

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
LOS ANGELES REGION**

In the matter of:)	
)	ORDER NO. R4-2023-0329 (PROPOSED)
ADMINISTRATIVE CIVIL LIABILITY)	
COMPLAINT NO.)	SETTLEMENT AGREEMENT AND
R4-2022-0251)	STIPULATION FOR ENTRY OF
IN THE MATTER OF GARVEY GARDEN)	ADMINISTRATIVE CIVIL LIABILITY ORDER;
PLAZA, LLC et al.)	ORDER
GARVEY GARDEN PLAZA)	
WDID 4 19C375389)	
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Section I: INTRODUCTION

This Settlement Agreement and Stipulation for Entry of Administrative Civil Liability Order (“Stipulated Order” or “Order”) is entered into by and between the Assistant Executive Officer of the Regional Water Quality Control Board, Los Angeles Region (“Regional Water Board”), on behalf of the Regional Water Board Prosecution Team (“Prosecution Team”) and Garvey Garden Plaza, LLC; Yang Ming Construction, Inc.; and Jimmy Duong (“Settling Respondents”) (collectively “Parties”) and is presented to the Regional Water Board¹, for adoption as an Order by settlement, pursuant to Water Code section 13323 and Government Code section 11415.60.

Section II: RECITALS

1. On September 9, 2022, the Assistant Executive Officer of the Regional Water Board issued Administrative Civil Liability Complaint No. R4-2022-0251 (“Complaint”) to Garvey Garden Plaza, LLC; Yang Ming Construction, Inc.; and Jimmy Duong for alleged violations related to construction work on the Garvey Garden Plaza, 8408 Garvey Ave., Rosemead, CA 91770 (“Site”). Specifically, the Complaint sought to impose \$1,989,380.18 in administrative civil liability for alleged violations of the National Pollutant Discharge Elimination System (NPDES) General Permit for Storm Water Discharges Associated with Construction and Land Disturbance Activities (Construction General Permit) Order No. 2009-009-DWQ as amended by Order No. 2010-0014-DWQ and Order No. 2012-0006-DWQ, while conducting construction work at the Garvey Garden Plaza development project located at 8408 Garvey Ave., Rosemead, CA 91770.
2. Settling Respondents waived their right to a hearing on the allegations in the Complaint within 90 days.
3. The Parties have engaged in settlement negotiations and agree to fully settle the violations alleged in the Complaint without administrative or civil litigation and by presenting this Stipulated Order to the Regional Water Board for adoption as an Order by settlement, pursuant to Water Code section 13323 and Government Code section 11415.60. The Prosecution Team believes that the resolution of the alleged violations is fair and reasonable and that no further action is warranted concerning the specific violations alleged in the Complaint, except as provided in this Stipulated Order and that this Stipulated Order is in the best interest of the public.

¹ The Regional Water Board’s delegee may act on behalf of the Regional Water Board.

4. The liability amount proposed in this Stipulated Order is significantly reduced from the liability proposed in the Complaint based on a consideration of the Settling Respondents' collective ability to pay. The Prosecution Team's financial expert has determined that each of the Settling Respondents is unable to pay the liability proposed in the Complaint, or any substantial amount beyond what is proposed in this Stipulated Order. As described in the Prosecution Team's expert report, each of the Settling Respondents' ability to pay is de minimis. The members of Garvey Garden Plaza LLC are not personally liable, but have leveraged their personal assets to pay the liability proposed herein. The proposed liability amount is greater than the economic benefit amount.

Section III: STIPULATIONS

The Parties stipulate to the following:

5. **Jurisdiction:** The Parties agree that the Regional Water Board has subject matter jurisdiction over the matters alleged in this action and personal jurisdiction over the Parties to this Stipulation.

6. **Administrative Civil Liability:** The Settling Respondents agree to the imposition, jointly and severally, of ONE HUNDRED SEVENTY THOUSAND (\$170,000) in administrative civil liability to resolve the violations specifically alleged in the Complaint. No later than 30 days after the Regional Water Board issues this Order, Settling Respondents shall submit a check for ONE HUNDRED SEVENTY THOUSAND (\$170,000) made to the "*State Water Pollution Cleanup and Abatement Account*" and mail it to:

State Water Resources Control Board Accounting Office
Attn: ACL Payment
P.O. Box 1888
Sacramento, CA 95812-1888

The check shall reference the Order number assigned to this Stipulation, and a copy of the check shall be sent via email at the time payment is made to Russ Colby, (russ.colby@waterboards.ca.gov) and David Boyers, (david.boyers@waterboards.ca.gov).

