

SETTLEMENT AGREEMENT AND MUTUAL RELEASE OF CLAIMS

This Settlement Agreement and Mutual Release of Claims (“AGREEMENT”) is entered into between the California Sportfishing Protection Alliance (“CSPA”) and the City of Modesto (“Modesto” or “City”) (individually, a “Settling Party” and collectively, the “Settling Parties”) with respect to the following facts and objectives:

I. RECITALS

WHEREAS, CSPA is a 501(c)(3) non-profit, public benefit corporation organized under the laws of the State of California, dedicated to the preservation, protection, and restoration of the environment, wildlife, and natural resources of all waters of California, including the San Joaquin River and the Sacramento-San Joaquin River Delta. Bill Jennings is the Executive Director of CSPA and a member of CSPA.

WHEREAS, the City is a municipal corporation that owns and operates the Water Quality Control Facility in Modesto. The City also owns and operates the collection system that conveys wastewater to the Water Quality Control Facility. Discharges from the Water Quality Control Facility and collection system are regulated by National Pollutant Discharge Elimination System (“NPDES”) Permit No. CA0079103 (California Regional Water Quality Control Board, Central Valley Region (“Regional Water Board”), Order No. R5-2012-0031 (“2012 NPDES Permit”) and were previously regulated by NPDES Permit No. CA 0079103, Regional Water Board Order No. R5-2008-0059 (“2008 NPDES Permit”), and by NPDES Permit No. CA 0079103, Regional Water Board Order No. 5-01-120 (“2001 NPDES Permit”) (collectively “NPDES Permits”). The Water Quality Control Facility and collection system is also regulated by *Statewide General Waste Discharge Requirements for Sanitary Sewer Systems*, State Water Resources Control Board, Order No. 2006-0003-DWQ and the associated Monitoring & Reporting Program as amended by Order No. WQ 2008-0002-EXEC (“SSO WDR”).

WHEREAS, discharges from the City’s municipal separate storm sewer system are regulated by NPDES Permit No. CAS083526, Regional Water Board Order No. R5-2008-0092

(“2008 MS4 Permit”); and were previously regulated by NPDES Permit No. CAS083526, Regional Water Board Order No. R5-2002-0182 (“2002 MS4 Permit”) (collectively “MS4 Permits”).

WHEREAS, on or about July 11, 2012, CSPA provided Modesto, the Administrator and the Regional Administrator for Region IX of the United States Environmental Protection Agency (“EPA”), the Executive Director of the California State Water Resources Control Board (“State Board”), and the Executive Officer of the California Regional Water Quality Control Board, Central Valley Region (“Regional Board”) with a Notice of Violation and Intent to File Suit (“CWA Notice Letter”) under Section 505 of the Federal Water Pollution Control Act (the “Act”, “Clean Water Act,” or “CWA”), 33 U.S.C. § 1365. The CWA Notice Letter alleged that the City violated and continues to violate the Clean Water Act for discharges of pollutants in violation of the NPDES Permits and MS4 Permits.

WHEREAS, on October 5, 2012, CSPA sent the City a letter notifying Modesto of CSPA’s intent to seek a peremptory writ of mandate ordering the City to comply with the NPDES Permits and the SSO WDR (“Writ Notice Letter”).

WHEREAS, on or about December 13, 2012, CSPA filed its Complaint in the United States District Court for the Eastern District of California against Modesto, *California Sportfishing Protection v. City of Modesto*. (USDC, E.D. Cal., Case No. 1:12-cv-02027-LJO-SKO) (“Complaint”).

WHEREAS, the City denies all of CSPA’s allegations and claims in the CWA Notice Letter, Writ Notice Letter, and Complaint; and denies CSPA is entitled to any relief whatsoever requested in the Complaint;

WHEREAS, the Settling Parties, through their authorized representatives and without either adjudication of CSPA’s claims or admission by the City of any alleged violation or other wrongdoing, have chosen to resolve in full CSPA’s allegations in the CWA Notice Letter, Writ

Notice Letter, and Complaint through settlement to avoid the cost and uncertainties of further litigation; and

WHEREAS, the Settling Parties have agreed that it is in their mutual interest to enter into this Agreement setting forth the terms and conditions appropriate to address CSPA's allegations set forth in the CWA Notice Letter, Writ Notice Letter, and Complaint.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Settling Parties hereby agree as follows:

II. GENERAL OBJECTIVES

1. The objectives of this Agreement are:
 - a. To ensure that the City continues to use, implement, and improve ways, means, and methods to prevent and/or reduce sanitary sewer overflows;
 - b. To ensure that the City continues to use, implement, and improve ways, means, and methods to prevent violations of, or comply with, applicable permits, laws, and regulations as related to sanitary sewer overflows.

