AGREEMENT BETWEEN CITY OF LODI AND CENTRAL VALLEY WATER BOARD REGARDING CLEANUP AND ABATEMENT ORDER NO. R5-2004-0043 FOR LODI CENTRAL PLUME AREA, SAN JOAQUIN COUNTY

A. **Parties**

This Agreement (the "Agreement") is entered into between the following parties:

1. The Regional Water Quality Control Board, Central Valley Region ("Central Valley Water Board"); and

2. The City of Lodi, California, a municipal corporation ("City").

These parties are sometimes collectively referred to herein as the "Parties." Any person or entity identified above may be referred to as a "Party."

B. **Background**

1. The City of Lodi ("City") is the owner and operator of the municipal sanitary sewer and water supply systems within the City of Lodi. DTSC and the Central Valley Water Board contend that the City is jointly and severally liable for the Central Plume Contamination, as defined in paragraph 2 of this section, because of its ownership and operation of the municipal sanitary sewer system.

2. Contaminants, including PCE, TCE, and associated breakdown products, have been identified in the soil and groundwater beneath the Central Plume Area, as set forth in that federal litigation identified at paragraph 6 of this section, the April 22, 2004, Central Valley Water Board Cleanup and Abatement Order No. R5-2004-0043 for the Central Plume Area ("CAO"), and the rescinded Imminent and Substantial Endangerment Determination and Remedial Action Order ("RAO") that the DTSC issued for the Central Plume Area on May 30, 2003, and amended on July 9, 2003 (the "Central Plume Contamination"). The "Central Plume Area" means the entire area in which the Central Plume Contamination is or was present.

3. The amended RAO named as respondents Guild Cleaners, Inc.; the Estate of Dwight Alquist, Deceased; Odd Fellows Hall Association of Lodi, Inc.; Lodi News Sentinel, Inc.; Beckman and Company; Beckman Capital Corporation; and Angelina Comporato. The DTSC rescinded the RAO on or about May 12, 2004.

4. The Central Valley Water Board is the lead governmental agency responsible for oversight of the Central Plume Area. Pursuant to a letter, dated May 12, 2004, the DTSC has agreed that the Central Valley Water Board should serve as lead agency with respect to the Central Plume Area.

5. On April 22, 2004, the Central Valley Water Board issued Cleanup and Abatement Order No. R5-2004-0043 for the Central Plume Area ("CAO"). The

CAO names as respondents Guild Cleaners, Inc., the City, Lodi News-Sentinel, Odd Fellows Hall Association of Lodi, and Beckman Capital Corporation.

6. On November 2, 2000, and as later amended on May 25, 2001, August 4, 2004, September 9, 2004, and January 21, 2005, the City filed a Complaint for damages against Guild Cleaners, Inc., Jack Alquist and Estate of Dwight Alquist, Deceased (collectively, "Guild"), Lodi News-Sentinel and Frederick Weybret (collectively "Lodi News-Sentinel"), Odd Fellows Hall Association of Lodi ("Odd Fellows"), and Beckman Capital Corp. and Beckman & Co., Inc. (collectively, "Beckman"), among others, in United States District Court for the Eastern District of California, Case No. CIV-00-2441 FCD/JFM, alleging that these individuals and entities were responsible in part for the Central Plume Contamination (the "Lodi Action"). Guild Cleaners, Inc., Jack Alquist, Estate of Dwight Alquist, Deceased, Lodi News-Sentinel, Frederick Weybret, Odd Fellows Hall Association of Lodi, Beckman Capital Corp. and Beckman & Co., Inc. are referred to herein as the "Settling Central Plume Defendants."

