

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 STATE OF TEXAS,)
)
 Plaintiff,)
 and)
)
 BAYOU CITY WATERKEEPER,)
)
 Plaintiff-Intervenor,)
)
 v.)
)
 CITY OF HOUSTON, TEXAS,)
)
 Defendant.)
 _____)

Civil Action No. 4:18-cv-03368
Judge EWING WERLEIN, JR.

CONSENT DECREE

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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 United States Environmental Protection Agency (“EPA”), filed a Complaint (“Complaint”) alleging Defendant, the City of Houston, Texas (“City”), has violated and continues to violate the Clean Water Act, 33 U.S.C. § 1251 *et seq.*, (“CWA”), the regulations promulgated under the CWA, and terms and conditions of the City’s National Pollutant Discharge Elimination System (“NPDES”) permits issued under Section 402 of the CWA, 33 U.S.C. § 1342;

WHEREAS, Plaintiff, the State of Texas (“State”), acting at the request of and on behalf of the Texas Commission on Environmental Quality (“TCEQ”), has joined in the Complaint as a Plaintiff in this action and as a Party pursuant to CWA § 309(e), 33 U.S.C. § 1319(e), seeking injunctive relief, civil penalties, and attorney’s fees for the City’s alleged violations of Chapter 7, Subchapter D, and § 26.121 of the Tex. Water Code (“TWC”) and the regulations promulgated and permits issued pursuant thereto;

WHEREAS, the City disagrees with and does not admit to these contentions, any facts alleged in the Complaint or liability to the United States, the State or any third party arising out of the transactions or occurrences alleged in the Complaint;

WHEREAS, notwithstanding these disagreements, the Parties have negotiated this Consent Decree to resolve the matter and to memorialize the terms of their agreement to work cooperatively on issues relating to the City’s Sewer System;

WHEREAS, since 1998, TCEQ has been authorized by EPA to administer the National Pollutant Discharge Elimination System (“NPDES”) program in Texas pursuant to Section

402(b) of the CWA, 33 U.S.C. § 1342(b), and NPDES permits administered by TCEQ are known as Texas Pollutant Discharge Elimination System (“TPDES”) permits;

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

WHEREAS, the City owns and operates a “treatment works” as defined in Section 212 of the CWA, 33 U.S.C. § 1292. The treatment works, also referred to herein as the Sewer System, includes the Wet Weather Facilities (“WWFs”), Wastewater Collection and Transmission System (“WCTS”) and Wastewater Treatment Plants (“WWTPs”). The City’s Sewer System is one of the largest and most complex in the nation, with approximately 6,000 miles of sewer mains, 390 Lift Stations to move sewage due to Houston’s flat topography, and 39 WWTPs serving approximately 2 million people. The City contends that it has been working to implement improvements to its massive system to try to keep pace with its rapidly growing population and has spent close to three billion dollars in upgrades and renewals to millions of feet of pipes and infrastructure pursuant to Texas Agreed Orders and earlier initiatives such as the Greater Houston Wastewater Program and is committing to undertake additional improvements pursuant to this Consent Decree;

WHEREAS, as of the Date of Lodging, the WWFs are permitted under Permit Nos. TX0063053, TX0096172, and TX0105058 and continue to operate under said permits;

WHEREAS, the Parties recognize this Consent Decree is in the interests of justice, a transparent resolution, and consistent with the impartial rule of law and fundamental constitutional principles, including federalism and control of state governments by their democratically elected leaders. While the City has proposed and agreed to make significant

improvements to its infrastructure, this Consent Decree is narrowly tailored to achieve the improvements necessary to remedy alleged violations of federal and state law; it is not being used to accomplish other policy goals or obtain relief that is unrelated to the alleged violations;

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

NOW, THEREFORE, IT IS HEREBY ADJUDGED, ORDERED AND DECREED as follows:

SECTION I. JURISDICTION AND VENUE

1. This Court has jurisdiction over the subject matter of this action, pursuant to 28 U.S.C. §§ 1331, 1345, 1355 and 1367(a), and Sections 309(b) of the CWA, 33 U.S.C. § 1319(b), and over the Parties. Pursuant to 28 U.S.C. § 1367, this Court has supplemental jurisdiction over the state law claims. 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 City is located in this judicial district, and the violations in the Complaint are alleged to have occurred in this judicial district. For purposes of this Decree, the City does not contest the Court's jurisdiction over this action or over the City and does not contest venue in this judicial district.
2. For purposes of this Consent Decree, the City agrees not to contest that the Complaint states claims upon which relief may be granted pursuant to Sections 301 and 309 of the CWA, 33 U.S.C. § 1311 and 1319, and under Sections 7.105 and 7.108 of the TWC.

SECTION II. OBJECTIVES

3. The objectives of this Consent Decree are for the City to take all measures necessary as agreed upon by the Parties to fulfill the objectives of and achieve compliance with the CWA and the regulations promulgated thereunder, the TWC and the City's Permits, with the goal of eliminating SSOs.

SECTION III. APPLICABILITY

4. The obligations of this Consent Decree apply to and are binding upon the United States, the State, and upon the City and any successors, assigns, or other entities or persons otherwise bound by law.
5. At least 30 Days before transferring ownership or operation of any WWTP or any part of or the whole WCTS to any other person, the City shall provide, or otherwise make electronically available, a copy of this Consent Decree to each prospective successor owner or operator and shall simultaneously verify such by a written notice to the United States and the State in accordance with Paragraph 123 of this Decree. Any such transfer must be conditioned upon the transferee's agreement to undertake the obligations required by this Decree, and no such transfer shall relieve the City of its obligation to ensure that the terms of the Decree are implemented.
6. The City shall provide a copy of this Consent Decree, or otherwise make electronically available, to all directors, managers, 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 Consent Decree. The City shall

condition any such contract upon performance of the Work in conformity with the terms of this Consent Decree.

7. In any action to enforce this Consent Decree, the City shall not raise as a defense the failure by any of its directors, managers, employees, agents, or contractors to take any actions necessary to comply with the provisions of this Consent Decree except as otherwise may be specifically provided in this Decree.

SECTION IV. DEFINITIONS

8. Unless otherwise defined herein, terms used in this Consent Decree (and any appendices) shall have the meanings given to those terms in the CWA, 33 U.S.C. §§ 1251 - 1387 or the regulations promulgated under the CWA.
9. The following terms used in this Consent Decree (and any appendices) shall be defined as follows:
 - a. “Building/Private Property Backup” for purposes of this Decree, shall mean an SSO in the form of wastewater release or backup into a building or onto private property that is caused by blockages, flow conditions, or other malfunctions in the WCTS. A wastewater backup or release that is caused by blockages, flow conditions, or other malfunctions of a Private Lateral is not a Building/Private Property Backup for purposes of this Decree.
 - b. “CCTV” shall mean Closed Circuit Television.
 - c. “CMOM” or “Capacity, Management, Operations and Maintenance” shall mean a program of industry practices to manage, operate and maintain sanitary wastewater collection, transmission and treatment systems, investigate capacity-

- constrained areas of these systems, and respond to SSO events.
- d. “City” or “Houston” shall mean the City of Houston, Texas.
 - e. “Complaint” shall mean the complaint filed on September 20, 2018 by the United States and the State in this action.
 - f. “Consent Decree” or “Decree” shall mean this consent decree document and all appendices attached hereto (listed in Paragraph 142). In the event of a conflict between this document and any appendix, this document shall control.
 - g. “CWA” shall mean the Clean Water Act, as amended 33 U.S.C. §§ 1251 - 1387.
 - h. “Date of Lodging” shall mean the date this Consent Decree is lodged with the Clerk of the Court for the United States District Court for the Southern District of Texas, Houston Division.
 - i. “Day” shall mean a calendar day unless expressly stated to be a business day. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, Federal, State or City holiday, the period shall run until the close of business of the next business day.
 - j. “Defendant” shall mean the City of Houston, Texas and any successor thereto.
 - k. “Deliverable” shall mean the written documents required to be submitted by or on behalf of the City under this Consent Decree.
 - l. “EPA” shall mean the United States Environmental Protection Agency and any of its successor departments or agencies.
 - m. “Effective Date” shall be the date that this Decree is entered by the Court.
 - n. “Fiscal Year” shall mean July 1 of a particular year through June 30 of the

following year.

- o. “FOG” shall mean fats, oils and grease.
- p. “FOG Generator” shall mean any establishment required to operate and maintain a FOG interceptor pursuant to Art. XI, Ch. 47-513(a) of the Code of Ordinances, Houston, Texas.
- q. “Force Main” shall mean any pipe that receives and conveys wastewater under pressure from the discharge side of a pump.
- r. “Gravity Sewer Main” shall mean a pipe that receives, contains and conveys wastewater that is not normally under pressure, but is intended to flow unassisted under the influence of gravity. The Gravity Sewer Mains consist of Small Diameter Gravity Sewer Mains and Large Diameter Gravity Sewer Mains.
- s. “Infiltration” shall mean water other than wastewater that enters a sewer system (including sewer service connections and foundation drains) from the ground through such means as defective pipes, pipe joints, connections, or manholes, as defined by 40 C.F.R. § 35.2005(b)(20).
- t. “Inflow” shall mean water other than wastewater that enters a sewer system (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, stormwater, surface runoff, street wash waters, or drainage, as defined by 40 C.F.R. § 35.2005(b)(21).
- u. “I/T” shall mean the total quantity of water from Infiltration and Inflow without

distinguishing the source.

- v. “Interest” shall mean interest at the rate calculated as specified in 28 U.S.C. § 1961, and unless otherwise stated, shall be the rate in effect at the time the Interest accrues. The State interest rate, calculated as specified in Tex. Fin. Code § 304.003, shall apply where applicable.
- w. “Large Diameter Gravity Sewer Mains” shall mean sanitary sewer pipes greater than 24” diameter.
- x. “Lift Station” shall mean a facility that includes pumps to lift wastewater to a higher hydraulic elevation, including all electrical, mechanical, and structural systems necessary to the operation of the Lift Station. Except as may be specifically provided otherwise, for purposes of this Consent Decree, Lift Stations shall not include facilities located at the WWTPs.
- y. “MS4” shall mean Municipal Separate Storm Sewer System.
- z. “NPDES” shall mean the National Pollutant Discharge Elimination System authorized under Section 402 of the CWA, 33 U.S.C. § 1342.
- aa. “Parties” shall mean the United States of America, on behalf of EPA, the State of Texas, on behalf of the TCEQ, and the City.
- bb. “Permit” shall mean any of the TPDES/NPDES Permits identified in Appendix A and issued to the City pursuant to Chapter 26 of the TWC and Section 402 of the CWA, 33 U.S.C. § 1342, for the City’s Sewer System, and any future extensions, modifications or reissuance of those Permits.
- cc. “Plaintiffs” shall mean the United States of America, on behalf of EPA, and the

State of Texas, on behalf of the TCEQ.

- dd. “Private Lateral” shall mean sewer assets not owned by the City, used to convey wastewater from a building or buildings to the WCTS.
- ee. “Publicly Owned Treatment Works” or “POTW” shall mean a publicly owned treatment works as defined in 40 C.F.R. § 403.3(q) and includes the WCTS and the WWTPs as defined in this Consent Decree.
- ff. “Sanitary Sewer Overflow” or “SSO” shall mean an overflow, spill, or release of wastewater from or caused by the City’s WCTS. This term shall include: 1) discharges to waters of the United States or into or adjacent to Waters in the State of Texas from the City’s WCTS; and 2) any release of wastewater from the City’s WCTS to public or private property that does not reach waters of the United States or into or adjacent to Waters in the State of Texas, including Building/Private Property Backups.
- gg. “Service Area” shall mean a portion of the WCTS that typically flows to a single WWTP.
- hh. “Sewer Segment” shall mean the full length of a Gravity Sewer Main extending from one manhole to the next manhole in the WCTS.
- ii. “Sewer System” shall mean the WCTS, WWFs and the WWTPs.
- jj. “Small Diameter Gravity Sewer Mains” shall mean sanitary sewer pipes less than or equal to 24” diameter.
- kk. “State” or “Texas” shall mean the State of Texas.
- ll. “TCEQ” shall mean the Texas Commission on Environmental Quality and any

successor agency.

