

SETTLEMENT AGREEMENT AND MUTUAL RELEASE OF CLAIMS

This Settlement Agreement and Mutual Release of Claims (“Agreement”) is entered into between Northern California River Watch, a non-profit corporation, on behalf of itself and its members (“River Watch”) and the City of Healdsburg, a municipality organized under the laws of the State of California (“City”), (collectively the “Parties”) as of the last date executed below (the “Effective Date”), with respect to the following facts and objectives.

RECITALS

On August 18, 2011, River Watch provided the City with a Notice of Violations and Intent to File Suit (“60-Day Notice”) under Section 505 of the Federal Water Pollution Control Act (“Clean Water Act”), [33 U.S.C. § 1365,] with regard to alleged violations of the Clean Water Act associated with the City’s operation of its wastewater collection, treatment and disposal facility. A copy of the 60-Day Notice is attached to this Agreement as Exhibit A.

On September 28, 2011, counsel for the Parties met to discuss the allegations and claims set forth in the 60-Day Notice. The Parties, through counsel, engaged in negotiations following that meeting, which subsequently lead to resolution of all claims and disputes made by River Watch as set forth in the 60-Day Notice.

Without either adjudication of River Watch’s claims, as set forth in the 60-Day Notice or admission by the City of any alleged violation or other wrongdoing, the Parties agree it is in their mutual interest to enter into this Agreement setting forth the terms and conditions appropriate to resolving the claims that were, or could have been, asserted based upon the 60-Day Notice.

In mutual consideration for the resolution of these claims and possible claims, the Parties agree to the following:

TERMS OF SETTLEMENT

I. REMEDIAL MEASURES

A. SEWER SYSTEM MAINTENANCE AND REPAIR

1. Within one (1) year from the Effective Date of this Agreement, the City shall amend its Sewer System Management Plan to specify that defective gravity sewer lines located within one hundred fifty (150) feet of surface waters, including storm drainage channels and creeks, will be given a

higher priority for repair and/or replacement in the City's capital improvement program ("CIP") than other sewer lines with comparable defects located more than one hundred fifty (150) feet of surface waters.

- a. On or before February 15 of the calendar year following the calendar year in which the City commences the CCTV inspection program required by section I.A.2 below, the City will provide River Watch with a brief summary explaining how the City, in compliance with Section I.A.1 above, gave gravity sewer lines located within one hundred fifty (150) feet of surface waters a higher priority for repair or replacement during the calendar year preceding the date said summary is issued. On or before February 15 of each of the succeeding four (4) calendar years, the City will provide River Watch with a comparable summary, so that in all five (5) annual summaries are submitted. The Parties understand and recognize that there may be years in which circumstances implicating the City's obligations under Section I.A.1 may not arise. Under such circumstances, the City will so state in its annual summary.
 - b. Within six (6) months of the Effective Date of this Agreement, the City shall provide River Watch with information identifying all sewer lines within one hundred fifty (150) feet of a surface water and any known structural defects in all sewer lines within one hundred fifty (150) feet of a surface water, including such sewer lines which are designated for repair or replacement in the City's CIP.
2. In accordance with the standards and obligations set forth in the City's Sewage System Management Plan and CIP, the City agrees to CCTV all gravity lines (except for gravity lines exempt pursuant to subsections (a) and (b) below) within ten (10) years, such that each year, at least ten percent (10%) of the gravity lines will be inspected by CCTV. However, if the City CCTVs more than 10% of the gravity lines in any year, the amount exceeding 10% may be credited to a subsequent year. The City will begin implementation of a plan to fund the ongoing CCTV inspection program within six (6) months of the Effective Date of this Agreement, and will begin said CCTV inspection within five (5) years of the Effective Date of this Agreement. If the City begins implementation of the CCTV program sooner than five (5) years from the Effective Date of this Agreement, the City shall be given credit for any lines CCTV'd within such 5-year period. The ongoing CCTV inspection program is subject to the following two exceptions:

a. The City is not required to CCTV gravity lines which have been CCTV'd within ten (10) years prior to the Effective Date of this Agreement.

b. The City is not required to CCTV gravity lines constructed, replaced or repaired within twenty (25) years prior to the Effective Date of this Agreement.

B. SEWER SYSTEM OVERFLOW RESPONSE

1. Within one (1) year from the Effective Date of this Agreement, the City agrees to require the following information in its Overflow Emergency Response Plan:

a. The name, address, and telephone number of the person reporting the incident. Staff person will ask caller to provide this information and will document the response concerning the duration of the problem and knowledge of any history of prior incidents in the same area.

b. For Crew Sewer System Overflow Reports, service crews will report the following:

i. A statement of the information relied upon to estimate the start time of the spill including information from the person reporting the incident;

ii. A statement of the method used to estimate the total volume of the spill;

iii. A brief general description of the terrain surrounding the point of discharge/overflow, including the direction of flow;

iv. Measures taken to remediate the spill, including any repairs made to the collection system, the cleaning protocols used and whether any chemicals were used in the course of clean-up; and

v. A statement of the information relied on to determine whether any portion of the spill reached a surface water, and if applicable, the information relied on to estimate the volume that reached a surface water.

