

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release ("Settlement Agreement") is made by and between Gordon Biersch Brewing Company ("GB") and the CITY OF SAN JOSE ("CITY"). "Parties," when referenced herein, include GB and CITY collectively.

WHEREAS, on October 17, 2025, GB filed a government claim with CITY alleging it was owed certain sums of money for alleged sanitary sewer rate overbilling since 1997 (the "Government Claim");

WHEREAS, CITY disputes all allegations from GB's Government Claim relating to sanitary sewer rate methodology and rates including that GB's sanitary sewer bills are inaccurate or excessive or that GB has been overbilled for any of its sanitary sewer rates (the "Dispute");

WHEREAS, the Parties now mutually desire to resolve the Dispute to avoid the cost of litigation and, therefore, undertake to settle the Dispute in its entirety by entering into this Agreement pursuant to which GB releases and extinguishes on a final basis all claims of any and every kind, nature, and character, arising from or related to wastewater service provided by CITY to GB, including but not limited to CITY's charges for said service;

NOW THEREFORE, the Parties agree as follows:

1. **Scope of Settlement.** This Agreement shall settle, compromise, and forever discharge all claims of any and every kind, nature, and character, arising from or related to wastewater service provided by CITY to GB, including but not limited to CITY's charges for said service.

2. **Consideration.** In consideration for GB's agreements, promises, covenants, releases, and waivers stated herein, CITY shall pay a total Settlement Amount of Four-Hundred Thousand Dollars (\$400,000.00) to Gordon Biersch Brewing Company ("Settlement Amount"). Two-Hundred and Thirty-Five Thousand Dollars (\$235,000) of the total Settlement Amount shall be released through a business competitive grant between the CITY and GB. In consideration of said payment of the Settlement Amount, GB shall withdraw, waive, and release all claims for damages described in paragraph 1, including all claims and/or rights to recover costs and attorneys' fees, that it may have against CITY.

3. **Payment Schedule:** One-Hundred and Sixty-Five Thousand Dollars (\$165,000) of the total Four-Hundred Thousand Dollar (\$400,000.00) Settlement

Amount shall be paid within 21 days of execution of the Settlement Agreement. The remaining Two-Hundred and Thirty-Five Thousand Dollars (\$235,000) shall be paid quarterly, specifically Fifty-Eight Thousand and Seven-Hundred and Fifty Dollars (\$58,750) paid on the 90th, 180th, 270th and 360th day following execution of the Settlement Agreement.

The quarterly release of payments shall be conditioned on the written representation from GB by Dan Gordon that no Events of Default have occurred. Events of Default shall include: (1) initiating a voluntary case or other proceeding seeking liquidation, reorganization or other relief with respect to itself or its debts under any bankruptcy, insolvency or other similar law now or hereafter in effect; (2) the appointment of a trustee, receiver, liquidator, custodian, assignee, or similar official for GB in connection with a bankruptcy, insolvency, receivership, or similar proceeding; (3) a court of competent jurisdiction enters an order for relief against GB in an involuntary bankruptcy, insolvency, receivership, or similar proceeding, and such order is not dismissed, stayed, bonded, or discharged within sixty (60) days; or (4) making a general assignment for the benefit of creditors.

4. Additional Terms: The parties agree that the sampling protocol for GB started in January 2025 will continue on an ongoing basis. GB will be sampled twice monthly for BOD, TSS, and Ammonia. It is recognized that GB has variable production and discharge schedules. The City will coordinate with GB to ensure samples are representative of a complete "production day" (defined as the hours in production within a 24-hour period) with actual sampling days varying to collect a representative sample. As GB is a 24-hour operation, the City will use the full day as a production day, and the sampler will run for the full 24 hours.

The City will utilize GB's existing automatic sampler to obtain representative aliquots of the flow throughout the production day. GB shall continue to report monthly to their assigned inspector total monthly flows (gallons), daily flow totals (gallons), and monthly production information (days in production for the calendar month). The averaged results of samples collected during the month along with the flow/production data reported by GB will support calculation of monthly bills.

City will also collaborate with GB on potential new technology pilots utilizing wastewater auto-monitoring systems by identifying potential improvements over GB's existing wastewater treatment automated controls and sampling device. GB currently operates a computerized system capable of collecting flow, pH, and information on the status of their treatment system. The City will work with GB to identify opportunities to expand or upgrade GB's monitoring and sampling systems.

