

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD  
SAN FRANCISCO BAY REGION**

In the matter of:	)	
	)	
<b>CITY OF HALF MOON BAY,</b>	)	<b>SETTLEMENT AGREEMENT AND</b>
<b>SAN MATEO COUNTY</b>	)	<b>STIPULATION FOR ENTRY OF</b>
	)	<b>ADMINISTRATIVE CIVIL LIABILITY</b>
<b>Discharges of Untreated Sewage to</b>	)	<b>ORDER</b>
<b>Surface Water between May 2, 2007,</b>	)	
<b>and December 31, 2017</b>	)	<b>ORDER R2-2018-1020</b>
	)	

**Section I: INTRODUCTION**

This Settlement Agreement and Stipulation for Entry of Administrative Civil Liability Order (Stipulated Order) is entered into by and between the California Regional Water Quality Control Board, San Francisco Bay Region, Prosecution Team (Prosecution Team) and the City of Half Moon Bay (City) (collectively Parties), and is presented to the California Regional Water Quality Control Board, San Francisco Bay Region (Regional Water Board) or its delegate for adoption as an Order by settlement pursuant to Government Code section 11415.60. This Stipulated Order resolves all of the violations alleged herein by the imposition of administrative civil liability against the City for **\$26,800**.

**Section II: RECITALS**

1. The City owns and operates a sanitary sewer collection system consisting of approximately 32.9 miles of gravity sewer pipeline, 1.3 miles of force main, and 3 pump stations. The system serves most City of Half Moon Bay residents. Wastewater collected by the City's sewer system is conveyed to the Sewer Authority Mid-Coastside for treatment and disposal.
2. The City is required to operate and maintain its collection system in compliance with State Water Resources Control Board Order No. 2006-0003-DWQ, Statewide General Waste Discharge Requirements for Sanitary Sewer Systems (Sanitary Sewer Order). The State Water Resources Control Board adopted the Sanitary Sewer Order on May 2, 2006.
3. Prohibition C.1 of the Sanitary Sewer Order prohibits sanitary sewer overflows (SSOs) that result in a discharge of untreated wastewater to waters of the United States.
4. Section 301 of the federal Clean Water Act (CWA) prohibits the discharge of any pollutant to a water of the United States by a person except as in compliance with the CWA. (33 U.S.C. § 1311.)
5. On January 17, 2018, the Prosecution Team issued a Proposed Settlement Offer for SSOs to the City alleging violations of the Sanitary Sewer Order for 12 SSOs between May 2, 2007,

and December 31, 2017, that discharged a total of 12,560 gallons of untreated sewage to Pilarcitos Creek, other local surface waters, and/or the Pacific Ocean, all of which are considered by the Regional Water Board to be waters of the United States.<sup>1</sup> Those SSOs, detailed in Attachment B (incorporated by reference herein), were alleged to have violated Prohibition C.1 of the Sanitary Sewer Order and Section 301 of the CWA. The Parties entered into settlement discussions and decided to resolve all 12 SSOs that discharged to waters of the United States.

6. The City takes issue with the issuance of penalties for SSOs that occurred more than five years ago, beyond the federal statute of limitations for actions to enforce alleged violations under the Clean Water Act. The City also points to the fact that prior to May 20, 2010, there was no effective Enforcement Policy. The Prosecution Team contends that the Water Boards are not subject to statutes of limitations or laches, and that such administrative penalties are appropriate. In the spirit of cooperation, the Parties have agreed to set this issue aside for this action only, with the explicit understanding that this settlement shall not be used as precedent for any future enforcement actions taken for alleged violations more than five years old.
7. Pursuant to California Water Code (Water Code) section 13385, subdivision (a)(5), a person that violates Section 301 of the CWA is subject to administrative civil liability under Water Code section 13385, subdivision (c):

...in an amount not to exceed the sum of the following: (1) Ten thousand dollars (\$10,000) for each day in which the violations occurs. (2) Where there is a discharge, any portion of which is not susceptible to cleanup or is not cleaned up, and the volume discharged but not cleaned up exceeds 1,000 gallons, an additional liability not to exceed ten dollars (\$10) multiplied by the number of gallons by which the volume discharged but not cleaned up exceeds 1,000 gallons.
8. To resolve the alleged violations in Section II, paragraph 5, by consent and without further administrative proceedings, the Parties have agreed to the imposition of an administrative civil liability of \$26,800 against the City. The administrative civil liability imposed for the Water Code violations is the proposed liability the Prosecution Team calculated and asserted using Steps 1 through 10 of the State Water Resources Control Board's Water Quality Enforcement Policy (October 2017) (Enforcement Policy) as shown in Attachments A and B. The Prosecution Team used the Enforcement Policy for all of the alleged violations even though only two of the SSOs occurred after the effective date (October 5, 2017). Payment of \$13,400 to the State Water Pollution Cleanup and Abatement Account is due no later than 30 days following the Regional Water Board or its delegate executing this Stipulated Order. The remaining \$13,400 in penalties shall be suspended upon completion of an Enhanced Compliance Action (ECA) as outlined in Section III, paragraph 2.
9. The Parties have engaged in settlement negotiations and agreed to settle this matter without administrative or civil litigation, and to present this Stipulated Order to the Regional Water

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<sup>1</sup> The timeframe begins on May 2, 2007, because that is when an enrollee was required to use the California Integrated Water Quality System for its reporting.

