

US EPA ARCHIVE DOCUMENT

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION

UNITED STATES OF AMERICA,)
)
)
)
)
)
)
Plaintiff,)
)
v.)
)
THE CITY OF KANSAS CITY,)
MISSOURI)
)
Defendant.)
)
THE STATE OF MISSOURI)
)
Non-aligned Party,)
Joined pursuant to 33 U.S.C. § 1319(e))
)
)

Civil Action No. 4:10-cv-0497-GAF

CONSENT DECREE

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CONSENT DECREE

WHEREAS, Plaintiff, the United States of America (“United States”), by the authority of the Attorney General of the United States and through its undersigned counsel, acting at the request and on behalf of the Administrator of the United States Environmental Protection Agency (“EPA”), filed the Complaint herein on (TBD), alleging that Defendant, the City of Kansas City, Missouri (“Kansas City,” “City,” or “Defendant”), has violated and continues to violate the Clean Water Act (“the Act” or “CWA”), 33 U.S.C. § 1251 et seq., and the conditions and limitations of its National Pollutant Discharge Elimination System (“NPDES”) Permit Numbers MO-0024929, MO-0024911, MO-0049531, MO-0048313, MO-0025011, MO-0048305, and MO-0024961.

WHEREAS, the Defendant is a municipality organized and existing under the laws and constitution of the State of Missouri.

WHEREAS, the Defendant owns and operates a Publicly Owned Treatment Works (“POTW”) that includes seven wastewater treatment plants and associated collection systems in Kansas City, that serves the citizens of Kansas City, and several surrounding counties and municipalities. Five of the wastewater treatment plants owned and operated by the City are located within the separate sanitary sewer system and are permitted to discharge treated effluent into the Missouri River, Fishing River, Wilkerson Creek, Rocky Branch Creek, Todd Creek, and their tributaries. These separate sanitary sewer system wastewater treatment plants are the Birmingham Sewage Treatment Plant, Fishing River Wastewater Treatment Plant, Northland Mobile Home Park Wastewater Treatment Plant, Rocky Branch Wastewater Treatment Plant, and Todd Creek Wastewater Treatment Plant. Defendant also owns and operates two wastewater treatment plants located within the combined sewer system area: Westside Wastewater Treatment

Plant and the Blue River Wastewater Treatment Facility. These two treatment plants are permitted to discharge treated effluent into the Missouri River.

WHEREAS this Consent Decree does not, in any way, address nutrient controls which may be required by Current NPDES Permits for the City's Wastewater Treatment Plants.

WHEREAS, the State of Missouri, has been joined in this action to satisfy the requirements of Section 309(e) of the Act, 33 U.S.C. § 1319(e). No allegation is made in the Complaint that the laws of Missouri prevent the City from raising revenues needed to comply with this Decree.

WHEREAS, the United States alleges that the City has violated and continues to violate Section 301 of the CWA, 33 U.S.C. § 1311, and the terms and conditions of the City's NPDES permits, by discharging untreated sewage from its sewage collection system, including but not limited to Combined Sewer Overflows ("CSOs") and Sanitary Sewer Overflows ("SSOs"), as these terms are defined in Section V of this Consent Decree, into the Missouri River, Fishing River, Wilkerson Creek, Rocky Branch Creek, Todd Creek, Blue River, Brush Creek, Penn Valley Lake, and their tributaries, hereinafter "receiving streams" as defined in Section V of this Consent Decree.

WHEREAS, pursuant to its NPDES permits, the City developed a Long Term Control Plan ("LTCP") and pursuant to its approved work plans, the LTCP is included in the City's Overflow Control Plan ("OCP"). The OCP includes the LTCP and a Sanitary Sewer System Control Plan ("SSSC Plan") to address both CSOs and SSOs.

WHEREAS, the City has implemented numerous early action projects to address and minimize sewer overflows.

WHEREAS, the City is becoming a national leader in promoting public and private green

solutions, in an effort to sustainably control sewer overflows and reduce environmental impacts from urban storm water.

WHEREAS, the City has followed the LTCP development process as provided in both EPA's April 19, 1994 "Combined Sewer Overflow (CSO) Policy" ("CSO Policy") and Missouri law in the development of its approved LTCP as part of the OCP.

WHEREAS, the City has developed and is implementing a Capacity, Management, Operation and Maintenance program ("CMOM"), which was submitted to EPA and relevant portions are incorporated as Appendix "C".

WHEREAS, the City has developed and is implementing a Nine Minimum Control ("NMC") Plan, which was submitted to EPA and relevant portions are incorporated as Appendix "B".

WHEREAS, the State of Missouri has approved the City's OCP by letter dated April 14, 2010.

WHEREAS, EPA has approved specific remedial and Control Measures contained within the OCP, which the City shall implement, pursuant to the provisions and schedules specified in this Consent Decree and its Appendices.

WHEREAS, the Parties agree, and the Court finds, that settlement of the claims alleged in the Complaint without further litigation or trial of any issues is fair, reasonable, and in the public interest and that entry of the Consent Decree is the most appropriate way of resolving the claims alleged in the Complaint.

NOW, THEREFORE, without admission by the City of any of the non-jurisdictional allegations in the Complaint and this Consent Decree, and without adjudication of any issue of

fact or law, and with the consent of the Parties, it is hereby ORDERED, ADJUDGED, and DECREED as follows:

I. JURISDICTION

This Court has jurisdiction over the subject matter of this action and over the parties to this action pursuant to Section 309(b) of the CWA, 33 U.S.C. § 1319(b) and 28 U.S.C. §§1331, 1345, and 1355. The Complaint states a claim upon which relief may be granted against the City under Section 309 of the CWA, 33 U.S.C. § 1319, for injunctive relief and civil penalties. The City waives any and all objections that it may have to the Court's jurisdiction to enter and enforce this Consent Decree.

II. VENUE

Venue is proper in this Court pursuant to Section 309(b) of the CWA, 33 U.S.C. § 1319(b) and 28 U.S.C. §§ 1391(b) and 1395(a).

III. BINDING EFFECT

- A. The provisions of this Consent Decree shall apply to and be binding on the City as defined in Section V below and its officers, directors, employees, agents, servants, successors and assigns, upon all persons, firms, and corporations in active concert or participation with the City or its officers, directors, agents, employees, successors and assigns, and upon the United States.
- B. Effective from the Date of Lodging of this Consent Decree until its termination, the City shall give written notice of this Consent Decree to any person or entity to whom the City transfers ownership or operation of any wastewater treatment plant, collection system or any other portion of its wastewater treatment and collection system and shall provide a copy

of this Consent Decree to any such person or entity. The City shall notify EPA and the United States Department of Justice (“DOJ”) in writing of any successor in interest at least thirty (30) days prior to any such transfer. Any sale or transfer of the City’s interests in or operating role with respect to the City’s wastewater treatment plant or collection system shall not in any manner relieve the City of its responsibility to meet the terms and conditions of this Consent Decree unless the Parties agree in writing.

- C. The City shall provide a copy of this Consent Decree to each entity the City retains to perform the work or any portion thereof required by this Consent Decree upon execution of any contract relating to such work, and shall provide a copy to each entity that the City is currently retaining no later than thirty (30) days after the date of entry of this Consent Decree. Providing a copy shall include either making the Consent Decree available electronically or by paper copy if requested by the entity retained. Any action taken by any entity retained by the City to implement the City’s duties under this Consent Decree shall be considered an action of the City for purposes of determining compliance with this Consent Decree.

IV. PURPOSE

The express purpose of the Parties entering into this Consent Decree is for the City to take all measures necessary to: (a) achieve full compliance with the CWA and the regulations promulgated thereunder; (b) achieve full compliance with the City’s Current NPDES Permits as they relate to the capacity at the WWTPs and capacity, management, operation and maintenance of the collection systems; (c) achieve the goal of eliminating SSOs; and (d) to achieve the goal of eliminating bypasses prohibited by 40 C.F.R. § 122.41(m), as these terms are defined in Section

V of this Consent Decree.

