

1 ANDREW L. PACKARD (State Bar No. 168690)
2 MEGAN E. TRUXILLO (State Bar No. 275746)
3 JOHN J. PRAGER (State Bar No. 289610)
4 Law Offices of Andrew L. Packard
5 100 Petaluma Blvd. N., Suite 301
6 Petaluma, CA 94952
7 Tel: (707) 763-7227
8 Fax: (707) 763-9227
9 E-mail: Andrew@packardlawoffices.com

10 Attorneys for Plaintiff
11 CALIFORNIA SPORTFISHING
12 PROTECTION ALLIANCE

13 **UNITED STATES DISTRICT COURT**
14 **NORTHERN DISTRICT OF CALIFORNIA**

15 CALIFORNIA SPORTFISHING
16 PROTECTION ALLIANCE, a non-
17 profit corporation,

18 Plaintiff,

19 vs.

20 CITY OF WATSONVILLE,

21 Defendant.

Case No. 5:14-cv-01559-LHK

[PROPOSED] CONSENT AGREEMENT

(Federal Water Pollution Control Act,

33 U.S.C. §§ 1251 to 1387)

22 **WHEREAS**, Plaintiff California Sportfishing Protection Alliance (hereinafter “CSPA”)
23 is a non-profit public benefit corporation dedicated to the preservation, protection, and defense
24 of the environment, wildlife, and natural resources of California’s waters;

25 **WHEREAS**, Defendant City of Watsonville (hereinafter “the City” or “Defendant”)
26 operates a 1.6-acre Public Drop Off/ Materials Recovery Facility (“the “PDO/MRF Facility”)
27 and adjacent 5.8-acre Corporation Yard (“the MSC”) located at 320 Harvest Drive, in
28 Watsonville California. The PDO/MRF accepts recyclable materials and wastes from City
residents.

WHEREAS, the City also operates an approximately 100-acre landfill at 730 San

1 Andreas Road, in Watsonville, California (the “Landfill Facility”);

2 **WHEREAS**, the PDO/MRF Facility, the MSC, and the Landfill Facility shall be
3 referred to collectively herein as “the Facilities”;

4 **WHEREAS**, CSPA and Defendant collectively shall be referred to as the “Parties;”

5 **WHEREAS**, the PDO/MRF and MSC Facilities collect and discharge storm water into
6 the Municipal Separate Storm Sewer System, Watsonville Slough, and ultimately into
7 Monterey Bay (a map of the PDO/MRF Facility is attached hereto as **Exhibit A** and
8 incorporated herein by reference);

9 **WHEREAS**, the Landfill Facility collects and discharges storm water from the Landfill
10 Facility into the Gallighan Slough, the Pajaro River, and ultimately into Monterey Bay (a map
11 of the Landfill Facility is attached hereto as **Exhibit B** and incorporated herein by reference);

12 **WHEREAS**, at all times relevant to Plaintiff’s complaint, storm water discharges
13 associated with industrial activity were regulated pursuant to the National Pollutant Discharge
14 Elimination System (“NPDES”), General Permit No. CAS000001 [State Water Resources
15 Control Board], Water Quality Order No. 91-13-DWQ (as amended by Water Quality
16 Order 92-12 DWQ and 97-03-DWQ, issued pursuant to Section 402 of the Clean Water Act,
17 33 U.S.C. § 1342;

18 **WHEREAS**, Plaintiff avers that on or about February 1, 2014, it provided notice of
19 Defendant’s alleged violations of the Act at the PDO/MRF Facility (“PDO/MRF Notice
20 Letter”), and of its intention to file suit against Defendant, to the Administrator of the United
21 States Environmental Protection Agency (“EPA”); the Administrator of EPA Region IX; the
22 U.S. Attorney General; the Executive Director of the State Water Resources Control Board
23 (“State Board”); the Executive Officer of the Regional Water Quality Control Board, Central
24 Valley Region (“Regional Board”); and to Defendant, as required by the Act, 33 U.S.C. §
25 1365(b)(1)(A) (a true and correct copy of CSPA’s February 1, 2014 Notice Letter is attached
26 as **Exhibit C** and incorporated herein by reference);

27 **WHEREAS**, Plaintiff avers that on or about March 5, 2014, it provided notice of
28

