

SETTLEMENT AGREEMENT AND RELEASE

This **SETTLEMENT AGREEMENT AND RELEASE** ("Agreement") is entered into by and between the SAN LUIS OBISPO COUNTY INTEGRATED WASTE MANAGEMENT AUTHORITY, a joint powers authority formed pursuant to California Government Code section 6500 et seq. ("Authority"), and CARL KNUDSON, a private citizen ("Plaintiff"). The above parties are referred to herein individually as "Party" and collectively as "Parties."

RECITALS

WHEREAS, on October 23, 2019, Plaintiff initiated litigation against the Authority in the Superior Court of California, San Luis Obispo County, as Case No. 19CV-0629 (the "Litigation"), filing a Verified Petition for Alternate and Peremptory Writ of Mandate and Complaint for Injunctive and Declaratory Relief Re Access to Records and Information ("Petition"); and

WHEREAS, on August 20, 2020, Plaintiff filed a First Amended Verified Petition for Alternate and Peremptory Writ of Mandate and Complaint for Injunctive and Declaratory Relief Re Access to Records and Information ("Amended Petition"); and

WHEREAS, the Petition and the Amended Petition allege that the Authority failed to provide records disclosable under the California Public Records Act ("PRA") responsive to Plaintiff's records requests as detailed in the Petition and Amended Petition ("PRA Requests"); and

WHEREAS, the Authority denies that it failed to provide non-exempt, disclosable records under the PRA; and

WHEREAS, on December 11, 2019, the San Luis Obispo County District Attorney's Office ("District Attorney") sent correspondence to the Board of Directors of the Authority ("Board"), attached hereto as Exhibit A, informing them of an ongoing criminal investigation into the conduct of employees of the Authority and conveying the District Attorney's opinion that "the interest of justice served by not disclosing the records until the completion of the investigation and any related prosecution clearly outweighs the public interest served by the disclosure of records at this time"; and

WHEREAS, the Authority made the determination, pursuant to Government Code section 6254(f), that the public's interest in preserving evidence for an ongoing District Attorney investigation outweighed the public's interest in accessing the information requested in Plaintiff's PRA Request; and

WHEREAS, in or around August 2021, the District Attorney's investigation completed; and

WHEREAS, the Authority makes the further determination that the public's interest in accessing the previously exempt, responsive documents has shifted to outweigh the public's interest in withholding the them; and

WHEREAS, to avoid the cost of further litigation, the Parties now wish to fully resolve and settle the Litigation as more particularly set forth herein.

NOW, THEREFORE, in consideration of the mutual covenants and agreements described below, and for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

1. Obligations of Parties

- A. Upon the execution of this Agreement, Plaintiff shall dismiss the Litigation against the Authority with prejudice, including any claims for fees and costs. Said dismissal shall request that the court retain jurisdiction to enforce this Agreement pursuant to Code of Civil Procedure Section 664.6.
- B. The Authority will remit prompt payment to Plaintiff in the amount of \$43,670 (forty-three thousand six hundred seventy dollars and zero cents), representing attorney fees, and \$1000 (one thousand dollars and zero cents), representing costs incurred. The check will be made payable to Plaintiff's attorney-of-record, Paul Nicholas Boylan, Esq.
- C. The Authority will provide all records responsive to Plaintiff's PRA Request, pertaining to the Litigation, on a rolling basis - according to a schedule to be determined by respective counsel - with guidance from Plaintiff as to topics and/or subject matter.
- D. With respect to Plaintiff's PRA Requests pertaining to the Litigation, the Authority agrees to waive all disclosure exemption claims other than attorney-client privilege, attorney work product doctrine, and employee or third-party's reasonable expectation of privacy.

2. Release

- A. Subject to the performance of the Parties' obligations in this Agreement, the Parties hereby fully and finally waive, release, and permanently discharge each other (and their respective officers, employees, agents, representatives and attorneys) (the "Releasees"), from any and all past, present, or future matters, claims, demands, obligations, liens, actions or causes of action, suits in law or equity, or claims for damages or injuries, whether known or unknown, which they now own, hold or claim to have or at any time heretofore have owned, held or claimed to have held against each other by reason of any matter or thing alleged or referred to, or in any way connected with, arising out of or in any way relating to the Litigation (collectively, the "Released Claims"). In connection with the release of the Released Claims, the Parties waive any and all rights that they may have under the provisions of section 1542 of the California Civil Code, which states as follows:

A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and

that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.