V. DEFINITIONS

- A. Unless otherwise defined herein, terms used in this Consent Decree shall have the meanings given to those terms in the CWA, 33 U.S.C. §§ 1251 et seq., and the regulations promulgated under the CWA.
- B. The following terms used in this Consent Decree shall be defined as follows:
1. “Achievement of Full Operation” shall mean completion of construction and installation of equipment or infrastructure such that the equipment or infrastructure has been placed into full operation, and is expected to both function and perform as designed.
 2. “Approved Supplemental Remedial Measures Plan” shall mean any Supplemental Remedial Measures Plan approved in accordance with Subparagraph VII.A.1.c of this Consent Decree, or established through Dispute Resolution pursuant to Section XV of this Consent Decree.
 3. “Bypass” as that term is defined in 40 C.F.R. § 122.41(m) means the intentional diversion of waste streams from any portion of a treatment facility. An anticipated bypass may be approved by EPA pursuant to 40 C.F.R. § 122.41(m)(4)(ii).
 4. “City” shall mean the City of Kansas City, Missouri.
 5. “Collection System” or “sewer system” shall mean the sewage collection and transmission system (including, but not limited to, all pipes, force mains, gravity sewer lines, lift stations, pump stations, diversion structures, manholes, and

appurtenances thereto but does not in any way include private laterals) owned or operated by the City and designed to collect and convey wastewater (e.g. commercial, industrial and domestic wastewater) to the WWTPs or to one or more points of discharge.

6. “Combined Sewer Overflow” or “CSO” shall mean a discharge, release and/or overflow from the combined sewer system at a point prior to the headworks of a WWTP.
7. “Combined Sewer Overflow Outfall” or “CSO Outfall” shall mean the outfall from which a CSO is discharged.
8. “Combined Sewer System” or “CSS” shall mean the portion of the City’s Sewer System designed to convey municipal sewage (i.e. domestic, commercial and industrial wastewaters) and stormwater runoff through a single-pipe system to a WWTP and/or to a combined sewer overflow structure and/or overflow.
9. “Consent Decree” shall mean this Consent Decree.
10. “Control Measure” or “Overflow Control Measure” or “Supplemental Remedial Control Measure” shall mean the construction, control measures, actions and other activities set forth in Appendix “A” or any revision to Appendix “A” made pursuant to the terms of this Consent Decree.
11. “Current NPDES Permits” means the City’s NPDES Permits Nos. MO-0024929, effective date May 28, 2004, and revised November 26, 2008; MO-0024911, effective date December 30, 2005; MO-0025011, effective date July 1, 2005; MO-

0049531, effective date January 26, 2007, and revised June 29, 2007; MO-0048313, effective date December 16, 2005, and revised April 21, 2006; MO-0048305, effective date October 13, 2006; MO-0024961, effective date December 23, 2005, and revised April 21, 2006; and any such permit which succeeds Permit Nos. MO-0024929, MO-0024911, MO-0025011, MO-0049531, MO-0048313, MO-0048305, and MO-0024961 issued to the City, and which is in effect at a particular time in question, and any extended, modified or reissued permit.

12. “Date of Entry” shall mean the date this Consent Decree is approved and signed by the Court.
13. “Date of Lodging” shall mean the date this Consent Decree is filed for lodging with the Clerk of the Court for the United States District Court for the Western District of Missouri.
14. The terms “day” or “days” as used herein shall mean a calendar day or calendar days. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, federal or state holiday, the period shall run until the close of the next business day.
15. “Defendant” shall mean the City of Kansas City, Missouri.
16. “Design” shall include the completion of detailed plans and specifications as needed to begin construction.
17. “Gravity sewer line” shall mean a pipe that receives, contains and conveys wastewater not normally under pressure, which wastewater is intended to flow unassisted under the influence of gravity.

18. “Green Infrastructure” shall mean a wastewater treatment technology or process that uses natural or engineered systems, such as green roofs, rain gardens and permeable pavement that mimics natural processes and directs stormwater to areas where it can be stored, infiltrated, evapotranspirated, or be re-used.
19. “Green Infrastructure Project” shall include any project that utilizes green infrastructure and is approved pursuant to Subparagraph VII.A.1.b.
20. “Infiltration” as defined by 40 CFR 35.2005(b)(20) shall mean water other than wastewater that enters a sewer system (including sewer service connections and foundation drains) from the ground through means including, but not limited to, defective pipes, pipe joints, connections, or manholes.
21. “Inflow” as defined by 40 CFR 35.2005(b)(21) shall mean water other than wastewater that enters a sewer system (including sewer service connections) from sources including, 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, foundation drains, storm sewers, catch basins, cooling water discharges, storm waters, surface runoff, street wash waters, or drainage.
22. “I/T” shall mean the total quantity of water from inflow and infiltration without distinguishing the source.
23. “MGD” or “mgd” means million gallons per day.
24. “Monthly Operating Report” or “MOR” is defined as those discharge monitoring reports which Kansas City submits to the MDNR on a monthly basis pursuant to

Section A of the City's NPDES Permit Nos. MO-0024929, MO-0024911, MO-0025011, MO-0049531, MO-0048313, MO-0048305, and MO-0024961 and any similar provision in any of the City's Current NPDES Permits.

25. "Missouri DNR" or "MDNR" means the State of Missouri Department of Natural Resources, a part of the executive branch of the government of the State of Missouri. Subject to the supervisory, rulemaking, and adjudicative authority of the Missouri Clean Water Commission, as described in Chapter 644 RSMo. MDNR issued the Current NPDES Permits at issue in this Consent Decree.
26. "Overflow Control Plan" or "OCP" shall mean the Long Term Control Plan and Sanitary Sewer System Plan collectively referred to by the City as the Overflow Control Plan approved by the MDNR by letter dated April 14, 2010.
27. "Paragraph" shall mean a portion of this Consent Decree identified by Arabic numerals.
28. "Parties" shall mean the signatories to this Consent Decree, the Plaintiff, the United States, and Defendant, the City of Kansas City, Missouri.
29. "Performance Criteria" shall mean the performance criteria and percent capture of wet weather flows specified in Appendix "A" or as specified in any revision to Appendix "A" made pursuant to the terms of this Consent Decree.
30. "Plaintiff" means the United States of America, on behalf of EPA.
31. "Post-Construction Monitoring Program" shall mean the post-construction monitoring program set forth as Appendix "D," as well as any additional post-construction monitoring or modeling activities as specified in any revision to

Appendix “A” made pursuant to the terms of this Consent Decree.

32. “Publicly Owned Treatment Works” or “POTW” shall mean a publicly owned treatment works or POTW as defined in 40 C.F.R. § 403.3(o).
33. “Receiving Stream” or “receiving water” or “receiving water body” shall mean water bodies that receive discharge from the treatment plants and/or the collection system(s), including but not limited to the Missouri River, Fishing River, Wilkerson Creek, Rocky Branch Creek, Todd Creek, Blue River, Brush Creek, Penn Valley Lake, and other waters.
34. “Separate sanitary sewer system” shall mean a conduit designed, or modified in a process called “separation,” to carry only sewage, and not stormwater, from residences, commercial buildings, industrial plants and institutions for treatment at a wastewater treatment plant.
35. “Sanitary sewer overflow,” or “SSO,” shall mean any discharge to waters of the United States from the City’s Sanitary Sewer Collection System through point sources not specified in any NPDES permit, as well as any release of wastewater from the City’s Separate Sanitary Sewer System to public or private property that does not reach waters of the United States or the State; provided, however, that wastewater backups into buildings that are caused by blockages, flow conditions, or malfunctions in a building lateral, other piping or conveyance system that is not owned or operationally controlled by the City or that are the result of overland, surface flooding not emanating from the City’s sewer system, are not SSOs for the purposes of this Consent Decree.

