

Agreement No. 21-93

**SETTLEMENT AGREEMENT**

This Settlement Agreement and Release of All Claims ("Agreement") is made between Plaintiffs WILD WINGS OWNERS ASSOCIATION and RICHARD J. FENAROLI (collectively, "Plaintiffs") and Defendant COUNTY OF YOLO ("Defendant" or "County") (collectively referred to as the "Parties" or individually as "Party"). This Agreement is effective on the date on which the last of the Parties executes it.

**RECITALS**

A. The County manages and operates the Wild Wings County Service Area ("CSA"), a special district governed by the Board of Supervisors that provides wastewater, freshwater, and recreation/golf course services to the residents of the Wild Wings subdivision in unincorporated Yolo County.

B. Plaintiff Wild Wings Owners Association is the homeowners' association whose membership is comprised of the property owners of the Wild Wings subdivision. Plaintiff Richard Fenaroli owns a property within the Wild Wings subdivision.

C. Plaintiffs filed a civil action pending in the Superior Court of California, County of Yolo, entitled *WILD WINGS OWNERS ASSOCIATION et al. v. COUNTY OF YOLO et al.*, Case No. CV-19-237 ("Lawsuit"). The Lawsuit alleges the County mismanaged the wastewater treatment and freshwater system at the plant owned and operated by the CSA and improperly imposed fees on the property owners for the County's allegedly inadequate maintenance and allegedly poor upkeep of the plant. Plaintiffs have filed a Verified Petition and Second Amended Complaint alleging, inter alia, violations of Proposition 218 and inverse condemnation against the County, negligence and breach of contract against National O&M, Inc. ("National"), and negligence against Environmental Enterprises, Inc. ("EEI").

D. Defendant denies and disputes Plaintiffs' claims and allegations in the Lawsuit.

E. In order to avoid the substantial expense and inconvenience of further litigation as arising from the Lawsuit, the Parties now desire to explore the possibility of forming a Community Services District ("CSD"), and if such CSD is formed, to finally settle all claims asserted in, as well as all issues that were raised or could have been raised in the Lawsuit, as well as any claims or potential claims arising from any transactions or occurrences between Plaintiffs and Defendant to date, on the terms set forth in this Agreement.

**THEREFORE, IN CONSIDERATION OF THE MUTUAL PROMISES CONTAINED HEREIN, IT IS HEREBY AGREED AS FOLLOWS:**

1. **Background, Purpose and Scope of Release.** The parties agree to pursue the formation of a CSD to assume, within the same service territory of the Wild Wings CSA, the services currently being provided by the CSA (including, but not limited to, wastewater treatment, freshwater, and recreation) as well as any other services desired by the community and approved by the Yolo Local Agency Formation Commission ("LAFCo"). In the event the CSD is formed, this Agreement is intended to set forth the terms and conditions by which the Parties resolve any

and all disputes, claims, complaints, demands, and/or causes of action amongst each other, including but not limited to those set forth by Plaintiffs in the Lawsuit.

2. **Dismissal of Lawsuit.** Plaintiffs agree to dismiss the Lawsuit as to the County, and the Parties agree not file any other suits, claims, or proceedings against one another during the pendency of the Formation Process described in Paragraph 3. If the CSD is formed, then Plaintiffs shall release the County and the CSA of all claims as described in Paragraph 7. If the Formation Process is terminated by failure of the Board of Supervisors to pass a resolution of application, LAFCo's failure to approve the application, a majority protest vote, lack of confirmation by the voters (if applicable), or as otherwise provided herein, this Agreement shall terminate, and Plaintiffs shall be allowed to refile the existing claims against the County within 60 calendar days of such event without regard to any applicable statute of limitations or laches defense that may bar such claims.

3. **Formation Process.** The process for formation of a CSD is established by the LAFCo Law (Government Code Sections 56000 et seq.) and the CSD Law (Government Code Sections 61000 et seq.). These proceedings are collectively referred to herein as the "Formation Process." Nothing herein is meant to supersede the requirements of the LAFCo Law or the CSD Law. In the event of a conflict between the procedure described herein and the applicable law, the applicable law shall be applied and control.

