

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

CHARLES TAYLOR et al.)
)
Plaintiffs,)
)
v.)
DISTRICT OF COLUMBIA WATER AND SEWER AUTHORITY)
)
Defendant.)
)

**Case Number: 1:01CV00561
Judge: Barbara Jacobs Rothstein**

SETTLEMENT AGREEMENT

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SETTLEMENT AGREEMENT

1 INTRODUCTION

1.1 Subject to the approval of the United States District Court for the District of Columbia (“the Court”), this Settlement Agreement sets forth the full and final terms by which the Class Representative, Charles Taylor, on behalf of himself and the class of current and former African-American employees of the District of Columbia Water and Sewer Authority certified by the Court on March 13, 2007, and the Defendant, District of Columbia Water and Sewer Authority (“DC WASA” or “WASA”), have settled and resolved all claims raised by the Plaintiffs in this matter.¹

¹ The District of Columbia Water and Sewer Authority is now known as “DC Water” and will be referred to as such in this Agreement except for the “Introduction,” “Background” and “Definitions” sections.

2 **BACKGROUND AND PURPOSES**

2.1 On March 16, 2001, Charles Taylor, as Class Representative, filed a Class Action Complaint against DC WASA in the United States District Court for the District of Columbia on behalf of himself and current and former African-American employees of DC WASA. The Complaint alleged, *inter alia*, that the Defendant subjected the proposed class “to a pattern and practice of discrimination, including disparate treatment, and personnel policies and practices which have a disparate impact on African Americans,” and it sought relief “pursuant to Section 1981 of the Civil Rights Act of 1871, as amended by the Civil Rights Act of 1991, 42 U.S.C. Section 1981 (‘Section 1981’), and Title VII of the Civil Rights Act of 1964, 42 U.S.C. Section 2000e et seq. (Title VII), including, but not limited to declaratory, injunctive and other equitable relief, and compensatory damages, litigation expenses and reasonable attorneys fees, based on Defendant’s continuing deprivation of rights accorded to the named Plaintiff and ...” the proposed class.

2.2 Mr. Taylor filed a First Amended Complaint on May 2, 2001, and a Second Amended Complaint on December 19, 2002. Both Amended Complaints contained the same substantive allegations that were contained in the original Complaint.

2.3 On March 13, 2007, the Court certified, under Rule 23(b)(2) for injunctive relief only, a class of “Black employees at WASA who sought and were denied positions, career ladder promotions, or other advancement, or whose advancement was delayed, or whose compensation was otherwise affected by WASA’s alleged unlawful discrimination, from October 1996 through December 2000.”

2.4 In 2010, in an effort to avoid the certain expense and uncertain outcome of further litigation, the Parties decided to explore the possibility of settlement and agreed to have the case referred to the Court’s Neutral Evaluation Program. Laurel Malson and Arthur Peabody were

selected to be the Neutral Evaluators (“Neutrals”). The Parties presented confidential position statements to the Neutrals, and mediation sessions were held in March, August and September 2011.

2.5 As a result of the mediation sessions, the Parties have reached this Settlement Agreement (“Agreement”) recognizing that, in the absence of an approved settlement, they would face a long litigation course, including motions to decertify the class and for summary judgment and, possibly, trial and appellate proceedings that would consume a great deal of time and resources and present each of them with ongoing litigation risks and uncertainties. The Parties wish to avoid those risks and uncertainties, as well as the consumption of additional time and resources, and have decided that an amicable settlement pursuant to the terms and conditions of this Agreement is preferable to continued litigation.

2.6 Each party believes that it is in its best interests to enter into this Agreement. With respect to the Plaintiffs, specifically, the Class Representative and Class Counsel believe that entering into this Agreement, which provides for prompt and certain relief to the Class, is in the best interests of the Class, and that the terms of this Agreement are fair, reasonable and adequate.

2.7 Without any admission or concession by the Defendants of any liability or wrongdoing with respect to the allegations in the Second Amended Complaint, all released claims will be finally and fully compromised, settled, and released subject to the terms and conditions of this Agreement.

2.8 By entering into this Agreement, the Parties wish to fully and finally settle and discharge all claims raised by the Plaintiffs in this Action.

3 **DEFINITIONS**

3.1 The words and terms listed below have the meanings set forth in this Section wherever they are used in this Agreement:

3.1.1 The “Action” and “Civil Action” means the above-captioned case, Charles Taylor et al. v. District of Columbia Water and Sewer Authority (1:01-cv-00561).

3.1.2 The “Agreement” and the “Settlement Agreement” mean this Agreement.

3.1.3 The “CAFA Notice” refers to the notice to be sent to appropriate federal officials pursuant to the requirements of the Class Action Fairness Act of 2005 (“CAFA”), 28 U.S.C. Section 1715(b).

3.1.4 A “Claimant” is a Settlement Class Member who timely submits a Claim Form to the Claims Administrator.

3.1.5 The “Claimant Release Form” (Exhibit D) is the Release Agreement each Claimant must timely submit to the Administrator to be eligible to receive payment from the Claims Fund.

3.1.6 The “Claims Administrator” (“Administrator”) is Settlement Services, Inc., P.O. Box 1657, Tallahassee, FL 32302-1657.

3.1.7 The “Claim Form” (Exhibit B) is the form attached to the Notice of Class Action Settlement, which each individual Class Member must submit to the Administrator to become a Settlement Class Member.

3.1.8 The “Claims Fund” is that portion of the Settlement Fund designated for distribution to Eligible Claimants.

3.1.9 “The Class” means the class certified by the Court on March 13, 2007 (*i.e.*, “Black employees at WASA who sought and were denied positions, career ladder promotions, or

other advancement, or whose advancement was delayed, or whose compensation was otherwise affected by WASA's alleged unlawful discrimination, from October 1996 through December 2000 ..."). However, pursuant to the Parties' stipulation, as ratified by the Court's August 25, 2009 order, individuals who were employed by WASA as either: (a) General Manager; (b) Assistant General Manager; (c) Deputy General Manager; (d) General Counsel; (e) In-House Counsel; or (f) Director of Human Resources, at any point between October 1, 1996 and December 31, 2000, are excluded from the class.

3.1.10 "Class Counsel" and "Plaintiffs' Counsel" refer to The Law Office of David A. Branch and Associates, PLLC and The Law Office of Alexander Hillery, PLLC, jointly.

3.1.11 A "Class Member" is a person who is a member of the Class.

3.1.12 "Class Representative" and "Named Plaintiff" refer to Mr. Charles Taylor.

3.1.13 "Counsel for the Parties" and "Counsel" mean Class Counsel and Defense Counsel, jointly.

3.1.14 "The Court" is the United States District Court for the District of Columbia.

3.1.15 "DC Water," "Defendant," "WASA" and "DC WASA" refer to the District of Columbia Water and Sewer Authority.

3.1.16 "Defense Counsel" and "Counsel for DC Water" refer to Morgan, Lewis & Bockius LLP.

3.1.17 The "Distribution Date" is the date that distributions from the Claims Fund are made to Eligible Claimants by the Administrator.

- 3.1.18 The “Effective Date” is the date by which all of the following have occurred:
- (1) the Court has entered an order finally certifying the Settlement Class;
 - (2) the Court has entered an order granting a motion for final approval of this Agreement;
 - (3) the Court has entered an order and judgment dismissing the Civil Action with prejudice; and
 - (4) the time for appeal has run without an appeal being filed, or any appeal (including any requests for rehearing *en banc*, petitions for certiorari or appellate review) has been finally resolved.
- 3.1.19 An “Eligible Claimant” is a Claimant who the Administrator determines to be eligible to receive a distribution from the Claims Fund upon his or her timely submission of an executed Claimant Release Form.
- 3.1.20 The “Execution Date” is the date that this Agreement has been signed by both Parties and their respective Counsel.
- 3.1.21 “Mailed” means distributed via first-class mail, postage prepaid, or as otherwise directed by the Court.
- 3.1.22 The “Named Plaintiff Release” and “Named Plaintiff Release Form” (Exhibit C) mean the Release Agreement to be executed by the Named Plaintiff, Mr. Charles Taylor.
- 3.1.23 “Notice” means the Notice of Class Action Settlement (Exhibit A).
- 3.1.24 The “Opt-Out Deadline” is the date by which any Class Member who wants to be excluded from this Agreement must submit an opt-out request to the Administrator.
- 3.1.25 “The Parties” are the Plaintiff Class, as represented by the Class Representative, and the Defendant, DC Water.

3.1.26 The “Preliminary Approval Date” is the date that the Court enters the Preliminary Approval Order.

3.1.27 The “Preliminary Approval Order” is an Order entered by the Court that preliminarily approves this Agreement.

3.1.28 “Released Parties” means DC Water, its predecessor, parent, subsidiary and affiliated companies, and in the case of all such entities, their respective past and present owners, representatives, officers, directors, attorneys, agents, employees, insurers, successors and assigns.

