

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF MISSISSIPPI  
GREENVILLE DIVISION

UNITED STATES OF AMERICA and )  
The STATE OF MISSISSIPPI, )  
 )  
Plaintiffs, )  
 )  
v. )  
 )  
The CITY OF GREENVILLE, MISSISSIPPI, )  
 )  
Defendant. )  
\_\_\_\_\_ )

Case No. 4:16-cv-00018-DMB-JMV

PARTIAL CONSENT DECREE

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**I. INTRODUCTION**

A. WHEREAS, Plaintiff United States of America, on behalf of the United States Environmental Protection Agency (“EPA”), has filed a complaint concurrently with this Partial Consent Decree, alleging that Defendant, the City of Greenville, Mississippi (the “City”), has violated and continues to violate Section 301 of the Clean Water Act (“CWA”), 33 U.S.C. § 1311, and terms and conditions of its National Pollutant Discharge Elimination System (“NPDES”) permit issued under Section 402 of the CWA, 33 U.S.C. § 1342; and seeking injunctive relief and civil penalties pursuant to Sections 309(b) and (d) of the CWA, 33 U.S.C. §§ 1319(b) and (d);

B. WHEREAS, Plaintiff the State of Mississippi, acting through the Mississippi Commission on Environmental Quality and the Mississippi Department of Environmental Quality (“MDEQ”) (collectively, the “State”), joined in the Complaint and seeks injunctive relief and civil penalties for the City’s alleged violations of the Mississippi Air and Water Pollution Control Law, Miss. Code Ann. § 49-17-1, *et seq.* (“MAWPCL”);

C. WHEREAS, the State is also a Plaintiff in this action and is joined as a party under Section 309(e) of the CWA, 33 U.S.C. § 1319(e), which requires the state in which a municipality is located to be joined as a party whenever the municipality is a party to a civil action brought by the United States under Section 309 of the CWA;

D. WHEREAS, the State has been authorized by EPA to administer the NPDES program in Mississippi pursuant to Section 402(b) of the CWA, 33 U.S.C. § 1342(b);

E. WHEREAS, the City is a “municipality” pursuant to Section 502 of the CWA, 33 U.S.C. § 1362;

F. WHEREAS, the City’s Wastewater Collection and Transmission System (“WCTS”) transports wastewater to a publicly owned wastewater treatment plant (“WWTP”) known as the Greenville WWTP, which is operated by the City pursuant to NPDES permit number MS0020184 (“NPDES Permit”);

G. WHEREAS, EPA and the State have determined, based upon information provided by the City, that the City has had hundreds of unauthorized Sanitary Sewer Overflows (“SSOs”) in the past five (5) years;

H. WHEREAS, the City has reported to MDEQ a number of violations of the effluent limitations in the NPDES Permit;

I. WHEREAS, the United States and the State contend that these SSOs and effluent limit exceedances are violations of the CWA, Miss. Code Ann. § 49-17-29, and the City’s NPDES Permit;

J. WHEREAS, the City does not admit any liability to the United States or the State

arising out of the transactions or occurrences alleged in the Complaint.

K. WHEREAS, the United States, the State, and the City (“Parties”) expressly acknowledge and agree that this Partial Consent Decree is a partial consent decree that does not resolve the civil claims the Plaintiffs have for civil penalties and does not resolve injunctive relief for violations of the CWA or the MAWPCL associated with Sanitary Sewer Overflows in Sewer Group 3 as alleged in the Complaint, and that the Plaintiffs reserve all claims that they may have concerning these unresolved matters as more particularly set forth below;

L. WHEREAS, the Parties recognize, and the Court by entering this Partial Consent Decree finds, that this Partial Consent Decree has been negotiated by the Parties in good faith and will avoid litigation between the Parties and that this Partial Consent Decree is fair, reasonable, and in the public interest.

NOW, THEREFORE, before the taking of any testimony, without the adjudication or admission of any issue of fact or law except as provided in Section II, and with the consent of the Parties, IT IS HEREBY ADJUDGED, ORDERED, AND DECREED as follows:

## **II. JURISDICTION AND VENUE**

1. This Court has jurisdiction over the subject matter of this action, pursuant to 28 U.S.C. §§ 1331, 1345, and 1355, and Section 309(b) of the CWA, 33 U.S.C. § 1319(b), and over the Parties. This Court has supplemental jurisdiction over the state law claims asserted by the State pursuant to 28 U.S.C. § 1367. Venue lies in this District pursuant to Section 309(b) of the CWA, 33 U.S.C. § 1319(b), and 28 U.S.C. §§ 1391(b) and 1395(a), because the violations alleged in the Complaint are alleged to have occurred in, and the City conducts business in, this judicial district. For purposes of this Decree, or any action to enforce this Decree, the City consents to the Court’s jurisdiction over this Decree, over any such action, and over the City and consents to venue in this judicial district.

2. For purposes of this Partial Consent Decree, the City agrees that the Complaint states claims upon which relief may be granted pursuant to Sections 309(b) and 309(d) of the CWA, 33 U.S.C. § 1319(b) and (d), and Miss. Code Ann. § 49-17-29 and § 49-17-43.

## **III. APPLICABILITY**

3. The obligations of this Partial Consent Decree apply to and are binding upon the United States and the State, and upon the City and any successors, assigns, or other entities or persons otherwise bound by law.

4. No transfer of ownership or operation of any portion of the Sewer System, whether in compliance with the procedures of this Paragraph or otherwise, shall relieve the City of its obligation to ensure that the terms of the Decree are implemented. At least thirty (30) Days prior to such transfer, the City shall provide a copy of this Partial Consent Decree to the proposed transferee and shall simultaneously provide written notice of the prospective transfer, together

with a copy of the proposed written agreement, to the United States and MDEQ, in accordance with Section XV (Notices). Any attempt to transfer ownership or operation of the Sewer System without complying with this Paragraph constitutes a violation of this Decree.

5. The City shall provide a copy of this Partial Consent Decree to all officers, employees, and agents whose duties might reasonably include compliance with any provision of this Decree, as well as to any contractor retained to perform work required under this Partial Consent Decree. The City shall condition any such contract upon performance of the work in conformity with the terms of this Partial Consent Decree.

6. In any action to enforce this Partial Consent Decree, the City shall not raise as a defense the failure by any of its officers, directors, employees, agents, or contractors to take any actions necessary to comply with the provisions of this Partial Consent Decree.

#### **IV. OBJECTIVES**

7. All plans, measures, reports, construction, maintenance, operational requirements, and other obligations in this Partial Consent Decree or resulting from the activities required by this Partial Consent Decree shall have the objective of causing the City to achieve and maintain full compliance with the CWA, the MAWPCL, and the NPDES Permit, including the elimination of Sanitary Sewer Overflows.

#### **V. DEFINITIONS**

8. Terms used in this Partial Consent Decree that are defined in the CWA or in regulations promulgated pursuant to the CWA (including, without limitation, those terms defined in Section 502 of the CWA, 33 U.S.C § 1362, and at 40 C.F.R. § 122.2) shall have the meanings assigned to them in the CWA or such regulations, unless otherwise provided in this Decree. Whenever the terms set forth below are used in this Partial Consent Decree, the following definitions shall apply:

a. “Building Backup” shall mean a wastewater release or backup into a building that is caused by blockages, flow conditions, or other malfunctions in the Wastewater Collection and Transmission System. A wastewater backup or release that is caused by blockages, flow conditions, or other malfunctions of a Private Lateral is not a Building Backup.

b. “Calendar Quarter” shall mean the three (3)-month periods ending on March 31, June 30, September 30, and December 31.

c. “Calendar Year” shall mean the twelve (12)-month period starting on January 1 and ending on December 31.

d. “Certification” or “certify” when used in this Partial Consent Decree shall require the City to comply with Paragraph 17 of this Partial Consent Decree.

e. “The City” or “Defendant” shall mean the City of Greenville, Mississippi, a municipal corporation, including all of its departments, agencies, instrumentalities such as the Public Works Department, and any successor thereto.

f. “CMOM” or “Capacity, Management, Operations, and Maintenance” shall mean a program of accepted industry practices to properly manage, operate and maintain sanitary wastewater collection, transmission and treatment systems, investigate capacity-constrained areas of these systems, and respond to SSO events.

g. “Complaint” shall mean the complaint filed by the United States and the State in this action.

h. “CWA” shall mean the Clean Water Act, as amended, 33 U.S.C. §§ 1251, *et seq.*

i. “Date of Lodging” shall mean the date this Partial Consent Decree is filed for lodging with the Clerk of the Court for the United States District Court for the Northern District of Mississippi.

j. “Day” shall mean a calendar day unless expressly stated to be a business day. In computing any period of time under this Partial Consent Decree, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next business day.

k. “Deliverable” shall mean any written document required to be prepared and/or submitted by or on behalf of the City pursuant to this Partial Consent Decree.

l. “EPA” shall mean the United States Environmental Protection Agency and any of its successor departments or agencies.

m. “Effective Date” shall have the definition provided in Section XVI.

n. “Excessive Inflow/Infiltration” or “Excessive I/I” shall have the meaning provided in 40 C.F.R. § 35.2005(b)(16).

o. “Force Main” shall mean any pipe that receives and conveys, under pressure, wastewater from the discharge side of a pump. A Force Main is intended to convey wastewater under pressure.

p. “Gravity Sewer Line” or “Gravity Sewer” shall mean a pipe that receives, contains and conveys wastewater not normally under pressure, but is intended to flow unassisted under the influence of gravity.

q. “Infiltration” as defined by 40 C.F.R. § 35.2005(b)(20) shall mean water other than wastewater that enters the WCTS (including sewer service connections and foundation drains) from the ground through such means as defective pipes, pipe joints,

connections, or manholes.

r. “Inflow” as defined by 40 C.F.R. § 35.2005(b)(21) shall mean water other than wastewater that enters the WCTS (including sewer service connections) from sources such as, but not limited to, roof leaders, cellar drains, yard drains, area drains, drains from springs and swampy areas, manhole covers, cross connections between storm sewers and sanitary sewers, catch basins, cooling towers, storm water, surface runoff, street wash waters, or drainage.

s. “I/I” shall mean the total quantity of water from Inflow, Infiltration, and rainfall induced Inflow and Infiltration without distinguishing the source.

t. “MAWPCL” shall mean the Mississippi Air and Water Pollution Control Law, Miss. Code Ann. § 49-17-1 *et seq.*

u. “Major Gravity Sewer Line” shall mean any of the following:

- (1) all Gravity Sewer Lines that are twelve (12) inches in diameter or larger;
- (2) all Gravity Sewer Lines that convey wastewater from one pumping station service area to another pumping station service area; and
- (3) all Gravity Sewer Lines that have caused or contributed, or that the City knows will likely cause or contribute to capacity-related SSOs.

v. “Month” shall mean one (1) calendar month running from the numbered day to the same numbered day of the following calendar month, regardless of whether the particular month has 28, 29, 30 or 31 days. In the event a triggered event would occur on a day of the month which does not exist (for example, on February 30), then the event shall be due on the first day of the following month (for example, March 1).

w. “MDEQ” shall mean the Mississippi Department of Environmental Quality and the Mississippi Commission on Environmental Quality, collectively, and any successor departments or agencies of the State.

x. “NPDES” shall mean the National Pollutant Discharge Elimination System authorized under Section 402 of the CWA, 33 U.S.C. § 1342.

y. “NPDES Permit” shall mean NPDES permit No. MS0020184 issued to the City pursuant to Section 402 of the Clean Water Act, 33 U.S.C. § 1342, for the Greenville WWTP, and any future extended, modified, or reissued permits.

z. “Paragraph” shall mean a portion of this Decree identified by an Arabic numeral.

aa. “Partial Consent Decree” or “Decree” shall mean this Decree and all appendices attached hereto (listed in Section XXIV). In the event of a conflict between this document and any appendix, this document shall control.

bb. “Parties” shall mean the United States of America on behalf of EPA, the State acting through MDEQ, and the City.

cc. “Plaintiffs” shall mean the United States of America on behalf of EPA, and the State acting through MDEQ.

dd. “Private Lateral” shall mean that portion of a sanitary sewer conveyance pipe that extends from the wastewater main to the single-family, multi-family, apartment, or other dwelling unit or commercial or industrial structure to which wastewater service is or has been provided.

ee. “Prohibited Bypass” shall mean the intentional diversion of waste streams from any portion of a treatment facility which is prohibited pursuant to the terms set forth at 40 C.F.R. § 122.41(m).