- mm. “TPDES” shall mean the Texas Pollutant Discharge Elimination System.
- nn. “Wastewater Collection and Transmission Systems” or “WCTS” shall mean Force Mains, Gravity Sewer Mains, Lift Stations, manholes, access vaults/structures, flow-regulating devices/structures, other hydraulic structures, and the appurtenances thereto that are owned or operated by the City to transport wastewater.
- oo. “Wastewater Treatment Plant” or “WWTP” shall mean the sewage treatment plants owned or operated by the City as identified in Appendix A and all components of each of those plants, subject to modification of Appendix A as a result of consolidation activities. “WWTP” does not include any plant that has been decommissioned and has a permit that has been terminated.
- pp. “Waters in the State of Texas” are “waters” as defined under Texas law. Tex. Water Code 26.001(5) defines “water” or “water in the state” to mean “groundwater, percolating or otherwise, lakes, bays, ponds, impounding reservoirs, springs, rivers, streams, creeks, estuaries, wetlands, marshes, inlets, canals, the Gulf of Mexico, inside the territorial limits of the state, and all other bodies of surface water, natural or artificial, inland or coastal, fresh or salt, navigable or nonnavigable, and including the beds and banks of all watercourses and bodies of surface water, that are wholly or partially inside or bordering the state or inside the jurisdiction of the state.”
- qq. “Wet Weather Facility” or “WWF” shall mean one of the three facilities the City

operates in the WCTS and that are permitted under Permits listed above.

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

ss. “Work Project” shall mean an individual task that is part of a larger overall Remedial Measures Plan under Section V (Compliance Requirements). It does not mean the entire overall Remedial Measures Plan.

SECTION V. COMPLIANCE REQUIREMENTS

10. The following constitutes the remedial measures the City shall undertake to achieve the Objectives of this Consent Decree. The City is responsible for ensuring contractors hired to perform Work pursuant to this Consent Decree comply with all applicable laws. All Work shall be performed using sound engineering practices, the City’s best professional judgment, and industry standards in compliance with the terms of this Decree. Sound engineering practices may include appropriate provisions of 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 (CREAT)*. All remedial measures required under this Consent Decree shall be completed no later than 15 years from the Effective Date.

Early Action Projects

11. The City shall implement the Early Action Program under this Paragraph and in accordance with Appendix B:

a. For the Lift Stations identified in Appendix B, the City shall complete the described remediation, replacement, or consolidation projects pursuant to the

schedule in Appendix B;

- b. For Force Main projects identified in Appendix B, the City shall complete the described projects pursuant to the schedule in Appendix B. Regarding the Force Main projects identified on page 12 of Appendix B, the City shall specify to the Parties the extent of remediation to be implemented per Force Main project within 90 Days after each Force Main has been evaluated and a determination has been made;
- c. For Consolidation Projects identified in Appendix B, the City shall complete the described projects pursuant to the schedule in Appendix B;
- d. For the 69th Street, Upper Brays, Almeda Sims, Greenridge, Metro Central, Keegans Bayou, Westway, FWSD 23, Kingwood Central, and Southwest WWTPs the City shall complete the remedial measures pursuant to the schedule in Appendix B.
- e. For each WWTP identified in Appendix B, the City shall also implement, as soon as technically and operationally practicable, interim operational changes and/or other short-term improvements where appropriate until the identified remedial measures are completed.

WCTS Capacity Assessment

- 12. The City has identified nine areas with known capacity related constraints that are identified in Appendix C. Within two years of the Effective Date, the City shall perform remedial alternatives analysis/es to address any identified capacity constraints within each of the nine areas and shall submit a Capacity Remedial Measures Plan(s) to EPA for

its review and approval, with a copy to TCEQ. The Capacity Remedial Measures Plan(s) shall address any identified capacity constraints in each of the nine areas by completing a remedial action design, including timelines for completion, to prevent sewer asset surcharge during a five-year, six-hour rain event using the Point Precipitation Frequency estimates published in 2018 NOAA Atlas 14, Volume 11, Version 2, except in situations where a remedial action design to prevent surcharge during a five-year, six-hour rain event would be detrimental to the operation of the WCTS, in which case the Capacity Remedial Measures Plan(s) shall include alternative measures that will be taken to correct the capacity constraint. The remedial measures identified in the Capacity Remedial Measures Plan(s) shall be completed within 10 years of the Effective Date with progress toward capacity improvements achieved on an annual basis. For Areas 1 and 3, identified in Appendix C, the City shall provide a detailed explanation in the Capacity Remedial Measures Plan(s) of why additional time may be needed beyond 10 years, for reasons including coordination with other agencies. If approved, the remedial measures for those areas shall be completed within the approved schedule not to exceed 15 years from the Effective Date. In Annual Reports following the approval of the Capacity Remedial Measures Plan(s), the City shall identify progress made in the previous year toward completing the remedial measures identified in the Capacity Remedial Measures Plan(s).

13. To identify and address additional areas beyond those included under Paragraph 12 with potential capacity constraints, the City shall evaluate all SSOs from the prior three years to identify any WCTS asset that meets one of the following criteria:
 - a. The total wet-weather SSO volume from any single WCTS asset over the

prior three years exceeds 100,000 gallons; or

- b. Three or more wet weather SSOs occur from any single WCTS asset over the prior three years.

If a WCTS asset meets the above-specified criteria, the City shall perform a capacity assessment of the area associated with the WCTS asset to determine whether capacity is the cause of the SSOs. If a lack of capacity is determined to be the cause of the SSOs meeting the above-specified criteria in this Paragraph, the City shall perform a capacity remedial alternatives analysis to address the identified capacity constraint at the area associated with the WCTS asset and shall implement remedial action to address the capacity constraint. If the remedial action to address the capacity constraint is to upsize the Sewer Segment, the new Sewer Segment shall be designed to prevent sewer asset surcharge during a five-year, six-hour rain event using the Point Precipitation Frequency estimates published in 2018 NOAA Atlas 14, Volume 11, Version 2, except in situations where a remedial action design to prevent surcharge during a five-year, six-hour rain event would be detrimental to the operation of the WCTS, in which case the remedial alternatives analysis shall include alternative measures that will be taken to correct the capacity constraint. In the Annual Reports submitted to EPA for review and comment, with a copy to TCEQ, the City shall identify the locations that meet the criteria specified above, identify areas with capacity constraints, provide remedial alternative analysis for each area in the Capacity Remedial Summary, specify the remedial action taken or to be taken, along with a timeline for completion of each remedial action.

14. Each time a Sewer Segment in the WCTS is scheduled for renewal or replacement, the

City shall perform a capacity assessment using its assessment storm. If the Sewer Segment does not have adequate capacity to convey the City's assessment storm, the City shall design and install a new Sewer Segment designed to prevent sewer asset surcharge during a five-year, six-hour rain event using the Point Precipitation Frequency estimates published in 2018 NOAA Atlas 14, Volume 11, Version 2, except in situations where a remedial action design to prevent surcharge during a five-year, six-hour rain event would be detrimental to the operation of the WCTS, in which case the remedial alternatives analysis shall include alternative measures that will be taken to correct the capacity constraints. In each Annual Report, the City shall identify all capacity-related Sewer Segments that were renewed or replaced in the previous year and shall identify all Sewer Segments that are scheduled for renewal or replacement in the following year (Capacity Remedial Summary).

15. The City has developed a four-step process for updating its hydraulic models. Step one includes reviewing the hydraulic model and updating it based on the City's GIS asset database and other operational databases. Step two includes collecting field data to verify the model, including flow monitoring and lift station flow tests. Step three includes validating the data and updating the model network. Step four includes using the field data to calibrate and verify the model results.
16. Based on this four-step process, the City will complete updates to its sanitary sewer system hydraulic models for the WWTPs and associated sewer collection systems within five years after the Effective Date as follows:

Year One - FWSD23, Homestead, Clinton Park, Kingwood, Chocolate Bayou,

Greenridge;

Year Two - Almeda Sims, 69th Street, Southwest, Sims Bayou;

Year Three - Northwest, Upper Brays, West District;

Year Four - Beltway, Imperial Valley, MUD203, Sagemont, Tidwell Timber,
WCID111, WCID76, Westway;

Year Five - Blackhawk, Cedar Bayou, Chelford City, Easthaven, Forest Cove,
Intercontinental, Keegans, MUD48, Metro Central, Northbelt,
Northgate, Park Ten, Southeast, Turkey Creek, Willowbrook,
WCID47, White Oak.

After the initial five-year cycle, the City shall perform an additional sanitary sewer system hydraulic model update to its models within 15 years from the Effective Date.

Wet Weather Facilities

17. This section of the Consent Decree addresses three WWFs. They are (i) the Bretshire WWF that operates under Permit No. TX0063053, (ii) the WWF that operates under 69th Street WWTP Permit No. TX0096172 and is referred to herein as the “Northside” WWF, and (iii) the WWF that operates under Sims Bayou Permit No. TX0105058 and is referred to herein as the “Scott Street” WWF. The City operates the WWFs under the above-referenced Permits. This Section contains remedial measures intended to either eliminate discharges from the WWFs or treat effluent to achieve water quality standards for the receiving stream prescribed by 40 C.F.R. § 122.44(d) and the CWA’s secondary treatment requirements.

Bretshire WWF

18. The City shall eliminate discharges from the Bretshire WWF by the Effective Date.

Scott Street WWF and Northside WWF Pilot Studies

19. The City shall conduct pilot studies to evaluate treatment technology for the Scott Street and Northside WWFs to achieve effluent that meets the water quality standards for the receiving stream and the CWA's secondary treatment requirements.
20. Pilot Studies. The City shall conduct pilot studies (such as, but not limited to, flocculation, filtration, and/or biological treatment) at the Scott Street WWF and the Northside WWF consistent with the requirements and schedule provided below:
 - a. No later than 12 months from the Effective Date, the City shall request from TCEQ a Letter of Authorization (LOA) for each of the pilot studies. In the request for the LOA, City shall describe: each technology being evaluated; the scope of the testing conditions (including the type and frequency of wet weather events necessary for testing); schedules for conducting the study of each technology; all pollutant parameters to be evaluated; water quality standards; secondary treatment performance criteria; schedules for periodic water quality and pollutant sampling; and schedules for periodic sampling and performance reporting to the TCEQ and EPA.
 - b. Within three months from receipt of the City's request for Pilot Studies, TCEQ shall issue a decision on the LOA.
 - c. No more than 30 months from the Effective Date, the City shall begin operation of the authorized pilot-scale treatments at a level scalable to full-size construction.
 - d. The City shall provide periodic written reports to the TCEQ and EPA, according to the timetable specified in the LOA, explaining the status of its

pilot studies and providing the results of all sampling conducted for each pilot-scale treatment.

- e. The City shall respond completely and adequately, as determined by the TCEQ, to all requests for information concerning each pilot study proposal submitted pursuant to this Consent Decree within 30 Days after the date of such requests or by any other deadline specified by the TCEQ in writing.

21. If the EPA and TCEQ do not approve the pilot studies that have been timely proposed by the City within two years from the Effective Date, the City shall eliminate discharges from Scott Street and Northside WWFs in accordance with this paragraph:

- a. Scott Street WWF. No later than four years and six months from the Effective Date the City shall submit to EPA and to TCEQ, for review and approval, a Remedial Measures Plan that includes a proposed schedule to eliminate discharges from the Scott Street WWF. No later than 11 years from the Effective Date, the City shall implement and have fully operational all EPA/TCEQ approved remedial measures for the Scott Street WWF.
- b. Northside WWF. No later than six years and six months from the Effective Date, the City shall submit to EPA and TCEQ, for review and approval, a Remedial Measures Plan that includes a proposed schedule to eliminate discharges from the Northside WWF. No later than 15 years from the Effective Date, the City shall implement and have fully operational all EPA approved remedial measures for the Northside WWF.

