111 to the classes identified above.

The Court previously certified three gas classes for the period of September 23, 2015 through June 30, 2019 (the "2012-2018 Class") when it entered judgment against the City in this action (the "original judgment"). Notice was previously sent to class members. For settlement purposes, the Court has provisionally decertified the 2012-2018 Class, so that the members of the 2012-2018 Class may participate in the settlement described herein.

Class Counsel in this matter intends to seek their fees and costs from the class refunds. Counsel intends to file a motion for attorney's fees and costs for a fourth of the total recovery in this matter, or $4,334,278.00. Plaintiff will seek a service award of $7,500 for her own efforts to secure the settlement for the settlement classes in this matter. A hearing on Plaintiff's and Class Counsel's motion for fees, costs, and service award is set for _____at 1:30 p.m. in Department 1 of the Superior Court for the County of Santa Clara, Downtown Superior Court Courthouse, 2nd Floor, 191 North First Street, San Jose, CA 95113, the Honorable Sunil R. Kulkarni, presiding.

Because the alleged overcharges were collected as part of the per-unit charges on your gas bills (that is, the part of your bill which depends on the amount of gas you use), refunds will be paid to each class member based on the number of units of gas the class member consumed. The estimated total refund that may be paid to each Class and estimated per therm amount that may be paid to individual Class members, after deducting potential attorneys' fees, service award and other costs, are as follows:

Estimated Refund

Gas Rate Class:	**2012 Class (26%)**	**2016 Class (21%)**	**2018 Class (13%)**	**2019 Class (23%)**	**2021 Class (17%)**
Total Net Refund (Est.):	$3,355,387	$2,710,120	$1,677,693	$2,968,227	$2,193,907
Refund Per Therm (Est.):	$0.145/ Therm	$0.048/ Therm	$0.058/ Therm	$0.112/ Therm	$0.086/ Therm*

*The per therm amount for the 2021 class may change between the time of this notice and the final settlement approval as the City continues to process invoices for this period.

Your individual estimated refund may be calculated by multiplying your gas usage by the estimated per therm amount during the relevant time period(s) within each class. For example, the median customer billed under the City's G-1 (Residential) rate schedule for the 2018 Class (July 1, 2018 and June 30, 2019) can expect a refund of $19.66. This same

customer, if a member of all classes, may receive approximately $156.32. Individual refund amounts will vary, as refunds will be based on each customer's gas usage during each class period.

The above is a summary of the basic terms of the settlement. For the precise terms and conditions of the settlement, you are referred to the detailed settlement agreement, which is on file with the Clerk of the Court and available on the settlement website www.WEBSITE.com. The pleadings and other records in this litigation, including the Settlement Agreement, may be examined (a) online on the Superior Court of California, County of Santa Clara's Electronic Filing and Service Website at www.scefiling.org or (b) in person at Records, Superior Court of California, County of Santa Clara, 191 N. 1st Street, San Jose, California 95113, between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday.

PLEASE DO NOT TELEPHONE THE COURT OR THE CITY OF PALO ALTO'S COUNSEL FOR INFORMATION REGARDING THIS SETTLEMENT.

Unless you have already been excluded from the first certified class in this action, you must now decide whether you wish to remain in the Settlement Class (with the option of being heard on the attorney's fees/costs/service award motions) or be excluded from the Class.

YOUR LEGAL RIGHTS AND OPTIONS

If You Were Excluded from the 2012-2018 Class, You Are Excluded From the Settlement Class	The Court previously entered judgment against the City. In connection with entry of judgment, the Court certified the 2012-2018 Class covering the class period of September 23, 2015 through June 30, 2019 and notice was given to City gas customers who were billed for gas service during that time. If you who were excluded from the 2012-2018 Class, you are automatically excluded from the Settlement Class and retain your rights, if any, to file your own lawsuit against the City separately on the legal issues in this case, subject to defenses the City may raise against you, including statute of limitations (timeliness) defenses. You should consult a lawyer of your choosing, at your cost. No action is needed to exclude yourself from the settlement class. You will not receive any benefits from the settlement.
If You Were Not Excluded from the 2012-2018 Class, You Can <u>Do Nothing</u> and Remain in the Settlement Class	If you were not excluded from the 2012-2018 Class, you may choose to do nothing and stay in the Settlement Class. If you stay in the Settlement Class, you will receive your share of the class recovery. However, you will give up any right to file your own lawsuit against the City separately on the legal issues in this case. No action is required to remain in the Class.

If You Were Not Excluded from the 2012-2018 Class, You May <u>Opt Out</u> – Exclude Yourself from the Settlement Class	If you were not excluded from the 2012-2018 Class, you may opt out of the Settlement Class. If you do, you will not share in the settlement, but you will be free to pursue your own claims against the City, subject to defenses the City may raise against you, including statute of limitations (timeliness) defenses. If you are considering opting out to pursue your own suit against the City, you should consult a lawyer of your choosing, at your cost. **To exclude yourself from the Class, you must send a *<u>Request to Be Excluded from the Class</u>* form to the attorneys representing Plaintiff, no later than XXXXXXXX, 2022.** For more information, see section 14 of this Notice.

If You Were Not Excluded from the 2012-2018 Class and You Do Not Opt Out of the Settlement Class, You May <u>Object</u> to Any or All of the Settlement Terms by Submitting an Objection to the Court	If you were not excluded from the 2012-2018 Class and you do not opt out of the Settlement Class, you have the right to object to any or all terms of the Settlement and appear at the Fairness Hearing scheduled on _____, 2022. If you object and the Settlement still becomes final, you will still receive the benefits of the Settlement and be bound by the terms of the Settlement including the general release set forth therein. **To object to the Settlement, you must submit written objections to the Settlement Administrator, no later than XXXXXXXX, 2022.** For more information, see section 14 of this Notice.

BASIC INFORMATION – PLEASE READ

1. Why did I get a notice?

This Notice explains that the Parties have reached a class-wide settlement on behalf of a class of gas utility customers and the Court has provisionally certified the settlement class while it considers whether to finally approve the settlement agreement. If you received this notice, then the City's records show that you are a member of one or more of the Settlement Classes defined above. Accordingly, you have legal rights and options that you may choose between now, before this case becomes final.

2. Where is this lawsuit pending?

This lawsuit is currently pending in Department 1 of the Santa Clara County Superior Court, before the Honorable Sunil R. Kulkarni. It is titled: *Green v. City of Palo Alto*, Case No. 16CV300760.

The Settlement Agreement and other important documents are available to on the settlement website at www.WEBSITE.com. In addition, the pleadings and other records in this litigation, including the Settlement Agreement, may be examined (a) online on the Superior Court of California County of Santa Clara's Electronic Filing and Service Website at www.scefiling.org, or (b) in person at Records, Superior Court of California, County of Santa Clara, 191 N. 1st Street, San Jose, California 95113, between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday, excluding Court holidays and closures.

3. What is a class action and who is involved?

In a class action lawsuit, one or more named parties called "Class Representatives" sue a defendant on behalf of other people who have similar claims against that defendant. Each such person is a member of the Class, unless he or she is expressly excluded or specifically asks to be excluded from the Class before a deadline the court sets. All claims brought on behalf of the Class are resolved for all members of the Class in a single case before a single judge, and all Class members will be bound by the outcome. Entities such as businesses and non-profits can also be members of the Class.

Plaintiff Miriam Green is the Class Representative in this case. The City of Palo Alto is the defendant.

4. Why is this lawsuit a class action?

Plaintiff filed this action as a class action. The Court has provisionally decided that this lawsuit may be settled as a class action because it provisionally meets the requirements of California Code of Civil Procedure, section 382, which governs class actions in California state courts. More information about why the Court has provisionally certified the settlement class in this case can be found in the Court's Order Preliminarily Approving the Settlement, which is available at WEBSITE.

THE CLAIMS IN THE LAWSUIT

5. What is the lawsuit about?

Plaintiff alleges that Palo Alto violated California Constitution article XIII C ("Propositions 26/218") by imposing, without voter approval, rates, fees, and charges for gas utility service that are more than the reasonable cost of providing that service. In particular, Plaintiff alleges that the City designs its gas rates to finance transfers of money from its gas utility to its general fund for general government services unrelated to the provision of gas service, and that this practice violates Propositions 26/218, initiatives which amended the California Constitution, in the absence of voter approval. Plaintiff alleges that the City owes refunds to all ratepayers for the amounts it collected which exceed the City's reasonable cost of providing gas service.

More information about the claims in the lawsuit, including a copy of the petition and complaint, maybe be found at WEBSITE.

6. What are the terms of settlement?

Rather than continuing to litigate the claims and have appellate courts decide who is right, the parties have agreed to settle their dispute, subject to Court approval, with Palo Alto providing a settlement fund to compensate class members for the alleged overpayments and the class agreeing to give up any further claims challenging the gas rates.

In consideration for the Settlement, Plaintiff, Class Representative, and each Class Member, on behalf of themselves and any other legal or natural persons who may claim by, through or under them, agree to fully, finally and forever release, relinquish, acquit, discharge and hold harmless the Released Parties from any and all claims, demands, suits, petitions, liabilities, causes of action, rights, and damages of any kind and/or type relating to the subject matter of the Action arising during the period between January 1, 2012 and June 30, 2023, including, but not limited to, compensatory, exemplary, punitive, expert, and/or attorneys' fees, or by multipliers, whether past, present, or future, mature, or not yet mature, known or unknown, suspected or unsuspected, contingent or non-contingent, derivative or direct, asserted or unasserted, whether based on federal, state or local law, statute, ordinance, regulation, code, contract, common law, or any other source, or any claim of any kind related, arising from, connected with, and/or in any way involving the Litigation, that are, or could have been, defined, alleged or described in the Litigation, including, but not limited to, claims that the City's gas and/or electric utility rates during the period of January 1, 2012 to June 30, 2022 violate Article XIII-C of the California Constitution (commonly known as Proposition 218 or Proposition 26) and claims that the City's transfer of funds from its gas and electric utility enterprise funds to the City's general fund based on article XII, section 2 of the City's Charter violates Article XIII C of the California Constitution.

7. Why are the parties settling?

Class Counsel have fully litigated the Consolidated Action through judgment. To achieve the original judgment (which was on appeal at the time of settlement), Class Counsel investigated the law and the facts and reviewed and analyzed thousands of pages of documents on the key issues in the case, and were, at the time of settlement, defending the original judgment in the Appeal.

Class Counsel have taken into account, *inter alia*, the expense and length of the Appeal process that will be necessary to defend the original judgment and the time and expense needed to prosecute the 2019 and 2021 claims (which were not part of the original judgment) through trial and appeal; the uncertain outcome and the risk of continued and protracted litigation and appeals, especially in complex actions such as this; the difficulties and delays inherent in complex litigation; and the inherent uncertainty and problems of proof of, and available defenses to, the claims asserted in the litigation. Plaintiff and Class Counsel believe that considering the foregoing, the Settlement represents a reasonable compromise of highly disputed and uncertain legal, factual and procedural issues, confers substantial benefits upon the Class and provides a result and recovery that is certain to be provided to Class Members, when any recovery should the Litigation continue is not certain. Based on their experienced evaluation of all of these factors, Plaintiff and Class Counsel have determined that the settlement of the Litigation, on the terms set forth herein, is in the best interests of the Class and is fair, reasonable, and adequate.