ff. “Public Document Repository” or “PDR” shall mean the William A. Percy Memorial Library located at 341 Main Street, Greenville, Mississippi, 38701 and the City’s website, [www.greenvillems.org](http://www.greenvillems.org).

gg. “Publicly Owned Treatment Works” or “POTW” shall mean a publicly owned treatment works or POTW as defined in 40 C.F.R. § 403.3(q), and includes the WCTS and the WWTP as defined in this Partial Consent Decree.

hh. “Pump Station” shall mean facilities comprised of pumps which lift wastewater to a higher hydraulic elevation, including all related electrical, mechanical, and structural systems necessary to the operation of that pump station.

ii. “Sanitary Sewer Overflow” or “SSO” shall mean any discharge of wastewater to waters of the United States or the State from the City’s Sewer System through a point source not specified in any NPDES permit, as well as any overflow, spill, or release of wastewater to public or private property from the Sewer System that may not have reached waters of the United States or the State, including all Building Backups.

jj. “SCADA” shall mean supervisory control and data acquisition.

kk. “Section” shall mean a portion of this Decree identified by a Roman numeral.

ll. “Sewershed” shall mean the subdivisions of the City’s WCTS containing sewers that are primarily hydraulically linked as identified on Appendix B, attached hereto and incorporated herein.



mm. “Sewer System” shall mean the WCTS and the WWTP.

nn. “State” shall mean the State of Mississippi, including all of its departments, agencies, and instrumentalities.

oo. “Timely” when applied to the submittal of a Deliverable shall mean submitted no later than the deadline established in this Partial Consent Decree (or in a document approved pursuant to this Partial Consent Decree) and containing all of the elements pertaining to the submittal as set forth in this Partial Consent Decree (or in a document approved pursuant to this Partial Consent Decree). “Timely” when applied to the implementation of any Work shall mean implemented no later than the deadline established in this Partial Consent Decree (or in a document approved pursuant to this Partial Consent Decree) and in accordance with the elements pertaining to such Work as set forth in this Partial Consent Decree (or in a document approved pursuant to this Partial Consent Decree).

pp. “United States” shall mean the United States of America, acting on behalf of EPA.

qq. “Wastewater Collection and Transmission System” or “WCTS” shall mean the entire municipal wastewater collection, retention and transmission system, including all pipes, Force Mains, Gravity Sewer Lines, Pump Stations, pumps, manholes, and appurtenances thereto, which are owned or operated by the City.

rr. “Wastewater Treatment Plant” or “WWTP” shall mean devices or systems used in the storage, treatment, recycling, and reclamation of municipal wastewater. For purposes of this Partial Consent Decree, this definition shall include all facilities owned, managed, operated, and maintained by the City, including but not limited to the treatment facility located on Highland Plantation Road, Greenville, Mississippi, and all components of such sewage treatment plant(s).

ss. “Work” shall mean all activities the City is required to perform under this Partial Consent Decree.

## **VI. REVIEW OF DELIVERABLES/CERTIFICATION OF DELIVERABLES**

9. Public Document Repository/ Public Review Requirement. The City shall post on its website instructions to the public for receiving email notice of future Deliverables. Prior to the submission of each Deliverable to EPA and MDEQ, the City shall post a copy of the Deliverable on its website and provide notice of such action by email to all parties who have requested such notice. The City shall also send to the Reference Librarian at the William A. Percy Memorial Library located at 341 Main Street, notice of the Deliverable to be submitted, a flyer containing a brief synopsis of the Deliverable, and instructions on how to find the document on the City’s website. The City shall post on its website instructions for submitting comments, and shall allow the public a period of thirty (30) Days to comment on, the following

Deliverables: (i) the Mini-System Group Evaluation Reports and Rehabilitation Plans required under Paragraph 21; (ii) the Rehabilitation Reports for Mini-Systems 1 and 2 required under Paragraph 22; (iii) the Sewer Overflow Response Plan required under Paragraph 23.a; (iv) the FOG Control Program required under Paragraph 23.g; and (v) Financing and Cost Analysis Program required under Paragraph 23.h. After the 30-day period, the City shall consider public comments for a period of up to fifteen (15) Days. Within seven (7) Days after submitting a Deliverable to EPA and MDEQ, the City shall place a copy of the submitted version of the Deliverable on its website and at the library. Within seven (7) Days after EPA's approval, approval contingent upon conditions, or modification by EPA, the City shall place a copy of such final version of the Deliverable on its website and at the library. The City shall maintain on its website until termination of this Partial Consent Decree all written comments received from EPA and MDEQ along with all submitted versions of Deliverables.

10. Copy to MDEQ. The City shall provide a copy of any Deliverable to MDEQ at the same time such Deliverable is due to EPA.

11. EPA Action on Deliverables. After review of any Deliverable that is required to be submitted pursuant to this Partial Consent Decree, EPA, after consultation with MDEQ, shall in writing:

- a. approve the submission;
- b. approve the submission upon specified conditions;
- c. approve part of the submission and disapprove the remainder; or
- d. disapprove the submission.

12. Approved Deliverables. If a Deliverable is approved by EPA pursuant to Paragraph 11.a, the City shall take all actions required by the Deliverable in accordance with the schedules and requirements of the Deliverable as approved. If the Deliverable is conditionally approved or approved only in part, pursuant to Paragraph 11.b or 11.c, the City shall, upon written direction from EPA, after consultation with MDEQ, take all actions required by the approved plan, report, or other item that EPA, after consultation with MDEQ, determines are technically severable from any disapproved portions, subject to the City's right to dispute only the specified conditions or the disapproved portions, under Section XI of this Partial Consent Decree (Dispute Resolution). Following EPA approval of any Deliverable or portion thereof, such Deliverable or portion thereof so approved shall be incorporated into and become enforceable under this Partial Consent Decree.

13. Disapproved Deliverables. If the submission is disapproved in whole or in part pursuant to Paragraph 11.c or 11.d, the City shall, within thirty (30) Days or such other time as EPA and the City agree to in writing, correct all deficiencies and resubmit to EPA the Deliverable, or disapproved portion thereof, for approval, in accordance with Paragraphs 11 and

12. If the resubmission is approved in whole or in part, the City shall proceed in accordance with Paragraph 12.

14. Stipulated Penalties Accruing. Any stipulated penalties applicable to the original Deliverable, as provided in Section IX of this Decree, shall accrue during the thirty (30)-Day period or other specified period, but shall not be payable unless the resubmission is untimely or is disapproved in whole or in part; provided that, if the original submission was so deficient as to constitute a material breach of the City's obligations under this Decree, the stipulated penalties applicable to the original submission shall be due and payable notwithstanding any subsequent resubmission.

15. Resubmitted Deliverable. If a resubmitted Deliverable, or portion thereof, is disapproved in whole or in part, EPA, after consultation with MDEQ, may again require the City to correct any deficiencies, in accordance with preceding Paragraph 13, or may itself correct any deficiencies, subject to the City's right to invoke Dispute Resolution and the right of EPA to seek stipulated penalties as provided in preceding Paragraph 14. Upon EPA's correction of any deficiencies, such resubmitted plan, report, or other item, or portion thereof will be incorporated into and become enforceable under this Partial Consent Decree and shall be implemented by the City according to the approved schedule, subject to the City's right to invoke Dispute Resolution pursuant to Section XI.

16. Timing of Review of Deliverables. If EPA issues written comments and decisions on any Deliverable more than ninety (90) Days after receipt of such submission, any subsequent deadline or milestone that is dependent upon such comments or decisions shall be extended. The length of the extension shall be determined by calculating the number of Days between EPA's receipt of the submission and the date of EPA's written response, less ninety (90) Days. Within thirty (30) Days of the date that the City knows or should know of a deadline or milestone that the City believes is extended under this Paragraph, the City shall inform EPA, in writing, of its belief and the amount of time the City believes the deadlines or milestones are extended. If EPA disagrees with the City's determination that a deadline is dependent upon such comments or decisions, EPA shall inform the City in writing. The City may dispute EPA's conclusion regarding whether a deadline is dependent upon such comments or decisions pursuant to Section XI of this Partial Consent Decree (Dispute Resolution).

17. Certification. In all Deliverables, notices, documents or reports submitted to the United States and State pursuant to this Partial Consent Decree, the City shall, by a senior City management official, sign and certify such notices, documents and reports as follows:

*I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering such information, the information submitted is, to the best of my knowledge and belief, true, accurate and complete. I am aware that there are*

*significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.*

## **VII. COMPLIANCE REQUIREMENTS**

18. Obligation to Perform Work. Upon the Effective Date, the City shall implement the Work pursuant to this Partial Consent Decree. All Work identified in Section VII shall be completed no later than seventy-five (75) Months after the Effective Date. All Work shall be performed using sound engineering practices to ensure that construction, management, operation and maintenance of the Sewer System complies with the CWA, including practices to improve the resilience of the Sewer System to the impacts of climate change. Sound engineering practices may include appropriate provisions of the *Handbook: Sewer System Infrastructure Analysis and Rehabilitation*, EPA/625/6-91/030, 1991; *Existing Sewer Evaluation and Rehabilitation*, WEF MOP FD-6, 2010; EPA's guidance: *Computer Tools for Sanitary Sewer System Capacity Analysis and Planning*, EPA/600/R-07/111, October 2007; the most current edition of MDEQ's *Guidance for the Design of Publicly Owned Wastewater Facilities*; EPA's *Climate Ready Water Utilities (CRWU) Initiative*, referenced at EPA 817-F-12-005, 2012; and EPA's *Climate Resilience Evaluation and Awareness Tool Version 2.0 (CREAT 2.0)*, referenced at EPA 817-F-12-011, 2012; and the Pump Stations evaluations shall be consistent with the *Pumping Systems* chapter of the most current version of Water Environment Federation's *Manual of Practice FD-4, Design of Wastewater and Stormwater Pumping Stations*.

19. Early Action Projects. Based on previous investigations, the City has identified certain rehabilitation and other projects that are intended to address conditions currently causing SSOs in the WCTS and other violations alleged in the Complaint which shall be referred to as "Early Action Projects." The Early Action Projects are identified and described in Appendix A, attached hereto and incorporated herein. The Early Action Projects shall include at a minimum, installation of backup power at the City's five (5) major Pump Stations; installation of Supervisory Control and Data Acquisition ("SCADA") at seventy-seven (77) of the City's Pump Stations; and WWTP improvements. The City shall complete each of these Early Action Projects in accordance with the schedules set forth in Appendix A. Such schedules do not extend past forty-five (45) Months after the Effective Date of this Partial Consent Decree. Any change to this list of projects or schedule approved by EPA shall not constitute a material modification to this Partial Consent Decree as set forth in Section XVIII (Modifications) below.