22. WWF Pilot Testing Result Report. No later than four years and six months from the Effective Date, the City shall submit a WWF Pilot Testing Result Report, including all sampling results and an analysis comparing the sampling results to the water quality standard limits and secondary treatment performance criteria. EPA and TCEQ shall respond to the WWF Pilot Testing Result Report, within 45 Days, indicating whether any of the piloted technologies meets the water quality standard limits for the receiving stream and secondary treatment performance criteria.
23. WWF Full-Scale Treatment Plan. If EPA and TCEQ concur that pilot studies demonstrate that the water quality standards and secondary treatment performance criteria have been met, the City shall, no later than six months after EPA's response, submit a plan to EPA and TCEQ, for review and approval, indicating how full implementation will occur and providing justification for the proposed implementation schedules.
24. Elimination of Discharge from Scott Street and Northside WWFs. If EPA and TCEQ conclude that the pilot's sampling results do not demonstrate that water quality standards and secondary treatment performance criteria can be met, the City shall eliminate discharges from Scott Street and Northside WWFs in accordance with this Paragraph.
 - a. The City shall continue to use the WWFs as wastewater storage before any discharge would occur and maximize the amount of wastewater flow that receives secondary treatment under this Consent Decree until the discharges are eliminated.
 - b. Scott Street WWF. No later than seven years from the Effective Date, the

City shall submit to EPA, with a copy to TCEQ, for EPA review and approval, a Remedial Measures Plan, including a proposed schedule to eliminate discharges from the Scott Street WWF. No later than 13 years from the Effective Date, the City shall implement and have fully operational all EPA approved remedial measures for the Scott Street WWF.

- c. Northside WWF. No later than 10 years from the Effective Date, the City shall submit to EPA, with a copy to TCEQ, for EPA review and approval, a Remedial Measures Plan, including a proposed schedule to eliminate discharges from the Northside WWF. No later than 15 years from the Effective Date, the City shall implement and have fully operational all EPA approved remedial measures for the Northside WWF.

WCTS Condition Assessment and Remediation

25. The City shall conduct a system-wide inspection and assessment of the structural condition of its Gravity Sewer Mains, manholes, Force Mains, and Lift Stations within the WCTS by implementing the condition assessment requirements of this Subsection. The system-wide inspection and assessment activities are designed to identify defects in the WCTS that have caused or significantly contributed to previous SSOs; and/or, that are likely to cause or significantly contribute to the future occurrence of SSOs.
26. The City shall conduct CCTV inspections of 100 percent of Gravity Sewer Mains and manholes within 10 years from the Effective Date. After the initial ten-year cycle, the City shall perform condition reassessments of no less than 50 percent of Gravity Sewer Mains and manholes within 15 years after the Effective Date. Furthermore, the City shall

conduct CCTV inspections of: (1) no less than 50 percent of the total length of all Gravity Sewer Mains within five years from the Effective Date; and (2) no less than 50 percent of the total number of all manholes within five years of the Effective Date. Furthermore, as part of the Early Year Targeted Cleaning set forth in Paragraph 43(e), the City shall CCTV no less than 1,500 miles of Gravity Sewer Main and inspect all companion manholes within two years from the Effective Date in areas with more than 10 SSOs per square mile. The assessment of the CCTV data and data from other inspection techniques utilized by the City shall be based on industry best practices defined by National Association of Sewer Services Companies (NASSCO), including the Pipeline Assessment and Certification Program (PACP) and the Manhole Assessment and Certification Program (MACP).

27. The City shall prioritize sewer basins for the inspections described in Paragraph 26 based upon the City’s Sewer Basin Prioritization Matrix, which prioritizes the City’s sewer basins based on factors that include, but are not limited to, SSO and stoppage history, as set forth in Appendix D.
28. Inspections of all Gravity Sewer Mains and manholes shall provide the basis for characterizing, using industry-accepted condition rating scoring systems described in this Paragraph and the City’s best professional judgment, the inspected assets into one of five categories designated Category 5 – 1 as follows:

Gravity Sewer Category	Example of Structural Conditions Anticipated for Each Category
NASSCO Grade 5 (Very Poor Condition)	Structural collapse (Deformation > 40 percent), which has or could likely cause SSO; or collapse imminent.

NASSCO Grade 4 (Poor Condition)	Significant missing material or broken material, severe corrosion with exposed pipe wall reinforcement, or pipe wall deformation > 25 percent from structural deterioration.
NASSCO Grade 3 (Fair Condition)	Pipe wall deformation < 25 percent from structural deterioration combined with displaced fractures or moderate corrosion - but no pipe wall reinforcement visible.
NASSCO Grade 2 (Good Condition)	Pipe wall deformation from construction impacts or < 10 percent of diameter from structural deterioration, minor corrosion, slightly open non-displaced fractures, or other moderate material degradation.
NASSCO Grade 1 (Very Good Condition)	No defects or mild defects which may include tight non-displaced cracks or other mild material degradation.

Manhole Category	Example of Structural Conditions Anticipated for Each Category
NASSCO Grade 5 (Very Poor Condition)	Severe structural defects that may include: cracks in walls; loose or missing bricks; or separated/broken casting; indicating potential for structural failure. Severe corrosion in the wall and/or base and broken/missing cover and frame. Active infiltration may be observed.
NASSCO Grade 4 (Poor Condition)	Moderate structural defects that may include: one or two open cracks; four or more closed cracks; loose bricks; separated casting; adjustment beginning to fail; signs of leakage through adjustment; or damaged cover and frame. Active infiltration may be observed. Moderate defects may include loose casting, moderate corrosion of metal surfaces, deterioration of concrete mortar between bricks, moderate deterioration of precast wall sections, and precast joint defects.
NASSCO Grade 3 (Fair Condition)	Minor structural defects. Nominal defects may include: two or three closed cracks; loose casting; nominal corrosion of metal surfaces; no active leaks or structural failure in adjustment; signs of past infiltration; or minor deterioration of concrete mortar between bricks or concrete walls.
NASSCO Grade 2 (Good Condition)	No significant structural defects. Conditions may include: a single closed crack; no signs of leakage in adjustment; minor frame/cover defects; or minor manhole corrosion.
NASSCO Grade 1 (Very Good Condition)	New manhole or older manhole with no structural defects, no adjustment leakage or structural damage, no defects in frame/cover, only cosmetic manhole wall defects observed, if any.

29. Gravity Sewer Mains or manholes discovered to be rated as Category 4 and 5 shall go into the City’s Remedial Measures Alternatives Analysis process, where the City determines the most practical solutions for resolving defects and the timetable for implementing those solutions considering the long-term performance.

30. The City shall additionally CCTV no less than 30 percent of all Preventive Cleaning to track the effectiveness of the Preventive Cleaning program in Paragraph 43(d) and to characterize assets as specified in Paragraph 28.
31. The City shall inspect Force Mains on a balanced annual basis so that all Force Mains are inspected at least once every 10 years from the Effective Date. During the inspections, the City shall assess each Force Main by reviewing past maintenance records, noting the age or installation date, physically examining the air- or vacuum-release valves, and visually inspecting the ground surface over the entire length of the Force Main, to the extent practicable.
32. The City shall inspect Lift Stations on a balanced annual basis so that all Lift Stations are inspected at least once every 10 years from the Effective Date. However, due to the impacts of Hurricane Harvey during August 2017, the initial ten-year inspection may be front loaded with inspections and assessments conducted primarily during the first three years from the Effective Date. The Lift Station inspections shall include review of the following:
 - i. Maintenance records;
 - ii. SSOs;
 - iii. Lift Station equipment, including Lift Station mechanical, electrical, structural, and supervisory control and data acquisition (SCADA) components; and
 - iv. Lift Station power sources, including on-site alternate power equipment, redundant power supplies and power switch over systems, where

applicable.

33. The City shall prioritize Lift Stations for the inspections described in Paragraph 32 based upon the City's Lift Station Prioritization Matrix as set forth in Appendix D, which prioritizes the City's Lift Stations based on factors that include, but are not limited to, likelihood and potential consequences of Lift Station failure.
34. In each Annual Report, the City shall document the inspection and Condition Assessment activities (Condition Assessment Summary) undertaken by providing a summary of identified Category 1 through 5 Gravity Sewer Mains and manholes, as well as defects identified during the inspections of Force Mains and Lift Stations. Additionally, the City shall provide a list and locational map of identified Category 4 and 5 Gravity Sewer Mains and manholes. The Condition Assessment Summary shall include the Gravity Sewer Main mileage and the number of manholes, Force Mains, and Lift Stations that will be remediated.
35. Following completion of the condition assessment, the City shall evaluate potential remedial measures that are required to resolve condition defects identified as Categories "4" or "5". Such remedial measures may include:
 - i. Point repairs
 - ii. Rehabilitation
 - iii. Pipe, manhole, Force Main, or Lift Station replacement
 - iv. Other remediation techniques (such as new technologies or methods that may become available)
 - v. Monitoring or maintenance analysis

36. Beginning upon the Effective Date, the City shall annually rehabilitate/renew or replace no less than 2.5 percent of all Gravity Sewer Mains, including associated manholes that have been identified in the Condition Assessment Summary pursuant to Paragraph 34. At the time of Date of Lodging, 2.5 percent of all Gravity Sewer Mains is equal to approximately 150 miles.
37. Beginning upon the Effective Date, the City shall annually rehabilitate or replace no less than 5 percent of all Lift Stations. At the time of Date of Lodging, 5 percent of all Lift Stations is equal to approximately 18.
38. In each Annual Report, the City shall identify all condition remedial measures that were completed for the previous year and condition remedial measures that are scheduled for the following year (Condition Remedial Summary). The Condition Remedial Summary shall provide a list and locational map of completed remedial measures of Force Mains, Lift Stations, and Category 4 and 5 Gravity Sewer Mains and manholes. The Condition Remedial Summary shall also include the Gravity Sewer Main and Force Main mileage, and the number of manholes and Lift Stations that were rehabilitated/renewed or replaced for the previous year and that will be rehabilitated/renewed or replaced in the following year.

WWTP Assessment and Remediation

39. The City shall address the effluent limit exceedances from the WWTPs specified in Appendix E. The City has conducted root cause analyses for each of the effluent limit exceedances from these WWTPs. As a result, the City has implemented operational changes to address the effluent violations and/or has identified remedial projects to

correct deficiencies, which are included in the Early Action Projects, Appendix B. The City shall implement the remedial projects for each WWTP identified in the Early Action Projects as specified in Paragraph 11(d).

40. The City shall implement a routine system of operations and maintenance performance evaluations for each WWTP. The initial evaluation shall be conducted for each WWTP within five years. The evaluation report shall assess the capability of the WWTPs to function in accordance with their Permits during the following five-year period.

The report shall:

- a. Evaluate the physical condition of each WWTP and the effectiveness of the operation and maintenance program.
- b. Identify physical, capacity, performance, and operation and maintenance issues which require immediate attention.
- c. Provide recommendations and schedules for corrective actions that shall be performed as identified in the Annual report.

The City shall maintain an evaluation checklist and supporting documentation to assist in preparing the evaluation report. WWTP rehabilitation/renewal, if necessary, shall be based on the findings and results of these evaluations.

41. The City shall make repairs or implement operational changes as soon as technically and operationally practicable, as necessary and where appropriate, to address effluent limit exceedances at all the WWTPs.

Capacity, Management, Operations and Maintenance Program

42. Upon the Effective Date, the City shall implement its existing Standard Operating

Procedures (“SOPs”) for WCTS operation and maintenance activities including Small and Large Diameter Gravity Sewer inspection and cleaning, manhole inspection and repair, Lift Station inspection and repair, conducting sanitarian inspections of food service establishments, and SSO investigation and response.

43. Thereafter the City shall develop a written CMOM Program Plan as detailed in this Paragraph. The City’s CMOM Program Plan will incorporate the elements listed in this Paragraph, which are consistent with EPA’s 2005 Guidance entitled “Guide for Evaluating Capacity, Management, Operation, and Maintenance Programs at Sanitary Sewer Collection Systems.” This CMOM Program Plan shall be submitted to EPA, with a copy to TCEQ, for EPA review and approval, within one and a half years of the Effective Date. Except as may otherwise be provided, each element of the CMOM Program Plan shall be implemented as soon as practicable and all elements shall be implemented no later than one year after receipt of EPA approval regarding the CMOM Program Plan. WCTS activities required under the CMOM Program Plan shall be coordinated with other activities of this Consent Decree as appropriate. The CMOM Program Plan shall include the following:

- a. A Strategic Asset Management program to be implemented within two years from the Effective Date. The Strategic Asset Management Program shall include the City’s WCTS component and equipment inventory and shall include information obtained during cleaning activities, condition and capacity assessments and rehabilitation activities that are used to update asset inventory. The City shall utilize this program to support the decision-making

process in prioritizing sewer basins for assessment and rehabilitation/renewal, replacement and consolidation.