The City and the City's Counsel have also considered applicable risks and consequences to them if Plaintiff were to prevail in the Appeal and proceed separately with the 2019 and 2021 claims, including certifying additional classes and eventually prevailing on the merits of all class claims on Appeal and at future trials. The City has considered and analyzed legal, factual, and procedural defenses to the claims alleged, as well as other options. The City and its counsel have determined that the Settlement provides a certain result, when the outcome, should the litigation continue, is uncertain.

The Settlement is the result of extensive arm's-length settlement negotiations and discussion between Class Counsel and the City's Counsel with the assistance of Bob Blum, an experienced mediator appointed by the Sixth District Court of Appeal.

8. Will current rates be impacted?

No. The settlement does not affect Palo Alto's current gas rates. The parties have determined that no refund is owed for the current gas rates based on the refund methodology utilized by the Court in entering the original judgment.

WHO IS IN THE CLASS?

9. Am I part of the Class?

The Class includes all Palo Alto gas utility customers who were billed for gas service during the periods of September 23, 2015 through June 30, 2020 and July 1, 2021 through June 30, 2022. Any judges assigned to the case, as well as their immediate family members, are excluded from the Class.

If you received a mailed or emailed notice regarding this class action settlement, according to Palo Alto's records, you are a member of the Class, and unless you were previously excluded from the judgment class or ask to be excluded from the Settlement Class, you will be bound by the Settlement and receive all of the benefits therefrom. For information on how to be excluded from the Class, see section 14 of this Notice.

If you are unsure whether you are a member of the Class, you can obtain free help by contacting the Settlement Administrator in this case at the email or phone number listed in section 14 of this Notice. You may also contact Class Counsel at the email or phone numbers listed in section 11 of this Notice.

10. Who is the Class Representative?

The Court has appointed Plaintiff Miriam Green to serve as the Class Representative. Ms. Green is a customer of Palo Alto's gas utility who was billed for gas utility service during the relevant periods.

THE LAW FIRMS REPRESENTING THE CLASS

11. Is a law firm representing the Class in this case?

The Court has appointed the law firms of Kearney Littlefield, LLP and Benink & Slavens, LLP as "Class Counsel." If you remain in the Class, these firms will represent your interests in this case. Class Counsel may be reached by the following methods:

Prescott W. Littlefield, Esq.
pwl@kearneylittlefield.com
KEARNEY LITTLEFIELD, LLP
3051 Foothill Blvd., Suite B
La Crescenta, CA 91214
Tel: (213) 473-1900
Fax: (213) 473-1919

Vincent D. Slavens, Esq.
vince@beninkslavens.com
BENINK & SLAVENS, LLP
8885 Rio San Diego Drive, #207
San Diego, CA 92108
Tel: (619) 369-5252
Fax: (619) 369-5253

12. Should I get my own lawyer?

Because Class Counsel are working on your behalf, you do not need to hire your own lawyer. If you would like a different lawyer to represent you, you may hire one. However, you will have to pay that lawyer yourself.

13. How will Class Counsel be paid?

Class Counsel have entered into a contingency fee agreement with Plaintiff. Class Counsel intend to seek their fees and reimbursement for costs from the refunds the Court orders.

Class Counsel will move for attorney's fees and costs for a fourth of the total recovery in this matter, or $4,334,278.00. In addition, Plaintiff will seek a service award of $7,500 for her efforts to secure the recovery in this matter.

A hearing on the motion for fees, costs, and the service award is set for _____at 1:30 p.m. in Department 1 of the Superior Court for the County of Santa Clara, Downtown Superior Court Courthouse, 2nd Floor, 191 North First Street, San Jose, CA 95113, the Honorable Sunil R. Kulkarni, presiding.

Class Counsel's attorneys' fees motion will be posted to the WEBSITE. Any Class Member may object to the award or the amount awarded by following the objection procedure outlined in section 14(c) of this Notice.

YOUR RIGHTS AND OPTIONS

14. Do I need to do anything now?

IMPORTANT: If you were previously excluded from the 2012-2018 Class, *you do not need to do anything*, you are automatically excluded from the Settlement Class. Otherwise, you must decide now whether you want to remain in the Settlement Class or Opt Out. If you do not Opt Out of the Settlement Class, you may also object to any or all terms of the Settlement. Your options are as follows:

(a) NO ACTION REQUIRED to remain in the Settlement Class

You do not need to do anything to remain in the Settlement Class. If you do not take any action and the Settlement is approved and becomes final, you will automatically be deemed a member of the Settlement Class as of **XXXXXXXX**.

(b) ACTION REQUIRED to be excluded from the Settlement Class

To exclude yourself from the Settlement Class, you must mail, fax or email a completed ***Request to Be Excluded from the Settlement Class*** form to Settlement Administrator at the following address:

PHOENIX CLASS ACTION ADMINISTRATION SOLUTIONS
Attn: Green v. City of Palo Alto *Case No. 16CV300760*
[ADDRESS]
[CITY, STATE, ZIP]
[FAX/PH#]
[EMAIL]

This form can be downloaded and printed from WEBSITE. IF MAILED, IT MUST BE POSTMARKED NO LATER THAN XXXXXXXX TO BE VALID. IF SENT BY FAX OR EMAIL IT MUST BE SENT NO LATER THAN MIDNIGHT ON XXXXXXXX TO BE VALID. ANY LATE REQUESTS TO BE EXCLUDED FROM THE SETTLEMENT CLASS WILL NOT BE ACCEPTED. Class Counsel will submit to the Court all opt out forms received before the deadline.

If you are considering excluding yourself from the Settlement Class, any legal claims that you make against the City separately may be barred by statutes of limitation (that is, come too late), which would prevent you from securing relief.

(c) ACTION REQUIRED to object to any terms of the Settlement

To object to all or part of the Settlement terms, you must mail, email or fax your written objection(s) to the Settlement Administrator as follows:

PHOENIX CLASS ACTION ADMINISTRATION SOLUTIONS
Attn: Green v. City of Palo Alto *Case No. 16CV300760*
[ADDRESS]
[CITY, STATE, ZIP]
[FAX/PH#]
[EMAIL]

IF MAILED, YOUR WRITTEN OBJECTION(S) MUST BE POSTMARKED NO LATER THAN XXXXXXXX TO BE VALID. IF SENT BY FAX OR EMAIL YOUR OBJECTION(S) MUST BE SENT NO LATER THAN MIDNIGHT ON XXXXXXXX TO BE VALID. LATE OBJECTIONS WILL NOT BE CONSIDERED BY THE COURT. The Settlement Administrator will submit to the Court all valid objections it received before the deadline.

For your objection to be valid, you must include your full name and full address, the specific reason(s), if any, for your objection, including any legal support you wish to

bring to the Court's attention; copies of any evidence or other information you wish to introduce in support of the objection(s); a statement of whether you intend to appear and argue at the Fairness Hearing; and a statement of why you believe you are a class member as defined by the class definition.

You must also provide a list of all other objections you, or your attorney, have submitted to any class action settlement in any state or federal court in the United States in the previous five years. If you or your counsel have not objected to any other class action settlement in the United States in the previous five years, you must affirmatively so state in the objection.

You must sign and date the Objection and reference *Green v. City of Palo Alto, Case No. 16CV300760* on the envelope *and* on the written objection.

You also have the right to appear personally or through an attorney at your own expense at the Fairness Hearing at which time the Court will consider the Settlement, any valid and timely objections received, prior to deciding whether to approve the Settlement.

Please be advised that physical access to the Court may be limited due to the COVID-19 pandemic. As of the date of this notice, you are allowed to appear in Department 1 in person or by telephone or video. If you wish to view or participate in the hearing, you should visit the Court's webpage (www.scscourt.org) to learn of access restrictions due to the pandemic.

15. What are the risks if I remain in the Settlement Class?

If you stay in the Settlement Class, you will be bound by the settlement, including the release described in Section 6, and you will not be able to pursue a separate lawsuit against the City based on the same claims the Plaintiff has alleged against the City for the Class.

16. What are the benefits if I remain in the Settlement Class?

If you stay in the Settlement Class, you do not have to sue on your own for any of the claims Plaintiff has brought against the City in this case and you will receive a proportionate share of the funds the City is providing in the Settlement.

17. Do I have to come to any hearings?

No. You do not have to come to any hearings in this case. Class Counsel and Plaintiff will represent you. You are welcome to come at your own expense.

You may object to the proposed settlement in writing. You may also appear at the Final Approval Hearing at your expense, either in person, telephonically, or through an attorney, provided you notify the Court of your intention to do so.

Please be advised that physical access to the Court may be limited due to the COVID-19 pandemic. As of the date of this notice, you are allowed to appear in Department 1 in person or by telephone or video. If you wish to view or participate in the hearing, you should visit the Court's webpage (www.scscourt.org) to learn of access restrictions due to the pandemic.

18. Can I attend the hearing for attorney's fees/service award?

Yes. A hearing on the motion for fees, costs, and the service award is set for _____at **1:30 p.m.** in Department 1 of the Superior Court for the County of Santa Clara, Downtown Superior Court Courthouse, 2nd Floor, 191 North First Street, San Jose, CA 95113, the Honorable Sunil R. Kulkarni, presiding. If you choose to remain in the Class, you may attend the hearing and be heard.

Please be advised that physical access to the Court may be limited due to the COVID-19 pandemic. As of the date of this notice, you are allowed to appear in Department 1 in person or by telephone or video. If you wish to view or participate in the hearing, you should visit the Court's webpage (www.scscourt.org) to learn of access restrictions due to the pandemic.

19. Will I get money or other benefits from this case?

You are entitled to a refund because you are part of the Settlement Class. The amount of that refund will depend on the amount of gas you were billed for during the time the City collected gas rates that were alleged to violate the law and other factors. The City will distribute these funds to current gas customers by credits on their utility bills and by checks to former customers, customers aged 65 and older, and customers in ill health.

GETTING MORE INFORMATION

More information, relevant documents, including the full Settlement Agreement and a ***Request to Be Excluded from the Class*** form can be viewed and downloaded at WEBSITE. The pleadings and other records in this litigation, including the Settlement Agreement, may be examined (a) online on the Superior Court of California, County of Santa Clara's Electronic Filing and Service Website at www.scefiling.org or (b) in person at Records, Superior Court of California, County of Santa Clara, 191 N. 1st Street, San Jose, California 95113, between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday.

If you have any questions, you may contact Class Counsel by any of the methods identified in section 14 of this Notice.

Please do not contact the Judge or the Court.

Exhibit D

Legal Notice

If You Received Natural Gas Service from Palo Alto Utilities Between September 23, 2015 and June 30, 2022 This Class Action May Affect Your Rights.

A court authorized this Notice. It is not a solicitation from a lawyer.