20. Sanitary Sewer Evaluation/Rehabilitation ("SSER") Work Plan. Within nine (9) Months after the Effective Date of this Partial Consent Decree, the City shall submit to EPA for review and approval a SSER Work Plan that provides for the continual assessment, analysis, and rehabilitation of the WCTS infrastructure to, among other things, address I/I, structural defects, and the other conditions causing, or that are likely to cause, SSOs. The SSER Work Plan shall establish procedures for setting priorities and expeditious schedules for undertaking the WCTS assessment and rehabilitation components set forth in Paragraphs 20.a through 20.h, below. The City shall develop these priorities and expeditious schedules taking into consideration the nature and extent of customer complaints; flow monitoring, including flow isolation studies; location and cause of SSOs; any remedial measures already undertaken; field crew work orders; any

preliminary sewer assessments; locations closer to the Mississippi River levees; and any other relevant information. In addition, areas near surface waters that have been included on MDEQ's CWA Section 303(d) list of impaired waters for pathogens shall also receive priority by the City. Finally, the City shall also consider areas that have been identified by EPA as potentially having environmental justice issues (minority and/or low income neighborhoods) when developing the priorities. The SSER Work Plan shall also include standard procedures for an information management system, performance goals for each of the components of the SSER Work Plan set forth below, and procedures for analysis of the effectiveness of completed rehabilitation. The SSER Work Plan shall include the following components:

a. Corrosion Defect Identification. The Corrosion Defect Identification component of the SSER Work Plan shall establish standard procedures for inspecting and identifying WCTS infrastructure that is either corroded or at risk of corrosion, through the use of CCTV and visual inspection during manhole and Pump Station inspections. The Corrosion Defect Identification component shall include a system for prioritizing repair of existing corrosion defects, corrosion identification forms, and procedures for a corrosion defect analysis.

b. Manhole Condition Assessment and Rehabilitation. The Manhole Condition Assessment and Rehabilitation component of the SSER Work Plan shall establish standard procedures for the condition assessment of manholes within the WCTS. This component shall include manhole inspection forms and procedures for a manhole defect analysis. This component shall also establish a process for setting manhole rehabilitation priorities and expeditious schedules; shall establish an ongoing inventory of manhole rehabilitation, including identification of the rehabilitation techniques to be used; and shall require an analysis of the effectiveness of completed rehabilitation.

c. Flow Monitoring. The Flow Monitoring component of the SSER Work Plan shall establish procedures for initiating routine flow monitoring during dry and wet weather to support engineering analyses related to Sewer System capacity and peak flow studies. Dry weather monitoring shall be carried out so as to allow the characterization of base flows and I/I rates within the WCTS. Wet weather monitoring shall be conducted periodically during events of sufficient duration and intensity that cause significant I/I into the WCTS. The procedures shall identify the process used to establish flow monitoring locations, appropriate flow monitoring techniques, sewer cleaning associated with flow monitoring and a procedure for rainfall measurement.

d. Closed Circuit Television ("CCTV") Inspection. The CCTV inspection component of the SSER Work Plan shall establish standard procedures for CCTV inspection within the WCTS to support sewer assessment and rehabilitation activities, and shall include procedures for CCTV cleaning and a process for the retention and retrieval of CCTV inspection data.

e. Gravity Sewer Line Defect Analysis and Rehabilitation. The Gravity

Sewer Line Defect Analysis component of the SSER Work Plan shall establish standard procedures for analysis of Gravity Sewer Line defects within the WCTS which may vary depending on the size of the pipe. Such procedures shall include Private Lateral investigations to identify sources of I/I to the WCTS. The Gravity Sewer Line Defect Analysis component shall establish standard defect codes, defect identification procedures and guidelines, and a standardized process for cataloging Gravity Sewer Line defects. This component shall also establish a process for setting Gravity Sewer Line rehabilitation priorities; shall establish an ongoing inventory of Gravity Sewer Line rehabilitation, including identification of the rehabilitation techniques to be used; and shall require an analysis of the effectiveness of completed rehabilitation.

f. Smoke Testing. The Smoke Testing component of the SSER Work Plan shall establish standard procedures for smoke testing of the Gravity Sewer Lines within the WCTS to identify sources of I/I, including cross connections and other unauthorized connections. Such procedures shall include Private Lateral investigations to identify sources of I/I.

g. Force Main Condition Assessment and Rehabilitation. The Force Main Condition Assessment and Rehabilitation component of the SSER Work Plan shall establish standard procedures for the condition assessment of Force Mains within the WCTS. In determining which Force Mains to assess, the following criteria should be considered: force main age, size, pipe material, bedding conditions and history. This component shall include inspection forms and procedures for a Force Main defect analysis. This component shall also establish a process for setting Force Main rehabilitation priorities; shall establish an ongoing inventory of Force Main rehabilitation, including identification of the rehabilitation techniques to be used; and shall require an analysis of the effectiveness of completed rehabilitation.

h. Pump Station Performance and Rehabilitation. The Pump Station Performance and Rehabilitation component of the SSER Work Plan shall establish standard procedures for the evaluation of Pump Station performance and Pump Station adequacy within the WCTS. The Pump Station Performance and Rehabilitation component shall include:

- (1) The use of pump run time meters; pump start counters; computation of Nominal Average Pump Operating Time ("NAPOT"); root cause failure analysis protocols; and appropriate remote sensing such as SCADA;
- (2) The evaluation of station capacity, as described in the *Pumping Systems* chapter of the most current version of WEF's Manual of Practice FD-4, *Design of Wastewater and Stormwater Pumping Stations*;
- (3) The evaluation of critical response time, defined as the time

interval between activation of the high wet well level alarm and the first (1st) SSO, under peak flow conditions;

- (4) The evaluation of station conditions, based upon both physical inspection and recent operating and mechanical failure history during at least the past five (5) years;
- (5) The evaluation of station design and equipment, including redundancy of pumps and electrical power supply, and other equipment installed, based upon Chapter 40, *Wastewater Pumping Stations* of the most recent edition of *Recommended Standards for Wastewater Facilities* by the Great Lakes-Upper Mississippi River Board of State and Provincial Public Health and Environmental Managers (commonly known as the “Ten State Standards”);
- (6) The evaluation of the ability of maintenance personnel to take corrective action within the critical response time calculated for each Pump Station; and
- (7) A process for setting Pump Station rehabilitation priorities and expeditious schedules and an ongoing inventory of Pump Station rehabilitation, including identification of the rehabilitation techniques to be used, and an analysis of the effectiveness of completed rehabilitation.

21. Mini-System Group Evaluation Report/Rehabilitation Plans. For purposes of implementing the SSER Work Plan under this Partial Consent Decree, the City has delineated its three (3) Sewersheds into mini-systems. Based on existing information including the location and frequency of past SSOs, the City has further prioritized these mini-systems into three (3) groups (“Group 1”, “Group 2” and “Group 3”). The three (3) groups of mini-systems are shown on the maps in Appendix B, attached hereto and incorporated herein. The City has prioritized Group 1 and Group 2 for sewer assessment and rehabilitation work pursuant to the SSER Work Plan under this Partial Consent Decree. It is the present intention of the Parties to seek to negotiate a modification to this Partial Consent Decree or a subsequent consent decree or other settlement to include appropriate injunctive relief, including assessment and rehabilitation work, to fully address SSOs in Sewer Group 3. The City shall complete the assessment of all mini-systems in Group 1 pursuant to the SSER Work Plan on or before thirty (30) Months after the Effective Date. The City shall complete the assessment of all mini-systems in Group 2 pursuant to the SSER Work Plan on or before forty-eight (48) Months after the Effective Date. Within three (3) Months after completion of the assessment of all mini-systems in a Group as set forth above pursuant to the SSER Work Plan, the City shall submit to EPA for review and approval a Mini-System Group Evaluation Report/Rehabilitation Plan setting forth the results of the assessment for the mini-systems in that group and proposed rehabilitative and corrective actions and schedules in order to meet objectives of this Partial Consent Decree. Upon approval by

EPA, the City shall implement the remedial measures in the approved Mini-System Rehabilitation Plan portion of this submittal in accordance with the schedule contained therein.

a. Mini-System Group Evaluation Report. The Mini-System Group Evaluation Report portion of this submittal shall include, at a minimum, the following:

- (1) A thorough analysis of historical and current flow monitoring, inspection, rainfall and other data, including data collected during the evaluation of the mini-systems;
- (2) Identification of areas with Excessive I/I, such that these conditions are causing and/or contributing to SSOs and/or Prohibited Bypasses at the WWTP;
- (3) Identification of sources of I/I within the mini-systems, if identifiable, by manhole/line segment, street address, type (Infiltration or Inflow), source (e.g., "wall leakage"), and estimated flow from the source;
- (4) Identification of cross-connections between the WCTS and the City's municipal separate storm sewer system;
- (5) Identification and quantification of SSOs, including all potential SSOs identified pursuant to implementation of the SSER Work Plan;
- (6) Identification of portions of the WCTS within the mini-systems in which physical degradation is causing or contributing to SSOs;
- (7) Results of average and peak daily dry and wet weather flow measurements;
- (8) A determination of maximum Infiltration rate during periods of high ground water (in gpd/inch diameter-mile);
- (9) A determination of maximum hourly Inflow rate during wet weather for various storm durations and intensities (in gpd/inch diameter-mile);
- (10) A determination of peaking factors for each mini-system (the ratio of measured peak flow to average dry weather flow as measured through the duration of the evaluation);
- (11) A summary of flow monitoring activities, to include, at a minimum, a map showing the delineation of each mini-system within the group, location and type of each flow meter, problems



- encountered and deviations from the SSER Work Plan, and a description of flow monitor calibration activities, including any scatter graphs and calibration and verification graphs;
- (12) A summary of field investigative activities performed to include, at a minimum: type of activity, number of activities performed (e.g., “100 out of 500 manholes inspected in mini-system XX”), observations made under each activity (inspection procedure), and summaries of the results;
  - (13) A summary of the structural defects identified in the WCTS in the mini-systems to include, at a minimum: number of each type of defect by line segment, manhole number or street address, and estimates of peak flow or impact on WCTS capacity (as appropriate) from defects in each line segment, based on a consistently applied set of stated criteria as set forth in the SSER Work Plan;
  - (14) A summary of the technical approach utilized in carrying out the capacity assessment analyses;
  - (15) A description of future projected flows;
  - (16) Information on the predicted (e.g. Manning equation) and actual peak flow capacity of all Major Gravity Sewer Lines (by segment), all Force Mains, siphons, and Pump Stations;
  - (17) Summaries of the number and footage of sewer segments surcharged, and the number of structures at which a SSO might be expected to occur under each condition investigated;
  - (18) Mapping for each condition investigated, illustrating each pipe segment operating in surcharge, and each manhole or structure at which a SSO might be expected to occur;
  - (19) Information regarding the Pump Station evaluation as required by Paragraph 20.h above;
  - (20) A summary of any capital projects implemented since commencement of the SSER Work Plan.

b. Rehabilitation Plan. The Rehabilitation Plan portion of this submittal shall include, at a minimum, the following:

- (1) Identification of specific measures and schedules that, when implemented, will result in adequate capacity in the WCTS within

that group of mini-systems to collect, convey and treat anticipated peak flows, without SSOs or Prohibited Bypasses at the WWTP;

- (2) Identification of the degree to which sources of Excessive I/I shall be removed, and the degree to which Excessive I/I removal is expected to alleviate capacity constraints, and propose specific remedial measures and schedules that will address those capacity limitations not expected to be addressed by Excessive I/I removal (anticipated I/I removal rates used in the development of the Rehabilitation Plan shall reflect current industry practice);
- (3) Identification of specific remedial measures and schedules to address capacity limitations that may also include increases in Pump Station and sewer line capacity, construction of storage or equalization basin facilities, or increases in WWTP capacity;
- (4) Identification of all measures and schedules necessary to eliminate all cross-connections between the WCTS and the City's municipal separate storm sewer system;
- (5) Identification of all measures and schedules necessary to eliminate all SSOs caused by physical degradation of sewers, inadequate Pump Station capacities, or inadequate Pump Station reliability;
- (6) Prioritized schedules for remedial measures based upon relative likely human health and environmental impact risks, SSO frequencies, and SSO volumes;
- (7) A description of the methodology used to apply the prioritization factors in Paragraph 21.b(6) above;
- (8) Estimated capital, operations and maintenance, and present value costs for each identified remedial measure in consistent, year-specific dollars;
- (9) Identification of the dates for preliminary design, complete design, complete permitting, contract award, construction commencement, and construction completion dates for each measure proposed; and
- (10) An expeditious schedule such that design, construction, and placement in service of all proposed measures shall be completed: within sixty (60) Months after the Effective Date for mini-systems in Group 1; and within seventy-two (72) Months after the Effective Date for mini-systems in Group 2.

22. Rehabilitation Reports for Mini-System Groups 1 and 2. Within three (3) Months after completion of all remedial measures set forth in a Rehabilitation Plan for a particular mini-system group, the City shall submit to EPA for review and approval a Rehabilitation Report summarizing the implementation of the Rehabilitation Plan for that mini-system group. Such summary shall include, at a minimum, the following:

- a. Identification of specific measures taken to achieve, and an analysis of whether such measures resulted in, adequate capacity in the WCTS within that mini-system group to collect and convey and treat anticipated peak flows, without SSOs or Prohibited Bypasses at the WWTP;
- b. An analysis of the degree to which sources of Excessive I/I were removed, and the degree to which Excessive I/I removal alleviated capacity constraints; and
- c. Identification of all measures taken to eliminate, and an analysis of whether such measures resulted in the elimination of, all cross-connections and SSOs caused by physical degradation of sewers, inadequate Pump Station capacities, or inadequate Pump Station reliability.

