

## SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT ("Agreement") is made by and between the CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD, CENTRAL COAST REGION (the "Regional Board"), and the GOLETA SANITARY DISTRICT (the "District"). The Regional Board and the District are collectively referred to herein as the "Parties," and each of them is singularly referred to herein as a "Party."

### Recitals

A. Pursuant to the requirements of Clean Water Act ("CWA") section 402 (33 U.S.C. §1342) and Water Code sections 13000 et seq., the Regional Board or the United States Environmental Protection Agency (the "U.S. EPA") must prepare and adopt a National Pollutant Discharge Elimination System ("NPDES") permit for the District's wastewater discharge to the Pacific Ocean every five (5) years.

B. Although NPDES permits issued to publicly owned treatment works generally specify secondary treatment of wastewater (33 U.S.C. §1311(b)(1)(B)), Congress has specifically authorized waivers of secondary treatment requirements under CWA section 301(h) (33 U.S.C. §1311(h)). To qualify for a waiver, a discharge must satisfy the conditions of CWA Section 301(h), and applicable regulations. The District has been and continues to discharge its treated wastewater under a 301(h) permit (No. CA0048160) jointly issued by the U.S. EPA and the Regional Board on July 26, 1996. On January 23, 2001, the District applied to U.S. EPA and the Regional Board for another 301(h) permit with a flow limit of 9 mgd.

C. At its April 19, 2002 meeting, the Regional Board considered the renewal of the District's 301(h) permit. At the conclusion of that meeting, the Regional Board directed its staff to develop findings to support denying CWA section 401 certification and denying concurrence with the 301(h) permit.

D. At its July 12, 2002 meeting, the Regional Board adopted Resolution No. R3-2002-0077 denying CWA section 401 certification and denying concurrence with the 301(h) permit. The Resolution required the District to submit a modified NPDES permit application to the Regional Board by December 12, 2002.

E. The District petitioned the Regional Board's adoption of Resolution No. R3-2002-0077 to the State Water Resources Control Board (the "State Board") on August 7, 2002 (the "State

Board Petition”). At the same time, the District requested that the State Board stay the Regional Board’s December 12, 2002 deadline for submitting a modified NPDES permit application while the State Board considered the State Board Petition. The State Board denied this stay request, but the Regional Board extended its own deadline to the date 45 days after the State Board issued a decision on the State Board Petition.

F. On October 15, 2003, the State Board adopted Order No. WQO 2003-0015, which stated that the deadline for final action upon the District’s State Board Petition was October 17, 2003 and that, because the State Board anticipated taking final action on the matter after October 17, 2003 (the expiration of the regulatory timeframe set forth in 23 C.C.R. §2050.5), the State Board would review Regional Board Resolution No. R3-2002-0077 on its own motion. (Subdivision (a) of the Water Code section 13320 authorizes the State Board to review actions of a regional water quality control board on its own motion at any time.)

G. On December 4, 2003, the District submitted to the Regional Board and U.S. EPA an application for a 301(h) permit providing for a flow limit of 7.64 million gallons per day and a CWA section 401 Water Quality Certification Application. The District provided additional information on December 19, 2003. On December 30, 2003 the Regional Board denied 401 certification without prejudice.

H. On January 22, 2004, the State Board adopted a motion rescinding Order No. WQO 2003-0015. In a letter dated February 4, 2004, the State Board advised the District that: “In view of the SWRCB’s action rescinding Order No. WQO 2003-0015, and the fact that the deadline for acting on GSD’s petition has passed, GSD’s petition is deemed to be denied by operation of law as of January 22, 2004, and Regional Board Resolution No. R3-2002-0077 remains in effect.” In a footnote, the State Board noted that: “By letter dated October 13, 2003, Goleta asked the SWRCB to hold Goleta’s petition to review the Regional Board resolution in abeyance. The State Board took no action upon the request to hold the petition in abeyance.”

I. On February 18, 2004, the District filed a Petition for Writ of Mandate in Santa Barbara County Superior Court (the “Petition”), and on April 21, 2004, filed an amended writ petition (the “Amended Petition”). In order to effectively stay these proceedings to allow settlement discussions to proceed, the District has not requested preparation of the administrative record.

J. The Parties wish to avoid unnecessary litigation over the issues raised in the Amended Petition and have agreed to settle the Amended Petition as set forth in this Agreement.

K. Subject to the provisions of this Agreement regarding Regional Board discretion and New Evidence (defined below), this Agreement contemplates that the Regional Board will concur in or issue the First and Second 5-Year Permits (defined below) in order to effect the District's obligation to complete the upgrade of its treatment facility to full secondary treatment standards within a ten-year period. Pursuant to the May 1984 Memorandum of Understanding for Modified NPDES Permits Under Section 301(h) of the Clean Water Act Between the California State Water Resources Control Board and the U.S. Environmental Protection Agency, Region 9, the Regional Board issues such concurrence and Clean Water Act Section 401 certification by issuing final waste discharge requirements. U.S. EPA then issues a NPDES permit including the 301(h) waiver provisions. References in this Agreement to the Regional Board "issuing" a permit mean, as applicable, issuance by the Regional Board of waste discharge requirements that constitute Section 401 certification of and concurrence with a U.S. EPA NPDES permit that includes modifications under Section 301(h), or issuance by the Regional Board of a NPDES permit.

L. Without admitting anything, the Parties enter into this Agreement to resolve the pending Amended Petition and to avoid the expense and uncertainty of litigation.

