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15 Attorneys for Plaintiff CALIFORNIA SPORTFISHING PROTECTION ALLIANCE

16 **UNITED STATES DISTRICT COURT**  
 17 **EASTERN DISTRICT OF CALIFORNIA**

18 CALIFORNIA SPORTFISHING  
 19 PROTECTION ALLIANCE, a non-profit  
 20 corporation,

21 Plaintiff,

22 vs.

23 GUNTERT SALES & ZIMMERMAN, *et.al.*

24 Defendants

25 Case No. 2:13-CV-02196-MCE-CKD

26 **CONSENT AGREEMENT**

27 (Federal Water Pollution Control Act,  
 28 33 U.S.C. §§ 1251 to 1387)

29 **WHEREAS**, Plaintiff California Sportfishing Protection Alliance (hereinafter "CSPA"  
 30 or "Plaintiff") is a non-profit public benefit corporation dedicated to the preservation, protection,  
 31 and defense of the environment, wildlife, and natural resources of California's waters;

32 **WHEREAS**, Defendants Guntert & Zimmerman Const. Div., Inc. and Guntert Sales  
 33 Div., Inc. (named in the lawsuit as Guntert Sales & Zimmerman, Guntert Steel), and Ronald M.  
 34 Guntert (collectively hereinafter "Guntert" or "Defendants") own an approximately twenty-two

1 (22) acre construction machinery equipment and metal services facility located at 222 E. 4<sup>th</sup>  
2 Street, in Ripon, California (“the Facility”), which is used for processing, fabrication, and storage  
3 of various sheet metals and metal products, along with other industrial activity, including the use,  
4 storage, maintenance, fueling, and washing of trucks, concrete slip-form paving equipment,  
5 trucks, and other heavy machinery;

6 **WHEREAS**, CSPA and Defendants are collectively referred to herein as the “Parties;”

7 **WHEREAS**, the Facility collects and discharges storm water into the City of Ripon’s  
8 storm drain system, which discharges to the Stanislaus River, which is a tributary to the  
9 Sacramento River and the Sacramento-San Joaquin Delta. (a map of the Facility is attached  
10 hereto as Exhibit A, and is incorporated herein by reference);

11 **WHEREAS**, storm water discharges associated with industrial activity are regulated  
12 pursuant to the National Pollutant Discharge Elimination System (“NPDES”), General Permit  
13 No. CAS000001 [State Water Resources Control Board], Water Quality Order No. 97-03-  
14 DWQ), issued pursuant to Section 402 of the Clean Water Act, 33 U.S.C. § 1342 (hereinafter  
15 “General Permit”);

16 **WHEREAS**, on or about August 20, 2013, Plaintiff provided notice of Defendants’  
17 alleged violations of the Act, and of its intention to file suit against Defendants, to the  
18 Administrator of the United States Environmental Protection Agency (“EPA”); the Administrator  
19 of EPA Region IX; the Executive Director of the State Water Resources Control Board (“State  
20 Board”); the Executive Officer of the Regional Water Quality Control Board, Central Valley  
21 Region (“Regional Board”); the U.S. Attorney General; and to Defendants, as required by the  
22 Act, 33 U.S.C. § 1365(b)(1)(A) (true and correct copies of CSPA’s notice letter are attached as  
23 Exhibit B and incorporated herein by reference);

24 **WHEREAS**, Defendants deny the occurrence of the violations alleged in the Notices and  
25 maintain that they have complied at all times with the provisions of the General Permit and the  
26 Clean Water Act;

27 **WHEREAS**, CSPA filed a complaint (“Complaint”) against Defendants in the United  
28 States District Court, Eastern District of California, on October 21, 2013 (the “Action”);



