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15 (Additional counsel listed on following page)

16  
 17 **UNITED STATES DISTRICT COURT**  
 18 **NORTHERN DISTRICT OF CALIFORNIA, SAN FRANCISCO DIVISION**  
 19

20  
 21 BAYKEEPER, INC., d/b/a SAN FRANCISCO  
 22 BAYKEEPER, a California non-profit corporation,

Civil Case No.: 10-00921 SBA

23 Plaintiff,

**CONSENT DECREE**

24 v.

25 CITY OF SOUTH SAN FRANCISCO, a California  
 26 municipal corporation,

27 Defendant.

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City of South San Francisco  
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**CONSENT DECREE**

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2 The following Consent Decree is entered into by and between Plaintiff San Francisco Baykeeper  
3 (“Plaintiff” or “Baykeeper”), and Defendant City of South San Francisco (“Defendant” or “City”)  
4 (collectively, “the Parties”).

5 **WHEREAS**, Baykeeper is a non-profit public benefit corporation dedicated to, among other  
6 things, the protection and enhancement of the water quality of the San Francisco Bay;

7 **WHEREAS**, the City is a municipal corporation established by California state law;

8 **WHEREAS**, the City is regulated by the Federal Water Pollution Control Act, 33 U.S.C., §§  
9 1251 *et seq.* (“Clean Water Act or CWA”), California Water Code sections 13000 *et seq.* (the “Porter-  
10 Cologne Act”), and the General Waste Discharge Requirements for Sanitary Sewer Systems, State  
11 Water Resources Control Board Order No. 2006-0003-DWQ and Monitoring and Reporting Program  
12 No. 2006-0003-DWQ, as amended by Order No. WQ 2008-0002-EXEC (“SSO WDR”);

13 **WHEREAS**, the City owns and/or operates a sewage collection system that serves South San  
14 Francisco;

15 **WHEREAS**, the City Collection System is intended to convey sewage to the South San  
16 Francisco Water Quality Control Plant (“the WQCP”);

17 **WHEREAS**, on December 19, 2009, Baykeeper issued a sixty (60) day notice letter (“Notice  
18 Letter”) to the City. The Notice Letter informed the City of alleged violations of the Clean Water Act  
19 and of Baykeeper’s intention to file suit against the City. The Notice Letter was sent to the  
20 Administrator of the United States Environmental Protection Agency (“EPA”), the Administrator of  
21 EPA Region IX, and the Executive Director of the State Water Resources Control Board (“State  
22 Board”), as required by section 505(b)(1)(A) of the Clean Water Act, 33 U.S.C. § 1365(b)(1)(A). The  
23 Notice Letter was also sent to the Executive Officer of the Regional Water Quality Control Board, San  
24 Francisco Bay Region, (“Regional Board”);

25 **WHEREAS**, on March 4, 2010, Baykeeper filed its complaint (the “Complaint”) against the  
26 City in the United States District Court for the Northern District of California (“District Court”);

27 **WHEREAS**, the City denies Baykeeper’s allegations that it has violated the Clean Water Act  
28 and denies it has liability to Baykeeper;

1           **WHEREAS**, the Parties, through their authorized representatives and without either adjudication  
2 of the Complaint’s claims or admission by the City of any alleged violation or other wrongdoing, have  
3 chosen to resolve this action through settlement to avoid the costs and uncertainties of further litigation;

4           **WHEREAS**, although this Consent Decree requires the City to reduce City Collection System  
5 sanitary sewer overflows (“SSOs”) to 5 SSOs per 100 miles of sewer pipe in 2015, and although further  
6 SSO reductions are not required by this Consent Decree, it is the mutual goal of the Parties to reduce  
7 City Collection System SSOs to 3 SSOs per 100 miles of sewer pipe per year or less (which Baykeeper  
8 contends is indicative of good collection system performance);

9           **WHEREAS**, all actions taken by the City pursuant to this Consent Decree shall be made in  
10 compliance with all applicable federal, state and local rules and regulations;

11           **WHEREAS**, for purposes of settlement, the Parties waive all objections that they may have to  
12 the District Court’s decision to enter and retain jurisdiction over this Consent Decree.

13           **NOW THEREFORE IT IS HEREBY STIPULATED BETWEEN THE PARTIES AND**  
14 **ADJUDGED, ORDERED AND DECREED BY THE COURT AS FOLLOWS:**

15   **I. GENERAL OBJECTIVES**

16           1.       The objectives of this Consent Decree are:

17                           (a)     To ensure that the City uses, implements, and improves ways, means, and  
18 methods to prevent sanitary sewer overflows;

19                           (b)     To ensure that the City uses, implements, and improves ways, means, and  
20 methods to prevent violations of, or to comply with, the Clean Water Act; and

21                           (c)     To further the goals and objectives of the Clean Water Act.

22           2.       Accordingly, the Parties agree that, so long as the City is implementing the terms and  
23 conditions of this Consent Decree and is not in violation hereof, it is the intent of this Consent Decree  
24 that the City will be in full compliance with the requirements of the Clean Water Act related to  
25 collection system operations or management, such that the City contends no cause of action against the  
26 City would be available to other citizen suit plaintiffs thereunder.

27    ///

28    ///

**II. DEFINITIONS**

3. Unless otherwise expressly defined herein, terms used in this Consent Decree that are defined in the Clean Water Act or in regulations, or in rules promulgated under the Clean Water Act, have the meaning assigned to them in the applicable statutes, regulations, or rules. Whenever terms listed below are used in this Consent Decree, the following definitions apply:

(a) “Consent Decree” means this Consent Decree, the District Court’s Stipulated Order of Dismissal, and any exhibits or documents incorporated by reference to this Consent Decree.

(b) “CCTV” means closed-circuit television.

(c) “CIP” means the City’s sewer system capital improvement program.

(d) “City” means the City of South San Francisco.

(e) “City Collection System” means the sewer pipes and lines, manholes or maintenance holes, pump stations, and all appurtenances thereto under ownership and responsibility of the City that are used to convey wastewater generated by residential, commercial, and industrial sources to the WQCP. For purposes of this Consent Decree, the City Collection System does not include Private Laterals or other privately owned or operated infrastructure that may connect to the City Collection System.

(f) “Day” means a calendar day. In computing any period of time under this Consent Decree, where the last day of such period is a Saturday, Sunday, or Federal or State Holiday, the period runs until the close of business on the next day that is not a Saturday, Sunday, or Federal or State Holiday.

(g) “Gravity Sewer” means pipes within the City Collection System that convey wastewater by gravity flow.

(h) “Food Service Establishment” or “FSE” means any facility where food is served and intended for individual portion service, and includes the site at which individual portions are prepared or provided.

(i) “FOG” means fats, oil, and grease.

(j) “Force Main” means the pipelines within the City Collection System that convey wastewater under pressure from the discharge side of a pump or pneumatic ejector to a discharge point.

1 (k) "Infiltration" means water other than wastewater that may enter the City  
2 Collection System through the pipes, joints, or cracks.

3 (l) "Inflow" means water other than wastewater that may enter the City Collection  
4 System through unpermitted connections, drains, or manholes.

5 (m) "I/I" means infiltration and inflow.

6 (n) "Interest" means interest at the rate established by the Secretary of the Treasury  
7 pursuant to 28 U.S.C. § 1961.

8 (o) "NPDES" means National Pollutant Discharge Elimination System.

9 (p) "Pipeline Assessment Condition Protocol" or "PACP" means the condition  
10 assessment protocol established by the National Association of Sewer Service Companies.

11 (q) "Private Lateral" means the private sanitary sewer lateral or line connecting a  
12 home or other structure to the City Collection System.

13 (r) "Sanitary Sewer Overflow," "overflow", or "SSO" has the same meaning as those  
14 terms are defined in Section A.1. of the SSO WDR, or any amendment thereto, and which currently  
15 means: any overflow, spill, release, discharge or diversion of untreated or partially treated wastewater  
16 from [the City Collection System]. SSOs include: (i) Overflows or releases of untreated or partially  
17 treated wastewater [from the City Collection System] that reach waters of the United States; (ii)  
18 Overflows or releases of untreated or partially treated wastewater [from the City Collection System] that  
19 do not reach waters of the United States; and (iii) Wastewater backups into buildings and on private  
20 property that are caused by blockages or flow conditions within the publicly owned portion of [the City  
21 Collection System]. For purposes of this definition, "waters of the United States" has the meaning as set  
22 forth in 40 C.F.R. § 122.2.

23 (s) "Sewer Line Segment" means any section of publicly owned sewer line or pipe  
24 located between: (1) two manholes/maintenance holes; (2) a pump station and a manhole/maintenance  
25 hole; (3) a pump station or a manhole/maintenance hole and a headworks structure; or (4) a sewer line or  
26 pipe otherwise identifiable as a discrete section.