23. Capacity, Management, Operations and Maintenance Programs. The City shall develop and implement for the Sewer System the Capacity, Management, Operations and Maintenance (“CMOM”) programs as provided below. All CMOM programs shall be developed in accordance with EPA Region 4 CMOM guidance, attached hereto and incorporated herein as Appendix C. The City shall ensure that each CMOM program has a written, defined purpose; a written, defined goal; is documented in writing with specific detail; is implemented by trained personnel; has established performance measures; and has written procedures for periodic review. The Parties recognize that the City may need or want to revise the CMOM Programs set forth below during the term of this Partial Consent Decree. Such revisions shall not be considered modifications to the Partial Consent Decree for purposes of Section XVIII (Modification). The City must obtain EPA’s prior written approval of any revision to the substance of any CMOM Program required by this Partial Consent Decree and shall place copies of any such revised Program in the PDR in accordance with the provisions of Section VI. The City may revise the form of any CMOM Program required by this Partial Consent Decree without EPA’s approval and shall provide a copy of any revised Program to EPA and MDEQ, and place a copy of any such revised Program in the PDR within seven (7) Days after making such revision.

- a. Sewer Overflow Response Plan (“SORP”). Within twelve (12) Months after the Effective Date of this Partial Consent Decree, the City shall submit to EPA for review and approval, a SORP that will establish timely and effective methods and means of responding to, cleaning up, and/or minimizing the impact of SSOs in the WCTS; timely reporting of the location, volume, cause, impact, and other pertinent SSO information to the appropriate regulatory agencies; timely and effective notification of SSOs to potentially impacted public; and timely and effective response to emergency situations. At minimum, the SORP shall include and provide for the following:

- (1) Within twenty-four (24) hours of the time the City first becomes aware of a SSO to waters of the United States or the State or of a SSO that will endanger public health or the environment, the City shall provide in an oral report to MDEQ the location of the SSO by street address or any other appropriate method (i.e., latitude-longitude). The oral report shall be given to MDEQ through calling the Chief, Environmental Compliance and Enforcement Division at 601/961-5682.
  
- (2) Within five (5) days of the time the City first becomes aware of a SSO to waters of the United States or the State or of a SSO that will endanger public health or the environment, the City shall also provide a written report to MDEQ for the SSO. The City shall maintain a copy of any written reports prepared pursuant to this Paragraph for a period of not less than five (5) years from the date of the SSO. The written report shall contain the following:
  - (a) The location of the SSO by street address, or any other appropriate method (i.e., latitude-longitude);
  - (b) The estimated date and time when the SSO began and stopped, or if it is still an active SSO, the anticipated time to stop the SSO;
  - (c) The steps taken to respond to the SSO;
  - (d) The name of the receiving water, if applicable;
  - (e) An estimate of the volume (in gallons) of sewage spilled;
  - (f) A description of the WCTS component from which the SSO was released (such as manhole, crack in pipe, Pump Station wet well or constructed overflow pipe);
  - (g) Subject to available information, an estimate of the SSO's impact on public health and to water quality in the receiving water body;
  - (h) The cause or suspected cause of the SSO;
  - (i) The date of the last SSO at the same point;
  - (j) The steps taken or to be taken to reduce, prevent, or eliminate, reoccurrence of the SSO;

- (k) A list of all notifications to the public and other agencies or departments; and
  - (l) The steps taken or to be taken to clean up any surfaces that have been in contact and/or contaminated by the SSO.
- (3) The City shall maintain for all SSOs for a period of not less than five (5) years from the date of the SSO all records documenting the steps that have been and will be taken to prevent the SSO from recurring, including work order records associated with investigation and repair activities related to the SSO. The City shall also maintain for a period of not less than five (5) years from the date of the SSO a list and description of complaints from customers or others regarding the SSO.
- (4) The SORP shall provide procedures for responding to all SSOs to minimize the environmental impact and potential human health risk of SSOs. At a minimum, such response procedures shall include:
- (a) A detailed description of the actions the City will undertake to immediately provide notice to the public (through the local news media or other means including signs or barricades to restrict access) of a SSO;
  - (b) A detailed description of the actions the City will undertake to provide notice to appropriate federal, state or local agencies/authorities;
  - (c) A detailed plan (including the development of response standard operating procedures) to minimize the volume of untreated wastewater transmitted to the portion of the WCTS impacted by the events precipitating the SSO to minimize overflow volumes;
  - (d) A particular description of the City's response to Building Backups, including the timeframe for responses and the measures to be taken to clean up Building Backups found to be caused by conditions in the City's Sewer System, including procedures necessary to disinfect and/or remove items potentially contaminated by Building Backups such as wet vacuuming or other removal of spillage, wiping floors and walls with cleaning solution and disinfectant, flushing out and disinfecting plumbing fixtures, carpet cleaning and/or replacement and other appropriate measures to disinfect and/or remove items potentially contaminated by

Building Backups; and a description of the City's follow-up process to ensure adequacy of cleanup;

(e) A detailed plan of the resources to be used to correct or repair the condition causing or contributing to the SSO;

(f) A detailed plan to ensure the preparedness, including response training of City employees and personnel of other affected agencies, necessary for the effective implementation of the SORP in the event of a SSO and establishing procedures and providing adequate training to response personnel for estimating SSO volumes;

(g) A list of those SSO locations within the area of the WCTS served by each Pump Station that have been recorded as overflowing more than once within the previous twelve (12) month period and/or those locations at which a SSO is likely to occur first in the event of a Pump Station failure; and

(h) Pump Station emergency bypass/pump-around strategies, and procedures.

(5) Emergency Response Plan. The Emergency Response Plan portion of the SORP shall address both routine and catastrophic emergencies. Routine emergencies include such situations as overflowing manholes, line breaks, localized electrical failure and Pump Station outages. Catastrophic emergencies include floods, tornados, earthquakes or other natural events, serious chemical spills and widespread electrical failure. The Emergency Response Plan portion of the SORP shall address areas of vulnerability and determine the effect of such a failure to operations, equipment and public safety and health based upon such factors as topography, weather, sewer system size, and other site specific factors. The Emergency Response Plan portion of the SORP shall include standard forms. The Emergency Response Plan portion of the SORP shall have the following components:

(a) The WWTP component of the Emergency Response Plan shall establish standard operating procedures for use in emergency situations, including changes in process controls.

(b) The WCTS component of the Emergency Response Plan shall establish standard operating procedures for use in emergency operations, including identification of the actions staff should take in the event of emergency situations (specific to the

type of emergency that could occur); criteria for initiating and ceasing emergency operations; identification of appropriate repair equipment and sources thereof; and instructions on how to operate equipment and systems during an emergency when they are not functioning as intended but are not fully inoperable.

(c) In addition to the reporting requirements set forth in Section VIII (Reporting Requirements), the City shall establish, in coordination with Public Health Authorities:

(i) Criteria to be used as the basis for immediately notifying the public and other impacted entities, such as users with a downstream water intake, of an emergency situation caused by a SSO, Prohibited Bypass, or effluent limit violation;

(ii) A list identifying, by name, phone number and pager number, all the City staff who are responsible for notifying the public;

(iii) A list identifying, by name and phone number, all Public Contacts, including local media outlets, who must be contacted during an emergency situation;

(iv) A list identifying the City staff who are authorized to make public statements during emergency situations; and

(v) Pre-scripted news releases for various types of emergency situations.

(d) In addition to the notification requirements set forth in the NPDES Permits, and the reporting requirements set forth in Section VIII (Reporting Requirements), the City shall establish, in coordination with Public Health Authorities:

(i) Criteria to be used as the basis for immediately notifying regulatory authorities, MDEQ, the City and the Public Health Authorities of any emergency situation caused by a SSO, Prohibited Bypass, or effluent limit violation;

(ii) A list identifying, by name, phone number and pager number, all the City staff who are responsible for notifying the regulatory authorities;

(iii) A list identifying, by name and phone number, all officials who must be contacted; and

(iv) Standard reporting forms.

b. Information Management System (“IMS”) Program. Within thirty-six (36) Months after the Effective Date of this Partial Consent Decree, the City shall submit to EPA for review and approval, an IMS Program, including a schedule of implementation, as more particularly described below. At a minimum, the IMS Program shall include the following:

- (1) A management IMS component to provide City managers with guidance and instruction to adequately evaluate operations, maintenance, customer service, and Sewer System rehabilitation activities so that overall Sewer System performance can be determined and utility planning can be conducted. This IMS component shall utilize management reports and standard management forms.
- (2) An operations IMS component to provide City managers and field supervisors with guidance to adequately track scheduled operational activities and to enhance operational performance. This IMS component shall utilize operating reports and standard operation forms used by field personnel and shall provide for field supervisor review.
- (3) A maintenance IMS component to provide City managers and field supervisors with guidance to adequately track scheduled maintenance activities and to enhance maintenance performance. This IMS component shall utilize maintenance reports and standard maintenance forms used by field personnel. The system shall provide for field supervisor review.
- (4) A description of what information will be fed into the system, how it will be entered and by what means it will be recorded.
- (5) A description of the management reports that will be generated from the input data (i.e., work reports), including examples and periodicity for review of such reports.
- (6) A description of the work reports that will be prepared and submitted, including examples and periodicity for review of such reports.
- (7) Standard forms that will be used by both field personnel and



management for the Program, where applicable.

- (8) A detailed description of how the records will be maintained.
- (9) If computer software will be utilized, a description of the software to be used with cited references for software training and procedures for utilizing the software.
- (10) Development and implementation of performance indicators to provide City managers with guidance to adequately evaluate data collected in the IMS for use in determining the condition of the Sewer System and an evaluation of the City's CMOM programs. Performance indicators shall include, without limitation, the linear footage of Gravity Sewer Line and Force Main inspections, the linear footage of Gravity Sewers cleaned, the number of manholes inspected, the number of manholes cleaned/maintained, the number of inverted siphons inspected, the number of inverted siphons cleaned/maintained, the number of SSOs per mile of Gravity Sewer, the number of SSOs per mile of Force Main, the number of SSOs per Pump Station, per capita wastewater flow, NPDES Permit effluent compliance and such other performance indicators as the City may suggest and EPA approve.
- (11) Maintenance activity tracked by type (corrective, preventative, and emergency).

c. Sewer Mapping Program. The City currently has a Geographic Information System ("GIS") sewer mapping program. Within thirty (30) Months after the Effective Date of this Partial Consent Decree, the City shall review, evaluate and revise its Sewer Mapping Program to update its GIS map of the Sewer System and update the capabilities and procedures for utilization of the GIS map. At minimum, the Sewer Mapping Program shall:

- (1) Enable the City to produce maps of the WCTS using GIS technology;
- (2) Enable the City to produce maps showing the location of all manholes, Gravity Sewer Lines, Pump Stations, Force Mains, valves, inverted siphons and the WWTP;
- (3) Enable the City to produce maps that include attribute data for the City's WCTS including, but not limited to, size, material, estimated age or age range, slope, invert elevation, and rim elevation as such information becomes available during implementation of the SSER;

- (4) Allow entry and mapping of work orders to identify and track problems geographically such as stoppages, service interruptions, and SSOs, and to assist in the planning and scheduling of maintenance as such information becomes available during implementation of the SSER;
- (5) Include written standard operating procedures for use of the program, the acquisition and entry of updated mapping data for new assets or changes to existing assets within ninety (“90”) calendar days of the acquisition of the new asset or change to the existing asset, and updates to system software; and
- (6) Include locations of each permitted FOG establishment as such information becomes available during implementation of the FOG Control Program.

d. Gravity Sewer System Operations and Maintenance Program. Within twenty-four (24) Months after the Effective Date of this Partial Consent Decree, the City shall submit to EPA for review and approval, a Gravity Sewer System Operations and Maintenance Program to address SSOs in the WCTS, particularly those caused by FOG, roots and/or debris obstructions. At a minimum, the Gravity Sewer System Operations and Maintenance Program shall include the following:

- (1) Written preventative operations and maintenance schedules and procedures which shall be scheduled appropriately and shall include, but not be limited to, written procedures for the following:
  - (a) Inspection and maintenance of all Gravity Sewers, manholes and inverted siphons;
  - (b) Identifying and documenting Gravity Sewer, manhole and inverted siphon conditions, including grease, roots, and/or debris accumulation;
  - (c) Identifying maintenance needs; and
  - (d) Scheduling preventative maintenance work/cleaning which the City may schedule in connection with the SSER Work Plan as described in Paragraph 20 above.
- (2) An engineering evaluation of potential sulfide and corrosion control options and a summary report of findings, including a recommendation of the preferred sulfide and corrosion control method(s); provided, however, that such corrosion control options and methods shall not apply to components made of plastic or

other similar materials.