### **Agreement**

In consideration of the foregoing and the following, the Parties agree as follows:

#### **A. STAY OF LAWSUIT.**

In order to avoid unnecessary litigation over the issues raised in the Amended Petition and to pursue the settlement provided for in this Agreement and to allow for its implementation, the Parties desire to stay the Amended Petition, the preparation and lodging with the Superior Court of the administrative record, the requirement for the filing of pleadings, and the court's consideration of the Amended Petition (the "Stay"). To accomplish the Stay, the District hereby agrees not to request that the administrative record pertaining to the Amended Petition be prepared or lodged with the court unless and until the District recommences the pending litigation pursuant to the Amended Petition under Section C.1.d after this Agreement becomes null and void. If the Superior Court issues an order to show cause or takes other action, which would have the effect of terminating the Stay and/or requiring said pending litigation to be recommenced, the Parties will jointly seek a court order granting a Stay of the litigation. If the Superior Court denies the Stay,

then within ten (10) days of such denial, (i) the Parties shall enter into a stipulation providing that the District may refile the Amended Petition, but only if such refiling is in accordance with the terms of this Agreement set forth below, and (ii) the District shall then dismiss the Amended Petition as to all respondents without prejudice. Said stipulation shall provide that, to the extent that the Amended Petition is refiled in accordance with and subject to the terms of this Agreement, (i) the refiling of the Amended Petition is not barred by time related defenses such as statutes of limitation, laches, estoppel or waiver, (ii) neither Party is waiving any other claims or defenses in connection with the Amended Petition upon refiling, including but not limited to claims and/or defenses relating to mootness and exhaustion of administrative remedies, (iii) the Regional Board reserves all rights to move to dismiss or demur to or move for summary judgment on the Amended Petition or any other pleading on any ground not stated in clause (i), (iv) the District reserves all rights to oppose such motions or demurrers, and (v) the waiver of time-related defenses in clause (i) shall expire if the District does not refile the Amended Petition within 30 days after this Agreement becomes null and void pursuant to Section B.2.c.2(a) or (b) hereof. The intent of this paragraph is only to effectuate the terms of this Agreement regarding the timing of and requirements for the Stay of the Amended Petition. Any new or changed allegations or claims in the refiled Amended Petition that were not included in the Amended Petition on April 21, 2004 are not subject to this paragraph.

## **B. TERMS.**

### **1. Conversion Schedule**

The District shall undertake a program to install and operate equipment at its treatment plant capable of achieving, and achieve, secondary treatment requirements set forth in 40 C.F.R. Part 133, other than 40 C.F.R. section 133.105. The program must be designed to adequately address projected future wastewater flows as of the end of the Conversion Schedule. The District shall complete the planning, design, construction and operation of the facilities necessary to attain compliance with the secondary treatment requirements in accordance with the schedule set forth below (the "Conversion Schedule"). The ten-year upgrade period, commencing with the issuance of the First 5-Year Permit (defined below) and ending on the last date listed in the Conversion Schedule, is the "Conversion Period."

## CONVERSION SCHEDULE

Tasks	Date of Completion*
<b>A. <u>Preliminary Activities:</u></b>	
1. Submittal of Detailed Conversion Plan and Timeline to Owners of Capacity in District's Plant	1/1/05
2. Coordination of Conversion Concepts w/ Owners of Capacity in District's Plant (Education regarding participation in conversion)	6/30/05
3. Send Requests for Environmental and Consulting Engineering Proposals	12/31/05
4. Award of Environmental and Consulting Engineering Contracts	6/30/06
<b>B. <u>Facilities Planning:</u></b>	
1. Complete Draft Facilities Plan	12/31/06
2. Complete Final Facilities Plan	6/30/08
<b>C. <u>Environmental Review and Permitting:</u></b>	
1. Complete and Circulate Draft CEQA Document	6/30/08
2. Certify Final CEQA Document	<del>1/31/09</del> 6/30/10
3. Submit Applications for all Necessary Permits	1/31/09
4. Obtain all Necessary Permits	1/31/11
<b>D. <u>Financing:</u></b>	
1. Complete Draft Plan for Project Design and Construction Financing	1/30/07
2. Complete Final Plan for Project Design and Construction Financing	3/31/08
3. Submit Proof that all Necessary Construction Financing has been Secured, Including Compliance with Proposition 218	12/31/10
<b>E. <u>Design and Construction:</u></b>	
1. Initiate Design	6/30/08
2. 30% Design	12/31/08

3	60% Design	11/30/09
4	90% Design	3/31/10
5	100% Design	9/30/10
6	Issue Notice to Proceed to Contractor	4/30/11
7	Construction Progress Reports	Quarterly (w/ self monitoring reports)
8	Complete Construction and Commence Debugging and Startup	4/30/14
9	Full Compliance w/ Secondary Requirements	11/1/14

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 \* Any completion date falling on a Saturday, Sunday or State holiday shall be extended until the next business day. The District shall submit proof of completion of each task within 30 days after the due date for completion.

**2. Secondary Treatment Limits and District's Conversion to Secondary.**

**a. First Five-Year Permit Cycle.**

1. The Regional Board's Executive Officer shall recommend to the Regional Board that it (i) concur in the issuance of a five (5)-year 301(h) permit for the District (the "First 5Year Permit"), and (ii) provide water quality certification of the First 5-Year Permit under Clean Water Act Section 401 (33 U.S.C. §1341) without changing the District's current requirements for biochemical oxygen demand ("BOD") or total suspended solids ("TSS"). It is not the intent of this Agreement to impose numeric or narrative requirements for other constituents (e.g., limits for bacteria) that would effectively require the District to upgrade to full-secondary treatment faster than provided under the Conversion Schedule. Therefore, unless there is new evidence that was not in the administrative record as of the date the Regional Board's Executive Officer signed this Agreement, the Executive Officer shall recommend that the First 5-Year Permit allow the District to continue with its current treatment process consistent with the provisions of its existing 301(h) permit, Order No. 96-21 (except as provided below with respect to Enhanced Treatment),

2. The BOD and TSS limits to be recommended by the Executive Officer for approval are as follows:

Constituent	Units	Monthly (30-day) Average	Maximum at any time
BOD5 (20°C)	mg/L	98	150
	lbs/day	6,240	9,560
Suspended Solids	mg/L	63	100
	lbs/day	4,010	6,370

3. The findings recommended for adoption by the Regional Board in connection with the First 5-Year Permit and the issuance of water quality certification shall reference the Settlement Agreement and shall incorporate the Conversion Schedule. The findings recommended for adoption by the Regional Board shall also state that:

(i) Subject to the provisions of the Settlement Agreement regarding Regional Board Discretion and New Evidence, the Settlement Agreement contemplates that the Regional Board will concur in or issue the First and Second 5-Year Permits (defined below) in order to effect the District's obligation to complete the upgrade of its treatment facility to full secondary treatment standards within a ten-year period,

(ii) Based on the administrative record, including population growth projections through 2014, known environmental and cumulative impacts of the District's existing wastewater treatment facilities, and evidence submitted by the District of the time needed for upgrading the plant, the Conversion Schedule is appropriate, and

(iii) At the end of the Conversion Period, once the District has converted to secondary treatment of effluent from the Plant, the Regional Board expects to issue an NPDES permit imposing effluent limitations based on secondary treatment as defined in 40 C.F.R. Part 133, or any more stringent requirements the Regional Board determines are necessary to comply with State or Federal law.

