

## **SETTLEMENT AGREEMENT AND RELEASE OF CLAIMS**

This Settlement Agreement and Release of Claims ("Agreement"), effective as of the last date of execution below ("Effective Date"), is made by and between the County of Mendocino and Solid Waste of Willits, Inc. ("Party" or the "Parties").

### **RECITALS**

The parties make this Agreement with reference to the following facts:

A. The County of Mendocino ("County") and the City of Fort Bragg ("City"), under a Joint Powers Agreement, are the owners, and Solid Waste of Willits, Inc. ("SWOW") is the operator, of the Caspar Transfer Station located at 15000 Prairie Way in the City of Mendocino, California ("Site"). The Site 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").

B. In relation to a Lawsuit filed on July 14, 2015, by California River Watch ("CRW") against the Parties ("Lawsuit" or "California River Watch v. County of Mendocino, et al., USDC Northern Dist., Case No. C-15-3263-YGR"), SWOW filed a Cross-Claim for Indemnification ("Cross-Claim") on August 3, 2015, against County and City.

C. The Parties have agreed to resolve and settle all disputes, obligations and/or causes of actions which may exist by and between the City and SWOW arising out of claims asserted in the Lawsuit and the Cross-Claim."

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:

### **RELEASE OF CLAIMS**

1. Upon the Effective Date of this Agreement, Solid Waste of Willits, Inc., 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 County, its elected and appointed officials, officers, employees, agents, legal successors and assigns, and any other person acting on the County's behalf, from all claims, actions, causes of action, obligations, except for obligations under this Agreement, including attorneys' fees, costs and fees, based upon the Lawsuit and Cross-Claim, specifically regarding the Caspar Transfer Station Storm Water Pollution Prevention Plan ("SWPPP"), which occurred at any time up to and including the effective date of this Agreement.

## AGREEMENT

1. The Parties agree to settle the SWOW Cross-Claim arising out of the Lawsuit. This Agreement, and each of its provisions, including all representations, warranties, and promises contained herein, binds, and inures to the benefit of County and SWOW, 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, 3 and 4 are finished by The Parties.

2. **Actions by County.** In exchange for the delivery, execution, and performance of this Agreement and of the Release by SWOW as provided herein, the County shall prepare an amendment to the existing BOS Agreements #11-008 and #10-138 adding indemnification language as set forth in contract amendments attached hereto and incorporated by reference as Exhibits A and B.

3. **Actions by SWOW.** In exchange for the delivery, execution, and performance of this Agreement, SWOW shall file with the Federal District Court, within five (5) business days of the Effective Date of this agreement, a Notice of Dismissal of Cross-Claim whereby the Cross-Claim and all claims therein shall be dismissed with prejudice, pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i).

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 SWOW against County, and the County against SWOW, with respect to any and all allegations and claims made in the Lawsuit or Cross-Claim. County and SWOW, 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 County and SWOW, 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 punitive damages), demands, debts, actions, attorneys' fees, costs of suit, and liabilities of every kind or nature whatsoever, arising out of claims asserted in the Lawsuit and Cross-Claim. 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.

Further, the parties acknowledge that they are familiar with Section 1542 of the California Civil Code. For any other claims against each other, 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.

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. 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 Parties, 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 Parties, which expressly deny any such liability or wrongdoing.

9. 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:

Mendocino County  
Rebecca L. Chenoweth, Deputy County Counsel  
Office of the County Counsel  
County of Mendocino  
501 Low Gap Road / Room 1030  
Ukiah, CA 95482  
Tel: (707) 234-6885

Stephen F. Johnson, Esq.  
Mannon, King and Johnson  
Counsel for Solid Waste of Willits, Inc.  
200 North School Street / Suite 304  
Post Office Box 419  
Ukiah, CA 95482

Copy all correspondence to:

Howard Dashiell, Director  
Department of Transportation  
County of Mendocino  
340 Lake Mendocino Drive  
Ukiah, CA 95482  
Tel: (707) 463-4363

Gerald Ward  
Solid Waste of Willits, Inc.  
P.O. Box 1425  
Willits, CA 95490

The foregoing addresses may be changed by Notice given in accordance with this Section 9. 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.

10. **Attorneys' Fees.** Each Party shall bear its own past and future attorneys' fees and costs relating to the subject matter of this Agreement.

11. **Parties' Acknowledgment of Terms.** This Agreement has been carefully and fully read and reviewed by the Parties and their respective counsel, 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.

12. **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.

13. **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.

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

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

16. **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.

17. **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.

18. **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.

19. **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.

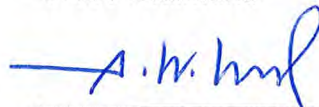
20. **No Third Party Beneficiaries.** This Agreement is not intended to confer any rights or obligations on any third party or parties, and no third party or parties shall have any right of action under this Agreement for any cause whatsoever. Subject only to the express restrictions contained in this 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.

21. **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.

Date: 2.4.16

Cross-Claimant:



SOLID WASTE OF WILLITS, INC.

Date: \_\_\_\_\_

Respondent:


\_\_\_\_\_  
COUNTY OF MENDOCINO  
BOARD OF SUPERVISORS, CHAIR

APPROVED AS TO FORM AND CONTENT:

Date: 2/5/16

Cross-Claimant Solid Waste of Willits' Attorney:

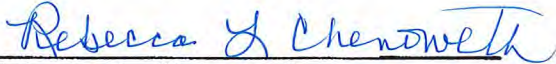
By

  
\_\_\_\_\_  
Stephen Johnson, Esq.

Date: 2/24/16

Respondent  
COUNTY OF MENDOCINO

By

  
\_\_\_\_\_  
Rebecca L. Chenoweth  
Deputy County Counsel

INSURANCE REQUIREMENTS:

  
\_\_\_\_\_  
Alan D. Flora  
Assistant CEO/Risk Manager

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

CITY OF FORT BRAGG

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

Dated: 2/12/16

SOLID WASTE OF WILLITS, INC.

By: signature on page 5

Dated:

APPROVED AS TO FORM:

CITY ATTORNEY - Burke Williams Soresten LLP

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

Dated:

COUNSEL FOR SWOW

By: signature on page 6

Dated:

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