

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD  
NORTH COAST REGION**

In the matter of:	)	
	)	<b>Order R1-2012-0056</b>
City of Santa Rosa	)	
Oakmont Trunk Sewer	)	<b>SETTLEMENT AGREEMENT AND</b>
Relocation Project	)	<b>STIPULATION FOR ENTRY OF</b>
	)	<b>ADMINISTRATIVE CIVIL LIABILITY</b>
	)	<b>ORDER</b>
WDID No. 1B11003WNSO	)	

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**Section I: Introduction**

This Settlement Agreement and Stipulation for Entry of Administrative Civil Liability Order (Stipulation) is entered into by and between the Assistant Executive Officer of the Regional Water Quality Control Board, North Coast Region (Regional Water Board), on behalf of the Regional Water Board Prosecution Team (Prosecution Team) and the City of Santa Rosa (the City) (collectively Parties) and is presented to the Regional Water Board or its delegate, for adoption as an Order, by settlement, pursuant to Government Code section 11415.60.

**Section II: Recitals**

1. The City of Santa Rosa (the "City") at all times relevant to this matter is the owner and operator of the Oakmont Trunk Sewer Relocation Project located between Melita Road and the Oakmont Wastewater Treatment Plant in northeast Santa Rosa, latitude 38.448841°N, longitude 122.626482°W, in Sonoma County, California. The project relocated a section of an existing 44 year old sewer main trunk line (sewer line) which conveys raw sewage from the Oakmont retirement community to the City's treatment facility. The sewer line was replaced upland away from Oakmont Creek due to stream bank erosion and maintenance factors. The project included three main components: 1) a gravel access road; 2) installation of 3000 feet of 18 inch polyvinyl chloride sewer line 100 to 300 feet south of its present location; and 3) abandonment of approximately 2,550 feet of 12 inch to 16 inch existing sewer line, which involved removal of the manholes to roughly 4 feet below existing ground surface and filling the sewer line with an air-entrained cement slurry mixture. The City contracted with Mountain Cascade Inc. to install the new sewer line and abandon the existing sewer line.
2. On November 11, 2011, Mountain Cascade Inc., working with a subcontractor, was filling the existing sewer line with an air-entrained cement slurry, as part of the abandonment process. During the filling process, an estimated 4 cubic yards of the slurry discharged to Oakmont Creek. The discharged slurry caused a

significant negative impact to aquatic life in Oakmont Creek for a distance of about 650 feet downstream of the spill. City staff relocated 17 distressed rainbow/steelhead trout, 7 sticklebacks, lamprey and sculpin. Several dead fish were collected by a California Department of Fish and Game Warden.

3. The Prosecution Team alleges that the City and its contractor violated section 13376 of the California Water Code by discharging cement slurry to Oakmont Creek without submitting a report of waste discharge to the Regional Water Board and obtaining a permit. The Prosecution Team's allegations are described in Exhibit A, attached hereto and incorporated herein by this reference.
4. The Parties have engaged in settlement negotiations and agree to settle the matter without administrative or civil litigation and by presenting this Stipulation to the Regional Water Board for adoption as an Order pursuant to Government Code section 11415.60. The liability imposed by this Order is consistent with a reasonable liability determination using the penalty methodology in the Water Quality Enforcement Policy. The California Water Code Section 13385(e) factors and Water Quality Enforcement Policy liability methodology analyses are presented in Exhibit B.
5. The Prosecution Team believes that the resolution of the alleged violations is fair and reasonable, that it fulfills the Regional Board's enforcement obligations, that it is consistent with the Enforcement Policy, that no further action is warranted concerning the specific violations alleged in the Complaint except as provided in this Stipulation, and that this Stipulation is in the best interest of the public.

### **Section III: Stipulations**

The Parties stipulate to the following:

6. **Jurisdiction:** The Parties agree that the Regional Water Board has subject matter jurisdiction over the matters alleged in this action and personal jurisdiction over the Parties to this Stipulation.
7. **Administrative Civil Liability:** The City shall pay a total of **Seven Thousand, Five Hundred Dollars (\$7,500)** in stipulated administrative civil liability by check made payable to the "North Coast Regional Water Quality Control Board" for deposit in the State Water Resources Control Board Cleanup and Abatement Account, which includes **One Thousand, Five Hundred Dollars, (\$1,500)** in staff costs, no later than 30 days following execution of the Order by the Regional Water Board or its Delegate. The check shall reference the Order number listed on page one of this stipulation. The original signed check shall be sent to the North Coast Regional Water Quality Control Board, 5550 Skylane Blvd., Suite A, Santa Rosa,

CA 95403, with copies to Cris Carrigan, Office of Enforcement, P.O. Box 100  
Sacramento, CA 95812.