4. If the Regional Board adopts the Executive Officer's recommendation by concurring with the First 5-Year Permit and issuing water quality certification, the District shall commence the process for completing all modifications to its plant necessary to comply with

secondary treatment standards (“upgrade to secondary treatment”) by the end of the Conversion Period, in accordance with the Conversion Schedule.

**b. Second Five-Year Permit Cycle.**

1. For the five (5) year period following the expiration of the First 5-Year Permit, the Regional Board’s Executive Officer shall recommend to the Regional Board that it (i) concur in the issuance of a second five (5)-year 301(h) permit for the District (the “Second 5-Year Permit”), and (ii) provide water quality certification of the Second 5-Year Permit under Clean Water Act Section 401 (33 U.S.C. §1341) without changing the District’s current requirements for BOD or TSS as provided under Section B.2.a.2 above. As stated above, it is not the intent of this Agreement to impose numeric or narrative requirements for other constituents (e.g., limits for bacteria) that would effectively require the District to upgrade to full-secondary treatment faster than the Conversion Schedule provides. Therefore, the Regional Board’s Executive Officer shall recommend that the Second 5-Year Permit (i) allow the District to continue with its current treatment process consistent with the provisions of its existing 301(h) Permit Order No. 96-21 (except as provided below with respect to Enhanced Treatment), and (ii) incorporate findings that contain the Conversion Schedule providing for converting to secondary treatment no sooner than the end of the original ten (10)-year Conversion Period. Notwithstanding the foregoing, the Executive Officer is not required to recommend concurrence in or certification of the Second 5-Year Permit as a 301(h) permit if there is evidence not in the administrative record at the time the First 5-Year Permit is issued (“New Evidence”) that (a) the plant cannot satisfy one or more of the applicable requirements for issuance of a 301(h) permit; (b) population growth is likely to cause the projected average dry weather flows through the plant to exceed 7.64 mgd prior to the end of the Conversion Period; or (c) a change in the law requires more stringent limits. If the Executive Officer does not make the recommendations described in this paragraph because there is New Evidence, the Executive Officer shall state in writing the reasons for not making the recommendation and clearly identify the New Evidence.

2. If the Regional Board determines at the time of its consideration of the District’s Second 5-Year Permit that substantial evidence supports a finding that the Conversion Schedule is still appropriate, based on the record before the Regional Board, but that the required



findings cannot be made for the Regional Board to (i) concur in the issuance of the Second 5-Year Permit under CWA Section 301(h), or (ii) provide water quality certification for such 301(h) permit as set forth in section B.2.b.1 above, the Regional Board may instead issue as the "Second 5-Year Permit" an NPDES permit. In such case, the final effluent limits (i.e., secondary treatment requirements) and the Conversion Schedule shall be incorporated into the permit findings, and the interim limits set forth in Section B.2.b.1 shall be incorporated into the permit provisions if the Regional Board determines that interim limits are legally authorized under the Water Code and the Clean Water Act. Otherwise, the final effluent limits shall be included in the Second 5-Year Permit and the interim limits and Conversion Schedule will be placed in an order adopted in conformance with Water Code §13385(j)(3) at the time the Second 5-Year Permit is adopted.

3. Except as otherwise provided in Sections B.2.a and b, above, this Agreement does not address any effluent limits of the First 5-Year Permit and the Second 5-Year Permit. The Parties understand and agree that pursuant to Order Nos. WQO 2003-0009 and WQO 2003-0012, the State Board has determined that the removal of effluent limitations for which new monitoring data indicate that there is no reasonable potential to cause or contribute to a water quality standards violation does not violate the general antibacksliding rules under Clean Water Act section 402(o), and that removal of effluent limits for non-impairing pollutants (as defined in WQO 2003-0009) does not violate the general antibacksliding rules under Clean Water Act section 303(d)(4) if antidegradation requirements are satisfied.

**c. Regional Board Discretion.**

1. Nothing in this Agreement limits the discretion that the Regional Board would have absent this Agreement. The Parties understand that the Regional Board members must consider the evidence before them and exercise their authority consistent with applicable laws, the record before them, and the discretion vested in them by applicable laws. Any decision by the Regional Board not to issue the First 5-Year Permit or Second 5-Year Permit as provided above, or to issue a permit that includes more stringent requirements than those set forth in herein, i.e., more stringent BOD or TSS limits or a shorter Conversion Period (either explicitly or through the imposition of effluent limits or other requirements that require a shorter Conversion Period) shall not constitute a breach of this Agreement by the Regional Board. However, the issuance of or

concurrence with the First 5-Year Permit and, if applicable, the Second 5-Year Permit, and any necessary related water quality certification, as set forth herein, are conditions to the District's continuing obligations under this Agreement, except for the District's obligation to Stay the Amended Petition pursuant to Section A, above.

2. (a) If, based the administrative record, the Regional Board issues the First or Second 5-Year Permit or takes other action during the Conversion Period and, in connection therewith, includes more stringent requirements than those set forth herein, i.e., more stringent BOD or TSS limits or a shorter Conversion Period (either explicitly or through the imposition of effluent limits or other requirements that require a shorter Conversion Period), the District shall timely file a petition for review by the State Board pursuant to Water Code section 13320 challenging these more stringent requirements. If the State Board does not, within two hundred seventy (270) days of the date on which the State Board determines in writing that the petition is complete, either remand the matter to the Regional Board for inclusion of the requirements set forth herein, or concur in the 301(h) waiver and issue 401 certification of, or issue, on its own the First or Second 5-Year Permit that includes the requirements provided for herein, then, unless the Parties otherwise mutually agree in writing, (i) the District's obligations under this Agreement to upgrade to secondary treatment within the ten-year Conversion Period and its obligations under the Conversion Schedule shall terminate, and (ii) this Agreement shall become null and void.

