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12		CATES DISTRICT COURT YRICT OF CALIFORNIA
13	UNITED STATES OF AMERICA,	)
14	Plaintiff,	) ) CIV. NO. 03-CV-1349K (POR)
15	V.	) ) FINAL CONSENT DECREE
16		
17	CITY OF SAN DIEGO,	)
18	Defendant.	) 
19.	SAN DIEGO BAYKEEPER, <u>et al</u> .,	)
20	Plaintiffs,	) CIV. NO. 01-CV-0550B (POR)
21	V.	
22	CITY OF SAN DIEGO,	)
23	Defendant.	)
24		
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27 28		
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WHEREAS, Plaintiff, the United States of America ("United States"), by the authority of the Attorney General of the United States and through its undersigned counsel, acting at the request and on behalf of the Administrator of the United States Environmental Protection Agency ("EPA"), filed a Complaint on July 9, 2003, seeking injunctive relief and civil penalties pursuant to Section 309 of the Federal Water Pollution Control Act, as amended by the Clean Water Act of 1977 and the Water Quality Act of 1987 ("CWA" or "Act"), 33 U.S.C. § 1319, naming as defendant the City of San Diego, California ("the City");

WHEREAS, the State of California, ("the State") *ex rel*. the Regional Water Quality Control Board, San Diego Region, ("the Regional Board") filed a Complaint on July 11, 2003, seeking injunctive relief pursuant to Section 309 of the CWA, 33 U.S.C. § 1319, naming as defendant the City;

WHEREAS, Plaintiffs San Diego Baykeeper ("Baykeeper") and the Surfrider Foundation ("Surfrider") (herein collectively "Citizen Plaintiffs") served the City; the United States Attorney General; EPA; the State Water Resources Control Board; and the Regional Board, with a notice of intent to file suit ("60-Day Notice") under Sections 505(a) and (b) of the CWA, 33 U.S.C. § 1365(a) and (b) on October 30, 2000, alleging that the City had in the past and continues to violate Section 301(a) of the CWA, 33 U.S.C. § 1311(a), by violating the City's Sanitary and Storm Water Permits;

WHEREAS, on March 29, 2001, Baykeeper and Surfrider filed a Complaint against the City;

WHEREAS, the City owns and operates a publicly-owned wastewater collection and treatment system that is regulated by identical 2002 permits issued by EPA under the CWA and

the Regional Board under the California Porter-Cologne Water Quality Control Act, respectively, NPDES permit CA0107409 (September 13, 2002), Order Number R-9-2002-0025 (April 10, 2002) and Order Number 2002-0013 (August 15, 2002)("the permit");

WHEREAS, the Plaintiffs allege that the City has violated and continues to violate the CWA as a result of sanitary sewer overflows ("SSOs") from its publicly-owned treatment system;

WHEREAS, EPA issued a Finding of Violation and Order pursuant to Sections 308(a) and 309(a) of the CWA on April 5, 2002, setting forth a comprehensive set of requirements to be met by the City to reduce and eliminate sewage spills;

WHEREAS, the City contends that it has upgraded the operation and maintenance of its wastewater collection and treatment system to reduce unpermitted overflows and that its operation and maintenance program meets or exceeds all applicable federal and state regulations;

WHEREAS, the requirements of Section VII (Compliance Actions) Paragraphs B - D, of this Final Consent Decree represent infrastructure improvements and upgrades designed to reduce municipal sanitary sewer overflows that will require significant capital expenditures, and the City plans to pursue a combination of funding sources that may include, but are not limited to, state assistance, federal assistance, bonding, and other public and private financing to assist in the implementation of such improvements;

WHEREAS, the Mayor and Members of the City Council created a formal Citizen's Clean Water Task Force to reduce SSOs and passed Resolution No. R-295587 on October 16, 2001, which raised sewer service rates 7.5% for each of the Fiscal Years 2002-2005 and dedicated a specific portion of those increases exclusively to sewer pipe replacement and

-4-

1 rehabilitation;

WHEREAS, the City paid penalties of \$6,258,900 to the Regional Board from 2000 to 2005 for various sewage spills occurring prior to October 1, 2004 (\$2,115,500 in cash and \$4,143,400 in supplemental environmental projects);

WHEREAS, the parties previously entered into a Partial Consent Decree and a Second Partial Consent Decree to immediately implement short-term capital improvement projects and operation and maintenance requirements;

WHEREAS, the Partial Consent Decree expired on June 30, 2006, and the Second Partial Consent Decree expires on June 30, 2007;

WHEREAS, the City asserts it has substantially complied with the EPA's Finding of Violation and Order, and the First and Second Partial Consent Decrees, and the City thereby asserts that the number of wastewater overflows was reduced by approximately 77% from 2000 through 2006;

WHEREAS, the Mayor and City Council approved Resolution No. R-302378 on February 26, 2007, increasing sewer revenues incrementally by 8.75% in each of fiscal years 2007 and 2008, and by 7% in each of fiscal years 2009 and 2010, primarily to fund the capital improvements required by this Final Consent Decree;

WHEREAS, the United States, Citizen Plaintiffs, and the City (collectively referred to herein as the "Settling Parties" or "Parties") agree that it is in the public interest to enter into this Final Consent Decree;

**WHEREAS**, the Court finds that this Final Consent Decree is a reasonable and fair settlement and that it adequately protects the public interest in accordance with the CWA.

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**NOW THEREFORE**, it is hereby ORDERED, ADJUDGED, and DECREED as follows:

#### I. JURISDICTION

This Court has jurisdiction over the subject matter of the claims asserted by the United States pursuant to Section 309(b) of the CWA, 33 U.S.C. § 1319(b) and 28 U.S.C. § 1331. This Court has jurisdiction over the claims brought by the Baykeeper and Surfrider pursuant to Section 505(a) of the CWA, 33 U.S.C. § 1365(a), and 28 U.S.C. § 1331.

#### II. <u>VENUE</u>

Venue is proper in the United States District Court for the Southern District of California pursuant to Sections 309(b) and 505(c) of the CWA, 33 U.S.C. §§ 1319(b) and 1365(c), and 28 U.S.C. §§ 1391(b), because it is the judicial district in which the alleged violations occurred.

#### III. <u>PARTIES</u>

A. Baykeeper is a nonprofit public benefit corporation organized under the laws of the State of California, with its principal place of business in San Diego, California. Baykeeper is a membership organization that is dedicated to the preservation and enjoyment of the oceans, waves, and beaches. Its members currently use and enjoy the ocean and beaches of San Diego County for a variety of recreational, esthetic, economic, and other purposes. Baykeeper brought this action on behalf of itself and its members.

B. Surfrider is a nonprofit public benefit corporation organized under the laws of the State of California, with its principal place of business in San Clemente, California. Surfrider is a membership organization that is dedicated to the preservation and enjoyment of the oceans, waves, and beaches. Its members currently use and enjoy the ocean and beaches of San Diego

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County for a variety of recreational, esthetic, economic, and other purposes. Surfrider brought this action on behalf of itself and its members.

C. The United States appears on behalf of EPA, a federal agency with responsibility for enforcing the CWA.

D. The City is a California municipal corporation and possesses NPDES Permit No.
CA0107409 to discharge treated effluent from the Point Loma Metropolitan Wastewater
Treatment Plant. The City owns and operates a publicly owned treatment works as defined in
33 U.S.C. § 1292 and 40 C.F.R. § 403.3.

#### **IV. DEFINITIONS**

Unless otherwise defined herein, terms used in this Final Consent Decree shall have the meaning given to those terms in the CWA, 33 U.S.C. §§ 1251-1387, and the regulations promulgated thereunder. For the purposes of this Final Consent Decree, the following terms shall have the meaning provided below:

"Acute Defect" means a defect that substantially increases the probability of a material SSO, and includes conditions leading to imminent structural collapse or that would create repeated blockages.

"Administrative Order" means the Finding of Violation and Order, Docket No. CWA-309-9-02-17 that EPA issued to the City on April 5, 2002, pursuant to Sections 308(a) and 309(a) of the CWA, which was withdrawn by the EPA upon entry of the Partial Consent Decree on September 13, 2005.

"Canyon Economic and Environmental Analysis" means an analysis of the feasibility of relocating sewer lines out of each canyon.

"Capital Improvement Program" ("CIP") means the City's ten (10) year "rolling" sewer repair, rehabilitation and replacement planning document.

"Collection System" means all pipes, manholes, sewer lines, pump stations, and appurtenances thereto under ownership of the City that are intended to convey domestic or industrial wastewater to the City's wastewater treatment plants.

"Contractor" as used in this Final Consent Decree, means the City's contractor(s) and subcontractor(s), agents, assigns, successors, and duly authorized representatives of City contractors.

"Director" means the Director of the EPA Region 9 Water Division.

"Lamping" means an inspection method in which a light source is put into a manhole and a visual device, such as a mirror, is placed in an adjacent manhole to try to detect blockages in the pipe.

"Large Diameter Pipes" means pipes in the City of San Diego's wastewater collection system that are greater than fifteen (15) inches in diameter.

"Plan for Accelerated Cleaning Program" means the plan the City submitted to EPA on September 27, 2002.

"Plan for Root Control Program" means the plan the City submitted to EPA on September 27, 2002.

"Plan for Sewer Overflow Response and Tracking" means the plan the City submitted to EPA dated October, 2003.

"Plan for Sewer Pipe Inspection and Condition Assessment" means the plan the City submitted to EPA on September 27, 2002.

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"Plan for Sewer Repair, Rehabilitation, and Replacement" means the plan the City submitted to EPA on September 27, 2002.

"Plan for Fats, Oils & Grease ("FOG") Blockage Control" means the plan the City submitted to EPA on September 27, 2002.

"Plan for Canyon Area Spill Elimination" means the plan the City submitted to EPA on September 27, 2002.

"Plan for Pump Station and Force Main Spill Reduction Action" means the plan the City submitted to EPA on September 27, 2002.

"Plan to Address Other Sanitary Sewer Overflows" means the plan the City submitted to EPA on September 27, 2002.

"Plan for Capacity Assurance" means the plan the City submitted to EPA on September 27, 2002.

"Plan for System-wide Cleaning Program" means the plan the City submitted to EPA on January 29, 2004.

"Sanitary Sewer Backup" or "SSB" is a wastewater backup into a building or solely onto private property from a private lateral that is caused by a blockage or other malfunction in the Collection System.

