

## SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (“**Settlement and Release**”) is made and entered into this day of November 28, 2023 (“**Effective Date**”), by and between the claimant, Fresno-Air Ltd., a California limited Partnership (“**Claimant**”), and the respondent, the County of Fresno, a political subdivision of the State of California (“**County**”). This Settlement and Release is intended by Claimant and County (together, the “**Settling Parties**”) to fully, finally, and forever release, relinquish, resolve, satisfy, discharge and settle the Released Claims as further set forth herein, upon and subject to the terms and conditions hereof.

### RECITALS

WHEREAS, as of the Effective Date, County leases certain office and warehouse space in Fresno (“**Leased Premises**”) from Claimant under that certain Lease Agreement by and between the Settling Parties, dated August 24, 2021 (the “**Current Lease**”), and the County has leased the Leased Premises from Claimant under certain successive, prior Lease Agreements between the Settling Parties for the Leased Premises since 2011, dated June 21, 2011 and September 13, 2016 (collectively, the “**Prior Leases**”), until they entered into the Current Lease (the Current Lease, together with the Prior Leases, are collectively the “**Leases**”).

WHEREAS, under the Leases, County agreed to pay all charges for certain utilities, including electricity and natural gas (collectively, such charges are the “**Electric and Gas Utilities Charges**”) and telephone, to such utility providers for County’s use of the Leased Premises.

WHEREAS, Claimant claims that one PG&E meter, for electricity and natural gas, for the Leased Premises was inadvertently left in Claimant’s name since the start of County’s first

tenancy of the Prior Leases, for which Claimant alleges it has paid since July 9, 2011 but erroneously did not charge County, as Electric and Gas Utilities Charges, under Leases (the “**Alleged Undercharges**”). Claimant claims that Claimant, including its agents, discovered the Alleged Undercharges for the first time in December 2022.

WHEREAS, on March 27, 2023, Claimant, through its property management company, Russell G. Smith, presented a claim to County for recovery of monetary sums in the total amount of \$98,091.17, representing the total amount of the Alleged Undercharges for all Electric and Gas Utility Charges that have not been paid by County under the Leases, between July 1, 2011 and January 31, 2023 (collectively, the “**Claim**”).

WHEREAS, having met and conferred with Claimant regarding said Claim, County and Claimant have agreed to resolve said Claim as further set forth herein.

WHEREAS, to avoid the time and expense of potential litigation, the Settling Parties now wish to reach an end, compromise, and settlement for all existing and potentially existing disputes between them in any way related to all Electric and Gas Utilities Charges, including the Alleged Undercharges, that have not been paid by County under the Leases between July 1, 2011 and January 31, 2023, including any and all claims of a monetary or personal property nature as further set forth herein.

NOW THEREFORE, in consideration of the execution of this Settlement and Release, the releases and promises made herein, as well as the considerations exchanged pursuant to this Settlement and Release, the Settling Parties agree as follows:

**A. Definitions.**

“**Released Claims**” means any and all manner of claims, demands, rights, actions, suits, causes of action, fees, costs, attorneys’ fees and costs, penalties, and damages incurred, and any

and all liabilities and liens of any nature whatsoever, known or unknown (including, but not limited to, “Unknown Claims”), suspected or unsuspected, asserted or unasserted, in law or in equity, which Releasors or any of them, whether directly, representatively, derivatively, or in any other capacity, ever had, now have or hereafter can, shall or may have, relating in any way to all Electric and Gas Utilities Charges, including the Alleged Undercharges, that have not been paid by County under the Leases between July 1, 2011 and January 31, 2023.

**“Releasees”** mean County, including, but not limited to, all of County’s departments, offices (including, but not limited to, the Sheriff’s Office), subdivisions, and agencies, all of County’s past and present officers (including, but not limited to, the Sheriff), agents, employees, representatives, officers, directors, Board of Supervisors (including each of the members of the Board of Supervisors), attorneys, affiliates, servants, volunteers, and insurance companies, and all other entities related to any or all of the foregoing, and all successors and assigns in interest of any or all of the foregoing.

**“Releasors”** means Claimant on its own behalf and on behalf of (i) all of Claimant’s respective past and present partners (including but not limited to general partner(s) and limited partner(s)), direct and indirect parents, subsidiaries and affiliates, officers, representatives, agents, property managers acting on behalf of Claimant, and any and all of their respective heirs, issues, executors, administrators, relatives, guardians, successors and assigns in interest, representatives, and agents, and (ii) any other person or entity claiming (now or in the future) to be acting through or on behalf of Claimant or any such persons or entities.

**“Settlement Amount”** means the total amount of ninety-eight thousand and ninety-one dollars and seventeen cents (\$98,091.17) to be paid by County to Claimant for the full and final settlement consideration of the Released Claims.