27 (t) "SSMP" means the Sewer System Management Plan implemented by the City to  
28 monitor the condition, maintenance, and repair of the City Collection System.

1 (u) "Year" shall mean calendar year, unless otherwise specified.

2 **III. JURISDICTION AND VENUE**

3 4. This District Court has jurisdiction over the subject matter of the claims asserted by  
4 Baykeeper pursuant to section 505(a)(1) of the Clean Water Act, 33 U.S.C. § 1365(a)(1), 28 U.S.C. §§  
5 1331 and 2201 (an action for declaratory and injunctive relief arising under the Constitution and laws of  
6 the United States).

7 5. Venue is proper in this judicial district pursuant to sections 309(b) and 505(c) of the  
8 Clean Water Act, 33 U.S.C. §§ 1319(b), 1365(c), and 28 U.S.C. §§ 1391(b) and (c).

9 6. The Complaint filed herein states claims for which relief can be granted against the City  
10 pursuant to section 505 of the Clean Water Act, 33 U.S.C. § 1365.

11 7. Baykeeper has standing to bring this action.

12 8. The District Court shall retain jurisdiction over this matter during the term of this  
13 Consent Decree for purposes of interpreting, modifying or enforcing the terms of this Consent Decree.

14 **IV. EFFECT OF CONSENT DECREE**

15 9. Notwithstanding the General Objectives of this Consent Decree, Baykeeper does not, by  
16 its consent to this Consent Decree, warrant or aver in any manner that the City's compliance with this  
17 Consent Decree will constitute or result in compliance with any federal or state law or regulation. This  
18 Consent Decree is neither a permit nor a modification of existing permits under any federal, state, or  
19 local law and in no way relieves the City of its responsibilities to comply with all applicable federal,  
20 state and local laws and regulations.

21 10. Nothing in this Consent Decree shall be construed as an admission by the City, and the  
22 City does not intend to imply any admission as to any fact, finding, issue of law, or violation of law, nor  
23 shall compliance with this Consent Decree be construed as an admission by the City of any fact, finding,  
24 conclusion, issue of law, or violation of law.

25 11. Compliance with this Consent Decree, including the payment of all mitigation and  
26 stipulated payments and Interest accrued thereon, and the completion of all Supplemental Environmental  
27 Projects required pursuant to this Consent Decree, resolves Baykeeper's civil claims for the violations  
28 alleged against the City in the Complaint, including all claims for civil penalties and attorneys' fees.

1 12. Upon the Effective Date of this Consent Decree, Baykeeper hereby releases the City, and  
 2 its officials, officers, employees and successors and assigns, from any and all claims related to SSOs that  
 3 have or could have been claimed in the Complaint, known or unknown, up to and including the  
 4 Effective Date of this Consent Decree. Except for claims for the City’s failure to comply with this  
 5 Consent Decree, Baykeeper further releases the City, and its successors and assigns, from all claims  
 6 pertaining to SSOs that may occur between the Effective Date and the termination of this Consent  
 7 Decree.

## 8 **V. APPLICABILITY**

9 13. The provisions of this Consent Decree apply to and bind the Parties, including any  
 10 successors or assigns. The Parties certify that their undersigned representatives are fully authorized to  
 11 enter into this Consent Decree, to execute it on behalf of the Parties, and to legally bind the Parties to its  
 12 terms.

13 14. The Parties agree to be bound by this Consent Decree and not to contest its validity in  
 14 any subsequent proceeding to implement or enforce its terms. By entering into this Consent Decree, the  
 15 City does not admit liability for any purpose as to any allegation or matter arising out of the Notice  
 16 Letter and/or Complaint.

17 15. No change in ownership or corporate or other legal status of the City or any transfer of  
 18 the City’s assets or liabilities shall in any way alter the responsibilities of the City, or any of its  
 19 successors or assigns, under this Consent Decree.

20 16. In any action to enforce this Consent Decree, the City shall not raise as a defense the  
 21 failure by any of its agents, servants, contractors, employees, and successors or assigns to take actions  
 22 necessary to comply with this Consent Decree.

## 23 **VI. EFFECTIVE DATE AND TERMINATION DATE**

24 17. The term “Effective Date,” shall mean the effective date of this Consent Decree, which  
 25 shall be the date on which the District Court enters the final Consent Decree.

26 18. This Consent Decree shall automatically and unconditionally terminate five (5) years and  
 27 six (6) months from the Effective Date (“Termination Date”) unless the City seeks early termination of  
 28 this Consent Decree pursuant to this paragraph. The City may seek early termination of this Consent



1 Decree if the City has no more than four SSOs per 100 miles of sewer from the City Collection System  
 2 in a given calendar year followed by no more than three SSOs per 100 miles of sewer in the succeeding  
 3 calendar year.<sup>1</sup> The City shall initiate early termination by submitting a letter to Baykeeper  
 4 demonstrating that it has satisfied the conditions of early termination set forth in this paragraph.  
 5 Baykeeper shall respond to the City's letter within twenty (20) days indicating whether it agrees with the  
 6 City's contentions or request more information to determine whether to agree with the City's  
 7 contentions. If Baykeeper agrees with the City's contentions, then the City shall prepare and file a joint  
 8 motion for termination of this Consent Decree, which Baykeeper shall sign. If Baykeeper disagrees with  
 9 the City's contentions or requests additional information, then the matter shall be subject to the dispute  
 10 resolution provisions of Part XXIV.

#### 11 **VII. SSO REDUCTION PERFORMANCE STANDARDS**

12 19. The City shall reduce its SSOs to comply with the following SSO Reduction Performance  
 13 Standards:

14 (a) Limitation on total SSOs per year:

15		16
17	<b>Calendar Year</b>	<b>Maximum Number of SSOs Per 100 Miles of Sewer Line/Year</b>
18	2011	10
19	2012	9
20	2013	7
21	2014	6
22	2015	5

23  
 24 <sup>1</sup> To calculate compliance with the early termination provisions of Paragraph 18 and the SSO Reduction  
 25 Performance Standards in Paragraph 19, the City shall use its current miles of publicly owned sewer line  
 26 (including public laterals) to calculate the number of SSOs per 100 miles of sewer line and shall then  
 27 round the number it calculates to the nearest whole number (i.e. if the number of SSOs per 100 miles  
 28 calculates to be between 3.1 and 3.4, the value shall be rounded down to 3; if the number of SSOs per  
 100 miles calculates to be between 3.5 and 3.9, the value shall be rounded up to 4). For purposes of  
 calculating compliance with the early termination provisions of Paragraph 18, SSOs that satisfy the  
 requirements set forth in Paragraphs 19(b) and 27 shall not be counted.

1 (b) For purposes of determining compliance with the SSO Reduction Performance  
2 Standards, SSOs caused by storm events exceeding a 10 year 6 hour storm shall not be counted.

3 (c) The City shall have no repeat spills due to pipe defects, grease, roots or debris  
4 within one year from the same sewer segment or manhole upon resolving the initial event.

5 20. For purposes of determining compliance with the SSO Reduction Performance Standards  
6 prior to the submission of the first Annual Summary Report required under Part XXI of this Consent  
7 Decree (“Annual Summary Report”), the Parties assume the City Collection System currently consists of  
8 150 miles of gravity sewers, 60 miles of lateral sewers and 4.8 miles of force main sewers for a total of  
9 215 miles.

10 21. Compliance with the SSO Reduction Performance Standards shall be determined using  
11 the miles of sewer lines as subsequently updated in the Annual Summary Report required under Part  
12 XXI of this Consent Decree. Failure to meet the SSO Reduction Performance Standards under Part VII  
13 shall be a violation of this Consent Decree and shall obligate the City to prepare and implement an SSO  
14 Reduction Action Plan as described in Part IX of this Consent Decree.

15 22. In order to reach the SSO Reduction Performance Standards, the City shall implement the  
16 programs described herein.

17 23. Compliance or non-compliance with the SSO Reduction Performance Standards shall be  
18 documented by the City in each Annual Summary Report required under Part XXI of this Consent  
19 Decree.

20 **VIII. SSMP REQUIREMENT**

21 24. Within 180 days, the City shall develop and thereafter maintain a comprehensive SSMP,  
22 set forth as a single integrated document that fully complies with the SSO WDR and any administrative  
23 orders issued by the Regional Board. The SSMP shall set forth the measures, and an implementation  
24 schedule for the measures, that the City is and will in the future employ to attain a well-maintained and  
25 operated City Collection System. The SSMP shall further be designed to achieve compliance with the  
26 SSO Reduction Performance Standards, and meeting these standards shall be a criterion for determining  
27 the adequacy of the SSMP. The City shall update the SSMP as needed to remain in full compliance with  
28 the SSO WDR and any applicable Regional Board administrative orders. With the exception of SSMP

1 sections addressing the Capacity Assurance Plan, Force Main Condition Assessment and Pump Station  
2 Condition Assessment, Baykeeper's review and comment on the SSMP shall be limited to the issue of  
3 whether the SSMP is a single integrated document that contains all elements required by the SSO WDR.