"Sanitary Sewer Overflow" or "SSO" means an overflow, spill, or release of wastewater from the Collection System at any point upstream of the sewage treatment plant. For purposes of this Final Consent Decree only, an SSB is an SSO.

"Section" shall mean the sections denoted by a roman numeral.

"Small Diameter Pipes" means pipes in the City of San Diego wastewater collection

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system that are less than or equal to fifteen (15) inches in diameter.

"United States" shall mean the United States of America.

#### V. <u>OBJECTIVES</u>

In entering into this Final Consent Decree, the Parties intend to further the objectives set forth in Section 101 of the CWA, 33 U.S.C. § 1251, to settle the claims alleged by the Plaintiffs in their respective Complaints and to achieve expeditious compliance with this Final Consent Decree for such purposes as eliminating spills to the extent feasible.

#### VI. <u>BINDING EFFECT</u>

A. The provisions of this Final Consent Decree shall apply to, and be binding upon the City, United States, EPA, Baykeeper, and Surfrider and their successors and assigns.

B. The City shall give written notice, and provide a copy of this Final Consent
Decree to any person or entity to whom the City may transfer ownership or operation of its
publicly owned treatment works, including any portion of the Collection System. The City shall
notify the United States and EPA in writing of any successor in interest at least forty-five (45)
days prior to any such transfer.

C. The City shall provide a copy of this Final Consent Decree, or otherwise make it available to:

1. Each engineering, consulting, and contracting firm to be retained to perform any material activities required by this Final Consent Decree upon execution of any contract relating to such work; and

2. Each engineering, consulting, and contracting firm already retained for such purpose.

D. In an action to enforce this Final Consent Decree, the City shall not assert as a defense against the Plaintiffs that any of its officers, directors, employees, agents, servants, Contractors, successors or assigns are responsible for the City's failure to perform under this Final Consent Decree.

#### VII. COMPLIANCE ACTIONS

A. The City has completed the plans listed below for the operation and maintenance of its Collection System. The City shall use best efforts to implement the plans identified below for the operation and maintenance of the Collection System. The City may subsequently modify these Paragraph A plans to incorporate new information and to make maintenance of the collection system more efficient or to make other changes that the City deems appropriate that are not inconsistent with the objectives of this Final Consent Decree. The City's obligation to implement these Paragraph A plans shall not be subject to enforcement under this Final Consent Decree.

1 ~ 1		
17	1.	Plan for Sewer Overflow Response and Tracking;
18	2.	Plan for System-wide Cleaning Program;
19	3.	Plan for Accelerated Cleaning;
20	4.	Plan for Root Control Program;
21	_	
22	5.	Plan for Sewer Pipe Inspection and Condition Assessment;
23	6.	Plan for Sewer Repair, Rehabilitation and Replacement;
24	7.	Plan for Fats, Oils & Grease ("FOG") Blockage Control;
25	8.	Plan for Canyon Area Spill Elimination;
26	0	Dise for Dense Station and Dama Main Spill Dalastics Astim
27	9.	Plan for Pump Station and Force Main Spill Reduction Action;
28		-11-

- 10. Plan to Address Other Sanitary Sewer Overflows; and
- 11. Plan for Capacity Assurance.

The City shall implement and meet the specific requirements of Paragraphs B - H below. In the event of a conflict between the requirements in Paragraphs B - H below and the Paragraph A plans listed above, the requirements in Paragraphs B - H below shall supercede the listed plans.

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#### SSO RESPONSE AND TRACKING

 In addition to the information required to be reported pursuant to Statewide WDR No 2006-003-DWQ and Regional Board Order R9-2007-0005, the City's NPDES permit, and any other applicable local, state or federal requirement, the City's Quarterly SSO reports required under Section VII (Compliance Actions) Paragraph H of this Final Consent Decree shall include at a minimum:

a. The name of the trunk sewer (for SSOs relating to trunk sewers);

b. The name of the canyon (for SSOs relating to canyons);

c. The total SSO volume (excluding SSBs), the volume returned to the system, and the volume not captured; and

d. The total SSB volume.

2. The City shall have crews on duty and available for response to SSOs twenty-four (24) hours per day every day of the year with the exception of the ten (10) holidays designated by the City. On each of the ten (10) holidays, the City shall have a duty supervisor on call who is able to immediately mobilize response crews. The City shall make all reasonable efforts to respond to a SSO within thirty (30) minutes of notification.

3. For any SSB about which a private customer contacts the City for assistance or the City otherwise responds to, if either a licensed plumber or the City concludes that an SSB has occurred, the City must follow the same response procedures as it follows for other SSOs.

4. The City shall maintain a SSO response log including response times. The City may maintain a separate log for SSBs.

5. The City shall operate and maintain a flow metering alarm system that covers at least ninety percent (90%) of the flow weighted length of the City's three hundred forty (340) miles of trunk sewers, including all canyon trunk sewers. The system must be capable of detecting and notifying City staff within ninety (90) minutes of reductions in flow of twenty-five percent (25%) or more of the average dry weather flow during dry weather conditions.

C.

#### CONTROL OF NON-CAPACITY RELATED SSOS

1. SYSTEM-WIDE GRAVITY COLLECTION SYSTEM CLEANING PROGRAM

a. By March 31, 2004, with the exception noted below, the City shall complete at least one (1) cleaning of each sewer pipe in the City's two thousand eight hundred nineteen (2,819) mile gravity municipal collection system. However, the City may decide not to clean up to thirty (30) miles of pipe located in environmentally sensitive areas and/or in non-right-of-way areas if the CCTV inspection demonstrates the pipe is clear, or for which permits cannot be obtained by the City to allow for the cleaning prior to March 31, 2004. The City will make all reasonable efforts to obtain such permits in a timely manner. In the event the CCTV inspection demonstrates that the pipe requires cleaning, the City shall continue with the permitting process for sewer pipe cleaning and complete the required cleaning activities within six (6) months of completing the cleaning permit process.

b. Starting April 1, 2004, the City shall clean each sewer pipe in the City's two thousand five hundred thirty-eight (2,538) mile small diameter gravity collection system on a minimum five (5) year frequency. For each five (5) year cleaning cycle, the City may elect to exclude from cleaning up to thirty (30) miles in environmentally sensitive non-right of way areas if the CCTV inspection demonstrates the pipe is clear. Starting April 1, 2004, the City shall clean each sewer pipe in the City's two hundred eighty-one (281) mile large diameter gravity system on a minimum five (5) year frequency unless the City can demonstrate the pipe is adequately clean through a cleaning needs assessment consisting of CCTV, hydraulic investigation, manhole inspection, and/or personnel entry into the sewer pipe. All miles cleaned under this Paragraph may be included in the one thousand five hundred (1,500) miles of annual cleaning required in Section VII (Compliance Actions) Paragraph C 2a.

c. By March 1st of each calendar year and pursuant to Section VII (Compliance Actions) Paragraph G of this Final Consent Decree, the City shall submit an annual report to EPA for review pursuant to Section VIII (Plan and Report Review and Approval) that documents which sewers and how many miles of pipe were cleaned as part of the system-wide cleaning program during the previous calendar year. The report shall distinguish between sewer pipes in canyon and non-canyon areas. The annual report shall describe the status of any pipes included in the thirty (30) miles described in Paragraphs a. and b. above, specify which miles were included in the thirty (30) miles, and explain the basis for not cleaning any Large Diameter Pipes.

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# 2. <u>ACCELERATED PREVENTIVE MAINTENANCE (ACCELERATED</u> PM) CLEANING PROGRAM

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The City shall clean a minimum of one thousand five-hundred a. 4 (1,500) miles of pipe per year. Calculation of the 1,500 miles may include problem pipe 5 segments that are cleaned more frequently than annually. 6 7 b. To make changes to the cleaning frequency of its pipes, the City 8 shall use a cleaning algorithm based upon SSO history and the pipe conditions observed in the 9 field. The City shall use the following "condition findings" in its algorithm used to adjust pipe 10 cleaning frequencies: 11 **CONDITION FINDINGS:** 12 c. 13 Clear Medium Light Heavy No observable grease, 1.0 to 1.5 gallons of 2 to 3 gallons of 4 or more gallons of 14 roots, or sludge sludge, small chunks of sludge, moderate sludge, grease, clumps of grease, slight detection of chunks of grease. roots, more than 30 15 root mass, 20 to 30 observable root minutes to clean, more 16 minutes to clean a line, 1 mass, 30 minutes than 4 passes to clear the to 2 passes to clear the to clean a line, 2 water. 17 water. to 3 passes to clear the water. 18 Note: A "line" is a pipe segment of approximately 300 feet length between two manholes. 19 d. Based on one of the methods below, the City may determine whether 20 to increase or decrease the pipe cleaning frequency changes. 21 (I) Method 1: Software Algorithm Recommendations 22 23 **Cleaning Frequency Decreases:** Category Findings Frequency Step Change 24 1 to 6 Month: Clear for three A One-Step Frequency Decrease to a time consecutive cleaning interval of 3, 6, or 12 months. 25 cycles 26 27 28 -15-

1	12 to 24 Month:	Clear for two	A One-Step Frequency Decrease to a time
2		consecutive cleaning	interval of 24 or 60 months.
3	60 Month:	cycles N/A	Small diameter pipes on a 60 month schedule
5			will never be cleaned less frequently. Large
4			Diameter pipes may skip cleaning if a
5			physical inspection per Section VII
6			(Compliance Actions) Paragraph C 1b., determines that the pipe is clear.
	Cleaning Frequency In	ncreases:	determines that the pipe is credi.
7	Category	Findings	Frequency Step Change
8	1 to 6 Month:	Findings of either 1 Medium	A One-Step Frequency Increase to a time
9		Or	interval of 1 or 3 months. An existing 1 month time interval will not be reduced but
		1 Heavy during any	will be transferred for further consideration
10		cleaning cycle	under Method 2: Crew/ Supervisor
11	12 to 24 Month:	Findings of either 2	Recommendations.           A One-Step Frequency Increase to a time
12	12 to 24 Month.	Medium	interval of 6 or 12 months.
		Or	
13		1 Heavy during any	
14	60 Month:	cleaning cycle Findings of either 1	A One-Step Frequency Increase to a time
15	oo wonui.	Medium	interval of 24 months.
		Or	
16		1 Heavy during any	
17		cleaning cycle	
18	Note: All Findings Depict	Pipes that have been cleaned w	ithin +/-25% of their current frequency's scheduled
	cleaning date.		
19			
20		(ii) Method 2: $C$	Crew/ Supervisor Recommendations
21	Changes to also	ing fraguancias for nings	that recently have been remained reliabilitated
	Unanges to clean	ing frequencies for pipes	that recently have been repaired, rehabilitated,
22	or replaced shall be mad	e in Regular Sanitary Sau	ver Overflow Report Tracking ("SSORT") or
23	or replaced shan be mad	e in Regular Sanitary Sev	ver overhow Report Hacking ( 550R1 ) of
24	other appropriate meetin	gs held by City staff Co	rrective actions and appropriate frequency
25			
	adjustments shall be mad	de based upon SSO/ block	cage relief cleaning findings, historical cleaning
26		*	
27			
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data, and if available, CCTV data.