(b) If the Regional Board issues the First or Second 5-Year Permit and, in connection therewith, takes action to impose BOD and TSS limits and a Conversion Schedule as set forth herein (and if the action does not require, either explicitly or through the imposition of effluent limits or other requirements, a shorter Conversion Schedule), the District agrees that it will not file a petition for review with the State Board pursuant to Water Code section 13320 challenging the BOD or TSS limits or the Conversion Schedule. If a petition for review is filed by a third party pursuant to Water Code section 13320 that challenges such BOD limits, TSS limits or the Conversion Schedule (or seeks to require, either explicitly or through the imposition of effluent limits or other requirements, a shorter Conversion Schedule), and if the State Board does not dismiss the petition, issue an order upholding the Regional Board's action, or allow the petition to be deemed denied by failing to make a formal disposition thereon within the time specified in 23 CCR §2050.5(b) (as extended by any own-motion review pursuant to 23 CCR §2050.5(c)) then,

unless the Parties otherwise mutually agree in writing, (i) the District's obligations under this Agreement to upgrade to secondary treatment and its obligations under the Conversion Schedule shall terminate, and (ii) this Agreement shall become null and void.

(c) If the Regional Board does not take final action on the First 5-Year Permit by December 3, 2005, or if the Regional Board does not take final action on the Second 5-Year Permit by November 30, 2010, then, unless the Parties otherwise mutually agree in writing, (i) the District's obligations under this Agreement to upgrade to secondary treatment within the ten-year Conversion Period and its obligations under the Conversion Schedule shall terminate, and (ii) this Agreement shall become null and void.

(d) Nothing in this Agreement relieves the District of the requirement to exhaust applicable administrative remedies. Notwithstanding the termination of this Agreement and the fact that this Agreement becomes null and void, (i) the District will be required to comply with all state and federal laws, including the Clean Water Act and the California Water Code, (ii) the District shall retain the right to bring an action relating to any failure of the Regional Board's Executive Officer to make the recommendations required under Sections B.2.a.1 or B.2.b.1, above, and (iii) certain provisions regarding fees and costs shall survive, as set forth in Section F.10. The District's sole remedy for any claimed failure of the Executive Officer to make a recommendation under Sections B.2.a.1 or B.2.b.1 shall be to seek specific performance. The parties waive any right to discovery in such action and the evidence shall be limited to documents in the Regional Board's files as of the date of the Executive Officer's challenged recommendation. The District hereby waives all of its rights, if any, to seek damages from the Regional Board or Executive Officer in the event the District claims a breach of the Executive Officer's agreement to make the recommendations required under Sections B.2.a.1 or B.2.b.1. Nothing herein shall operate as a waiver of any defenses the Executive Officer or Regional Board may assert in such an action. The parties acknowledge that the State Board may decline to review any petition filed pursuant to this Agreement.

3. It is not the intent of this Agreement to create a basis for the Regional Board to issue a subsequent permit that requires a shorter Conversion Schedule because it determines, upon consideration of the Second 5-Year Permit, that it may be possible for the District to complete the upgrade sooner. Any decision by the Regional Board, when considering the Second 5-Year Permit, to require a shorter Conversion Schedule for other reasons shall specify those reasons and

support those reasons with evidence in the record. Only after it has determined, based on substantial evidence in the record, that independent factors exist for requiring a shorter Conversion Period, may the Regional Board consider the time necessary to complete the conversion as one of the factors in establishing the shorter Conversion Schedule, time schedule, or other compliance schedule.

**C. PERMIT RENEWAL AND STIPULATION TO DISMISS.**

**1. Required Actions**

**a.** If the Regional Board concurs in the issuance of the First 5-Year Permit and issues water quality certification consistent with the terms of Section B of this Agreement, and if no petition is filed with the State Board by a third party under California Water Code Section 13320 challenging the Regional Board's 301(h) concurrence, 401 water quality certification, TSS or BOD effluent limits or the findings specified by this Agreement (collectively referred to in this Section C.1 as "301(h) Waiver"), then the District shall dismiss with prejudice its Amended Petition in its entirety against both the Regional Board and the State Board within ten (10) days following the effective date of the First 5-Year Permit. If a petition challenging the 301(h) Waiver is filed by a third party with the State Board under California Water Code Section 13320, then the District shall dismiss with prejudice its Amended Petition in its entirety against both the Regional Board and the State Board within ten (10) days following the date on which the State Board dismisses the petition, fails to act on the petition within the time specified in 23 CCR §2050.5(b) (as extended by any own-motion review pursuant to 23 CCR §2050.5(c)), or issues an order upholding the 301(h) Waiver.

**b.** If the Regional Board issues the First 5-Year Permit as provided above, the District covenants not to petition to the State Board or otherwise appeal the 301(h) Waiver provisions of the First 5-Year Permit, so long as said Permit remains in effect and unchanged. However, the District reserves the right to petition to the State Board or otherwise appeal the First 5-Year Permit if any change(s) are made to the 301(h) Waiver or Conversion Schedule provisions of said Permit by the Regional Board or State Board.

**c.** The District reserves the right to challenge all other provisions of the First 5-Year Permit besides the Permit's BOD, TSS or Conversion Schedule requirements, including, but not limited to any new requirements for collection system maintenance, any new or

more stringent requirement than the requirements contained in Order No. 96-21, and effluent limits for constituents not demonstrated to have reasonable potential to cause or contribute to a violation of water quality standards. Any such challenge shall be commenced by raising the issue(s) before the Regional Board and then filing a petition to the State Board under Water Code Section 13320. A challenge to the Regional Board's or State Board's action under this paragraph shall not relieve the District of its obligation to dismiss the Amended Petition if required under Section C.1.a.

d. If this Agreement becomes null and void pursuant to Section B.2.c.2(a) or (b) above (Regional Board Discretion) with respect to the First 5-Year Permit, the District has indicated that it might either file a new lawsuit and seek to consolidate the new lawsuit with the Amended Petition, or continue the pending litigation pursuant to the Amended Petition. If the District files a new lawsuit alleging that a shorter Conversion Schedule is required, the District shall have the burden of proving that a requirement imposed by the Regional Board or State Board expressly or effectively requires a shorter Conversion Schedule. Before filing a new lawsuit related to the First or Second 5-Year Permit, the District agrees that it shall first exhaust all applicable administrative remedies (except for a lawsuit to stay the Regional Board action should the State Board deny such a stay request pursuant to California Water Code Section 13320(e)). If the District continues the Amended Petition, the District agrees that it shall first seek to amend the Amended Petition to incorporate the subsequent actions of the Regional Board and any State Board order relating to the Regional Board's action. Notwithstanding the foregoing, both the Regional Board and the State Board contend that all claims set forth in the Amended Petition will become moot no later than the date on which the First 5-Year Permit is issued and that the District cannot cure this by amending the Amended Petition to incorporate subsequent actions. The District does not agree with this contention. The Regional Board explicitly reserves that defense and any other claim of mootness, and the District explicitly reserves all of its defenses and claims with respect to any mootness arguments. In addition, the Regional Board and State Board contend that the District will have failed to exhaust its administrative remedies if it attempts to amend the Amended Petition to add any new claims or facts prior to raising the issue(s) before the Regional Board and then filing a petition to the State Board. The District does not agree with this contention. Nothing in this Agreement shall prejudice the State Board's ability to assert the same defenses. These reservations do not limit any other defenses of either of the Parties or the State Board.

