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Document Title(s):

RELEASE AND SETTLEMENT AGREEMENT

Reference Number (if applicable):

Grantor(s):

☐ additional grantor names on page \_\_\_\_

1. BRYAN TRUCKING, INC.

2. BRYAN OLSON

Grantee(s):

☐ additional grantee names on page \_\_\_\_

1. SKAGIT COUNTY

2.

Abbreviated legal description:

☐ full legal on page(s) \_\_\_\_

21/35/04 NE SE

Assessor Parcel / Tax ID Number:

☐ additional parcel number(s) on page \_\_\_\_

P 37028

## RELEASE AND SETTLEMENT AGREEMENT

THIS RELEASE AND SETTLEMENT AGREEMENT ("Agreement") is made and entered into by and between the Bryan Olson and Bryan Trucking Inc. ("BTI"), and Skagit County, a political subdivision of the State of Washington (hereafter referred to as the "County"). BTI and the County may be individually referred to herein as a "party", and may be collectively referred to herein as the "parties."

### I. RECITALS & BACKGROUND

WHEREAS, BTI is the owner of that certain real property known as 20872 Cook Road, Burlington, Washington, Skagit County Tax Assessor Parcel No. 37028 (hereinafter, the "Property"); and

WHEREAS, the County filed suit against BTI, in Skagit County Superior Court Cause No. 18-2-01516-9 (the "Litigation"), asserting a nuisance cause of action, seeking to enjoin BTI from use of the Property for materials recycling and other non-agricultural activities; and

WHEREAS, on July 13, 2017, the County prevailed on a motion for summary judgment against BTI, with the Court ordering BTI to "cease and desist from the operation of any non-agricultural operation at the Property...including the receipt, processing and sale of materials for sale to third parties" (hereinafter, the "Summary Judgment Order"); and

WHEREAS, BTI has since appealed the Summary Judgment Order to the Washington Court of Appeals, Division I, which case is captioned Skagit County, Respondent v. Bryan Trucking and Bryan Olson, Appellants, Case #: 77221-0-1; and

WHEREAS, the parties wish to avoid the time and costs that would be incurred in the litigation of the dispute; and

WHEREAS, the parties, without admission of fault or liability, have agreed to a compromise and settlement of the dispute, and desire to reduce their agreement to writing and settle all matters associated with the dispute pursuant to the terms of this Agreement.

### II. TERMS & CONDITIONS

In consideration of the foregoing, and of the following terms and conditions, the parties mutually agree as follows:

1. **Allowed Activities.** The intent of this provision is to define with specificity those activities which BTI may permissibly undertake at the Property under the auspices of this negotiated settlement agreement. This Agreement is a compromise recognizing existing economic expectations, and is not in any way intended to serve as a precedential representation of the permissible scope of Skagit County's Agricultural - Natural Resource Land ordinance, SCC 14.16.400.

- UNOFFICIAL
- a. BTI understands and agrees that it is not permitted to engage in retail sales at the Property, defined as sales directly to the public wherein the public receives materials onsite. BTI may dispose of those materials allowed in paragraph 1(b) below by transporting the materials off-site, using BTI owned or leased equipment.
  - b. Except as set forth in subsection "c" next below, BTI may receive, store and transport only earthen materials on the Property, not to exceed at any one time the following specific inert materials and specific quantities:
    - i. Gravel – not to exceed 400 yards
    - ii. Compost – not to exceed 200 yards
    - iii. Bark – not to exceed 200 yards

BTI understands and agrees that the activities allowed by this Agreement under Section 1(b) are personal to Bryan Olsen, and may not be undertaken by any business operator other than Bryan Olsen. In addition, the activities allowed by this Agreement under Section 1(b) shall sunset and be prohibited under SCC 14.16.400 seven (7) years after the date of this Agreement (unless SCC 14.16.400 is later amended to permit such activities).