- a. The County will create a Community Advisory Committee to monitor and provide oversight during the Formation Process. The Community Advisory Committee shall be comprised of six members who reside within the Wild Wings CSA: three members appointed by the Association and three members appointed by the Yolo County Board of Supervisors. No member may currently be an employee or vendor of the County. The Community Advisory Committee shall provide its advice and input to the Board of Supervisors and LAFCo and all recommendations of the Advisory Committee will be presented without edits by the County. Because the Community Advisory Committee will be created by the Board of Supervisors, its meetings will be public and subject to the Ralph M. Brown Act. Minutes of meetings will be recorded and published. A member of the Community Advisory Committee can be removed from the committee either by action of that member's appointing body, or by the vote of four Community Advisory Committee members, at which time the appointing body may designate a replacement for the vacated seat.
- b. The Community Advisory Committee will make monthly reports to the County Supervisor for the District encompassing Wild Wings, and/or the Board of Supervisors, as requested. The Community Advisory Committee will make monthly reports to the Association, as requested. The Community Advisory Committee will elect its own officers and determine its own meeting schedule. The Community Advisory Committee will have reasonable access to current and historical records of the CSA and County Staff as provided for in Paragraph 4(c). The Community Advisory Committee will be free to hold "Town Hall" meetings as needed. The Community Advisory Committee will be given an opportunity to review all contracts (including modifications or additions to current contracts)

related to the CSA before signing (other than emergency services), and have the opportunity to address any concerns to the Board of Supervisors prior to agreement, provided that such consultation and review do not cause delays that might cause health or safety violations or damage to CSA property.

- c. The Yolo County Board of Supervisors will consider a resolution of application pursuant to Government Code Section 61013 within 90 days of execution of this Agreement. Nothing in this Agreement commits the Board to a course of action on such a resolution, given that it must be considered at a public hearing that provides all members of the public an opportunity to comment.
- d. If the Board of Supervisors adopts the resolution of application, the County will submit an application for the formation of the CSD with the Yolo Local Agency Formation Commission ("LAFCo"). LAFCo will evaluate the application and make a determination on the application in its own independent judgment, and may impose conditions on approval as allowed by State law.
- e. If LAFCo approves the application, LAFCo will then conduct protest proceedings pursuant to Government Code section 57000 et seq. If a majority of the citizens in the CSD's service territory object, the Formation Proceedings are terminated and the CSD is not formed. If less than 25 percent of the citizens in the CSD's service territory object, the CSD formation is approved. If more than 25 percent but less than a majority object, the formation will be subject to confirmation of the registered voters.
- f. If the LAFCo Formation Process is successful, LAFCo will record a Certificate of Completion. *See* Gov. Code §§ 56020.5 & 56102. Upon the recording of the Certificate of Compliance, the provisions in Paragraphs 4-6 shall become operative.
- g. The County will pay for the LAFCo expenses associated with the Formation Process ("LAFCo Costs"), regardless of the results. In addition, the County will contribute staff time necessary to prepare the application, public mailings, public meetings, and any voting costs needed in the Formation Process.
- h. The parties will aim to have the CSD formed and operational by July 1, 2022. However, State law or LAFCo conditions may impose several requirements that must occur prior to the CSD's formation and that may result in a later operational date. Further, State law requires that the initial five-member CSD board be elected, which may affect the timing of the CSD's formation. The Parties therefore agree July 1, 2022 is a shared goal; it is not a deadline that, if not met, will cause any term of this Agreement to expire.

#### **4. County's Contributions to CSD.**

- a. If the CSD is successfully formed, the County agrees to pay the CSA's attorneys' fees associated with the Lawsuit that have not otherwise been paid for by the joint risk pool or insurance, subject to a full waiver and release of all known and unknown claims against the County held by the newly-formed CSD

similar in substance to Paragraph 6. The CSA's legal expenses associated with the Lawsuit will not be a liability incurred or transferred to the CSD, if formed.

