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11 CALIFORNIA SPORTFISHING  
12 PROTECTION ALLIANCE

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

CALIFORNIA SPORTFISHING  
PROTECTION ALLIANCE, a non-profit  
corporation,

Plaintiff,

vs.

LAS ANIMAS CONCRETE &  
BUILDING SUPPLY, INC., and SCOTT  
FRENCH,

Defendants.

**Case No. 14-cv-00580-HRL**

**[PROPOSED] CONSENT AGREEMENT**

(Federal Water Pollution Control Act,  
33 U.S.C. §§ 1251 to 1387)

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

**WHEREAS**, Defendant Las Animas Concrete & Building Supply, Inc. owns and operates an approximately 2.35-acre ready-mix concrete production plant located in Santa Cruz, California (the “Facility”);

**WHEREAS**, Defendant Scott French is the President of, and a shareholder in, Las

1 Animas Concrete & Building Supply, Inc. and manages the operations of the Facility;

2 **WHEREAS**, Las Animas Concrete & Building Supply, Inc. and Scott French  
3 collectively shall be referred to as “Las Animas;”

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

5 **WHEREAS**, the Facility collects and discharges storm water from the Facility to the  
6 San Lorenzo River which flows into the Pacific Ocean (a map of the Facility is attached hereto  
7 as **Exhibit A** and incorporated herein by reference);

8 **WHEREAS**, storm water discharges associated with industrial activity are regulated  
9 pursuant to the National Pollutant Discharge Elimination System (“NPDES”), General Permit  
10 No. CAS000001 [State Water Resources Control Board], Water Quality Order  
11 No. 91-13-DWQ (as amended by Water Quality Order 92-12 DWQ and 97-03-DWQ), issued  
12 pursuant to Section 402 of the Clean Water Act, 33 U.S.C. § 1342 (hereinafter “General  
13 Permit”);

14 **WHEREAS**, Defendants assert that the parties entered into a stipulated settlement on  
15 October 19, 2012 (**Exhibit B**), that all settlement criteria were met and exceeded and that  
16 plaintiff filed this action in violation of that agreement. Plaintiff disputes the assertions that  
17 the parties entered into any settlement agreement at all, or that the items set forth in Exhibit B  
18 were ever complied with by Defendants, or that the filing of the instant lawsuit violates any  
19 agreement between the parties, or that Plaintiff has breached any agreement; Plaintiff further  
20 asserts that Defendants are violating and continue to violate the General Permit and the Clean  
21 Water Act. In an effort to settle their differences, avoid cross actions and further litigation, the  
22 parties have agreed to the items herein.

23 **WHEREAS**, on or about December 6, 2013, Plaintiff provided notice of Defendants’  
24 violations of the Act (“Notice Letter”), and of its intention to file suit against Defendants, to  
25 the Administrator of the United States Environmental Protection Agency (“EPA”); the  
26 Administrator of EPA Region IX; the U.S. Attorney General; the Executive Director of the  
27 State Water Resources Control Board (“State Board”); the Executive Officer of the Regional  
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1 Water Quality Control Board, Central Coast Region (“Regional Board”); and to Defendant, as  
2 required by the Act, 33 U.S.C. § 1365(b)(1)(A) (a true and correct copy of CSPA’s Notice  
3 Letter is attached as **Exhibit C** and incorporated herein by reference);

4 **WHEREAS**, Defendants deny the occurrence of the violations alleged in the Notice  
5 Letter and maintains that Las Animas has complied at all times with the provisions of the  
6 General Permit and the Clean Water Act;

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

10 **WHEREAS**, CSPA filed its original complaint against Defendants herein in the United  
11 States District Court, Northern District of California, on February 7, 2014 (this matter  
12 hereinafter referred to as “the Action”);

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

16 **WHEREAS**, this Agreement shall be submitted to the United States Department of  
17 Justice for the 45-day statutory review period, pursuant to 33 U.S.C. § 1365(c); and shall  
18 thereafter be submitted for approval by the Court, the date of which approval shall be referred  
19 to herein as the “Court Approval Date;”