- c. BTI may excavate materials from an existing farm pond on the property, and store and/or distribute such excavated materials on the Property. BTI shall not remove the excavated materials from the Property.
  - d. BTI may not extend or expand its holding, storage, and transportation activities to any area currently not cleared and currently used for such activities, as more specifically indicated by the aerial imagery depicted in Exhibit A hereto.
2. **Restoration of Converted Area.** As a material condition of this Agreement, BTI shall restore the area depicted on Exhibit A hereto that is delineated by red line (the "Restoration Area"). Restoration for the purposes of this Agreement shall mean restoration of suitable topsoil and seeding in grass. Such restoration shall be commenced no later than August 1, 2018, provided that commencement may be delayed upon mutual agreement of the parties in the event wet weather conditions make work infeasible. The Restored Area may be used only for agricultural activities (relating to the production of plants or animals) consistent with Skagit County Code 14.16.400.
3. **Use of Remaining Areas of Property.** Notwithstanding any language in this Agreement, BTI may use the remaining areas of the Property for agricultural activities (relating to the production of plants or animals) consistent with Skagit County Code 14.16.400.
4. **County Inspection.** BTI hereby consents and agrees to entry onto the exterior areas of the Property by employees or agents of the County on twenty four (24)

hours' notice to BTI, for the purposes of enforcing this agreement, with notice to be provided by email to BTIBryan@Wavescable.com.

5. **Settlement Conditioned on Compliance.** The concessions by the County contained in this Agreement are expressly conditioned on full compliance by BTI with the terms of this Agreement. In the event that BTI breaches any provision of this Agreement, the parties agree that in addition to breach damages and other relief to which Skagit County may be entitled, the Summary Judgment Order will be in full force and effect without need for further action or legal proceedings by Skagit County, as if this Agreement had never existed, Provided, that the County shall provide BTI with 20 business days written notice of any alleged violations prior to finding BTI in breach of this Agreement. BTI further agrees to (a) the recording of this Settlement Agreement against the Property and (b) that BTI will disclose the existence and furnish a copy of this Agreement to any transferor or successor in interest to the Property.
6. **Mutual Release.** Upon the mutual execution of this Agreement, the parties hereby forever release and discharge each other and their employees, volunteers, officers and/or agents in both their official and individual capacities from any and all past, present, and/or future claims, demands, judgments, debts, costs, liabilities, expenses, suits, and proceedings of any kind any nature, whether known or unknown, and whether liquidated or un-liquidated, existing on, and/or arising from actions prior to the date of this Agreement and/or that have been or could have been alleged in the Litigation, other than claims alleging breach of this Agreement, except as to claims arising for breach of this Agreement and specifically as set forth in paragraph 5 herein. Notwithstanding paragraph 5 above, upon execution of this Agreement, the County shall record a release of any and all liens claimed and/or asserted by the County against the Property, excepting any lien for taxes and any lien for any special assessment. The parties further agree to join in a motion to dismiss the Litigation, including Washington Court of Appeals Case #: 77221-0-1.
7. **Changes, Modifications, Amendments, Waivers & Severability.** The Agreement may be changed, modified, amended or waived only by written agreement duly executed by the parties hereto. Waiver or breach of any term or condition of this Agreement shall not be considered a waiver of any prior or subsequent breach. In the event any term or condition of this Agreement or application thereof to any person or circumstances is held invalid, such invalidity shall not affect other terms, conditions or applications of this Agreement which can be given effect without the invalid term, condition, or application. To this extent and end the terms and conditions of this Agreement are declared severable.
8. **Remedies; Attorney Fees.** No provision of this Agreement shall be deemed to bar the right of the parties to seek or obtain judicial relief from a violation of any term or provision of this Agreement. Neither the existence of other remedies identified in this Agreement, nor the exercise thereof shall be deemed to bar or otherwise limit the right of the parties to seek and obtain judicial enforcement of the other party's obligations by means of specific performance, injunctive relief or mandate, or any other remedy at law or in equity. In the event of any dispute arising under this Agreement, the substantially prevailing party shall be entitled to recover its costs and reasonable attorney fees.

