

## **SETTLEMENT AGREEMENT AND RELEASE**

This Settlement Agreement and Release ("Agreement"), effective as of the last date of execution below ("Effective Date"), is made by and between California River Watch, a nonprofit corporation, on behalf of itself and its members ("CRW"), and Northern Recycling Operations & Waste Services, LLC and the Napa-Vallejo Waste Management Authority ("Owners and Operators"). CRW and the Owners and Operators are sometimes hereinafter each referred to as a "Party" or collectively as the "Parties."

### **RECITALS**

A. California River Watch is a 501(c)(3) nonprofit, public benefit corporation organized under the laws of the State of California, dedicated to protect, enhance, and help restore the surface waters and groundwater including all rivers, creeks, streams, wetlands, vernal pools and tributaries of California.

B. Northern Recycling Operations & Waste Services, LLC operates the Devlin Road Recycling & Transfer Facility located at 889 Devlin Road in American Canyon, California ("Site"). The Site, owned by the Napa-Vallejo Waste Management Authority, is subject to various federal and state regulatory requirements under the federal Clean Water Act ("CWA"), including compliance with the State Water Resource Control Board's General Industrial Activities Storm Water Permit ("General Permit").

C. On April 17, 2015, CRW served Northern Recycling Operations & Waste Services, LLC and the Napa-Vallejo Waste Management Authority with a 60-Day Notice of Violations and Intent to File Suit ("Notice Letter") alleging various violations of the CWA relating to activities at the Site. Principal among the issues of alleged non-compliance identified in the Notice Letter are failures of the Best Management Practices ("BMPs") in the Devlin Road Recycling & Transfer Facility Storm Water Pollution Prevention Plan ("SWPPP") to control discharges of non-storm water from the Site as evidenced by the failure to test for copper and exceedances of EPA Benchmarks for pollutants in Annual Reporting year 2013-2014.

D. The Owners and Operators deny all of CRW's allegations that they are liable to CRW for any claims that were, or could have been asserted against the Owners and Operators based upon the Notice Letter.

E. The Parties have expended effort and resources in investigating and evaluating allegations and claims set forth in the Notice Letter, including the exchange of information regarding the Site, as well as engaging in a negotiation and technical dialogue regarding settlement.

F. The Parties now wish to resolve and settle all disputes, obligations, and purported or actual claims or causes of action, which may exist by and between CRW and the Owners and Operators, including without limitation any disputes, obligations, claims and/or causes of action that were or could have been asserted in or pursuant to the Notice Letter.

NOW, THEREFORE, in consideration of the execution of this Agreement and the releases, satisfactions and promises made herein, it is hereby agreed upon by the Parties as follows:

### **TERMS AND CONDITIONS**

1. Parties Bound By This Agreement and Length of Agreement. This Agreement, and each of its provisions, including all representations, warranties, and promises contained herein, binds, and inures to the benefit of CRW and the Owners and Operators, and each of their respective assigns, present and future affiliates, parents, subsidiaries, predecessors and successors in interest whether by merger, consolidation, or otherwise, as well as their respective representatives, agents, and administrators, past, present, and future. The "Termination Date" of this Agreement is the date that all of the requirements under Sections 2 and 3 are finished by The Owners and Operators.

2. Actions By the Owners and Operators. In exchange for the delivery, execution, and performance of this Agreement and of the Release by CRW as provided herein, the Owners and Operators shall perform the below specified projects. The Owners and Operators reserve the right, in its sole discretion, to determine (i) which persons shall perform any work described herein, including contractors; and (ii) the scope and technical details of, and manner to implement, any such work, subject to review and approval by the Regional Water Quality Control Board (or such other regulatory agency as may, from time to time, exercise jurisdiction with respect to environmental matters at the Site):

#### 2.1. Prepare and Implement an Updated and Expanded SWPPP.

- The Owners and Operator's current Storm Water Pollution Prevention Plan ("SWPPP") shall be updated and kept revised as necessary to ensure it is consistent with the requirements of the new General Permit (Water Quality Order 2014-0057-DWQ) that goes into effect July 1, 2015
- The SWPPP shall, in addition to specifying measures for the Construction and Demolition Material Processing Operations, specify measures addressing Transfer Operations and General Public Operations at the Site. The SWPPP shall also provide detailed descriptions of the drainage area at the Site, specifically, Drainage Area 1 – Scale and Off-Site areas, Drainage Area 2 – Operations Areas, and Drainage Area 3-Non Industrial Areas.

