

1 Daniel Cooper (Bar No. 153576)  
2 Martin McCarthy (Bar No. 194915)  
3 LAWYERS FOR CLEAN WATER, INC.  
4 1004-A O'Reilly Avenue  
5 San Francisco, California 94129  
6 Telephone: (415) 440-6520  
7 Facsimile: (415) 440-4155  
8 Email: daniel@lawyersforcleanwater.com

9 Christopher Sproul (Bar No. 126398)  
10 ENVIRONMENTAL ADVOCATES  
11 5135 Anza Street  
12 San Francisco, California 94121  
13 Telephone: (415) 533-3376  
14 Facsimile: (415) 358-5695  
15 Email: csproul@enviroadvocates.com

16 Jason Flanders (Bar No. 238007)  
17 SAN FRANCISCO BAYKEEPER  
18 785 Market Street, Suite 850  
19 San Francisco, California 94103  
20 Telephone: (415) 856-0444  
21 Facsimile: (415) 856-0443  
22 Email: jason@baykeeper.org

23 Attorneys for Plaintiff  
24 SAN FRANCISCO BAYKEEPER

25 UNITED STATES DISTRICT COURT  
26  
27 NORTHERN DISTRICT OF CALIFORNIA  
28

29 SAN FRANCISCO BAYKEEPER, a California  
30 non-profit corporation,  
31 Plaintiff,

32 v.

33 CITY OF SAN CARLOS, a California municipal  
34 corporation,  
35 Defendant.

Civil Case No.: CV 09-05677 SBA

**CONSENT DECREE**

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The following Consent Decree is entered into by and between Plaintiff San Francisco Baykeeper (Plaintiff or ‘Baykeeper’), and defendant City of San Carlos (‘City’ or ‘Defendant’). The entities entering into this Consent Decree are each referred to herein as ‘Party’ and collectively as ‘Parties.’

**WHEREAS**, Baykeeper is a non-profit public benefit corporation dedicated to, among other things, the protection and enhancement of the water quality of the San Francisco Bay;

**WHEREAS**, the City is a municipal corporation and political subdivision of the State of California;

**WHEREAS**, the City owns and/or operates a sanitary sewer collection system that collects, treats, and discharges wastewater generated by residential, commercial, and industrial sources;

**WHEREAS**, the City is one of twenty cities and towns in San Mateo County that have joined together to form the San Mateo Countywide Stormwater Pollution Prevention Program (‘STOPP’).

STOPP’s National Pollution Discharge Elimination System (‘NPDES’) permit, *Waste Discharge Requirements for City/County Association Of Governments Of San Mateo County, et al.*, San Francisco Regional Water Quality Control Board Order No. 99-058, NPDES Permit No. CAS0029921, reissued as Order No. 99-059, and subsequently amended by Order Nos. R2-2003-0023, R2-2004-0060, R2-2004-0062, and R2-2007-0027 (‘MS4 Permit’), regulates discharges into and out of the City’s municipal separate storm sewer system;

**WHEREAS**, on September 28, 2009, Baykeeper issued to Defendant a 60-day Notice of Violation and Intent to File Suit (‘Notice Letter’) under section 505(a) of the Federal Water Pollution Control Act (‘Clean Water Act’), 33 U.S.C. § 1365(a). Baykeeper also served a copy of the Notice Letter on, the Administrator and the Regional Administrator for Region IX of the United States Environmental Protection Agency (‘EPA’), the Executive Director of the California State Water Resources Control Board (‘State Board’), and the Executive Officer of the San Francisco Bay Regional Water Quality Control Board (‘Regional Board’). The Notice Letter alleged that Defendant violated and continues to violate the Clean Water Act for discharges of pollutants to waters of the United States without NPDES permit coverage, and discharges of pollutants in violation of the MS4 Permit;





1 g. 'Day' means a calendar day. In computing any period of time under this Consent  
2 Decree, where the last day of such period is a Saturday, Sunday, or Federal or State Holiday, the period  
3 runs until the close of business on the next day that is not a Saturday, Sunday, or Federal or State  
4 Holiday.

5 h. 'Design Storm' means a 10-year return period rainstorm with a duration of 24 hours  
6 as measured by a properly calibrated and monitored rain gage, or such rain gages, within San Carlos or,  
7 if no such gage is available, at the San Francisco International Airport. The engineering design criteria  
8 to be used by the City for a 10-year 24-hour storm shall take into account short duration intense rainfall  
9 periods by reference to USDA Urban Hydrology for Small Watersheds guidance TR-55 (June 1986) and  
10 use of the synthetic rainfall distribution curve (Figure B-1 SCS 24-Hour Rainfall Distribution) found in  
11 Appendix B of TR-55. The City shall use the distribution curve for a Type IA storm as referenced on  
12 Figure B-1 of Appendix B of TR-55 based on local rainfall quantities for the San Carlos area in San  
13 Mateo County, California.

14 i. 'FOG' means fats, oil, and grease.

15 j. 'Infiltration' means groundwater, rainwater, or other surface water that may enter  
16 the San Carlos Collection System through the pipe, joints, or cracks.

17 k. 'Inflow' means wastewater or water that may enter the San Carlos Collection  
18 System through unpermitted connections, drains, or manholes.

19 l. 'I' means infiltration and inflow.

20 m. 'Lower Lateral' means the lateral line connecting a home or business to the City's  
21 sewer main extending from the sewer main to the City's clean out or to the back of the public right-of-  
22 way, whichever is applicable to the lateral connection. Lower Laterals are generally connected to upper  
23 laterals.

24 n. 'MS4 Permit' means the *Waste Discharge Requirements for City/County*  
25 *Association Of Governments Of San Mateo County, et al.*, San Francisco Regional Water Quality  
26 Control Board Order No. 99-058, NPDES Permit No. CAS0029921, reissued as Order No. 99-059, and  
27 subsequently amended by Order Nos. R2-2003-0023, R2-2004-0060, R2-2004-0062, and R2-2007-  
28 0027.

1 o. ‘NPDES’ means National Pollutant Discharge Elimination System.

2 p. ‘Private Lateral’ means the private sanitary sewer lateral or line connecting a home  
3 or other structure to the Lower Lateral, generally extending from the outside of the foundation of the  
4 structure to the public right-of-way or the City’s cleanout, whichever is applicable

5 q. ‘Sanitary Sewer Overflow’; ‘overflow’; or ‘SSO’ has the same meaning as those terms  
6 are defined in Section A.1 of the SSO WDR’, or any amendment thereto, and which currently means: ‘any  
7 overflow, spill, release, discharge or diversion of untreated or partially treated wastewater from a  
8 sanitary sewer system. SSOs include: (i) Overflows or releases of untreated or partially treated  
9 wastewater that reach waters of the United States; (ii) Overflows or releases of untreated or partially  
10 treated wastewater that do not reach waters of the United States; and (iii) Wastewater backups into  
11 buildings and on private property that are caused by blockages or flow conditions within the publicly  
12 owned portion of a sanitary sewer system.’ For purposes of this definition, ‘waters of the United States’  
13 has the meaning as set forth in 40 C.F.R. § 122.2.