3.1.29 “The Settlement Class” means all members of the Class, except:

- (1) Class Members who opt-out of this Agreement; and
- (2) Class Members excluded from the Settlement Class pursuant to ¶8.1.2.2

(“Mandatory Exclusion: Prior Released Claims”), below, of this Agreement.

3.1.30 A “Settlement Class Member” is a person who is a member of the Settlement Class.

3.1.31 The “Settlement Fund” is the fund to be administered by the Administrator, the monies from which will be distributed to the Eligible Claimants and Class Counsel pursuant to the terms of this Agreement.

4 **JURISDICTION AND VENUE**

4.1 The Parties agree that the Court has jurisdiction over the Parties and the subject matter in this Action, and that venue is proper. The Court will retain jurisdiction over this Action for the duration of this Agreement for the purpose of entering all orders, decrees and judgments that may be necessary to enforce its provisions and implement the relief provided herein.

5 **DUTIES OF THE PARTIES PRIOR TO COURT APPROVAL**

5.1 **Preliminary Approval Order**

5.1.1 Within ten (10) business days after the Execution Date, Class Counsel will move the Court for entry of the Preliminary Approval Order. Said motion will seek an order that:

(1) vacates the existing injunctive relief class certification under Rule 23(b)(2) and provisionally certifies the Settlement Class under Rule 23(b)(3);

(2) preliminarily approves this Agreement;

(3) approves the form and content of the proposed Notice of Class Action Settlement (Exhibit A);

(4) approves the form and content of the proposed Claim Form, Named Plaintiff Release Form, and Claimant Release Form (Exhibits B, C, and D, respectively);

(5) directs the mailing of the Notice and Claim Form to the Class Members;

(6) schedules a Fairness Hearing to determine whether this Agreement should be finally approved;

(7) preliminarily enjoins all Class members, pending the outcome of the Fairness Hearing, from:

(a) commencing, prosecuting or maintaining any claim already asserted in, and encompassed by, this Action, and

(b) commencing, prosecuting or maintaining in any court or forum other than the Court any claim, action or other proceeding that challenges, seeks review of, or relief from any order, judgment, act, decision or ruling of this Court in connection with this Agreement or otherwise in connection with this Action; and

(8) enters Administrative Order No. 1 (Exhibit E).

5.1.2 Class Counsel will submit this Agreement and any attachments to it with the motion seeking entry of the Preliminary Approval Order.

5.2 **CAFA Notice**

5.2.1 Within ten (10) business days after this Agreement is filed with the Court, DC Water will serve notices on the appropriate authorities pursuant to the Class Action Fairness Act, 28 U.S.C. Section 1715.

6 **NOTICE TO CLASS MEMBERS**

6.1 **Intent**

6.1.1 The Parties intend to provide actual notice to each Class Member, to the extent practicable.

6.2 **Determining the Composition of the Class**

6.2.1 **Transmittal of Class Member Data to the Claims Administrator**

6.2.1.1 Within ten (10) days after the Preliminary Approval Date, DC Water will provide the Administrator with a list consisting of the name, social security number, employee identification number, last known address, and last known telephone number of each Class Member. DC Water will simultaneously provide the same list to Class Counsel, with the social security numbers redacted. The social security numbers will be used only to locate and identify Class Members, and the Administrator will keep them confidential.

6.2.2 **Challenging Omission from the Class**

6.2.2.1 Any person who believes that he or she was omitted from the Class erroneously may contact the Administrator or Class Counsel and submit any information or documentation in his or her possession to substantiate the claim that he or she should be included in the Class. Any such submission must be made within sixty (60) days after the initial Notice is mailed to the Class Members.

6.2.2.2 If any such claim is made, the Administrator will review any information or documentation submitted and, if necessary, seek confirmation of the person's employment and positions held from the Defendant, through Defense Counsel. The Defendant will cooperate with the Administrator to the extent reasonably necessary to enable the Administrator to make an accurate determination as to whether the individual should or should not be included in the Class.

6.2.2.3 A person who was not initially included in the Class will not be subsequently included unless he or she can establish good cause to be included. The Administrator's determination as to whether good cause to include the individual exists is final and not subject to review by, or appeal to, any court, mediator, arbitrator or other judicial body, including, without limitation, this Court.

6.2.2.4 If the Administrator determines that the individual should have been included in the Class, the Administrator will promptly mail him or her a Notice and Claim Form.

6.3 **Distributing the Notice and Claim Form**

6.3.1 **Pre-Distribution Address Verification**

6.3.1.1 In order to provide the best notice practicable, before mailing the Notice and Claim Form the Administrator may, in its discretion: (1) run the addresses provided by DC Water through the Postal Service's National Change of Address ("NCOA") Database; and (2) attempt to verify the addresses provided by performing address searches using public and proprietary electronic resources that collect address and other data for such purposes.

6.3.2 **Form of Notice and Claim Form**

6.3.2.1 The document attached to this Agreement as Exhibit A will constitute the Notice of Class Action Settlement, and the form attached to this Agreement as Exhibit B will constitute the Claim Form, subject to Court approval.

6.3.3 **Initial Mailing of the Notice**

6.3.3.1 Within thirty (30) days after its receipt of the Class Member Data from the Defendant pursuant to ¶6.2.1 (“Transmittal of Class Member Data to the Claims Examiner”), above, the Administrator will mail the Notice and Claim form, in the form approved by the Court, to each Class Member.

6.3.4 **Second Mailing of Notice When First is Returned**

6.3.4.1 If a Notice is returned to the Claims Administrator, the Administrator will attempt to locate the Class Member. To that end, the Administrator may use any information provided by DC Water, and it may engage third party vendors to assist in locating Class Members.

6.3.4.2 If the Administrator is able to locate a Class Member whose initial mailing was returned, the Administrator will re-mail the Notice to him or her within five (5) business days. In such an instance, the Second Notice will be identical to the Notice included in the initial mailing, and the Second Notice will provide the Class Member not less than thirty (30) days to respond thereto.

6.3.4.3 If the Administrator is unable to locate a Class Member whose first mailing was returned, the Administrator will re-mail the notice to his or her last-known address.

6.3.4.4 Beginning thirty (30) days after the initial mailing of the Notice, the Claims Administrator will provide Counsel, on a bi-weekly basis, with: (1) a copy of all Claim Forms received; and (2) a list of those Class Members who have not been located.

6.3.5 **Claims Administrator: Record Keeping and Due Diligence**

6.3.5.1 The Administrator will maintain a record of its activities undertaken pursuant to this Agreement, including but not limited to retaining copies of all Settlement Checks issued, and any affidavits, attestations and documentation received or considered.

6.3.5.2 At least ten (10) days prior to any scheduled Fairness Hearing, the Administrator will provide Class Counsel with an affidavit attesting to its mailing of the Notices and Claim Forms, and all original documents received, including Claim Forms, Opt-Out requests and objections, and all Notices that were returned and not delivered.

7 **FAIRNESS HEARING AND OBJECTIONS**

7.1 **Fairness Hearing**

7.1.1 In the motion seeking Preliminary Approval of this Agreement, the Parties will request that the Court set a schedule and choose a date for the Fairness Hearing. To afford sufficient time for the distribution of notices and claims forms, and the submission of requests for exclusion (“Opt Outs”) and objections, the Parties will request that the Court not schedule the Fairness Hearing sooner than one hundred fifty (150) days after the Preliminary Approval Date.

7.2 **Objections**

7.2.1 A Class Member who objects to this Agreement must submit his or her written objection, stating the basis for the objection, to the Administrator within sixty (60) days of the date that the Notice was mailed to him or her. A Class Member whose initial Notice was returned and who is mailed a Second Notice must submit his or her objection within thirty (30) days of the date that the Second Notice was mailed to him or her.

7.2.2 The deadline for filing an objection, and the requirement that an objection be in writing and state the basis for the objection, will be set forth prominently in the Notice.

7.2.3 Class Members who fail to object to this Agreement in the manner specified herein will be deemed to have waived any objection to this Agreement and will be precluded from making any objection at the Fairness Hearing.

7.2.4 An attorney who seeks to represent a Class Member for the purpose of objecting to this Agreement must file a Notice of Appearance with the Court and serve copies of said Notice on Counsel at least ten (10) days before the Fairness Hearing.

7.2.5 Beginning thirty (30) days after the initial mailing of the Notice, the Administrator will provide Counsel with a copy of all objections received on a bi-weekly basis. Class Counsel will file copies of those objections with the Court before the Fairness Hearing.

8 **MONETARY RELIEF**

8.1 **The Settlement Class**

8.1.1 **Composition of the Settlement Class**

8.1.1.1 The Settlement Class will consist of all Class Members except:

- (1) Class Members who opt-out of this Agreement; and
- (2) Class Members who are excluded from the Settlement Class pursuant to

¶8.1.2.2 (“Mandatory Exclusion: Prior Released Claims”), below.

8.1.2 **Exclusion from the Settlement Class**

8.1.2.1 **Voluntary Exclusion: Opting-Out**

8.1.2.1.1 Any Class Member may exclude himself or herself from—or “opt-out” of—this Agreement by timely filing a written request for exclusion with the Administrator pursuant to the provisions of the Notice. The request for exclusion must be signed by the Class Member who wants to opt-out of the Agreement.