A customer of Palo Alto's natural gas utility has filed a class action lawsuit against the City of Palo Alto, claiming that Palo Alto has violated Propositions 26/218 by imposing fees for natural gas that exceed the reasonable cost of providing that service, without voter approval. The City denied any wrongdoing. The parties have settled the dispute, and Palo Alto has agreed to provide refunds to the affected customers totaling $17,337,111. The class's attorneys will move for attorney fees which, if awarded, would be paid from the refunds. The hearing on the attorney fee motion is set for DATE.

Who is included? The Court has provisionally for purposes of settlement certified this case as a class action. All persons and entities the City billed for gas service between September 23, 2015 and June 30, 2020, and July 1, 2021 and June 30, 2022 are in the Class. The City's records indicate that you received gas service during these periods, and therefore, unless you ask to be excluded, you will be a member of the Class.

The Court previously certified three gas classes for the period of September 23, 2015 through June 30, 2019 (the "2012-2018 Class") when it entered judgment against the City in this action. For settlement purposes, the Court has provisionally decertified the 2012-2018 Class.

If the settlement is finalized, the certification of the settlement classes and the decertification of the judgment class will be final. However, anyone who was excluded from the 2012-2018 Class is excluded from the settlement class.

How much are the potential refunds? Because the overcharges were collected as a part of the per-unit charges on your gas bills (that is, the part of your bill which depends on the amount of gas you use), refunds will be issued based on a per-unit formula. Under that formula, your total gas use during the relevant time period(s) will be multiplied by a per-therm (unit of gas use) rate to spread the total refund across all gas sold to each class. For example, the median customer billed under the City's G-1 (Residential) rate schedule for the 2018 class period (July 1, 2018 to June 30, 2019) may receive a refund of approximately $19.66. This same customer, if a member of all classes, may receive approximately $156.32. Please visit the class notice website identified below for more details to calculate your potential refund. Individual refund

amounts will vary, as refunds will be based on each customer's gas use and the duration of a customer's gas service during the class period.

What are your options? If you were excluded from the previously certified 2012-2018 Class, you are automatically excluded from the settlement class. If not, you can stay in the settlement class by doing nothing, or you can elect not to be in the settlement class by submitting an opt out request form. If you do nothing, you remain in the Class, are bound by the settlement, and would receive your portion of a refund. If you opt out of the settlement class, you will not receive any benefits from the settlement and may, if you choose, pursue your own claims against the City. You must submit an opt out request on or before DEADLINE.

For additional information about the case, your potential refund and instructions on how to contact Class Counsel and how to opt out of the Class, visit: **www.WEBSITE.com**.

Exhibit E

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SANTA CLARA

MIRIAM GREEN, on behalf of herself, and all others similarly situated, Petitioner and Plaintiff, v. CITY OF PALO ALTO, and DOES 1 through 100, Respondents and Defendants.	Case No. 16CV300760 (Lead) Consolidated with Case No. 18CV336237 *Assigned for all purposes to the Hon. Sunil R. Kulkarni* **[PROPOSED] ORDER GRANTING MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT** Date: Time: Dept.: 1

This matter came before the Court as Plaintiff/Petitioner's Motion for Preliminary Approval of a Class Action Settlement ("Motion") on _____, 2022 in Department 1 of the Superior Court of California for the County of Santa Clara, the Honorable Sunil R. Kulkarni presiding.

Appearing for Petitioner/Plaintiff Miriam Green were Prescott W. Littlefield, Esq. of Kearney Littlefield, LLP and Vincent D. Slavens, Esq., of Benink & Slavens, LLP.

Appearing for Respondent/Defendant, the City of Palo Alto, were Michael G. Colantuono, Esq. and Liliane M. Wyckoff of Colantuono, Highsmith & Whatley, PC.

Petitioner/Plaintiff and Respondent/Defendant are referred herein together as "Parties." Upon

reviewing the motion, the Class Settlement Agreement and Stipulation and exhibits attached thereto ("Settlement Agreement" or "Settlement"), filed concurrently with the Motion, and accompanying supporting declaration and pleadings, and good cause appearing thereon, IT IS HEREBY ORDERED that the Motion is granted, on the following terms and conditions:

1. The Court, for purposes of this Order, adopts all defined terms as set forth in the Settlement Agreement.

2. The Court preliminarily finds the Settlement to be fair, just, reasonable, and adequate, and therefore preliminarily approves the Settlement, subject to further consideration by the Court at the time of the Fairness Hearing.

3. In accordance with the terms of the Settlement Agreement and for purposes of settlement only, the court hereby provisionally decertifies the 2012-2018 Class previously certified by the court.

4. The Court, for purposes of this Settlement only, pursuant to California Code of Civil Procedure section 382 and Rule 3.769(c) and (d) of the California Rules of Court, finds that the requirements for provisional certification of the Settlement Class have been satisfied, and conditionally certifies the following Settlement Class:

> **2012 Gas Rate Class**: All gas utility customers of the City of Palo Alto Utilities whom the City billed for natural gas service between September 23, 2015 and June 30, 2016;
>
> **2016 Gas Rate Class:** All gas utility customers of the City of Palo Alto Utilities whom the City billed for natural gas service between July 1, 2016 and June 30, 2018;
>
> **2018 Gas Rate Class:** All gas utility customers of the City of Palo Alto Utilities whom the City billed for natural gas service between July 1, 2018 and June 30, 2019;
>
> **2019 Gas Rate Class**: All gas utility customers of the City of Palo Alto Utilities whom the City billed for natural gas service between July 1, 2019 and June 30, 2020;
>
> **2021 Gas Rate Class:** All gas utility customers of the City of Palo Alto Utilities whom the City billed for natural gas service between July 1, 2021 and June 30, 2022.

5. Expressly excluded from the Settlement Class are (a) all persons who were excluded from the 2012-2018 Class, as reflected in the judgment (attached to the Settlement Agreement as Exhibit A); (b) all persons who timely elect to be excluded from the Settlement Class, and (c) the judge(s) to whom this case is assigned and any immediate family members thereof. "Gas Utility Customer" means a customer to whom Palo Alto supplies, or has supplied, gas utility service at rates established by resolution, ordinance or other local law or act during the Class Period.

4. Petitioner/Plaintiff Miriam Green is hereby appointed Class Representative for the Settlement Class.

5. Prescott W. Littlefield, Esq. of Kearney Littlefield, LLP and Vincent D. Slavens, Esq. are hereby appointed Class Counsel for the Settlement Class.

6. The Court approves Phoenix Class Action Administration Solutions as the Settlement Administrator. The Settlement Administrator shall comply with the terms and conditions of the Settlement Agreement in carrying out its duties pursuant to the Settlement.

7. A Fairness Hearing shall be held before this Court on _____, 2022 at _____ a.m. / p.m. before the Honorable Sunil R. Kulkarni in Department 1 of the Superior Court of California for the County of Santa Clara, located at 161 North First Street, San Jose, California 95113 to determine: (a) whether the proposed settlement of this action on the terms and conditions provided for in the Settlement Agreement should be given final approval as fair, just, reasonable; (b) whether a Final Order and Final Judgment should be entered; and (c) whether Class Counsel's application for Attorney's Fees and Expenses and Class Representatives' request for a Service Award to be paid from the Common Fund, should be approved. The Fairness Hearing may be postponed, adjourned or continued by further order of the Court, without further notice to the Parties or the Settlement Class Members.

8. The form, manner, and content of the Class Notice, attached to the Settlement Agreement as Exhibits C and D will provide the best notice practicable to the Settlement Class under the circumstances, constitutes valid, due, and sufficient notice to all Settlement Class Members, and

fully complies with California Code of Civil Procedure section 382, the Constitution of the State of California, the Constitution of the United States, and other applicable law.

9. The Parties shall, through the Settlement Administrator, disseminate Class Notice as provided in the Settlement Agreement. The "Notice Date" means the first date upon which the Settlement Class Notice is disseminated. The Settlement Administrator shall complete the notice described in paragraphs 90-95 of the Settlement Agreement by the Notice Date, which shall be no later than sixty (60) days after the date of the issuance of this Preliminary Approval Order ("Preliminary Approval Date").

10. Any Settlement Class Member who wishes to be excluded from the Settlement Class must do one of the following: (1) mail a written request for exclusion to the Settlement Administrator at the address provided in the Notice, postmarked no more than sixty (60) calendar days from the Notice Date, which is to be extended by seven (7) calendar days if a second Notice was sent to a forwarding address (the "Exclusion Deadline"); or (2) send a written request for exclusion to the Settlement Administrator by e-mail or fax, at the address or numbers provided in the Notice, before midnight Pacific Time on the Exclusion Deadline. The request must (a) state the Class Member's name and Palo Alto Gas service account number; (b) reference *Green v. City of Palo Alto, Case No. 16CV300760*; and (c) clearly state that the Settlement Class Member wants to be excluded from the Settlement Class. A list reflecting all requests for exclusion shall be filed with the Court by the Settlement Administrator, *via* declaration, no later than seven (7) calendar days before the Fairness Hearing. If a potential Settlement Class Member files a request for exclusion, they may not file an objection to the Settlement. If any Class Member files a timely request for exclusion, they will not be a member of the Settlement Class, will not release any Released Claims pursuant to this Settlement or be subject to the Release, and will reserve all Released Claims they may have. All Settlement Class Members will be bound by the Final Order and Final Judgment unless such Settlement Class Members timely file valid written requests for exclusion or opt out in accordance with this Order.

11. Any Settlement Class Member who has not filed a timely written request for

exclusion and who wishes to object to the fairness, reasonableness, or adequacy of this Agreement or the proposed Settlement, or to the award of Attorneys' Fees and Expenses, or to the Service Awards to the Class Representatives, must do one of the following: (1) mail a written statement, describing the Class Member's objections in the specific manner set forth in this Section, to the Settlement Administrator at the address provided in the Notice, postmarked no later than sixty (60) calendar days after the Notice Date, which is to be extended by seven (7) calendar days is a second Notice was sent to a forwarding address (the "Objection Deadline"); or (2) send a written statement, describing the Class Member's objections in the specific manner set forth in this section, to the Settlement Administrator by e-mail or fax, at the address or numbers provided in the Notice, before midnight Pacific Time on the Objection Deadline. Any such objection shall include: (1) the full name of Objector; (2) the full address of Objector; (3) the specific reason(s), if any, for the objection, including any legal support the Settlement Class Member wishes to bring to the Court's attention; (4) copies of any evidence or other information the Settlement Class Member wishes to introduce in support of the objections; (5) a statement of whether the Settlement Class Member intends to appear and argue at the Fairness Hearing; (6) the individual Settlement Class Member's written signature, with date; and (7) reference *Green v. City of Palo Alto, Case No. 16CV300760* on the envelope, if applicable, and on the written objection. Settlement Class Members may personally object or object through an attorney retained at their own expense, however, each individual Settlement Class Member objecting to the Settlement, in whole or part, shall personally sign the objection. The objection must also include an explanation of why the objector falls within the definition of the Settlement Class. In addition, any Settlement Class Member objecting to the Settlement shall provide a list of all other objections submitted by the objector, or the objector's counsel, to any class action settlements submitted in any state or federal court in the United States in the previous five years. If the Settlement Class Member, or their counsel, has not objected to any other class action settlement in the United States in the previous five years, they shall affirmatively so state in the objection. Settlement Class Members who submit an objection may be subject to discovery, including written discovery and depositions,

on whether they are a Settlement Class Member, and any other topic that the Court deems appropriate.