2.2. Submission of Additional Reports to CRW. To the extent that annual or other monitoring reports are not otherwise uploaded to and made available on the Regional Water Quality Control Board's storm water database, the Owners and Operators agree to provide CRW with a copy of any reports concerning matters addressed in this Agreement. The Owners and Operators may furnish copies of any such reports to CRW in either hard copy or digital form.

2.3. Site Visits. CRW shall conduct one (1) site visit of the Site within one (1) year after the Effective Date of this Agreement to review BMPs designed to ensure compliance with the General Permit and implemented at the site. CRW shall give the Owners and Operators at least seventy-two (72) hours' advance notice of its intent to conduct the site visit.

3. Fees and Costs. Northern Recycling Operations & Waste Services, LLC and/or the Napa-Vallejo Waste Management Authority shall pay to CRW, within thirty (30) days after the Effective Date of this Agreement, the amount of Forty-Two Thousand, Five Hundred Dollars (\$42,500.00), representing full satisfaction of all claims by CRW, including but not limited to CRW's investigative, expert, and attorneys' fees and costs. Payment shall be made by Northern Recycling Operations & Waste Services, LLC and the Napa-Vallejo Waste Management Authority to CRW in the form of checks payable to "California River Watch," mailed to the Law Office of Jack Silver, P.O. Box 5469, Santa Rosa, California 95402-5469, and shall constitute full payment for all of CRW's claims and for all costs of anticipated litigation and attorneys' fees incurred by CRW that have or could have been claimed in connection with CRW's allegations in its Notice Letter and/or under state or federal law.

4. Mutual Release. It is the intent of the Parties that the execution and delivery of this Agreement constitutes a full and complete satisfaction of all rights, claims and demands by CRW against the Owners and Operators, and the Owners and Operators against CRW, with respect to any and all allegations and claims made in the Notice Letter under the Clean Water Act. CRW and the Owners and Operators, on behalf of itself and any and all of its agents, representatives, successors, members, and assigns, does hereby absolutely, fully, and forever release, relieve, remise, and discharge the Owners and Operators and CRW, respectively, and its past and present employees, officers, directors, attorneys, and the predecessors, successors, and assigns of any of them, from any and all causes of action, claims, damages (including but not limited to punitive damages), demands, debts, actions, attorneys' fees, costs of suit, and liabilities of every kind or nature whatsoever, alleged in the Notice Letter under the Clean Water Act concerning the Site. The release provided for herein shall be valid and effective whether the claims, causes of action, or liability hereby released (i) were known or unknown, suspected or unsuspected, (ii) were based in contract, tort, statute, or otherwise, or (iii) arise at law or in equity. This release shall survive the termination of this Agreement, whether by satisfaction of the terms and conditions hereof or operation of law.

Further, the parties acknowledge that they are familiar with Section 1542 of the California Civil Code. For any and all other claims against each other, known or unknown, suspected or unsuspected, each party expressly waives and relinquishes any rights and benefits which they have or may have under Section 1542 of the Civil Code of the State of California, which provides:

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

The Parties acknowledge that each has specifically reviewed with its attorney the meaning and effect of the release set forth herein, the language of California Civil Code Section 1542, and the waiver contained herein. The Parties acknowledge that their attorneys have fully explained the impact of these provisions, and the Parties knowingly accept the risks associated with these provisions.

5. Covenant Not to Sue. As of the Effective Date of this Agreement, and for a period of 5 (five) years after the Effective Date, CRW agrees that neither CRW, its officers, executive staff, members of its governing board, nor any organization under the control of CRW, its officers, executive staff, or members of its governing board, will serve any 60-day Notice of Violations and Intent to Sue or file any lawsuit against the Owners and Operators seeking relief for alleged violations of the CWA, or any similar state statutes and/or regulations, including the Porter Cologne Water Quality Control Act (Cal. Water Code § 13000 *et seq.*), related to the Site, nor will CRW initiate or support such lawsuits against the Owners and Operators brought by other groups or individuals by providing financial assistance, personnel time, or any other affirmative actions. The Parties acknowledge and agree that this provision shall survive the termination of this Agreement, whether by satisfaction of the terms and conditions hereof or operation of law.