8.1.2.1.2 To be deemed timely filed, an exclusion request must be post-marked (if mailed) or received (if delivered) by the deadline set forth in the Notice. The postmark will be the exclusive means of determining whether a mailed opt-out request was timely filed.

8.1.2.1.3 Class members who timely file an opt-out request will be excluded from the Settlement Class, and will not be entitled to receive any monetary award under this Agreement.

8.1.2.1.4 If a Class Member opts-out of this Agreement, the statute of limitations for his or her individual claims will resume running on the date he or she submits an opt-out request to the Administrator. The fact that submission of an opt-out request will cause the resumption of the running of the statute of limitations on any individual claims will be set forth prominently in the Notice.

8.1.2.1.5 A Class Member may rescind his or her opt-out request. To be effective, a request to rescind a filed opt-out request must be in writing, signed by the Class Member, and received by the Administrator by the date set forth in the Notice.

8.1.2.1.6 Beginning thirty (30) days after the mailing of the initial Notice, the Administrator will provide Counsel with a copy of all opt-out requests received on a bi-weekly basis. Class Counsel will file copies of all opt-out requests received with the Court before the Fairness Hearing.

8.1.2.2 **Mandatory Exclusion: Prior Released Claims**

8.1.2.2.1 A Class Member who brought a claim of race discrimination and executed a release of that claim that encompasses the entire period from October 1, 1996 to December 31, 2000 is excluded from the Settlement Class.

8.1.2.2.2 A Class Member who brought a claim of race discrimination and executed a release of that claim that encompasses less than the entire period from October 1, 1996 to

December 31, 2000 is not excluded from the Settlement Class, but will receive a pro rata share of the amount that he or she would have received from the Claims Fund but for the release.

8.1.2.2.3 A Class Member will not be excluded from the Settlement Class under this Section because he or she:

(1) signed a general release (*e.g.*, a release of “any and all claims,” or a release of “all claims that were brought or could have been brought”);

(2) signed a release without having brought a claim of race discrimination (*e.g.*, as a result of a reduction-in-force); or

(3) signed a release as a result of bringing a claim or claims the gravamen of which was other than a claim of race discrimination (*e.g.*, as the result of bringing a sex discrimination or sexual harassment claim), even if the release purports to release a claim or claims of race discrimination.

8.1.2.3 **Identifying Excluded Class Members**

8.1.2.3.1 When it provides the Administrator and Class Counsel with the information required by ¶6.2.1 (“Transmittal of Class Member Data to the Claims Administrator”), above, DC Water will also provide the Administrator and Class Counsel with:

(1) a list of Class Members that DC Water contends should be excluded from the Settlement Class pursuant to this Section; and

(2) copies of signed releases of claims and any other documents that support DC Water’s contention.

8.1.2.3.2 Within fourteen (14) days of Class Counsel’s receipt of DC Water’s list, the Parties will meet and confer.

8.1.2.3.3 If Class Counsel does not object to the exclusion of a particular Class Member, that Class Member will be excluded from the Settlement Class, and Counsel will so notify the Administrator.

8.1.2.4 **Dispute Resolution**

8.1.2.4.1 If Class Counsel objects to the exclusion of a particular Class Member, the Parties will make their best, good-faith effort to expeditiously resolve the dispute.

8.1.2.4.2 If, after making their best, good-faith effort to expeditiously resolve the dispute, the Parties cannot agree, they will, as soon as is practicable, submit the issue to the Administrator.

8.1.2.4.3 If the issue is submitted to the Administrator, the Administrator will exclude the Class Member from the Settlement Class if the documentation submitted by DC Water clearly establishes that the Class Member should be excluded. The Administrator will promptly notify Counsel of its determination. The Administrator's determination is final and unreviewable.

8.1.2.4.4 The Administrator will promptly notify any Class Member who is excluded from the Settlement Class under this Section of his or her exclusion from the Settlement Class and the basis for it.

8.2 **The Settlement Fund**

8.2.1 No later than ten (10) days after the Preliminary Approval Date, DC Water will pay by wire transfer or otherwise transmit to the Administrator the sum of Two Million Eight Hundred Eighty-Five Thousand dollars (\$2,885,000). The monies so transferred, including the interest subsequently earned thereon, if any, will constitute the Settlement Fund.

8.3 **Establishing the Settlement Fund**

8.3.1 The \$2,885,000 paid or otherwise transmitted from DC Water to the Administrator will be placed in an account (the “Settlement Fund Account”) established by the Administrator, as approved by Counsel, and managed by the Administrator, under the Court’s supervision. The Settlement Fund Account may be interest bearing or non-interest bearing, at the Administrator’s discretion.

8.3.2 The Administrator will act to establish and qualify the Settlement Fund Account as a “Qualified Settlement Fund” pursuant to Section 468B of the Internal Revenue Code of 1986, as amended, and Treas. Reg. Section 1.468B-1, et seq., and to maintain that status.

8.4 **Authority Over the Settlement Account**

8.4.1 The Administrator is the only entity authorized to make withdrawals or payments from the Settlement Fund Account. Once it has been established, DC Water will have no authority over or responsibility or liability for the administration of the Settlement Fund Account.

8.5 **Purpose of the Settlement Fund**

8.5.1 The Two Million Eight Hundred Eighty-Five Thousand Dollar (\$2,885,000) payment is made in full satisfaction of the claims of the Named Plaintiff and the Class Members, as well as for other purposes identified in this Section, and includes:

- (1) payment of Awards to Eligible Claimants, and of the Service Payment to the Named Plaintiff, as provided herein;
- (2) attorneys’ fees, including fees incurred in connection with securing court approval of this Agreement, managing the claims process, and monitoring the implementation of this Agreement;

- (3) all litigation costs, as provided herein; and
- (4) the employee's share of applicable payroll and federal, state and local

income taxes.

8.5.2 The \$2,885,000 payment does not include costs in connection with the establishment and administration of the Settlement Fund including, but not limited to, costs related to issuing the Notice, claims processing, securing legal advice relating to the establishment and administration of the Qualified Settlement Fund and the tax treatment and tax reporting of awards to claimants, preparing tax returns (and the taxes associated with such tax returns as defined below), and the Administrator's fees and expenses, which costs will be paid by DC Water pursuant to ¶9.1.9 ("Administrator's Costs and Expenses To Be Paid By DC Water"), below.

8.5.3 Further, the \$2,885,000 payment to the Settlement Fund does not include DC Water's share of taxes and contributions (*i.e.*, FUTA, SUTA, FICA and Medicare), which will be paid separately by DC Water to the Administrator. Upon its receipt of notice from the Administrator pursuant to ¶9.1.5 ("DC Water to Remit Its Share of Taxes and Contributions to the Administrator"), below, DC Water will remit to the Administrator any required tax and contribution payment.

8.6 **Claim Filing Procedures**

8.6.1 **Submission of Claims Forms to the Administrator**

8.6.1.1 Class Members who seek payment from the Claims Fund under this Agreement must submit a Claim Form to the Administrator, post-marked (if mailed) or received (if faxed or delivered) by the deadline set forth in the Notice. The Claim Form is to be fully or substantially completed, if possible. A Class Member's failure to timely submit a substantially complete

Claim Form to the Administrator will bar him or her from receiving payment from the Claims Fund; however, as provided in ¶8.6.5 (“Administrator’s Discretion to Excuse Late or Incomplete Filings and to Extend Filing Deadline”), below, the Claims Administrator may, in its sole discretion, excuse the late or incomplete filing of a Claim Form, or extend the deadline for filing the Claim Form, for good cause.

8.6.2 **Administrator and Class Counsel to Assist Settlement Class Members in Submitting Claim Forms**

8.6.2.1 The Administrator will maintain a toll-free telephone number to respond to requests from Class Members for assistance in completing and filing Claim Forms. Class Counsel will also be reasonably available to answer questions from and provide assistance to Class Members who request assistance in completing and submitting their Claim Forms. This information will be prominently set forth in the Notice.

8.6.3 **Class Members to Promptly Notify the Administrator of Any Change of Address**

8.6.3.1 Class Members must promptly notify the Administrator of any change of address. The responsibility of Class Members to so notify the Administrator will be clearly set forth in the Notice. The failure of a Class Member to promptly notify the Administrator of a change of address may result in the forfeiture of any monetary award he or she might be entitled to receive under this Agreement.

8.6.4 **Administrator to Determine Eligibility for and Amount of Payment to Claimants**

8.6.4.1 The Administrator will:

- (1) determine which Claimants are eligible to receive a monetary award from the Claims Fund;
- (2) determine how much each Claimant is eligible to receive, pursuant to the Allocation Formula set forth herein; and
- (3) transmit that information to Counsel. Counsel will treat the information as confidential.

8.6.5 **Administrator's Discretion to Excuse Late or Incomplete Filings and to Extend Filing Deadline**

8.6.5.1 The Administrator may, in its discretion, and for good cause:

- (1) excuse the late or incomplete filing of any document by a Class Member; and
- (2) grant any individual Class Member or group of Class Members an extension of time, not to exceed sixty (60) days, to file or complete any document.