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e. By March 1st of each year, and pursuant to Section VII (Compliance Actions) Paragraph G of this Final Consent Decree, the City shall submit an annual report to EPA for review pursuant to Section VIII (Plan and Report Review and Approval) that: (I) documents which sewers and how many miles of pipe were cleaned as part of the Accelerated PM cleaning program during the previous calendar year; (ii) includes a table containing the number of miles of sewer pipes within each cleaning frequency and the number of miles identified for the Repair, Rehabilitation, and Replacement Program; (iii) describes the success of the program at preventing repeat blockages and sewage overflows from pipes included in the Accelerated PM cleaning program; and (iv) distinguishes between pipes in canyons and pipes located elsewhere.

3.

#### ROOT CONTROL PROGRAM

a. The City shall utilize mechanical root control to clean at least three hundred fifty (350) miles of pipe each year. The 350 miles of pipe mechanically cleaned under this Paragraph may be included in the cleaning miles required in Section VII (Compliance Actions) Paragraph C 2a.

b. The City shall utilize chemical root control to treat at least one
hundred fifty (150) miles of pipe each year. Mileage chemically-treated under this Paragraph
may be included in the cleaning miles required in Section VII (Compliance Actions) Paragraph C
2a., if the chemical treatment is independent from the mechanical root cleaning miles counted in

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Section VII (Compliance Actions) Paragraph C 3a. Due to advances in mechanical root control processes, the City may substitute some or all of the miles of chemical root control required by this Paragraph with additional mechanical root control above the miles required in Paragraph C 3a.

c. By March 1st of each year, the City shall submit an annual report pursuant to Section VII (Compliance Actions) Paragraph G of this Final Consent Decree, to EPA for review pursuant to Section VIII (Plan and Report Review and Approval) documenting how many miles of pipe were subject to mechanical and chemical root control, respectively, during the previous year. The report shall evaluate the success of the program, distinguish between pipes in canyons and pipes located elsewhere and document any problem pipe segments or lines that are referred to the Sewer Repair, Rehabilitation, and Replacement Program in Paragraph C 5 below.

4.

#### SEWER PIPE INSPECTION AND CONDITION ASSESSMENT

a. The City shall inspect each gravity sewer pipe that experiences a blockage leading to an SSO using CCTV or other appropriate inspection methods as soon as is practicable but no later than two (2) weeks following the SSO. Lamping may not be used for purposes of satisfying the obligations of this Paragraph 4.

b. Having completed CCTV inspection of one thousand two-hundred (1,200) miles of its pipelines, all pipe installed prior to 1965, all trunk sewers prior to 1991, and all high maintenance sites by June 2004, the City shall complete CCTV inspection of at least forty (40) miles of its pipelines each year, focusing on pipelines in high-maintenance areas and ensuring that all pipe over forty (40) years old is inspected by CCTV. The calculation of the 40

1	miles requirement may not include CCTV inspections done pursuant to Paragraph a. above or
2	Section VII (Compliance Actions) Paragraph C 1.
3	c. The City shall inspect all manholes in its collection system every
4	five (5) years, starting from September 13, 2005.
6	d. The City shall prepare condition assessment reports following
7	CCTV inspections that, at a minimum, document the following:
8	CC1 V hispections that, at a minimum, document the following.
9	(I) Defects that materially threaten the structural integrity of
10	the pipe or structure;
11	
12	(ii) Material defects that allow infiltration, inflow, or
13	exfiltration;
14	
15	(iii) Material pipe defects, including but not limited to, cracks,
16	holes, corrosion, misaligned joints, root intrusion, sags, improper lateral taps, or other defects
17	that make the pipe or structure prone to grease, root, or debris blockages;
18	
19	(iv) A rank or score of the condition of each inspected pipe or
20	structure on a sliding scale that indicates the severity of any defects found;
21	
22	(v) Whether the pipe or structure requires either short or
23	long-term repair under Paragraph 5 below;
24	
25 26	(vi) Changes to cleaning frequency as a result of the
26	assessment; and
27	
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(vii) An estimate of the expected remaining life of the pipe or

structure.

e. By March 1st of each year, the City shall submit an annual report pursuant to Section VII (Compliance Actions) Paragraph G of this Final Consent Decree, to EPA for review pursuant to Section VIII (Plan and Report Review and Approval) summarizing the findings of the sewer pipe condition assessments conducted during the previous calendar year, documenting any past changes in inspection methods, and differentiating between inspections and condition assessments of pipes in canyons and pipes located elsewhere.

#### 5. <u>SEWER REPAIR, REHABILITATION, AND REPLACEMENT</u>

a. The City shall repair all Acute Defects within one (1) year of discovery of the defect. The City shall maintain a log listing all sewer line Acute Defects in need of expeditious repair or replacement, the date the City discovered the Acute Defect, a schedule for performing the repair or replacement, and the date of project completion.

b. Between January 1, 2002 and June 30, 2007, the City shall replace, rehabilitate, or permanently repair two hundred (200) miles of pipeline. Beginning July 1, 2007, the City shall replace, rehabilitate, or permanently repair a total of two hundred fifty (250) miles prior to termination of this Final Consent Decree according to the following schedule:

Miles of Pipeline	Schedule
30	7/1/2007 - 6/30/2008
45	7/1/2008 - 6/30/2009
45	7/1/2009 - 6/30/2010
45	7/1/2010 - 6/30/2011
45	7/1/2011 - 6/30/2012
40	7/1/2012 - 6/30/2013

Permanent repair means the correction of a structural defect in a manhole to manhole pipe segment such that the repaired segment has the same life expectancy as a rehabilitated pipe segment. If more than two hundred (200) miles of pipeline are replaced, rehabilitated, or permanently repaired between January 1, 2002 and June 30, 2007, the City may hold those miles in reserve to be applied, if needed, against the requirement to replace, rehabilitate, or permanently repair pipeline for any future year. If more than the specified miles of pipeline are replaced, rehabilitated, permanently repaired in one year, beginning July 1, 2007, the City may hold those miles in reserve to be applied, if needed, against the requirement to replace, rehabilitate, or permanently repair pipeline in any future year. The City shall maintain a log listing each sewer pipe and structure project completed during the previous year and the date the project was completed.

c. The City shall maintain a rolling ten (10) year CIP.

d. By March 1st of each year, the City shall submit an annual report pursuant to Section VII (Compliance Actions) Paragraph G, to EPA for review pursuant to Section VIII (Plan and Report Review and Approval) which describes all Acute Defect and long-term projects completed in the previous year pursuant to this Paragraph, distinguishes between canyon and non-canyon projects, documents all projects referred to programs under other Paragraphs of this Section, and includes copies of the Acute Defect logs for the previous year. Upon request by EPA, the City shall provide EPA with a copy of its full CIP within thirty (30) days. Nothing in this Paragraph 5 shall require the City to implement any of the projects listed in the CIP not otherwise required hereunder.

FATS, OILS & GREASE ("FOG") BLOCKAGE CONTROL PROGRAM

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8 For at least the duration of this Final Consent Decree, the City shall a. 9 implement a Residential Grease Outreach and Education Program consisting of the following 10 elements. 11 The City shall distribute informational FOG postcards to all (i) 12 13 residents living within a one thousand (1,000) foot radius of each residential grease SSO within 14 ten (10) working days of a SSO; 15 The City shall prepare and distribute FOG inserts with City (ii) 16 17 water/sewer bills semiannually; 18 The City shall produce residential grease Public Service (iii) 19 Announcements and broadcast them on the City's public access channel at least twice per week; 20 21 (iv) The City shall prepare and maintain grease education 22 information on the MWWD web site; and 23 24 The City shall attend the annual Apartment and (v) 25 Condominium Owner's Association convention to publicize its FOG program. 26 27 28 -22-

1	b. The City shall implement a program for timely enforcement and
2	inspection follow-up at Food Service Establishments ("FSE"). At a minimum, the City shall:
4	(I) Inspect each FSE at least once every two (2) years.
5	Inspection of FSEs maintaining full compliance shall continue on a biannual frequency. Any
6 7	FSE found to be in violation shall be inspected at least every ninety (90) days until full
8	compliance is demonstrated for a minimum of two (2) ninety (90) day inspection cycles;
10	(ii) Issue a formal Notice of Violation to an FSE within two (2)
11	weeks of discovering a violation;
12 13	(iii) Hold administrative hearings within ninety (90) days of the
14	NOV if the FSE fails to comply with the NOV or has had two (2) NOVs within the last year or
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16	for the same compliance issue and, if non-compliance continues, hold a Permit Revocation
17	hearing within ninety (90) days of the administrative hearing and, if necessary, terminate water
18 19	service if the City is the water service provider;
20	(iv) Issue compliance schedules, assess fees or penalties, and
21	
22	revoke permits as necessary to ensure compliance;
23	(v) Inspect each new and substantially remodeled FSE within
24	four (4) months of the FSE's start up; and
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26 27	(vi) Assure adequate budget and staffing to meet the above
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requirements.

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c. By March 1st of each year, the City shall submit an annual report pursuant to Section VII (Compliance Actions) Paragraph G of this Final Consent Decree to EPA for review pursuant to Section VIII (Plan and Report Review and Approval) documenting the activities carried out under the FOG Blockage Control Program during the previous year. The report shall: (i) include copies of the FSE inspection and enforcement log for the previous year, and (ii) discuss budget and staffing levels for the previous and current years.