36. “Section” shall mean a portion of this Consent Decree identified by Roman numerals.
37. “State” shall mean the State of Missouri.
38. “Sub-paragraph” shall mean a portion of a paragraph identified by lower case letters.
39. “Subsection” shall mean a portion of this Consent Decree identified by capital letters.
40. “Unpermitted CSO Discharge” shall include any release of untreated or partially treated sewage from the City’s combined sewer system that is not authorized by any of the City’s NPDES permits.
41. “Wastewater treatment plants” and “WWTPs” shall mean the wastewater treatment plants operated by the City and set forth as follows:
- i. Birmingham Sewage Treatment Plant, NPDES Permit MO-0049531, located in Clay County, at 10801 NE 28th Street, Kansas City, Missouri 64161;
 - ii. Fishing River Wastewater Treatment Plant, NPDES Permit MO-0048313, located in Clay County, at 10300 NE 118th Street, Kansas City, Missouri 64157;
 - iii. Northland Mobile Home Park Wastewater Treatment Plant, NPDES Permit MO-0025011, located in Clay County, at 11819 North College, Kansas City, Missouri 64156;
 - iv. Rocky Branch Wastewater Treatment Plant, NPDES Permit MO-

0048305, located in Clay County, at 500 NE 132nd Street, Kansas City, Missouri 64165;

- v. Todd Creek Wastewater Treatment Plant, NPDES Permit MO-0024961, located in Platte County, at 7600 NW 144th Street, Kansas City, Missouri 64163;
- vi. Westside Wastewater Treatment Plant, NPDES Permit MO-0024929, located in Jackson County, at 1849 Woodswether Road, Kansas City, Missouri 64105; and
- vii. Blue River Wastewater Treatment Facility, NPDES Permit MO-0024911, located in Jackson County, at 7300 Hawthorne Road, Kansas City, Missouri 64120.

VI. SUBMISSIONS REQUIRING EPA APPROVAL

- A. EPA review: After review of any plan, report or other item that the City is required to submit for approval to EPA pursuant to this Consent Decree, EPA shall: (a) approve the submission, in whole or in part; (b) approve the submission upon specified conditions; (c) disapprove, in whole or in part, the submission, providing comments identifying deficiencies and directing the City to modify the submission; or (d) any combination of the above. If EPA partially approves, disapproves the submission, in whole or in part, or if EPA approves it upon specified conditions, EPA shall notify the City in writing of those portions of the submission that EPA disapproves or approves upon specified conditions. Except where specifically provided otherwise, the City shall provide MDNR with copies of all submittals made to EPA. EPA shall provide MDNR notice and the

- opportunity to comment on the submittal, and EPA agrees to consider any comment by MDNR that is received by EPA within forty-five (45) days of the date of EPA's notice to MDNR.
- B. The City's obligations upon EPA approval: In the event of approval, or approval upon conditions by EPA, the City shall proceed to take any action required by the plan or other item as approved by EPA, except as provided in Subsection E.
- C. The City's obligations upon EPA disapproval: Upon receipt of notice of disapproval, partial approval, or conditional approval of a submission pursuant to Subsection VI.A above, the City shall within sixty (60) days, if no other time frame is specified in the notice, address the disapproved portions of the plan, report or other item and resubmit the plan or other item for approval, subject to the City's rights under Section XV, Dispute Resolution.
- D. Procedures for Resubmitted Plans: EPA may take any of the actions described in Subsection VI.A above with respect to any resubmitted document. In the event that EPA disapproves a resubmitted plan, report or other item, or portion thereof, EPA may again require the City to address the disapproved portions and resubmit the plan within sixty (60) days of receipt of the disapproval. If the City fails to timely submit the plan or again does not address the disapproved portions, the City shall be deemed out of compliance with this Consent Decree. The City shall within ten (10) business days, unless a longer period is specified by EPA, proceed with any action required pursuant to the approved resubmitted plan, or the City may initiate the dispute resolution provisions of the Consent Decree, pursuant to Section XV. If the Court upholds EPA's disapproval or approval

upon conditions, stipulated penalties shall accrue for such violation from the date on which the resubmitted submission was originally required.

- E. The City shall proceed, if directed by EPA, to take any action required by any approved portion of the City's submission or resubmission, unless such action is directly dependent upon any unapproved portion of the submission or resubmission and the City invokes its right to dispute resolution under Section XV. Implementation of any approved portion of a submission shall not relieve the City of any liability for stipulated penalties for not implementing the unapproved and/or conditionally approved portion(s).
- F. Any stipulated penalties applicable to the original submission shall not be payable unless the first resubmission, as set forth in Subsection D above, is untimely or is disapproved in whole or in part so as to require another resubmission; provided that, if the original submission was so deficient as to constitute a material breach of the City's obligations under this Consent Decree, the stipulated penalties applicable to the original submission shall be due and payable notwithstanding any subsequent resubmissions.
- G. All plans, reports, and other items required to be submitted to EPA under this Consent Decree shall, upon approval by EPA pursuant to Section VI, herein, be enforceable under this Consent Decree. In the event EPA approves or approves upon conditions a portion of a plan, report, or other item required to be submitted to EPA under this Consent Decree, the approved portion shall be enforceable under this Consent Decree, unless such action is directly dependent upon an unapproved portion of the submission or resubmission and the City invokes its right to dispute resolution under Section XV.
- H. EPA agrees to use its best efforts to expeditiously review and comment on submittals that

the City is required to submit to EPA for approval pursuant to the terms and provisions of this Consent Decree. If EPA cannot complete its review of a submittal within ninety (90) days of receipt of the submittal, or within the time period otherwise provided in this Consent Decree, EPA shall so notify the City before the expiration of the applicable review period. If EPA fails to approve, provide comments or otherwise act on a submittal within ninety (90) days of receipt of the submittal, or within the time period otherwise provided in this Consent Decree, the City shall be granted an extension by EPA equal to the number of days that EPA's approval was untimely to complete any dependent subsequent milestones.

VII. IMPLEMENTATION OF SEWER SYSTEM REMEDIAL MEASURES AND POST-CONSTRUCTION MONITORING

- A. Compliance Program and Schedules for the Implementation of the OCP. The City shall achieve and maintain compliance with the City's Current NPDES Permits as they relate to the capacity at the WWTPs and capacity, management, operation and maintenance of the collection systems, the provisions of the CWA, 33 U.S.C. § 1281 et seq., and the CSO Policy, in accordance with the compliance program and schedules set forth below.
1. Implementation of the Overflow Control Measures. The City shall implement the remedial and Control Measures in accordance with the Performance Criteria and implementation schedule incorporated into this Consent Decree and attached hereto as Appendix "A". Construction and implementation of all recommended remedial and Control Measures set forth in Appendix "A" shall be pursuant to Section IV, Purpose, of this Consent Decree. The City shall complete

construction and full implementation of all remedial and Control Measures pursuant to Appendix “A” as expeditiously as possible but in no event later than December 31, 2035.

- a. Post-Construction Monitoring Program. The City shall perform the Post-Construction Monitoring pursuant to the CSO Policy and as set forth in Appendix “D”.
- b. Use of Green Infrastructure and Revision of Control Measures set forth in Appendix “A” to Utilize Green Infrastructure.
 - i. The City intends to use an adaptive management approach in order to extensively utilize green infrastructure in lieu of and in addition to structural controls. No later than 365 days after completion of the Middle Blue River Pilot Project, the City shall submit to EPA for review and comment, a final report on the Middle Blue River 100-acre green infrastructure pilot project. The report shall include:
 - (a) A detailed description of the activities and work performed as part of the pilot project, including specific information about type, number, and location of green infrastructure technologies included in the pilot project;
 - (b) An evaluation of the effectiveness, implementability, and cost of the green infrastructure technologies included in the pilot project; this evaluation shall include a description of any barriers to

green infrastructure implementation encountered by the City during the pilot project, community reaction to and support for green infrastructure, and evaluation of socio-economic benefits from use of green infrastructure in the pilot project;

(c) A plan, based upon the results of the pilot project, for implementation of green infrastructure across the 744-acre Marlborough neighborhood;

(d) A plan, based upon the results of the pilot project, for implementation of green infrastructure potentially throughout the CSS.

