

SETTLEMENT AGREEMENT AND MUTUAL RELEASE OF CLAIMS

This Settlement Agreement and Mutual Release of Claims (“AGREEMENT”) is entered into between Northern California River Watch (“NCRW”) and the Alameda-Contra Costa County Transit District (“AC Transit”) (collectively, the “PARTIES”) with respect to the following facts and objectives:

RECITALS

WHEREAS, NCRW is a 501(c)(3) non-profit, public benefit corporation organized under the laws of the State of California, dedicated to the protection, enhancement, and restoration of the rivers, creeks, and tributaries of Northern California;

WHEREAS, AC Transit is a publicly-owned transportation district, providing bus service in several cities and adjacent unincorporated areas in Alameda and Contra Costa counties, California.

WHEREAS, on or about December 15, 2010, NCRW provided AC Transit with a Notice of Violation and Intent to File Suit under the Resource Conservation and Recovery Act (“RCRA”), 42 U.S.C. §6901, (“RCRA Notice Letter”) pertaining to AC Transit transportation and maintenance facilities located at 1100 Seminary Avenue, Oakland, California and 1177 47th Street, Emeryville, California (singularly “Facility,” together, “Facilities”);

WHEREAS, AC Transit denies any and all of NCRW’s allegations and claims in the RCRA Notice Letter;

WHEREAS, NCRW and AC Transit, through their authorized representatives and without either adjudication of NCRW’s claims or admission by AC Transit of any alleged violation or other wrongdoing, have chosen to resolve in full NCRW’s allegations in the RCRA Notice Letter through settlement and avoid the cost and uncertainties of further litigation; and

WHEREAS, NCRW and AC Transit have agreed that it is in their mutual interest to enter into this AGREEMENT setting forth the terms and conditions appropriate to resolving NCRW’s allegations set forth in the RCRA Notice Letter.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, NCRW and AC Transit hereby agree as follows:

EFFECTIVE DATE

1. The term “Effective Date,” as used in this AGREEMENT, shall mean the last date on which the signature of a party to this AGREEMENT is executed.

AGREEMENT

2. **Feasibility Studies:** By September 15, 2012, AC Transit shall complete a feasibility study for each Facility, which will include the information set forth in sections a – c below.

a. AC Transit shall update its preferential pathway analyses. Subsurface utility maps will be analyzed, and if utilities exist in an area of known or suspected contamination, additional borings and samples will be taken to determine if the utilities are acting as preferential pathways.

b. AC Transit shall update sensitive receptor analyses by conducting sensitive receptor surveys within a one-half mile radius from the Facilities. If further investigation at the Facilities reveal shallow soil impacts exist or are migrating off the Facility property, AC Transit will revisit and/or revise its sensitive receptor analysis parameters, as appropriate.

c. For the 47th Street Facility, over-excavation as a remedial alternative will be assessed in the feasibility study on the basis of expected effectiveness and ability to implement, given the specific constraints of the site and location of the contamination.

3. **Select and Implement Remedial Alternative.** After completion of the feasibility studies, AC Transit will select a remedial alternative for each Facility and implement the alternative to the satisfaction of the applicable lead local agency. During implementation of the remedial alternative selected for each Facility, a mass inventory of plume constituents (*e.g.*, contaminant mass removal rates) shall be performed.

4. **Fees, Costs, and Expenses.**

Within thirty (30) calendar days after the EFFECTIVE DATE of this AGREEMENT, AC Transit shall pay NCRW the sum of thirty-five thousand dollars (\$35,000.00) as reimbursement for NCRW's investigative, expert and attorneys' fees and costs. Payment shall be made by AC Transit to NCRW in the form of a single check payable to "Northern California River Watch," and shall constitute full payment for all costs of litigation and attorneys' fees incurred by NCRW that have or could have been claimed in connection with NCRW's allegations in its RCRA Notice Letter up to and including the Effective Date of this AGREEMENT, and for NCRW's expert and attorneys' fees and costs spent monitoring and enforcing AC Transit's compliance with ongoing obligations under this AGREEMENT, with the exception of any action taken to enforce this AGREEMENT in accordance with the dispute resolution procedures set forth in paragraphs 10 and 11 below.

TERMINATION DATE

5. This AGREEMENT shall terminate upon AC Transit's completion of activities set forth in sections two (2) and three (3) above.

NO ADMISSION OR FINDING

6. Neither this AGREEMENT nor any payment pursuant to the AGREEMENT shall constitute evidence or be construed as a finding, adjudication, or acknowledgment of any fact, law or liability, nor shall it be construed as an admission of violation of any law, rule or regulation. However, this AGREEMENT and/or any payment pursuant to the AGREEMENT may constitute evidence in actions seeking compliance with this AGREEMENT.