20 **WHEREAS**, at the time the Agreement is submitted for approval to the United States  
21 District Court, CSPA shall submit a Notice of Settlement and inform the Court of the expected  
22 dismissal date;

23 **AND WHEREAS**, upon expiration of the statutory review period, the Parties shall file  
24 with the Court a Stipulation and Order that shall provide that the Complaint and all claims  
25 therein shall be dismissed with prejudice pursuant to Federal Rule of Civil Procedure 41(a)(2)  
26 and retain jurisdiction for the enforcement of this Agreement as provided herein (the date of  
27 entry of the Order to dismiss shall be referred to herein as the “Court Approval Date”).  
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2 **NOW THEREFORE IT IS HEREBY STIPULATED BETWEEN THE**  
3 **SETTLING PARTIES AS FOLLOWS:**

4 **II. COMMITMENT OF DEFENDANTS**

5 **1. Compliance With General Permit & Clean Water Act.** Beginning  
6 immediately, and throughout the term of this Agreement, Las Animas shall continue  
7 implementing all measures needed to operate the Facility in compliance with the requirements  
8 of the General Permit and the Clean Water Act, subject to any defenses available under the  
9 law.

10 **2. Implementation of Specific Storm Water Best Management Practices.**  
11 The parties have had extensive discussions regarding the relative efficacy of various  
12 approaches to storm water management at the Facility. Without any Party conceding the legal  
13 adequacy of the management practices implemented herein, the parties have agreed to the  
14 construction of a “capture and treat” flow-through system for which some variables in the  
15 modeling are in sharp dispute. On or before October 1, 2014 (unless an alternative deadline is  
16 stated herein), Defendants shall complete the implementation of the storm water Best  
17 Management Practices (“BMPs”) set forth below (and described in greater detail in the  
18 construction drawings attached as **Exhibit D** hereto):

19 **(a) Storm Water Capture BMPs.** Defendants agree to direct all storm  
20 water flows at the Facility to a central drain, where it shall be captured in a sump fitted  
21 with two float-actuated capture pumps (a 75-gpm submersible to capture all lower flow  
22 events, and a 300-gpm pump to capture higher flows). All flows shall be conveyed to  
23 the treatment works described in subsection (b), below; the system shall have the  
24 capacity to capture and treat the maximum flow rate of storm water runoff resulting  
25 from a storm with 0.4 inches per hour rainfall intensity.

26 **(b) Storm Water Treatment BMPs.** Defendants agree to construct a storm  
27 water treatment system designed to reduce pollutants such that the treated water  
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1 satisfies the numerical standards set forth in Exhibit D. Storm water will be pumped  
2 from the site drain sump by the capture pumps described above in paragraph 2.(a). The  
3 pumped water will be amended with a drinking water grade polymer<sup>1</sup> to enhance  
4 flocculation and fine particle settling. The water will also be amended with acid to  
5 reduce the pH. Polymer and acid will be metered into the pump discharge lines in the  
6 appropriate volumes using liquid metering pumps. The amended water will be pumped  
7 to a 2,750-gallon capacity polyethylene flocculation/mixing tank (“Mixing Tank”),  
8 where the flocculation reaction will be enhanced by gentle mixing. The water pH will  
9 be frequently measured<sup>2</sup> in the Mixing Tank and an automatic pH monitoring system  
10 with a feedback loop will be installed to modulate the pH reduction process. Water will  
11 gravity flow from the Mixing Tank into the two 27,000 gallon settling tanks  
12 (“Clarifier”). The Clarifier will enhance the settling of polymer-amended storm water.  
13 The Clarifier will be operated as one tank, with the water gently introduced to the  
14 bottom of one tank through an energy dissipater, and flowing around and into the other  
15 tank, where a weir at the water surface will allow clarified water to overflow and  
16 discharge from the top of the clarifier. The system will be designed to effectively treat  
17 a continuous flow of 375 gallons per minute. After shakedown and optimization of the  
18 system during the first four storms of the year, the system’s effectiveness will be  
19 evaluated. Should the system not be capable of performing to meet the water quality  
20 goals set forth in Exhibit E), a sand filter or other appropriate filtration sized for a flow  
21 rate of 375 gpm will be added to the treatment train to further improve water treatment  
22 effectiveness as soon as practicable and in any case on or before August 1, 2015.