- 1           **b.** Within ninety (90) days of the Court Approval Date, Guntert will design an  
2           infiltration basin and canals with the capacity to contain the necessary runoff to  
3           prevent discharge from the unpaved areas of the: (1) West Yard, (2) Middle Yard;  
4           (3) South Yard; and (4) Fallow Land;
- 5           **c.** Guntert will conduct a pilot infiltration test in the proposed area of the infiltration  
6           basin within sixty (60) days of the Court Approval Date;
- 7           **d.** Guntert agrees to submit plans and applications to obtain necessary approvals to  
8           construct the drainage features to the City of Ripon and other state or local land  
9           use authorities within ninety (90) days of the Court Approval Date;
- 10          **e.** During the 2014 Dry Season (June 1 through September 30) and after agency  
11          approval, but not later than September 30, 2014, Guntert will construct the  
12          infiltration basin and canals in the general area designated on the attached Facility  
13          Map (see, Exhibit A);
- 14          **f.** Guntert shall annually vacuum and cover all drop inlets at the Facility during the  
15          Dry Season (June 1 through September 30) to reduce the amount of sediments  
16          entering the Facility's discharge point;
- 17          **g.** Within thirty (30) days of the Court Approval Date, Guntert shall conduct regular  
18          sweeping (excluding rainy weather days and/or weeks) of the paved areas of the  
19          Facility using a magnetic and/or vacuum sweeper. Sweeping shall occur at least  
20          once per week during the Wet Season (October 1 through May 30) and at least  
21          once per month during the Dry Season (June 1 through September 30);
- 22          **h.** Guntert shall keep detailed records of the sweeping activities described in  
23          Paragraph 2(g). The records shall include, at minimum, sweeping dates and times,  
24          the name of the operator, weather conditions, and any other notable conditions that  
25          are relevant to implementation of the sweeping requirements (e.g., conditions that  
26          prevent sweeping, etc.). A sample form of the sweeping log shall be included in  
27          the Facility's SWPPP. Guntert shall provide CSPA with copies of the sweeping  
28          records/logs on or before July 1<sup>st</sup> of each year covered by this Consent Agreement.  
The documents and reports shall be provided to CSPA pursuant to the Notice  
provisions herein (at ¶ 27);

West Yard

- 1           **i.** Until the infiltration basin and canals are constructed, existing catch basins in the  
2           middle of the West Yard will be maintained using the existing permeable geo-  
3           textile beneath a thick layer of coarse gravel with straw wattle that encircle each of  
4           the catch basins and silt socks within each basin during the Wet Season (October 1  
5           through May 30);



- 1 t. Runoff to the South Yard from the City of Ripon's adjacent property will be re-  
2 directed by using a series of small berms and ditches to the City of Ripon's Pump  
3 Station collection point;

4 Fallow Land

- 5 u. During the 2014 Dry Season, no later than September 30, 2014, and as part of the  
6 construction of the infiltration basin and canals, Guntert will protect the slope area  
7 along East Fourth Street by using permeable geo-textile beneath a thick layer of  
8 course gravele, east of the main facilities, in order to minimize runoff to the North  
9 Yard catch basin located on Fourth Street and maximize the infiltration on the  
10 property. The fallow land will be re-graded. The grading will direct storm water,  
11 by sheet flow, to a canal along the south property line, which will direct the storm  
12 water to the infiltration basin;
- 13 v. Defendants shall add vegetation and check dams to the canal within thirty (30)  
14 days of the completion of the Main Basin and shall continue to maintain the canal  
15 to prevent erosion and siltation;

16 North Yard

- 17 w. Within thirty (30) days of the Court Approval Date, Guntert shall installed a large  
18 capacity silt sock in the North Yard catch basin, located in Fourth Street;
- 19 x. At least once every week during each Wet Season (October 1 through May 30)  
20 covered by the Term of this Agreement, Guntert will sweep the east manufacturing  
21 area and the parking lot areas which drain to the North Yard catch basin on Fourth  
22 Street; and
- 23 y. Guntert shall keep detailed records of the sweeping activities described in  
24 Paragraph 2(g). The records shall include, at minimum, sweeping dates and times,  
25 the name of the operator, weather conditions, and any other notable conditions that  
26 are relevant to implementation of the sweeping requirements (e.g., conditions that  
27 prevent sweeping, etc.). A sample form of the sweeping log shall be included in  
28 the Facility's SWPPP. Guntert shall provide CSPA with copies of the sweeping  
records/logs on or before July 1<sup>st</sup> of each year covered by this Amended Consent  
Agreement. The documents and reports shall be provided to CSPA pursuant to the  
Notice provisions herein (at ¶ 27).

If, as a result of the ongoing investigation and analysis of storm water conditions at the  
Facility, Guntert determines that any of the aforementioned BMPs are impractical or impossible  
to implement, the parties shall meet-and-confer to discuss possible alterations to the BMPs and  
amendment to this Agreement. Guntert shall not unilaterally abandon or modify any of the  
BMPs described above without prior consultation with CSPA. Guntert's failure to meet-and-

1 confer with CSPA prior to altering the BMP and schedule described herein shall constitute a  
2 breach of this Agreement.

