

**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 City of Rohnert Park ("**City**") (collectively, the "**Parties**").

**RECITALS**

A. NCRW is a 501(c)(3) non-profit, public benefit corporation organized under the laws of the State of California.

B. City is a municipality organized under the laws of the State of California. City operates a wastewater collection system ("**Collection System**") that serves the its residents and businesses. The Collection System transports wastewater to the Laguna Subregional Wastewater Collection, Treatment, Conveyance, Reuse, and Disposal Facilities operated by the City of Santa Rosa.

C. On June 6, 2005 NCRW provided City with a Notice of Violations and Intent to File Suit ("**Notice**") under Section 505 of the Federal Water Pollution Control Act (the "**Act**" or the "Clean Water Act"), 33 U.S.C. § 1251 *et seq.*

D. On November 10, 2005 NCRW provided the City with a Supplemental Notice of Violations and Intent to File Suit Under the Act ("**Supplemental Notice**").

E. NCRW and the City, through their authorized representatives, attended a mediation for this matter on May 15, 2006.

F. At the conclusion of the mediation, NCRW's and the City's representatives executed a "Stipulation for Settlement" and "River Watch v. City of Rohnert Park Term Sheet". The purpose of this Agreement is to memorialize in more detail the terms of the settlement, but to be consistent with those May 15, 2006 documents.

G. NCRW and the City, through their authorized representatives and without either adjudication of NCRW's claims or the City's admission of any alleged violation or other wrongdoing, have chosen to resolve in full NCRW's allegations in the Notice and Supplemental Notice through settlement and to avoid the cost of litigation.

H. NCRW and the City have agreed that it is in their mutual interest to enter into this Agreement setting forth the terms and conditions to resolve NCRW's allegations set forth in the Notice and Supplemental Notice.

**AGREEMENT**

For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, NCRW and the City hereby agree as follows:

1. **EFFECTIVE DATE.** The Term "**Effective Date**," as used in this Agreement, shall mean the date the Agreement has been executed by both parties.

2. **MEDIATION OUTCOME.** The "Stipulation for Settlement" and "River Watch v. City of Rohnert Park Term Sheet" from the May 15, 2006 mediation are attached hereto as Exhibit A and incorporated by reference as though fully set forth herein. The Parties intend that the Stipulation for Settlement, the Term Sheet, and this Agreement shall be read and interpreted together as one document.

3. **COMMITMENTS TO NCRW.**

3.1 **Supplemental Environmental Project.** City agrees to include a water quality study as a component of the City's anticipated Creek Restoration Plan. One element of the water quality study shall be a reasonably comprehensive and technically competent analysis of human markers to determine if human wastewater is present in waters of selected surface watercourses in Rohnert Park. City shall use its best efforts to complete this analysis within 3 years of the Effective Date. City agrees to utilize the results of the water quality study as a factor in determining future improvements to and maintenance of the Collection System. City shall invite Michael Johnson, a researcher affiliated with the University of California at Davis, to submit a proposal to perform the water quality study. City shall provide River Watch the opportunity to review and comment within 30 days upon the water quality study proposal, and shall respond in a like period of 30 days to any comments or recommendations submitted by River Watch, prior to final award of the proposal to perform the study.

3.2 **Protocols for Recording Collection System Overflows.** City will review and improve overflow reporting in compliance with the new State Water Resources Control Board Wastewater Discharge Requirements, Order 2006-0003, dated May 2, 2006 ("**WDR**"). Reports will be available to the public upon request to the City Clerk and in the state database developed in connection with the WDR requirements. City shall review and improve reporting in accordance with the schedule in the WDR.

3.3 **Mapping of Collection System.** City will prepare and provide its GIS map of the Collection System within 6 months of the Effective Date. The map will show sewer lines, creeks, parks and schools, and soil type information from the Soil Conservation Service or similar sources. The City shall use the map as a factor in determining the locations for its water quality study referred to in Section 3.1 above.

3.4 **Recommended Lateral Replacement Ordinance.** Within 12 months of the Effective Date, City public works staff will prepare and submit for the City Council's consideration a lateral replacement ordinance requiring an inspection of private sewer laterals prior to the sale of property. The draft ordinance may include a provision requiring repair of inspected laterals, if and as necessary. City staff's presentation will include a good faith, balanced report on the benefits of such a program and will not recommend against approval. Staff shall include in its presentation the recommendations of V&A Consulting Engineers in the Inflow & Infiltration Study commissioned by the City concerning such an ordinance, and information about, and examples of, the lateral ordinances of other cities. City shall provide River Watch the opportunity to review and comment within 30 days upon City staff's report and

proposed ordinance, and shall respond in a like period of 30 days to River Watch's comments or recommendations, prior to submitting the report and proposed ordinance to the City Council. City shall provide notice to River Watch in the manner set forth in Section 7.4 below 7 days prior to any scheduled City Council meeting where this item will be considered.

