CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN FRANCISCO BAY REGION

In the matter of:	)	
	)	
CITY OF SAN BRUNO	)	**Order No. R2-2011-0044**
	)	
	)	
Administrative Civil Liability	)	**Settlement Agreement and Stipulation**
Complaint No. R2-2010-0004	)	**for Entry of Order; Order**
_____	)	

Section I: INTRODUCTION

This Settlement Agreement and Stipulation for Entry of Administrative Civil Liability Order ("Stipulated Order") is entered into by and between the Assistant Executive Officer of the San Francisco Bay Regional Water Quality Control Board ("Regional Water Board"), on behalf of the Regional Water Board Prosecution Staff ("Prosecution Staff"), and the City of San Bruno ("Discharger") (Collectively the "Parties") and is presented to the Regional Water Board, or its delegee, for adoption as an order by settlement, pursuant to Government Code section 11415.60.

Section II: RECITALS

1. The Discharger and the City of South San Francisco own and operate a wastewater treatment plant ("WWTP") located at 195 Belle Air Road, South San Francisco, San Mateo County. The WWTP and appurtenant collection system operate under WDR Order No. R2-2008-0094 (NPDES Permit No. CA0038130) and were previously subject to WDR Order No. R2-2003-0010 (NPDES Permit No. CA 0038130) from April 1, 2003, to December 31, 2008. The collection system is also subject to State Water Resources Control Board ("State Water Board") Order No. 2006-0003, *Statewide General Waste Discharge Requirements for Sanitary Sewer Systems*.

2. On February 16, 2010, the Assistant Executive Officer of the Regional Water Board issued Administrative Civil Liability Complaint No. R2-2010-0004 ("Complaint") to the Discharger (Attachment A). The Complaint recommends imposing an administrative civil liability totaling $633,600 for alleged violations of the Water Code associated with 148 sanitary sewer overflows ("SSO") that occurred from the Discharger's collection system at various locations between December 1, 2004, and December 31, 2009 (Collectively, "Alleged ACL Violations"). The proposed administrative civil liability includes staff costs of $30,000.

3. On August 2, 2010, the Assistant Executive Officer of the Regional Water Board issued a Tentative Cease and Desist Order (Tentative CDO) to the Discharger requiring certain actions to reduce and eliminate sanitary sewer overflows from its sanitary sewer

collection system. The deadline for public comment on the Tentative CDO was September 1, 2010.

4. The Parties have engaged in settlement negotiations and agree to settle the matter without administrative or civil litigation and by presenting this Stipulated Order to the Regional Water Board, or its delegee, for adoption as an order by settlement pursuant to Government Code section 11415.60. The Prosecution Staff believes that the resolution of the Alleged ACL Violations is fair and reasonable and fulfills its enforcement objectives, that no further action is warranted concerning the Alleged ACL Violations except as provided in this Stipulated Order and that this Stipulated Order is in the best interest of the public.

5. To resolve the Alleged ACL Violations by consent and without further administrative proceedings, the Parties have agreed to the imposition of $621,100 in liability against the Discharger. The reduction in liability from that proposed in the Complaint is based on two considerations; (1) the SSO that occurred September 30, 2009, to October 5, 2009, originated from a private sewer lateral, rather than from the Discharger's collection system, and (2) mitigating circumstances warranted a minor reduction in the degree of culpability associated with the SSO that occurred December 6, 2006 to November 19, 2007.

6. Of the $621,100 in liability, the Discharger shall pay a total of $325,550 to the State Water Resources Control Board Cleanup and Abatement Account. This amount includes recovery of the $30,000 in staff costs identified in the Complaint. The remaining $295,550 in liability shall be suspended conditioned upon completion of the Supplemental Environmental Projects ("SEPs") as set forth in this Stipulated Order.

Section III: STIPULATIONS

The Parties stipulate to the following:

7. Administrative Civil Liability: The Discharger hereby agrees to the imposition of an administrative civil liability totaling $621,100.

a. Within thirty (30) days of issuance of the Order, the Discharger agrees to remit, by check, THREE HUNDRED TWENTY FIVE THOUSAND, FIVE HUNDRED FIFTY DOLLARS ($325,550), payable to the *State Water Resources Control Board Cleanup and Abatement Account,* and shall indicate on the check the number of this Order. The Discharger shall send the original signed check to Gina Kathuria, San Francisco Bay Regional Water Quality Control Board, 1515 Clay Street, Suite 1400, Oakland, CA 94612 and shall send a copy to David Boyers, State Water Resources Control Board, Office of Enforcement, P.O. Box 100, Sacramento, CA 95812.

b. The Parties agree that $295,550 of this administrative civil liability shall be suspended ("Suspended Liability") pending completion of: (1) the Private Sewer Lateral Grant Program SEP as set forth in Paragraphs 8 through 18 of

Section III herein and Attachment B attached hereto and incorporated by reference ($199,622); and (2) the Marine Mammal Center SEP as set forth in Paragraphs 8 through 18 of Section III herein and Attachment C attached hereto and incorporated by reference ($95,928).

8. **SEP Descriptions:** The Discharger agrees to perform and fund, respectively, the two SEPs described below:

a. **Private Sewer Lateral Grant Program SEP:** The goal of this project is to reduce inflow and infiltration (I/I) into the Discharger's collection system from defective private sewer laterals in the Sharp Park basin. A reduction in I/I will benefit surface water quality and beneficial uses by decreasing the number and volume of spills of untreated or partially treated sewage from the Discharger's collection system to surface waters during wet weather. In addition, the project will reduce the number and volume of spills to surface waters from private laterals. Detailed plans concerning how the Discharger will implement the Private Sewer Lateral Grant Program SEP, as well as an implementation schedule, milestone dates and budget are provided in the SEP proposal included herein as Attachment B.

b. **Marine Mammal Center SEP:** The goal of this project is to assist in the rescue and rehabilitation of marine mammals that have been adversely affected by human activities by contributing $95,928 to the Marine Mammal Center's rebuild project. The City's funds will be used to construct a shade structure over 3 new in-ground pools that are part of the Center's Intensive Care and Quarantine Unit. Detailed plans concerning the Marine Mammal Center SEP, including an implementation schedule, milestone dates and budget are provided in the SEP proposal included herein as Attachment C. The Marine Mammal Center will implement the Marine Mammal Center SEP and is considered the "Implementing Party" for purposes of this Stipulated Order.

SEP Completion Dates: The Private Sewer Lateral Grant Program SEP shall be concluded, and a final report shall be provided to the Regional Water Board by June 1, 2016 ("Private Sewer Lateral Grant Program SEP Completion Date"). The Marine Mammal Center SEP shall be concluded, and a final report shall be provided to the Regional Water Board by September 15, 2011 ("Marine Mammal Center SEP Completion Date"). The Private Sewer Lateral Grant Program SEP Completion Date and the Marine Mammal Center SEP Completion Date are collectively referred to as the "SEP Completion Dates."

9. **Agreement of Discharger to Fund, Report and Guarantee Implementation of SEPs:** The Discharger represents that: (1) it will fund the SEPs in the amounts as described in this Stipulated Order; (2) it will provide certifications and written reports to the Regional Water Board consistent with the terms of this Stipulated Order detailing the implementation of the SEPs; (3) it will guarantee implementation of the SEPs identified

in Attachments B and C by remaining liable for the Suspended Liability until the SEPs are completed and accepted by the Regional Water Board in accordance with the terms of this Stipulated Order; and (4) prior to the adoption of the Stipulated Order, it will provide a signed agreement with the Implementing Party in which the Implementing Party agrees to the terms provided in Attachment D. The Discharger agrees that the Regional Water Board has the right to require an audit of the funds expended by it to implement the SEPs.

10. Oversight of SEPs: The Discharger agrees to contract with the San Francisco Estuary Partnership (SFEP) to oversee the implementation of the SEPs. The Discharger is solely responsible for paying for all oversight costs incurred by the San Francisco Estuary Partnership to oversee the SEPs. The SEP oversight costs are in addition to the total administrative civil liability imposed against the Discharger and are not credited toward the Discharger's obligation to fund the SEPs. Oversight tasks to be performed by the San Francisco Estuary Partnership include but are not limited to, updating CIWQS, reviewing and evaluating progress, reviewing the final completion report, verifying completion of the project with a site inspection, auditing appropriate expenditure of funds, and providing updates to Regional Water Board staff.

11. Certification of Funding of Marine Mammal Center SEP: The Discharger shall provide evidence to the Regional Water Board of its payment of $95,928 to the Marine Mammal Center in support of the Marine Mammal Center SEP, no later than the Marine Mammal Center SEP Completion Date. Failure to pay the full SEP amount by this date will result in the full SEP amount of $95,928 being immediately due and payable to the State Water Board for deposit into the Cleanup and Abatement Account.

12. SEP Progress Reports: Commencing July 1, 2011, the Discharger shall provide quarterly progress reports regarding implementation of the SEP to the SFEP representative who is designated to oversee the SEPs for the Regional Water Board. The Discharger shall also provide the quarterly reports to the State Water Board's Division of Financial Assistance, The quarterly reports shall include but not be limited to a discussion of progress with meeting project performance measures and an accounting of all costs and expenses incurred for each SEP. The requirement for quarterly progress reports will terminate upon the Discharger's submittal of the final reports described below in Paragraph 13. If no activity occurred during a particular quarter, a quarterly report so stating shall be submitted.

13. Certification of Completion of SEPs and Final Reports: On or before the applicable SEP Completion Date, the Discharger shall submit a certified statement of completion of the SEPs ("Certification of Completion"). The Certification of Completion shall be submitted under penalty of perjury, to the Regional Water Board and the State Water Board's Division of Financial Assistance, by a responsible corporate official representing the Discharger. The Certification of Completion shall include following:

a. Certification that the SEPs have been completed in accordance with the terms of this Stipulated Order. Such documentation may include photographs, invoices, receipts, certifications, and other materials reasonably necessary for the Regional Water Board to evaluate the completion of the SEPs and the costs incurred by the Discharger.

b. Certification documenting the expenditures by the Discharger and the Implementing Party during the completion period for the SEPs. The Implementing Party's expenditures may be external payments to outside vendors or contractors performing the SEP. In making such certification, the official may rely upon normal company project tracking systems that capture employee time expenditures and external payments to outside vendors such as environmental and information technology contractors or consultants. The certification need not address any costs incurred by the Regional Water Board for oversight. The Implementing Party may submit a separate certification of expenditures on the Discharger's behalf. The Discharger (or the Implementing Party on the Discharger's behalf) shall provide any additional information requested by the Regional Water Board staff which is reasonably necessary to verify SEP expenditures.

c. Certification, under penalty of perjury, that the Discharger and/or the Implementing Party followed all applicable environmental laws and regulations in the implementation of the SEP including but not limited to the California Environmental Quality Act (CEQA), the federal Clean Water Act, and the Porter-Cologne Act. The Implementing Party may submit a separate certification of compliance on the Discharger's behalf. To ensure compliance with CEQA where necessary, the Discharger and/or the Implementing Party shall provide the Regional Water Board with the following documents from the lead agency prior to commencing SEP construction:

i. Categorical or statutory exemptions relied upon by the Implementing Party;

ii. Negative Declaration if there are no potentially "significant" impacts;

iii. Mitigated Negative Declaration if there are potentially "significant" impacts but revisions to the project have been made or may be made to avoid or mitigate those potentially significant impacts; or

iv. Environmental Impact Report (EIR)

14. Third Party Financial Audit: In addition to the certification, upon completion of the SEPs and at the written request of the Regional Water Board staff, the Discharger, at its sole cost, shall submit a report prepared by an independent third party(ies) acceptable to the Regional Water Board staff, or its designated representative, providing such party's(ies') professional opinion that the Discharger and/or the

Implementing Party have expended money in the amounts claimed by the Discharger. The audit report shall be provided to the Regional Water Board staff within three (3) months of notice from Regional Water Board staff to the Discharger of the need for an independent third party financial audit. The audit need not address any costs incurred by the Regional Water Board for oversight.

15. Regional Water Board Acceptance of Completed SEPs: Upon the Discharger's satisfaction of its SEP obligations under this Stipulated Order and completion of the SEPs and any audit requested by the Regional Water Board, Regional Water Board staff shall send the Discharger a letter recognizing satisfactory completion of its obligations under the SEPs. This letter shall terminate any further SEP obligations of the Discharger and result in the permanent stay of the Suspended Liability.

16. Failure to Expend all Suspended Administrative Civil Liability Funds on the Approved SEPs: In the event that Discharger and/or the Implementing Party is not able to demonstrate to the reasonable satisfaction of the Regional Water Board Assistant Executive Officer that the entire Suspended Liability has been spent to complete the components of the SEPs for which the Discharger is financially responsible, Discharger shall pay the difference between the Suspended Liability and the amount the Discharger can demonstrate was actually spent on the SEPs, as an administrative civil liability. The Discharger shall pay the additional administrative liability within 30 days of its receipt of notice of the Regional Water Board Assistant Executive Officer's determination that the Discharger has failed to demonstrate that the entire Suspended Liability has been spent to complete the SEP components.

