

ORDINANCE NUMBER O- 21714 (NEW SERIES)

DATE OF FINAL PASSAGE SEP 18 2023

AN ORDINANCE OF THE COUNCIL OF THE CITY OF  
SAN DIEGO AUTHORIZING THE FIRST AMENDMENT TO  
THE CONSENT DECREE FOR THE SETTLEMENT  
BETWEEN SAN DIEGO COASTKEEPER, THE COASTAL  
ENVIRONMENTAL RIGHTS FOUNDATION, AND THE CITY  
OF SAN DIEGO REGARDING STATEWIDE INDUSTRIAL  
STORM WATER PERMIT, ORDER NO. 2014-0057-DWQ.

WHEREAS, San Diego Coastkeeper and the Coastal Environmental Rights Foundation  
(Plaintiffs) alleged that the City of San Diego (City) failed to comply with the requirements of  
the Statewide Industrial Storm Water Permit, Order No. 2014-0057-DWQ, at the Miramar  
Landfill, the Metro Biosolids Center, the Point Loma Wastewater Facility, the North City Water  
Reclamation Plant, and the South Bay Water Reclamation Plant; and

WHEREAS, the City Council in Closed Session on May 22, 2018, authorized a  
settlement agreement to satisfy all of Plaintiffs' claimed violations relating to Order No. 2014-  
0057-DWQ by the following votes: Yeas, Districts 1, 2, 3, 4, 5, 6, 7, 8 and 9; Nays, None; and  
Absent, None, pursuant to the terms set forth in the settlement agreement; and

WHEREAS, the Federal District Court of Southern California issued a Consent Decree  
on November 20, 2018, approving the settlement agreement with an established termination date  
five years from the effective date (November 20, 2023); and

WHEREAS, to continue to meet compliance obligations, the City and the Plaintiffs have  
negotiated amendments to the Consent Decree to modify the timeframe by which the City's  
compliance obligations will be accomplished later than the November 20, 2023, termination  
date; and

WHEREAS, to reflect those amendments, the City and the Plaintiffs have negotiated new termination dates based on individual facilities that are proposed in the First Amendment to the Consent Decree, copies of which are included in the backup materials accompanying this Ordinance; and

WHEREAS, the new termination dates may be adjusted prior to the District Court's approval of the First Amendment, if new information becomes available related to the completion dates for the individual facilities; and

WHEREAS, in order to more efficiently address any future needed adjustments to the completion dates, City staff recommends authorizing the Mayor to approve any additional amendments to the Consent Decree, provided that the amendments are under the same terms and conditions of the Consent Decree and only extend the dates by which a specific facility must meet its compliance obligations; and

WHEREAS, the City Council in Closed Session on June 12, 2023, authorized the First Amendment relating to Order No. 2014-0057-DWQ by the following votes: Yeas, Districts 1, 2, 3, 4, 5, 6, 7, 8 and 9; Nays, None; and Absent, None, pursuant to the terms set forth in the amendments; and

WHEREAS, San Diego Charger section 99 (Section 99) generally provides that no contract, agreement, or obligation creating City indebtedness and extending for a period of more than five years may be authorized except by an ordinance adopted by a two-thirds majority of the City Council; and

WHEREAS, this Ordinance authorizes amendments that will extend the term of the Consent Decree beyond five years, which is a contractual obligation that may extend for a period of more than five years and, therefore, is subject to the ordinance requirement in Section 99; and

WHEREAS, the Office of the City Attorney has drafted this Ordinance based on the information provided by City staff, with the understanding that the information is complete, true, and accurate; NOW, THEREFORE,

BE IT ORDAINED, by the Council of the City of San Diego as follows:

Section 1. The First Amendment to the Consent Decree is approved contingent upon the Federal District Court of Southern California issuing an Order approving the amendments to the settlement agreement.

Section 2. That the Chief Financial Officer is authorized to expend an amount up to \$25,000 per year to satisfy Plaintiffs' monitoring fees, of which four-fifths of the payment will be expended from the Metro Sewer Utility Fund 700001, and the remaining one-fifth will be expended from the Refuse Disposal Enterprise Fund 700039, contingent upon the City's receipt of joint invoices from Plaintiffs in accordance with the settlement agreement, adoption of the annual Appropriation Ordinance for the applicable fiscal year, and upon the Chief Financial Officer first furnishing one or more certificates certifying that the funds necessary for expenditure are, or will be, on deposit with the City Treasurer. Once the Miramar Landfill facility compliance is complete, scheduled for December 1, 2024, fees will be expended by only the Metro Sewer Utility Fund 700001.


Section 3. That the Chief Financial Officer is authorized to expend an amount of \$1,000 for each missed reporting deadline for the feasibility analyses or Action Plans, of which the payment for the missed deadline will be expended from the appropriate respective Metro Sewer Utility Fund 700001 or from the Refuse Disposal Enterprise Fund 700039 associated with the responsible facility, contingent upon the adoption of the annual Appropriation Ordinance for the applicable fiscal year, and contingent upon the Chief Financial Officer first furnishing one or more certificates certifying that the funds necessary for expenditure are, or will be, on deposit with the City Treasurer. Once the Miramar Landfill facility compliance is complete, scheduled for December 1, 2024, fees will be expended by only the Metro Sewer Utility Fund 700001.

Section 4. That the Mayor or designee is authorized to sign all additional documents, modify the compliance dates for each facility if needed prior to the U.S. District Court approving the amended Consent Decree, take all additional actions, necessary to implement the terms and conditions of this Ordinance, and enter into future amendments to the Consent Decree without further Council approval, provided that such future amendments are subject to the same terms and conditions of the Consent Decree and only extend the date for a specific facility (or facilities) to meet the compliance obligations.

Section 5. That a full reading of this Ordinance is dispensed with prior to passage, a written copy having been made available to the Council and the public prior to the day of its passage.

Section 6. That this Ordinance shall take effect and be in force on the thirtieth day from  
and after its final passage.

APPROVED: MARA W. ELLIOTT, City Attorney

By   
Shannon C. Eckmeyer  
Deputy City Attorney

SCE:sc:cm  
06/30/2023  
07/11/2023 COR. COPY  
07/18/2023 COR. COPY 2  
Or.Dept: Planning  
Doc. No.: 3361319

Attachment: Exhibit B: [Proposed] Amended Consent Decree

I hereby certify that the foregoing Ordinance was passed by the Council of the City of  
San Diego, at this meeting of SEP 12 2023.

DIANA J.S. FUENTES  
City Clerk

By   
Deputy City Clerk

Approved: 9/15/23  
(date)

  
TODD GLORIA, Mayor

Vetoed: \_\_\_\_\_  
(date)

\_\_\_\_\_  
TODD GLORIA, Mayor

(Note: The date of final passage is September 18, 2023, which represents the  
day this ordinance was returned to the Office of the City Clerk with the  
Mayor's signature of approval.)

## EXHIBIT B

Patrick McDonough (SBN #288285)  
SAN DIEGO COASTKEEPER  
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San Diego, California 92111  
Telephone: (619) 609-0680  
Email: [patrick@sdcoastkeeper.org](mailto:patrick@sdcoastkeeper.org)

*Attorney for Plaintiff*

SAN DIEGO COASTKEEPER

Marco Gonzalez (SBN #190832)  
Livia Borak Beaudin (SBN #259434)  
COAST LAW GROUP LLP  
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*Attorneys for Plaintiff*

COASTAL ENVIRONMENTAL RIGHTS FOUNDATION

### UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF CALIFORNIA

SAN DIEGO COASTKEEPER, a California non-  
profit corporation, COASTAL  
ENVIRONMENTAL RIGHTS FOUNDATION, a  
California non-profit corporation,

Plaintiff,

vs.