14 r. ‘Sewer line segment’ means any section of publicly owned sewer line or pipe  
15 located between: (1) two manholes/maintenance holes; (2) a pump station and a manhole/maintenance  
16 hole; (3) a pump station or a manhole/maintenance hole and a headworks structure; or (4) a sewer line or  
17 pipe otherwise identifiable as a discrete section.

18 s. ‘SSMP’ means the Sewer System Management Program implemented by the City  
19 for the San Carlos Collection System to monitor the condition, maintenance, and repair of the San  
20 Carlos Collection System.

21 t. ‘Year’ shall mean calendar year, unless otherwise specified.

22 **III. JURISDICTION AND VENUE**

23 3. Plaintiff alleges the following jurisdictional allegations:

24 a. This District Court has jurisdiction over the subject matter of the claims asserted  
25 by Plaintiff pursuant to section 505(a)(1) of the Clean Water Act, 33 U.S.C. § 1365(a)(1), 28 U.S.C.  
26 §§ 1331 and 2201 (an action for declaratory and injunctive relief arising under the Constitution and laws  
27 of the United States), and 28 U.S.C. § 1367(a), which provides supplemental jurisdiction for claims  
28 based on state law, including, but not limited to, California Code of Civil Procedure section 1085, the

1 California Water Code sections 13000 *et seq.*, (the Porter-Cologne Act), San Mateo County Ordinance,  
2 title 4 sections 100.010 *et seq* ("San Mateo Ordinance), and the City of San Carlos Municipal Code, title  
3 13 sections 14.010 *et seq.* ("Municipal Code");

4 b. Venue is proper in this judicial district pursuant to sections 309(b) and 505(c) of  
5 the Clean Water Act, 33 U.S.C. §§ 1319(b), 1365(c), and 28 U.S.C. §§ 1391(b) and (c);

6 c. The Complaint filed herein states claims for which relief can be granted against  
7 Defendant pursuant to section 505 of the Clean Water Act, 33 U.S.C. § 1365;

8 d. Plaintiffs have standing to bring this action;

9 e. The District Court shall retain jurisdiction over this matter for purposes of  
10 interpreting, modifying or enforcing the terms of this Consent Decree, or as long thereafter as is  
11 necessary for the District Court to resolve any motion to enforce this Consent Decree.

#### 12 **IV. EFFECT OF CONSENT DECREE**

13 4. Plaintiff does not, by its consent to this Consent Decree, warrant or aver in any manner that  
14 the Defendant's compliance with this Consent Decree will constitute or result in compliance with any  
15 Federal or State law or regulation. Nothing in this Consent Decree shall be construed to affect or limit  
16 in any way the obligation of the Defendant to comply with all applicable Federal, State and local laws  
17 and regulations governing any activity required by this Consent Decree.

18 5. Nothing in the Consent Decree, including but not limited to the proposed actions and  
19 payments made pursuant to the Consent Decree, shall be used as evidence or be construed as a finding,  
20 adjudication, or acknowledgement of any fact, law, issue of law, or liability, nor shall it be construed as  
21 an admission of violation of any law, issue of law, rule, regulation, permit, or administrative order by  
22 Defendant.

#### 23 **V. APPLICABILITY**

24 6. The provisions of this Consent Decree apply to and bind the Parties, including any successors  
25 or assigns. The Parties certify that their undersigned representatives are fully authorized to enter into  
26 this Consent Decree, to execute it on behalf of the Parties, and to legally bind the Parties to its terms.

27 7. The Parties agree to be bound by this Consent Decree and not to contest its validity in any  
28 subsequent proceeding to implement or enforce its terms. By entering into this Consent Decree, the

1 Defendant does not admit liability for any purpose as to any allegation or matter arising out of the  
2 Notice Letter and/or Complaint.

3 8. No change in ownership or corporate or other legal status of the Defendant or any transfer of  
4 the Defendant's assets or liabilities shall in any way alter the responsibilities of the Defendant or any of  
5 its successors or assigns thereof, under this Consent Decree. In any action to enforce this Consent  
6 Decree, the Defendant shall not raise as a defense the failure by any of its agents, servants, contractors,  
7 employees, and successors or assigns to take actions necessary to comply with this Consent Decree.  
8 Defendant is not precluded from raising as a defense that a particular spill in the San Carlos Collection  
9 System was caused by an upstream sewage collection system ('Satellite System') connected to the San  
10 Carlos Collection System. To assert this defense for a particular spill, Defendant shall have the burden  
11 to demonstrate that: (1) Defendant has initiated and is diligently prosecuting enforcement of its service  
12 contract with the Satellite System to address the cause the spill; and (2) that the Satellite System directly  
13 caused the spill in question.

#### 14 **VI. EFFECTIVE DATE AND TERMINATION DATE**

15 9. The term 'Effective Date,' as used in this Consent Decree, shall mean the last date for the  
16 United States Department of Justice to comment on the [proposed] Consent Decree, i.e., the 45th day  
17 following the United States Department of Justice's receipt of the [proposed] Consent Decree and  
18 Stipulated Dismissal or, the date on which the Federal Agencies provide notice that no further review is  
19 required and the District Court enters the final Consent Decree, whichever occurs earlier.

20 10. This Consent Decree will automatically terminate seven (7) years from the Effective Date  
21 ('Termination Date') unless Baykeeper has invoked the Dispute Resolution Procedure set forth in Section  
22 XIX or the Parties have agreed to an early termination of this Consent Decree and the District Court has  
23 authorized the modification of the Termination Date.

24 11. The obligations set forth in this Consent Decree take effect as of the date of execution by all  
25 Parties unless otherwise noted in this Consent Decree.

#### 26 **VII. SSO AND SPILL REDUCTION PERFORMANCE STANDARDS**

27 12. SSO Reduction Goals. It is the goal of this Consent Decree to reduce the City's Collection  
28 System SSOs to zero (0) over time. To approach the goal of zero (0) SSOs, the City shall reduce its

1 SSOs and Lower Lateral spills as follows:

2 a. San Carlos Collection System SSO Reduction Performance Goals.

<b>Calendar Year</b>	<b>Maximum Number of SSOs Per 100 Miles of Sewer Line/Year</b>
2010	46
2011	41
2012	32
2013	23
2014	14
2015	7
2016	5
2017	2

14 b. Lower Lateral SSO Reduction Performance Goals.

15 The City's goal is to reduce the annual number of Lower Lateral spills. The Lower Lateral SSO  
16 Reduction Standards are as follows:

<b>Calendar Year</b>	<b>Maximum Number of Lower Lateral Spills</b>
2010	18
2011	16
2012	13
2013	10
2014	7
2015	4
2016	3
2017	2

28 13. For purposes of determining compliance with the San Carlos Collection System SSO

1 Reduction Performance Goals and Lower Lateral SSO Reduction Performance Goals, SSOs and spills  
2 caused by storm events exceeding the Design Storm shall not be counted.

3 14. For purposes of determining compliance with the San Carlos Collection System SSO  
4 Reduction Performance Goals and Lower Lateral SSO Reduction Performance Goals, the Parties assume  
5 the City currently has approximately 106 miles of main sewer line in the San Carlos Collection System.