7. **Debarment:** Settling Respondents agree that, as of the effective date of the Stipulated Order, Garvey Garden Plaza, LLC; Yang Ming Construction, Inc.; and Jimmy Duong are prohibited from performing any work for or in connection with any program administered, funded, or directed in any manner by the State Water Board or any Regional Water Quality Control Board for a period of three years. The prohibition in this paragraph includes, but is not limited to, any program, fund, or account authorized under division 7 of the Water Code.

8. **Admission of Liability:** Settling Respondents admit to each of the violations alleged in Paragraphs 8, 9, 11, 12, 13, 14, and 15 of the Complaint.

9. **Denial of Liability:** Settling Respondents do not admit to the violations alleged in Paragraphs 7 and 10 of the Complaint.

10. **Evidence of Prior Enforcement:** Settling Respondents agree that in the event of any future enforcement actions by the Regional Water Board, the State Water Board or any other Regional Water Quality Control Board, this Stipulated Order may be used as evidence of a prior

enforcement action against them regardless of any denial of liability made herein, consistent with Water Code section 13327 or section 13385, subdivision (e).

11. **Publication:** Settling Respondents understand that this Stipulated Order must be noticed for a 30-day public review and comment period prior to consideration by the Regional Water Board. If significant new information is received that reasonably affects the propriety of presenting this Stipulated Order to the Regional Water Board for adoption, the Prosecution Team may unilaterally declare this Stipulated Order void and decide not to present it to the Regional Water Board. Settling Respondents agree that they may not rescind or otherwise withdraw their approval of this proposed Stipulated Order. The Prosecution Team's expert report regarding Settling Respondents' ability to pay may be provided to members of the public on request but shall not be posted on the internet, either in conjunction with the draft issued for public comment or any final Order adopted by the Regional Water Board.

12. **Addressing Objections Raised During Public Comment Period:** The Parties agree that the procedure contemplated for the Regional Water Board's adoption of the Order, and public review of this Stipulated Order is lawful and adequate. The Parties understand that the Regional Water Board has the authority to require a public hearing to consider adoption of this Stipulated Order. In the event procedural objections are raised or the Regional Water Board requires a public hearing prior to the Stipulated Order becoming effective, the Parties agree to meet and confer concerning any such objections and may agree to revise or adjust the procedure and/or this Stipulated Order as necessary or advisable under the circumstances.

13. **Attorney's Fees and Costs:** Except as otherwise provided herein, each Party shall bear all attorneys' fees and costs arising from the Party's own counsel in connection with the matters set forth herein.

14. **Interpretation:** This Stipulated Order shall be construed as if the Parties prepared it jointly. Any uncertainty or ambiguity shall not be interpreted against any one Party. The Parties are represented by counsel in this matter.

15. **Modification:** The Parties shall not modify this Stipulated Order by oral representation made before or after its execution. All modifications must be in writing, signed by all Parties, and approved by the Regional Water Board.

16. **If the Stipulated Order Does Not Take Effect:** In the event that the Stipulated Order does not take effect because the Regional Water Board does not approve it, or the State Water Resources Control Board (State Water Board) or a court vacates it in whole or in part, the Parties acknowledge that they expect to proceed to a contested evidentiary hearing before the Regional Water Board to determine whether to assess administrative civil liabilities for the underlying alleged violation(s), unless the Parties agree otherwise. The Parties agree that all oral and written statements and agreements made during the course of settlement discussions will not be admissible as evidence in the hearing. The Parties agree to waive any and all objections based on settlement communications in this matter, including, but not limited to the following:

- A. Objections related to prejudice or bias of any of the Regional Water Board members or their advisors and any other objections that are premised in whole or in part on the fact that the Regional Water Board members or their advisors were exposed to some of the material facts and the Parties' settlement positions as a consequence of reviewing the Stipulated Order, and therefore may have formed impressions or conclusions prior to any contested evidentiary hearing on the alleged violations; or

B. Laches or delay or other equitable defenses based on the time period for administrative or judicial review to the extent this period has been extended by these settlement proceedings.