CITY OF SAN DIEGO, a municipal corporation

Defendant.

Civil Case No. 3:18-cv-01757-JM-WVG

**[PROPOSED] AMENDED CONSENT  
DECREE**

**(Federal Water Pollution Control Act,  
33 U.S.C. §§ 1251 *et seq.*)**

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**WHEREAS**, City is the owner and operator of the facility known as the Point Loma Wastewater Treatment Plant, which is located at 1902 Gatchell Road, San Diego CA 92106, hereinafter referred to

1 by the Settling Parties as the "Point Loma";

2 **WHEREAS**, the Settling Parties refer to the Landfill, MBC, North City, South Bay, and Point  
3 Loma facilities individually as a "City Facility" and collectively as the "City Facilities";

4 **WHEREAS**, Plaintiffs' members live and/or recreate in and around waters which Plaintiffs'  
5 members allege receive discharges from the City Facilities, including San Clemente Creek, Rose Creek,  
6 Mission Bay, the Pacific Ocean, the Tijuana River, and the Tijuana Estuary;

7 **WHEREAS**, the discharges from the City Facilities are regulated by the National Pollutant  
8 Discharge Elimination System ("NPDES") General Permit No. CAS000001 [State Water Resources  
9 Control Board] Water Quality Order No. 92-12-DWQ, as amended by Order No. 97-03-DWQ, as  
10 superseded by Order No. 2014-0057-DWQ, as amended by Order Nos. 2015-0122-DWQ and 2018-  
11 0028-DWQ, ("Storm Water Permit"), except for enforcement purposes, and the Federal Water Pollution  
12 Control Act, 33 U.S.C. §§ 1251 *et seq.* ("Clean Water Act" or "CWA");

13 **WHEREAS**, on July 31, 2018, Plaintiffs filed a complaint against Defendant in the United  
14 States District Court, Southern District of California (Civil Case No. 3:18-cv-01757-JM-WVG), relating  
15 to the Storm Water Permit and the City Facilities ("Complaint");

16 **WHEREAS**, Defendant denies all Plaintiffs' allegations and claims in the Complaint, and  
17 denies that Plaintiffs are entitled to the relief requested in the Complaint;

18 **WHEREAS**, The Settling Parties' original Consent Decree was entered by the Court on  
19 November 20, 2018 (Docket No. 10). This Amended Consent Decree modifies the timeframe by which  
20 Defendants' compliance obligations must be accomplished and extends the Termination Date  
21 accordingly. This Amended Consent Decree has been negotiated in good faith, and will avoid further  
22 litigation among the Settling Parties.

23 **WHEREAS**, Plaintiffs and Defendant, through their authorized representatives and without  
24 either adjudication of Plaintiffs' claims or admission by the Defendant of any alleged violation or other  
25 wrongdoing, have agreed that it is in the Settling Parties' mutual interest to enter into an Amended  
26 Consent Decree and intend by this Amended Consent Decree to resolve in full Plaintiffs' allegations in  
27 the Complaint and avoid the cost and uncertainties of litigation;

28 **WHEREAS**, all actions taken by City pursuant to this Amended Consent Decree shall be made



1 in compliance with all applicable federal, state and local rules and regulations.

2 **NOW THEREFORE IT IS HEREBY STIPULATED BETWEEN THE SETTling**  
3 **PARTIES AND ORDERED AND DECREED BY THE COURT AS FOLLOWS:**

4 1. The Court has jurisdiction over the subject matter of this action pursuant to Section  
5 505(a) of the Clean Water Act, 33 U.S.C. § 1365(a);

6 2. Venue is appropriate in the Southern District of California pursuant to Section 505(c)(1)  
7 of the Clean Water Act, 33 U.S.C. § 1365(c)(1), because the City Facilities are located within this  
8 District;

9 3. Plaintiffs have standing to bring this action; and

10 4. The Court shall retain jurisdiction over this matter for purposes of enforcing the terms of  
11 this Amended Consent Decree for the life of the Amended Consent Decree, or as long thereafter as is  
12 necessary for the Court to resolve any motion to enforce this Amended Consent Decree.

13 **I. OBJECTIVES**

14 5. It is the express purpose of the Settling Parties entering into this Amended Consent  
15 Decree to further the objectives set forth in the Clean Water Act and to resolve those issues alleged by  
16 Plaintiffs in their Complaint. In light of these objectives and as set forth fully below, Defendant agrees  
17 to comply with the provisions of this Amended Consent Decree and to comply with the requirements of  
18 the Storm Water Permit and all applicable provisions of the Clean Water Act.

19 **II. TERM OF AMENDED CONSENT DECREE**

20 6. Effective Date of Amended Consent Decree. The term "Effective Date" as used in this  
21 Amended Consent Decree shall mean November 20, 2018.

22 7. Termination Date of Amended Consent Decree. The term "Termination Date" as used in  
23 this Amended Consent Decree shall mean for each individual City Facility, respectively, the date set  
24 forth in Paragraph 16.2.4. of this Amended Consent Decree , unless dispute resolution has been invoked  
25 at a City Facility, in which case this Amended Consent Decree will end for that City Facility upon  
26 completion of the dispute resolution process pursuant to Article VI.

27 8. Early Termination of Amended Consent Decree. This Amended Consent Decree will  
28 terminate early for a City Facility in the following circumstances:

1 8.1. Defendant implements an onsite retention approach (e.g., infiltration, re-use,  
2 diversion to sewer, or re-routing flows into the existing wastewater treatment  
3 system located onsite) at the City Facility for all storm water discharges;

4 8.2. The State Water Resources Control Board adopts an amendment(s) to the Storm  
5 Water Permit that designates a rainfall-based sizing criteria for the onsite  
6 compliance option, and Defendant implements that onsite compliance option at the  
7 City Facility per the amendment's requirements; or

8 8.3. The State Water Resources Control Board adopts an amendment(s) to the Storm  
9 Water Permit that designates an offsite compliance option, and Defendant  
10 participates in that offsite compliance option for the City Facility per the  
11 amendment's requirements.

12 Defendant shall provide prior written notice to Plaintiffs that early termination has been triggered  
13 and a description of the circumstances that satisfy paragraphs 8.1, 8.2 or 8.3 for the City Facility.  
14 Plaintiffs shall inform Defendant within thirty (30) calendar days of receipt of Defendant's written  
15 notice whether Plaintiffs dispute early termination for the City Facility. Any disputes shall be resolved  
16 pursuant to the dispute resolution provisions of this Amended Consent Decree, set out in Article VI  
17 below.

18 **III. COMMITMENTS OF THE SETTLING PARTIES.**

19 **A. Submission of Amended Consent Decree to Federal Agencies.**

20 9. Plaintiffs shall submit this Amended Consent Decree to the United States Department of  
21 Justice and the Environmental Protection Agency ("EPA") (collectively "Federal Agencies") within  
22 three (3) business days of the final signature of the Settling Parties for agency review consistent with 40  
23 C.F.R. § 135.5. The agency review period expires forty-five (45) calendar days after receipt by both  
24 Federal Agencies, as evidenced by written acknowledgement of receipt by the Federal Agencies or the  
25 certified return receipts, copies of which are to be provided to Defendant. In the event that the Federal  
26 Agencies object to entry of this Amended Consent Decree, the Settling Parties agree to meet and confer  
27 to attempt to resolve the issue(s) raised by the Federal Agencies within a reasonable amount of time. If  
28 the Settling Parties are unable to resolve any issue(s) raised by the Federal Agencies, Plaintiffs and

1 Defendant agree to expeditiously seek a settlement conference with the Magistrate Judge assigned to this  
2 matter to resolve the issue(s).