1 Defendant’s alleged violations of the Act at the Landfill Facility (“Landfill Notice Letter”),
2 and of its intention to file suit against Defendant, to the Administrator of the United States
3 Environmental Protection Agency (“EPA”); the Administrator of EPA Region IX; the U.S.
4 Attorney General; the Executive Director of the State Water Resources Control Board (“State
5 Board”); the Executive Officer of the Regional Water Quality Control Board, Central Valley
6 Region (“Regional Board”); and to Defendant, as required by the Act, 33 U.S.C. §
7 1365(b)(1)(A) (a true and correct copy of CSPA’s February 1, 2014 Notice Letter is attached
8 as **Exhibit D** and incorporated herein by reference);

9 **WHEREAS**, Defendant denies the occurrence of the violations alleged in the Notice
10 Letters and maintains that the City has complied at all times with the provisions of the General
11 Permit and the Clean Water Act;

12 **WHEREAS**, the Parties agree that it is in their mutual interest to resolve the Clean
13 Water Act matter as to all entities and persons named in the Notice Letters without litigation
14 and enter into this Consent Agreement (“Agreement”);

15 **WHEREAS**, CSPA filed its original complaint against Defendant herein in the United
16 States District Court, Northern District of California, on April 4, 2014 (this matter hereinafter
17 referred to as “the Action”);

18 **WHEREAS**, CSPA filed its First Amended Complaint herein on May 5, 2014;

19 **WHEREAS**, for purposes of this Agreement, the Parties stipulate that venue is proper
20 in this Court, and that Defendant does not contest the exercise of jurisdiction by this Court to
21 dismiss this matter with prejudice under the terms of this Agreement;

22 **WHEREAS**, this Agreement shall be submitted to the United States Department of
23 Justice for the 45-day statutory review period, pursuant to 33 U.S.C. § 1365(c);

24 **WHEREAS**, at the time the Agreement is submitted for approval to the United States
25 Department of Justice, CSPA shall file a Notice of Settlement in the Action and inform the
26 Court of the expected date of the parties’ stipulated request for dismissal following the
27 expiration of the statutory review period;

28

1 **AND WHEREAS**, upon expiration of the statutory review period, the Parties shall file
2 with the Court a Stipulation and Order that shall provide that the First Amended Complaint
3 and all claims therein shall be dismissed with prejudice pursuant to Federal Rule of Civil
4 Procedure 41(a)(2) and that the Court shall retain jurisdiction for the enforcement of this
5 Agreement as provided herein (the date of entry of the Order to dismiss shall be referred to
6 herein as the “Court Approval Date”).

7 **NOW THEREFORE IT IS HEREBY STIPULATED BETWEEN THE SETTLING**
8 **PARTIES AS FOLLOWS:**

9 The State Water Resources Control Board’s April 1, 2014 adoption of Order 2014-0057-DWQ,
10 effectively supersedes the 1997 General Permit, effective July 1, 2015. References herein to
11 the “General Permit” shall mean whichever General Permit is applicable at that time.

12 **I. COMMITMENTS OF DEFENDANT**

13 **1.** Compliance with General Permit & Clean Water Act. Beginning immediately,
14 and throughout the term of this Agreement, the City shall continue implementing all measures
15 needed to operate the Facilities in compliance the Clean Water Act by complying with the
16 requirements of the General Permit, subject to any defenses available under the law.

17 Implementation of Specific Storm Water Best Management Practices.

18 **2.** On or before September 15, 2014 (unless an alternative deadline is stated
19 herein), the City shall complete the implementation of, and incorporation into the Facilities’
20 Storm Water Pollution Prevention Plans (“SWPPP”), the following storm water control
21 measures/best management practices (“BMPs”) at the Facilities:

- 22 **(a) Eliminating Run-On to the PDO/MRF Storm Drain System.** The City shall
23 construct a concrete berm designed to prevent any storm water run-on flows from the
24 perimeter V-ditch from entering the PDO/MRF storm drain system. This will enable
25 representative sampling of storm water (pursuant to the General Permit) from the
26 PDO/MRF without contaminating or diluting offsite flows. Roof runoff from the west
27 side of the MRF building will continue to be discharged to the western bioswale as
28 indicated on **Exhibit A**.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