MUTUAL RELEASE OF LIABILITY AND COVENANT NOT TO SUE

7. In consideration of the above, and except as otherwise provided by this AGREEMENT, the PARTIES hereby forever and fully release each other and their respective successors, assigns, directors, officers, agents, board members, representatives, and employees, and all persons, firms and corporations having an interest in them, from any and all claims and

demands of any kind, nature, or description whatsoever, and from any and all liabilities, damages, injuries, actions or causes of action, either at law or in equity, whether known or unknown, which the PARTIES have or may have against each other arising from or related to NCRW's allegations as set forth in the RCRA Notice Letter up to and including the Effective Date of this AGREEMENT.

8. The PARTIES acknowledge that they are familiar with section 1542 of the California Civil Code, which provides:

A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.

The PARTIES hereby waive and relinquish any rights or benefits they may have under California Civil Code section 1542 with respect to any other claims against each other arising from, or related to, the allegations and claims as set forth in the RCRA Notice Letter, up to and including the Effective Date of this AGREEMENT.

9. For the period beginning on the Effective Date and ending on the Termination Date of this AGREEMENT, NCRW agrees that neither NCRW, its officers, executive staff, members of its governing board nor any organization under the control of NCRW, its officers, executive staff, or members of its governing board, will serve any 60-day Notice Letter or file any lawsuit against AC Transit seeking relief for alleged violations of the Clean Water Act or RCRA, or similar state statutes and/or regulations, including the California Porter-Cologne Water Quality Control Act, nor will NCRW support such lawsuits against AC Transit brought by other groups or individuals by providing financial assistance, personnel time, or any other affirmative actions.

DISPUTE RESOLUTION PROCEDURE

10. Any disputes with respect to any of the provisions of this AGREEMENT shall be resolved through the following procedure. The PARTIES covenant and agree that, if either party determines the other is in violation of one or more terms of the AGREEMENT, the party shall provide notice to the other in writing of what actions or inactions they deem to be in violation of this AGREEMENT. Within thirty (30) days of receipt of such notice, the party receiving the

notice shall respond to the notice in writing. If the PARTIES still dispute compliance with this AGREEMENT, within an additional thirty (30) days, the PARTIES will meet and confer in a good faith attempt to resolve their dispute. If the PARTIES cannot informally resolve the dispute, they will enter into binding arbitration, conducted by an arbitrator agreed upon by both PARTIES. Either party may request that the presiding judge of the Alameda County Superior Court may select an arbitrator if the PARTIES cannot reach an agreement. The arbitration shall be binding and not subject to ordinary judicial appeal; however, it shall be subject to the procedural provisions provided for under California Code of Civil Procedure sections 1280, *et seq.* The arbitration shall be conducted in accordance with the arbitration rules and procedures of JAMS (Judicial Arbitration and Mediation Service) to the extent other conventional rules are not promptly agreed to by the PARTIES. The relief the arbitrator is empowered to award is limited to injunctive relief to take action specified in this AGREEMENT, and the arbitrator shall be empowered to determine a prevailing party and may award payment of reasonable attorneys' fees and costs to a prevailing party, commencing with the post-notice meet and confer process described herein. To the extent there are multiple issues with a different prevailing party, the arbitrator may take those facts into account in terms of an award for fees and costs, and can order each party to bear their own costs.

11. If NCRW asserts that AC Transit is in violation of this AGREEMENT, and AC Transit corrects the action or inaction within sixty (60) days of written notice from NCRW describing the asserted violations, no further enforcement action under the terms of the AGREEMENT shall be taken by either party. To the extent an alleged violation cannot be reasonably cured within the sixty (60) day period, and AC Transit undertakes all reasonable efforts to commence the cure of such asserted violation within that period, similarly, no further enforcement action under the terms of this AGREEMENT shall be taken by either party if AC Transit ultimately cures the alleged violation.

FORCE MAJEURE

12. Separate from, and in addition to any other limitations on AC Transit's obligations under this AGREEMENT, AC Transit's obligations to comply with any provisions of this AGREEMENT shall be excused or deferred if compliance, or a delay to compliance, is caused by an event or circumstance beyond the reasonable control of AC Transit or any entity

controlled by AC Transit, including its contractors, and which event or circumstance could not have been reasonably foreseen and prevented by the exercise of due diligence by AC Transit. Where implementation of the actions set forth in this AGREEMENT, within the deadlines prescribed, becomes unachievable, despite the timely good faith efforts of AC Transit, AC Transit shall notify NCRW in writing within thirty (30) days of the date that AC Transit knew of the event or circumstance precluding compliance, and shall describe the reason for the non-performance. The PARTIES agree to meet and confer in good faith concerning the non-performance and, where the PARTIES concur that the non-performance was or is impossible, despite the timely good faith efforts of one of the PARTIES, compliance shall be excused or new performance deadlines shall be established by agreement of the parties. In the event that the PARTIES cannot timely agree, either party shall have the right to invoke the dispute resolution procedure described herein.