- b. Advanced Infrastructure Analytics Platform (AIAP). Within two years from the Effective Date, the City shall implement its AIAP. The AIAP integrates citywide wastewater system hydraulic models, infrastructure asset inventory and condition, historical Capital Improvement Plan (CIP), projected regional growth, and operational databases regularly maintained by the City. The integrated platform will be used to develop effective operational and CIP plans for wastewater infrastructure. It will also be used to establish interactive key performance indicators (KPIs) and management reports on demand. The AIAP tools include statistical analytical results from the wastewater infrastructure models with SCADA, level monitoring, flow monitoring, and rainfall data, and shall be used to identify, respond to, and help to prevent SSOs from occurring in the wastewater collection system. Upon full integration of capacity, condition and work order management systems in the AIAP, the needs for infrastructure assets (pipes and facilities) will be identified and prioritized for developing a balanced CIP and operation and maintenance plan/projects.
- c. Program Cleaning. Program Cleaning is the process of routinely removing debris from the interior of the pipe. The City shall clean all Small Diameter Gravity Sewer Mains within the WCTS within 10 years from the Effective Date. All Large Diameter Gravity Sewer Mains within the WCTS shall be

inspected within 10 years from the Effective Date. The City shall clean each Large Diameter Gravity Sewer Segment that the City determines, based on inspection results and other analysis, to have a maximum depth of debris in any part of that Sewer Segment that exceeds 20 percent of the Sewer Segment's height. After the initial 10-year cycle, the City shall perform program cleaning of no less than 50 percent of Gravity Sewer Mains and manholes within 15 years from the Effective Date.

- d. Preventive Cleaning. Preventive Cleaning is the process of cleaning the same pipe segment more often than Program Cleaning due to a higher rate of debris accumulation. Preventive Cleaning shall target areas identified through analysis of the WCTS including reoccurrence of SSOs, SSO causes, and selection of areas with multiple FOG generators. The City shall annually clean no less than 275 miles of Small Diameter Gravity Sewer Mains in addition to Program Cleaning.
- e. Early Year Targeted Cleaning. Within two years of the Effective Date, the City shall clean no less than 1,500 miles of Gravity Sewer as part of Early Year Targeted Cleaning. The Early Year Targeted Cleaning shall consist of Program Cleaning in areas that have experienced more than 10 SSOs per square mile as well as Preventive Cleaning. The City may count Early Year Targeted Cleaning to comply with the Program Cleaning and Preventive Cleaning requirements, as applicable.
- f. Root Control. As part of the Gravity Sewer Main Condition Assessment

described under Paragraphs 25, 26 and 30 of this Consent Decree and CMOM activities, the City shall identify and expeditiously remove root intrusions to minimize hydraulic capacity loss and prevent future blockage. The City may remove roots through application of chemical root growth inhibitors or by mechanical means. In each Annual Report, the City shall describe its yearly root control activities, including a map identifying Sewer Segments where root control activities were conducted.

- g. A FOG Program with the goal of eliminating FOG-related SSOs in the WCTS. The City has implemented and shall continue to implement its FOG Program that includes, at a minimum, the following elements related to FOG Generators:
 - i. Specific requirements for the installation and maintenance of FOG interceptors at new commercial, institutional and industrial facilities that discharge FOG to the WCTS. Specific requirements for the installation and maintenance of FOG interceptors at existing commercial, institutional and industrial facilities when those facilities undergo modification(s) that trigger the local ordinance's permitting requirements;
 - ii. An ongoing FOG communication and response process that (1) investigates FOG SSOs by engaging City departments or staff responsible for FOG investigations or industrial pretreatment; (2) identifies practicable remedial actions to be taken by the City or

FOG Generators to address identified FOG discharges or locations within the WCTS where FOG accumulation caused an SSO; and, (3) facilitates communication and prioritization strategies between different departments or staff responsible for implementing the FOG program;

- iii. A tiered FOG Generator interceptor inspection program based upon compliance histories that requires routine internal inspection of FOG interceptors no less often than once every three years. The City shall also continue its practice of conducting sanitarian inspections of food service establishments, which include review of FOG Generator compliance documentation;
- iv. Guidance and standards for FOG Generators to comply with local FOG ordinances;
- v. FOG program effectiveness metrics and measures that shall include an analysis of FOG-related blockages and SSOs;
- vi. FOG disposal manifest program to document transportation and disposal of FOG;
- vii. The ability to make all modifications to local regulations, including Art. XI, Ch. 47 of the Code of Ordinances, Houston, Texas (“Transportation and Treatment of Certain Wastes”), which includes enforcement mechanisms and procedures for addressing non-compliant FOG Generators;

- viii. Educational efforts aimed at FOG Generators and if appropriate, residential customers of the Sewer System; and
- ix. A list of FOG generators that discharge FOG into the WCTS that is updated annually.
- h. A list of categories of employees that require training and a list of specific training for each category of employee directly related to operation and maintenance of the WCTS, for the purpose of responding to and preventing SSOs, including identification of the types of training records that the City maintains and of the information management systems used to plan and document completed training.
- i. The Parties acknowledge the City has authority to address Private Laterals that cause or threaten to cause an unauthorized discharge to the City's MS4, the WCTS, or waters of the United States or waters in the State of Texas, pursuant to City Code chs.10 and 47.
- j. To address a wastewater release that impacts or threatens to impact the City's MS4 or waters of the United States or waters in the State of Texas from a Private Lateral caused by blockages, flow conditions, or other malfunctions of that Private Lateral of which the City has become aware, the City shall:
 - i. Provide either verbal information (if the owner of the Private Lateral is present) or leave a "door hanger"-style written notice at the property. The information whether written or verbal shall inform the owner to contact a plumber to resolve the defective Private Lateral.

- ii. Houston Public Works (HPW), its responsible branch, department or successor shall electronically notify the Houston Health Department (HHD) of the defective Private Lateral.
 - iii. HHD shall dispatch an investigator to the location of the defective Private Lateral. If the defective Private Lateral has not been addressed by the owner when the HHD inspector conducts his/her inspection, HHD shall inform the owner to hire a plumber to correct the defective Private Lateral.
 - iv. HHD shall re-inspect to confirm that the defective Private Lateral has been corrected by the owner. If the defective Private Lateral has not been corrected, the City may pursue any of its enforcement options allowed by law.
- k. To address defective Private Laterals that are found to significantly contribute I/I to a capacity constraint, the City shall:
- i. Provide either verbal information (if the owner of the Private Lateral is present) or leave a “door hanger”-style written notice at the property. The information, whether written or verbal, shall inform the owner to contact a plumber to resolve the defective Private Lateral.
 - ii. HPW shall electronically notify the City’s Building Code Enforcement Branch (BCE), its responsible branch, department or successor of the defective Private Lateral.

- iii. BCE shall dispatch an investigator to the location of the defective Private Lateral. If the defective Private Lateral has not been addressed by the owner prior to the BCE investigator's inspection, BCE shall inform the owner to hire a plumber to correct the defective Private Lateral.
 - iv. BCE shall re-inspect to confirm that the defective Private Lateral has been corrected by the owner. If the defective Private Lateral has not been corrected, the City may pursue any of its enforcement options allowed by law.
- 44. The City has developed and begun to implement an SSO Response Plan ("SSORP") to expedite the response to SSOs.
 - a. The SSORP includes the following objectives:
 - i. Response and halting SSOs as rapidly as practicable, including Building/Private Property Backups. The City shall respond within an average of four hours after it becomes aware of an SSO, but not longer than eight hours;
 - ii. Appropriate response and remediation of SSOs to minimize potential health hazards and adverse environmental impacts; and,
 - iii. Appropriate measures implemented to prevent SSO recurrence, including identifying and mitigating the cause of the SSO.
 - b. The SSORP includes the following information:
 - i. A description of the actions the City will undertake to provide notice to

- the public of each SSO from the WCTS when such notice is required by Permits or applicable law;
- ii. A description of the actions the City will undertake to provide notice to any applicable government authorities of an SSO from the WCTS when such notice is required by Permits or applicable law;
 - iii. A description of procedures to minimize the volume of untreated wastewater discharging that is associated with an SSO;
 - iv. A description of procedures for responding to a Building/Private Property Backup, including:
 1. A description of methods for communicating with customers where Building/Private Property Back-ups have occurred;
 2. A description of procedures for customers to report Building/Private Property Backups; and
 3. A description of procedures for customers to obtain assistance with property clean-up.
 - v. Identification of location(s) within the service area of each Lift Station where SSOs are first likely to occur in the event of a failure of that Lift Station;
 - vi. A description of SSO response procedures that are specific to each Lift Station, including alternative pumping strategies, critical wet well levels and operation of emergency power system; and
 - vii. A description of procedures for responding to and resolving SSOs that

occur at Gravity Sewers Mains or Force Mains.

45. The City has developed certain SOPs for general operation and maintenance of components of the WCTS, including Gravity Sewer Mains, manholes, Lift Stations, Force Mains, and other major ancillary facilities. The City shall enhance existing and/or develop new SOPs as necessary to assist it with implementation of this Decree, including major work tasks required for the operation and maintenance of the WCTS related to the Decree as shown in the List of Houston SOPs Appendix F. If substantial updates to SOPs are made, the City shall submit, electronically or otherwise, such updated SOPs to EPA, with a copy to TCEQ, as part of the Annual Report. EPA reserves the right to comment on SOPs.

Advanced Sewer System Monitoring

46. The City shall expand its current network of approximately 300 manhole sewer level remote monitoring devices by completing installation of no less than 3,000 additional manhole sewer level remote monitoring devices across the WCTS within five years of the Effective Date. The devices shall monitor wastewater levels and shall be designed and capable of sending real-time alerts when specified thresholds are exceeded, thereby improving responsiveness and operations with the goal of preventing SSOs from occurring. The City shall maintain at least 3,000 remote monitoring devices for a period of four years after installation and shall evaluate the benefits of this technology and other remote wastewater detection technologies to increase efficiency in SSO prevention and hydraulic modeling efforts. After the evaluation, the City shall continue remote

monitoring of sewer levels at locations where it deems appropriate, with the goal of reducing SSOs.

SECTION VI. CIVIL PENALTY

47. Within 60 Days after the Effective Date of this Consent Decree, the City shall pay the sum of \$4,400,000 as a civil penalty. Of this amount, \$2,200,000 shall be payable to the United States as a civil penalty and \$2,200,000 shall be payable to the State as a civil penalty as set forth below.
48. In the event that full cash payment to the United States or the State is not made within 60 Days after the Effective Date of this Consent Decree, the City shall pay to the United States interest on the balance due from the original due date to the date of full payment, at the rate calculated pursuant to 28 U.S.C. § 1961, and shall pay to the State interest on the balance due from the original due date to the date of full payment, at the rate calculated pursuant to Texas Finance Code § 304.003.
49. Payment shall be made by FedWire Electronic Funds Transfer (EFT) to the U.S. Department of Justice in accordance with instructions to be provided to the City by the Financial Litigation Unit of the U.S. Attorney's Office for the Southern District of Texas. At the time of payment, the City shall simultaneously send written notice of payment identifying the payment as a civil penalty and a copy of any transmittal documentation (which should reference DOJ case number 90-5-1-1-08687/1 and the civil action number of this case) to the United States in accordance with Paragraph 123 of this Decree (Notices).

50. The City shall make payment directed to Texas by this Consent Decree as follows: the City shall pay Texas by wire transfer to the Texas Comptroller of Public Accounts – Federal Reserve Clearing Account for the Office of the Attorney General:

Financial Institution (short name):	TX COMP AUSTIN
Routing Number:	114900164
Account Name:	Comptroller of Public Accounts Treasury Operations
Account Number to Credit:	463600001
Reference:	City of Houston, Texas AG Case # CX3618358233 Priscilla M. Hubenak, Chief, Environmental Protection Division MC-066
Attention	Office of the Attorney General, Kristy Lerma, Financial: Rptg

51. At the time of payment, the City shall send a copy of the wire transfer authorization form and the wire transaction record, together with a transmittal letter, which shall state that the payment is for the Civil Penalty and Attorney’s Fees owed pursuant to the Consent Decree in the United States et. al v. City of Houston, and shall reference the civil action number and Reference: AG # CX3618358233 to Texas in accordance with Section XVIII (Notices).