- (b) **Pavement Repairs at the MSC.** To eliminate surface cracks that trap and re-entrain fine sediment, the City shall begin repaving approximately 20,239 square feet of the pavement in the area adjacent the MRF Warehouse, completing the repaving on or before October 15, 2014 (the location of these repaved areas are indicated on **Exhibit A**);
- (c) **Covered Bin Steam Cleaning Area at the MSC.** The City agrees to construct a 6'-high concrete berm to direct all wash waters to the channel drain leading to the sanitary sewer. The location of the new berm is set forth on **Exhibit A**.
- (d) **Truck Wash Area at the MSC.** The City agrees to construct a 6'-high concrete berm to direct all rinse waters to the channel drain leading to the sanitary sewer. The location of the new berm is set forth on **Exhibit A**.
- (e) **Removal of Storage Bins and Construction of Sediment Capture Basin at the Sand and Gravel Stockpile Storage Area of the MSC.** The City will remove all of the bins for the storage of all sand and gravel at the MSC Facility. The City further agrees to begin construction of a 15' by 20' sediment capture basin in the area designated on **Exhibit A**, completing the construction on or before October 15, 2014; the engineering drawings for the paving and sediment capture basin are set forth on **Exhibit E**.
- (f) **Regenerative Sweeping Program at the PDO/MRF and the MSC.** The City agrees to implement a facility-wide regenerative sweeping regime, to include daily regenerative sweeping (with the exception of days with actual rain, when sweeping is of negligible value) during the Wet Season (October 1 – May 31), and monthly regenerative sweeping during the Dry Season (June 1- September 30), with all such sweeping contemporaneously inspected and logged by the SWPPP team leader.
- (g) **Drop Inlet Maintenance & Protection at the PDO/MRF and the MSC.** The City shall install filter fabric in all PDO/MRF and MSC drop inlets to reduce Total Suspended Solids. All MRF Facility drop inlets shall be inspected and cleaned on a monthly basis during the Wet Season with all such inspections and cleanings contemporaneously inspected and logged by the SWPPP team leader. The City shall

1 further fabricate durable steel lids for all PDO/MRF and MSC drop inlets to be installed
2 for the next entire Dry Season.

- 3 (h) **Parking Areas at the MSC Facility.** The City agrees to remove from this area
4 (designated in **Exhibit A**) all vehicles, equipment and materials that are not fully
5 operational employee vehicles, and to prohibit any uses of this area whatsoever,
6 including all industrial activities, other than the parking of light duty vehicle, cars,
7 pickups, and vans.
- 8 (i) **Mapping Revisions.** The City agrees to revise the Facility maps for the PDO/MRF
9 Facility, the MSC Facility and the Landfill Facility to comply with all requirements of
10 the General Permit. The City has concluded that the MSC is not regulated under the
11 General Permit, but agrees, for purposes of this Settlement Agreement, to comply with
12 the terms of the General Permit at the MSC for the entire term of this Agreement). All
13 discharge points on Exhibit A (whether designated as a “Compliance Monitoring Point”
14 or a “BMP Effectiveness Monitoring Point”) shall be identified, monitored and
15 sampled.
- 16 (j) **Revised Monitoring & Reporting Programs (All Facilities): Employee Training.**
17 The City agrees to implement a training regime at the Facilities, incorporating facility-
18 wide training in storm water management issues at each Facility each year during the
19 first half¹ of September and again during the first half of December. Such training will
20 include training in taking samples; conducting Wet and Dry Season visual observations;
21 laboratory and Regional Board support resources; permit compliance; SWPPP
22 implementation, changes and assessment; and permit reporting requirements.
23 Reporting to the Regional Board through the SMARTS program shall include all
24 required lab data.
- 25 (k) **Heightened Sampling (All Facilities).** All discharge points from the Facilities shall

26 _____
27 ¹ For the 2014-2015 Wet Season, only, this September training obligation can met any time
28 during the month of September.

