

**IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF KANSAS**

**UNITED STATES OF AMERICA,** )  
 )  
 **Plaintiff,** )  
 )  
 **v.** )  
 )  
 **UNIFIED GOVERNMENT OF** )  
 **WYANDOTTE COUNTY AND** )  
 **KANSAS CITY, KANSAS,** )  
 )  
 **and** )  
 )  
 **THE STATE OF KANSAS,** )  
 )  
 **Defendants.** )  
 \_\_\_\_\_ )

**Civil Action No.**

**PARTIAL CONSENT DECREE**

## TABLE OF CONTENTS

### **Contents**

INTRODUCTION .....	3
I. JURISDICTION AND VENUE.....	7
II. APPLICABILITY .....	8
III. OBJECTIVES.....	10
IV. DEFINITIONS .....	10
V. INFORMATION MANAGEMENT SYSTEM.....	18
VI. COMPLIANCE MEASURES RELATING TO STORM SEWER SYSTEM.....	19
VII. ONGOING CONSTRUCTION AND PROGRAMMATIC ACTIVITIES FOR THE SEWER SYSTEM.....	23
VIII. EVALUATION OF SEWERSHEDS WITHIN THE UNIFIED GOVERNMENT’S SEWER SYSTEM.....	38
IX. INTEGRATED OVERFLOW CONTROL PLAN.....	53
X. GREEN INFRASTRUCTURE.....	58
XI. IMPLEMENTATION OF THE INTEGRATED OVERFLOW CONTROL PLAN .....	60
XII. REPORTING, CERTIFICATION AND APPROVAL OF SUBMITTALS.....	60
XIII. STIPULATED PENALTIES .....	68
XIV. FORCE MAJEURE.....	74
XV. DISPUTE RESOLUTION .....	77
XVI. INFORMATION COLLECTION AND RETENTION .....	80
XVII. EFFECT OF SETTLEMENT/RESERVATION OF RIGHTS.....	81
XVIII. COSTS.....	84
XIX. NOTICES .....	84
XX. EFFECTIVE DATE.....	86
XXI. RETENTION OF JURISDICTION.....	86
XXII. MODIFICATION .....	87
XXIII. TERMINATION.....	87
XXIV. PUBLIC PARTICIPATION .....	89
XXV. SIGNATORIES/SERVICE.....	89
XXVI. INTEGRATION .....	90
XXVII. PARTIAL JUDGMENT.....	90

## **APPENDICES**

- A. List of NPDES Permits for Unified Government's WWTPs and MS4
- B. Sewershed Map
- C. Estimated SSS/CSS Hydraulic Model Network
- D. Combined Sewer Overflow Outfalls and Diversion Structures
- E. Storm Water Management Plan
- F. Fats, Oil and Grease Control Program Plan
- G. Collection System Release Response Plan
- H. Nine Minimum Controls Plan

## **INTRODUCTION**

WHEREAS, Plaintiff, the United States of America ("United States"), by the authority of the Attorney General of the United States, acting at the request and on behalf of the Administrator of the United States Environmental Protection Agency ("EPA"), filed a Complaint alleging that Defendant, Unified Government of Wyandotte County and Kansas City, Kansas ("Unified Government"), violated the Clean Water Act, 33 U.S.C. § 1251, *et seq.* ("CWA" or "Act"), and seeking injunctive relief and civil penalties pursuant to Section 309(b) and (d) of the CWA, 33 U.S.C. § 1319(b) and (d).

WHEREAS, the Unified Government is a governmental entity organized and existing under the laws and constitution of the State of Kansas and a "municipality" pursuant to Section 502(4) of the CWA, 33 U.S.C. § 1362(4).

WHEREAS, the United States' Complaint also names the State of Kansas ("State") as a defendant in this action, thereby satisfying the requirements of Section 309(e) of the CWA, 33 U.S.C. § 1319(e).

WHEREAS, the State, through the Kansas Department of Health and Environment (“KDHE”), has been authorized by EPA to administer the National Pollutant Discharge Elimination System (“NPDES”) permit program, pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.