III. JURISDICTION AND VENUE

2. CSPA alleges that: a) the Eastern District Court of California has jurisdiction over the subject matter of the claims asserted by CSPA in the Complaint pursuant to section 505(a)(1) of the Clean Water Act, 33 U.S.C. § 1365(a)(1), 28 U.S.C. §§ 1331 and 2201 (an action for declaratory and injunctive relief arising under the Constitution and laws of the United States), and 28 U.S.C. § 1367(a), which provides supplemental jurisdiction for claims based on state law, including, but not limited to, California Code of Civil Procedure § 1085 and the California Water Code §§ 13000 *et seq.* (the "Porter-Cologne Water Quality Control Act" or "Porter-Cologne"); and b) venue for CSPA's Complaint is proper in the Eastern District Court of California pursuant to sections 309(b) and 505(c) of the Clean Water Act, 33 U.S.C. §§ 1319(b), 1365(c), and 28 U.S.C. §§ 1391(b) and (c). The City denies these allegations, but for purposes of this settlement, the Settling Parties waive all objections that they may have relative to the District

Court's ability to retain jurisdiction over the Settling Parties and this Agreement as specified in Section XV of this Agreement.

IV. EFFECT OF AGREEMENT

3. CSPA does not, by its consent to this Agreement, warrant or aver in any manner that the City's compliance with this Agreement will constitute or result in compliance with any Federal or State law or regulation. Nothing in this Agreement shall be construed to affect or limit in any way the obligation of the City to comply with all applicable Federal, State and local laws and regulations governing any activity required by this Agreement.

4. Neither this Agreement, nor any payment pursuant to this Agreement, shall constitute evidence or be construed as a finding, adjudication, or acknowledgement of any fact, law, or liability by the Settling Parties, nor shall it be construed as an admission of violation of any law, rule, regulation, permit, or administrative order by the City.

V. APPLICABILITY

5. The provisions of this Agreement apply to and bind the Settling Parties, including any successors or assigns. The Settling Parties certify that their undersigned representatives are fully authorized to enter into this Agreement, to execute it on behalf of the Settling Parties, and to legally bind the Settling Parties to its terms.

6. The Settling Parties agree to be bound by this Agreement and not to contest its validity in any subsequent proceeding to implement or enforce its terms. By entering into this Agreement, the City does not admit liability for any purpose as to any allegation or matter arising out of the CWA Notice Letter, Writ Notice Letter, and/or the Complaint.

7. No change in ownership or corporate or other legal status of the City or any transfer of the City's assets or liabilities shall in any way alter the responsibilities of the City or any of its successors or assigns thereof, under this Agreement.

VI. EFFECTIVE DATE AND TERMINATION DATE

8. The term "Effective Date," as used in this Agreement, shall mean the day the

District Court enters an order granting the Settling Parties stipulation to dismiss Plaintiff's claims with prejudice described in Section XV of this Agreement.

a. This Agreement will terminate May 31, 2017, if the City meets its SSO Reduction Performance Standard for the year 2016, as set forth in Section VIII of this Agreement below. Failure to comply with the final SSO Reduction Performance Standard for the year 2016 will result in year-to-year extensions of the Agreement until the City achieves the final SSO Reduction Performance Standard. If either of the Settling Parties has invoked the Dispute Resolution Process pursuant to Section XVI, and the dispute is active and has not been resolved at the time the Agreement would otherwise terminate, the Agreement shall continue in effect until the dispute is resolved, either through mutual agreement of the Settling Parties or by the District Court.

