

SETTLEMENT AGREEMENT

This Settlement Agreement is made between the Parties, which include the Town of Proctor, Vermont (hereinafter “Town” or “Town of Proctor”), and the undersigned private individuals and entities (hereinafter “Settling Defendants”).

WHEREAS, in October 2010, the Town filed a Petition in the Vermont Superior Court, Rutland Civil Division, in a case styled In re Town of Proctor Drinking Water System, Docket Number 820-10-10 Rdcv, seeking an order declaring that a decision by the Town to discontinue drinking water service to customers located outside the Town’s jurisdictional limits is “require[d]” by “public good and necessity,” and that no “damages . . . will be sustained thereby,” 24 V.S.A. § 3410, and approving the discontinuance;

WHEREAS, the Settling Defendants answered the Petition, objecting to and/or opposing the relief sought;

WHEREAS, the Parties enter into this Settlement Agreement in order to facilitate prompt judicial resolution of the Town’s Petition, and to avoid the complication and expense of further litigation of such matters;

WHEREAS, the Parties agree that this Settlement Agreement is fair and reasonable; and

WHEREAS, by entering into this Settlement Agreement, the Parties acknowledge that this is a settlement of a bona fide dispute and none of the Parties admit any issues of law or fact, except as set forth herein;

NOW, THEREFORE, IT IS AGREED that:

1. Parties. The Parties to this Settlement Agreement are the Town of Proctor, Vermont, and the Settling Defendants.

2. Application of this Agreement. This Settlement Agreement applies to and is binding upon the Parties, as well as any of their successors or assigns.

3. Definitions. Whenever the terms listed below are used in this Agreement, the following definitions shall apply:

a. “Case” shall mean In re Town of Proctor Drinking Water System, Docket Number 820-10-10 Rdcv, in the Vermont Superior Court, Civil Division, Rutland Unit.

b. “Settlement Agreement” or “Agreement” shall mean this settlement agreement, including all appendices.

c. “Settling Defendants” shall mean those individuals or entities who: own real estate that is located outside the Town’s jurisdictional limits which was served with drinking water provided by the Town at the time the Town served its Petition under 24 V.S.A. § 3410; filed a notice of appearance and/or answer to the Town’s Petition; and, by their signatures below, have agreed and entered into this Settlement Agreement.

d. “Town of Proctor” shall mean the Town of Proctor, Vermont, the municipal governmental entity residing in Rutland County, Vermont, with a charter approved by the Vermont Legislature, and shall include all agencies and instrumentalities of the Town, including, without limitation, the Proctor Water Department, and the Town of Proctor Selectboard.

e. “Other Outer-District Water Customer” shall mean an individual or entity – listed on Appendix C hereto – that owns a parcel or parcels of property, located outside the Town’s jurisdictional limits, which was served with drinking water provided by the Town at the time the Town served its Petition under 24 V.S.A. § 3410, but who failed to answer the Town’s Petition or file a Notice of Appearance in the Case. It also includes any person or entity listed on

Appendix C who became a water customer of the Town as a result of purchasing or otherwise becoming a successor-in-interest with respect to any real estate that was owned by a person or entity who was served with the Town's Petition, but failed to answer or file a Notice of Appearance in the Case.

4. Covenants by the Settling Defendants.

a. Upon signing this Agreement, the Settling Defendants covenant and agree to join in and support, as may be appropriate, any and all motions or legal proceedings as are necessary to secure the Superior Court's approval of the court order attached hereto as Appendix A.

b. Upon the Superior Court's approval and entry of the order attached hereto as Appendix A, the Settling Defendants covenant and agree not to assert any and all claims, causes of action, suits or demands of any kind whatsoever in law or in equity which they now have, may have had, or hereafter have (except as set forth in Paragraph 5, below ("Reservation of Rights")), against the Town of Proctor, arising out of or in connection with the Town's decision to discontinue and terminate drinking water service to the property or properties owned by any of the Settling Defendants located outside of the Town's jurisdictional limits.