GENERAL PROVISIONS

13. **Construction.** The language in all parts of this AGREEMENT shall be construed according to its plain and ordinary meaning, except as to those terms defined by law, in RCRA or the Clean Water Act, or specifically herein.

14. **Choice of Law.** This AGREEMENT shall be governed by the laws of the State of California.

15. **Severability.** In the event that any provision, section, or sentence of this AGREEMENT is held by a court to be unenforceable, the validity of the enforceable provisions shall not be adversely affected.

16. **Correspondence.** All notices required herein or any other correspondence pertaining to this AGREEMENT shall be sent by regular, certified, overnight, or electronic mail as follows:

If to NCRW:

Northern California River Watch
500 North Main Street, Suite 110 / P.O. Box 817
Sebastopol, CA 95472
Telephone: (707) 824-4372
Facsimile: (707) 824-4372

And to:

Jack Silver and James Doyle
Law Office of Jack Silver
500 North Main Street, Suite 110
P.O Box 817
Sebastopol, CA 95472
Telephone: (707) 528-8175
Facsimile: (707) 528-8675
jamesdoyle2244@sbcglobal.net

If to AC Transit:

Carol Babington
Interim General Counsel
Alameda-Contra Costa County Transit District
1600 Franklin Street
Oakland, CA 94612
Telephone: (510) 891-4831
Facsimile: (510) 891-4724

And to:

Nicole E. Granquist
Downey Brand LLP
621 Capitol Mall, 18th Floor
Sacramento, CA 95814
Telephone: (916) 444-1000
Facsimile: (916) 444-2100
ngranquist@downeybrand.com

Notifications of communications shall be deemed submitted on the date that they are sent by electronic mail, postmarked and sent by first-class mail, or deposited with an overnight mail/delivery service. Any change of address or addresses shall be communicated in the manner described above for giving notices.

17. **Counterparts.** This AGREEMENT may be executed in any number of counterparts, all of which together shall constitute one original document. Telecopy, electronic, and/or facsimile copies of original signature shall be deemed to be originally executed counterparts of this AGREEMENT.

18. **Assignment.** Subject only to the express restrictions contained in this AGREEMENT, all of the rights, duties and obligations contained in this AGREEMENT shall inure to the benefit of and be binding upon the PARTIES, and their successors and assigns.

19. **Modification of the AGREEMENT:** This AGREEMENT, and any provisions herein, may not be changed, waived, discharged or terminated unless by a written instrument, signed by the PARTIES.

20. **Full Settlement.** This AGREEMENT constitutes a full and final settlement of this matter. It is expressly understood and agreed that the AGREEMENT has been freely and voluntarily entered into by the PARTIES with and upon advice of counsel.

21. **Integration Clause.** This is an integrated AGREEMENT. This AGREEMENT is intended to be a full and complete statement of the terms of the agreement between the PARTIES and expressly supersedes any and all prior oral or written agreements covenants, representations and warranties (express or implied) concerning the subject matter of this AGREEMENT.

22. **Negotiated Agreement.** The PARTIES have negotiated this AGREEMENT, and agree that it shall not be construed against the party preparing it, but shall be construed as if the Parties jointly prepared this AGREEMENT and any uncertainty and ambiguity shall not be interpreted against any one party.

23. **Authority.** The undersigned representatives for NCRW and AC Transit each certify that he or she is fully authorized by the party whom he represents to enter into the terms and conditions of this AGREEMENT.

The PARTIES hereby enter into this AGREEMENT.

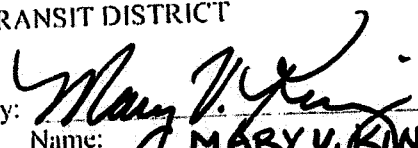
Date: 4-27, 2011

NORTHERN CALIFORNIA-RIVER WATCH

By: Margaret Paicadupi
Name: MARGARET Paicadupi
Title: Board Pres

Date: 5/3, 2011

ALAMEDA-CONTRA COSTA COUNTY
TRANSIT DISTRICT


By: 
Name: **MARY V. KING**
Title: **INTERIM GENERAL MANAGER**

APPROVED AS TO FORM:

For NCRW:

Date: April 27, 2011

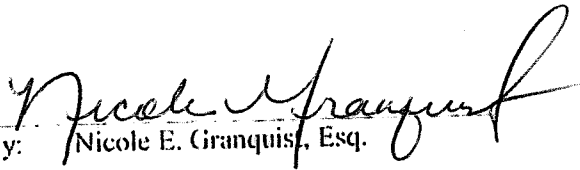
LAW OFFICE OF JACK SILVER

By: 
Jack Silver, Esq.

For AC Transit:

Date: May 3, 2011

DOWNEY BRAND LLP

By: 
Nicole E. Granquist, Esq.