SECTION VII. ATTORNEY’S FEES

52. The City shall pay Texas \$200,000 in attorney’s fees within 60 Days after the Effective Date of the Consent Decree. The City shall make full payment of this amount in accordance with Paragraphs 50 and 51 of this Consent Decree.

SECTION VIII. REVIEW OF DELIVERABLES

53. Each Deliverable is subject to review by EPA. For any Deliverables due to EPA under this Consent Decree, the City shall concurrently provide a copy of the Deliverable to TCEQ at the time that such Deliverable is submitted to EPA. Select Deliverables are subject to review and approval, as detailed in Paragraph 54 below. All other Deliverables are subject to review and comment, as detailed in Paragraph 55 below. Select Deliverables are subject only to EPA review, as detailed in Paragraph 56 below.
54. Deliverables Subject to Review and Approval. The Capacity Remedial Measures Plan(s), the TCEQ Letter of Authorization request, the WWF Pilot Testing Result Report, the WWF Full Scale Treatment Plans, the Scott Street WWF Remedial Measures Plan, the Northside WWF Remedial Measures Plan, and the CMOM Program Plan shall be subject to the review and approval process described in Paragraph 57 below. During the review of the Capacity Remedial Measures Plan(s), EPA will consider all factors used by the City in the development of the Capacity Remedial Measures Plan(s).
55. Deliverables Subject to Review and Comment. The Annual Reports shall be subject to Review and Comment, as detailed in Paragraph 58.
56. Other Deliverables. All other Deliverables required under this Consent Decree, including Monthly SSO Summary Reports, and any substantial updates to SOPs for general operation and maintenance of the WCTS submitted as part of the Annual Reports, are subject to EPA review at its option.
57. EPA Action on Deliverables Subject to Review and Approval. After review of any Deliverable that is required to be submitted pursuant to Paragraph 54 and after

consultation with TCEQ, EPA shall in writing: (i) approve the Deliverable, in whole or in part; (ii) approve the Deliverable upon specified conditions; (iii) disapprove the Deliverable, in whole or in part, providing comments identifying deficiencies and directing the City to modify the Deliverable, in whole or in part; or, (iv) any combination of the above.

- a. Approved Deliverables. If a whole Deliverable is approved by EPA pursuant to Paragraph 57, 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 approved only in part pursuant to Paragraph 57, the City shall, upon written direction from EPA, after consultation with TCEQ, take all actions required by the approved Deliverable that EPA, after consultation with TCEQ, determines are technically severable from any disapproved portions, subject to the City's right to dispute severability, the specified conditions, or the disapproved portions, under Section XII (Dispute Resolution) of this Decree. 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 Consent Decree.
- b. Disapproved Deliverables. If the Deliverable is disapproved in whole or in part pursuant to Paragraph 57, the City shall, within 60 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 Paragraph 57, and subject to Subparagraph d. If the resubmission is approved in

whole or in part, the City shall proceed in accordance with Subparagraph d. For any Deliverable that is disapproved in whole or in part, EPA shall provide a written explanation of how the Deliverable does not meet the requirements of the Consent Decree.

- c. Stipulated Penalties Accruing. Any Stipulated Penalties applicable to the original Deliverable, as provided in Paragraph 85 (Stipulated Penalties) of this Decree, shall accrue during the 60 Day period or other specified period, but shall not be payable unless the resubmitted Deliverable is untimely or is disapproved in whole or in part. 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.
- d. Resubmitted Deliverable. If a resubmitted Deliverable, or portion thereof, is disapproved in whole or in part, EPA, after consultation with TCEQ, may again require the City to correct any deficiencies, in accordance with this Subparagraph. If, upon resubmission, a Deliverable is disapproved or modified in whole or in part by EPA, after consultation with TCEQ, due to a material defect previously identified and not corrected, the City shall be deemed to have failed to submit the Deliverable timely and adequately unless the City invokes the dispute resolution procedures set forth in Section XII (Dispute Resolution), and (i) EPA agrees to modify their earlier position or (ii) the Court adopts the City's position. If EPA's disapproval is upheld by the Court, Stipulated Penalties shall accrue for such

violation from the date on which the initial Deliverable was originally required.

Upon EPA's approval of the City's resubmitted Deliverable, that Deliverable will be incorporated into and become enforceable under this Consent Decree and shall be implemented by the City according to the approved schedule subject to the City's right to invoke Dispute Resolution.

58. Deliverables for Which EPA Provides Written Comments. EPA may choose to provide written comments on the Deliverables subject to Paragraph 55. If EPA provides comments that identify deficiencies in such a Deliverable, and EPA specifically requests a response from the City, then the City shall provide a written response to EPA within 60 Days of receipt of such request.
59. Public Document Repository. The City shall post to its website all final EPA-reviewed and/or EPA-approved plans, reports, or other submissions required by Section V (Compliance Requirements) and Section IX (Reporting Requirements). Each submission shall remain on the website or by link or other accepted method for at least three years.

SECTION IX. REPORTING REQUIREMENTS

60. Provisions applicable to all Deliverables:
- a. All Deliverables shall be certified in accordance with Paragraph 111 (Certification) of this Consent Decree.
 - b. All Deliverables shall be submitted electronically in a searchable format.
 - c. All Deliverables shall be submitted to the persons designated in Paragraph 123 (Notices) of this Consent Decree.
 - d. The reporting requirements of this Consent Decree do not modify in any way or

relieve the City of any reporting obligations required under the CWA or its implementing regulations or any other federal, state, or local law, regulation, permit or other requirement.

- e. If a due date for an action or Deliverable falls on a Saturday, Sunday, or a Federal, State, or City holiday, then the required information or action is due on the next business day.

61. Monthly SSO Reporting. Beginning 45 Days after the Effective Date, the City shall provide a monthly SSO summary report in tabular format addressing the SSOs that occurred the previous month and shall continue providing monthly SSO summary reports over the term of this Consent Decree. The monthly SSO summary reports shall be submitted within 30 Days of the end of each reporting month and shall be consistent with the monthly report provided to TCEQ so long as it includes the following for each SSO:
- a. Location of the SSO by street address, asset identification number or any other appropriate method (e.g., by latitude and longitude);
 - b. SSO route including whether the SSO entered the storm sewer, drainage ditch, surface water (bayou), or was contained on site;
 - c. An estimate of the volume (in gallons) of wastewater lost in the SSO;
 - d. Description of the WCTS component from which the SSO occurred (e.g., manhole, Gravity Sewer Main, pump station wet well);
 - e. Number of fish kill occurrences caused by SSOs, if any;
 - f. Cause(s) or suspected cause(s) of the SSO;

- g. Estimated date and time when the SSO began and stopped and the average SSO gallons per minute (gpm) discharged;
 - h. Description of corrective action taken to mitigate adverse impact of SSO;
 - i. Indication of notifications to the public and other agencies or departments, as required by law or regulation; and
 - j. Any report by the City asserting that an SSO, WWF effluent or WWTP effluent violation is not a violation pursuant to TWC Section 7.251.
62. Annual Reports. On October 31 following each Fiscal Year over the term of this Consent Decree, and until this Consent Decree is terminated, the City shall submit to EPA, with a copy to TCEQ, an Annual Report. The Annual Report shall generally conform to the Annual Report Template provided in Appendix G, and contain all the information required under Paragraphs 11, 12-14, 16, 18-24, 25-38, 39-41, 43-44, 46, 63-74, 75-76, and 131. All Annual Reports shall be submitted to EPA for review and comment.
63. SSO Reporting. A tabular or graphic summary of the following SSO information:
- a. Total number of SSOs during the previous Fiscal Year and annual total number of SSOs for up to the previous 10 Fiscal Years after the Effective Date;
 - b. Total number of SSOs during the previous Fiscal Year categorized by cause, such as grease, roots, lift station failure, capacity constraint;
 - c. Total SSO discharge volume during the previous Fiscal Year and annual total SSO discharge volume for up to the previous 10 Fiscal Years after the Effective Date;

- d. Total number of media reports issued during the previous Fiscal Year;
 - e. Total number of locations where “repeat SSOs” occurred during the previous Fiscal Year (for purposes of this section, “repeat SSO” is defined as an SSO that occurred at the same Pipe Segment within the past 24 months) including the date of the last SSO that occurred at the same location; and
 - f. Any report by the City asserting that an SSO, WWF effluent or WWTP effluent violation is not a violation pursuant to TWC Section 7.251.
64. Early Action Program. A tabular summary of the status of each Early Action Project as of the end of the Fiscal Year.
65. CMOM - FOG Program. A tabular summary of the total number of permitted FOG Generators, FOG program interceptor inspections, number of FOG Generators that have not been inspected during the previous three Fiscal Years, and enforcement or compliance assistance actions taken during the previous Fiscal Year.
66. CMOM - Sewer Cleaning. A tabular summary of total WCTS Small and Large Diameter Gravity Sewer Main miles, miles of Gravity Sewer Mains inspected and/or cleaned as part of Program Cleaning, miles of Gravity Sewer Mains cleaned as part of Preventive Cleaning, and percent of Small and Large Diameter Gravity Sewer Mains cleaned during the previous Fiscal Year. During the first two years of the Consent Decree, Early Year Targeted Cleaning results will also be reported in this section of the Annual Report.
67. CMOM - Private Laterals. A tabular summary regarding Private Lateral wastewater releases that impact or threaten to impact the MS4 or waters of the United States or waters in the State of Texas due to blockages, flow conditions, or other malfunctions of

that Private Lateral. The tabular summary shall provide the following information regarding each Private Lateral addressed pursuant to Paragraph 43(j) and (k): location of Private Lateral and the date of the wastewater release. A second tabular summary shall provide the following: number of Private Laterals remediated as a result of a notification (verbal or written); number of Private Laterals remediated as a result of inspections conducted by HHD or BCE; number of Private Laterals remediated as a result of an assessment of a fine; number of Private Laterals remediated as a result of suspension of city water or sewer service; and number of Private Laterals not remediated despite City efforts.

68. Capacity Assessment and Rehabilitation. Identify the status of and progress made in the previous year toward completing the remedial measures identified in the Capacity Remedial Measures Plan(s). A list of assets that meet the criteria specified in Paragraph 13 of the Consent Decree regarding potential capacity constraints and specify the reason the location meets the criteria. A list and map of new areas with capacity constraints, remedial alternative analysis for each new area, remedial action taken or to be taken along with a timeline for completion of each remedial action. Identify all capacity-related Sewer Segments that were renewed or replaced in the previous year, all Sewer Segments that are scheduled for renewal or replacement in the following year, and provide a list of sanitary sewer system hydraulic models updated during the previous year.
69. Condition Assessment and Rehabilitation. A tabular summary of Gravity Sewer Mains and manholes inspected with corresponding NASSCO grades (1-5), as well as any defects identified during inspections of Force Mains and Lift Stations; a list of identified

Category 4 and 5 Gravity Sewer Mains and manholes; and a tabular summary of the mileage of Gravity Sewer Mains and Force Mains and number of Lift stations to be inspected in the upcoming year.

70. Completed Condition Remedial Measures. A tabular summary of condition remedial measures completed pursuant to Paragraph 38 during the previous Fiscal Year showing the following remediation figures: miles of Gravity Sewer Mains, number of manholes, miles of Force Mains, and number of Lift Stations.
71. Completed Capacity Remedial Measures. A tabular summary of capacity remedial measures completed pursuant to Paragraphs 12, 13, and 14 during the previous Fiscal year showing the following remediation figures: miles of Gravity Sewer Mains, number of Force Mains, number of Lift Stations.
72. WWTP Corrective Actions. A tabular summary of WWTP corrective actions scheduled and WWTP corrective actions completed pursuant to Paragraphs 40 and 41.
73. Wet Weather Facilities. A summary of all activities performed in the previous Fiscal Year pursuant to Paragraphs 18 - 24 of the Consent Decree regarding the Wet Weather Facilities, including, as appropriate, a summary of pilot study activities, LOA activities, sampling results and analysis, status of Pilot Testing Result Report, status of Full-Scale Treatment Plan, and status of the Remedial Measures Plan. The City shall specify any non-effluent maintenance-related permit violations involving the WWFs. After any applicable deadline specified in Paragraphs 21 and 24, the City shall provide the number of discharges from the Scott Street WWF.