8.6.5.2 The Administrator's determination of what constitutes "good cause" is at its sole discretion, and that determination is final and not subject to review by, or appeal to, any court, mediator, arbitrator or other judicial body, including, without limitation, this Court.

8.7 **The Claims Fund**

8.7.1 The Administrator will reserve One Million Nine Hundred Thousand Dollars (\$1,900,000) from the Settlement Fund to be distributed to Eligible Claimants, which sum will constitute the Claims Fund. The Claims Fund, together with the interest generated by the entire

Settlement Fund, if any, will be allocated to Eligible Claimants pursuant to the Allocation Formula set forth in Section 8.8 (“Allocation Formula”), below.

8.8 **Allocation Formula**

8.8.1 The payment to each Eligible Claimant will be based on the following allocation formula:

8.8.2 The allocation will be based on a “points” system, consisting of a total of 3,000 equally-valued points. As a baseline for the distribution of these points, each Claimant will receive one (1) point, which will leave approximately 2,000 points for further allocation (assuming all Settlement Class Members timely submit Claims Forms).

8.8.3 Each Claimant is eligible to receive additional points based on:

(1) the ratio of his or her potential back pay loss in comparison to the Class’ potential back pay losses based on the regression model from Table 1 (with pay grade control) of Dr. Lanier’s expert report submitted in this Action, which criteria will be used to allocate seventy-five percent (75%) of the unallocated points; and

(2) the nature and severity of his or her particular allegations of pay discrimination, emotional injury and economic loss, which criteria will be used to allocate the remaining twenty-five percent (25%) of the unallocated points. This information will be solicited on the Claim Form.

8.8.3.1 To assess these criteria, the Administrator will consider the credibility of the Claimant's allegations, (taking into account, *e.g.*, whether there are sufficient concrete details offered and whether there is any documentation submitted to support the allegations), the character, severity and duration of the alleged discrimination, and the extent to which there are credible or documented allegations of serious psychological, economic, consequential or incidental harms resulting from the alleged discrimination.

8.9 **Determination of the Administrator is Final and Unreviewable**

8.9.1 The Administrator's determination with respect to eligibility, point allocation, the amount to be paid to each Eligible Claimant, and any other matter with which the Administrator is vested with discretion pursuant to the terms of this Agreement, is final and not subject to review by, or appeal to the Court or any other court, mediator, arbitrator or other body.

8.9.2 DC Water and Counsel are not responsible, and may not be held liable, for any determination reached or discretion exercised by the Administrator.

8.10 **Payment to Eligible Claimants**

8.10.1 **Notice of Awards to Claimants**

8.10.1.1 As soon as practicable after the Final Approval Date, the Administrator will send each Eligible Claimant a Notice of Award specifying the amount of the payment that he or she is eligible to receive from the Claims Fund, and a Claimant Release form. Each Claimant Release Form will advise the recipient that he or she has sixty (60) days from the date of the Notice of Award to return the signed Release Form to the Administrator.

8.10.2 **Distribution of Settlement Checks**

8.10.2.1 As soon as practicable after the deadline for the receipt of the Claimant Release Forms, the Administrator will distribute a settlement check to each Eligible Claimant in the amount that the Administrator determines he or she is entitled to receive

8.10.3 **Deceased Class Members**

8.10.3.1 If a Class Member who is otherwise eligible to receive a monetary award under this Agreement is deceased at the time of the distribution of such awards, the Administrator, upon receipt of sufficient proof of the Class Member's death, will pay the monetary award to which the deceased Class Member was entitled to his Estate, provided a claim for such payment is made to the Administrator by the deadline for the receipt of Claimant Release Forms. If any such payment is made, the Settlement Check will be made payable to "The Estate of" the deceased Class Member

8.10.3.2 To receive payment, a duly authorized representative of the deceased Class Member's Estate must sign a Claimant Release Form on behalf of the Estate.

8.10.3.3 The Claims Administrator may accept an individual as a duly authorized representative of the deceased Class Member's Estate if he or she: (1) presents legal documentation to that effect, or (2) attests under penalty of perjury that he or she is a duly authorized representative of said Estate.

8.10.3.4 To the extent practicable, the Administrator will require and obtain positive identification from any person to whom a Settlement Check is issued on behalf of a deceased Class Member's Estate pursuant to this Section.

8.10.4 **Settlement Checks**

8.10.4.1 **Settlement Checks Valid for One Hundred Eighty Days**

8.10.4.1.1 All Settlement Checks will be valid for one hundred eighty (180) days from the date appearing thereon, and must be negotiated within that time. Each Settlement Check will prominently state on its face that it must be negotiated within one hundred eighty (180) days. If it is practicable to do so, the Administrator will cause the exact expiration date of each settlement check to appear prominently thereon.

8.10.4.1.2 Additionally, each Settlement Check will be accompanied by a cover letter prominently stating that the check must be cashed within one hundred eighty (180) days of the date appearing thereon or the check will be void.

8.10.4.2 **Failure to Negotiate Settlement Check**

8.10.4.2.1 If a Settlement Check is returned to the Administrator, the Administrator will, as soon as is practicable following its receipt of the returned check, use its best efforts to locate the person to whom the check was distributed. If the Administrator locates him or her, it will promptly re-distribute the Settlement Check to him or her at the new address.

8.10.4.2.2 All Settlement Checks that are returned from Eligible Claimants who cannot be located by the best efforts of the Administrator will be held by the Administrator until the day after the check's expiration date. If the designated recipients of the checks do not claim them from the Administrator by that date, the funds will be returned to the Settlement Fund and distributed pursuant to ¶8.11 ("Distribution of Funds Remaining in the Settlement Fund"), below.

8.10.4.2.3 If any Eligible Claimant does not negotiate his or her Settlement Check within one hundred eighty (180) days from the date appearing thereon, he or she will be ineligible for, and forever barred from receiving, monetary relief under this Agreement, and the unclaimed funds will be distributed pursuant to ¶8.11 ("Distribution of Funds Remaining in the Settlement Fund"), below.

8.11 **Distribution of Funds Remaining in the Settlement Fund**

8.11.1 As soon as is practicable, but not earlier than ninety (90) days or later than one-hundred eighty (180) days after the deadline for Settlement Checks to be negotiated has expired, the Administrator will distribute any undistributed funds that remain in the Settlement Fund equally to the Eligible Claimants. However, if the remaining funds are, in Counsel's considered

judgment, too *de minimus* to justify such a distribution, the parties will jointly seek the Court's permission to distribute the remaining funds *cy pres* to the District of Columbia Legal Aid Society.

8.12 **Payment to the Named Plaintiff**

8.12.1 **Named Plaintiff to Receive Service Payment in Lieu of Award Predicated on the Allocation Formula**

8.12.1.1 The Formula set forth in Section 8.8 ("Allocation Formula"), above, does not apply to the Named Plaintiff, and he will not be eligible to receive an award pursuant to that formula.

8.12.1.2 In lieu of receiving such an award, the Named Plaintiff will receive a Service Payment of Sixty Thousand Dollars (\$60,000) in recognition of his service to the Class, provided he timely executes and submits a Claim Form and the Named Plaintiff Release Form.

8.12.2 **Distribution of the Named Plaintiff Release Form**

8.12.2.1 The Administrator will provide the Named Plaintiff with the Named Plaintiff Release Form when the Claimant Release Forms are distributed. The Named Plaintiff Release Form will provide the Named Plaintiff sixty (60) days from the date thereon to sign the Release and return it to the Administrator, which deadline will be prominently set forth on the Release Form.

8.12.3 **Distribution of Settlement Check to the Named Plaintiff**

8.12.3.1 As soon as practicable after the Administrator receives the executed Named Plaintiff Release Form from the Named Plaintiff, the Administrator will distribute a settlement check to the Named Plaintiff in the amount provided herein.

9 **TAXES**

9.1 **Duties and Responsibilities of the Administrator**

9.1.1 **Establishing the Qualified Settlement Fund**

9.1.1.1 Pursuant to Section 8.3 (“Establishing the Settlement Fund”), above, the Administrator, in cooperation with the Parties, will establish the Settlement Fund as a Qualified Settlement Fund within the meaning of Section 468B of the Internal Revenue Code of 1986, as amended, and Treas. Reg. Section 1.468B-1, et seq., and will administer the Fund under the Court’s supervision. The Parties agree to cooperate to ensure such tax treatment and will not take a position in any filing or before any tax or other authority inconsistent with such treatment.

9.1.2 **Administrator is Trustee of Settlement Fund**

9.1.2.1 The Administrator will serve as trustee of the Settlement Fund, and will act as a fiduciary with respect to the handling, management, and distribution of the monies therein, including the handling of tax-related issues and payments.

