

SETTLEMENT PROPOSAL

RECITALS

A. The City of Petaluma (“the City”) owns and operates a wastewater collection and treatment system for residents and businesses of the City of Petaluma. The system is subject to National Pollutant Discharge Elimination System (“NPDES”) Permit No. CA0037810 (“Permit”), issued by the California Regional Water Quality Control Board, San Francisco Bay Region (“Region”) pursuant to Section 402 of the Clean Water Act (“CWA”), 33 U.S.C. § 1342. Pursuant to the requirements of the Permit, the City is authorized to treat wastewater and discharge treated wastewater from the City’s Publicly Owned Treatment Works (“POTW”) into the Petaluma River (“River”) from October 21 through April 30. For the remainder of the year, direct discharge into the River is prohibited, except as authorized by the Permit, and treated wastewater is recycled for irrigation of nearby agricultural lands.

B. Northern California River Watch (“River Watch”) provided notice to the City on May 24, 2004, pursuant to Section 505(b) of the CWA, alleging past and continuing violations by the City of its Permit.

THEREFORE, the City and River Watch agree as follows in order to settle and resolve all issues set for the River Watch’s notice letter dated May 24, 2004:

I. SUPPLEMENTAL ENVIRONMENTAL PROJECT

1. Within one (1) year of the approval and entry of this Settlement Agreement, the City shall undertake a healthy waterways study, the cost of which to the City shall not exceed \$35,000.00, including consultant fees and expenses, and excluding internal City staff costs. The study will consist of sampling for potential human markers as set forth in the protocol for the study, which shall be developed by the City within six (6) months of

the execution of this Agreement. The protocol shall be provided to River Watch for review and comment. River Watch shall return, in writing, any comments it may have on the protocol within twenty-one (21) days of submittal by the City.

2. The purpose of the study will be to determine whether elevated levels of human markers indicating sewage pollution exist in the surface water of the Petaluma River and selected feeder creek(s) within the City of Petaluma. Creeks will be selected for sampling based on their proximity to sewage lines. the creeks closest to the oldest lines where structural defects have been identified will receive the highest priority. The City will make a good faith effort to sample all of the highest priority creeks within the limits of the available budget. If elevated levels of human sewage markers are found, one study objective is to determine if there is any correlation between potential leakage from sanitary sewers which are proximate to the impacted waters and the contamination found in those segments of the creek(s) or River. If it is determined that a positive correlation exists between the condition of proximate sewers and creek water quality related to human sewage markers, the City will use the study results to prioritize sewer maintenance, repair and replacement activities to improve the condition of the sanitary sewers potentially associated with the creek contamination. In the event that the potential sewers in question have not yet been through a TV inspection and a condition assessment, the City will then include those portions of the City sewer system in the next round of condition assessments and thereafter assign the highest priority for maintenance, repairs and replacement of those segments to the extent significant defects are determined to be present. All creek sample results will be provided to River Watch for its review.

3. The details of the study will be more specifically determined and set forth in the protocol yet to be developed. The City anticipates developing a protocol which will attempt to address several approaches which have previously been discussed between the

City and River Watch. These include a study that provides for sampling at one or more feeder creeks (hopefully non-ephemeral creeks) at first flush and low flow, as well as at wet weather flow conditions. One marker which will be evaluated for use is that of caffeine. Caffeine or some other similar marker will be used for initial testing. To the extent that marker is found in the study areas at a level which suggests potential sewage related pollution, follow up sampling for fecal coliform and nutrients will occur. The protocol will set forth appropriate locations for sampling including, potentially, sampling at the mouth of feeder creek(s). The City will use its best efforts to prepare the protocol in such a manner to maximize the achievement of the objectives set forth in these paragraphs 2 and 3. Although, the protocol may modify these suggested approaches as needed to provide a sound, cost effective study, the City will act in good faith to undertake the study in a manner which has the best potential to demonstrate a correlation, or lack of correlation, between creek pollution and the condition of adjacent sanitary sewers at a cost within the available budget.