12. Any Settlement Class Member who files and serves a written objection, as described in paragraph 11, may appear at the Fairness Hearing, either in person or through personal counsel hired at the Settlement Class Member's own expense, to object to the fairness, reasonableness, or adequacy of the Settlement Agreement or the proposed Settlement, or to the award of Attorneys' Fees and Expenses, or Service Awards to the Petitioner/Plaintiff and/or the Class Representative.

13. Petitioner shall file and serve papers in support of final approval of the Settlement and/or Class Counsel's application for an award of Attorneys' Fees and reimbursement of expenses, and Class Representatives' Service Award on or before sixteen (16) court days prior to the date of the Fairness Hearing. Class counsel shall file two (2) memoranda of law, with the first addressing arguments in favor of final approval of the Settlement, decertification of the 2012-2108 Class, and certification of the Settlement Class; and the second memorandum of law addressing Class Counsel's application for an award of Attorneys' Fees and reimbursement of expenses, and Service Award. Each memorandum shall not exceed twenty-five (25) pages in length.

14. The Parties may file replies/responses to objections and supplemental papers to any motion or petition on or before five (5) court days before the Fairness Hearing.

15. The Settlement Administrator shall file its declaration affirming that notice was given in accordance with this Order and the Settlement Agreement and identifying those Settlement Class Members who timely and validly submitted Requests for Exclusion, pursuant to the Settlement, on or before seven (7) court days before the Fairness Hearing.

16. If the proposed Settlement is finally approved, the Court shall enter a separate order finally approving the Settlement and entering judgment. The form of the Final Order and Final Judgment attached to the Settlement Agreement as Exhibit H is preliminarily approved.

17. The parties are hereby ordered, pursuant to the terms and conditions of this Settlement Agreement, to take all necessary and appropriate steps to establish the means necessary to implement the Settlement.

18. Pending the Fairness Hearing, all proceedings in this Action, other than proceedings necessary to carry out or enforce the terms and conditions of this Settlement Agreement and this Order are hereby stayed.

19. Pending the Fairness Hearing, a preliminary injunction is hereby issued enjoining Settlement Class Members who did not seek exclusion from the Class, pending the Court's determination of whether the Settlement should be given final approval, from challenging in any action or proceeding any matter covered by this Settlement, except for proceedings in this Court to determine whether the Settlement of the Action will be given final approval.

IT IS SO ORDERED.

DATED: _____ _____

Judge of the Superior Court

Exhibit F

Thomas A. Kearney, State Bar No. 90045
tak@kearneylittlefield.com
Prescott W. Littlefield, State Bar No. 259049
pwl@kearneylittlefield.com
KEARNEY LITTLEFIELD, LLP
3051 Foothill Blvd., Suite B
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Attorneys for Petitioner/Plaintiff MIRIAM GREEN, on behalf of herself and all others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SANTA CLARA

MIRIAM GREEN, on behalf of herself, and all others similarly situated,

Petitioner and Plaintiff,

v.

CITY OF PALO ALTO, and DOES 1 through 100,

Respondents and Defendants.

Case No. 16CV300760

Assigned for all purposes to the Hon. Sunil R. Kulkarni

CLASS ACTION

STIPULATION FOR LEAVE TO FILE AMENDED CONSOLIDATED COMPLAINT; [PROPOSED] ORDER

STIPULATION

This stipulation is entered between Petitioner and Plaintiff Miriam Green, on behalf of herself, and all others similarly situated ("Green"), and Respondent and Defendant City of Palo Alto ("City"), by and through their attorneys. Green and the City are referred to collectively as the "Parties."

WHEREAS, on October 6, 2016, Green filed the above-entitled class action (Case No. 16CV300760) against the City alleging that the City's gas rates adopted June 18, 2012, and electric and gas utility rates adopted on June 13, 2016, are taxes that were not approved by a vote of the electorate in violation of Propositions 218 and 26 (the "2016 Action").

WHEREAS, the City adopted new electric and gas rates on June 11, 2018. Green filed a separate action, styled *Green v. City of Palo Alto*, Case No. 18CV336237, challenging the 2018 gas and electric rates.

WHEREAS, on February 7, 2019, the court entered an order consolidating the 2016 Action and 2018 Action. The 2016 Action is the lead case. The court also entered an order amending the certified class, as follows:

> **2012 Gas Rate Class**: All gas utility customers of the City of Palo Alto Utilities whom the City billed for natural gas service between September 23, 2015 and June 30, 2016;
>
> **2016 Gas Rate Class:** All gas utility customers of the City of Palo Alto Utilities whom the City billed for natural gas service between July 1, 2016 and June 30, 2018;
>
> **2016 Electric Rate Class:** All electric utility customers of the City of Palo Alto Utilities whom the City billed for electric service between July 1, 2016 and June 30, 2018;
>
> **2018 Gas Rate Class:** All gas utility customers of the City of Palo Alto Utilities whom the City billed for natural gas service between July 1, 2018 and the date on which the Court orders notice to be sent to class members; and
>
> **2018 Electric Rate Class:** All electric utility customers of the City of Palo Alto Utilities whom the City billed for electric service between July 1, 2018 and the date on which the Court orders notice to be sent to class members

WHEREAS, on February 27, 2019, Plaintiff filed a consolidated class action petition and complaint in the 2016 Action, which is the operative complaint in the case.

WHEREAS, on March 28, 2019, the City filed an answer to the consolidated class action

petition and complaint;

WHEREAS, on June 17, 2019, Palo Alto's City Council approved rate changes for the gas utility. The new rates became effective on July 1, 2019 (the "2019 Gas Rates"). The Parties entered into an agreement to toll any and all causes of action Plaintiff has or may have, for herself and on behalf of a class or classes challenging the 2019 Gas Rates, until after the Court ruled on the merits of the 2016 Action. On January 28, 2020, the Parties agreed to amend the 2019 tolling agreement to toll any and all causes of action Plaintiff has or may have, for herself and on behalf of a class or classes, pertaining to the 2019 Gas Rates, until after any appeal in the 2016 Action.

WHEREAS, the Court bifurcated the 2016 Action into a liability and a remedy phase and set the hearing on the liability phase of trial ("Phase I") for September 18, 2019;

WHEREAS, on January 21, 2020, following extensive briefing and oral argument, the Court issued a Statement of Decision for Phase I of trial. The Court found that the City's "electric rates are not taxes under *Redding*, but that the challenged gas rates are to the extent [the City's general fund transfer] and/or market-based rental charges were passed through to ratepayers." The Court explained that the general fund transfer and market-based rental charges do not correspond to the reasonable costs to the local government of the service provided to ratepayers under article XIII C, section 1, subdivision (e)(2).

WHEREAS, on June 1, 2020, the Court enter an order setting a hearing on the remedy phase of trial ("Phase II") for September 23, 2020;

WHEREAS, on June 22, 2020, Palo Alto's City Council approved rate changes for the gas utility. The new rates became effective on July 1, 2020 (the "2020 Gas Rates"). The Parties entered into an agreement to toll any and all causes of action Plaintiff has or may have, for herself and on behalf of a class or classes to challenge the 2020 Gas Rates, until after any appeal in the 2016 Action.

WHEREAS, on October 27, 2020, following extensive briefing and oral argument, the Court issued a Statement of Decision for Phase II of trial. The Court found Respondent and Defendant the City of Palo Alto liable to gas utility customers and directed it to pay refunds to the class in the following amounts:

- $4,991,510 to the 2012 Gas Rate Class;
- $4,812,000 to the 2016 Gas Rate Class;
- $2,815,000 to the 2018 Gas Rate Class.

The Court further held that "Green is the prevailing party and shall be awarded fees and costs according to law." The Court further noted that the Parties agreed that the 2018 Gas Rate Class should end with bills for gas service sent on or before June 30, 2019.

WHEREAS, on December 17, 2020, the Court entered an order directing the City to provide notice to the Gas Classes and addressing other related issues.

WHEREAS, on March 15, 2021, the Court entered an order approving the form of notice to the 2012-2018 Gas Classes, appointing a class administrator and directing notice to be sent no later than March 25, 2021. Class notice was completed as ordered.

WHEREAS, on June 21, 2021, the Palo Alto City Council approved rate changes for the gas utility. The new rates became effective on July 1, 2021 (the "2021 Gas Rates"). The Parties entered into an agreement to toll any and all causes of action Plaintiff has or may have, for herself and on behalf of a class or classes challenging the 2021 gas rates, until after any appeal in the 2016 Action.

WHEREAS, on May 14, 2021, the Court entered an Order awarding Plaintiff's attorneys fees in the amount of $3,154,627.50, $6,960 to cover notice costs, $25,000 to cover the cost of distributing the common fund to the individual class members, and $5,000 as an award to Plaintiff, all to be paid from the common fund of the refunds the Court ordered and not in addition to the ordered refunds.

WHEREAS, on June 25, 2021, the Court entered judgment against the Respondent and Defendant the City of Palo Alto on gas rates and for the Respondent and Defendant City on electric rates. The Clerk of the Court issued a Peremptory Writ of Mandate on August 17, 2021, which, among other things, directed the City to pay the judgment entered by the Court totaling $12,618,510 to the appointed claims administrator. The judgment also directed that Respondent and Defendant pay Plaintiff's litigation costs pursuant to section 1021 et seq. of the Code of Civil Procedure and Rules 3.1700 and 3.1702 in addition to the common fund;

WHEREAS, on September 7, 2021, the Court entered an order denying the City's motion for new trial and to vacate judgment. The Court also issued an order granting but modifying the City's election to pay the judgment over time and also ordering further notice to the class, 75% of which costs are to be borne by the City;

WHEREAS, on September 21, 2021, the City filed a notice of appeal to the Sixth Appellate District of California, and on October 1, 2021 Plaintiff filed a cross-appeal, case number H049436;

WHEREAS, on June 13, 2022, Palo Alto's City Council approved rate changes for the gas utility. The new rates became effective on July 1, 2022 (the "2022 Gas Rates"). The Parties entered into an agreement to toll any and all causes of action Plaintiff has or may have, for herself and on behalf of a class or classes challenging the 2022 gas rates, until after any appeal in the 2016 Action.

WHEREAS, on _____, 2022, the parties entered into a conditional class action settlement to resolve all claims in the 2016 Action and any and all claims arising out of the tolled claims for rates set in 2019, 2020, 2021 and 2022. The settlement is conditioned on notice to the class, as well as preliminary and final approval of the settlement by the trial court.