6 15. Failure to meet the San Carlos Collection System SSO Reduction Performance Goals shall be  
7 a violation of this Consent Decree to be resolved by the Dispute Resolution procedure in Section XIX  
8 below.

9 16. Failure to meet the Lower Lateral SSO Reduction Performance Goals shall be a violation of  
10 this Consent Decree to be resolved by the Dispute Resolution procedure in Section XIX below.

11 17. In order to reach the above SSO standards, the City shall implement the programs described  
12 below.

13 18. Compliance or non-compliance with the SSO Reduction Performance Goals and Lower  
14 Lateral SSO Reduction Performance Goals shall be documented by the City in each year's Annual  
15 Report required under Section XVI of this Consent Decree.

16 **VIII. SSO INVESTIGATION, RESPONSE AND REPORTING**

17 19. The terms, conditions, obligations, and requirements of the City's current Sanitary Sewer  
18 Overflow Response Plan ('SORP') are incorporated into this Consent Decree, and are enforceable  
19 pursuant to this Consent Decree.

20 20. The City recognizes that proper identification of the cause of SSOs is essential to prevent  
21 future SSOs.

22 21. Within one-hundred twenty (120) days of the Effective Date of this Consent Decree the City  
23 shall prepare a standard operating procedure ('SSO Cause Determination SOP') aimed at the proper and  
24 consistent determination of the cause of each SSO. The City shall provide a copy of the SSO Cause  
25 Determination SOP to Baykeeper for review and comment within seven (7) days of its finalization.  
26 Within thirty (30) days after providing the SSO Cause Determination SOP to Baykeeper, the City shall  
27 train all of its personnel who respond to SSOs regarding how to use the SSO Cause Determination SOP.  
28 Baykeeper shall provide the City, in writing, with all recommended revisions to the SSO Cause

1 Determination SOP within thirty (30) days after receiving the SSO Cause Determination SOP from the  
2 City. Upon receipt of Baykeeper's comments, the City shall consider each of Baykeeper's recommended  
3 revisions and indicate within thirty (30) days of receipt of Baykeeper's comments whether the City  
4 accepts each such recommendation for revision, and if not, provide a detailed explanation as to why  
5 Baykeeper's comments are being rejected. Baykeeper may seek dispute resolution pursuant to  
6 Section XIX of this Consent Decree regarding disputes over the SSO Cause Determination SOP. In any  
7 such dispute resolution process, the City shall demonstrate that the elements or actions set forth in the  
8 SSO Cause Determination SOP are designed to ensure causes of the SSOs can be readily and accurately  
9 determined. To the extent the Parties do not dispute specific original provisions of the SSO Cause  
10 Determination SOP or specific recommended revisions, the City shall implement all undisputed  
11 provisions or revisions within thirty (30) days of receiving Baykeeper's comments on the SSO Cause  
12 Determination SOP. After the Parties have reached agreement on the SSO Cause Determination SOP,  
13 or after the dispute resolution process resolves any dispute concerning the SSO Cause Determination  
14 SOP, the City shall begin implementation of the SSO Cause Determination SOP as an enforceable  
15 requirement of this Consent Decree within sixty (60) days of agreement or upon the schedule set forth  
16 therein.

17 22. Within one-hundred eighty (180) days of reaching agreement with Baykeeper regarding the  
18 SSO Cause Determination SOP, the City shall complete training of all City personnel that respond to  
19 SSOs in the methods and practices used to identify the root causes of SSOs, including capacity related  
20 SSOs, and shall certify to Baykeeper that the training has been completed. All new employees who may  
21 respond to SSOs shall be trained in the methods and practices used to identify the root causes of SSO  
22 within sixty (60) days of commencing employment or transfer to duties that include SSO response and  
23 the City shall maintain records of such training.

24 23. The cause of any SSO shall be reported to the State Board's California Integrated Water  
25 Quality System (CIWQS) and entered into and maintained in the City's Computerized Maintenance  
26 Management System (CMMS) database. The information in the CMMS database shall be used in  
27 evaluating the City's programs. The City shall include in its Annual Report required under Section XVI  
28 of this Consent Decree a summary of SSO causes as determined by analysis of its CMMS database.



1 Parties have reached agreement on the SSO Reduction Action Plan or after Dispute Resolution resolves  
2 any dispute concerning the SSO Reduction Action Plan, the City shall begin implementation of the SSO  
3 Reduction Action Plan as an enforceable requirement of this Consent Decree within forty-five (45) days  
4 of agreement on the SSO Reduction Action Plan, or upon the schedule set forth therein.

5 28. The City shall address in the SSO Reduction Action Plan the various elements of such a plan  
6 that it believes will be necessary to achieve future compliance with the SSO Reduction Performance  
7 Goals, which may include any or all elements in its SSMP Program.

8 29. If additional funding is necessary to implement the SSO Reduction Action Plan, the City  
9 shall seek such funding as soon as is practical. If the City seeks financing, but is unsuccessful, the City  
10 shall disclose in the SSO Reduction Action Plan the extent of its efforts to obtain financing.

#### 11 **X. CAPACITY ASSURANCE**

12 30. By March 31, 2011, the City shall have completed sufficient flow monitoring of the San  
13 Carlos Collection System to support hydraulic modeling. The monitoring shall be sufficient to calibrate  
14 and validate hydraulic modeling of the San Carlos Collection System.

15 31. Hydraulic Modeling Work Plan. By August 1, 2010, The City shall submit a Hydraulic  
16 Modeling Work Plan for the San Carlos Collection System. The hydraulic modeling shall be sufficient  
17 to identify all necessary capacity improvements to convey peak wet weather flows to the South Bayside  
18 System Authority WWTP without SSOs caused by insufficient capacity in the San Carlos Collection  
19 System. The Hydraulic Modeling Work Plan shall contain a schedule for hydraulic modeling and all  
20 supporting efforts such as smoke testing, dye testing and other measures necessary to identify sources of  
21 I/I.

22 32. Capacity Assurance Report. By March 31, 2012, the City shall provide a Capacity  
23 Assurance Report to Baykeeper identifying all necessary capacity improvements to convey peak wet  
24 weather flows to the South Bayside System Authority WWTP without SSOs caused by insufficient  
25 capacity. The Capacity Assurance Report shall include a schedule for construction of all necessary  
26 capacity improvements identified in the Capacity Assurance Report based on Design Storm criteria.  
27 The schedule for construction of capacity improvements shall be as expeditious as is practicable and the  
28 City shall complete construction of such improvements within five (5) years from the date of the final

1 Capacity Assurance Report. In no event shall the completion of the construction of the improvements  
2 identified in the Capacity Assurance Report extend beyond the Termination Date.

3 33. Inflow and Infiltration (I/I). I/I identified within the San Carlos Collection System by the  
4 hydraulic modeling, smoke testing, dye testing, and condition assessment programs set forth herein,  
5 shall be identified and addressed in the Capacity Assurance Report. Major sources of I/I shall be  
6 removed as expeditiously as practicable. The Capacity Assurance Report shall include capacity  
7 improvements for the San Carlos Collection System designed to eliminate capacity-related SSOs during  
8 the rain events of less than the Design Storm.