3 Unless otherwise noted above, each of the BMPs described in 2.a. – 2.y. shall be  
4 completed on or before September 30, 2014. If timely implementation of any of the BMPs set  
5 forth above becomes impossible, despite the timely good faith efforts of the Defendants,  
6 Defendants shall notify CSPA in writing within seven (7) calendar days of the date that the  
7 failure becomes apparent, and shall describe the reason for the non-performance. The Parties  
8 agree to meet and confer in good faith concerning the nonperformance and, where the Parties  
9 concur that the non-performance was or is impossible, despite Defendants’ timely good faith  
10 efforts, new performance deadlines shall be established. In the event that the Parties cannot  
11 timely agree upon the terms of such an extension, either of the Parties shall have the right to  
12 invoke the dispute resolution procedure described herein. In the event Defendants are unable to  
13 complete construction of any the BMPs described in Sections 2.a. – 2.y. by September 30, 2014,  
14 the Term of this Consent Agreement shall be extended until September 30, 2016.

15 **3. SWPPP Amendments/Additional BMPs.** Within thirty (30) days of the Court Approval  
16 Date, Guntert shall formally amend the SWPPP for the Facility to incorporate all of the relevant  
17 requirements of this Consent Agreement, as well as the revised Facility map attached hereto as  
18 Exhibit A. A copy of the SWPPP shall be provided to CSPA pursuant to the Notice provisions  
19 herein (at ¶ 27).

20 **4. Sampling Frequency.** Guntert shall collect and analyze samples from four (4)  
21 Qualifying Storm Events (“QSE”), as set forth in the General Permit<sup>1</sup> for sampling purposes, in  
22 each of the Wet Seasons<sup>1</sup> occurring during the Term of this Consent Agreement. Guntert shall  
23 collect and analyze storm water samples from two (2) QSEs within the first half of each Wet  
24 Season (October 1<sup>st</sup> to December 31<sup>st</sup>), including the first QSE of the Wet Season, and two (2)

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26 \_\_\_\_\_  
27 <sup>1</sup> “Qualifying Storm Events” under the General Permit are those events in which (i) the samples taken are preceded  
28 by at least three (3) working days during which no storm water discharges from the Facility have occurred; (ii) the  
samples are collected within the first hour that flow is observed when Guntert’s designated safety officer is present  
at the Discharge Point being sampled; and (iii) the samples are collected during daylight and scheduled facility  
operating hours.

<sup>2</sup> The “Wet Season” includes October 1<sup>st</sup> – May 30<sup>th</sup> of each calendar year.

1 QSEs within the second half of each Wet Season (January 1<sup>st</sup> to May 30<sup>th</sup>). The QSE sample  
2 results shall be compared with the values set forth in Exhibit C, attached hereto, and  
3 incorporated herein by reference. If the results of any QSE samples exceed the parameter values  
4 set forth in Exhibit C, Guntert shall comply with the “Action Memorandum” requirements set  
5 forth below (at ¶ 6).

6 **5. Sampling Parameters.** QSE samples shall be analyzed for each of the constituents listed  
7 in Exhibit C by a laboratory accredited by the State of California. QSE samples collected from  
8 the Facility shall be delivered to the laboratory as soon as possible to ensure that sample “hold  
9 time” is not exceeded. Analytical methods used by the laboratory shall be adequate to detect the  
10 individual constituents at or below the values specified on Exhibit C. Sampling results shall be  
11 provided to CSPA within seven (7) days of Guntert’s receipt of the laboratory report from each  
12 QSE sampling event pursuant to the Notice provisions herein (at ¶ 27).

