



District Manager
Melissa Morton

August 22, 2017

BOARD COMMUNICATION

Administrative Item No. 9A

TO: THE HONORABLE PRESIDENT AND BOARD OF TRUSTEES

**FROM: MELISSA MORTON, DISTRICT MANAGER
GARY HEPPELL, FAVARO, LAVEZZO, GILL, CARETTI & HEPPELL**

SUBJECT: SETTLEMENT AGREEMENT AMONG THE NAVY, LENNAR MARE ISLAND, LLC, CH2M HILL CONSTRUCTORS, INC., CH2M HILL CONSTRUCTORS, LLC, STEADFAST INSURANCE COMPANY, VALLEJO SANITATION AND FLOOD CONTROL DISTRICT AND THE CITY OF VALLEJO; SEPARATE AGREEMENT BETWEEN DISTRICT AND CITY OF VALLEJO FOR PRESENTATION OF SOME DISTRICT ENVIRONMENTAL CLAIMS

BACKGROUND AND DISCUSSION

Two proposed agreements are before the board for consideration. The first is a proposed settlement agreement that would resolve federal court litigation between Lennar Mare Island (LMI) and Steadfast Insurance Company (Steadfast), among other parties, over insurance coverage for environmental contamination claims. The proposed settlement would require Steadfast to deposit funds in a trust account to be used by LMI and the City of Vallejo (City) to remediate environmental contamination within the Eastern Early Transfer Parcel (EETP) on Mare Island. The District was not a party to the litigation but its signature is required on the settlement agreement because the District (along with the City) is an additional named insured on the remaining Steadfast policy.

The second proposed agreement is between the City and the District. That agreement would allow the City to act as a conduit for submitting some environmental claims by the District for payment from the trust fund mentioned in the preceding paragraph. The proposed City-District agreement contains, at City's insistence, significant limitations on the District's ability to be paid from that fund, as will be discussed below.

The following text is reproduced, largely verbatim, from the City of Vallejo Staff Report to the City Council for its August 22, 2017 meeting. The District did not participate in the events and transactions recited, and while District staff has no reason to doubt the accuracy of the below recitals, they are reproduced here for context only and not as representations of District staff.

A. PROPOSED SETTLEMENT AGREEMENT

In April, 2001, the City executed the Environmental Services Cooperative Agreement (ESCA East) which provided funding for the environmental remediation of the 650 acre Eastern Early Transfer Parcel (EETP). Per the terms of the ESCA East, the City assumed the responsibility of remediation of the known hazardous sites and the Navy provided approximately \$78.42 million in grant funds for the cost of the remediation work. The City

then transferred its obligations to perform the remediation work to LMI with the execution of the Mare Island Remediation Agreement (MIRA).

The City received an additional \$9,354,262 in grant funds from the Navy via the First, Second and Third Amendments to the ESCA East. Concurrent with the execution of these amendments, the City also amended the companion agreements to the ESCA, including the MIRA between the City and LMI, the Fiscal Agent Agreement (FAA) between the City, LMI and First American Title Insurance Co and the Consulting Agreement for Grant Administrator (Grant Consulting Agreement) between the City and Mr. Reginald Banks, to ensure that the additional grant funding was properly disbursed and managed.

A portion of the grant monies provided in the initial funding of the ESCA East were used to purchase environmental insurance policies issued by Steadfast Insurance Company (Steadfast), including a Remediation Stop Loss Policy (RSL Policy) covering certain cost overruns incurred in connection with remediating "Known Conditions," an Environmental Liability Insurance Policy (ELI Policy) covering cleanup costs related to "Unknown Conditions," third party liability for bodily injury or property damage caused by environmental contamination, professional and pollution liability of CCI for its work on the ESCA East, and loss of rental value caused by environmental contamination, and a Long Term Monitoring Policy (LTM Policy) covering ground water monitoring of Known Conditions. The RSL Policy and the LTM policy, because they covered Known Conditions, expired on March 31, 2011. The ELI Policy is the only remaining Steadfast policy currently providing additional coverage, including to City as additional named insured. **[The District is also an additional named insured.]** The ELI policy expires in 2021, or approximately 3.9 years. After years of Steadfast's repeated denials of coverage under the ELI Policy and refusals to authorize the necessary work, LMI alleged breach of contract, bad faith and interference with contract against Steadfast, resulting in the LMI v. Steadfast litigation in 2012. Since 2012, the Navy and LMI have funded this litigation.

Over the past sixteen (16) years, Steadfast's denials of coverage and rejection of proposed work on accepted claims have stalled over \$20 million of cleanup work. Overall, Steadfast has paid out only \$10 Million of the total \$150 Million ELI Policy limits. On June 14, 2017, the parties participated in a mediation session to try to resolve the case prior to trial. Trial is set for October 17, 2017. The proposed Settlement Agreement is a result of that mediation.

1. Settlement Terms

Under the Settlement Agreement Steadfast will pay Forty-Three Million Dollars (\$43,000,000), in exchange for the termination of the policies, dismissal of all litigation claims and the insured parties (including LMI and CH) and additional insured parties (including Navy, City and VSFCD) release of Steadfast from any and all obligations under the Steadfast policies. Steadfast will also release all claims against LMI, the Navy, CH, VSFCD and the City.

The following is a breakdown of the settlement offer.

Approximately Nine Hundred Sixty Thousand Dollars (\$960,000), or three percent (3%), will be paid to DOJ in recognition of its role in recovering funds from Steadfast as required by statute.

Approximately Thirty-One Million Forty Thousand Dollars (\$31,040,000) will be deposited into the ESCA trust fund that was created under the terms of the ESCA East First Amendment. This fund will be available to the City and LMI to fund the costs of remediating remaining unknown environmental conditions that require clean up at the EETP. Of this amount, \$620,800, or 2% of the total, will be available to City to pay City's administrative costs, including staff and legal costs, incurred in implementing the ESCA and MIRA, as amended.

Five Million (\$5,000,000) will be paid to LMI as partial reimbursement of unreimbursed clean-up costs, lost rent, unreimbursed regulatory costs, lost opportunity damages, attorneys' and expert fees and costs, and release by LMI of warranty claims against CH2M Hill through the end of the ELI Policy period.

Six Million (\$6,000,000) will be paid to CH2M Hill, LMI's contractor, for its unreimbursed clean-up costs and other damages.

In addition to the total \$43 Million settlement payment, Steadfast will also release to LMI approximately \$4.5 Million currently held in an escrow account established under the terms of a settlement agreement entered into by LMI, CH, and Steadfast in 2010 concerning payment and further handling of certain EETP fuel oil pipeline (FOPL) claims.

2. Settlement Risks

If the Settlement Agreement is approved and signed by all parties, then the Named Insureds (Lennar Mare Island, LLC; CH2M Hill Constructors), Additional Named Insureds (City of Vallejo, Vallejo Sanitation and Flood Control District) and Additional Insureds (United States Department of Defense, Department of the Navy, CH2M Hill Constructors, CH2M Hill Inc., Lennar Corporation, LNR Corporation, Lennar Mare Island LLC, City of Vallejo, Vallejo Sanitation and Flood Control District), will lose the remaining benefits of the ELI Policy. The ELI Policy includes the following coverages: bodily injury and property damage, unknown pollution conditions, loss of rental value, and transportation of materials. The coverage which is potentially of greatest interest and value to City is the bodily injury and property damage coverage. If the City were named in a property damage or bodily injury claim or lawsuit at any time prior to expiration of the policy in 2021, the City, under current circumstances, would seek to tender that claim or lawsuit to Steadfast and demand that Steadfast indemnify and defend City in accordance with the terms of the ELI Policy. Once the Settlement Agreement has been approved and fully executed, Steadfast will have no further obligations under the Steadfast policies and City **[and the District]** will therefore not be able to tender any future claims to Steadfast.

While the loss of bodily injury and property damage coverage under the ELI Policy presents some risks to the City **[and the District]**, City staff believes that the benefits provided by the Settlement Agreement outweigh the risks associated with termination of the Steadfast coverage for the following reasons: (a) since the inception of the Steadfast policies in 2001, City has not been named in any bodily injury or property damage claim or lawsuit that would have been covered under the ELI Policy, (b) the ELI Policy will expire in any event in 3.9 years, (c) if the City is named in a bodily injury or property damage claim related to environmental conditions at the EETP, City can still potentially tender those claims to the Navy

pursuant to applicable provisions of the federal environmental law known as CERCLA and/or pursuant to the indemnity provisions of Section 330 of the 1993 National Defense Authorization Act, and (4) the Settlement Agreement will make \$31 Million available to the City and LMI to address cleanup of remaining environmental conditions at the EETP.

[The foregoing two paragraphs apply to the District as well. Since the inception of the Steadfast policies in 2001, the District has not been named in any bodily injury or property damage lawsuit that would have been covered under the ELI policy.]