VII. DEFINITIONS

9. Unless otherwise expressly defined herein, terms used in this Agreement, which are defined in the CWA, California's Porter-Cologne Water Quality Control Act, Water Code sections 13000 *et seq.*, or in regulations implementing these statutes, have the meaning assigned to them in the applicable statutes or regulations. Whenever terms listed below are used in this Agreement, the following definitions apply:

a. "Day" means a calendar day. In computing any period of time under this Agreement, 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.

b. "Collection System" means the sewer pipes and lines, manholes or maintenance holes, pump stations, and all appurtenances thereto under ownership of the City that are used to convey wastewater generated by residential, commercial, and industrial sources to the Water Quality Control Facility.

c. "Design Storm" means a 10-year, 24-hour storm event.

d. “Dispute Resolution Process” means, collectively, the Informal Dispute Resolution and Formal Dispute Resolution procedures set forth in Section XVI of this Agreement.

e. “Sanitary Sewer Overflow” or “SSO” has the same meaning as those terms are defined in Section A.1. of the SSO WDR, or any amendment thereto, and which currently means: “any overflow, spill, release, discharge or diversion of untreated or partially treated wastewater from the Collection System. SSOs include: (i) Overflows or releases of untreated or partially treated wastewater that reach waters of the United States; (ii) Overflows or releases of untreated or partially treated wastewater that do not reach waters of the United States; and (iii) Wastewater backups into buildings and on private property that are caused by blockages or flow conditions within the publicly owned portion of a sanitary sewer system.” For purposes of this definition, “waters of the United States” has the meaning as set forth in 40 C.F.R. § 122.2.

f. “Year” shall mean a calendar year, unless otherwise specified.

VIII. SSO REDUCTION PERFORMANCE STANDARDS

10. It is the goal of this Agreement to reduce SSOs from the Collection System. The City shall maintain its SSOs in the Collection System to a maximum number of five (5) SSOs per 100 miles of collection system starting with the 2013 calendar year.

a. For purposes of determining compliance with the SSO Reduction Performance Standards, SSOs occurring due to lack of collection system capacity during storm events equal to or exceeding the Design Storm or of a volume of thirty five (35) gallons or less that does not reach a drain inlet, storm drain main, pipe, pumping station or surface water body shall not be counted. SSOs entering the MS4 or entering a paved surface of the public right of way adjacent to the MS4 when it is raining are not eligible for this exception. Field reports shall document weather conditions at the time of response to the SSO event.

b. For purposes of determining compliance with the SSO Reduction Performance Standards, the miles of pipes and lines in the Collection System as of the Effective

Date of this Agreement equals 639 miles. The City shall document all changes to mileage totals in the Annual Report required under Section XII of this Agreement, and use the most current mileage totals for purposes of determining compliance with the SSO Reduction Performance Standards.

c. Failure to meet the final SSO Reduction Performance Standard shall be a violation of this Agreement and subject to the Dispute Resolution Process set forth in Section XVI.

IX. SSO REPORTING

11. The City shall ensure that its internal SSO reporting (both SSO Reports and SSO Investigation Reports) is consistent with what the City reports to the California Integrated Water Quality System (“CIWQS”). This includes, but is not limited to, reporting about cause, volumes, dates, and whether the SSO reached a storm drain. The City shall continue to implement its annual training program for all staff involved in SSO reporting.

12. By December 1, 2013, the City shall prepare a dataset of its SSOs that is consistent with its SSO Reports and SSO Investigation Reports.

X. CONDITION ASSESSMENT

13. By December 1, 2016, the City shall do a one-time inspection of all its pipes that are (1) eight (8) inches and smaller in diameter, (2) older than ten (10) years old, and (3) have not been inspected in the past ten (10) years. The City shall prioritize its inspection of pipes with known SSO problems or structural deficiencies first.