4. Upon request from River Watch, and notice to the City a minimum of five (5) days before a scheduled sampling event, the City will provide River Watch with dual samples from that sampling event.

5. The Sonoma County Department of Health Services (DHS) monitors Sonoma County recreational waters and beaches with regard to sanitation and healthfulness, including the posting of public notices. The City agrees to provide DHS with creek water quality testing results and aid DHS in taking appropriate efforts to protect the public using recreational waters and beaches within Petaluma City limits, including posting warning signs if found to be appropriate.

6. The City will seek to augment or replace the City funds committed to this study by exploring grant funds potentially available for environmental studies.

II. LATERAL GRANT REPLACEMENT PROGRAM

7. Beginning in Fiscal Year 2005/2006, the City will undertake a voluntary Lateral Grant Replacement Program (“LGRP”). This program will include the City providing grants up to 50% of the approved cost for replacing a private residential lateral, for a maximum grant of \$2,000. Said grants will be available to all residential property owners and to buyers of residential property who elect to have laterals inspected at the time of purchase. The City will provide outreach materials directed to owners of residential properties informing them of the availability of the grants. The total budget of the program shall not exceed \$50,000 annually. The City will implement the program for a minimum of three (3) fiscal years.

III. WATER CONSERVATION PROGRAM

8. Since 1999, the City has operated an efficient and effective water conservation program. This program is designed to meet the California Urban Water Conservation Council’s Best Management Practices. Since 1999, this program has supported replacement of over 2,500 high flow residential toilets with ultra-low flow toilets. Over 1,190 high-flow commercial/institutional/industrial toilets have been replaced with ultra-low flow toilets. Other water conservation programs that benefit the wastewater system include the washing machine rebate program, which has supported replacement of over 1,100 washing machines with energy and water efficient washing machines, and the installation of flow control spray nozzles at over 90 local restaurants. The City will continue to fund its water conservation program, including the washing machine and low flow toilet rebate programs, for the next three (3) fiscal years, beginning in Fiscal Year 2005/2006, at a maximum amount of \$150,000 annually.

IV. RECYCLED WATER PROGRAM

9. The City currently has in place a program for monitoring the irrigation uses of its recycled water. Monitoring includes a listing of uses and volume used, as well as instances of over-irrigation spills resulting in recycled water reaching the surface water of the state. The City makes daily inspections of recycled water user sites and retains as public records documents pertaining to site visits. Under this Settlement Agreement, the City shall continue to monitor and set forth in writing the details of its ongoing monitoring activities. Monthly reporting to the Regional Board in self-monitoring reports of recycled water use will continue for irrigation sites during the periods of the year when recycled water is being provided.

V. SPILL REPORTING AND RESPONSE

10. The purpose of the City's spill reporting and response program is to protect public health and eliminate the sanitary sewer overflow. The City shall continue to implement its spill reporting and response protocol (See Exhibit A). The City understands the San Francisco Bay Regional Water Quality Control Board has developed a draft sanitary sewer overflow and monitoring program and the City agrees to monitor the further development of this program and modify its spill reporting and response program when the Regional Board monitoring program is implemented.

VI. COLLECTION SYSTEM

11. The Parties acknowledge that Petaluma's wastewater collection system includes 120 miles of small diameter (6 and 8-inch) pipelines and 100 miles of trunk sewers ranging from 10 to 48 inches in diameter. At an estimated value of over \$100 million, the wastewater collection system represents an important asset that must be actively maintained and improved. Since the collection system is underground, its condition cannot be easily determined and maintenance issues cannot be easily anticipated. This can result in a reactive maintenance program, where the maintenance crew is constantly

responding to service calls. This approach inhibits the maintenance crews' ability to plan and implement maintenance activities, and often results in repairs that are temporary. In 2001, the City began implementing an aggressive Capacity, Management, Operation and Maintenance ("CMOM") program to assess, prioritize and address existing collection system deficiencies. Under this Settlement Agreement, it is the City's intent to use this CMOM program to meet the goal that both Parties share: the minimization of the potential impacts of municipal sewage on the environment.