6. No Admission. This Agreement is the direct result of a compromise of disputed allegations and claims. As such, this Agreement shall not, for any purpose, be considered as an admission of liability by the Owners and Operators, nor shall the payment of any sum of money in consideration for the execution of this Agreement constitute or be construed as an admission of any liability by the Owners and Operators, which expressly denies any such liability or wrongdoing.

7. Delays in Schedule Implementation. In the event implementation by the Owners and Operators of the remedial measures set forth in Section 2 of this Agreement does not occur by the agreed to dates, despite the timely good faith efforts of the Owners and Operators to acquire any necessary approvals and/or permits, or due to factors unforeseen at the time this Agreement was entered into, the Owners and Operators agree to notify CRW in writing as soon as practicable after the anticipated delay becomes apparent, and in any case except in a case of force majeure described below, not less than twenty (20) days prior to any deadline set forth in Section 2, and shall describe the reasons for the anticipated delay.

8. Force Majeure. The Owners and Operators shall not be deemed in default or breach of this

Agreement by reason of any event which constitutes a force majeure. For purposes of this Agreement, a force majeure is defined as any event arising from causes beyond the reasonable control of the Owners and Operators or its contractors that delay or prevents performance. This includes, without limitation, acts of God, acts of war, acts of terrorism, fire, explosion, extraordinary weather events, restraint by court order or public authority, or other causes beyond the Owners and Operators' reasonable control. Neither increased costs nor economic hardship shall constitute a force majeure.

9. Breach of Agreement and Dispute Resolution. Any disputes between CRW and the Owners and Operators concerning any alleged breach of this Agreement shall be subject to the following dispute resolution procedures. Failure to satisfy the payment condition in Section 3 is a substantial breach of this Agreement and relieves CRW of its obligations under this Agreement.

9.1. Good Faith Negotiations. CRW and the Owners and Operators shall make good faith efforts to resolve informally any alleged breach of the Agreement. If informal efforts to resolve the alleged breach are unsuccessful, that Party shall provide written notice of the alleged breach and that Party's intent to initiate the dispute resolution procedure of this Section 8. The notice shall include a recitation of all facts and circumstances giving rise to the dispute, including the particular provisions of the Agreement alleged to have been breached.

9.2. Mediation. If the dispute is not resolved by the Parties within thirty (30) days after such notice is given, such dispute shall be submitted to mediation before a mutually agreeable neutral mediator. The Parties shall each bear their own costs and attorney's fees incurred in connection with such mediation.

9.3. Waiver. By agreeing to these dispute resolution provisions, the Parties understand that they are waiving certain important rights and protections that otherwise may have been available to each of them if a dispute between them were determined by a judicial action including, without limitation, the right to a jury trial, and certain rights of appeal. Other than the remedies contained within this Agreement including dispute resolution and specific performance of the terms of this Agreement, there are no other remedies. The Parties specifically agree that there is no basis within this Agreement or within the contemplation of the Parties to support a claim for consequential damages due to any form of breach.

10. Notices. All notices, consents, approvals, requests, demands and other communications (collectively, "Notice") which the Parties are required or desire to serve upon or deliver to the other Party shall be in writing and shall be given by nationally- recognized overnight courier, by certified United States mail, return receipt requested, postage prepaid, addressed as set forth below, or by facsimile or electronic mail addressed as set forth below:

**If to CRW:**

Jack Silver, Esq.  
Law Office of Jack Silver  
P.O. Box 5469  
Santa Rosa, CA 95402-5469  
Tel: (707) 528-8175  
Email: [lhm28843@sbcglobal.net](mailto:lhm28843@sbcglobal.net)

**If to the Owners  
and Operators:**

Richard Luthy  
Executive Director  
Napa-Vallejo Waste Management Authority  
1195 Third Street, Suite B10  
Napa, CA 94559  
Tel: (707) 299-1314  
Email: [rich.luthy@countyofnapa.org](mailto:rich.luthy@countyofnapa.org)

