# AGREEMENT FOR COVENANTS NOT TO SUE

## A. Parties

This Agreement for Covenants Not To Sue (the "Agreement") is entered into among the following parties:

1. The Department of Toxic Substances Control ("DTSC");

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

3. Jack Alquist, individually and as a Trustee of the Alquist Family Trust, dated March 2, 1981; Guild Cleaners, Inc., a California corporation; the Estate of Dwight Alquist, Deceased; the Alquist Family Trust, dated March 2, 1981; and Beulah Viva Alquist, individually and as a Trustee of Alquist Family Trust, dated March 2, 1981, (collectively referred to as the "Guild Parties").

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

## B. Background

1. Jack Alquist, Beulah Viva Alquist, and the Alquist Family Trust, dated March 2, 1981, own or have owned at various times certain property located at 17 and 31 South Church Street, Lodi, California (the "Guild Property"). The Guild Property, as well as certain neighboring property, is located within what is commonly referred to as the Central Plume Area and is alleged to have become environmentally contaminated as a result of or arising from the operations of Guild Dry Cleaners and other businesses, and from the City's sewer main located in the alley behind 17 South Church Street.

2. Dwight Alquist, an individual, owned and operated Guild Dry Cleaners as a sole proprietorship at 17 South Church Street from approximately 1959 to 1981. Dwight Alquist died in 1982. The City sued the Estate of Dwight Alquist, Deceased, pursuant to the California Probate Code section 550, et seq., in that federal litigation identified at paragraph 10 of this section.

3. Guild Cleaners, Inc., a California corporation, was incorporated in 1981 by Jack Alquist. Guild Cleaners, Inc. has operated the Guild Dry Cleaners at 17 South Church Street from approximately 1981 to the present.

4. Contaminants, including PCE, have been identified in the soil and groundwater beneath the Central Plume Area, as set forth in that federal litigation identified at paragraph 10 of this section, the April 22, 2004, Central Valley Water Board Cleanup and Abatement Order No. R5-2004-0043 for the Central Plume Area ("CAO"), and the rescinded Imminent and Substantial Endangerment Determination and Remedial Action Order ("RAO") that the DTSC issued for the

Central Plume Area on May 30, 2003, and amended on July 9, 2003 (the "Central Plume Contamination"). The "Central Plume Area" means the entire area in which the Central Plume Contamination is or was present.

5. In or about 2001, the Guild Parties began investigative activities associated with commencing a Remedial Investigation/Feasibility Study ("RI/FS") in the Central Plume Area. In or about April 2002, the Guild Parties submitted a draft RI/FS Workplan to the Central Valley Water Board and the DTSC.

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

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

8. On April 22, 2004, the Central Valley Water Board issued Cleanup and Abatement Order No. R5-2004-0043 for the Central Plume Area ("CAO"). The CAO names as respondents Guild Cleaners, Inc., the City, Lodi News-Sentinel, Odd Fellows Hall Association of Lodi, and Beckman Capital Corporation.

9. As part of the investigation and remediation measures set forth above, the Guild Parties conducted a pilot study, which included the installation of a soil-vapor extraction system. The Guild Parties also submitted a DRAFT Remedial Investigation/Feasibility Study, Lodi Central Plume Area to the Central Valley Water Board on August 16, 2004. The City conducted sampling and analysis of indoor air in the Central Plume Area pursuant to a work plan approved by Central Valley Water Board (the "Indoor Air Assessment"), and performed deep groundwater sampling in the Central Plume Area.

10. On November 2, 2000, and as later amended on May 25, 2001, August 4, 2004, September 9, 2004, and January 21, 2005, the City filed a Complaint for damages against Guild Cleaners, Inc., Jack Alquist; and Estate of Dwight Alquist, Deceased, among others, in United States District Court for the Eastern District of California, Case No. CIV-00-2441 FCD/JFM, alleging that Guild Cleaners, Inc., Jack Alquist; and Estate of Dwight Alquist, Deceased were responsible in part for the Central Plume Contamination (the "Lodi Action"). Guild Cleaners, Inc. has filed counterclaims against the City in the Lodi Action.