9 34. Final Compliance Report. The City shall provide to Baykeeper a Final Compliance Report  
10 for Baykeeper's review and comment. The Final Compliance Report shall be submitted to Baykeeper a  
11 minimum of one (1) year prior to the Termination Date and the Final Compliance Report shall provide  
12 the status of all of the construction and other related activities required in the Capacity Assurance  
13 Report. The report shall provide sufficient information and detail to reasonably demonstrate that the  
14 City has undertaken and will have completed sufficient activities to fully comply with the capacity  
15 related SSOs for rain events less than the Design Storm by the Termination Date. This Final  
16 Compliance Report shall be subject to review, comment and referral to the Dispute Resolution  
17 Procedures as set forth in Section XIX of this Consent Decree. If the City determines that a fee increase  
18 is required to fund capacity improvement projects designed to eliminate capacity-related SSOs, the City  
19 may request a one time, one-year extension to implement the fee increase and obtain the revenue stream.  
20 If the City requests the one-year extension, the City shall have the burden to demonstrate that  
21 elimination of capacity related SSOs cannot be accomplished on the schedule set forth in this Consent  
22 Decree without the fee increase. This extension request shall be subject to the dispute resolution  
23 procedures set forth in Section XIX of this Consent Decree.

24 35. Review of Submittals. Baykeeper shall have the right to review the Hydraulic Modeling  
25 Work Plan and provide comments thereon. Baykeeper shall provide the City, in writing, with all  
26 recommended revisions to the Hydraulic Modeling Work Plan within twenty (20) days of receipt of the  
27 document. The City shall consider each of Baykeeper's recommended revisions and indicate within  
28 twenty (20) days of receipt of Baykeeper's comments whether the City accepts each such

1 recommendation for revision and if not provide a detailed explanation as to why Baykeeper's comments  
2 are being rejected. The City shall implement, within twenty (20) days of receipt of Baykeeper's  
3 comments, all elements in the Hydraulic Modeling Work Plan agreed to by Baykeeper and the City.  
4 Baykeeper may seek dispute resolution pursuant to Section XIX of this Consent Decree regarding  
5 disputes over the Hydraulic Modeling Work Plan.

6 36. Baykeeper shall also provide the City, in writing, with all recommended revisions to the  
7 Capacity Assurance Report within thirty (30) days of receipt of the document. The City shall consider  
8 each of Baykeeper's recommended revisions and indicate within thirty (30) days of receipt of Baykeeper's  
9 comments whether the City accepts each such recommendation for revision and if not provide a detailed  
10 explanation as to why Baykeeper's comments are being rejected. Baykeeper may seek dispute resolution  
11 pursuant to Section XIX of this Consent Decree regarding disputes over the Capacity Assurance Report.

12 37. Neither Party shall invoke Dispute Resolution until both Parties have made good faith efforts  
13 to resolve any professional differences with regard to the Hydraulic Modeling Work Plan and the  
14 Capacity Assurance Report.

15 **XI. SEWER CONDITION ASSESSMENT/REHABILITATION/REPLACEMENT**

16 38. Within three (3) years of the Effective Date of the Consent Decree, the City shall complete a  
17 sewer system assessment ('SSA') inspection and condition assessment of all main sewer line segments in  
18 the San Carlos Collection System that are fifteen (15) inches and smaller in diameter and are greater  
19 than 10 years old. The City shall inspect and assess no less than thirty (30) miles of sewer in each of the  
20 first two (2) years of this Consent Decree.

21 39. Within one-hundred and twenty (120) days of the Effective Date of the Consent Decree, the  
22 City shall propose to Baykeeper a work plan for CCTV inspections. The defects shall be coded and  
23 weighted using the Sanitary Sewer Assessment Defect Codes, which are attached hereto as Appendix A.

24 40. Inspections shall be accomplished using SSA. The work products shall include an inspection  
25 database, prioritized repair projects, and prioritized rehabilitation/ replacement projects. The annual  
26 inspection quantity will include the sum of the lengths of all of the gravity sewers where inspection was  
27 completed. Segments failing to pass the SSA device or camera shall not be included in the annual  
28 inspection quantity.

1 41. The City shall correct defects that may cause an SSO within an appropriate timeframe.  
 2 Based on the Sanitary Sewer Assessment Defect Code scores derived during SSA inspections, the City's  
 3 timeframes for actions to correct observed defects in the sewer segments are shown on the table  
 4 Timeframe for Actions to Correct Observed Defects set out below.

5 **Timeframe for Actions to Correct Observed Defect**

Defect Weight	Condition	Condition Description	Remedy
8-9	Failure Imminent	Structural defects that may lead to complete failure and blockage of the pipe at any time	Repair completed immediately (within 30 days)
6-7	Severe	Severe structural defects of deformed pipe, holes in pipe, broken pipes, and large joint offsets	Repair completed within 1 year or for non-structural defects, re-assess condition within 1 year if it is determined that periodic maintenance can keep the pipe in working order
4-5	Major	Structural defects such as multiple fractures, medium joint offsets and major sags, and pipes with large number of cracks	Repair completed within 5 years, SSA and assess condition within 2 years
2-3	Moderate	Structural defects such as fractures, cracks, small and medium joint offsets, and sags	Inspect with SSA and assess condition every 5 years
0-1	Minor	Structural defects such as slight sags, cracks, and small joint offsets	Inspect with SSA and assess condition every 10 years

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21 42. The schedule proposed in paragraph 40 above shall be prioritized to first inspect sewers in  
 22 areas with known SSO problems and sewers with known or suspected structural deficiencies

23 **XII. IMPLEMENTATION OF FATS, OILS AND GREASE PROGRAM**

24 43. The City shall continue to contract its FOG Control Program to South Bayside System  
 25 Authority ('SBSA') as outlined in the 'Proposal to Conduct a FOG Program for the City of San Carlos'  
 26 dated June 26, 2009. Under this program, the City contracts FOG inspections and education to SBSA.

27 44. The City shall continue its own residential outreach program to reduce FOG from residential  
 28 sources consistent with its SSMP.

1 45. The City shall commence a program for enforcement of violations of the Municipal Code  
2 relating to FOG discharges, including community outreach and education. The City agrees to modify its  
3 Municipal Code to include provisions for fines for each violation of not less than One Thousand Dollars  
4 (\$1,000.00) for a first offense, and not less than Five Thousand (\$5,000.00) for a second and/or  
5 subsequent offense. The Municipal Code may include provision for an initial six (6) month grace period  
6 for all customers commencing from the date of adoption of such fines, and may further provide for a  
7 warning prior to prosecution for residential customers who do not willfully violate the Municipal Code.

8 46. The City shall report to Baykeeper the number of violations of the Municipal Code relating  
9 to FOG discharges and the amount of money collected as fines by the City each year in the Annual  
10 Report required under Section XVI of this Consent Decree.

### 11 **XIII. SEWER CLEANING, HOT SPOTS, AND LATERAL PROGRAMS**

12 47. Routine Cleaning. The City shall clean all of its gravity sanitary sewer segments fifteen (15)  
13 inches in diameter or smaller in the San Carlos Collection System at least once every five (5) years.  
14 Lower Laterals shall be cleaned and inspected after each SSO caused by a blockage in the Lower  
15 Lateral.