XI. CLEANING AND ROOT CONTROL PROTOCOLS

14. By December 1, 2013, the City shall continue to follow a response matrix to respond to findings during its preventive maintenance and hot spot cleaning consistent with the following matrix:

	Minimal	Light	Medium	Heavy
Debris	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
Grease	No observable grease	Minor amounts of grease 15 minutes or less to clean 1 pass	Small “chunks” No “logs” 15-30 minutes to clean 2-3 passes	Big “chunks” or “logs” More than 4 passes Operator concern for future stoppage
Roots	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
Debris: 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
Action	Decrease frequency to next lower frequency after 2 consecutive results (e.g. 6 months to 12 months)	Continue current maintenance frequency	Increase current maintenance frequency to next higher frequency (e.g. 6 months to 3 months)	Increase current maintenance frequency to next higher frequency (e.g. 6 months to 3 months)

15. By no later than December 1, 2013, the City shall develop specific protocols and/or a decision matrix for its sanitary sewer cleaning and root control program that will guide the City’s staff on how to make cleaning decisions based on a comparison of the observations made from trapping to CCTV (“closed circuit television”) observations.

XII. ANNUAL REPORTS

16. Beginning in 2015, by February 28 of each year that this Agreement remains in effect, the City shall submit an Annual Report to CSPA. The Annual Report shall:

a. Summarize, assess and document the City's compliance with the SSO Reduction Performance Standard in Section VIII of this Agreement, and report compliance or non-compliance with the SSO Reduction Performance Standard.

b. Provide details relevant to the City's implementation of, and compliance with, the requirements set forth in Sections IX, X, and XI of this Agreement during the preceding year, including any program modifications or delays during the prior calendar year or delays.

c. Include copies of all SSO Reports and SSO Investigation Reports. This shall include electronic/CIWQS reports as well as any modification the City files with CIWQS.

17. The City agrees to make available to CSPA existing documents within the City's custody or control that are reasonably necessary to evaluate the City's compliance with this Agreement within thirty (30) days of written request by CSPA.

XIII. SSO REDUCTION ACTION PLAN

18. If the Annual Report required under Section XII of this Agreement documents compliance with the SSO Reduction Performance Standard, the City shall have no obligation to prepare an SSO Reduction Action Plan as set forth herein. However, if after the second year of this Agreement, an Annual Report required under Section XII of this Agreement documents in excess of five (5) SSOs per hundred miles, of the City's collection system, the City shall submit to CSPA by April 15th of that same year an SSO Reduction Action Plan. An SSO Reduction Action Plan prepared pursuant to this section shall specify the actions taken in the calendar year for which the Annual Report was submitted, and shall specify additional program elements and measures to be taken during the next calendar year and thereafter, which are designed to achieve compliance with the SSO Reduction Performance Standards set forth in this Agreement. The SSO Reduction Action Plan shall include a proposed schedule for implementation of all actions

proposed.

19. CSPA shall provide the City, in writing, with all recommended revisions to the SSO Reduction Action Plan within forty-five (45) days of receipt of such SSO Reduction Action Plan. The City shall consider each of CSPA's recommended revisions and indicate within forty-five (45) days of receipt whether the City accepts each such recommendation for revision. All revisions to the SSO Reduction Action Plan recommended by CSPA, determined by the City or the District Court to be reasonable, shall be accepted by the City. If the City does not accept each of CSPA's recommendations, and remaining differences cannot be informally resolved promptly between the Settling Parties, then either party may seek dispute resolution pursuant to Section XVI of this Agreement. In any such Dispute Resolution Process, the City shall demonstrate by a preponderance of the evidence that the elements or actions set forth in the SSO Reduction Action Plan are designed to achieve compliance with the SSO Reduction Performance Standard set forth in Section VIII of this Agreement, and, taken as a whole, constitute sound engineering and operational approaches to achieving compliance. If the City rejects any revision to the SSO Reduction Action Plan recommended by CSPA, the City bears the burden of demonstrating by a preponderance of the evidence that such rejected revision(s) are unreasonable. After the Settling Parties have reached agreement on the SSO Reduction Action Plan or after the Dispute Resolution Process resolves any dispute concerning the SSO Reduction Action Plan, the City shall begin implementation of the SSO Reduction Action Plan as an enforceable requirement of this Agreement within sixty (60) days of agreement or upon the schedule set forth therein, if earlier. To the extent the Settling Parties do not dispute specific original provisions of the SSO Reduction Action Plan or specific recommended revisions, the City shall implement all undisputed provisions or revisions, if possible.