17. **Waiver of Hearing:** Settling Respondents have been informed of the rights Water Code section 13323, subdivision (b) provides, and hereby waive their right to a hearing before the Regional Water Board prior to the Stipulated Order's adoption.

18. **Waiver of Right to Petition or Appeal:** Settling Respondents hereby waive their right to petition the Regional Water Board's adoption of the Stipulated Order for review by the State Water Board, and further waives their rights, if any, to appeal the same to a California Superior Court and/or any California appellate level court.

19. **Covenant Not to Sue:** Settling Respondents covenant not to sue or pursue any administrative or civil claim(s) against any State agency or the State of California, their officers, Board Members, employees, representatives, agents, or attorneys arising out of or relating to any matter expressly addressed by the Complaint or this Stipulated Order.

20. **No Waiver of Right to Enforce:** The failure of the Prosecution Team or the Regional Water Board to enforce any provision of this Order shall in no way be deemed a waiver of such provision, or in any way affect the validity of the Order. The failure of the Prosecution Team or Regional Water Board to enforce any such provision shall not preclude it from later enforcing the same or any other provision of this Order.

21. **Necessity for Written Approvals:** All approvals and decisions of the Regional Water Board under the terms of this Stipulated Order shall be communicated to the Settling Respondents in writing. No oral advice, guidance, suggestions, or comments from Regional Water Board employees or officials regarding submissions or notices shall be construed to relieve the Settling Respondents of their obligation to obtain any final written approval this Stipulated Order requires.

22. **Authority to Bind:** Each person executing this Stipulated Order in a representative capacity represents and warrants that he or she is authorized to execute this Stipulated Order on behalf of and to bind the entity on whose behalf he or she executes the Stipulated Order.

23. **No Third-Party Beneficiaries:** This Stipulated Order is not intended to confer any rights or obligations on any third party or parties, and no third party or parties shall have any right of action under this Stipulated Order for any cause whatsoever.

24. **Severability:** This Stipulated Order is severable; should any provision be found invalid, the remainder shall remain in full force and effect.

25. **Counterpart Signatures; Facsimile and Electronic Signature:** This Stipulated Order may be executed and delivered in any number of counterparts, each of which when executed and delivered shall be deemed to be an original, but such counterparts shall together constitute one document. Further, this Stipulated Order may be executed by facsimile or electronic signature, and any such facsimile or electronic signature by any Party hereto shall be deemed to be an original signature and shall be binding on such Party to the same extent as if such facsimile or electronic signature were an original signature.

26. **Effective Date:** This Stipulated Order shall be effective and binding on the Parties upon the date the Regional Water Board enters the Order incorporating the terms of this Stipulation.

IT IS SO STIPULATED.

By: Original signed by Hugh Marley September 27, 2023
Hugh Marley
Assistant Executive Officer
Regional Water Board Prosecution Team
Date

By: Original signed by William Duong September 27, 2023
William Duong
Garvey Garden Plaza LLC
Date

By: Original signed by Jimmy Duong September 27, 2023
Jimmy Duong
Chief Executive Officer
Yang Ming Construction, Inc.
Date

By: Original signed by Jimmy Duong September 27, 2023
Jimmy Duong
Date

HAVING CONSIDERED THE PARTIES' STIPULATIONS, THE LOS ANGELES REGIONAL WATER QUALITY CONTROL BOARD FINDS THAT:

1. The foregoing Stipulation is fully incorporated herein and made part of this Order.
2. This is an action to enforce the laws and regulations administered by the Regional Water Board. The Regional Water Board finds that issuance of this Order is exempt from the provisions of the California Environmental Quality Act (Public Resources Code, sections 21000 et seq.), in accordance with section 15321, subdivision (a)(2), Title 14, of the California Code of Regulations.
3. The Executive Officer of the Regional Water Board is authorized to refer this matter directly to the Attorney General for enforcement if the Settling Respondents fail to perform any of their obligations under this Order.

Pursuant to Water Code section 13323 and Government Code section 11415.60, **IT IS HEREBY ORDERED** on behalf of the California Regional Water Quality Control Board, Los Angeles Region.

By: _____
Susana Arredondo
Executive Officer

Date