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24 \_\_\_\_\_  
25 <sup>1</sup> CSPA does not endorse or approve of the use of any polymers as amendments to storm  
26 water. However, this agreement is the reflection of a series of compromises made by both  
27 sides in good faith, including certain BMPs that CSPA does not believe are necessary,  
28 appropriate and/or effective in meeting the requirements of the General Permit.

<sup>2</sup> The computer that monitors and manages the pH control shall log the pH once every five  
minutes; these data shall be downloaded from the computer as raw data or in the form of a  
monthly operational report. This operational report shall then be appended to the SWPPP.

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Treated water will be conveyed by gravity in a closed pipe and discharged to the site discharge sump. The treatment system construction drawings are shown in Exhibit D.

(c) **Storm Water Flow Measurements and Data Recording.** Defendants agree to record all treated water flows and bypass water flows such that CSPA may ascertain the frequency, duration and volume of any treated water flows or bypass water flows during the duration of the agreement. The water pumped by the two sump pumps will flow through a system flow meter prior to discharge into the mixing tank. This flow meter will be tied to the System Control Panel which will record all flows through the treatment system. Defendants also agree to monitor and record the flow rate of water that bypasses treatment and flows untreated directly to the drain. This will be accomplished by installation of a flow measurement weir and water level sensor between the stilling chamber and the storm water drain chamber. See Exhibit D, Drawing No. 2. If the storm water capture pumps fail to capture all the site runoff (likely due to flows in excess of 375 gpm or due to pump malfunction), the water will flow from the capture sump through the stilling chamber and into the drain chamber. As untreated water flows over the weir (located between the stilling chamber and the drain chamber), an ultrasonic water level sensor detects the water level over the weir and sends that signal to the System Control Panel. The System Control Panel is programmed to convert that water level to a flow rate that is monitored and recorded. See Exhibit D. The “bypass” flow measurements including date, time, duration, flow rate, and cumulative volume will be electronically monitored and recorded in the System Control Panel. The System Control Panel will output monthly system performance reports (including pump run times, volume of water captured, volume of water bypassing the treatment system, and measured site rainfall) that will be appended to the Facility’s Storm Water Pollution Prevention Plan (“SWPPP”). Defendants shall also install an automatic recording rain gauge at the Facility. All monthly reports shall be incorporated in the Facility’s SWPPP for the two-year term of this Agreement.

1           (d)    **Improved Sweeping & Tracking BMPs.** Defendants shall sweep all of  
2 the paved surfaces of the Facility using a mechanical sweeper three times weekly  
3 during the Wet Season (October 1 – May 31) and weekly during the Dry season (June 1  
4 – September 30). All such sweeping events shall include sweeping on Encinal Street  
5 directly in front of the Facility entrance and for 50 feet on Encinal in both the easterly  
6 direction and the westerly direction. Defendants shall log the date, time and personnel  
7 involved for all such sweeping events, with such logs kept with and incorporated into  
8 the Facility’s Storm Water Pollution Prevention Plan during the two-year life of this  
9 Agreement.

10           (e)    **Training BMPs.** Defendants shall train all Facility employees bi-  
11 annually, in September and February, concerning the requirements of this Agreement  
12 and the Facility SWPPP and Monitoring & Reporting Program. Training Logs  
13 recording the date, trainer, subjects covered and the signatures of attendees shall be  
14 kept with and incorporated into the Facility’s Storm Water Pollution Prevention Plan  
15 during the two-year life of this Agreement.

16           (f)    **Drain Inlet Maintenance BMPs.** Defendants shall inspect the drain  
17 inlet and collection sump between all storm events and clean/maintain as necessary. At  
18 a minimum, Defendants shall inspect the drain inlet and collection sump monthly  
19 during the Wet Season. Defendants shall also cover the Facility drain inlet for the  
20 duration of the Dry Season during the two-year life of this Agreement.