#### 7. <u>CANYON AREA SSO ELIMINATION</u>

a. By no later than March 1, 2009, the City shall complete the Canyon Economic and Environmental Analyses for the forty-two (42) canyons listed below in order to evaluate the feasibility and need to relocate the sewer lines out of canyon bottoms. The economic and environmental analyses shall include both quantitative and qualitative costs and benefits of alternatives, weigh environmental impacts, and address stakeholder and community input. The analyses shall consider the life cycle costs of the alternatives. When estimating the cost to maintain sewer facilities in canyons, the cost of the increased risk of an SSO occurring and the cost of the impacts to the canyon habitat resulting from necessary canyon access and maintenance, as required by Section VII (Compliance Actions) Paragraphs C 1, C 2, C 3, and C 7 will be considered. Where the life cycle cost of redirecting flow is less than thirty-five percent (35%) more than the life cycle cost of leaving the flow in place, and where environmental and community interest factors indicate that flow should be redirected in whole or in part, redirection shall be undertaken. Those sewers identified for relocation shall be included in the next update of the City's CIP. Nothing in Section VII (Compliance Actions) of this Final Consent Decree

1 shall require the City to relocate any sewer. 2 The City shall conduct analyses for a minimum of six (6) canyons a b. 3 year, starting January 1, 2004, for the following canyons, giving priority to those canyons 4 containing pipeline identified as a priority under Section VII (Compliance Actions) Paragraph C 5 4. 6 7 Tecolote 8 East Tecolote (East Clairemont) 9 Stevenson 10 Van Nuys 11 San Clemente 12 13 Upper Rose 14 Middle Rose 15 Lower Rose 16 Dakota 17 Manning 18 19 Acuña 20 Park Mesa 21 Bounty & Waring 22 Mission Center Road 23 Lake Murray 24 25 Adobe Falls 26 Mission Gorge (Junipero Serra) 27 28 -25-

1	•	Chollas Creek
2	•	Chocolate (Home Avenue)
3	•	Switzer
4	•	Carroll (Rock Quarry)
5 6	•	Alvarado
7		Sorrento/Flintkote
8	•	
9	•	Roselle/Sonico
10	•	Lopez
11	•	Peñasquitos
12	•	Peñasquitos Bluffs
13	•	Rose Creek East of I-805
14	•	Mesa College and I-805 (Onalaska)
15		Black Mountain
16	·	
17	•	Shawn
18	•	Shepherd (Santo Road)
19	. •	Woodman
20	•	Lexington
21	•	Washington Creek
22	•	Highway 163 Corridor
23		
24	•	El Camino Real/San Dieguito Road
25 26	•	Florida
20 27	•	Sevan Court
27		-26-
20		20-
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1	• Skylark
2	Rancho Mission
3	• 45th & Boston
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5	If more than six (6) Canyon Economic and Environmental Analyses are completed in one
6	(1) year, the City may hold these analyses in reserve to be applied, if needed, against the
7	requirement to complete six (6) analyses per year in any future year.
8	c. The City shall implement the following minimum measures:
9	(I) The City shall conduct an annual visual exterior inspection
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11	of each canyon area trunk sewer, including examination of each maintenance hole structure for
12	structural integrity, examination of any exposed sewer pipes, and observation of any condition in
13	the canyon area that could pose a threat to pipes or maintenance hole structures. The City shall
14	assess the environmental and other external physical factors that may lead to a structural failure.
15	A line with a shall include such factors of energies, landslides, flooding, excessive plant
16	Annual inspections shall include such factors as erosion, landslides, flooding, excessive plant
17	growth, and any circumstances that could affect pipe or maintenance hole structural integrity.
18	(ii) During each annual inspection of canyon trunk sewers
19	required by Subparagraph (I) above, the City shall identify all potentially vulnerable sections of
20	canyon pipelines.
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22	(iii) The City shall visually inspect all potentially vulnerable
23	sections of canyon pipelines within one (1) week of every significant rainfall (over 0.5" within a
24	twenty-four (24) hour period).
25	(iv) The City shall conduct cleaning and annual maintenance of
26	1
27	each canyon area sewer pipe and maintenance hole structure, including, but not limited to,
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control of erosion that may undermine sewer pipes or maintenance hole structures, diversion of channels when necessary to protect the infrastructure, rebuilding of deteriorated maintenance hole structures, and the securing of maintenance hole covers to prevent vandalism as specified in Section VII (Compliance Actions) Paragraph C 9b.

(v) The City shall obtain short and long-term access to each canyon area sewer pipe sufficient to allow for the cleaning and annual inspection of such pipes as required by this Final Consent Decree.

d. By March 1st of each year the City shall submit an annual report to EPA for review pursuant to Section VII (Compliance Actions) Paragraph G of this Final Consent Decree, documenting which canyon sewers were cleaned and/or inspected during the previous calendar year, listing all potentially vulnerable sections of canyon pipelines identified in Subparagraph c.(ii) above, describing the plans the City intends to undertake for the then current year, summarizing and including the sewer relocation economic and environmental analyses completed in the previous calendar year, and listing those canyons for which economic and environmental analyses will be done in the current year.

PROGRAM

# PUMP STATION AND FORCE MAIN SSO REDUCTION ACTION

specified below:

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a.

The City shall complete the following projects by the dates

## PUMP STATIONS WITH IMPROVEMENTS UNDER DESIGN AND CONSTRUCTION:

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Pump Station No.	Construction Completion Date	Description of Work	
18 (Phase II)	Dec 2008	Mechanical & electrical upgrades <sup>(a)</sup> , storage tank <sup>(b)</sup>	
		and on-site generator	
79	Dec 2008	Replace pumps and motors and install properly size storage tank <sup>(b)</sup> , electrical upgrades, odor control, SCADA controls and alarms, and redundant force main	
62	May 2013	Install properly sized storage tank <sup>(b)</sup> , odor control and redundant force main	
43, 44, 46, 47, 51, 54, 60, 71, 73, 74, 75, 76, 80, 81, 82	Jun 2013	Replace pumps and motors; add redundant force main, storage tank <sup>(b)</sup> ; upgrade SCADA and odor controls	
84	Jun 2013	Replace pumps and motors; add redundant force main, storage tank <sup>(b)</sup> ; upgrade SCADA and odor controls	
52, 53, 55, 56, 57, 58	Jun 2009	Replace pumps and motors; upgrade SCADA &an odor controls	
63	Dec 2008	Mechanical & electrical upgrades <sup>(a)</sup> ; add redundar force main, storage tank <sup>(b)</sup> , on-site generator and SCADA controls	
41	Nov 2010	Build a new PS to code (properly sized wetwell, storage tank <sup>(b)</sup> , odor control, on-site generator, SCADA controls and alarms, and redundant force main) then demolish old pump station	
(a) Mechanical and El	ectrical Upgrades may	y include one or more of the following: replace pumps ar	
motors, upgrade or	add ventilation system	s, add alarms, upgrade or add a sump pump, add remote	
control ability for certain functions (i.e., the on-site generator), and all related electrical work for the			
new mechanical work.			
(b) All storage tanks		n-system storage shall have a minimum of two (2) hours eak wet weather flow conditions.	
	b. By March 1	st of each year the City shall submit an annual repor	
ursuant to Section V	II (Compliance Action	ons) Paragraph G of this Final Consent Decree, to E	
		and Report Review and Approval), documenting the	

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City's progress in the projects during the previous year.

#### 9. PROGRAM TO ADDRESS OTHER CAUSES OF SSOS

a. The City shall require all Contractors working under a new construction contract to have an approved SSO response plan prior to initiating work if the construction work is to occur within a public right-of-way or sewer easement. All City construction contracts must contain provisions that allow the City to impose penalties and/or cleanup costs on any Contractor whose activities, or failure to act, result in an SSO or other violation of this Final Consent Decree.

b. The City shall secure at least six hundred (600) manhole covers in remote areas each year with all five thousand eight hundred (5,800) +/- covers to be secured prior to termination of this Final Consent Decree. If more than 600 manhole covers in remote areas are secured in one (1) year, the City may hold these secured covers in reserve to be applied, if needed, against the requirement to secure 600 manhole covers per year in any future year.

c. The City shall conduct a Public Outreach Program to educate the public about vandalism.

d. By March 1st of each year the City shall submit an annual report pursuant to Section VII (Compliance Actions) Paragraph G of this Final Consent Decree, to EPA for review pursuant to Section VIII (Plan and Report Review and Approval), documenting the activities carried out under this program, summarizing the SSOs caused by Contractors or vandalism, and distinguishing between SSOs in canyon and non-canyon areas.

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COLLECTION SYSTEM CAPACITY ASSESSMENT AND ASSURANCE

#### 1. <u>Capacity Assessment</u>

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The City shall continue to use the dynamic model developed as a. required by the U.S.A. v. City of San Diego, Case No. 88-1101-B, Stipulated Final Order for Injunctive Relief, to analyze the hydraulic capacity of all trunk sewers fifteen (15) inch in diameter or greater. The City will ensure that system capacity is sufficient and will continue to collect flow monitoring data in both dry and wet weather and perform a dynamic modeling analysis for all of the City's trunk sewers. The City will add thirteen (13) new permanent flow meters on trunk sewers fifteen (15) inches in diameter or greater by December 31, 2005, at an additional cost of approximately \$1.3 million. Combining the existing and additional flow meters, the total monitoring coverage in flow weighted length shall exceed ninety percent (90%). For the remaining trunk sewers not permanently monitored, the City will install temporary meters, on a rotational basis, to monitor at least one (1) twelve (12) month continuous period for each of the trunk sewers by termination of the Final Consent Decree. The data from this additional metering will be incorporated into the criticality assessment for the trunk sewers. The modeling analysis shall include trunk-by-trunk model calibrations based on dry weather flow monitoring data and model simulations for the present, future (5-10 years), and wet weather scenarios. By July 31, 2006, the City shall submit a Trunk Sewer Capacity Assessment Report documenting the findings of the above mentioned modeling analysis. The report shall prioritize the trunk sewers as either critical, semi-critical, or non-critical, according to the flow monitoring and modeling results. The City shall update the Trunk Sewer Capacity Assessment Report on an annual basis, considering new flow trends, changes in the sewer system, and other modifications.