3 **B. Lodging of Amended Consent Decree.**

4 10. Within ten (10) calendar days of the Federal Agencies notifying the Settling Parties of no  
5 objection to the Amended Consent Decree or expiration of the Federal Agencies' review period  
6 specified in paragraph 9 above, whichever is earlier, Plaintiffs will lodge this Amended Consent Decree  
7 with the District Court. If the Amended Consent Decree is not entered by the District Court, the Parties  
8 shall retain all rights they had in this litigation before the lodging of the Decree.

9 **C. Storm Water Pollution Control Best Management Practices.**

10 11. In addition to maintaining the current structural and non-structural Best Management  
11 Practices ("BMPs") described in the City Facilities' Storm Water Pollution Prevention Plan ("SWPPP"),  
12 Defendant shall develop and implement additional BMPs necessary to comply with the provisions of  
13 this Amended Consent Decree and the Storm Water Permit. By December 31, 2018, Defendant shall  
14 provide Plaintiffs with analyses describing the additional BMPs that Defendant intends to pursue at each  
15 City Facility and an expected timeframe for doing so. Notwithstanding the foregoing, Defendant is not  
16 obligated to maintain any BMP that is rendered obsolete, including due to a subsequently installed BMP  
17 at the City Facility.

18 **D. Discharge Locations and Storm Water Sampling.**

19 12. Discharge Locations. The current storm water discharge sample locations for the  
20 Landfill, MBC, North City, South Bay, and Point Loma are identified in Exhibit A, Exhibit B, Exhibit  
21 C, Exhibit D and Exhibit E, respectively. The discharge sample locations identified in Exhibits A  
22 through E are subject to change and such changes will be documented in SWPPP updates pursuant to  
23 paragraph 19.1.

24 13. Sampling. The following storm water monitoring procedures shall be implemented at the  
25 City Facilities:

26 13.1. Frequency. During the life of this Amended Consent Decree, Defendant shall  
27 collect samples of storm water discharges from the City Facilities at all discharge  
28 sample locations identified in Exhibits A through E (or at the discharge sample

1 locations as amended in accordance with paragraph 19.1), for a minimum of four  
2 (4) Qualified Storm Events ("QSEs")<sup>1</sup> in a Reporting Year (July 1 to June 30),  
3 provided that four (4) QSEs occur at each City Facility in a Reporting Year.  
4 Defendant shall collect two (2) samples during the first half of the Reporting  
5 Year (July 1 through December 31) and two (2) samples during the second half  
6 of the Reporting Year (January 1 through June 30), provided that two (2) QSEs  
7 occur at each City Facility during each half of the Reporting Year. If, prior to  
8 March 1, Defendant has collected samples from two (2) or fewer QSEs,  
9 Defendant shall continue to sample QSEs in the second half of the Reporting  
10 Year until Defendant has collected a minimum of four (4) samples for the  
11 Reporting Year, provided that QSEs continue to occur in the second half of the  
12 Reporting Year.

13 13.2. Parameters. Defendant shall analyze each storm water sample collected from the  
14 City Facilities pursuant to paragraph 13 for the constituents listed in Table 1 for  
15 Point Loma, Table 2 for South Bay, Table 3 for North City, Table 4 for MBC,  
16 and Tables 5a and 5b for the Landfill.

17 13.3. Laboratory. A laboratory accredited by the State of California shall analyze all  
18 samples collected pursuant to this Amended Consent Decree unless State of  
19 California accreditation does not exist for the sampled constituent.

20 13.4. Detection Limits. The laboratory shall use analytical methods adequate to detect  
21 the individual constituents at or below the Numeric Levels listed in Table 1  
22 through Table 5b.

23 13.5. Hold Time. All samples collected from the City Facilities shall be delivered to  
24 the laboratory and analyzed within the holding times required in 40 C.F.R., Part  
25 136, except for pH which will be analyzed using a calibrated instrument for pH  
26 that analyzes the sample within fifteen (15) minutes of collection  
27

28 <sup>1</sup> As defined in the Storm Water Permit.

13.6. Results. Defendant shall request that sample analysis results be reported to them within fourteen (14) calendar days of laboratory receipt of the sample, or as soon as possible without incurring "rush" charges.

13.7. Concentrations. Defendant shall request that all sample results for metals be reported by the laboratory in total concentrations.

13.8. Reporting. Defendant shall electronically provide Plaintiffs with the complete laboratory results, including a copy of the Quality Assurance/Quality Control results within the laboratory report for all samples collected at the City Facilities, at the time that Defendant uploads the results to the Storm Water Multiple Application Reporting System ("SMARTS").

**E. Discharge Standards.**

14. Numeric Levels. During the life of this Amended Consent Decree, Defendant shall develop and implement BMPs to reduce constituents in storm water discharges at each City Facility to levels at or below those in Table 1 through Table 5b ("Numeric Levels"), as applicable to the particular City Facility, unless Defendant has a current No Exposure Certification ("NEC") for the City Facility in accordance with Section XVII of the Storm Water Permit or this Amended Consent Decree has terminated early for the City Facility under paragraph 8.

**Table 1. Point Loma Wastewater Treatment Plant Numeric Levels**

Constituent	Level
Total Suspended Solids	100 mg/L
Oil and Grease	15 mg/L
pH	6.0 – 9.0 s.u.
Fecal Coliform	400 MPN/100 mL***
Total Copper**	0.0058 mg/L
Total Lead**	0.220 mg/L
Total Zinc**	0.095 mg/L
Total Aluminum**	0.75 mg/L
Total Iron**	1.0 mg/L
Nitrate + Nitrite Nitrogen**	0.68 mg/L
Ammonia (as N)**	2.14 mg/L

\*\* Constituent will be removed from Table 1 if the City's storm water sampling under this Amended Consent Decree results in non-detect levels, for 2 consecutive sampled QSEs, for this constituent.

\*\*\* Defendant disputes the applicability of the fecal coliform Basin Plan Objective REC 1 numeric level to discharges from the Point Loma facility due to receiving water characteristics and submits to its application under this Amended Consent Decree solely in the interest of settlement.

**Table 2. South Bay Water Reclamation Plant Numeric Levels**

Constituent	Level
Total Suspended Solids	100 mg/L
Oil and Grease	15 mg/L
pH	6.0 – 9.0 s.u.
E. Coli	235 MPN/100 mL
Total Coliform	10,000 MPN/100 mL
Total Copper**	0.0332 mg/L *
Total Lead**	0.262 mg/L *
Total Zinc**	0.26 mg/L *
Total Aluminum**	0.75 mg/L
Total Iron**	1.0 mg/L
Nitrate + Nitrite Nitrogen**	0.68 mg/L
Ammonia (as N)**	2.14 mg/L

\* Listed numeric level represents the CTR value when adjusted for hardness, using a conservative hardness concentration of 250 mg/L as CaCO<sub>3</sub>, as set out in Volume 65, No. 97 of the Federal Register, May 18, 2000, Rules and Regulations, for both hardness and water effects ratios.

\*\* Constituent will be removed from Table 2 if the City's storm water sampling under this Amended Consent Decree results in non-detect levels, for 2 consecutive sampled QSEs, for this constituent.

**Table 3. North City Water Reclamation Plant Numeric Levels**

Constituent	Level
Total Suspended Solids	100 mg/L
Oil and Grease	15 mg/L
pH	6.0 – 9.0 s.u.
E. Coli	235 MPN/100 mL
Total Coliform	10,000 MPN/100 mL
Total Copper**	0.0332 mg/L *
Total Lead**	0.262 mg/L *
Total Zinc**	0.26 mg/L *
Total Aluminum**	0.75 mg/L
Total Iron**	1.0 mg/L
Nitrate + Nitrite Nitrogen**	0.68 mg/L
Ammonia (as N)**	2.14 mg/L

\* Listed numeric level represents the CTR value when adjusted for hardness, using a conservative hardness concentration of 250 mg/L as CaCO<sub>3</sub>, as set out in Volume 65, No. 97 of the Federal Register, May 18, 2000, Rules and Regulations, for both hardness and water effects ratios.