11. The City and the Guild Parties have now resolved to settle any and all disputes arising from or related to the Central Plume Contamination or its causes, including those claims and counterclaims arising from any alleged civil rights violations.

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

C. **Covenants Not To Sue**

1. In consideration of the obligations of the Guild Parties under the terms of this Agreement and the Settlement Agreement and Mutual Release between the City and the Guild Parties, dated February 15, 2005 (the "Settlement Agreement"), the Central Valley Water Board and the DTSC each covenant not to sue or take any judicial or administrative action to pursue any claim against the Guild Parties and their legal heirs, successors and assigns for: (A) costs for removal, remedial or investigative action, (B) corrective action, and/or (C) damages to, assessment of, or restoration of, natural resources pursuant to CERCLA, 42 U.S.C. §§ 9601 *et seq.*; the Federal Water Pollution Control Act, 33 U.S.C. §§ 1251 *et seq.*; the Oil Pollution Act of 1990, 33 U.S.C. §§ 2701, *et seq.*; the Solid Waste Disposal Act, as amended, 42 U.S.C. §§ 6901 *et seq.*; Chapters 6.5 (commencing with section 25100) and 6.8 (commencing with section 25301) of division 20 of the California Health and Safety Code; Chapter 5 (commencing with section 13300) of division 7 of the California Water Code; or pursuant to other applicable laws, regulations or any other civil, judicial or administrative authorities, which arise from or are related to the Central Plume Contamination. These covenants not to sue shall take effect immediately upon execution of this Agreement or, if later, execution of an agreement between the City and the Central Valley Water Board in which the City assumes the Guild Parties' liability as to the Central Valley Water Board . The DTSC's and the Central Valley Water Board's covenants not to sue are conditioned on the Guild Parties' completion of all their obligations to the City pursuant to the Settlement Agreement. For purposes of paragraph C.1.(e) of the Settlement Agreement, "reasonable access" includes access that the Central Valley Water Board determines is necessary or appropriate to achieve compliance with the CAO (or revisions thereto). These covenants not to sue extend only to the Guild Parties and their legal heirs, successors and assigns and do not extend to any other person. The City shall not be treated as a legal heir, successor or assign of the Guild Parties. These covenants not to sue do not extend to any other claims except as expressly identified in this Paragraph. The Guild Parties will not be named as respondents or defendants in any such future order or action respecting the Central Plume Contamination.

2. In consideration of the Central Valley Water Board's and the DTSC's covenants not to sue, the Guild Parties hereby covenant not to assert any claims or causes of action against the Central Valley Water Board and the DTSC, their authorized officers, employees or representatives with respect to the Central Plume Contamination.

3. The Central Valley Water Board's and DTSC's covenants not to sue in this Agreement are conditioned on the Guild Parties' completion of all their obligations to the City pursuant to the Settlement Agreement.

D. **Reservation of Rights**

1. The Central Valley Water Board and DTSC reserve, and this Agreement is without prejudice to, all rights against the Guild Parties with respect to all matters not expressly included within the covenants not to sue in Paragraph C.1. Notwithstanding any other provision of this Agreement, the Central Valley Water Board and DTSC reserve all rights against the Guild Parties with respect to:

   (a) failure to meet a requirement of this Agreement or the Settlement Agreement;

   (b) criminal liability; and

   (c) future liability based upon the transportation, treatment, storage, or disposal, or the arrangement for the transportation, treatment, storage, or disposal of a hazardous substance or hazardous waste at or in connection within the area comprising the Central Plume Contamination, after the effective date of this Agreement, or based on the discharge of a hazardous substance or a hazardous waste (other than migration of waste already present in the sewer, soil or groundwater) after the effective date of this Agreement, by or on behalf of the Guild Parties.