21           (g)    **Berming Improvements.** The existing six-inch berms installed at the  
22 Facility shall be modified with concrete to reduce the slope of the berms to allow  
23 vehicles to traverse the berms without having to use small aggregate ramps to achieve  
24 the same effect.

25           3.           **SWPPP Amendments/Additional BMPs.** Within 30 days of the Court  
26 Approval Date for this Agreement, Las Animas shall formally amend the Facility SWPPP to  
27 incorporate all of the relevant requirements of this Agreement, as well as revise the Facility  
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1 map associated with the SWPPP. These revisions shall reflect all then-current site conditions  
2 and practices and identify potential Contaminants of Concern (“COC”), identify the location  
3 of all pervious and impervious areas, drop inlets, BMPs, and storm water flow vectors.

4 **4. Sampling Frequency.** Las Animas shall collect and analyze samples  
5 from three qualifying storm events, as defined in the General Permit<sup>3</sup> for sampling purposes, in  
6 each of the two Wet Seasons occurring during the term of this Agreement (2014-2015 and  
7 2015-2016). The storm water sample results shall be compared with the values set forth in  
8 **Exhibit E**, attached hereto, and incorporated herein by reference. The storm water capture  
9 and treatment approach described in paragraphs 2.(a). and 2.(b). is intended to capture all or  
10 most runoff from most storm events, whether or not the storm is a qualifying storm event.  
11 Provided the system is functioning as intended, small storms will be captured in their entirety  
12 and may or may not discharge from the Clarifier during the storm. This contained storm water  
13 may be recycled/reused or discharged after the storm<sup>4</sup>, in order to free up Clarifier capacity for  
14 future storms. Furthermore, given the approximately 54,000 gallon capacity of the Clarifier,  
15 the actual storm water discharge from the Clarifier may occur many hours after the  
16 commencement of a storm event. The Clarifier must fill prior to discharge, unless a manual  
17 drain valve is used to drain the contents of the Clarifier. Therefore, Defendants’ storm water  
18 sampling shall consist of collection of samples from the treatment system discharge, whether  
19 from (a) overflow when the system is at or below capacity and actively discharging; or (b)  
20 from manual tank draining, to free up needed system capacity after a storm event has occurred.

21 \_\_\_\_\_  
22 <sup>3</sup> “Qualifying Storm Events” under the General Permit are those events in which (i) the  
23 samples taken are preceded by at least three (3) working days during which no storm water  
24 discharges from the Facility have occurred; (ii) the samples are collected within the first hour  
25 that flow is observed at the Discharge Point being sampled; and (iii) the samples are collected  
26 during daylight operating hours. General Permit, Section B.5.b. However, consistent with  
27 General Permit Section B.8.b., in the event that Las Animas can demonstrate good cause as to  
28 why it was unable to collect samples of storm water discharges within the first hour of  
discharges occurring during an otherwise qualifying storm event, Las Animas may collect  
storm water discharge samples as soon as practicable during an otherwise qualifying storm  
event occurring during daylight operating hours.

<sup>4</sup> Defendants understand that Section B.5.a of the General Permit requires that any such  
discharges must be sampled at the time of release from the Facility (sampling of “stored or  
contained storm water shall occur at the time the stored or contained storm water is released.”)



1 The samples shall be designated as “Active Flow” or “Tank Drainage” accordingly.  
2 Defendants will endeavor to sample qualifying storm events; however, the application of the  
3 qualifying storm event requirement may not be practical or achievable, given the required  
4 operation of the capture and treatment system described in paragraphs 2.(a). and 2.(b). Both  
5 the “Active Flow” and “Tank Drainage” samples represent the captured, treated, and  
6 discharged storm water; therefore, both of these types of samples fulfill the requirement for  
7 qualifying storm event sampling. For each Wet Season occurring during the term of this  
8 agreement, Defendant agrees to collect a minimum of two Active Flow samples, representing  
9 the condition when the treatment system is full of water to capacity and actively discharging to  
10 the storm drain. In the event of a bypass event where untreated storm water is discharged from  
11 the facility, Defendants agree to sample up to three (3) bypass discharge events and compare  
12 the results with the values set forth in **Exhibit E** (except see footnote 5, below). Bypass  
13 events shall only be sampled during normal facility operating hours, which for the purposes of  
14 this agreement are from 6AM to 5PM. If the results of any bypass or non-bypass sampling  
15 required under this agreement exceed the parameter values set forth in **Exhibit E**, Las Animas  
16 shall comply with the “Action Memorandum” requirements set forth below.

