

SAN FRANCISCO BAY REGIONAL WATER QUALITY CONTROL BOARD

In the matter of:)	
)	Order R2-2011-0054 (Revised Proposed)
City of Napa)	
Trancas Crossing Park Project)	SETTLEMENT AGREEMENT AND
)	STIPULATION FOR ENTRY OF
)	ADMINISTRATIVE CIVIL LIABILITY
)	ORDER; ORDER (REVISED PROPOSED)
)	

Section I: INTRODUCTION

This Settlement Agreement and Stipulation for Entry of Administrative Civil Liability Order (Stipulation) is entered into by and between the Assistant Executive Officer of the San Francisco Bay Regional Water Quality Control Board (Regional Water Board), on behalf of the Regional Water Board Prosecution Staff (Prosecution Staff) and the City of Napa (the City) (collectively Parties) and is presented to the Regional Water Board, or its delegee, for adoption as an Order by settlement, pursuant to Government Code section 11415.60.

Section II: RECITALS

1. The City, at all times relevant to this matter, was the owner and operator of the Trancas Crossing Park Project (Park Project), located to the north of the intersection of Trancas Street and Old Soscol Avenue, in the City of Napa, Napa County. The Park Project encompassed an area of approximately 31 acres, with nine acres of disturbed area, and included the construction of park pathways, trails, a parking lot, and bank stabilization of Salvador Creek in two locations. The City contracted with Elite Landscaping, Inc. to construct the Park Project. Construction of the Park Project began on September 23, 2010, and ended on June 20, 2011.
2. On April 30, 2003, the State Water Resources Control Board (SWRCB) adopted SWRCB Water Quality Order No. 2003-0005 DWQ, National Pollutant Discharge Elimination System (NPDES) General Permit No. CAS000004, Waste Discharge Requirements (WDRs) for Storm Water Discharges from Small Municipal Separate Storm Sewer Systems (MS4 General Permit), which required the City to implement a program to ensure that all construction projects within the City's jurisdiction comply with the provisions of the NPDES General Permit for Storm Water Discharges Associated with Construction Activity, SWRCB Order 99-08-DWQ (Construction Storm Water Permit). Dischargers whose projects disturb one or more acres of soil are required to obtain coverage under the Construction Storm Water Permit. Additionally, the Regional Water Board issued a Conditional Federal Water Pollution Control Act (Clean Water Act or CWA) section 401 Water Quality Certification (Certification) for the Park Project on September 16, 2010.
3. The Prosecution Team alleges that the City failed to obtain coverage under the Construction Storm Water Permit prior to the start of construction of the Park Project, and failed to comply with the conditions of the Construction Storm Water Permit and the Certification. The

Prosecution Team's allegations are described in Exhibit A, attached hereto and incorporated herein by this reference.

4. The Parties have engaged in settlement negotiations and agree to fully settle all alleged violations set forth in Exhibit A without administrative or civil litigation and by presenting this Stipulation to the Regional Water Board, or its delegee, for adoption as an Order by settlement, pursuant to Government Code section 11415.60. The liability imposed by this Order is consistent with a reasonable liability determination using the penalty methodology in the Water Quality Enforcement Policy (see Exhibit B, attached hereto and incorporated herein by this reference). The Prosecution Staff believes that the resolution of all alleged violations set forth in Exhibit A is fair and reasonable and fulfills all of its enforcement objectives, that no further action is warranted concerning those violations, except as provided in this Stipulation, and that this Stipulation is in the best interest of the public.

5. To resolve by consent and without further administrative proceedings certain alleged violations set forth in Exhibit A, the Parties have agreed to the imposition of administrative civil liability in the amount of \$20,000 against the City, which includes \$7,000 for staff costs.

Section III: STIPULATIONS

The Parties stipulate to the following:

6. **Jurisdiction:** The Parties agree that the Regional Water Board has subject matter jurisdiction over the matters alleged in this action and personal jurisdiction over the Parties to this Stipulation.