Board or its delegate for adoption as a Stipulated Order by settlement pursuant to Government Code section 11415.60.

10. The Prosecution Team contends that the resolution of the alleged violations is fair and reasonable, and fulfills all of its enforcement objectives; that no further action or injunctive relief is necessary or warranted concerning the violations, except as provided in this Stipulated Order; and that this Stipulated Order is in the public's best interest.

### **Section III: STIPULATIONS**

The Parties incorporate the foregoing Recitals and stipulate to the following:

1. **Administrative Civil Liability:** The City hereby agrees to the imposition of an administrative civil liability of **\$26,800** to resolve the alleged violations as set forth in section II, paragraph 5, as follows:

- a. No later than 30 days after the Regional Water Board or its delegate signs this Stipulated Order, the City shall submit a check for **\$13,400** made payable to the "State Water Pollution Cleanup and Abatement Account," with reference to the Order number on page one of this Stipulated Order, to the following address:

State Water Resources Control Board Accounting Office  
Attn: ACL Payment  
P.O. Box 1888  
Sacramento, CA 95812-1888

The City shall provide a copy of the check via e-mail to the State Water Resources Control Board, Office of Enforcement ([susan.loscutoff@waterboards.ca.gov](mailto:susan.loscutoff@waterboards.ca.gov)), and the Regional Water Board ([michael.chee@waterboards.ca.gov](mailto:michael.chee@waterboards.ca.gov)).

- b. The Parties agree that **\$13,400** of the administrative civil liability amount shall be suspended pending completion of the ECA described in Section III, paragraph 2, and Attachment C, incorporated by reference herein.
2. **Enhanced Compliance Action:** The proposed ECA allows the City to improve its operational equipment beyond those actions required by law and is separate from projects designed to bring the City into compliance with the Sanitary Sewer Order and the CWA. The ECA goal is the purchase and deployment of four SmartCover® or equivalent level monitoring systems as described below:
    - a. SmartCover® or equivalent systems are self-contained wireless level monitoring systems with immediate and historical data logging capabilities. The systems are transportable and can be moved to selected locations within a collection system to track flows, to understand flow patterns and potential sources of inflow and infiltration, and to help prevent SSOs.
    - b. SmartCover® or equivalent systems provide advanced notification by monitoring sewage levels within the collection system at specific locations. When the sewage level rises

above a predetermined threshold (e.g., due to a problem area downstream), an alarm will be sent to collection system personnel alerting them to arising issues so responsive or corrective actions can be taken before SSOs occur. Alarm acknowledgement, alarm level thresholds, and system status can be changed and viewed remotely via the internet.

### 3. Representations and Agreement Regarding ECA

- a. As a material condition for the Regional Water Board's acceptance of this Stipulated Order, the City agrees to use the suspended liability of \$13,400 (ECA Amount) to implement the ECA set forth in Section III, paragraph 2, and Attachment C. The City understands that its promise to implement the ECA, in its entirety, is a material condition of this settlement of liability between the City and the Regional Water Board.
  - b. The City agrees to (1) spend the ECA Amount as described in this Stipulated Order, (2) provide certified, written reports to the Regional Water Board detailing ECA implementation consistent with the terms of this Stipulated Order, and (3) within 30 days of ECA completion, provide a certification by a responsible official, signed under penalty of perjury, that the City followed all applicable environmental laws and regulations in implementing the ECA, including but not limited to the California Environmental Quality Act (CEQA), Porter-Cologne Act, and federal Clean Water Act. The City further agrees that the Regional Water Board may require a third-party audit of the funds expended to implement the ECA at the City's cost, and that the City bears ultimate responsibility for meeting all deadlines specified in Attachment C.
4. **Publicity Associated with the ECA:** Whenever the City or its agents or subcontractors publicize one or more elements of the ECA, they shall state in a **prominent manner** that the project is undertaken as part of a settlement to a Regional Water Board enforcement action against the City.
  5. **Progress Reports and Inspection Authority:** As described in Attachment C, the City shall provide reports to the Regional Water Board describing its progress in implementing the ECA. The City agrees that Regional Water Board staff have permission to inspect ECA installation and deployment progress at any reasonable time during normal business hours, with 24 hours' notice.
  6. **Certification of ECA Completion:** Within **180 days** from the date the Executive Officer signs the Stipulated Order, a responsible official of the City shall submit a final report and certified statement that documents the City's ECA expenditures and the City's completion of the ECA in accordance with the terms of this Stipulated Order. The expenditures may include external payments to outside vendors, but may not include normal, routine work undertaken by City staff. In making such certification, the signatories may rely upon normal organizational project tracking systems that capture employee time expenditures and external payments to outside vendors, such as environmental and information technology contractors or consultants. Documentation of ECA completion may include photographs, invoices, receipts, certifications, and other materials reasonably necessary for the Regional Water Board to evaluate ECA completion and the costs incurred. The City shall provide Regional

Water Board staff with any additional information reasonably necessary to verify ECA expenditures and completion.