XIV. PAYMENT OF LITIGATION COSTS, MONITORING OF CONSENT DECREE COMPLIANCE, AND MITIGATION PAYMENT

20. Litigation Fees and Costs. To help defray CSPA's attorneys, consultant, and

expert fees and costs, and any other costs incurred as a result of investigating, filing the Complaint, and negotiating a settlement, the City shall pay CSPA the sum of Ninety-six thousand five hundred dollars (\$96,500) which shall include all attorneys' fees and costs for all services performed by and on behalf of CSPA by its attorneys and consultants up to and through the Effective Date of this Agreement. The payment shall be made within thirty (30) days of the Effective Date of this Agreement. The payment shall be made in the form of a check payable to "Lozeau Drury LLP" addressed to: 410 12th Street, Suite 250, Oakland, CA 94607, sent overnight delivery, and shall constitute full satisfaction of all costs of litigation incurred by CSPA that have or could have been claimed in connection with or arising out of the CWA Notice Letter, Writ Notice Letter, and Complaint, up to and including the Effective Date.

21. Compliance Monitoring. As reimbursement for CSPA's future fees and costs that will be incurred in order for CSPA to monitor the City's compliance with this Agreement, and to evaluate the City's Annual Reports and, if necessary, SSO Reduction Action Plans, the City agrees to reimburse CSPA for fees and costs incurred in overseeing the implementation of this Agreement as follows:

- a. If the City is only required to submit an Annual Report in any given year, the City shall reimburse CSPA in the amount of Two Thousand dollars (\$2,000.00) for each such year.
- b. If the City is required to submit an SSO Reduction Action Plan in any given year, the City shall reimburse CSPA in the amount of Four Thousand dollars (\$4,000.00) for each such year.

Each payment shall be made on or before March 15 of each year, starting March 15, 2015. Each payment shall be made in the form of a check payable to "Lozeau Drury LLP" addressed to: Michael Lozeau, Lozeau Drury LLP, 410 12th Street, Suite 250, Oakland, CA 94607.

22. Mitigation Payment. In recognition of the good-faith efforts by the City to comply with its Permits, the federal Clean Water Act, and the California Porter-Cologne Water

Quality Control Act, and in lieu of payment by the City of any penalties and costs which may have been assessed if the Complaint had proceeded to trial and CSPA prevailed, the Settling Parties agree that the City will pay the sum of Sixty-five thousand dollars (\$65,000) to the Rose Foundation for Communities and the Environment (“Rose Foundation”) to be used to fund environmental project activities designed to improve and/or protect water quality in the San Joaquin River, Stanislaus River, Tuolumne River, and their downstream waters.

23. The Rose Foundation shall provide notice to the Settling Parties and the U.S. Department of Justice within thirty (30) days of when the funds are dispersed by the Rose Foundation, setting forth the recipient and/or purpose of the funds. Payment to the Rose Foundation shall be due within thirty (30) days of the Effective Date of this Agreement, with payment sent to:

The Rose Foundation for Communities and the Environment
1970 Broadway, Suite 600
Oakland, California 94612
Attn: Tim Little

XV. COMMITMENTS OF CSPA

24. Submission of Agreement to Federal Agencies. CSPA shall submit a copy of this Agreement to the United States Environmental Protection Agency (“EPA”) and the United States Department of Justice (“DOJ”) within three (3) business days of its execution for agency review consistent with 40 C.F.R. § 135.5. The agency review period expires forty-five (45) days after receipt by both agencies, as evidenced by the certified return receipts, copies of which shall be provided by CSPA to the City. In the event that EPA or DOJ comment negatively on the provisions of this Agreement, the Settling Parties agree to meet and confer to attempt to resolve the issue(s) raised by EPA or DOJ.