3. Fourth Amendment to ESCA, District Cooperative Agreement and Ancillary Implementing Agreements.

Concurrently with execution of the Settlement Agreement, Navy and the City will execute a Fourth Amendment to the ESCA to clarify the roles and responsibilities for processing the additional grant funds paid by Steadfast pursuant to the Settlement Agreement, including the establishment of protocols for the submittal and processing of the fund disbursements. The Fourth Amendment to ESCA acknowledges that the settlement funding and remaining funds in the Contingency Fund may not be sufficient to obtain Regulatory Closure of each Unknown Condition and, therefore, the Navy will retain responsibility to complete the cleanup of Navy Retained Conditions in the event the grant funds and settlement proceeds are exhausted before the cleanup is completed and regulatory agency close out achieved.

B. PROPOSED CITY-DISTRICT AGREEMENT

1. *The paragraph immediately below is reproduced, largely verbatim, from the City of Vallejo Staff Report to the City Council for its August 22, 2017 meeting.*

As one of the additional insureds under the ELI Policy, VSFCD is also required to execute the Settlement Agreement for purposes of consenting to termination of the Steadfast policies and waiving and releasing any claims that the District may have against Steadfast. In considering that request, District staff have expressed a concern that there is no mechanism by which the District can access Navy ESCA trust fund monies to pay the incremental costs associated with the handling, off-hauling and disposal of Navy contamination that the District may encounter in the course of performing work on the District sanitary sewer or storm drain facilities at the EETP. District staff have therefore requested that City agree to serve as a conduit for the District to potentially access Navy ESCA trust fund monies to pay the costs of such work. City staff are also seeking Council approval to execute a cooperative agreement between the City and VSFCD that would memorialize and establish a process by which City can assist VSFCD, at VSFCD's expense, in presenting to Navy for review and approval and potential payment from ESCA trust fund monies, the costs, if any, that District may incur in connection with the handling, off-hauling and disposal of Navy contamination encountered in the course of performing work on the District sanitary sewer or storm drain facilities at the EETP.

2. *The following text contains the observations and concerns of District Staff regarding the proposed City-District agreement.*

The District is not an entity authorized in the ESCA or the MIRA to submit claims arising out of environmental contamination to the Navy or to LMI. (District was not a party to either agreement.) City is authorized to submit such claims. District Staff therefore requested of City that, as to the funds in the trust account, the City act as a conduit for any such claims where the District encounters environmental contamination in the course of its work in the EETP. City agreed to do so, but it imposed significant limitations on the dollar amounts of District claims that would be considered and on the dollar amounts of District claims for which City would act as a conduit. The limitations imposed by City are as follows:

- a. City will only consider, and submit to the Navy for payment from the trust account, District claims that do not exceed \$75,000 individually and \$750,000 in the aggregate over the entire term of the agreement. If VSFCDC encounters contaminated soil or other pollution in the course of its work on the sanitary sewer or storm drain systems, and the additional cost to the District because of the contamination will exceed \$75,000; or if the original additional cost plus any change orders will exceed \$75,000; or if the amount of additional work will cause the aggregate of all District claims to exceed \$750,000; the City will not present the claim for payment.
- b. After the trust account funds are exhausted, City's agreement to act as a conduit for even the smaller District claims will end.

District Staff finds the dollar limitations arbitrary. City and District serve virtually the same populations and share virtually the same governing board. It should be in the joint interests of City and District, and the populations they serve, that any claims submitted by the District be administered expeditiously, that environmental contamination in the EETP be remediated, and that VSFCDC be paid and reimbursed from the ESCA trust account as promptly and fully as possible. Nevertheless, District Staff recommends that the board approve the City-District agreement. This recommendation is based on two factors. One is that the relationship between the City and the District should be cooperative and productive. The second reason is that the agreement provides a mechanism whereby small District claims may be paid from the settlement funds.

Given the fact that the District lacks "standing" to submit environmental claims under ESCA and MIRA, and the fact that its ability to receive payment from the settlement trust account is limited as discussed above, the District must be very cautious about performing work on the sewer or storm drain systems on Mare Island. In the future the District will not accept a grant or dedication of an easement on Mare Island unless the landowner (public or private) (1) agrees to remain fully responsible for, and to indemnify the District against the costs of, environmental investigation, testing, characterization, remediation, removal, disposal and monitoring, and (2) agrees that the District and its contractors and subcontractors shall not be obligated to begin or continue working at any site or on any project at the EETP after pollution or contaminated soil or other materials is encountered at such site or on such project. Other terms and conditions may be necessary as well.

C. CONCLUSION

1. Settlement Agreement. The proposed settlement agreement in the LMI-Steadfast litigation should facilitate LMI's ability to complete the cleanup of the EETP, accelerate development on Mare Island, and execute the goals of the Mare Island conversion as originally contemplated by the City. LMI should be able to move forward on important remediation activities and expedite development plans, which will help accelerate historic building renovation and reuse, and put more buildings back into reuse faster, thereby attracting third party investment and new business.
2. City-District Agreement. The proposed agreement will allow the District to submit smaller claims for the additional cost of work caused by environmental contamination, through the City of Vallejo.

RECOMMENDATION

Adopt the attached resolution authorizing the District Manager to execute the LMI-Steadfast settlement agreement and the City-District agreement.

ENVIRONMENTAL REVIEW

Any action by the Board on the settlement agreement and the City-District agreement would be exempt under Sections 15308 and 15330 of the California Environmental Quality Act (CEQA) Guidelines; as to any matter to which such exemption is not deemed applicable, this action does not result in additional significant impacts or require additional mitigation measures not previously analyzed in the Environmental Impact Statement (EIS)/Environmental Impact Report (EIR) for the Disposal and reuse of Mare Island Naval Shipyard (SCH # 94093029) certified on November 17, 1988 and the addendum to the Final Environmental Impact Statement/ Environmental Impact Report for Disposal and Reuse of Mare Island Naval Shipyard adopted in February, 1999 and therefore does not require additional environmental review.

FISCAL IMPACT

There should be no negative fiscal impact to the District from the execution and implementation of the two agreements.

DOCUMENTS ATTACHED

- A. Resolution
- B. LMI-Steadfast Settlement Agreement
- C. City of Vallejo-VSFCO Cooperative Agreement

CONTACT PERSON

Melissa Morton, District Manager, (707) 644-8949, ext. 1101
Gary Heppell, Favaro, Lavezzo, Gill, Caretti & Heppell, District Counsel, (707) 552-3630

RESOLUTION NUMBER 2017 -

AUTHORIZING THE DISTRICT MANAGER TO EXECUTE (1) A SETTLEMENT AGREEMENT AMONG THE NAVY, LENNAR MARE ISLAND, LLC, CH2M HILL CONSTRUCTORS, INC., CH2M HILL CONSTRUCTORS, LLC, STEADFAST INSURANCE COMPANY, VALLEJO SANITATION AND FLOOD CONTROL DISTRICT, AND THE CITY OF VALLEJO AND (2) AN AGREEMENT WITH VALLEJO SANITATION AND FLOOD CONTROL DISTRICT FOR CITY PRESENTATION OF SOME DISTRICT CLAIMS

BE IT RESOLVED, by the Board of Trustees of the Vallejo Sanitation and Flood Control District as follows:

WHEREAS, the City of Vallejo has represented to the District as follows:

1. On April 2, 2001, the Vallejo City Council approved Resolution 01-161 N.C. which authorized the City Manager to execute the Environmental Services Cooperative Agreement – East (“ESCA East”), the Mare Island Remediation Agreement – Lennar (“MIRA”) and other agreements which provided for environmental remediation of the Eastern Early Transfer Parcel (“EETP”); and
2. The ESCA East provided approximately \$78.42 million in grant funding to accomplish the remediation of known hazardous waste within the EETP; and
3. The City of Vallejo (“City”) received an additional \$9,354,262 in grant funds from the Department of the Navy (“Navy”) via the First, Second and Third Amendments to the ESCA East; and
4. A portion of the Navy grant monies provided in the initial funding of the ESCA East were used to purchase environmental insurance policies issued by Steadfast Insurance Company (“Steadfast”), including a Remediation Stop Loss Policy (“RSL Policy”) covering certain cost overruns incurred in connection with remediating “Known Conditions”; an Environmental Liability Insurance Policy (“ELI Policy”) covering cleanup costs related to unknown conditions, third party liability for bodily injury or property damage caused by environmental contamination, professional and pollution liability of CH2M Hill (“CH”) for its work on the ESCA East, and loss of rental value caused by environmental contamination; and a Long Term Monitoring Policy (“LTM Policy”) covering ground water monitoring of known conditions; and
5. The RSL Policy and the LTM Policy, because they covered Known Conditions, expired on March 31, 2011, and the ELI Policy is the only remaining Steadfast policy currently providing additional coverage, including to City as additional named insured; and
6. After years of Steadfast’s repeated denials of coverage under the ELI Policy and refusals to authorize the necessary work, Lennar Mare Island (“LMI”) alleged breach of contract, bad faith and interference with contract against Steadfast, resulting in the LMI v. Steadfast litigation in 2012; and
7. The parties to the litigation, including the Department of Justice (DOJ) in conjunction with the Navy, LMI and CH, have reached a tentative settlement with Steadfast; and
8. Under the terms of the settlement, Steadfast will pay \$43 Million - approximately \$31 Million of which will be deposited into the ESCA Contingency Fund and made available to the City and LMI to fund the cost of remediating remaining known and unknown environmental conditions at the EETP - in exchange for the termination of the Steadfast policies, dismissal of all litigation claims and the insured parties’ (including LMI and CH) and additional insured parties’ (including Navy, City and Vallejo Sanitation and Flood Control District, also known as Vallejo Flood and Wastewater District [hereinafter “VSFCD”]) release of Steadfast from any and all obligations under the Steadfast policies; and