e. If the Regional Board issues the Second 5-Year Permit as provided in Section B.2.b.1 or B.2.b.2 above, the District covenants not to petition to the State Board or otherwise appeal the Second 5-Year Permit's BOD, TSS or Conversion Schedule requirements, so long as said Permit remains in effect and unchanged. However, the District reserves the right to petition to the State Board or otherwise appeal the Second 5-Year Permit if any change(s) are made to said Permit or if the Conversion Period or Conversion Schedule are modified by the Regional Board or State Board.

f. The District reserves the right to challenge any other provisions of the Second 5-Year Permit besides the Permit's BOD, TSS or Conversion Schedule requirements, including, but not limited to any new requirements for collection system maintenance, any new or more stringent requirements than the requirements of the First 5-Year Permit, and effluent limits for constituents not demonstrated to have reasonable potential to cause or contribute to a violation of water quality standards, except as otherwise provided in the Ocean Plan. Any such challenge shall be commenced by raising the issue(s) before the Regional Board and then filing a petition to the State Board under Water Code Section 13320.

g. A challenge by the District or any other person of any provisions of the First 5-Year Permit or the Second 5-Year Permit that do not relate to the 301(h) Waiver or the Conversion Schedule shall not relieve the District of any obligation to comply with the Conversion Schedule and shall not toll any due date in the Conversion Schedule.

h. Except as otherwise provided in this Agreement, the District reserves the right to (i) pursue a future administrative or judicial challenge to the underlying water quality objectives, both numeric and narrative, as applied in future permits; (ii) challenge future revisions to any permit other than the First 5-Year Permit or the Second 5-Year Permit, without limitation, on all legal theories raised in the District's Amended Petition, and (iii) challenge any new permit or amendment thereto should there be a change in law that renders, in the District's opinion, any provision of the permit, as amended, inconsistent with the Clean Water Act or the Porter-Cologne Water Quality Control Act.

**D. REQUIRED ACTIONS DURING CONVERSION PERIOD.**

**1. Enhanced Treatment.**

a. If, during the Conversion Period, the District's effluent monthly (30-day) average mass emissions for total suspended solids (TSS) or biochemical oxygen demand (BOD) measured over the three-month period of June, July, and August of each year exceed eighty-five percent (85%) of the mass emissions limit set forth in the District's current 301(h) Permit, the District will enhance its treatment process by the use of polymers or other available technologies of equal or lesser cost (taking into account capital, operations and maintenance costs) and equal or better effectiveness ("Enhanced Treatment") in an effort to reduce mass emissions to eighty-five percent (85%) of the Permit limit.

b. Mass emissions for TSS and BOD will be re-evaluated in June of each year following the commencement of Enhanced Treatment to determine if emissions continue to exceed the Enhanced Treatment trigger of eighty-five percent (85%) without Enhanced Treatment. If the monthly (30-day) average mass emissions for TSS or BOD in June exceed ninety (90%), Enhanced Treatment will continue until tested again in June of the following year. If the monthly (30-day) average mass emissions for TSS or BOD in June are greater than eighty-five percent (85%) but less than ninety (90%), testing will continue through July and August to determine whether the three month monthly (30-day) average mass emissions for TSS or BOD exceed eighty-five percent (85%) of the Permit limit. If the monthly (30-day) average mass emissions for TSS or BOD for the three-month period of June, July, and August do not exceed the eighty-five percent (85%) Enhanced Treatment trigger, Enhanced Treatment may be discontinued until the Enhanced Treatment trigger is exceeded again in the future, as determined by subsequent three-month results during June, July, and August.

c. If the use of Enhanced Treatment fails to achieve mass emissions at or below the Enhanced Treatment triggers for any six (6) consecutive monthly periods, the District shall investigate and apply, with the approval of the Regional Board's Executive Officer, other technologies of equal or lesser cost (taking into account capital, operations and maintenance costs) and equal or better effectiveness if any such technologies are readily available and are capable of achieving at least eighty-five percent (85%) of the permitted mass emissions limits.

d. The Enhanced Treatment triggers set forth above are not effluent limitations, and, if exceeded, will not be considered a violation of the District's NPDES permit,

waste discharge requirements or water quality certification and will not subject the District to civil liabilities, fines, penalties or other enforcement action. If the District exceeds an Enhanced Treatment trigger and is therefore required to commence or continue Enhanced Treatment, the District will not be considered to have committed a violation of the District's NPDES permit, waste discharge requirements, or water quality certification, and will not be subject to civil liabilities, fines, penalties, or other enforcement action if Enhanced Treatment fails to bring effluent mass emissions for TSS or BOD, as measured above, below eighty-five percent (85%) of the mass emissions limit set forth in the District's current 301(h) permit.

e. The Enhanced Treatment requirements shall not be stated as NPDES permit conditions that could give rise to administrative civil liability, but shall be incorporated into the findings adopted as part of any 301(h) or NPDES permit issued to the District during the Conversion Period.

