

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SANTA ANA REGION

In the Matter of:)	
)	
City of Huntington Beach)	Order No. R8-2011-0021 (Proposed)
)	
Complaint No. R8-2010-0004 for Administrative Civil Liability)	Settlement Agreement and Stipulation for Entry of Administrative Civil Liability Order; Order (Proposed)

Section I: Introduction

This Settlement Agreement and Stipulation for Order ("Stipulation") and Administrative Civil Liability Order (the "Order") are entered into by and between the Regional Water Quality Control Board Prosecution Staff ("Prosecution Staff") and the City of Huntington Beach ("City") (collectively "Parties") in reference to an administrative proceeding initiated by the issuance of Administrative Civil Liability Complaint No. R8-2010-0004, dated July 29, 2010 ("Complaint"). This Stipulation is presented to the Executive Officer of the Santa Ana Region, California Regional Water Quality Control Board ("Regional Board") as the Regional Board's delegee for adoption as an Order, by settlement, pursuant to California Government Code section 11415.60.

Section II: Recitals

1. The Complaint alleges that the City constructed the Oak View Branch Library ("Library"), located at 17241 Oak Lane City of Huntington Beach, Orange County, California, in two phases. The two phases were completed on October 2, 1995 and April 19, 1999, respectively. The City also operates the Library. On January 23, 2009, the City reported that sewage was being discharged from the Library to Nichols Street via an inadvertent connection to an old sewer line that was connected to a septic tank, which was re-routed at some point to discharge to Nichols Street via a curb core. Surface flow along the curb and gutter of Nichols Street ultimately flows into the City's storm drain system via catch basins located on Nichols Street and Warner Avenue, which discharges into the East Garden Grove Wintersburg Channel and ultimately into Bolsa Bay and Bolsa Chica Ecological Reserve, waters of the United States.
2. The City is subject to the requirements set forth in Chapter 5 of the Water Quality Control Plan for the Santa Ana River Basin ("Basin Plan"), which prohibit the discharge of untreated sewage to surface waters. The City is also subject to the requirements set forth in Municipal Separate Storm Sewer System Permit, Order No. R8-2002-0010, National Pollutant Discharge Elimination System Permit no. CAS618030 and Order No.

R8-2009-0030, which renewed Order No. R8-2002-0010 on May 22, 2009 (collectively "MS4 Permits"). The MS4 Permits prohibit the discharge of non-storm water into the City's municipal separate storm sewer system and the discharge of storm water containing pollutants that have not been reduced to the maximum extent practicable to waters of the United States. The MS4 Permits also require that discharges from the City's municipal separate storm sewer system be in compliance with discharge prohibitions contained in Chapter 5 of the Basin Plan.

3. The Complaint alleges that the City violated the MS4 Permits on 4,854 days from October 2, 1995 to January 15, 2009 by discharging sewage to the City's storm drain system and ultimately waters of the United States. The Complaint, as issued, recommended imposing administrative civil liability pursuant to California Water Code ("CWC") section 13385(c) totaling one hundred fifty thousand seven hundred fifty dollars (\$150,750.00) against the City for alleged violations of the MS4 Permits. That amount included twenty-five thousand five hundred dollars (\$25,500.00) in staff costs.

4. The Parties have engaged in settlement negotiations and agree to settle the matter without administrative or civil litigation and by presenting this Stipulation to the Executive Officer for adoption as an Order pursuant to California Government Code section 11415.60. The Prosecution Staff believes that the resolution of the alleged violations is fair and reasonable and fulfills its enforcement objectives; that no further action is warranted concerning the specific violations alleged in the Complaint except as provided in this Stipulation; and that this Stipulation is in the best interest of the public.

5. To resolve by consent and without further administrative proceedings all the alleged violations set forth in the Complaint, the Parties have agreed to the assessment of fifty thousand dollars (\$50,000.00) against the City. This liability amount is at least 10 percent higher than the economic benefit derived from the violations, and is within the maximum and minimum liability amounts, as required by the State Water Resources Control Board's Water Quality Enforcement Policy (Enforcement Policy). The liability amount proposed in the Complaint, which was determined using the penalty methodology in the Enforcement Policy, warrants adjustment as a result of the Prosecution Staff's consideration of the available evidence of the City's culpability, the timing of the action in comparison to the date of the alleged violations, the City's cleanup and cooperation efforts, and consideration of litigation risks.