7. **Administrative Civil Liability:** The City shall pay a total of \$20,000 in stipulated administrative civil liability by check made payable to the State Water Resources Control Board, which includes \$7,000 in staff costs, no later than 30 days following the Regional Water Board, or its delegee, executing this Order. The Regional Water Board shall provide notice of the execution of this Order within two business days of such execution. Notice may be provided by e-mail to the City's contact set forth in Paragraph 9 and the City's counsel, David C. Jones at cjones@cityofnapa.org. The check shall reference the Order number listed on page one of this Stipulation. The original signed check shall be sent to the San Francisco Bay Regional Water Quality Control Board, 1515 Clay Street, Suite 1400, Oakland, CA 94612, Attention: Accounting, with copies to: David Boyers, Office of Enforcement, P.O. Box 100, Sacramento, CA 95812, and Brian Thompson, San Francisco Bay Regional Water Quality Control Board, 1515 Clay Street, Suite 1400, Oakland, CA 94612.

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

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

**For the Regional
Water Board:**

Brian Thompson, Sr. Engineering
Geologist
San Francisco Bay Regional Water
Quality Control Board
1515 Clay Street, 14th Floor
Oakland, CA 94612
brthompson@waterboards.ca.gov
(510) 622-2380

For the City:

Jack LaRochelle, Director of Public
Works
P.O. Box 660,
1600 First Street
Napa, CA 94559
jlrochelle@cityofnapa.org
(707) 257-9520

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

11. **Matters Covered by this Stipulation:** Upon adoption by the Regional Water Board, or its delegee, as an Order, this Stipulation represents a final and binding resolution and settlement of all claims, violations or causes of action alleged in Exhibit A or which could have been asserted based on the specific facts alleged in Exhibit A against the City. The provisions of this Paragraph are expressly conditioned on the City's full payment of administrative civil liability by the deadline specified in Paragraph 7 herein.

12. **Denial of Liability:** In settling this matter, the City expressly denies the allegations described in Exhibit A and makes no admission or representation as to the appropriateness of the liability determination under the Water Quality Enforcement Policy as set forth in Exhibit B. Neither this Stipulation nor any payment pursuant to the Order shall constitute evidence of, or be construed as, a finding, adjudication, or acknowledgement of any fact, law or liability, nor shall it be construed as an admission of violation of any law, rule, or regulations. This Order may be used as evidence of a prior enforcement action in future actions by the State Water Resources Control Board or the Regional Water Board against the City.

13. **Interpretation:** This Stipulation and Order shall be construed as if the Parties prepared it jointly. Any uncertainty or ambiguity shall not be interpreted against any one Party. The City is represented by counsel in this matter.

14. **Modification:** This Stipulation and Order shall not be modified by any of the Parties by oral representation made before or after its execution. All modifications must be in writing, signed by all Parties, and approved the Regional Water Board or its delegee.

15. **If the Order Does Not Take Effect:** In the event that this Order does not take effect because it is not approved by the Regional Water Board, or its delegee, or is vacated in whole or in part by the State Water Board or a court, the Parties acknowledge that they expect to proceed to a contested evidentiary hearing before the Regional Water Board to determine whether to assess administrative civil liabilities for the underlying alleged violations, unless the Parties

agree otherwise. The Parties agree that all oral and written statements and agreements made during the course of settlement discussions will not be admissible as evidence in the hearing. The Parties agree to waive any and all objections arising out of the Parties' settlement communications in this matter, including, but not limited to:

- a. Objections related to prejudice or bias of any of the Regional Water Board members or their advisors and any other objections that are premised in whole or in part on the fact that the Regional Water Board members or their advisors were exposed to some of the material facts and the Parties' settlement positions as a consequence of reviewing the Stipulation and/or the Order, and therefore may have formed impressions or conclusions prior to any contested evidentiary hearing on the violations alleged in Exhibit A in this matter; or
- b. Laches or delay or other equitable defenses based on the time period for administrative or judicial review to the extent this period has been extended by these settlement proceedings.