Steve Kelley  
General Manager  
Devlin Road Recycling and Transfer Facility  
Northern Recycling Operations  
& Waste Services, LLC  
889 Devlin Road  
American Canyon, CA 94503  
Tel: (707) 266-4144  
Email: [stevek@devlinroadrecycling.com](mailto:stevek@devlinroadrecycling.com)

Michael V. Brady  
Brady & Vinding  
400 Capitol Mall, Suite 2640  
Sacramento, CA 95814  
Tel: (916) 446-3400  
Email: [mbrady@bradyvinding.com](mailto:mbrady@bradyvinding.com)

The foregoing addresses may be changed by Notice given in accordance with this Section 10. Any Notice sent by mail shall be deemed received two (2) days after the date of mailing. Any Notice sent by facsimile shall be deemed received upon electronic confirmation of the successful transmission thereof, and any Notice sent by electronic mail shall be deemed received upon electronic transmission thereof provided sender does not receive electronic notice of non-delivery. Any Notice sent by overnight courier service shall be deemed received on the day of actual delivery as shown by the confirmation of delivery by the messenger or courier service. If the date of receipt of any Notice to be given hereunder falls on a weekend or legal holiday, then such date of receipt shall automatically be deemed extended to the next business day immediately following such weekend or holiday for purposes of calculating time periods

commencing upon the date of service.

11. Attorneys' Fees. Other than the payment to CRW under Section 3 each Party shall bear its own past and future attorneys' fees and costs relating to the subject matter of this Agreement.

12. Parties' Acknowledgment of Terms. This Agreement has been carefully and fully read and reviewed by CRW, the Owners and Operators, and their respective counsel, if any, who hereby represent that the contents of this Agreement are understood, and agree that this Agreement is binding on each Party or its respective predecessors, successors, and assigns and as described above.

13. Interpretation and Applicable Law. This Agreement shall be construed and interpreted in accordance with the laws of the United States and the State of California without regard to principles of conflicts of law. This Agreement shall be interpreted and construed as a whole, according to its fair meaning and not strictly for or against any Party, and without regard to which Party drafted the Agreement. All of the promises, representations, and warranties contained in this Agreement survive the execution of this Agreement.

14. No Assignments. Each Party to this Agreement represents and warrants that it has not assigned, transferred, hypothecated, or sold to any third person or entity, any of the rights or obligations released by or entered into under this Agreement.

15. Counterparts. This Agreement may be executed in multiple counterparts, each of which shall evidence one and the same agreement.

16. Headings. The headings used in this Agreement are for convenience of reference and shall not be used to define any provision.

17. Entire Agreement In Writing. This Agreement constitutes the entire agreement between the Parties hereto with respect to the subject matter set forth herein and supersedes all previous or contemporaneous negotiations, commitments (oral or written), and writings with respect to the subject matter set forth herein.

18. Modification or Amendment. This Agreement or any of its provisions may be modified or amended only by written agreement executed by all Parties to this Agreement.

19. Severability. The invalidity or unenforceability of any provision of this Agreement shall in no way affect the validity or enforceability of any other provision. If, in any action before any court or other tribunal of competent jurisdiction, any term, restriction, covenant, or promise is held to be unenforceable for any reason, then such term, restriction, covenant, or promise shall be deemed modified to the extent necessary to make it enforceable by such court or other tribunal and, if it cannot be so modified, that this Agreement shall be deemed amended to delete here from such provision or portion adjudicated to be invalid or unenforceable, and the

remainder of this Agreement shall be deemed to be in full force and effect as so modified. Any such modification or amendment in any event shall apply only with respect to the operation of this Agreement in the particular jurisdiction in which such adjudication is made.

20. Representations and Warranties. This Agreement is given voluntarily, free of undue influence, coercion, duress, menace, or fraud of any kind. No Party, nor any officer, agent, employee, representative, or attorney of or for any Party, has made any statement or representation to any other Party regarding any fact relied upon in entering this Agreement, and no Party is relying upon any statement, representation, or promise of any other Party, nor of any officer, agent, employee, representative, or attorney of or for any Party, in executing this Agreement or in making the settlement provided herein, except as expressly stated in this Agreement.