7. **Request for Extension:** The Executive Officer may extend the ECA deadlines contained in this Stipulated Order for good cause if the City demonstrates delays from unforeseeable contingencies, such as a delay in receipt of ordered materials, provided that the City continues to undertake all appropriate measures to meet the deadlines. The City shall make any deadline extension request in writing at least 30 days prior to the deadline. Any request for an extension must be approved in writing by the Executive Officer. Regional Water Board approval of such extension requests will not be unreasonably withheld.
8. **Regional Water Board Acceptance of Completed ECA:** Upon the City's satisfaction of its obligations under this Stipulated Order, ECA completion, and any requested audits, the Executive Officer will issue a "Satisfaction of Order" terminating any further City obligations under this Stipulated Order and permanently suspending the remaining liability.
9. **Failure to Expend All Suspended Funds on Approved ECA:** If the City is unable to demonstrate to the reasonable satisfaction of the Executive Officer that the entire ECA Amount was spent on the completed ECA, the City shall pay the difference between the ECA Amount and the amount the City can demonstrate was actually spent on the ECA (the Difference). The Executive Officer shall issue a "notice" that will require the City to pay the Difference to the State Water Pollution Cleanup and Abatement Account within 30 days of the notice issuance date. The City shall submit payment consistent with the payment method described in Section III, paragraph 1. Payment of the Difference shall satisfy the City's obligations to implement the ECA.
10. **Failure to Complete ECA:** If the ECA is not fully implemented within **180 days** from the date the Executive Officer signs the Stipulated Order (or other date if extended under paragraph 7), or if there has been a material failure to satisfy a project milestone, the Executive Officer shall issue a Notice of Violation. The amount of suspended liability owed shall be determined via a written, stipulated agreement of the Parties, or, if the Parties cannot reach agreement, via a Motion for Payment of Suspended Liability before the Regional Water Board or its delegate. The City shall be liable to pay the entire ECA Amount, some portion thereof less the value of any completed milestones (if shown by the City) as stipulated to by the Parties in writing, or an amount determined by the Motion for Payment of Suspended Liability. Unless the Regional Water Board or its delegate determines otherwise, the City shall not be entitled to any credit, offset, or reimbursement from the Regional Water Board for expenditures made on the ECA prior to the Notice of Violation's issuance date. Within 30 days of the Regional Water Board's or its delegate's determination of the suspended liability amount assessed for the City to pay, the City shall submit payment consistent with the payment method described in Section III, paragraph 1. Payment of the assessed amount shall satisfy the City's obligations to implement the ECA.
11. **Regional Water Board is Not Liable:** Neither the Regional Water Board members nor Regional Water Board staff, attorneys, or representatives shall be liable for any injury or damage to persons or property resulting from negligent or intentional acts or omissions by the City or its directors, officers, employees, agents, representatives, or contractors in

carrying out activities pursuant to this Stipulated Order, nor shall the Regional Water Board, its members, or its staff be held as parties to, or guarantors of, any contract entered into by the City or its directors, officers, employees, agents, representatives, or contractors in carrying out activities pursuant to this Stipulated Order.

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

**13. Party Contacts for Communications related to this Stipulated Order:**

**For the Regional Water Board:**

Michael Chee  
San Francisco Bay Regional Water  
Quality Control Board  
1515 Clay Street, 14th Floor  
Oakland, CA 94612  
[michael.chee@waterboards.ca.gov](mailto:michael.chee@waterboards.ca.gov)  
(510) 622-2333

**For the City:**

John Doughty  
Public Works Director  
City of Half Moon Bay  
501 Main Street  
Half Moon Bay, CA 94019  
[jdoughty@hmbcity.com](mailto:jdoughty@hmbcity.com)  
(650) 726-7177

**14. Attorneys' Fees and Costs:** Except as otherwise provided herein, each Party shall bear all attorneys' fees and costs arising from the Party's own counsel in connection with the matters set forth herein.

**15. Matters Addressed by this Stipulated Order:** Upon the Regional Water Board's or its delegate's adoption, this Stipulated Order represents a final and binding resolution and settlement of the alleged violations as of the effective date of this Stipulated Order. The provisions of this paragraph are expressly conditioned on the full payment of the administrative civil liability by the deadline specified in Section III, paragraph 1.a, and the City's full satisfaction of the obligations described in Section III, paragraph 2.

**16. Public Notice:** The City understands that this Stipulated Order must be noticed for a 30-day public review and comment period prior to consideration by the Regional Water Board or its delegate. If significant new information is received that reasonably affects the propriety of presenting this Stipulated Order to the Regional Water Board or its delegate for adoption, the Prosecution Team may unilaterally declare this Stipulated Order void and decide not to present it to the Regional Water Board or its delegate. The City agrees that it may not rescind or otherwise withdraw its approval of this proposed Stipulated Order.

**17. Addressing Objections Raised During Public Comment Period:** The Parties agree that the procedure contemplated for public review of this Stipulated Order and the Regional Water Board's or its delegate's adoption of this Stipulated Order is lawful and adequate. The Parties understand that the Regional Water Board or its delegate has the authority to require a public hearing on this Stipulated Order. If procedural objections are raised or the Regional Water

Board requires a public hearing 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 and/or this Stipulated Order as necessary or advisable under the circumstances.

