

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
LOS ANGELES REGION

In the matter of:)
)
) **Order No. R4-2012-00XX (Proposed)**
City of Westlake Village)
)
) **Settlement Agreement and Stipulation**
) **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 California Regional Water Quality Control Board, Los Angeles Region (“Los Angeles Water Board”), on behalf of the Los Angeles Water Board Prosecution Staff (“Prosecution Staff”), and the City of Westlake Village (“Respondent”) (collectively the “Parties”) and is presented to the Los Angeles Water Board, or its designee, for adoption as an order by settlement, pursuant to Government Code section 11415.60.

Section II: RECITALS

1. The Respondent leases real property located at the north side of Thousand Oaks Boulevard, between Lindero Canyon Road and Via Colinas in the City of Westlake Village, Los Angeles County, California. Between June 1, 2009 and December 31, 2010, the Respondent had entered into a public works contract with a private contractor to perform mass grading operations in connection with the development of the Westlake Village Community Park on the property.
2. On December 16, 2011, Administrative Civil Liability Complaint No. R4-2011-0188 (“Complaint”) was issued to the Respondent (Attachment A). The Complaint alleges that, during the relevant time period, the Respondent was responsible for discharges of sediment-laden storm water to waters of the United States and failed to implement effective best management practices, in violation of State Water Resources Control Board Order No. 99-08-DWQ, General Permit for Storm Water Discharges Associated with Construction Activity. The Complaint recommends the imposition of administrative civil liability totaling \$81,500. The proposed administrative civil liability includes staff costs of \$6,000.
3. 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 Los Angeles Water Board, or its designee, for adoption as an order by settlement pursuant to Government Code section 11415.60. The Prosecution Staff believes that

the resolution of the alleged violations in accordance with the terms of this Stipulated Order is fair and reasonable and fulfills its enforcement objectives, that no further action is warranted concerning the violations alleged in the Complaint except as provided in this Stipulated Order and that this Stipulated Order is in the best interest of the public.

Section III: STIPULATIONS

The Parties stipulate to the following:

4. Settlement of Administrative Civil Liability Claims: The Respondent hereby agrees that, within thirty (30) days of the effective date of this Stipulated Order, it shall remit, by check, EIGHTY-ONE THOUSAND FIVE HUNDRED DOLLARS (\$81,500), payable to the *State Water Pollution Cleanup and Abatement Account*, and shall indicate on the check the number of this Stipulated Order. The Respondent shall send the original signed check to Hugh Marley, Regional Water Quality Control Board, Los Angeles Region, 320 W. 4th Street, Suite 200, Los Angeles, CA 90013, and shall send a copy to David Boyers, State Water Resources Control Board, Office of Enforcement, P.O. Box 100, Sacramento, CA 95812.

5. Compliance with Applicable Laws: The Respondent understands that payment in accordance with the terms of this Stipulated Order and compliance with the terms of this Stipulated Order is not a substitute for compliance with any other applicable laws and that future violations of the type alleged in the Complaint may subject it to further enforcement, including additional administrative civil liability.

6. Attorney's Fees and Costs: Each of the Parties shall bear all attorneys' fees and costs arising from the Party's own counsel in connection with the matters set forth herein.

7. Matters Addressed by Stipulation: Upon adoption by the Los Angeles Water Board, this Stipulated Order represents a final and binding resolution and settlement of the violations alleged in the Complaint, and all claims, violations or causes of action that could have been asserted against the Respondent as of the effective date of this Stipulated Order based on the specific facts, acts, omissions, dates, and/or occurrences alleged in the Complaint or this Stipulated Order ("Covered Matters"). The provisions of this Paragraph are expressly conditioned on the full payment in accordance with Paragraph 4.

8. Public Notice: The Respondent understands that this Stipulated Order will be noticed for a 30-day public review and comment period prior to consideration by the Los Angeles Water Board, or its designee. If significant new information is received that reasonably affects the propriety of presenting this Stipulated Order to the Los Angeles Water Board, or its designee, for adoption, the Assistant Executive Officer may unilaterally declare this Stipulated Order void and decide not to present it to the Los Angeles Water Board, or its designee. The Respondent agrees that it may not rescind or otherwise withdraw its approval of this proposed Stipulated Order.