- (3) Prioritization for evaluating the Gravity Sewers based upon the size of the pipe (e.g., starting with the larger pipes and work back to smaller pipes), location of SSOs, community input or other criteria the City finds appropriate.
- (4) Inspection of Gravity Sewers, manholes, and inverted siphon easements, including inspection of creek crossings, canal crossings, stream bank encroachment toward Gravity Sewers, manholes and inverted siphons, and easement accessibility (including the need to control vegetative growth or encroachment of man-made structures or activities that could threaten the integrity of the affected Gravity Sewer, manhole, or inverted siphon). Inspections shall include written reports, and where appropriate, representative photographs or videos of appurtenances being inspected (Gravity Sewers, manholes, inverted siphons, creek crossings, canal crossings, etc.). Inspectors shall promptly report any observed SSOs to their area supervisors and shall record any evidence of SSOs which may have occurred since the last inspection. Any observed SSO shall be promptly reported in accordance with the SORP.
- (5) A schedule for the maintenance of easements.
- (6) A staffing and funding plan sufficient in structure, skills, numbers and funding to allow completion of the operation and maintenance activities required by this Paragraph 23.d.
- (7) Data attributes for the City's mapping program allowing program data to be compared in the City's IMS against other pertinent data such as the occurrence of SSOs, including repeat SSO locations and permit violations.
- (8) An inventory management system that includes:
  - (a) A list of critical equipment and critical spare parts;
  - (b) A list of where critical spare parts and critical equipment may be secured to allow repairs in a reasonable amount of time for those spare parts and critical equipment that are not stored by the City, including spare pipe having a diameter of 24 inches or greater; the list shall also set forth an inventory of spare parts and critical equipment stored by the City, as applicable; and
  - (c) Written procedures for updating the critical spare parts

and equipment inventories in the IMS.

- (9) Reports which list equipment problems and the status of work orders generated during the prior month.

e. Corrosion Control Program. Within eighteen (18) Months after the Effective Date of this Partial Consent Decree, the City shall develop and submit to EPA for review and approval, a Corrosion Control Program. The Corrosion Control Program shall include a schedule providing for full implementation within twelve (12) Months of EPA program approval. The City shall have in place a corrosion control program that will include provisions for inspecting the Sewer System infrastructure for corrosion caused by hydrogen sulfide or other corrosives, the development and implementation of site specific corrosion control measures, application of corrosion control measures where needed, a monitoring program to evaluate corrosion control programs and performance measures and a corrosion control program information management system.

f. Pump Station Operations and Preventative Maintenance Program. Within twenty-one (21) Months after the Effective Date of this Partial Consent Decree, the City shall submit to EPA for review and approval, a Pump Station Operations and Preventative Maintenance Program to facilitate proper operation and maintenance activities associated with the Pump Stations within the WCTS. At a minimum, the Pump Station Operations and Preventative Maintenance Program shall include the following:

- (1) Identification of the means and modes of communication between Pump Stations, field crews, and supervising staff.
- (2) Technical specifications of each Pump Station within the WCTS.
- (3) A description of each Pump Station monitoring system which shall continuously monitor, report, and transmit information for each Pump Station.
- (4) Written preventative operations and maintenance schedules and procedures which shall be scheduled appropriately and shall include, but not be limited to, written procedures for periodic service and calibration of instrumentation such as flow meters, liquid level sensors, alarm systems, elapsed time meters, and remote monitoring equipment. Such written preventative operations and maintenance schedules and procedures shall also include predictive (including non-physical inspections) and/or physical inspection and service for all Pump Stations including, but not limited to:
  - (a) Reading, recording and maintaining records of information from the elapsed time meters and pump start counters;

- (b) Observing and documenting wet well conditions, including grease and/or debris accumulation;
  - (c) Checking and re-setting, as necessary to improve system performance, wet well pumping points (e.g., floats);
  - (d) Checking, recording and maintaining records of system pressure(s);
  - (e) Checking SCADA and/or alarm components;
  - (f) Checking stand-by power sources;
  - (g) Checking motor electrical system, including, but not limited to, line voltage on each leg quarterly, current draw on each leg quarterly, and resistance of windings on each leg quarterly; and
  - (h) Identifying maintenance needs.
- (5) Written standard emergency/reactive operations and maintenance procedures. The City may use portable pumps, portable generators or alternative power sources as it deems appropriate. At a minimum, the standard emergency/reactive Pump Station operating procedures shall include:
- (a) Criteria used to determine the need for emergency operations and maintenance;
  - (b) Initiation/use of stand-by power (e.g., portable generators), where applicable;
  - (c) Initiation/use of portable pump (e.g., bypass/pump-around operations), where applicable;
  - (d) Evaluation of the need for additional equipment for emergency/reactive operations, including, but not limited to, additional portable generators and/or additional portable pumps (for pump-around operations);
  - (e) Evaluation of the need for on-site standby power (e.g., on-site generator and/or second electrical feed from the power grid) for each Pump Station should the City choose, not to have a portable pump available for the Pump Station; and
  - (f) Establishing standard forms, reporting procedures and performance measures for emergency/reactive operations and

maintenance.

- (6) An inventory management system that includes:
  - (a) A list of critical equipment and critical spare parts;
  - (b) A list of where critical spare parts and critical equipment may be secured to allow repairs in a reasonable amount of time for those spare parts and critical equipment that are not stored by the City; the list shall also set forth an inventory of spare parts and critical equipment stored by the City, as applicable; and
  - (c) Written procedures for updating the critical spare parts and equipment inventories in the IMS.
- (7) Reports which list equipment problems and the status of work orders generated during the prior month.
- (8) A staffing and funding plan sufficient in structure, skills, numbers and funding to allow completion of the operations and maintenance activities required by this Paragraph 23.f.

g. Fats, Oils and Grease (“FOG”) Control Program. The City shall review, evaluate and revise its Grease Ordinance and FOG Control Program and submit to EPA for review and approval, a new FOG Control Program within fifteen (15) Months after the Effective Date of this Partial Consent Decree. The City shall submit to the EPA and MDEQ a draft revised Grease Ordinance prior to its enactment. At a minimum, the new FOG Control Program shall apply City-wide and include the following:

- (1) A FOG characterization study that shall identify the sources of FOG causing problems in the WCTS and the most appropriate method or mechanism for addressing those sources.
- (2) The legal authority to control the discharge of FOG into the WCTS, including the ability to implement a permit and enforcement program for commercial and industrial sources.
- (3) Specification of accepted devices to control the discharge of FOG into the WCTS.
- (4) Establishment of standards for the design and construction of FOG control devices including standards for capacity and accessibility, site map, design documents and as-built drawings.
- (5) Establishment of FOG control device management, operations and maintenance standards, or best management practices, that address

onsite record keeping requirements, cleaning frequency, cleaning standards, use of additives, and ultimate disposal.

- (6) Establishment of construction inspection protocols, including scheduling, inspection report forms, and inspection record keeping requirements, to assure that FOG control devices are constructed in accordance with established design and construction standards.
- (7) Establishment of compliance inspection protocols, including scheduling, inspection report forms, and inspection record keeping requirements to assure that FOG control devices are being managed, operated and maintained in accordance with the established management, operation and maintenance standards or best management practices.
- (8) Establishment of a FOG disposal manifest system, with the included requirements that FOG and septage not be comingled and that the point of origin be specified on the manifest.
- (9) Establishment of an enforcement program, including specific enforcement mechanisms, to ensure compliance with the FOG Control Program.
- (10) Establishment of a compliance assistance program to facilitate training of FOG generators and their employees.
- (11) Establishment of a comprehensive public education program directed at reducing the amount of FOG entering the WCTS from residences.
- (12) Establishment of staffing (technical and legal) and equipment requirements to ensure effective implementation of the FOG Control Program.
- (13) A regularly maintained list of current commercial establishment FOG generators including a description of their FOG generating processes and estimated average quantity of FOG generated daily.
- (14) Establishment of performance indicators to be used by the City to measure the effectiveness of the FOG Control Program.
- (15) A schedule to review, evaluate and revise the FOG Control Program on at least an annual basis. Any revisions to the FOG Control Program shall be submitted to EPA in accordance with Paragraphs 9 through 15 and 69 of this Partial Consent Decree.

Within two (2) Months of receipt of EPA's approval of the new FOG Control Program, the City shall enact the revised Grease Ordinance. Subject to enactment, the City shall immediately undertake the implementation of the new FOG Control Program, which shall be incorporated into, and become enforceable under, this Partial Consent Decree.

h. Financing & Cost Analysis Program. Within twenty-four (24) Months after the Effective Date of this Partial Consent Decree, the City shall submit to EPA for review and approval, a Financing and Cost Analysis Program. The Financing and Cost Analysis Program shall include, at a minimum, the following:

- (1) A process (including a schedule of implementation) that regularly analyzes, projects, plans, and finances management, operating, and maintenance costs of its Sewer System, including those management, operating, and maintenance costs associated with labor and equipment needed to properly implement the CMOM programs required pursuant to this Partial Consent Decree.
- (2) A process (including a schedule of implementation) that regularly analyzes, projects, plans, and finances capital improvements to its Sewer System, including those capital improvements required pursuant to this Partial Consent Decree. Capital improvement financing shall be planned using, at a minimum, a five (5)-year planning horizon followed by annual updates.
- (3) A process, including a schedule of implementation, to ensure that life cycle cost analysis is incorporated into its operations cost analyses, maintenance cost analyses, and management cost analyses for all Sewer System equipment and infrastructure.
- (4) A process, including a schedule of implementation, to establish its annual budget and set customer rates that assures that the budget and rates are based on the programs referenced in Paragraph 23.h(1) through 23.h(3) above.

i. Legal Support Program. Within seventeen (17) Months after the Effective Date of this Partial Consent Decree, the City shall submit to EPA for review and approval, a Legal Support Program. At minimum, the Legal Support Program shall include the following:

- (1) Rules and Regulations Program. The City has determined, after thorough analysis and documentation, and has represented to Plaintiffs (1) that it has the legal authority to take all actions necessary to implement this Partial Consent Decree; (2) that it has properly exercised that legal authority by providing, among other



things, fair notice to the public of the creation of all rules and regulations that are necessary to implement this Partial Consent Decree; (3) that it has in place a legal process that allows it to enforce all such rules and regulations; and (4) that it is in fact enforcing all such rules and regulations, as necessary to implement this Partial Consent Decree. If it becomes apparent to the City, after the Effective Date, that the City lacks the appropriate authority to enforce its rules and regulations, the City shall, as promptly as possible, take all legal and available actions to correct that deficiency. If it becomes apparent to the City, after the Effective Date, that the City has improperly exercised its authority to establish a rule or regulation that is necessary to implement this Decree, or lacks a process sufficient to enforce a rule or regulation that is necessary to implement this Decree, the City shall, as promptly as possible, take all legal and available actions to correct that deficiency. Within thirty (30) Days after discovery of any deficiency, the City shall notify the Plaintiffs of the deficiency and its intended plan for correction of that deficiency. Upon correction of the deficiency, the City shall represent to Plaintiffs that it has, in fact, corrected the deficiency.

- (2) Grease Control Legal Support Program. The City shall prepare an enforcement response guide to address violations of the FOG Control Program set forth in Paragraph 23.g above and other applicable rules and regulations. The guide, in conjunction with the rules and regulations, shall include an array of tools available to the City in the enforcement of the FOG Control Program and applicable rules and regulations. The guide and/or rules and regulations shall identify the process a customer must follow to request a waiver of any of the obligations imposed by the FOG Control Program and the other applicable rules and regulations, and the process the City will use to consider granting and revoking such waivers. The City shall maintain records of all decisions to grant or revoke such waivers, and the basis for each such decision. The guide shall set forth a series of graduated enforcement responses for violations of the FOG Control Program and of other applicable rules and regulations, such as:

- (a) Unauthorized grease discharges to the WCTS;
- (b) Unauthorized modifications to an approved grease interceptor or trap;
- (c) Failure to properly operate and maintain an approved grease interceptor or trap;

- (d) Failure to follow standard operating procedures;
- (e) Failure to maintain adequate manifest documentation or to use permitted haulers; and
- (f) Failure to timely pay administrative fees.

The guide and/or the rules and regulations shall describe the notice the City provides to customers who are found to be in violation and the process a customer must follow in order to challenge the issuance of a penalty or termination of services.

- (3) Private Lateral Legal Support Program. The City shall prepare an enforcement response guide to address Private Laterals that may contain defects and/or improper connections that:

- (a) Are potential sources of I/I to the WCTS that may cause or contribute to SSOs or other violations of the NPDES Permits;
- (b) Allow for the possible exfiltration of wastewater onto or below the surface of the ground that could then enter the stormwater system; or
- (c) Allow roots and/or debris to enter the WCTS through cracks, holes, or poorly sealed joints, thus restricting flow and increasing the likelihood of SSOs.