12. The first four years (2001 - 2004) of the City CMOM Program have included the establishment of a digital mapping system and a condition assessment of the Southwest basin. During the following years, the City will conduct condition assessments for the four remaining collection system basins with priority given to the oldest pipes and those in relatively worse condition. The City's condition assessment generally includes:

- ▶ Videotaping of the collection system;
- ▶ Real time documentation of the location and nature of critically necessary repairs as the system is being videotaped in a digital format;
- ▶ Real time assessment of the condition of the system, including identification, documentation and prioritization of events (the changing condition of events that receive a low priority can be tracked as the system is reviewed every five years);
- ▶ Condition assessment of manholes; and
- ▶ Development of collection system database to support GIS management of the collection system.

13. For the fiscal year 2004/2005, \$345, 000.00 has been budgeted for the conditional

assessment-type functions and sewer cleaning as described above (listed in the budget as Integrated Collection System). Using the results of the ongoing condition assessment, the City will commence repairs, maintenance and construction on high priority sewer segments (listed in the budget as Sewer Main Repairs). In Fiscal Year 2004/2005 (year 4 of the CMOM Program), the City has budgeted \$768,000.00 for repair/replacement of damaged or deteriorated sewer lines (Sewer Main Repairs) which includes design, construction management, City staff costs and construction costs. The City will begin making repairs using these funds within the Southwest Basin in fiscal year 2004/2005.

14. After the condition of each collection system basin has been completed, the City's approach is to initiate capital projects to address the urgently necessary repairs/replacements found by the condition assessment. When the entire system has been assessed, and the most critical deficiencies have been addressed, the City's will begin correction of the lower priority deficiencies which remain in need of repair or replacement. A process of continued reprioritization of projects based on newly accumulated information will be instituted. Contract documents would then be prepared to repair line segments that have risen in priority.

15. The City's program provides the tools necessary to meet the requirements of the EPA's anticipated CMOM regulations, which were issued in draft form in 2001 and are currently under review. This program also provides the City with a complete database and digital photos of the condition of the collection system including costs for repair/replacement. The database is linked to the City's mapping system. Lines showing damage, but not selected for immediate repair/replacement, are rated for damage then rescheduled for video inspection in future years. Because the program uses actual asset degradation to define system repairs/replacements, the City is assured that only the work necessary to maintain a functionally efficient wastewater collection system at a

reasonable level of service will be considered for repair and replacement.

16. The City currently maintains a wastewater collections system crew of four full time equivalent (FTE) employees. The collections crew is responsible for maintaining and repairing the collection system on an on-going basis. Their work is supplemented by the City's on-going condition assessment and system repair work. Each month approximately 13,000 - 15,000 linear feet of collection system pipeline is cleaned by this crew.

17. The City agrees to continue to implement its CMOM Program in the manner described above and at similar levels of funding as set forth in the 2004/2005 budget for Sewer Main Repairs and Integrated Collection System for a period of five (5) fiscal years beginning with FY 2004/2005. Although this general level of funding may vary from year to year, the City will aggressively implement this CMOM program during this five-year period. The City shall be in full compliance with this funding commitment to the extent it funds and expends funds on its CMOM Program during the five (5)-years for Sewer Main Repairs and Integrated Collection System programs in an amount which totals at least eighty-five per cent (85%) of the amounts set forth for 2004/2005 budget multiplied by five years. For purposes of this commitment, the fiscal year expenditures may vary due to timing of payments to vendors, construction bid climate and other ordinary variables affecting the actual expenditures of funds for public works. Accordingly, the City's fiscal commitment herein may be evaluated by reviewing and averaging its expenditures over the 5 year period.