74. Inaccessible/nonexistent Sewer Assets. A list identifying assets within the Sewer System that the City was unable to inspect or clean because the asset was inaccessible, nonexistent, or not located.
75. Modifications. A summary of written agreements pursuant to Paragraph 131 during the previous Fiscal Year.
76. Standard Operating Procedures. Copies of SOPs that were substantively modified in the previous Fiscal Year, if any, as described in Paragraph 45 of the Consent Decree.
77. The City shall not object to the authenticity of any certified Annual Report that it submits in any proceeding brought to enforce this Consent Decree.

SECTION X. STIPULATED PENALTIES

78. The City shall be liable for stipulated penalties as specified in this Section for violations of the items listed below in this Section, upon demand. Stipulated penalties due and owing under this Paragraph shall be paid in the manner specified in Paragraphs 89-90 below. Stipulated penalties for which a demand has been made and are due and owing shall be paid unless excused under Section XI (Force Majeure) or the terms of this Section.
79. Failure to pay Civil Penalty. If the City fails to pay the civil penalty required under Section VI of this Decree when due, then stipulated penalties of \$2,000 per Day may be assessed against the City by the Plaintiffs for each Day the payment is late.
80. Failure to meet WWTP effluent limitations set in the City's Permits. If the City exceeds the WWTP effluent limits set in its Permits, then the following stipulated penalties may

be assessed by Plaintiffs, except for permit #TX0096172 regarding the copper effluent limit, and permit #TX0105058 for two-hour peak flow:

Effluent Limitation	Penalty per Exceedance
Daily effluent limitation	\$1,000
Seven-day average effluent limitation	\$2,000
Monthly average effluent limitation	\$5,000

81. Failure to meet a WWF non-effluent maintenance-related requirement set in the City’s Permits. If the City does not meet a WWF operational requirement for Outfall 002 set forth in TPDES/NPDES Permit Nos. TX0096172 or TX0105058, then Plaintiffs may assess a \$1,000 stipulated penalty per exceedance or other failure (e.g., the City does not provide a minimum chlorine dosage, the City does not comply with requirement to drain, clean and temporarily remove the WWF from service within 48 hours after a discharge event).

82. WWF Discharges that occur after a compliance deadline. In the event a WWF experiences a discharge after a compliance deadline specified in Paragraphs 21(a) and 24(b) the following stipulated penalties may be assessed by Plaintiffs:

WWF Discharge occurring after compliance deadline	Penalty per WWF Discharge per Day
1 st year in which any such discharge occurs from that WWF	\$20,000
2 nd year in which any such discharge occurs from that WWF	\$40,000
3 rd year in which any such discharge occurs from that WWF	\$60,000
4 th and later years in which any such discharge occurs from that WWF	\$100,000

83. SSOs discharging into or adjacent to waters. For each SSO that discharges to either waters of the United States or into or adjacent to Waters in the State of Texas, the following stipulated penalties may be assessed by Plaintiffs.

If SSO occurs	<u>Penalty per SSO per Day</u>
Within four years from the Effective Date	\$500
More than four years from the Effective Date	\$1,000
More than seven years from the Effective Date	\$2,500
More than 10 years from the Effective Date	\$3,000

84. SSOs that do not reach into or adjacent to waters. For each SSO that does not reach either waters of the United States or into or adjacent to Waters in the State of Texas, the following stipulated penalties may be assessed by Plaintiffs.

If SSO occurs	<u>Penalty per SSO per Day</u>
Within five years from the Effective Date	\$300
More than five years from the Effective Date	\$1,000
More than nine years from the Effective Date	\$1,500

85. Failure to submit timely and/or complete Deliverables. For each Day the City fails to submit and/or complete any Deliverables required under Section V of this Consent Decree by the specified due dates, stipulated penalties may be assessed by the Plaintiffs. If a due date falls on a Saturday, Sunday, Federal, State, or City holiday, the due date

shall be the following business day. The stipulated penalties for failure to meet each Deliverable submission date shall be as follows:

Period of noncompliance	Penalty per violation per Day
1 st to 30 th Day	\$500
31 st to 60 th Day	\$1,000
61 st Day to 90 th Day	\$2,000
Beyond the 90 th Day	\$2,500

86. Failure to implement and complete Compliance Requirements in Section V. The Plaintiffs may assess stipulated penalties as set forth below for each Day the City fails to satisfy any of the following remedial requirements: Early Action Projects referenced in Paragraph 11; capacity requirements referenced in Paragraphs 12, 13, 14 and 16; condition requirements referenced in Paragraphs 26, 30, 31, 32, 36 and 37; and CMOM requirements referenced in Paragraph 43(c), (d), and (e) (Program Cleaning, Preventive Cleaning and Early Year Targeted Cleaning). The stipulated penalties for failure to meet each remedial requirement shall be as follows:

Period of noncompliance	Penalty per Day
Days 1-30	\$1,000
Days 30-60	\$2,500
Days 61-180	\$3,500
More than 180 Days	\$4,500

87. 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 Consent Decree. The City shall pay any stipulated penalty within 60 Days of receiving a written demand from the United States and/or the State. Prior to either Plaintiff making a written demand for stipulated penalties pursuant to this Paragraph, the Plaintiffs shall consult.

Where the Plaintiffs jointly pursue stipulated penalties that accrue pursuant to any Paragraph(s) in this Section, the City shall pay 50 percent of the total penalty owed to the United States and the remaining 50 percent of the total penalty owed to Texas. Where only one Plaintiff, the United States or Texas, pursues stipulated penalties, only that Plaintiff shall recover the full amount of the penalty accrued pursuant to the Paragraph(s) invoked, and the Plaintiff not joining in the pursuit of stipulated penalties shall be deemed to have waived such penalties. The Plaintiff independently making a demand for payment of stipulated penalties shall concurrently send a copy of the written demand to the other Plaintiff.

88. Stipulated penalties shall continue to accrue as provided in Paragraph 87 above, during any Dispute Resolution subject to the provisions set forth below, with Interest on accrued penalties payable and calculated at the rate established by the Secretary of the Treasury, pursuant to 28 U.S.C. § 1961, but need not be paid until the following:
 - a. If the dispute is resolved by agreement or by a decision of the United States and/or Texas that is not appealed to the Court, the City shall pay accrued penalties determined to be due and owing, together with Interest, to the United States

and/or Texas within 60 Days of the effective date of the agreement or the receipt of the United States' or Texas's written decision or order;

- b. If the dispute is appealed by the City to the Court and the United States and/or Texas prevails in whole or in part, the City shall pay all accrued penalties determined by the Court to be due and owing, together with Interest, within 60 Days of receiving the Court's decision or order, except as provided in Subparagraph 88(c), below;
 - c. If the City appeals the District Court's decision, the City shall pay all accrued penalties determined to be due and owing, together with Interest, within 60 Days of receiving the final non-appealable appellate court decision.
89. Stipulated penalties due and owing to the United States shall, as directed by the United States, be paid by EFT in the amount due payable to the "U.S. Department of Justice," referencing DOJ No. 90-5-1-1-08687/1 and the United States Attorney's Office file number and delivered to the office of the United States Attorney, Southern District of Texas.
90. Stipulated penalties due and owing to Texas shall be paid in the manner set forth and with the confirmation notices required in Paragraphs 50 and 51, except that the transmittal letter shall state that payment is for stipulated penalties and shall state for which violation(s) the penalties are being paid.
91. If the City fails to pay stipulated penalties according to the terms of this 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.

92. Either the United States or Texas, or both, may, in the unreviewable exercise of each Plaintiff's own discretion, reduce or waive stipulated penalties otherwise due to them pursuant to Paragraphs 79 (Failure to pay Civil Penalty), 80 (Failure to meet effluent WWTP limitations set in the City's Permits), 81 (Failure to meet a WWF non-effluent maintenance-related requirement set in the City's Permits), 82 (WWF Discharges that occur after a compliance schedule), 83 (SSOs discharging to waters of the United States or into or adjacent to Waters in the State of Texas), 84 (SSOs that do not reach waters of the United States or into or adjacent to Waters in the State of Texas), 85 (Failure to submit timely and/or complete Deliverables), and 86 (Failure to implement and complete Compliance Requirements in Section V) under this Consent Decree. Any such reduction or waiver shall only apply to stipulated penalties owed to the Plaintiff exercising the discretion allowed under these Paragraphs and shall not affect the right of the other Plaintiff to enforce the stipulated penalties provisions of this Section.
93. Subject to the provisions of Section XVI of this Consent Decree (Effect of Settlement/Reservation of Rights), the stipulated penalties provided for in this Consent Decree shall be in addition to any other rights, remedies, or sanctions available to the United States and/or Texas for the City's violation of this Consent Decree or applicable law. Where a violation of this Consent Decree is also a violation of the CWA or TWC, regulations promulgated under those Acts, the Permits, or state law, any statutory penalties due or owed by the City to a Plaintiff for any violation of law shall be reduced by the amount of all stipulated penalties paid by the City for the same violation under this Consent Decree.

SECTION XI. FORCE MAJEURE

94. “Force Majeure” shall mean any event arising from causes beyond the control of the City, its contractors, or any entity controlled by the City that delays or prevents the performance of any obligation under this Consent Decree despite the City’s best efforts to fulfill the obligation. “Best efforts” include using efforts to anticipate reasonably foreseeable Force Majeure events and to address the effects of any such event (a) as it is occurring and (b) after it has occurred, such that the delay is minimized to the extent reasonably practicable. “Force Majeure” does not include the City’s financial inability to perform any obligation under this Consent Decree.
95. The City shall provide notice to the United States and Texas orally or by electronic or facsimile transmission within 15 Days of when the City first knew of, or by the exercise of due diligence, should have known of, a claimed Force Majeure event. Within 30 Days thereafter or such other time as EPA, TCEQ, and the City agree in writing, the City shall provide in writing to EPA and TCEQ the following: an explanation and description of the reasons for the delay; the anticipated duration of any delay; all actions taken to prevent or minimize the delay; a schedule for implementing any measure to be taken to prevent or mitigate the delay or the effect of the delay; and the City’s rationale for attributing the delay to a Force Majeure event, if it intends to assert such a claim. Failure to comply with the requirements of this paragraph may at EPA’s and TCEQ’s option preclude the City from asserting any claim of Force Majeure. The City shall be deemed to know of any circumstance of which the City, its contractors, or any entity controlled by the City knew or, through best efforts, should have known.

96. If Plaintiffs agree that the delay or anticipated delay is attributable to a Force Majeure event, then the time for the City to perform the obligations under this Decree that are affected by the Force Majeure event will be extended by Plaintiffs by such time as is 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. Plaintiffs will notify the City in writing of the length of the extension of time, if any, for performance of the obligations affected by the Force Majeure event.
97. If Plaintiffs do not agree that a Force Majeure event has occurred, or do not agree to the extension of time sought by the City, then Plaintiffs will issue a notice, in writing, to the City of Plaintiffs' position that the delay or anticipated delay was not caused by a Force Majeure event or that Plaintiffs do not agree to the extension of time sought by the City.
98. If the City elects to invoke the Dispute Resolution procedures set forth in the Decree, it shall do so no later than 30 Days after receipt of Plaintiffs' notice sent under Paragraph 97 above. 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; the duration of the delay or the extension sought was or will be warranted under the circumstances; the City exercised best efforts to prevent or minimize the effects of the delay; and the City complied with the requirements of the preceding Paragraphs in this Section. If the City carries this burden, then the delay at issue shall be deemed not to be a violation by the City of the affected obligation of this Decree identified to Plaintiffs and the Court.