#### 4 **IX. SSO REDUCTION ACTION PLAN**

5 25. If any Annual Summary Report provided by the City to Baykeeper pursuant to Part XXI  
6 of this Consent Decree documents SSOs in excess of this Consent Decree's then-applicable SSO  
7 Reduction Performance Standard, the City shall submit to Baykeeper by June 1<sup>st</sup> of that same year an  
8 SSO Reduction Action Plan that specifies the actions taken in the prior calendar year pursuant to this  
9 Consent Decree, and additional measures to be taken during the pending calendar year and thereafter,  
10 which are designed to achieve compliance with the SSO Reduction Performance Standards. The SSO  
11 Reduction Action Plan shall include a proposed schedule for implementation of all actions proposed.

12 26. The City shall include in the SSO Reduction Action Plan the measures necessary to  
13 achieve future compliance with the SSO Reduction Performance Standards.

14 27. Notwithstanding the provisions of paragraph 25, the City shall have no obligation to  
15 prepare an SSO Reduction Action Plan in any given year if it submits to Baykeeper, by the date an SSO  
16 Reduction Action Plan would otherwise be due, a statement demonstrating through properly signed,  
17 contemporaneous records or other relevant evidence contemporaneous with the SSO that it did not  
18 comply with SSO Reduction Performance Standards because of one or more SSOs that meet all of the  
19 following conditions: (i) the SSOs were caused by severe natural conditions (such as hurricanes,  
20 tornados, widespread flooding, earthquakes, tsunamis, and other similar natural conditions), a human-  
21 caused catastrophe such as a catastrophic fire, contractor excavation damage to a sewer line or  
22 vandalism; and (ii) the City had no feasible alternatives, based on reasonable engineering judgment, that  
23 it could have implemented to avoid the SSO, such as the use of auxiliary treatment facilities, retention of  
24 untreated wastewater, reduction of inflow and infiltration, use of adequate backup equipment, an  
25 increase in the capacity of the system, implementation of measures to educate contractors concerning  
26 avoiding damage to sewer lines or other sewer system assets, or reasonable anti-vandalism measures to  
27 prevent foreseeable vandalism risks.  
28

**X. IMPLEMENTATION OF FATS, OILS AND GREASE PROGRAM**

1  
2 28. The City shall continue to implement its residential outreach program to educate the  
3 public on proper FOG disposal in order to reduce the discharge of FOG to the City Collection System  
4 from residential sources. Within ninety (90) days of the Effective Date of this Consent Decree, the City  
5 shall submit to Baykeeper a Residential FOG Outreach Program Plan describing an expanded residential  
6 outreach program to reduce FOG from residential sources. At a minimum, the City's Residential  
7 Outreach Program shall consist of mailing or hand delivery of leaflets to residential customers, posting  
8 of educational materials on the City's website, distribution of grease receptacles, and providing  
9 educational materials to public schools aimed at reducing the discharge of residential grease. Within  
10 ninety (90) days of the Effective Date, the City shall institute a commercial outreach program to educate  
11 commercial establishments with the potential to discharge FOG to the sanitary sewer system on the use  
12 of Best Management Practices ("BMPs"), and the proper maintenance of grease recovery devices to  
13 reduce FOG from commercial sources consistent with the device manufacturer's requirements.

14 29. The City shall continue to conduct its commercial FOG source control, inspection,  
15 education, and preventive maintenance program. The City shall require and undertake education  
16 outreach and enforcement measures to ensure that all FSEs do the following:

17 (a) Implement all FOG BMPs currently recommended by the City, as applicable to  
18 each facility (the City shall further find that any inspected FSE that fails to do so shall be deemed to  
19 have failed the City's inspection);

20 (b) Receive and post, in appropriate locations for their employees to see, the City's  
21 BMP procedures that are applicable to that business that show how to properly handle FOG;

22 (c) Maintain up to date maintenance and cleaning logs for their grease interceptors (if  
23 applicable) and have them readily available for review by the City's personnel during inspection (the  
24 City shall further find that any inspected FSE that fails to do so shall be deemed to have failed the City's  
25 inspection);

26 (d) Apply for a pre-treatment discharge permit in accordance with the City's Water  
27 Quality Control Ordinance.

28 ///

1           30.     The City shall continue its inspection program and shall inspect all FSEs no less than  
2 once a year. FSEs found in violation of the City’s FOG ordinance shall be re-inspected within thirty  
3 (30) days. Repeat violations shall be met with increased enforcement actions as deemed necessary by  
4 the City to enforce compliance.

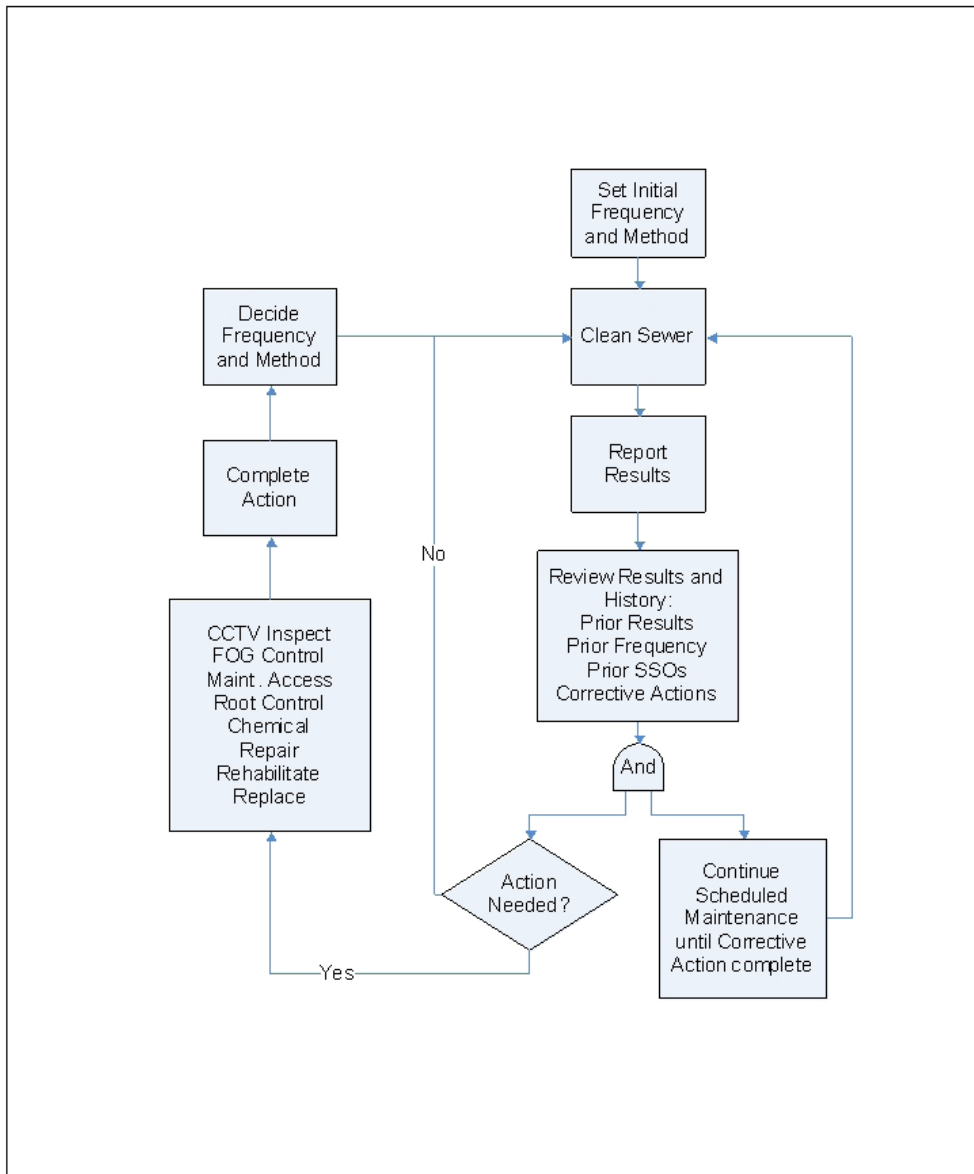
5           31.     The City shall send a warning letter to any FSE found to be the cause of a FOG-related  
6 SSO. The warning letter shall describe the cause of the SSO that has been attributed to the FSE, outline  
7 pertinent parts of the City’s FOG Ordinance and identify remediation methods and corrective actions to  
8 comply, such as improved BMPs (including more effective removal of FOG from cookware via paper  
9 towels, scrapers, or other devices, before cleaning cookware in dishwashers or sinks) or installation  
10 and/or improved maintenance of City-approved grease removal devices. Such warning letter will  
11 require the recipient to acknowledge receipt within thirty (30) days. However, the City has the  
12 discretion to issue a Notice of Violation, conduct a Show Cause Hearing on the violation(s) and issue  
13 fines, citations(s) or refer a case to its City Attorney in lieu of a warning letter when circumstances  
14 indicate more action is appropriate.