16. **Waiver of Hearing:** The City has been informed of the rights provided by Water Code section 13323(b), and hereby waives its right to a hearing before the Regional Water Board prior to the adoption of the Order.

17. **Waiver of Right to Petition:** The City hereby waives its right to petition the Regional Water Board's adoption of the Order for review by the State Water 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.

18. **The City's Covenant Not to Sue:** The City covenants not to sue or pursue any administrative or civil claim(s) against any State Agency or the State of California, their officers, Board Members, employees, representatives, agents, or attorneys arising out of or relating to any matter expressly addressed by this Stipulation and Order.

19. **Authority to Bind:** Each person executing this Stipulation in a representative capacity represents and warrants that he or she is authorized to execute this Stipulation on behalf of and to bind the entity on whose behalf he or she executes the Stipulation.

20. **Counterpart Signatures; Facsimile and Electronic Signature:** This Stipulation may be executed and delivered in any number of counterparts, each of which when executed and delivered shall be deemed to be an original, but such counterparts shall together constitute one document. Further, this Stipulation may be executed by facsimile or electronic signature, and any such facsimile or electronic signature by any Party hereto shall be deemed to be an original signature and shall be binding on such Party to the same extent as if such facsimile or electronic signature were an original signature.

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

IT IS SO STIPULATED.

**California Regional Water Quality Control Board,
San Francisco Region Prosecution Team**

Date: _____

By: _____

**Dyan C. Whyte,
Assistant Executive Officer**

City of Napa

Date: _____

By: _____

**Mike Parness
City Manager**

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HAVING CONSIDERED THE ALLEGATIONS AND THE PARTIES' STIPULATIONS, THE REGIONAL WATER BOARD, OR ITS DELEGEE, FINDS THAT:

22. The Regional Water Board incorporates the foregoing Stipulation, set forth in Paragraphs 1 through 23 above, by this reference, as if set forth fully herein.

23. In accepting this Stipulation, the Regional Water Board has considered, where applicable, each of the factors prescribed in Water Code sections 13327 and 13385(e). The Regional Water Board's consideration of these factors is based upon information obtained by the Prosecution Team in investigating the allegations in Exhibit A, or otherwise provided to the Regional Water Board. This settlement recovers the costs incurred by the Prosecution Team in investigating and pursuing enforcement of the allegations set forth in Exhibit A as "other matters as justice may require".

24. This is an action to enforce the laws and regulations administered by the Regional Water Board. The Regional Water Board finds that issuance of this Order is exempt from the provisions of the California Environmental Quality Act (Public Resources Code, sections 21000 et seq.), in accordance with section 15321(a)(2), Title 14, of the California Code of Regulations.

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

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

Bruce H. Wolfe
Executive Officer

Date: _____

EXHIBIT A

REGIONAL WATER BOARD PROSECUTION STAFF'S ALLEGATIONS

1. The City, at all times relevant to this matter, was the owner and operator of the Trancas Crossing Park Project and Napa River Trail Project (collectively Park Project), located to the north of the intersection of Trancas Street and Old School Avenue, in the City of Napa, Napa County. The Park Project encompassed an area of approximately 31 acres, with nine acres of disturbed area, and included the construction of park pathways, trails, a parking lot, and bank stabilization of Salvador Creek in two locations. The City contracted with Elite Landscaping, Inc. to construct the Park Project. Construction of the Park Project began on September 23, 2010, and ended on June 20, 2011.