## **2. Force Majeure**

a. A "force majeure event" is any event beyond the reasonable control of the District, its contractors, or any entity controlled by the District that delays or prevents the performance of any obligation under this Agreement. Force majeure events include, without limitation, (i) fire, strike, war, insurrection, terrorism, natural disaster, civil or military authority, civil disturbance; and (ii) to the extent they are beyond the District's reasonable control, government restriction on or prohibition of the task(s) set forth in the Compliance Schedule, lawsuits, court orders, injunctions, delays by other agencies with approval authority relating to or permitting of the conversion of the District's treatment facilities to secondary treatment, and site conditions discovered during construction if the District exercised reasonable diligence, but did not foresee such site condition prior to the commencement of construction. If a force majeure event occurs, the District shall undertake all reasonable measures to prevent or minimize the delay resulting from the event.

b. If any event occurs that the District believes is a force majeure event, the District shall notify the Regional Board by telephone as soon as reasonably possible. The District shall endeavor to notify the Regional Board in writing within fifteen (15) calendar days of the date on which the District first knew of the event, and shall provide such written notice within fifteen (15) calendar days after the date on which the District first knew the event would cause, or



be likely to cause, a delay. The District shall provide the written notice in accordance with Section F.7. The notice shall describe in reasonable detail the anticipated length of time the delay may persist, the cause or causes of the delay, the measures, if any, taken or to be taken by the District to prevent or minimize the delay as well as to prevent future delays, and the timetable by which those measures will be implemented.

c. If a delay has been caused by a force majeure event, the time for performance of the affected requirement(s) shall be extended for a period not to exceed the actual delay in performance resulting from such circumstance. In addition, stipulated penalties shall not be due for said delay. The Executive Officer shall notify the District of the agreement or disagreement with the District's claim of a delay or impediment to performance within seven (7) calendar days of receipt of a written notice that complies with Section D.2.b, above. If the Executive Officer does not so agree, or does not notify the District of its decision within seven (7) calendar days after receiving notice (in which case the Executive Officer shall be deemed to have disagreed), such decision (or deemed decision) by the Executive Officer shall not constitute final agency action and the dispute will be resolved administratively or judicially pursuant to Section E. In any such dispute, the District bears the burden of proving, by a preponderance of the evidence, that each claimed force majeure event is a force majeure event; that the District gave the notice required by this Section; that the force majeure event caused the delay that the District claims was attributable to that event; and that the District undertook all reasonable measures to prevent or minimize any delay caused by the event.

d. Unanticipated or increased costs or expenses associated with the implementation of this Settlement Agreement or changed financial circumstances shall not constitute a force majeure event hereunder.

e. An extension of one compliance date under the Compliance Schedule based on a particular incident may, but shall not necessarily, result in an extension of a subsequent compliance date or dates.

f. Where the Regional Board agrees to an extension of time, the appropriate modification(s) shall be made to the Conversion Schedule in accordance with Section F.5, below.

g. If the Regional Board issues the First or Second 5-Year Permit or takes other action during the Conversion Period and, in connection therewith, includes more

stringent requirements than those set forth herein, i.e., more stringent BOD or TSS limits or a shorter Conversion Period (either explicitly or through the imposition of effluent limits or other requirements that require a shorter Conversion Period) and, as required by Section B.2.c.2(a), the District files a timely petition for review with the State Board, a force majeure event shall be deemed to be occurring until such time as the District has been issued a permit that includes the requirements provided for herein. If the Regional Board does not act on the District's First 5-Year Permit by December 3, 2004, a force majeure event shall be deemed to be occurring from December 4, 2004 until such time as the District has been issued the First 5-Year Permit (unless prior to such permit issuance this Agreement becomes null and void). If the Regional Board does not act on the District's Second 5-Year Permit by March 31, 2010, a force majeure event shall be deemed to be occurring from April 1, 2010 until such time as the District has been issued a Second 5-Year Permit (unless prior to such permit issuance this Agreement becomes null and void).

**h.** If the Regional Board concurs in the 301(h) waiver and issues 401 certification of the First 5-Year Permit and, in connection therewith, includes BOD and TSS limits and a Conversion Schedule as set forth herein (and if the action does not require, either explicitly or through the imposition of effluent limits or other requirements, a shorter Conversion Schedule), and a petition for review is filed by a third party pursuant to Water Code section 13320, which challenges such BOD limits, TSS limits or the Conversion Schedule (or which seeks to require, either explicitly or through the imposition of effluent limits or other requirements, a shorter Conversion Schedule), a force majeure event shall be deemed to be occurring commencing on the date for the District to Send Requests for Environmental and Consulting Engineering Proposals (Task A.3) under the Conversion Schedule (as said date may be revised by force majeure events or by the agreement of the Parties) and continuing until such time as the State Board dismisses the petition without review (explicitly or by operation of law pursuant to 23 C.C.R. §2050.5) or issues an order upholding the BOD and TSS limits and the Conversion Schedule approved by the Regional in connection with the First 5-Year Permit.

**i.** If the Regional Board issues the Second 5-Year Permit as provided in Section B.2.b.1 or B.2.b.2 and, in connection therewith, includes BOD and TSS limits and a Conversion Schedule as set forth herein (and if the action does not require, either explicitly or through the imposition of effluent limits or other requirements, a shorter Conversion Schedule), and a petition for review is filed by a third party pursuant to Water Code section 13320, which

challenges such BOD limits, TSS limits or the Conversion Schedule (or which seeks to require, either explicitly or through the imposition of effluent limits or other requirements, a shorter Conversion Schedule), a force majeure event shall be deemed to be occurring commencing on the date for the District to complete 100% Design (Task E.5) under the Conversion Schedule (as said date may be revised by force majeure events or by the agreement of the Parties) and continuing until such time as the State Board dismisses the petition without review (explicitly or by operation of law pursuant to 23 C.C.R. §2050.5) or issues an order upholding the BOD and TSS limits and the Conversion Schedule approved by the Regional in connection with the Second 5-Year Permit.

j. The Parties agree not to request abeyance, and to oppose any request for abeyance, of a third party petition described in Sections D.2.h or i.