7. The City and the Settling Central Plume Defendants have settled any and all disputes arising from or related to the Central Plume Contamination or its causes, including those claims and counterclaims arising from any alleged civil rights violations in the following agreements: "Settlement Agreement and Mutual Release" among the City of Lodi and Jack Alquist, individually and as a Trustee of the Alquist Family Trust, dated, March 2, 1981; Guild Cleaners, Inc., a California corporation; the Estate of Dwight Alquist, Deceased; the Alquist Family Trust, dated, March 2, 1981; and Beulah V. Alquist, individually and as a Trustee of Alquist Family Trust, dated, March 2, 1981, (collectively referred to as the "Guild Parties"), dated February 15, 2005; "Settlement Agreement and Mutual Release" among the City of Lodi and Lodi-News Sentinel and Frederick Weybret, dated April 21, 2005; "Settlement Agreement and Mutual Release" between the City of Lodi and Odd Fellows Hall Association of Lodi, Inc., dated April 1, 2005; and "Settlement Agreement and Mutual Release" among the City of Lodi and Beckman Capital Corporation and Beckman & Co., Inc., dated March 21, 2005, (the "Settlement Agreements").

8. Pursuant to the Settlement Agreements between the City and the Settling Central Plume Defendants, the City has agreed to assume the Settling Central Plume Defendants' obligations under the CAO for the Central Plume Contamination. The City has further agreed with Guild that, except for any obligations of Guild covered, released or extinguished by the covenants not to sue provided to Guild by the Central Valley Water Board and the DTSC, the City will assume any obligations of Guild under any future order of any regulatory agency, including federal, state and local agencies, regarding the Central Plume Contamination.

9. The Central Valley Water Board and the DTSC intend to enter into settlements and provide covenants not to sue to Guild, and with other Settling Central Plume Defendants (the "Covenants Not To Sue").

NOW, THEREFORE, in consideration for the mutual promises set forth in this Agreement, the Central Valley Water Board and the City agree as set forth below.

C. **Waiver of Defenses and Agreement to Perform Obligations of Settling Central Plume Defendants**

1. The City hereby waives any defense(s) that the Comprehensive Joint Cooperative Agreement (1997) between the City and DTSC, or the Settlement Agreement and Mutual Release dated June __, 2005 between the City and DTSC (the "DTSC/City Agreement") bars or otherwise impairs the Central Valley Water Board's regulatory jurisdiction over the City.

2. The City hereby assumes all obligations of each Settling Central Plume Defendant to comply with the CAO and any future amendment thereto, and any future cleanup order of a successor state lead agency, regarding the Central Plume Contamination. The assumed obligations expressly apply to any waste that is associated with discharges of PCE or TCE by Van Waters and Rogers, or any other supplier of PCE or TCE to a settling Central Plume Defendant, that contributed or may have contributed to the Central Plume Contamination. The City assumes no liability to third parties other than the State of California or any board, department or agency of the State of California. The City's assumption of obligations as to the Settling Central Plume Defendants, as stated in this paragraph, is contingent on the Settling Central Plume Defendants obtaining Covenants Not To Sue from DTSC and the Central Valley Water Board. The City acknowledges that it is assuming all of the responsibility to cleanup the Central Plume Contamination. The City's obligations to assume each Settling Central Plume Defendant's separate obligations pursuant to this paragraph are further conditioned in that, if any Settling Central Plume Defendant fails to complete its obligations to the City pursuant to its respective Settlement Agreement (a "defaulting Settling Central Plume Defendant"), then the City shall not be required to assume the obligations of any Settling Central Plume Defendants that are signatories to the particular Settlement Agreement to which the defaulting Settling Central Plume Defendant also is a signatory.

3. This Agreement does not limit the Central Valley Water Board's authority, with respect to the City, under the Porter Cologne Water Quality Control Act, Water Code sections 13000 et seq., nor does it limit the City's defenses except as specifically provided herein. This Agreement is without prejudice to the provisions of the DTSC/City Agreement.

4. Any Covenants Not To Sue that the Central Valley Water Board grants to any Settling Central Plume Defendant are consideration for this Agreement.

5. The City agrees to dismiss its pending petition to the State Water Resources Control Board in the matter of SWRCB/OCC No. A-1639(c).

6. If the City recovers any money, agreement to participate in cleanup, or assignment ("recovery") from any manufacturer or supplier of PCE or dry cleaning equipment for claims associated with the Central Plume Contamination, the City agrees to dedicate the recovery to cleanup of the Central Plume Contamination. The City shall deposit the recovery into the Central Plume Trust Fund described in Section C.1(a) of the Settlement Agreement and Mutual Release between the Guild Parties and the City, dated February 15, 2005. Interest earned on the recovery shall remain in the Central Plume Trust Fund. Prior to depositing the recovery into the Central Plume Trust Fund, the City may deduct litigation costs, including attorneys fees, directly related to the recovery.