#### 15           **XI. ROUTINE SEWER CLEANING AND HOT SPOTS CLEANING PROGRAMS**

16           32.     The City shall continue to clean all of its gravity sanitary Sewer Line Segments fifteen  
17 (15) inches in diameter or smaller in the City Collection System in accordance with a schedule that is  
18 appropriate for the prevention of SSOs, but in any event the City shall clean the entire City Collection  
19 System at least once every five (5) years.

20           33.     The City shall include any Sewer Line Segment that has a blockage caused by roots,  
21 debris, grease or pipe condition into its Hot Spot Cleaning Program. Within one hundred and twenty  
22 (120) days from the Effective Date of this Consent Decree, the City shall develop a Hot Spot Cleaning  
23 Work Plan (“HSCWP”). The HSCWP shall include a listing of all lines requiring Hot Spot Cleaning  
24 and the cleaning frequency identified for each identified line. The HSCWP shall include the rationale  
25 relied upon to select the main sewer segments included in the HSCWP and to determine cleaning  
26 frequencies. Cleaning frequencies for the Hot Spot Cleaning Program shall include: three (3) month, six  
27 (6) month, and twelve (12) month cleaning cycles as needed. The HSCWP shall incorporate the  
28 methodology set forth below in Figure 1 (“Preventive Maintenance Scheduling Flow Chart”) below. If

1 any Sewer Line Segment included in the HSCWP is subsequently repaired or replaced and the need for  
 2 the placement of the segment in the HSCWP is eliminated, the Sewer Line Segment may be removed  
 3 from HSCWP and shall be indicated in the Annual Summary Report required by Part XXI of this  
 4 Consent Decree.



34. The Hot Spot Cleaning Program results shall be maintained in a database by the City.

35. The City shall collect all observations made by its sewer cleaning crews regarding the extent and nature of materials removed during the cleaning process. The observations shall be recorded in the City’s database. The City shall maintain or change the frequency of its Hot Spot Cleaning

1 Program for a Sewer Line Segment based on the Sewer Cleaning Results Matrix below in accordance  
2 with the section labeled "Action."

3  
4 **Sewer Cleaning Results Matrix**

	<b>Clear</b>	<b>Light</b>	<b>Moderate</b>	<b>Heavy</b>
<b>Debris</b>	No observable debris	Minor amount of debris 1 pass	Moderate amounts of debris 2-3 passes	Significant amounts of debris More than 4 passes Operator concern for future stoppage
<b>Grease</b>	No observable grease	Minor amounts of grease 1 pass	Small "chunks" No "logs" 2-3 passes	Big "chunks" or "logs" More than 4 passes Operator concern for future stoppage
<b>Roots</b>	No observable roots	Minor amounts of roots 1 pass	Thin stringy roots No "clumps" 2-3 passes	Thick roots Large "clumps" More than 4 passes Operator concern for future stoppage
<b>Debris:</b> Structural pipe fragments soil, rock, etc.	No observable materials	Specify material (if possible) Minor amounts of material	Specify material Moderate amounts of material per line segment	Specify material Significant amounts of material per line segment Operator concern for future stoppage
<b>Action</b>	Decrease frequency to next lower frequency after 3 consecutive results (e.g. 6 months to 12 months)	Continue current maintenance frequency	Increase maintenance frequency as necessary (e.g. 6 months to 3 months, or more frequently if necessary)	Increase maintenance frequency as necessary (e.g. 6 months to 3 months or more frequently if necessary)

24  
25 36. Changes in cleaning frequency based upon cleaning results shall be as follows:

26 (a) No reduction in cleaning frequency shall be made in a Sewer Line Segment with a  
27 previous history of SSOs without the approval of the Public Works Supervisor.

28 ///

1 (b) Three (3) consecutive results of “clear” will cause the cleaning frequency to be  
2 reduced to the next lower cleaning frequency;

3 (c) Results of “moderate” or “heavy” will cause the cleaning frequency to be  
4 increased to the next highest frequency, if any, if the Sewer Line Segment is already part of the Hot Spot  
5 Cleaning Program.

6 37. Main Sewer Line Segments shall be added to the Hot Spot Cleaning Program based on  
7 the findings from any CCTV Condition Assessment using the City’s system of Defect Codes and  
8 Ratings. Any Sewer Line Segments with a condition assessment rating of “Medium” or “Heavy” for  
9 roots, grease, or debris will be added to the Hot Spot Cleaning Program. A Sewer Line Segment with a  
10 condition assessment rating of “Medium” for roots, grease or debris will be added at a six (6) months  
11 cleaning frequency. A Sewer Line Segment with a condition assessment rating of “Heavy” for roots,  
12 grease, or debris will be added at a three (3) months cleaning frequency.

13 38. The City shall institute and maintain a quality assurance/quality control program  
14 (“QA/QC Program”) adequate to ensure proper and complete cleaning of sewers. The QA/QC Program  
15 shall consist of spot-checking the cleaning quality in a minimum of two (2) Sewer Line Segments of the  
16 cleaned sewers on a monthly basis using CCTV to ensure adequate cleaning. If the cleaning is found to  
17 be inadequate, the City shall re-clean the Sewer Line Segment within thirty (30) days. If one (1) of the  
18 spot-checked Sewer Line Segments requires re-cleaning in any given month, the City shall increase  
19 spot-checking of the system to a minimum of five Sewer Line Segments of sewer lines cleaned. Where  
20 spot-checking of the system has increased to a minimum of five Sewer Line Segments pursuant to this  
21 section, the City shall not reduce such spot checking until three (3) consecutive months showing none of  
22 the Sewer Line Segments inspected require re-cleaning. If a required inspection frequency increase is  
23 prompted by cleaning problems attributed to a single crew, the increased inspection schedule will only  
24 apply to that crew.

25 39. If routine sewer cleaning or hot spot cleaning of a Sewer Line Segment or area cannot be  
26 properly accomplished due to sewer line condition or access limitations, the condition of the segment  
27 shall be considered failing, and placed in the City’s Spot Repair Program (see paragraph 48, below).  
28 The City shall repair that Sewer Line Segment or area within one hundred twenty (120) days of



1 discovery of the sewer defect, or in the event a permit or permission from a third party is required to  
2 repair the Sewer Line Segment, within one hundred twenty (120) days of obtaining the necessary  
3 permits or permission. The Sewer Line Segment shall be repaired in a manner sufficient to allow that  
4 segment or area to be effectively cleaned.

## 5 **XII. INFORMATION MANAGEMENT**

6 40. Commencing within ninety (90) days of the Effective Date, the City shall implement and  
7 maintain a continuously updated computerized data and information system, linked to GIS, to record and  
8 track pertinent asset management, operations, and maintenance. This information system shall be used  
9 in conjunction with the City's GIS database to track and make readily available to relevant City  
10 employees and contractors information concerning SSO history, sewer line cleaning, sewer line and  
11 manhole spot repairs, sewer line CCTV inspections, gravity and force main sewer line condition  
12 assessment, sewer line rehabilitation and replacement projects, pump station condition assessments,  
13 pump station repair projects and other information necessary to plan system operation and maintenance  
14 and capital improvement.

15 41. The City shall update its GIS database by June 30, 2012 to include all available City  
16 Collection System attributes that will facilitate City Collection System operation and maintenance. The  
17 City shall regularly revise and update the GIS database as the City acquires new information. The City  
18 shall include the following information in its GIS database to the extent available: (1) for sewer lines--  
19 sewer line diameters, lengths, sewer line slope, service area covered by line segment and corresponding  
20 land use, location of potentially conflicting utilities, whether a sewer line is located in a right-of-way or  
21 an easement, and construction material, year of construction, inspection history, cleaning history, repair  
22 history, and any known structural defects, and (2) for manholes--locations, depth, lid size, manhole  
23 diameter, rim elevation, and invert elevation, repair history, and any known structural defects, (3) for  
24 pump stations--year of construction, status of mechanical and electrical components, spare parts  
25 inventory, availability of backup power and pumping capabilities, wet well storage capacity, average  
26 and peak flow, pumping capacity, inspection history, maintenance and repair history, and any known  
27 structural defects.