\*\* Constituent will be removed from Table 3 if the City's storm water sampling under this Amended Consent Decree results in non-detect levels, for 2 consecutive sampled QSEs, for this constituent.

**Table 4. Metropolitan Biosolids Center Numeric Levels**

Constituent	Level
Total Suspended Solids	100 mg/L
Oil and Grease	15 mg/L

Constituent	Level
pH	6.0 – 9.0 s.u.
E. Coli	235 MPN/100 mL
Total Coliform	10,000 MPN/100 mL
Total Copper**	0.0332 mg/L*
Total Lead**	0.262 mg/L*
Total Zinc**	0.26 mg/L*
Total Aluminum**	0.75 mg/L
Total Iron**	1.0 mg/L
Nitrate + Nitrite Nitrogen**	0.68 mg/L
Ammonia (as N)**	2.14 mg/L

\* Listed numeric level represents the CTR value when adjusted for hardness, using a conservative hardness concentration of 250 mg/L as CaCO<sub>3</sub>, as set out in Volume 65, No. 97 of the Federal Register, May 18, 2000, Rules and Regulations, for both hardness and water effects ratios.

\*\* Constituent will be removed from Table 4 if the City's storm water sampling under this Amended Consent Decree results in non-detect levels, for 2 consecutive sampled QSEs, for this constituent.

**Table 5a. Miramar Landfill Numeric Levels\*\*\***

Constituent	Level
Total Suspended Solids	100 mg/L
Oil and Grease	15 mg/L
pH	6.0 – 9.0 s.u.
Total Zinc	0.26 mg/L*
Total Aluminum	0.75 mg/L
Total Iron	1.0 mg/L
Nitrate + Nitrite Nitrogen	0.68 mg/L
Ammonia (as N)**	2.14 mg/L
Total Lead	0.262 mg/L*
Total Copper**	0.0332 mg/L*
Total Cyanide**	0.022 mg/L
Total Arsenic**	0.15 mg/L
Total Mercury**	0.0014 mg/L
Total Cadmium**	0.0053 mg/L*
Total Silver**	0.0183 mg/L*
Total Phosphorous	2.0 mg/L
Chemical Oxygen Demand	120 mg/L
Fecal Coliform	400 MPN/100 mL
Enterococcus	61 MPN/100 mL
Total Coliform	10,000 MPN/100 mL

\* Listed numeric level represents the CTR value when adjusted for hardness, using a conservative hardness concentration of 250 mg/L as CaCO<sub>3</sub>, as set out in Volume 65, No. 97 of the Federal Register, May 18, 2000, Rules and Regulations, for both hardness and water effects ratios.

\*\* Constituent will be removed from Table 5a if the City's storm water sampling under this Amended Consent Decree results in non-detect levels, for 2 consecutive sampled QSEs, for this constituent.

\*\*\* Constituents in Table 5a will be sampled at their applicable discharge sampling location(s) as listed in Exhibit A.

**Table 5b. Miramar Landfill Subchapter N ELG Numeric Levels\***

Constituent	Level
Biochemical Oxygen Demand (BOD)	140 mg/L
Total Suspended Solids	88 mg/L
Ammonia (as N)	10 mg/L
a-Terpineol	0.033 mg/L
Benzoic Acid	0.12 mg/L
p-Cresol	0.025 mg/L
Phenol	0.026 mg/L
Zinc	0.2 mg/L
pH	6.0 – 9.0 s.u.

\* Constituents in Table 5b will be sampled at their applicable discharge sampling location(s), as listed in Exhibit A. Constituents in Table 5b will not be sampled under this Amended Consent Decree during a sampled QSE if there are no discharges of “contaminated storm water” as defined in 40 CFR 445.2.

15. Action Plan for Numeric Level Table Exceedances. Defendant shall submit an Action Plan to Plaintiffs for reducing the level of a constituent at a City Facility to Table Numeric Levels if Defendant’s sampling under this Amended Consent Decree during a single Reporting Year reveals either: (1) a single exceedance of double or more the constituent’s Table Numeric Level at any City Facility sampling location; or (2) more than two exceedances of the Table Numeric Level for a single constituent, considering all discharge sampling locations at the City Facility (and with no averaging of each discharge sampling location’s results). Any Action Plan required by this paragraph shall be prepared by a Qualified Industrial Storm Water Practitioner (“QISP”) and must be submitted to Plaintiffs by the July 31 following the Reporting Year in which exceedances occurred that triggered the Action Plan. For example, if an Action Plan is triggered by exceedances during the 2018/2019 Reporting Year (i.e., July 1, 2018 – June 30, 2019), then the Action Plan will be due July 31, 2019.

16. Action Plan Requirements.

16.1. Identification and Assessment. An Action Plan shall include:

16.1.1. The identification of the constituent(s) discharged in excess of the Table Numeric Level(s), which triggered an Action Plan under paragraph 15;

16.1.2. An assessment of the source of each constituent discharged in excess of the Table Numeric Level(s);

16.1.3. Either (a) the identification of additional BMPs, including both preventing the exposure of pollutant and pollutant sources to storm water and further treatment of storm water prior to discharge from the City Facility that will



1 reduce constituent concentrations to those below Table Numeric Levels, or (b)  
2 for those constituents where there is no California Toxics Rule or other  
3 established receiving water limitation, the identification of and demonstration  
4 that BMPs the Defendant has developed and implemented achieve BAT/BCT,  
5 and that further feasible BMPs will not achieve the Table Numeric Level(s) for  
6 that City Facility; and

7 16.1.4. The time schedule(s) for implementation of the proposed BMPs.

8 16.2. Implementation Schedule. The time schedule(s) for implementation of the BMPs  
9 identified following the Action Plan assessment are:

10 16.2.1. Non-Structural BMPs. The time schedule(s) for implementation shall  
11 ensure that all non-structural BMPs are implemented as soon as possible, but  
12 in no case later than three (3) months after the submission of the Action Plan to  
13 Plaintiffs, provided however that Defendant may have a single time extension  
14 for up to an additional three (3) months with the submission of the following  
15 information to Plaintiffs:

16 16.2.1.1. An explanation of why it would be infeasible to implement the  
17 non-structural BMP(s) in the Action Plan within three (3) months despite  
18 the exercise of due diligence and good faith effort;

19 16.2.1.2. A schedule and detailed description of the necessary tasks to be  
20 performed; and

21 16.2.1.3. A description of any additional temporary Non-Structural BMPs  
22 that will be implemented while permanent BMPs are being constructed.

23 16.2.2. Structural BMPs. Structural BMPs shall be implemented as soon as  
24 possible and in accordance with the following time schedule(s): (i) structural  
25 BMPs identified in an Action Plan due on July 31, 2019 (for the 2018/2019  
26 Reporting Year) shall be implemented no later than six (6) months after the  
27 submission of the Action Plan to Plaintiffs; and (ii) structural BMPs identified  
28 in an Action Plan due on July 31, 2020 (for the 2019/2020 Reporting Year)

1 and later (for any subsequent Reporting Year) shall be implemented no later  
2 than three (3) months after the submission of the Action Plan to Plaintiffs.  
3 Defendant may have a single time extension in all these cases of up to six (6)  
4 additional months with the submission of the following information to  
5 Plaintiffs:

6 16.2.2.1. An explanation of why it would be infeasible to implement the  
7 Structural BMP(s) in the Action Plan upon the time schedule(s) identified  
8 in an Action Plan despite the exercise of due diligence and good faith  
9 effort;

10 16.2.2.2. A schedule and detailed description of the necessary tasks to be  
11 performed; and

12 16.2.2.3. A description of any additional temporary structural BMPs that  
13 will be implemented while permanent BMPs are being constructed.