WHEREAS, the Unified Government owns and operates a Publicly Owned Treatment Works (“POTW”) that includes wastewater collection, retention, transmission and treatment systems to collect and convey municipal sewage (domestic, commercial and industrial) to its wastewater treatment plants (“WWTPs”) or to its combined sewer overflow outfalls (“CSO Outfalls”), and is the holder of NPDES permits issued by KDHE authorizing the discharge of pollutants from certain outfalls.

WHEREAS, the Unified Government’s Sewer System consists of a combined sewer system (“CSS”) located within the eastern portion of Wyandotte County, and a separate sanitary sewer system (“SSS”) in the Unified Government’s jurisdiction in the remainder of Wyandotte County, with portions of the Sewer System in the primarily CSS area also consisting of some SSS lines.

WHEREAS, the Unified Government’s management of the CSS and discharges from CSO Outfalls are subject to the terms and conditions of an NPDES Permit No. KS0038563, issued for WWTP #1, also known as the Kaw Point WWTP, (hereafter, the “Kaw Point Permit”).

WHEREAS, the Unified Government prepared and submitted to KDHE a Long Term Control Plan (“LTCP”) in November 2000, pursuant to the requirements of the Kaw Point Permit, for continued operation and management of the CSS consistent with the requirements of the CWA.

WHEREAS, the Unified Government is required by the CWA, its implementing regulations and the Kaw Point Permit to implement the nine minimum controls (“NMCs”) for proper operation and maintenance of the CSS.

WHEREAS, in January 2007, EPA conducted an inspection to determine the Unified Government’s compliance with NPDES permit requirements for its Sewer System. Based on information developed by EPA during the inspection, EPA has identified various violations, including but not limited to, dry weather overflows from CSO Outfalls and discharges from the Sewer System at unauthorized locations. EPA has further determined, that the Unified Government’s LTCP, as presently drafted, is inadequate to comply with EPA’s 1994 CSO Policy (“CSO Policy”), adopted by reference into Section 402(q) of the CWA, 33 U.S.C. § 1342(q).

WHEREAS, in October 2009, EPA conducted an inspection of portions of the Unified Government’s collection system and the Kaw Point WWTP and WWTP #20 to evaluate the Unified Government’s compliance with NPDES permit requirements. EPA identified various alleged violations, including but not limited to, constructed SSOs, continued utilization of CSO Outfalls previously reported as abandoned by the Unified Government, and outfalls identified as CSO discharge points with little or no known stormwater contribution.

WHEREAS, this Partial Consent Decree requires the Unified Government to fully implement the NMCs and to develop and submit to EPA for review and approval, with a copy to the State, an Integrated Overflow Control Plan (“IOCP”), containing elements appropriate under the CSO Policy for a LTCP and plans for the continued improvement of its SSS.

WHEREAS, this Partial Consent Decree further requires the Unified Government to implement certain short-term construction projects and ongoing programmatic activities for the

Sewer System as set forth in Section VII. The Unified Government estimates that these projects will cost approximately \$20 million dollars.

WHEREAS, the Parties recognize that the work required by this Partial Consent Decree will not fully resolve the United States' claims alleged in the Complaint for either injunctive relief or civil penalties.

WHEREAS, the Unified Government owns and operates a Municipal Separate Storm Sewer System ("MS4") in the jurisdictional area of the Unified Government pursuant to NPDES Permit No. KS0095656 ("MS4 Permit"), issued by KDHE and effective January 2001 and most recently reissued and effective October 2007. The MS4 Permit authorizes discharges from the Unified Government's MS4, in accordance with specified conditions.

WHEREAS, in November 2007, EPA conducted a performance evaluation of the Unified Government's MS4 program. Based on information developed by EPA during the inspection, EPA has identified various violations by the Unified Government of its MS4 Permit.

WHEREAS, the Unified Government, in 2000, prepared and submitted a Stormwater Management Plan ("SWMP") to KDHE as a condition of being issued the 2001 MS4 Permit, and in October 2008, submitted a revised SWMP to KDHE as a condition of the reissued 2007 MS4 Permit. EPA and KDHE determined that the Unified Government's 2008 SWMP was inadequate to reduce the discharge of pollutants to the maximum extent practicable, as required by Section 402(p)(3)(B) of the CWA, 33 U.S.C. § 1342(p)(3)(B).