WHEREAS, pursuant to the settlement agreement, the parties filed a joint motion for partial reversal of the judgment entered in this case. The case was remitted to the trial court on _____, 2022, for further proceedings in accordance with the remand instructions provided by the Court of Appeal.

WHEREAS the settlement agreement calls for the resolution of all causes of action and claims arising out of the gas and electric rates imposed by the City at various times in 2012, 2016, 2018, 2019, 2020, 2021 and 2022, as alleged in the Consolidated Complaint;

WHEREFORE, the parties request that the court grant Green leave to file a First Amended Consolidated Class Action Verified Petition for Writ of Mandate and Complaint for Declaratory and Injunctive Relief, in the form attached hereto, to allow for the settlement of all outstanding claims between the parties, as of the date of settlement.

NOW, THEREFORE, the Parties, by and through their attorneys of record, hereby

stipulate as follows:

1. That Petitioner/Plaintiff be granted leave to file a first amended consolidated petition and complaint in the form attached hereto as **Exhibit A** within 20 days after entry of the proposed order;

2. Respondent/Defendant shall file a responsive pleading to the consolidated complaint within 30 days of the date it is served.

SO STIPULATED.

DATED: _____, 2022

Respectfully submitted,

KEARNEY LITTLEFIELD, LLP

Thomas A. Kearney
Prescott W. Littlefield

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Attorneys for Petitioner/Plaintiff
MIRIAM GREEN

DATED: _____, 2022

COLANTUONO, HIGHSMITH & WHATLEY, PC

MICHAEL G. COLANTUONO
LILIANE M. WYCKOFF
Attorneys for Respondent and Defendant,
CITY OF PALO ALTO

[PROPOSED] ORDER

In light of the parties' stipulation, and good cause appearing, IT IS HEREBY ORDERED:

1. Petitioner/Plaintiff is granted leave to file a first amended consolidated petition and complaint in the form attached hereto as **Exhibit A** within 20 days after entry of the proposed order;

2. Respondent/Defendant shall file a responsive pleading to the consolidated complaint within 30 days of the date it is served;

SO ORDERED.

DATED: _____

Judge of the Superior Court

Exhibit G

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Attorneys for Petitioner/Plaintiff MIRIAM GREEN, on behalf of herself and all others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SANTA CLARA

MIRIAM GREEN, on behalf of herself, and all others similarly situated,

Petitioner and Plaintiff,

v.

CITY OF PALO ALTO, and DOES 1 through 100,

Respondents and Defendants.

Case No. 16CV300760 (Lead)
Consolidated with Case No. 18CV336237

Assigned for all purposes to the Hon. Sunil R. Kulkarni

CLASS ACTION

FIRST AMENDED:

CONSOLIDATED VERIFIED PETITION FOR WRIT OF MANDATE

and

CONSOLIDATED COMPLAINT DECLARATORY RELIEF AND REFUND OF ILLEGAL TAX

Petitioner/Plaintiff Miriam Green ("Petitioner" or "Plaintiff"), on behalf of herself and the Classes of all other similarly situated persons defined below, alleges upon personal knowledge and information and belief as to all other matters based upon, *inter alia*, the investigation made by and through her attorneys, as follows:

INTRODUCTION

1. Proposition 218, the Right to Vote on Taxes Act, was passed by the people of California in November 1996. The measure stated its purpose "was intended to provide effective tax relief and to require voter approval of tax increases. However, local governments have subjected taxpayers to excessive tax, assessment, fee and charge increases that not only frustrate the purposes of voter approval for tax increases, but also threaten the economic security of all Californians and the California economy itself. This measure protects taxpayers by limiting the methods by which local governments exact revenue from taxpayers without their consent."

2. By passing Proposition 218, the California Constitution was amended to add articles XIII C and XIII D. Article XIII C prohibits local government agencies from imposing, extending or increasing taxes unless and until the taxes are approved by a vote of the electorate. Article XIII D sets forth procedures for and restrictions on special assessments and fees for property related services. This action pertains to Article XIII C, sections 2(b) and (d) relating to Respondent/Defendants' imposition, extension or increase of electric and gas utility fees and charges upon Petitioner and the putative class by various resolutions from 2012 through 2022.

3. In November 2010, California voters approved Proposition 26, which amended Article XIII C, section 1 to broadly define "tax" as "any levy, charge or exaction of any kind imposed by a local government" with certain exceptions. (art. XIII C, § 2(e).) Article XIII C, section 1, subdivision (e)(1) and (2) except from the definition of "tax" charges for a specific benefit conferred or privilege granted, or specific government service not provided to those not charged, so long as the charge does not exceed the reasonable cost to the government of conferring, granting or providing the benefit, privilege or service. It also shifted the burden to prove that the charge does not exceed the cost of conferring, granting or providing the benefit, privilege or service.

4. Petitioner brings this consolidated class action, on behalf of herself and all others similarly situated, to compel Respondents/Defendants to comply with Propositions 218 and 26. Specifically, she alleges that the fees and charges Respondents/Defendants imposed upon Petitioner and the putative class members, during the periods of September 23, 2015 through and including the date of the second class notice to be given following the filing of this First Amended Consolidated Petition and Complaint ("FA Consolidated Petition"), for gas and electric utility services are taxes that have not been approved by a vote of the electorate in violation of Proposition 218. Petitioner seeks to invalidate Respondents/Defendants' electric and gas fees and charges currently imposed upon Petitioners and the putative class, and to enjoin Respondents/Defendants from continuing to collect the illegal taxes unless and until the taxes are approved by a vote of the electorate. Petitioner also seeks class-wide refunds of all illegal taxes collected since September 23, 2015 for gas service and since July 1, 2016 for electric utility service.

PARTIES

5. Petitioner/Plaintiff Miriam Green is currently, and has been, a resident of Respondent/Defendant the City of Palo Alto. During the relevant time period, she has paid the electricity and natural gas fees and charges at issue herein. At no time did Ms. Green vote on any increase to her gas or electricity rates.

6. Defendant City of Palo Alto ("City") is located in the County of Santa Clara, State of California. At all times herein mentioned, the City provides electrical power and natural gas, among other utilities, to its citizens.

7. Defendants/Respondents DOES 1 through 100 are persons or entities whose true names and identities are currently unknown to Plaintiff. This FA Consolidated Petition will be amended to allege the true names and capacities of these fictitiously named Defendants/Respondents when they are ascertained. Each of the fictitiously named Defendants/Respondents is responsible for the conduct alleged in this FA Consolidated Petition. Through their conduct, the fictitiously named Defendants/Respondents caused damages to Plaintiff and the Classes. At all times mentioned herein, each Defendants/Respondents was acting

as the agent and/or employee of each of the remaining Defendants and was at all times acting within the purpose and scope of such agency and employment. In doing the acts alleged herein, each Defendant/Respondent, and its officers, directors, members, owners, principals, or managing agents (where the defendant is a corporation, limited liability company, or other form of business entity) authorized and/or ratified the conduct of each other Defendant and/or of his/her/its employees. Upon discovery of the fictitiously named Defendants/Respondents, Plaintiff will amend her FA Consolidated Petition to formally identify them.

GOVERNMENT CLAIM

8. On or about September 23, 2016, September 14, 2018 and _____ 2023 counsel for Petitioner/Plaintiff provided to Respondent/Defendant City of Palo Alto a written Claim for Damages, on behalf of Petitioner/Plaintiff and all others similarly situated, pursuant to California Government Code section 910, *et seq*., and *City of San Jose v. Superior Court*, 12 Cal. 3d 447 (1974).

9. The City denied each Plaintiff's class-wide government claims.

GENERAL ALLEGATIONS

10. The City operates its utility known as the City of Palo Alto Utilities ("CPAU"), which provides electricity and natural gas services to paying customers. It imposes user fees and charges for these services on a monthly basis.

11. The City imposes fees and charges for each of its electricity and gas services in an amount that exceeds the reasonable cost of providing each service. For example, the City engineers each of its electric and gas utility service fees to generate sufficient surplus revenue to fund an annual transfer of millions of dollars from its utility enterprise funds to its general fund. The funds transferred are intended for use and are used to fund general government expenses unrelated and unnecessary to operate or otherwise provide gas or electric utility services. As has been stated by CPAU on its website: ". . . the electric, gas, and water utilities provided millions in financial support to community services such as libraries, parks, police and fire protection. These contributions to the community do not occur in areas served by private power companies. This makes Palo Alto a unique place to live and work."

12. Between 2012 and 2022, the Palo Alto City Council adopted rate resolutions to impose, extend or increase its fees and charges for electricity and gas services. The challenged fees for each service exceed the reasonable cost of providing each service. For example, the City embedded in the fees amounts necessary to fund the continued transfer of millions of dollars in profits to the general fund.

13. Respondents/Defendants cannot meet their burden to prove that their fees and charges do not exceed the reasonable cost to Respondents/Defendants of providing their electricity and/or gas services.

14. Respondents/Defendants electricity and gas service fee and charge revenues exceed their reasonable cost of providing electricity and/or gas services notwithstanding its non-rate revenue. Respondents/Defendants incur substantial costs, unrelated to providing retail electric service, to generate any purported non-rate revenue. For example, Respondents/Defendants incur substantial wholesale costs (i.e. fuel purchases) to generate wholesale revenue.

15. Respondents/Defendants have imposed, extended or increased, and continue to impose, extend or increase, the taxes alleged herein without a vote of the electorate in violation of article XIII C, section 2(b) and/or (d).

16. In light of the foregoing, Petitioner/Plaintiff, on behalf of herself and all others similarly situated, seek relief from the illegal tax, return of all sums illegally collected and the other relief set out herein.

CLASS ACTION ALLEGATIONS

17. Plaintiff brings this class action pursuant to California Code of Civil Procedure section 382 on her own behalf and on behalf of the following classes ("Classes"):

> **2012 Gas Rate Class**: All gas utility customers of the City of Palo Alto Utilities whom the City billed for natural gas service between September 23, 2015 and June 30, 2016;
>
> **2016 Gas Rate Class:** All gas utility customers of the City of Palo Alto Utilities whom the City billed for natural gas service between July 1, 2016 and June 30, 2018;
>
> **2016 Electric Rate Class:** All electric utility customers of the City of Palo Alto Utilities whom the City billed for electric service between July 1, 2016 and June 30, 2018;

2018 Gas Rate Class: All gas utility customers of the City of Palo Alto Utilities whom the City billed for natural gas service between July 1, 2018 and June 30, 2019;

2018 Electric Rate Class: All electric utility customers of the City of Palo Alto Utilities whom the City billed for electric service between July 1, 2018 and June 30, 2019;

2019 Gas Rate Class: All gas utility customers of the City of Palo Alto Utilities whom the City billed for natural gas service between July 1, 2019 and June 30, 2020; and

2021 Gas Rate Class: All gas utility customers of the City of Palo Alto Utilities whom the City billed for natural gas service between July 1, 2021 and June 30, 2022;

Expressly excluded from the Classes are (a) all persons who timely elect to be excluded from the Classes, and (b) the judge(s) to whom this case is assigned and any immediate family members thereof. Putative members of the Classes are referred to as "Class Members."