9. City has determined that the benefits provided by the Settlement Agreement outweigh the risks associated with termination of the Steadfast policies for, among other reasons, the fact that the Settlement Agreement will enable LMI and the City to expedite environmental cleanup activity and accelerate development on Mare Island; and
10. Concurrently with execution of the Settlement Agreement, Navy and the City desire to execute a Fourth Amendment to the ESCA East ("ESCA East Fourth Amendment") to, among other things, clarify the roles and responsibilities for processing the additional settlement funds paid by Steadfast pursuant to the Settlement Agreement, including the establishment of protocols for the submittal and processing of the fund disbursements; and

WHEREAS, the District was not a party to the litigation between LMI and Steadfast, among other parties, but the settlement agreement, if approved by the Board of Trustees, must be executed by the District because the District is an additional named insured under the remaining Steadfast policy;

WHEREAS, The District believes it is in the best interests of the City and the populations served by District and City to obtain environmental remediation of the EETP in order that development of that land may proceed, and that the funds that will be made available by the settlement of the litigation between LMI and Steadfast will hasten and enhance such environmental remediation;

WHEREAS, at present there is no mechanism by which VSFCD can access ESCA trust fund monies to pay the incremental costs related to the handling, off-hauling and disposal of Navy contamination that VSFCD may encounter in the course of performing installation or repair work on VSFCD sanitary sewer or storm drain facilities on the EETP property and VSFCD has requested that City serve as a conduit for VSFCD to potentially access ESCA trust fund monies to pay the costs of such work;

WHEREAS, City and VSFCD desire to enter into an agreement setting forth a requirement that City will present to Navy, pursuant to the ESCA East, as amended, some limited future claims, if any, that VSFCD may have related to the handling, off-hauling and disposal of Navy contamination encountered in the course of performing work on VSFCD sanitary sewer or storm drain facilities at the EETP, as if such claims were the City's own, and a requirement that City, in cooperation with VSFCD, do all things reasonably necessary to be done in City's capacity to advance and prosecute such claims;

WHEREAS, City has insisted on monetary limits on the District claims it will consider and present to the Navy for possible payment, those limits being \$75,000 per claim and \$750,000.00 in the aggregate for all District claims over the entire term of the agreement;

WHEREAS, the District, lacking standing under ESCA and MIRA to present to the Navy or LMI, in its own right, claims arising out of extra work and costs caused by the presence of environmental contamination that may be encountered by the District in the course of its work on the sanitary sewer and storm drain systems within the EETP, believes that having the ability to process some smaller claims through the City is nonetheless advantageous to the District;

WHEREAS, the proposed agreement between City and District provides that nothing in the Agreement shall serve to or be construed to impose upon the District any duties or obligations relating to the investigation, testing, remediation, removal, disposal or monitoring of pollution or contaminated soil or other materials that the District may encounter in the course of its work at the EETP, and nothing in the Agreement shall serve to or be construed to impose any duty or obligation upon the District to begin or continue working at any site or on any project at the EETP

after pollution or contaminated soil or other materials is encountered at such site or on such project; and

WHEREAS, this action is exempt under Section 15308 and 15330 of the California Environmental Quality Act Guidelines; as to any matter to which such exemption is not deemed applicable, this action does not result in additional significant impacts or require additional mitigation measures not previously analyzed in the Environmental Impact Statement (EIS)/Environmental Impact Report (EIR) for the Disposal and reuse of Mare Island Naval Shipyard (SCH # 94093029) certified on November 17, 1988 and the addendum to the Final Environmental Impact Statement/ Environmental Impact Report for Disposal and Reuse of Mare Island Naval Shipyard adopted in February, 1999 and therefore does not require additional environmental review.

IT IS, THEREFORE RESOLVED, by the Board of Trustees of the Vallejo Sanitation and Flood Control District that the Board authorizes the District Manager to execute (1) the Settlement Agreement, substantially in the form attached to the accompanying staff report, and (2) the agreement between the City and the District, substantially in the form attached to the accompanying staff report, requiring City to present to Navy, pursuant to the ESCA East, as amended, some future claims, if any, that District may have relating to the handling, off-hauling and disposal of Navy contamination encountered in the course of performing work on District sanitary sewer or storm drain facilities at the EETP, as if such claims were the City's own, and requiring City, in cooperation with District, to do all things reasonably necessary to be done in City's capacity to advance and prosecute such claims.

BE IT FURTHER RESOLVED, that the District Manager is authorized and directed to execute the above-described agreements on behalf of the District, subject to such technical or clarifying revisions as are reasonably determined necessary by the District Manager and approved by District Counsel.

ADOPTED by the Board of Trustees of the Vallejo Sanitation and Flood Control District at a regular meeting held on August 22, 2017, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

WITNESS my hand and the Seal of said District this 22nd day of August, 2017.

HOLLY M. CHARLETY
District Clerk

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (“Settlement Agreement”) is made and entered into as of _____, 2017 (the “Effective Date”) by and among Lennar Mare Island, LLC (“LMI”), CH2M HILL Constructors, Inc., CH2M HILL Companies, Ltd., CH2M HILL, Inc., and CH2M HILL Constructors, LLC (collectively “CCI”), the United States of America, acting on behalf of the Department of the Navy (“Navy” or “United States”), and Steadfast Insurance Company (“Steadfast”), to resolve existing and potential disputes concerning the Eastern Early Transfer Parcel (“EETP”) located at the former Mare Island Naval Shipyard, Vallejo, California (“Mare Island”). In addition to LMI, CCI, Navy, and Steadfast, the following are also parties to this Settlement Agreement solely for purposes of waiving any rights as additional insureds and releasing Steadfast pursuant to Paragraph 4 (Policy Releases) of this Settlement Agreement: the City of Vallejo (“City”), the Vallejo Sanitation and Flood Control District (“VSFCD”), and LNR Corporation (“LNR”). Navy, City, VSFCD, LMI, CCI, LNR, and Steadfast may be referred to hereinafter individually as “Party” or collectively as “Parties.”

RECITALS

- A. WHEREAS, Navy transferred title to the EETP to City under the early transfer authority of the Comprehensive Environmental Response, Compensation, and Liability Act (“CERCLA”), 42 U.S.C. Section 9620 (h)(3)(C);
- B. WHEREAS, Navy and City executed an Environmental Services Cooperative Agreement (“ESCA”) on April 16, 2001, which sets forth the terms and conditions under which City is responsible for remediation of the Areas Covered by Environmental Services (“ACES”) as identified in the ESCA, with the exception of certain conditions in the ESCA defined as Navy-Retained Conditions;
- C. WHEREAS, City transferred its obligations to perform environmental services at the ACES to LMI, as its master developer, under the Mare Island Remediation Agreement (“MIRA”) dated April 16, 2001;
- D. WHEREAS, on April 16, 2001, LMI entered into a Guaranteed Fixed Price Remediation Contract with CCI to perform certain environmental services at the ACES, and subsequently entered into two amendments of such contract on February 14, 2002 and August 25, 2009, respectively (as amended, the “GFPC”);
- E. WHEREAS, City transferred title to the EETP to LMI by Quitclaim Deed recorded in Solano County on March 26, 2002;
- F. WHEREAS, LMI and CCI obtained environmental insurance in connection with the foregoing transactions from Steadfast in the form of a Remediation Stop Loss policy (“RSL Policy”), bearing policy number ERC 5224884-00, an Environmental Liability Insurance policy (“ELI Policy”), bearing policy number REL 5224850-00, and a Long-Term Monitoring Remediation Stop Loss policy (“LTM Policy”), bearing policy number ERC 3884962-00, and City and VSFCD were additional insureds under those policies;

G. WHEREAS, on January 4, 2008, LMI, CCI, and Steadfast entered into a settlement agreement concerning payment and further handling of GFPC change orders under the ELI Policy (“Change Order Agreement”);

H. WHEREAS, on April 9, 2010, LMI, CCI, and Steadfast entered into a settlement agreement concerning payment and further handling of certain FOPL sites at the EETP (“FOPL Agreement”);

I. WHEREAS, on December 12, 2011, LMI and Steadfast entered into a settlement agreement concerning payment and further handling of certain PCB sites at the EETP (“PCB Agreement”);

J. WHEREAS, on August 25, 2009, LMI and CCI entered into a settlement regarding the Crane Test Area at the EETP (“Crane Test Agreement”);

K. WHEREAS, on April 11, 2012, LMI and CCI entered into a settlement regarding the transfer of data from CCI to LMI regarding the EETP (“Data Transfer Agreement”);

L. WHEREAS, City and Navy entered into a First Amendment to the ESCA on April 23, 2012, a Second Amendment to the ESCA on August 1, 2014, and a Third Amendment to the ESCA on June 30, 2016 (collectively, “Amended ESCA”);

M. WHEREAS, the Parties have disputes concerning their respective rights and obligations under the ELI Policy, the RSL Policy, and/or the LTM Policy, some but not all of which have been joined in the matter styled *Lennar Mare Island, LLC v. Steadfast Insurance Company*, United States District Court for the Eastern District of California, Case No. 2:12-cv-02182-KJM-KJN and Case No. 2:16-cv-00291 and all cross-claims and counter-claims therein (the “Coverage Actions”); and

N. WHEREAS, the Parties intend that one of the goals of this Settlement Agreement is to fully and forever resolve all past, present, and future rights and obligations under the RSL, LTM, and ELI Policies.