25. Stipulation to Dismiss With Prejudice and [Proposed] Order. Within ten (10) calendar days of the expiration of the Agencies’ review period specified in Paragraph 24 above, CSPA shall file a Stipulation to Dismiss With Prejudice and [Proposed] Order thereon pursuant

to Federal Rule of Civil Procedure 41(a)(2) with the United States District Court for the Eastern District of California (“District Court”), with this Agreement attached as Exhibit A thereto and incorporated by reference, specifying that CSPA is dismissing with prejudice all claims in CSPA’s Complaint. The Stipulation to Dismiss with Prejudice and [Proposed] Order shall state that the District Court will maintain jurisdiction over the parties for purposes of resolving any disputes between the Settling Parties with respect to any provision of this Agreement incorporated into the Court’s dismissal Order. In resolving such disputes, the Court may order any appropriate remedy including, but not limited to, contempt sanctions. CSPA is responsible for notifying the City of the District Court’s entry of the Order dismissing with prejudice. If the District Court chooses not to enter the Order, this Agreement shall be null and void.

XVI. BREACH OF AGREEMENT/DISMISSAL ORDER AND DISPUTE RESOLUTION PROCEDURES

26. Force Majeure. The City shall notify CSPA pursuant to the terms of this paragraph, when implementation of the requirements set forth in this Agreement, within the deadlines set forth in those paragraphs, becomes impossible, despite the timely good-faith efforts of the City, due to circumstances beyond the control of the City or its agents, and which could not have been reasonably foreseen and prevented by the exercise of due diligence by the City. Any delays due to the City’s failure to make timely and bona fide applications and to exercise diligent efforts to comply with the terms in this Agreement shall not, in any event, be considered to be circumstances beyond the City’s control. Financial inability shall not, in any event, be considered to be circumstances beyond the City’s control.

a. If the City claims impossibility, it shall notify CSPA in writing within thirty (30) days of the date that the City first knew of the event or circumstance that caused or would cause non-performance with the terms of this Agreement, or the date the City should have known of the event or circumstance by the exercise of due diligence. The notice shall describe the reason for the non-performance and specifically refer to this Section of this Agreement. The

notice shall describe the anticipated length of time the non-performance may persist, the cause or causes of the non-performance, the measures taken or to be taken by the City to prevent or minimize the non-performance, the schedule by which the measures will be implemented, and the anticipated date of compliance. The City shall adopt all reasonable measures to avoid and minimize such non-performance.

b. The Settling Parties shall meet and confer in good-faith concerning the non-performance and, where the Settling Parties concur that performance was or is impossible, despite the timely good faith efforts of the City, due to circumstances beyond the control of the City that could not have been reasonably foreseen and prevented by the exercise of due diligence by the City, new performance deadlines shall be established.

c. If CSPA disagrees with the City's notice, or in the event that the Settling Parties cannot timely agree on the terms of new performance deadlines or requirements, either Settling Party shall have the right to invoke the Dispute Resolution Process pursuant to Section XVI of this Agreement. In such proceeding, the City shall bear the burden of proving that any delay in performance of any requirement of this Agreement was caused or will be caused by force majeure and the extent of any delay attributable to such circumstances.

27. The Dispute Resolution Process set forth in paragraphs 28 and 29 shall be the exclusive mechanism for resolving disputes between the Settling Parties with regard to any aspect of this Agreement.

28. Informal Dispute Resolution. The Settling Parties agree to engage in Informal Dispute Resolution pursuant to the terms of this paragraph:

a. If a dispute under this Agreement arises, including whether any Settling Party believes that a violation of the Agreement and the Court's dismissal Order has occurred, the Settling Parties shall meet and confer (telephonically or in-person) within twenty-one (21) days of receiving written notification of a request for such meeting. During the meet and confer proceeding, the Settling Parties shall discuss the dispute and make best efforts to devise a

mutually acceptable plan, including implementation dates, to resolve the dispute. The Settling Parties may, upon mutual written agreement, extend the time to conduct the meet and confer discussions beyond twenty-one (21) days.

b. If any Settling Party fails to meet and confer within the timeframes set forth in paragraph 25(a), or the meet and confer does not resolve the dispute, after at least twenty-one (21) days have passed after the meet and confer occurred or should have occurred, either Settling Party shall be entitled to initiate the Formal Dispute Resolution procedures outlined in paragraph 30 below.