14 16.2.3. Process for Alternate Time Schedule. The Settling Parties may agree on a  
15 later date for BMP implementation than otherwise specified in paragraphs  
16 16.2.1 and 16.2.2, based on the time needed to design, procure, and install the  
17 necessary equipment or implementation within the required time period is not  
18 possible due to force majeure, as defined in paragraph 48, below. Plaintiffs  
19 will not unreasonably withhold agreement to extend the deadline, as needed.

20 16.2.4. Alternate Time Schedules. The Settling Parties have agreed to the  
21 following alternate dates for completion of BMP implementation described in  
22 each Facility's updated Action Plan:

- 23 a. Landfill – December 1, 2024;
- 24 b. MBC – December 31, 2024;
- 25 c. North City – May 31, 2025;
- 26 d. South Bay – December 31, 2024; and
- 27 e. Point Loma – June 30, 2026.

28 16.2.5. Time Schedule Disputes. Any disputes over the deadline for

1 implementation of additional BMP(s) identified in an Action Plan shall be  
2 resolved pursuant to the dispute resolution provisions of this Amended  
3 Consent Decree, set out in Article VI below.

4 16.3. Action Plan Review.

5 16.3.1. Plaintiffs shall have thirty (30) calendar days upon receipt of Defendant's  
6 Action Plan to provide Defendant with comments on the Action Plan. Within  
7 thirty (30) calendar days of Defendant's receipt of Plaintiffs' comments on the  
8 Action Plan, Defendant shall consider Plaintiffs' comments and shall either  
9 incorporate them into the Action Plan or, if Defendant declines to accept one  
10 or more of Plaintiffs' comments, provide Plaintiffs with a written explanation  
11 of the grounds for rejection.

12 16.3.2. Disputes regarding the adequacy of a particular BMP shall not impact the  
13 schedule for implementing any other BMP set forth in the Action Plan. Any  
14 disputes as to the adequacy of the Action Plan shall be resolved pursuant to the  
15 dispute resolution provisions of this Amended Consent Decree, set out in  
16 Article VI below.

17 17. Defendant shall notify Plaintiffs in writing when an Action Plan has been completely  
18 implemented.

19 **F. Storm Water Pollution Prevention Plan and Monitoring Implementation Plan.**

20 18. Initial Revisions to SWPPP and/or MIP. Within sixty (60) calendar days of the Effective  
21 Date of this Amended Consent Decree, Defendant shall revise the City Facilities' SWPPP and/or  
22 Monitoring Implementation Plan ("MIP") as applicable to include:

23 18.1. All BMPs that are currently utilized at the City Facilities;

24 18.2. All BMPs identified and currently implemented pursuant to this Amended  
25 Consent Decree and/or the Storm Water Permit;

26 18.3. The specific position(s) responsible for compliance with the Storm Water Permit  
27 and this Amended Consent Decree, including specifying which position is  
28 responsible for each area of compliance;

1 18.4. A detailed site map that includes at a minimum all information required by the  
2 Storm Water Permit and this Amended Consent Decree;

3 18.5. A description of each industrial activity, all potential pollutant sources, and each  
4 potential pollutant associated with each industrial activity and/or pollutant  
5 source;

6 18.6. Incorporate the requirements of the Storm Water Permit and this Amended  
7 Consent Decree.

8 19. Additional and Ongoing Revisions to SWPPP and/or MIP.

9 19.1. Changes to City Facility Operations. Defendant shall revise the SWPPP and/or  
10 MIP if there are any significant changes in the City Facilities' operations, including  
11 but not limited to changes to storm water discharge point(s)/sample location(s) or  
12 changes or additions to the BMPs resulting from an Action Plan.

13 19.2. SWPPP Pollutant Source Assessments.

14 19.2.1. Non-Fecal Indicator Bacteria Constituents. Defendant may remove a  
15 constituent from a City Facility's SWPPP and the above Numeric Levels  
16 Tables for the City Facility if new information becomes available supporting  
17 an amended SWPPP pollutant source assessment relating to the constituent,  
18 including a demonstration that the Numeric Level exceedance(s) are solely  
19 caused by natural background sources or non-industrial pollutant sources  
20 (consistent with Sections XII.D.2.b and c of the Storm Water Permit), and the  
21 following is satisfied: (i) Defendant submits a written evaluation in support of  
22 the amended SWPPP pollutant source assessment determination to a mutually  
23 agreed upon third party consultant, which must be a QISP and Trainer of  
24 Record, for review; and (ii) the third party consultant subsequently concurs  
25 with the City's evaluation.

26 19.2.2. Fecal Indicator Bacteria Constituents. Defendant may remove fecal  
27 indicator bacteria constituents from the SWPPP for Point Loma, North City,  
28 South Bay, or MBC, and from that City Facility's Numeric Levels Table in

1 this Amended Consent Decree if Defendant conducts testing at the City  
2 Facility that achieves HF183 human marker analytical results below lab  
3 quantification levels, as measured at all applicable discharge sample locations  
4 at the City Facility, for four (4) consecutive sampling events. If satisfied,  
5 Defendant is not required to provide a written evaluation to a third party  
6 consultant, as described in paragraph 19.2.1, prior to removing fecal indicator  
7 bacteria constituents from the City Facility's SWPPP and the Numeric Levels  
8 Table for that City Facility.

9 20. Commenting on Revised SWPPP and/or MIP. Defendant shall submit any revised  
10 SWPPP and/or MIP to Plaintiffs for review and comment within five (5) calendar days of completion.  
11 Plaintiffs shall provide comments, if any, to Defendant within thirty (30) calendar days of receipt of any  
12 revised SWPPP and MIP. Within thirty (30) calendar days of receiving comments from Plaintiffs,  
13 Defendant shall incorporate Plaintiffs' comments into any revised SWPPP and/or MIP or shall justify in  
14 writing why any comment is not incorporated. Any disputes as to the adequacy of the SWPPP and/or  
15 MIP shall be resolved pursuant to the dispute resolution provisions of this Amended Consent Decree, set  
16 out in Article VI below.

17 **G. Visual Observations.**

18 21. During the life of this Amended Consent Decree, Defendant shall conduct and document  
19 visual observations pursuant to the Storm Water Permit and as more fully described in each City Facility  
20 SWPPP.

21 **H. Employee Training.**

22 22. Within forty-five (45) calendar days of the Effective Date of this Amended Consent  
23 Decree, Defendant shall develop and implement additional employee training in order to familiarize  
24 employees at the City Facilities with the requirements of the Storm Water Permit and this Amended  
25 Consent Decree ("Training Program"). The Training Program shall include use of written training  
26 materials needed for effective implementation of the training program. Defendant shall also ensure that  
27 there are a sufficient number of employees, contractors and/or consultants assigned to implement the  
28 BMPs and conduct other compliance activities required by the Storm Water Permit and this Amended

1 Consent Decree, and that these employees, contractors and/or consultants are properly trained to  
2 perform the required activities.

3 23. The training program shall require at least the following:

4 23.1. Non-Storm Water Discharge Training. Defendant shall train employees on the  
5 Storm Water Permit's prohibition of non-storm water discharges, so that  
6 employees know what non-storm water discharges are, which can result from  
7 improper practices that may produce non-storm water discharges at the City  
8 Facilities, and how to detect and prevent them;

9 23.2. BMP Training. Defendant shall train employees on BMP implementation and  
10 maintenance to ensure that BMPs are implemented effectively to prevent or  
11 minimize the exposure of pollutants to storm water, to prevent or minimize the  
12 discharge of contaminated storm water, and to ensure the proper treatment of  
13 storm water at the City Facilities;

14 23.3. Sampling Training. Defendant shall designate an adequate number of employees,  
15 contractors and/or consultants to ensure the collection of storm water samples  
16 from each discharge location as required by this Amended Consent Decree  
17 and/or the Storm Water Permit. The training shall include the proper sampling  
18 protocols, including chain of custody requirements, to ensure storm water  
19 samples are properly collected, stored, and submitted to a certified laboratory.