Section III: Stipulations

The Parties stipulate to the following:

6. **Payment of Amount:** The City hereby agrees to pay a total liability of fifty thousand dollars (\$50,000.00) by check made payable to the "State Water Pollution Cleanup and Abatement Account", no later than 30 days following the execution of the Order by the Executive Officer of the Regional Board. The check shall reference

Complaint No. R8-2010-0004. Payment shall be submitted to Steve Mayville, Senior Water Resource Control Engineer, at the address provided in Paragraph 8, Party Contacts.

7. **Compliance with Applicable Laws:** The City understands that payment of the liability amount of \$50,000.00 in accordance with the terms of this Order and/or compliance with the terms of this Order is not a substitute for compliance with applicable laws, and that continuing violations of the type alleged in the Complaint may subject it to further enforcement, including additional administrative civil liability.

8. **Party Contacts for Communications related to this Stipulation and Order:**

For the Regional Board:

Steve Mayville, Senior WRCE
Santa Ana RWQCB
3737 Main Street, Suite 500
Riverside, CA 92501-3339
SMayville@waterboards.ca.gov
(951) 782-4992

For the City:

Tony Olmos, City Engineer
City of Huntington Beach
2000 Main Street
Huntington Beach, CA 92648
tony.olmos@surfcity-hb.org
(714) 536-5431

John M. Fujii, Sr. Deputy City Attorney
City of Huntington Beach
2000 Main Street, 4th Floor
Huntington Beach, CA 92648
jfujii@surfcity-hb.org
(714) 536-5623

9. **Attorneys' Fees and Costs:** Each Party shall bear all attorneys' fees and costs arising from the Party's own counsel in connection with the matters set forth herein.

10. **Matters Addressed by this Stipulation:** Upon adoption by the Regional Board as an Order, this Stipulation represents a final and binding resolution and settlement of all liabilities, claims, violations, or causes of action alleged in the Complaint, or which could have been asserted against the City as of the Effective Date of this Stipulation based on the allegations in the Complaint. The provisions of this Paragraph are expressly conditioned on the full payment of the liability amount of \$50,000 no later than 30 days following the execution of the Order by the Executive Officer of the Regional Board as specified in Paragraph 6 herein.

11. **City's Denial of Liability:** In settling this matter, the City expressly denies the violations alleged in the Complaint. Neither this Stipulation nor any payment pursuant to the Order shall constitute evidence of, or be construed as, a finding, adjudication, or acknowledgement of any fact, law, or liability. In addition, neither this Stipulation nor

any payment pursuant to the Order shall be construed as an admission of violation of any law, rule, or regulation. This Stipulation and/or any actions of payment pursuant to the Order may, however, constitute evidence in actions seeking compliance with this Stipulation. In the event of any future enforcement actions by the Regional Board, the City agrees that this Order may be used as evidence of a prior enforcement action.

12. **Public Notice:** The City and the Regional Board Prosecution Team understand that this Stipulation and Order must be noticed for a 30-day public review and comment period prior to consideration by the Regional Board or its delegee. In the event objections are raised during the public review and comment period, the Regional Board or the Executive Officer may, under certain circumstances, require a public hearing regarding the Stipulation and Order. In that event, the Parties agree to meet and confer concerning any such objections, and may agree to revise or adjust the proposed Order as necessary or advisable under the circumstances.

13. **Addressing Objections Raised During Public Comment Period:** The Parties agree that the procedure contemplated for adopting the Order by the Regional Board and review of this Stipulation by the public is lawful and adequate. In the event procedural objections are raised prior to the Order becoming effective, the Parties agree to meet and confer concerning any such objections, and may agree to revise or adjust the procedure as necessary or advisable under the circumstances.

14. **Interpretation:** This Stipulation and Order shall be construed as if the Parties prepared it jointly. Any uncertainty or ambiguity shall not be interpreted against any one Party. The City is represented by counsel in this matter.

15. **Modification:** This Stipulation and Order shall not be modified by any of the Parties by oral representation made before or after its execution. All modifications must be in writing, signed by all Parties, and approved by the Regional Board or its delegee.

16. **Necessity for Written Approvals:** All approvals and decisions of the Regional Board under the terms of this Order shall be communicated to the City in writing. No oral advice, guidance, suggestions, or comments by employees or officials of the Regional Board regarding submissions or notices shall be construed to relieve the City of its obligation to obtain any final written approval required by this Order.