2. On April 30, 2003, the State Water Resources Control Board (SWRCB) adopted SWRCB Water Quality Order No. 2003-0005 DWQ, National Pollutant Discharge Elimination System (NPDES) General Permit No. CAS000004, Waste Discharge Requirements (WDRs) for Storm Water Discharges from Small Municipal Separate Storm Sewer Systems (MS4 General Permit), which required the City to implement a program to ensure that all construction projects within the City's jurisdiction comply with the provisions of the NPDES General Permit for Storm Water Discharges Associated with Construction Activity, SWRCB Order 99-08-DWQ (Construction Storm Water Permit). Dischargers whose projects disturb one or more acres of soil are required to obtain coverage under the Construction Storm Water Permit. The City obtained coverage under the Construction Storm Water Permit on November 5, 2010. Additionally, the Regional Water Board issued a Conditional Federal Water Pollution Control Act (Clean Water Act or CWA) section 401 Water Quality Certification (Certification) for the Park Project on September 16, 2010

3. To obtain coverage under the Construction Storm Water Permit, dischargers must submit Permit Registration Documents (PRDs), which include but are not limited to a Notice of Intent (NOI) and a Storm Water Pollution Prevention Plan (SWPPP) prior to the commencement of construction activities, and mail the appropriate annual fee no later than seven days prior to the commencement of construction activities. The Construction Storm Water Permit further requires that a Qualified SWPPP Developer prepare, amend, and certify the SWPPP.

4. Pursuant to the Construction Storm Water Permit the City was required to comply with the following for the Park Project:
 - a. Perform post-storm event inspections to identify whether best management practices (BMPs) at the construction site were adequately designed, implemented, and effective, and whether any additional BMPs are necessary and revise the SWPPP if necessary;
 - b. Inspect the site prior to all anticipated storm events and visually observe storm water discharges at all discharge locations within two business days after a qualifying event;¹

¹ A qualifying rain event is one that produces 0.5 inches of precipitation or more with at least 48 hours between rain events.

- c. Maintain records at the construction site of all visual observations, document the personnel performing the observations, observation dates, weather conditions, locations observed, and corrective actions taken in response to the observations;
- d. Monitor effluent for pH and turbidity; and
- e. Collect samples at the time of discharge of stored or contained storm water that is discharged subsequent to a storm event producing 0.5 inches of precipitation or more.

5. The Regional Water Board issued the Certification to the City for the Park Project conditioned on the performance of the following: implementing adequate BMPs, keeping equipment out of stream channels or other waters with flowing water, providing a dewatering plan prior to the start of construction, submittal of the Riparian Repair and Maintenance Wetland Tracker short form (Short Form) within 14 days of issuance of the Certification, submittal of annual mitigation monitoring reports on July 15 of each year, and establishment of permanent photo-documentation points at both Project reaches, both upstream and downstream of each reach.

6. On June 1, 2011, the Regional Water Board received a citizen complaint regarding construction activities at the Park Project. Specifically, the complainant alleged that the City started construction prior to obtaining coverage under the General Construction Permit and failed to implement effective erosion and sediment control measures at the Park Project site. The complainant further alleged that the City violated conditions of the Certification issued for the Park Project as discussed below.

7. On June 23, 2011, the Regional Water Board's Assistant Executive Officer issued a Notice of Violation and Order for Technical Reports (Order) to the City. The Order identified water quality violations associated with the Park Project, including, but not limited to, the failure to comply with the conditions of the Project's Certification and the Construction Storm Water Permit. The Order required the City to provide, no later than July 15, 2011, technical reports, acceptable to the Regional Water Board's Assistant Executive Officer, that addressed the following:

- a. A copy of the final SWPPP, including all BMPs implemented, and any amendments to the SWPPP made during the construction of the Park Project;
- b. A copy of each of the rain event action plans (REAPs) prepared over the duration of the Park Project;
- c. Copies of all inspection reports and maintenance records of all BMPs generated for the duration of the Park Project, including photo-documentation and analytical results;
- d. Status of implementation of the required Mitigation and Monitoring Plan (Mitigation Plan), including a timeline for implementation of each phase of the Mitigation Plan and a narrative description of attainment of the required activities from the Mitigation Plan, and
- e. Documentation of submittal of the Riparian Repair and Maintenance Wetland Tracker short form and a copy of the Short Form submitted to the California Wetlands Portal.