- b. The County agrees to provide the newly-formed CSD up to 24 months' assistance from County staff for staff management, finance, and legal billed at the actual cost.
- c. Subject to LAFCo's order, the CSD will become the successor in interest to all assets (including property, plant, and spare parts), revenues, and liabilities held by the CSA or directly related to the services provided by the CSA, except as provided herein. Within 30 days of signing this Agreement, the County will provide the Community Advisory Committee all past and current documentation related to the CSA in the County's possession including all financial records and contracts, past and present, for the last four years. Such records since inception shall be compiled for the CSD during the Formation Process. The County shall ensure that the CSA has no past-due CSA expenses at the time the CSD is formed.

**5. Plaintiffs' Rights During Formation Process.** During the Formation Process, Plaintiffs have the following rights:

- a. The right to terminate this Agreement if new taxes or charges will be or will need to be imposed on the Wild Wing residents to form the CSD.. However, before the Plaintiffs can terminate, the Parties will meet and confer in good faith to discuss and address the grounds for termination. If Plaintiffs terminate pursuant to the above, all provisions concerning contributions by the Defendants will remain as applicable during the time of termination.

**6. Dismissals.** Within 30 days of execution of this Agreement, and without further action by any Party, Plaintiffs shall dismiss the Lawsuit as to the County, each Party bearing its own attorney fees, expert fees, and costs, except as provided in paragraph 4(a) above. The Parties hereby irrevocably authorize and direct their attorneys of record to execute and deliver to the court the Dismissals, so that the same may be filed with the Court in accordance with this Agreement. The Parties hereby expressly agree and stipulate that the Court shall retain jurisdiction over this matter only pursuant to California Code of Civil Procedure section 664.6.

**7. Mutual Release and Waiver.**

- a. All provisions in this Paragraph 7 and subparagraphs hereinunder are contingent and effective only upon the recording of the Certificate of Completion. The recording of the Certificate of Completion described in Paragraph 3 shall automatically result in Plaintiffs and Defendant unconditionally, irrevocably, and absolutely releasing and discharging each other, as well as any other present or former employee, officers, county service areas, shareholders, agents, attorneys, affiliates, successors, parents, subsidiaries, assigns, current contractors and all other representatives (collectively, "Released Parties"), and each of them, from any and all causes of

action, judgments, liens, indebtedness, damages, losses, claims (including attorney fees and costs), liabilities and demands of whatsoever kind and character that they may now or hereafter have against the Released Parties arising from the incidents or events occurring on or before the Effective Date of this Agreement as related to the Lawsuit (hereafter collectively, "Released Claims"). To the extent permitted by law, this release is intended to be interpreted broadly to apply to all transactions and occurrences between any Released Party, including but not limited to any and all claims, known or unknown, suspected or unsuspected, arising directly or indirectly out of or in any way connected with the Lawsuit. Released Claims include, without limitation, any claim based in tort, contract, common law, the State or Federal Constitution, State or Federal Statutes (including, without limitation, the California Fair Employment and Housing Act, the California Civil Code, the California Government Code, and Title VII of the Civil Rights Act of 1964), and all claims, including such claims as may arise under contract, State or Federal law for attorney fees, costs and expenses, grievances, claims and/or appeals under Defendant's policies and/or collective bargaining agreements, or Defendant's internal administrative review procedures, but excluding any claims that cannot lawfully be waived or released by private agreement.

- b. **Covenant Not to Sue.** Plaintiffs and Defendant agree, to the fullest extent permitted by law, no lawsuit will be initiated related to a Released Claim. If any such action is brought, this Agreement will constitute an Affirmative Defense thereto, and the prevailing party shall be entitled to recover reasonable costs and attorney fees incurred in defending against any Released Claims as set forth in Paragraph 7(a).
- c. **Unknown or Different Facts or Law.** Plaintiffs and Defendant each acknowledge they may discover facts or law different from, or in addition to, the facts or law it knows or believes to exist with respect to a Released Claim. Plaintiffs and Defendant agree, nonetheless, this Agreement and the releases contained in it shall be and remain effective in all respects notwithstanding such different or additional facts or law.
- d. **Waiver of California Civil Code Section 1542.** Plaintiffs and Defendant expressly acknowledge and agree the releases contained in this Agreement include a waiver of all rights under California Civil Code section 1542. Section 1542 reads as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

The Parties understand and acknowledge the significance and consequence of this waiver of Section 1542 is that even if the Parties should eventually suffer injury arising out of or pertaining to the claims released herein, they will not be able to make any claim for those injuries. Furthermore, the Parties acknowledge that each consciously intends these consequences even as to claims for injuries that may exist as of the date of this Agreement but which are unknown, and which, if known, would materially affect their decision to execute this Agreement, regardless of whether the lack of knowledge is the result of ignorance, oversight, error, negligence, or any other cause.