18. **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. The Parties are represented by counsel in this matter.
19. **Modification:** The Parties shall not modify this Stipulated Order 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.
20. **If the Stipulated Order Does Not Take Effect:** If the Stipulated Order does not take effect because the Regional Water Board or its delegate does not approve it, or because the State Water Resources Control Board or a court vacates it in whole or in part, 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 the following:
  - a. Objections related to prejudice or bias of any of the Regional Water Board members or their advisors or 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 Stipulated Order and, therefore, may have formed impressions or conclusions prior to any contested evidentiary hearing on the violations alleged herein 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 that this period has been extended by these settlement proceedings. Nothing in the preceding sentence shall be construed to in any way limit, waive, or otherwise constrain the City from asserting that administrative civil liabilities for SSOs that occurred more than five years ago are barred by the federal statute of limitations for actions to enforce alleged violations under the Clean Water Act, by other statutes of limitation, or by laches, delay, or other equitable defenses.
21. **Waiver of Hearing:** The City has been informed of the rights Water Code section 13323, subdivision (b), provides and hereby waives its right to a hearing before the Regional Water Board prior to the Stipulated Order's adoption. However, should the settlement not be adopted, and should the matter proceed to the Regional Water Board or State Water Resources Control Board for hearing, the City does not waive the right to a hearing before an order is imposed.
22. **Waiver of Right to Petition or Appeal:** The City hereby waives its right to petition the Regional Water Board's adoption of the Stipulated Order for review by the State Water

Resources Control Board, and further waives its rights, if any, to appeal the same to a California Superior Court and/or any California appellate level court. This explicit waiver of rights includes potential future decisions by the Regional Water Board or its delegate directly related to this Stipulated Order, including but not limited to time extensions, ECA completion, and other terms contained in this Stipulated Order.

23. **Covenant Not to Sue:** The City covenants not to sue or pursue any administrative or civil claims against the State of California, any State agency, or its officers, Board Members, employees, representatives, agents, or attorneys arising out of, or relating to, any matter expressly addressed by this Stipulated Order, or the ECA, except that this covenant is not intended to, and does not limit the City's rights to sue over other Regional Water Board orders (e.g., permits, cease and desist orders, etc.) or limit the City's rights to defend against any additional enforcement or other actions taken by the Regional Water Board or its employees, representatives, agents, or attorneys, and shall not release any claims or complaints against any state agency or the State of California, their officers, Regional Water Board Members, employees, representatives, agents, or attorneys to the extent such covenant would be prohibited by California Business and Professions Code Section 6090.5 or by any other statute, rule, regulation or legal principle of similar effect. .
24. **No Admission of Liability/No Waiver of Defenses:** In settling this matter, the City does not admit to liability or to the truth of the findings or allegations made by the Prosecution Team, or admit to any of the findings in this Stipulated Order or its attachments, or admit to any violations of the Clean Water Act, the Sanitary Sewer Order, any Regional Water Board Order, or any other federal, state, or local laws or ordinances, but recognizes that this Stipulated Order may be used as evidence of resolution of a prior enforcement action consistent with Water Code section 13327 and the Enforcement Policy. By entering into this Stipulated Order, the City does not waive any defenses or arguments related to any new enforcement action that may be brought by the Regional Water Board, including any brought under its discretionary enforcement authority reserved herein.
25. **Necessity for Written Approvals:** All Regional Water Board approvals and decisions under the terms of this Stipulated Order shall be communicated to the City in writing. No oral advice, guidance, suggestions, or comments from Regional Water Board employees or officials regarding submissions or notices shall be construed to relieve the City of its obligation to obtain any final written approval this Stipulated Order requires.
26. **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 Stipulated Order.
27. **No Third Party Beneficiaries:** This Stipulated Order is not intended to confer any rights or obligations on any third party, and no third party shall have any right of action under this Stipulated Order for any cause whatsoever.
28. **Severability:** This Stipulated Order is severable; if any provision is found to be invalid, the remainder shall remain in full force and effect.




29. **Counterpart Signatures, Facsimile and Electronic Signature:** 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. Furthermore, this Stipulated Order 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.
30. **Effective Date:** This Stipulated Order shall be effective and binding on the Parties upon the date the Regional Water Board or its delegate enters the Order incorporating the terms of this Stipulated Order.


**IT IS SO STIPULATED.**

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD  
SAN FRANCISCO BAY REGION, PROSECUTION TEAM**

Date: August 21, 2018

  
By: \_\_\_\_\_  
Thomas Mumley  
Assistant Executive Officer


Approved as to form:

  
By: \_\_\_\_\_  
Susie Loscutoff, Attorney  
State Water Resources Control Board  
Office of Enforcement

Settlement Agreement and Stipulated Administrative Civil Liability  
City of Half Moon Bay

**City of Half Moon Bay**

Date: 8/22/19

By:   
John Doughty, Public Works Director

Date: 8/27/2018

By:   
David Boesch, Interim City Manager

Approved as to form:

By:   
Melissa Thorne, Attorney  
Downey Brand LLP

**ORDER OF THE REGIONAL WATER BOARD**

1. This Stipulated Order incorporates the foregoing Sections I through III by this reference as if set forth fully herein.
2. In accepting this Stipulation, the Regional Water Board has considered, where applicable, each of the factors prescribed in Water Code section 13385, subdivision (e), and has applied the Penalty Calculation Methodology set forth in the October 2017 Enforcement Policy, which is incorporated by reference herein. The Regional Water Board's consideration of these factors and application of the Penalty Calculation Methodology is based on information the Prosecution Team obtained in investigating the allegations set forth in the Stipulated Order or otherwise provided to the Regional Water Board.
3. This is an action to enforce the laws and regulations administered by the Regional Water Board, which therefore finds issuance of this Stipulated Order exempt from the provisions of the California Environmental Quality Act (Public Resources Code, § 21000 et seq.) in accordance with section 15321, subdivision (a)(2), Title 14, of the California Code of Regulations.
4. The Executive Officer of the Regional Water Board is authorized to refer this matter directly to the Attorney General for enforcement if the City fails to perform any of its obligations under this Stipulated Order.