The guide, in conjunction with the City's rules and regulations, shall include an array of tools available to the City to require customers to repair or replace Private Laterals identified as having such defects and/or improper connections. The guide and/or rules and regulations shall identify the process that the City will follow to require customers to repair or replace the identified Private Laterals. The guide shall set forth a series of graduated enforcement responses by the City, including termination of services, in the event a customer fails to repair or replace the identified Private Laterals. The guide and/or rules and regulations shall describe the notice the City provides to customers to require repair or replacement of identified Private Laterals and the process a customer must follow in order to challenge the City's determination that repair or replacement is necessary or the City's enforcement response, such as termination of services. The guide and/or rules and regulations shall identify the process a customer must follow to request a waiver of any of the obligations to

properly operate and maintain Private Laterals imposed by the City's rules and regulations and the process the City will use to consider granting and revoking such waivers. The City shall maintain records of all decisions to grant or revoke such waivers and the basis for each such decision.

24. Permits. Where any compliance obligation under this Section requires the City to obtain a federal, state, or local permit or approval, the City shall submit timely and complete applications and take all other actions necessary to obtain all such permits or approvals. The City may seek relief under the provisions of Section X (Force Majeure) for any delay in the performance of any such obligation resulting from a failure to obtain, or a delay in obtaining, any permit or approval required to fulfill such obligation, if the City has submitted timely and complete applications and has taken all other actions necessary to obtain all such permits or approvals.

### **VIII. REPORTING REQUIREMENTS**

25. The City shall submit the following reports:

a. Quarterly Reports. Beginning one (1) Month after the first Calendar Quarter following the Effective Date of this Partial Consent Decree, and one (1) Month after each subsequent Calendar Quarter thereafter until termination of the Partial Consent Decree, the City shall submit to EPA for review and approval a Quarterly Report that shall include the following:

- (1) the date, time, location (including whether in Group 1, 2 or 3), source, estimated duration, estimated volume, receiving water (if any), and cause of all SSOs occurring in the applicable three (3)-Month period in a tabulated electronic format; and
- (2) the date, time, estimated duration, estimated volume, and cause of all effluent violations occurring in the applicable three (3)-Month period in a tabulated electronic format.

b. Semi-Annual Reports. Beginning one (1) Month after the first two (2) Calendar Quarters following the Effective Date of this Partial Consent Decree, and one (1) Month after each subsequent two (2) Calendar Quarters until termination of the Partial Consent Decree, the City shall submit to EPA for review and approval a Semi-Annual Report. Each Semi-Annual Report shall include, at a minimum:

- (1) A description of projects and activities completed and milestones achieved during the previous applicable six (6)-Month period pursuant to the requirements of this Partial Consent Decree, in Gantt chart or similar format, including a description of the status of compliance or non-compliance with the requirements of this

Partial Consent Decree and, if applicable, the reasons for non-compliance. If any non-compliance cannot be fully explained at the time the report is due, the City shall include a statement to that effect in the report. The City shall investigate to determine the cause of the non-compliance and then shall submit an amendment to the report, including a full explanation of the cause of the non-compliance, within thirty (30) Days after submission of the Semi-Annual Report.

- (2) A summary of significant projects and activities anticipated to be performed, and milestones anticipated to be achieved, in the successive applicable six (6)-Month period to comply with the requirements of this Partial Consent Decree, in Gantt chart or similar format.
- (3) Any additional information the City determines is appropriate to demonstrate that the City is implementing the remedial actions required under this Partial Consent Decree in an adequate and timely manner.

c. Annual Reports. Beginning two Months after the first full Calendar Year, and two (2) Months after each subsequent Calendar Year until termination of this Partial Consent Decree, the City shall submit to EPA for review and approval an Annual Report. Each Annual Report shall cover the most recent applicable Calendar Year and shall include, at a minimum:

- (1) A summary of the CMOM Programs implemented or modified pursuant to this Partial Consent Decree, including a comparison of actual performance with any performance measures that have been established.
- (2) A trends analysis of the number, volume, duration, and cause of the City's SSOs for the previous two Calendar Years updated to reflect the SSOs that occurred during the previous twelve (12)-month period except that the first Annual Report shall only include the first twelve (12) months.

26. Whenever any violation of this Partial Consent Decree or any other event affecting the City's performance under this Partial Consent Decree or its NPDES Permit may pose an immediate threat to the public health or welfare or the environment, the City shall notify EPA and MDEQ orally or by electronic or facsimile transmission as soon as possible, but no later than twenty-four (24) hours after the City first knew of the violation or event. This procedure is in addition to the requirements set forth in the preceding Paragraph.

27. All reports shall be submitted to the persons designated in Section XV (Notices).

28. Each report by the City under this Section shall be submitted in accordance with the provisions of Paragraph 17 of this Partial Consent Decree. The certification requirement in Paragraph 17 does not apply to emergency or similar notifications where compliance would be impractical.

29. The reporting requirements of this Partial Consent Decree do not relieve the City of any reporting obligations required by the Act or implementing regulations, or by any other federal, state, or local law, regulation, permit, or other requirement.

30. Any information provided pursuant to this Partial Consent Decree may be used by the United States or the State in any proceeding to enforce the provisions of this Partial Consent Decree and as otherwise permitted by law.

### **IX. STIPULATED PENALTIES**

31. The City shall be liable for stipulated penalties to the United States and the State for violations of this Partial Consent Decree as specified below, unless excused under Section X (Force Majeure). A violation includes failing to perform any obligation required by the terms of this Decree, including any work plan or schedule approved under this Decree, according to all applicable requirements of this Decree and within the specified time schedules established by or approved under this Decree.

32. The following stipulated penalties shall accrue for each violation identified below:

a. SSOs Reaching Waters. For each SSO that reaches waters of the United States or the State, a stipulated penalty may be assessed as follows:

<u>If SSO Occurs in Group 1 or 2:</u>	Penalty Per Violation Per Day:
Calendar Years 2018-2020	\$500
Calendar Years 2021 until Termination	\$1,000

<u>If SSO Occurs in Group 3:</u>	Penalty Per Violation Per Day:
	\$500

b. Failure to Timely Submit Deliverable. For each day the City fails to Timely submit any Deliverable, a stipulated penalty for each such Deliverable may be assessed as follows:

Period of Noncompliance:	Penalty Per Deliverable Per Day:
1-30 days	\$500
31-60 days	\$1,000

More than 60 days \$2,000

c. Failure to Timely Implement Work. For each day the City fails to Timely implement any Work, daily stipulated penalties may be assessed for each such item of Work as follows:

Period of Noncompliance:	Penalty Per Violation Per Day:
1-30 days	\$500
31-60 days	\$1,000
61 days -180 days	\$2,000
More than 180 days	\$5,000

33. Stipulated penalties under this Section shall begin to accrue on the Day after performance is due or on the Day a violation occurs, whichever is applicable, and shall continue to accrue until performance is satisfactorily completed or until the violation ceases. Stipulated penalties shall accrue simultaneously for separate violations of this Partial Consent Decree.

34. The City shall pay any stipulated penalty within thirty (30) Days of receiving the United States' written demand. The City shall pay fifty (50) percent of the total stipulated penalty amount due to the United States and fifty (50) percent to the State.

35. The United States may in the unreviewable exercise of its discretion, reduce or waive stipulated penalties otherwise due under this Partial Consent Decree.

36. Stipulated penalties shall continue to accrue as provided in Paragraph 33, during any Dispute Resolution, but need not be paid until the following:

a. If the dispute is resolved by agreement or by a decision of EPA, after consultation with MDEQ, and is not appealed to the Court, the City shall pay accrued penalties determined to be owing, together with interest, within thirty (30) Days of the effective date of the agreement or the receipt of EPA's decision or order.

b. If the dispute is appealed to the Court and the United States prevails in whole or in part, the City shall pay all accrued penalties determined by the Court to be owing, together with interest, within sixty (60) Days of receiving the Court's decision or order, except as provided in subparagraph c, below.

c. If any Party appeals the District Court's decision, the City shall pay all accrued penalties determined to be owing, together with interest, within fifteen (15) Days of receiving the final appellate court decision.

37. The City shall pay stipulated penalties owing to the United States either by use of <https://www.pay.gov> to the U.S. Department of Justice account, or by FedWire Electronic Funds Transfer (“EFT”), in accordance with instructions provided to the City by the Financial Litigation Unit (“FLU”) of the United States Attorney’s Office for the Northern District of Mississippi. The payment instructions provided by the FLU shall include a Consolidated Debt Collection System (“CDCS”) number, which the City shall use to identify all payments required to be made in accordance with this Partial Consent Decree. The FLU will provide the payment instructions to:

City Clerk  
P.O. Box 897  
Greenville, MS 38702-0897  
(662) 378-1501

Mayor  
P.O. Box 897  
Greenville, MS 38702-0897  
(662) 378-1501

OR DELIVERY TO: 340 Main Street, Greenville, MS 38701

on behalf of the City. The City may change the individual to receive payment instructions on their behalf by providing written notice of such change to the United States and EPA in accordance with Section XV (Notices). At the time of payment, the City shall send notice that payment has been made: (i) to EPA via email at [acctreceiveable.cinwd@epa.gov](mailto:acctreceiveable.cinwd@epa.gov) or via regular mail at EPA Cincinnati Finance Office, 26 Martin Luther King Drive, Cincinnati, Ohio 45268; (ii) to the United States via email or regular mail in accordance with Section XV; and (iii) to EPA in accordance with Section XV. Such notice shall reference the CDCS Number and DOJ case number 90-5-1-1-10932. In the event that full cash payment to the United States is not made within thirty (30) Days, the City shall also pay to the United States interest on the balance due from the original due date to the date of payment, at the rate calculated pursuant to 28 U.S.C. § 1961. The transmittal letter shall state that the payment is for stipulated penalties and shall state for which violation(s) the penalties are being paid.

38. The City shall pay stipulated penalties owing to MDEQ by check payable to the “Mississippi Department of Environmental Quality.” The check shall reference the case name and civil action number herein and shall be sent to: Mississippi Department of Environmental Quality, Attn: Jennifer Parish, P.O. Box 2339 Jackson, Mississippi 39225. In the event that full cash payment to MDEQ is not made within thirty (30) Days, the City shall also pay to MDEQ interest on the balance due from the original due date to the date of payment, at the rate calculated pursuant to 28 U.S.C. § 1961.

39. If the City fails to pay stipulated penalties according to the terms of this Partial Consent Decree, the City shall be liable for interest on such penalties, as provided for in 28 U.S.C. § 1961, accruing as of the date payment became due. Nothing in this Paragraph shall be construed to limit the United States or the State from seeking any remedy otherwise provided by law for the City’s failure to pay any stipulated penalties.

40. Subject to the provisions of Section XIII (Effect of Settlement/Reservation of Rights), the stipulated penalties provided for in this Partial Consent Decree shall be in addition to any other rights, remedies, or sanctions available to the United States and the State for the City’s

violation of this Partial Consent Decree or applicable law. Where a violation of this Partial Consent Decree is also a violation of the CWA or the MAWPCL, the City shall be allowed a credit, for any stipulated penalties paid, against any statutory penalties imposed for such violation.

#### **X. FORCE MAJEURE**

41. “Force majeure,” for purposes of this Partial Consent Decree, is defined as any event arising from causes beyond the control of the City, of any entity controlled by the City, or of the City’s contractors, that delays or prevents the performance of any obligation under this Partial Consent Decree despite the City’s best efforts to fulfill the obligation. The requirement that the City exercise “best efforts to fulfill the obligation” includes using best efforts to anticipate any potential force majeure event and best efforts to address the effects of any such event (a) as it is occurring and (b) after it has occurred to prevent or minimize any resulting delay to the greatest extent possible. “Force Majeure” does not include the City’s financial inability to perform any obligation under this Partial Consent Decree.

42. If any event occurs or has occurred that may delay the performance of any obligation under this Partial Consent Decree, whether or not caused by a force majeure event, the City shall provide notice orally or by electronic or facsimile transmission to EPA and MDEQ, within 72 hours of when the City first knew that the event might cause a delay. Within seven (7) days thereafter, the City shall provide in writing to EPA and MDEQ an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; the City’s rationale for attributing such delay to a force majeure event if it intends to assert such a claim; and a statement as to whether, in the opinion of the City, such event may cause or contribute to an endangerment to public health, welfare or the environment. The City shall include with any notice all available documentation supporting the claim that the delay was attributable to a force majeure. Failure to comply with the above requirements shall preclude the City from asserting any claim of force majeure for that event for the period of time of such failure to comply, and for any additional delay caused by such failure. The City shall be deemed to know of any circumstance of which the City, any entity controlled by the City, or the City’s contractors knew or should have known.

