

SETTLEMENT AGREEMENT BETWEEN CONSUMER ADVOCACY GROUP, INC.  
AND ROAD WORKS, INC.

Consumer Advocacy Group, Inc., on behalf of itself and suing in the public interest pursuant to Health and Safety Code section 25249.7, subdivision (d) ("CAG") and Road Works, Inc. ("Road Works"), (collectively, "Parties") enter into this agreement ("Settlement Agreement") to settle the case entitled *Consumer Advocacy Group, Inc. v. International Pavement Solutions, Inc., et al.*, and pending in the Superior Court of California for the County of Alameda, Case No. RG07363352 ("Lawsuit"), as follows:

**1.0 Introduction**

1.1 CAG is an entity based in Los Angeles, California that seeks to promote awareness of exposures to toxic chemicals and improve human health by reducing or eliminating hazardous substances contained in consumer and industrial products. Road Works disputes this.

1.2 CAG alleges that Road Works is a company that employs ten or more persons and acts primarily as a paving contractor. Road Works disputes this.

1.3 CAG alleges that Road Works uses paving materials, some of which contain asphalt or coal tar, the use of which is alleged to expose persons to acetaldehyde; arsenic (inorganic arsenic compounds); benz[a]anthracene; benzene; benzo[a]pyrene; benzo[b]fluoranthene; benzo[k]fluoranthene; beryllium and beryllium compounds; 1,3-butadiene; cadmium and cadmium compounds; carbazole; chromium (hexavalent compounds); chrysene; dibenz[a,j]acridine; dibenz[a,h]anthracene; dibenzo[a,e]pyrene; dibenzo[a,h]pyrene; dibenzo[a,i]pyrene; dibenzo[a,l]pyrene; dichloromethane (methylene chloride); formaldehyde (gas); indeno[1,2,3-cd]-pyrene; lead and lead compounds; 5-methylchrysene; nickel and nickel compounds; silica, crystalline; tetrachloroethylene (perchloroethylene); toluene diisocyanate; trichloroethylene; carbon disulfide; mercury and mercury compounds; and toluene (collectively, "Covered Chemicals"). Road Works disputes this.

1.4 The Covered Chemicals are substances listed in the regulations promulgated under the California Safe Drinking Water and Toxic Enforcement Act (Health & Saf. Code, §§ 25249.5, et seq.) ("Proposition 65") as chemicals known to the State of California to cause cancer or reproductive harm.

1.5 On August 23, 2006, CAG served public enforcement agencies and Road Works with a document entitled "60-Day Notice of Violation" ("Notice"). The Notice alleged that Road Works violated Proposition 65 by failing to warn its employees and other persons in California that some of the paving materials used by Road Works expose those persons to the Covered Chemicals.

1.6 On December 27, 2007, CAG filed the Lawsuit alleging Road Works, among other entities, violated Proposition 65 by exposing employees and others to Covered Chemicals contained in asphalt paving products without providing "clear and reasonable" warnings. The alleged exposures constitute "consumer product," "occupational," and "environmental" exposures pursuant to California Code of Regulations, title 22, section 12601. Road Works denies the material allegations of the Lawsuit and liability for the cause of action alleged in the complaint.

1.7 The Parties enter into this Settlement Agreement for settlement of certain disputed claims between the Parties as alleged in the CAG Complaint and Notice to avoid prolonged and costly litigation between the Parties.

1.8 By execution of this Settlement Agreement, the Parties admit no facts or conclusions of law, including those regarding any violation of Proposition 65, or any other statutory, regulatory, common law, or equitable doctrine. Nothing in this Settlement Agreement shall be construed as an admission by the Parties of any fact, conclusion of law, issue of law, or violation of law, including any admission concerning the meaning of the terms "knowingly and intentionally expose" or "clear and reasonable warning" as used in Health and Safety Code section 25249.6. Nothing in this Settlement Agreement, nor compliance with its terms, shall constitute or be construed as evidence of an admission or evidence of fault, wrongdoing, or liability by Road Works, its officers, directors, employees, or parent, subsidiary or affiliated corporations, in any administrative or judicial proceeding or litigation. Except for the cause of action and allegations settled and compromised, nothing in this Settlement Agreement shall prejudice, waive, or impair any right, remedy, argument, or defense that CAG or Road Works may have against one another in any other pending legal proceeding.

## 2.0 Release

2.1 Upon Road Works' completion of the requirements of the Opt-In process described in Part 5 of the Consent Judgment in *Consumer Advocacy Group, Inc. v. All American Asphalt, et al.*, Alameda Superior Court Case no. RG03097307 (consolidated with lead case *The People of the State of CA. v. Blue's Roofing Company, Inc, et al.*, Alameda Superior Court Case no. RG03082954) ("Consent Judgment") CAG releases and forever discharges Road Works, RW Materials LLC, Inland Equipment & Marine LLC, and Wilmar Industries LLC, and their affiliates, subsidiary and parent corporations, or their affiliated companies, and each of their officers, directors, agents, servants, partners, stockholders, attorneys, employees, representatives, and each of their respective successors and assigns (collectively, "Released Parties") from rights, claims, causes of action, damages, suits, penalties, liabilities, injunctive relief, declaratory relief, and attorney fees, costs and expenses related to or arising out of the facts

Settlement Agreement and are not meant to, and do not, change any manufacturer's or other project specifications. As with every other provision in this Settlement Agreement, only the Parties may enforce compliance with this Paragraph.

