CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN FRANCISCO BAY REGION

SETTLEMENT AGREEMENT AND MUTUAL RELEASE FOR COMPLAINT NO. R2-2009-0027

ADMINISTRATIVE CIVIL LIABILITY
IN THE MATTER OF
SANITARY SEWER OVERFLOW
MT. VIEW SANITARY DISTRICT
CONTRA COSTA COUNTY

This Settlement Agreement for Administrative Civil Liability Complaint No. R2-2009-0027 (this "Agreement") is made and entered into by the Assistant Executive Officer of the California Regional Water Quality Control Board, San Francisco Bay Region, ("Regional Water Board") and the Mt. View Sanitary District (the "District") (collectively referred to as the "Parties") with reference to the following facts:

RECITALS:

A. On March 30, 2009, the Assistant Executive Officer issued Administrative Civil Liability Complaint No. R2-2009-0027 (Attachment A). The Complaint alleged that there was a sanitary sewer overflow (SSO) of 586,000 gallons from the District's collection system that occurred between January 4, 2009 and January 5, 2009. The spill violated Regional Water Board Order No. R2-2006-0063 (NPDES Permit No. CA0037770). The Complaint proposed that the District pay a penalty in the amount of $498,000.

B. The District subsequently provided the Assistant Executive Officer with evidence that the January 4-5, 2009, 586,000 gallons SSO did not result in irrecoverable damages to the fish community in Vine Hill Creek. Although the SSO resulted in some fish mortality, the evidence submitted indicates that the fish community in Vine Hill Creek is up to 74% recovered and is in a trajectory toward full recovery (based on bioassessment field data collected by the District's contractor on April 27-28, 2009).

   Additionally, the District provided the Assistant Executive Officer with evidence that it should not be culpable for the SSO based on its failure to install PLC surge protection at pump station no. 4. The District submitted an engineering opinion dated April 23, 2009, from credible and qualified engineers to support this claim. The engineering opinion states that the District "should not be held culpable for the PS4 [Pump Station No. 4] SSO on the basis that they did not install a PLC surge protection system at Pump Station No. 4 even though they installed one at the treatment plant". The reasoning for this opinion was provided to the Assistant Executive Officer and is summarized below:

a. The District, based upon sound technical information, reasonably believed that the pump station had a functioning backup system that would activate should the PLC fail for any reason.

b. When the partial failure of a PLC system occurred at the treatment plant in 2008, there was neither backup equipment nor backup controls in the event of PLC failure. Thus, it was more critical to install surge protection at the treatment plant.

c. The pump station has been subjected to power surge(s) in its 15 years of operation and none of these power surge(s) resulted in PLC failure. This history would lead the District to believe they had a functioning backup system.

d. Although surge protection may have prevented this SSO, PLC systems can fail for many other reasons. It was the lack of a backup system independent of the PLC that could have ultimately prevented this SSO. The District believed its backup system was wired independently of the PLC.

C. The Regional Water Board's Prosecution Team reviewed the evidence submitted by the District in light of the factors under Water Code section 13385(e) for the SSO. The Prosecution Team and the District agree that the gravity and culpability factors should be lower; therefore, the penalty associated with this SSO should be lower.

D. The Parties have reached this settlement for the violation alleged in the complaint. This settlement is subject to public comment as provided below.

E. The Parties agree that full compliance with this Agreement constitute settlement of all claims arising out of the alleged violation specified in Complaint No. R2-2009-0027.

F. The general terms of the settlement are that the District will pay a total penalty of $270,000 as follows:

a. The District will pay administrative civil liability of $145,000 to the State Water Resources Control Board's Cleanup and Abatement Account.

b. In lieu of the remaining $125,000 penalty, the District agrees to complete a Supplemental Environmental Project (SEP) at a cost of no less than $125,000 towards a levee sealing project to improve water control and management including restoration and enhancement of the native plant species in Peyton Slough and McNabney Marsh as is described more particularly in Attachment B which includes a schedule for its implementation. The District will comply with the specific terms and conditions described in Attachment B, which is incorporated into this Agreement. Any public information on outreach materials produced by the District concerning the SEP shall indicate that the SEP is being performed in fulfillment of the settlement of an enforcement action with the Regional Water Board.

G. As a material condition of this Agreement, the District warrants and represents that the SEP was not budgeted or included in any approved District program prior to the ACL and that it has no current plans or future legal obligation to undertake this project except to partially satisfy the District's obligations in settling the violation alleged in Complaint No. R2-2009-0027.

H. Subject to the qualifications set forth in paragraph 8 below, the Assistant Executive Officer has the authority to settle this matter in accordance with Water code section 13323 and Government Code section 11415.60. The District's representative signing this Agreement confirms that s/he has the authority to bind the District to the terms of this Agreement.

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

1. Both Parties agree to comply with the terms and conditions of this Agreement.

2. The Parties agree that they will support, advocate for, and promote the proposed Administrative Civil Liability Order attached as Attachment C. The Parties further agree that they will not contest the proposed Administrative Civil Liability Order attached as Attachment C before the Regional Water Board, the State Water Resources Control Board or any court.