13 **6. “Action Memorandum” Trigger; CSPA Review of “Action Memorandum”; Meet-**  
14 **and-Confer.** If any QSE sample taken during the Wet Seasons occurring during the Term of  
15 this Agreement exceeds the evaluation levels set forth in Exhibit C, Guntert shall prepare a  
16 detailed, written statement describing the excess, the possible cause(s) and/or source of the  
17 excess, additional measures that will be taken to address and eliminate the problem and future  
18 exceedances, and a time line for implementing said additional measures (“Action  
19 Memorandum”). The Action Memorandum shall be provided to CSPA no later than thirty (30)  
20 days after Guntert’s receipt of the sample results at issue. Recognizing that a SWPPP is an  
21 ongoing iterative process meant to encourage innovative BMPs, the additional measures  
22 described in the Action Memorandum may include, but are not limited to, taking confirmation  
23 samples, increasing the storage and/or treatment capacity of the infiltration basin and canals,  
24 further material improvements to the storm water collection and discharge system, changing the  
25 frequency of sweeping activities, changing the type and extent of industrial activities and/or  
26 Best Management Practices at the Facility. Such additional measures, to the extent feasible,  
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1 shall be implemented no later than seventy-five (75) days after the due date of the Action  
2 Memorandum, except where: (1) structural changes require longer than seventy-five  
3 (75)calendar days to complete; (2) weather-related conditions render timely implementation  
4 infeasible; or (3) the Parties otherwise agree in writing. If the additional measures cannot be  
5 implemented within seventy-five (75) days of the due date of the Action Memorandum, Guntert  
6 will include an explanation for why additional time is needed in the Action Memorandum.  
7 Within thirty (30) days of implementation of any such additional measures, the Facility SWPPP  
8 shall be amended to include all additional BMP measures designated in the Action  
9 Memorandum. CSPA may review and comment on an Action Memorandum and suggest any  
10 additional pollution prevention measures it believes are appropriate. CSPA will provide  
11 Guntert with any such comments and suggestions within sixty (60) days of its receipt of the  
12 Action Memorandum; however, CSPA's failure to do so shall not be deemed to constitute  
13 agreement with the proposals set forth in the Action Memorandum. Upon request by CSPA,  
14 Guntert agrees to meet and confer in good faith (at the Facility, if requested by CSPA)  
15 regarding the contents and sufficiency of the Action Memorandum.  
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18 **7. Inspections During the Term of this Agreement.** In addition to any site inspections  
19 conducted as part of the meet-and-confer process concerning an Action Memorandum as set  
20 forth above, Guntert shall permit representatives of CSPA to perform up to three (3) physical  
21 inspections of the Facility during normal daylight business hours during the Term of this Consent  
22 Agreement. These inspections shall be performed by CSPA's counsel and consultants and may  
23 include stormwater water quality sampling, photographing, and/or videotaping and CSPA shall  
24 provide Guntert with a copy of all sampling reports, photographs and/or video. CSPA shall not  
25 inspect the interior of the buildings located on the Facility without the express written permission  
26 of Guntert or its legal representative. CSPA shall provide Guntert with at least seventy-two (72)  
27 hours prior written Notice via email transmission (as set forth in ¶27) of such physical  
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1 inspection, except that Guntert shall have the right to deny access if circumstances would make  
2 the inspection unduly burdensome and pose significant interference with business operations of  
3 Guntert or its attorney, or threaten the safety of individuals. In such case, Guntert shall specify at  
4 least three (3) dates within the two (2) weeks thereafter upon which a physical inspection by  
5 CSPA may proceed. Guntert shall not make any material alterations to Facility conditions during  
6 the period between receiving CSPA's initial advance notice and the start of CSPA's inspection  
7 that Guntert would not otherwise have made but for receiving notice of CSPA's request to  
8 conduct a physical inspection of the Facility, excepting any actions taken in compliance with any  
9 applicable laws or regulations. Guntert shall provide CSPA with written documentation of any  
10 alterations to Facility conditions during the period between receiving CSPA's notice of  
11 inspection and the start of CSPA's inspection. Nothing herein shall be construed to prevent  
12 Guntert from continuing to implement any BMPs identified in the SWPPP during the period  
13 prior to an inspection by CSPA or at any time.

14 **8. Guntert's Communications with Regional and State Boards.** During the Term of this  
15 Consent Agreement, Guntert shall provide CSPA with copies of all documents submitted to the  
16 Regional Board or the State Board concerning storm water discharges from the Facility,  
17 including, but not limited to, all documents and reports submitted to the Regional Board and/or  
18 State Board as required by the General Permit. Such documents and reports shall be provided to  
19 CSPA pursuant to the Notice provisions herein (at ¶ 27) and contemporaneously with Guntert's  
20 submission to such agencies.

21 **9. Future SWPPP Amendments.** Guntert shall provide CSPA with a copy of any  
22 amendments to the Facility SWPPP made during the Term of the Consent Agreement within  
23 fourteen (14) days of such amendment.