17 **5. Sampling Parameters.** All samples shall be analyzed for each of the  
18 constituents listed in **Exhibit E** by a laboratory accredited by the State of California for the  
19 particular test method(s) in question. All samples collected from the Facility shall be  
20 delivered to the laboratory as soon as possible to ensure that sample “hold time” is not  
21 exceeded. Analytical methods used by the laboratory shall be adequate to detect the individual  
22 constituents at or below the values specified on **Exhibit E**. Sampling results shall be provided  
23 to CSPA within thirty (30) business days of Las Animas’ receipt of the laboratory report from  
24 each sampling event pursuant to the Notice provisions below.

25 **6. “Action Memorandum” Trigger; CSPA Review Of “Action**  
26 **Memorandum”; Meet-and-Confer.** If any sample taken during the two (2) Wet Seasons  
27 referenced in Paragraph 4 above exceeds the evaluation levels set forth in **Exhibit E**, or if Las  
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1 Animas fails to collect and analyze samples as required above, then Las Animas shall prepare  
2 a written statement discussing the exceedance(s) and/or failure to collect and analyze samples  
3 as required above, the possible cause and/or source of the exceedance(s), and additional  
4 measures that will be taken to address and eliminate future exceedances and/or failures to  
5 collect required samples (“Action Memorandum”)<sup>5</sup>. CSPA recognizes that a bypass event  
6 represents a discharge flow rate that exceeds the storm water runoff capture capacity of the  
7 Las Animas treatment system and is therefore not treated prior to discharge. The Action  
8 Memorandum shall be provided to CSPA not later than July 1 following the conclusion of  
9 each Wet Season. Recognizing that a SWPPP is an ongoing iterative process meant to  
10 encourage innovative BMPs, such additional measures may include, but are not limited to,  
11 taking confirmation samples, further material improvements to the storm water collection and  
12 discharge system, changing the type and frequency of Facility sweeping, changing the type  
13 and extent of storm water filtration media or modifying other industrial activities or  
14 management practices at the Facility. Such additional measures, to the extent feasible, shall be  
15 implemented immediately and in no event later than ninety (90) days after the due date of the  
16 Action Memorandum. The parties may agree to more time in the event certain BMP’s require  
17 more time for implementation due to the nature of the BMP. Within fourteen (14) days of  
18 implementation, the Facility SWPPP shall be amended to include all additional BMP measures  
19 designated in the Action Memorandum. CSPA may review and comment on an Action  
20 Memorandum and suggest any additional pollution prevention measures it believes are  
21 appropriate; however, CSPA’s failure to do so shall not be deemed to constitute agreement  
22 with the proposals set forth in the Action Memorandum. Upon request by CSPA, Las Animas  
23 agrees to meet and confer in good faith (at the Facility, if requested by Plaintiff) regarding the  
24 contents and sufficiency of the Action Memorandum. Upon receipt of the Action  
25 Memorandum, CSPA may review and comment on any identified or omitted additional

26 <sup>5</sup> Except that exceedances of 200 µmhos/cm for Specific Conductance, alone and without  
27 other parameter benchmark exceedances, shall not trigger an Action Memorandum under this  
28 Agreement. Any Action Memorandum will not require Las Animas to take action regarding  
Specific Conductance exceedances.

1 measures within 75 days.