17. Failure to Complete the SEPs: If the SEPs are not fully implemented within the SEP Completion Dates (as defined in Paragraph 8) required by this Stipulated Order, the Regional Water Board Assistant Executive Officer shall issue a Notice of Violation. As a consequence, the Discharger shall be liable to pay the entire Suspended Liability or, some portion thereof less the value of the completion of any milestone requirements. Unless otherwise ordered, the Discharger shall not be entitled to any credit, offset, or reimbursement from the Regional Water Board for expenditures made on the SEP(s) prior to the date of receipt of the Notice of Violation. The amount of the Suspended Liability owed shall be determined via a "Motion for Payment of Suspended Liability" before the Regional Water Board, or its delegee. Upon a determination by the Regional Water Board, or its delegee, of the amount of the Suspended Liability assessed, the amount shall be paid to the State Water Board Cleanup and Abatement Account within thirty (30) days after the service of the Regional Water Board's determination. In addition, the Discharger shall be liable for the Regional Water Board's reasonable costs of enforcement, including but not limited to legal costs and expert witness fees. Payment of the assessed amount will satisfy the Discharger's obligations to implement the SEP(s).

18. Publicity: Should the Discharger, the Implementing Party, or the agents or subcontractors of the Discharger or the Implementing Party publicize one or more

elements of the SEPs, they shall state in a prominent manner that the project is being funded as part of the settlement of an enforcement action by the Regional Water Board against the Discharger.

19. Compliance with Applicable Laws: The Discharger understands that payment of administrative civil liability in accordance with the terms of this Stipulated Order and/or compliance with the terms of this Stipulated 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.

20. Party Contacts for Communications related to Stipulated Order:

For the Regional Water Board:

Dyan C. Whyte
Assistant Executive Officer
San Francisco Bay Regional Water Quality Control Board
1515 Clay Street, Suite 1400
Oakland, CA 94612
DWhyte@waterboard.ca.gov

For the Discharger:

Klara Fabry
Public Services Director
567 El Camino Real
San Bruno, CA 94066
kfabry@ci.sanbruno,ca.us

21. Attorney's Fees and Costs: Except as otherwise provided herein, each Party shall bear all attorneys' fees and costs arising from the Party's own counsel in connection with the matters set forth herein.

22. Matters Addressed by Stipulation: Upon the Regional Water Board's adoption of this Stipulated Order, this Order represents a final and binding resolution and settlement of the Alleged ACL Violations, and all claims, violations or causes of action that could have been asserted against the Discharger as of the effective date of this Stipulated Order based on the specific facts alleged in the Complaint or this Order ("Covered Matters"). The provisions of this Paragraph are expressly conditioned on the full payment of the administrative civil liability and the Discharger's full satisfaction of the SEP obligations described herein.

23. Public Notice: The Discharger understands that this Stipulated Order must be noticed for a 30-day public review and comment period prior to consideration by the Regional Water Board, or its delegee. If the Regional Water Board Assistant Executive

Officer receives significant new information that reasonably affects the propriety of presenting this Stipulated Order to the Regional Water Board, or its delegee, for adoption, the Regional Water Board Assistant Executive Officer may unilaterally declare this Stipulated Order void and decide not to present it to the Regional Water Board, or its delegee. The Discharger agrees that it may not rescind or otherwise withdraw its approval of this proposed Stipulated Order.

24. Addressing Objections Raised During Public Comment Period: The Parties agree that the procedure contemplated for the Regional Water Board's adoption of the settlement by the Parties and review by the public, as reflected in this Stipulated Order, will be adequate. In the event procedural objections are raised prior to the Stipulated 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.

25. No Waiver of Right to Enforce: The failure of the Prosecution Staff or Regional Water Board to enforce any provision of this Stipulated Order shall in no way be deemed a waiver of such provision, or in any way affect the validity of the Order. The failure of the Prosecution Staff or Regional Water Board to enforce any such provision shall not preclude it from later enforcing the same or any other provision of this Stipulated Order.

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

27. Modification: This Stipulated 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 Water Board.

28. If Order Does Not Take Effect: In the event that this Stipulated Order does not take effect because it is not approved by the Regional Water Board, or its delegee, or is vacated in whole or in part by the State Water Board or a court, the Parties acknowledge that they expect to proceed to a contested evidentiary hearing before the Regional Water Board to determine whether to assess administrative civil liabilities for the underlying alleged violations, unless the Parties agree otherwise. The Parties agree that all oral and written statements and agreements 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 Water Board members or their advisors and any other objections that are premised in whole or in part on the fact that the Regional Water 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.

29. No Admission of Liability: In settling this matter, the Discharger does not admit to any of the findings in the Complaint, or that it has been or is in violation of the Water Code, or any other federal, state, or local law or ordinance; however, the Discharger agrees that in the event of any future enforcement actions by the Regional Water Board, the Order may be used as evidence of a prior enforcement action consistent with Water Code section 13327.

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

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

32. Waiver of Right to Contest the Revised Tentative CDO: The Discharger agrees to the terms and conditions contained in the Revised Tentative CDO attached hereto as Attachment E and waives the following rights: (1) to object to the adoption of the Revised Tentative CDO by the Regional Water Board; (2) to petition the Regional Water Board's adoption of the Revised Tentative CDO as written for review by the State Water Board; and (3) to appeal the same to a California Superior Court and/or any California appellate level court.

33. Covenant Not to Sue: The Discharger 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 Covered Matter.

34. Regional Water Board is Not Liable: Neither the Regional Water Board members nor the Regional Water Board staff, attorneys, or representatives shall be liable for any injury or damage to persons or property resulting from acts or omissions by the Discharger or the Implementing Party, their directors, officers, employees, agents, representatives or contractors in carrying out activities pursuant to this Stipulated Order, nor shall the Regional Water Board, its members or staff be held as parties to or guarantors of any contract entered into by the Discharger or the Implementing Party, their directors, officers, employees, agents, representatives or contractors in carrying out activities pursuant to this Stipulated Order.

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

36. No Third Party Beneficiaries. This Stipulated Order is not intended to confer any rights or obligations on any third party or parties, and no third party or parties shall have any right of action under this Stipulated Order for any cause whatsoever.

37. Effective Date: This Stipulated Order shall be effective and binding on the Parties upon the date the Regional Water Board, or its delegee, enters the Order.

38. Counterpart Signatures: This Stipulated Order 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.

IT IS SO STIPULATED.

California Regional Water Quality Control Board Prosecution Team
San Francisco Bay Region

By: Dyan C. Whyte
Dyan C. Whyte, Assistant Executive Officer

Date: May 26, 2011

City of San Bruno

By: Constance C Jackson
NAME: Constance C Jackson, City Manager

Date: May 24, 2011

Attest:

City Clerk

Order of the Regional Water Board

39. In adopting this Stipulated Order, the Regional Water Board or its delegee has considered, where applicable, each of the factors prescribed in CWC sections 13327 and 13385(e). The consideration of these factors is based upon information and comments obtained by the Regional Water Board's staff in investigating the allegations in the Complaint or otherwise provided to the Regional Water Board or its delegee by

the Parties and members of the public. In addition to these factors, this settlement recovers the costs incurred by the staff of the Regional Water Board for this matter and recovers the economic benefits derived from the acts that constitute the violations, in accordance with Water Code section 13385(e).

40. This is an action to enforce the laws and regulations administered by the Regional Water Board. The Regional Water 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.

IT IS HEREBY ORDERED pursuant to CWC section 13323 and Government Code section 11415.60, on behalf of the California San Francisco Bay Regional Water Quality Control Board.

Digitally signed by Bruce Wolfe
Date: 2011.07.01 17:43:39 -07'00'

Bruce H. Wolfe
Executive Officer

List of Attachments

A. ACL Complaint R2-2010-0004
B. San Bruno Private Lateral SEP
C. Marine Mammal Center SEP
D. List of Terms that must be in signed agreement between City of San Bruno and the Marine Mammal Center (i.e., SEP Implementing Party)
E. Revised Tentative Cease and Desist Order

1645919.1

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD

SAN FRANCISCO BAY REGION

IN THE MATTER OF: **CITY OF SAN BRUNO** 567 El Camino Real San Bruno, San Mateo County California	COMPLAINT No. R2-2010-0004 FOR ADMINISTRATIVE CIVIL LIABILITY February 16, 2010

THE CITY OF SAN BRUNO IS GIVEN NOTICE THAT:

1. The City of San Bruno (Discharger) is alleged to have violated provisions of law for which the California Regional Water Quality Control Board, San Francisco Bay Region (Regional Water Board), may impose civil liability under section 13385 of the California Water Code (Water Code).

2. This Administrative Civil Liability Complaint (Complaint) is issued under authority of Water Code section 13323.

3. The Discharger and the City of South San Francisco own and operate a wastewater treatment plant (WWTP), located at 195 Belle Air Road, South San Francisco, San Mateo County. The WWTP and appurtenant collection system operates under Order No. R2-2008-0094, National Pollutant Discharge Elimination System (NPDES) Permit No. CA0038130, and was previously subject to Order No. R2-2003-0010 (NPDES Permit No. CA0038130) from April 1, 2003, to December 31, 2008. The collection system is also subject to State Water Resources Control Board (State Water Board) Order No. 2006-0003-DWQ, *Statewide General Waste Discharge Requirements for Sanitary Sewer Systems*. This Complaint is issued to address alleged violations of the Water Code associated with 148 sanitary sewer overflows (SSOs) that occurred from the Discharger's collection system at various locations between December 1, 2004, and December 31, 2009. The total volume discharged and not recovered due to these events is 1,953,225 gallons.

4. Unless waived, a hearing on this Complaint will be held before the Regional Water Board on May 12, 2010, at the Elihu M. Harris Building, First Floor Auditorium, 1515 Clay Street, Oakland, California. The Discharger or its representative will have an opportunity to be heard and to contest the allegations in this Complaint and the imposition of civil liability. An agenda for the meeting will be available at http://www.waterboards.ca.gov/sanfranciscobay/board_info/agenda.shtml not less

than 10 days before the hearing date. At the hearing, the Regional Water Board will consider whether to affirm, reject, or modify the proposed civil liability, or refer the matter to the Attorney General's Office for recovery of judicial liability. The Discharger can waive its right to a hearing to contest the allegations contained in this Complaint by submitting a signed waiver and paying the civil liability in full or by taking other actions as described in the attached waiver form.

ALLEGATIONS

1. The WWTP provides secondary treatment from domestic, commercial and industrial sources from the cities of South San Francisco and San Bruno, portions of Daly City, and the town of Colma. The total service population is approximately 105,867 (2007 estimate). The WWTP discharges through the North Bayside System Unit (NBSU) outfall. Treated, disinfected wastewater from the WWTP enters the NBSU force main and combines with treated disinfected wastewater from other NBSU members. The combined effluent is dechlorinated and discharged through the NBSU outfall to Lower San Francisco Bay.

2. The collection system appurtenant to the WWTP includes about 77 miles of gravity sewers and forced mains, 83 miles of laterals and 6 pump stations. Of the 83 miles of laterals, the Discharger is responsible for 41 miles (lower laterals only). The Discharger's collection system serves an approximate population of 43,444 consisting primarily of residential customers and some commercial and industrial customers. The Discharger's service area covers about 5.5 square miles.

3. The Discharger's collection system design capacity is based on a five-year, six-hour storm. The collection system has an average daily dry weather capacity of 3.5 MGD and a peak wet weather capacity of 20.5 MGD. The actual average daily dry weather flow is 3.1 MGD, based on data provided for the Discharger's 2000 Sewer Master Plan. The dry weather flow represents 32% of the total flow received at the WWTP.

4. From December 1, 2004, through December 31, 2009, the Discharger reported 148 SSOs from its collection system totaling close to 2.1 million gallons. Of this total, about 7 SSOs representing close to 1.6 million gallons of raw sewage diluted with rainwater and groundwater, discharged to waters of the United States in January 2008. The cause of these 7 SSOs was insufficient sewer system capacity and excessive inflow and infiltration (I/I) of rainwater and groundwater into the collection system. The attached Tables 1A and 1B summarize the details of all 148 SSOs.

REQUIREMENTS APPLICABLE TO THE DISCHARGER

1. The Discharger is subject to Regional Water Board Order No. R2-2008-0094 (NPDES Permit No. CA0038130). Order No. R2-2008-0094 prescribes waste discharge requirements for discharges from January 1, 2009, to date.

2. Order No. R2-2008-0094 includes the following prohibition:

Section III. Discharge Prohibitions

E. Any sanitary sewer overflow that results in a discharge of untreated or partially treated wastewater to waters of the United States is prohibited.

3. Order No. R2-2008-0094 includes the following standard provision:

Attachment D. Federal Standard Provisions

I. D. Proper Operation and Maintenance
The Discharger shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the Discharger to achieve compliance with the conditions of this Order. Proper operation and maintenance also includes laboratory controls and appropriate quality assurance procedures. This provision requires the operation of backup or auxiliary facilities or similar systems that are installed by a Discharger only when necessary to achieve compliance with the conditions of this Order [40 CFR §122.41(e)].

4. The Discharger was subject to Regional Water Board Order No. R2-2003-0010 (NPDES Permit No. CA0038130). Order No. R2-2003-0010 prescribes waste discharge requirements for discharges from April 1, 2003, to December 31, 2008.

5. Order No. R2-2003-0010 includes the following prohibition:

Section A. Discharge Prohibitions
3. The bypass or overflow of untreated or partially treated wastewater to waters of the State, either at the treatment plant or from the collection system or pump stations tributary to the treatment plant, is prohibited except as provided for bypasses under the conditions stated in 40 CFR 122.41 (m)(4) and in Standard Provision A.13.