The report and/or updates shall be provided to Plaintiffs annually.

b. If the City experiences a significant SSO/SSOs caused by a lack of capacity during any calendar year beginning two (2) years after entry of this Final Consent Decree, the City shall pay Citizen Plaintiffs up to \$25,000 to review and assess the City's capacity assessment and assurance program. Such payment will only be made at most once during the period of the Final Consent Decree. Nothing contained in the results of such review and assessment by the Citizen Plaintiffs shall require the City to perform any additional work. For purposes of this Paragraph, an SSO caused by lack of capacity means an SSO caused by any flow less than a ten (10) year return wet weather flow in any trunk sewer fifteen (15) inches or greater exceeding the flow capacity of that sewer except when the City demonstrates that a specific blockage or condition defect occurred and was a material cause of the SSO. Overflows on trunk sewers identified in the CIP for improved capacity are not included herein.

### 2. <u>Capacity Assurance Program</u>

The City shall implement and complete the following capacity improvement projects on the schedule below. These projects may be included in the mileage required in Section VII (Sewer Repair, Rehabilitation, and Replacement) Paragraph C 5b.

#### TRUNK SEWERS

Trunk	Trunk Name	Construction Completion Date
40	Miramar Road	November 2008
43	Sorrento Valley	November 2008
32	Lake Murray	December 2011
63	Crown Point	December 2009

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12 East Point Loma December 2011 88 Penasquitos Views December 2010 South Mission Valley October 2011 6 July 2012 62 Sunset Cliffs Pacific Highway August 2012 71 November 2012 16 Grantville 7 Alvarado Phase III November 2012 75 November 2012 Palm City **USIU-Miramar** April 2013 55 Balboa Avenue May 2013 67 June 2013 31 Montezuma Road June 2013 67 Balboa Terrace 13 Harbor Drive June 2013

As a result of the ongoing capacity assessment, the City shall describe any proposed schedule or project changes/additions it seeks to make to this Paragraph with a justification and seek EPA's approval under Section VIII (Plan and Report Review and Approval) Paragraphs A and B of this Final Consent Decree.

3. By March 1st of each year the City shall submit an annual report pursuant to Section VII (Compliance Actions) Paragraph G of this Final Consent Decree, to EPA for review pursuant to Section VIII (Plan and Report Review and Approval), detailing at a minimum, the upgrades made during the previous year and the effectiveness of those upgrades at eliminating SSOs.

## E. <u>EXTENSION OF TIME FOR CAPITAL PROJECTS</u>

Notwithstanding the deadlines for capital projects contained in Paragraphs
 C 5b., C 8a., and D 2 of this Section, the City has the right to extend any schedule for such
 capital projects for a period of up to one (1) year and upon written notification to EPA. Any
 obligation so extended must be completed prior to termination of the Final Consent Decree. The
 City's right to extend a schedule pursuant to this Paragraph shall not be subject to dispute

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resolution.

2	2. The City shall list any such delays, the reasons for them, and the new		
3	schedule in the annual report required by Paragraph G of this Section.		
4	F. <u>OTHER SSO REQUIREMENTS</u>		
5	The City shall continue to reduce the frequency and volume of SSOs.		
7	G. <u>ANNUAL PROGRESS REPORT</u>		
8	1. By March 1st of each year this Final Consent Decree remains in effect, the		
9	City shall submit an annual progress report to EPA, with copies to Baykeeper and Surfrider. This		
10	report (or parts thereof) shall be reviewed and, where so provided, approved or disapproved		
11			
12	following the process in Section VIII (Plan and Report Review and Approval) Paragraphs A - D		
13	of this Final Consent Decree.		
14	2. The report shall:		
15	a. Include the specific annual reporting requirements set forth in		
16 17	Paragraphs B through D above;		
17 18	b. Provide other details relevant to the City's implementation of, and		
19	compliance with, this Final Consent Decree during the preceding year, including any program		
20	modifications during the prior calendar year or delays pursuant to Section VII (Compliance		
21	Actions) Paragraph E;		
22	c. Assess the City's progress towards meeting the requirements of		
23	this Final Consent Decree program-by-program and overall;		
24			
25	d. Report the volume, number, and location of SSBs;		
26 27	e. Report the volume, number, and location of SSOs, with the		
27 28	-34-		

exception of SSBs reported under Subparagraph d. above, and compare the volume, number, and 1 2 location of the SSOs reported under this Subparagraph to SSOs occurring since 1997; and 3 f. Propose new or modified plans in any area where the City has 4 5 materially failed to comply with the requirements of this Final Consent Decree. The plan shall 6 identify the material impact of the proposed changes on other obligations in this Section VII 7 (Compliance Actions) of this Final Consent Decree. Nothing in this Paragraph shall require the 8 City to perform any work not otherwise required in Section VII (Compliance Actions). 9 3. MODIFICATION OF COMPLIANCE OBLIGATIONS 10 Starting three (3) years after entry of this Final Consent Decree, the 11 a. 12 annual report may include a request for EPA to modify the requirements specified in Paragraphs 13 C 1b., C 2a., C 2b., C 2c., C 3a., C 3b., C 6a., C 8a., C 9b., or D 2 of this Section. 14 The annual report submitted in 2007 and any annual report b. 15 thereafter may include a request for EPA to modify any requirement specified in Section VII 16 17 (Compliance Actions), Paragraphs B - C and D 2. However, except as provided in Section IX 18 (Dispute Resolution) Paragraph E 1, EPA's decision to approve or disapprove a modification 19 request under this Subparagraph shall not be subject to dispute resolution under Section IX 20 (Dispute Resolution) of this Final Consent Decree. 21 All requests for modification of the Final Consent Decree c. 22 23 requirements under Subparagraphs a. and b. above shall: 24 Include a specific justification for the request; (I) 25 (ii) Include proposed language modifying the existing Final 26 Consent Decree requirement; and 27 28 -35(iii) Be aggregated in one (1) section of the annual report. However, subject to the limitations in Paragraphs a. and b. above, the City may make requests for modification of the Final Consent Decree outside the annual report cycle in exigent circumstances.

d. The City may request the Citizen Plaintiffs to modify the requirements specified in Paragraph D 1 of this Section. In the event the Citizen Plaintiffs deny such request, the City shall not have the right to contest that decision. EPA approval is not necessary to modify the requirements specified in Paragraph D 1; provided, however, EPA shall be provided copies of all documents as if EPA is a party.

e. Starting three (3) years after entry of this Final Consent Decree, the City may request the Citizen Plaintiffs to modify the requirements specified in Paragraph D 1 of this Section. In the event the Citizen Plaintiffs deny such request, the City shall have the right to seek direct review in the United States District Court, and Section IX (Dispute Resolution) of this Final Consent Decree shall not apply. EPA approval is not necessary to modify the requirements specified in Paragraph D 1; provided, however, EPA shall be provided copies of all documents and/or pleadings as if EPA is a party.

H.

### QUARTERLY SSO REPORTS

On the first day of February, May, August, and November in each calendar year in which activities are conducted pursuant to this Final Consent Decree, the City shall submit a summary of all SSOs occurring during the previous calendar quarter to EPA, with copies to Baykeeper and Surfrider, along with the primary factors contributing to the SSOs if known. The reports shall:

1	1. Indicate which SSOs occurred in canyons;	
2	2. Indicate whether SSOs entered waters of the United States and, if so,	
3	whether they entered via storm drains or other man-made conveyances; and	
4	3. Differentiate between SSBs and all other SSOs.	
5	I. <u>OTHER REPORTS</u>	
6 7	Upon the request of a Plaintiff, the City shall provide any information required by	
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° 9	this Final Consent Decree or relevant to implementation or compliance with any provision of this	
10	Final Consent Decree.	
11	J. <u>PACIFIC BEACH POINT STUDY</u>	
12	By June 30, 2006, the City will complete a study of Pacific Beach Point to:	
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14	1 Seek to identify the sources, if any, of bacteriological contamination; and	
15	2. Develop recommendations to remedy the sources identified, if any. This	
16	study shall not exceed a cost of \$250,000, and the final report shall be furnished to Baykeeper,	
17		
18	Surfrider, and EPA. Nothing contained in this section shall require the City to perform any work	
19	or remediation recommended in said study.	
20	VIII. <u>PLAN AND REPORT REVIEW AND APPROVAL</u>	
21	VIII. <u>FLAN AND KEFORT KEVIEW AND ATTROVAL</u>	
22	A. The submittal of any plan or report required by this Final Consent Decree shall be	
23	subject to EPA's review and/or approval as specified in Section VII (Compliance Actions) and	
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25 26	Paragraphs B - D below. Copies of all such plans and reports and follow-up correspondence	
26 27	shall be provided simultaneously to Citizen Plaintiffs. The City shall respond to reasonable	
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requests for additional documentation by Citizen Plaintiffs.

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2 B. For new or modified plans submitted under Section VII (Compliance Actions) 3 Paragraph G 2f. or for requests by the City under Section VII (Compliance Actions) Paragraph G 4 3a. - c. to modify a requirement in Section VII (Compliance Actions) Paragraphs C 1b., C 2a., C 5 2b., C 2c., C 3a., C 3b., C 6a., C 8a., C 9b., or D 2: 6 7 EPA shall: 1. 8 Approve the submission or request in whole or in part; a. 9 Approve the submission or request with specified conditions; b. 10 Modify the submission or request to cure any deficiency; c. 11 Disapprove the submission or request in whole or in part, directing 12 d. 13 the City to correct any deficiency; or 14 Any combination of the above. e. 15 2. Citizen Plaintiffs shall submit any written comments to EPA and the City 16 within thirty (30) days of the City's submission. 17 18 EPA shall use its best efforts to take the actions in Paragraph 1 above 3. 19 within ninety (90) days of receipt of the City's submission. If EPA does not take action by the 20 end of the ninety (90) days, the City's submission shall be deemed disapproved, but the City need 21 not take corrective action until EPA specifies the required corrections. If EPA takes no action by 22 the time of receipt of the subsequent annual report (or termination of this Final Consent Decree), 23 24 the prior annual report(s) shall be deemed approved. 25 The City shall revise the plan or report to correct any deficiency identified 4. 26 by EPA within sixty (60) days of receipt of EPA's action, unless the time is extended by mutual 27 28 -38-

agreement of EPA and the City.

5. In the event that a revised submission is disapproved in whole or in part, EPA may again require the City to correct the deficiencies. The City shall take the action specified by EPA within sixty (60) days, subject only to its right to invoke dispute resolution under Section IX (Dispute Resolution) of this Final Consent Decree. The sixty (60) days may be extended by mutual agreement of the EPA and the City up to an additional sixty (60) days. Nothing in this Paragraph shall require the City to perform any work not otherwise required by Section VII (Compliance Actions).