NOW, THEREFORE, in consideration of the payments, conditions, and promises stated in this Settlement Agreement, the Parties agree as follows:

ADDITIONAL DEFINITIONS

“CCI” shall mean CH2M HILL Constructors, Inc., CH2M HILL Companies, Ltd., CH2M HILL, Inc. and CH2M HILL Constructors, LLC, and each of them, and their predecessors, successors, parents, subsidiaries, and affiliated entities, and each of their employees, directors, officers, shareholders, agents, representatives, consultants, and attorneys acting or serving in their capacities as such.

“City” shall mean the City of Vallejo and its past, present, and future organizational subdivisions, departments, instrumentalities, agencies, employees, contractors, elected or

appointed officials, representatives, agents, attorneys, or consultants acting or serving in their capacities as such.

“Claim” or “Claims” shall mean any and all actual, potential, threatened, or alleged past, present, or future action, suit, claim, count, cross-claim, counter-claim, right, obligation, liability, duty, demand, request, charge, allegation, insurance tender, insurance claim, cause of action, or any other assertion of liability of any kind, whether legal, equitable or extra-contractual, and whether known or unknown, fixed or contingent, matured or unmatured, liquidated or unliquidated, direct or consequential, foreseen or unforeseen, and whether sounding in tort, contract, equity, nuisance, trespass, negligence, strict liability, or any other statutory, regulatory, administrative, or common law cause of action of any sort, including any alleged violation of the duty of good faith and fair dealing, bad faith, or any other misconduct or alleged wrongdoing.

“Effective Date” shall mean the date set forth in the preamble of this Settlement Agreement.

“ESCA Trust Account” shall mean the Settlement Fund created and defined in the Fourth Amendment to the Environmental Services Cooperative Agreement and administered by First American Title Insurance Company.

“LMI” shall mean Lennar Mare Island, LLC and Lennar Corporation, and each of them, and their past and present members, shareholders, predecessors, successors, parents, subsidiaries, and affiliated entities, and each of their respective employees, directors, officers, shareholders, agents, representatives, consultants, and attorneys acting or serving in their capacities as such, and insurers.

“LNR” shall mean LNR Corporation and its past and present members, shareholders, predecessors, successors, parents, subsidiaries, and affiliated entities, and each of its employees, directors, officers, shareholders, agents, representatives, consultants, and attorneys acting or serving in their capacities as such, and insurers.

“Navy” shall mean the United States of America, acting on behalf of its Department of the Navy, which term shall include all of the Navy’s departments, including, without limitation, the BRAC Program Management Office.

“Relating to” or “Related to” shall mean consisting of, based on, arising from, or in any way connected to the referenced matter.

“Steadfast” shall mean Steadfast Insurance Company and its predecessors, successors, parents, subsidiaries, and affiliated entities, and each of their employees, directors, officers, shareholders, agents, representatives, consultants, and attorneys acting or serving in their capacities as such.

“VSFCD” shall mean the Vallejo Sanitation and Flood Control District and its past, present, and future organizational subdivisions, departments, instrumentalities, agencies, employees, contractors, elected or appointed officials, representatives, agents, attorneys, or consultants acting or serving in their capacities as such.

SETTLEMENT TERMS

1. **Permanent Resolution:** This Settlement Agreement is a permanent and binding accord and resolution of the rights and obligations of the Parties with respect to all matters which are the subject of this Settlement Agreement.
2. **Payments by Steadfast:** In consideration of the agreements by LMI, City, and Navy as set forth in this Settlement Agreement, Steadfast agrees, by no later than twenty business days following the Effective Date, to pay, or have paid, as set forth below all the following sums:
 - (a) Thirty-Two Million Dollars (\$32,000,000) to Navy. This amount shall be paid to Navy pursuant to wire instruction set forth on Exhibit A-1. As soon as is practicable, Navy shall transfer funds in accordance with law, subject to Pub. L. No. 107-273, § 11013, to the ESCA Trust Account pursuant to wire instructions set forth on Exhibit A-2. The amount Navy shall deposit into the ESCA Trust Account is \$31,040,000, and Navy shall utilize best efforts to make such payment no later than 21 days following receipt of payment from Steadfast.
 - (b) Five Million Dollars (\$5,000,000) to LMI. This amount shall be paid to LMI by wire transfer attached as Exhibit A-3.
 - (c) In addition to the above payments, all remaining escrowed amounts under the FOPL Agreement in the approximate amount of Four Million Five Hundred Thousand Dollars (\$4,500,000) shall be released to LMI. Upon execution of this Settlement Agreement, Steadfast and LMI shall concurrently execute and deliver instructions substantially in accordance with Exhibit B attached hereto. LMI shall hereafter be responsible for the fees, including accounting fees, related to the final tax filing for such escrow account.
3. **Payment to CCI:** In consideration of the agreement by CCI to perform the obligations set forth in this Settlement Agreement, Steadfast agrees to pay by no later than twenty business days following the Effective Date the total sum of Six Million Dollars (\$6,000,000) to CCI. This amount shall be paid to CCI pursuant to wire instructions attached as Exhibit A-4.
4. **Policy Releases:**
 - (a) In consideration of the agreement by Steadfast to perform the obligations set forth in this Settlement Agreement and upon payment in full of the amounts set forth in Paragraphs 2(a), 2(b), and 3, LMI, CCI, City, VSFCO, LNR, and Navy each release Steadfast from any and all Claims Relating to the ELI Policy, the RSL Policy, and/or the LTM Policy.
 - (b) In consideration of the agreement by LMI, CCI, City, VSFCO, LNR, and Navy to perform the obligations set forth in this Settlement Agreement, Steadfast hereby releases LMI, CCI, City, VSFCO, LNR, and Navy from any and all Claims Relating to the ELI Policy, the RSL Policy, and/or the LTM Policy.

- (c) In consideration of the agreements between LMI, CCI, City, VSFCD, LNR, and Navy and upon payment in full of the amounts set forth in Paragraphs 2(a), 2(b), and 3, each of LMI, CCI, City, VSFCD, LNR, and Navy releases one another from any and all Claims Relating to the ELI Policy, the RSL Policy, and/or the LTM Policy and such Parties' interactions and communications with Steadfast and each other in regard to such policies and claims made or not made under such policies, including, without limitation, any coverage defenses asserted by Steadfast in connection with such claims. Notwithstanding the foregoing, as between LMI, City, and Navy, the release provided under this Paragraph 4(c) is not intended nor shall it be deemed to amend or modify the obligations of the parties under the ESCA and the MIRA (as applicable), as amended.
- (d) In consideration of the agreement by the Parties to perform the obligations set forth in this Settlement Agreement and upon payment in full of the amounts set forth in Paragraphs 2(a), 2(b), and 3 and LMI's receipt of the FOPL Agreement escrow funds as provided in Paragraph 2(c), the Parties agree that the Parties shall have no further rights or obligations under the ELI Policy, the RSL Policy, and/or the LTM Policy and all of these prior agreements shall be considered terminated.

5. Coverage Actions Releases:

- (a) In consideration of the agreement by Steadfast to perform the obligations set forth in this Settlement Agreement and upon payment in full of the amounts set forth in Paragraphs 2(a), 2(b), and 3, LMI, CCI, and Navy release Steadfast from any and all Claims which were asserted or could have been asserted in the Coverage Actions or Relating to the Coverage Actions.
- (b) In consideration of the agreement by LMI, CCI, and Navy to perform the obligations set forth in this Settlement Agreement, Steadfast hereby releases LMI, CCI, and Navy from any and all Claims which were asserted or could have been asserted in the Coverage Actions or Relating to the Coverage Actions.
- (c) In consideration of the agreements by LMI, CCI, and Navy to perform the obligations set forth in this Settlement Agreement and upon payment in full of the amounts set forth in Paragraphs 2(a), 2(b), and 3, LMI, CCI and Navy each release one another from any and all Claims Relating to the Coverage Actions, including, without limitation, any Claims Relating to any counter-claims asserted by Steadfast in the Coverage Actions. Notwithstanding the foregoing, as between LMI, City, and Navy, the release provided under this Paragraph 5(c) is not intended nor shall it be deemed to amend or modify the obligations of the parties under the ESCA and the MIRA (as applicable), as amended.

6. Limitation on the United States' Releases: Notwithstanding any other provision of this Settlement Agreement, the United States does not release or compromise any of the following claims: (a) any claims arising under criminal laws unless fully satisfied; (b) any criminal, civil, or administrative claims, rights, or defenses arising under Title 26, United States Code (Internal

Revenue Code); (c) any claims, rights, or defenses arising under 31 U.S.C. §§ 3729 et seq. (False Claims Act), 31 U.S.C. §§ 3801 et seq. (Program Frauds Civil Remedies Act), or 42 U.S.C. §§ 1320a-7a (Civil Monetary Penalties Statute); (d) [any common law cause of action for fraud]; (e) any potential claims, rights, or defenses arising under 42 U.S.C. §§ 9601 et seq. (Comprehensive Environmental Response, Compensation, and Liability Act); and (f) any claim by any United States agency other than the Navy.

