

## **Attachment A**

## SETTLEMENT AGREEMENT AND MUTUAL RELEASE

### ADMINISTRATIVE CIVIL LIABILITY

#### COMPLAINT NO. R2-2008-0070

THIS SETTLEMENT AGREEMENT AND MUTUAL RELEASE – ADMINISTRATIVE CIVIL LIABILITY COMPLAINT NO. R9-2008-0070 (“Agreement”) is made by and between Sewerage Agency of Southern Marin (“SASM”) and the Prosecution Team (“Prosecution Team”) of the Regional Water Quality Control Board, San Francisco Bay (“Regional Water Board”) (collectively, the “Parties”) and effective as of the last date of the signing Parties, with reference to the following facts:

#### RECITALS:

- A. On or about August 11, 2008, the Assistant Executive Officer of the Regional Water Board issued Administrative Civil Liability Complaint No. R8-2008-0070 (the “Complaint”), which sought to impose an Administrative Civil Liability order on SASM for discharges from its treatment plant located in Mill Valley that occurred on January 24 and January 31, 2008 (**Attachment B**)
- B. SASM denies the allegations contained in the Complaint. The Parties, through their respective representatives, have reached a proposed settlement that includes the issuance of an Administrative Civil Liability Order (**Attachment A** hereto) for the discharges from SASM’s treatment plant and other discharges from SASM’s facilities that occurred during the period January 1, 2001 to September 30, 2008, as set forth in **Attachment C** hereto. SASM enters into this Agreement without the admission of any fact or adjudication of any issue in this matter. If the Regional Water Board’s Executive Officer or Board Chair chooses to have a hearing on this matter, the Parties agree to present the proposed Administrative Civil Liability Order to the Regional Water Board for issuance at a publicly noticed Regional Water Board Meeting.
- C. Under this Settlement, in exchange for a full release of all claims arising out of the specified alleged violations in the Complaint and the discharges described in **Attachment C**, SASM will pay a total liability assessment of \$1,600,000.00 as set forth herein.
- D. As a material condition of this Agreement, SASM represents and warrants that the contributions to the projects that would serve as Supplemental Environmental Projects (“SEPs”) under this Agreement (as set forth in **Attachment D** hereto) are not and were not previously being contemplated, in whole or in part, by SASM for any purpose other than to satisfy, in part, SASM’s obligations in

settling the Complaint and that SASM's contributions to the projects that serve as SEPs would not be made in the absence of this enforcement action.

E. In order to facilitate the approval of the proposed settlement, and to carry out its terms, the Parties desire to enter into the following agreement.

**NOW, THEREFORE**, in exchange for their mutual promises and for other good and valuable consideration specified herein, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. The Parties agree to support, advocate for, and promote the proposed Administrative Civil Liability Order set forth in **Attachment A**.
2. The Parties covenant and agree that they will not contest the proposed Administrative Civil Liability Order before the Regional Water Board, the State Water Resources Control Board, or any court.
3. SASM agrees to pay the proposed Administrative Civil Liability Order of \$1,600,000.00 for the discharges from the SASM treatment plant and other discharges from SASM's facilities that occurred during the period January 1, 2001 to September 30, 2008, as follows:
  - a. Pay \$800,000.00 to the State Water Resources Control Board Cleanup and Abatement Account in three payments, with the first payment of \$300,000.00 being due as provided in Section 4 below. The second payment of \$250,000.00 must be received by April 14, 2010 at the office of the Regional Water Board. The third and final payment of \$250,000 must be received by April 14, 2011 at the office of the Regional Water Board. The payments are not subject to interest thereon.
  - b. Fund and implement Supplemental Environmental Projects ("SEPs") in the amount of an additional \$800,000.00 as follows:
    1. \$200,000.00 to the Richardson Bay Aramburu Island Project; and
    2. \$600,000.00 for the Private Lateral Replacement Program.

Each of these SEPs is described in detail in **Attachment D** hereto, including schedules for implementation.

4. SASM will make the first payment of \$300,000.00 by delivering a check to the Executive Officer of the Regional Water Board within 30 days of approval by the Regional Water Board or its Executive Officer of the proposed Administrative Civil Liability Order.

5. SASM agrees that if it fails to make any payment as provided herein or to implement any SEP as set forth in the schedule for that SEP by the deadline, all payments due after that, including SEP payments, become immediately due and payable to the State Water Resources Control Board's Cleanup and Abatement Account, and that the Regional Water Board may immediately seek an order under Water Code Section 13328 in a court of competent jurisdiction requiring payment of the entire remaining amount.

6. The Prosecution Team agrees to submit a request to the Regional Water Board asking that it adopt a resolution to be submitted to the Cleanup and Abatement Account to request additional money from the CAA (up to \$800,000) to support the Richardson Bay Aramburu Island Project.