6. Order No. R2-2003-0010 includes the following standard prohibition:

Attachment Standard Provisions and Reporting Requirements for NPDES Surface Water Discharge Permits, August 1993

D. 1. *TREATMENT RELIABILITY*
The discharger shall, at all times, properly operate and maintain all facilities and systems of treatment disposal and control (and related appurtenances) which are installed or used by the discharger to achieve compliance with this order and permit. Proper operation and maintenance also includes adequate laboratory controls and appropriate quality assurance procedures. All of these procedures shall be described in an Operation and Maintenance Manual. The discharger shall keep in a state of readiness all systems necessary to achieve compliance

with the conditions of this order and permit. All systems, both those in service and reserve, shall be inspected and maintained on a regular basis. Records shall be kept of the tests and made available to the Board. [40 CFR 122.41(e)]

WATER CODE PROVISIONS RELEVANT TO THESE DISCHARGES

1. Pursuant to Water Code Section 13385(a)(2), a discharger is subject to civil liability for violating any waste discharge requirement issued pursuant to Chapter 5.5, which is the Water Code chapter that applies to the Regional Water Board's issuance of NPDES permits. The Regional Water Board may impose civil liability in an amount not to exceed the sum of both of the following:

   a. Ten thousand dollars ($10,000) for each day in which a violation occurred.
   b. Ten dollars ($10) for each gallon exceeding 1,000 gallons of discharge that is not cleaned up.

   If this matter is referred to the Attorney General for judicial enforcement, a higher liability of $25,000 for each day of violation and $25 for each gallon exceeding 1,000 gallons of discharge that is not cleaned up, may be imposed by a superior court.

VIOLATIONS

1. A. SSOs that occurred during the period December 1, 2004, through December 31, 2008, resulted in the discharge of untreated wastewater to waters of the State in violation of Discharge Prohibition A.3 of Regional Water Board Order No. R2-2003-0010. A portion or all of the SSOs that were reported by the Discharger to have reached "yard/land" or "surrounding soils" were not recovered nor cleaned up and are presumed to have seeped through the soil to groundwater, a water of the State. These violations subject the Discharger to liability pursuant to Water Code Section 13385(a)(2).

   B. SSOs that occurred during the period December 1, 2004, through December 31, 2008, were caused by the Discharger's failure to properly operate and maintain its collection system, in violation of Provision D.1. Treatment Reliability, in the Standard Provision and Reporting Requirements for NPDES Surface Water Discharge Permits, August 1993. These violations subject the Discharger to liability pursuant to Water Code Section 13385(a)(2).

2. A. SSOs that occurred during the period January 1, 2009, through December 31, 2009, resulted in the discharge of untreated wastewater to waters of the United States, in violation of Prohibition III.E of Regional Water Board Order No. R2-2008-0094. Because the Discharger's storm drains ultimately drain to the Pacific Ocean or San Francisco Bay (waters of the United States), SSOs that were reported by the Discharger to the "storm drain," "street/curb and gutter," and "paved surfaces," as shown in Attachment Tables 1A and 1B, are presumed to discharge into waters of the

United States. These violations subject the Discharger to liability pursuant to Water Code Section 13385(a)(2).

B. SSOs that occurred during the period January 1, 2009, through December 31, 2009 were caused by the Discharger's failure to properly operate and maintain its collection system in violation of Section I.D. of the Standard Provisions of Regional Water Board Order No. R2-2008-0094. These violations subject the Discharger to liability pursuant to Water Code Section 13385(a)(2).

MAXIMUM LIABILITY

The maximum administrative civil liability the Regional Water Board may impose for each of the violations described above is $24,229,740. See Attachment Tables 1A and 1B for calculations.

CONSIDERATION OF FACTORS UNDER WATER CODE SECTION 13385(e)

1. In determining the amount of civil liability proposed to be assessed against the Discharger, the Regional Water Board's Prosecution Team has taken into consideration the factors described in Water Code Section 13385(e) for violations of Water Code 13385. These factors include:

   - The nature, circumstances, extent, and gravity of the violation or violations,
   - Whether the discharge is susceptible to cleanup or abatement,
   - The degree of toxicity of the discharge,
   - With respect to the discharger, the ability to pay and the effect on ability to continue in business,
   - Any voluntary cleanup efforts undertaken,
   - Any prior history of violations,
   - The degree of culpability,
   - The economic benefit or savings, if any, resulting from the violation, and
   - Other matters as justice may require.

   At a minimum, liability shall be assessed at a level that recovers the economic benefits, if any, derived from the acts that constitute a violation of Water Code Section 13385(a)(2), in accordance with Water Code Section 13385(e).

2. **The nature, circumstances, extent, and gravity of the violation or violations**

   Nature and Circumstances

   From December 1, 2004, through December 31, 2009, the Discharger reported 148 SSOs that total 2,056,002 gallons with 1,953,225 gallons not recovered. The cause and final spill destinations of all SSOs are summarized in Tables 1A and 1B (attached).

Of the 148 SSOs that occurred during the period December 1, 2004, through December 31, 2009, there were ten significant SSOs that resulted in the discharge of approximately 2 million gallons of raw sewage or raw sewage diluted with rainwater and groundwater to either surface waters, groundwater or both. The nature and circumstances of these ten SSOs are discussed in more detail below. The primary causes of the remaining SSOs (totaling about 67,000 gallons of raw sewage) are fats, oil and grease (FOG), root, and debris blockages.

September 30, 2009, to October 5, 2009, SSO

This SSO occurred over a period of 5 days and resulted in the discharge of 78,000 gallons of raw sewage which was mostly captured in AT&T's underground vaults and returned to the Discharger's collection system. Based on information provided by the Discharger, it is estimated that about 90% of the total volume discharged entered AT&T's eroded conduit and collected in AT&T's downstream underground vaults. Thus, approximately 7,800 gallons (or 10% of total volume discharged) of raw sewage was not recovered and seeped through the surrounding soils to groundwater.

The primary cause of this SSO is failure of a sewer lateral pipeline located on 1290 Montgomery Avenue and adjacent to the AT&T conduit. Shortly after the SSO occurred, the Discharger performed a Closed Circuit Television (CCTV) inspection of the Montgomery Avenue sewer main and associated lower laterals. Based on CCTV data showing the deteriorated condition of the sewer lines, the Discharger determined the cause of the pipeline failure to be aging infrastructure. As a result, the Discharger, through the issuance of an Emergency Proclamation, immediately replaced the sewer main and associated lower laterals on the 1200 block of Montgomery Avenue.

January 2008 SSOs

Seven SSOs representing close to 1.6 million gallons of raw sewage diluted with rainwater, discharged to waters of the United States in January 2008. No portion of these SSOs was recovered. The January 2008 SSOs discharged to either Lower San Francisco Bay or the Pacific Ocean via the storm drain, Milagra Creek, or Cupid's Row Flood Control Channel.

The primary cause of these SSOs is insufficient wet weather capacity in the Discharger's collection system. Six of these seven SSOs occurred during a January 24-25, 2008, storm event; the seventh occurred during an event earlier on January 4, 2008. Excessive inflow and infiltration into the collection system during these events resulted in flows exceeding the collection system design capacity. These excess flows resulted in the overflow of raw sewage diluted with rainwater and groundwater from several manhole locations into the storm drain, ultimately reaching waters of the United States.

Based on information provided by the Discharger, the January 24-25, 2008, storm event had a rainfall intensity of 0.18 inches per hour over a period of 24 hours. Using Intensity Duration Frequency (IDF) Curves for San Mateo County[1], the January 24-25, 2008, storm event likely exceeded a 25-year storm over 24 hours. This exceeds the 5-year, 6-hour duration storm event for which the collection system is designed.

December 6, 2006, to November 19, 2007, SSO

This SSO occurred over a period of 349 days and resulted in the unrecoverable discharge of close to 58,000 gallons of raw sewage from a sewer lateral into surrounding soils ultimately reaching groundwater. The SSO location has natural springs that flow year round; thus a portion of the SSO likely reached surface waters.

The primary cause of this SSO is operator error. During completion of the Discharger's sewer main rehabilitation project, the Discharger's contractor failed to reconnect the sewer lateral serving 1560 Claremont Drive to the main sewer line. In April 2007, the Discharger received an initial complaint of a potential SSO when the resident of the nearby property located at 1551 Claremont Drive complained of sewer odor in his front yard. The Discharger conducted several unsuccessful investigations and monitored the area for a few months to determine the cause. However, it was not until a sink hole developed in the street on November 14, 2007, that the Discharger was able to excavate the area and determine that the sewer lateral serving 1560 Claremont Drive was not connected to the sewer main.

June 24, 2006 SSO

This SSO resulted in the discharge of 276,000 gallons of raw sewage from a manhole to surrounding soils, ultimately reaching the Glennview Drive storm water spillway and Crestmoor Canyon natural drainway, a water of the State. The Discharger was notified of the SSO via an anonymous voicemail on Saturday, June 24, 2006. The Discharger's weekend outgoing message instructs callers to contact the police if the matter was an urgent water or sewer spill. The caller did not do this, so the Discharger did not respond to the SSO until the morning of Monday, June 26, 2006.

The primary cause of the SSO event is vandalism. The Discharger determined that an unknown third party likely deposited rocks and debris into the sewer pipeline via a manhole located behind 1670 Claremont Drive. The rocks and debris created a blockage that caused sewage to back up and overflow via the manhole located behind 1650 Claremont Drive.

[1] IDF Curves were calculated using methodology from San Mateo County and the National Oceanic and Atmospheric Administration (NOAA) Atlas 2, the Precipitation-Frequency Atlas of the Western United States, 1973. Rain gauge data obtained from a station located near Sharp Park Pump Station on Highland Drive, San Bruno, California.

Extent and Gravity

In general, the gravity of the 148 SSOs during the period December 1, 2004, through December 31, 2009, is medium. The combined SSO volume discharged of about 2.1 million gallons is significant. Of this total, the Discharger was able to recover and return to the collection system about 102,777 gallons (or 5% of total volume). About 1.6 million gallons (or 80% of total volume) discharged to surface waters. The impact to surface waters was somewhat mitigated by the fact that these SSOs consisted of raw sewage diluted with rainwater and groundwater, which generally results in a lesser impact to water quality and beneficial uses when compared to an equal volume of undiluted raw sewage during non-storm conditions.

September 30, 2009, to October 5, 2009, SSO

The gravity of this SSO is low. Only about 7,800 gallons (or 10% of total volume) of raw sewage seeped through the surrounding soils and likely reached groundwater. Although no samples were taken to determine the extent of the impact, it is likely that there was no significant water quality impact. As discussed in Section 4 of this Complaint, the Discharger took samples of the SSO that collected within the AT&T vaults.

January 2008 SSOs

The gravity of these SSOs is medium. As mentioned previously, the SSOs resulted in the discharge of a significant cumulative volume of raw sewage diluted with rain water and groundwater to waters of the United States. Since it was diluted raw sewage, it did not pose the same level of toxicity or impact as an equal volume of raw sewage. For the four January 2008 SSOs which ultimately reached the Pacific Ocean (totaling about 1.4 million gallons), San Mateo County Public Health Department (County Health Department) did not require beach closure or posting of warning signs because neither the County Health Department nor the Discharger collected the necessary water quality samples to make such a determination. Nonetheless, the SSOs could have impacted non-water contact and water contact recreation in nearby beaches. In fact, the SSOs discharged to Milagra Creek which discharges to Pacific Manor Beach, is a public beach.

For the three January 2008 SSOs which ultimately reached lower San Francisco Bay (totaling about 123,000 gallons), the public health threat was likely minimal since the nearby shoreline areas are not designated beaches and since public access to Cupid's Row Flood Control Channel is restricted. Any impacts to water quality and beneficial uses[2] of the Pacific Ocean and Lower San Francisco Bay are unknown because the Discharger did not sample the discharge or receiving waters.

[2] January 2007 San Francisco Bay Basin Water Quality Control Plan (Basin Plan) establishes the following beneficial uses for the Pacific Ocean in San Mateo/San Francisco and Lower San Francisco Bay. The Pacific Ocean supports or could support industrial service (IND), ocean, commercial and sport fishing (COMM), shellfish harvesting (SHELL), marine habitat (MAR), fish migration (MIGR), preservation of

December 6, 2006, to November 19, 2007, SSO

The gravity of this SSO is low because the discharge was primarily to shallow groundwater which is not used as a drinking water supply. Also, the discharge migrated through soil which likely adsorbed or facilitated degradation of some of the pollutants prior to reaching groundwater (with a small portion possibly reaching surface water via the nearby spring). During the Discharger's year-long investigation, the Discharger reported it was not able to collect a sample as only a weep[3] was observed. Once the source of the discharge was identified, no samples were collected to determine the extent of the impact.

June 24, 2006, SSO

The gravity of this SSO is high. A significant volume of raw sewage discharged to surface waters and was not recovered. The SSO occurred during dry weather conditions and thus was not diluted by rainwater.

The Discharger collected water quality samples at several locations along the Glennview Drive storm water spillway, the Crestmoor Canyon drainway and in the water canal near the Walnut Storm Water Pump Station.

Bacteria concentrations in receiving waters are used to indicate the presence of waste. The SSO event resulted in bacteria concentration levels indicative of raw sewage in surface waters about 1.5 miles east of the discharge point. Fecal coliform levels were detected as high as 20,000 colonies per 100 mL four days after the SSO occurred at about 1.5 miles from the source. By July 21, 2006 (28 days after SSO occurred), water quality monitoring results demonstrated fecal coliform levels significantly lower than detected shortly after the SSO occurred (about 2,800 colonies per 100 mL).

Additional water quality monitoring conducted by the Discharger demonstrated dissolved oxygen levels as low as 6.4 mg/L. These levels are higher than the minimum level of 5 mg/l[4] needed by aquatic organisms to survive. Un-ionized ammonia levels were detected as high as 0.34 mg/l as N. This level is lower than the

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rare and endangered species (RARE), wildlife habitat (WILD), water contact recreation (REC-1), REC-2 (noncontact water recreation) and navigation (NAV). Lower San Francisco Bay supports or could support industrial service (IND), ocean, commercial and sport fishing (COMM), shellfish harvesting (SHELL), estuarine habitat (EST), fish migration (MIGR), preservation of rare and endangered species (RARE), fish spawning (SPWN), wildlife habitat (WILD), water contact recreation (REC-1), noncontact water recreation (REC-2), and navigation (NAV).