5. **Release.** GB and its representatives, successors, assigns, attorneys, and agents, hereby generally release, waive and forever discharge CITY and all CITY Departments, elected officials, and past and present CITY employees from any and all actions, causes of action, obligations, costs, expenses, damages, losses, claims, liens, liabilities, attorney's fees, and demands of whatsoever nature described in paragraph 1, whether or not GB has actually asserted or alleged such claims. Said release and waiver of claims includes but is not limited to all claims relating to sanitary sewer rate charges incurred prior to the execution date of this settlement, and to the methodology for calculation of sanitary sewer rate charges. For purposes of this Agreement, CITY includes, without limitation, all CITY Departments and Agencies, the CITY Council, all past and present elected and appointed officials, CITY employees, and any person or entity to which CITY may owe an obligation of contractual or implied indemnity relating to a released claim.

6. **Release of Unknown Claims.** GB understands this Agreement is a full and final settlement of all disputes and matters arising out of any subject matter identified in this Agreement, including but not limited to all claims and causes of action asserted, or which GB could have asserted in its Government Claim dated October 17, 2025, or otherwise, and all present and future unknown and unanticipated injuries, losses or damages arising out of the Dispute (the "Released Matters"). GB acknowledges and understands Section 1542 of the Civil Code of the State of California provides as follows:

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

Initials

Handwritten initials in black ink, appearing to be 'M' and 'S' or similar, written over a horizontal line.

GB represents that it has read, reviewed with counsel, and understood Civil Code Section 1542, and that it hereby waives all present and future rights and benefits under Section 1542 to the extent it would permit claims relating to, arising out of, or any way connected to the subject of the Dispute based on facts found to be different from the facts believed to be true at the time this Settlement Agreement was executed.

7. **Liability Not Admitted.** The Parties acknowledge and agree that CITY's payment represents a compromise and release of disputed claims and that neither the payment, nor anything stated in this Agreement, constitutes or represents an admission of wrongful conduct, or liability, or

responsibility of any kind, or a concession by any person, that any allegation asserted, or that could be asserted, is valid.

8. **Parties to Bear Own Attorney's Fees and Costs.** The Parties shall bear their own costs, including attorneys' fees, and any other fees incurred in connection with the Dispute, this Settlement Agreement, and the matters settled pursuant to this Settlement Agreement.

9. **Consultation with Counsel.** The Parties and each of them acknowledge they have carefully read and understand the terms of this Settlement Agreement and have consulted with legal counsel of their choice prior to execution and delivery of this Agreement. The Parties have voluntarily accepted the terms stated herein for the express purpose of making a full and final compromise and settlement of the Dispute.

10. **Representations.** Each person executing this Settlement Agreement hereby warrants that he/she has full authority to do so. GB further represents and warrants that it is the sole and rightful owner of the claims resolved by this Agreement; that it has not assigned any claim or claims, or the right to receive payments that are the subject of this Agreement; and that no Liens on the settlement proceeds have been asserted or exist.

11. **Severability.** If any provision in this Agreement is found to be unenforceable, it shall not affect the enforceability of the remaining provisions to the extent permitted by law.

12. **Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed an original and shall be deemed duly executed upon the signing of the counterparts by the Parties hereto.

13. **Binding Force and Effect.** This Agreement shall be governed by California law. It shall bind and inure to the benefit of all Parties and their respective heirs, executors, administrators, trustors, trustees, beneficiaries, predecessors, successors, assigns, partners, partnerships, affiliated entities, agents, and representatives.


14. **Entire Agreement.** This document is a fully integrated contract. It contains all agreements, covenants, understandings, representations, and warranties between the Parties concerning the subject matter of the Agreement. The Parties have made no other express or implied agreements, covenants, understandings, representations, or warranties concerning the subject matter of this Agreement. All prior and contemporaneous conversations,

negotiations, possible and alleged agreements, understandings, representations, covenants, and warranties concerning the subject matter of this Agreement, other than those referred to herein, are merged herein. This Agreement cannot be modified or amended by the exchange of electronic communications, or any means other than a fully integrated writing signed by all Parties.

IN WITNESS WHEREOF, the Parties have executed this Settlement Agreement effective as of the date last set forth below.

Dated: 6/1/26

GORDON BIRSCH BREWING
COMPANY

By: 
DAN GORDON

CITY OF SAN JOSE

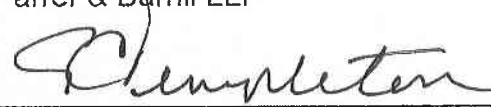
Dated: _____

By: _____
SUSANA ALCALA WOOD
City Attorney as Authorized Agent for
the City of San José

APPROVED AS TO FORM:

Dated: 6/1/26

Hill, Farrer & Burrill LLP

By: 
G. CRESWELL TEMPLETON III
Attorney for Gordon Birsch

CITY OF SAN JOSE

Dated: _____

By: _____
WESLEY KLIMCZAK
Sr. Deputy City Attorney
Attorney for City of San José