7. Dismissal of the Coverage Actions: Within ten (10) court days after the receipt of the payments required in Paragraphs 2 and 3 herein, LMI, Steadfast, Navy, and CCI shall file stipulations dismissing with prejudice all of their Claims asserted in the Coverage Actions, all sides to bear their own fees and costs. LMI, Steadfast, Navy, and CCI shall take whatever additional actions may be required to effectuate such dismissals.

8. Prior Agreements: Upon payment in full of the amounts set forth in Paragraphs 2(a), 2(b), and 3 and LMI's receipt of the FOPL Agreement escrow funds as provided in Paragraph 2(c), the Parties that have entered into the FOPL Agreement, the Change Order Agreement, the PCB Agreement, the Crane Test Area Agreement, and the Data Transfer Agreement agree that no Party has any further rights or obligations under these agreements and that all of these prior agreements shall be considered terminated. Notwithstanding the foregoing, all payments made, releases provided, and waivers made in those prior agreements shall remain in full force and effect.

9. Release of CCI by LMI and Navy; City warranty regarding Claims against CCI:

- (a) LMI and Navy each warrant that they are not currently aware of any fact or circumstance which could give rise to a Claim against CCI that has not been asserted in the Coverage Actions.
- (b) City warrants that it has no current, actual knowledge of any of the Claims that have been asserted against CCI or any of the other parties in the Coverage Action and further warrants that City has not investigated, and is thus is not aware of any fact or circumstance, including any fact or circumstance relating to Claims asserted in the Coverage Action, which could give rise to a Claim by City against CCI Relating to the EETP, the GFPC, the ESCA or the MIRA. As used herein the phrase "current, actual knowledge" means the current, actual knowledge of Claudia M. Quintana, City Attorney.
- (c) Subject to Paragraphs 9(d) and 9(e) below, LMI and Navy each release CCI from any and all Claims Relating to the quality and sufficiency of the Environmental Services performed by CCI or any other acts, errors, or omissions Relating to the EETP, the GFPC, the ESCA, the MIRA, or any previous agreements, specifically including but not limited to Claims arising out of the CCI's warranties regarding Materials and Workmanship, Correction or Removal of Defective Materials, Equipment and Work, and Work, all as set forth in Sections 9.1, 9.4, and 9.5 of the GFPC, or out of CCI's indemnity obligations as set forth in Section 4.1 of the GFPC, including but not limited to costs for additional remediation, correction,

repair, or replacement of remedies implemented by CCI, additional investigation, long-term monitoring, or any other aspect of the Environmental Services conducted by CCI.

(d) As to Claims against CCI by LMI and/or the Navy:

(1) The release in Paragraph 9(c) shall apply only to Claims by LMI of which an officer or managing agent of LMI knew or reasonably should have known prior to March 31, 2021.

(2) Similarly, the release in Paragraph 9(c) shall apply only to Claims by the Navy of which the Regional Director of Navy BRAC PMO West or his or her staff knew or reasonably should have known prior to March 31, 2021.

(3) As used in subparagraphs (1) and (2) above, the terms “known” and “knew of” shall mean actual knowledge and not implied, imputed, or constructive knowledge.

(e) As to third-party claims which may be asserted against LMI and/or the Navy in the future, if any:

(1) The release in Paragraph 9(c) shall apply to preclude LMI from suing CCI for indemnity only with respect to the following occurring prior to March 31, 2021:

(i) any third-party litigation filed against LMI with a copy provided to LMI; or (ii) any third-party demand delivered to LMI in writing.

(2) The release in Paragraph 9(c) shall apply to preclude the Navy from suing CCI for indemnity only with respect to the following occurring prior to March 31, 2021: (i) any litigation filed against Navy with a copy provided to Navy, (ii) Navy receipt of written CERCLA warranty claims asserted against the Navy, or (iii) any third party demand delivered to Navy in writing.

(3) CH's potential indemnity obligations to LMI and/or Navy for third party claims shall not be altered or affected by the release set forth in Paragraph 9(c) except as expressly stated in this Paragraph 9(e).

10. Statutes of Limitations and Repose: None of the provisions in this Settlement Agreement shall shorten, lengthen or otherwise affect any, or all, statutes of limitations or repose which might apply to any claims made by, or against, any of the Parties hereto.

11. Concurrent Agreements: LMI, CCI, Navy and City acknowledge and agree that as between LMI, CCI, Navy and City, this Settlement Agreement is conditioned upon the concurrent execution and delivery of the following documents between the following parties:

(a) CCI and LMI shall enter into a Third Amendment to the Guaranteed Fixed Price Contract;

- (b) Navy and City shall enter into a Fourth Amendment to the ESCA mutually agreeable to Navy and City;
- (c) City and LMI shall enter into a Fourth Amendment to the MIRA mutually agreeable to City and LMI;
- (d) City, LMI, and First American Title Insurance Company shall enter into a Third Amendment to the Fiscal Agent Agreement mutually agreeable to City, LMI, and First American Title Insurance Company; and
- (e) City and Reginald Banks shall enter into a Second Amendment to the Consulting Agreement for the Grant Administrator mutually agreeable to City and Reginald Banks.

In the event this Settlement Agreement is executed by one or more Parties prior to the execution and delivery of all of the foregoing documents, then this Settlement Agreement shall have no effect as between LMI, CCI, Navy and City until all of the foregoing documents have been executed by the respective parties thereto and such parties have confirmed execution and delivery of such documents to all Parties and the date to be inserted on all final executed documents, including this Settlement Agreement.

12. No Precedential Value: The Parties acknowledge and agree that this Settlement Agreement carries no precedential value and should not be relied upon by any person or entity as evidence of any obligation of Steadfast under any insurance policy for any purpose at any time. Notwithstanding the foregoing, the Parties expressly agree that this Settlement Agreement shall be admissible to enforce the obligations of the Parties under this Settlement Agreement.

13. Statutory Waivers: With regard to the releases set forth in Paragraphs 4, 5, and 9 of this Settlement Agreement, each of the Parties providing such releases acknowledges that it has been informed by its attorneys of the provisions of Section 1542 of the Civil Code of the State of California, which reads as follows:

A general release does not extend to claims which the creditor does not know 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 settlement with the debtor.

To the extent applicable, the Parties providing such releases hereby waive and relinquish with respect to the matters released herein all rights and benefits which they have or may have under California Civil Code Section 1542 and any state or federal statute, rule, and legal doctrine in this or any other jurisdiction to the same or similar effect as Section 1542 to the full extent that they may lawfully waive such rights and benefits. In making this waiver, the Parties acknowledge that they may hereafter discover facts in addition to, or different from, those which they now believe to be true with respect to the subject matter of this Settlement Agreement, but agree that they have taken that possibility into account in reaching this Settlement Agreement and that the releases given herein shall be and remain in effect as a full and complete release of

the matters released, notwithstanding the discovery or existence of any such additional or different facts, as to which the Parties providing such releases expressly assume the risk.

14. **Legal Assistance:** Each Party represents and warrants that: (a) it is represented by legal counsel in connection with this Settlement Agreement and all matters covered by it; (b) it has been fully advised by those attorneys with respect to its rights and obligations under this Settlement Agreement; and (c) it has executed this Settlement Agreement after consultation with counsel and careful consideration of each of its terms. This Settlement Agreement is the product of arms' length negotiation, and each Party is entering into this Settlement Agreement voluntarily and without duress. Each Party agrees to bear its own attorneys' fees and other costs incurred in connection with the negotiation and implementation of this Settlement Agreement.

15. **Fee Shifting:** If litigation or any other proceeding is instituted Relating to this Settlement Agreement, or any provision thereof, the Party prevailing in that litigation or proceeding shall be entitled to recover reasonable attorneys' fees, in addition to any other relief granted, except that attorneys' fees may not be assessed against the United States.

16. **Successors and Assignment:** This Settlement Agreement is binding upon, inures to the benefit of, and is enforceable by and against the Parties, their respective agents, representatives, and successors, including any corporate or joint venture successor, whether created by merger, stock sale, asset acquisition, or in any other fashion. This Settlement Agreement shall not be assignable by any Party without the prior written consent of the other Parties, which shall not be unreasonably withheld or denied.

17. **Multiple Counterparts:** This Settlement Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one agreement. The signature of any Party to any counterpart is deemed to be a signature to, and may be appended to, any other counterpart.

18. **Entire Agreement:** This Settlement Agreement constitutes the entire agreement between Steadfast, CCI, Navy, City, VSFC, LNR, and LMI as to the terms contained within it, and supersedes all prior and contemporaneous oral and written agreements. Any provision not contained herein does not change, define, interpret, expand, or limit any provision of this Settlement Agreement. Each of CCI, Navy, LMI, and City acknowledge that the agreements of such Party referenced in Paragraph 11 shall be made in conformance with this Settlement Agreement.