1 be identified in the respective Facility SWPPPs as discharge points and shall be
2 sampled in accordance with the General Permit. Runoff from the PDO/MRF shall be
3 sampled at the storm drain inlet designated in the Facility SWPPP using an ISCO
4 Model 674 rain gauge activated sampler (ISCO Model 6712) in accordance with the
5 General Permit. As per the applicable General Permit, a Representative Sampling
6 Reduction justification shall be included in the Monitoring Implementation Plan section
7 of the amended SWPPP. Runoff from the west side of the MSC Facility shall be
8 sampled at the end of the bioswale (designated in **Exhibit A**) using an ISCO 6712
9 sampler and liquid level actuator. Runoff from the MSC shall be sampled in
10 accordance with the General Permit at the location designated on **Exhibit A**. Samples
11 will be collected prior to discharge to the perimeter V-ditch to assess the effectiveness
12 of BMPs in these areas. Runoff from the City landfill will be sampled at the detention
13 pond outfall as designated in the Landfill SWPPP and on **Exhibit B** (due to limited
14 impervious areas and the large volume of the detention pond, however, many rain
15 events do not result in actual discharge of runoff). Sampling shall be performed in
16 accordance with the applicable General Permit. The City shall sample for the
17 additional pollutants mercury, nickel, magnesium and cadmium, at all of the Facilities
18 as described more fully below.

- 19 (l) **Removal of Containers, Equipment & Other Materials from Landfill Facility.** The
20 City agrees to remove all containers, equipment and other materials located in the area
21 designated in the Facility map attached hereto as **Exhibit B**. The City further agrees to
22 discontinue and prohibit any future storage of such materials in this area.

23 **3. Numeric Action Level (NAL) Exceedance Response Actions.** The City will
24 re-evaluate its BMPs and implement additional BMPs (if necessary) if there are NAL
25 exceedances for any parameter as described in the applicable General Permit Section XII A
(Exceedance Response Actions) during the term of this Agreement.

26 **4. Redesign of the Public Drop-Off Area of the MRF Facility.** If there are EPA
27 Benchmark or Annual NAL exceedances (per the applicable General Permit) for any
28

1 parameter from the PDO/MRF Facility for 2014-2015 Wet Season, the City agrees to move
2 the Public Drop Off Area inside the Materials Recovery Facility to provide 100% coverage for
3 all material drop off, handling and storage activities in the Public Drop Off area.

4 **5. SWPPP Amendments/Additional BMPs.** On or before October 1, 2014, the
5 City shall formally amend the PDO/MRF and MSC Facility SWPPP and the Landfill Facility
6 SWPPP to incorporate all of the requirements of this Agreement, and to revise the Facility
7 Maps associated with the respective SWPPPs accordingly. These revised SWPPPs shall
8 comply with all requirements of the General Permit and shall be produced to CSPA on or
9 before October 1, 2014.

10 **6. Sampling Frequency.** The City shall collect and analyze samples from five (5)
11 qualifying storm events (QSE), as detailed in the applicable General Permit for sampling
12 purposes at the PDO/MRF Facility and MSC Facility, in the 2014-15 and 2015-2016 Wet
13 Seasons. The City shall also collect and analyze samples from five (5) QSEs at the Landfill
14 Facility as such QSEs are defined in the General Permit in each of the two Wet Seasons
15 occurring during the term of this Agreement (2014-2015 and 2015-2106), unless weather
16 conditions result in less than five (5) QSE discharges from the Facility. All storm water
17 sample results from the Facilities shall be compared with the values set forth in Table 2 of the
18 General Permit, page 43 (Exhibit F), for the 2014-2015 and 2015-2016 Wet Seasons. If the
19 results of any such samples exceed the Annual NAL values set forth in Table 2 of the General
20 Permit, the City shall comply with the “Action Memorandum” requirements set forth below,
21 for that Facility.

22 **7. Sampling Parameters.** All samples shall be analyzed for iron, aluminum,
23 zinc, lead, copper, mercury, nickel, magnesium, cadmium, pH, Total Suspended Solids,
24 specific conductivity, chemical oxygen demand, and oil & grease by a laboratory ELAP-
25 accredited by the State of California, unless no certification applies to the particular analyte in
26 question. All samples collected from the Facilities shall be delivered to the laboratory as soon
27 as possible to ensure that sample “hold time” is not exceeded. Selected laboratories shall use
28 the analytical methods detailed in the General Permit, using Practical Quantitation Limits

1 adequate to detect the individual constituents at or below the values specified on Exhibit F.
2 Sampling results shall be provided to CSPA within seven (7) business days of the City's
3 receipt of the laboratory report from each sampling event pursuant to the Notice provisions
4 below.