5. Reservation of Rights. The Settling Defendants reserve, and this Agreement is without prejudice to, all rights against the Town with respect to matters not included within the Covenants by the Settling Defendants, including, but not limited to, liability for failure to meet a requirement of this Agreement; liability arising from actions or omissions unrelated to the discontinuation of drinking water service outside the Town; and liability for damage to the property of any Settling Defendant that is caused by the Town's water system infrastructure, including, without limitation, its water transmission main. The Settling Defendants also reserve,

and this Agreement is without prejudice to, any and all rights the Settling Defendants may have with respect to liability arising from the Town's termination of drinking water service to any property of any Settling Defendant on a date prior to November 15, 2012. The Town specifically reserves any and all defenses it may have, whether now or in the future, to any claims reserved by the Settling Defendants, including, but not limited to, defenses arising from or based on one or more easements between the Town (or its agents or predecessors), and any of the Settling Defendants (or their predecessors), relating to the Town's water system infrastructure.

6. Payments by Town of Proctor

a. Notice By Town

Within 7 days of the Superior Court's approval and entry of the order attached hereto as Appendix A, the Town of Proctor will send by certified U.S. mail to each Other Outer-District Water Customer, one copy of the notice and the request form that is attached hereto as Appendix B, which apprise the recipients that they may obtain financial assistance payments from the Town by timely returning the request form.

b. Return of Forms Requesting Financial Assistance

As indicated in the model notice and form, attached hereto at Appendix B, the Other Outer-District Water Customers will have until the date specified in such notice to sign and return the form to the Clerk of the Superior Court. Any form that is timely signed and returned to the Court Clerk will constitute a valid request by the signatory to receive a payment from the Town of Proctor in the manner and amount provided in this Agreement. If any Other Outer-District Water Customer does not timely return a form, they will not be eligible for any payment under this Agreement. An Other Outer-District Water Customer will not be entitled to claim or receive payments in an amount or manner different than as provided in this Agreement.

c. List of Respondents Provided To Town

The Town will request that the Court Clerk – as soon as reasonably possible after the expiration of the time period for Other Outer-District Water Customers to return the forms referred to in Paragraph 6.b – provide the Proctor Town Clerk with a list of those who returned the forms in a timely manner.

d. Disbursement of Funds

Within 20 days of receiving the list from the Court Clerk, the Town will mail out disbursements by check to: each Settling Defendant; each Other Outer-District Water Customer who appears on the list provided by the Court Clerk under Paragraph 6.c; and to an individual designated by the United States (on behalf of the U.S. Fish and Wildlife Service) to receive such disbursement. To the extent possible and consistent with this Agreement, the checks will be mailed to the names and addresses used by the Town for purposes of mailing water charges or bills to its water customers located outside of the Town.

The total amount available for disbursement will be \$250,000.00, less \$1,003.00 (for mediation expenses incurred by Settling Defendants), or, \$248,997.00. The dollar amount of each disbursement check will be calculated as follows: the amount of \$248,997.00 will be divided by the sum of:

- (a) the number of Settling Defendants;
- (b) the number of Other Outer-District Water Customers appearing on the list provided by the Court Clerk; and,
- (c) one additional disbursement, to be made to a person designated by the United States.

If multiple Settling Defendants have ownership interests in any single, undivided parcel

of property that was served with drinking water by the Town at the time the Town served its Petition under 24 V.S.A. § 3410, then such Settling Defendants will constitute a single Settling Defendant for purposes of the above calculation, and such Settling Defendants will be entitled to receive only a single disbursement check (between them).

Similarly, if multiple Other Outer-District Water Customers have ownership interests in any single, undivided parcel of property that was served with drinking water by the Town at the time the Town served its Petition under 24 V.S.A. § 3410, then such Other Outer-District Water Customers will constitute a single Other Outer-District Water Customer for purposes of the above calculation, and such Customers will be entitled to receive only a single disbursement check (between them).