## **E. ENFORCEMENT**

1. Except for force majeure events as provided above, and except as otherwise agreed by the Parties, if the District fails to complete a required action by the date set forth in the Conversion Schedule, stipulated penalties shall accrue as set forth below. Stipulated penalties shall accrue only with respect to one task on the Conversion Schedule at a time. In other words, if the District is behind schedule with respect to more than one required task, stipulated penalties shall accrue only for the most recent task.

a. Stipulated penalties shall be \$200/day for all tasks that are to be completed prior to the issuance of the Second 5-Year Permit. The District shall pay all such accrued stipulated penalties, together with interest at the rate of five percent (5%) per annum, within thirty (30) days following the date on which the Second 5-Year Permit becomes final. If the District is current (i.e. has "caught up") by the date on which the Second 5-Year Permit becomes final, or if the Second 5-Year Permit is denied by the Regional Board or by the State Board on petition, all accrued stipulated penalties and interest thereon shall be cancelled and forgiven. The Second 5-Year Permit "becomes final" for purposes of this paragraph 30 days after the Regional Board issues the Second 5-Year Permit as provided in Section B.2.b.1 or B.2.b.2, if no petition challenging the BOD or TSS limits or Conversion Schedule is filed; or on the date the State Board resolves any petition challenging the BOD or TSS limits or Conversion Schedule by a dismissal (explicitly or by operation of law) or order having the effect of upholding or issuing a Second 5-Year Permit.

b. Stipulated penalties shall be \$200/day for all tasks that are to be completed after the issuance of the Second 5-Year Permit and prior to the date on which the District is to achieve full compliance with secondary treatment requirements. The District shall pay all such accrued stipulated penalties, together with interest at the rate of five percent (5%) per annum, within thirty (30) days following the date on which the District is to achieve full compliance with secondary treatment requirements. If the District is current (i.e. has “caught up”) by the due date for issuing a Notice to Proceed, all stipulated penalties and interest that have accrued after the issuance of the Second 5-year Permit, but prior to the due date for issuing a Notice to Proceed, shall be cancelled and forgiven.

c. Stipulated penalties shall be \$500/day for the first 180 days if the District fails to achieve full compliance with secondary treatment requirements by the date specified in the Conversion Schedule. For the next 185 days following the initial 180 days, stipulated penalties shall be \$1,000/day until the District achieves full compliance with secondary treatment requirements. After 365 days, stipulated penalties shall be \$2,000/day until the District achieves full compliance with secondary treatment requirements. Stipulated penalties under this paragraph shall be paid by the District quarterly, commencing on the first day of the next calendar quarter that is at least thirty (30) days following the date on which the stipulated penalty is incurred.

2. Except for force majeure events as provided above, and except as otherwise agreed by the Parties, if the District fails to undertake an Enhanced Treatment activity as required herein, the District shall pay stipulated penalties in the amount of \$200/day until the Enhanced Treatment activity has been undertaken. Stipulated penalties under this paragraph shall be paid by the District quarterly, commencing on the first day of the next calendar quarter that is at least thirty (30) days following the date on which the stipulated penalty is incurred and shall be in addition to and separate from any stipulated penalties payable under Section E.1, above.

3. In addition to or in lieu of seeking stipulated penalties, the Regional Board may seek judicial enforcement, including specific performance, of this Agreement, including without limitation the tasks and due dates set forth in the Conversion Schedule or the Enhanced Treatment requirements.

4. If the Executive Officer does not agree that a delay in the District's performance was caused by a force majeure event as defined in Section D.2 and the District does not stipulate in writing to the amount of penalties due after missing a milestone under the Conversion Schedule, the Regional Board may also impose stipulated penalties by issuing an administrative civil liability complaint, pursuant to Water Code Sections 13323-13326 and 13328. The Regional Board may hold administrative civil liability proceedings at any time, but any administrative civil liability order shall include the applicable payment due date and conditions of cancellation and forgiveness set forth in Sections E.1.a and E.1.b. The District may, but shall not be required to, waive the right to a hearing. If the District does not waive the right to a hearing, the District agrees not to challenge the daily amount of the stipulated penalties as set forth in this Agreement. The issues for hearing may include, without limitation, whether the District undertook or completed the required task or activity by the completion date(s) in question, the number of days or months for which stipulated penalties apply, and whether the delay, if any, was caused by force majeure as defined in Section D.2. The District agrees not to contest the use of the administrative civil liability process and waives any claim that Water Code Sections 13323-13326 and 13328 do not apply to administrative or judicial enforcement of the stipulated penalty provisions of this Agreement. However, the District reserves the right to petition to the State Board for review of any decision made by the Regional Board under this paragraph. Upon the filing of such a petition, the District and the Regional Board shall jointly request that the petition be held in abeyance until such time as it is determined, as applicable, that (i) the stipulated penalties at issue are not subject to cancellation and forgiveness on the date the Second 5-Year Permit becomes final as set forth in Section E.1.a, (ii) the stipulated penalties at issue are not subject to cancellation and forgiveness on the date for issuing the notice to proceed to the contractor as set forth in Section E.1.b, or (iii) the District has achieved full compliance with secondary treatment requirements, such that it can be determined whether any stipulated penalties are due and the amount thereof. The intent of the foregoing provisions is to ensure that there will be no more than three (3) occasions on which the State Board will be required to take action on a petition filed by the District with respect to the issue of stipulated penalties for completion dates under the Conversion Schedule. Following the expiration of the abeyance and either final action by the State Board on the District's petition or the dismissal of the District's petition by the State Board without review, the District may, at the times described in subparagraphs (i), (ii) and (iii), above, file a judicial appeal in accordance with California Water Code Section 13330 with respect to the

administrative civil liability order. In any such judicial appeal(s), the District agrees not to challenge the daily amount of the stipulated penalties as set forth in this Agreement. The issues in such judicial appeal(s) may include, without limitation, whether the District undertook or completed the required task or activity by the completion date(s) in question, the number of days or months for which stipulated penalties apply, and whether the delay, if any, was caused by force majeure as defined in Section D.2, provided that nothing in this paragraph 4 shall relieve the District of any obligation to exhaust applicable administrative remedies prior to seeking judicial relief.

5. The requirements of this Agreement with respect to (i) the Conversion Schedule, (ii) the Conversion Period, (iii) Enhanced Treatment, and (iv) stipulated penalties shall be incorporated into the findings adopted by the Regional Board in connection with the First and Second 5-Year Permits. In addition to the procedures set forth above for enforcement with respect to failure to meet the Conversion Schedule or to undertake Enhanced Treatment activities, the Regional Board may use any enforcement action or procedure to remedy any and all violations of the terms of any permit (including the First or Second 5-Year Permits) issued to the District, including, without limitation, any remedy set forth in the California Water Code. Nothing in this Agreement shall limit other remedies available to the Regional Board to enforce the terms and conditions of any permit or 401 certification issued to the District.

## F. MISCELLANEOUS PROVISIONS

1. **No Admission of Liability.** Except as set forth in this Agreement, nothing in this Agreement shall be construed as an admission of liability by any Party, or as a waiver of any future claims or causes of action, or as an agreement on the appropriate standard of review or causes of action or claims that may be asserted in challenging any permit issued to the District or the requirements thereof.