8. The City submitted a response to the Order on July 15, 2011, that included the following: an original pre-construction SWPPP and Mitigation Plan; a copy of the Short Form dated July 11, 2011; a set of undated and unlabeled Park Project BMP photographs; a Park Project map including the delineation of Section 404 jurisdictional waters; photographs of the dewatering activities; inspection forms dated October 21, 2010, through February 15, 2011; and a set of incomplete REAPs, including incomplete inspection forms and sampling results.

9. After reviewing the City's July 15, 2011, response, Regional Water Board staff determined that the City violated the Construction Storm Water Permit and its Certification by failing to do the following:

[Construction Storm Water Permit]

- a. Obtain coverage under the Construction Storm Water Permit prior to the start of construction of the Park Project;
- b. Amend and certify the SWPPP and each amendment throughout the various stages of the Park Project;
- c. Adequately maintain and document maintenance of BMPs;
- d. Perform all required qualifying rain event inspections; and
- e. Perform all required qualifying rain event sampling and analysis.

[Certification]

- f. Document implementation and maintenance of adequate BMPS;
- g. Obtain an approved dewatering plan prior to the start of construction;
- h. Submit the Short Form within 14 days of issuance of the Certification;
- i. Establish and document upstream and downstream photo-documentation points; and
- j. Submit the annual monitoring report.

Staff communicated these violations to the City in a letter dated August 19, 2011.

10. On December 2, 2011, the Regional Water Board Assistant Executive Officer signed and executed Settlement Agreement and Stipulation of Entry of Administrative Civil Liability Proposed Order No. R2-2011-0054 (Proposed Order). The Proposed Order proposed imposition of a \$20,000 liability against the City for one of the alleged violations: the failure to obtain permit coverage prior to the start of construction.

11. According to its stipulations, the Proposed Order was noticed for a 30-day public comment period, ending on January 3, 2012. On March 23, 2012, in accordance with stipulation 14 of the Proposed Order, the Parties met to tour the Park Project and discuss the issues raised during the comment period. Subsequently, Prosecution Staff requested additional information from the City, in order to better evaluate the alleged permit violations and associated issues raised by the public commenters.

12. After reviewing all information submitted during and following the public comment period, Prosecution Staff provided a written response to the commenters' concerns and objections. As explained in this written response, Prosecution Staff's understanding of the facts, as they pertain to the alleged violations, changed. Based on new information and evidence received, Prosecution Staff determined that proposed liability for failure to obtain construction permit coverage should be adjusted (see Exhibit B), and that certain violations alleged in the Proposed Order should be removed. As a result, Prosecution Staff determined, as described in this Revised Proposed Order, that the City violated its permits by failing to do the following:

[Construction Storm Water Permit]

- a. Obtain coverage under the Construction Storm Water Permit prior to the start of construction of the Park Project; and
- b. Amend and certify the SWPPP and each amendment throughout the various stages of the Park Project.

[Certification]

- c. Obtain an approved dewatering plan prior to the start of construction; and
- d. Submit the Short Form within 14 days of issuance of the Certification.

13. These violations are ones for which the Regional Water Board may impose administrative civil liability on a daily basis, not to exceed \$10,000 for each day of violation pursuant to Water Code section 13385(a)(2) and (c) or not to exceed \$1,000 for each day of violation pursuant to Water Code sections 13267 and 13268(b). The authority and process for imposing civil liability are set forth in Water Code section 13323.

EXHIBIT B

WATER QUALITY ENFORCEMENT POLICY METHODOLOGY

Potential Administrative Civil Liability

1. California Water Code section 13385(a), provides that civil liability may be administratively imposed by the Regional Water Board against any person who violates any waste discharge requirements issued pursuant to Chapter 5.5 of Division 7 of the Water Code. NPDES Permit No. CAS000004, Waste Discharge Requirements Order No. 2003-2005 DWQ and NPDES General Permit for Storm Water Discharges Associated with Construction Activity, Order 99-08-DWQ were issued pursuant to Chapter 5.5 of Division 7 of the Water Code.