5 **8. "Action Memorandum" Trigger; CSPA Review of "Action Memorandum";**
6 **Meet-and-Confer.** If any sample taken during the two (2) Wet Seasons referenced in
7 Paragraph 6 above exceeds the EPA Benchmark in the 2014-2015 Wet Season or annual NAL
8 parameters set forth in Table 2 of the General Permit in the 2015-2016 Wet Season (Exhibit F)
9 , or if the City fails to collect and analyze samples from five (5) qualifying storm events at any
10 of the Facilities in any given season, then the City shall prepare a written statement discussing
11 the exceedence(s) at that Facility and/or the failure to collect and analyze samples from five
12 (5) qualifying storm events at that Facility, the possible cause and/or source of the
13 exceedence(s) at that Facility, and additional measures that will be taken to address and
14 eliminate future exceedances at that Facility and/or failures to collect required samples at that
15 Facility ("Action Memorandum"). The Action Memorandum shall be provided to CSPA not
16 later than July 15 following the conclusion of each Wet Season. Recognizing that a SWPPP is
17 an ongoing iterative process meant to encourage innovative BMPs, such additional measures
18 may include, but are not limited to, taking confirmation samples, further material
19 improvements to the storm water collection and discharge system, changing the type and
20 frequency of Facility sweeping, changing the type and extent of storm water filtration media or
21 modifying other industrial activities or management practices at the Facility. Such additional
22 measures, to the extent feasible, shall be implemented immediately and in no event later than
23 sixty (60) days after the due date of the Action Memorandum. Within seven (7) days of
24 implementation, the Facility SWPPP(s) shall be amended to include all additional BMP
25 measures designated in the Action Memorandum. CSPA may review and comment on an
26 Actio Memorandum and suggest any additional pollution prevention measures it believes are
27 appropriate; however, CSPA's failure to do so shall not be deemed to constitute agreement
28 with the proposals set forth in the Action Memorandum. Upon request by CSPA, the City

1 agrees to meet and confer in good faith (at the Facility at issue, if requested by Plaintiff)
2 regarding the contents and sufficiency of the Action Memorandum.

3 **9. Inspections During The Term Of This Agreement.** In addition to any site
4 inspections conducted as part of the meet-and-confer process concerning an Action
5 Memorandum as set forth above, the City shall permit representatives of CSPA to perform up
6 to four (4) physical inspections of the Facilities during the term of this Agreement. These
7 inspections shall be performed by CSPA's counsel and consultants and may include sampling,
8 photographing, and/or videotaping and CSPA shall provide the City with a copy of all
9 sampling reports, photographs and/or video. CSPA shall provide at least forty-eight (48)
10 hours advance notice of such physical inspection, except that the City shall have the right to
11 deny access if circumstances would make the inspection unduly burdensome and pose
12 significant interference with business operations or any party/attorney, or the safety of
13 individuals. In such case, the City shall specify at least three (3) dates within the two (2)
14 weeks thereafter upon which a physical inspection by CSPA may proceed. The City shall not
15 make any alterations to Facility conditions during the period between receiving CSPA's initial
16 forty-eight (48) hour advance notice and the start of CSPA's inspection that the City would not
17 otherwise have made but for receiving notice of CSPA's request to conduct a physical
18 inspection of the Facility, excepting any actions taken in compliance with any applicable laws
19 or regulations. Nothing herein shall be construed to prevent the City from continuing to
20 implement any BMPs identified in the SWPPP during the period prior to an inspection by
21 CSPA or at any time.

22 **10. City Communications To/From Regional and State Water Boards.** During
23 the term of this Agreement, the City shall provide CSPA with copies of all documents
24 submitted to, or received from, the Regional Water Board or the State Water Board concerning
25 storm water discharges from the Facility, including, but not limited to, all documents and
26 reports submitted to the Regional Water Board and/or State Water Board as required by the
27 General Permit (e.g., Annual Reports). Such documents and reports shall be provided to
28

1 CSPA pursuant to the Notice provisions set forth below and contemporaneously with the
2 City's submission(s) to, or, receipt from, such agencies.

3 **11. SWPPP Amendments.** Pursuant to the Notice provisions set forth below, the
4 City shall provide CSPA with a copy of any amendments to the Facility SWPPPs made during
5 the term of the Agreement within fourteen (14) days of such amendment.