[3] To exude water from the subsoils to the surface

[4] January 2007 San Francisco Bay Basin Water Quality Control Plan (Basin Plan) establishes this numerical water quality objective for dissolved oxygen concentrations in nontidal waters designated as warm water habitat (minimum of 5 mg/l).

maximum level of 0.4 mg/l as N[5] above which acute toxicity to fish occurs. Detergents were also monitored and detected below the detection limit.

The area where the SSO occurred is located 50 feet from single-family homes located on Claremont Avenue and about 150 feet from Glennview Park (a small city owned park). To minimize public exposure to the SSO, the Discharger barricaded and posted warning signs surrounding the SSO discharge point and near an entrance road which provides access to a golf driving range (about 1600 feet from the discharge point). The area was closed for a period of about 15 days.

According to the Discharger, the SSO location was not heavily used by the general public and there was no restricted access to the golf driving range. However, the SSO event resulted in a fifteen day closure of areas mentioned above and posting of warning signs.

Other SSOs due to Blockages

The gravity of the discharge of any large volume SSOs (>5,000 gallons) that occurred during dry weather conditions was high. These SSOs are significant in volume, and the raw sewage received no dilution. The Discharger reported five such SSOs totaling close to 425,000 gallons. The Discharger was able to recover about 18% of the total volume spilled.

The gravity of the discharge of any moderate volume SSOs (>1,000 gallons and <5,000 gallons) that occurred during dry weather conditions was medium. These SSOs are notable in volume, and the raw sewage received no dilution. The Discharger reported 15 such SSOs, totaling about 35,000 gallons. The Discharger was able to recover about 30% of the total volume spilled.

The gravity of the discharge of any small volume SSOs (<1,000 gallons) that occurred during dry weather conditions was low. These SSOs are minor in volume, and the raw sewage received no dilution. The Discharger reported 120 such SSOs totaling about 19,000 gallons. The Discharger was able to recover 38% of the total volume spilled.

B. Whether the discharge is susceptible to cleanup or abatement

Overall, the Discharger recovered 5% of the total volume discharged during the period of December 1, 2004, to December 31, 2009.

Insufficient capacity wet weather related SSOs are not susceptible to cleanup or containment because the storm drains and surface waters are flowing full at the time (i.e., storm events). In the case of the January 2008 SSOs (which contributed to about

[5] Basin Plan establishes this numerical water quality objective for un-ionized ammonia concentrations in the Lower Bay (maximum of 0.40 mg/l as N).

80% of the total volume discharged), the Discharger stated the raw wastewater diluted with rainwater was not recoverable once it entered the Pacific Ocean or Lower San Francisco Bay via the storm drain, Milagra Creek, or Cupid's Row Flood Control Channel.

For non-capacity related SSOs, either all or a portion of the SSO, can be contained and returned to the collection system for treatment. The Discharger recovered a moderate percentage of SSOs due to blockages (about 30%). The Discharger recovered none of the SSOs that occurred on December 6, 2006, to November 19, 2007, due to contractor error and on June 24, 2006, due vandalism. The Discharger recovered about 90% of the SSO that occurred on September 30, 2009, to October 5, 2009, due to sewer lateral failure.

C. The degree of toxicity of the discharge

Untreated wastewater would be expected to have a deleterious effect on the environment, including causing potential nuisance in the near shore areas. Raw or diluted wastewater typically has elevated concentrations of biochemical oxygen demand, total suspended solids, oil and grease, ammonia, high levels of viruses and bacteria, trash (only in the case of raw sewage) and toxic pollutants (such as heavy metals, pesticides, personal care products, and pharmaceuticals). These pollutants exert varying levels of impact on water quality, and, as such, will adversely affect beneficial uses of receiving waters to different extents. For all the SSOs described herein with the exception of the SSO that occurred from September 30, 2009, to October 5, 2009, the Discharger did not sample and analyze the discharge for any of these pollutants during the SSO events.

January 2008 and Other Wet Weather SSOs

The toxicity of the discharge for SSOs that occurred during wet weather conditions was medium. Since storm related SSOs are diluted with rainwater and groundwater, they would not pose the same level of toxicity as an equal volume of raw sewage during non-storm conditions. However, solids remain in the discharge along with all dissolved toxic pollutants such as ammonia, metals, and pharmaceuticals and personal care products. Additionally, viruses and bacteria remain at medium levels because the discharge was not disinfected. The Discharger reported eight such SSOs, totaling about 1.6 million gallons. The Discharger was able to recover less than 0.5% of total volume spilled.

All other Dry Weather SSOs

The toxicity of the discharge that occurred during dry weather conditions was high. These SSOs consisted of raw undiluted sewage.

D. The ability to pay and the effect on ability to continue in business

The Discharger is financially stable and has the financial resources to provide for debt service obligations and financial needs, including this proposed administrative civil liability.

The Discharger provided financial information regarding its Wastewater Enterprise Fund (summarized in *Table 1* below) and sewer rate fees. The Discharger's net assets at the end of fiscal year (FY) 2008/2009 were $13.7 million. The Discharger's primary sources of revenue are sewer service charges and connection fees. The Discharger also receives some revenue from interest income on investments.

The Discharger has existing debt service for past funds received from the Clean Water State Revolving Fund which were used to upgrade the WWTP. The Discharger also has existing debt service for certificates of participation used to fund capital improvement projects required under CDO 97-104. All debt obligations are backed by revenue from ratepayers.

Table 1: Discharger's Financial Summary-Wastewater Enterprise Fund

	FY 2006/2007 Actual	**FY 2007/2008 Actual**	**FY 2008/2009 Actual**	**FY 2009/2010 Budgeted**
Operating Revenue	$6,261,689	$8,413,781	$9,061,790	$10,076,160
Operating Expenses	$5,804,944	$7,063,137	$8,073,876	$11,540,725
Net Non-Operating Revenues	($901,008)	($558,835)	($76,637)	$0
Change in Net Assets	($444,263)	$791,809	$913,277	($1,464,565) Estimated
Net Assets, Beginning of Year	$12,484,941	$12,040,678	$12,832,487	$13,745,764
Net Assets, End of Year	$12,040,678	$12,832,487	$13,745,764	$12,281,200 (Estimated)

Note: Non-Operating Revenues/Expenses are not shown but net change is calculated.

The Discharger has the authority to adjust its sewer rate scale to provide for financial needs. The Discharger's average monthly sewer rate fee for FY 2008-2009 was $41.47 per equivalent dwelling unit (EDU) and the current fee for FY 2009-2010 is $46.70 per EDU. These rates are above the average monthly sewer rate fees for San Mateo County (about $43 per EDU for FY 2007/2008).

In May 2009, the Discharger's City Council accepted a rate model that anticipates an annual rate increase of 10.16% each year for 10 years, and adopted an ordinance implementing this rate increase for the first three years beginning July 1, 2009. The implementation of this three year rate ordinance will result in a 33.7% total increase in sewer rates by FY 2011-2012. The revenues from these increased rates along with bond issuances will ensure that adequate financial resources are available to

implement the necessary capital improvement projects and ongoing sanitary sewer maintenance activities.

The Discharger has the ability to pay the proposed penalty and continue to provide its services. The Discharger could raise its monthly sewer rate fees by an additional $0.42 per equivalent dwelling unit (EDU) to raise sufficient funds to pay for a loan that would cover the proposed penalty (assuming an interest rate of 5% for 15 years). This sewer rate raise of $0.42 per EDU per month would be a 0.9 percent fee increase that would not put an appreciable hardship on the Discharger's sewer users.

E. Any voluntary cleanup efforts undertaken

Of the total 2.1 million gallons of SSOs, the Discharger recovered about 105,000 gallons. Close to 2 million gallons were not recovered. Of these 2 million gallons not recovered, about 1.6 million gallons, which were discharged during the storm events in January 2008, were not susceptible to cleanup and abatement.

Upon arriving onsite after the June 24, 2006, SSO, the Discharger implemented several cleanup efforts to mitigate the effects of the SSO. The Discharger removed the soil around the manhole, which had been saturated with sewage, and replaced it with uncontaminated topsoil. The Discharger also removed sewage related debris and materials deposited in the area. In addition, the Discharger disinfected with bleach the surrounding soils near the manhole and leading to the Glennview storm water spillway.

F. Any prior history of violations

The Discharger has a prior history of SSOs. On August 20, 1997, the Regional Water Board adopted Cease and Desist Order (CDO) No. 97-104, requiring the Discharger to cease and desist from discharging waste contrary to the requirements of its NPDES Permit. The basis of this CDO was the insufficient capacities of the existing collection, treatment, and outfall systems, evidenced particularly during wet weather conditions of high storm water inflow and/or high groundwater infiltration rates. The CDO set forth a provision and time schedule to eliminate the prohibited discharges and violations of effluent limits. Provisions included improvements to the Discharger's WWTP and improvements to the collection system.

Due to delays in securing a State Revolving Fund loan and other project delays, the Discharger was not able to meet all the CDO compliance dates. However, all the CDO tasks were ultimately substantially completed. Specifically, the CDO required the Discharger to (1) complete I/I studies and submit a Master Plan for improving its collection system by September 1, 1998, and (2) complete I/I improvement projects recommended by the I/I Study Report by November 1, 2007. In August 1999, the Discharger completed a Sewer Master Plan and I/I Study. The Sewer Master Plan recommended the implementation of 19 projects totaling $76 million over the next 40 years (which equates to an average expenditure of $1.84 million annually). Although

the CDO required a nine-year implementation schedule for I/I improvement projects, the Sewer Master Plan recommended a more comprehensive, feasible 40-year schedule for collection system improvement projects (including more than just I/I improvement projects). Completion of the recommended improvement projects (e.g., relief sewer, pump station and sewer basin rehabilitation improvements) would reduce wet weather related sewage overflows.

As of the CDO compliance date of November 1, 2007, the Discharger had expended about $10 million (or an average of $1.4 million annually) to implement the recommended relief sewer and pump station improvements. To date, the Discharger has expended a total of $14 million to implement the recommended projects. In addition, the Discharger spent $1.8 million for WWTP improvements required in the CDO.

G. The degree of culpability

In general, the Discharger's degree of culpability is medium/low. The Discharger is culpable for the violations because it is responsible for the proper operation and maintenance of its collection system facilities and for achieving full compliance with discharge prohibitions in its NPDES Permit. As noted earlier, the primary causes of the more significant SSO events were insufficient collection system capacity, pipeline failure due to aging infrastructure, contractor error and vandalism. With the exception of the SSO caused by vandalism, these SSO events could have been prevented or mitigated with the rehabilitation/replacement of sewer pipelines and the implementation of procedures to adequately inspect contractor work. The cause of the remaining SSOs was blockages due to FOG, root, and debris. These SSOs could have been prevented with a more aggressive FOG control program and cleaning/inspection program.

January 2008 SSOs/September 30, 2009, to October 5, 2009, SSO

The degree of culpability for these SSOs is medium/low. It is reasonable to expect that the Discharger could have implemented a more aggressive schedule to rehabilitate and replace sewer pipelines within its collection system to prevent SSOs due to insufficient capacity, excessive I/I and aging infrastructure. In fact, the implementation of the Rollingwood Sewer Main Rehabilitation Projects (Phase II and III), which were completed in July 2008 and October 2009 respectively, could have mitigated the gravity of the January 2008 SSOs. These projects added needed capacity to the upper and western portions of the Discharger's collection system, where a majority of these SSOs occurred. Additionally, over the past years, the Discharger could have focused a portion of its investments in implementing the sewer basin rehabilitation projects recommended in the Sewer Master Plan. These projects would have begun to address the Discharger's aging sewer mains and laterals thus reducing I/I flows into the collection system and reducing the likelihood of pipeline failure. The implementation of sewer basin rehabilitation projects is also required to reduce peak wet weather flows. Although the Discharger made investments of about

$1.4 million annually over the past few years with the goal of increasing its collection system capacity and complying with CDO requirements, these contributions fell short of the recommended $1.84 million annual investment identified in the Sewer Master Plan. Thus, the Discharger's degree of culpability for these SSOs is medium/low.

December 6, 2006, to November 19, 2007, SSO

The degree of culpability is medium. The Discharger is culpable for the violations because it is responsible for the proper operation and maintenance of its collection system. This SSO could have been prevented by ensuring that adequate construction inspections procedures were in place to make sure that sewer laterals are reconnected after the completion of main sewer rehabilitation work. Although the Discharger had internal project management procedures in place prior to this SSO, these procedures did not adequately address reconnection of sewer laterals; thus, the Discharger's degree of culpability is medium.

June 26, 2006, SSO

The Discharger is not culpable for this SSO. The Discharger was not promptly notified of the SSO and was not able to immediately respond to the SSO. Because, the complainant did not properly report the SSO to the police as instructed in the Discharger's outgoing voice message. In addition, it is recognized that the SSO was caused primarily by the intentional acts of vandalism of a third party, which could not have been prevented or avoided by the Discharger. The Discharger is thus not responsible for this SSO because the actions of the third party were out of its control. Therefore, the Discharger has no culpability and this Complaint proposes no penalties for this SSO.