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

9. **Party Contacts for Communications related to Stipulation/Order:**

**For the Regional Water Board:**

Bill Rodriguez  
Sanitary Engineering Associate  
North Coast Regional Water Quality Control Bd  
5550 Skylane Boulevard, Suite A,  
Santa Rosa, CA 95403  
[wrodriguez@waterboards.ca.gov](mailto:wrodriguez@waterboards.ca.gov)  
(707) 576-2683

**For the City:**

Norman Amidon PE  
69 Stoney Circle  
Santa Rosa, CA 95401  
[namidon@srcity.org](mailto:namidon@srcity.org)  
(707) 543-3449

10. **Attorney's Fees and Costs:** Each Party shall bear all attorneys' fees and costs arising from the Party's own counsel in connection with the matters set forth herein.
11. **Matters Addressed by Stipulation:** Upon the Regional Water Board's adoption of the Order incorporating the terms of this Stipulation, this Stipulation represents a final and binding resolution and settlement of the violations specifically alleged in Exhibit A. The provisions of this Paragraph are expressly conditioned on the full payment of the administrative civil liability by the deadline specified in Paragraph 7 above.
12. **Public Notice:** The City and the Regional Water Board Prosecution Team understand that this Stipulation and Order must be noticed for a 30 day public review and comment period prior to consideration by the Regional Water Board or its delegate. In the event objections are raised during the public review and comment period, the Regional Water Board or its delegate may, under certain circumstances, require a public hearing regarding the Stipulation and Order. In that event, the Parties agree to meet and confer concerning any such objections, and may agree to revise or adjust the proposed Order as necessary or advisable under the circumstances.

13. **Addressing Objections Raised During Public Comment Period:** The Parties agree that the procedure contemplated for adopting the Order by the Regional Water Board and review of this Stipulation by the public is lawful and adequate. In the event procedural objections are raised prior to the Order becoming effective, the Parties agree to meet and confer concerning any such objections, and may agree to revise or adjust the procedure as necessary or advisable under the circumstances.
14. **Interpretation:** This Stipulation and Order shall be construed as if the Parties prepared it jointly. Any uncertainty or ambiguity shall not be interpreted against any one Party.
15. **Modification:** This Stipulation and Order shall not be modified by any of the Parties by oral representation made before or after its execution. All modifications must be in writing, signed by all Parties, and approved by the Regional Water Board or its delegate.
16. **If Order Does Not Take Effect:** In the event that this Order does not take effect because it is not approved by the Regional Water Board 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.

17. **Waiver of Hearing:** The City has been informed of the rights provided by CWC section 13323, subdivision (b), and hereby waives its right to a hearing before the Regional Water Board prior to the adoption of the Order.
18. **Waiver of Right to Petition:** The City hereby waives its right to petition the Regional Water Board's adoption of the Order 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.
19. **Regional Water Board is Not Liable:** Neither the Regional Water Board members nor the Regional or State 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 City its directors, officers, employees, agents, representatives or contractors in carrying out activities pursuant to this Stipulation and/or 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 City, its directors, officers, employees, agents, representatives, or contractors in carrying out activities pursuant to this Stipulation and Order.
20. **Covenant Not to Sue:** The City covenants not to sue or pursue any administrative or civil claim(s) against any State Agency or the State of California, their officers, Board Members, employees, representatives, agents, or attorneys arising out of or relating to any Covered Matter.
21. **Necessity for Written Approvals:** All approvals and decisions of the Regional Water Board under the terms of this Order shall be communicated to the City in writing. No oral advice, guidance, suggestions, or comments by employees or officials of the Regional Water Board regarding submissions or notices shall be construed to relieve the City of its obligation to obtain any final written approval required by this Order.
22. **Authority to Bind:** Each person executing this Stipulation in a representative capacity represents and warrants that he or she is authorized to execute this Stipulation on behalf of and to bind the entity on whose behalf he or she executes the Stipulation.
23. **Counterpart Signatures:** This Stipulation may be executed and delivered in any number of counterparts, each of which when executed and delivered shall be deemed to be an original, but such counterparts shall together constitute one document. Further, this Stipulation may be executed by facsimile or electronic signature, and any such facsimile or electronic signature by any Party hereto shall be deemed to be an original signature and shall be binding on such Party to the same extent as if such facsimile or electronic signature were an original signature.

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

**IT IS SO STIPULATED.**

**California Regional Water Quality Control Board,  
North Coast Region Prosecution Team**

**Date:** \_\_\_\_\_

**By:** \_\_\_\_\_

**Luis Rivera,  
Assistant Executive Officer**

**City of Santa Rosa**

**Date:** \_\_\_\_\_

**By:** \_\_\_\_\_

**Norman Amidon PE**

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**Order of the Regional Water Board:**

**IT IS HEREBY ORDERED:**

25. This Order incorporates the foregoing Stipulation, set forth in Paragraphs 1 through 24 above, by this reference, as if set forth fully herein.
26. The Parties believe that settlement of this matter is in the best interest of the People of the State. Therefore, to settle the Complaint, the City hereby agrees to comply with the terms and conditions of this Order.
27. 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.

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

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

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Matthias St. John  
Executive Officer

June 7, 2012

Attachment A

Exhibit B