- ii. EPA encourages the City to propose revisions to Appendix “A” to utilize green infrastructure as appropriate to reduce or replace gray Control Measures included in Appendix “A,” provided that any green measures proposed provide the same or greater level of control as those gray Control Measures to be reduced or replaced.
- iii. The terms of Section VI, Submissions Requiring EPA Approval, and Section XV, Dispute Resolution of this Consent Decree do not apply to EPA’s review of any Green Infrastructure Project Proposal submitted by the City; rather, the review process set forth herein in Section VII.A.1.b shall control.
- iv. Upon determination by the City to incorporate green infrastructure as an alternative measure to achieve the Performance Criteria set

forth in Appendix “A,” the City shall submit to EPA a conceptual proposal for review and approval.

- v. If EPA disapproves the City’s conceptual proposal, the City may request reconsideration of its proposal by the Director of the Water, Wetlands and Pesticides Division, EPA, Region 7, within thirty (30) days of receipt of EPA’s disapproval. The decision of the Director after reconsideration of the proposal shall be final and not subject to dispute resolution.
- vi. If EPA approves the conceptual proposal, the City shall submit to EPA a detailed Green Infrastructure Project Proposal. This proposal shall be consistent with this Consent Decree and shall at a minimum include the following:
 - (a) The performance levels expected to be achieved with the implementation of the Green Infrastructure Project, utilizing the information and models that the City used in developing the OCP, and any monitoring information used in formulating the proposal; along with a demonstration of the long term effectiveness and performance expected to be achieved with implementation of the project;
 - (b) A description of the work required to implement the Green Infrastructure Project and a schedule for completion of this work and implementation of the Project that is consistent with this

Consent Decree, its Appendices, and the date set forth herein in Section VII.A.1 for completion of construction and full implementation of all remedial and Control Measures; and

- (c) A description of any post-construction monitoring and modeling to be performed, in addition to that set forth in Appendix “D” or any previously approved Supplemental Remedial Measures Plan, that is necessary to determine whether the Performance Criteria set forth in Appendix “A” will be met upon completion and implementation of the Green Infrastructure Project.
- vii. Upon receipt of the City’s Green Infrastructure Project Proposal, EPA shall provide notice and a copy of the proposal and the opportunity to comment on the proposal to MDNR. Any comment by MDNR shall be provided to EPA within thirty (30) days of the date of EPA’s notice to MDNR.
- viii. Upon review of the City’s Green Infrastructure Project Proposal and any comments on the proposal submitted by MDNR, EPA will either approve or disapprove the proposal. If approved, the City shall implement the Green Infrastructure Project in accordance with the provisions and schedule in the approved proposal. If disapproved, and EPA determines that the proposal would have constituted a non-material modification to the Consent Decree as defined in Section XXV, Modification, EPA’s decision is final. If

disapproved, and EPA determines that the proposal would have constituted a material modification to the Consent Decree as defined in Section XXV, Modification, the City may, within thirty (30) days of receipt of EPA's disapproval, appeal EPA's disapproval to the Director of the Water, Wetlands and Pesticides Division, EPA, Region 7, whose decision will be final.

- ix. The City shall provide for public participation in the development of any Green Infrastructure Project and corresponding revision to its Overflow Control Plan in accordance with the CSO Policy.
- x. In the event that the City implements an approved Green Infrastructure Project Proposal that fails to meet the Performance Criteria set forth in Appendix "A," the City may propose, within 180 days after submittal of the applicable post-construction monitoring report documenting said failure, additional Control Measures designed to achieve the Performance Criteria, or in the alternative, where the City has fundamentally met the Performance Criteria, the City may, within sixty (60) days after its failure to meet the Performance Criteria, petition EPA for a change in the Performance Criteria. After consideration of any such request by the City, EPA's decision will be final. In the event that EPA disapproves the City's request for a change in the performance Criteria, the City may propose additional Control Measures

designed to achieve the Performance Criteria within 180 days after EPA's disapproval.

- xi. Any change in the Control Measures, the Performance Criteria, or the deadlines set forth in this Consent Decree that occur as a result of a decision made by EPA pursuant to this Subparagraph will be in accordance with Section XXV, Modification. Changes to the Performance Criteria or the implementation date set forth in Paragraph VII.A.1 shall be considered material modifications pursuant to Section XXV, Modification.
- xii. Stipulated penalties will not accrue and become payable in the event that an approved Green Infrastructure Project Proposal, once implemented, fails to meet the Performance Criteria set forth in Appendix "A," provided that the City proposes additional Control Measures designed to meet the Performance Criteria that are approved by EPA, and/or the City petitions EPA for a change in the Performance Criteria, and that request is approved by EPA.
- xiii. The City shall submit to EPA an update on its implementation of green Control Measures as part of the annual report due on March 31 each year.
- xiv. The City shall submit to EPA every five (5) years an update on the status of all green infrastructure projects that have been approved by EPA.

- c. Achievement of Performance Criteria.
- i. By the specified date for Achievement of Full Operation for each specific control measure set forth in Appendix “A” and/or any revision to Appendix “A,” the City shall achieve the Performance Criteria as specified in Appendix “A” and/or any revision to Appendix “A” for the specific control measure. The Performance Criteria set forth in Appendix “A” and the Post-construction Monitoring criteria set forth in Appendix “D” shall be used to determine whether the City has achieved the Performance Criteria.
 - ii. Except as provided in Subparagraph VII. A.1.b, if following Achievement of Full Operation of any specific control measure(s), the City needs additional time to implement additional remedial measures necessary to achieve the Performance Criteria pertaining to the specific control measure(s), the City shall submit to EPA within 180 days after the Date of Demonstration of Compliance with the Performance Criteria or the date of completion of the Critical Milestone for CSO Control Measures and/or within 180 days after the Date of Achievement of Full Operation for SSO Control Measures, as set forth in Appendix “A” for approval: (1) a request for an extension of the previously applicable deadline for Achievement of Full Operation for the control measure(s) at issue to allow for implementation of additional remedial measures, and

(2) a plan for performing supplemental remedial measures and additional post-construction monitoring and modeling (“Supplemental Remedial Measures Plan”). EPA shall provide the opportunity to comment on the submittal to the State pursuant to Subsection VI.A. An extension request that is beyond the implementation date set forth in Paragraph VII.A.1 shall be considered a material modification pursuant to Section XXV, Modification, herein. Any Supplemental Remedial Measures Plan submitted by the City shall include a description of the remedial measures that the City will take to ensure that the Performance Criteria will be achieved, and a schedule that is as expeditious as possible for design, construction and implementation of the measures; a description of additional post-construction monitoring and modeling needed to assess whether the City has achieved the Performance Criteria, and a schedule for performing such monitoring and modeling.

- iii. Upon receipt of EPA’s approval of the request for extension of time and the Supplemental Remedial Measures Plan, or upon resolution of any disputes in accordance with Section XV of this Consent Decree, the City shall implement the Approved Supplemental Remedial Measures Plan (including additional monitoring and modeling) in accordance with the schedule and

terms set forth therein.

2. Compliance with NPDES Permits. The City shall at all times comply with the City's Current NPDES Permits, as they relate to the capacity at the WWTPs and capacity, management, operation and maintenance of the collection systems, and the requirements set forth in the CSO Policy that no discharges from CSOs occur during dry weather.
 - a. Nine Minimum Controls. The City shall implement and comply with a NMC Plan that complies with the criteria set forth in Appendix "B."
 - b. Elimination of Unpermitted CSO Discharges within the City's Combined Sewer System. The City shall demonstrate that unpermitted CSO discharges from its Combined Sewer System have been eliminated to the extent practicable. If the City experiences an unpermitted CSO discharge, then the City shall by no later than five (5) days following such an event, submit a report to MDNR, in accordance with the City's Current NPDES Permits.
3. Capacity, Management, Operation and Maintenance Program. The City shall implement a CMOM Program that complies with the criteria set forth in Appendix "C."
4. Implementation of Disinfection at the City's WWTPs. The City shall implement disinfection at its WWTPs in accordance with the schedule provided in Appendix "F" and in compliance with its Current NPDES Permits and applicable laws governing the design, installation, and operation of such disinfection facilities.