Other SSOs due to Blockages

The degree of culpability for the SSOs caused by FOG, roots, and debris is medium. The Discharger should have implemented a more aggressive FOG control program and cleaning/inspection program to prevent such SSOs. In fact, the number of FOG related SSOs has not significantly decreased over the past three years (17 FOG related SSOs occurred in 2007, 18 in 2008 and 13 in 2009). A FOG control program should identify hot spot areas based on blockage history, line investigation, and inspection of FOG dischargers (i.e. food service establishments such as restaurants). This was the expectation and guidance established by Regional Water Board staff in a letter dated July 7, 2005, requiring dischargers to establish an appropriate program by August 2006. The Discharger has an established program to identify hot spots and prioritize maintenance. However, it did not add staff to perform inspections of food service establishments (FSE) until the end of 2008. The Discharger, thus, did not begin to conduct FSE inspections in earnest until 2009. As of September 2009, the Discharger has inspected 33 restaurants and issued 19 discharge permits. Although the Discharger made some recent efforts to establish a more aggressive FOG Control

Program, it could have conducted FSE inspections sooner, an essential element of a FOG program.

The Discharger's collection system cleaning and inspection program to reduce/eliminate SSOs is generally on schedule relative to Regional Water Board expectations for all dischargers in the region to have a program in place no later than August 2008. In 2006 and 2007, the length of unique main pipeline cleaned in the Discharger's hotspot cleaning program was only 4.5 miles (or 6% of the total collection system). In 2008 and 2009, the Discharger increased the length of unique main pipeline cleaned to 19.5 miles (or 26% of the total collection system) due to recent efforts to conduct closed circuit television (CCTV) inspections of its collection system. In 2007, the Discharger awarded a contract to conduct CCTV inspection of its entire collection system in five years.

Though on schedule with the Regional Water Board's general expectations, the Discharger could have made more aggressive strides to accomplish this earlier to reduce the high number of SSOs from blockages in this area, which averaged 32 blockage SSOs per 100 miles of sewer (including lower laterals) over the past 3 years.

Although the Discharger took some steps toward establishing more aggressive FOG control and cleaning and inspection programs, it could have begun efforts to do so earlier. As such, the Discharger's degree of culpability is medium.

H. The economic benefit of savings

January 2008 SSOs/ September 30, 2009, to October 5, 2009, SSO

The Discharger should have invested an additional $440,000 per year in sewer rehabilitation and replacement projects to reach $1.84 million per year. This is the level of fiscal commitment recommended by the Sewer Master Plan. The cost savings of this additional investment over a period of seven years is about $528,000 (assuming a risk- free interest rate of 2.5%). A 2.5% interest rate was utilized because a municipality may obtain a low-interest State Revolving Fund loan to fund wastewater improvement projects.

December 6, 2006, to November 19, 2007, SSO

As discussed in more detail below, the Discharger initiated a third party review of its internal management procedures and amended its inspection procedures to ensure that sewer laterals are reconnected after the completion of sewer main rehabilitation work. These actions could have been completed prior to the occurrence of this SSO. The cost savings of implementing such actions sooner are minimal.

June 26, 2006, SSO

There is currently no evidence of economic benefit or savings from this SSO. Although the acts of vandalism which led to the SSO were out of the Discharger's control, the Discharger, nonetheless, implemented several actions to prevent similar occurrences in the future such as bolting the manhole and contracting a professional answering service. The cost savings of implementing such actions sooner are minimal.

Other SSOs due to blockages

In terms of blockage related SSOs, the Discharger at a minimum should have established a more aggressive FOG Control Program by conducting FSE inspections sooner than 2007 when Regional Water Board staff instituted the expectation. The cost savings of not having two FSE inspectors employed in 2007 and 2008 is about $48,000 (assuming an interest rate of 6% and a cost per FSE inspector of about $85,000, of which the Discharger is responsible for about 23% and the City of South San Francisco for the remaining cost).

I. Other such matters as justice may require

The matters discussed herein were considered in increasing the administrative civil liability penalty amount.

December 6, 2006 to November 19, 2007 SSO

Following this SSO, the Discharger procured a third-party to review its internal management procedures and prepare a project management manual. The new manual contains a revised daily inspection report which will be used to track field observations of construction activities including reconnection of all sewer laterals after completion of main pipeline rehabilitation work. The Discharger accepted the manual in 2009 and stated that it will use the manual in all construction projects beginning Spring 2010. Although the Discharger made reasonable efforts to revise its inspection procedures and will begin implementation of the procedures next spring, these actions should have been implemented more promptly and immediately following this SSO.

Staff Time

Regional Water Board Prosecution Team to prepare the Complaint and supporting evidence is estimated to be about 200 hours. Based on an average cost to the State of $150 per hour, the total staff cost is $30,000.

The matters discussed herein were considered in lowering the administrative civil liability penalty amount.

The Discharger, on its own initiative, has recently taken more aggressive steps to address its collection system deficiencies.

Over the past decade, the Discharger has demonstrated its commitment to improving its collection system. The Discharger steadily increased its sewer rates between 1997 and 2007 to raise needed funds to implement its capital improvement program recommended in its Sewer Master Plan. In fact, by 2007, the Discharger's sewer rates increased by a total of 101% since 1997 (sewer rate of $17.90 in 1997 was ultimately increased to $36.03 in 2007).

In 2007, the Discharger established a policy goal to clean and inspect its entire collection system over a 5-year period. The Discharger procured the services of a contractor to CCTV the collection system. To date, approximately 60% of the system has been cleaned and inspected. With the implementation of the CCTV program, the Discharger will be able to more accurately assess pipeline conditions and effectively identify areas in need of rehabilitation and/or replacement.

The Discharger has committed to rehabilitate its entire collection system in 25 years. To achieve this goal, the Discharger established a Wastewater Pipeline Repair Program. This Program identified new projects totaling approximately $40 million to rehabilitate and/or replace the aging sewer pipelines in addition to the recommended projects in the Sewer Master Plan. The cost to revitalize 100% of sewer pipelines in 25 years is estimated at about $100 million. This estimate includes the cost to implement the remaining Sewer Master Plan basin rehabilitation projects (totaling about $60 million) and new rehabilitation projects (totaling about $40 million).

As discussed in this Complaint, the Discharger has committed to funding future capital improvement projects through rate increases and bond issuances backed by those rates. In May 2009, the Discharger's City Council accepted a rate model to increase rates over the next 10 years and adopted an ordinance to increase rates by 10.16% per year for the next three years beginning July 1, 2009. This will result in a 33.7% total increase in sewer rates by FY 2011-2012.

January 25, 2008 SSOs

Analysis of the January 24-25, 2008, storm event indicate there was a high intensity, long duration storm on January 25, 2008, which likely exceeded a 25-year storm over 24 hours. Although this exceeds the 5-year, 6-hour duration storm event for which the collection system is designed, the SSOs would have still occurred due to excessive I/I into the Discharger's collection system. However, had it not been for the significant storm event on that day, the SSO volume would have been lower.

June 24, 2006 SSO

Because the Discharger lacks culpability and considering other factors discussed below, no administrative civil liability was assessed for this SSO.

To prevent future acts of vandalism, the Discharger installed a new manhole ring with a lid cover that can be bolted closed. In addition, the Discharger promptly contracted a professional call service to answer to and respond to public complaints received after hours by the Discharger's Public Works Department.

Also, during its investigation of the cause of this SSO, the Discharger identified an uncapped cross connection pipeline in a manhole located behind 1670 Claremont Drive. The cross connection pipeline extended from the manhole to a hillside near the Glennview Drive storm water spillway. Although no sewage discharged through the cross connection pipeline during this SSO event, the Discharger permanently plugged, capped and glued shut all screw tight fittings on both ends of the cross connection pipeline. Additionally, in 2007, the Discharger began to implement a more aggressive program to investigate and address cross connections between storm water drainage and sanitary sewer systems. In August 2008, the Discharger completed an inspection of all known sanitary sewer manholes (about 1,900). The purpose of the inspection was to identify and eliminate all functional cross connections. During this process, the Discharger identified and capped off three more cross connections.

The matters discussed herein were considered and did not affect the administrative civil liability penalty amount.

The Regional Water Board adopted Resolution No. R2-2005-0059 declaring its support of local programs that inspect and rehabilitate private sewer laterals. The Resolution also states that the Regional Water Board would consider the existence of such programs, especially those experiencing significant I&I from private sewer laterals, as an important factor when considering enforcement actions for sanitary sewer overflows.

The Discharger does not have a private lateral sewer program or ordinance in place. This did not factor in favor of or against the Discharger in the proposed penalty amount.

PROPOSED CIVIL LIABILITY

Based upon consideration of the factors in Section 13385, the Assistant Executive Officer proposes civil liability be imposed upon Discharger in the amount of $633,600.

CEQA EXEMPTION

This issuance of this Complaint is an enforcement action and is, therefore, exempt from the California Environmental Quality Act, pursuant to Title 14, California Code of Regulations, Section 15321.

February 16, 2010
Date

Dyan C. Whyte
Assistant Executive Officer

Attachments: Tables 1A and 1B: City of San Bruno SSOs
Waiver of Hearing

ATTACHMENT Table 1A: City of San Bruno SSOs (May 3, 2007 through December 31, 2009)

Sources of data: State Water Board CIWQS eReporting Program Database Records (from May 3, 2007 through December 31, 2009)

Start Date	End Date	Location	Gallons Discharged	Gallons Recovered	Final Spill Destination	Cause	Maximum Penalty[1]
12/6/2006	11/19/2007	1560 Claremont Drive	57934	0	Street/curb and gutter	Operator error	$ 4,059,340
5/18/2007	5/18/2007	695 San Mateo Ave.	115	10	Storm drain	Debris	$ 10,000
6/7/2007	6/7/2007	2429 Trenton Drive	3700	2500	Storm drain	Root intrusion	$ 12,000
6/9/2007	6/9/2007	2740 Chabot Dr.	70	0	Other paved surface	Debris	$ 10,000
6/11/2007	6/11/2007	291 Bryant Wy	30	20	Street/curb and gutter	Root intrusion	$ 10,000
6/14/2007	6/14/2007	2335 Trenton Dr.	30	25	Street/curb and gutter	Vandalism	$ 10,000
6/18/2007	6/18/2007	2575 Olympic Dr.	675	450	Street/curb and gutter	Grease deposition (FOG)	$ 10,000
7/9/2007	7/9/2007	741 Masson Ave	130	50	Storm drain	Grease deposition (FOG)	$ 10,000
7/16/2007	7/16/2007	774 Chestnut Ave.	80	20	Other: Grass, dirt area	Root intrusion	$ 10,000
8/7/2007	8/7/2007	1151 Huntington Ave.	150	90	Storm drain	Grease deposition (FOG)	$ 10,000
8/5/2007	8/5/2007	901 6th Ave	3	1	Street/curb and gutter	Grease deposition (FOG)	$ 10,000
9/1/2007	9/1/2007	466 San Mateo Ave.	10	10	Other paved surface	Grease deposition (FOG)	$ 10,000
9/11/2007	9/12/2007	Crestmoor Canyon (easement behind Claremont Dr.	3400	1800	Surface water	Other: During excavation contractor hit and damaged sewer main pipe	$ 16,000
9/13/2007	9/13/2007	Crestmoor Canyon	400	0	Unpaved surface	Pipe structural problem/failure	$ 10,000
9/15/2007	9/15/2007	483 Oak Ave.	150	0	Unpaved surface	Root intrusion	$ 10,000
9/16/2007	9/16/2007	630 Skyline Drive	5	2	Street/curb and gutter	Root intrusion	$ 10,000
9/20/2007	9/20/2007	823 Hensley Ave.	50	30	Street/curb and gutter	Debris	$ 10,000
9/30/2007	9/30/2007	Traeger Ave.	750	50	Storm drain;Street/curb and gutter	Root intrusion	$ 10,000
10/1/2007	10/1/2007	1711 El Camino Real	15	0	Street/curb and gutter	Grease deposition (FOG)	$ 10,000
10/10/2007	10/10/2007	Trenton Outfall	2000	1400	Other paved surface;Storm drain;Street/curb and gutter;Unpaved surface	Root intrusion	$ 10,000
10/12/2007	10/12/2007	San Antonio Ave @ Santa Clara	1000	0	Other paved surface;Storm drain;Street/curb and gutter	Root intrusion	$ 10,000
10/14/2007	10/14/2007	2001 Whitman way	10	2	Street/curb and gutter	Debris	$ 10,000
10/12/2007	10/12/2007	799 El Camino Real	30	10	Other paved surface	Rainfall exceeded design	$ 10,000
10/16/2007	10/16/2007	Manhole #45, Intersection of Santa Clara Ave. and San Antonio Ave.	15	2	Unpaved surface	Grease deposition (FOG)	$ 10,000
10/17/2007	10/17/2007	799 El Camino Real	55	30	Storm drain	Grease deposition (FOG)	$ 10,000
11/12/2007	11/12/2007	2359 Trenton Drive	3	0	Unpaved surface	Root intrusion	$ 10,000
11/13/2007	11/13/2007	2481 Trenton Drive	2075	300	Storm drain	Root intrusion	$ 17,750
11/22/2007	11/22/2007	345 El Camino Real	1500	10	Other paved surface;Storm drain;Street/curb and gutter	Grease deposition (FOG)	$ 14,900
11/29/2007	11/29/2007	701 Linden Ave	50	30	Storm drain;Street/curb and gutter	Grease deposition (FOG)	$ 10,000

[1] The maximum penalty was determined by taking the sum of $10,000 for each day the violation occurred and $10 multiplied by the number of gallons by which the volume discharged but not cleaned up exceeds 1,000 gallons.