3. Paragraph 2 does not apply in the event that the Executive Officer or Regional Water Board considers adopting an order that differs in any substantial way from the proposed Administrative Civil Liability Order attached as Attachment C. In that event, the Parties will have full rights to a hearing as set forth in the Notice for this Proceeding.

4. The Assistant Executive Officer agrees that this settlement fully resolves the allegations in the Complaint and assesses civil penalties for all violations for the SSO from January 4, 2009 to January 5, 2009. The Assistant Executive Officer further agrees that once the Administrative Civil Liability Order in Attachment C is approved, not to pursue any further administrative or judicial action of any kind against the District for those discharges. The Regional Water Board maintains the ability to initiate other administrative or judicial enforcement actions against the District for spills that are not subject to this Agreement.

5. The District agrees to pay an administrative civil liability of $145,000 to the Cleanup and Abatement Account in accordance with a payment plan described as follows: 50% of the administrative civil liability amount to be paid within 30 days of approval by the Regional Water Board or its Executive Officer of the Settlement Agreement, and the remainder to be paid by September 30, 2010. If the District fails to comply with the terms of the payment plan, the entire amount shall be paid not later than 30

days following any such failure to comply. The payment obligation shall not accrue during the time in which any review is sought by any third party under Water Code sections 13320 or 13330. The District agrees to undertake an SEP for not less than $125,000 and will comply with the specific terms and conditions in Attachment B.

6. Subject to Paragraph 5 above, in the event that any of the following occur, the District agrees to promptly pay an administrative civil liability amount of $125,000 (in addition to the amount of $145,000 described in Paragraph 5 above) to the Cleanup and Abatement Account:

   a. The District determines that it does not wish to perform the proposed SEP and an alternative SEP of at least $125,000 is not approved by the Regional Water Board or the Executive Officer, or

   b. The Executive Officer determines that the SEP is not being performed in accordance with the specified terms and conditions, including the time schedule detailed in Attachment B, or

   c. The Executive Officer determines that the proposed SEP does not qualify as a SEP in accordance with the State Water Resources Control Board's Enforcement Policy and another acceptable SEP proposal is not proposed to and approved by the Regional Water Board or the Executive Officer in a reasonable time frame.

   Additionally, in the event that the SEP is completed but District expenditures on the SEP are less than $125,000, the District shall pay any remaining balance to the Cleanup and Abatement Account.

7. The Parties understand that this settlement and the proposed Administrative Civil Liability Order attached as Attachment C must be noticed for a 30-day public review period. In the event that objections are raised during the public comment period for the proposed Administrative Civil Liability Order, the Regional Water Board or the Board's Executive Officer may, under certain circumstances, require a public hearing regarding the proposed Administrative Civil Liability Order. In that event, the Parties agree to meet and confer in advance of the public hearing concerning such objections, and may agree to revise or adjust this Agreement as necessary or advisable under the circumstances.

8. In the event that this Agreement does not take effect because the Executive Officer and/or other Regional Water Board does not approve the attached Administrative Civil Liabilities Order, or the Order is vacated in whole or in part by the State Water Resources Control Board or a court, the Parties acknowledge that they expect to proceed to a contested evidentiary hearing 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 of the Parties made during the course of settlement

discussions, except this Agreement, will not be admissible as evidence in the hearing; however, nothing in this Settlement Agreement precludes either party from presenting any documentary evidence which it presented during the settlement discussions at the hearing.

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

10. The Parties intend that this Agreement reflects adequate procedures to be used for the approval of the settlement by the Parties and review by the public. In the event that objections to the procedures are raised during the public comment period for the proposed Administrative Civil Liability Order, the Parties agree to meet and confer concerning any such objections and agree to revise or adjust the procedure as necessary or advisable under the circumstances.

11. Performance of paragraph 5 (and if applicable, paragraph 6) shall effect a mutual release and discharge of the Parties and their respective assigns, agents, attorneys, employees, officers and representatives from any and all claims, demands, actions, causes of action, obligations, damages, penalties, liabilities, debts, losses, interests, costs, or expenses of whatever nature, character, or description that they may have or claim to have against one another by reason of any matter or omission arising from any cause whatsoever relating to the proposed Administrative Civil Liability Order, the Complaint, or the sanitary sewer overflows alleged in the Complaint.

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

13. This Agreement shall not be modified by either of the Parties by oral representation made before or after its execution. All modifications to the Agreement must be made in writing and signed by both Parties.

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

15. If any part of this Agreement is ultimately determined not to be enforceable, the entire Agreement shall become null and void.

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

17. This Agreement may be executed as duplicate originals, each of which shall be deemed an original Agreement, and all of which shall constitute one Agreement. Facsimile or electronic signatures are acceptable.

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

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their respective officers on the dates set forth, and this Agreement is effective as of the most recent date signed.

California Regional Water Quality Control Board
San Francisco Bay Region

By: _____
Thomas E. Mumley
Assistant Executive Officer

Mt. View Sanitary District

By: _____
Gregory T. Pyka
President, Board of Directors

APPROVED AS TO FORM:

By: _____
Kenton L. Alm
Counsel for Mt. View Sanitary District

List of Attachments
Attachment A: ACL Complaint R2-2009-0027
Attachment B: Supplemental Environmental Project
Attachment C: ACL Tentative Order