6. Within thirty (30) days, Citizen Plaintiffs may challenge an EPA action
approving a major modification of the activities required in Section VII (Compliance Actions) by
invoking Dispute Resolution under Section IX (Dispute Resolution) of this Final Consent
Decree. The thirty (30) days may be extended by mutual agreement of the Parties.

C. For reports requiring EPA review but not approval, EPA shall use its best efforts to complete its review within one hundred twenty (120) days of receipt of the City's submission. If, upon review, EPA determines that the City is failing to comply with Section VII (Compliance Actions) Paragraphs B - D of this Final Consent Decree, EPA shall notify the City to submit a plan to address the deficiencies, following the process described in Paragraph B above. Nothing in this Paragraph shall require the City to perform any work not otherwise required in Section VII (Compliance Actions).

D. For requests by the City under Section VII (Compliance Actions) Paragraph G
3(b) to modify a requirement in Section VII (Compliance Actions), EPA shall use its best efforts
to make a decision within ninety (90) days of receipt of the City's submission. If EPA does not

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1	take action by the end of the ninety (90) days, the City's submission shall be deemed pending,
2	and the City shall not modify the requirements requested until approved by EPA.
3	E. Upon EPA's approval of the submissions, any changes that supercede existing
4	requirements in Section VII (Compliance Actions) Paragraphs B - D of this Final Consent Decree
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6 7	shall be incorporated by reference as enforceable parts of this Final Consent Decree.
8	IX. DISPUTE RESOLUTION
9	A. Unless otherwise expressly provided for in this Final Consent Decree, the dispute
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11	resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising
12	under or with respect to this Final Consent Decree. However, the procedures set forth in this
13	Section shall not apply to:
14	Section shan not apply to.
15	1. Actions by the United States to enforce obligations of the City that have
16	not been disputed in accordance with this Section; or
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18	2. Any disputes concerning the issuance, modification, revocation, or
19	reissuance of NPDES permits; or
20	
21	3. Any requests made pursuant to Section VII (Compliance Actions)
22	Paragraph G 3b., d., and e.
23	
24	B. A dispute shall be considered to have arisen when one (1) party sends the other
25	party a written Notice of Dispute. As used in this Paragraph, parties shall refer to the Chief,
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27	CWA Compliance Office, Water Division, EPA Region 9, for the United States, the Director of
28	-40-

the Metropolitan Wastewater Department for the City, and the attorneys for Citizen Plaintiffs. 1 2 Any dispute that arises under or with respect to this Final Consent Decree shall in the first 3 instance be the subject of informal negotiations between the parties to the dispute. During the 4 5 informal negotiations the EPA shall identify the reasons for the non-approval. The period for 6 informal negotiations shall not exceed thirty (30) days from the time the dispute arises, unless it 7 8 is modified by written agreement of the parties. 9 In the event that the Parties cannot resolve a dispute by informal С. 1. 10 11 negotiations under the preceding Paragraph B, the City or Citizen Plaintiffs may invoke formal 12 dispute resolution procedures by providing the Director with a written statement of position on 13 14 the matter in dispute, including, but not limited to, any factual data, analysis or opinion 15 supporting that position and any supporting documentation relied upon by the City or Citizen 16 Plaintiffs. Such statement of position shall be provided within thirty (30) days of the end of 17 18 informal negotiations. If the City or Citizen Plaintiffs do not invoke formal dispute resolution 19 within thirty (30) days, EPA's position shall be binding on the City and Citizen Plaintiffs. 20 21 Within thirty (30) days after receipt of a City's or Citizen Plaintiffs' 2. 22 statement of position, the Director shall provide a written Response to the City's or Citizen 23 24 Plaintiffs' statement of position, including, but not limited to, any factual data, analysis, or 25 opinion supporting that position and all supporting documentation relied upon by EPA. That 26 27 28 -41-

position shall be considered binding and the City and Citizen Plaintiffs shall waive any right to 1 2 challenge that position unless, within thirty (30) days after receipt of the Director's decision, the 3 City or Citizen Plaintiffs file and serve upon the United States a motion for judicial review of the 4 5 decision. The motion shall include a description of the matter in dispute, the efforts made by the 6 Parties to resolve it, the relief requested, and the schedule, if any, within which the dispute must 7 8 be resolved to ensure orderly implementation of this Final Consent Decree. The schedules 9 contained in the local rules for the United States District Court shall apply to the dispute; 10 11 provided, however, the United States shall have at least thirty (30) days to file a response with an 12 alternative proposal for resolution. 13 14 In proceedings on any dispute governed by this Section, the moving party 3. 15 shall have the burden by a preponderance of the evidence to prevail in the dispute regarding 16 17 EPA's decision; provided, however, the City shall be considered the moving party with respect to 18 Section VII (Compliance Actions); Section VIII (Plan and Report Review and Approval); 19 Section XI (Stipulated Penalties); and Section XXIV (Termination). 20 21 D. The invocation of formal dispute resolution procedures under this Section shall 22 not extend, postpone, or affect in any way any obligation of the City under this Final Consent 23 24 Decree, not directly in dispute unless and until final resolution of the dispute so provides. 25 Stipulated penalties with respect to the disputed matter shall continue to accrue; provided, 26 27 28 -42-

however, that the City may argue to the Court that stipulated penalties should not run after the 1 2 matter has been fully briefed and submitted to the Court and provided that Plaintiffs may argue 3 the contrary. Payment shall be stayed pending resolution of the dispute. Except as provided 4 5 above, stipulated penalties shall accrue from the first day of non-compliance with any applicable 6 provision of this Final Consent Decree. In the event that the City does not prevail on the 7 8 disputed issue, stipulated penalties may be assessed as provided in Section XI (Stipulated 9 Penalties) of this Final Consent Decree. 10 11 E. Citizen Plaintiffs have the right to invoke Dispute Resolution pursuant to this 12 Section IX (Dispute Resolution) in the following circumstances: 13 14 Citizen Plaintiffs may challenge an EPA action approving a major 1. 15 modification of the activities required in Section VII (Compliance Actions). The Citizen 16 Plaintiffs retain the right to dispute what constitutes a major modification. For purposes of 17 18 establishing what constitutes a major modification under this Subparagraph, Citizen Plaintiffs 19 shall have the burden of establishing the same based upon the arbitrary and capricious standard 20 21 of proof. 22 2. Citizen Plaintiffs may challenge an EPA action terminating the Final 23 24 Consent Decree pursuant to Section XXIV (Termination). 25 3. With respect to any motion under this Section, the Citizen Plaintiffs shall 26 27 28 -43be considered the moving party.

#### X. FORCE MAJEURE

A. "Force majeure," for purposes of this Final Consent Decree, is defined as any event arising from causes beyond the control of the City, of any entity controlled by the City, or of the Contractors, that delays or prevents the performance of any obligation under this Final Consent Decree, despite the City's best efforts to fulfill the obligation. The requirement that the City exercise "best efforts to fulfill the obligation" includes using reasonable efforts to anticipate any potential force majeure event and best efforts to address the effects of any potential force majeure event as it is occurring and following the potential force majeure event, such that the delay is minimized to the greatest extent possible. "Force Majeure" shall not, in any event, include unanticipated or increased costs associated with implementation of this Final Consent Decree, changed financial circumstances, or other financial or budgetary issues.

B. If any event occurs or has occurred that may delay the completion of any requirement of this Final Consent Decree, whether or not caused by a force majeure event, the City shall notify EPA in writing, with copies to Baykeeper and Surfrider, within thirty (30) days of when the City first knew, or in the exercise of reasonable diligence under the circumstances, should have known of such event. The notice shall indicate whether the City claims that the delay should be excused as a force majeure event. The notice shall describe in detail the basis for the City's contention that it experienced a force majeure delay; the anticipated duration of the delay; the precise cause or causes of the delay; all actions taken or to be taken to prevent or minimize the delay; and a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay. The City shall adopt all reasonable measures to

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avoid and minimize such delays. Failure to comply with the above requirements shall preclude the City from asserting any claim of force majeure. The City shall be deemed to know of any circumstance of which the City, any entity controlled by the City, or the Contractors knew or should have known.

C. If EPA agrees that the delay or anticipated delay is attributable to a force majeure event, the time for performance of the obligations under this Final Consent Decree that are affected by the force majeure event will be extended by EPA in writing for such time as is necessary to complete those obligations and stipulated penalties shall not be due for such period. If EPA does not agree that the delay or anticipated delay has been or will be caused by a force majeure event, EPA will notify the City in writing of its decision. If the City elects to invoke the Dispute Resolution procedures set forth in Section IX (Dispute Resolution) of this Final Consent Decree, it shall do so no later than thirty (30) days after receipt of EPA's notice. In any such proceeding, the City shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a force majeure event, and that the duration of the delay or the extension sought was or will be warranted under the circumstances. Copies of all documents under this Subparagraph shall be provided to Baykeeper and Surfrider.

D. An extension of the time for performance of the obligations the City contends are affected by the force majeure event shall not, of itself, extend the time for performance of any other obligation. The City must make an individual showing of proof regarding each delayed incremental step or other requirement for which an extension is sought.

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#### XI. STIPULATED PENALTIES 1 2 The City shall pay the stipulated penalties listed below upon written demand by A. 3 the United States. Pursuant to its non-reviewable enforcement discretion, the United States may 4 waive or reduce stipulated penalties. EPA need not provide a Notice of Violation prior to 5 assessing stipulated penalties. A copy of the demand shall be provided to Baykeeper and 6 Surfrider. 7 8 B. COMPLIANCE MILESTONES 9 The City shall pay stipulated penalties for each failure to implement, achieve, or 10 complete a requirement identified in Section VII (Compliance Actions) Paragraphs B - D of this 11 Final Consent Decree as follows: 12 Period of Noncompliance Penalty per Milestone Date per Day of Violation 13 14 Days 1 - 14 \$ 750 15 Days 15 - 28 \$1,500 16 Days over 28 \$3,000 17 C. **REPORTING AND PLAN SUBMISSION** 18 The City shall pay the stipulated penalties below for each day it fails to submit or revise a 19 20 report or plan required by this Final Consent Decree. 21 Penalty per Report/Plan per Day of Violation Period of Noncompliance 22 Days 1 - 14 \$ 375 23 Days 15 - 28 \$ 750 24 \$1,500 Days over 28 25 26 27 28 -46-

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D.