The provisions of Section XIII, Stipulated Penalties, do not apply to any failure by the City to comply with any of the requirements of this paragraph relating to implementation of disinfection.

VIII. FUNDING

- A. The City intends to seek federal and state grant funding assistance. However, the City's duty to comply with the terms of this Consent Decree is not contingent on the receipt of federal or state grant funds or the City's financial capabilities. Failure to comply is not excused by the lack of federal or state grant funds, or by the processing of any applications for the same, or by the City's financial capabilities.

IX. REPORTING

- A. Beginning with the first full semi-annual period (either January 1 or July 1) following entry of this Consent Decree, and each such period thereafter until termination of the Consent Decree, the City shall submit in writing to EPA a semi-annual status report on or before each March 31 and September 30. The semi-annual status report shall contain a summary of the status and progress of implementation of all Control Measures required by Section VII and Appendix "A," including but not limited to the status of the following matters:
1. Development and implementation of all plans and reports addressing Control Measures required by Section VII and Appendix "A" of this Decree, including a statement of whether specific scheduled milestone dates in the schedules included in Appendix "A" were timely met during the semi-annual period. Upon completion of a specific project in Appendix "A," the City shall submit a

certification that the specified work has been completed, including the following documentation of the completed work to EPA:

- a. For work performed by a private contractor: an inspection report by City personnel of the completed project and certification by the Water Services Department Director, Deputy Director or Assistant Director, that the specified work has been completed.
 - b. For work performed by City personnel: a copy of the work order or similar document for the project verified by the Water Services Department Director, Deputy Director or Assistant Director, as having been completed.
 - c. The Water Services Department Director, Deputy Director or Assistant Director may delegate the certification responsibilities above by providing advance written notice to EPA for approval.
2. A statement setting forth the deadlines and other terms that the City is required by this Consent Decree to meet since the date of the last semi-annual report, whether and to what extent the City has met these requirements, and the reasons for any noncompliance;
 3. A general description of the progress made toward achievement of the Performance Criteria set forth in Appendix "A" within the six-month period, and a projection of the work to be performed pursuant to Appendix "A" during the following six-month period. Notification to EPA of any anticipated delay in performance shall not, by itself, excuse the delay.

- B. Beginning with the first full annual period following entry of this Consent Decree, and each such period thereafter until termination of the Consent Decree, the City shall submit in writing to EPA an annual status report on or before March 31. The annual status report shall contain a summary of and/or copies of reports documenting the following during the previous year:
1. Copies of all unpermitted CSO discharge reports submitted to MDNR, as referenced in Section VII.A.2.b.
 2. Copies of all other reports that were required to be submitted under its Current NPDES Permits during the prior twelve (12) months not otherwise submitted to EPA. Nothing in this Consent Decree shall be construed to modify the City's Current NPDES Permits, so as to relieve the City of any of its reporting requirements pursuant to its Current NPDES Permits.
 3. A report demonstrating compliance with the Performance Criteria contained in Appendices "B," "C," and "D" during the prior twelve (12) months.
 4. An update on implementation of green Control Measures, as required by Subparagraph VII.A.1.b;
 5. An update on implementation of the SEP Plan, as required in Subsection XII.D.
- C. Any additional report required to be submitted pursuant to Appendix "D" shall be submitted in accordance with the schedules set forth therein.
- D. All reports required to be submitted herein shall contain a certification in accordance with Section XVIII of this Decree.
- E. The City shall maintain copies of all written submissions prepared pursuant to this

Section and the Appendices of this Decree until the date of termination of this Consent Decree, unless upon the City's request, EPA agrees in writing to allow certain records to be discarded. The City shall provide notice to MDNR prior to any records being discarded.

X. COMMUNICATIONS

- A. Except as specified otherwise, when the Plaintiff, Defendant, and MDNR transmit written notification (including all reports) or communication required by or in conjunction with the terms of the Consent Decree to EPA, DOJ, the United States Attorney, MDNR and the City, the notification shall be addressed as follows:

As to the United States Department of Justice:

Chief
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
Post Office Box 7611
Washington, D.C. 20044-7611
Reference Case No. 90-5-1-1-0643811

As to the United States Attorney:

Charles M. Thomas
Assistant United States Attorney
Western District of Missouri
400 East 9th Street
Kansas City, Missouri 64106

As to EPA:

Chief
Water Enforcement Branch
Water, Wetlands and Pesticides Division
U.S. Environmental Protection Agency, Region 7
901 North 5th Street
Kansas City, Kansas 66101

and

Regional Counsel
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 7
901 North 5th Street
Kansas City, Kansas 66101

As to the State:

Chief Counsel
Agriculture and Environment Division
State of Missouri Office of Attorney General
207 West High Street
Jefferson City, Missouri 65102

and

Chief
Water Pollution Compliance and Enforcement Section
Missouri Department of Natural Resources
P.O. Box 176
Jefferson City, Missouri 65102

and

Director
Kansas City Regional Office
Missouri Department of Natural Resources
500 NE Colbern Road
Lee's Summit, Missouri 64086-4710

As to the City:

City Attorney
City of Kansas City, Missouri
28th Floor
414 East 12th Street
Kansas City, Missouri 64106

and

Director
Water Services Department
City of Kansas City, Missouri
4800 East 63rd Street
Kansas City, Missouri 64130.

- B. Plaintiff, Defendant, and MDNR, upon written notification to the others listed in Subsection X.A, above, may change the addresses for communication. All notifications or communications shall be deemed submitted on the date they are postmarked and sent by first class mail or certified mail, return receipt requested or sent by electronic mail.

XI. CIVIL PENALTY

- A. No later than thirty (30) days after the entry of this Decree, the City shall pay a civil penalty of \$600,000 to the United States.
- B. The United States shall be deemed a judgment creditor for purposes of collection of this civil penalty.
- C. The City shall pay \$600,000 as set forth in Subsection XI.A by Electronic Funds Transfer (“EFT”) to the DOJ lockbox bank, referencing DOJ No. 90-5-1-1-06438/1. Payment shall be made in accordance with instructions provided by the United States to the City following execution of this Consent Decree. Any EFT received at the DOJ lockbox bank after 4:00 P.M. Eastern Time will be credited on the next business day.

- D. Notice of the EFT shall simultaneously be sent to the following:

United States Department of Justice

Paul Gormley
U.S. Department of Justice
Environmental Enforcement Section
Environmental and Natural Resources Division
1961 Stout Street, Suite 800
Denver, Colorado 80294

EPA

Melissa A.C. Bagley
U.S. Environmental Protection Agency, Region 7
Office of Regional Counsel
901 North 5th Street
Kansas City, Kansas 66101.

- E. The transmittal letter forwarding such notice shall include the caption, civil action number and judicial district of this action.
- F. If the City fails to tender any portion of the payment as set forth above, interest shall accrue in accordance with the provisions of 31 U.S.C. § 3717.

XII. SUPPLEMENTAL ENVIRONMENTAL PROJECT

- A. The City shall complete the Supplemental Environmental Project (“SEP”), in accordance with the Supplemental Environmental Project Plan (“SEP Plan”) attached to this Consent Decree as Appendix “E.” EPA and the City agree that the SEP Plan is intended to secure significant environmental protection and improvements with the implementation of the project identified in the SEP Plan that are not otherwise required by law.
1. The City shall complete the SEP pursuant to the plans and time schedule set forth in the SEP Plan.