9.1.3 **Payment and Reporting of Federal, State and Local Taxes**

9.1.3.1 Awards to Eligible Claimants will be subject to applicable tax withholding and reporting.

9.1.3.2 The Administrator will be responsible for withholding, remitting and reporting each Eligible Claimant’s share of the payroll taxes from the Claims Fund. Except with respect to the Employer’s Payroll Tax Payment, the Administrator will be responsible for withholding, from any distribution from the Claims Fund, the required federal, state and local employment taxes and withholdings, including but not limited to federal and state income tax withholdings, FICA, and Medicare.

9.1.3.3 The Administrator will comply with all federal, state, local, and other reporting requirements, including any required reporting of attorneys' fees and other costs and expenses.

9.1.4 **Administrator to Determine the Tax Allocation of Distributions**

9.1.4.1 The Administrator will determine the allocation, for tax purposes, of the distribution made to each Eligible Claimant (*e.g.*, as wages, interest, compensatory damages, etc.), based on the submissions received from the Claimants and the principles set forth in Treas. Reg. §1.468B-4, as if DC Water made such payments directly to the Claimants, and the Administrator will withhold such taxes from all distributions as are legally required. The Administrator will exercise its discretion with respect to that allocation conservatively, so as to minimize Eligible Claimants' risk of incurring additional or unanticipated taxes or penalties due to inadequate withholding.

9.1.5 **DC Water to Remit Its Share of Taxes and Contributions to the Administrator**

9.1.5.1 The Administrator will notify DC Water of its share of all taxes and contributions (*i.e.*, FUTA, SUTA, FICA and Medicare) (the "Employer Payroll Tax Payment"), and DC Water will, within thirty (30) business days of receiving such notice, remit that amount to the Administrator for payment to appropriate taxing authorities.

9.1.6 **Administrator to Remit Payroll Tax Payment**

9.1.6.1 The Administrator will be responsible for the timely reporting and remittance of the Employer Payroll Tax Payment to the appropriate taxing authorities, and will indemnify DC Water for any penalty imposed upon DC Water due to the Administrator's incorrect calculation or late payment of any taxes, subject to the terms of the contract between the Administrator and DC Water.

9.1.7 **Interest**

9.1.7.1 Subject to the Administrator's obligation to comply with applicable laws, the Parties anticipate that any amounts designated as interest will not be subject to withholding and will be reported, if required, to the IRS on Form 1099-INT.

9.1.8 **Other Taxes Payable from the Claims Fund**

9.1.8.1 The Administrator will satisfy any tax obligations not otherwise addressed herein from the Claims Fund.

9.1.8.2 All taxes (including any estimated taxes) arising from income earned by the Settlement Fund, including any taxes that may be imposed on DC Water as a result of income earned by the Settlement Fund during any period in which the Settlement Fund does not qualify as a "Qualified Settlement Fund" for federal and state income tax purposes, will be paid out of the Claims Fund.

9.1.9 **Administrator's Costs and Expenses To Be Paid By DC Water**

9.1.9.1 All expenses and costs incurred in connection with the implementation of the Administrator's duties as set forth in this Section including, but not limited to, the cost of tax attorneys and/or accountants, mailing and other distribution costs, and expenses relating to filing or failing to file any returns described herein or otherwise required to be filed will be paid by DC Water.

9.1.10 **Mutual Cooperation**

9.1.10.1 The Parties agree to cooperate with the Administrator, any tax attorneys and accountants employed or retained by the Administrator, each other, and their respective tax attorneys and accountants to the extent reasonably necessary to carry out the provisions set forth in this Section.

9.1.11 **Defendant Has No Further Obligation to, or Liability or Responsibility for the Settlement Fund**

9.1.11.1 Other than DC Water's responsibility to remit the employer's share of payroll taxes and withholdings to the Administrator, pursuant to ¶9.1.5 ("DC Water to Remit Its Share of Taxes and Contributions to the Administrator"), above, DC Water will have no withholding, reporting or any other tax reporting or payment responsibilities with regard to the Settlement Fund or its distribution.

9.1.11.2 The Defendant will have no obligation to, or liability or responsibility for the administration of the Settlement Fund, the determination of any formulas for disbursement, or the disbursement of any monies from the Settlement Fund except:

(1) its obligation to pay the settlement amount of \$2,885,000 no later than ten (10) days after preliminary approval of this Agreement, pursuant to ¶8.2 ("The Settlement Fund"), above;

(2) its obligation to remit the Employer Payroll Tax Payment to the Administrator, pursuant to ¶9.1.5 ("DC Water to Remit Its Share of Taxes and Contributions to the Administrator"), above;

(3) its obligation to pay reasonable costs and expenses related to the Claims Administrator's implementation of the Agreement, pursuant to ¶9.1.9 ("Administrator's Costs and Expenses to be Paid By DC Water"), above, and Section 10 ("Administrator's Fees, Costs and Expenses"), below; and

(4) its obligation to provide the information necessary for Settlement administration to the Administrator, Settlement Monitor, and Class Counsel as set forth in this Agreement.

9.1.12 **Record Keeping and Access to Distribution Information**

9.1.12.1 The Administrator will transmit a copy of the distribution plan and allocation list to Counsel at least five (5) days before the Settlement Checks are distributed.

9.1.12.2 The Administrator will maintain copies of all records related to its administration of this Agreement, including copies of all Claim Forms and supporting documentation, releases, opt-out requests and objections received, and copies of all checks issued, for a period of five (5) years.

9.1.12.3 The Administrator will maintain all filed original, executed Releases until the expiration of the Settlement Fund, provided, however, that the Administrator will surrender any original individual Release upon order of the Court.

9.1.12.4 Access to individual allocation information may be had only upon written notice to Counsel and a showing of good cause (*e.g.*, actual or threatened litigation by a Claimant), or upon order of the Court. Any dispute as to whether good cause exists for such a disclosure will be resolved through the Dispute Resolution process set forth herein.

10 **ADMINISTRATOR'S FEES, COSTS AND EXPENSES**

10.1 DC Water will pay all reasonable fees, costs and expenses related to the Administrator's implementation and administration of this Agreement.

11 **NULLIFICATION OR TERMINATION OF THIS AGREEMENT**

11.1 **Agreement Not Approved, or Approval is Reversed or Modified**

11.1.1 If this Agreement is not approved by the Court, or if following approval by the Court such approval is reversed or substantively modified, or if for any other reason this Agreement fails to become effective in accordance with its material terms, this Agreement is

terminated, provided the Defendant notifies the Administrator, Class Counsel, and the Court of its termination within ten (10) days after the event giving rise to its termination.

11.2 **DC Water's Right to Terminate This Agreement, or Receive an Opt-Out Credit**

11.2.1 **DC Water's Right to Terminate this Agreement**

11.2.1.1 If the number of Class Members who duly request exclusion from the Settlement Class equals or exceeds fifty (50), DC Water may, within thirty (30) days after the Opt-Out Deadline, withdraw from and fully terminate this Agreement by providing written notice to the Administrator, Class Counsel and the Court.

11.2.2 **DC Water's Option to Receive an Opt-Out Credit in Lieu of Terminating This Agreement**

11.2.2.1 If the number of Class Members who duly request exclusion from the Settlement Class equals or exceeds fifty (50), DC Water may, at its option, take an Opt-Out Credit in lieu of terminating this Agreement. If DC Water exercises its option to take the Opt-Out Credit, the Opt-Out Credit it will receive is a pro rata share of the Claims Fund based on the number of Class Members who have opted out in excess of fifty, in relation to the total number of Class Members.

11.2.3 **Exercising the Option to Take An Opt-Out Credit**

11.2.3.1 To exercise its option to take the Opt-Out Credit, DC Water must so notify the Court, the Administrator and Class Counsel within thirty (30) days after the Opt-Out Deadline.

11.2.4 **Payment of the Opt-Out Credit**

The Administrator will pay DC Water any sum that it is entitled to receive pursuant to the terms of this Section from the Claims Fund within thirty (30) days after it receives notice of DC Water's intent to exercise its option to receive the Opt-Out Credit.

11.3 **Effects of Termination**

11.3.1 **Return of Settlement Fund to DC Water**

11.3.1.1 If this Agreement is terminated, the Administrator will return the Settlement Fund, including any interest earned through the date that the Administrator receives notice of the termination, to DC Water within thirty (30) days after the Administrator's receipt of such notice.

11.3.1.2 This Section will survive the termination of this Agreement, and is enforceable notwithstanding any provision in this Agreement to the contrary.

11.3.2 **No Waiver of Claims of Defenses**

11.3.2.1 If this Agreement is terminated, each party may prosecute or defend this Action as if the Agreement never existed, and no party will be deemed to have waived any claims, objections, rights, defenses, legal arguments or positions, including, but not limited to, claims or objections to class certification or decertification and claims and defenses on the merits, and this Agreement will not be considered an admission of liability by DC Water. Neither this Agreement, nor the Court's preliminary or final approval of it, will be admissible in any court for any purpose other than the enforcement of this Settlement Agreement.

11.3.3 **Parties Restored to the Status Quo Ante**

11.3.3.1 If this Agreement is terminated, the Parties will be restored to the litigation positions they respectively occupied in this Action before they entered into this Agreement, and the terms and provisions of this Agreement may not be used in this action or in any proceeding for any purpose other than the enforcement of this Agreement.