**“Unknown Claims”** means any part of the Released Claims that Releasors, or any of them, do not know or suspect to exist in their, his, or her favor at the time of the release of Releasees that if known by them, him, or her, might have affected their, his, her settlement with and release of Releasees under this Settlement and Release, or might have affected their, his, or her or its decision to enter into this Settlement and Release.

**B. Claimant’s Representations and Promises.**

Claimant represents and promises to County that:

1. As of February 1, 2023 Claimant changed the name of the customer under the one PG&E meter, referenced above, to County, so that County is directly billed by PG&E for any and all PG& electricity and natural gas charges from such meter while the Lease is in effect; and

2. As to any other PG&E meter(s) that have served or are serving the Leased Premises under the Leases, none of them have been or are in the name of Claimant, and all of them have been or are in the name of County so that County has been or is directly billed by PG&E for any and all PG& electricity and natural gas charges from such PG&E meters while the Leases are or have been in effect.

**C. Releasors’ Agreements.**

Releasors agree:

1. To fully, finally, and forever waive the Released Claims against the Releasees, as further set forth herein;

2. To fully, finally, and forever release, relinquish, and discharge the Released Claims against Releasees, as further set forth herein;

3. To covenant not to sue the Releasees for the Released Claims, as further set forth herein;  
and

4. To fully comply with this Settlement and Release.

**D. County's Representations and Promises.**

In consideration of the Releasor's Release, under Section E. hereof, County shall pay or cause to be paid to Claimant the Total Settlement Amount, as full and final settlement consideration of the Released Claims against Releasees. Upon County's payment of the Total Settlement Amount, the Claimant's Claim shall be deemed to be fully and finally satisfied. Under no circumstances will County be required to pay more or less than the Total Settlement Amount pursuant to this Settlement and Release.

**E. Release.**

1. Releasors fully, finally, and forever release, relinquish, and discharge the Released Claims against Releasees and covenant not to sue the Releasees with respect to such Released Claims, and shall be permanently barred and enjoined from instituting, commencing, or prosecuting any such Released Claims against Releasees or any of them.

2. This is a full, final, and complete release, relinquishment and discharge of the Released Claims that may have been brought or may be brought, by Releasors against Releasees arising from or relating in any way to all Electric and Gas Utilities Charges, including the Alleged Undercharges, that have not been paid by County under the Leases between July 1, 2011 and January 31, 2023.

3. It is the intent of the Settling Parties that this Settlement and Release serves to forever resolve any and all disputes arising from relating in any way to all Electric and Gas Utilities Charges, including the Alleged Undercharges, that have not been paid by County under

the Leases between July 1, 2011 and January 31, 2023, and to that end, to fully, finally, and forever release, relinquish, resolve, satisfy, discharge and settle the Released Claims.

4. Accordingly, Releasors fully, finally, and forever expressly waive any and all rights and benefits which Releasors may have, or had under California Civil Code section 1542, arising from or related to Unknown Claims arising from relating in any way to all Electric and Gas Utilities Charges, including the Alleged Undercharges, that have not been paid by County under the Leases July 1, 2011 and January 31, 2023. California Civil Code section 1542 states:

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

Releasors acknowledge that Releasors, or any of them, may hereafter discover facts in addition to or different from those that any of them now know or believe to be true with respect to the subject matter of the Released Claims or may incur or suffer loss or damages of any nature, or indebtedness, which may have been caused by, be or related to, the Electric and Gas Utilities Charges, including the Alleged Undercharges, that have not been paid by County under the Leases July 1, 2011 and January 31, 2023, but Releasors expressly have, upon the Effective Date, fully, finally and forever settled, released, relinquished and discharged any and all claims, known or unknown, suspected or unsuspected, contingent or non-contingent, whether or not concealed or hidden, that now exist or heretofore have existed, upon any theory of law or equity now existing or coming into existence in the future, including, but not limited to, conduct that is negligent, reckless, intentional, with or without malice, or a breach of any duty, law or rule, without regard to the subsequent discovery or existence of such different or additional facts.

Releasors acknowledge that the foregoing waiver and relinquishment was separately bargained for and a key element of this Settlement and Release.

**F. General Provisions.**

1. This Settlement and Release does not alter or amend any of the Leases or any of the Settling Parties rights and obligations thereunder.

2. The Settling Parties agree to refrain from initiating oral or written statements or comments, and from responding to inquiries from third parties, including press, regarding the Alleged Undercharges, party negotiations, and/or the terms of this Settlement and Release, except to confirm the terms of this Settlement and Release, or as may be required by law, including but not limited to the Ralph M. Brown Act and the California Public Records Act. Claimant acknowledges and agrees that **this Settlement and Release is a public record under the Public Records Act**, subject to full public disclosure, whether voluntarily or involuntarily, by County.