Water Code section 13385(c) provides that the civil liability may be imposed by the Regional Water Board in an amount not to exceed the sum of both the following:

- a. Ten thousand dollars (\$10,000) for each day in which the violation occurs.
- b. 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.

The City is exposed to liability pursuant to section 13385(c) by violating the Construction Storm Water Permit by failing to (1) amend and certify the SWPPP and each amendment throughout the various stages of the Park Project, and (2) obtain permit coverage prior to the start of construction for at least 43 days from September 23, 2010, through November 5, 2010, (date permit coverage is granted), as alleged in Exhibit A.

2. Water Code section 13267 provides that any requirements for a report made as a condition of regulatory actions, are formal requirements and are subject to civil liability. According to Water Code section 13268, the Regional Water Board may impose up to \$1,000 for each day in which a report required pursuant to Water Code 13267 is not submitted.

The City is exposed to liability pursuant to section 13268 by violating conditions of the Conditional Federal Water Pollution Control Act (Clean Water Act or CWA) section 401 Water Quality Certification (Certification) for the Park Project. As alleged in Exhibit A, the City failed to submit a proposed dewatering plan prior to the start of construction for at least 251 days from September 23, 2010, through June 1, 2011. Additionally, the City failed to submit the Wetland Tracker Short Form within 14 days of Certification issuance for at least 284 days from September 30, 2010, through July 11, 2011.

Enforcement Policy Penalty Methodology

Pursuant to Water Code sections 13327 and 13385(e), the Regional Water Board is required to consider the following factors in determining the amount of civil liability, including the nature, circumstances, extent, and gravity of the violations; whether the discharge is susceptible to cleanup or abatement; the degree of toxicity of the discharge; and with respect to the violator, the ability to pay; the effect on the ability to continue in business; voluntary cleanup efforts; prior history of violations; the degree of culpability; economic benefit or savings, if any, resulting from the violation; and other matters that justice may require. Water Code section 13385(e) requires that, at a minimum, the liability shall be assessed at a level that recovers the economic benefits, if any, derived from the acts that constitute the violation.

On November 17, 2009, the State Water Board adopted Resolution No. 2009-0083 amending the Enforcement Policy. The Enforcement Policy was approved by the Office of Administrative Law and became effective on May 20, 2010. The Enforcement Policy establishes a methodology for assessing administrative civil liability. Use of the methodology addresses the factors in Water Code Section 13385(e). The proposed stipulated administrative civil liability is based on that methodology.

Proposed Liability

The total liability to resolve all the violations described in Exhibit A. Item 12 of this Revised Proposed Order is \$20,000. The following provides the basis for this liability assessment.

Penalty Methodology Considerations for Alleged Violations

1. Base Liability Calculation

The total base liability for all violations is \$12,980, as calculated below:

- A base liability of \$6,600 is proposed for failure to obtain coverage under the Construction Storm Water Permit prior to the start of construction of the Park Project, based on the penalty factor assessments presented in Table 1. This liability is adjusted from a liability proposed in 2011, based on new evidence obtained in 2012 that revealed that the City had in fact filed its notice of intent for coverage on September 23, 2010 (the same day the City contends that construction commenced), but had only failed to include the required \$549 permit fee. The evidence shows that the State Water Board issued a fee statement on September 23, 2010, acknowledging receipt of the permit documents and requiring submittal of the fee by November 22, 2010. Given this information, the per day assessment factor in the methodology for “deviation from requirement” is adjusted from “moderate” to “minor.”
- A base liability of \$3,080 is assessed for failure to obtain an approved dewatering plan prior to the start of construction, based on the penalty factor assessments presented in Table 2.

- A base liability of \$3,300 is assessed for failure to submit the Short Form within 14 days of issuance of the Certification, based on the penalty factor assessments presented in Table 3.
- Civil liability is not warranted for the failure to amend and certify the SWPPP throughout the project. The City has provided evidence that an adequate SWPPP was implemented during construction. The City's inability to provide documentation of SWPPP amendments is a violation, but not a violation warranting penalty enforcement based on Prosecution Staff's review of BMP implementation.