11.3.4 **Judgments and Orders to be Vacated**

11.3.4.1 If this Agreement is terminated, the Parties will jointly move the Court to vacate, *nunc pro tunc*, any judgments or orders entered in accordance with or pursuant to its terms, and the litigation of this Action will resume as if there had been no Agreement.

12 **RELEASES**

12.1 **Claimant Releases**

12.1.1 **Executed, Original Claimant Release Forms Must be Submitted to the Administrator**

12.1.1.1 Each Claimant must timely submit, by mail or delivery, an original, executed Claimant Release Form to the Administrator to receive payment from the Claims Fund.

12.1.2 **Claims Released By Claimants**

12.1.2.1 As consideration for receiving payment from the Claims Fund, each Claimant must execute a Claimant Release Form that waives, releases and surrenders the following claims:

(1) Any and all claims of race discrimination raised against the Released Parties in the Second Amended Complaint, and

(2) Any and all claims of race discrimination, known or unknown, that the Claimant has or may have had against the Released Parties under Section 1981, Title VII, and any other federal, state and local law, through December 31, 2007.

12.2 **Named Plaintiff Release**

12.2.1 **Executed, Original Named Plaintiff Release Must Be Submitted to the Administrator**

12.2.1.1 To receive his designated Service Payment as provided in this Agreement, the Named Plaintiff must timely submit, by mail or delivery, an original, executed Named Plaintiff Release Form to the Administrator.

12.2.2 **Claims Released by the Named Plaintiff**

12.2.2.1 The Named Plaintiff Release is more expansive than the release to be executed by the Claimants. The Named Plaintiff Release is a general release of all claims of any nature against the Released Parties under federal, state and local laws through the date that the Named Plaintiff Release is executed, except for those claims that he specifically reserves in ¶12.2.3 (“Claims Reserved by the Named Plaintiff”), below.

12.2.3 **Claims Reserved by the Named Plaintiff**

12.2.3.1 Notwithstanding any other provision of this Agreement, The Named Plaintiff specifically reserves and does not waive:

(1) the claims set forth in his pending case in the District of Columbia Superior Court against DC Water (captioned Charles Taylor v. District of Columbia Water & Sewer Authority, et al., Civil Action No: 0500002297); and

(2) any claims contained in or resulting from his pending EEOC Charge (No. 570-2012-01016).

12.3 **Releases Are a Material Part of this Agreement**

12.3.1 The terms of the Named Plaintiff Release and the Claimant Releases are a material part of this Agreement and are incorporated herein as if fully set forth in this Agreement. If the Releases are not finally approved by the Court, or this Agreement does not become effective for any reason or is terminated, the Releases will terminate *nunc pro tunc* and be of no force and effect.

12.4 **Administrator to Deliver Copies of Executed Releases**

12.4.1 The Administrator will deliver copies of all executed releases it receives to DC Water on a weekly basis.

13 **FAILURE TO OPT OUT OR FILE CLAIM FORM DEEMED A RELEASE OF CLAIMS**

13.1 Class Members who do not timely opt out of this Agreement or timely file a Claim Form and executed Claimant Release Form are, upon the Distribution Date of this Agreement, ineligible to receive any monetary distribution from the Claims Fund, and will be deemed, as of that date, to have waived, released and surrendered any and all claims of race discrimination raised in the Civil Action.

14 **NO ADMISSION, NO DETERMINATION**

14.1 This Settlement Agreement does not constitute, is not intended to constitute, and is not to be deemed to constitute an admission by any Party as to the merits of the Opposing Party's claims or defenses. By entering into this Agreement, neither DC Water nor any Released Party admits or concedes liability, expressly or impliedly. D.C. Water expressly denies that it has in any way violated Section 1981, Title VII, parallel state and local laws prohibiting race discrimination, the common law of any jurisdiction, or any other federal, state or local laws, statutes, ordinances, regulations, rules or executive orders, or any obligations or duties at law or in equity. Neither this Court, nor any other court has made any findings or issued any opinion with respect to the merits of either Party's claims or defenses in this case.

14.2 Nothing in this Agreement, or any action taken in implementation thereof, or any statements, discussions, communications, or materials prepared, exchanged, issued or used during the course of the mediation or negotiations leading to this Agreement, or the result of the claims process established under this Agreement, may be introduced, used or admitted in this case or any other judicial, arbitral, administrative, investigative or other proceeding as evidence of discrimination or retaliation in violation of Section 1981, Title VII, parallel state and local laws prohibiting race discrimination, the common law of any jurisdiction, or any other federal,

state or local laws, statutes, ordinances, regulations, rules or executive orders, or any obligations or duties at law or in equity.

14.3 Notwithstanding the foregoing, this Agreement may be admitted as evidence in any proceeding in this Court or in mediation to enforce or implement any provision in it, and to enforce or implement any orders or judgments entered in connection with it.

15 **INADMISSIBILITY OF FACT OF AWARD OR NON-AWARD**

15.1 Except to the extent that it would constitute a set-off in an action for damages claimed for any period covered by this Agreement, neither the fact nor the amount of any award, nor the fact of any non-award, will be admissible in any proceeding for any purpose other than to enforce the terms of this Agreement including, but not limited to, the Releases, nor will the same be deemed to be evidence of the merit of any claim or defense.

16 **PROGRAMMATIC RELIEF**

16.1 **Duration**

16.1.1 The programmatic relief set forth in this Agreement will remain binding on the Parties and their agents and successors for a period of three (3) years following the Effective Date.

16.2 **Commitment to Non-Discrimination**

16.2.1 Within six months of the Effective Date of this Agreement, DC Water will provide to all employees a written statement of DC Water's commitment to equal employment opportunity, issued by its General Manager.

16.3 **Publication and Distribution of EEO Policy**

16.3.1 Within six months of the Effective Date of this Agreement, DC Water will:

- (1) provide all employees with a copy of its EEO policy;
- (2) post copies of its EEO policy prominently in common areas of the workplace where they will be visible to employees during the workday;
- (3) post copies of its EEO policy on DC Water's intranet website; and
- (4) adopt and implement a policy of distributing copies of its EEO policy to:
 - (A) all new employees upon hire; and
 - (B) all new managers and supervisors upon promotion to a

management or supervisory position, or during management training.

16.3.2 DC Water's employees will be required to submit an acknowledgment of receipt of the EEO policy.

16.4 **No Retaliation**

16.4.1 DC Water will not retaliate against any Class Member because he or she:

- (1) complained of or opposed discrimination on the basis of race at DC Water;
- (2) testified, furnished information or participated in any formal or informal investigation, proceeding, or hearing in connection with this Action; or
- (3) sought or received any monetary or non-monetary relief under this

Agreement.

16.5 **Publication and Distribution of Compensation Policies**

16.5.1 Within six months of the Effective Date of this Agreement, DC Water will:

- (1) provide a copy of its compensation policies to all of its employees;

(2) make copies of its compensation policies available to employees on demand at its Human Capital Management Office (or its functional equivalent), and post notices prominently in common areas of the workplace notifying employees of that fact;

(3) post a copy of its compensation policies on its intranet website; and

(4) provide copies of its compensation policies to all new hires upon hire.

16.6 **Mandatory Diversity and EEO Training**

16.6.1 Within one year of the Effective Date of this Agreement, DC Water will:

(1) implement and conduct—or contract with an external entity that will implement and conduct—a mandatory EEO and Diversity training program for all DC Water employees, and ensure that all DC Water employees have received such training within three (3) years of the Effective Date;

(2) expand and enhance its existing training programs to emphasize its procedures for ensuring compliance with its EEO policies, and use its best efforts to ensure that its employees:

(A) are trained to identify violations of DC Water’s EEO policies and to know the proper procedures for receiving, processing, investigating and resolving complaints of such violations, and

(B) understand their responsibility and obligation to report, properly investigate, and respond to any alleged violations of DC Water’s EEO policies.

16.6.2 DC Water will maintain written records with respect to the specifics of the training offered in and attendance at the mandatory EEO and diversity training program for four years.

16.7 **Complaint Procedures and Complaint Tracking System**

16.7.1 **Enhanced Awareness of Complaint Procedures**

16.7.1.1 Within one year of the Effective Date of this Agreement, DC Water will enhance its existing EEO training program and use its best efforts to ensure that all employees know DC Water's complaint procedures, their obligation to adhere to DC Water's EEO policies, and their obligation to identify and report potential violations by utilizing DC Water's internal complaint procedures.

16.7.2 **Complaint Tracking System**

16.7.2.1 Within one year of the Effective Date of this Agreement, DC Water will develop, implement and maintain a system, consisting of a database or spreadsheet, to record and track all internal complaints of compensation discrimination on the basis of race, and the status and resolution of each complaint.

16.7.2.2 The tracking system ("the System") will specifically identify any complaints or allegations of compensation discrimination.