WHEREAS, the Unified Government, in 2012, prepared and submitted a SWMP to the EPA and KDHE to address the deficiencies identified in the Unified Government's previous SWMP submittal. KDHE conditionally approved the 2012 SWMP, attached hereto as Appendix

E, pending receipt and review of the Standard Operating Procedures (“SOPs”) to implement the SWMP, the final few of which are to be submitted pursuant to Section VI of this Consent Decree.

WHEREAS, this Consent Decree requires the Unified Government to implement its MS4 program in a manner consistent with its MS4 Permit through developing SOPs to implement the SWMP attached hereto as Appendix E, implementing its SWMP and the SOPs identified therein, and updating or revising its SWMP and the SOPs identified therein as may be required in a reissued MS4 Permit.

WHEREAS, the Parties to this Consent Decree have negotiated in good faith and have reached a partial settlement of the issues raised in the Complaint.

WHEREAS, the Unified Government does not admit any liability to the United States or State arising out of the transactions or occurrences alleged in the Complaint.

WHEREAS, the Parties agree, and the Court finds, that partial settlement of the claims alleged in the Complaint without further litigation or trial of any issues is fair, reasonable and in the public interest.

NOW THEREFORE, without the admission by the Unified Government of any of the non-jurisdictional allegations in the Complaint and this Consent Decree, and without adjudication of any fact or law, and with the Consent of the Parties, it is hereby ORDERED, ADJUDGED and DECREED as follows:

#### **I. JURISDICTION AND VENUE**

1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331, 1345, and 1355; Section 309(b) of the CWA, 33 U.S.C. § 1319(b); and over the

Parties. Venue lies in this District pursuant to Sections 309(b) of the CWA, 33 U.S.C. § 1319(b); and pursuant to 28 U.S.C. § 1391(b) and 28 U.S.C. § 1395(a); because the Unified Government is located in this judicial district and the alleged violations, and a substantial part of the events or omissions giving rise to the claims, occurred in this judicial district. For purposes of this Decree or any action by the United States to enforce this Decree, the Unified Government consents to the Court's jurisdiction over this Decree or such action and over the Unified Government, and consents to venue in this judicial district.

2. The State of Kansas is a party to this Consent Decree, thereby satisfying the notice requirement pursuant to Section 309(b) of the Clean Water Act, 33 U.S.C. § 1319(b), and the requirement of Section 309(e) of the Act, 33 U.S.C. § 1319(e).

## **II. APPLICABILITY**

3. The obligations of this Consent Decree apply to and are binding upon the United States and the Unified Government and any successor or other entities or persons otherwise bound by law.

4. The Unified Government shall provide effective notice to appropriate officers, employees, and agents whose duties include compliance with any provision of this Decree, including, the Mayor, the Unified Government Commission members and any contractor or consultant retained to perform Work required under this Consent Decree that a copy of this Consent Decree is posted on the Unified Government's intranet or internet site. The Unified Government shall be responsible for ensuring that all employees, contractors or consultants involved in performing any work pursuant to this Consent Decree perform such work in a manner consistent with the requirements of this Consent Decree. Any action taken by an entity

retained by the Unified Government to implement the Unified Government's duties under this Consent Decree shall be considered an action of the Unified Government for purposes of determining compliance with this Consent Decree. This Consent Decree shall not limit the Unified Government's rights to take all appropriate action against any such person or entity that causes or contributed to the Unified Government's act or failure to act.

5. Except as provided in Section XIV (Force Majeure), in any action by the United States to enforce this Consent Decree, the Unified Government shall not raise as a defense or excuse for noncompliance the failure by any of its officers, directors, the Unified Government Commission members, employees, agents, or contractors to take any actions necessary to comply with the provisions of this Consent Decree.