No Settling Defendant or Other Outer-District Water Customer who owns only a single, undivided parcel of property that was served with water by the Town of Proctor at the time the Town served its Petition under 24 V.S.A. § 3410 will constitute more than one Settling Defendant or more than one Outer-District Customer, for purposes of the above calculation. Nor will any such Settling Defendant or Other Outer-District Water Customer be eligible to receive more than a single disbursement check, notwithstanding that such Settling Defendant or Other Outer-District Water Customer is or was charged or billed for multiple units of water service at or to such single, undivided parcel of property, and notwithstanding that such person uses or did use drinking water furnished by the Town to serve more than one family dwelling unit at such property. Proctor Pittsford Country Club, Inc., one of the Settling Defendants, hereby specifically acknowledges and consents to this method of calculation and disbursement.

However, any Settling Defendant or Other Outer-District Water Customer who owns two or more separately-deeded land parcels – each of which can be conveyed separately and each of

which was served separately with water by the Town at the time the Town served its Petition under 24 V.S.A. § 3410 – will count as two or more Settling Defendants or Other Outer-District Water Customers, for purposes of the above calculations (the number being equal to the number of separately-deeded parcels at issue). Likewise, such Settling Defendant or Other Outer-District Water Customer will be eligible to receive separate and additional disbursement checks – one check for each separately-deeded land parcel at issue (so long as each parcel can be conveyed separately).

In determining the amount of any disbursement check due to any Settling Defendant or Other Outer-District Water Customer, the Town Clerk shall reduce the amount to which any such person or entity is otherwise entitled, by the amount that such person or entity – as of the date the Clerk receives the list referred to in Paragraph 6.d – is past due (i.e., more than 30 days late) on previously billed water charges for water service provided by the Town. If any such reduction is made to a disbursement check, the Clerk when mailing the disbursement check shall include a notification that the amount of the disbursement was reduced because and to the extent of an amount past due on a water bill. If the amount past due exceeds the amount of the disbursement to which a person is otherwise entitled under this Agreement, then no disbursement check (and only a written explanation) will be provided to such person or entity. Only the Town of Proctor shall benefit from any reduction in the amount of any disbursement that results from an overdue water bill; the amount of the disbursements to any person or entity who otherwise qualifies for a disbursement pursuant to this Agreement will not be increased or affected because of any reduction to a disbursement that results from a past due water bill.

Within 20 days of receiving the list referred to in Paragraph 6.c, the Town will also mail a check for \$1,003.00, addressed and made payable to Michael Marks of MarksPowers LLP (the

Court-assigned mediator in this Case).

The Settling Defendants hereby reserve any and all rights to enforce the Town's obligation to make and mail such payments in the manner or the amounts specified in this Agreement.

7. Effective Date. Unless otherwise specified in this Agreement, this Agreement shall become effective and binding against the Parties when the Court approves and enters the order that is attached hereto as Appendix A.

8. Effect of Settlement. Nothing in this Settlement Agreement shall constitute or be construed as an admission of any issue of law or fact by the Town of Proctor. The Parties intend for the "Consent Judgment And Order," attached hereto as Appendix A, to constitute the final judgment in the Case.

9. Integration Provision. This Settlement Agreement, including all appendices, constitutes the entire settlement agreement between the Town of Proctor and the Settling Defendants with respect the Town's decision to discontinue and terminate drinking water service to the property or properties owned by any of the Settling Defendants located outside of the Town's jurisdictional limits. All prior discussions, drafts and writings – including, without limitation, any writing or discussion made by any person (including the court-appointed mediator) during mediation – are specifically superseded by this Settlement Agreement and may not be used to vary or contest the terms of this Settlement Agreement.

10. Separate Claims By Settling Defendants Bruce and Anita Paynter. By entering into this Agreement, Settling Defendants Bruce and Anita Paynter hereby agree to be bound by this Settlement Agreement, including, without limitation, the Covenants by Settling Defendants set forth in Paragraph 4 of this Agreement, except that this Agreement is without prejudice and does

not apply to the claims that have been asserted by the Paynters in a separate case now pending in the Vermont Superior Court, Rutland Civil Division, which is styled Town of Proctor v. Paynter, Docket Number 679-9-11, insofar as the claims asserted in that separate case do not arise from and are unrelated to the Town's discontinuation of drinking water service to the Paynters' residence in Pittsford, Vermont.

Town of Proctor, Vermont


By Its Duly Authorized Agent

Dated: 7-22-12