16 48. Focused Cleaning Program. The City shall expand and improve its Focused Cleaning  
17 Program to include main line sewer segments having repeat and frequent blockages caused by Roots,  
18 Debris, and Pipe Condition, in addition to those main line segments included in the City's Focused  
19 Cleaning Program due to FOG.

20 49. Within one-hundred twenty (120) days from the Effective Date of the Consent Decree, the  
21 City shall develop and submit to Baykeeper for comments a Focused Cleaning Work Plan ('FCWP'). The  
22 FCWP shall include a listing of all lines requiring focused cleaning and the cleaning frequency for each  
23 identified line. The FCWP shall include the rationale relied upon to select the main sewer segments  
24 included in the FCWP and to determine cleaning frequencies. Cleaning frequencies for the Focused  
25 Cleaning Program shall include: one (1) month, two (2) month, three (3) month, six (6) month, twelve  
26 (12) month, and twenty-four (24) month cycles as needed. The FCWP shall incorporate the methodology  
27 set forth below in Figure 1 ('Preventive Maintenance Scheduling Flow Chart') in paragraph 50 below.  
28

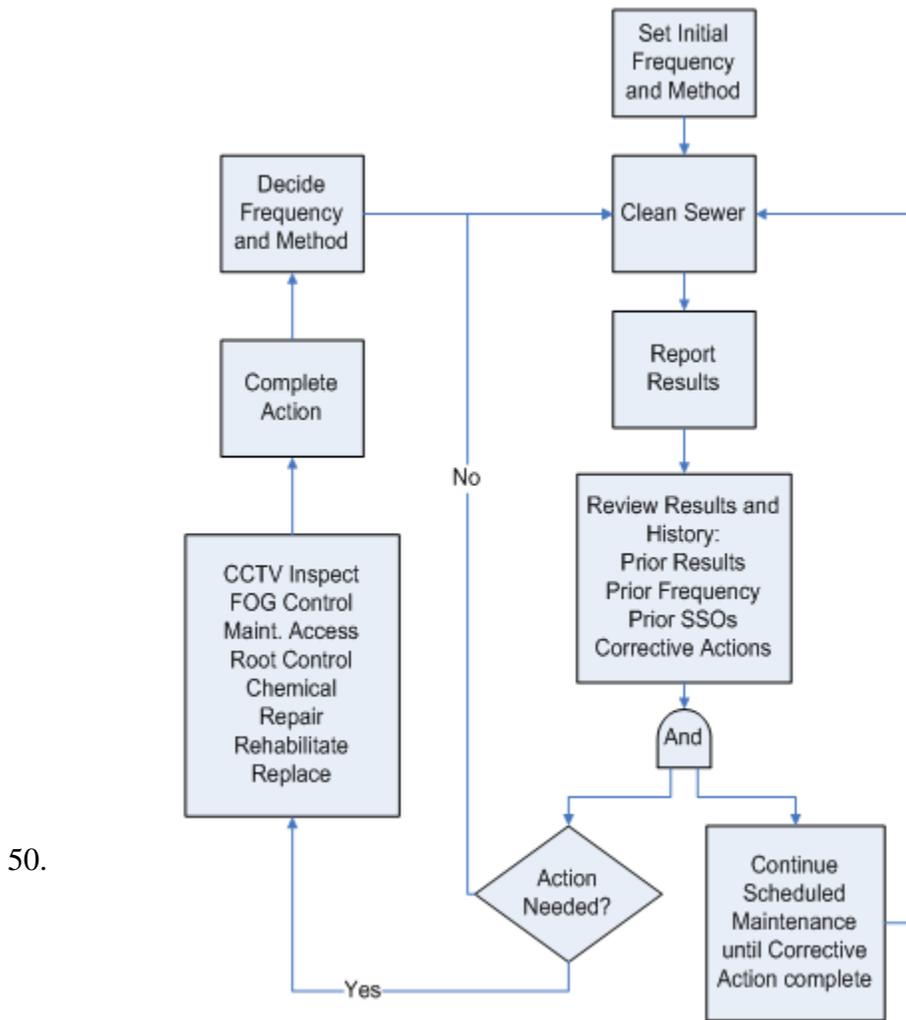


Figure 1 - Preventive Maintenance Scheduling Flow Chart.

51. Baykeeper shall review and provide the City with comments on the FCWP within thirty (30) days of submittal. The City shall consider each of Baykeeper’s recommended revisions and indicate within thirty (30) days of receipt of Baykeeper’s comments whether the City accepts each such recommendation for revision and if not provide a detailed explanation as to why Baykeeper’s comments are being rejected. Baykeeper may seek dispute resolution pursuant to Section XIX of this Consent Decree regarding disputes over the FCWP.

52. The Parties shall attempt to resolve any disputes regarding the FCWP in good faith. Neither Party shall invoke dispute resolution until good faith efforts to resolve disputes have been completed. The City shall immediately implement all portions of the Focused Cleaning Program not in dispute and shall implement all portions of the Final FCWP not previously implemented immediately upon

1 resolution of disputes.

2 53. The Focused Cleaning Program shall be maintained in the City's CMMS database.

3 54. The City shall collect all observations made by its trained sewer cleaning crews in  
4 accordance with the SSO Cause Determination SOP (Section VIII of this Consent Decree) regarding the  
5 extent and nature of materials removed during the cleaning process. The observations shall be recorded  
6 in the City's CMMS database. The City shall maintain or change the frequency of its focused cleaning  
7 for a sewer line segment based on the Sewer Cleaning Results Matrix set forth below in accordance with  
8 the section labeled "Action."

9 **Sewer Cleaning Results Matrix**

	<b>Clear</b>	<b>Light</b>	<b>Moderate</b>	<b>Heavy</b>
<b>Debris</b>	No observable debris	Minor amount of debris 1 pass	Moderate amounts of debris 2-3 passes	Significant amounts of debris More than 4 passes Operator concern for future stoppage
<b>Grease</b>	No observable grease	Minor amounts of grease 15 minutes or less to clean 1 pass	Small "chunks" No "logs" 15-30 minutes to clean 2-3 passes	Big "chunks" or "logs" More than 4 passes Operator concern for future stoppage
<b>Roots</b>	No observable roots	Minor amounts of roots 1 pass	Thin stringy roots No "clumps" 2-3 passes	Thick roots Large "clumps" More than 4 passes Operator concern for future stoppage
<b>Debris:</b> Structural pipe fragments soil, rock, etc.	No observable materials	Specify material (if possible) Minor amounts of material	Specify material Moderate amounts of material per line segment	Specify material Significant amounts of material per line segment Operator concern for future stoppage

<b>Action</b>	Decrease frequency to next lower frequency after 3 consecutive results (e.g. 6 months to 12 months)	Continue current maintenance frequency	Increase current maintenance frequency to next higher frequency (e.g. 6 months to 3 months)	Increase current maintenance frequency to next higher frequency (e.g. 6 months to 3 months)
---------------	---	--	---	---

55. Changes in cleaning frequency based upon cleaning results shall be as follows:

- a. No reduction in cleaning frequency shall be made in a sewer line segment with a previous history of SSOs without the approval of an appropriate maintenance supervisor or superintendent;
- b. three (3) consecutive results of "clear" will cause the cleaning frequency to be reduced to the next lower cleaning frequency;
- c. results of "medium" or "heavy" will cause the cleaning frequency to be increased to the next highest frequency.
- d. lines on a 12 month or 24 month cleaning cycle may be taken off the FCWP if there have been no SSOs on the line since the initial cleaning and the lines are found to be "clear" or "light" on the second cleaning.