6 **II. MITIGATION; COMPLIANCE MONITORING; FEES AND COSTS**

7 **12. Mitigation Payment In Lieu Of Civil Penalties.** As mitigation to address any
8 potential harms from the Clean Water Act violations alleged in CSPA's First Amended
9 Complaint, the City agrees to pay the sum of \$27,500 to the Rose Foundation for Communities
10 and the Environment ("Rose Foundation") for projects to improve water quality in the
11 Watsonville Slough, Gallighan Slough, the Pajaro River, and the Monterey Bay. Rose
12 Foundation shall give special priority to Watsonville Wetlands Watch unless they fail to
13 comply with Rose Foundation's grantmaking application protocols. Such mitigation payment
14 shall be remitted directly to the Rose Foundation at: Rose Foundation, Attn: Tim Little, 1970
15 Broadway, Suite 600, Oakland, CA 94612 with one half due within fifteen (15) days of the
16 Court Approval Date, and one half due within one (1) year of the Court Approval Date. If any
17 payment owed by Defendant under this Consent Agreement is not remitted or post-marked on
18 or before its due date, CSPA shall provide written notice to Defendant; if Defendant fails to
19 pay within five (5) business days of such notice, then (a) all future payments due hereunder
20 shall become immediately due and payable, with the prevailing federal funds rate applying to
21 all interest accruing on unpaid balances due hereunder, beginning on the due date of the funds
22 in default.

23 **13. Compliance Monitoring Funding.** To defray CSPA's reasonable
24 investigative, expert, consultant and attorneys' fees and costs associated with monitoring the
25 City's compliance with this Agreement for the next two Wet Seasons, the City agrees to
26 contribute \$5,000 for each of the two Wet Seasons covered by this Agreement (\$10,000 total
27 for the life of the Agreement), to a compliance monitoring fund maintained by counsel for
28

1 CSPA as described below. Payment shall be made payable to the “Law Offices of Andrew L.
2 Packard Attorney-Client Trust Account” and remitted to Plaintiff’s counsel within fifteen (15)
3 days of the Court Approval Date.

4 **14. Reimbursement of Fees & Costs.** The City agrees to reimburse CSPA in the
5 amount of \$52,500 to defray CSPA’s reasonable investigative, expert, consultant and
6 attorneys’ fees and costs, and all other costs incurred as a result of investigating the activities
7 at the Facilities, bringing the Action and negotiating a resolution in the public interest.
8 Payment shall be made payable to the “Law Offices of Andrew L. Packard Attorney-Client
9 Trust Account” and remitted to Plaintiff’s counsel within fifteen (15) days of the Court
10 Approval Date.

11 **III. DISPUTE RESOLUTION AND ENFORCEMENT OF CONSENT**
12 **AGREEMENT**

13 15. With the exception of the timelines set forth above for addressing exceedences
14 of values specified in Exhibit F (Table 2 of the General Permit) and Action Memoranda, if a
15 dispute under this Agreement arises, or either Party believes that a breach of this Agreement
16 has occurred, the Parties shall meet and confer within seven (7) days of receiving written
17 notification from the other Party of a request for a meeting to determine whether a violation
18 has occurred and to develop a mutually agreed upon plan, including implementation dates, to
19 resolve the dispute. If the Parties fail to meet and confer, or the meet-and-confer does not
20 resolve the issue, after at least seven (7) days have passed after the meet-and-confer occurred
21 or should have occurred, either Party shall be entitled to all rights and remedies under the law,
22 including filing a motion with the District Court of California, Northern District, which shall
23 retain jurisdiction over the Action for the limited purposes of enforcement of the terms of this
24 Agreement. The Parties shall be entitled to seek fees and costs incurred in any such motion,
25 and if such fees and costs are awarded, the award shall be made pursuant to the provisions set
26 forth in the then-applicable federal Clean Water Act and applicable case law interpreting such
27 provisions.