2. The City shall spend at least \$1,600,000 implementing the SEP identified in the SEP Plan. No part of this expenditure shall include federal or state funds, including federal or state low interest loans, contracts, or grants. The City shall include documentation of expenditures made in connection with the SEP as part of the SEP Completion Report required below in Subsection XII.B.
- B. The City shall submit to EPA a SEP Completion Report for the SEP described in the SEP Plan no later than one hundred and twenty (120) days from the date for completion of the SEP set forth in the SEP Plan. The SEP Completion Report shall contain the following information for the SEP:
1. A detailed description of the SEP as implemented;
 2. A description of any operating problems encountered and the solution thereto;
 3. Itemized costs;
 4. Certification that the SEP has been fully implemented in accordance with the SEP Plan and the provisions of this Consent Decree; and
 5. A description of the environmental and public health benefits resulting from implementation of the SEP.
- C. The City hereby certifies that it is not required to perform or develop the SEP by any federal, state, or local law or regulation; nor is the City required to perform or develop the SEP by agreement, grant or injunctive relief in this or any other case or in compliance with state or local requirements. The City further certifies that it has not received, and is not presently negotiating to receive, credit for the SEP in any other enforcement action or proceeding involving the EPA or MDNR.

- D. SEP Reports.
1. SEP Progress Reports. Beginning with the first full year after the commencement of the implementation of the SEP Plan, and continuing every year thereafter until the SEP is completed, the City shall include in its annual progress report to EPA, as required under Section IX herein, an update on the SEP Plan implementation progress and those actions taken to complete the SEP in the preceding year, the actions planned to implement the SEP in the forthcoming year, any current foreseeable delays in implementing the SEP, the action being taken to address such delays, and an itemized accounting of the costs expended for the preceding period and to date.
- E. The City shall submit all notices required by this Section in accordance with Section X.
- F. Any public announcement, oral or written, made by the City pertaining to the City undertaking the SEP shall include the following language:
- This project was undertaken in connection with the settlement of an enforcement action on behalf of EPA.

XIII. STIPULATED PENALTIES

- A. Failure to Submit Timely and/or Complete Documents required by Section VII and/or the Appendices of this Consent Decree. The City shall be subject to pay to the United States stipulated penalties, as set forth below, for each day the City fails to submit and/or submits an incomplete or otherwise disapproved plan, report, or other submittal required under Section VII and/or the Appendices of this Decree or fails to make any required material changes to those documents per EPA's comments within the required time

frames. If a due date falls on a holiday or weekend, the due date shall be the following business day. The City shall be subject to stipulated penalties for failure to meet each document submission date as follows:

<u>Period of Noncompliance</u>	<u>Penalty per Violation per Day</u>
1st to 30 th day	\$500
31st to 60th day	\$1,000
more than 60 days	\$1,500

- B. Remedial Requirements. The City shall be subject to pay to the United States stipulated penalties as set forth below for each day the City fails to satisfy any of the remedial requirements set forth in Section VII and/or the Appendices of this Consent Decree, unless the City has submitted a request for an extension of time and a plan in compliance with Section VII.A.1.c.ii. The stipulated penalties for failure to meet each such requirement shall be as follows:

<u>Period of Noncompliance</u>	<u>Penalty per Violation per Day</u>
1st to 30th day	\$1,000
31st to 60th day	\$2,000
more than 60 days	\$4,000

- C. Unpermitted CSO Discharges

1. The City shall be subject to pay stipulated penalties for any unpermitted CSO discharge as follows:
 - a. For each unpermitted CSO discharge occurring in a basin during the period from twelve (12) months after the date of entry of this Consent

Decree through the completion of basin specific remedial and Control Measures required by Section VII and/or the Appendices of this Consent Decree, the City shall be subject to pay \$500 per violation per day.

- b. For each unpermitted CSO discharge occurring in a basin after completion of basin specific remedial and Control Measures required by Section VII and/or the Appendices of this Consent Decree, the City shall be subject to pay a stipulated penalty of \$1,000 per violation per day.

D. Bypasses.

1. For any bypass that is prohibited by 40 C.F.R. § 122.41(m) and/or the City's Current NPDES Permits and occurs before the completion of the remedial and Control Measures required by Section VII and/or the Appendices of this Consent Decree, the City shall be subject to a stipulated penalty of \$500 per day per bypass.
2. For any bypass that is prohibited by 40 C.F.R. § 122.41(m) and/or the City's Current NPDES Permits and occurs after the completion of the remedial measures required by Section VII and/or the Appendices of this Consent Decree, the City shall be subject to a stipulated penalty of \$1,000 per day per bypass.

E. Operations and Maintenance Program.

1. For each SSO that occurs where the City did not implement its CMOM developed in accordance with Appendix "C," the City shall be subject to pay stipulated penalties in the following amounts:

\$500 for any discharge of 1,000 gallons or less;

\$1,000 for any discharge of more than 1,000 but less than 10,000 gallons and \$2,000 per violation for all discharges in excess of 10,000 gallons.

F. Delays in Completion of SEP.

1. The City shall be subject to pay stipulated penalties for the failure to meet the milestones set forth in Section XII and Appendix “E” as follows:

<u>Period of Noncompliance</u>	<u>Penalty Per Violation Per Day</u>
1 - 30 days	\$500
31 - 60 days	\$1,500
over 60 days	\$3,000

- G. Rejection of SEP Completion Reports: In the event that the United States rejects a SEP Completion Report as required in Section XII, the City shall be subject to pay \$500 per day per report until an acceptable SEP Completion Report is submitted to EPA.

- H. Failure to Substantially Complete a SEP: If the total amount expended on implementing the SEP is less than \$1,600,000, the City shall be subject to a stipulated penalty equal to the difference between the amount spent and \$1,600,000.

- I. Delay in Payment of Penalty: The City shall be subject to pay to the United States, as applicable, a stipulated penalty of \$3,500 for each day that the City is late in paying the civil penalty required under Section XI.

- J. Stipulated penalties shall automatically begin to accrue on the first day the City fails either to meet any of the schedules of performance required by this Consent Decree or to satisfy any obligation or requirement of this Consent Decree and shall continue to accrue through the final day of the correction of the noncompliance or completion of the activity,

but need not be paid except as provided in Subsections XIII.A through K. Payment of stipulated penalties as set forth above shall be in addition to any other rights or remedies which may be available to the United States by reason of the City's failure to comply with requirements of this Consent Decree, and any applicable federal, State or local laws, regulations, NPDES Permits, and all other applicable permits.

- K. Stipulated penalties shall be paid within thirty (30) days of EPA's written demand for payment, or as provided in the resolution of a dispute under Subsection XV.E. Stipulated penalties shall be paid to the United States in accordance with the payment procedures detailed in Section XI, Civil Penalty. Copies of any checks and the transmittal letters shall be sent simultaneously to DOJ and EPA, as set forth in Section X.

XIV. FORCE MAJEURE

- A. A "force majeure event" is any event beyond the control of the City, its contractors, or any entity controlled by the City that delays the performance of any obligation under this Consent Decree despite the City's best efforts to fulfill the obligation. "Best efforts" includes anticipating any potential force majeure event and addressing 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. Unanticipated increased costs or expenses associated with implementation of this Consent Decree and changed financial ability shall not, in any event, be considered a "force majeure event."
- B. The City shall provide notice orally or by electronic or facsimile transmission as soon as possible, but not later than fourteen (14) days after the time the City first knew of, or by the exercise of due diligence, should have known of, a claimed force majeure event. The

City shall also provide written notice, as provided in Section X of this Consent Decree, within thirty (30) days of the time the City first knew of, or by the exercise of due diligence, should have known of, the event. The notice shall state the anticipated duration of any delay; its cause(s); the City's past and proposed actions to prevent or minimize any delay; a schedule for carrying out those actions; and the City's rationale for attributing any delay to a force majeure event. Failure to comply with these notice 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.