20 23.4. Visual Observation Training. Defendant shall provide training to all individuals  
21 performing visual observations at the City Facilities pursuant to this Amended  
22 Consent Decree and/or the Storm Water Permit that includes when visual  
23 observations are required, the different types of visual observations required, and  
24 instruction on proper record keeping under the Storm Water Permit.

25 24. Ongoing Training. Training shall be provided on an annual basis, or as otherwise  
26 required to ensure compliance with the terms of this Amended Consent Decree, by a consultant or a  
27 representative of Defendant who is familiar with the requirements of this Amended Consent Decree and  
28 the Storm Water Permit. The training shall be repeated as necessary to ensure that employees are

familiar with the requirements of this Amended Consent Decree, the Storm Water Permit, and the City Facilities' SWPPP and MIP, as appropriate to the particular employee's job descriptions. Any new employee who is responsible for implementation of any portion of the SWPPP, the MIP, or compliance with other terms of the Storm Water Permit or Amended Consent Decree shall receive training within thirty (30) calendar days after being hired, or before being responsible for compliance with the terms of the Storm Water Permit or Amended Consent Decree.

25. Training Records. Defendant shall maintain training records to document compliance with Section H of this Amended Consent Decree, and shall make these records available, upon Plaintiffs' request, at the City Facilities. The Training Program shall be specified in the SWPPP and Defendant shall modify the SWPPP as necessary to reflect the Training Program required by this Amended Consent Decree.

#### IV. COMPLIANCE MONITORING AND REPORTING

26. Site Inspections. Each Reporting Year for the life of this Amended Consent Decree, Plaintiffs and their representatives, accompanied by Defendant representatives, may conduct up to two (2) noticed site inspections at each City Facility. The site inspections shall occur during normal business hours, and Plaintiffs shall provide Defendant with three (3) calendar days' notice of an intended inspection. If a Wet Season inspection is noticed, Plaintiffs will continue to follow the weather forecast, and will confirm the Wet Season inspection at least twenty-four (24) hours prior to the start of the inspection in an effort to ensure Plaintiffs catches a rain event producing a discharge during the inspection. During inspections, Plaintiffs' representatives will wear appropriate personal protective equipment (PPE) and remain in the presence of Defendant's representatives at all times.

27. During the site inspection, Plaintiffs and/or their representatives shall be allowed access to the City Facility's SWPPP, MIP, and other monitoring records, reports, and Storm Water Permit sampling data for the City Facility. In addition, during the site inspection, Plaintiff and/or their representatives may, at their own cost, collect grab samples of discharges from the City Facilities. Plaintiffs may collect samples for any of the constituents included in Table 1 through 5b, as applicable to the City Facility, and shall orally list the constituents that Plaintiffs intend to analyze at the commencement of the site inspection. Plaintiffs shall provide split samples to Defendant, shall allow

1 Defendant to photograph and/or videotape the sample collection process, and shall provide Defendant  
2 with a designation of who will perform any discharge sampling. Any samples collected by Plaintiffs  
3 shall be collected in accordance with Attachment H of the Storm Water Permit and submitted to a  
4 certified California laboratory for is unless State of California accreditation does not exist for the  
5 sampled constituent. Copies of the complete laboratory reports shall be provided to Defendant within  
6 five (5) business days of receipt.

7 28. Reporting and Documents. During the life of this Amended Consent Decree, Defendant  
8 shall provide Plaintiffs with a copy of all documents related to the Storm Water Permit at the City  
9 Facilities that are submitted to the Regional Board, the State Board, and/or any State or local agency or  
10 municipality. Such reports and documents shall be provided to Plaintiffs concurrently as they are sent to  
11 the agencies and/or municipalities. Any correspondence related to Defendant's compliance with the  
12 Storm Water Permit received by Defendant from any regulatory agency, State or local agency, county,  
13 and/or municipality shall be provided to Plaintiffs within ten (10) business days of receipt by Defendant.

14 29. Compliance Monitoring and Oversight. Defendant shall compensate Plaintiffs for costs  
15 and fees incurred for monitoring City's compliance with this Amended Consent Decree ("Monitoring  
16 Fees"). Plaintiffs shall prepare a joint invoice for submittal to Defendant. The invoice shall include a  
17 description of the monitoring activity, the time spent, which City Facility the monitoring activity  
18 pertains to, and the rate charged for each person that performs monitoring activities. Subject to the  
19 Dispute Resolution provision in Article VI, below, Defendant shall compensate Plaintiffs for costs and  
20 fees incurred for monitoring meeting(s) attendance, review of Defendant-related documents and  
21 monitoring reports and Action Plans, submission of Plaintiffs' comments, meetings held to discuss  
22 compliance deadlines, site inspections, and attendance at additional mutually agreed upon meetings  
23 between the Settling Parties. Review of Storm Water Permit information or publicly distributed  
24 information from the State Board or Regional Board shall not be expensed or included in the invoice.  
25 Payment shall be made within forty-five (45) calendar days of receipt of an invoice from Plaintiffs for  
26 such compliance efforts, payable to "Coast Law Group, LLP Attorney Client Trust" and sent via U.S.  
27 Mail or similar delivery service to Coast Law Group, LLP, Attn: Marco Gonzalez, 1140 South Coast  
28 Highway 101, Encinitas CA, 92024. Invoices shall be submitted by Plaintiffs no more frequently than on



1 a monthly basis. Total Monitoring Fees shall be capped at \$25,000 per year during the term of the  
2 Amended Consent Decree.

3 **V. ENVIRONMENTAL PROJECT AND REIMBURSEMENT OF LITIGATION FEES**  
4 **AND COSTS**

5 30. Environmental Project. To remediate the alleged environmental harms resulting from  
6 non-compliance with the Storm Water Permit alleged in the Complaint, City agrees to make a payment  
7 totaling \$35,000 (Thirty-Five Thousand) to fund environmental project activities that will reduce or  
8 mitigate the impacts of storm water pollution from industrial activities in the Southern California Bight  
9 and its tributaries ("Environmental Project"). Payment shall be made payable to: the San Diego  
10 Audubon Society and sent to San Diego Audubon Society, Attn Chris Redford, 4010 Morena Blvd, San  
11 Diego, CA 92117.

12 31. Reimbursement of Plaintiffs' Fees and Costs. City shall pay a total of \$100,000 (One-  
13 Hundred Thousand) to Plaintiffs to reimburse Plaintiffs for its investigation fees and costs,  
14 expert/consultant fees and costs, and reasonable attorneys' fees incurred as a result of investigating and  
15 preparing the lawsuit and negotiating this Amended Consent Decree. Payments shall be made within  
16 forty-five (45) calendar days of the Effective Date and payable to "Coast Law Group, LLP Attorney  
17 Client Trust" and delivered by certified mail or overnight delivery to: Coast Law Group, LLP, Attn:  
18 Marco Gonzalez, 1140 South Coast Highway 101, Encinitas CA, 92024.

19 **VI. DISPUTE RESOLUTION**

20 32. Continuing Jurisdiction. This Court shall retain jurisdiction over this matter until the  
21 Termination Date defined above for the purposes of implementing and enforcing the terms and  
22 conditions of this Amended Consent Decree, and adjudicating all disputes among the Settling Parties  
23 that may arise under the provisions of this Consent Decree. The Court shall have the power to enforce  
24 this Amended Consent Decree with all available legal and equitable remedies, including contempt.