In the event that any waiver of the provisions of Section 1542 of the California Code provided for in this Agreement shall be judicially determined to be invalid, voidable or unenforceable, for any reason, such waiver to that extent shall be severable from the remaining provisions of this Agreement, and the invalidity, voidability or unenforceability of the waiver shall not affect the validity, effect, enforceability or interpretation of the remaining provisions of this Agreement.

- B. The Parties understand and acknowledge that the foregoing release extends to any claims or damages, without limitation, arising out of the Released Claims that may exist on the date of the execution of this Agreement, but which the Parties do not know to exist, which, if known, would have materially affected their decision to execute this Agreement, regardless of whether their lack of knowledge is a result of ignorance, oversight, error, negligence or any other cause.
- C. Each Party acknowledges and agrees that this Agreement is a compromise and settlement of their disputes and differences, and that it is not an admission of liability or wrongdoing by any Party.
- D. Except as provided in Section 1.B. of this Agreement, each of the Parties waives any and all claims for the recovery of any costs, expenses, or fees, including attorney fees, associated with the matters and claims released in this Agreement.

3. Representations and Warranties

- A. Plaintiff hereby represents and warrants to the Authority, as of the Effective Date, as follows:
 - i. He has not heretofore assigned or transferred, or purported to assign or transfer, to any party not named herein any Released Claim, or any part or portion thereof.
 - ii. To the best of his knowledge, there are no legal actions, suits or similar proceedings pending and served, or threatened in writing against the Plaintiff that would adversely affect his ability to consummate the transactions contemplated in this Agreement. To the best of his knowledge, Plaintiff is not aware of any existing claims nor of any facts that might give rise to any claims of any type or nature against the Authority, whether asserted or not, that have not been fully released and discharged by the release set forth in this Agreement.
 - iii. Plaintiff has freely entered into this Agreement and is not entering into this Agreement because of any duress, fear, or undue influence; this Agreement is being entered into in good faith.
 - iv. Plaintiff has made such investigation of the facts pertaining to this Agreement as deemed necessary.

- v. Plaintiff has, prior to the execution of this Agreement, obtained the advice of independent legal counsel of his own selection regarding the substance of this Agreement and the claims released herein.
- B. In executing this Agreement, Plaintiff acknowledges, represents, and warrants to the Authority that he has not relied upon any statement or representation of any Authority officer, agent, employee, representative, or attorney regarding any facts not expressly set forth within this Agreement. In entering into this Agreement, Plaintiff assumes the risk of any misrepresentations, concealment, or mistake, whether or not he should subsequently discover or assert for any reason that any fact relied upon by him in entering into this Agreement was untrue, or that any fact was concealed from him, or that his understanding of the facts or of the law was incorrect or incomplete.
- C. The representations and warranties of each of the Parties set forth in this Section and elsewhere in this Agreement will survive the execution and delivery of this Agreement and are a material part of the consideration to the Authority in entering into this Agreement.

4. Interpretation

- A. The Parties have cooperated in the drafting and preparation of this Agreement and, in any construction or interpretation to be made of this Agreement, the same shall not be construed against any Party. This Agreement is the product of bargained for and arm's length negotiations between the Parties and their counsel. This Agreement is the joint product of the Parties.
- B. This Agreement is an integrated contract and sets forth the entire agreement between the Parties with respect to the subject matter contained herein. All agreements, covenants, representations, and warranties, express or implied, oral or written, of the Parties with regard to such subject matter are contained in this Agreement. No other agreements, covenants, representations, or warranties, express or implied, oral or written, have been made or relied on by either Party.
- C. This Agreement may not be changed, modified, or amended except by written instrument specifying that it amends such agreement and signed by both Parties. No waiver of any provision of this Agreement shall be deemed or shall constitute a waiver of any other provision whether or not similar, nor shall any waiver be deemed a continuing waiver; and no waiver shall be implied from delay or be binding unless executed in writing by the party making the waiver.
- D. All of the covenants, releases and other provisions herein contained in favor of the persons and entities released are made for the express benefit of each and all of the said persons and entities, each of which has the right to enforce such provisions.
- E. This Agreement shall be binding upon and inure to the benefit of each of the Parties, and their respective representatives, officers, employees, agents, heirs, devisees, successors and assigns.