28 ///

**XIII. PUMP STATION CONDITION ASSESSMENT**

1  
2 42. The City's SSMP shall specify methods and a time schedule for a repeating cycle of  
3 assessing the condition of the City's pump stations.

**XIV. FORCE MAIN CONDITION ASSESSMENT**

4  
5 43. The City's SSMP shall specify methods and a time schedule for a repeating cycle of  
6 assessing the condition of the City's force mains.

**XV. SEWER AND MANHOLE CONDITION ASSESSMENT**

7  
8 44. The City shall implement a Sewer Line and Manhole Condition Assessment Program as  
9 specified in this Part. Within one hundred (100) days of the Effective Date of this Consent Decree, the  
10 City shall provide to Baykeeper a plan for CCTV inspections of gravity sewer main lines and visual  
11 inspection of manholes ("Sewer Line and Manhole Inspection Plan"). The plan shall include the  
12 following information: the type of equipment the City will purchase to implement its Sewer Line and  
13 Manhole Condition Assessment Program, the date by which the City will purchase such equipment, and  
14 a schedule for CCTV inspections of gravity sewer main lines and visual inspection of manholes. To the  
15 extent practicable, the City shall first inspect areas with known SSO, structural, or blockage problems  
16 and then inspect gravity sewers ten (10) years old or older.

17 45. Within five (5) years of the Effective Date of this Consent Decree, the City shall  
18 complete CCTV inspection and condition assessment of all gravity main Sewer Line Segments in the  
19 City Collection System that are fifteen (15) inches and smaller in diameter and are greater than ten (10)  
20 years old and shall concurrently visually inspect all manholes in these Sewer Line Segments in  
21 accordance with the schedule set forth in the Sewer Line and Manhole Inspection Plan. The City shall  
22 inspect and assess no less than 15% of its gravity main Sewer Line Segments in each of the first two (2)  
23 years of this Consent Decree, 20% in each of the third and fourth years of this Consent Decree, and the  
24 remaining 30% in the fifth year. However, if the City CCTVs more than the minimum percentage  
25 required for any given year, the amount exceeding the minimum percentage required may be credited to  
26 a subsequent year. The City shall concurrently visually inspect all manholes in these sewer lines.

27 46. Any sewer line where inspection is not possible because the passage of the CCTV camera  
28 was blocked by the condition of the pipe shall result in the Sewer Line Segment being defined as having

1 failed the inspection. Within three (3) months of failed attempt to inspect that line, or in the event a  
2 permit or permission from a third party is required to repair the Sewer Line Segment, within three (3)  
3 months of obtaining the necessary permits or permission, the City shall repair that sewer line in such  
4 fashion as to allow inspection and shall re-inspect that line before the end of the five (5) year inspection  
5 cycle.

6 47. The City shall employ a system of defect codes and ratings (“System of Defect Codes  
7 and Ratings”) that is consistent with the PACP to assess the results of its CCTV inspections of sewer  
8 main lines. The City shall produce and maintain a sewer line inspection and grading database consisting  
9 of the City’s CCTV inspection tapes and logs and the grading of its sewer lines, employing the System  
10 of Defect Codes and Ratings, based on this inspection. The City shall further adopt and utilize an  
11 objective grading system for its concurrent assessment of sewer manholes. The City shall use the results  
12 of the CCTV inspection and condition assessment to identify and prioritize City Collection System  
13 deficiencies requiring repair, rehabilitation or replacement and shall incorporate identified sewer repair,  
14 rehabilitation and replacement projects into the City’s CIP based on the ranking and resulting  
15 prioritization.

16 48. The City shall continue to implement its Spot Repair Program, which is the City’s  
17 program for addressing localized sewer line or manhole defects in need of repair. The City shall  
18 schedule and perform spot repairs based on the results of its condition assessment provided for in  
19 paragraph 45, field observations made during sewer line cleaning, and other relevant information that  
20 indicates the need for spot repairs.

## 21 **XVI. CAPACITY ASSURANCE**

22 49. The City’s SSMP shall specify methods and a time schedule for a repeating cycle of  
23 assessment of the capacity of the City Collection System sufficient to ensure that the City does not in the  
24 future experience a return of capacity problems.

## 25 **XVII. CAPITAL IMPROVEMENT PROJECTS**

26 50. The City shall repair, rehabilitate or replace any sewer lines or portions of sewer lines  
27 discovered during the term of this Consent Decree to be in imminent risk of failure, as expeditiously as

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1 possible. Other than as provided in this paragraph or paragraph 48, the City is not required by this  
 2 Consent Decree to perform sewer line repair, rehabilitation and replacement.

3 51. By May 1, 2014, the City shall prepare a 15-year CIP (“Long Range CIP”) that specifies  
 4 rehabilitation or replacement projects necessary to address City Collection System deficiencies  
 5 identified as part of the City’s condition assessment program. The Long Range CIP shall include or be  
 6 accompanied by the City’s financial analysis of the costs of CIP projects compared to the revenues  
 7 available for these projects and the City’s conclusions concerning how the City’s finances are adequate  
 8 to ensure timely completion of the projects.

### 9 **XVIII. PRIVATE LATERAL PROGRAM**

10 52. Within 180 days of the Effective Date, the City Manager shall propose and recommend to  
 11 the South San Francisco City Council, with notice to Baykeeper, the adoption of an ordinance that  
 12 requires property owners to inspect Private Laterals upon sale of a property and to replace defective  
 13 Private Laterals made of Orangeburg pipe as a requirement of transfer of the property. The City Council  
 14 shall take final action on the City Manager’s recommendation within ninety days. If the City Council  
 15 does not enact the Ordinance within such ninety-day period, the City shall propose to Baykeeper an  
 16 alternative means for securing the replacement of such defective Private Laterals that will secure a rate  
 17 of replacement of such defective Private Laterals equivalent to the rate of replacement that would have  
 18 been secured by implementation of the Ordinance.

### 19 **XIX. CONSENT DECREE EXPENDITURES**

20 53. Notwithstanding any provision to the contrary set forth herein, subject to Paragraph 54  
 21 below, for each calendar year that this Consent Decree is in effect, the City shall not be required to  
 22 spend more than the sum of its current \$3.8 million annual expenditure on the City Collection System  
 23 and the incremental increases set forth in the table below.

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<b>Consent Decree Year</b>	<b>Incremental Increase</b>
2011	\$380,000
2012	\$406,600
2013	\$433,200
2014	\$459,800
2015	\$486,400

54. If additional expenditures are necessary to rehabilitate, replace or repair Sewer Line Segments determined to be in imminent risk of failure or collapse, this Consent Decree shall not require the City's total annual expenditures on its City Collection System and wastewater treatment operations and infrastructure to exceed an amount equal to the amount of expenditures the City could afford if its residential sewer service rates were equal to the then-existing mean sewer rates for the County of San Mateo.<sup>2</sup>

55. In budgeting for and implementing City Collection System capital projects and operation and maintenance activities, the City shall place the highest priority on any actions needed to address Sewer Line Segments judged to be in imminent risk of failure or collapse. If the City deems it necessary to reduce expenditures below what it might otherwise spend to meet the substantive requirements of this Consent Decree and below the expenditure caps set forth in paragraphs 53 and 54, the City shall reduce its expenditures on other components of its City Collection System in order to address Sewer Line Segments judged to be in imminent risk of failure or collapse (i.e., the City's highest City Collection

<sup>2</sup> The then-existing mean sewer rates referenced in this paragraph shall be calculated using the then-existing residential sewer rates for the following jurisdictions: Burlingame Hills Sanitation District, City of Belmont, City of Brisbane, City of Burlingame, City of Daly City, El Granada Sanitary District, City of East Palo Alto, City of Foster City, City of Half Moon Bay, City of Hillsborough, City of Menlo Park, City of Millbrae, Montara Sanitary District, City of Pacifica, City of Redwood City, City of San Bruno, City of San Carlos, City of San Mateo, and City of South San Francisco. Where the sewer rate for a jurisdiction is not a flat fee, the sewer rate shall be calculated based on the homeowners' average annual domestic water consumption.

1 System spending priority when faced with financial constraints shall be funding remedial work needed  
2 to address Sewer Line Segments judged to be in imminent risk of failure or collapse).