Start Date	End Date	Location	Gallons Discharged	Gallons Recovered	Final Spill Destination	Cause	Maximum Penalty[1]
12/18/2007	12/18/2007	364 El Camino Real	840	5	Storm drain;Street/curb and gutter	Grease deposition (FOG)	$ 10,000
12/19/2007	12/19/2007	421 Acacia Ave.	45	0	Street/curb and gutter	Root intrusion	$ 10,000
12/20/2007	12/20/2007	565 East San Bruno Ave.	50	45	Other paved surface;Storm drain;Street/curb and gutter	Grease deposition (FOG)	$ 10,000
12/24/2007	12/24/2007	483 East San Bruno Ave.	10	5	Unpaved surface	Root intrusion	$ 10,000
12/24/2007	12/24/2007	416 Euclid Ave.	5	5	Other paved surface	Root intrusion	$ 10,000
12/25/2007	12/25/2007	560 East San Bruno Ave.	1005	50	Storm drain;Street/curb and gutter	Grease deposition (FOG)	$ 10,000
12/26/2007	12/26/2007	1501 Donner Ave.	20	20	Storm drain;Street/curb and gutter	Root intrusion	$ 10,000
1/4/2008	1/4/2008	3496 Highland Drive (Pacific Heights Sewer Pump Station)	9000	0	Storm drain;Street/curb and gutter	Rainfall exceeded design	$ 90,000
1/18/2008	1/18/2008	541 Elm Ave.	3	0	Unpaved surface	Debris	$ 10,000
1/22/2008	1/22/2008	2601 Cottonwood Drive	4	2	Other: Grass, Lawn area	Grease deposition (FOG)	$ 10,000
1/24/2008	1/24/2008	2641 Crestmoor Drive	50	5	Storm drain;Street/curb and gutter	Grease deposition (FOG)	$ 10,000
1/25/2008	1/26/2008	3496 Highland Drive	756000	0	Other paved surface;Storm drain;Street/curb and gutter	Rainfall exceeded design	$ 7,560,000
1/25/2008	1/26/2008	Earl Drive at Sneath Lane (Intersection)	576000	0	Other paved surface;Storm drain;Street/curb and gutter	Rainfall exceeded design	$ 5,760,000
1/25/2008	1/26/2008	Rollingwood Drive at Sneath Lane	108000	0	Building or structure;Other paved surface;Storm drain	Rainfall exceeded design	$ 1,080,000
1/25/2008	1/26/2008	Susan Drive at Fasman Drive (Intersection)	108000	0	Other paved surface;Storm drain;Street/curb and gutter	Rainfall exceeded design	$ 1,080,000
1/25/2008	1/25/2008	Kains Ave @ Masson Ave (Intersection)	12000	0	Other paved surface;Storm drain;Street/curb and gutter	Rainfall exceeded design	$ 120,000
1/25/2008	1/25/2008	Crystal Springs Road at Linden Ave. (Intersection)	3000	0	Other paved surface;Storm drain;Street/curb and gutter	Rainfall exceeded design	$ 30,000
2/9/2008	2/9/2008	901 6th Ave.	50	50	Street/curb and gutter	Grease deposition (FOG)	$ 10,000
2/24/2008	2/24/2008	398 El Camino Real (SR-82)	1250	0	Other paved surface;Storm drain;Street/curb and gutter	Grease deposition (FOG)	$ 12,500
3/22/2008	3/22/2008	424 San Mateo Ave.	825	300	Storm drain;Street/curb and gutter	Grease deposition (FOG)	$ 10,000
4/1/2008	4/1/2008	540 2nd Ave.	10	10	Street/curb and gutter	Grease deposition (FOG)	$ 10,000
4/11/2008	4/11/2008	Intersection of Oakmont Drive and Chabot Drive	150	150	Storm drain;Street/curb and gutter	Grease deposition (FOG)	$ 10,000
4/22/2008	4/22/2008	1811 Parkview Drive.	20	20	Storm drain;Street/curb and gutter	Debris	$ 10,000
4/23/2008	4/23/2008	161 Fernwood Drive	825	150	Unpaved surface	Root intrusion	$ 10,000
4/24/2008	4/24/2008	Intersection of Sneath Lane and Engvall Canyon	10	10	Storm drain;Street/curb and gutter	Root intrusion	$ 10,000
5/11/2008	5/11/2008	Engvall Canyon	2625	100	Unpaved surface;Other: over ground into storm drain culvert	Vandalism	$ 25,250

Start Date	End Date	Location	Gallons Discharged	Gallons Recovered	Final Spill Destination	Cause	Maximum Penalty[1]
5/9/2008	5/9/2008	217 El Camino Real (SR-82)	5	5	Street/curb and gutter	Debris	$ 10,000
5/18/2008	5/18/2008	61 Tanforan Ave.	180	180	Storm drain;Street/curb and gutter	Debris	$ 10,000
6/12/2008	6/12/2008	Intersection of Crestmoor Drive and Kingston Way	525	0	Storm drain	Grease deposition (FOG)	$ 10,000
7/16/2008	7/16/2008	Donner Ave. @ Palomar Ct.	75	25	Storm drain	Debris	$ 10,000
7/25/2008	7/25/2008	1000 San Mateo Ave.	50	50	Other paved surface	Debris	$ 10,000
7/26/2008	7/26/2008	464 Milton Ave.	75	55	Storm drain	Debris	$ 10,000
8/14/2008	8/14/2008	290 Lowell Ave.	450	150	Storm drain	Debris	$ 10,000
8/23/2008	8/23/2008	2339 Trenton Drive	10	0	Unpaved surface	Root intrusion	$ 10,000
8/25/2008	8/25/2008	333 Acacia Ave.	20	5	Street/curb and gutter	Other: Unknown, city crews could not gain access to cleanout	$ 10,000
9/12/2008	9/12/2008	San Bruno	100	100	Other paved surface;Storm drain;Street/curb and gutter	Grease deposition (FOG)	$ 10,000
9/14/2008	9/14/2008	462 Milton Ave.	100	100	Storm drain;Street/curb and gutter	Debris	$ 10,000
9/20/2008	9/20/2008	241 El Camino Real	100	20	Storm drain	Grease deposition (FOG)	$ 10,000
10/1/2008	10/1/2008	466 Milton Ave.	20	5	Other paved surface	Debris	$ 10,000
10/18/2008	10/18/2008	9016th Ave.	5	5	Street/curb and gutter	Grease deposition (FOG)	$ 10,000
10/23/2008	10/23/2008	799 El Camino Real SR-82	13	13	Storm drain;Street/curb and gutter	Grease deposition (FOG)	$ 10,000
10/24/2008	10/24/2008	816 5th Ave.	200	100	Storm drain	Grease deposition (FOG)	$ 10,000
10/27/2008	10/27/2008	596 Skyline Blvd.	45	45	Storm drain;Street/curb and gutter	Debris	$ 10,000
10/27/2008	10/27/2008	Intersection of Linden Ave. and Kains Ave.	42	42	Storm drain;Street/curb and gutter	Root intrusion	$ 10,000
10/24/2008	10/24/2008	795 5th Ave.	10	0	Street/curb and gutter	Grease deposition (FOG)	$ 10,000
11/1/2008	11/1/2008	179 Linden Ave.	800	800	Other: floor drain connected to sewer system	Grease deposition (FOG)	$ 10,000
11/7/2008	11/7/2008	430 San Antonio Ave.	50	50	Storm drain;Street/curb and gutter	Grease deposition (FOG)	$ 10,000
11/9/2008	11/9/2008	Intersection of Kains Ave. and Linden Ave.	50	50	Storm drain;Street/curb and gutter	Grease deposition (FOG)	$ 10,000
11/11/2008	11/11/2008	416 Euclid Ave.	30	30	Unpaved surface	Debris	$ 10,000
11/13/2008	11/13/2008	2101 Sneath Lane	60	30	Other paved surface;Storm drain	Root intrusion	$ 10,000
11/18/2008	11/18/2008	2001 Whitman Way	500	0	Storm drain;Street/curb and gutter	Debris	$ 10,000
11/19/2008	11/19/2008	2001 Whitman Way	30	30	Other paved surface;Storm drain;Street/curb and gutter;Unpaved surface	Debris	$ 10,000
11/26/2008	11/26/2008	483 Oak Ave.	220	220	Street/curb and gutter	Debris	$ 10,000
12/3/2008	12/3/2008	890 El Camino real SR-82	150	150	Other paved surface;Storm drain	Debris	$ 10,000

Start Date	End Date	Location	Gallons Discharged	Gallons Recovered	Final Spill Destination	Cause	Maximum Penalty[1]
12/7/2008	12/7/2008	823 Hensley Ave.	25	25	Other paved surface;Storm drain	Debris	$ 10,000
12/19/2008	12/19/2008	940 Hensley Ave.	200	200	Street/curb and gutter	Grease deposition (FOG)	$ 10,000
12/26/2008	12/26/2008	20 Livingston Terrace	7300	1000	Storm drain;Street/curb and gutter	Root intrusion	$ 63,000
1/3/2009	1/3/2009	2010 Rollingwood Drive	360	360	Storm drain;Street/curb and gutter	Grease deposition (FOG)	$ 10,000
1/12/2009	1/12/2009	467 Oak Ave.	50	0	Unpaved surface	Debri-Rags	$ 10,000
1/12/2009	1/12/2009	608 6th Ave.	10	5	Unpaved surface	Debri-General	$ 10,000
1/14/2009	1/14/2009	161 Diamond Ave.	20	20	Street/curb and gutter	Debri-General	$ 10,000
1/15/2009	1/15/2009	Intersection of Scott Ave. and Montgomery Ave.	300	300	Storm drain;Street/curb and gutter	Debri-General	$ 10,000
1/16/2009	1/16/2009	100 San Bruno Ave.	50	50	Storm drain;Street/curb and gutter	Other: Maintenance crew found a sur-charged manhole on their preventative maintenance route. Crew cleared a blockage in the main but sewage exited a cleanout during the process	$ 10,000
1/21/2009	1/21/2009	1771 Parkview Drive	75	75	Storm drain;Street/curb and gutter	Debri-General	$ 10,000
1/23/2009	1/23/2009	161 Serra Ct.	50	50	Storm drain;Street/curb and gutter	Debri-General	$ 10,000
2/2/2009	2/2/2009	189 El Camino Real, San Bruno, CA	25	25	Other paved surface;Storm drain;Street/curb and gutter	Grease deposition (FOG)	$ 10,000
2/3/2009	2/3/2009	City of San Bruno Recreation Center	40	10	Other paved surface;Street/curb and gutter;Unpaved surface	Grease deposition (FOG)	$ 10,000
2/9/2009	2/9/2009	596 Skyline Drive	125	125	Storm drain;Street/curb and gutter	Root intrusion	$ 10,000
2/10/2009	2/10/2009	596 Skyline Drive	200	200	Storm drain;Street/curb and gutter	Root intrusion	$ 10,000
2/12/2009	2/12/2009	165 San Benito Ave.	150	150	Storm drain;Street/curb and gutter	Debri-Rags	$ 10,000
2/14/2009	2/14/2009	740 Masson Ave	57	20	Storm drain;Street/curb and gutter	Debri-General	$ 10,000
2/15/2009	2/15/2009	2325 Valleywood Drive	95	0	Storm drain;Street/curb and gutter	Debri-Rags	$ 10,000
2/15/2009	2/16/2009	3496 Highland Drive	8100	6000	Storm drain	Rainfall exceeded design	$ 31,000
3/11/2009	3/11/2009	1040 Santa Lucia Ave.	100	100	Storm drain;Street/curb and gutter	Grease deposition (FOG)	$ 10,000
3/30/2009	3/30/2009	1600 Monterey Drive	200	0	Storm drain	Debri-General	$ 10,000
4/17/2009	4/17/2009	462 Milton Ave.	25	25	Street/curb and gutter	Debri-Rags	$ 10,000
5/22/2009	5/22/2009	251 City Park Way	40	20	Other paved surface;Storm drain	Root intrusion	$ 10,000
5/28/2009	5/28/2009	2260 Pinecrest Drive	3	3	Other paved surface	Debri-General	$ 10,000
6/4/2009	6/4/2009	Manhole Number 1437 - 421 El Camino Real	150	150	Storm drain;Street/curb and gutter	Debri-General	$ 10,000