21. No Third Party Beneficiaries. This Agreement is not intended to confer any rights or obligations on any third party or parties, and no third party or parties shall have any right of action under this Agreement for any cause whatsoever. 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.

22. Authority. Each of the persons signing this Agreement on behalf of an entity represents and warrants that he or she has actual authority and capacity to execute this Agreement on behalf of the entity and to bind it to all of the terms of this Agreement.

IN WITNESS WHEREOF, the undersigned have caused this Agreement to be executed by their duly authorized representatives.

**NORTHERN RECYCLING OPERATIONS & WASTE SERVICES, LLC**

By:  \_\_\_\_\_

Dated: 7-20-15

**NAPA-VALLEJO WASTE MANAGEMENT AUTHORITY**

By: \_\_\_\_\_

Dated:

**CALIFORNIA RIVER WATCH**

By: \_\_\_\_\_



remainder of this Agreement shall be deemed to be in full force and effect as so modified. Any such modification or amendment in any event shall apply only with respect to the operation of this Agreement in the particular jurisdiction in which such adjudication is made.

20. Representations and Warranties. This Agreement is given voluntarily, free of undue influence, coercion, duress, menace, or fraud of any kind. No Party, nor any officer, agent, employee, representative, or attorney of or for any Party, has made any statement or representation to any other Party regarding any fact relied upon in entering this Agreement, and no Party is relying upon any statement, representation, or promise of any other Party, nor of any officer, agent, employee, representative, or attorney of or for any Party, in executing this Agreement or in making the settlement provided herein, except as expressly stated in this Agreement.

21. No Third Party Beneficiaries. This Agreement is not intended to confer any rights or obligations on any third party or parties, and no third party or parties shall have any right of action under this Agreement for any cause whatsoever. 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.

22. Authority. Each of the persons signing this Agreement on behalf of an entity represents and warrants that he or she has actual authority and capacity to execute this Agreement on behalf of the entity and to bind it to all of the terms of this Agreement.

IN WITNESS WHEREOF, the undersigned have caused this Agreement to be executed by their duly authorized representatives.

**NORTHERN RECYCLING OPERATIONS & WASTE SERVICES, LLC**

By: \_\_\_\_\_

Dated:

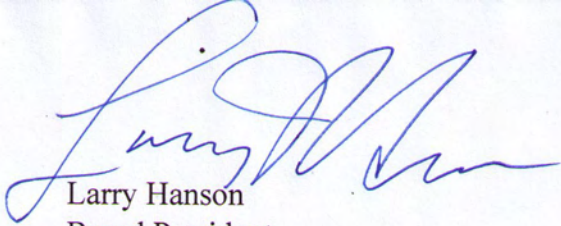
**NAPA-VALLEJO WASTE MANAGEMENT AUTHORITY**

By:  \_\_\_\_\_

Dated: 7-20-15

**CALIFORNIA RIVER WATCH**

By: \_\_\_\_\_



Larry Hanson  
Board President

Dated: 7/22/2015

**APPROVED AS TO FORM**

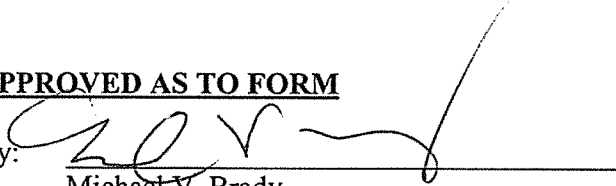
By: \_\_\_\_\_  
Michael V. Brady  
Brady & Vinding

Larry Hanson  
Board President

Dated:

**APPROVED AS TO FORM**

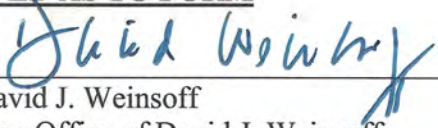
By:

A handwritten signature in black ink, appearing to read "M. V. Brady", is written over a horizontal line. The signature is stylized and extends above the line.

Michael V. Brady  
Brady & Vinding

**APPROVED AS TO FORM**

By:

  
\_\_\_\_\_  
David J. Weinsoff  
Law Office of David J. Weinsoff