### 3 **XX. BAYKEEPER REVIEW OF CONSENT DECREE DELIVERABLES**

4 56. Baykeeper shall have the right to review and comment upon the following submittals  
5 required of the City pursuant to this Consent Decree: any SSO Reduction Action Plan pursuant to Part  
6 IX, the revised SSMP pursuant to Part VIII, the Residential FOG Outreach Program Plan pursuant to  
7 Part X, the HSCWP pursuant to Part XI, the Sewer Line and Manhole Inspection Plan pursuant to Part  
8 XV, and the Long Range CIP pursuant to Part XVII (“the Consent Decree Deliverables” or “the  
9 Deliverables”). Baykeeper shall provide the City, in writing, with any comments on the Consent Decree  
10 Deliverables within thirty (30) days of Baykeeper’s receipt of these Deliverables. The City shall  
11 consider in good faith each of Baykeeper’s comments on each Consent Decree Deliverable. If the City  
12 rejects any of Baykeeper’s comments on a Consent Decree Deliverable, within twenty days of a written  
13 request from Baykeeper for either a written explanation or a meeting to confer about the City’s position,  
14 the City shall, depending on Baykeeper’s request, provide a written explanation or explain its position in  
15 a meeting with Baykeeper as to why Baykeeper’s comments are being rejected.

### 16 **XXI. ANNUAL SUMMARY REPORT**

17 57. Beginning on March 1, 2012, and on each March 1 thereafter that this Consent Decree is  
18 in effect, the City shall submit an Annual Summary Report to Baykeeper. The Annual Summary Report  
19 shall:

20 (a) Include all information concerning the City’s SSOs during the prior calendar year  
21 that the City is required to report to the State Water Resources Control Board pursuant to the SSO  
22 WDR;

23 (b) Indicate whether the City met the SSO Reduction Performance Goals and explain  
24 the basis for the City’s conclusions in this respect;

25 (c) Describe in detail the City’s implementation of any current SSO Reduction  
26 Action Plan, including the City’s efforts to secure the necessary funding to implement such Plan;

27 (d) Report the number and location of SSOs caused by FOG from residential versus  
28 commercial sources. The Report shall further describe the City’s efforts to implement its FOG Program

1 (including both the dates and specific nature of efforts to address residential and commercial sources of  
2 FOG, including implementing measures designed to educate about proper FOG disposal and  
3 enforcement of FOG ordinance requirements) pursuant to Part X;

4 (e) Describe the City's implementation of its Routine Sewer Cleaning Program and  
5 Hot Spot Cleaning Program pursuant to Part XI. Specifically, for the Routine Sewer Cleaning Program,  
6 the report shall state the total miles cleaned, total unique miles cleaned, and the percentages of the City  
7 Collection System cleaned for each category. If any problems were encountered with cleaning  
8 personnel or equipment related to this Consent Decree, or with line defects that impaired cleaning, the  
9 report shall describe the problems and how they were addressed. If the QA/QC Program described in  
10 paragraph 38 does not reveal any problems, the report shall so state. For the Hot Spot Cleaning  
11 Program, the report shall include a list of all Sewer Line Segments on the Hot Spot Cleaning List at the  
12 beginning of the year, and a similar list for the end of the year, how many of miles of sewer line were  
13 removed from the Hot Spot Cleaning list and how many miles were added to the Hot Spot Cleaning List  
14 during the year;

15 (f) Describe the City's Pump Station Condition Assessment activities for the year  
16 pursuant to Part XIII, Force Main Condition Assessment activities for the year pursuant to Part XIV and  
17 Capacity Assurance activities for the year, if any, pursuant to Part XVI.;

18 (g) Describe the City's implementation of the Sewer Line and Manhole Condition  
19 Assessment Program pursuant to Part XV and the CIP requirements of Part XVII, including: (1)  
20 specification of how many miles of sewer line the City subjected to CCTV inspection, (2) the City's  
21 grading of its gravity sewer lines (how many miles of gravity sewer line the City determined fell within  
22 each separate grade category in the City's grading system and an identification of the Sewer Line  
23 Segments receiving PACP codes of 3, 4 and 5, as well as the number of Sewer Line Segments  
24 categorized as "moderate" and "heavy" for FOG, grease and debris), (3) the City's adoption of an  
25 updated list of prioritized sewer line repair projects based on the City's sewer line condition assessment,  
26 and (4) the number and type of Spot Repairs made in the last year, and the number and type planned in  
27 the future and (5) and the number and type of repairs made to address imminent failure risks and the  
28 number and type planned in the future;

1 (h) Describe the City's implementation of its Private Lateral Program pursuant to Part  
 2 XVIII and the Lateral Replacement Program Supplemental Environmental Project (Private Lateral SEP)  
 3 pursuant to Part XXII. Specifically, in the year or years in which a Private Lateral Ordinance was  
 4 considered and/or adopted, the report shall include a copy of the ordinance. For subsequent years, the  
 5 report shall include any amendments or modifications to the Ordinance, number of laterals inspected,  
 6 number of laterals found to be defective, and number of laterals replaced pursuant to the programs. For  
 7 the Private Lateral SEP, the number of loans or grants made for lateral replacement during the year, the  
 8 total value of loans and grants provided during the year, the mean and median loan or grant values for  
 9 the year, the median percentage of total lateral replacement cost funded by the Private Lateral SEP, the  
 10 number of applications to participate in the program submitted and processed during the year, and a  
 11 narrative discussion of any change in the approach toward the size of loan or grant available;

12 (i) Describe the City's annual expenditures on City Collection System operation,  
 13 maintenance and capital projects, the City's revenues for operation of the City Collection System and  
 14 WQCP from sewer fees and any bonds, and the City's adjustments (if any) to its sewer rates.

15 (j) Describe the City's development of and implementation of its Information  
 16 Management obligations pursuant to Part XII;

17 If the City's annual report to the Regional Board meets all the requirements of this Part XXI, the  
 18 City may comply with this Part by providing Baykeeper with a copy of the annual reports.

## 19 **XXII. ENVIRONMENTAL MITIGATION PROJECT AND FEES AND COSTS**

20 58. To mitigate perceived environmental harms resulting from the allegations in the  
 21 Complaint, the City shall pay to the Rose Foundation for Communities and the Environment the total  
 22 sum of One Hundred Fifty Thousand Dollars (\$150,000) ("the Mitigation Payment") to be used to fund  
 23 environmental project activities that will benefit the San Francisco Bay or its tributaries. None of the  
 24 mitigation payments paid to the Rose Foundation pursuant to this Part XXII shall be used to fund  
 25 Baykeeper. Payment shall be made within thirty (30) days of the Effective Date of this Consent Decree,  
 26 to:

27 ///

28 ///



1 The Rose Foundation for Communities and the Environment  
2 6008 College Avenue, Suite 10  
3 Oakland, California 94618  
4 Attention: Tim Little

5 The City shall also implement the Private Lateral Program Supplemental Environmental Project(s)  
6 (“SEP”) described in Exhibit A in accordance with the timelines set forth therein. The Parties agree that  
7 SEP is intended to secure significant environmental benefits to the watersheds and ocean waters in and  
8 adjacent to South San Francisco. The City shall fund the SEP in the amount of Three Hundred  
9 Thousand Dollars (\$300,000). The City shall spend this sum on Private Lateral improvements by no  
10 later than 30 days before the termination of this Consent Decree. If the City has not spent this sum on  
11 Private Lateral improvements by that date, the City shall convey the difference between \$300,000 and  
12 the sum it has spent on such improvements to the Rose Foundation for Communities and the  
13 Environment to the address listed above no later than 20 days before the termination of this Consent  
14 Decree. The City shall simultaneously provide Baykeeper notice, in accord with Part XXVII, that it has  
15 made this payment to the Rose Foundation.

16 59. To help defray Baykeeper’s attorney’s, consultant, and expert fees and costs, and any  
17 other costs incurred as a result of investigating, filing this action, and negotiating a settlement, the City  
18 shall pay Baykeeper the sum of One Hundred Eighty-Six Thousand Dollars (\$186,000) which shall  
19 include all attorneys’ fees and costs for all services performed by and on behalf of Baykeeper by its  
20 attorneys and consultants up to and through the Effective Date of this Consent Decree. The payment  
21 shall be made within twenty-one (21) days of the Effective Date of this Consent Decree. The payment  
22 shall be made in the form of a check payable to “*Environmental Advocates Client Trust Account*,”  
23 addressed to: 5135 Anza Street, San Francisco, CA 94121, sent via overnight delivery, and shall  
24 constitute full payment for all costs of litigation incurred by Baykeeper that have or could have been  
25 claimed in connection with or arising out of Baykeeper’s lawsuit, up to and including the Effective Date.

26 60. The City agrees to compensate Baykeeper for time to be spent by legal staff or technical  
27 consultants reviewing compliance reports and any other documents, or participating in any meet and  
28 confer process or Informal Dispute Resolution under this Consent Decree. To this end, the City shall  
pay Sixty Thousand Dollars (\$60,000) within twenty-one (21) days of the Effective Date of this Consent

1 Decree. Payment shall be made payable to “San Francisco Baykeeper,” addressed to Jason Flanders,  
 2 SAN FRANCISCO BAYKEEPER, INC., 785 Market Street, Suite 850, San Francisco, California  
 3 94103-2023, sent via overnight delivery.