# SANITARY SEWER OVERFLOWS

2	1. Except	as provided in Paragraph E below,	the stipulated penalties set forth	
3	in this Paragraph apply to any SSO over one thousand (1,000) gallons if any portion of that spill			
4	reaches navigable waters. Th	e stipulated penalties set forth in thi	s Paragraph apply to those	
5	-			
6		y of the Final Consent Decree. Gall		
7	overflow, spill, or release. Successive SSOs refer to the same part or reach of sewer line (from			
8	manhole to manhole or from manhole to pump station), the same manhole, or the same pump			
9	station under similar circumst	tances. The City shall provide notic	e of the SSO to EPA:	
10	a.	When required by law to be reported	d to the Board and/or EPA; and	
11	b.	When required by the reports under	Section VII (Compliance	
12				
13	Actions) of this Final Consen			
14	2. EPA m	hay assess penalties as provided belo	w:	
15	a.	Over one thousand (1,000) and up a	to ten thousand (10,000) gallons	
16 17		(i) First successive SSO	\$ 2,000	
17 18		(ii) Second successive SSO	\$ 5,000	
19		(iii) Third successive SSO	\$ 7,500	
20		(iv) Fourth and subsequent		
21			¢10.000	
22		successive SSOs	\$10,000	
23	b.	More than 10,000 gallons		
24		(i) First successive SSO	\$ 4,000	
25		(ii) Second successive SSO	\$10,000	
26		(iii) Third successive SSO	\$15,000	
27				
28		-47-		
	H			

Fourth and subsequent

### successive SSOs

\$20,000

(iv) 1 2 3 If the City does not reasonably estimate the size of a SSO, the SSO will be presumed to 4 be more than ten thousand (10,000) gallons for the purpose of determining stipulated penalties. 5 E. **OTHER PROVISIONS:** 6 1. The City shall not be liable for stipulated penalties under Paragraph D 7 8 above if the City demonstrates that it is in compliance with both the response and reporting 9 requirements in Section VII (Compliance Actions) Paragraphs B 1 - 4, and Paragraphs C 1b.; C 10 2a.; C 3a.-b.; C 4a.-d., C 5a.-b.; C 6b. (i-v); C 7a.; C 7c.(i-iv); C 8a.; C 9b.; and D 2. 11 2. The City shall not be liable for stipulated penalties under Paragraph D 12 13 above if the City demonstrates that the SSO was caused by an Act of God, vandalism, a non-City 14 Contractor, or any act of a third party not working directly or indirectly on behalf of the City. 15 3. The City shall not be liable for stipulated penalties under Paragraph D 16 above for any SSO downstream of the Marine Corps Air Station Miramar that was caused by the 17 Marine Corps Air Station Miramar; provided however, this exception applies only if the City 18 utilizes best efforts to reach an agreement with Marine Corps Air Station Miramar to address the 19 20 potential for SSOs. 21 4. Payment of stipulated penalties as provided in this Section shall be in 22 addition to any other rights or remedies, including statutory penalties, which may be available to 23 24 the United States by reason of the City's failure to comply with this Final Consent Decree and all 25 applicable federal, state, or local laws, regulations, wastewater discharge permits, and all other 26 27 28

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applicable permits.

2 5. The United States will credit the City for any stipulated penalty paid with 3 respect to any SSO pursuant to this Final Consent Decree in any future enforcement action in 4 which EPA seeks penalties for that SSO. The United States will credit the City against any 5 stipulated penalty assessed pursuant to this Final Consent Decree with respect to any EPA 6 7 enforcement action in which penalties were paid for that SSO. 8 In exercising its discretion of whether to assess a stipulated penalty for an 6. 9 SSO, the United States will consider the amount of sewage recovered. 10 7. In exercising its discretion of whether to assess a stipulated penalty for an 11 12 SSO, the United States will consider the length of time after which a disputed issue has been 13 fully briefed and is under the consideration of the United States District Court pursuant to 14 Section IX (Dispute Resolution) of this Final Consent Decree. 15 8. SSBs shall not be subject to stipulated penalties under this Final Consent 16 Decree. 17 18 XII. PAYMENTS 19 The City shall pay stipulated penalties owing to the United States by certified or cashier's 20 check in the amount payable to the "United States Department of Justice" referencing "DOJ No. 21 90-5-1-1-4364/1" and United States Attorney's file number (to be provided), and delivered to the 22 office of the United States Attorney, Southern District of California, 880 Front Street, Room 23 24 6293, San Diego, California, 92101. In the event that any payments are not received when due, 25 interest shall continue to accrue on the unpaid balance through the date of payment at the rate 26 established by the Secretary of the Treasury, pursuant to 28 U.S.C. § 1961. 27

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## XIII. <u>RIGHT OF ENTRY</u>

A. EPA, their employees, and authorized agents (including contractors and subcontractors) upon presentation of valid credentials or other official authorization, shall have access to enter the City's publicly-owned treatment works for the purposes of monitoring, investigating, and/or verifying the City's compliance with all terms of this Final Consent Decree. Where appropriate, EPA shall provide reasonable notice to the City.

B. Nothing in this Section shall be construed to limit the right of the United States to enter the City's property, to require monitoring, or to obtain information pursuant to federal or state law or regulation.

### XIV. NOT A PERMIT

This Final Consent Decree is neither a permit nor a modification of existing permits under any federal, state, or local law and in no way relieves the City of its responsibilities to comply with all applicable federal, state, and local laws, and regulations.

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### XV. ONGOING COMPLIANCE RESPONSIBILITIES

A. This Final Consent Decree does not relieve the City of any obligation to apply for, obtain and comply with the requirements of any new or existing NPDES permit or its duty to comply with the CWA and any other applicable federal and state laws, regulations, and permits.

B. The United States, by its consent to the entry of this Final Consent Decree, does not warrant or aver in any manner that the City's compliance with this Final Consent Decree will result in compliance with the provisions of the CWA or with any NPDES permit.

C. Notwithstanding review or approval by the United States of any plans, reports, policies, or procedures formulated pursuant to this Final Consent Decree, the City shall remain

solely responsible for any non-compliance with the terms of this Final Consent Decree, all applicable permits, the CWA, and regulations promulgated thereunder.

### XVI. <u>EFFECT OF SETTLEMENT</u>

A. This Final Consent Decree resolves all civil claims and claims for relief related thereto against the City by EPA, Baykeeper, and Surfrider for the violations alleged in the Complaints up to December 31, 2005.

B. This Final Consent Decree does not limit or affect the rights of Defendant or of the United States against any third parties not party to this Final Consent Decree, nor does it limit the rights of third parties not parties to this Final Consent Decree, against the City, except as otherwise provided by law. This Final Consent Decree shall not be construed to create rights in, or grant any cause of action to any third parties not parties to this Final Consent Decree.

C. The United States reserves all legal and equitable remedies available to enforce the provisions of this Final Consent Decree, except as expressly stated herein. This Final Consent Decree shall not be construed to limit the rights of the United States to obtain penalties or injunctive relief under the Act or the implementing regulations, or under other federal laws, regulations or permit conditions, except as expressly specified in this Section XVI (Effect of Settlement). The United States further reserves all legal and equitable remedies, including but not limited to injunctive relief, to address any imminent and substantial endangerment to the public health or welfare or the environment.

D. This Final Consent Decree shall be considered "diligent prosecution" for purposes of Section 1319(G)(6) of the CWA.

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#### **XVII. RESERVATION BY BAYKEEPER AND SURFRIDER**

Baykeeper and Surfrider may submit comments to EPA regarding the City's annual report or the City's request for a major modification to this Final Consent Decree. Comments must be submitted within thirty (30) days of EPA's receipt of the City's annual report or the City's request for a major modification of the Final Consent Decree.

#### XVIII. <u>NO ADMISSION OF LIABILITY</u>

Neither the execution of this Final Consent Decree nor any action taken hereunder is an admission of any fact, liability, or wrongdoing of any kind regarding any of the matters addressed in the Final Consent Decree.

#### XIX. CERTIFICATION OF SUBMISSIONS/RECORD RETENTION

A. Any notice, report, certification, data presentation, or other document submitted by the City pursuant to this Final Consent Decree, which discusses, describes, demonstrates, or supports any finding or makes any representation concerning the City's compliance or non-compliance with any requirement(s) of this Final Consent Decree, shall contain the following certification by the City, signed by a responsible City official:

"I certify under penalty of law 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, based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

> Signature Title

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1	B. The notice and reporting requirements contained in this Final Consent Decree do
2	not relieve the City of its obligations to submit any other reports or information required by
3	applicable law. Notice of a violation does not excuse the violation. Any information provided
4	under the reporting requirements of this Final Consent Decree may be admissible evidence in any
5	proceeding to enforce the provisions of this Final Consent Decree or the applicable law.
6 7	XX. FORM OF NOTICE
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° 9	A. Unless otherwise specified, or as may be changed from time to time, all reports,
9 10	notices, or any other written communications required to be submitted under this Final Consent
11	Decree shall be sent to the respective Parties at the following addresses:
12	As to the City:
13	City Attorney City of San Diego
	1200 Third Avenue, Suite 1100
14	San Diego, California 92101
15	As to Surfrider and Baykeeper:
16	Executive Director Surfrider Foundation
17	P.O. Box 6010
18	San Clemente, California 92674-6010
19	Surfrider Foundation
20	San Diego County Chapter P.O. Box 1511
21	Solana Beach, California 92075
22	San Diego Coastkeeper
23	2825 Dewey Road, Suite 200 San Diego, California 92106
24	Rory Wicks
25	Marco A. Gonzalez
26	Coast Law Group LLP 169 Saxony Road, Suite 204
27	Encinitas, California 92024
28	-53-

1	As to the United States Section Chief
2	Environmental Enforcement Section
3	Environment & Natural Resources Division United States Department of Justice
4	P.O. Box 7611
. 5	Washington, D.C. 20044-7611
6	Gary Hess, ORC-2 Attorney
7	Air, Toxics, Water, and General Law Group
8	Office of Regional Counsel U.S. Environmental Protection Agency
9	75 Hawthorne Street
10	San Francisco, California 94105
11	Jo Ann Cola, WTR-7 Water Management Division
12	Water Management Division U.S. Environmental Protection Agency
	75 Hawthorne Street
13	San Francisco, California 94105
14	B. Notifications of communications shall be deemed submitted on the date they are
15	postmarked and sent by certified mail, return receipt requested, or deposited with an overnight
16 17	mail/delivery service.
18	XXI. COSTS OF SUIT/COMPLIANCE MONITORING
19	A. Citizen Plaintiffs' reasonable attorneys' fees and costs incurred through March,
20	2006, were paid by the City following entry of the Partial Consent Decree and the Second Partial
. 21	Consent Decree. The Parties agree that Citizen Plaintiffs are entitled to, and the City will pay, the
22	outstanding reasonable attorneys' fees and cost through the date of entry of this Final Consent
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24	Decree. The Parties will attempt to reach agreement as to the appropriate amount to be paid. If
25	they are unable to do so, Citizen Plaintiffs may file an application with this Court for the
26	recovery of reasonable fees and costs within ninety days after entry of this Final Consent Decree,
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or by such later date as set by the Court upon motion or otherwise. The City shall have not less than 30 days to respond to Citizen Plaintiffs' fee application.