18. Notwithstanding the City's commitment to the program funding levels set forth in the 2004/2005 fiscal year budget for the ensuing five years, the City shall not be precluded from attempting to reduce its expenditures by implementing cost cutting approaches, maximizing program efficiencies, favorable bid-climates, new technologies,

and other cost effective means of performing the same amount or more work for less cost. To the extent that a question arises between River Watch and the City concerning whether the City has proceeded with the CMOM program at the level of effort contemplated herein, the City may provide evidence of its progress in completing condition assessments, and maintenance, repair and replacement of significantly defective collection system facilities as a means of demonstrating its compliance with the funding and expenditure commitments set forth above. The City shall be relieved of its responsibility to expend a least eighty-five percent (85%) of the funds budgeted, to the extent it can demonstrate that it has carried on an effective program during the 5 year period and only spent less than anticipated on the CMOM program due to unanticipated cost savings and efficiencies. The City may also demonstrate its compliance by providing documentation that the condition assessment of more than (suggest 90%) percentage of the collection system older than fifteen (15) years in age has been completed and the highest priority segments needing repair or replacement, as revealed by the condition assessment, have been repaired or replaced or are scheduled for repair or replacement in the year following the termination of the five year period.

VII. SETTLEMENT AND RELEASE OF CLAIMS

19. Upon approval and entry of this Settlement Agreement, River Watch, on behalf of itself, its officers, members, agents, successors and assigns, and any other person acting under its direction and control with respect to this matter, agrees that it releases and forever discharges the City, its officials, officers, employees, agents, successors and assigns, and any other person acting on the City's behalf with respect to the matters alleges in this action from all claims, liabilities, or causes of action, known or unknown, arising from or connected with the wastewater collection, treatment, discharge and recycling activities referred to, or which could have been referred to, in the notices

provided to the City by River Watch and attached to this Settlement Agreement as Attachments A and B, including without limitation, any and all claims for violations of the City's NPDES Permit, of administrative orders or directives of the Regional Board, of the CWA, the Porter Cologne Act, or any other federal or state law, and of any local law, ordinance or regulation governing such activities, that occurred at any time up to and including the effective date of this Settlement Agreement and that may occur within the period of five (5) years thereafter.

20. River Watch, on behalf of itself, its officers, members, agents, successors and assigns, and any other person under its direction and control, hereby waives the application of Section 1542 of the California Civil Code (and any similar federal provisions), which provides:

“A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release which if known by him must have materially affected the settlement with the debtor.”

River Watch understands and acknowledges the significance and consequence of this waiver and agrees that it intends these consequences even as to claims for injunctive relief, penalties or damages that may exist as of the effective date of this Settlement Agreement, but which it does not know exist, and which, if known, would materially affect its decision to execute this release, regardless of whether the lack of knowledge is the result of ignorance, oversight, error, negligence, or any other cause.

21. The releases set forth in this Settlement Agreement are not conditioned upon timely compliance by the City with the payment and other obligations of this Settlement Agreement, and River Watch agrees that its exclusive remedies for a breach of this Settlement Agreement by the City shall be suit in the state or federal court with

jurisdiction over this matter for specific performance and/or any other remedies available under law.

22. In further consideration of the City's agreement to enter into this Settlement Agreement, River Watch, for itself, and its officers, members, employees, successors and assigns, and all other persons under its direction and control, covenants and agrees not to sue or take any other steps to enforce any claims, rights, liabilities, or causes of action released hereby. Furthermore, River Watch, for itself and its officers, members, employees, successors, and assigns, and all persons under its direction and control, are restrained and enjoined from prosecuting any citizen's suit arising out of an violations of the CWA or Porter Cologne Act committed by the City during the five (5) year period from the effective date of this Settlement Agreement. River Watch's sole remedy against the City during this period shall be limited to enforcement of this Settlement Agreement. River Watch further covenants and agrees that, at least sixty (60) days before filing any such motion with the Court, it shall notify the City in writing of what actions or inactions by the City it deems to be in violation of this Settlement Agreement. After receipt of such notice, the Parties will meet and confer in a good faith attempt to resolve their disputes hereunder. If the Parties cannot informally resolve the dispute, they will make a good faith effort to mediate the dispute through JAMS or other mediation alternative agreed upon by the parties. The auspices of the ADR office of the state or federal court may be used to effectuate such mediation, hi the event the City corrects the action or inaction that River Watch contends constitutes a violation of this Settlement Agreement within the sixty-day period, no action shall be commenced to the Court by either party.