**8. Attorneys' Fees and Costs.** Plaintiffs and Defendant agree to bear their own attorneys' fees and expenses incurred in connection with the Lawsuit or any Released Claim.

**9. No Admissions.** By entering into this Agreement, Defendant does not admit that it has engaged in, or is now engaging in, any unlawful conduct, practice or violation of law. It is understood and agreed this Agreement is not an admission of liability, and Defendant specifically denies liability in the Complaint and intends merely to avoid further litigation and expense by entering into this Agreement.

**10. Admissibility.** The Parties agree it is their mutual intention that neither this Agreement nor any terms hereof shall be admissible in any other or future proceedings against Defendant, except a proceeding to enforce this Agreement or as set forth above. The Parties intend this Agreement to be enforceable, binding and admissible in a court of law pursuant to Code of Civil Procedure section 664.6.

**11. Entire Agreement.** The Parties agree that no promise, inducement, or other agreement has been made to Plaintiffs except what is expressly contained in this Agreement, and that this Agreement contains the entire agreement between the Parties. All prior agreements, understandings, representations, oral agreements or writings, if any, are expressly superseded by this Agreement and are of no further force and effect.

**12. Binding on Successors.** The Parties agree this Agreement shall be binding upon Plaintiffs and Defendant, and their respective heirs, administrators, representatives, executors, successors, assigns, directors, officers, agents and affiliated entities, and shall inure to the parties, and each of them, and to their heirs, administrators, representatives, executors, successors, assigns, directors, officers, agents and affiliated entities and upon whom this Agreement shall also be binding.

**13. Governing Law.** This Agreement is entered into and governed by the laws of the State of California, with venue for any legal action or proceeding arising from or related to the enforcement or construction of this Agreement to be in the Superior Court of the State of California, County of Yolo.

**14. Severability.** If any term, provision, covenant or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions of this Agreement shall remain in full force and effect. Each term of this Agreement is contractual and not merely a recital.

**15. Modifications.** This Agreement may be amended only by a written instrument executed by all Parties thereto.

**16. Cooperation.** The Parties agree to do all things necessary and to execute all further documents necessary and appropriate to carry out and effectuate the terms and purposes of this Agreement.

**17. No Credit for Drafting.** Each Party has cooperated in the drafting and preparation of this Agreement; therefore, the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement.

**18. Counterparts.** This Agreement may be executed in counterparts and/or by facsimile or other electronic means, and when each Party has signed and delivered at least one such counterpart, each counterpart shall be deemed an original, and, when taken together with other signed counterparts, shall constitute one Agreement, which shall be binding upon and effective as to all Parties.

**19. Authority.** Each person signing this Agreement on behalf of a Party warrants that he or she has the right, power, legal capacity, and authority to enter into and bind said Party by signing this Agreement, and that no further approval or consent of any person, board, or entities is necessary to enter into and perform each of the obligations under this Agreement.

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WHEREFORE, THE PARTIES HAVE VOLUNTARILY EXECUTED THIS AGREEMENT ON THE DATES SHOWN BELOW.

**PLAINTIFFS**

**COUNTY**

Dated: 5-10-2021

Dated: 5/4/21


By: *[Signature]*  
Robert Johnson HOA  
President

By: *[Signature]*  
Jim Provenza  
Chair, Board of Supervisors

Dated: MAY 10, 2021

Attest:  
Julie Dachtler, Senior Deputy Clerk  
Board of Supervisors

*[Signature]*  
Richard Fenaroli

*[Signature]*  
  
(Seal)

Approved as to form:

Approved as to form:

\_\_\_\_\_  
Cang Le  
Counsel for Plaintiffs

*[Signature]*  
Eric May  
Senior Deputy County Counsel