19. **Governing Law:** This Settlement Agreement shall be construed as jointly drafted by all Parties, and any rule of construction to the effect that ambiguities are resolved against the drafting Party shall not apply to the interpretation of this Settlement Agreement. This Settlement Agreement shall be governed by and in accordance with federal law and, to the extent federal law does not apply, by the laws of the State of California, without reference to its choice of law rules.

20. **Severability:** All rights and obligations under the Settlement Agreement may be exercised or performed only to the extent that such exercise or performance does not violate any

applicable law. All rights and obligations are limited to the extent necessary to ensure that they do not render the Settlement Agreement, or any provision hereof, invalid or unenforceable under any applicable law. If any provision of the Settlement Agreement is held invalid or unenforceable, the validity and enforceability of all other provisions shall not be affected.

21. **Headings and Recitals:** The headings and captions contained herein are inserted only as a matter of convenience, and do not define, expand, or limit any provision of this Settlement Agreement. The recitals set forth at the beginning of this Settlement Agreement shall not be admissible to prove the truth of the matters asserted therein in any action or proceeding involving any of the Parties (other than an action or proceeding brought to enforce the terms of this Settlement Agreement), nor do any of the Parties intend such recitals to constitute admissions of fact by any of them.

22. **Execution:** This Settlement Agreement shall be deemed to have been executed when the Parties sign and exchange counterparts hereof, which may be accomplished by e-mail or in person in accordance with the convenience of the Parties. This Settlement Agreement is not binding and shall be of no force and effect unless and until it is executed by all Parties in one document or in counterparts as set forth above.

23. **Notices:** All consents, notices, and other communications required under this Settlement Agreement shall be served upon the following persons and addresses, until such time as a change thereto is designated by any Party to the other Parties in the manner provided in this Settlement Agreement:

If to City:

City of Vallejo
Attn: City Manager
555 Santa Clara Street
Vallejo, CA 94589
daniel.keen@cityofvallejo.net

with a copy to:

City of Vallejo
Attn: City Attorney
555 Santa Clara Street
Vallejo, CA 94589
claudia.quintana@cityofvallejo.net

If to VSFCD:

with a copy to:

Gary Heppell
Favaro, Lavezzo, Gill, Caretti & Hepell, PC
300 Tuolumne Street
Vallejo, CA 94590
garyheppell@flgch.com

If to CCI:

Matthew Tuller, Esq.
CH2M HILL, Inc.
9191 South Jamaica Street
Englewood, CO 80112
matthew.tuller@ch2m.com

with a copy to:

Deborah Ballati, Esq.
Farella, Braun + Martel, LLP
235 Montgomery Street
San Francisco, CA 94104
dballati@fbm.com

If to LMI:

Thomas Sheaff
Lennar Mare Island, LLC
690 Walnut Avenue, Suite 100
Vallejo, CA 94592
tom.sheaff@lennar.com

with a copy to:

Beth Pennington
Pennington Lawson LLP
44 Montgomery Street, Suite 2400
San Francisco, CA 94104
bethpennington@penningtonlawson.com

and to:

Lennar Corporation
Attn: Risk Manager
c/o CT Corporation System

818 W. 7th Street, Suite 930
Los Angeles, CA 90017

If to LNR:

with a copy to:

If to Navy:

Michael Tencate
BRAC Attorney
Navy BRAC PMO
33000 Nixie Way
Bldg. 50
San Diego, CA 92147
Mike.Tencate@navy.mil

with a copy to:

Richard L. Green
Assistant Director, Affirmative Environmental Restoration Claims
Department of the Navy, Office of General Counsel Naval Litigation Office
720 Kennon Street, S.E.
Bldg. 36, Rm. 233
Washington Navy Yard, D.C. 20374-5013

and to:

J. Taylor McConkie
United States Department of Justice
Civil Division
1100 L Street, N.W., #10062
Washington, D.C. 20005
john.t.mcconkie@usdoj.gov

If to Steadfast:

Robert J. Koscielniak
Zurich North America
1299 Zurich Way
Schaumburg, IL 60196

with a copy to:

Dale H. Oliver
Quinn Emanuel Urquhart & Sullivan, LLP
865 S. Figueroa Street, 10th Floor
Los Angeles, CA 90017

All notices shall be in writing and shall be deemed to have been given (a) in the event of transmission by hand delivery or overnight courier, on the date of delivery to the recipient, or (b) in the event of transmission by e-mail, on the date of confirmation of receipt by the recipient.

24. Warranties of Validity: Each Party separately warrants and represents:

- (a) That it is duly organized and currently existing under the laws of one of the United States, or the United States, and that it has the requisite power and authority to enter into this Settlement Agreement and to perform its respective obligations contemplated by this Settlement Agreement;
- (b) That the performance of the Parties' respective obligations contemplated by this Settlement Agreement have been approved by duly authorized representatives of the Party, and by all other necessary actions of the Party;
- (c) That neither it nor to its knowledge any of its predecessors, successors, or affiliates has previously assigned, transferred, or purported to assign or transfer to any other person or entity any Claim released or waived herein;
- (d) That it has expressly authorized its undersigned representative to execute this Settlement Agreement on the Party's behalf as its duly authorized agent, and this Settlement Agreement continues a valid and binding obligation of such Party; and
- (e) That this Settlement Agreement has been executed in good faith, and for good and valuable consideration.

[REST OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the Parties have executed this Settlement Agreement to be effective as of the date set forth above.

UNITED STATES OF AMERICA,
acting on behalf of the Department of the Navy

By: _____
Name: _____
Title: _____

[Signatures continue on the following page.]

LENNAR CORPORATION, a Delaware corporation

By: _____
Name: _____
Title: _____

LENNAR MARE ISLAND, LLC

By: Lennar Homes of California, Inc.,
a California corporation, its sole member

By: _____
Name: _____
Title: _____

[Signatures continue on the following page.]

STEADFAST INSURANCE COMPANY

By: _____

Name: _____

Title: _____

[Signatures continue on the following page.]

CITY OF VALLEJO

By: _____

Name: _____

Title: _____

[Signatures continue on the following page.]

**VALLEJO SANITATION AND FLOOD CONTROL
DISTRICT**

By: _____
Name: _____
Title: _____

[Signatures continue on the following page.]

CH2M HILL CONSTRUCTORS, INC.

By: _____
Name: _____
Title: _____

CH2M HILL COMPANIES, LTD.

By: _____
Name: _____
Title: _____

CH2M HILL CONSTRUCTORS, LLC

By: _____
Name: _____
Title: _____

CH2M HILL, INC.

By: _____
Name: _____
Title: _____

[Signatures continue on the following page.]

LNR CORPORATION

By: _____

Name: _____

Title: _____

[Final signature page.]

Exhibit A-1

Article I. FEDWIRE
Electronic Funds Transfer to
the
United States Department of
Justice

Notice Date:

07/12/2017 Expected

Date: 08/01/2017

STEADFAST INSURANCE COMPANY

To transfer funds electronically to the Federal Reserve/United States Treasury Department in New York City located at 33 Liberty Street, New York, NY 10045, for Credit to the United States Department of Justice, the following information must be provided to the bank from which the funds are to be transferred. This information will enable the sending bank to complete those fields associated with the beneficiary bank of a "*FedWire Structured Third Party Format*" electronic funds transfer.

| ITEM | DESCRIPTION | CODING INFORMATION FOR FEDWIRE FORMAT |
|-------------|--|---|
| 2 | Receiving Bank ABA Code | 021030004 |
| 3 | Message Type Code | 1000 |
| 7 | Wire Amount | \$32,000,000.00 |
| 9 | Receiver ABA name/Business Func code | TREAS NYC/CTR |
| 10 | Beneficiary Name | U.S. DEPARTMENT OF JUSTICE |
| 11 | Account No. | 15030001 |
| 12 | Required Beneficiary Information: *Collection Office Identifier *Debtor Name *DJ Number *CDCS Number *EFT No. | CIV STEADFAST INSURANCE COMPANY 145-6-4128 2017A67812 CIV17E256 |

Article II. ATTENTION FINANCIAL LITIGATION PERSONNEL:

The debtor/debtor's attorney must provide this form to the bank from which the funds are to be transferred to ensure that the electronic transfer of funds is accomplished and properly credited to the United States Department of Justice/Debt Accounting Operations Group.

Article III. AUTHORITY:

The above information requirements are in accordance with the United States Treasury Department "Treasury Requirements Manual/Part 6 - Chapter 8000"; Appendix E of the "Federal Reserve Bank Funds Transfer Systems Manual"; and 31 CFR Part 206 (Federal Register - Vol. 59 , No. 20).

Article IV. Questions regarding this FedWire EFT should be directed to the responsible Collection Office:

POINT OF CONTACT: TELEPHONE NUMBER:

Gretchen D'Costa/Angela Funnye (202)-514-6033

Limited Official Use

[Remainder of page intentionally blank.]

Exhibit A-2

[First American Title wire instructions to be confirmed]

Wire to: First American Trust, FSB
Santa Ana Branch
421 N. Main St.
Santa Ana, CA 92701

ABA Number: 122241255

For Credit To: First American Title Insurance Company

Account Number: 3016910000

Reference: Escrow No.: NCS-605770A-1

Attn: Lesley Kaufman

Phone: 916-576-3128

Customer Name: Lennar Mare Island

Please email lkaufman@firstam.com on the day you transmit funds.