**IT IS HEREBY ORDERED** pursuant to Water Code section 13323 and Government Code section 11415.60 on behalf of the California Regional Water Quality Control Board, San Francisco Bay Region.

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Bruce H. Wolfe  
Executive Officer  
California Regional Water Quality Control Board  
San Francisco Bay Region

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Date

## **ATTACHMENT A**

### **Factors in Determining Administrative Civil Liability**

#### **CITY OF HALF MOON BAY SANITARY SEWER COLLECTION SYSTEM SANITARY SEWER OVERFLOWS MAY 2, 2007, TO DECEMBER 31, 2017 HALF MOON BAY, SAN MATEO COUNTY**

The State Water Resources Control Board's October 2017 Water Quality Enforcement Policy (Enforcement Policy) establishes a methodology for assessing administrative civil liability. Use of the methodology addresses the factors required by Water Code sections 13327 and 13385, subdivision (e). Each factor in the Enforcement Policy and its corresponding category, adjustment, and amount for the alleged violation, is presented below. The Enforcement Policy can be found at the following site:

[https://www.waterboards.ca.gov/board\\_decisions/adopted\\_orders/resolutions/2017/040417\\_9\\_final%20adopted%20policy.pdf](https://www.waterboards.ca.gov/board_decisions/adopted_orders/resolutions/2017/040417_9_final%20adopted%20policy.pdf)

### **ALLEGED VIOLATIONS**

From May 2, 2007, through December 31, 2017, the City of Half Moon Bay (City) had 12 sanitary sewer overflows (SSOs) that discharged a total of 12,560 gallons of untreated sewage to Pilarcitos Creek, other local surface waters, and/or the Pacific Ocean, all of which are considered by the Regional Water Board to be waters of the United States. These SSOs are violations of section 301 of the Clean Water Act (33 U.S.C. § 1311) and Water Code section 13385, subdivision (a), which prohibit the discharge of pollutants to surface waters except in compliance with a National Pollutant Discharge Elimination System permit. Section 301 of the Clean Water Act prohibits any person from discharging any pollutant into waters of the United States unless that person has complied with all permitting requirements under the Clean Water Act. The SSOs also violate Prohibition C.1 of State Water Resources Control Board Order No. 2006-0003-DWQ, Statewide General Waste Discharge Requirements for Sanitary Sewer Systems (Sanitary Sewer Order), which prohibits SSOs that result in a discharge of untreated wastewater to waters of the United States.

Details of the SSOs are shown in Attachment B. The 12 SSO violations include the following:

- Three wet weather SSOs that occurred on December 11-12, 2014, January 4, 2017, and March 21, 2017, and resulted in 3,186-gallon, 1,125-gallon, and 300-gallon (200 gallons recovered) discharges, respectively. The City reported the causes of these SSOs as either rainfall exceeded design, flow exceeded capacity, or excessive rain.
- Nine dry weather SSOs that occurred on the following dates: March 23, 2008 (121 gallons, 60 gallons of which were recovered); July 30, 2009 (3,675 gallons, 200 gallons of which were recovered); March 23, 2010 (175 gallons, 150 gallons of which were recovered);

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 City of Half Moon Bay

January 5, 2011 (500 gallons); December 4, 2011 (500 gallons); May 23, 2012 (750 gallons, 150 gallons of which were recovered); February 17, 2014 (2,063 gallons); October 11, 2017 (6,158 gallons, 5,933 gallons of which were discharged to land); and December 1, 2017 (900 gallons, 200 gallons of which were recovered). The City reported the causes of these SSOs as either debris, grease deposition, pump station failure, root intrusion, or contractor activity.

The factors considered in determining the liabilities are described below.