43. If EPA, after a reasonable opportunity for review and comment by MDEQ, agrees that the delay or anticipated delay is attributable to a force majeure event, the time for performance of the obligations under this Partial Consent Decree that are affected by the force majeure event will be extended by EPA, after a reasonable opportunity for review and comment by MDEQ, for such time as is necessary to complete those obligations. An extension of the time for performance of the obligations affected by the force majeure event shall not, of itself, extend the time for performance of any other obligation. EPA will notify the City in writing of the length of the extension, if any, for performance of the obligations affected by the force majeure event.



44. If EPA, after a reasonable opportunity for review and comment by MDEQ, does not agree that the delay or anticipated delay has been or will be caused by a force majeure event, EPA will notify the City in writing of its decision.

45. If the City elects to invoke the dispute resolution procedures set forth in Section XI (Dispute Resolution), it shall do so no later than fifteen (15) Days after receipt of EPA's notice. In any such proceeding, the City shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a force majeure event, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and that the City complied with the requirements of Paragraphs 41 and 42. If the City carries this burden, the delay at issue shall be deemed not to be a violation by the City of the affected obligation of this Partial Consent Decree identified to EPA and the Court.

## **XI. DISPUTE RESOLUTION**

46. Unless otherwise expressly provided for in this Partial Consent Decree, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising under or with respect to this Partial Consent Decree. The City's failure to seek resolution of a dispute under this Section shall preclude the City from raising any such issue as a defense to an action by the United States to enforce any obligation of the City arising under this Decree.

47. Informal Dispute Resolution. Any dispute subject to Dispute Resolution under this Partial Consent Decree shall first be the subject of informal negotiations. The dispute shall be considered to have arisen when the City sends the United States and the State a written Notice of Dispute. Such Notice of Dispute shall state clearly the matter in dispute. The period of informal negotiations shall not exceed thirty (30) Days from the date the dispute arises, unless that period is modified by written agreement between the United States and the City. The United States shall consult with the State during the period of informal negotiations. If the Parties cannot resolve a dispute by informal negotiations, then the position advanced by the United States shall be considered binding unless, within forty-five (45) Days after the conclusion of the informal negotiation period, the City invokes formal dispute resolution procedures as set forth below.

48. Formal Dispute Resolution. The City shall invoke formal dispute resolution procedures, within the time period provided in the preceding Paragraph, by serving on the United States and the State a written Statement of Position regarding the matter in dispute. The Statement of Position shall include, but need not be limited to, any factual data, analysis, or opinion supporting the City's position and any supporting documentation relied upon by the City.

49. The United States shall serve its Statement of Position within sixty (60) Days of receipt of the City's Statement of Position. The United States' Statement of Position shall include, but need not be limited to, any factual data, analysis, or opinion supporting that position and any supporting documentation relied upon by the United States. If within five (5)

Days of receiving the United States' Statement of Position, the City requests to confer, the United States agrees to confer (in person or by telephone) with the City, but such a conference shall be concluded no later than twenty-one (21) Days after the issuance of the United States' Statement of Position. Within fourteen (14) Days after the conclusion of the conference, the United States will either reaffirm its Statement of Position or issue an amended Statement of Position. If the United States fails to either reaffirm or amend its Statement of Position within this fourteen (14) Day period, its Statement of Position shall be deemed reaffirmed. The United States' Statement of Position shall be binding on the City, unless the City files a motion for judicial review of the dispute in accordance with the following Paragraph.

50. The City may seek judicial review of the dispute by filing with the Court and serving on the United States and the State, in accordance with Section XV (Notices), a motion requesting judicial resolution of the dispute. If the City did not request to confer with the United States pursuant to preceding Paragraph, the City's motion must be filed within thirty (30) Days of receipt of the United States' Statement of Position pursuant to the preceding Paragraph. If the City requested to confer with the United States pursuant to the preceding Paragraph, the City's motion must be filed within thirty (30) Days after the expiration of the fourteen (14) Day period following the conference during which the United States either reaffirms or amends its Statement of Position. The motion shall contain a written statement of the City's position on the matter in dispute, including any supporting factual data, analysis, opinion, or documentation, and shall set forth the relief requested and any schedule within which the dispute must be resolved for orderly implementation of the Partial Consent Decree.

51. The United States shall respond to the City's motion within the time period allowed by the Local Rules of this Court. The United States shall consult with the State during preparation of its response. The City may file a reply memorandum, to the extent permitted by the Local Rules.

52. Except as otherwise provided in this Partial Consent Decree, in any dispute brought before this Court that was invoked under Paragraph 50 the City shall bear the burden of proof, and each Party reserves the right to argue what the appropriate standard of proof and standard of review should be under applicable principles of law.

53. The invocation of dispute resolution procedures under this Section shall not, by itself, extend, postpone, or affect in any way any obligation of the City under this Partial Consent Decree, unless and until final resolution of the dispute so provides. Stipulated penalties with respect to the disputed matter shall continue to accrue from the first Day of noncompliance, but payment shall be stayed pending resolution of the dispute as provided in Paragraph 36. If the City does not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section IX (Stipulated Penalties).

## **XII. INFORMATION COLLECTION AND RETENTION**

54. The United States, the State, and their representatives, including attorneys, contractors, and consultants, shall have the right of entry into any facility covered by this Partial Consent Decree, at all reasonable times, upon presentation of credentials, to:

- a. monitor the progress of activities required under this Partial Consent Decree;
- b. verify any data or information submitted to the United States or the State in accordance with the terms of this Partial Consent Decree;
- c. obtain samples and, upon request, splits of any samples taken by the City or its representatives, contractors, or consultants;
- d. obtain documentary evidence, including photographs and similar data; and
- e. assess the City's compliance with this Partial Consent Decree.

55. Upon request, the City shall provide EPA and MDEQ or their authorized representatives splits of any samples taken by the City. Upon request, EPA and MDEQ shall provide the City splits of any samples taken by EPA or MDEQ.

56. Until five (5) years after the termination of this Partial Consent Decree, the City shall retain, and shall instruct its contractors and agents to preserve, all non-identical copies of all documents, records, or other information (including documents, records, or other information in electronic form) in its or its contractors' or agents' possession or control, or that come into its or its contractors' or agents' possession or control, and that relate in any manner to the City's performance of its obligations under this Partial Consent Decree. This information-retention requirement shall apply regardless of any contrary corporate or institutional policies or procedures. At any time during this information-retention period, upon request by the United States or the State, the City shall provide copies of any documents, records, or other information required to be maintained under this Paragraph.

57. At the conclusion of the information-retention period provided in the preceding Paragraph, the City shall notify the United States and the State at least ninety (90) Days prior to the destruction of any documents, records, or other information subject to the requirements of the preceding Paragraph and, upon request by the United States or the State, the City shall deliver any such documents, records, or other information to EPA or MDEQ. The City may assert that certain documents, records, or other information is privileged under the attorney-client privilege or any other privilege recognized by federal law. If the City asserts such a privilege, it shall provide the following: (a) the title of the document, record, or information; (b) the date of the document, record, or information; (c) the name and title of each author of the document, record, or information; (d) the name and title of each addressee and recipient; (e) a description of the subject of the document, record, or information; and (f) the privilege asserted by the City.

However, no documents, records, or other information created or generated pursuant to the requirements of this Partial Consent Decree shall be withheld on grounds of privilege.

58. The City may also assert that information required to be provided under this Section is protected as Confidential Business Information (“CBI”) under 40 C.F.R. Part 2. As to any information that the City seeks to protect as CBI, the City shall follow the procedures set forth in 40 C.F.R. Part 2.

59. This Partial Consent Decree in no way limits or affects any right of entry and inspection, or any right to obtain information, held by the United States or the State pursuant to applicable federal or state laws, regulations, or permits, nor does it limit or affect any duty or obligation of the City to maintain documents, records, or other information imposed by applicable federal or state laws, regulations, or permits.

### **XIII. EFFECT OF SETTLEMENT/RESERVATION OF RIGHTS**

60. This Partial Consent Decree resolves the civil claims of the United States and the State for the violations alleged in the Complaint filed in this action through the Date of Lodging of this Partial Consent Decree only with respect to the injunctive relief set forth in Section VII above. The United States and the State specifically reserve all rights to seek civil penalties for all the violations alleged in the Complaint and injunctive relief for violations of the CWA and the MAWPCL associated with SSOs in Sewer Group 3, and this Partial Consent Decree is without prejudice to those rights. It is the present intention of the Parties to seek to negotiate a modification to this Partial Consent Decree or a subsequent consent decree or other settlement to fully resolve the civil claims of the United States and the State for civil penalties for the violations alleged in the Complaint and for injunctive relief for violations of the CWA and the MAWPCL associated with SSOs in Sewer Group 3. However, the Parties recognize that such negotiations may not result in such a resolution and that the United States and the State reserve the right to take such actions as they deem appropriate and necessary to resolve these claims and any future claims. The Parties agree in good faith to initiate such negotiations to modify this Partial Consent Decree or for a subsequent consent decree or other settlement on or before forty-five (45) Months from the Effective Date.

61. The United States and the State reserve all legal and equitable remedies available to enforce the provisions of this Partial Consent Decree, except as expressly stated in Paragraph 60. This Partial Consent Decree shall not be construed to limit the rights of the United States or the State to obtain penalties or injunctive relief under the CWA, the MAWPCL, or their implementing regulations, or under other federal or state laws, regulations, or permit conditions, except as expressly specified in Paragraph 60. The United States and the State further reserve all legal and equitable remedies to address any imminent and substantial endangerment to the public health or welfare or the environment arising at, or posed by, the City’s Sewer System, whether related to the violations addressed in this Partial Consent Decree or otherwise.

62. In this and any subsequent administrative or judicial proceeding initiated by the United States and/or the State for civil penalties for all the violations alleged in the Complaint

and/or for injunctive relief for violations of the CWA and the MAWPCL associated with SSOs in Sewer Group 3, the City shall not assert, and may not maintain, any defense or claim based upon the statute of limitations. In this and any subsequent administrative or judicial proceeding initiated by the United States and/or the State for injunctive relief, civil penalties, or other appropriate relief relating to the Sewer System or the City's violations of the CWA or the MAWPCL, the City shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States and/or the State in the subsequent proceeding were or should have been brought in the instant case, except with respect to claims that have been specifically resolved pursuant to Paragraph 60.

63. This Partial Consent Decree is not a permit, or a modification of any permit, under any federal, State, or local laws or regulations. The City is responsible for achieving and maintaining complete compliance with all applicable federal, State, and local laws, regulations, and permits; and the City's compliance with this Partial Consent Decree shall be no defense to any action commenced pursuant to any such laws, regulations, or permits, except as set forth herein. The United States and the State do not, by their consent to the entry of this Partial Consent Decree, warrant or aver in any manner that the City's compliance with any aspect of this Partial Consent Decree will result in compliance with provisions of the CWA, the MAWPCL, or with any other provisions of federal, State, or local laws, regulations, or permits.

64. Application for construction grants, State Revolving Loan Funds, or any other grants or loans, or other delays caused by inadequate facility planning or plans and specifications on the part of the City shall not be cause for extension of any required compliance date in this Partial Consent Decree.

65. Nothing in this Partial Consent Decree limits the rights or defenses available under Section 309(e) of the Clean Water Act, 33 U.S.C. § 1319(e), in the event that the laws of the State, as currently or hereafter enacted, may prevent the City from raising the revenues needed to comply with this Decree.

66. This Partial Consent Decree does not limit or affect the rights of the City or of the United States or the State against any third parties, not party to this Partial Consent Decree, nor does it limit the rights of third parties, not party to this Partial Consent Decree, against the City, except as otherwise provided by law.

67. This Partial Consent Decree shall not be construed to create rights in, or grant any cause of action to, any third party not party to this Partial Consent Decree.

#### XIV. COSTS

68. The Parties shall bear their own costs of this action, including attorneys' fees, except that the United States and the State shall be entitled to collect the costs (including attorneys' fees) incurred in any action necessary to collect any stipulated penalties due but not paid by the City.