18. This action is properly maintainable as a class action.

19. The Classes consists of more than 10,000 City of Palo Alto Utilities customers, making each Class so numerous that joinder of all members is impracticable.

20. There are questions of law and fact which are common to Class Members and which predominate over any questions affecting only individual members of each Class. A class action will generate common answers to the below questions, which are apt to drive the resolution of the litigation:

a. What was the reasonable cost of the electricity and natural gas services provided to Plaintiff and the members of each class;

b. How was the reasonable cost of the electricity and natural gas services calculated;

c. Whether Defendants can meet their burden to prove their fees or charges for electricity and natural gas do not exceed the reasonable cost to Defendant in providing each service;

d. Whether Defendants' fees and charges for electricity and natural gas are taxes;

e. Whether Defendants' actions violate article XIII C of the California Constitution;

f. Whether Defendants obtained approval by a vote of the electorate before imposing, extending or increasing their fees and charges for electric and gas services;

g. Whether Plaintiff and other Class Members are entitled to a refund; and

h. Whether Plaintiff and other Class Members are entitled to injunctive relief.

21. Plaintiff is committed to prosecuting this action and has retained competent counsel experienced in litigation of this nature. Plaintiff's claims are typical of the claims of other Class Members and Plaintiff has the same interests as other Class Members. Plaintiff has no interests that are antagonistic to, or in conflict with, the interests of the other members of the Classes. Plaintiff is an adequate representative of each Class and will fairly and adequately protect the interests of the Classes.

22. The prosecution of separate actions by individual Class members could create a risk of inconsistent or varying adjudications with respect to individual members of each Class, which could establish incompatible standards of conduct for Defendants or adjudications with respect to individual members of each Class which would, as a practical matter, be dispositive of the interests of the members of each Class not parties to the adjudications.

23. Furthermore, as the damages suffered by some of the individual Class members may be small, the expense and burden of individual litigation make it impracticable for the individual members of each Class to redress the wrongs done to them individually. If a class action is not permitted, Class members will continue to suffer and Defendants' misconduct will continue without proper remedy.

24. Defendants have acted and refused to act on grounds applicable to the entire Class, thereby making appropriate relief with respect to the Class as a whole.

25. Plaintiff anticipates no unusual difficulties in the management of this litigation as a class action.

26. For the above reasons, a class action is superior to other available methods for the fair and efficient adjudication of this action.

FIRST CAUSE OF ACTION

Petition for Writ of Mandate
Pursuant to Code of Civil Procedure section 1085
(By Petitioner Against All Respondents)

27. Petitioner incorporates by reference each of the preceding allegations as though fully set forth herein.

28. Respondents have imposed, extended or increased fees and charges for electricity and gas service upon Petitioner and the Class. Respondents' fees and charges are taxes as defined by article XIII C, section 1, subdivision (e). Respondents have not obtained approval by a vote of the electorate prior to enacting its fees for electricity and natural gas utility service.

29. Respondents cannot meet their burden to prove that their fees and charges for electricity and/or gas services exclusively provided to those customers who are charged, does not exceed the reasonable cost to Respondents of providing the electricity and/or gas services. Thus, Respondents have violated, and continue to violate, article XIII C, section 2, subdivision (b) and (d).

30. The imposition and collection of the illegal taxes from Petitioner and the Class was, and is, improper because it is a violation of the State Constitution, Article XIII C and the imposition of the illegal taxes has caused Petitioner and the Class to suffer monetary damages in amounts according to proof at trial.

31. Accordingly, Petitioner is entitled to a writ of mandate pursuant to Code of Civil Procedure section 1085 so as to ensure compliance with the law by Respondents.

SECOND CAUSE OF ACTION

Declaratory Relief
(By Plaintiff Against All Defendants)

32. Plaintiff hereby incorporates by reference each of the preceding allegations as though fully set forth therein.

33. An actual, present, and substantial controversy exists between Plaintiff and Defendants. Plaintiff contends that Defendants have violated, and continue to violate, the

California Constitution. Defendants contends they comply and have complied with the law.

34. Plaintiff and other Class members have no adequate remedy at law.

35. By reason of the foregoing, there is a present and ongoing controversy between the parties with respect to which this Court should enter a declaratory judgment determining the rights and obligations of each. Plaintiff contends that such judgment should determine that the conduct complained of herein is illegal.

THIRD CAUSE OF ACTION

Refund of Illegal Tax
(Plaintiff Against All Defendants)

36. Plaintiff hereby incorporates by reference each of the preceding allegations as though fully set forth therein.

37. Plaintiff has substantially complied with all requirements to exhaust her administrative remedies pursuant to Government Code section 945.6.

38. Defendants never submitted the charges for electricity and natural gas that exceed costs to the electorate for a vote.

39. Propositions 218 and 26 were designed to "protect[] taxpayers by limiting the methods by which local governments exact revenue from taxpayers without their consent." (Prop. 218 § 2)

40. Local governments must submit to the electorate for approval by vote laws that "impose, extend, or increase" any tax. (Cal. Const., art. XIII C, § 2(b), (d).)

41. Defendants' collection of electricity and gas rates without voter approval that exceed the costs of providing the service violates Propositions 218 and 26.

42. Because the rates are in violation of Propositions 218 and 26, they are unconstitutional under the California Constitution, are invalid and inapplicable.

43. For all of the foregoing reasons, Plaintiff and the Classes have overpaid for electricity and natural gas and thus are entitled to recovery in the form of a refund.

PRAYER FOR RELIEF

WHEREFORE, Petitioner/Plaintiff, individually and on behalf of all others similarly situated, hereby prays that the Court determine that this action may be maintained as a class action and further prays that the Court enter judgment in her favor and against Defendants, as follows:

1. An order certifying the proposed Classes, designating Plaintiff as the named representative of the Class, and designating Plaintiff's counsel as Class Counsel;
2. For the issuance of a writ of mandate directing Respondents to rescind, revoke or otherwise invalidate the resolution(s) imposing currently effective electric and gas utility fees and charges; cease further collection of the alleged taxes embedded in the currently effective electric and gas utility fees and charges; and ordering the refund of all illegal taxes collected during the class periods;
3. A refund to Plaintiff and the Class for all monies illegally collected in an amount to be proven at trial;
4. Injunctive relief;
5. An award of attorneys' fees and costs, as allowed by law, including, but not limited to, common fund attorneys' fees and fees awarded pursuant to California Code of Civil Procedure section 1021.5;
6. An award of pre-judgment and post-judgment interest, as provided by law; and
7. For such other, further, and different relief as the Court deems proper under the circumstances.

DATED: August 11, 2022

Respectfully submitted,

KEARNEY LITTLEFIELD, LLP

By: _____

Thomas A. Kearney
Prescott W. Littlefield

STONEBARGER LAW
Gene J. Stonebarger
Richard D. Lambert

DAVIDOVITZ + BENNETT
Moris Davidovitz

BENINK & SLAVENS, LLP.
Vincent D. Slavens (SBN 217132)
Eric J. Benink (SBN 187434)

Attorneys for Petitioner/Plaintiff
MIRIAM GREEN

VERIFICATION

I, Miriam Green, declare:

I am party to this Action, and I have read the foregoing First Amended Consolidated Petition and know its contents. With regard to myself, the matters stated are true based on my knowledge, and all other allegations are made based on information and belief, and as to those matters I believe them to be true.

I certify, upon penalty of perjury under the laws of the State of California, that the foregoing is true and correct and that this verification was executed on the date shown below in the City of Palo Alto, California.

Dated: [DATE]

MIRIAM GREEN

Exhibit H

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SANTA CLARA

MIRIAM GREEN, on behalf of herself, and all others similarly situated, Petitioner and Plaintiff, v. CITY OF PALO ALTO, and DOES 1 through 100, Respondents and Defendants.	Case No. 16CV300760 (Lead) Consolidated with Case No. 18CV336237 *Assigned for all purposes to the Hon. Sunil R. Kulkarni* **[PROPOSED] ORDER GRANTING FINAL APPROVAL OF CLASS ACTION SETTLEMENT AND FINAL JUDGMENT** Date: Time: Dept.: 1

This matter came before the Court as Plaintiff/Petitioner's Motion for Final Approval of a Class Action Settlement ("Motion") on _____, 2022 in Department 1 of the Superior Court of California for the County of Santa Clara, the Honorable Sunil R. Kulkarni presiding.

Appearing for Petitioner/Plaintiff Miriam Green were Prescott W. Littlefield, Esq. of Kearney Littlefield, LLP and Vincent D. Slavens, Esq., of Benink & Slavens, LLP.

Appearing for Respondent/Defendant, the City of Palo Alto, were Michael G. Colantuono, Esq. and Liliane M. Wyckoff of Colantuono, Highsmith & Whatley, PC.

Petitioner/Plaintiff and Respondent/Defendant are referred herein together as "Parties."

1. Upon reviewing the Motion and supporting papers and declarations, including the

pleadings filed in support of the Motion for Final Approval of Class Action Settlement, Class Counsel's application for Attorneys' Fees and costs, and Class Representatives' application for a Service Award, and having reviewed and considered the Class Action Settlement Agreement and exhibits attached thereto filed in this Action ("Settlement Agreement"), and any timely and proper objections, and good cause appearing thereon, the Court makes the following findings and determinations, and **ORDERS, ADJUDGES, AND DECREES as follows:**

2. The Court, for purposes of this Final Order and Final Judgment, adopts all defined terms as set forth in the Settlement Agreement.

3. The Court has continuing and exclusive jurisdiction over the Settlement and all Parties hereto for the purpose of construing, enforcing and administering the Settlement Agreement.

4. The Court finally decertifies the 2012-2018 Class, as defined in the Settlement Agreement.

5. The Court finally certifies, pursuant to California Code of Civil Procedure section 382, the following Settlement Class:

> **2012 Gas Rate Class**: All gas utility customers of the City of Palo Alto Utilities whom the City billed for natural gas service between September 23, 2015 and June 30, 2016;
>
> **2016 Gas Rate Class:** All gas utility customers of the City of Palo Alto Utilities whom the City billed for natural gas service between July 1, 2016 and June 30, 2018;
>
> **2018 Gas Rate Class:** All gas utility customers of the City of Palo Alto Utilities whom the City billed for natural gas service between July 1, 2018 and June 30, 2019;
>
> **2019 Gas Rate Class**: All gas utility customers of the City of Palo Alto Utilities whom the City billed for natural gas service between July 1, 2019 and June 30, 2020;
>
> **2021 Gas Rate Class:** All gas utility customers of the City of Palo Alto Utilities whom the City billed for natural gas service between July 1, 2021 and June 30, 2022.

6. Expressly excluded from the Settlement Class are (a) all persons who were excluded from the 2012-2018 Class, as reflected in the judgment; (b) all persons who timely elect to be excluded from the Settlement Class, and (c) the judge(s) to whom this case is assigned and

any immediate family members thereof. "Gas Utility Customer" means a customer to whom Palo Alto supplies, or has supplied, gas utility service at rates established by resolution, ordinance or other local law or act during the Class Period.