5. Further Cooperation

Each Party shall perform any further acts and execute and deliver any further documents that may be reasonably necessary or appropriate to carry out the provisions and intent of this Agreement. Except as expressly stated otherwise in this Agreement, actions required of the Parties or any of them will not be unreasonably withheld or delayed, and approval or disapproval will be given within the time set forth in this Agreement, or, if no time is given, within a reasonable time. Time will be of the essence of actions required of any of the Parties.

6. No Third-Party Beneficiaries

Nothing in this Agreement is intended to benefit any third party or create a third-party beneficiary. This Agreement will not be enforceable by any person not a Party to this Agreement.

7. Enforced Delay (Force Majeure)

- A. Performance by either Party shall not be deemed to be in default where delays or defaults are due to war, insurrection, strikes, walkouts, riots, floods, earthquakes, fires, acts of terrorism, epidemic, pandemic, quarantine, casualties, acts of God, litigation, governmental restrictions imposed or mandated by governmental entities, enactment of conflicting state or federal laws or regulations, or other similar circumstances beyond the reasonable control of the Parties and which substantially interferes with the ability of a Party to perform its obligations under this Agreement.
- B. An extension of time for any such cause (a "Force Majeure Delay") shall be for the period of the enforced delay and shall commence to run from the time of the commencement of the cause, if notice by the Party claiming such extension is sent to the other Party within thirty (30) days of knowledge of the commencement of the cause. Notwithstanding the foregoing, none of the foregoing events shall constitute a Force Majeure Delay unless and until the Party claiming such delay and interference delivers to the other Party written notice describing the event, its cause, when and how such Party obtained knowledge, the date the event commenced, and the estimated delay resulting therefrom. Either Party claiming a Force Majeure Delay shall deliver such written notice within thirty (30) days after it obtains actual knowledge of the event. The time for performance will be extended for such period of time as the cause of such delay exists, but in any event, not longer than for such period of time.

8. Governing Law; Venue

This Agreement shall be governed by, and construed in accordance with, the laws of the State of California, without regard to any otherwise applicable principles of conflicts of laws. Any action arising out of this Agreement must be commenced in the state courts of the State of California, County of San Luis Obispo, and each Party hereby consents to the jurisdiction of the above courts in any such action and to venue in the State of California, County of San Luis Obispo, and agrees that such courts have personal jurisdiction over each of them.

9. Counterparts

This Agreement may be executed in any number of counterparts, each of which when so executed shall be deemed to be an original, and such counterparts together shall constitute one and the same instrument.

[Remainder of page left intentionally blank.]

EXHIBIT A


10. Effectiveness

This Agreement shall become effective immediately following execution by each of the Parties ("Effective Date").

IN WITNESS WHEREOF, the Parties have executed this Agreement on the date set forth below ("Date of Execution").

FOR PLAINTIFF CARL KNUDSON:

**SAN LUIS OBISPO COUNTY
INTEGRATED WASTE MANAGEMENT
AUTHORITY:**


By: _____
Paul Nicholas Boylan, Attorney for Plaintiff

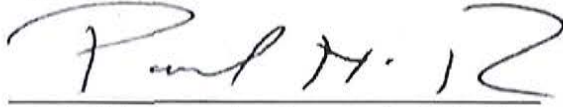

By: _____
Charles Bourbeau, President

Date: September 9, 2021

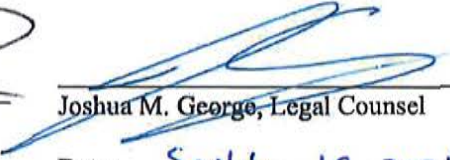
Date: Sept 10, 21

**APPROVED AS TO FORM AND
CONTENT:**

APPROVED AS TO FORM AND CONTENT:



Paul Nicholas Boylan, Attorney for Plaintiff
Date: September 9, 2021



Joshua M. George, Legal Counsel
Date: September 10, 2021



OFFICE OF THE DISTRICT ATTORNEY

COUNTY OF SAN LUIS OBISPO, STATE OF CALIFORNIA

DAN DOW
District Attorney

December 11, 2019

ERIC J. DOBROTH
Assistant District Attorney

JERRET C. GRAN
Chief Deputy District Attorney

SHERYL M. WOLCOTT
Chief Deputy District Attorney

TERRY O'FARRELL
Chief, Bureau of Investigation

Board of Directors
San Luis Obispo County Integrated Waste Management Authority
c/o Jeffrey Alan Minnery, Esq.
Adamski, Moroski, Madden et al. LLP
P.O. Box 3835
San Luis Obispo, CA 93403

Sent via electronic mail: minnery@ammglaw.com

Subject: Requests for Production of IWMA Agency Documents by Plaintiff Carl Knudson

Dear Board Members,

This letter is intended to inform your board of the significant negative impact that the release of documents pursuant to Plaintiff Carl Knudson's Public Records Act request is likely to have on this office's active and ongoing criminal investigation into the conduct of employees of the Integrated Waste Management Authority (IWMA).

Based on the recent lawsuit, *Knudson v. The San Luis Obispo County Integrated Waste Management Authority, et al* (19CV-0629), our office has become aware of various request for documents made by Plaintiff Carl Knudson to the IWMA under the California Public Records Act (Gov't Code section 6250 et. seq).

In his suit, Mr. Knudson alleges that in late-2018 the IWMA hired a forensic auditor/accountant to examine certain IWMA financial operations and to prepare a report. Further, that the IWMA hired a computer expert to recover data lost on IWMA computers and to prepare a report. Mr. Knudson has requested from the IWMA "all data and data files that the computer specialist recovered from Respondent Agency's computers, his report(s) and a copy of the forensic auditor/accountant's report(s)". (Knudson Petition at Paragraph 20, Page 4)

The District Attorney's Office Public Integrity Unit has an open and active investigation related to alleged misconduct by IWMA staff. Although substantial progress has been made in our investigation, the nature and voluminous quantity of electronic data evidence acquired in this case requires significant time for our investigative staff to adequately conduct our review.

While mindful of the public's interest in access to information on the operation of the IWMA, we write to express profound concern about the likely significant negative effect that releasing the information prior to our completed review would have on our active investigation and any resulting criminal prosecution. It is our opinion that the release of the records at this time will have a significant negative impact on both the investigation and any attendant prosecution. If released, the records will reach the public domain and be widely distributed through local media.

This creates two substantial areas of concern. First, release at this time creates a high likelihood of influencing witness statements and suspect interviews and any resulting trial testimony. The investigation is not yet complete, and we will continue to conduct additional witness interviews. If these witnesses obtain access to the requested information because of its publication, it will likely shape their statements and therefore call into question the quality and believability of those accounts and compromise the overall integrity of the investigation. Second, release of the information will no doubt be covered in our local media. Widespread media attention could taint our local jury pool in such a manner that could arguably interfere with a fair trial. Should that occur, any potential criminal case may be required to be transferred to and tried in another jurisdiction, which would cause even further delay.

Government Code 6254(f) provides your board with a framework in which to analyze precisely the type of harm to an active investigation that we discussed above. The statute says in pertinent part, "...unless disclosure would endanger the successful completion of the investigation or a related investigation." We are not suggesting that production of the requested documents be halted indefinitely. We are however asking that your Board conduct the appropriate balancing of interests under Government Code section 6255(a).

It is our opinion that the interest of justice served by not disclosing the records until completion of the investigation and any related prosecution clearly outweighs the public interest served by disclosure of the records at this time.

Please let me know if I can be of further assistance. You may reach me by phone at (805) 781-5819.

Sincerely yours,



Eric J. Dobroth
Assistant District Attorney
County of San Luis Obispo, State of California