**XV. NOTICES**

69. Unless otherwise specified in this Decree, whenever notifications, submissions, or communications are required by this Partial Consent Decree, they shall be made in writing and addressed as follows:

As to the United States:

By Mail:

EES Case Management Unit  
Re: DJ # 90-5-1-1-10932  
Environment and Natural Resources Division  
U.S. Department of Justice  
P.O. Box 7611  
Washington, D.C. 20044-7611

By Email:

[eescasemanagement.enrd@usdoj.gov](mailto:eescasemanagement.enrd@usdoj.gov)  
Re: DJ # 90-5-1-1-10932

And

Chief, NPDES Permitting and Enforcement Branch  
Water Protection Division  
U.S. Environmental Protection Agency, Region 4  
ATTN: Brad Ammons  
61 Forsyth Street, S.W.  
Atlanta, GA 30303  
(404) 562-9769

As to EPA:

Chief, NPDES Permitting and Enforcement Branch  
Water Protection Division  
U.S. Environmental Protection Agency, Region 4  
ATTN: Brad Ammons  
61 Forsyth Street, S.W.  
Atlanta, GA 30303  
(404) 562-9769

As to the State/MDEQ:

Chief, Environmental Compliance and Enforcement Division  
Office of Pollution Control  
Mississippi Department of Environmental Quality  
P.O. Box 2261  
Jackson, MS 39225-2261  
(601) 961-5682

As to the City:

Director of Public Works  
Attn: Brad Jones  
P.O. Box 897  
Greenville, MS 38702-0897  
(662) 378-1501  
OR DELIVERY TO: 340 Main Street, Greenville, MS 38701

Mayor of Greenville  
P.O. Box 897  
Greenville, MS 38702-0897  
(662) 378-1501  
OR DELIVERY TO: 340 Main Street, Greenville, MS 38701

70. Any Party may, by written notice to the other Parties, change its designated notice recipient or notice address provided above.

71. Notices submitted pursuant to this Section shall be deemed submitted upon mailing, unless otherwise provided in this Partial Consent Decree or by mutual agreement of the Parties in writing.

**XVI. EFFECTIVE DATE**

72. The Effective Date of this Partial Consent Decree shall be the date upon which this Partial Consent Decree is entered by the Court or a motion to enter the Partial Consent Decree is granted, whichever occurs first, as recorded on the Court's docket.

**XVII. RETENTION OF JURISDICTION**

73. The Court shall retain jurisdiction over this case until termination of this Partial Consent Decree, for the purpose of resolving disputes arising under this Decree or entering orders modifying this Decree, pursuant to Sections XI and XVIII, or effectuating or enforcing compliance with the terms of this Decree.

### **XVIII. MODIFICATION**

74. Except as otherwise set forth in Paragraphs 16, 23, or 43 of this Partial Consent Decree, the terms of this Partial Consent Decree, including any attached appendices, may be modified only by a subsequent written agreement signed by all the Parties. Where the modification constitutes a material change to this Decree, it shall be effective only upon approval by the Court. Non-material changes to this Partial Consent Decree (including appendices) may be made by written agreement of the Parties without Court approval.

75. Any disputes concerning modification of this Decree shall be resolved pursuant to Section XI (Dispute Resolution), provided, however, that the Party seeking the modification bears the burden of demonstrating that, instead of the burden of proof referenced in Paragraph 52, it is entitled to the requested modification in accordance with Federal Rule of Civil Procedure 60(b).

### **XIX. TERMINATION**

76. This Partial Consent Decree may be terminated when the United States determines that the City has satisfactorily completed the requirements of Section VII (Compliance Requirements), provided the City has fulfilled all other obligations of this Partial Consent Decree, including payment of any accrued stipulated penalties as required by this Partial Consent Decree not waived or reduced by the United States. The City may serve upon the United States a Request for Termination, certifying that the City has satisfied those requirements, together with all necessary supporting documentation.

77. Following receipt by the United States of the City's Request for Termination, the Parties shall confer informally concerning the Request and any disagreement that the Parties may have as to whether the City has satisfactorily complied with the requirements for termination of this Partial Consent Decree. If the United States, after consultation with the State, agrees that the Decree may be terminated, the United States and the City shall submit, for the Court's approval, a joint stipulation terminating the Decree.

78. If the United States, after consultation with the State, does not agree that the Decree may be terminated, the City may invoke Dispute Resolution under Section XI. However, the City shall not seek Dispute Resolution of any dispute regarding termination until one hundred and twenty (120) Days after service of its Request for Termination.

### **XX. PUBLIC PARTICIPATION**

79. This Partial Consent Decree shall be lodged with the Court for a period of not less than thirty (30) Days for public notice and comment in accordance with 28 C.F.R. § 50.7. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Partial Consent Decree disclose facts or considerations indicating that the Partial Consent Decree is inappropriate, improper, or inadequate. The City and the State each consents to entry of this Partial Consent Decree without further notice and agrees not to withdraw from or oppose



entry of this Partial Consent Decree by the Court or to challenge any provision of the Decree, unless the United States has notified the Parties in writing that it no longer supports entry of the Decree.

#### **XXI. SIGNATORIES/SERVICE**

80. Each undersigned representative of the City, the State, EPA, and the Assistant Attorney General for the Environment and Natural Resources Division of the Department of Justice, certifies that he or she is fully authorized to enter into the terms and conditions of this Partial Consent Decree and to execute and legally bind the Party he or she represents to this document.

81. This Partial Consent Decree may be signed in counterparts, and its validity shall not be challenged on that basis. The City agrees to accept service of process by mail with respect to all matters arising under or relating to this Partial Consent Decree and to waive the formal service requirements set forth in Rules 4 and 5 of the Federal Rules of Civil Procedure and any applicable Local Rules of this Court including, but not limited to, service of a summons.

#### **XXII. INTEGRATION**

82. This Partial Consent Decree constitutes the final, complete, and exclusive agreement and understanding among the Parties with respect to the settlement embodied in the Decree and supersedes all prior agreements and understandings, whether oral or written, concerning the settlement embodied herein. Other than deliverables that are subsequently submitted and approved pursuant to this Decree, no other document, nor any representation, inducement, agreement, understanding, or promise, constitutes any part of this Decree or the settlement it represents, nor shall it be used in construing the terms of this Decree.

#### **XXIII. PARTIAL JUDGMENT**

83. Upon approval and entry of this Partial Consent Decree by the Court, this Partial Consent Decree shall constitute a partial judgment of the Court as to the United States, the State, and the City. The Parties recognize that final resolution of the claims set forth in the Complaint will require further remedial action, and this Partial Consent Decree is without prejudice to the Parties' positions as to the merits of any such further relief.

#### **XXIV. APPENDICES**

84. The following Appendices are attached to and part of this Partial Consent Decree:

“Appendix A” is the list and description of the Early Action Projects;

“Appendix B” is a map and a list of the Sewersheds and three (3) groups of mini-systems; and

“Appendix C” is the EPA Region 4 guidance on Capacity, Management, Operation, and Maintenance (“CMOM”) programs.

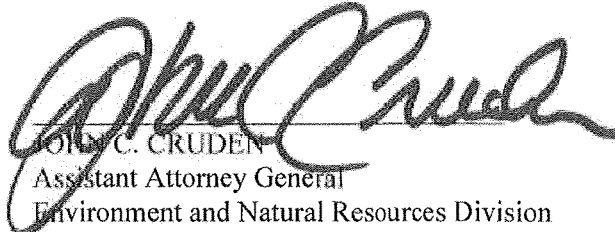
Dated and entered this \_\_\_ day of \_\_\_\_\_, 2016


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UNITED STATES DISTRICT JUDGE  
Northern District of Mississippi

WE HEREBY CONSENT to the entry of this Partial Consent Decree in United States et al. v. City of Greenville, Mississippi, subject to the public notice and comment provisions of 28 C.F.R. § 50.7:


FOR THE UNITED STATES OF AMERICA:

  
JOHN C. CRUDEN  
Assistant Attorney General  
Environment and Natural Resources Division  
U.S. Department of Justice

  
VALERIE K. MANN  
DC Bar No. 440744  
Trial Attorney  
Environmental Enforcement Section  
Environment and Natural Resources Division  
U.S. Department of Justice  
Washington, DC 20044-7611  
Telephone: 202/616-8756  
Facsimile: 202/ 616-2427  
Email: Valerie.mann@usdoj.gov

WE HEREBY CONSENT to the entry of this Partial Consent Decree in United States et al. v. City of Greenville, Mississippi, subject to the public notice and comment provisions of 28 C.F.R. § 50.7:

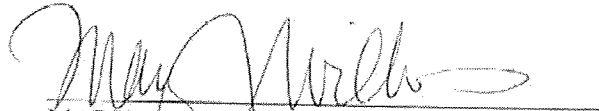
Felicia C. Adams  
United States Attorney  
Northern District of Mississippi



FELICIA L. WILSON, MSB# 9900  
Assistant United States Attorney  
Northern District of Mississippi  
900 Jefferson Ave.  
Oxford, Mississippi 38655  
Phone 662-234-3351  
Fax 662-234-3318  
Email: [feleica.wilson@usdoj.gov](mailto:feleica.wilson@usdoj.gov)

WE HEREBY CONSENT to the entry of this Partial Consent Decree in United States et al. v. City of Greenville, Mississippi, subject to the public notice and comment provisions of 28 C.F.R. § 50.7:

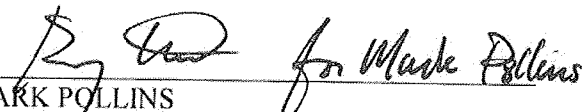
FOR PLAINTIFF UNITED STATES OF AMERICA (Continued):


  
MARY J. WILKES  
Regional Counsel  
U.S. Environmental Protection Agency, Region 4  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303

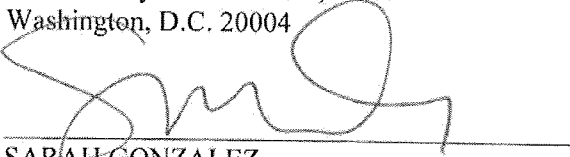
Of Counsel:  
WILLIAM B. BUSH, JR.  
Associate Regional Counsel  
U.S. Environmental Protection Agency, Region 4  
61 Forsyth Street  
Atlanta, GA 30303

WE HEREBY CONSENT to the entry of this Partial Consent Decree in United States et al. v. City of Greenville, Mississippi, subject to the public notice and comment provisions of 28 C.F.R. § 50.7:

FOR PLAINTIFF UNITED STATES OF AMERICA (Continued):

  
MARK POLLINS  
Division Director  
Water Enforcement Division  
Office of Civil Enforcement  
Office of Enforcement and Compliance Assurance  
United States Environmental Protection Agency  
1200 Pennsylvania Avenue, N.W.  
Washington, D.C. 20004

  
LOREN DENTON  
Branch Chief  
Municipal Enforcement Branch  
Water Enforcement Division  
Office of Civil Enforcement  
Office of Enforcement and Compliance Assurance  
United States Environmental Protection Agency  
1200 Pennsylvania Avenue, N.W.  
Washington, D.C. 20004

  
SARAH GONZALEZ  
Water Enforcement Division  
Office of Civil Enforcement  
Office of Enforcement and Compliance Assurance  
United States Environmental Protection Agency  
1200 Pennsylvania Avenue, N.W.  
Washington, D.C. 20004

WE HEREBY CONSENT to the entry of this Partial Consent Decree in United States et al. v. City of Greenville, Mississippi:

FOR PLAINTIFF STATE OF MISSISSIPPI BY AND THROUGH THE MISSISSIPPI COMMISSION ON ENVIRONMENTAL QUALITY AND THE MISSISSIPPI DEPARTMENT OF ENVIRONMENTAL QUALITY:



GRETCHEN L. ZMITROVICH

MS Bar No. 101470

Senior Attorney

Office of Pollution Control

Mississippi Department of Environmental Quality

P.O. Box 2261

Jackson, MS 39225

Telephone: 601/961-5050

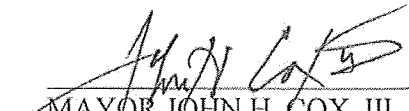
Facsimile: 601/961-5674

Email: Gretchen\_Zmitrovich@deq.state.ms.us

WE HEREBY CONSENT to the entry of this Partial Consent Decree in United States et al. v. City of Greenville, Mississippi:

FOR THE CITY OF GREENVILLE:



  
MAYOR JOHN H. COX, III  
340 Main Street  
Greenville, MS 38701  
(662) 378-1501

ATTEST: By   
Amelia D. Wicks, City Clerk