C. PRIVATE LATERAL ORDINANCE

1. Within one (1) year of the Effective Date of this Agreement, City staff shall prepare and submit for City Council consideration, a sewer lateral ordinance that generally provides the following:
 - a. Inspection and verification of the condition of private sewer laterals at the property owner's expense upon the occurrence of one of the following general conditions:
 - i. Transfer of ownership of the property if no inspection/replacement of the sewer lateral occurred within twenty (20) years prior to the transfer.
 - ii. The occurrence of two (2) or more SSOs caused by the private sewer lateral within two (2) years;
 - iii. A change of the use of the structure served (1) from residential to non-residential uses (2) to a non-residential use that will result in a higher flow than the current non-residential use, and (3) non-residential uses where the structure served has been vacant/unoccupied for more than three (3) years;
 - iv. Upon replacement or repair of any part of the sewer lateral;
 - v. Upon issuance of a building permit with a valuation of \$25,000.00 or more;
 - vi. Upon significant repair or replacement of the main sewer line to which the lateral is attached.
 - b. Mandatory replacement of a private sewer lateral at the property owner's expense where, upon CCTV inspection made under the supervision of an authorized City representative, the condition of the lateral warrants replacement to prevent stormwater infiltration into, or leaking of wastewater from, the lateral.
2. The City agrees the ordinance shall be considered in a duly noticed public hearing(s), by the City Council, pursuant to state law.

3. The City will provide a copy of the draft Ordinance to River Watch for review and comment upon publication of the Public Hearing Notice.

D. TASK CONFIRMATION

The City shall provide written confirmation of the completion of each task described in Sections A. B. and C. above to River Watch, with a copy to Jerry Bernhaut, within thirty (30) days of the completion of each task. Submission of the annual summaries described in Section I.A.1.a shall constitute written confirmation of the completion of that task.

II. RELEASE OF CLAIMS

A. Upon the Effective Date of this Agreement, River Watch, on behalf of itself, its officers, members, agents, successors and assigns, and any other person acting under its direction and control with respect to this matter, agrees that it releases, acquits and forever discharges the City, its elected and appointed officials, officers, employees, agents, attorneys, legal successors and assigns, and any other person acting on the City's behalf, from all environmental claims, actions, causes of action, obligations, liabilities, indebtedness, breach of duty, claims for injunctive relief and other equitable relief, suits, liens, damages, losses, costs or expenses, including attorneys' fees, known or unknown, fixed or contingent, liquidated or unliquidated, suspected or unsuspected, foreseen or unforeseen arising from, connected with, based upon or related in any way to the violations alleged, or which could have been alleged, in the 60-Day Notice, including without limitation, any and all claims for violations of 33 U.S.C. § 1365, or of administrative orders, waste discharge requirements or directives of the Regional Water Quality Control Board, of the Clean Water Act (33 U.S.C. § 1251, *et seq.*), the Porter Cologne Water Quality Control Act (Cal. Water Code, § 13000 *et seq.*), or any other federal or state law, or of any local law, ordinance or regulation governing the City's wastewater collection, treatment or disposal activities, which occurred at any time up to and including the Effective Date of this Agreement..

B. The foregoing release is intended to extend to all such claims, known or unknown, suspected or unsuspected, and 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.

C. The Parties acknowledge that each has specifically reviewed with its attorney the meaning and effect of the release set forth herein, the language of 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.

III. COVENANT NOT TO SUE

For the period beginning on the Effective Date and ending five (5) years after the Effective Date of this Agreement, River Watch agrees that neither River Watch, its officers, executive staff, members of its governing board, nor any organization under the control of River Watch, its officers, executive staff, members of its governing board, will serve any Notice of Intent to Sue or file any lawsuit against the City seeking relief for alleged violations of the Clean Water Act (33 U.S.C. § 1251, et seq.), or the Resources Conservation Recovery Act (“RCRA”; 42 U.S.C. § 6901 et seq.), or any similar state statutes and/or regulations, including the Porter Cologne Water Quality Control Act (Cal. Water Code, § 13000 et seq.), nor will River Watch initiate or support such lawsuits against the City brought by other groups or individuals by providing financial assistance, personnel time, or any other affirmative actions.