23. Execution of this Settlement Agreement does not preclude any Party from asserting any legal or factual position in any action brought by any person or entity not a party to this Settlement Agreement.

24. Neither this Settlement Agreement nor the action taken hereunder shall constitute an admission by the City of liability for any violation of the CWA or applicable California law regarding any of the matters referenced in this Settlement Agreement.

VIII. FORCE MAJEURE

25. Separate from, and in addition to any other limitations on the City's obligations under this Settlement Agreement, the City's obligation to comply with one or more of the provisions of this Settlement Agreement shall be deferred to the extent and for the duration that the delay in compliance is caused by an event or circumstances beyond the reasonable control of the City or any entity controlled by the City, including its contractors, and that could not have been reasonably foreseen and prevented by the exercise of due diligence by the City. Delays due to unanticipated or increased costs or expenses associated with the completion of any work or activity under this Settlement Agreement, changed financial circumstances, or the City's failure to make timely and bona fide applications and to exercise diligent efforts to obtain permits, or normal inclement weather shall not, in any event, be considered to be circumstances beyond the City's control.

26. If any event or circumstance occurs which causes or may cause a delay in the City's compliance with any provision(s) of this Settlement Agreement and the City seeks relief under this Part VIII:

- a. The City shall provide written notice to River Watch within thirty (30) days of the date that the City first knew of the event or circumstance or should have known of the event or circumstance by the exercise of due diligence.
- b. The City's notice shall specifically refer to this Part of this Settlement Agreement and describe the anticipated length of time the delay may persist, the cause or causes of the delay, the measures taken or to be taken by the City

to prevent or minimize the delay, the schedule by which the measures will be implemented, and the anticipated date of compliance. The City shall adopt all reasonable measures to avoid and minimize such delays

- c. If River Watch disagrees with the City's notice, the Parties shall meet and confer in good faith to determine whether the Parties concur that the delay was or is impossible to avoid, despite the good faith efforts of the City.

IX. ATTORNEYS' FEES AND COSTS

27. Within thirty (30) days of the entry and approval of this Settlement Agreement, the City shall pay River Watch the sum of \$50,000.00 in full satisfaction of all claims by River Watch for attorney's fees and costs incurred in this action, and for any fees associated with enforcement and monitoring of this Settlement Agreement. The City's check or warrant shall be made payable to Jack Silver, as trustee for River Watch.

28. Except as stated in paragraph 22 above, each Party shall bear its own attorney's fees, costs and expenses

X. GENERAL PROVISIONS

29. All reports, notices or other written communications required under this Settlement Agreement shall be sent to the respective parties at the following addresses:

- a. City of Petaluma: Richard Rudnansky, Esq.
City Attorney
P.O. Box 61
Petaluma, CA 94953
Phone: (707)778-4362
Facsimile: (707)778-442

b. River Watch: Jack Silver, Esq.
Silver & Silver
902 Stevenson St.
Santa Rosa, CA 94504
Phone: (707)527-8811
Facsimile: (707)527-5443

IT IS SO AGREED AND STIPULATED:

Dated: _____, 2004 Northern California River Watch
By: _____

Dated: _____, 2004 City of Petaluma
By: _____
City Manager

APPROVED AS TO FORM:

Dated: _____, 2004 By: _____
Jack Silver, Esq.
Silver & Silver
902 Stevenson St.
Santa Rosa, CA 94504

Dated: _____, 2004 By: _____
Richard Rudnansky, Esq.
City Attorney
P.O. Box 61
Petaluma, CA 94953

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