CALIFORNIA
Water Boards

EDMUND G. BROWN JR.
GOVERNOR

MATTHEW RODRIQUEZ
SECRETARY FOR
ENVIRONMENTAL PROTECTION

Los Angeles Regional Water Quality Control Board

September 4, 2014

Robert DePrat
City of Beverly Hills
455 North Rexford Drive
Beverly Hills, CA 90210

VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED
CLAIM NO. 7012 3460 0000 2166 3454

SETTLEMENT OFFER NO. R4-2014-0079: OFFER TO PARTICIPATE IN THE EXPEDITED PAYMENT PROGRAM RELATING TO VIOLATIONS OF THE STATE WATER RESOURCES CONTROL BOARD GENERAL PERMIT FOR STORM WATER DISCHARGES ASSOCIATED WITH CONSTRUCTION AND LAND DISTURBANCE ACTIVITIES FOR THE CITY OF BEVERLY HILLS, ROXBURY PARK, 471 SOUTH ROXBURY DRIVE, BEVERLY HILLS (ORDER NO. 2009-0009-DWQ AS AMENDED BY ORDER NO. 2010-0014-DWQ, NPDES NO. CAS000002, WDID NO. 4 19C361559)

Dear Mr. DePrat:

This letter is to notify The City of Beverly Hills (hereinafter "Permittee" or "you") of alleged violations of the California Water Code identified in the State Water Resources Control Board's water quality data system and to allow the Permittee to participate in the Los Angeles Regional Water Quality Control Board's (Regional Board) Expedited Payment Program to address liabilities that may be assessed pursuant to California Water Code section 13399.33.

NOTICE OF VIOLATION:

Based on information in the Storm Water Multiple Application & Report Tracking System (SMARTS) as of September 4, 2014, the Regional Board alleges that the Permittee is in violation of the statewide General Permit for Storm Water Discharges Associated with Construction and Land Disturbance Activities Order No. 2009-0009-DWQ as amended by 2010-0014-DWQ (Order) for failure to submit the **Fiscal Year 2011-2012 and 2012-2013** Annual Reports for the construction project located at 471 South Roxbury Drive in the City of Beverly Hills. The Annual Reports are due to the Regional Board by **September 1 of each year** as required by Section I.4.c of the Order. As of September 4, 2014, the Permittee has failed to submit the Annual Reports requested in the Notice of Non-Compliance (NNC) and Notice of Violation (NOV) issued on November 1, 2013 and March 26, 2014, respectively. The Permittee will have the opportunity to address the alleged violations as discussed below.

STATUTORY LIABILITY:

Pursuant to California Water Code section 13399.33(c), the Permittee is subject to a minimum penalty of not less than one thousand dollars ($1,000) plus staff costs for failing to submit **each** Annual Report within sixty (60) days after the NNC was sent. The Permittee is also subject to discretionary administrative civil liabilities of up to ten thousand dollars ($10,000) for each day in which the violation occurs. These minimum and discretionary administrative civil liabilities may be assessed by the Regional Board beginning with the date that the violations first occurred. The formal enforcement action that the Regional Board uses to assess such liability is an administrative civil liability complaint, although the Regional Board may instead refer such matters to the Attorney General's Office for prosecution. If referred to the Attorney General for prosecution, the Superior Court may assess up to twenty-five thousand dollars ($25,000) per violation.

PERMITTEE'S OPTIONS FOR RESPONSE TO OFFER:

You have two options to respond as outlined below. However, the Expedited Payment Program does not address or resolve liability for any violation that is not specifically identified in the corresponding NNC and NOV regardless of the date that the violation occurred.

1. **Accept the Expedited Payment Program offer** by complying with the Order and submitting the requested Annual Reports and agreeing to pay a settlement of **$2,500**. The minimum administrative civil liability pursuant to California Water Code section 13399.33(c) is $1,000 **per report**. Staff costs incurred in seeking compliance with California Water Code Chapter 5.9, the Storm Water Enforcement Act of 1998, is $500. This is a Conditional Offer subject to certain terms and conditions set forth below. If you choose this option **you must sign and submit the enclosed Acceptance and Waiver form by October 6, 2014.** The form provides submittal instructions. Final closure on this action is only possible after ultimate submission of the settlement amount.