2. Other Liability Factors Considered

An additional \$7,000 is added to the base liability after consideration of the following liability factors:

- **Ability to Pay and Ability to Continue in Business**

Prosecution Staff believe that the City has the ability to pay the proposed liability and continue in business. The City's adopted budget for fiscal years 2011-12 and 2012-13 projects general fund operating revenues of \$58.1 million and \$59.2 million, respectively. While the general fund is projected to operate in deficit during these years, the budget projects the City will have available reserves of more than \$12 million (FY 2011-12) and \$8.95 million (FY 2012-13). These amounts are significantly greater than the proposed liability of \$20,000. Accordingly, the total base liability is not adjusted.

- **Other Factors as Justice May Require**

The Regional Water Board has incurred approximately \$7,000 in staff costs associated with the investigation and enforcement of the violations alleged herein including review of new evidence provided in 2012. In accordance with the Enforcement Policy, this amount is added to the total base liability amount.

$$\$12,980 + \$7000 = \mathbf{\$19,980}$$

- **Economic Benefit**

Since the City eventually received permit coverage on November 5, 2010 (43 days after start of construction), the annual fee (\$549) is considered a delayed cost of compliance, not an avoided cost. Due to the modest delay associated with paying the annual fee, the estimated economic benefit is negligible, and is fully recovered by the proposed settlement.

- **Maximum and Minimum Liability Amounts**

The maximum liability provided for by statute is \$965,000, and the minimum liability amount required by the Enforcement Policy is less than \$5 (economic benefit + 10%).

The Enforcement Policy requires that the discretionary administrative civil liability must not exceed the maximum liability amount nor be less than the minimum liability amount. Because the stipulated liability is \$20,000, the liability does not need to be adjusted to fall within the maximum and minimum liability amounts.

- **Final Liability Amount**

The stipulated administrative civil liability amount is **\$20,000**, which includes \$7,000 for staff costs (amounts rounded).

Table 1
Determination of Base Liability for Failure to Obtain Permit Coverage

Maximum Liability	Factor	Explanation
Days of Violation	6	During 43 days without Construction Storm Water Permit coverage, it rained 6 days when stormwater likely discharged from the Park Project to waters of the United States.
Max Per Day Liability	\$10,000	Water Code § 13385(c)(1)
Total Maximum Liability	\$60,000	6 Days x \$10,000

Per Day Assessment for Non-Discharge Violations	Factor	Explanation
Potential for Harm	Minor	While the Park Project lacked coverage under the Construction Storm Water Permit, the City had implemented BMPs for pollution prevention.
Deviation from Requirement	Minor	The City filed its Notice of Intent for the Project on September 23, 2010 (same day as construction commenced), but it failed to include the required \$549 permit fee until 43 days later.
Per Day Factor	0.10	Factor determined by Water Quality Enforcement Policy matrix analysis using the potential for harm and deviation from requirements.

Initial Liability	\$6000	Number of violation days (6) x per day factor (.10) x maximum statutory liability per day of violation (\$10,000)
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Conduct Factors	Multiplier	Explanation
Culpability	1.1	The City was knowledgeable of, but did not comply with, permit requirements. The City is a Permittee under the MS4 General Permit and has had that permit coverage continuously since 2003. Under this permit, the City is responsible for educating the general public regarding storm water pollution prevention, including regulatory requirements for construction activity and water quality protection.
Cleanup and cooperation	1.0	Cleanup is not considered because the alleged violation is a non-discharge violation. The City cooperated with Water Board requests to pay its NOI fee and to provide additional information about the alleged violations.
Prior History of Violations	1.0	The Regional Water Board has not previously taken formal enforcement against the City for similar violations. Thus, a multiplier of 1 is appropriate.