   (d) future liability based on any of the Guild Parties causing or permitting the discharge of waste.

2. Except as expressly provided in this Agreement, nothing herein is intended nor shall be construed to preclude the DTSC or the Central Valley Water Board from exercising authority under any law, statute or regulation with respect to any person not a Party hereto.

3. Nothing in this Agreement is intended as a covenant not to sue for any claim or cause of action, administrative or judicial, civil or criminal, past or future, in law or in equity, which the DTSC or the Central Valley Water Board may have against any person not a Party to this Agreement.

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

5. Nothing in this Agreement shall be construed to affect the rights of any other department, office, board, agency, or organization of the State of California, except for DTSC and the Central Valley Water Board.

E. **Other**

1. **Costs and Attorneys' Fees**

The Parties acknowledge and agree that as to each other they are to bear their own costs, expenses, expert and consultant fees, and attorneys' fees arising out of the matters addressed herein, the negotiation, drafting, and execution of this Agreement, and all matters arising out of or connected therewith, except that the Guild Parties will pay the oversight costs of the Central Valley Water Board billed to Guild as of November 30, 2004.

2. **Integrated Agreement**

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

3. **Binding Effect**

Subject to the conditions found in this Agreement, this Agreement shall be binding upon and shall inure to the benefit of the Parties as well as their respective officers and directors, the respective heirs, executors, administrators, trustors, trustees, beneficiaries, predecessors, successors, affiliated and related entities, officers, directors, principals, agents, employees, assigns, representatives, and all persons, firms, associations, and/or corporations connected with them, including, without limitation, their sureties and/or attorneys, except as otherwise provided by this Agreement. The City shall not be treated as a legal heir, successor or assign of the Guild Parties.

4. **Benefit of Counsel/Consultant**

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

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

5. **Counterparts**

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

6. **Representations and Warranties**

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

7. **Governing Law**

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

[SIGNATURES CONTINUE ON FOLLOWING PAGES]

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| DATED: | _____<br>JACK ALQUIST, Individually and as a Trustee of the Alquist Family Trust, dated March 2, 1981 |
| DATED: | **GUILD CLEANERS, INC.**<br>_____<br>by: JACK ALQUIST, PRESIDENT |
| DATED: | _____<br>BEULAH VIVA ALQUIST, Individually and as a Trustee of the Alquist Family Trust, dated March 2, 1981 |
| APPROVED AS TO FORM<br>DATED: 8/11/05 | **LAW OFFICE OF LORI J. GUALCO**<br>By: Lori J. Gualco<br>LORI J. GUALCO, Attorney for Jack Alquist and Guild Cleaners, Inc. |
| APPROVED AS TO FORM<br>DATED: | **DOWNEY BRAND LLP**<br>By:_____<br>STEPHEN J. MEYER, Attorneys for Jack Alquist, Guild Cleaners, Inc. and Estate of Dwight Alquist, Deceased |

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| DATED: | **DEPARTMENT OF TOXIC SUBSTANCES CONTROL**<br><br>By: _____<br>TIMOTHY J. SWICKARD, Director |
| DATED: | **REGIONAL WATER QUALITY CONTROL BOARD CENTRAL VALLEY REGION**<br><br>By: _____<br>THOMAS R. PINKOS, Executive Officer |
| APPROVED AS TO FORM<br>DATED: | **DEPARTMENT OF TOXIC SUBSTANCES CONTROL**<br><br>By: _____<br>Steve Koyasako, Assistant Chief Counsel<br>Office of Legal Counsel and Investigations |
| APPROVED AS TO FORM<br>DATED: | **REGIONAL WATER QUALITY CONTROL BOARD CENTRAL VALLEY REGION**<br><br>By: _____<br>Lori Okun, Senior Staff Counsel |

CNS.Guild NS 8.11.2005