Start Date	End Date	Location	Gallons Discharged	Gallons Recovered	Final Spill Destination	Cause	Maximum Penalty[1]
6/6/2009	6/6/2009	589 Hawthorne Ave.	25	25	Storm drain;Street/curb and gutter	Debri-General	$ 10,000
6/9/2009	6/9/2009	486 Milton Ave.	50	50	Street/curb and gutter	Debri-General	$ 10,000
6/15/2009	6/15/2009	165 San Benito Ave.	18	18	Storm drain;Street/curb and gutter	Pipe structural problem/failure	$ 10,000
6/18/2009	6/18/2009	2641 Crestmoor Drive, San Bruno, CA 94066	80	80	Other paved surface;Storm drain	Debri-General	$ 10,000
6/25/2009	6/25/2009	3496 Highland Drive - Pacific Heights sewer lift station	100	100	Storm drain;Street/curb and gutter	Pump station failure	$ 10,000
6/27/2009	6/27/2009	623 Chestnut Avenue San Bruno CA 94066	180	180	Storm drain;Street/curb and gutter	Debri-General	$ 10,000
7/16/2009	7/16/2009	1380 Crystal Springs Road	50	50	Storm drain	Grease deposition (FOG)	$ 10,000
8/11/2009	8/11/2009	324 Florida Ave.	200	200	Storm drain;Street/curb and gutter	Debri-General	$ 10,000
9/8/2009	9/8/2009	582 San Bruno Ave.	5	5	Street/curb and gutter	Grease deposition (FOG)	$ 10,000
9/8/2009	9/8/2009	582 San Bruno Ave.	40	40	Storm drain;Street/curb and gutter	Grease deposition (FOG)	$ 10,000
9/17/2009	9/17/2009	324 Florida Ave.	1750	1750	Storm drain;Street/curb and gutter	Grease deposition (FOG)	$ 10,000
9/28/2009	9/28/2009	659 Huntington Avenue, San Bruno, CA 94066	315	315	Storm drain	Grease deposition (FOG)	$ 10,000
9/30/2009	10/5/2009	1290 Montgomery Avenue, San Bruno, CA 94066	78000	70200[2]	Other: AT&T Vaults	Pipe structural problem/failure	$ 118,000
10/15/2009	10/15/2009	City Park- 1125 Crystal Springs Road	175	10	Unpaved surface	Root intrusion	$ 10,000
11/7/2009	11/7/2009	2540 Turnberry Drive	40	0	Storm drain	Root intrusion	$ 10,000
11/13/2009	11/13/2009	901 6th Ave.	12	12	Storm drain;Street/curb and gutter	Grease deposition (FOG)	$ 10,000
12/06/09	12/06/09	185 Santa Clara Avenue	125	125	Storm drain	Grease deposition (FOG)	$ 10,000
12/07/09	12/07/09	Crestmoor Drive at Darby Place	45	45	Storm drain;Street/curb and gutter	Grease deposition (FOG)	$ 10,000
12/14/09	12/14/09	83 Scott Street	115	115	Storm drain;Street/curb and gutter	Debri-General	$ 10,000
12/18/09	12/18/09	Rear easement of 2345 Trenton Drive	1300	1200	Other paved surface;Storm drain	Root intrusion	$ 10,000
12/21/09	12/21/09	360 El Camino Real, San Bruno, CA	80	80	Other paved surface;Storm drain;Street/curb and gutter	Debri-General	$ 10,000

[2] Based on information provided by the Discharger dated October 7, 2009, about 90% of the total volume discharged entered an eroded AT&T conduit and collected in the downstream AT&T vault. Thus, it is estimated that approximately 7,800 gallons (or 10% of total volume discharged) was not recovered and seeped through the surrounding soils to groundwater. The maximum penalty amount is thus calculated taking into consideration that 70,200 gallons were recovered as opposed to the 78,000 recovered gallons reported in CIWQS.

Start Date	End Date	Location	Gallons Discharged	Gallons Recovered	Final Spill Destination	Cause	Maximum Penalty[1]
12/26/09	12/26/09	236 El Camino Real	800	0	Storm drain	Grease deposition (FOG)	$ 10,000
Total Gallons (5/3/07-12/31/09)			1759402	99777	Maximum Penalty (5/2/07-12/31/09)		$21,219,740
Total Gallons (12/1/04-5/2/07)			296600	3000	Maximum Penalty (12/1/04-5/2/07)		$ 3,010,000
Total Gallons			**2056002**	**102777**	Total Maximum Penalty		**$ 24,229,740**
Total SSOs (5/2/07-12/31/09)			130				
Total SSOs (12/1/04-5/2/07)			18				
Total SSOs			**148**				

ATTACHMENT Table 1B: City of San Bruno SSOs (December 1, 2004 through May 2, 2007)

Source of Data: SF Bay Regional Water Board – SSO eReporting Program Database Records (from December 1, 2004 to May 2, 2007)

DATE	GALLONS DISCHARGED	GALLONS RECOVERED	LOCATION	SSO DESTINATION	CAUSE	DESCRIPTION	MAXIMUM PENALTY[1]
6/13/2005	750	0	Oakmont @ Olynpic Dr.	STORM DRAIN	BLOCKAGE	GREASE	$ 10,000
8/22/2005	750	0	2450 Crestmoor Dr.	STORM DRAIN	BLOCKAGE	GREASE	$ 10,000
9/6/2005	750	0	179 Linden (easement)	STORM DRAIN	BLOCKAGE	GREASE	$ 10,000
1/1/2006	6000	2000	Pacific heights @ Highland Dr.	STORM DRAIN	BLOCKAGE	----	$ 40,000
2/9/2006	3000	1000	2540 Olympic Dr.	STORM DRAIN	BLOCKAGE	----	$ 20,000
5/27/2006	300	0	424 San Mateo Ave.	STORM DRAIN	BLOCKAGE	----	$ 10,000
6/7/2006	1000	0	2150 Evergreen Dr.	STREET/CURB & GUTTER	BLOCKAGE	ROOTS	$ 10,000
6/9/2006	200	0	466 San Mateo Ave.	YARD/LAND	BLOCKAGE	GREASE	$ 10,000
6/9/2006	600	0	2440 Bennington Drive	YARD/LAND	BLOCKAGE	ROOTS	$ 10,000
6/24/2006	276000	0	Glenview Dr. @ Earl Ave (easement) 1550 Claremont Dr.	STORM DRAIN	BLOCKAGE	VANDALISM	$ 2,760,000
7/8/2006	3000	0	2480 Bennington Dr.	STORM DRAIN	BLOCKAGE	ROOTS	$ 30,000
8/15/2006	150	0	Intersection of Oakmont Dr. and Olympic Dr.	STREET/CURB & GUTTER	BLOCKAGE	GREASE	$ 10,000
8/25/2006	300	0	Crystal Springs Road at Donner Ave.	STORM DRAIN	BLOCKAGE	GREASE	$ 10,000
12/6/2006	100	0	1650 Claremont Drive	YARD/LAND	BYPASS	----	$ 10,000
1/10/2007	300	0	Intersection of Santa Clara Ave. and San Antonio Ave.	YARD/LAND	BLOCKAGE	GREASE	$ 10,000
2/26/2007	3000	0	Intersection of Kains and Masson Ave.	STORM DRAIN	BLOCKAGE	GREASE	$ 30,000
3/28/2007	150	0	Intersection of State Highway 35 and Sharp Park Road.	NO WATER INVOLVED	BLOCKAGE	GREASE	$ 10,000
4/7/2007	250	0	Parking lot across from 422 Mastick Ave.	STREET/CURB & GUTTER	BLOCKAGE	GREASE	$ 10,000
Total Gallons	**296600**	**3000**				**Maximum Penalty:**	**$ 3,010,000**
Total SSOs		**18**					

[1] The maximum penalty was determined by taking the sum of $10,000 for each day the violation occurred and $10 multiplied by the number of gallons by which the volume discharged but not cleaned up exceeds 1,000 gallons.

ATTACHMENT B

Project Name: City of San Bruno Private Sewer Lateral Grant Program

Project Developed by: City of San Bruno

Project to be Performed by: City of San Bruno

Contact: Klara Fabry, Public Services Director
City of San Bruno
567 El Camino Real
San Bruno, CA 94066
Voice: (650) 616-7065
Fax: (650) 794-1443
Email: KFabry@sanbruno.ca.gov

Compliance with SEP Criteria:

1. Benefit to Water Quality and Beneficial Uses

The objective of the City's Private Sewer Lateral Grant Program is to reduce inflow and infiltration (I/I) into the City's collection system from defective private sewer laterals in the Sharp Park basin. A reduction in I/I would benefit surface water quality and beneficial uses by decreasing the number and volume of spills from the City's collection system to surface waters during wet weather. In addition, repair or replacement of defective laterals in the Sharp Park basin is expected to reduce the number and volume of spills to surface waters from private laterals.

2. SEP is not an Obligation of Discharger

The City is not required to develop, implement or fund the Private Sewer Lateral Grant Program by any permit or order or any local, state or federal law nor has this program been previously contemplated as a City funded program or included in prior City budgets.

3. No Fiscal Benefit to Regional Water Board

The Private Sewer Lateral Grant Program does not provide any fiscal benefit to the Regional Water Board's functions, its members or its staff.

4. Nexus Between Violation and SEP

A nexus exists between the City's spill violations and the Private Sewer Lateral Grant Program because repair or replacement of defective laterals in the Sharp Park basin will reduce the amount of I/I in the City's collection system, thereby reducing the likelihood

of future wet weather spills from the City's collection system. In addition, repair or replacement of defective laterals in the Sharp Park basin is expected to reduce the number of private lateral spills and their related consequences.

Description of Project:

1. The goal(s) of the SEP and detailed plans for achieving the goal(s)

The City completed a Master Plan in 2002, which indicated that the Sharp Park basin has a high level of I/I. The City later conducted smoke testing in the Sharp Park basin to determine whether the high levels of I/I were caused by inflow. The smoke testing confirmed that the basin has limited sources of inflow. These results suggest that the high rates of I/I in the Sharp Park basin are caused by infiltration from private laterals and/or from unknown sources.

The Sharp Park basin has approximately 300 laterals that flow to mains that then flow to the Sharp Park Pumping Station. The goal of the Private Sewer Lateral Program is to reduce the rate of I/I in the Sharp Park Basin from these laterals by incentivizing homeowners located in the basin to repair or replace their defective private sewer laterals. CCTV can determine defective laterals. The City intends to achieve this goal by making $199,622 in grant funds available for lateral repair/replacement to homeowners that discharge into mains that flow to the Sharp Park pump station in such a way as to accomplish the performance measure standard described in the following section. This project will also determine the amount of I&I reduction by monitoring flows in the basin before and after repairs and replacements of the private sewer laterals. In addition, since the smoke testing conducted by the City only produced smoke from one lawn area and one cleanout in the Sharp Park Basin, the City will CCTV the mains at City cost to assist in identifying other possible sources of inflow/infiltration in the system.

Interested homeowners will be required to submit a grant application to the City, by a specified deadline. Homeowners will be required to hire a private company to conduct a CCTV inspection of their private lateral. The City will reimburse the homeowner 50% of the cost of the CCTV inspection, up to a maximum amount of $150. Using non-SEP funds, City staff will observe the CCTV inspections and assign a rating of one to five to each inspected lateral, with five being in a failure condition and one being in excellent condition.

Homeowners with defective private laterals of a defect rating of five through three will be eligible for a grant from the City for repair or replacement of their private sewer lateral. The City will provide the homeowner with a list of contractors with whom the City has previously negotiated a pre-bid set price. The homeowners will have the option of using one of the contractors on the City's list or a contractor of their choice. The City will provide the grant funds to the homeowner upon the contractor's satisfactory completion of the work.

2. Key personnel involved in SEP

The City's collection system staff will develop and implement the Private Sewer Lateral Program.

3. Plans to continue and/or maintain the SEP beyond the SEP-funded period

N/A

4. Documented Support

N/A

Project Milestones and Budget:

The City will fund the Private Sewer Lateral Grant Program in the amount of $199,622 with $10,000 of that amount being public outreach. The $10,000 includes all aspects of public outreach including staff time, utility billing inserts, web page updates about the lateral program, and public access television notice development. The Private Sewer Lateral Grant Program will include the following milestones:

November 2011 – March 2012 – The City will use a magnetic flow meter at the Sharp Park Pumping Station to measure flow before implementation of the Private Sewer Lateral Grant Program. This meter and chart output has been calibrated using volume drawdown. This date will be used in the final report when comparing pre and post flow data.

February 1, 2012 – The City will develop an outreach program informing homeowners in the Sharp Park basin about the Private Sewer Lateral Grant Program. The outreach program will clearly describe the benefits of the limited time only grant to homeowners in the Sharp Park Basin. The main benefit to homeowners is that utilizing the grant money would reduce future costs to the homeowners if the homeowners were required to repair or replace their laterals after the grant program has expired. The City in its outreach material or website in publicizing the Program, shall state in a prominent manner that it is being partially funded as part of the settlement of an enforcement action by the Regional Water Board against the City.

March 1, 2012 – The City will implement the outreach program

April 1, 2012 – Submit report to Regional Water Board on implementation of outreach program

April 1, 2012 – Submit report to Regional Water Board on results of pre-project flow monitoring data

July 20, 2012 – Submit quarterly status report as further described below

October 20, 2012 – Submit quarterly status report as further described below

January 20, 2013 – Submit quarterly status report as further described below

April 20, 2013– Submit quarterly status report as further described below

July 20, 2013– Submit quarterly status report as further described below

October 20, 2013– Submit quarterly status report as further described below

January 20, 2014– Submit quarterly status report as further described below

April 20, 2013– Submit quarterly status report as further described below

July 20, 2014– Submit quarterly status report as further described below

October 20, 2014– Submit quarterly status report as further described below

January 20, 2015– Submit quarterly status report as further described below

April 20, 2015– Submit quarterly status report as further described below

October 1, 2015 - Begin post flow monitoring.

June 1, 2016 – Submit final report, including post-flow monitoring report, and certification of completion as further described in the Settlement Agreement for this matter

The City will maintain a monthly accounting of grant funds. Any funds left over after the successful completion of the Private Sewer Lateral Grant Program will be turned over to the State Cleanup and Abatement Account.

Project Performance Measures:

The City will measure the success of the Private Sewer Lateral Grant Program by tracking the number, length, location, and cost of repairs/replacements of defective private laterals. Suspension of $199,622 in administrative civil penalty shall occur after successful completion of the program that equates to the satisfactory repair or replacement of a total of 115 defective private sewer laterals and compliance with the SEP provisions in the Settlement Agreement for this matter, which include the requirement that the City demonstrate that it has expended a minimum of $199,622 to implement the SEP project. If the program results in a lesser number of private laterals repaired or replaced, the suspended amount shall be determined by this equation: suspended amount in dollars= (number of private laterals repaired or replaced) * ($1,700 per private lateral).