Total Base Liability	\$6600	Initial liability (\$6000) x Culpability Multiplier (1.1) x Cleanup and Cooperation Multiplier (1.0) x History of Violations Multiplier (1.0)
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Table 2
Determination of Base Liability for Failure to Obtain an Approved Dewatering Plan

Maximum Liability	Factor	Explanation
Days of Violation	14	Because there was not a daily detrimental impact to the environment, the City's violation lasting 251 days accrued a total of 14 days' worth of violation in calculating the penalty, based on the Enforcement Policy's alternate approach for multiple day violations.
Max Per Day Liability	\$1,000	Water Code § 13267
Total Maximum Liability	\$14,000	14 Days x \$1,000

Per Day Assessment for Non-Discharge Violations	Factor	Explanation
Potential for Harm	Minor	The City implemented an appropriate dewatering plan while working within the channel. The failure to obtain prior approval for the dewatering plan did not result in a moderate or major threat to water quality.
Deviation from Requirement	Moderate	By not submitting the dewatering plan in a timely manner, the City did not meet a Certification Condition. Submitting the dewatering plan after implementing the plan compromised the effectiveness of the review and approval process.
Per Day Factor	0.20	Factor determined by Water Quality Enforcement Policy matrix analysis using the potential for harm and deviation from requirements.

Initial Liability	\$2800	Number of violation days (14) x per day factor (.20) x maximum statutory liability per day of violation (\$1,000)
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Conduct Factors	Multiplier	Explanation
Culpability	1.1	The City had knowledge of the requirement to obtain approval prior to implementing the dewatering plan.
Cleanup and cooperation	1.0	Cleanup is not considered because the alleged violation is a non-discharge violation. The City cooperated in providing the dewatering plan upon request and after being notified of the violation.
Prior History of Violations	1.0	The Regional Water Board has not previously taken formal enforcement against the City for similar violations. Thus, a multiplier of 1 is appropriate.

Total Base Liability	\$3080	Initial liability (\$2800) x Culpability Multiplier (1.1) x Cleanup and Cooperation Multiplier (1.0) x History of Violations Multiplier (1.0)
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TABLE 3
Determination of Base Liability for Failure to Submit the Short Form

Maximum Liability	Factor	Explanation
Days of Discharge	15	Because there was not a daily detrimental impact to the environment, the City's violation lasting 284 days accrued a total of 15 days' worth of violation in calculating the penalty, based on the Enforcement Policy's alternate approach for multiple day violations.
Max Per Day Liability	\$1,000	Water Code § 13267
Total Maximum Liability	\$15,000	15 Days x \$1,000

Per Day Assessment for Non-Discharge Violations	Factor	Explanation
Potential for Harm	Minor	The failure to submit the Short Form in a timely manner is a paperwork violation which did not result in a moderate or major threat to water quality.
Deviation from Requirement	Moderate	By not submitting the Short Form in a timely manner, the City did not meet a Certification Condition. Even though it was eventually submitted, the effectiveness of the Wetland Tracking System was partially compromised.
Per Day Factor	0.20	Factor determined by Water Quality Enforcement Policy matrix analysis using the potential for harm and deviation from requirements.

Initial Liability	\$3000	Number of violation days (15) x per day factor (.20) x maximum statutory liability per day of violation (\$1,000)
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Conduct Factors	Multiplier	Explanation
Culpability	1.1	The City had knowledge of the requirement to submit the Short Form.
Cleanup and cooperation	1.0	Cleanup is not considered because the alleged violation is a non-discharge violation. The City cooperated in submitted the Short Form upon request and after being notified of the violation.
Prior History of Violations	1.0	The Regional Water Board has not previously taken formal enforcement against the City for similar violations. Thus, a multiplier of 1 is appropriate.

Total Base Liability	\$3300	Initial liability (\$3000) x Culpability Multiplier (1.1) x Cleanup and Cooperation Multiplier (1.0) x History of Violations Multiplier (1.0)
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