Exhibit A-3

LENNAR MARE ISLAND LLC WIRE INSTRUCTIONS

Beneficiary Bank: **Bank of America**
 333 S Hope Street, Ste 100
 Los Angeles, CA 90071

ABA Number: **026009593**

Beneficiary: **Lennar Homes of California, Inc. Regional Depository**
 700 N.W. 107th Avenue
 Miami, FL 33172

Account #: **1426001282**

Reference **Lennar Mare Island (NCU) Steadfast Settlement**

Exhibit A-4

CH2M HILL CONSTRUCTORS, INC.

Beneficiary Bank:

**Wells Fargo Bank
420 Montgomery Street
San Francisco, CA 94104**

ABA Number:
(for domestic wires)

121000248

SWIFT
(for USD international wires)

WFBIUS6S

SWIFT
(for Other Currency international wires)

WFBIUS6SWFFX

Beneficiary Name:

CH2M HILL CONSTRUCTORS, INC.

Beneficiary Acct #

4178528071

Exhibit B

_____, 2017

VIA EMAIL AND OVERNIGHT DELIVERY

First American Title Company
1610 Arden Way, Suite 101
Sacramento, CA 95815
Attention: Lesley Kauffman

*Re: Escrow No. NCS 439003; Escrow Account for Future FOPL Work Settlement
EIN: 27-6602018*

Dear Ms. Kaufman:

Reference is hereby made to those certain Joint Escrow Instructions (the "**Joint Instructions**") dated as of May 6, 2010, by and among Lennar Mare Island, LLC ("**LMI**"), Steadfast Insurance Company ("**Steadfast**") and First American Title Company ("**Escrow Holder**"), pursuant to which Escrow No. NCS 439003 (the "**Escrow Fund**") was funded by Steadfast in the initial amount of \$5,000,000.

In accordance with Section III, Paragraph 8 of the Joint Instructions, LMI and Steadfast hereby jointly direct Escrow Holder to release all remaining funds in the Escrow Fund to LMI, less any fees due to Escrow Holder. These instructions may not be amended, cancelled or withdrawn by any party unless agreed to in writing by all undersigned parties.

LMI shall make payment on the 2017 tax filing for the EIN referenced above, and shall provide a copy of same to Steadfast and Escrow Holder.

Please send all remaining Escrow Funds to LMI [via wire transfer/via cashier's check].
Thank you for your assistance.

Sincerely,

LENNAR MARE ISLAND, LLC

By: Lennar Homes of California, Inc.,
a California corporation, its sole member

By: _____
Name: _____
Title: _____

STEADFAST INSURANCE COMPANY

By: _____
Name: _____
Title: _____

ACKNOWLEDGED AND AGREED TO:

First American Title Company
hereby acknowledges receipt of the
foregoing letter of instructions and agrees
to act in strict accordance therewith

By: _____
Name: _____
Its: _____

Date: _____, 2017

COOPERATIVE AGREEMENT

This Cooperative Agreement (“Agreement”) is entered into on _____, 2017 (“Effective Date”), by and between the CITY OF VALLEJO, a California municipal corporation (“City”) and the VALLEJO SANITATION AND FLOOD CONTROL DISTRICT (“VSFCD”), a special district created pursuant to the Vallejo Sanitation and Flood Control District Act of 1952. City and VSFCD are referred to herein individually as a “Party,” and collectively as the “Parties.”

RECITALS

A. On April 2, 2001, the Vallejo City Council approved Resolution 01-161 N.C. which authorized the City Manager to execute the Environmental Services Cooperative Agreement – East (“ESCA East”) with the Department of the Navy (“Navy”), the Mare Island Remediation Agreement – Lennar (“MIRA”) with Lennar Mare Island (“LMI”), and other agreements which provided for environmental remediation of the Eastern Early Transfer Parcel (“EETP”).

B. A portion of the Navy grant monies provided in the initial funding of the ESCA East were used to purchase environmental insurance policies issued by Steadfast Insurance Company (“Steadfast”), including a Remediation Stop Loss Policy (“RSL Policy”) covering certain cost overruns incurred in connection with remediating “known conditions”; an Environmental Liability Insurance Policy (“ELI Policy”) covering cleanup costs related to unknown conditions, third party liability for bodily injury or property damage caused by environmental contamination, professional and pollution liability of CH2M Hill (“CH2M”) for its work on the ESCA East, and loss of rental value caused by environmental contamination; and a Long Term Monitoring Policy (“LTM Policy”) covering ground water monitoring of known conditions.

C. The RSL Policy and the LTM Policy, because they covered known conditions, expired on March 31, 2011, and the ELI Policy is the only remaining Steadfast policy currently providing additional coverage, including to City and VSFCD as additional named insureds.

D. After Steadfast’s repeated denials of coverage under the ELI Policy and refusals to authorize necessary work, Lennar Mare Island (“LMI”) alleged breach of contract, bad faith and interference with contract against Steadfast, resulting in the LMI v. Steadfast litigation in 2012.

E. The parties to the litigation, including the Department of Justice (“DOJ”) in conjunction with the Navy, LMI and CH2M, have reached a tentative settlement with Steadfast.

F. Under the terms of the settlement, in exchange for the termination of the Steadfast policies, dismissal of all litigation claims and the insured parties’ (including LMI and CH2M) and additional insured parties’ (including Navy, City, and VSFCD) release of Steadfast from any and all obligations under the Steadfast policies, Steadfast has agreed to pay \$43 million, of which approximately \$31 million will be deposited into the ESCA East settlement funding trust account

and made available to the City and LMI to fund the cost of remediating remaining unknown environmental conditions at the EETP.

G. Concurrently with execution of the Steadfast settlement agreement, Navy and the City will execute a Fourth Amendment to the ESCA East to, among other things, clarify the roles and responsibilities for processing the additional settlement funds paid by Steadfast pursuant to the Settlement Agreement, including the establishment of protocols for the submittal and processing of the fund disbursements.

H. At present there is no mechanism by which VSFCDC can access Navy ESCA East trust account monies to pay the incremental costs related to the handling, off-hauling, and disposal of Navy contamination that VSFCDC may encounter in the course of performing installation and repair work on VSFCDC sanitary sewer and storm drain facilities on the EETP property and VSFCDC has requested that City serve as a conduit for VSFCDC to potentially access the Steadfast settlement monies to pay the costs of such work.

I. City and VSFCDC now desire to enter into this Agreement setting forth, among other things, a process by which the City, subject to the terms herein, can assist VSFCDC in presenting to Navy future claims, if any, that VSFCDC may have related to the handling, off-hauling and/or disposing of Navy contamination encountered in the course of performing work on VSFCDC sanitary sewer and storm drain facilities at the EETP.

NOW THEREFORE, the Parties hereby agree as follows:

AGREEMENT

1. Presentation of VSFCDC Claims for Potential Funding Under ESCA East. Subject to the limitation on the aggregate amount of VSFCDC Claims that may be funded from settlement funds as set forth in Subsection 1(a) below, if VSFCDC or its contractors or subcontractors encounter Navy contamination in the course of performing work on VSFCDC sanitary sewer or storm drain facilities at the EETP and VSFCDC has incurred or will incur added costs in connection with the handling, off-hauling, and/or disposal of such Navy contamination, VSFCDC may submit to City a claim (referred to herein individually, as a “VSFCDC Claim” and, collectively, as the “VSFCDC Claims”) to have said incremental costs paid out of Steadfast settlement funding in the ESCA East trust account. For any VSFCDC Claim which qualifies as “Nominal Work” (as defined in Appendix 8 Section C(1) of the First Amendment of the ESCA East), VSFCDC shall represent and warrant to City in writing that the VSFCDC Claim, including all expenditures for which reimbursement is sought, are in compliance with applicable Department of Defense grant regulations. Promptly following City’s receipt of a VSFCDC Claim which qualifies as Nominal Work, City shall either submit such Nominal Work claim to the Fiscal Agent for payment and/or to LMI for performance pursuant to the MIRA or, if City has reason to believe the Nominal Work claim does not comply with applicable Department of Defense grant regulations, return the VSFCDC Claim to VSFCDC so that the claim can be modified as necessary to comply with such grant regulations. VSFCDC acknowledges that all disbursements for payment of Nominal Work claims remain subject to Navy disbursement review per the terms of the ESCA East, as amended. Promptly following City’s receipt of any VSFCDC Claim which does not qualify as Nominal Work, City shall submit such VSFCDC Claim to Navy for consideration and approval pursuant to

Section 6 of the Fourth Amendment to ESCA East and the protocol set forth in Paragraph C of Appendix 8. All out-of-pocket, third party costs and expenses, if any, incurred by City in connection with the presentation, processing, approval and payment of VSFCD Claims pursuant to the ESCA East and/or MIRA, as amended, shall be paid by VSFCD within 30 days following City's demand therefor, which demand shall be accompanied by copies of invoices or other evidence documenting the City costs and expenses. Out-of-pocket, third party costs and expenses not paid within 30 days following City's demand shall accrue interest at 7% per annum, compounded annually, until paid in full.