56. At a minimum, main line segments shall be added to the Focused Cleaning Program based on the findings from any SSA Condition Assessment using the Operation and Maintenance Codes Table set forth in Appendix A—Sanitary Sewer Assessment Codes.

57. Sewer Cleaning Quality Assurance/Quality Control Program: The City shall institute and maintain a quality assurance/quality control ("QA/QC") program adequate to ensure proper and complete cleaning of sewers. The QA/QC program shall consist of spot checking the cleaning quality in a minimum of two percent (2%) by sewer segment of the cleaned sewers on a monthly basis using SSA to ensure adequate cleaning. If the cleaning is found to be inadequate, the sewer segment will be re-cleaned within thirty (30) days. If more than ten percent (10%) of the spot checked segments require re-cleaning in any given month, spot checking of the system shall be increased to five percent (5%). Where spot checking of the system has increased to five percent (5%) pursuant to this section, such spot checking will not be reduced to two percent (2%) until three consecutive months show two percent (2%) or less of the pipes inspected required re-cleaning. If a required inspection frequency increase is

1 identified with a single crew, the increased inspection schedule will only apply to that crew.

2 58. If scheduled or hot spot cleaning of a segment or area cannot be properly accomplished due  
3 to pipe condition or access limitations, the condition of the segment shall be considered failing and shall  
4 be repaired within one-hundred and twenty (120) days. If scheduled or hot spot cleaning cannot be  
5 properly accomplished due to access limitations, an action plan to gain access to the segment shall be  
6 developed within one-hundred and twenty (120) days and shall be implemented via repair within one (1)  
7 year.

8 59. The City shall identify the sewer lines cleaned and the results of its QA/QC program each  
9 year in the Annual Report required by Section XVI of this Consent Decree.

10 **XIV. PRIVATE LATERALS**

11 60. Within one-hundred and (180) days of the Effective Date of this Consent Decree, the City  
12 shall propose and recommend to the City Council the adoption of amendments to the Municipal Code to:

- 13 a. Require inspection of private laterals as a condition to sale of a property;
- 14 b. Require inspection of private laterals as a condition to obtaining a building permit if the  
15 value of the construction either exceeds \$75,000, or where any repair or replacement is  
16 being made to the sanitary sewer system;
- 17 c. Require inspection where more than twenty-five percent of the square footage of the  
18 structure is being remodeled;
- 19 d. Set standards for evaluating the condition of private laterals subject to the provisions in  
20 subsections (a)-(b) above.
- 21 e. Require any defects in the private lateral that causes the private lateral to fail the  
22 inspection be repaired or replaced within ninety (90) days. Defects causing a private  
23 lateral to fail the inspection shall include but not be limited to the following: pipe  
24 failure; open joints; and/or openings in the pipe, which allow root intrusion.
- 25 f. Require the private lateral owner, within one-hundred and twenty (120) days of  
26 notification by the City, to remove roots from their laterals that are growing into Lower  
27 Laterals as determined by the City and make all necessary repairs to the private lateral  
28 necessary to prevent a reoccurrence of roots intrusion that reaches the lower lateral.

1 **XV. CHEMICAL ROOT CONTROL PROGRAM**

2 61. The City shall continue to implement its Chemical Root Control Program to supplement  
 3 focused cleaning and routine cleaning to assure compliance with the San Carlos Collection System SSO  
 4 Reduction Performance Goals and Lower Lateral SSO Reduction Performance Goals in Section VII of  
 5 this Consent Decree. The City shall annually evaluate the effectiveness of the Chemical Root Control  
 6 Program and present its findings in the Annual Reports required under Section XVI of this Consent  
 7 Decree. Should the City in any year determine that the Chemical Root Control Program is ineffective,  
 8 the City may submit a request for terminating the program to Baykeeper that includes the basis for such  
 9 termination. Upon Baykeeper's written approval, the program shall be terminated.

10 **XVI. ANNUAL REPORT**

11 62. Commencing March 1, 2011 and each year that this Consent Decree remains in effect, the  
 12 City shall submit an Annual Report to Baykeeper. The Annual Report shall:

- 13 a. Include the specific annual reporting requirements as set forth in Sections VII, VIII,  
 14 XII, XIII, and XV of this Consent Decree.
- 15 b. Provide details relevant to the City's implementation of, and compliance with, this Final  
 16 Consent Decree during the preceding year, including any program modifications during  
 17 the prior calendar year or delays.
- 18 c. Assess the City's progress towards meeting the requirements of the Consent Decree.

19 **XVII. ENVIRONMENTAL MITIGATION PROJECT AND FEES AND COSTS**

20 63. Environmental Mitigation Project. To remediate perceived environmental harms resulting  
 21 from the allegations in the Complaint, Defendant shall pay to the *Rose Foundation for Communities and*  
 22 *the Environment* the total sum of Two-Hundred Thousand Dollars (\$200,000) (the 'Mitigation Payment')  
 23 to be used to fund environmental project activities that will benefit the San Francisco Bay or its  
 24 tributaries. Payment shall be made in two equal installments of \$100,000.00, with the first installment  
 25 of \$100,000.00 due on or before June 30, 2010, and the second installment of \$100,000.00 due on or  
 26 before July 31, 2010. These payments shall be made to:  
 27  
 28

1 The Rose Foundation for Communities and the Environment  
 2 6008 College Avenue, Suite 10  
 3 Oakland, California 94618  
 4 Attention: Tim Little

5 64. Litigation Fees and Costs. To help defray Baykeeper's attorneys, consultant, and expert fees  
 6 and costs, and any other costs incurred as a result of investigating, filing this action, and negotiating a  
 7 settlement, Defendant shall pay Plaintiff the sum of Ninety-Five Thousand Dollars (\$95,000) which  
 8 shall include all attorneys' fees and costs for all services performed by and on behalf of Baykeeper by its  
 9 attorneys and consultants up to and through the Effective Date of this Consent Decree. The payment  
 10 shall be made within twenty-one (21) days of the Effective Date of this Consent Decree. The payment  
 11 shall be made in the form of a check payable to *Lawyers for Clean Water Attorney Client Trust Account*  
 12 and addressed to: 1004 O'Reilly Avenue, San Francisco, CA 94129, sent overnight delivery, and shall  
 13 constitute full payment for all costs of litigation incurred by Baykeeper that have or could have been  
 14 claimed in connection with or arising out of Baykeeper's lawsuit, up to and including the Effective Date.

15 65. Compliance Monitoring. Defendants agree to compensate Plaintiff for time to be spent by  
 16 legal staff and/or technical consultants reviewing compliance reports and any other documents, or  
 17 participating in any meet and confer process under this Consent Decree. To this end, the Defendant  
 18 shall pay Fifty-Five Thousand Dollars (\$55,000) within twenty-one (21) days of the Effective Date of  
 19 this Consent Decree. Payment shall be made payable to *Lawyers for Clean Water Attorney Client Trust*  
 20 *Account* and addressed to 1004 O'Reilly Avenue, San Francisco, CA 94129, sent overnight delivery.  
 21 Any compliance monitoring money remaining when this Consent Decree terminates shall be returned to  
 22 the City within sixty (60) days of termination.