3. This Settlement and Release contains the entire agreement between the Settling Parties respect to the matters referred to in this Settlement and Release, and cannot be modified except by written agreement executed by the Settling Parties. This Settlement and Release embodies the entire agreement and understanding that exists between the Settling Parties with respect to the matters referred to in this Settlement and Release, and supersedes all prior and contemporaneous agreements, representations, and undertakings.

4. This Settlement and Release shall be binding upon, and inure to the benefit of, the respective successors and assigns of the Settling Parties.

5. Claimant represents to County that the person executing this Settlement and Release on behalf of Claimant is duly authorized to do so. County represents to Claimant that the person executing this Settlement and Release on behalf of County is duly authorized to do so.

6. The headings used in this Settlement and Release are intended for the convenience of the reader only and shall not affect the meaning or interpretation of this Settlement and Release.

7. The Settling Parties agree that this Settlement and Release may be executed by electronic signature as provided in this paragraph:

a. An “electronic signature” means any symbol or process intended by the individual signing this Settlement and Release to represent their signature, including but not limited to (1) a digital signature; (2) a faxed version of an original handwritten signature; or (3) an electronically scanned and transmitted (for example by PDF document) of a handwritten signature.

b. Each electronic signature affixed or attached to this Settlement and Release (1) is deemed equivalent to a valid original handwritten signature of the person signing this Settlement and Release for all purposes, including but not limited to evidentiary proof in any administrative or judicial proceeding, and (2) has the same force and effect as the valid original handwritten signature of that person.

c. The provisions of this section satisfy the requirements of Civil Code section 1633.5, subdivision (b), in the Uniform Electronic Transaction Act (Civil Code, Division 3, Part 2, Title 2.5, beginning with section 1633.1).

d. Each party using a digital signature represents that it has undertaken and satisfied the requirements of Government Code section 16.5, subdivision (a), paragraph (1) through (5), and agrees that each other’s party may rely upon that representation.



e. This Settlement and Release is not conditioned upon the Settling Parties conducting the transactions under it by electronic means and either party may sign this Settlement and Release with an original handwritten signature.

8. This Settlement and Release may be signed in counterparts, each of which is an original, and all of which together constitute this Settlement and Release.

9. If any term of this Settlement and Release (including any phrase, provision, covenant, or condition) is held by a court of competent jurisdiction to be invalid or unenforceable, this Settlement and Release shall be construed as not containing that term, and the remainder of this Settlement and Release shall remain in full force and effect; except that this section shall not be applied to the extent that it would result in a frustration of the Settling Parties' intent under this Settlement and Release. The Settling Parties shall use their best efforts to cure any inadequacies or deficiencies identified by a court of competent jurisdiction in a manner consistent with the express and implied intent of this Settlement and Release and then to adopt or re-enact such part of this Settlement and Release as necessary or desirable to permit implementation of this Settlement and Release.

10. Each party hereto has had an opportunity to review this Settlement and Release, confer with its legal counsel regarding the meaning of this Settlement and Release, and negotiate revisions to this Settlement and Release. Accordingly, neither party hereto shall rely upon Civil Code section 1654 in order to interpret any uncertainty in the meaning of the Settlement and Release.

11. This Settlement and Release shall be governed by the laws of the State of California. Any suit, claim, or legal proceeding of any kind related to this Settlement and Release shall be filed and heard in the Superior Court of California, County of Fresno.

12. Except as may otherwise be set forth herein, each party hereto shall bear his/its own costs and attorneys' fees and costs in any suit, claim, or legal proceeding of any kind related to this Settlement and Release.

13. The Settling Parties agree to cooperate fully in good faith and execute any and all supplementary documents and to take all additional actions which may be reasonably necessary or appropriate to give full force and effect to the terms and intent of this Settlement and Release.

**[Go to Signature Page]**

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By signing below, the parties agree to be bound by the foregoing Settlement and Release.

Claimant, FRESNO-AIR LTD.

Dated 10-24, 2023

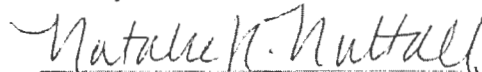
By:   
FRESNO-AIR LTD.

**FOR COUNTY OF FRESNO**

Dated 11/9, 2023

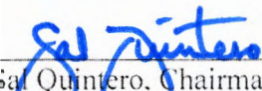
Approved as to legal form:

DANIEL C. CEDERBORG  
County Counsel


By:   
Natalie R. Nuttall, Deputy County  
Counsel

Dated 11/28, 2023

COUNTY OF FRESNO

By:   
Sal Quintero, Chairman of the Board  
of Supervisors of the County of  
Fresno

ATTEST:  
BERNICE E. SEIDEL  
Clerk of the Board of Supervisors  
County of Fresno, State of California

By:  Deputy

For Accounting Use Only:  
Org: 31113300  
Fund: 0001  
Subclass: 10000  
Acct: 7430