## 24 **II. MITIGATION, COMPLIANCE MONITORING AND FEES AND COSTS**

25 **10. Mitigation.** As mitigation of the Clean Water Act violations alleged in CSPA Complaint,  
26 Guntert agrees to pay the sum of \$45,000.00 to the Rose Foundation for Communities and the  
27 Environment (the "Rose Foundation") for projects to improve water quality in local watersheds  
28

1 of San Joaquin County, the Stanislaus River, the San Joaquin River, and/or the Sacramento-San  
2 Joaquin Delta. The mitigation payment shall be made in three installments. The first installment  
3 payment of \$15,000 shall be made within seven (7) days after the Court Approval Date. The  
4 second installment payment of \$15,000 shall be made on or before January 1, 2015. The third  
5 installment payment of \$15,000 shall be made on or before January 1, 2016. The Rose  
6 Foundation shall endeavor to apply the funds to projects within 50 miles of the Facility. If the  
7 Rose Foundation cannot identify a suitable project within 50 miles of the Facility, then the funds  
8 shall be used on any applicable project in the watersheds described above. None of the funds  
9 paid to the Rose Foundation shall be used to pay attorneys' fees in litigation against any of the  
10 Defendants to this action. Payment shall be provided directly to the Rose Foundation as follows:  
11 Rose Foundation, 6008 College Avenue, Oakland, CA 94618, Attn: Tim Little. The Rose  
12 Foundation shall provide notice to the Parties within thirty (30) days of when the funds are  
13 dispersed by the Rose Foundation, setting forth the recipient and purpose of the funds.  
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16 **11. Compliance Monitoring Funding.** To defray CSPA's reasonable investigative, expert,  
17 consultant and attorneys' fees and costs associated with monitoring Guntert's compliance with  
18 this Consent Agreement, Guntert agrees to contribute \$10,000 to a compliance monitoring fund  
19 maintained by CSPA. Compliance monitoring activities may include, but shall not be limited to,  
20 site inspections, review of water quality sampling reports, review of annual reports, discussions  
21 with representatives of Guntert concerning the Action Memoranda referenced above, and  
22 potential changes to compliance requirements herein, preparation for and participation in meet-  
23 and-confer sessions, water quality sampling and analysis, and compliance-related activities. The  
24 \$10,000 shall be paid to the Jackson & Tuerck Attorney-Client Trust Account, and sent to  
25 JACKSON & TUERCK at P.O. Box 148, Quincy, CA 95971, in two (2) annual installments.  
26 The first installment shall be paid on or before June 1, 2015; the second installment shall be paid  
27 on or before June 1, 2016. Guntert further agrees to reimburse CSPA for actual, reasonable and  
28 necessary fees and costs in excess of the aforementioned \$10,000.00 up to a maximum of

1 \$5,000.00, if said fees and costs are incurred as a result of investigations, inspections, or any  
2 meet and confer that becomes necessary because any or all of the following occur:

- 3       **a.**     Guntert fails to implement any of the BMPs, or comply with any of the conditions  
4               set forth in Section 2 of this Agreement;
- 5       **b.**     Guntert fails to comply with the Action Memorandum requirements set forth in  
6               Section 6 of this Agreement;

7       Such fees and costs shall include reasonable investigative, expert, consultant and  
8 attorneys' fees and costs, incurred as a result of the investigation, inspection and meet and confer  
9 process.

10 **12. Fees and Costs.** Guntert agrees to reimburse CSPA in the amount of \$29,000 in two  
11 installments, consisting of \$14,500 per installment to defray CSPA's reasonable investigative,  
12 expert, consultant and attorneys' fees and costs, incurred as a result of investigating the activities  
13 at the Facility, bringing the Action and negotiating a resolution in the public interest. The first  
14 installment is payable within seven (7) days of the Court Approval Date and the second  
15 installment is payable six (6) months thereafter. Such payments shall be made to the Jackson &  
16 Tuerck Attorney-Client Trust Account, and sent to JACKSON & TUERCK at P.O. Box 148,  
17 Quincy, CA 95971.

18 **III. DISPUTE RESOLUTION AND ENFORCEMENT OF CONSENT AGREEMENT**

19 **13. Jurisdiction of the Court.** Upon the Court Approval Date, the Parties shall file with the  
20 Court a Stipulation and Order that shall provide that: (1) the Complaint and all claims therein  
21 shall be dismissed with prejudice pursuant to Federal Rule of Civil Procedure 41(a)(2), and (2)  
22 the Court shall retain and have jurisdiction over the Parties with respect to disputes arising under  
23 this Consent Agreement. Nothing in this Consent Agreement shall be construed as a waiver of  
24 any Party's right to appeal from an order that arises from an action to enforce the terms of this  
25 Consent Agreement.