7. Petitioner/Plaintiff Miriam Green is hereby appointed Class Representative for the Settlement Class.

8. Prescott W. Littlefield, Esq. of Kearney Littlefield, LLP and Vincent D. Slavens, Esq. are hereby appointed Class Counsel for the Settlement Class.

9. The Court approves Phoenix Class Action Administration Solutions as the Settlement Administrator. The Settlement Administrator shall comply with the terms and conditions of the Settlement Agreement in carrying out its duties pursuant to the Settlement.

10. With respect to the Settlement Class, the Court finds that: (a) the members of the Settlement Class are so numerous that their joinder is impracticable; (b) there are questions of law and fact common to the Settlement Class which predominate over any individual questions; (c) the claims of the Class Representatives are typical of the claims of the Settlement Class; and (d) for purposes of settlement, a class action is superior to other available methods for the fair and efficient adjudication of the controversy considering: (i) the interest of the Settlement Class in individually controlling the prosecution of the separate actions, (ii) the extent and nature of any litigation concerning the controversy already commenced by the Settlement Class, (iii) the desirability or understandability of concentrating the litigation of these claims in the particular forum, and (iv) the difficulties likely to be encountered in the management of the action.

11. Class Notice to the Settlement Class was provided in accordance with the Preliminary Approval Order and satisfied the requirements of due process, California Code of Civil Procedure section 382 and Rule 3.766 of the California Rules of Court and (a) provided the best notice practicable, and (b) was reasonably calculated under the circumstances to apprise Settlement Class Members of the pendency of the Action, the terms of the Settlement, their right to appear at the Fairness Hearing, their right to object to the Settlement, and their right to exclude themselves from the Settlement..

12. The Settlement Agreement was arrived at following serious, informed, adversarial, and arm's length negotiations conducted in good faith by counsel for the parties facilitated by an experienced mediator and is supported by the majority of the members of the Settlement Class. This Court hereby finally approves the Settlement as fair, adequate, reasonable, and in the best interests of the Settlement Class.

13. Upon the Effective Date of this Final Order and Final Judgment, Respondent/Defendant City of Palo Alto shall commence paying all consideration, including the Settlement Fund in the amount of $17,337,111.00, in accordance with the timing, terms and conditions set forth in the Settlement Agreement.

14. Upon the Effective Date of this Final Order and Final Judgment, Plaintiffs, Class Representatives, and each Class Member, on behalf of themselves and any other legal or natural persons who may claim by, through or under them, agree to fully, finally and forever release, relinquish, acquit, discharge and hold harmless the Released Parties from any and all claims, demands, suits, petitions, liabilities, causes of action, rights, and damages of any kind and/or type relating to the subject matter of the Action arising during the period between January 1, 2012 and June 30, 2023, including, but not limited to, compensatory, exemplary, punitive, expert, and/or attorneys' fees, or by multipliers, whether past, present, or future, mature, or not yet mature, known or unknown, suspected or unsuspected, contingent or non-contingent, derivative or direct, asserted or unasserted, whether based on federal, state or local law, statute, ordinance, regulation, code, contract, common law, or any other source, or any claim of any kind related, arising from, connected with, and/or in any way involving the Litigation, that are, or could have been, defined, alleged or described in the Litigation, including, but not limited to, claims that the City's gas and/or electric utility rates during the period of January 1, 2012 to June 30, 2023 violate Article XIII C of the California Constitution (commonly known as Proposition 218 or Proposition 26) and claims that the City's transfer of funds from its gas and electric utility enterprise funds to the City's general fund based on article XII, section 2 of the City's Charter violates Article XIII C of the California Constitution.

15. This Court hereby dismisses this Action with prejudice and without costs (except as provided for in the Settlement Agreement as to costs) as to all Settlement Class Members who did not timely and properly request to be excluded from the Settlement Class, consistent with the Released Claims identified in the Settlement Agreement. Persons who were by definition excluded from the Settlement Class or those persons who timely and properly excluded themselves, as set forth in Exhibit A, attached hereto, are not Settlement Class Members and not bound by this Final Order and Final Judgment or the Release.

16. For the reasons set forth in their application for attorney's fees, the Court hereby awards Class Counsel attorney's fees in the amount of $_____ and reimbursement of expenses in the amount of $_____. For the reasons set forth in the Class Representative's Request for Service Awards, the Court hereby awards the Class Representative $_____ as a Service Award. The foregoing sums shall be paid from the Settlement Fund in accordance with the Settlement Agreement.

17. The Settlement Administrator is to be compensated for its services in connection with the Settlement Agreement in accordance with the terms and conditions set forth in the Settlement Agreement.

18. Plaintiffs and the Settlement Class, on the one hand, and the Defendants, on the other, shall take nothing further from the other side except as expressly set forth in the Settlement Agreement and this Final Order and Final Judgment.

19. The Parties are authorized to implement the terms of the Settlement Agreement.

20. Pursuant to California Code of Civil Procedure section 664.6 and Rule 3.769(h) of the California Rules of Court, the Court reserves exclusive and continuing jurisdiction over this Action, the Plaintiff, the Class Members, and Defendant for purposes of administrating, consummating, enforcing, and interpreting the Settlement Agreement, the Final Order and Final Judgment, and for any other necessary purpose, and to issue related orders necessary to effectuate the final approval of the Settlement Agreement.

21. The parties are hereby ordered, pursuant to the terms and conditions of this Settlement

Agreement, to take all necessary and appropriate steps to establish the means necessary to implement the Settlement.

22. The Court adopts its findings and conclusions set forth in the Original Judgment, attached to the Settlement Agreement as Exhibit A, except as modified by the Court of Appeal with respect to the rent issue, and incorporates said findings and conclusions as if fully set forth herein. Judgment is hereby entered for the City on all claims in the Litigation, First Amended Consolidated Complaint, Tolled Claims Action, and/or any other complaint Plaintiff might file challenging the City's electric rates. Judgment is further entered in favor of Petitioner and Plaintiff Miriam Green and each of the certified gas classes on all claims challenging the City's gas rates, except with respect to the rent issue.

23. This document shall constitute a Judgment for purposes of California Rule of Court 3.769(h). The Court is directed to enter this Final Order and Final Judgment forthwith.

IT IS SO ORDERED.

DATED: _____ _____

Judge of the Superior Court

Exhibit I

PROPOSED
INSTRUCTIONS ON REMAND

1. The trial court is directed to implement the parties' settlement in a manner consistent with their settlement agreement, including but not limited to:

(a) consider the parties' stipulation to file an amended consolidated complaint or other requests to add and/or consolidate claims challenging the City's gas and electric rates collected in fiscal years 2019 through 2023;

(b) consider the parties' motion for preliminary approval of their settlement;

(c) if it grants preliminary approval, direct the parties to give notice to the settlement class identified in the settlement, hold a final fairness hearing to consider approving the settlement agreement, and consider class counsel's motion for attorney fees; and

(d) if final approval of the settlement is granted after consideration of any objections by class members, enter judgment in accordance with the settlement agreement and direct the City to comply with all terms of the settlement. The trial court is further directed to enter judgment for the City on all claims challenging the City's electric rates and in favor of Green and each of the certified gas classes on all claims challenging the City's gas rates, except with respect to the rent issue.

2. In the event the trial court does not finally approve the settlement or its final approval is reversed on appeal, the trial court shall retry the rent issue consistent with this reversal order and remand instructions.

3. Upon completion of the retrial of the rent issue, if necessary pursuant to paragraph 2 of these instructions, the trial court is directed to enter judgment consistent with the original judgment entered in this action for the City on all claims challenging the City's electric rates and in favor of Green and each of the originally certified gas classes on all claims challenging the City's gas rates, except with respect to the rent issue it shall enter judgment consistent with its decision on retrial.

4. The clerk is directed to issue a remittitur forthwith.

Exhibit J

CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT

THIS CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT (this "Agreement") is entered into this 9th day of March, 2021 by and between the City of Palo Alto, a California charter city and municipal corporation with offices at 250 Hamilton Avenue, Palo Alto, California 94301 ("CITY"), and Phoenix Class Action Administration Solutions, a California Corporation with offices at Orange County, CA ("COMPANY"). COMPANY and CITY may also be referred to individually herein as a "Party," and collectively herein as the "Parties."

RECITALS

WHEREAS, the City's counsel, Coluntuono, Highsmith & Whatley, PC, and Class counsel (Benink & Slavens, LLP and Kearney Littlefield, LLP) agree that COMPANY will provide class administration services in connection with *Green v. City of Palo Alto*, Santa Clara Superior Court Case No. 16CV300760 (the "Transaction");

WHEREAS, in connection with the Transaction, CITY may disclose to the COMPANY certain Confidential Information (defined below) of the CITY;

WHEREAS, CITY desires to protect the confidentiality of its Confidential Information; and

WHEREAS, the Disclosing Party (defined below) would not disclose its Confidential Information to the Receiving Party (defined below) but for the legal protections against unauthorized disclosures intended to be afforded by California law and this Agreement, and is relying on the protections against such disclosures contained in this Agreement in disclosing such Confidential Information to the Receiving Party;

NOW THEREFORE, in consideration of the foregoing and of the mutual covenants, opportunities and promises set forth herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. **Confidential Information.** As used in this Agreement, "Confidential Information" means all utility customer information, documents and other material of the Parties, in any form or media, that:
   A. Is not generally known to the public, whether of a technical, business or other nature including, without limitation any and all intellectual property rights either Party holds in and to its data, information, documents and other materials including without limitation any software, services and/or documentation, including patents, copyrights, and trademarks and trade secrets;
   B. is disclosed by one Party (the "Disclosing Party") to the other Party (the "Receiving Party") or that is otherwise learned or accessed by the Receiving Party in the course of its communications, discussions or other dealings with, or due to its physical or electronic access to the premises, property or systems of, the Disclosing Party; and/or

C. has been identified as being proprietary and/or confidential, or that would reasonably be deemed to be proprietary and/or confidential based upon the nature of such information and/or the circumstances surrounding its disclosure or receipt.

2. **Exceptions.** "Confidential Information" does not include information which:
   A. becomes generally available to the public other than as a result of a disclosure by the Receiving Party;
   B. was available to the Receiving Party on a non-confidential basis prior to its receipt by the Receiving Party;
   C. becomes available to the Receiving Party on a non-confidential basis from a source other than the Disclosing Party, its employees or agents, provided that such source is not bound by a confidentiality agreement with the Disclosing Party, its employees or agents or otherwise is prohibited from transmitting the information to the Receiving Party by a contractual, legal or fiduciary obligation; or
   D. was independently developed by the Receiving Party without access to or the benefit of the Confidential Information.