25 33. Meet and Confer. A party to this Amended Consent Decree shall invoke the dispute  
26 resolution procedures of this paragraph by notifying all other Settling Parties in writing of the  
27 matter(s) in dispute. The Settling Parties shall then meet and confer in good faith (either  
28 telephonically or in person) in an attempt to resolve the dispute informally over a period of ten (10)

1 calendar days from the date of the notice. The Settling Parties may elect to extend this time in an  
2 effort to resolve the dispute without court intervention.

3 34. Dispute Resolution. If the Settling Parties cannot resolve a dispute by the end of the  
4 meet and confer process, the Settling Parties may agree to enter into the Alternative Dispute  
5 Resolution process provided by the United States District Court for the Southern District of  
6 California, including but not limited to stipulating to a hearing or settlement conference before a  
7 Magistrate Judge. If the Settling Parties cannot resolve a dispute by the end of the Alternative Dispute  
8 Resolution process, the party initiating the dispute resolution provision may invoke formal dispute  
9 resolution by filing a motion before the United States District Court for the Southern District of  
10 California.

11 35. Burden of Proof. The burden of proof for formal dispute resolution shall be in accordance  
12 with applicable law. Notwithstanding the foregoing, in the event of any disagreement or dispute between  
13 Plaintiffs and Defendant over the necessity or appropriateness of implementing any particular BMP or  
14 set of BMPs, Defendant shall bear the burden of demonstrating that its BMPs, collectively, constitute  
15 BAT/BCT for the City Facilities, or that it is in compliance with the terms of this Amended Consent  
16 Decree. Plaintiffs shall not be required to prove that Defendant's BMPs do not constitute BAT/BCT.

17 36. Costs and Fees. Litigation costs and fees incurred in conducting the meet and confer or  
18 otherwise addressing and/or resolving any dispute, including an alleged breach of this Amended Consent  
19 Decree, shall be awarded in accord with the standard established by Section 505 of the Clean Water Act,  
20 33 U.S.C. §§ 1365 and 1319, and case law interpreting that standard.

21 **VII. MUTUAL RELEASE OF LIABILITY AND COVENANT NOT TO SUE**

22 37. Except for violations of this Amended Consent Decree, which shall be addressed in  
23 accordance with the Dispute Resolution provisions in Article VI, and any ongoing payments as set  
24 forth in paragraph 29, in consideration of the above, upon the Effective Date of this Amended  
25 Consent Decree, the Settling Parties hereby fully release each other and their respective successors,  
26 assigns, officers, agents, attorneys, employees, representatives and all persons, firms, and  
27 corporations having an interest in them, from any and all claims and demands of any kind, nature, or  
28 description, and from any and all liabilities, relief, damages, fees (including fees of attorneys, experts,

1 and others), injuries, actions, or causes of action, either at law or in equity, whether known or  
2 unknown, except for continuing obligations as set forth in this Amended Consent Decree, which the  
3 Plaintiffs' have against Defendant arising from the Notice Letter and/or Complaint and the alleged  
4 violations of the Clean Water Act, the Storm Water Permit, or other federal and state law, up to and  
5 including the Termination Date of this Amended Consent Decree.

6 38. Plaintiffs and Defendant acknowledge that they are familiar with Section 1542 of the  
7 California Civil Code, which provides:

8  
9 A general release does not extend to claims which the creditor does not know or suspect to exist in  
10 his or her favor at the time of executing the release, which if known by him or her must have  
materially affected his or her settlement with the debtor.

11 Plaintiffs and Defendant hereby waive and relinquish any rights or benefits they may have under  
12 California Civil Code section 1542 with respect to any other claims against each other arising from the  
13 allegations and claims as set forth or that could have been set forth in the Notice Letter and/or Complaint  
14 up to and including the Termination Date of this Amended Consent Decree.

15 39. Except as provided for in the Dispute Resolution provisions of this Amended Consent  
16 Decree, Plaintiffs' and their officers, executive staff, members of their governing boards and any  
17 organization under the control of Plaintiffs, its officers, executive staff, or members of its governing  
18 board, shall not pursue or file any action against Defendant seeking relief for any alleged violation of  
19 the Clean Water Act, the Storm Water Permit or any revisions thereto, or other related federal and  
20 state statutes and/or regulations, relating to the City Facilities, that may be alleged for the period of  
21 time beginning on the Effective Date and ending on the Termination Date. This provision is  
22 applicable and will survive beyond the Termination Date of this Agreement.

23 40. Nothing in this Amended Consent Decree limits or otherwise affects either Settling  
24 Party's right to address or take any position that it deems necessary or appropriate in any formal or  
25 informal proceeding before the State Board, Regional Board, EPA, or any other administrative body  
26 on any other matter relating to City's compliance with the Storm Water Permit or the Clean Water  
27 Act occurring or arising after the Effective Date of this Amended Consent Decree.  
28

1 **VIII. MISCELLANEOUS PROVISIONS**

2 41. No Admission of Liability. Neither this Amended Consent Decree, the implementation  
3 of additional BMPs, nor any payment pursuant to the Amended Consent Decree shall constitute or be  
4 construed as a finding, adjudication, admission, or acknowledgment of any fact, law, or liability, nor  
5 shall it be construed as an admission of violation of any law, rule, or regulation. City maintains and  
6 reserves all defenses they may have to any alleged violations that may be raised in the future. Except  
7 as otherwise provided in this Amended Consent Decree, each Settling Party maintains and reserves  
8 any and all defenses and claims that it may have to any alleged violations that may be raised by the  
9 other Settling Party during the life of this Consent Decree

10 42. Construction. The language in all parts of this Amended Consent Decree shall be  
11 construed according to its plain and ordinary meaning, except as to those terms defined in the Storm  
12 Water Permit, the Clean Water Act, or specifically herein.

13 43. Choice of Law. The laws of the United States shall govern this Amended Consent  
14 Decree.

15 44. Severability. In the event that any provision, paragraph, section, or sentence of this  
16 Amended Consent Decree is held by a court to be unenforceable, the validity of the enforceable  
17 provisions shall not be adversely affected.

18 45. Correspondence. Unless specifically provided for in this Amended Consent Decree, all  
19 notices required herein or any other correspondence pertaining to this Amended Consent Decree shall  
20 be sent by U.S. mail or electronic mail as follows:

21 If to Plaintiffs:

22 San Diego Coastkeeper  
23 Attn: Phillip Musegaas  
24 8305 Vickers Street, Suite 209  
25 San Diego, CA 92111  
26 Email: phillip@sdcoastkeeper.org

27 Coastal Environmental Rights Foundation  
28 Attn: Sara Ochoa  
1140 South Coast Hwy 101  
Encinitas, CA 92024  
Email: sara@cerf.org

1 With a copy to:

2 Coast Law Group LLP  
3 Attn: Marco Gonzalez  
4 1140 South Coast Hwy 101  
5 Encinitas, CA 92024  
6 Email: marco@coastlawgroup.com

7 San Diego Coastkeeper  
8 Attn: Patrick McDonough  
9 8305 Vickers St., Suite 209  
10 San Diego, CA 92111  
11 Email: patrick@sdcoastkeeper.org

12 If to Defendant:

13 Alia Khouri  
14 Deputy Chief Operating Officer, Infrastructure/Public Works  
15 202 C Street, MS 9A  
16 San Diego, CA 92101  
17 Email: EKhouris@sandiego.gov

18 Renee Robertson  
19 Director, Environmental Services Department  
20 9601 Ridgehaven Court, Suite 210  
21 San Diego, CA 92123  
22 Email: RobertsonR@sandiego.gov

23 Juan Guerreiro  
24 Director, Public Utilities Department  
25 9192 Topaz Way  
26 San Diego, CA 92123  
27 Email: JGuerreiro@sandiego.gov

28 With a copy to:

Shannon Eckmeyer  
Chief Deputy City Attorney  
Melissa Ables  
Deputy City Attorney  
Office of the City Attorney  
1200 Third Avenue, Suite 1100  
San Diego, CA 92101  
Email: SEckmeyer@sandiego.gov  
Mables@sandiego.gov

Nicole Granquist  
Downey Brand LLP  
621 Capitol Mall, 18<sup>th</sup> Floor

1 Sacramento, CA 95814  
2 Email: ngranquist@downeybrand.com

3 46. Notifications of communications shall be deemed submitted three (3) business days  
4 after having been sent via U.S. mail or the day of sending notification or communication by  
5 electronic mail. Any change of address or addresses shall be communicated in the manner described  
6 above for giving notices.