16.7.2.3 Information to be entered into the System will include:

(1) the employee identification number of the complainant, the employee's job classification, and department;

(2) the factual allegations that form the basis for the complaint, if known;

(3) the results of any investigation undertaken in response to the complaint;

and

(4) the corrective action taken, if any.

16.7.2.4 The information contained in the System will not be subject to any reporting obligation under this Agreement.

16.8 **Human Capital Management Staff**

16.8.1 DC Water will use its best efforts to ensure that its Human Capital Management staff (or its functional equivalent) knows the requirements of:

- (1) District of Columbia anti-discrimination and anti-retaliation statutes and policies;
 - (2) federal EEO, anti-discrimination and anti-retaliation statutes and policies;
- and
- (3) DC Water's own anti-discrimination and anti-retaliation policies.

16.9 **Development and Maintenance of Voluntary Affirmative Action Program**

16.9.1 By December 31, 2013, DC Water will develop and fully implement a voluntary, written Affirmative Action Program (AAP) encompassing any positions in which less than fifty (50) percent of the incumbent employees are African-American.

16.9.2 The AAP will be structured generally after the OFCCP regulations implementing the affirmative action requirements of Executive Order 11246, but this Agreement does not obligate DC Water to adhere to any particular requirement of the OFCCP regulations.

16.9.3 This Agreement does not require the AAP to impose any quotas or preferences on the basis of race in hiring, promotion, compensation or any other term or condition of employment.

16.9.4 Any placement goals identified in the AAP will be based on relevant internal and external qualified labor market statistics.

16.10 **Settlement Compliance Monitor**

16.10.1 **Selection**

16.10.1.1 The Parties have selected Michael Lewis of JAMS, Inc., 555 13th Street, NW, Suite 400 West, Washington, DC 20004, to be the Settlement Compliance Monitor under this Agreement.

16.10.2 **Cost**

16.10.2.1 The fees and costs of the Settlement Compliance Monitor will be paid by DC Water.

16.10.3 **Duties**

16.10.3.1 The Settlement Compliance Monitor will monitor and report on DC Water's implementation of this Agreement's Programmatic Relief provisions for the duration of the Agreement.

16.10.4 **Reports**

16.10.4.1 **Reports from DC Water to the Monitor**

16.10.4.1.1 Beginning one year after the Effective Date of this Agreement, DC Water will submit, semi-annually, a detailed, written report of the implementation of all aspects of its programmatic relief obligations under this Agreement.

16.10.4.1.2 DC Water's semi-annual reports to the Monitor will be at least five (5) months apart.

16.10.4.2 **Reports from the Monitor to the Parties and Counsel**

16.10.4.2.1 The Monitor will review the reports submitted by DC Water and determine whether DC Water is fulfilling its programmatic relief obligations under this Agreement.

16.10.4.2.2 Within forty-five (45) days of receiving a semi-annual report from DC Water, the Monitor will issue a Report to the Parties and Counsel assessing DC Water's implementation of the programmatic relief set forth in this Agreement.

16.10.5 **Confidentiality**

16.10.5.1 The Monitor will treat the reports provided to him by DC Water under this Agreement as confidential, and upon retention will sign a confidentiality agreement to that effect. Notwithstanding any other provision of this Agreement, the Monitor may refer to information contained in any report he receives from DC Water in any report he is required or authorized to make to the Parties under the terms of this Agreement.

16.10.6 **Status of the Monitor**

16.10.6.1 The Monitor will not be deemed an agent of either Party for any purpose.

16.10.7 **Cooperation with the Monitor**

16.10.7.1 DC Water will cooperate with the Monitor to the extent reasonably necessary to enable him to perform the duties assigned to him by this Agreement.

16.11 **Internal Implementation Team**

16.11.1 **Assembly, Authorization and Composition**

16.11.1.1 Within one year of the Effective Date of this Agreement, DC Water will assemble and authorize an Internal Implementation Team ("the Team") to implement its programmatic relief obligations under this Agreement. Assembled for the purpose of this Agreement only, the Team will be headed by a designated representative within the Office of General Counsel ("OGC"). In addition to OGC's designated representative, the Team will be comprised of a representative from DC Water's Human Capital Management Department, and the Senior Management Team.

16.11.2 **Meetings**

16.11.2.1 The Team will meet:

- (1) at least monthly during the first year of the Team's existence; and
- (2) at least every other month for the duration of this Agreement.

16.11.3 **Commitment**

16.11.3.1 The Team will use its best efforts to ensure DC Water's implementation of and compliance with the programmatic relief provisions of this Agreement.

16.11.4 **Support**

16.11.4.1 DC Water will provide such support staff and other resources as may be reasonably necessary to discharge its obligations under this Agreement.

16.11.5 **Review of Compensation Policies for EEO Considerations**

16.11.5.1 **Review by The Team**

16.11.5.1.1 Within one year of the Effective Date of this Agreement, The Team will:

- (1) undertake a comprehensive review of DC Water's compensation policies to ensure that the policies are consistent with DC Water's commitment to equal employment opportunity;
- (2) recommend potential improvements to those policies and procedures; and
- (3) send a copy of its review and recommendations to the Monitor.

16.11.6 **Confidentiality**

16.11.6.1 The Monitor will treat The Team's review and recommendations, any decisions by DC Water with respect to such recommendations, and any changes implemented by DC Water as a result of such recommendations as confidential, except the Monitor may make reference to DC Water's adoption or failure to adopt The Team's recommendations in making his assessment of the Defendant's implementation of its programmatic relief obligations under this Agreement.

16.11.7 **Good Faith**

16.11.7.1 DC Water will, in good faith, consider The Team's recommendations in light of the principles and purposes of this Agreement, and DC Water's business objectives and legal obligations.

16.12 **Annual Review of Pay Data and Practices**

16.12.1 Within one year of the Effective Date of this Agreement, and not less than yearly thereafter, DC Water will undertake annual assessments of the compensation paid to employees of DC Water (the "Annual Pay Assessments" or "Assessments"). The Annual Pay Assessments will be designed to determine whether racial disparities exist with respect to compensation paid to DC Water's employees and, if such racial disparities exist, to quantify the extent and statistical significance of the disparities and assess the probability that the disparities are due to legitimate, non-discriminatory factors or other factors.

16.12.2 **Individualized Assessment of Statistically Significant Pay Disparities Not Accounted for By Legitimate, Non-Discriminatory Factors**

16.12.2.1 If any Annual Pay Assessment identifies a statistically significant pay disparity that cannot be accounted for by legitimate, non-discriminatory factors, DC Water will conduct an individualized assessment of the basis for the specific pay decisions underlying the disparity (the “Individualized Assessment”). If, following such an Individualized Assessment, any pay disparity cannot be accounted for by legitimate, non-discriminatory factors, DC Water will make appropriate adjustments to the pay of the particular employee disadvantaged by the disparity, consistent with applicable legal standards.

16.12.3 **Submission of the Annual Pay Assessment to the Monitor**

16.12.3.1 Within thirty (30) days of its completion, DC Water will transmit a copy of the Annual Pay Assessment, including the results of any Individualized Assessments conducted by the Defendant pursuant to ¶16.12.2, above (“Individualized Assessment of Statistically Significant Pay Disparities Not Accounted for By Legitimate, Non-Discriminatory Factors”) to the Monitor.

16.12.3.2 Notwithstanding any other provision of this Agreement, DC Water must undertake and produce at least three (3) Annual Pay Assessments, including the results of any Individualized Assessments conducted by the Defendant pursuant to ¶16.12.2, above (“Individualized Assessment of Statistically Significant Pay Disparities Not Accounted for By Legitimate, Non-Discriminatory Factors”) to the Monitor within three (3) years following the Effective Date of this Agreement.

16.12.4 **Monitor to Review and Consider Result of Pay Assessment**

16.12.4.1 The Monitor will review and consider the result of each Annual Pay Assessment and any Individualized Assessments as he determines whether DC Water is fulfilling its programmatic relief obligations under this Agreement.

16.12.4.2 Notwithstanding any other provision of this Agreement, the Monitor will produce a report assessing DC Water's implementation of the programmatic relief specified in this Agreement within thirty (30) days after he receives a copy of the Annual Pay Assessment and any Individualized Assessments from DC Water.

16.12.5 **Confidentiality**

16.12.5.1 The Monitor will maintain the Annual Pay Assessments and any Individualized Assessments on a strictly confidential basis and will not share those documents with anyone without DC Water's express written permission; however, the Monitor may refer to information contained in the Annual Pay Assessments and the Individualized Assessments in his reports.

16.12.6 **Submission of the Annual Pay Assessment to the Monitor Not Intended to Waive Privilege**

DC Water's submission of the Annual Pay Assessments and any Individualized Assessments to the Monitor in compliance with this Section is not intended to waive any privilege with respect to those documents, including but not limited to attorney-client privilege and the attorney work-product doctrine.