IV. FORCE MAJEURE

A. Separate from, and in addition to any other limitations on the City’s obligations under the this Agreement, the City’s obligation to comply with one or more of the provisions of this Agreement shall be deferred to the extent and for the duration that the delay in compliance is caused by an event or circumstances beyond the reasonable control of the City or any entity controlled by the City, including its contractors, and that could not have been reasonably foreseen and prevented by the exercise of due diligence by the City. Delays solely caused by unanticipated or increased costs or expenses associated with the completion of any work or activity under this Agreement, changed financial circumstances, or the City’s failure to make timely and bona fide applications and to exercise diligent efforts to obtain permits, or normal inclement weather shall not, in any event, be considered to be circumstances beyond the City’s control.

B. If any event or circumstance occurs which causes or may cause a delay in the City’s compliance with any provision of this Agreement, and the City seeks relief under this section,

1. The City shall provide written notice to River Watch within thirty (30) days of the date that the City first knew of the event or circumstance, or should have known of the event or circumstance by the exercise of due diligence;

2. The City's notice to River Watch shall specifically refer to this part of this Agreement and describe the anticipated length of time the delay may persist, the cause or causes of the delay, the measures taken or to be taken by the City to prevent or minimize the delay, the schedule by which the measures will be implemented, and the anticipated date of compliance. The City shall adopt all reasonable measures to avoid and minimize such delays;
3. If River Watch disagrees with the City's notice, the Parties shall meet and confer in good faith to determine whether the Parties concur that the delay was or is impossible to avoid, despite the good faith efforts of the City.

V. ENFORCEMENT

A. The Parties covenant and agree that, if either party determines the other is in violation of one or more terms of this Agreement, they shall provide notice to the other in writing of what actions or inactions they deem to be in violation. 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 the Agreement, within an additional sixty (60) 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 to by the Parties. Either party may request that the presiding Judge of the Sonoma County Superior Court select an arbitrator if the parties cannot reach agreement. The arbitration shall be binding and not subject to appeal. The arbitration shall be conducted in accordance with the arbitration rules and procedures of JAMS/ENDISPUTE or other conventional rules agreed to by the parties. The arbitrator shall be empowered to determine a prevailing party and award payment of reasonable attorneys' fees and costs to that party. To the extent there are multiple issues with a different prevailing party for one or more issues, the arbitrator may take those facts into account in terms of an award for fees and costs.

B. If River Watch asserts the City is in violation of this Agreement and the City corrects the action or inaction within sixty (60) days of notice from River Watch, no further enforcement action under the terms of this Agreement shall be taken by either party. To the extent an alleged violation cannot be reasonably cured within the sixty-day period, and the City undertakes all reasonable efforts to commence the cure of such alleged violation within that period, no further enforcement action under the terms of this Agreement shall be taken by either party.

VI. MONETARY RELIEF, FEES, COSTS AND EXPENSES

a. **Mitigation Payment In Lieu Of Civil Penalties.** In lieu of payment of civil penalties and to address any perceived environmental harm as alleged in River Watch's 60-Day Notice, and as mitigation of the Clean Water Act violations alleged in River Watch's 60-Day Complaint, the City agrees to pay the sum of Fifteen Thousand Dollars (\$15,000.00) (herein "Mitigation Payment") to River Watch within thirty (30) days of the Effective Date of this Agreement. Payment shall be made in the form of a single check payable to "Northern California River Watch" and shall be mailed to Law Office of Jack Silver, P.O. Box 5469, Santa Rosa, CA 95402-5469; or, if the payment is mailed via FedEx, UPS or other overnight service, to Law Office of Jack Silver, 100 E Street, Suite 318, Santa Rosa, CA 95404. Said Mitigation Payment shall be used by River Watch to fund the design and implementation of an environmental project undertaken by River Watch designed to benefit water quality in Foss Creek and/or the Russian River or any tributaries thereto. River Watch shall provide the City a written description of said Project prior to the Project's implementation. If any report(s) is/are produced for said Project, River Watch shall provide the City a copy of such report(s), and if the project produces sampling or analytical data, River Watch will provide the City a copy of such data, within two (2) years of receipt of said Mitigation Payment. River Watch further agrees, as a condition of this Agreement, that it shall complete the Project within two (2) years of receipt of said Mitigation Payment and shall provide the City with written documentation demonstrating that the Mitigation Payment, in its entirety, was applied to the Project.

b. **Attorneys' Fees and Costs.** Within fifteen (15) days of the Effective Date of this Agreement, the City shall pay River Watch the sum of Thirty-Five Thousand Dollars (\$35,000.00) as reimbursement for River Watch's investigative and attorneys' fees and costs. Said payment shall constitute full and complete satisfaction of any and all claims by River Watch for attorneys' fees and costs in connection with this matter up to and including the Effective Date of this Agreement, and for attorneys' fees and costs incurred monitoring and enforcing the City's compliance with this Agreement, with the exception of any action taken to enforce this Agreement by way of arbitration. Payment shall be made in the form of a single check payable to "Northern California River Watch" and shall be mailed to Law Office of Jack Silver, P.O. Box 5469, Santa Rosa, CA 95402-5469; or, if the payment is mailed via FedEx, UPS or other overnight service, to Law Office of Jack Silver, 100 E Street, Suite 318, Santa Rosa, CA 95404.