PENALTY FACTOR	VALUE	DISCUSSION
Physical, Chemical, Biological, or Thermal Characteristics (Degree of Toxicity)	3	An “above moderate” degree of toxicity is selected for all of the SSOs because the discharged sewage was not treated, was potentially toxic to aquatic organisms, and contained bacteria at levels exceeding human health standards. Therefore, the discharges posed an above moderate risk to potential receptors.
Harm or Potential Harm to Beneficial Uses for Discharge Violations	1	A “minor” potential for harm is selected for the three wet weather SSOs because the impacts fit the Enforcement Policy definition for minor harm (“potential short term impact to beneficial uses with no appreciable harm”). The San Francisco Bay Regional Water Quality Control Plan (Basin Plan) designates the following beneficial uses of Pilarcitos Creek: agricultural supply (AGR), municipal and domestic supply (MUN), cold freshwater habitat (COLD), fish migration (MIGR), preservation of rare and endangered species (RARE), fish spawning (SPWN), warm freshwater habitat (WARM), wildlife habitat (WILD), water contact recreation (REC1), and noncontact water recreation (REC2). The Basin Plan designates the following beneficial uses for the Pacific Ocean: industrial service supply (IND), commercial and sport fishing (COMM), shell harvesting (SHELL), marine habitat (MAR), MIGR, RARE, SPWN, WILD, REC1, REC2, and navigation (NAV). The beneficial uses most affected were REC1 and REC2. Because the discharges were diluted with high wet weather flows in the creeks and ocean, there were short-term impacts to the recreational beneficial uses of the water bodies involved with no appreciable harm.
	2	A “below moderate” potential for harm is selected for the ten dry weather SSOs because the impacts fit the Enforcement Policy definition for below moderate harm (“harm or potential harm to beneficial uses is measurable in the short term, but not appreciable”). The SSOs occurred during dry weather when creek flows were lower and the discharges were full strength. Since health warning signs were posted along the affected water areas as a result of some SSOs, the recreational beneficial uses were not substantially impacted because public use was limited.
Susceptibility to Cleanup or Abatement	1	Less than 50 percent of each wet weather SSO was amenable to cleanup or containment because, the discharges were quickly carried away by high creek flows to the ocean and the ocean current prevented cleanup or containment of untreated sewage.

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 City of Half Moon Bay

PENALTY FACTOR	VALUE	DISCUSSION
	0	Greater than 50 percent of each dry weather SSO was susceptible to cleanup. However, the actual average SSO recovery was about 24 percent.
Final Potential for Harm Score	5	A value of 5 (1+3+1) applies to the three wet weather SSOs.
	5	A value of 5 (2+3+0) applies to the ten dry weather SSOs.
Per Gallon and Per Day Factor for Discharge Violations	0.15	Based on the Enforcement Policy, a major deviation from requirement occurs when the requirement has been rendered ineffective (e.g., a city disregards the requirement, and/or the requirement is rendered ineffective in its essential functions.) Prohibition C.1 of the Sanitary Sewer Order prohibits discharge of untreated sewage to waters of the United States. Discharging to waters of the United States rendered this prohibition ineffective in its essential functions. This represents a “major” deviation from the requirement. Based on Tables 1 and 2 of the Enforcement Policy, a per gallon and per day factor of 0.15 applies to all the SSOs, due to their Potential for Harm score of “5” and the “major” Deviation from Requirement.
Adjustment for High Volume Discharges	\$10/day No adjustment	The largest of the 12 SSOs to surface water was 3,475 gallons. This is not considered a “high volume discharge.” Therefore, \$10 per gallon liability is the appropriate maximum penalty.
<b>Initial Liability</b>	<b>\$26,773.50</b>	The initial liability is determined by adding the individual liabilities for each of the 12 SSOs:  Each individual SSO liability = (Per gallon factor x [SSO gallons discharged to surface water minus 1,000 gallons] x maximum per gallon (\$10)) + (Per day factor x the number of days of SSO duration x maximum per day amount of liability allowed [i.e., \$10,000]).  March 23, 2008: <b>\$1,500</b> = (0.15 x 0 x10) + (0.15 x 1 x 10,000) July 30, 2009: <b>\$5,212.50</b> = (0.15 x 2,475 x10) + (0.15 x 1 x 10,000) March 23, 2010: <b>\$1,500</b> = (0.15 x 0 x10) + (0.15 x 1 x 10,000) January 5, 2011: <b>\$1,500</b> = (0.15 x 0 x10) + (0.15 x 1 x 10,000) December 4, 2011: <b>\$1,500</b> = (0.15 x 0 x10) + (0.15 x 1 x 10,000) May 23, 2012: <b>\$1,500</b> = (0.15 x 0 x10) + (0.15 x 1 x 10,000) February 17, 2014: <b>\$3,094.50</b> = (0.15 x 1,063 x10) + (0.15 x 1 x 10,000) December 11-12, 2014: <b>\$4,779</b> = (0.15 x 2,186 x10)+(0.15 x 1 x 10,000) January 4, 2017: <b>\$1,687.50</b> = (0.15 x 125 x10) + (0.15 x 1 x 10,000) March 21, 2017: <b>\$1,500</b> = (0.15 x 0 x10) + (0.15 x 1 x 10,000) October 11, 2017: <b>\$1,500</b> = (0.15 x 0 x10) + (0.15 x 1 x 10,000) December 1, 2017: <b>\$1,500</b> = (0.15 x 0 x10) + (0.15 x 1 x 10,000)
<b>Adjustments for City’s Conduct</b>		
Culpability	1.0	For the 12 SSOs, a neutral culpability factor is appropriate because the City is responsible for the operation and maintenance of its collection system pipelines. However, the SSOs were not caused by intentional or

Attachment A - Settlement Agreement and Stipulated Administrative Civil Liability  
 City of Half Moon Bay