(a) Notwithstanding any other provision hereof to the contrary, the parties agree that the maximum amount of any individual VSFCD Claim shall not exceed \$75,000.00, and the aggregate amount of all VSFCD Claims that may be paid under this Agreement shall not exceed \$750,000.00. In addition, once the Steadfast settlement funding in the ESCA East trust account has been exhausted (and regardless of whether the individual and/or aggregate cap amounts have been reached), City shall have no further obligation to consider any VSFCD Claims for approval or submit such VSFCD Claims to Navy. City shall promptly notify VSFCD upon exhaustion of such settlement funds.

(b) City shall make itself and its staff available, at reasonable times, to respond to inquiries by VSFCD regarding the submission and status of VSFCD Claims, and shall promptly notify VSFCD regarding any inquiries, requests, or determinations made by LMI or Navy with respect to VSFCD Claims, so that VSFCD may respond to any such inquiries or requests at its own expense.

(c) Any required negotiations regarding a VSFCD Claim shall be performed by VSFCD at its own expense. City, as the designated local reuse authority, shall use good faith efforts to facilitate VSFCD's negotiations with Navy; provided, however, City shall not be obligated to negotiate any VSFCD Claim with the Navy or LMI on behalf of VSFCD.

2. VSFCD Preparation of VSFCD Claims and Supplemental Documentation. VSFCD shall be responsible for preparation of each VSFCD Claim for submission to the Navy and/or LMI in accordance with the relevant provisions of the ESCA East and MIRA, as amended, at its own expense. VSFCD Claims shall be prepared in coordination with the City.

(a) VSFCD shall be responsible for ensuring that VSFCD Claims are prepared such that City can meet any requirement related to the timely presentation of such claim, including any applicable notification, information sharing, meet and confer, and Navy and/or LMI authorization requirements whether or not such requirements are identified by City. Regardless of whether City responds to inquiries made by VSFCD regarding such requirements, City's obligation with respect to identifying such requirements shall be limited to providing copies of the ESCA East and MIRA and any amendments thereto and notifying VSFCD regarding any inquiries, requests, or determinations made by Navy and/or LMI with respect to VSFCD Claims.

(b) If Navy pre-approval is required for the costs of the particular VSFCD Claim under the terms of the ESCA East, VSFCD shall prepare at its own expense any documentation detailing the proposed scope of work and recommended contractor, if any, sufficient for the Navy to evaluate the validity of the proposed expenses.

(c) If additional information is requested by Navy and/or LMI in response to a VSFCDC Claim, VSFCDC shall prepare and provide such information to City, LMI and/or Navy, as applicable, and shall make itself, its staff, and its contractors available to respond to inquiries relating to the VSFCDC Claim.

3. Change Orders Related to VSFCDC Claims. In the event that additional scope, unforeseen conditions, or a material change related to a VSFCDC Claim would require the City to submit a Change Order Approval Request to the Navy in accordance with the provisions of the ESCA East, VSFCDC, at its expense, shall be responsible for preparation of any documentation for City's submission to the Navy in accordance with the relevant provisions of the ESCA East as amended. VSFCDC shall be responsible for ensuring compliance with the applicable requirements imposed under the ESCA East, as amended, with respect to Change Order Approval Requests.

4. City Liability Limited to Available ESCA East Settlement Trust Account Monies. In the event of denial of a VSFCDC Claim by Navy for any reason, VSFCDC shall not seek reimbursement from the City for such expenses. City shall only be obligated to pay funds under this Agreement for a VSFCDC Claim to the extent that funds are made available to City from the Steadfast settlement funding in the ESCA East trust account for the specific purpose of payment of the particular VSFCDC Claim.

5. Limitations on Obligations. Nothing in this Agreement shall serve to or be construed to impose any duty or obligation upon VSFCDC or City relating to the investigation, testing, remediation, removal, disposal or monitoring of pollution or contaminated soil or other materials that VSFCDC may encounter in the course of its work at the EETP. Nothing in this Agreement shall serve to or be construed to impose any duty or obligation upon VSFCDC or City to begin or continue working at any site or on any project at the EETP after pollution or contaminated soil or other materials is encountered at such site or on such project.

6. Disputes and Litigation. In the event that VSFCDC disputes Navy's determinations with respect to any VSFCDC Claim, City, upon VSFCDC's written request, shall initiate the dispute resolution procedure under the ESCA East on behalf of VSFCDC. Any disputes with respect to VSFCDC Claims shall be prosecuted at VSFCDC's sole expense and any and all out-of-pocket, third party costs and expenses incurred by City in connection with such efforts, if any, shall be paid by VSFCDC to City within the times and in the manner set forth in Section 1 above. VSFCDC shall not initiate litigation or arbitration against Navy with respect to any VSFCDC Claim without prior written approval of City.

7. Term. This Agreement shall commence on the Effective Date and shall continue in effect until such time as the ESCA East is terminated in accordance with the termination provisions therein, or there is no Steadfast settlement funding remaining in the ESCA East trust account.

8. Notices. All notices required hereunder may be given by personal delivery, U.S. mail, or courier service (e.g. Federal Express). Notices shall be effective upon receipt at the following addresses:

To VSFCD: Vallejo Sanitation and Flood Control District

Vallejo, CA 94590

To City: City of Vallejo
City Manager
555 Santa Clara Street
Vallejo, CA 94590

With a copy to City of Vallejo
City Attorney
555 Santa Clara Street
Vallejo, CA 94590

9. Reservations of Discretion. By execution of this Agreement, the Parties are not committing to or agreeing to undertake any acts or activities requiring the subsequent independent exercise of discretion by the Parties or any department thereof, other than as specifically set forth and agreed under this Agreement.
10. No Waiver. Waiver of a breach or default under this Agreement shall not constitute a continuing waiver or a waiver of a subsequent breach of the same or any other provisions of this Agreement.
11. No Assignment. This Agreement shall not be assigned by either Party.
12. Severability. If any provision of this Agreement or the application of any such provision shall be held by a court of competent jurisdiction to be invalid, void or unenforceable to any extent, the remaining provisions of this Agreement and the application thereof shall remain in full force and effect and shall not be affected, impaired or invalidated.
13. Entire Agreement. This Agreement represents the full, complete and entire agreement of the Parties with respect to the subject matter hereof, and supersedes any and all other communications, representations, proposals, understandings or agreements, whether written or oral, between the Parties hereto with respect to such subject matter.
14. Miscellaneous. As used in this Agreement, masculine, feminine or neuter gender and the singular or plural number shall each be deemed to include the others where and when the context so dictates. The word “including” shall be construed as if followed by the words “without limitation.” This Agreement shall be interpreted as though it was a product of a joint drafting effort and no provisions shall be interpreted against a Party on the ground that said Party was solely or primarily responsible for drafting the language to be interpreted. This Agreement is made and entered into in the State of California and shall be interpreted, construed and enforced in accordance with the laws of the State of California. In the event that an action or proceeding is brought by either Party hereunder, the Parties agree that venue of such action is exclusively in a state court in Solano County, California. Nothing herein is intended to create any third party

benefit. Nothing in this Agreement is intended to create a joint venture or partnership between the Parties.

15. Authority. The Parties represent that the individuals whose signatures appear at the end of this document as signatories are authorized by their respective boards to enter into this Agreement on behalf of and to bind their respective agencies to the terms of this Agreement.

16. Indemnity. To the fullest extent permitted by law, VSFCD hereby agrees to defend (by counsel reasonably satisfactory to the City), indemnify, and hold harmless the City, its officers, elected officials, employees, agents, and volunteers (collectively, "City Indemnitees") from and against any and all claims, demands, damages, costs, liabilities, or obligations brought on account of or arising out of any actual or alleged improper expenditure of federal grant funds in connection with the submittal, payment or prosecution of any VSFCD Claim. VSFCD's indemnity obligations under this Section 16 shall not apply to the extent the claim or liability is a result of the active negligence or willful misconduct of City. VSFCD's obligations to defend, indemnify, and hold harmless the City Indemnitees shall survive the termination of this Agreement.

17. Attorneys' Fees. In the event that any action is brought by either Party hereto as against the other Party hereto for the enforcement or declaration of any right or remedy in or under this Agreement or for the breach of any covenant or condition of this Agreement, the prevailing Party shall be entitled to recover, and the other Party agrees to pay, all fees and costs to be fixed by the court therein including, but not limited to, reasonable attorneys' fees.

18. Counterparts. This Agreement may be signed in counterparts and the signature pages combined shall create a document binding on all the Parties.

19. Amendments. This Agreement may not be modified or amended, in whole or in part, except by a written instrument signed by an authorized officer or representative of each of the Parties hereto.

IN WITNESS WHEREOF, the Parties hereto have entered into this Agreement as of the Effective Date set forth above.

CITY:

CITY OF VALLEJO, a California municipal corporation

By: _____
Daniel Keen, City Manager

APPROVED AS TO FORM:

Claudia M. Quintana, City Attorney

VSFCD:

VALLEJO SANITATION AND FLOOD CONTROL DISTRICT, a special district

By: _____
Melissa Morton, District Manager

APPROVED AS TO FORM:

Gary K. Heppell, General Counsel