2. **Signatures.** This Agreement may be signed in counterparts. Signatures transmitted by facsimile shall be deemed to have the same force and effect as original signatures. Photocopies and facsimiles of counterparts shall be binding and admissible as originals.

3. **Representation by Counsel.** The Parties agree and confirm that this Agreement has been freely and voluntarily entered into by the Parties, each of which has been fully represented by counsel at every stage of the proceedings, and that no representations or promises of

any kind, other than as contained herein, have been made by any Party to induce any other Party to enter into this Agreement. The language of this Agreement shall be construed in its entirety, according to its fair meaning, and not strictly for or against any of the Parties.

**4. Integrated Agreement.** Except as otherwise set forth in this Settlement Agreement, this Agreement contains the entire understanding of the Parties concerning the matters contained herein and constitutes an integrated agreement.

**5. Subsequent Amendment.** This Agreement may not be altered, amended, modified, or otherwise changed except after a public meeting by a writing executed by each of the Parties. The Regional Board may, on a case-by-case basis in a public meeting, delegate to the Executive Officer the authority to approve and sign on behalf of the Regional Board written amendments to this Agreement.

**6. Effective Date.** This Agreement is effective when signed by all Parties and the effective date shall be date of the last signature.

**7. Notice Requirements.** Any notice provided under this Agreement shall be provided by facsimile and first class mail as follows:

**If to the District:**

Kamil S. Azoury, General Manager  
GOLETA SANITARY DISTRICT  
P. O. Box 906  
Goleta, CA 93116  
Telephone: 805-967-4519  
Facsimile: 805-964-3583

Richard G. Battles, Esq.  
MULLEN & HENZEL LLP  
112 E. Victoria St., P.O. Drawer 789  
Santa Barbara, CA 93102-0789  
Telephone: 805-966-1501  
Facsimile: 805-966-9204

Melissa A. Thorne, Esq.  
DOWNEY BRAND, LLP  
555 Capitol Mall, Tenth Floor  
Sacramento, CA 95814-4686  
Telephone: 916-444-1000  
Facsimile: 916-444-2100

**If to the Regional Board:**

Roger W. Briggs, Executive Officer  
REGIONAL WATER QUALITY CONTROL BOARD,  
CENTRAL COAST REGION  
895 Aerovista Place, Suite 101  
San Luis Obispo, CA 93401  
Telephone: 805-549-3147  
Facsimile: 805-543-0397

Lori T. Okun, Esq.  
STATE WATER RESOURCES CONTROL BOARD  
1001 I Street, P.O. Box 100  
Sacramento, CA 95814  
Telephone: 916-341-5165  
Facsimile: 916-341-5199

Marilyn H. Levin, Esq.  
OFFICE OF THE ATTORNEY GENERAL  
300 South Spring Street, Suite 1702  
Los Angeles, CA 90013-1233  
Telephone: 213-897-2612  
Facsimile: 213-897-2802

**8. Authority.** Each Party to this Agreement warrants that the individual executing this Agreement is duly authorized to do so and that execution is the act and deed of the Party.

**9. Counsel Approval.** Counsel for the represented Parties have negotiated, read, and approved as to form the language of this Agreement, the language of which shall be construed in its entirety according to its fair meaning and not strictly for or against any of the Parties.

**10. Fees and Costs.** The Parties acknowledge and agree that each of them will bear their own attorneys' fees, costs, including costs pursuant to C.C.P. section 1094.5, and expenses arising out of and/or connected with the disputes which are the subject of this Agreement, including but not limited to all attorneys' fees, costs, and expenses arising out of the Amended Petition or the negotiation, drafting, and execution of this Agreement, and any dispute arising out of this Agreement. The agreement that each party shall bear its own fees, costs, and expenses arising out of the claims alleged in the Amended Petition as of the date of this Agreement shall apply notwithstanding any provision that this agreement shall become null and void and regardless of when such fees or costs are incurred.

**11. Severability.** In the event that any provision of this Agreement is determined by a court of competent jurisdiction to be invalid, the remainder of this Agreement shall not be affected thereby and shall remain in full force and effect.

**12. Successors in Interest.** If applicable law allows the Executive Officer to issue waste discharge requirements at the time of consideration of the Second 5-Year Permit, then all provisions of this Agreement requiring the Executive Officer to make any recommendation shall not apply to the Executive Officer, but shall instead apply to the highest-ranking Regional Board staff person other than the Executive Officer. If applicable law does not include a process to petition to the State Board or its successor, then the District shall exhaust all other administrative remedies then available where this Agreement requires the District to file a petition to the State Board or otherwise exhaust administrative remedies. In all other cases, whenever in this Agreement one of the Parties hereto is named or referenced, the legal representatives, successors, and permitted assigns of such Party shall be included and all covenants and agreements contained in this Agreement by or on behalf of any of the Parties hereto shall bind and inure to the benefit of their respective successors and permitted assigns, whether so expressed or not.



**13. References.** This Agreement is made without respect to number or gender, and as such, any reference to a party hereto by any pronoun shall include the singular, the plural, the masculine, and the feminine.

**IN WITNESS WHEREOF**, the Parties have executed this Agreement on the dates indicated below.

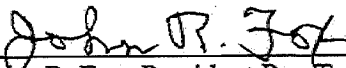

Dated: 11/19, 2009

CALIFORNIA REGIONAL WATER QUALITY  
CONTROL BOARD, CENTRAL COAST REGION

By:   
Roger W. Briggs, Executive Officer

Dated: 11/21, 2009

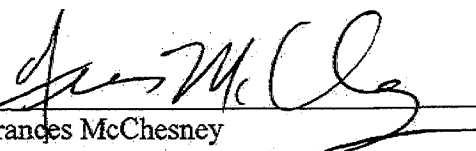
GOLETA SANITARY DISTRICT

By:   
John R. Fox, President ~~Sanitary District~~ 

By:   
Kamil S. Azoury,  
General Manger/Board Secretary

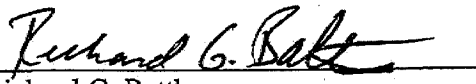
APPROVED AS TO FORM

Dated: 11/16, 2009

By:   
Frances McChesney  
Regional Board Counsel

Dated: 11/2, 2009

MULLEN & HENZELL L.L.P.

By:   
Richard G. Baffles  
Attorneys for Goleta Sanitary District