3. **Non-Disclosure of Confidential Information.** The Receiving Party, except as expressly provided in this Agreement, will keep all Confidential Information confidential and will not disclose any Confidential Information without the Disclosing Party's prior written consent, except as otherwise expressly provided for in this Agreement. In addition, the Receiving Party will not use, or permit others to use, the Disclosing Party's Confidential Information for any purpose other than for the Receiving Party's performance of the Transaction for the Disclosing Party. Such permitted use includes the disclosure of the Confidential Information to the Receiving Party's employees and agents on a need-to-know basis only and solely for purposes of the Receiving Party's performance of the Transaction between the Parties pursuant to and in accordance with this Agreement, provided that the Receiving Party informs such employees and agents of, and requires them to adhere to, the provisions of this Agreement. The Receiving Party is responsible for any use of Confidential Information by its employees and agents.

4. **Public Records or Governmental Request.** The Receiving Party shall comply with the confidentiality covenants contained herein to the fullest extent permitted by applicable law. Should the Receiving Party receive a public records request, or otherwise be directed by any governmental authority to disclose any or all of the Disclosing Party's Confidential Information, the Receiving Party shall promptly provide notice to the Disclosing Party of such request to allow the Disclosing Party an opportunity to prevent such disclosure.

5. **Ownership of Confidential Information.** All Confidential Information will remain the exclusive property of the Disclosing Party, and the Receiving Party will have no rights, by license or otherwise, to use the Confidential Information except as expressly provided herein or in a separate written agreement specifically granting such rights.

6. **Protection of Confidential Information.** The Receiving Party will take commercially reasonable measures to protect and secure the Disclosing Party's Confidential Information from unauthorized access, disclosure, dissemination or use, including, at a minimum, those measures it takes to protect and secure its own confidential information, and, in any event, no less than a reasonable standard of care.

7. **Notice of Unauthorized Disclosure.** The Receiving Party shall immediately notify the Disclosing Party upon the discovery of any loss or unauthorized disclosure or use of the Confidential Information of the Disclosing Party.

8. **Injunctive Relief.** Each Party acknowledges and agrees that a breach by it or one of its affiliates, employees or agents of any of the covenants set forth in this Agreement will cause irreparable injury to the other Party and its business for which damages, even if available, will not constitute an adequate remedy. Accordingly, each Party agrees that the other Party, in addition to any other remedy available at law or in equity, shall be entitled to the issuance of injunctive relief (including, without limitation, specific performance) by a court of competent jurisdiction in order to enforce the covenants and agreements contained herein.

9. **Attorneys' Fees and Costs.** If attorneys' fees or other costs are incurred to secure performance of any obligations under this Agreement, or to establish damages for the breach thereof, or to obtain any other appropriate relief, whether by way of prosecution or defense, the prevailing Party will be entitled to recover reasonable attorneys' fees and costs incurred in connection therewith.

10. **Non-waiver.** Any failure by either Party to enforce performance of any provision of this Agreement will not constitute a waiver of its right to subsequently enforce such provision or any other provision of this Agreement.

11. **Assignment.** Neither Party may assign this Agreement or any rights or obligations hereof without the prior written consent of the other Party, and any attempted assignment without such consent shall be null, void, and of no effect. Subject to the foregoing, the covenants, terms, conditions and provisions of this Agreement will apply to, and will bind, the heirs, successors, executors, administrators and assignees of the Parties.

12. **Section Headings.** The section headings contained in this Agreement are for convenience of reference only and are not intended to define the scope of any provision of this Agreement.

13. **Notices.** All notices or communications required or permitted to be given under this Agreement shall be in writing and shall be delivered by: (a) certified mail, return receipt requested to a party's principal place of business set forth below in this Notices section, (b) hand delivered, (c) e-mail, or (d) delivery by a reputable overnight carrier service. In the case of delivery by e-mail, the notice must be followed by a copy of the notice being delivered by a means provided in (a), (b) or (d). The notice will be deemed given on the day the notice is received.

Notices to the Parties under this Agreement shall be provided as follows:

NOTICE TO COMPANY:	NOTICE TO CITY:
Phoenix Class Action Administration Solutions 1411 N. Batavia Street, Suite 105 Orange, CA 92867	City of Palo Alto City Attorney's Office 250 Hamilton Ave. Palo Alto, CA 94301
Attention: Michael E. Moore CEO & Managing Partner	Attention: Amy Bartell Assistant City Attorney

14. **Governing Law.** This Agreement will be governed by and construed in accordance with California law, without regard to its conflict-of-law provisions.

15. **Jurisdiction and Venue.** Any judicial proceeding brought by or against the Parties arising out of this Agreement or any matter related hereto shall be brought exclusively in a California federal or state court of competent jurisdiction. The venue for any dispute shall be Santa Clara County, California. Each of the Parties consents to the exclusive jurisdiction and venue of the aforesaid courts.

16. **Severability.** If any term or provision of this Agreement or the application thereof shall, to any extent, be invalid or unenforceable, the remainder of this Agreement or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable shall not be affected thereby, and each term and provision of this Agreement shall be valid and enforced to the fullest extent permitted by law.

17. **Amendment.** This Agreement may only be modified by written amendment signed by authorized representatives of the Parties and approved as required under Palo Alto Municipal Code.

18. **Incorporation of Recitals**. The recitals set forth on page 1 of this Agreement are substantive terms of this Agreement and are hereby fully incorporated herein by this reference.

19. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which will be deemed an original and all of which will constitute one and the same Agreement.

20. **Term and Termination; Survival.** This Agreement is intended to cover Confidential Information disclosed or received by either Party prior or subsequent to the date of this Agreement. Unless otherwise earlier terminated, this Agreement will expire five (5) years from the date first written above; provided, however, that each Party's confidentiality and

security obligations with respect to the other Party's Confidential Information disclosed or received prior to termination or expiration will survive until such Confidential Information ceases to be confidential hereunder or the Receiving Party is no longer in possession or control of such information in accordance with the provisions of this Agreement.

21. **Return of Confidential Information.** Upon termination or expiration of this Agreement, or upon receipt of written request from the Disclosing Party, the Receiving Party shall promptly and securely return to the Disclosing Party all Confidential Information of the Disclosing Party, including any copies made thereof, and/or shall promptly and securely destroy (so as to render such Confidential Information unreadable by any third party) all such Confidential Information of the Disclosing Party in the Receiving Party's possession or control (including in the possession or control of any employee or agent of the Receiving Party) and shall, upon request of the Disclosing Party, certify such secure destruction in writing to the Disclosing Party within thirty (30) days of such request.

22. **Section Headings.** All section headings contained in this Agreement are for convenience and reference only and are not intended to define or limit the scope of any provision of this Agreement.

23. **Entire Agreement.** This Agreement represents the entire agreement of the CITY and COMPANY with respect to the subject matter hereof, and supersedes any prior agreements, understandings, and representations, whether written, oral, expressed, implied, or statutory. The CITY hereby acknowledges that in entering into this Agreement it did not rely on any information not explicitly set forth in this Agreement.

(SIGNATURE BLOCK FOLLOWS ON THE NEXT PAGE.)

PARTY SIGNATURES TO THE AGREEMENT

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized representative(s) as of the date first set forth above.

COMPANY

Phoenix Class Action Administration Solutions

APPROVED:

By:_____

Name: Michael E. Moore

Title: CEO & Managing Partner

CITY OF PALO ALTO

APPROVED:

By: DocuSigned by: Ed Shikada _____

Ed Shikada
City Manager

RECOMMENDED:

By: DocuSigned by: Dean Batchelor _____

Dean Batchelor
Director of Utilities

APPROVED AS TO FORM:

By: DocuSigned by: Molly Stump _____

Molly S. Stump
City Attorney

DocuSign

Certificate Of Completion

Envelope Id: C2E299AC1A47441F8B16C47947C585FA
Status: Completed
Subject: Please DocuSign: Green v Palo Alto ClassActionSettlement (FULL FINAL).pdf
Source Envelope:
Document Pages: 194
Signatures: 2
Certificate Pages: 2
Initials: 0
AutoNav: Enabled
EnvelopeId Stamping: Enabled
Time Zone: (UTC-08:00) Pacific Time (US & Canada)

Envelope Originator:
Tricia Hoover
250 Hamilton Ave
Palo Alto , CA 94301
Tricia.Hoover@CityofPaloAlto.org
IP Address: 199.33.32.254

Record Tracking

Status: Original
9/7/2022 11:27:28 AM
Holder: Tricia Hoover
Tricia.Hoover@CityofPaloAlto.org
Location: DocuSign

Security Appliance Status: Connected
Pool: StateLocal

Storage Appliance Status: Connected
Pool: City of Palo Alto
Location: DocuSign

Signer Events	Signature	Timestamp
Molly Stump Molly.Stump@cityofpaloalto.org City Attorney City of Palo Alto Security Level: Email, Account Authentication (None)	DocuSigned by: Molly Stump 39A473B653574A9... Signature Adoption: Pre-selected Style Using IP Address: 199.33.32.254	Sent: 9/7/2022 11:30:12 AM Viewed: 9/7/2022 1:28:36 PM Signed: 9/7/2022 1:29:09 PM
Electronic Record and Signature Disclosure: Not Offered via DocuSign		
Ed Shikada Ed.Shikada@cityofpaloalto.org Ed Shikada, City Manager City of Palo Alto Security Level: Email, Account Authentication (None)	DocuSigned by: Ed Shikada F2DCA19CCC8D4F9... Signature Adoption: Pre-selected Style Using IP Address: 199.33.32.254	Sent: 9/7/2022 1:29:12 PM Viewed: 9/7/2022 4:42:37 PM Signed: 9/8/2022 8:49:37 AM
Electronic Record and Signature Disclosure: Not Offered via DocuSign		

In Person Signer Events	Signature	Timestamp

Editor Delivery Events	Status	Timestamp

Agent Delivery Events	Status	Timestamp

Intermediary Delivery Events	Status	Timestamp

Certified Delivery Events	Status	Timestamp

Carbon Copy Events	Status	Timestamp
Lili Wyckoff lwyckoff@chwlaw.us Security Level: Email, Account Authentication (None)	COPIED	Sent: 9/8/2022 8:49:41 AM
Electronic Record and Signature Disclosure: Not Offered via DocuSign		

Carbon Copy Events	Status	Timestamp
Michael Colantuono mcolantuono@chwlaw.us Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Not Offered via DocuSign	COPIED	Sent: 9/8/2022 8:49:42 AM
Katherine Ramirez Vargas katherine.ramirezvargas@cityofpaloalto.org Senior Legal Secretary City of Palo Alto Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Not Offered via DocuSign	COPIED	Sent: 9/8/2022 8:49:44 AM
Joanna Tran Joanna.Tran@Cityofpaloalto.org Program Assistant II City of Palo Alto Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Not Offered via DocuSign	COPIED	Sent: 9/8/2022 8:49:45 AM

Witness Events	Signature	Timestamp

Notary Events	Signature	Timestamp

Envelope Summary Events	Status	Timestamps
Envelope Sent	Hashed/Encrypted	9/7/2022 11:30:12 AM
Certified Delivered	Security Checked	9/7/2022 4:42:37 PM
Signing Complete	Security Checked	9/8/2022 8:49:37 AM
Completed	Security Checked	9/8/2022 8:49:45 AM

Payment Events	Status	Timestamps