The difference between $199,622 and the suspended amount shall be paid by the City to the State Cleanup and Abatement Account (CAA). For example, if the City only repairs or replaces 78 private laterals, then the City would pay $67,022 to the CAA ($67,022 = $199,622 – (78 * $1,700)).

In addition, the City will gather pre rehab flow monitoring data by April 1, 2012. Within two years following exhaustion of the grant funds and no later than October 1, 2015, the City will commence post rehab project flow monitoring at the Sharp Park Pump Station using existing flow meters to measure flow reductions and will prepare a brief summary report of its findings. If the City's monitoring results indicate that the Private Sewer Lateral Grant Program did not reduce I/I , the City will recommend further studies in the area and complete those studies before December 1, 2016 at the City's cost.

Reports to the Regional Water Board:

The City will provide a quarterly progress report to the Regional Water Board's designated representative (the San Francisco Estuary Partnership) and, the Division of Financial Assistance of the State Water Board in accordance with the schedule set forth in the Project Milestones and Budget section above. Each report shall include a table showing a running tally of the number and length of laterals inspected, whether work was required on the inspected laterals, the number and length of laterals repaired or replaced, the street address locations for each lateral videoed/inspected and repaired/replaced, the month and date the work was completed, the amount of grant funds expended on each lateral, and the amount of grant funds remaining. The quarterly reports shall also include summaries of outreach conducted and copies of any supporting materials for the program.

The City will provide a final report and certification of completion in accordance with the Settlement Agreement for this matter.

Third Party Oversight Organization:

To ensure completion of commitments and appropriate expenditure of funds, oversight and audit of the project will be conducted by the San Francisco Estuary Partnership (SFEP). All reports must be sent to the following:

Athena Honore
San Francisco Estuary Partnership
1515 Clay Street, Suite 1400
Oakland, CA 94612
(510) 622-2419
ahonore@waterboards.ca.gov

1647276.1

ATTACHMENT C

Project Name:
Marine Mammal Center's Intensive Care and Quarantine Unit - Shade Structure for Three In-Ground Pools

Project Developed by: City of San Bruno

Project to be Performed by: The Marine Mammal Center

Contact: Tony Promessi
Director of Life Support and Facilities
The Marine Mammal Center
2000 Bunker Road
Fort Cronkhite
Sausalito, CA 94965
415 289-7372 work
415 729-6001 cell
415 754-4072 fax
promessit@tmmc.org

Compliance with SEP Criteria:

1. Benefit to Water Quality and Beneficial Uses

The Marine Mammal Center's Intensive Care and Quarantine Unit Project ("Project" or "SEP") will benefit the San Francisco Bay, the Pacific Ocean, and their beneficial uses by renovating aging pools used for the rehabilitation of injured marine mammals rescued from the Bay and Northern California coastline. These pools will aid in maintaining successful populations of marine mammals, helping to support the Bay and Ocean beneficial uses of estuarine habitat (EST) and marine habitat (MAR). By supporting the Center's interpretive functions (providing information and resources to the public about marine mammals and their habitats), the project will support the non-contact recreation (REC2) beneficial use.

2. SEP is not an Obligation of Discharger

The City is not required by any permit or order or any local, state or federal law to fund the Project.

3. No Fiscal Benefit to Water Board

The City's contribution to the Project does not provide any fiscal benefit to the Water Board's functions, its members or its staff.

4. Nexus Between Violation and SEP

The Marine Mammal Center rescues and provides veterinary care for ill and injured marine mammals. Marine mammals in San Francisco Bay and along the Northern California coastline are adversely affected by several anthropogenic factors, including discharges of raw or partially treated sewage. The Marine Mammal Center studies these factors and assesses their influence on the health of the marine environment. Three examples of these efforts in the San Francisco Bay area include:

a) Epilepsy in Sea Lions & Studying of Domoic Acid Poisoning

Inquiry continues into the effects of domoic acid, a byproduct of harmful algal blooms or "red tides," on sea lions. In 2007, the Center's researchers published a paper in the Proceedings of the Royal Society identifying epilepsy in sea lions resulting from previous low dose exposure to the toxin. This is important, as similar effects could occur in people if they ate seafood containing these levels of domoic acid. Researchers plan on studying behavioral patterns of sea lion pups exhibiting epilepsy from domoic acid exposure during development.

b) PCBs and Developed Risk Assessment Models

Polychlorinated biphenyls (PCBs) are mixtures of manmade chemicals such as oily liquids, solids or sometimes odorless vapors. They are no longer produced in the United States but are still found in the environment. When PCBs enter the water, fish ingest them and in turn, sea lions and other marine mammals and humans eat the fish. California sea lions are exposed to some of the highest levels of contaminants worldwide because of their geographical range. The Center analyzed blubber samples from female sea lions and their pups, and learned that the contaminants crossed the placenta, thus exposing fetuses during critical months of their development. This study helps set the parameters for developing risk assessment models for marine mammals.

c) Understanding the Health of the Bay

The harbor seal habitats of San Francisco Bay are influenced by several human-produced factors, including sewage, agricultural and surface runoff, chemical pollution, and watercraft. Not only is it important to protect the seal population from toxic exposure that could threaten its survival, but the seals also serve as good gauges for the safety of the marine environment in relation to human beings.

Additionally, by allowing the general public access, The Marine Mammal Center is enhancing the public's knowledge of the marine environment and the water quality issues that may impact marine mammals and other marine flora and fauna. Each year the Center's education programs teach thousands of students and the public about marine mammals, what they can tell us about ocean health and the urgent need for stewardship of Earth's marine environments.

Description of Project:

1. The goal(s) of the SEP and detailed plans for achieving the goal(s)

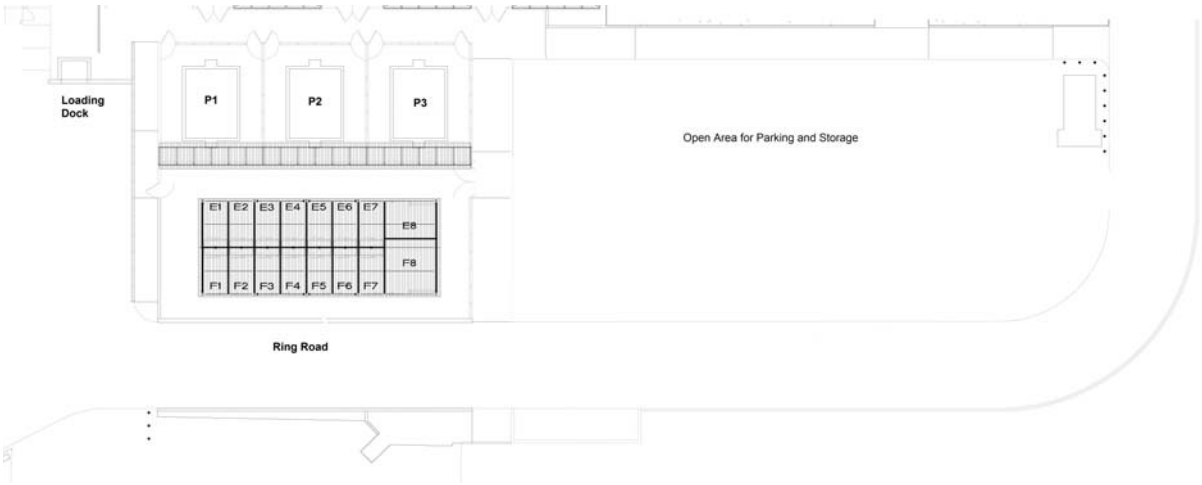
The Marine Mammal Center is a non-profit marine mammal rehabilitation facility operating under a letter of authorization from the National Marine Fisheries Service. In June 2009, the Center opened a renovated facility which included markedly enhanced pens and pools for holding and treating patients, a state of the art water filtration system, a fully equipped laboratory for the performance of on-site diagnostics, a pathology facility, extensive and purposefully designed support areas for food storage and preparation, and a separate room for medical record-keeping that also facilitates the dialog of clinicians, support staff and volunteers in managing cases.

The goal of this SEP is to assist in the rescue and rehabilitation of marine mammals that have been adversely affected by human activities by contributing $95,928 to the installation of shade structures for three new intensive care patient pools. This is part of a larger project of pens, fencing, and life support for the Center's Intensive Care and Quarantine Unit.

The SEP funding would go specifically to the construction of steel framework, metal roofing and the labor and parts necessary to complete a 72' long 8' foot wide shade structure along three large animal pools.

This scope of work will be done by a single contractor, Gonsalves and Stronck, and has an estimated cost of $95,928.

The shade structure that is part of the SEP covers pools P1, P2 and P3 as shown below:



While outreach is not a direct component of this project, the City and The Marine Mammal Center in any outreach material or web information publicizing the project shall state in a prominent manner that it is being partially funded as part of the settlement of an enforcement action by the Regional Water Board against the City.

2. Key personnel involved in SEP

Marine Mammal Center staff will utilize the City's funds to hire general contractor Gonsalves and Stronck, lic. 672769, to complete the construction of the shade structure.

3. Plans to continue and/or maintain the SEP beyond the SEP-funded period

The Marine Mammal Center will maintain the new shade structure as part of its ongoing maintenance of its facilities.

4. Documented Support

N/A

Schedule of Performance

1. Project Milestones and Budget:

The City will fund the Marine Mammal Center Rebuild Project in the total amount of $95,928.

Work	Milestone	Value
Notice to Proceed	7/01/2011	
Tube Steel Supports	8/01/2011	$39,627
Unistrut Supports	8/07/2011	$3,910
Corrugated Metal Roof	8/07/2011	$10,798

Chain Link Fence	8/14/2011		$15,000
Painting	8/14/2011		$3,875
Electrical	8/21/2011		$1,500
Contractors Fee			$5,230
Project Completion Date	8/22/2011		
Submission of Final Report	9/15/2011		
Contingency & Insurance @ 20%			$15,988
		Project Total	$95,928

Upon acceptance of this funding, The Marine Mammal Center will restrict the funds to the purpose outlined in the proposal. All funds received by the Center for this project will be maintained in a separate account and not commingled with funds the Center receives for general operating or other purposes.

2. Project Performance Measures:

The indicators for the success of the SEP will be the contractor's completion of the shade structure in accordance with the design plan and specifications.

3. Reports to the Water Board:

By September 15, 2011, the Marine Mammal Center will provide a final report to the Regional Water Board, the SF Estuary Partnership, and the State Water Board's Division of Financial Assistance documenting completion of the SEP, and addressing how performance measures were met, along with a copy of accounting records of expenditures. Since the project duration is shorter than one calendar quarter, no quarterly reports are anticipated.

<u>Third Party Oversight Organization:</u>

To ensure completion of commitments and appropriate expenditure of funds, oversight and audit of the project will be conducted by the San Francisco Estuary Partnership (SFEP). All reports must be sent to the following:

Athena Honore
San Francisco Estuary Partnership
Association of Bay Area Governments (ABAG)
1515 Clay St, Suite 1400
Oakland, CA 94612
510-622-2325
ahonore@waterboards.ca.gov

1645785.1

Attachment D
Implementing Party Agreement Terms

1. Agreement to be Bound as an Implementing Party: The Marine Mammal Center ("Implementing Party") agrees to be bound by the terms of California Regional Water Quality Control Board, San Francisco Bay Region, ("Regional Water Board"), Order No. R2-2011-00XX Settlement Agreement and Stipulation for Entry of Order ("Stipulated Order") in the matter of the City of San Bruno ("Discharger") (attached and incorporated herein as Attachment A) as a third party responsible for implementing the Marine Mammal Center Supplemental Environmental Project ("SEP").

2. Agreement to Accept SEP Funds and Implement the SEP: As a material consideration for the Regional Water Board's acceptance of the Stipulated Order, the Implementing Party represents that it will utilize the funds provided to it by the Discharger to perform the SEP in accordance with the schedule for performance included in the SEP description, Attachment C of the Stipulated Order. The Implementing Party understands that its promise to implement the SEP, in its entirety and in accordance with the schedule for performance, is a material condition of the Stipulated Order's settlement of liability between the Discharger and the Regional Water Board Prosecution Staff. The Implementing Party agrees that the Regional Water Board staff, or its designated representative, has the right to: (1) inspect the SEP at any time without notice; (2) require an audit of the funds expended by the implementing party to implement the SEP; and (3) require implementation of the SEP in accordance with the terms of the Stipulated Order if the Implementing Party has received funds for that purpose from the Discharger. The Implementing Party agrees to submit to the jurisdiction of the Regional Water Board to enforce the terms of the Stipulated Order and the implementation of the SEP and agrees to provide all such information requested by the Discharger to enable the Discharger to fulfill its reporting and certification obligations to the Regional Water Board regarding the SEP, as set forth in the Stipulated Order.

3. Publicity: The Implementing Party agrees that if it, or any of its agents or subcontractors, publicize one or more elements of the SEP, they shall state in a <u>prominent manner</u> that the project is being funded as part of the settlement of an enforcement action by the Regional Water Board against the Discharger.

4. Covenant Not To Sue: The Implementing Party 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 its implementation of the SEP.

5. Water Board is Not Liable: Neither the Regional Water Board members nor the Regional Water Board staff, attorneys, or representatives shall be liable for any injury or damage to persons or property resulting from acts or omissions by the Implementing Party, its directors, officers, employees, agents,

representatives or contractors in carrying out activities pursuant to this Stipulated Order, nor shall the Water Board, its members or staff be held as parties to or guarantors of any contract entered into by the Implementing Party, its directors, officers, employees, agents, representatives or contractors in carrying out activities pursuant to this Stipulated Order.

6. Third Party Beneficiary: The Regional Water Board is an intended third party beneficiary of this agreement and can enforce its terms and conditions.