4 61. In the event of late payment of any of the sums due referred to in this Part, the City shall  
 5 pay Interest to Baykeeper, which shall accrue daily from the thirtieth (30<sup>th</sup>) day past the date the sum  
 6 was due until the date the City tenders payment.

7 **XXIII. STIPULATED PAYMENTS**

8 62. Subject to Paragraph 63, if the City fails to submit to Baykeeper a Consent Decree  
 9 Deliverable or Annual Report by the deadlines set forth herein, it shall be subject to the following  
 10 stipulated payments:

Period of Noncompliance	Payment Per Violation Per Day
Days 1-30	\$100
Days 31-60	\$500
Days over 60	\$1,000

15 63. In the event of a late Consent Decree Deliverable or Annual Report, the City shall send  
 16 Baykeeper the Consent Decree Deliverable or Annual Report. Baykeeper shall notify the City of receipt  
 17 of the late Consent Decree Deliverable or Annual Report and may include an invoice for the amount of  
 18 any stipulated payments due and payable. The City shall contact Baykeeper within five (5) working  
 19 days if the City disagrees with Baykeeper’s stipulated payment calculation and may meet and confer  
 20 with Baykeeper or seek Dispute Resolution pursuant to Part XXIV of this Consent Decree. The City  
 21 shall pay any stipulated payments assessed pursuant to this Consent Decree within thirty (30) days after  
 22 receipt of Baykeeper’s invoice itemizing the stipulated payment liability, or thirty (30) days after  
 23 resolution of a dispute if Dispute Resolution has been invoked pursuant to Part XXIV of this Consent  
 24 Decree. Nothing in this Consent Decree shall prevent Baykeeper from waiving any stipulated payments,  
 25 which might be due under this Section, based on the outcome of any Dispute Resolution proceeding or  
 26 the City’s good faith efforts.

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1           64.     If the City fails to pay any of the stipulated payments required by this Consent Decree  
2 within thirty (30) days of the date such payments are due, Interest shall accrue from the date payment  
3 was due until the City makes the required payment.

4           65.     All payments of stipulated payments described in this Consent Decree shall be paid by  
5 the City to the “*Rose Foundation for Communities and the Environment*” to be used solely to fund  
6 activities which benefit San Francisco Bay or its tributaries. The City shall send payments via overnight  
7 mail to: Rose Foundation for Communities and the Environment, 6008 College Avenue, Oakland,  
8 CA 94618, Attn: Tim Little. The City shall send notice to Baykeeper in accord with Part XXVII that it  
9 has sent any such payments to the Rose Foundation. None of the stipulated payments paid to the Rose  
10 Foundation pursuant to this Part XXIII shall be used to fund Baykeeper.

#### 11                                   **XXIV. DISPUTE RESOLUTION**

12           66.     This Court shall retain jurisdiction over this matter for the purposes of adjudicating all  
13 disputes among the Parties that may arise under the provisions of this Consent Decree. The District  
14 Court shall have the power to enforce this Consent Decree with all available legal and equitable  
15 remedies, including contempt.

16           67.     The Dispute Resolution procedures set forth in this Part shall be the exclusive mechanism  
17 for resolving disputes between the Parties with regard to any aspect of this Consent Decree.

18           68.     Either Party to this Consent Decree shall invoke the dispute resolution procedures of this  
19 Part by notifying the other Party in writing of the matter(s) in dispute and of the Party’s proposal to  
20 resolve the dispute under this Part. The Parties shall then meet and confer in a good faith attempt to  
21 resolve the dispute informally (“Informal Dispute Resolution”) within thirty (30) calendar days from the  
22 date of the notice.

23           69.     If the Parties cannot resolve a dispute within thirty (30) calendar days from the date of the  
24 notice as specified in Paragraph 68 above, the Party invoking Informal Dispute Resolution may invoke  
25 formal dispute resolution (“Formal Dispute Resolution”) by filing a motion before the District Court.

26           70.     The prevailing Party in any Formal Dispute Resolution proceeding shall be entitled to  
27 attorneys’ fees and costs in accord with the standard established by 33 U.S.C. section 1365(d).

28     ///

**XXV. LODGING OF CONSENT DECREE**

1  
2 71. Baykeeper shall submit a copy of this Consent Decree to DOJ and EPA within three (3)  
3 days of its execution for agency review consistent with 40 C.F.R. § 135.5. The agency review period  
4 expires forty-five (45) days after receipt by both agencies, as evidenced by the certified return receipts,  
5 copies of which shall be provided by Baykeeper to the City upon request. If the EPA or DOJ request or  
6 suggest revisions to this Consent Decree or object to entry of this Consent Decree in the form presented,  
7 the Parties shall attempt in good faith to agree to revisions of this Consent Decree in accord with the  
8 requested or suggested revisions provided by EPA or DOJ and/or otherwise accommodate EPA or  
9 DOJ's objections. If the District Court objects to entry of this Consent Decree in the form presented, the  
10 Parties will attempt in good faith to agree to revisions of this Consent Decree necessary so that it is  
11 acceptable to the District Court.

12 72. Baykeeper shall lodge this [proposed] Consent Decree with the District Court within  
13 three (3) days of the Parties' execution of this Consent Decree. Baykeeper will thereafter promptly  
14 request the District Court to enter this Consent Decree after the DOJ and EPA comment period specified  
15 by 40 C.F.R. § 135.5 (and after the completion of the meet and confer process referred to in the  
16 preceding paragraph, if any).

**XXVI. MUTUAL RELEASE OF LIABILITY AND FORCE MAJEURE**

17  
18 73. In consideration of the above, upon the Effective Date of this Consent Decree, the Parties  
19 hereby fully release, except as expressly provided below, each other and their respective successors,  
20 assigns, officers, agents, employees, and all persons, firms, and corporations having an interest in them,  
21 from any and all claims arising from SSOs that have or could have been claimed in the Complaint,  
22 known or unknown, up to and including the Effective Date of this Consent Decree. Except for claims  
23 for the City's failure to comply with this Consent Decree, Baykeeper further releases the City, and its  
24 successors and assigns, from all claims pertaining to alleged SSOs that may occur between the Effective  
25 Date and the termination of this Consent Decree.

26 74. Nothing in this Consent Decree limits or otherwise affects Baykeeper's right to address  
27 or take any position that it deems necessary or appropriate in any formal or informal proceeding before  
28 the Regional Board, EPA, or any other judicial or administrative body on any other matter relating to the

1 City.

2 75. Neither this Consent Decree nor any payment pursuant to this Consent Decree shall  
3 constitute or be construed as a finding, adjudication, or acknowledgement of any fact, law, or liability,  
4 nor shall it be construed as an admission of violation of any law, rule, or regulation. The City maintains  
5 and reserves all defenses it may have to any alleged violations that may be raised in the future.

6 76. The City's obligation to comply with one or more of the provisions of this Consent  
7 Decree shall be deferred to the extent and for the duration that the delay in compliance is caused by  
8 impossibility due to an event or circumstances beyond the reasonable control of the City and that could  
9 not have been reasonably foreseen and prevented by the exercise of due diligence by the City.

10 77. Any delays due to the City's failure to make timely and bona fide applications, the City's  
11 failure to exercise diligent efforts to comply with the terms in this Consent Decree, or normal inclement  
12 weather shall not, in any event, be considered to be circumstances beyond the City's control. Financial  
13 inability shall not, in any event, be considered to be circumstances beyond the City's control.

14 78. If the City claims impossibility, it shall notify Baykeeper in writing within thirty (30)  
15 days of the date that the City first knew of the event or circumstance that caused or would cause a  
16 violation of this Consent Decree, or the date the City should have known of the event or circumstance by  
17 the exercise of due diligence. The notice shall describe the reason for the nonperformance and  
18 specifically refer to this Part of this Consent Decree. It shall describe the anticipated length of time the  
19 delay may persist, the cause or causes of the delay, the measures taken or to be taken by the City to  
20 prevent or minimize the delay, the schedule by which the measures will be implemented, and the  
21 anticipated date of compliance. The City shall adopt all reasonable measures to avoid and minimize  
22 such delays.

23 If Baykeeper disagrees with the City's notice, or in the event that the Parties cannot timely agree  
24 on the terms of new performance deadlines or requirements, either Party shall have the right to invoke  
25 the Dispute Resolution procedures pursuant to Part XXIV of this Consent Decree. In such proceeding,  
26 the City shall bear the burden of proving that any delay in performance of any requirement of this  
27 Consent Decree was caused or will be caused by force majeure and the extent of any delay attributable  
28 to such circumstances.