2           **7.           Inspections During The Term Of This Agreement.** In addition to any  
3 site inspections conducted as part of the settlement process and the meet-and-confer process  
4 concerning an Action Memorandum as set forth above, Las Animas shall permit  
5 representatives of CSPA to perform up to two (2) physical inspections of the Facility during  
6 the term of this Agreement. These inspections shall be performed by CSPA's counsel and  
7 consultants and may include sampling, photographing, and/or videotaping and CSPA shall  
8 provide Las Animas with a copy of all sampling reports, photographs and/or video. Counsel  
9 for CSPA must attend any such inspections. CSPA shall provide at least 72 hours advance  
10 notice of such physical inspection, except that Las Animas shall have the right to deny access  
11 if circumstances would make the inspection unduly burdensome and pose significant  
12 interference with business operations or any party/attorney, or the safety of individuals. In  
13 such case, Las Animas shall specify at least three (3) dates within the two (2) weeks thereafter  
14 upon which a physical inspection by CSPA may proceed. Las Animas shall not make any  
15 alterations to Facility conditions during the period between receiving CSPA's initial forty-  
16 eight (48) hour advance notice and the start of CSPA's inspection that Las Animas 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 Las Animas 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           **8.           Las Animas Communications To/From Regional and State Water**  
23 **Boards.** During the term of this Agreement, Las Animas shall provide CSPA with copies of  
24 all documents submitted to, or received from, the Regional Water Board or the State Water  
25 Board concerning storm water discharges from the Facility, including, but not limited to, all  
26 documents and reports submitted to the Regional Water Board and/or State Water Board as  
27 required by the General Permit. Such documents and reports shall be provided to CSPA  
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1 pursuant to the Notice provisions set forth below and contemporaneously with Las Animas’s  
2 submission(s) to, or, receipt from, such agencies.

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

6 **III. MITIGATION, COMPLIANCE MONITORING AND FEES AND COSTS**

7 **10. Mitigation Payment In Lieu Of Civil Penalties.** As mitigation to  
8 address any potential harms from the Clean Water Act violations alleged in CSPA’s  
9 Complaint, Defendant agrees to pay the sum of \$15,000 to the Rose Foundation for  
10 Communities and the Environment (“Rose Foundation”) for projects to improve water quality  
11 in the San Lorenzo River, or in the Pacific Ocean within 10 miles of the mouth of the San  
12 Lorenzo River. In the event that the Rose Foundation is not able to identify appropriate  
13 projects concerning these water bodies, it may direct these funds to projects to improve water  
14 quality in the San Joaquin River and the Sacramento-San Joaquin River Delta (“the Delta”).  
15 Such mitigation payment shall be remitted directly to the Rose Foundation at: Rose  
16 Foundation, Attn: Tim Little, 1970 Broadway, Suite 600, Oakland, CA 94612 within fifteen  
17 (15) days of the Court Approval Date.

18 **11. Compliance Monitoring Funding.** To defray CSPA’s reasonable  
19 investigative, expert, consultant and attorneys’ fees and costs associated with monitoring Las  
20 Animas’s compliance with this Agreement, Defendants agree to contribute \$7,500 for each of  
21 the two Wet Seasons covered by this Agreement (\$15,000 total for the life of the Agreement),  
22 to a compliance monitoring fund maintained by counsel for CSPA as described below.  
23 Payment shall be made within fifteen (15) days of the Court Approval Date. Compliance  
24 monitoring activities may include, but shall not be limited to, site inspections, review of water  
25 quality sampling reports, review of annual reports, discussions with representatives of Las  
26 Animas concerning the Action Memoranda referenced above, and potential changes to  
27 compliance requirements herein, preparation for and participation in meet-and-confer sessions,  
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1 water quality sampling and analysis, and compliance-related activities.

2           **12. Reimbursement of Fees & Costs.** Defendant agrees to reimburse CSPA  
3 in the amount of \$49,000 to defray CSPA’s reasonable investigative, expert, consultant and  
4 attorneys’ fees and costs, and all other costs incurred as a result of investigating the activities  
5 at the Facility, bringing the Action and negotiating a resolution in the public interest. Payment  
6 shall be made payable to the “Law Offices of Andrew L. Packard Attorney-Client Trust  
7 Account” and remitted to Plaintiff’s counsel within fifteen (15) days of the Court Approval  
8 Date.