7 47. Prior Notice for Deadline Extensions and Missed Reporting Deadlines. Except in a  
8 case of force majeure, as described in paragraph 48, Defendant shall contact Plaintiffs to request an  
9 extension of any deadline set forth in this Amended Consent Decree, if necessary, at least fourteen  
10 (14) calendar days prior to the deadline at issue. Plaintiffs' consent to Defendant's requested  
11 extension shall not be unreasonably withheld. Defendant shall make a stipulated payment of \$1000  
12 for a missed reporting deadline for the feasibility analyses, as described under paragraph 11, and for  
13 an Action Plan, as described under paragraph 15. Payment shall be made within forty-five (45)  
14 calendar days of a missed reporting deadline and payable to the San Diego Audubon Society and sent  
15 to the San Diego Audubon Society, Attn Chris Redford, 4010 Morena Blvd, San Diego, CA 92117  
16 via U.S. Mail or similar delivery service. Payments for a missed deadline shall be used to fund the  
17 Environmental Project.

18 48. Force Majeure. Defendant shall not be deemed in default, contempt, or breach of this  
19 Amended Consent Decree by reason of any event that constitutes a force majeure. For purposes of  
20 this Amended Consent Decree, a force majeure is defined as any event arising from causes beyond  
21 the reasonable control of Defendant or its contractors that delay or prevents performance. This  
22 includes, without limitation, acts of God, acts of war, acts of terrorism, fire, explosion, extraordinary  
23 weather events, restraint by court order or public authority, necessary public agency approvals, or  
24 other causes beyond Defendant's reasonable control.

25 49. Access to the City Facilities. Plaintiffs acknowledge that inspection and/or sampling  
26 of the City Facilities is potentially hazardous and involves certain risks, including the risks of serious  
27 bodily injury, death, and property damage, and Plaintiffs accept and assume all risk of harm to  
28 persons and property from Plaintiffs entry upon the City Facilities. To the fullest extent permitted by

1 law, Plaintiffs shall also defend (with legal counsel reasonably acceptable to Defendant), indemnify,  
2 protect, and hold harmless Defendant and its elected officials, agents, officers, employees, and  
3 representatives ("Indemnified Parties"), from and against any and all claims, losses, costs, damages,  
4 injuries (including, without limitation, injury to or death to Plaintiffs' officers, employees, agents, and  
5 contractors), expense, and liability of every kind, nature, and description (including, without  
6 limitation, incidental and consequential damages, court costs, and litigation expenses and fees of  
7 expert consultants or expert witnesses incurred in connection therewith and costs of investigation)  
8 that arise out of, pertain to, or relate to, directly or indirectly, in whole or in part, any personal injury  
9 or property damage arising out of, connected with or related to Plaintiffs' inspection and/or sampling  
10 of the City Facilities. Plaintiffs' duty to defend, indemnify, protect and hold harmless shall not  
11 include any claims or liabilities arising from the sole negligence or willful misconduct of the  
12 Indemnified Parties.

13 50. Effect of Amended Consent Decree. Except as provided herein, Plaintiffs does not, by  
14 its consent to this Amended Consent Decree, warrant or aver in any manner that City's compliance  
15 with this Amended Consent Decree will constitute or result in compliance with any federal, state or  
16 local law or regulation. Nothing in this Amended Consent Decree shall be construed to affect or limit  
17 in any way the obligation of City to comply with all federal, state, and local laws and regulations  
18 governing any activity required by this Amended Consent Decree.

19 51. Counterparts. This Amended Consent Decree may be executed in any number of  
20 counterparts, all of which together shall constitute one original document. Telecopy, email of a .pdf  
21 signature, and/or facsimile copies of original signature shall be deemed to be originally executed  
22 counterparts of this Amended Consent Decree.

23 52. Modification of the Amended Consent Decree. This Amended Consent Decree, and  
24 any provisions herein, may not be changed, waived, discharged, or terminated unless by a written  
25 instrument, signed by the Settling Parties. If any Settling Party wishes to modify any provision of this  
26 Amended Consent Decree, the Settling Party must notify the other Settling Party in writing at least  
27 twenty-one (21) calendar days prior to taking any step to implement the proposed change.  
28

53. Full Settlement. This Amended Consent Decree constitutes a full and final settlement of this matter.

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

55. Authority. The undersigned representatives for Plaintiff and City each certify that he/she is fully authorized by the party whom he/she represents to enter into the terms and conditions of this Amended Consent Decree.

56. The Settling Parties certify that their undersigned representatives are fully authorized to enter into this Amended Consent Decree, to execute it on behalf of the Settling Parties, and to legally bind the Settling Parties to its terms.

57. The Settling Parties, including any successors or assigns, agree to be bound by this Amended Consent Decree and not to contest its validity in any subsequent proceeding to implement or enforce its terms.

**IN WITNESS WHEREOF**, the undersigned have executed this Amended Consent Decree as of the date first set forth below.

APPROVED AS TO CONTENT

Dated: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

San Diego Coastkeeper

Dated: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Coastal Environmental Rights Foundation

Dated: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_



Title: \_\_\_\_\_  
City of San Diego

APPROVED AS TO FORM

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Patrick McDonough  
Attorney for San Diego Coastkeeper

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Marco Gonzalez  
Coast Law Group LLP  
Attorney for Coastal Environmental Rights Foundation

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Deputy City Attorney XXX  
Attorney for City of San Diego

**IT IS SO ORDERED.**

**FINAL JUDGMENT**

Upon approval and entry of this Decree by the Court, this Decree shall constitute a final judgment between the Plaintiffs and Defendant.

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

\_\_\_\_\_  
Honorable Jeffrey T. Miller  
United States District Court Judge  
Southern District of California

Passed by the Council of The City of San Diego on SEP 12 2023, by the following vote:

Councilmembers	Yeas	Nays	Not Present	Recused
Joe LaCava	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Jennifer Campbell	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Stephen Whitburn	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Monica Montgomery Steppe	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Marni von Wilpert	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Kent Lee	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Raul A. Campillo	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Vivian Moreno	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sean Elo-Rivera	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Date of final passage SEP 18 2023.

AUTHENTICATED BY:

(Seal)

TODD GLORIA  
Mayor of The City of San Diego, California.

DIANA J.S. FUENTES  
City Clerk of The City of San Diego, California.

By Kristelle Medina, Deputy

I HEREBY CERTIFY that the foregoing ordinance was not finally passed until twelve calendar days had elapsed between the day of its introduction and the day of its final passage, to wit, on

JUL 25 2023

SEP 18 2023

, and on \_\_\_\_\_.

I FURTHER CERTIFY that said ordinance was read in full prior to passage or that such reading was dispensed with by a vote of five members of the Council, and that a written copy of the ordinance was made available to each member of the Council and the public prior to the day of its passage.

(Seal)

DIANA J.S. FUENTES  
City Clerk of The City of San Diego, California.

By Kristelle Medina, Deputy

Office of the City Clerk, San Diego, California

Ordinance Number O- 21714