1 16. **CSPA’s Waiver and Release.** Upon the Court Approval Date of this
2 Agreement, CSPA, on its own behalf and on behalf of its members, subsidiaries, successors,
3 assigns, directors, officers, agents, attorneys, representatives, and employees, releases
4 Defendant and its officials, employees, and affiliates, and each of its predecessors, successors
5 and assigns, and each of their agents, attorneys, consultants, and other representatives (each a
6 “Released Defendant Party”) from, and waives all claims which arise from or pertain to the
7 Action, including, without limitation, all claims for injunctive relief, damages, penalties, fines,
8 sanctions, mitigation, fees (including fees of attorneys, experts, and others), costs, expenses or
9 any other sum incurred or claimed or which could have been claimed in this Action, for the
10 alleged failure of Defendant to comply with the Clean Water Act at the Facility, up to the
11 Court Approval Date.

12 17. **Defendant’s Waiver and Release.** Upon the Court Approval Date of this
13 Agreement, Defendant, on its own behalf and on behalf of any Released Defendant Party
14 under its control, releases CSPA (and its officers, directors, employees, members, parents,
15 subsidiaries, and affiliates, and each of their successors and assigns, and its agents, attorneys,
16 and other representative) from, and waives all claims which arise from or pertain to the
17 Action, including all claims for fees (including fees of attorneys, experts, and others), costs,
18 expenses or any other sum incurred or claimed or which could have been claimed for matters
19 associated with or related to the Action.

20 18. **Statutory Agency Review.** Within five (5) business days of the mutual
21 execution of this Agreement, Plaintiff shall submit this Agreement to the United States
22 Department of Justice (“DOJ”) for the statutory 45-day agency review period set forth in
23 33 U.S.C. §1365(c) and submit a Notice of Settlement to the federal District Court. Within
24 seven (7) days of the expiration of the agency review period, the Parties shall file with the
25 Court a Stipulation and Order providing that:

26 a. the Complaint and all claims therein shall be dismissed with prejudice pursuant
27 to Federal Rule of Civil Procedure 41(a)(2); and,

28

1 b. the Court shall retain jurisdiction over the Parties with respect to disputes arising
2 under this Agreement. Nothing in this Agreement shall be construed as a waiver of any
3 Party's right to appeal from an order that arises from an action to enforce the terms of this
4 Agreement.

5 **IV. MISCELLANEOUS PROVISIONS**

6 19. The Parties enter into this Agreement for the purpose of avoiding prolonged and
7 costly litigation. Nothing in this Agreement shall be construed as, and Defendant expressly
8 does not intend to imply, an admission as to any fact, finding, issue of law, or violation of law,
9 nor shall compliance with this Agreement constitute or be construed as an admission by
10 Defendant of any fact, finding, conclusion, issue of law, or violation of law. However, this
11 paragraph shall not diminish or otherwise affect the obligation, responsibilities, and duties of
12 the Parties under this Agreement.

13 20. The Agreement shall be effective upon mutual execution by all Parties. The
14 Agreement shall terminate on the "Termination Date," which shall be September 30, 2016,
15 unless any activities currently regulated are themselves ceased or cease to be regulated under
16 the General Permit, in which case the provisions of this Agreement relating to those activities
17 will terminate simultaneously. The City agrees to provide CSPA with written notice of plans
18 to cease activities currently regulated or plans to modify activities such that they cease to be
19 regulated.

20 21. The Agreement may be executed in one or more counterparts which, taken
21 together, shall be deemed to constitute one and the same document. An executed copy of this
22 Agreement shall be valid as an original.

23 22. If any one of the provisions of this Agreement is held by a court to be
24 unenforceable, the validity of any unrelated remaining provisions shall not be adversely
25 affected.

26 23. The language in all parts of this Agreement, unless otherwise stated, shall be
27 construed according to its plain and ordinary meaning. This Agreement shall be construed
28 pursuant to California law, without regarding to conflict of law principles.

1 24. The undersigned are authorized to execute this Agreement on behalf of their
2 respective Parties and have read, understood and agreed to be bound by all of the terms and
3 conditions of this Agreement.

4 25. All agreements, covenants, representations and warranties, express or implied,
5 oral or written, of the Parties concerning the subject matter of this Agreement are contained
6 herein. This Agreement and its attachments are made for the sole benefit of the Parties, and no
7 other person or entity shall have any rights or remedies under or by reason of this Agreement,
8 unless otherwise expressly provided for therein.