26 **14. Meet and Confer.** With the exception of the timelines set forth above for addressing  
27 exceedances of values specified on Exhibit C and Action Memoranda, if a dispute under this  
28 Consent Agreement arises, or either Party believes that a breach of this Consent Agreement has

1 occurred, the Parties shall meet and confer within seven (7) days of receiving written notification  
2 from the other Party of a request for a meeting to determine whether a violation has occurred and  
3 to develop a mutually agreed upon plan, including implementation dates, to resolve the dispute.  
4 If the Parties fail to meet and confer, or the meet-and-confer does not resolve the issue, after at  
5 least seven (7) days have passed after the meet-and-confer occurred or should have occurred,  
6 either Party shall be entitled to all rights and remedies under the law, including filing a motion  
7 with the District Court of California, Northern District, which shall retain jurisdiction over the  
8 Action for the limited purposes of enforcement of the terms of this Consent Agreement. The  
9 Parties shall be entitled to seek: (1) injunctive relief as needed to remedy the alleged  
10 breach/breaches of the Consent Agreement, (2) additional mitigation payments to the Rose  
11 Foundation, and/or (3) reimbursement of fees and costs incurred in the litigation of any such  
12 motion, and such fees and costs may be awarded, pursuant to the provisions set forth in Section  
13 505(d) of the Clean Water Act, 33 U.S.C. §1365(d), and applicable case law interpreting such  
14 provision.

15 **15. Right to Cure.** Except in case of an emergency but subject to the regulatory authority of  
16 any applicable governmental authority, any breach of or default under this Consent Agreement  
17 capable of being cured shall be deemed cured if, within five (5) days of first receiving notice of  
18 the alleged breach or default, or within such other period approved in writing by the Party  
19 making such allegation, which approval shall not be unreasonably withheld, the party allegedly  
20 in breach or default has completed such cure or, if the breach or default can be cured but is not  
21 capable of being cured within such five (5) day period, has commenced and is diligently  
22 pursuing to completion such cure.

#### 23 **IV. MISCELLANEOUS PROVISIONS**

24 **16. Purpose.** The Parties enter into this Consent Agreement for the purpose of avoiding  
25 prolonged and costly litigation. Nothing in this Consent Agreement shall be construed as, and  
26 Defendants expressly do not intend to imply, an admission as to any fact, finding, issue of law,  
27 or violation of law, nor shall compliance with this Consent Agreement constitute or be construed  
28 as an admission by Defendants of any fact, finding, conclusion, issue of law, or violation of law.

1 However, this paragraph shall not diminish or otherwise affect the obligation, responsibilities,  
2 and duties of the Parties under this Consent Agreement.

3 **17. Parties.** This Consent Agreement and its attachments are made for the sole benefit of the  
4 Parties named herein, and no other person or entity shall have any rights or remedies under or by  
5 reason of this Consent Agreement, unless otherwise expressly provided for therein.

6 **18. CSPA's Waiver and Release.** Upon the Court Approval Date and entry of this Consent  
7 Agreement, CSPA, on its own behalf and on behalf of its members, subsidiaries, successors,  
8 assigns, directors, officers, agents, attorneys, representatives, and employees, releases  
9 Defendants and their officers, directors, employees, shareholders, parents, subsidiaries, and  
10 affiliates, and each of their predecessors, successors and assigns, and each of their agents,  
11 attorneys, consultants, and other representatives (each a "Released Defendant Party") from, and  
12 waives all claims which arise from or pertain to the Action, including, without limitation, all  
13 claims for injunctive relief, damages, penalties, fines, sanctions, mitigation, fees (including fees  
14 of attorneys, experts, and others), costs, expenses or any other sum incurred or claimed or which  
15 could have been claimed in this Action, for the alleged failure of Defendants to comply with the  
16 Clean Water Act at the Facility, up to the Effective Date of this Consent Agreement.

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19 During the term of the Consent Agreement, CSPA agrees that neither CSPA, its officers,  
20 executive staff, or members of its governing board nor any organization under the control of  
21 CSPA, its officers, executive staff, or members of its governing board, will file any new lawsuit  
22 against the Defendants seeking relief related to storm water discharged from the Facility. CSPA  
23 further agrees that, during the term of the Consent Agreement, CSPA will not support other  
24 lawsuits, by providing financial assistance, personnel time or other affirmative actions, against  
25 the Defendants arising from its operation of the Facility that may be proposed by other groups or  
26 individuals who would rely upon the citizen suit provision of the Clean Water Act or state law  
27 claims to challenge the City's management of storm water at the Facility. Nothing in this section  
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1 shall be construed as limiting CSPA's right to enforce the terms and conditions of this  
2 Agreement or its right to appeal from an order that arises from an action to enforce the terms of  
3 this Consent Agreement.