PENALTY FACTOR	VALUE	DISCUSSION
		negligent behavior.
Cleanup and Cooperation	1.0	For the 12 SSOs, a neutral cleanup and cooperation factor is appropriate because the City cooperated during investigations.
History of Violations	1.0	A neutral history of violations factor is appropriate because the City has no history of enforcement due to SSO violations.
<b>Total Base Liability</b>	<b>\$26,773.50</b>	Each applicable factor relating to the City's conduct is multiplied by the total initial liability to determine the total base liability.
Ability to Pay and Continue in Business	No adjustment	The ability of a city to pay the recommended administrative civil liability is determined by its revenues and assets. The City had an annual operating budget of \$4.9 million for fiscal year 2016-2017. The proposed liability will not affect the City's ability to continue operation and maintenance of its collection system.
Economic Benefit	Minimal	Pursuant to Water Code section 13385, subdivision (e), civil liability, at a minimum, must be assessed at a level that recovers the economic benefit, if any, derived from the acts that constitute a violation. The City incurred minimal economic benefit as a result of the 12 SSOs.
<b>Other Factors as Justice May Require</b>		
Maximum Liability	\$198,490	Water Code section 13385 allows up to \$10,000 for each day in which the violation occurs, plus \$10 for each gallon exceeding 1,000 gallons discharged and not cleaned up. Therefore, the maximum liability reflects 12 SSOs totaling 12,570 gallons discharged to surface water and 14 days of violations.
<b>Final Liability</b>	<b>\$26,800 (rounded)</b>	The final liability is the total base liability after adjusting for ability to pay, economic benefit, other factors, considering the maximum and minimum liabilities, and rounding to nearest hundred dollars.

Attachment B - Settlement Agreement and Stipulated Administrative Civil Liability  
City of Half Moon Bay

Attachment B – City of Half Moon Bay reported SSOs to surface water in CIWQS from May 2, 2007, through December 31, 2017

Event ID	Start Date	End Date	Spill Location	Gallons Discharged	Gallons Recovered	Gallons Reached Surface Water	Final Spill Destination	Impacted Surface Water	Cause
715186	3/23/08	3/23/08	Ocean and Valdez	121	60	61	Separate storm drain	Ditch	Debris-General <sup>2</sup>
742211	7/30/09	7/30/09	Ocean Colony LS	3675	200	3475	Beach;Surface water	Golf Course Pond	Pump station failure <sup>2</sup>
751008	3/23/10	3/23/10	196 Main Street	175	150	25	Storm drain	Pilarcitos Creek	Debris-General <sup>2</sup>
760368	1/5/11	1/5/11	401 Greenbrier Road	500	0	500	Beach;Separate storm drain;Unpaved surface	Pacific Ocean	Root intrusion <sup>2</sup>
775005	12/4/11	12/4/11	509 Ocean	500	0	500	Beach;Separate storm drain;Street/curb and gutter	Pacific Ocean	City contractor plugged main line to televiser, and that led manhole to overflow.(lowest point) 12-1-2011 Response from Sewer Authority on 12-4-2011 <sup>2</sup>
781589	5/23/12	5/23/12	15th hole golf course	750	150	600	Other paved surface;Separate storm drain;Surface water;Unpaved surface	golf course pond that leads to pacific ocean	Root intrusion <sup>2</sup>
803996	2/17/14	2/17/14	507 Terrace Avenue	2063	0	2063	Ocean	Pilarcitos Creek	Debris-Rain <sup>2</sup>
811604	12/11/14	12/12/14	751 First Avenue	3186	0	3186	Beach;Separate Storm Drain;Street/Curb and Gutter	Pacific Ocean	Rainfall Exceeded Design, I and I (Separate CS Only) <sup>1</sup>
831439	1/4/17	1/4/17	220 Kelly Avenue	1125	0	1125	Beach	Pacific Ocean	Flow Exceeded Capacity (Separate CS Only) <sup>1</sup>
833893	3/21/17	3/21/17	212 Kelly Avenue	300	200	100	Beach	Pacific Ocean	Excessive Rain <sup>1</sup>
840818	10/11/17	10/11/17	Behind 70 N. Cabrillo	6158 <sup>3</sup>	2020	225	Beach	Pilarcitos Creek	Grease deposition (FOG) <sup>2</sup>
841984	12/1/17	12/1/17	1 Miramontes Pt. Rd.	900	200	700	Beach	Pacific Ocean	Pump station failure/operator error <sup>2</sup>

<sup>1</sup>Wet weather SSO

<sup>2</sup>Dry weather SSO

<sup>3</sup>5,933 gallons discharged to land



## Attachment C

### City of Half Moon Bay Proposal for Enhanced Compliance Action Purchase and Installation of Four SmartCover® Level Monitoring Systems

1. **Project Title:** Purchase and Installation of Four SmartCover® (or equivalent)<sup>2</sup> Level Monitoring Systems
2. **Service Area:** City of Half Moon Bay
3. **Name of Responsible Entity:** City of Half Moon Bay (City)
4. **Cost of Project Completion:** The City will purchase and install four SmartCover® level monitoring systems for **\$16,292**, which includes **\$13,400** of suspended liability.
5. **City of Half Moon Bay Contact Information:**