- C. If the United States agrees that a force majeure event has occurred, the United States shall provide an extension of time for the City to perform the affected requirements for the time necessary to complete those obligations. An extension of time to perform the obligations affected by a force majeure event shall not, by itself, extend the time to perform any other obligation. Where the United States agrees to an extension of time necessitated by a force majeure event, this shall be considered a non-material modification pursuant to Section XXV of this Consent Decree and shall not require court approval.
- D. If the United States does not agree that a force majeure event has occurred, or does not agree to the extension of time sought by the City, the United States' position shall be binding, unless the City invokes Dispute Resolution under Section XV of this Consent Decree. In any such dispute, the City bears the burden of proving, by a preponderance of the evidence, that each claimed force majeure event is a force majeure event, that the

City gave the notice required by Subsection XIV.B above, that the force majeure event caused any delay the City claims was attributable to that event, and that the City exercised best efforts to prevent or minimize any delay caused by the event.

XV. DISPUTE RESOLUTION

- A. This Court shall retain jurisdiction for the purpose of adjudicating, in the manner provided in this Section, all disputes between the Parties, which may arise under this Consent Decree.
- B. Unless otherwise expressly provided for in this Consent Decree, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising under or with respect to this Consent Decree.
- C. Informal Dispute Resolution. Any dispute subject to Dispute Resolution under this 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 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 a written agreement. If the Parties cannot resolve a dispute by informal negotiations, the position advanced by the United States shall be considered binding unless, within thirty (30) days after the conclusion of the informal negotiation period, the City invokes formal dispute resolution procedures as set forth below or the Parties agree in writing to attempt to resolve the dispute through mediation. EPA shall provide MDNR notice of the informal dispute resolution negotiation and the opportunity to comment to EPA on the position advanced by the United States within the

informal negotiation period.

D. Formal Dispute Resolution. The City shall invoke formal dispute resolution procedures by serving on the United States a written Statement of Position regarding the matter in dispute. The Statement of Position shall include, but may not necessarily be limited to, any factual data, analysis, or opinion supporting the City's position and any supporting documentation relied upon by the City.

1. The United States shall serve its Statement of Position within thirty (30) days of receipt of the City's Statement of Position unless the Parties agree in writing to a longer period of additional time, and during this additional time, stipulated penalties shall not accrue. EPA agrees to consult with MDNR prior to finalizing the United States' Statement of Position. The United States' Statement of Position shall include, but may not necessarily be limited to, any factual data, analysis, or opinion supporting that position, and any supporting documentation relied upon by the United States. 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.
2. The City may seek judicial review of the dispute by filing with the Court and serving on the United States, in accordance with Section X of this Consent Decree, a motion requesting judicial resolution of the dispute. The motion must be filed within thirty (30) days of receipt of the United States' Statement of Position pursuant to the preceding paragraph unless the parties agree in writing to a longer period. 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 Consent Decree.

3. The United States shall respond to the City's motion within the time period allowed by the Local Rules of this Court. The City may file a reply memorandum, to the extent permitted by the Local Rules of this Court.
 4. In any dispute brought under this Subsection, the City shall have the burden of proof, and the standard and scope of review shall be that provided by applicable law.
 5. 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 Consent Decree, unless and until final resolution of the dispute so provides.
- E. Stipulated Penalties. Stipulated penalties with respect to any disputed matter (and interest thereon) shall accrue in accordance with Section XIII of this Consent Decree; however, payment of stipulated penalties, and any accrued interest, shall be stayed pending resolution of the dispute, as follows:
1. If the dispute is resolved by informal dispute resolution before appeal to this Court, the City shall be subject to pay accrued penalties (and interest), if any, determined to be owing within sixty (60) days of the agreement or the receipt of the United States' final position in writing.
 2. If the dispute is appealed to this Court and the United States prevails in whole or

in part, the City shall be subject to pay all accrued penalties (and interest) determined to be owed within sixty (60) days of a final decision.

XVI. RIGHT OF ENTRY AND INFORMATION COLLECTION AND RETENTION

- A. The United States, and its representatives, including attorneys, contractors, and consultants, shall have the right of entry into any facility covered by this Consent Decree at all reasonable times, upon presentation of credentials, to: (1) monitor the progress of activities required under this Consent Decree; (2) verify any data or information submitted to the United States and/or MDNR in accordance with the terms of this Consent Decree; (3) obtain samples and, upon request, splits of any samples taken by the City or its representatives, contractors, or consultants; (4) obtain documentary evidence, including photographs and similar data; and (5) assess the City's compliance with this Consent Decree.
- B. Upon request, the City shall provide EPA, or its authorized representatives splits of any samples taken by the City. Upon request, EPA shall provide the City splits of any samples taken by EPA, as well as copies of other documents collected, photos taken, or other non-privileged information collected during any facility visit.
- C. The City shall maintain copies of any reports, plans, permits, and documents submitted to EPA pursuant to this Consent Decree, including any underlying research and data, for a period of five (5) years from the date of submission. Where a contractor fails to retain such documents, and the City can demonstrate that the contractor's missing or destroyed documents contained the same information as documents in the possession of the City, the City shall not be liable for the contractor's failure to retain such documents.

- D. At the conclusion of the information-retention period provided in the preceding Subsection, the City shall notify the United States at least ninety (90) days prior to the destruction of any documents, records, or other information subject to the requirements of the preceding Subsection and, upon request by the United States, the City shall deliver any such documents, records, or other information to EPA. The City may assert that certain documents, records, or other information are 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 required to be created or generated pursuant to the requirements of this Consent Decree shall be withheld on grounds of privilege.
- E. 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.
- F. This 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 of Missouri 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.

XVII. PERMIT OBLIGATIONS

- A. This Consent Decree does not authorize or approve the construction of any physical structure or facilities, or the modification of any existing treatment works or sewer system. Approval of such construction or modification shall be as required by applicable City, state, or federal laws or regulations, including applicable requirements of Missouri law and regulations with regard to permits to install.
- B. This Consent Decree is not and shall not be interpreted to be a permit or modification of any Current NPDES Permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342. This Consent Decree does not relieve the City of any obligation to apply for, obtain and comply with the requirements of any Current NPDES Permit, or to comply with any federal, state, or local laws or regulations.

XVIII. CERTIFICATION

- A. Any report, plan, or other submission that the City is required by this Consent Decree to submit, including reports, plans or other submissions that the City is also required to submit by its Current NPDES Permits, shall be signed by an official or authorized agent of the City and shall include the following certification:

I certify under penalty of law that the document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted, and that 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.

- B. The City shall not object to the authenticity for purposes of admission into evidence of

any report, plan, or other submission prepared in accordance with this Section or the information contained in said reports in any proceeding to enforce this Consent Decree.

XIX. EFFECT OF SETTLEMENT AND RESERVATION OF RIGHTS

- A. This Consent Decree resolves the civil claims of the United States for the violations alleged in the Complaint filed in this action through the date of lodging.
- B. The United States reserves all legal and equitable remedies available to enforce the provisions of this Consent Decree, unless expressly stated in the Consent Decree. This Consent Decree shall not be construed to limit the rights of the United States or the State of Missouri to obtain penalties or injunctive relief under the CWA or implementing regulations, or under other federal or state laws, regulations, or permit conditions, unless expressly specified in this Consent Decree. The United States further reserves 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 POTW, whether related to the violations addressed in this Consent Decree or otherwise.
- C. This 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 Consent Decree shall not be a defense to any action commenced by the United States pursuant to any such laws, regulations, or permits. The United States does not, by its consent to the entry of this Consent Decree, warrant or aver in any manner that the City's compliance with any aspect of this Consent Decree will result in compliance with provisions of the CWA , 33 U.S.C. § 1251, *et seq.*,

- or with any other provisions of federal, state, or local laws, regulations, or permits.
- D. This Consent Decree shall not be construed to create rights in, or grant any cause of action to, any third party not party to this Consent Decree.
- E. This Consent Decree does not limit or affect the rights of the Parties against any third parties, not party to this Consent Decree, nor does it limit the rights of third parties, not party to this Consent Decree, against the City, except as otherwise provided by law.