9. **Neutral Authorship.** Each of the terms and provisions of this Agreement have been reviewed and negotiated, and represents the combined work product of the parties hereto. No presumption or other rules of construction which would interpret the provisions of this Agreement in favor of or against the party preparing the same shall be applicable in connection with the construction or interpretation of any of the provisions of this Agreement. The parties represent and warrant that they have fully read this Agreement, that they understand its meaning and effect, and that they enter into this Agreement with full knowledge of its terms and with resort to counsel and other applicable professional advice. The parties have entered into this Agreement without duress or undue influence.
10. **Additional Terms.** The captions in this Agreement are for convenience and reference only and do not define, limit, or describe the scope or intent of this Agreement. This Agreement may be executed in any number of counterparts, and each such counterpart hereof shall be deemed to be an original instrument, but all such counterparts together shall constitute but one agreement. In the event that any litigation should arise concerning the construction or interpretation of any of the terms of this Agreement, the venue of such action of litigation shall be in the Superior Court of the State of Washington in and for the County of Skagit. This Agreement shall be governed by the laws of the State of Washington. This Agreement contains all the terms and conditions mutually agreed upon by the parties. This Agreement supersedes any prior oral statements, discussions, and/or understandings between the parties. All items incorporated herein by reference are attached. No other understandings, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind any of the parties hereto.

*[remainder of page left intentionally blank]*

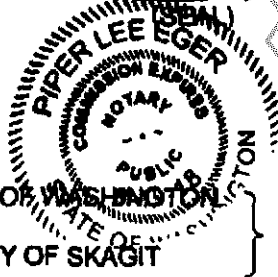
IN WITNESS WHEREOF, BTI hereby executes this Agreement as of the date first indicated above.

Bryan Olson  
Bryan Olson, personally and in his capacity  
as governing person of Bryan Trucking Inc.

STATE OF WASHINGTON }  
COUNTY OF SKAGIT } ss.

I certify that I know or have satisfactory evidence that Bryan Olson is the person(s) who appeared before me, and said person(s) acknowledged that he signed this instrument, on oath stated that he executed the foregoing instrument as his/her/their free and voluntary act for the uses and purposes herein mentioned.

DATED this 26<sup>th</sup> day of Jan, 2018.

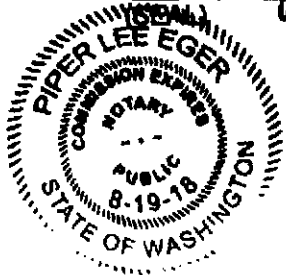


Piper Lee Eger  
Notary Public  
print name: Piper Lee Eger  
Residing at Mount Vernon  
My appointment expires 8/19/18

STATE OF WASHINGTON }  
COUNTY OF SKAGIT } ss.

I certify that I know or have satisfactory evidence that Bryan Olson, known to be the governing person of Bryan Trucking Inc., is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized execute the instrument on behalf of the corporation, and acknowledged it to be the free and voluntary act of such party for the uses and purposes herein mentioned.

DATED this 26<sup>th</sup> day of Jan, 2018.



Piper Lee Eger  
Notary Public  
print name: Piper Lee Eger  
Residing at Mount Vernon  
My appointment expires 8/19/18

DATED this 5 day of February 2018.

BOARD OF COUNTY COMMISSIONERS  
SKAGIT COUNTY, WASHINGTON

Kenneth A. Dahlstedt  
Kenneth A. Dahlstedt, Chair

ABSENT

Lisa Janicki, Commissioner

Ron Wesen  
Ron Wesen, Commissioner

Attest:

Amber Epps  
Clerk of the Board

Recommended:

[Signature]  
Department Head

Approved as to form:

[Signature]  
Civil Deputy Prosecuting Attorney

Approved as to indemnification:

[Signature]  
Risk Manager