**XXVII. NOTICES AND SUBMISSIONS**

1  
2 79. Any notifications, submissions, or communications to Baykeeper or to the City pursuant  
3 to this Consent Decree shall be, to the extent feasible, sent via electronic mail transmission to the e-mail  
4 addresses listed below (electronic return receipt requested) or, if electronic transmission is not feasible,  
5 via U.S. Mail or hand delivery to the following addresses. Any change in the individuals or addresses  
6 designated by any party must be made in writing to all Parties, but the parties stipulate and agree that the  
7 District Court need not amend this Consent Decree to effectuate a change in the notice recipients.

8 If to BAYKEEPER:

9 Christopher Sproul  
10 Jodene Isaacs  
11 Brian Orion  
12 ENVIRONMENTAL ADVOCATES  
13 5135 Anza Street  
14 San Francisco, California 94121  
15 Telephone: (415) 533-3376  
16 Facsimile: (415) 358-5695  
17 Email: csproul@enviroadvocates.com, jiaacs@enviroadvocates.com,  
18 borion@enviroadvocates.com

15 Daniel Cooper  
16 LAWYERS FOR CLEAN WATER, INC.  
17 1004 O'Reilly Avenue  
18 San Francisco, California 94129  
19 Telephone: (415) 440-6520  
20 Email: daniel@lawyersforcleanwater.com

19 Jason Flanders  
20 SAN FRANCISCO BAYKEEPER, INC.  
21 785 Market Street, Suite 850  
22 San Francisco, California 94103-2023  
23 Email: jason@baykeeper.org

22 If to the CITY:

23 Gregory Newmark  
24 Meyers, Nave, Riback, Silver & Wilson  
25 333 South Grand, Suite 1670  
26 Los Angeles, CA 90071  
27 Telephone: (213) 626-2906  
28 Facsimile: (213) 626-0215  
Email: gnewmark@meyersnave.com

1 City of South San Francisco  
400 Grand Avenue  
2 South San Francisco, CA 94080  
Telephone: (650) 877-8500  
3 Facsimile: (650) 829-6609  
Attn: City Manager

4 City of South San Francisco  
550 N. Canal Street  
5 South San Francisco, CA 94080  
Telephone: (650) 877-8550  
6 Facsimile: (650) 877-8665  
7 Attn: Public Works Director

8 80. Notices submitted in accordance with this Section shall be deemed submitted on the date  
9 they are postmarked or, if sent electronically, they shall be deemed submitted upon transmission, but a  
10 notice is not effective if the sending Party learns that it did not reach the Party to be notified.

11 Notwithstanding the sender’s receipt of a successful delivery notification, a recipient that fails to receive  
12 the submission may request delivery by other means. Such a request does not affect the timeliness of  
13 the original submission.

14 81. The City also agrees to provide to Baykeeper any new or existing documents within the  
15 City’s custody or control that are reasonably necessary to evaluate City Collection System performance  
16 and/or compliance with this Consent Decree within thirty (30) days of written request by Baykeeper.

17 82. During the life of this Consent Decree, the City shall preserve at least one legible copy of  
18 all records and documents, including computer-stored information, which memorialize performance of  
19 its obligations under this Consent Decree.

20 **XXVIII. GENERAL PROVISIONS**

21 83. Continuing Jurisdiction. The Parties stipulate that the District Court shall retain  
22 jurisdiction to enforce the terms and conditions of this Consent Decree and to resolve disputes arising  
23 hereunder as may be necessary or appropriate for the construction or execution of this Consent Decree  
24 up to and including the Termination Date in Part VI.

25 84. Construction. The language in all parts of this Consent Decree shall be construed  
26 according to its plain and ordinary meaning, except as to those terms defined in Part II above.

27 85. Choice of Law. The laws of the United States shall govern this Consent Decree.

28 ///

1 86. Counterparts. This Consent Decree may be executed in any number of counterparts, all  
2 of which together shall constitute one original document. Telecopy, scanned copies (i.e., pdf) and/or  
3 facsimile copies of original signature shall be deemed to be originally executed counterparts of this  
4 Consent Decree.

5 87. Modification of the Consent Decree. This Consent Decree, and any provisions herein,  
6 may not be changed, waived, discharged, or terminated unless by a written instrument, signed by the  
7 Parties.

8 88. Full Settlement. This Consent Decree constitutes a full and final settlement of this  
9 matter.

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

14 90. Authority. The undersigned representatives for Baykeeper and the City each certify that  
15 he/she is fully authorized by the settling Party whom he/she represents to enter into the terms and  
16 conditions of this Consent Decree.

17  
18 The Parties hereby enter into this Consent Decree.


19 CITY OF SOUTH SAN FRANCISCO

20  
21 Date: \_\_\_\_\_

22 By: \_\_\_\_\_  
23 By: Barry M. Nagel, City Manager

24 SAN FRANCISCO BAYKEEPER

25 Date: March 5, 2011  
26 \_\_\_\_\_

27   
28 By: Jason Flanders, Staff Attorney



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APPROVED AS TO FORM:

For DEFENDANT SOUTH SAN FRANCISCO

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

By: Gregory Newmark

For SAN FRANCISCO BAYKEEPER:  
ENVIRONMENTAL ADVOCATES

Date: March 5, 2011

*Christopher a. sproul*

By: Christopher Sproul

1579760.4

1 86. Counterparts. This Consent Decree may be executed in any number of counterparts, all  
2 of which together shall constitute one original document. Telecopy, scanned copies (i.e., pdf) and/or  
3 facsimile copies of original signature shall be deemed to be originally executed counterparts of this  
4 Consent Decree.

5 87. Modification of the Consent Decree. This Consent Decree, and any provisions herein,  
6 may not be changed, waived, discharged, or terminated unless by a written instrument, signed by the  
7 Parties.

8 88. Full Settlement. This Consent Decree constitutes a full and final settlement of this  
9 matter.

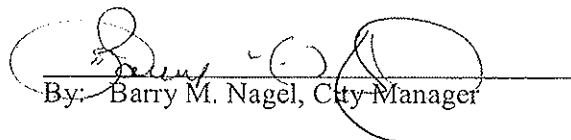
10 89. Integration Clause. This is an integrated Consent Decree. This Consent Decree is  
11 intended to be a full and complete statement of the terms of the agreement between the Parties and  
12 expressly supersedes any and all prior oral or written agreements, covenants, representations, and  
13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

14 90. Authority. The undersigned representatives for Baykeeper and the City each certify that  
15 he/she is fully authorized by the settling Party whom he/she represents to enter into the terms and  
16 conditions of this Consent Decree.

17  
18 The Parties hereby enter into this Consent Decree.

19 CITY OF SOUTH SAN FRANCISCO

20  
21 Date: March 9, 2011

22   
By: Barry M. Nagel, City Manager

23 SAN FRANCISCO BAYKEEPER

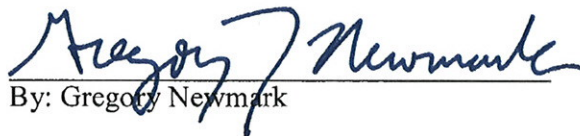
24  
25 Date: March 5, 2011

26 By: Jason Flanders, Staff Attorney

1 APPROVED AS TO FORM:

For DEFENDANT SOUTH SAN FRANCISCO

2  
3 Date: March 15, 2011

  
By: Gregory Newmark

4  
5  
6  
7 Date: March 5, 2011

By: Christopher Sproul

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**EXHIBIT A**

1  
2           The City shall fund a Sewer Lateral Replacement Grant Program (“Program”) in the  
3 amount of \$300,000. The Program will provide grants to eligible homeowners to replace defective  
4 sewer laterals in the amount of 50% of the cost of replacement up to a maximum of \$2500 per sewer  
5 lateral. Funds will be available on a first-come, first-served basis. The City shall advertise the Program  
6 to the public and shall notify property owners who are required to inspect their private laterals of the  
7 availability of grant funds for lateral replacement.

8           Interested homeowners must hire an independent contractor to conduct a closed-circuit  
9 television (“CCTV”) inspection of their sewer lateral, which must be observed by City personnel. If  
10 City personnel determines that the sewer lateral is defective based on the CCTV inspection results, the  
11 homeowner may submit a grant application to the City. The grant application must be accompanied by  
12 three (3) bids from licensed contractors. If the application is approved, the homeowner must complete  
13 the work within 90 days. Upon completion of the work, the sewer lateral must be tested/inspected by  
14 City personnel. The homeowner must then submit a copy of the paid-in-full invoice for the work  
15 performed by the contractor.

**IT IS SO ORDERED.**

Dated:       MAY 13      , 2011

  
\_\_\_\_\_  
The Honorable Sandra B. Armstrong  
United States District Court Judge

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