3.5 Video Inspect Select Sections of the Collection System. Within 5 years, City will visually document with closed circuit television ("CCTV"), the following portions of the Collection System: (a) those portions that either cross creeks, streams, or waters of the United States, or are within 200 feet of such creeks, streams, or waters; and (b) those portions that are within 100 feet of sites listed as "Open" using the Site/Facility Finder Tool on the California State Water Resources Control Board GeoTracker website.

3.6 Attorneys' Fees. City shall pay NCRW the sum of \$40,000 within 15 days of the Effective Date. The City shall issue a single check in that amount payable to "Northern California River Watch," and this shall constitute full payment for all costs, including attorney's fees, incurred by NCRW in this matter, up to and including the Effective Date of this Agreement.

3.7 Mediation Costs. City shall pay 66 % of the costs of mediation, and NCRW shall pay 34% of the costs of mediation. The parties will pay those costs directly to JAMS.

3.8 Press Release. NCRW and City agree jointly to prepare any press release associated with this Agreement, within 10 days of the Effective Date. The Parties will make no public statement about the settlement, or the substance of this matter, except in that joint press release.

**4. NO ADMISSION OR FINDING.** 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.

**5. MUTUAL RELEASE OF LIABILITY.** In consideration of the matters set forth in this Agreement, and except as otherwise provided herein, the Parties hereby forever and fully release each other and their respective successors, assigns, officers, agents, employees, and all persons, firms and corporations having an interest in them, from any and all claims and demands of any kinds, nature, or description whatsoever, and from any and all liabilities, damages, injuries, actions or causes of action, either at law or in equity, which the Parties have against each other arising from NCRW's allegations and claims as set forth in the Notice and Supplemental Notice.

**6. COVENANT NOT TO SUE.** For the period beginning on the Effective Date and ending seven years after the Effective Date, NCRW covenants not to sue the City for any matter regarding the City's compliance with the Act, the WDR, or other matters relating to the Collection System. This covenant is binding on NCRW, its officers, executive staff, members of its governing board, and any organization under the control of NCRW, its officers, executive staff, or members of its governing board. NCRW further agrees that NCRW will not support

other lawsuits, by providing financial assistance, personnel time or other affirmative actions, against City that may be proposed by other groups or individuals who would challenge the City's compliance with the Act, the WDR, or other matters relating to the Collection System.

## 7. GENERAL PROVISIONS.

7.1 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 the Act, or specifically herein.

7.2 Choice of Law. This Agreement shall be governed by the laws of the United States, and where applicable, the laws of the State of California.

7.3 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.

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

NCRW: Jack Silver, Esq.  
Law Office of Jack Silver  
PO Box 5469  
Santa Rosa, CA 95402-5469

City: Michelle Marchetta Kenyon, Esq.  
City Attorney for the City of Rohnert Park  
McDonough Holland & Allen PC  
1901 Harrison Street, 9th Floor  
Oakland, CA 94612-3501

Notifications of communications shall be deemed submitted on the date that they are 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. In addition, the Parties may agree to transmit documents electronically or by facsimile.

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

7.6 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.


7.7 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.

7.8 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 except as provided in Section 2 expressly supersedes any and all prior oral or written agreements covenants, representations and warranties (express or implied) concerning the subject matter of this Agreement.

7.9 Negotiated Agreement. The Parties have negotiated this Agreement, and the doctrine of *contra proferentum* does not apply.

7.10 Authority. The undersigned representatives for NCRW and City each certify that he/she is fully authorized by the party whom he/she represents to enter into the terms and conditions of this Agreement.

The Parties hereby enter into this Agreement.

CITY:		
Date: <u>7-11</u> , 2006	City of Rohnert Park Mayor <u>[Signature]</u>	
Approved as to Form: <u>[Signature]</u> Michelle Marchetta Kenyon, City Attorney	Per Resolution No. 2006-193 adopted by the City Council on July 11, 2006 Attest: <u>[Signature]</u> Judy Hauff, City Clerk	
NCRW:		
Date: <u>7-8</u> , 2006	NORTHERN CALIFORNIA RIVER WATCH <u>[Signature]</u> President of the Board of Directors	
Approved as to Form: <u>[Signature]</u> 7.10.06 Jack Silver, Esq., attorney for NCRW		