9 **IV. DISPUTE RESOLUTION AND ENFORCEMENT OF CONSENT**  
10 **AGREEMENT**

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

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

10 **15. Covenant not to Sue.** During the two-year term of this Agreement, CSPA  
11 agrees that it will not file any lawsuit against Defendants seeking relief for alleged violations  
12 of the Clean Water Act or the current or any future General Permit at the Facility. Nor will  
13 CSPA provide assistance of any kind whatsoever or join in any manner with any lawsuit  
14 brought by any other entity or individual for violations of the Clean Water Act or the current  
15 or future General Permit at the Facility.

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

24 **17. Waiver under Civil Code section 1542.** The Parties are familiar with and  
25 waive Civil Code §1542 which provides:

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27 A general release does not extend to claims which the creditor does not know  
28 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

1 settlement with the debtor.

2  
3 **18.** It is expressly understood and agreed that the possibility that such claims  
4 exist has been explicitly taken into account in determining the consideration to be given for  
5 their agreement and that a portion of the consideration, having been bargained for in full  
6 knowledge of the possibility of such unknown claims, was given in exchange for the release  
7 and discharge of claims covered by this permanent release. Within five (5) business days of  
8 the mutual execution of this Agreement, Plaintiff shall submit this Agreement to the United  
9 States Department of Justice (“DOJ”) for the statutory 45-day agency review period set forth  
10 in 33 U.S.C. §1365(c) and submit a Notice of Settlement to the federal District Court.

11 **19.** Within seven (7) days of the expiration of the agency review period, the  
12 Parties shall file with the Court a Stipulation and Order providing that:

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

15 b. the Court shall retain and have jurisdiction over the Parties with respect to  
16 disputes arising under this Agreement. Nothing in this Agreement shall be construed as  
17 a waiver of any Party’s right to appeal from an order that arises from an action to  
18 enforce the terms of this Agreement.

19 **IV. MISCELLANEOUS PROVISIONS**

20 **20.** The Parties enter into this Agreement for the purpose of avoiding  
21 prolonged and costly litigation. Nothing in this Agreement shall be construed as, and  
22 Defendant expressly does not intend to imply, an admission as to any fact, finding, issue of  
23 law, or violation of law, nor shall compliance with this Agreement constitute or be construed  
24 as an admission by Defendant of any fact, finding, conclusion, issue of law, or violation of  
25 law. However, this paragraph shall not diminish or otherwise affect the obligation,  
26 responsibilities, and duties of the Parties under this Agreement.

27 **21.** The Agreement shall be effective upon mutual execution by all Parties.  
28 The Agreement shall terminate on the “Termination Date,” which shall be September 30,

1 2016.

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

5           **23.**           In the event that any one of the provisions of this Agreement is held by a  
6 court to be unenforceable, the validity of the enforceable provisions shall not be adversely  
7 affected.

8           **24.**           The language in all parts of this Agreement, unless otherwise stated, shall  
9 be construed according to its plain and ordinary meaning. This Agreement shall be construed  
10 pursuant to California law, without regard to conflict of law principles.

11           **25.**           The undersigned are authorized to execute this Agreement on behalf of  
12 their respective Parties and have read, understood and agreed to be bound by all of the terms  
13 and conditions of this Agreement.

14           **26.**           All agreements, covenants, representations and warranties, express or  
15 implied, oral or written, of the Parties concerning the subject matter of this Agreement are  
16 contained herein. This Agreement and its attachments are made for the sole benefit of the  
17 Parties, and no other person or entity shall have any rights or remedies under or by reason of  
18 this Agreement, unless otherwise expressly provided for therein.