B. Nothing in this Final Consent Decree restricts or otherwise compromises Citizen Plaintiffs' right to request reimbursement for attorney fees and costs incurred to monitor and to enforce City's compliance with this Final Consent Decree. The City reserves any and all defenses to such claims.

### XXII. MODIFICATION

This Final Consent Decree contains the entire agreement of the Parties.

A. Any material modification to this Final Consent Decree must be with the written agreement of the Parties and approval by the Court, except as provided herein.

B. Notwithstanding Paragraph A above, EPA and the City can agree in writing and without Court approval to make non-material modifications to the requirements of this Final Consent Decree. Baykeeper and Surfrider shall receive copies of any such modifications.

C. Notwithstanding any provision of this Final Consent Decree, the City may seek modification of this Final Consent Decree pursuant to Rule 60(b) of the Federal Rules of Civil Procedure.

## XXIII. CONTINUING JURISDICTION OF THE COURT

The Court shall retain jurisdiction to enforce the terms and conditions of this Final Consent Decree and to resolve disputes that may arise under this Final Consent Decree to the extent that this Final Consent Decree provides for resolution of disputes by the Court.

## XXIV. TERMINATION

A. Except as provided in Paragraph D below, this Final Consent Decree shall

1	terminate on July 1, 2013, or three (3) months after the City has complied with Paragraph C		
2	below, whichever is later, provided that the City has complied with all of its obligations under		
3	this Final Consent Decree as provided in Paragraphs B and C below.		
4	B. By no earlier than October 1, 2012, the City shall certify to EPA with appropriate		
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6	documentation and copies to Baykeeper and Surfrider, that the City has:		
7	1. Paid any penalties, fees, and interest due under Section XI (Stipulated		
8	Penalties);		
9	2. Completed two (2) cleanings of its two thousand five hundred thirty eight		
10	(2,538) mile small diameter gravity collection system by April 1, 2009; cleaned an additional two		
11	thousand three hundred twenty three (2,323) miles of its small diameter gravity collection system		
12			
13			
14	large diameter gravity collection system after April 1, 2004, as required by Section VII		
15	(Compliance Actions) Paragraph C 1b.;		
16 17	3. Inspected all manholes in its Collection System at least every five (5)		
18	years as required by Section VII (Compliance Actions) Paragraph C 4c;		
19	4. Completed all capital projects as required by Section VII (Compliance		
20	Actions) Paragraphs C 8a. and D 2;		
21			
22			
23	pipeline since January 1, 2002, as required by Section VII (Compliance Actions) Paragraph C		
24	5b.;		
25	6. Completed all canyon economic and environmental analyses as required		
26	by Section VII (Compliance Actions) Paragraph C 7a.;		
27			
28	-56-		

7. Secured all approximately five thousand eight hundred (5,800) +/manhole covers in remote areas as required by Section VII (Compliance Actions) Paragraph C 3 9b.; and

8. Completed CCTV inspection of one thousand five hundred twenty 5 (1,520) miles of pipelines as required by Section VII (Compliance Actions) Paragraph C 4b. 6 C. By no earlier than April 1, 2013, the City shall certify to EPA, with appropriate 7 8 documentation and copies to Baykeeper and Surfrider, that the City has achieved compliance 9 with all other obligations in Section VII (Compliance Actions) Paragraphs B - D. Specifically, 10 the City is required to show that it is in compliance with all other obligations in Section VII 11 (Compliance Actions) Paragraphs B - D, during either the time period from October 1, 2012 thru 12 April 1, 2013, or the six (6) month time period following the City's completion of work items in 13 14 Paragraph B 1 - 8 contained in the above Paragraph, whichever is later. The City is also required 15 to show that it has paid any penalties, fees, and interest due under Section XI (Stipulated 16 Penalties) during the six (6) month period described in this Paragraph. Once the certification has 17 been submitted, pursuant to Paragraph B above, the City shall have no obligation to continue to 18 perform the requirements under Section VII (Compliance Actions) Paragraphs C 1, C 4b., C 4c., 19 20 C 5b., C 7a., C 8a., C 9b., and D 2.

21 D. The Final Consent Decree shall not terminate: 1) if the City has not filed the 22 certification requests described in Paragraphs B and C above, or 2) if EPA, Baykeeper or 23 Surfrider object in writing to the City's certification by July 1, 2013, or three (3) months after the 24 City has complied with Paragraph C, whichever is later. Such objections shall set forth the 25 26 specific components of the certification alleged not to be complete. If any party objects in 27

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writing to the City 's certification, such dispute shall be resolved pursuant to Section IX (Dispute Resolution). This Final Consent Decree shall remain in effect pending resolution of the dispute, provided however, the City shall not be obligated to perform any obligation not expressly contested pursuant to this Paragraph.

#### XXV. <u>SIGNATORIES</u>

A. The signatories for the Parties certify that they are fully authorized to enter into the terms and conditions of this Final Consent Decree and to execute and legally bind such Parties to this document.

B. The Parties shall identify on the attached signature pages the name, address,
telephone number, and fax number of one (1) agent who is authorized to accept service by mail
on the Party 's behalf with respect to all matters arising under or related to this Final Consent
Decree.

#### XXVI. COUNTERPARTS

This Final Consent Decree may be executed in any number of counterpart originals, each of which shall be deemed to constitute an original agreement, and all of which shall constitute one (1) agreement. The execution of one counterpart by any party shall have the same force and effect as if that party had signed all other counterparts.

### XXVII. PUBLIC COMMENT

The United States consents to the entry of this Final Consent Decree subject to the publication of notice of this Final Consent Decree pursuant to 28 C.F.R. 50.7. The United States reserve its rights to withdraw or withhold consent to this Final Consent Decree if public comments disclose facts or considerations indicating this Final Consent Decree is inappropriate,

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1	improper, or inadequate. The City agrees to entry of this Final Consent Decree without further
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2	notice.
4	
5	IT IS SO ORDERED this day of, 2007.
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9	HON. RUDI M. BREWSTER
10	UNITED STATES DISTRICT COURT JUDGE SOUTHERN DISTRICT OF CALIFORNIA
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THE UNDERSIGNED PARTY enters into this Final Consent Decree in the matter of <u>United</u> <u>States, et al. v. City of San Diego</u>.

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FOR THE UNITED STATES OF AMERICA:

RONALD J. TENPAS

Acting Assistant Attorney General Environment and Natural Resources Division United States Department of Justice Washington, DC 20530

BRADLEY R. O'BRIEN Environmental Enforcement Section Environment and Natural Resources Division United States Department of Justice 301 Howard Street, Suite 1050

San Francisco, California 94105

່ງນາ Dated

<u>)ul 28,200</u>7 Dated

THE UNDERSIGNED PARTY enters into this Final Consent Decree in the matter of <u>United</u> <u>States, et al. v. City of San Diego</u>.

2		
3	FOR THE ENVIRONMENTAL PROTECTION AGENCY:	
4		
5		
6		
7	WAYNE NASTRI Dated Regional Administrator	
8	U.S. Environmental Protection Agency	
9	Region IX 75 Hawthorne Street	
10	San Francisco, California 94105	
11		
12		
13	GRANTA Y. NAKAYAMA Dated	
14	Assistant Administrator Office of Enforcement & Compliance Assurance	
15	U.S. Environmental Protection Agency	
16	1200 Pennsylvania Avenue, NW Washington, DC 20460-0001	
17		
18 19		
20		
20	GARY HESS Dated Office of Regional Counsel	
22	U.S. Environmental Protection Agency Region IX	
23	75 Hawthorne Street	
24	San Francisco, California 94105	
25		
26		
27		
28	-61-	

THE UNDERSIGNED PARTY enters into this Final Consent Decree in the matter of <u>United</u>
 <u>States, et al. v. City of San Diego</u>.

FOR SAN DIEGO BAYKEEPER: BRUCE REZNIK Dated **Executive Director** San Diego Baykeeper 10/07 MARCO A. GONZ ΈZ Date Coast Law Group LEP 169 Saxony Road, Suite 201 Encinitas, CA 92024 -62-

THE UNDERSIGNED PARTY enters into this Final Consent Decree in the matter of <u>United</u>
 <u>States, et al. v. City of San Diego</u>.

JIM MORIARTY Executive Director Surfrider Foundation 

FOR SURFRIDER FOUNDATION:

Win

RORY (k) WICKS Coast Law Group LLP 169 Saxony Road, Suite 201 Encinitas, CA 92024

Dated

July 10, 2007 Dated

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1 THE UNDERSIGNED PARTY enters into this Final Consent Decree in the matter of United States, et al. v. City of San Diego. 2 3 FOR THE CITY OF SAN DIEGO: 4 5 6 JULY 2007 7 TIMOTHY C. BERTCH. Ph.D. Dated Director 8 Metropolitan Wastewater Department 9192 Topaz Way 9 San Diego, California 92123 10 11 12 200 THOMAS C. ZELENY 13 Dated Deputy City Attorney 14 Office of the San Diego City Attorney 1200 3rd Avenue, Suite 1100 15 San Diego, California 92101 16 17 18 . 07 19 JERRY SANDERS Dated Mayor 20 City of San Diego 202 "C" Street, 11th floor 21 San Diego, California 92101 22 23 24 25 26 27 28 -64-