#### 23 **XVIII. COMMITMENTS OF BAYKEEPER**

24 66. Submission of Consent Decree to Federal Agencies. Baykeeper shall submit a copy of this  
 25 Consent Decree to EPA and the United States Department of Justice ('DOJ') within three (3) days of the  
 26 Consent Decree's execution for agency review consistent with 40 C.F.R. § 135.5. The agency review  
 27 period expires forty-five (45) days after receipt by both agencies, as evidenced by the certified return  
 28 receipts, copies of which shall be provided by Baykeeper to Defendant upon request. In the event that  
 EPA or DOJ comment negatively on the provisions of this Consent Decree, the Parties agree to meet and



1 of this Consent Decree consistent with the provisions of sections 505 and 309 of the Clean Water Act,  
2 33 U.S.C. §§ 1365, 1319.

3 **XX. MUTUAL RELEASE OF LIABILITY, COVENANT NOT TO SUE, AND FORCE**  
4 **MAJEURE**

5 73. In consideration of the above, upon the Effective Date of this Consent Decree, the Parties  
6 hereby fully release, except for claims for the Defendant's failure to comply with this Consent Decree  
7 and as expressly provided below, each other and their respective successors, assigns, officers, agents,  
8 employees, and all persons, firms, and corporations having an interest in them, from any and all Clean  
9 Water Act violations alleged or which could have been alleged based upon the facts alleged in the  
10 Complaint, up to and including the Termination Date of this Consent Decree.

11 74. Nothing in this Consent Decree limits or otherwise affects Plaintiff's right to address or take  
12 any position that it deems necessary or appropriate in any formal or informal proceeding before the  
13 Regional Board, EPA, or any other judicial or administrative body on any other matter relating to  
14 Defendant.

15 75. Neither the Consent Decree nor any payment pursuant to the Consent Decree shall constitute  
16 or be construed as a finding, adjudication, or acknowledgement of any fact, law, or liability, nor shall it  
17 be construed as an admission of violation of any law, order, rule, or regulation. Defendant maintains and  
18 reserves all defenses they may have to any alleged violations that may be raised in the future.

19 76. Force Majeure. Defendant shall notify Baykeeper pursuant to the terms of this paragraph,  
20 when implementation of the requirements set forth in this Consent Decree, within the deadlines set forth  
21 in those paragraphs, becomes impossible, despite the timely good-faith efforts of Defendant, due to  
22 circumstances beyond the control of Defendant or its agents, and which could not have been reasonably  
23 foreseen and prevented by the exercise of due diligence by Defendant. Any delays due to Defendant's  
24 failure to make timely and bona fide applications and to exercise diligent efforts to comply with the  
25 terms in this Consent Decree in normal inclement weather shall not, in any event, be considered to be  
26 circumstances beyond Defendant's control. Financial inability shall not, in any event, be considered to  
27 be circumstances beyond Defendant's control.

28 a. If Defendant claims impossibility, it shall notify Baykeeper in writing within thirty (30)

1 days of the date that Defendant first knew of the event or circumstance that caused or  
 2 would cause a violation of this Consent Decree, or the date Defendant should have  
 3 known of the event or circumstance by the exercise of due diligence. The notice shall  
 4 describe the reason for the nonperformance and specifically refer to this Section of this  
 5 Consent Decree. It shall describe the anticipated length of time the delay may persist,  
 6 the cause or causes of the delay, the measures taken or to be taken by Defendant to  
 7 prevent or minimize the delay, the schedule by which the measures will be  
 8 implemented, and the anticipated date of compliance. Defendant shall adopt all  
 9 reasonable measures to avoid and minimize such delays.

- 10 b. The Parties shall meet and confer in good-faith concerning the non-performance and,  
 11 where the Parties concur that performance was or is impossible, despite the timely good  
 12 faith efforts of Defendant, due to circumstances beyond the control of Defendant that  
 13 could not have been reasonably foreseen and prevented by the exercise of due diligence  
 14 by Defendant, new performance deadlines shall be established.
- 15 c. If Baykeeper disagrees with Defendant's notice, or in the event that the Parties cannot  
 16 timely agree on the terms of new performance deadlines or requirements, either Party  
 17 shall have the right to invoke the Dispute Resolution Procedures pursuant to Section  
 18 XIX of this Consent Decree. In such proceeding, Defendant shall bear the burden of  
 19 proving that any delay in performance of any requirement of this Consent Decree was  
 20 caused or will be caused by force majeure and the extent of any delay attributable to  
 21 such circumstances.

22 77. The Dispute Resolution Procedures set forth in Section XIX shall be the exclusive  
 23 mechanism for resolving disputes between the Parties with regard to any aspect of this Consent Decree.

#### 24 **XXI. STIPULATED PAYMENTS**

25 78. Stipulated Payments for Failure to Comply with Consent Decree. Defendant shall make a  
 26 stipulated payment of One Thousand Dollars (\$1,000) for each missed deadline and/or failure to comply  
 27 with a requirement included in or contemplated by this Consent Decree, unless the failure to comply is  
 28 from a Force Majeure Event. Payments for missed deadlines shall be made for the restoration and/or

1 improvement of the San Francisco Bay watershed, and shall be awarded to the Environmental  
2 Mitigation Project recipient identified above. Defendant agrees to make the stipulated payment within  
3 thirty (30) days of a missed deadline and mail via certified mail or overnight delivery. Defendant shall  
4 provide Plaintiff with a copy of each such payment.

5 79. The City agrees to make stipulated payments in the event complete reports covered by this  
6 Section are not timely submitted. Reports covered by this Section include the following Sections from  
7 this Consent Decree: the SSO Cause Determination SOP under Section VIII; the SSO Reduction Action  
8 Plan under Section IX; the Hydraulic Modeling Work Plan, Capacity Assurance Report, and Final  
9 Compliance Report under Section X; the FOG Control Action Plan under Section XII; and the Annual  
10 Reports under Section XVI. The City shall have a fourteen (14) day grace period after the due date for  
11 the reports covered by this Section prior to imposition of stipulated penalties for the first instance of  
12 delayed reporting. Baykeeper is not obligated to notify the City, however it may do so in order to allow  
13 the City to promptly address any alleged deficiency after any submission date has been missed.

14 80. The City shall pay the following stipulated payments in the event that they file a late or  
15 incomplete report covered herein after the grace period:

- 16 a. For a report submitted after the grace period, the City shall pay \$100 per day until the  
17 report is filed, up to thirty (30) days for a total amount of \$3,000.
- 18 b. For any report more than thirty (30) days late, the City shall pay \$5,000.
- 19 c. For any report more than ninety (90) days late, the City shall pay \$10,000.
- 20 d. The above penalties are cumulative, as applicable, to a maximum payment of \$18,000  
21 per report.