SECTION XII. DISPUTE RESOLUTION

99. Unless otherwise expressly provided for in this Consent Decree, the procedures of this section shall be the exclusive mechanism to resolve disputes arising under this Consent Decree.
100. 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 and Texas a written notice of dispute, which may be sent by regular first-class mail, return receipt requested, and by electronic mail. Such notice of dispute shall state clearly the matter in dispute. The period of informal negotiations shall not exceed 45 Days from the date the City sends its notice of dispute, unless that period is modified by written agreement between the Plaintiffs and the City. During the period of informal negotiations:
- a. With respect to disputes regarding force majeure under Section XI (Force Majeure) and termination under Section XXII (Termination), Plaintiffs shall consult about their position. The position Plaintiffs take in their written notification to the City as set forth in Section XI (Force Majeure) or Section XXII (Termination) will be the position of Plaintiffs in informal dispute resolution pursuant to this Paragraph, unless Plaintiffs mutually agree to modify that position and inform the City of their modified position on the dispute in writing. If the Parties cannot resolve a dispute by informal negotiations, then Plaintiffs will send the City formal written notice of conclusion of the informal negotiation period by electronic and certified mail, return receipt requested, and the position advanced

by Plaintiffs shall be considered binding unless, within 45 Days after the City's receipt of the written notice of conclusion of the informal negotiation period, the City invokes formal dispute resolution procedures as set forth below in Paragraph 101;

- b. With respect to disputes regarding modification under Section XXI (Modification), the City shall provide written notice of the dispute and explanation of its position to Plaintiffs. Plaintiffs shall consult in an attempt to reach a joint position.
 - i. If Plaintiffs reach a joint position, the United States shall send Plaintiffs' written joint position to the City within 20 Days from the date the City submits its notice of dispute. If the Parties cannot resolve a dispute by informal negotiations, then the United States, after consulting with the State of Texas, shall send the City formal written notice of conclusion of the informal negotiation period by electronic and certified mail, return receipt requested, with copies to the State of Texas. The position of Plaintiffs shall be considered binding, unless the City invokes formal dispute resolution procedures as set forth in Paragraph 101 within 45 Days after the City's receipt of written notice of conclusion of the informal negotiation period.
 - ii. If Plaintiffs do not reach a joint position, each Plaintiff shall send its written position regarding the dispute to the City, with a copy to the other Plaintiff, within 20 Days from the date the City submits its notice of

dispute. If the Parties cannot resolve a dispute by informal negotiations, then the United States, after consulting with the State of Texas, shall send the City formal written notice of conclusion of the informal negotiation period by electronic and certified mail, return receipt requested, with copies to the State of Texas. Within 45 Days of receipt of the written notice of conclusion of the informal negotiation period, the City shall initiate the formal dispute resolution process specified in Paragraph 101(b), below by submitting its Statement of Position to Plaintiffs.

- c. With respect to all other disputes under this Consent Decree, the United States shall, after providing Texas a reasonable opportunity for consultation, inform the City of the United States' position. If the United States and the City cannot resolve a dispute by informal negotiations, then the United States will send the City formal written notice of conclusion of the informal negotiation period by electronic and certified mail, return receipt requested, and the position advanced by the United States shall be considered binding unless, within 45 Days after the City's receipt of the written notice of conclusion of the informal negotiation period, the City invokes formal dispute resolution procedures as set forth in Paragraph 101.

101. Formal Dispute Resolution. The City shall invoke formal dispute resolution procedures, within the time period provided in the preceding paragraph, by serving on Plaintiffs a written statement of position regarding the matter in dispute. The statement of position shall include any factual data, analysis, or opinion supporting the City's position and any

supporting documentation relied upon by it. During the period of formal negotiations:

- a. With respect to disputes regarding force majeure under Section XI (Force Majeure) and termination under Section XXII (Termination), the position Plaintiffs provided to the City pursuant to Subparagraph 100(a) shall be the position of Plaintiffs under this Paragraph, unless Plaintiffs mutually agree to modify their position. Plaintiffs shall consult and serve on the City Plaintiffs' Statement of Position within 90 Days after receipt of City's Statement of Position. Plaintiffs' Statement of Position shall include any factual data, analysis, or opinion supporting that position and any supporting documentation relied upon by Plaintiffs. Plaintiffs' Statement of Position shall be binding on the City, unless the City files a motion for judicial review of the dispute in accordance with Paragraph 102;
- b. With respect to disputes regarding modification under Section XXI (Modification), the City shall provide to Plaintiffs its written Statement of Position regarding the dispute and shall include any factual data, analysis, or opinion supporting that position and any supporting documentation relied upon by the City. Plaintiffs shall consult in an attempt to reach a joint position.
 - i. If Plaintiffs reach a joint position, the United States shall serve on the City Plaintiffs' Statement of Position within 90 Days after receipt of City's Statement of Position with a copy to the State of Texas. Plaintiffs' Statement of Position shall include any factual data, analysis, or opinion supporting that position and any supporting documentation relied upon by

Plaintiffs. Plaintiffs' Statement of Position shall be binding on the City, unless the City files a motion for judicial review of the dispute within 30 Days of receipt of Plaintiff's Statement of Position in accordance with Paragraph 102.

ii. If the Plaintiffs do not reach a joint position, each Plaintiff shall serve on the City and the other Plaintiff its Statement of Position within 90 Days after receipt of City's Statement of Position with a copy to the other Plaintiff. Each Statement of Position shall include any factual data, analysis, or opinion supporting that position and any supporting documentation relied upon by the respective Plaintiff. Within 30 Days of receipt of Plaintiffs' Statements of Position, the City shall file a motion for judicial review of the dispute in accordance with Paragraph 102.

c. With respect to all other disputes under this Consent Decree, the United States shall provide Texas a reasonable opportunity for consultation during the preparation of the United States' Statement of Position. The United States shall serve on the City the United States' Statement of Position within 90 Days after receipt of the City's Statement of Position. The Statement of Position served by the United States shall include 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 within 30 Days of receiving the United States' Statement of Position, in accordance with Paragraph 102.

102. Judicial Dispute Resolution. 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 Paragraph 123 of this Consent Decree (Notices), a motion requesting judicial resolution of the dispute. The motion must be filed within 30 Days of receipt of the Plaintiffs' Statements of Position, pursuant to Paragraph 101. 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. Plaintiffs shall respond to the City's motion as follows:

- a. With respect to disputes regarding force majeure under Section XI (Force Majeure) and termination under Section XXII (Termination), Plaintiffs shall file their response to the City's motion within the time period allowed by the Local Rules of this Court. Plaintiffs shall consult about their response. Unless Plaintiffs mutually agree to modify their position, the position provided to the City in their Statement of Position pursuant to Paragraph 101(a) shall be the position of the Plaintiffs under this Paragraph. The City may file a reply memorandum, to the extent permitted by the Local Rules or order of the Court;
- b. With respect to disputes regarding modification under Section XXI (Modification), Plaintiffs shall consult in an attempt to reach a joint position.
 - i. If Plaintiffs reach a joint position, Plaintiffs shall file a joint response 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 or order of the Court.

ii. If Plaintiffs do not reach a joint position, each Plaintiff shall file a response 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 or order of the Court.

c. With respect to all other disputes under this Consent Decree, the United States shall provide Texas a reasonable opportunity for consultation during the preparation of the United States' response. The United States shall file its response 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 or order of the Court.

103. The invocation of dispute resolution procedures under this Paragraph 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. 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 88. If the City does not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Paragraph 88 (Stipulated Penalties).

104. Standard of Review. Except as otherwise provided in this Consent Decree, in any dispute brought under this Section, the City shall bear the burden of demonstrating that its position complies with this Consent Decree. The Parties' positions are reviewable only on the record of this dispute, including Statements of Position submitted by the Parties

pursuant to Paragraph 101. The following standard of review applies:

- a. With respect to disputes involving modifications pursuant to Section XXI, the Party seeking the modification bears the burden of demonstrating that it is entitled to the requested modification in accordance with Federal Rules of Civil Procedure 60(b).
- b. With all other disputes brought under this Section, the City shall bear the burden of demonstrating that its position complies with this Consent Decree. The Parties' positions are reviewable only on the record of this dispute, including Statements of Position submitted by the Parties pursuant to Paragraph 101. The Parties reserve the right to argue regarding the applicable standard of review.

**SECTION XIII. RIGHT OF ENTRY AND
INFORMATION COLLECTION AND RETENTION**

105. The United States, the State, and their representatives, including attorneys, contractors, and consultants, shall have the right of entry to the WWTPs and any part of the WCTS covered by this Consent Decree, at all reasonable times, upon presentation of credentials to:
 - a. monitor the progress of activities required under this Consent Decree;
 - b. verify any data or information submitted to the United States or the State in accordance with the terms of this Consent Decree;
 - c. obtain samples and, upon request, splits of any samples taken by the City or its representatives, contractors, or consultants; and
 - d. assess the City's compliance with this Consent Decree.
106. Upon request, the City shall allow split or duplicate samples to be taken by EPA and the

TCEQ or their authorized representatives. Upon request, EPA and the TCEQ shall allow the City to take split or duplicate samples of any samples they take.

107. Until five years after the termination of this Consent Decree, the City shall retain and preserve, and shall instruct its contractors and agents to retain and preserve, all non-identical copies of all records, documents and underlying data (including records, documents or data in electronic form) now 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 directly to the City's Deliverables unless the underlying data has been provided to Plaintiffs previously. The City may seek a determination from EPA and TCEQ as to whether any particular document or data must be preserved pursuant to this Paragraph by submitting that document or data to EPA and TCEQ. This record retention requirement shall apply regardless of any corporate document-retention policy to the contrary.
108. At the conclusion of the document retention period provided in the preceding Paragraph, the City shall notify the United States and the State at least 90 Days prior to the destruction of any records or documents subject to the requirements of the preceding Paragraph, and, upon request by the United States or the State, the City shall deliver any such records or documents to EPA or the TCEQ. 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: (1) the title of the document, record, or information; (2) the date of the document, record, or information; (3) the name and title

of the author of the document, record, or information; (4) the name and title of each addressee and recipient; (5) a description of the subject of the document, record, or information; and (6) the privilege asserted by the City. No documents, reports, or other information created or generated pursuant to the requirements of this Consent Decree shall be withheld on the grounds they are privileged. However, nothing in this Consent Decree shall require the City to provide documents to Plaintiffs that are listed in a City privilege log for which the City can claim a privilege recognized by federal law until the matter is resolved by the Parties or the Court.

109. 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, pursuant to applicable federal or state laws, regulations, or permits.

SECTION XIV. FAILURE OF COMPLIANCE

110. The United States and the State of Texas do not, by 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 or TWC, regulations enacted pursuant to those Acts, or applicable state laws and regulations. Notwithstanding the United States' or the State's review and approval of any documents submitted to it by the City pursuant to this Consent Decree, the City shall remain solely responsible for compliance with the terms of the CWA, TWC and this Consent Decree.

SECTION XV. CERTIFICATION

111. In all Deliverables, notices, documents or reports submitted to the United States and State

pursuant to this Consent Decree, the City shall, by a City senior 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.

The certification requirement does not apply to emergency or similar notifications where compliance would be impractical.

112. The City shall not object to the authenticity of any report, plan, notice or any other document prepared in accordance with this Consent Decree or the information contained in said reports in any proceeding to enforce this Consent Decree.

SECTION XVI. EFFECT OF SETTLEMENT/RESERVATION OF RIGHTS

113. This Consent Decree resolves the civil claims of the United States and Texas against the City for violations alleged in the Complaint filed in this action, through the Effective Date of this Consent Decree. Stipulated penalties shall apply pursuant to Section X (Stipulated Penalties) of the Consent Decree, specifically for effluent violations, pursuant to Paragraph 80, and SSO violations, pursuant to Paragraphs 83 and 84, that occur between the Date of Lodging of the Decree through the Effective Date.

114. The United States and Texas reserve all legal and equitable remedies available to enforce the provisions of this Consent Decree, except as expressly stated in Paragraph 113. This Consent Decree shall not be construed to limit the rights of the United States or Texas to obtain penalties or injunctive relief under the CWA, the TWC, or their implementing regulations, or under other federal or state laws, regulations, or permit conditions, except as expressly specified in Paragraph 113. The United States and Texas 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, Houston's WCTS and WWTPs, whether related to the violations addressed in this Consent Decree or otherwise.
115. In any subsequent administrative or judicial proceeding initiated by the United States or Texas for injunctive relief, civil penalties, or other appropriate relief relating to the Sewer System or Houston's violations, Houston 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 or Texas 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 113.
116. 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 be no defense to any

action commenced pursuant to said laws, regulations, or permits except as a defense in connection with any third-party claim relating to or arising out of claims or violations alleged by Plaintiffs in the Complaint. Notwithstanding any other provision in this Consent Decree, the City may seek to offer as evidence its compliance with this Consent Decree in any third-party proceeding. Plaintiffs do not, by their 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, TWC, regulations, the Permits, or state law.