VII. TERMINATION DATE

Notwithstanding anything to the contrary set forth herein, this Agreement shall terminate when one of the following occurs, whichever is earlier:

- A. on the fifteenth (15th) anniversary of the Effective Date; or,
- B. the date the City completes both of the following:
 - (1) submits five (5) annual summaries required by Section I.A.1; and
 - (2) CCTVs gravity lines as set forth in Section I.A.2 of this Agreement.

VIII. GENERAL PROVISIONS

A. NOTICE

Unless otherwise provided herein or until the Parties otherwise agree in writing, all communications and notice between the Parties regarding this Agreement shall be through the following addresses:

For City:

City of Healdsburg
 401 Grove Street
 Healdsburg CA, 95448
 Attn: City Manager

With a Copy to:

Gregory Newmark
 Attorney at Law
 Meyers Nave
 555 12th Street, Suite 1500
 Oakland, CA 94607
 Fax: (510) 444-1108

For River Watch:

Northern California River Watch
 P.O. Box 817
 Sebastopol, CA 95472
 Attn: Larry Hansen

With a copy to:

Jerry Bernhaut, Esq.
 Law Office of Jack Silver
 P.O. Box 5469
 Santa Rosa, CA 95402-5469
 Fax: (707) 528-8675

B. ENTIRE AGREEMENT

This Agreement constitutes the entire agreement between the Parties. It is expressly understood and agreed that this Agreement may not be altered, amended, modified or otherwise changed in any respect whatsoever except by a writing duly executed by authorized representatives of the Parties hereto. The Parties hereby agree and acknowledge that they will make no claim at any time or place that this Agreement has been orally altered or modified or otherwise changed by oral communication of any

kind or character. This Agreement shall supersede all previous agreements whether written or oral, that may have been reached between the Parties in connection with this matter and provides the sole remedy from any party to any other party regarding this matter.

C. ADVICE OF ATTORNEYS

This Agreement is entered into by each party freely and voluntarily. Each of the parties has had the benefit of advice of counsel of their choice in the negotiating, drafting and executing of this Agreement, and the language in all parts of this Agreement is the product of the efforts of all counsel. Accordingly, neither the entire Agreement nor any provision in it shall be deemed to have been proposed or drafted by a party or construed against any Party.

D. GOVERNING LAW/CONSTRUCTION OF AGREEMENT

This Agreement shall be governed, interpreted, construed and enforced in accordance with the laws of the State of California applicable to agreements executed and wholly performed within said State, without regard to principles of conflicts of laws. Should any provision of this Agreement be held invalid or illegal, such illegality shall not invalidate the whole of this Agreement, but rather, this Agreement shall be construed as if it did not contain the illegal part, and the rights and obligations of the Parties shall be construed and enforced accordingly.

E. AUTHORITY OF REPRESENTATION

Each party respectively represents and warrants to each other party that the undersigned representative for such party has full and complete authority to execute this Agreement and bind said party to the terms hereof.

F. COUNTERPARTS AND FACSIMILE SIGNATURES

This Agreement may be executed in counterparts with each counterpart being interpreted as an original, and all of which, taken together shall constitute one and the same instrument. Any party may transmit its execution of this Agreement by facsimile or electronic mail, in which case such party shall provide the original execution page within three business days to all other parties. A party's execution page transmitted by facsimile or electronic mail may be used as though it were an original signature notwithstanding the fact that the party did not provide an original signature.

G. NO ADMISSION OF LIABILITY OR WAIVER

The Parties expressly recognize that the terms and conditions of the Agreement constitute a compromise and settlement of disputed claims and an accord and satisfaction of contested matters. This Agreement shall not be construed in any manner as an admission by any party hereto of any liability of any kind to the other party, nor shall it be considered or interpreted as an assumption of any liability under applicable law. This Agreement is executed by the Parties for the sole purpose of settling the disputes which serve as the basis for River Watch's claims. It is expressly understood and agreed, as a condition hereof, that this Agreement is not to be construed as, nor does it constitute, an admission, evidence, or indication, in any degree, of liability by any party for any claim, asserted or unasserted.

H. 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.

SO AGREED:

Dated: 1-6-12

NORTHERN CALIFORNIA RIVER WATCH

By: Margaret Buzalyski
Board President

Dated: 1-13-12

CITY OF HEALDSBURG

By: [Signature]
City Manager

APPROVED AS TO FORM:

Dated: 1/5/12



Jerry Bernhaut
Attorney for Northern California River Watch

Dated: 1-13-12



Mike Gogna
Attorney for City of Healdsburg
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