7. SASM agrees that if it or a related agency publicizes the SEPs or the results of the SEPs, it will state in a prominent manner that the SEP is being undertaken as part of the settlement of this enforcement action by the San Francisco Regional Water Quality Control Board.

8. In the event that any of the SEPs described in **Attachment D** cannot be performed for any reason as determined by the Executive Officer, then the penalty amount designated for that SEP shall be directed to another SEP approved by the Executive Officer after consultation with SASM's representatives. In the event that no alternative SEP(s) are agreed upon between the Executive Officer and SASM following a 90-day consultation period, the remaining funds shall become immediately due and payable to the State Water Resources Control Board's Cleanup and Abatement Account. The approval of another SEP by the Executive Officer as contemplated by this paragraph cannot be unreasonably withheld.

9. The Regional Water Board agrees that this settlement fully resolves the allegations in the Complaint and all discharges listed in **Attachment C** and that it will not to pursue any action of any kind for those discharges.

10. Performance of paragraph 3 and 4 (and if applicable, paragraphs 5 and 8) shall effect a mutual release and discharge of the Parties and their respective successors and assigns, agents, attorneys, employees, officers, and representatives from any and all claims, demands, actions, causes of action, obligations, damages, penalties, liabilities, debts, losses, interest, costs, or expenses of whatever nature, character, or description, that they may have or claim to have against one another by reason of any matter or omission arising from any cause whatsoever relating to the proposed Administrative Civil Liability Order, the discharges, or the Complaint.

11. SASM agrees to a limited waiver of the requirement to have a hearing on the Complaint within 90 days of service under Water Code section 13323(b)

conditioned on the hearing on the proposed settlement and on the Complaint, if necessary, being conducted at the next regularly scheduled board meeting.

In the event that the Regional Water Board does not approve the proposed Administrative Civil Liability Order or the Order 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 at the next scheduled Regional Water Board meeting.

The Parties also agree that, in the event that the Regional Water Board does not approve the proposed settlement, they waive any and all objections related to their attempt to settle this matter, including, but not limited to, objections related to prejudice or bias of any of the board members or their advisors and any other objections that are premised in whole or in part on the fact that the board members and their advisors were exposed to some of the material facts and the Parties' settlement positions and, therefore, may have formed impressions or conclusions prior to conducting an evidentiary hearing on the merits of the Administrative Civil Liability Complaint.

12. The Parties intend that the procedure that has been adopted for the approval of the settlement by the Parties and review by the public, as reflected by the proposed Administrative Civil Liability Order and this Agreement will be legally sufficient. In the event that objections are raised during the public comment period for the proposed Administrative Civil Liability Order, 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.

13. Each person executing this Agreement in a representative capacity represents and warrants that he or she is authorized to execute this Agreement on behalf of and to bind the entity on whose behalf he or she executes the Agreement.

14. This Agreement shall not be construed against the Party preparing it, but shall be construed as if the Parties jointly prepared this Agreement and any uncertainty and ambiguity shall not be interpreted against any one Party.

15. This Agreement shall not be modified by any of the Parties by oral representation made before or after the execution of this Agreement. All modifications must be in writing and signed by the Parties.

16. Each Party to this Agreement shall bear its own attorneys' fees and costs arising from that Party's own counsel in connection with the matters referred to herein.

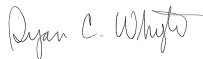
17. The Parties shall execute and deliver all documents and perform all further acts that may be reasonably necessary to effectuate the provisions of this Agreement.

18. This Agreement shall be executed as duplicate originals, each of which shall be deemed an original Agreement, and all of which shall constitute one agreement to be effective as of the Effective Date. Facsimile or electronic signatures are acceptable.

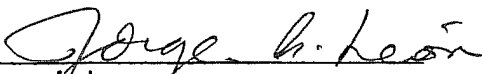
19. This Agreement is entered into and shall be construed and interpreted in accordance with the laws of the State of California.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the date set forth above.

**REGIONAL BOARD PROSECUTION TEAM by:**

 Date: \_\_\_\_\_  
Dyan C. Whyte  
Assistant Executive Officer


**APPROVED AS TO FORM:**

 Date: 2/13/09  
Jorge A. Leon  
Office of Chief Counsel  
Counsel to the Regional Water Board Prosecution Team

**SEWERAGE AGENCY OF SOUTHERN MARIN by:**

 Date: 2/12/09  
Jim Jacobs, President  
Sewerage Agency of Southern Marin Board

**APPROVED AS TO FORM:**

 Date: 2/12/09  
Melissa A. Thorne  
Downey Brand LLP  
Counsel to the Sewerage Agency of Southern Marin