David Boesch  
Interim City Manager  
City of Half Moon Bay  
501 Main St.  
Half Moon Bay, CA 94019  
Telephone: 650.726.8280  
Email: [DBoesch@hmbcity.com](mailto:DBoesch@hmbcity.com)
6. **Project Goals and Description:** The goal of this project is to purchase, install, and make operational four SmartCover® level monitoring systems. The City will purchase four SmartCover® level monitoring systems and install them in selected sewer line segments. The City, its collection system cleaning contractor, or consulting engineer will determine the initial locations. The SmartCovers® will be placed where sanitary sewer overflows (SSOs) have occurred, where SSOs are likely to occur, or where SmartCovers® may identify sources of inflow and infiltration. After installation, the City will use the SmartCovers® as a tool to collect data in various parts of the collection system and may move the SmartCovers® to different locations within the collection system. The long-term goal is to minimize the risk of SSOs to surface waters.
7. **Water Quality and Beneficial Uses:** Using the SmartCovers®, City personnel will respond to sewer line anomalies before SSOs occur, which will directly benefit surface water quality by mitigating the SSO sizes and volumes. Through alarms, data, and notifications from the SmartCovers®, City personnel will respond and arrive onsite prior to or shortly after an SSO occurs, thereby reducing SSO risks and harm. Thus, surface water quality and beneficial uses will be protected.

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<sup>2</sup> All references to SmartCover® level monitoring systems includes any equivalent product from another manufacturer.

8. **Confirmation that ECA Contains Only Measures that Go Above and Beyond Applicable Obligations of City:** The City is under no current obligations to use SmartCovers® and has not been required to develop, implement, or fund the SmartCovers® proposed for this ECA by any permit, order, or local, State, or federal law.
9. **Demonstration that ECA Does Not Directly Benefit, in a Fiscal Manner, Water Board’s Functions, its Members, or its Staff:** The ECA does not provide any fiscal benefit to the Regional Water Board or fund any of its functions, members, or staff.
10. **Project Schedule, Milestones, and Deliverables:** The City is responsible for all deliverables described below for each phase of the project. The purchase and installation will include the following milestones, measured from the date the Executive Officer signs the Stipulated Order. The ECA duration is estimated to be 16 weeks from the date the Executive Officer signs the Stipulated Order.

**A. Project Milestones and Schedule**

- i. **Equipment Purchase:** The City will purchase the equipment necessary to implement the ECA. The City will allocate necessary funds for this portion of the ECA, coordinate equipment purchase with the vendor, and submit a purchase order to the vendor for equipment delivery and installation. The equipment purchase is estimated to be completed within **45 days** from the date the Executive Officer signs the Stipulated Order.

An itemized breakdown of expenses for this portion of the ECA is provided below.

<u>Description</u>	<u>Unit Quantity</u>	<u>Unit Price (each)</u>	<u>Total</u>
SmartCover® Unit	4	\$4,049*	\$16,196
Shipping and Handling	1	-	\$ 96
<b>Total Estimated ECA Cost**</b>			<b>\$16,292</b>

- \* Includes one-year advance payment of active on-site monitoring  
 \*\* Does not include sales tax if applicable

- ii. **Equipment Delivery:** Equipment delivery is estimated to take approximately six weeks following receipt of purchase order and any engineering or site information the vendor requests. The equipment delivery is estimated to be completed within **90 days** from the date the Executive Officer signs the Stipulated Order.
- iii. **Equipment Installation:** The vendor will install the SmartCovers® within **120 days** from the date the Executive Officer signs the Stipulated Order.

**B. Project Deliverables**

- i. 60-Day Progress Report:** A progress report shall be submitted no later than 60 days after the date the Executive Officer signs the Stipulated Order. The progress report shall summarize all work completed during the 60 days.
  - ii. Final Report:** Within **180 days** from the date the Executive Officer signs the Stipulated Order, the City shall provide a final report documenting ECA completion that includes all information required under Stipulated Order section III, paragraph 6, and a summary of all tasks completed, copies of purchase invoices, and a map showing the initial SmartCover® deployment locations.
  
- 11. Reports to Regional Water Quality Control Board:** All deliverables, reports, and accounting invoices pertaining to this ECA shall be submitted to Regional Water Board staff for review and approval. All reports must be emailed to the following:  
  

Michael Chee Water Resources Control Engineer San Francisco Bay Regional Water Quality Control Board 1515 Clay Street, 14th Floor Oakland, CA 94612 <a href="mailto:Michael.Chee@waterboards.ca.gov">Michael.Chee@waterboards.ca.gov</a> (510) 622-2333	Jasmine Oaxaca State Water Resources Control Board Office of Enforcement 801 K Street, 23 <sup>rd</sup> Floor Sacramento, CA <a href="mailto:Jasmine.Oaxaca@waterboards.ca.gov">Jasmine.Oaxaca@waterboards.ca.gov</a> (916) 322-5327
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- 12. Plans to Continue or Maintain SmartCovers® Beyond ECA Funded Period:** The City intends to maintain the SmartCovers® for the duration of their useful life outside and separate of this ECA. Operations and maintenance funds are not included in the anticipated project expenses identified in Section 10.A.i. of this proposal.
  
- 13. Additional Funding Sources:** The City does not believe that this project qualifies for additional funding through local, State, or federal programs.
  
- 14. Project Compliance with CEQA:** Work completed on this ECA is limited to internal portions of the City's sewer collection system. Pursuant to 14 C.C.R. §15061(b)(2) and (3) and §15301 (existing facilities), environmental impacts are not anticipated from this ECA.