   Please submit a hard copy of the Annual Reports and the Acceptance and Waiver form to:

   Barbara Guia, Enforcement Unit
   Los Angeles Regional Water Quality Control Board
   320 West 4th Street, Suite 200
   Los Angeles, California 90013

   In response to the Conditional Offer and payment in settlement of this enforcement action, the Regional Board will forego issuance of a formal administrative complaint, will not refer the violation to the Attorney General, and will waive its right to seek additional discretionary civil liabilities for the violations identified in the NNC and NOV.

2. **Contest the non-filing violation** by submitting in writing, the basis of your challenge with supporting evidence. For example, you have evidence that you previously submitted your Annual Reports or you are no longer in business. If you choose this option, you must **submit your written documentation by October 6, 2014.** We will review your submission, and if we agree with you, we will notify you in writing that you are no longer considered in violation of the permit and that our enforcement action has been terminated.

If you do not respond in a manner described in the above options, the Regional Board will prepare an administrative civil liability complaint for the violations cited above in the Notice of Violation section. The liability amount sought in the administrative civil liability complaint and/or imposed by the Regional Board may be higher than the liability amount set forth in this Conditional Offer. Moreover, staff costs associated with formal enforcement may be considered in the recommended liability amount.

CONDITIONS FOR REGIONAL BOARD ACCEPTANCE OF RESOLUTION:

This offer to participate in the Expedited Payment Program is conditional upon the Regional Board's receipt of confirmation that the Permittee has submitted the Annual Reports to the Regional Board on or before **October 6, 2014**. If you choose not to or fail to submit the Annual Reports on or before that date, this offer will be deemed withdrawn and a formal enforcement action will be pursued. After the offer is deemed withdrawn, Regional Board staff will notify you of the impending enforcement action and any associated deadlines.

Should you participate in the Expedited Payment Program, the settlement will be published in the following manner: Federal regulations require the Regional Board to publish notice of, and to provide at least thirty (30) days for public comment on, any settlement of an enforcement action addressing NPDES permit violations (40 C.F.R. section 123.27(d)(2)(iii)). Upon receipt of the Permittee's Acceptance and Waiver, the Annual Reports, and other requested technical reports on or before **October 6, 2014**, Regional Board staff will publish a notice of the proposed resolution of the failure to submit the reports alleged in the NNC and NOV attached.

If no comments are received within the notice period, the Regional Board Executive Officer will execute the Acceptance and Waiver as a stipulated order assessing the uncontested penalty amount pursuant to Water Code section 13399.33 as described under the heading "Statutory Liability" herein. You will then be notified that payment is due within 30 days. Failure to pay the penalty within that time frame may result in further liability, referral of the matter to the Attorney General, and/or may void the offer to participate in this Expedited Payment Program.

If, however, significant comments are received in opposition to the settlement, this offer may be withdrawn. In that case, the Permittee's waiver pursuant to the Acceptance and Waiver will also be treated as withdrawn. In that case, the violations will be addressed in a liability assessment proceeding. At the liability assessment hearing the Permittee will

be free to make arguments as to any of the alleged violations, and the Permittee's agreement to accept this conditional offer will not in any way be binding or used as evidence against the Permittee. The Permittee will be provided with further information on the liability assessment proceeding.

Should you have any questions about this Conditional Offer or Notice of Violation, please contact Enforcement Unit staff Ms. Barbara Guia at (213) 620-6361, bguia@waterboards.ca.gov or Ms. Pavlova Vitale at (213) 576-6751, pvitale@waterboards.ca.gov regarding this matter.

Sincerely,

Paula Rasmussen

Paula Rasmussen
Assistant Executive Officer

Enclosures:
Notice of Non-Compliance dated November 1, 2013
Notice of Violation dated March 26, 2014
Acceptance of Conditional Resolution and Waiver of Right to Hearing; (proposed) Order

cc: (via email)
Mayumi Okamoto, Office of Enforcement, State Water Resources Control Board