17. **If Order Does Not Take Effect:** In the event that this Order does not take effect because it is not approved by the Regional Board, or its delegee, or is vacated in whole or in part by the State Water Resources Control Board or a court, the Parties acknowledge that they expect to proceed to a contested evidentiary hearing before the Regional Board to determine whether to assess administrative civil liability for the underlying alleged violations, unless the Parties agree otherwise. The Parties agree that all oral and written statements and agreements (including, but not limited to, this Stipulation) made during the course of settlement discussions will not be admissible as

evidence in the hearing. The Parties agree to waive any and all objections based on settlement communications in this matter, including, but not limited to:

- a. Objections related to prejudice or bias of any of the Regional Board members or their advisors and any other objections that are premised in whole or in part on the fact that the Regional Board members or their advisors were exposed to some of the material facts and the Parties' settlement positions as a consequence of reviewing the Stipulation and/or the Order, and therefore may have formed impressions or conclusions prior to any contested evidentiary hearing on the Complaint in this matter; or
- b. Laches or delay or other equitable defenses based on the time period for administrative or judicial review to the extent this period has been extended by these settlement proceedings.

18. **Waiver of Hearing:** The City has been informed of the rights provided by CWC section 13323, subdivision (b), and hereby waives its right to a hearing before the Regional Board prior to the adoption of the Order.

19. **Waiver of Right to Petition:** The City hereby waives its right to petition the Regional Board's adoption of the Order for review by the State Water Resources Control Board, and further waives its rights, if any, to appeal the same to a California Superior Court and/or any California appellate level court.

20. **City's Covenant Not to Sue:** The City covenants not to sue or pursue any administrative or civil claim(s) against any State Agency or the State of California, their officers, Board Members, employees, representatives, agents, or attorneys arising out of or relating to any matter expressly addressed by the Complaint and/or this Stipulation and Order.

21. **Authority to Bind:** Each person executing this Stipulation in a representative capacity represents and warrants that he or she is authorized to execute this Stipulation on behalf of and to bind the entity on whose behalf he or she executes the Stipulation.

22. **Counterpart Signatures:** This Stipulation may be executed and delivered in any number of counterparts, each of which when executed and delivered shall be deemed to be an original, but such counterparts shall together constitute one document.

23. **Severability:** This Stipulation and Order are severable; should any provision be found invalid the remainder shall remain in full force and effect.

24. **Effective Date:** This Stipulation is effective and binding on the Parties upon the entry of this Order by the Regional Board or its delegee, which incorporates the terms of this Stipulation.

IT IS SO STIPULATED.

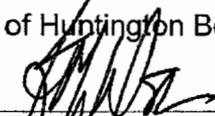
California Regional Water Quality Control Board,
Santa Ana Region Prosecution Team

Date: 2-10-12

By: 
Michael J. Adackapara,
Division Chief

City of Huntington Beach

Date: 2/9/12

By: 
Fred Wilson
City Manager

Approved as to Form:

California Regional Water Quality Control Board,
Santa Ana Region Prosecution Team

Date: _____

By: _____
Ann K. B. Carroll,
State Water Resources Control Board
Office of Enforcement
Attorney for the Prosecution Team

City of Huntington Beach

Date: 2-8-12

By: 
Jennifer McGrath
City Attorney
Attorney for the City of Huntington Beach

Order of the Regional Board

25. The Regional Board incorporates the foregoing Stipulation, set forth in Paragraphs 1 through 24 above, by this reference, as if set forth fully herein.

26. In accepting the foregoing Stipulation, the Regional Board has considered, where applicable, each of the factors prescribed in CWC sections 13327 and 13385(e) as provided for in the Enforcement Policy. The Regional Board's consideration of these factors is based upon information obtained by the Prosecution Team in investigating the allegations in the Complaint or otherwise provided to the Regional Board. In addition to these factors, this settlement recovers the costs incurred by the Prosecution Team in investigating and pursuing enforcement of the allegations addressed herein.

27. This is an action to enforce the laws and regulations administered by the Regional Board. The Regional Board finds that issuance of this Order is exempt from the provisions of the California Environmental Quality Act (Public Resources Code, sections 21000 et seq.), in accordance with section 15321(a)(2), Title 14, of the California Code of Regulations.

28. The Executive Officer is authorized to refer this matter directly to the Attorney General for enforcement if the City fails to perform any of its obligations under the Order.

Pursuant to CWC section 13323 and California Government Code section 11415.60, **IT IS HEREBY SO ORDERED** on behalf of the California Regional Water Quality Control Board, Santa Ana Region.

Kurt V. Berchtold
Executive Officer

Date: _____