9. Addressing Objections Raised During Public Comment Period: The Parties agree that the procedure contemplated for the Los Angeles 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.

10. No Waiver of Right to Enforce: The failure of the Prosecution Staff or the Los Angeles 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 this Stipulated Order. The failure of the Prosecution Staff or the Los Angeles Water Board to enforce any such provision shall not preclude it from later enforcing the same or any other provision of this Stipulated Order.

11. 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.

12. 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 Los Angeles Water Board.

13. If Order Does Not Take Effect: In the event that this Stipulated Order does not take effect because it is not approved by the Los Angeles Water Board, or its designee, 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 Los Angeles Water Board to determine whether administrative civil liabilities shall be assessed 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 upon the following defenses in the event that this Stipulated Order does not take effect:

- a. Objections related to prejudice or bias of any of the Los Angeles Water Board members or their advisors and any other objections that are premised in whole or in part on the fact that the Los Angeles Water Board members or their advisors were exposed to some of the material facts and the Parties' settlement positions as a consequence of reviewing this Stipulated 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.

14. No Admission of Liability: The Respondent expressly denies the allegations described in the Complaint and this Stipulated Order, and the Respondent has entered into this Stipulated Order in order to avoid protracted litigation and the costs associated therewith. Neither this Stipulated Order nor any payment pursuant to it shall constitute evidence of, or be construed as: a finding, adjudication, or acknowledgment of any fact, law or liability; an admission by the Respondent of negligence, fault or wrongdoing; or as a violation by the Respondent of any law, rule, rule or regulation. However, this Stipulated Order and/or any actions or payment pursuant to the Order may constitute evidence in actions seeking compliance with this Order. This Order may be used as evidence of a prior enforcement action in any future enforcement actions by the Los Angeles Water Board against the Respondent.

15. Waiver of Hearing: The Respondent has been informed of the rights provided by Water Code section 13323(b), and hereby waives its right to a hearing before the Los Angeles Water Board prior to the adoption of this Stipulated Order, provided that the Stipulated Order takes effect.

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

17. Covenant Not to Sue: The Respondent 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.

18. Los Angeles Water Board is Not Liable: Neither the Los Angeles Water Board members nor the Los Angeles 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 Respondent, its directors, officers, employees, agents, representatives or contractors in carrying out activities pursuant to this Stipulated Order.

19. 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.

20. 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.

21. Effective Date: This Stipulated Order shall be effective and binding on the Parties upon the date of execution by the Los Angeles Water Board or its designee.

22. 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.

By: Paula Rasmussen
Paula Rasmussen
Assistant Executive Officer
California Regional Water Quality Control Board Prosecution Staff
Los Angeles Region

Date: June 18, 2012

By: Raymond B. Taylor
Raymond B. Taylor
City Manager
City of Westlake Village

Date: June 1, 2012

Order of the Los Angeles Water Board

23. In adopting this Stipulated Order, the Los Angeles Water Board or its designee has considered, where applicable, each of the factors prescribed in Water Code sections 13327 and 13351. The consideration of these factors is based upon information and comments obtained by the Los Angeles Water Board's staff in investigating the allegations in the Complaint or otherwise provided to the Los Angeles Water Board or its designee by the Parties and members of the public. In addition to these factors, this settlement recovers the costs incurred by the staff of the Los Angeles Water Board for this matter.

24. This is an action to enforce the laws and regulations administered by the Los Angeles Water Board. The Los Angeles 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.

25. The terms of the foregoing Stipulated Order are fully incorporated herein and made part of this Order of the Los Angeles Water Board.

Pursuant to Water Code section 13323 and Government Code section 11415.60, **IT IS HEREBY ORDERED** by the California Regional Water Quality Control Board, Los Angeles Region.

Samuel E. Unger
Executive Officer

Date: _____