9 26. **Notices.** Any notices or documents required or provided for by this Agreement
10 or related thereto that are to be provided to CSPA pursuant to this Agreement shall be
11 hand-delivered or sent by U.S. Mail, postage prepaid, and addressed as follows or, in the
12 alternative, shall be sent by electronic mail transmission to the email addresses listed below:

13 Bill Jennings, Executive Director
14 California Sportfishing Protection Alliance
15 3536 Rainier Avenue
16 Stockton, CA 95204
17 E-mail: DeltaKeep@me.com

18 With copies sent to:

19 Andrew L. Packard
20 Law Offices of Andrew L. Packard
21 319 Pleasant Street
22 Petaluma, CA 94952
23 Tel: (707) 763-7227
24 E-mail: Andrew@packardlawoffices.com

25 Any notices or documents required or provided for by this Agreement or related thereto that
26 are to be provided to Defendant pursuant to this Agreement shall be sent by U.S. Mail, postage
27 prepaid, and addressed as follows or, in the alternative, shall be sent by electronic mail
28 transmission to the email addresses listed below:

 Steve Palmisano
 Director of Public Works & Utilities
 City of Watsonville
 250 Main Street
 Watsonville, CA 95076

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Tel: (831-768-3100)
E-mail: steve.palmisano@cityofwatsonville.org

With copies sent to:

William D. Wick
Wactor & Wick LLP
180 Grand Avenue, Suite 950
Oakland, CA 94612
Tel: (510) 465-5750, ext. 2
E-mail: bwick@ww-envlaw.com

Each Party shall promptly notify the other of any change in the above-listed contact information.

27. Signatures of the Parties transmitted by facsimile or email shall be deemed binding.

28. No Party shall be considered to be in default in the performance of any of its obligations when a failure to perform is due to a “Force Majeure.” A Force Majeure event is any circumstances beyond the Party’s control, including, without limitation, any act of God, war, fire, earthquake, flood, and restraint by court order or public authority. A Force Majeure event does not include normal inclement weather, such as anything less than or equal to a 100 year/24-hour storm event, or inability to pay. Any Party seeking to rely upon this paragraph shall have the burden of establishing that it could not reasonably have been expected to avoid, and which by exercise of due diligence has been unable to overcome, the Force Majeure.

29. If for any reason the Court should decline to approve this Agreement in the form presented, the Parties shall use their best efforts to work together to modify the Agreement within thirty (30) days so that it is acceptable to the Court. If the Parties are unable to modify this Agreement in a mutually acceptable manner, this Agreement shall become null and void.

30. This Agreement shall be deemed to have been drafted equally by the Parties, and shall not be interpreted for or against any Settling Party on the ground that any such party drafted it.

31. This Agreement and the attachments contain all of the terms and conditions agreed upon by the Parties relating to the matters covered by the Agreement, and supersede

1 any and all prior and contemporaneous agreements, negotiations, correspondence,
2 understandings, and communications of the Parties, whether oral or written, respecting the
3 matters covered by this Agreement. This Agreement may be amended or modified only by a
4 writing signed by the Parties or their authorized representatives.

5 32. Except in case of an emergency but subject to the regulatory authority of any
6 applicable governmental authority, any breach of or default under this Agreement capable of
7 being cured shall be deemed cured if, within five (5) days of first receiving notice of the
8 alleged breach or default, or within such other period approved in writing by the Party making
9 such allegation, which approval shall not be unreasonably withheld, the party allegedly in
10 breach or default has completed such cure or, if the breach or default can be cured but is not
11 capable of being cured within such five (5) day period, has commenced and is diligently
12 pursuing to completion such cure.

13 33. The Parties hereto enter into this Agreement and respectfully submit it to the
14 Court for its approval and entry.

15
16 Dated: September __, 2014

California Sportfishing Protection Alliance

17
18 By: _____

Bill Jennings, Executive Director

19
20 Dated: September __, 2014

City of Watsonville

21
22 By: _____

Carlos J. Palacios, City Manager
City of Watsonville

23
24
25 Exhibit A: Map of PDO/MRF Facility

26 Exhibit B: Map of the Landfill Facility

27 Exhibit C: CSPA's February 1, 2014 "*PDO/MRF Notice Letter*"

28 Exhibit D: CSPA's March 5, 2014 "*Landfill Notice Letter*"

Exhibit E: Construction drawings sediment capture basin

Exhibit F: Table 2 of the 2014 General Industrial Storm Water

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28