29. Formal Dispute Resolution. The Settling Parties agree that any action or proceeding which is brought by any Settling Party against any other Settling Party pertaining to, arising out of or related to the requirements of the Court's dismissal Order and this Agreement shall first utilize the Informal Dispute Resolution meet and confer proceedings set forth in the preceding paragraph and, if not successful, the Settling Parties shall utilize the Formal Dispute Resolution procedures in this paragraph. The Settling Parties agree that Formal Dispute Resolution shall be initiated by filing a Motion to Show Cause or other appropriately titled motion ("Motion") in the United States District Court, Eastern District of California, before District Court Judge Lawrence O'Neill, to determine whether either party is in violation of the Agreement and the Court's dismissal Order and, if so, to require the violating party to remedy any violation identified by the District Court within a reasonable time frame. If Judge O'Neill is not available to perform the role identified herein, the Settling Parties agree that the Motion shall be re-assigned pursuant to applicable rules of the District Court. Litigation costs and fees incurred in the Dispute Resolution Process shall be awarded in accord with the standard established by section 505 of the Clean Water Act, 33 U.S.C. § 1365.

XVII. NOTICES AND SUBMISSIONS

30. The City agrees to provide CSPA with all documents or reports required by this Agreement. All notices required herein or any other correspondence pertaining to this

Agreement shall be sent by regular, certified, overnight, or electronic mail as follows:

If to CSPA:

Michael Lozeau
Douglas Chermak
Lozeau | Drury LLP
410 12th Street, Suite 250
Oakland, CA 94607
Telephone: (510) 836-4200
Email: michael@lozeaudrury.com
doug@lozeaudrury.com

California Sportfishing Protection Alliance
Bill Jennings, Executive Director
3536 Rainier Avenue
Stockton, California 95204
Telephone: 209-464-5067
Fax: 209-464-1028
Email: deltakeep@me.com

If to the City:

Director of Public Works
City of Modesto
1010 10th Street
Modesto, CA 95354
Telephone: 209-577-5200

Gary DeJesus, Deputy Director
Wastewater Administration
City of Modesto
1221 Sutter Avenue
Modesto, CA 95351
Telephone: 209-577-5200
Email: gdejesus@modestogov.com

Kanwarjit (Jit) S. Dua
Somach Simmons & Dunn
500 Capitol Mall, Suite 1000
Sacramento, CA 95814
Telephone: (916) 446-7979
Fax: (916) 446-8199
Email: kdua@somachlaw.com

31. Notices or communications shall be deemed submitted on the date that they are postmarked and sent by first-class mail, deposited with an overnight mail/delivery service, or sent via electronic message. Any change of address or addresses shall be communicated in writing in the manner described above for giving notices. In addition, the Settling Parties may agree to transmit documents electronically or by facsimile.

32. During the life of this Agreement, the City shall preserve at least one legible copy of all records and documents, including computer-stored information, which relate to performance of its obligations under this Agreement.

33. All Annual Reports and SSO Reduction Action Plans required to be submitted by the City to CSPA pursuant to this Agreement shall contain the following certification, signed and dated by a responsible official:

I certify under penalty of perjury that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted and is, to the best of my knowledge and belief, true, accurate and complete.

**XVIII. MUTUAL RELEASE OF LIABILITY AND COVENANT
NOT TO SUE**

34. As of the Effective Date of this Agreement, the Settling Parties and their successors, assigns, directors, officers, agents, attorneys, representatives, and employees, hereby release all persons from any and all claims and demands of any kind, nature, or description, and from any and all liabilities, relief, damages, fees (including fees of attorneys, experts, and

others), injuries, actions, or causes of action, either at law or in equity, whether known or unknown, arising from CSPA's allegations regarding the City's compliance with the Clean Water Act, Porter-Cologne Water Quality Control Act, NPDES Permits, MS4 Permits, and the SSO WDR as set forth in the CWA Notice Letter, Writ Notice Letter, and/or Complaint, including all claims for fees, costs, expenses, or any other sum incurred or claimed or which could have been claimed for violations up to and including the Effective Date of this Agreement, except as provided for in Section XVI of this Agreement.

35. The Settling Parties acknowledge that they are familiar with section 1542 of the California Civil Code, which provides:

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

The Parties hereby waive and relinquish any rights or benefits they may have under California Civil Code section 1542 with respect to any other claims against each other arising from the allegations and claims as set forth in the CWA Notice Letter, Writ Notice Letter, and/or the Complaint.