Settlement Offer No. R4-2014-0079
WDID No. 4 19C361559

ACCEPTANCE OF CONDITIONAL RESOLUTION AND WAIVER OF RIGHT TO HEARING; (Proposed) ORDER

2014 DEC 22 PM 1 04
CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
LOS ANGELES REGION

City of Beverly Hills
Settlement Offer No. R4-2014-0079
WDID No. 4 19C361559

By signing below and returning this Acceptance of Conditional Resolution and Waiver of Right to Hearing (Acceptance and Waiver) to the Los Angeles Regional Water Quality Control Board (Regional Board), City of Beverly Hills (Permittee) hereby accepts the "Offer to Participate in Expedited Payment Program" and waives the right to a hearing before the Regional Board to dispute the allegations of violations described in the Notice of Non-Compliance (NNC) and Notice of Violation (NOV), which are attached and incorporated herein by reference.

The Permittee agrees that the Conditional Offer shall serve as a complaint pursuant to Article 2.5 of the California Water Code and that no separate complaint is required for the Regional Board to assert jurisdiction over the alleged violations through its Chief Prosecutor. The Permittee agrees to pay the administrative civil liability authorized by California Water Code section 13399.30, in the sum of $2,500 (Expedited Payment Amount) which shall be deemed payment in full of any civil liability pursuant to California Water Code section 13399.30 that otherwise might be assessed for the violations described in each NNC and NOV for each missing annual report. The Permittee understands that this Acceptance and Waiver waives its right to contest the allegations in the NNC, NOV and the amount of civil liability for such violations.

The Permittee understands that this Acceptance and Waiver does not address or resolve liability for any violation that is not specifically identified in each NNC and NOV.

Upon execution by the Permittee, the completed Acceptance and Waiver and Annual Report(s) shall be returned to:

Barbara Guia, Enforcement Unit
Expedited Payment Program
Los Angeles Regional Water Quality Control Board
320 West 4th Street, Suite 200
Los Angeles, California 90013

The Permittee understands that federal regulations set forth at title 40, Code of Federal Regulations, section 123.27(d)(2)(iii) require the Regional Board to publish notice of and provide at least thirty (30) days for public comment on any proposed resolution of an enforcement action addressing NPDES permit violations. Accordingly, this Acceptance and Waiver, prior to execution by the Regional Board Executive Officer, will be published as required by law for public comment.

If no comments are received within the notice period that causes the Regional Board Executive Officer to question the Expedited Payment Amount, the Regional Board Executive Officer will execute the Acceptance and Waiver.

The Permittee understands that if significant comments are received in opposition to the Expedited Payment Amount, the offer on behalf of the Regional Board to resolve the violations set forth in the NNC and NOV may be withdrawn. In that circumstance, the Permittee will be advised of that withdrawal, and an administrative civil liability complaint may be issued and the matter may be set for a hearing before the Regional Board. For such a liability hearing, the Permittee understands that this Acceptance and Waiver executed by the Permittee will be treated as a settlement communication and will not be used as evidence in that hearing.

The Permittee further understands that once this Acceptance and Waiver is executed by the Regional Board Executive Officer, the full payment required by the deadline set forth below is a condition of this Acceptance and Waiver. In accordance with California Water Code section 13399.37(a), funds collected for violations pursuant to sections 13399.33(c) and 13399.33(d) shall be deposited in the Waste Discharge Permit Fund. Accordingly, the $2,500 liability including staff costs shall be paid by a cashiers or certified check made out to the "State Water Resources Control Board" referencing this Order number for deposit into the Waste Discharge Permit Fund. The payment must be submitted to the State Water Resources Control Board no later than thirty (30) calendar days after the date the Acceptance and Waiver is executed by the Regional Board Executive Officer.

Please mail check to:

State Water Resources Control Board
Re: Order No. R4-2014-0079
Division of Administrative Services, Accounting Branch
1001 I Street, 18th Floor, [95814]
P.O. Box 1888
Sacramento, California 95812-1888

I hereby affirm that I am duly authorized to act on behalf of and to bind the Permittee in the making and giving of this Acceptance and Waiver.

City of Beverly Hills

By: _____ December 11, 2014
(Signed Name) (Date)

Laurence S. Wiener City Attorney
(Printed or Typed name) (Title)

IT IS SO ORDERED PURSUANT TO CALIFORNIA WATER CODE SECTION 13399.30

Date: _____

By: _____
Samuel Unger, P.E.
Executive Officer