17 **ATTORNEYS' FEES AND LITIGATION COSTS**

17.1 **DC Water to Consent to Class Counsel's Motion for Attorneys' Fees and Costs**

17.1.1 As soon as practicable after the Effective Date and pursuant to Fed. R. Civ. P. 23(h), Class Counsel will file a motion for attorneys' fees in the amount of Eight Hundred Thousand Dollars (\$800,000) and costs in the amount of One Hundred Twenty-Five Thousand Dollars (\$125,000). DC Water agrees to consent to that motion.

17.2 **Attorneys' Fees and Costs to Be Paid By the Administrator**

17.2.1 Within thirty (30) days after the Court approves such payment, the Administrator will pay Class Counsel Eight Hundred Thousand Dollars (\$800,000) (or such lesser amount approved by the Court) for attorneys' fees, which sum will compensate Class Counsel for their work in this Action to date and their future work in connection with seeking Court approval of this Agreement, responding to inquiries from Class Members, and monitoring the implementation of this Agreement, as follows:

(1) \$425,000 (Four Hundred Twenty-Five Thousand Dollars) (or 53.125% of any lesser award of attorneys' fees) to The Law Office of Alexander Hillery, PLLC, 1629 K Street, NW, Suite 300, Washington, DC 20006; and

(2) \$375,000 (Three Hundred Seventy-Five Thousand Dollars) (or 46.875% of any lesser award of attorneys' fees) to The Law Office of David A. Branch and Associates, PLLC, 1901 Pennsylvania Avenue, NW, Suite 802, Washington, DC 20006.

17.2.2 Within thirty (30) days after the Court approves such payment, the Administrator will also pay The Law Office of David A. Branch and Associates, PLLC, One Hundred Twenty-Five Thousand Dollars (\$125,000) (or such lesser amount approved by the Court) for litigation costs.

17.2.3 Class Counsel will each provide the Administrator with Taxpayer Identification Numbers and executed W-9s. The Administrator will provide Class Counsel with completed Form 1099s reflecting the payments made to each, respectively.

18 **ADEQUACY OF CONSIDERATION**

18.1 The Parties acknowledge that the covenants and promises made by each herein, one to another, constitute sufficient and adequate consideration for this Agreement.

19 **OTHER TERMS**

19.1 **Exhibits**

19.1.1 The Exhibits to this Agreement are material and integral parts of this Agreement and are fully incorporated herein by reference.

19.2 **Notices**

19.2.1 All notices required by this Agreement will be in writing and sent by overnight or certified mail, and by e-mail as follows:

(1) notices to Counsel will be sent to their respective addresses as designated in this Agreement, or to such other address as they may designate in the future (Counsel will promptly inform Opposing Counsel, the Administrator and the Monitor of any change of address); and

(2) notices to the Administrator or the Settlement Monitor will be sent to their respective addresses as designated in this Agreement, or to such other address as they may

designate in the future. A copy of any such Notice must be sent to Opposing Counsel as provided in this Section.

19.3 **Failure to Insist on Strict Compliance Is Not Waiver**

19.3.1 The failure of any Party to insist in any instance or instances on strict compliance with the terms of this Agreement will not constitute a waiver of that Party's right to demand strict compliance with those terms in any future instance, nor will such a failure be construed to be a waiver of remedies with respect to any subsequent breach.

19.4 **Agreement Inures to the Benefit of the Parties**

19.4.1 This Agreement will inure to the benefit of, and be binding upon, the Parties and their respective heirs, dependents, executors, administrators, trustees, legal representatives, personal representatives, agents, successors and assigns; provided, however, that this Agreement will not inure to the benefit of any third party.

19.5 **No Drafting Presumption**

19.5.1 The Parties have each participated, through their respective counsel, in drafting this Agreement and, therefore, this Agreement will not be construed more strictly against one Party than the other.

19.6 **Interpretation of Terms**

19.6.1 Whenever possible, each provision and term of this Agreement will be interpreted in such a manner as to be valid and enforceable.

19.7 **Paragraph and Section Headings**

19.7.1 Paragraph and Section headings in this Agreement are for convenience only and are not intended to create substantive rights or obligations.

19.8 **Agreement Binding When Executed**

19.8.1 When this Agreement is executed by the Parties or their respective counsel, it will be binding in all respects, unless the Court fails to approve it or it is otherwise nullified or terminated pursuant to its terms.

19.9 **Submissions and Filings from Class Members and Claimants**

19.9.1 Any submission or filing that a Class Member or Claimant must make or may make pursuant to the terms of this Agreement, except the Releases, may be submitted or filed by mail or facsimile or delivered.

19.9.2 The Named Plaintiff Release and Claimant Releases may be submitted or filed by mail or delivered only; they may not be submitted or filed by facsimile.

20 **SECURING FINAL COURT APPROVAL AND SUBSEQUENT DUTIES OF THE PARTIES**

20.1 **Submission of Proposed Final Order**

20.1.1 At least fifteen (15) days prior to the Fairness Hearing, Counsel will jointly submit a proposed final order that:

- (1) adjudges the terms of this Agreement to be fair, reasonable and adequate;
- (2) grants final approval of this Agreement; and
- (3) dismisses the Action with prejudice, but retains jurisdiction to enforce this

Agreement.

20.2 **Return or Destruction of Confidential Documents**

20.2.1 Any confidential documents will, at the producing Party's written request, be returned to the producing Party or destroyed by the Party to whom those materials were produced, within one hundred-eighty (180) days after the Effective Date of this Agreement;

however, the Parties and their respective Counsel may retain copies of their work product, all filed documents, and any materials necessary to oversee compliance with the Agreement.

21 **AUTHORITY OF THE PARTIES TO ENTER INTO THIS AGREEMENT**

21.1 By signing this Agreement, the signatories represent that they are fully authorized to enter into this Agreement and to bind their respective Parties to its terms.

22 **MODIFICATION**

22.1 This Agreement may not be altered or modified in any respect, except in a writing signed by the Parties and approved by the Court.

23 **ENTIRE AGREEMENT**

23.1 This Agreement and any attachments to it constitute the entire agreement between the Parties. No extrinsic oral statements or writings will be admissible to modify, vary or contradict the terms of this Agreement. If there is a conflict between this Agreement and any other settlement-related document, the terms of this Agreement will control. This Agreement does not impose any obligations on the Parties beyond the terms and conditions stated herein.

24 **COUNTERPARTS**

24.1 This Agreement may be executed in counterparts. When any Party or its respective counsel signs a given counterpart, that counterpart will be deemed an original. When both Parties and their respective counsel have each signed counterparts, the combined signed counterparts will constitute one Agreement, which will be binding upon and effective as to all Parties.

25 **ENFORCEMENT AND DISPUTE RESOLUTION**

25.1 The Parties agree to act in good faith and to fully cooperate to effectuate and implement the terms of this Agreement.

25.2 Counsel will meet or confer at least semi-annually regarding compliance and may confer more frequently at their discretion.

25.3 The Parties will work diligently and in good faith to resolve any disputes that may arise between them concerning the rights, obligations, and duties of the Parties, or the meaning, effect or interpretation of this Agreement or any Exhibit. If the Parties cannot agree, they will attempt to resolve the dispute with the facilitation of a mediator. If mediation is not successful, then either Party may institute an enforcement action. The Court will retain continuing jurisdiction to enforce this Agreement.

25.4 Enforcement of this Agreement will be prosecuted by the Parties only, not third parties. In any action brought to enforce this Agreement, the Court may, in its discretion, award reasonable attorneys' fees and expenses to the prevailing party.

25.5 Where a Paragraph or Section of this Agreement provides for a specific manner or means of dispute resolution, that provision governs that Paragraph or Section.

26 **GOVERNING LAW**

26.1 Federal law will govern the validity, construction and enforcement of this Agreement. To the extent that the validity, construction or enforcement of this Agreement or any release executed pursuant to its terms is governed by state law, District of Columbia law will apply.

27 **DEADLINES MAY BE EXTENDED**

27.1 Any deadline in this Agreement may be extended with the consent of the Parties or upon order of the Court.

28 **FAXED SIGNATURES DEEMED ORIGINAL**

28.1 Faxed signatures will be deemed original signatures for all purposes.

IN WITNESS WHEREOF, the undersigned have duly executed this Agreement as of the date indicated below:

Charles N. Taylor, Named Plaintiff
1524 Nova Avenue
Capital Heights, MD 20743

David A. Branch (D.C. Bar No. 438764)
Law Office of David A. Branch and Associates,
PLLC
1901 Pennsylvania Avenue, NW, Suite 802
Washington, D.C. 20006
(202) 785-2805 (phone)
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Alexander Hillery, II
(D.C. Bar No.: 980231)
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1629 K St., NW, Suite 300
Washington, D.C. 20006-1631
(202) 288-5139 (phone)
(301) 877-5972 (facsimile)
aghillery@gmail.com
Attorneys for Plaintiffs

DATED: August _____, 2012
Washington, D.C.

District of Columbia Water and Sewer Authority
5000 Overlook Avenue, S.W.
Washington, D.C. 20032

By:

Title

Grace E. Speights (D.C. Bar No. 392091)
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(202) 739-3001 (Fax)
Attorneys for Defendant

DATED: August _____, 2012
Washington, D.C.