36. For the period beginning on the Effective Date and ending on the Termination Date, CSPA agrees that neither CSPA, its officers, executive staff, members of its governing board nor any organization under the control of CSPA, its officers, executive staff, or members of its governing board, will file any lawsuit against the City seeking relief for alleged violation of the Clean Water Act as it pertains to compliance with the NPDES Permits, the MS4 Permits, the SSO WDR, or any revisions, amendments, or successors to these permits, or similar state statutes and/or regulations, nor will CSPA support such lawsuits against the City brought by other groups or individuals by providing financial assistance, personnel time, or any other affirmative actions.

37. Nothing in this Agreement limits or otherwise affects CSPA's right to participate in, address, or take any position that it deems necessary or appropriate in any formal or informal

proceeding before any judicial or administrative body on any other matter relating to the City, including the issuance of revisions, amendments, or successors to the NPDES Permits, the MS4 Permits, or the SSO WDR.

XIX. GENERAL PROVISIONS

38. **Construction.** The language in all parts of this Agreement shall be construed according to its plain and ordinary meaning, except as to those terms are defined by law, in the CWA, California's Porter-Cologne Water Quality Control Act, Water Code sections 13000 *et seq.*, in regulations implementing these statutes, or specifically herein.

39. **Choice of Law.** This Agreement shall be governed by the laws of the United States, and where applicable, the laws of the State of California.

40. **Severability.** In the event that any provision, section, or sentence of this Agreement is held by a court to be unenforceable, the validity of the enforceable provisions shall not be adversely affected.

41. **Counterparts.** This Agreement may be executed in any number of counterparts, all of which together shall constitute one original document. Telecopy, .pdf, and/or facsimile copies of original signature shall be deemed to be originally executed counterparts of this Agreement.

42. **Assignment.** Subject only to the express restrictions contained in this Agreement, all of the rights, duties and obligations contained in this Agreement shall inure to the benefit of and be binding upon the Settling Parties, and their successors and assigns.

43. **Modification of the Agreement:** This Agreement, and any provisions herein, may not be changed, waived, discharged or terminated, other than termination pursuant to Section VI of this Agreement, unless by a written instrument, signed by the Settling Parties.

44. **Full Settlement.** This Agreement constitutes a full and final settlement of this matter. The Settling Parties expressly understand and agree that each Settling Party has freely and voluntarily entered into the Agreement with and upon advice of counsel.

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

46. **Negotiated Agreement.** The Settling Parties have negotiated this Agreement, and agree that it shall not be construed against the party preparing it, but shall be construed as if the Settling Parties jointly prepared this Agreement and any uncertainty and ambiguity shall not be interpreted against any one Settling Party.

47. **Authority.** The undersigned representatives for CSPA and the City each certify that he is fully authorized by the party whom he represents to enter into the terms and conditions of this Agreement.

48. If for any reason the District Court should decline to approve this Agreement in the form presented, the Settling Parties shall use their best efforts to work together to modify the Agreement within thirty (30) days of receiving notice by District Court so that it is acceptable to the District Court. If the Parties are unable to modify this Agreement in a mutually acceptable manner that is also acceptable to the District Court, this Agreement shall immediately be null and void as well as inadmissible as a settlement communication under Federal Rule of Evidence 408.

The Settling Parties hereby enter into this Agreement.

Date: 12 November, 2013

CALIFORNIA SPORTFISHING PROTECTION
ALLIANCE

Bill Jennings
By: Bill Jennings
Chairman, Board of Directors

Date: Nov. 1, 2013

Susan A. Wood
Approved As To Form
10/31/13
Susan A. Wood, City Attorney

CITY OF MODESTO

Greg Nyhoff
By: Greg Nyhoff
City Manager

APPROVED AS TO FORM:

For PLAINTIFF CSPA

Date: 11/13, 2013

LOZEAU DRURY LLP

Michael R. Lozeau
By: Michael R. Lozeau

For DEFENDANT
CITY OF MODESTO

Date: 11/12/, 2013

SOMACH SIMMONS & DUNN

Kanwarjit S. Dua
By: Kanwarjit S. Dua, Esq.