117. Nothing in this Consent Decree will preclude the City from raising defenses available under its Permits, including under TWC Section 7.251, or any renewals or modifications thereof in any such actions.
118. Nothing in this Consent Decree limits the rights or defenses available under Section 309(e) of the CWA, 33 U.S.C. §1319(e), in the event the laws of the State, as currently or hereafter enacted, may prevent the City from raising the revenue needed to comply with this Decree.
119. This Consent Decree does not limit or affect the rights of the Parties against any third party, not party to this Consent Decree, nor does it limit the rights of any third party, not party to this Consent Decree, against the City, except as otherwise provided by law.
120. 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.
121. The Parties agree the Complaint and compliance with this Consent Decree constitute and establish diligent prosecution by the United States and the State of Texas under Section

505(b)(1)(B) of the CWA, 33 U.S.C. § 1365(b)(1)(B) and state law, of all matters alleged in the Complaint and addressed in this Consent Decree arising from the beginning of the applicable statute of limitations through the termination of this Consent Decree in accordance with Section XXII.

SECTION XVII. COSTS

122. The Parties shall each bear their own costs of litigation of this action, including attorneys' fees, except that Texas may collect its Attorney's fees as set forth in Section VII of this Consent Decree, and Plaintiffs shall be entitled to collect the costs (including attorneys' fees) incurred in any action necessary to collect any portion of the civil penalties or stipulated penalties due but not paid by the City.

SECTION XVIII. NOTICES

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

To the United States:

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
Box 7611 Ben Franklin Station
Washington, D.C. 20044-7611
Re: DOJ No. 90-5-1-1-08687/1

Municipal Enforcement Branch Chief, Water Enforcement Division
Office of Enforcement and Compliance Assurance,
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Mail Code 2243A

Washington, DC 20460

Associate Director, Water Enforcement
U.S. Environmental Protection Agency
Region VI
1445 Ross Avenue
Mail Code 6EN
Dallas, Texas 75202

To Texas:

Phillip Ledbetter
Environmental Protection Division, MC-066
Office of the Attorney General
P.O. Box 12548
Austin, Texas 78711-2548

Reference: AG # CX3618358233

-AND-

James Sallans
Litigation Division, MC-175
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

To the City of Houston:

City Attorney
City of Houston
900 Bagby Street
Houston, Texas 77002

-AND-

City of Houston
Attn: Director, Houston Public Works
611 Walker St.
Houston, Texas 77002

124. Notices submitted pursuant to this Paragraph shall be deemed effective upon sending by electronic and certified mail, return receipt requested, unless otherwise provided in this Consent Decree or by mutual agreement of the Parties in writing.
125. Any Party may, by written notice to the other Parties, change its designated notice recipient or notice address provided above.
126. If the City annexes new assets into its WCTS during the term of the Consent Decree, it shall provide written notice to EPA and TCEQ under this Section within 45 Days. The Parties shall meet and confer within 45 Days to discuss and resolve all issues raised by the Parties related to annexation.

SECTION XIX. EFFECTIVE DATE

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

SECTION XX. RETENTION OF JURISDICTION

128. The Court shall retain jurisdiction of this case until termination of this Consent Decree, for the purpose of enabling any of the Parties to apply to the Court for such further order, direction, or relief as may be necessary or appropriate for the construction or modification of this Consent Decree, or to effectuate or enforce compliance with its terms, or to resolve disputes in accordance with Section XII of this Decree (Dispute Resolution). The Court retains exclusive jurisdiction to enforce all matters under this Consent Decree.

SECTION XXI. MODIFICATION

129. The terms of this 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. The Parties may by mutual agreement make non-material modifications to this Consent Decree.
130. Any disputes concerning modification of this Decree shall be resolved pursuant to Section XII of this Decree (Dispute Resolution), provided that the Party seeking the modification pursuant to Paragraph 104(a) bears the burden of demonstrating that it is entitled to the requested modification in accordance with Federal Rule of Civil Procedure 60(b).
131. The City and Plaintiffs may by mutual agreement determine whether a proposed modification is a non-material change to the Consent Decree. Non-material changes to the Consent Decree (including Appendices) shall be made by written agreement of the Parties without approval by the Court. The City will request a non-material change at least 90 Days before the deadline for the specific Work at issue. The City shall provide sufficient information to the EPA about why and how it seeks the modification. Non-material changes include the examples provided below:
- a. Changes to Appendices, guidelines or processes based upon implementation experience so long as the overall technical and schedule objectives are achieved.
 - b. Changes in Sewer System investigation and/or remediation techniques as a result of technology advancements or implementation experience so long as the specific

requirements set forth in Paragraphs 25 - 37 (WCTS Condition Assessment and Remediation) are met.

- c. The City may reprioritize a Work Project under an EPA-approved Remedial Measures Plans under Section V (Compliance Requirements), provided the Work Project reprioritized ahead of other tasks offers substantially the same or better CWA compliance benefits as the Work Project reduced to a lower priority. The City may reprioritize Work Projects under EPA-approved Remedial Measures Plans where the City determines technical, health, safety or other reasons justify priority completion of an existing, particular Work Project or a new Work Project ahead of another task, provided such determination is provided to EPA in writing and submitted to EPA for review and approval at the time any change under this Paragraph is requested.
- d. The City may, subsequent to EPA's approval of a Remedial Measures Plan under Section V (Compliance Requirements), based on new or additional information, substitute a new Work Project or a redefined Work Project under an EPA-approved Remedial Measures Plan, provided that any such new or redefined Work Project offers substantially the same or better CWA compliance benefits.
- e. The City and the Plaintiffs may agree to extend the schedule for completion of any Work Project for a period of up to 60 Days, provided any such extension does not extend the term of the Consent Decree.
- f. Decrease in the annual Preventive Cleaning requirement, based upon demonstration by the City that there are not 275 miles of Small Diameter Gravity

Sewer Mains that meet the criteria for Preventive Cleaning.

SECTION XXII. TERMINATION

132. The City may serve upon the United States and the State a request for termination, certifying the City has completed performance of its compliance requirements under this Decree (Section V) together with all necessary supporting documentation such as references to the Annual Reports. This Consent Decree may be terminated when the Plaintiffs determine the City has completed performance of its compliance requirements (Section V) under this Decree, provided that the City has fulfilled all other obligations of this Decree, including payment of the Civil Penalty under Section VI of this Decree, Attorney's Fees under Section VII and Stipulated Penalties that have been demanded and found to be due and owing as required by Section X of this Decree not waived or reduced by the Plaintiffs.
133. Following receipt by the United States and the State of the City's request for termination, the United States, the State and the City shall confer informally concerning the request and any disagreement that they may have as to whether the City has complied with the requirements for termination of this Consent Decree.
134. If Plaintiffs agree the City has satisfactorily complied with the requirements for termination of this Consent Decree, the Parties shall submit, for the Court's approval, a joint stipulation terminating the Consent Decree.
135. If the Plaintiffs do not agree that the City has satisfactorily complied with the requirements for termination of this Consent Decree, they will notify the City in writing and the City may invoke Dispute Resolution under Section XII of this Decree. However,

the City shall not seek Dispute Resolution of any dispute regarding termination, under Section XII, until 120 Days after service of its request for termination.

136. Partial Termination. The City may serve upon the United States and the State a request for Partial Termination of the Consent Decree with respect to following provisions:
- a. Early Action Projects identified in Paragraph 11;
 - b. WWF requirements identified in Paragraphs 18 - 24, which includes either full implementation of the approved Wet Weather Facility Full-Scale Treatment Plan, pursuant to Paragraph 23 or elimination of discharges pursuant to Paragraph 21 or 24.
137. Any request for Partial Termination of the provisions identified in Paragraph 136 shall be subject to the same conditions, requirements and procedures applicable to any request for termination of the Decree as set forth in Paragraphs 132, 133, 134, and 135. The City shall remain subject to stipulated penalties for WWTP effluent limit exceedances under Section X.

SECTION XXIII. PUBLIC PARTICIPATION

138. This Consent Decree shall be lodged with the Court for a period of not less than 30 Days for public notice and comment in accordance with 28 C.F.R. § 50.7 and TWC § 7.110. The United States and Texas each reserve the right to withdraw or withhold their 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. The City hereby agrees not to oppose entry of this Consent Decree by the Court or to challenge any provision of the

Decree, unless one or more Plaintiffs has notified the City in writing that it no longer supports entry of the Decree.

SECTION XXIV. SIGNATORIES/SERVICE

139. Each undersigned representative of the City, the State of Texas, 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 Consent Decree and to execute and legally bind the Party he or she represents to this document.
140. This Consent Decree may be signed in counterparts, and such counterpart signature pages shall be given full force and effect.
141. The City hereby 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 Rule 4 of the Federal Rules of Civil Procedure and any applicable Local Rules of this Court including, service of a summons.

SECTION XXV. INTEGRATION/APPENDICES

142. This Consent Decree and all its attachments and appendices constitute 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. 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.

The Appendices for this Consent Decree are as follows:

Appendix A List of WWTPs

Appendix B Early Action Projects

Appendix C Description of 9 Areas for Capacity Remedial Measures Plan(s)

Appendix D Sewer Basin and Lift Station Prioritization Matrices

Appendix E WWTP Violations and Associated Corrective Action

Appendix F List of SOPs

Appendix G Annual Report Template

SECTION XXVI. FINAL JUDGMENT

Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute a final judgment between Plaintiffs and the City of Houston. The Court finds that there is no just reason for delay and therefore enters this judgment as a final judgment under Federal Rules of Civil Procedure 54 and 58.

United States District Court Judge

WE HEREBY CONSENT to the entry of this Consent Decree, subject to the public notice and comment provisions of 28 C.F.R. § 50.7:

FOR THE UNITED STATES OF AMERICA:

Date

JEFFREY BOSSERT CLARK
Assistant Attorney General
Environment and Natural Resources Division
United States Department of Justice

Date

NATHANIEL DOUGLAS
Deputy Section Chief
Environmental Enforcement Section
Environment and Natural Resources Division
United States Department of Justice

WE HEREBY CONSENT to the entry of this Consent Decree, subject to the public notice and comment provisions of 28 C.F.R. § 50.7:

FOR PLAINTIFF THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY:

Date

CHERYL SEAGER
Director, Compliance Assurance and Enforcement Division
U.S. Environmental Protection Agency, Region VI
1445 Ross Avenue, Suite 1200
Dallas, Texas 75202-2733

Date

EFREN ORDÓÑEZ
Assistant Regional Counsel
U.S. Environmental Protection Agency, Region VI
1445 Ross Avenue, Suite 1200
Dallas, Texas 75202-2733

WE HEREBY CONSENT to the entry of this Consent Decree, subject to the public notice and comment provisions of 28 C.F.R. § 50.7:

FOR PLAINTIFF THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY:

Date

SUSAN PARKER BODINE
ASSISTANT ADMINISTRATOR
Office of Enforcement and Compliance Assurance
United States Environmental Protection Agency

Date

ROSEMARIE KELLEY
Office Director
Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
United States Environmental Protection Agency

Date

MARK POLLINS
Division Director
Water Enforcement Division
Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
United States Environmental Protection Agency

Date

CAROL DEMARCO KING
MORGAN ROG
Water Enforcement Division
Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
United States Environmental Protection Agency

WE HEREBY CONSENT to the entry of this Consent Decree, subject to the public notice and comment provisions of 28 C.F.R. § 50.7:

FOR PLAINTIFF STATE OF TEXAS:

KEN PAXTON
Attorney General of Texas

JEFFERY MATEER
First Assistant Attorney General

DARREN L. MCCARTY
Deputy Attorney General for Civil Litigation

PRISCILLA M. HUBENAK
Chief, Environmental Protection Division

Date

PHILLIP LEDBETTER
Assistant Attorney General
State Bar No. 24041316
Southern District No. 1401529
Phillip.Ledbetter@oag.texas.gov

Office of the Attorney General of Texas
Environmental Protection Division
P. O. Box 12548, Capitol Station
Austin, Texas 78711-2548
(512) 475-4152
(512) 320-0911 (Facsimile)
ATTORNEYS FOR THE STATE OF TEXAS

WE HEREBY CONSENT to the entry of this Consent Decree, subject to the public notice and comment provisions of 28 C.F.R. § 50.7 and TWC § 7.110:

FOR THE CITY OF HOUSTON, TEXAS:

Mayor
Date signed: _____, 2019

ATTEST/SEAL

City Secretary

Director, Houston Public Works

APPROVED:

City Attorney

APPROVED AS TO FORM:

Assistant City Attorney

COUNTERSIGNED BY:

City Controller
Date countersigned: _____