22 81. In the case of a late report, the City shall send Baykeeper the report per Section XXII of this  
23 Consent Decree. Baykeeper shall notify the City of receipt of the late report and shall include an invoice  
24 for the amount of the stipulated payment, if any, due and payable. The City shall contact Baykeeper  
25 within five (5) working days if the City disagrees with Baykeeper's stipulated payment calculation and  
26 may meet and confer with Baykeeper or seek Dispute Resolution pursuant to Section XIX of this  
27 Consent Decree. The City shall pay any stipulated payments due pursuant to this Consent Decree within  
28 thirty (30) days after receipt of Baykeeper's invoice itemizing the stipulated payment liability, or thirty

1 (30) days after resolution of a dispute if the dispute resolution process has been invoked pursuant to  
2 Section XIX of this Consent Decree.

3 82. All payments of stipulated penalties described in this Consent Decree shall be paid by the  
4 City to the *Rose Foundation for Communities and the Environment* and sent via overnight mail to: Rose  
5 Foundation for Communities and the Environment, 6008 College Avenue, Oakland, CA 94618,  
6 Attn: Tim Little. Nothing in this Consent Decree shall prevent Baykeeper from waiving any stipulated  
7 penalties, which might be due under this Section, based on the outcome of the Informal Dispute  
8 Resolution process, or based on the City's good faith efforts.

9  
10 **XXII. NOTICES AND SUBMISSIONS**

11 83. Defendant agrees to provide Plaintiff with all documents or reports required or contemplated  
12 by this Consent Decree. All documents provided by Defendant shall be directed to the following  
13 individuals at the addresses specified below unless specifically stated otherwise herein and shall be sent  
14 by certified or overnight delivery, and by electronic mail. Any change in the individuals or addresses  
15 designated by any Party must be made in writing to all Parties.

16 **If to BAYKEEPER:**

17 Daniel Cooper  
18 Martin McCarthy  
19 LAWYERS FOR CLEAN WATER, INC.  
1004 O'Reilly Avenue  
20 San Francisco, CA 94129  
Telephone: (415) 440-6520  
21 Email: daniel@lawyersforcleanwater.com  
martin@lawyersforcleanwater.com

22 Jason Flanders  
23 SAN FRANCISCO BAYKEEPER, INC.  
24 785 Market Street, Suite 850  
San Francisco, CA 94103-2023  
25 Email: jason@baykeeper.org  
26  
27  
28

1           If to the CITY:

2           Gregory J. Rubens  
3           AARONSON, DICKERSON, COHN & LANZONE  
4           939 Laurel Street, Suite D  
5           San Carlos, CA 94070  
6           Telephone: (650) 593-3117 ext. 202  
7           Fax: (650) 637-1401  
8           Email: grubens@adcl.com

9           Mark Weiss  
10          CITY OF SAN CARLOS  
11          600 Elm Street  
12          P.O. Box 3009  
13          San Carlos, CA 94070  
14          Tel: (650) 802-4228  
15          Fax: (650) 595-6729  
16          Email: mweiss@cityofsancarlos.org

17           84. Notifications of communications shall be deemed submitted three (3) days after the date that  
18 they are postmarked and sent by first-class mail or deposited with an overnight mail/delivery service.

19           85. Defendant also agrees to make available to Baykeeper any new or existing documents within  
20 the City's custody or control that are reasonably necessary to evaluate system performance and/or  
21 compliance with this Consent Decree within seven (7) days of written request by Baykeeper.

22           86. During the life of this Consent Decree, Defendant shall preserve at least one legible copy of  
23 all records and documents, including computer-stored information, which relate to performance of its  
24 obligations under this Consent Decree.

25           87. Any notice, report, certification, data presentation or other document submitted by Defendant  
26 to Baykeeper pursuant to this Consent Decree, which discusses, describes, demonstrates, or supports any  
27 finding or makes any representation concerning compliance or non-compliance with any requirement(s)  
28 of this Consent Decree, shall contain the following certification, signed and dated by a responsible  
official:

          I certify, under penalty of perjury, that this document and all attachments were  
prepared under my direction or supervision in accordance with a system designed  
to assure that qualified personnel properly gather and evaluate the information  
submitted and is, to the best of my knowledge and belief, true, accurate and  
complete.

**XXIII. GENERAL PROVISIONS**

1  
2 88. Continuing Jurisdiction. The Parties stipulate that the District Court shall retain jurisdiction  
3 to enforce the terms and conditions of this Consent Decree and to resolve disputes arising hereunder as  
4 may be necessary or appropriate for the construction or execution of this Consent Decree up to and  
5 including the Termination Date in paragraph 10.

6 89. Construction. The language in all parts of this Consent Decree shall be construed according  
7 to its plain and ordinary meaning, except as to those terms defined in Section II above.

8 90. Choice of Law. The laws of the United States shall govern this Consent Decree.

9 91. Severability. In the event that any provision, paragraph, section, or sentence of this Consent  
10 Decree is held by a District Court to be unenforceable, the validity of the enforceable provisions shall  
11 not be adversely affected.

12 92. Counterparts. This Consent Decree may be executed in any number of counterparts, all of  
13 which together shall constitute one original document. Telecopy, scanned copies (i.e., pdf) and/or  
14 facsimile copies of original signature shall be deemed to be originally executed counterparts of this  
15 Consent Decree.

16 93. Modification of the Consent Decree. This Consent Decree, and any provisions herein, may  
17 not be changed, waived, discharged, or terminated unless by a written instrument, signed by the Parties.

18 94. Full Settlement. This Consent Decree constitutes a full and final settlement of this matter.

19 95. Integration Clause. This is an integrated Consent Decree. This Consent Decree is intended  
20 to be a full and complete statement of the terms of the agreement between the Parties and expressly  
21 supersedes any and all prior oral or written agreements, covenants, representations, and warranties  
22 (express or implied) concerning the subject matter of this Consent Decree.

23 96. Authority. The undersigned representatives for Baykeeper and the City each certify that  
24 he/she is fully authorized by the Party whom he/she represents to enter into the terms and conditions of  
25 this Consent Decree.

26 ///

27 ///

28 ///

The Parties hereby enter into this Consent Decree.

CITY OF SAN CARLOS

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

By: Mark Weiss, City Manager

SAN FRANCISCO BAYKEEPER

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

By: Deb Self, Executive Director

APPROVED AS TO FORM:

For DEFENDANT CITY OF SAN CARLOS:  
AARONSON DICKERSON COHN & LANZONE

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

By: Greg Rubens

CITY ATTORNEY

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

By: Mark Weiss  
Assistant City Attorney

For SAN FRANCISCO BAYKEEPER:  
LAWYERS FOR CLEAN WATER INC.

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

By: Daniel Cooper

**ORDER**

IT IS HEREBY ORDERED that the above captioned action is dismissed with prejudice.

IT IS FURTHER ORDERED that the Court shall retain jurisdiction over Baykeeper's claims against the City of San Carlos for the sole purpose of enforcing compliance by the Parties with the terms of the Consent Decree. All proceedings relating to enforcing compliance with the Consent Decree shall be before the federal Magistrate.

IT IS SO ORDERED.

Date: 4/19/10

NORTHERN DISTRICT OF CALIFORNIA



Honorable Sandra Brown Armstrong  
United States District Court Judge  
Northern District of California