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

23           Bill Jennings, Executive Director  
24           California Sportfishing Protection Alliance  
25           3536 Rainier Avenue  
26           Stockton, CA 95204  
27           E-mail: DeltaKeep@me.com

28           With copies sent to:

          Andrew L. Packard  
          Law Offices of Andrew L. Packard



1 100 Petaluma Boulevard North, Suite 301  
2 Petaluma, CA 94952  
3 Tel: (707) 763-7227  
4 E-mail: Andrew@packardlawoffices.com

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

9 Scott French  
10 Las Animas Concrete  
11 PO Box 517  
12 Santa Cruz, CA 95061  
13 lasanimas3@aol.com

14 With copies sent to:

15 Gary Redenbacher  
16 REDENBACHER & BROWN, LLP  
17 PO Box 66134  
18 Scotts Valley, CA 95067  
19 gary@redbrownlaw.com

20 Each Party shall promptly notify the other of any change in the above-listed contact  
21 information. Any notice sent by email shall be sent delivery and read receipt requested.

22 **28.** Signatures of the Parties transmitted by facsimile or email shall be deemed  
23 as binding as an original signature.

24 **29.** No Party shall be considered to be in default in the performance of any of  
25 its obligations when a failure to perform is due to a "Force Majeure." A Force Majeure event  
26 is any circumstances beyond the Party's control, including, without limitation, any act of God,  
27 war, fire, earthquake, flood, and restraint by court order or public authority. A Force Majeure  
28 event does not include normal inclement weather 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.

**30.** If for any reason the Court should decline to approve this Agreement in the

1 form presented, the Parties shall use their best efforts to work together to modify the  
2 Agreement within thirty (30) days so that it is acceptable to the Court. If the Parties are unable  
3 to modify this Agreement in a mutually acceptable manner, this Agreement shall become null  
4 and void.

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

8 **32.** This Agreement and the attachments contain all of the terms and  
9 conditions agreed upon by the Parties relating to the matters covered by the Agreement, and  
10 supersede any and all prior and contemporaneous agreements, negotiations, correspondence,  
11 understandings, and communications of the Parties, whether oral or written, respecting the  
12 matters covered by this Agreement. This Agreement may be amended or modified only by a  
13 writing signed by the Parties or their authorized representatives.

14 **33.** Except in case of an emergency but subject to the regulatory authority of  
15 any applicable governmental authority, any breach of or default under this Agreement capable  
16 of being cured shall be deemed cured if, within five business days of first receiving notice of  
17 the alleged breach or default, or within such other period approved in writing by the Party  
18 making such allegation, which approval shall not be unreasonably withheld, the party  
19 allegedly in breach or default has completed such cure or, if the breach or default can be cured  
20 but is not capable of being cured within such five (5) day period, has commenced and is  
21 diligently pursuing to completion such cure.

22 The Parties hereto enter into this Agreement and respectfully submit it to the Court for  
23 its approval and entry.

24  
25 Dated: \_\_\_\_\_, 2014 California Sportfishing Protection Alliance

26  
27 By: \_\_\_\_\_  
28 Bill Jennings, Executive Director

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Dated: \_\_\_\_\_, 2014

Las Animas Building & Concrete supply, Inc.

By: \_\_\_\_\_  
Scott French, President

Dated: \_\_\_\_\_, 2014

SCOTT FRENCH

By: \_\_\_\_\_  
Scott French

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**EXHIBIT A – Facility Site Map**

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**EXHIBIT B – October 19, 2012 Letter**

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**EXHIBIT C – CWA Notice of Violation and Intent to Sue Letter**

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**EXHIBIT D – Treatment System Schematic**

**EXHIBIT E**

<b>Parameter</b>	<b>Level of Potential Concern Value</b>
pH	6.0 – 9.0
Specific Conductivity*	200 µmhos/cm
Total Suspended Solids	100 mg/L
Oil & Grease	15 mg/L
Mercury	0.0024 mg/L
Nickel	1.417 mg/L
Iron	1.0 mg/L
Lead**	0.0816 mg/L
Aluminum	0.75 mg/L
Copper	0.0636 mg/L
Zinc**	0.117 mg/L

\* In the event that the General Permit is revised to discontinue sampling requirements for Specific Conductance, this Agreement shall be deemed amended to discontinue required sampling for Specific Conductance.

\*\* In the event that the General Permit is revised to reflect different pollutant levels of concern, this Agreement shall be deemed amended to reflect such revised levels of concern for these parameters.