4 **19. Defendants' Waiver and Release.** Defendants, on their own behalf and on behalf of  
5 those Released Defendant Parties under their control, release CSPA (and its officers, directors,  
6 employees, members, parents, subsidiaries, and affiliates, and each of their successors and  
7 assigns, and its agents, attorneys, and other representative) from, and waive all claims which  
8 arise from or pertain to the Action, including all claims for fees (including fees of attorneys,  
9 experts, and others), costs, expenses or any other sum incurred or claimed or which could have  
10 been claimed for matters associated with or related to the Action up to the Effective Date of this  
11 Consent Agreement.

12 **20. Term.** It is the intent of the Parties that the Term of this Agreement cover two (2)  
13 complete Wet Season following the implementation of the BMPs set forth in Section 2 above.  
14 Therefore, the Term of this Consent Agreement shall run from the Court Approval date until  
15 September 30, 2016, unless implementation of any the BMPs indentified in Section 2 are not  
16 completed prior to September 30, 2014, in which case the Term of this Agreement shall be  
17 extended to September 30, 2017.

18 **21. Execution.** The undersigned are authorized to execute this Consent Agreement on behalf  
19 of their respective parties and have read, understood and agreed to be bound by all of the terms  
20 and conditions of this Consent Agreement.

21 **22. Formalities of Execution.** The Consent Agreement may be executed in one or more  
22 counterparts which, taken together, shall be deemed to constitute one and the same document.  
23 An executed copy of this Consent Agreement shall be valid as an original. Signatures of the  
24 Parties transmitted by facsimile or email shall be deemed binding.

25 **23. Invalidity and Severability.** In the event that any of the provisions of this Consent  
26 Agreement is held by a court to be unenforceable, the validity of the enforceable provisions shall  
27 not be adversely affected.  
28

1 **24. Disapproval by Court.** If for any reason the Court should decline to approve this  
2 Consent Agreement in the form presented, the Parties shall use reasonable efforts to work  
3 together to modify the Consent Agreement within thirty (30) days so that it is acceptable to the  
4 Court. If the Parties are unable to modify this Consent Agreement in a mutually acceptable  
5 manner, this Consent Agreement shall become null and void. Should this proposed Consent  
6 Agreement fail to be entered for any reason, this proposed Consent Agreement, and any  
7 statement or other provision contained in this proposed Consent Agreement shall have no legal  
8 effect and shall not be used for any purpose in any subsequent proceeding in this or any other  
9 litigation.

10 **25. Construction/Applicable Law.** The language in all parts of this Consent Agreement,  
11 unless otherwise stated, shall be construed according to its plain and ordinary meaning. This  
12 Consent Agreement shall be construed pursuant to California law, without regarding to conflict  
13 of law principles.

14 **26. Entirety of the Agreement.** This Consent Agreement and the attachments contain all of  
15 the terms and conditions agreed upon by the Parties relating to the matters covered by the  
16 Consent Agreement, and supersede any and all prior and contemporaneous agreements,  
17 negotiations, correspondence, understandings, and communications of the Parties, whether oral  
18 or written, respecting the matters covered by this Consent Agreement. All agreements,  
19 covenants, representations and warranties, express or implied, oral or written, of the Parties  
20 concerning the subject matter of this Consent Agreement are contained herein.

21 **27. Notice.** Unless otherwise stipulated to by the receiving party, any notices or documents  
22 required or provided for by this Consent Agreement or related thereto that are to be provided to  
23 CSPA pursuant to this Consent Agreement shall be hand-delivered or sent by U.S. Mail, postage  
24 prepaid, and addressed as follows or, in the alternative, shall be sent by electronic mail  
25 transmission to the email addresses listed below:

1 Bill Jennings, Executive Director  
2 California Sportfishing Protection Alliance  
3 3536 Rainier Avenue  
4 Stockton, CA 95204  
5 E-mail: DeltaKeep@aol.com

6 With copies sent to:

7 Robert J. Tuerck, Esq.  
8 Jackson & Tuerck  
9 P.O. Box 148  
10 Quincy, CA 95971  
11 Tel: (530) 283-0406  
12 Fax: (530) 283-0416  
13 E-mail: bob@JacksonTuerck.com

14 And to:

15 Andrew L. Packard  
16 Law Offices of Andrew L. Packard  
17 100 Petaluma Boulevard North, Suite 301  
18 Petaluma, CA 94952  
19 Tel: (707) 763-7227  
20 E-mail: andrew@packardlawoffices.com

21 Any notices or documents required or provided for by this Consent Agreement or related  
22 thereto that are to be provided to Defendants pursuant to this Consent Agreement shall be sent by  
23 U.S. Mail, postage prepaid, and addressed as follows or, in the alternative, shall be sent by  
24 electronic mail transmission to the email addresses listed below:

25 Ronald M. Guntert, Jr., CEO  
26 Guntert & Zimmerman Const. Div. Inc.  
27 Guntert Sales Div. Inc.  
28 222 East Fourth Street  
Ripon, California 95366  
Tel: (209) 599-0066  
Fax: (209) 599-2021  
E-mail: gz@guntert.com

With copies sent to:

1 Cecelia C. Fusich  
2 Vernon Law Office  
3 2300 Geng Road, Suite 200  
4 Palo Alto, California 94303  
5 Tel: (650) 493-8483  
6 Fax.: (650) 493-6160  
7 E-mail: Cecelia.Fusich@vernonlawoffice.com

8 Each Party shall promptly notify all other Parties of any change in the above-listed  
9 contact information.

10 **28. Force Majeure.** No Party shall be considered to be in default in the performance of any  
11 of its obligations when a failure to perform is due to a “Force Majeure.” A Force Majeure event  
12 is any circumstances beyond the Party’s reasonable control, including, without limitation, any act  
13 of God, war, fire, earthquake, flood, and restraint by court order or public authority. A Force  
14 Majeure event does not include normal inclement weather, such as anything less than or equal to  
15 a 100 year/24-hour storm event, or inability to pay. Any Party seeking to rely upon this  
16 paragraph shall have the burden of establishing that it could not reasonably have been expected  
17 to avoid, and which by exercise of due diligence has been unable to overcome, the Force  
18 Majeure.

19 **29. Regulatory Approval.** If for any reason the United States Department of Justice, the  
20 United States Environmental Protection Agency or the Court should decline to approve this  
21 Consent Agreement in the form presented, the Parties shall use their best efforts to work  
22 together to modify the Consent Agreement within thirty (30) days so that it is acceptable to the  
23 United States Department of Justice, the United States Environmental Protection Agency or the  
24 Court.

25 **30. Modification and Amendment.** This Consent Agreement may be amended or modified  
26 only by a writing signed by the Parties or their authorized representatives, and then by order of  
27 the Court.  
28

1 **31. Drafting.** This Consent Agreement shall be deemed to have been drafted equally by the  
2 Parties, and shall not be interpreted for or against any Party on the ground that any such party  
3 drafted it.

4 The Parties hereto enter into this Consent Agreement and respectfully submit it to the  
5 Court for its approval and entry as an Order and Final Judgment.

6  
7 Dated: \_\_\_\_\_ California Sportfishing Protection Alliance

8  
9 By: \_\_\_\_\_  
10 Bill Jennings, Executive Director

11  
12 Dated: \_\_\_\_\_ Guntert & Zimmerman Const. Div. Inc. and  
13 Guntert Sales Div., Inc.

14  
15 By: \_\_\_\_\_  
16 Ronald. M Guntert, Jr., CEO

17 **ORDER**

18 Having reviewed and fully considered the parties' request to enter this Consent  
19 Agreement as an order, the Court finds this agreement to be fair, adequate and reasonable,  
20 consistent with applicable laws, and protective of the public interest.

21 The foregoing Consent Agreement is hereby approved and judgment is entered therewith.  
22 The Court shall retain jurisdiction over the parties with respect to disputes arising under the  
23 Consent Agreement.

24 IT IS SO ORDERED.

25 **Dated: May 13, 2014**

26   
27 \_\_\_\_\_  
28 MORRISON C. ENGLAND, JR., CHIEF JUDGE  
UNITED STATES DISTRICT COURT

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**EXHIBIT A**

**Facility Map**

**EXHIBIT B**  
**Notice of Violation**

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**EXHIBIT C**

**Sampling Parameter Values**

Parameter	Value
Total Suspended Solids (“TSS”)	100 mg/L
pH	6.0 – 9.0
Specific Conductivity (“SC”)	200 µmhos/cm
Oil & Grease (“O&G”)	15 mg/L
Iron (“Fe”)	1.0 mg/L
Lead (“Pb”)	0.0816 mg/L
Aluminum (“Al”)	0.75 mg/L
Zinc (“Zn”)	0.117 mg/L
Cadmium (“Cd”)	0.0159 mg/L
Chromium (“Cr”)	0.085 mg/L
Copper (“Cu”)	0.063 mg/L
Total Petroleum Hydrocarbons (“TPH”) <sup>2</sup>	100 mg/L
Benzene	0.01 mg/L

<sup>2</sup>Testing must be done using “Method 8015(m)” and the laboratory should report all peaks.