4.8 Enforcement of Exposure Reduction Measures. CAG intends to monitor compliance with Paragraph 4.7 through whatever measures it deems appropriate, so long as such measures do not violate any law. Should CAG believe that Road Works is not complying with its obligations under Paragraph 4.7, CAG may seek enforcement of this Settlement Agreement.

## **5.0 Opt-In Procedure and Premium**

5.1 Opt-In Payment and Premium and Procedure. Concurrent with executing this Settlement Agreement, Road Works is opting into the Consent Judgment as an Opt-In Defendant as defined in Paragraph 1.20 of the Consent Judgment. Concurrent with executing this Settlement Agreement, Road Works is executing an Opt-In Agreement, in the form set forth at Exhibit E of the Consent Judgment. Road Works shall distribute the executed Opt-In Agreement to Manatt, Phelps & Phillips, LLP and shall provide a copy to Yeroushalmi & Associates. Road Works shall simultaneously execute a declaration under penalty of perjury, in the form set forth at Exhibit F of the Consent Judgment or Exhibit B of the Settlement Agreement, certifying that it has a Hazard Communication Program. Road Works has calculated the amount due under the Opt-In Agreement (pursuant to Paragraphs 5.4, 5.5, and 4.2 of the Consent Judgment) as \$3,320.00. Therefore, Road Works shall pay an Opt-In Payment and Premium, if any, of \$3,320.00 to the General Escrow Account as defined in Paragraph 1.14 of the Consent Judgment. CAG neither disagrees with nor supports Road Works' finding as to the amount of the Opt-In Payment and Premium, if any, it is to pay the General Escrow Account. Road Works releases and agrees to hold harmless CAG with regard to any issue concerning the allocation, distribution, or amount paid under this section.

5.2 Payment to Yeroushalmi & Associates. Within 15 days of completing the requirements of the Opt-In process described in Part 5 of the Consent Judgment, Road Works shall pay \$6,680.00 to CAG for attorney fees and costs. Payment shall be to "Yeroushalmi & Associates." CAG represents and warrants that CAG has authorized the payment of attorney fees and costs, and that the payment and any application or distribution of such payment will not violate any agreement between CAG and its attorneys with any other person or entity. Road Works does not object to this allocation.

**6.0 Authority to Enter Into Settlement Agreement**

6.1 CAG represents that the signatory to this Settlement Agreement has the authority to enter into this Settlement Agreement on behalf of CAG and to bind legally CAG. Road Works represents that the signatories to this Settlement Agreement have the authority to enter into this Settlement Agreement on behalf of Road Works and to bind legally Road Works.

**7.0 Execution in Counterparts and Facsimile**

7.1 This Settlement Agreement may be executed in counterparts, which taken together shall be deemed to constitute the same document. A facsimile signature shall be as valid as the original.

**8.0 Entire Agreement**

8.1 This Settlement Agreement contains the sole and entire agreement and understanding of the Parties with respect to the entire subject matter hereof, and all related prior discussions, negotiations, commitments, and understandings. No other agreements, oral or otherwise, exist to bind any of the Parties.

**9.0 Modification of Settlement Agreement**

9.1 Any modification to this Settlement Agreement shall be in writing by the Parties.

**10.0 Application of Settlement Agreement**

10.1 This Settlement Agreement shall apply to, be binding upon, and inure to the benefit of, the CAG and the Released Parties identified above.

**11.0 Severability**

11.1 In the event that a court of competent jurisdiction finds unenforceable any of the provision of this Settlement, such finding shall not affect adversely the validity of the enforceable provisions.

**12.0 Governing Law**

12.1 The laws of the State of California shall govern the terms of this Settlement Agreement.

**13.0 Attorney Fees**

13.1 In the event that a dispute arises concerning any provision(s) of the Settlement Agreement, and such disputes are resolved by the Court or through any alternative dispute resolution proceeding, the prevailing party in such action or proceeding shall be entitled to recover costs and reasonable attorney fees.

**14.0 Notification Requirements**

14.1 Any notice required or permitted hereunder shall be effective only if in writing and delivered in person or sent by telecopy, certified or registered mail return receipt requested, or traceable overnight delivery service, to the following designees:

For CAG:

Reuben Yeroushalmi  
Yeroushalmi & Associates  
3700 Wilshire Blvd., Suite 480  
Los Angeles, CA 90010  
Fax: 213.382.3430

For Road Works:

Larry Blocker  
Road Works, Inc.  
303 Short Street  
Pomona, CA 91768  
Fax: 909.469.5112

Any party may change its designee(s) for purposes of notification by providing notice of such change pursuant to this section.

Dated: 3/17/08

By: *Jim H. Marcus, Pres.*  
CONSUMER ADVOCACY GROUP, INC.

Dated: 3-11-08

By: *Larry Blocker*  
ROAD WORKS, INC.