XX. FAILURE OF COMPLIANCE

The United States reserves any and all legal and equitable remedies available to enforce the provisions of this Consent Decree. The City reserves all legal and equitable defenses to enforcement under this Consent Decree which are not specifically waived.

XXI. MISSOURI AS A NON-ALIGNED PARTY

The State of Missouri is joined as a non-aligned party to this action pursuant to Section 309(e) of the Act, 33 U.S.C. 1319(e), which provides that whenever a municipality is a party to a civil action brought by the United States under this section, the State in which such municipality is located shall be joined as a party. The Plaintiff and Defendant reserve any and all claims and defenses with respect to the State's joinder.

XXII. COSTS OF SUIT

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

XXIII. EFFECTIVE DATE

The Effective Date of this Consent Decree shall be the date upon which this Consent Decree is entered by the Court.

XXIV. RETENTION OF JURISDICTION

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

XXV. MODIFICATION

- A. Except as further set forth in this Section, there shall be no material modification of this Consent Decree without written approval by all Parties and the Court; and any non-material modification of this Consent Decree shall be in writing and signed by all Parties. Modifications (whether material or not) to this Consent Decree that are specifically allowed under the terms of this Consent Decree may be made in accordance with the terms of this Consent Decree.
- B. It is the intention of the Parties to this Consent Decree that the City shall have the opportunity, consistent with applicable law, to conform compliance with this Consent Decree to any modification in EPA's regulations or national policies governing SSOs, CSOs or bypassing; to conform compliance with this Consent Decree to any applicable new or revised water quality standards that have been approved or promulgated by EPA in accordance with 33 U.S.C. § 1313(c) and 40 C.F.R. § 131.21 and 131.22; and to conform compliance with this Consent Decree to any new or more stringent requirements

that are included in the City's Current NPDES Permits pertaining to the City's WWTPs or sewer system.

1. Consequently, upon issuance of any new federal law or state law or regulation that is as or more stringent than current federal law (as to the latter, as promulgated in the Federal Register) or national policy governing SSOs, CSOs or bypassing, upon EPA approval or promulgation of new or revised water quality standards in accordance with 33 U.S.C. § 1313(c) and 40 C.F.R. §131.21 and 131.22; or upon the issuance of a Current Permit that contains new or more stringent requirements pertaining to the City's WWTPs or sewer system, the City may request modification of this Consent Decree (including requests for extensions of time) from the United States to conform this Consent Decree to such regulation, national policy, new or revised water quality standard or current permit. Upon the City's request, the Parties shall discuss the matter. If the Parties agree on a proposed modification to the Consent Decree, they shall prepare a joint motion to the Court requesting such modification.
2. If the Parties do not agree, and the City still believes that modification of this Consent Decree is appropriate, the City may file a motion seeking such modification in accordance with Federal Rule of Civil Procedure 60(b); provided, however, that nothing in this subparagraph is intended to waive the Plaintiff's rights to oppose such motion and to argue that such modification is unwarranted.
3. Following the filing of a motion under Rule 60(b), stipulated penalties shall accrue due to the City's failure, if any, to continue performance of obligations

under the Consent Decree that are necessarily the subject of the Rule 60(b) motion; provided, however, that such penalties need not be paid if the Court resolves the motion in the City's favor, and the City shall comply with the Consent Decree as modified.

XXVI. PUBLIC PARTICIPATION

This 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 Consent Decree disclose facts or considerations indicating that the Consent Decree is inappropriate, improper, or inadequate. The City consents to entry of this Consent Decree without further notice.

XXVII. SIGNATORIES AND SERVICE

- A. Each undersigned representative of the City and the Assistant Attorney General for the Environment and Natural Resources Division of the DOJ certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Decree, to execute this document, and to legally bind the Party he or she represents to this document.
- B. This Consent Decree may be signed in counterparts, and its validity shall not be challenged on that basis.
- C. The City agrees not to oppose entry of this Consent Decree by the Court or to challenge any provision of the Consent Decree, unless the United States has notified the City in writing that it no longer supports entry of the Consent Decree.
- D. The City agrees to accept service of process by mail with respect to all matters arising

under or relating to this 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.

XXVIII. INTEGRATION

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

XXIX. TERMINATION

Upon motion filed with the Court by the United States and/or the City, the Court shall terminate this Consent Decree upon finding that the following has occurred:

- A. The City has achieved and maintained compliance with all provisions of this decree for twelve consecutive months to the satisfaction of EPA;
- B. The City has achieved and maintained substantial compliance with the Current NPDES Permits for twelve consecutive months; and
- C. The City has paid all penalties due and demanded under this decree.

If the City elects to unilaterally move the Court for termination, the City shall certify to the

United States at least one hundred and twenty (120) days before filing a termination motion with the Court that it has met all the requirements above in this Section and provides documentation in support of such certification.

XXX. FINAL JUDGMENT

Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute a final judgment of the Court as to the United States and the City. The Court finds that there is no just reason for delay and therefore enters this judgment as a final judgment under Fed. R. Civ. P. 54 and 58.

XXXI. APPENDICES

The following Appendices are attached to this Consent Decree:

- A. “Appendix “A” is Performance Criteria of the Overflow Control Program.
- B. “Appendix “B” is the Nine Minimum Control Plan Performance Criteria.
- C. “Appendix “C” is the Capacity, Management, Operation and Maintenance plan (“CMOM”) Performance Criteria.
- D. “Appendix “D” is the Post-Construction Monitoring Program Performance Criteria.
- E. “Appendix “E” is the Supplemental Environmental Project Plan (“SEP Plan”).
- F. “Appendix “F” is the Schedule for Implementation of Disinfection Technology at WWTPs.

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United States vs. City of Kansas City, Missouri:

FOR THE UNITED STATES OF AMERICA:

4/23/10
Date

s/ IGNACIA S. MORENO
IGNACIA S. MORENO
Assistant Attorney General
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Ben Franklin Station
Washington, D.C. 20044-7611
Telephone: 202-514-2601

5/7/10
Date

s/ ROBERT R. HOMIAK
ROBERT R. HOMIAK
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Telephone: 303-844-1379

MARY ELIZABETH PHILLIPS
United States Attorney
Western District of Missouri

5/11/10

Date

s/ CHARLES M. THOMAS

CHARLES M. THOMAS

Assistant United States Attorney
Charles Evans Whittaker Courthouse
400 East Ninth Street, Room 5510
Kansas City, Missouri 64106
Telephone: 816-426-3130

FOR THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY:

4/27/10
Date

s/ KARL BROOKS
KARL BROOKS
Regional Administrator
U.S. Environmental Protection Agency
Region 7
901 North 5th Street
Kansas City, Kansas 66101

4/27/10
Date

s/ WILLIAM A. SPRATLIN
WILLIAM A. SPRATLIN
Director
Water, Wetlands and Pesticides Division
U.S. Environmental Protection Agency
Region 7
901 North 5th Street
Kansas City, Kansas 66101

4/27/10
Date

s/ DAVID C. COZAD
DAVID C. COZAD
Regional Counsel
Office of Regional Counsel
U.S. Environmental Protection Agency
Region 7
901 North 5th Street
Kansas City, Kansas 66101

5/3/10
Date

s/ CYNTHIA GILES
CYNTHIA GILES
Assistant Administrator
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, D.C. 204060

April 30, 2010
Date

s/ ADAM M. KUSHNER
ADAM M. KUSHNER
Director
Office of Civil Enforcement
U.S. Environmental Protection Agency
Headquarters
Ariel Rios Building
1200 Pennsylvania Avenue, NW
Washington, D.C. 20460

FOR THE CITY OF KANSAS CITY, MISSOURI:

April 27, 2010
Date

s/ TROY SCHULTE
TROY SCHULTE
Interim City Manager
Office of the City Manager
414 East 12th Street
Kansas City, Missouri 64106

APPROVED AS TO FORM:

April 26, 2010
Date

s/ GALEN BEAUFORT
GALEN BEAUFORT
City Attorney
28th Floor
City Hall
414 East 12th Street
Kansas City, Missouri 64106