D. **Reservation of Rights**

Nothing in this Agreement shall be construed to create any rights in, or grant any cause of action to any person not a party to this Agreement, except as set forth in Section E.2 or E.3. Except as set forth herein, the Parties each reserve any and all rights (including but not limited to any right of contribution), defenses, claims, demands and causes of action that each may have with respect to any matter, transaction or occurrence relating in any way to the Central Plume Contamination against any person not a party hereto.

E. **Other**

1. **Costs and Attorneys' Fees**

Except as otherwise provided in this Section E.1, the Parties acknowledge and agree that as to each other they are to bear their own costs, expenses, expert and consultant fees, and attorneys' fees arising out of the matters addressed herein, the negotiation, drafting, and execution of this Agreement, and all matters arising out of or connected therewith.

The Central Valley Water Board reserves the right to recover any attorneys' fees and legal costs and expenses, including expert and consultant fees, to the extent that they are incurred in the future as response costs within the meaning of CERCLA, 42 U.S.C. §§ 9601 et seq. Nothing in this Agreement shall be construed as a waiver of the Attorney General's right to recover attorneys fees under Code of Civil Procedure section 1021.8.

2. **Integrated Agreement**

This Agreement supersedes any prior communications, agreements, and understandings regarding the matters contained herein between the signatories hereto or their representatives. Any prior representation, promise, or condition in connection with such matters that is not incorporated in this Agreement shall not be binding upon any of the Parties.

3. **Binding Effect**

Subject to the conditions found in this Agreement, this Agreement shall be binding upon

and shall inure to the benefit of the Parties as well as their respective officers and directors, the respective heirs, executors, administrators, trustors, trustees, beneficiaries, predecessors, successors, affiliated and related entities, officers, directors, principals, agents, employees, assigns, representatives, and all persons, firms, associations, and/or corporations connected with them, including, without limitation, their sureties and/or attorneys, except as otherwise provided by this Agreement. This Agreement shall be also inure to the benefit of any State or federal board, department or other agency that serves as the lead agency for the Central Plume Contamination.

4. **Benefit of Counsel/Consultant**

In entering into this Agreement, each Party represents and warrants that he, she, or it is not relying on any representations, opinions, conclusions, recommendations, or opinions expressed by, provided by, or inferred from any other Party to this Agreement, any attorney for any other Party, or any other Party's experts, consultants, or agents.

Each Party represents and warrants that it has been fully advised by its attorney concerning the effect and finality of this Agreement, and that the Party understands, without reservation or doubt, the effect and finality of this Agreement.

5. **Counterparts**

This Agreement may be executed in counterparts, and all so executed shall be binding upon all Parties hereto, notwithstanding that the signatures of the Parties' designated representatives do not appear on the same page.

6. **Representations and Warranties**

The Parties represent and warrant that each Party warrants that it is fully authorized to enter into this Agreement on behalf of itself and that each Party's signatory is authorized to sign on behalf of the Party.

7. **Governing Law**

This Agreement is entered into and shall be interpreted in accordance with the laws of the State of California.

SIGNATURE PAGE FOLLOWS

DATED:	By: _____, Central Valley Water Board
APPROVED AS TO FORM DATED:	By: _____, LORI T. OKUN, Attorney, STATE WATER RESOURCES CONTROL BOARD
DATED: 8/16/05	By: _____, BLAIR KING, City Manager, CITY OF LODI
ATTEST DATED: August 16, 2005	By: _____, SUSAN J. BLACKSTON, City Clerk, CITY OF LODI
APPROVED AS TO FORM DATED: 8/15/05	By: _____, D. STEPHEN SCHWABAUER, City Attorney, CITY OF LODI
APPROVED AS TO FORM DATED:	FOLGER LEVIN & KAHN LLP By: _____, MARGARET R. DOLLBAUM, Attorneys for CITY OF LODI

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