6. No transfer of ownership or operation of any of the facilities governed by this Decree, whether in compliance with this Section or otherwise, shall relieve the Unified Government of its obligation to ensure that the terms of the Decree are implemented, unless (a) the transferee agrees to be substituted for the Defendant as a Party under the Decree and thus be bound by the terms thereof and (b) the United States consents to relieve Defendant of its obligations. The decision to refuse or to approve the substitution of the transferee for the Defendant shall not be subject to judicial review. If the Unified Government proposes to sell or transfer part or all of its ownership or operation of any facilities governed by this Decree, it shall advise the purchaser or transferee in writing of the existence of this Consent Decree and provide a copy of the Consent Decree prior to such sale or transfer. The Unified Government shall send a copy of such written notification to the United States pursuant to Section XIX of this Decree (Notices) by certified mail, return receipt requested, at least forty-five (45) days before such sale

or transfer. Any attempt to transfer ownership or operation of any facility governed by this Decree without complying with this Paragraph constitutes a violation of this Decree.

### **III. OBJECTIVES**

7. It is the express purpose of the Parties in entering this Consent Decree that the Unified Government use its best efforts to achieve the goals of: (a) full compliance with its NPDES permits, the CWA, the Kansas public health statutes, and their regulations; (b) compliance with the CSO Policy, including compliance with applicable state water quality standards; (c), the elimination of Sanitary Sewer System Overflows (“SSOs”) and Unauthorized CSOs; (d) the elimination of bypasses prohibited by 40 C.F.R. § 122.41(m); and (e) implementation of a SWMP that reduces the discharge of pollutants from the MS4 to the maximum extent practicable and requires implementation of measures to ensure compliance with the Unified Government’s MS4 Permit. The Unified Government shall maintain sufficient financial and personnel resources and sufficient equipment and analytical services to administer and implement the Work.

### **IV. DEFINITIONS**

8. Unless otherwise provided in this Decree, terms used in this Consent Decree that are defined in the CWA, or in regulations promulgated pursuant to that Act, shall have the meanings assigned to them in the CWA, or such regulations. Whenever the terms set forth below are used in this Consent Decree, the following definitions shall apply:

“Adequate Capacity” shall mean the ability to collect, convey and treat peak wet weather flows, as identified in the approved IOCP.

“Asset Management” shall mean a structured approach to long-term management of assets as tools for the efficient and effective delivery of services, managing infrastructure capital assets to minimize the total cost of owning and operating them, and improving operational, environmental, and financial performance.

“Bypass” shall mean the intentional diversion of waste streams from any portion of a Wastewater Treatment Facility, as defined in 40 C.F.R. § 122.41(m). The Unified Government may request that an anticipated bypass be approved in accordance with 40 C.F.R. § 122.41(m)(4)(ii).

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

“Capacity, Management, Operations, and Maintenance” or “CMOM” shall mean, for the purpose of this Consent Decree, a flexible program of accepted industry practices to properly manage, operate and maintain the Unified Government’s entire sanitary wastewater collection, transmission and treatment systems, respond to SSOs, and in conjunction with implementation of the IOCP, investigate and maintain and/or improve the system’s capacity.

“Capacity-Related” Sewer System discharge shall mean any unauthorized discharge or release from the City’s Separate Sewer System, such as an SSO, Unauthorized CSO or Private Property Backup, that is the result of the inability of that portion of the system or portions of the Separate Sewer System downstream of that portion, to convey or treat flows experienced within that portion of the Separate Sewer System, and where that inability is not primarily maintenance related (e.g., the result of a temporary blockage).

“Certification” or “certify” when used in this Consent Decree shall require the Unified Government to comply with Section XII of this Consent Decree.

“Clean Water Act” or “CWA” or “Act” shall mean the Clean Water Act, formally entitled the Federal Water Pollution Control Act, as amended, 33 U.S.C. § 1251, *et seq.*

“Combined Sewer System” or “CSS” shall mean the portions of the Unified Government’s Sewer System which convey sanitary wastewaters (domestic, commercial and industrial wastewaters) and storm water through a single-pipe system to a POTW Treatment Plant (as defined in 40 § CFR 403.3(r)) or an authorized CSO Outfall.

“Combined Sewer Overflow” or “CSO” shall mean any discharge from the CSS at a point prior to the POTW Treatment Plant.

“Combined Sewer Overflow Outfall” or “CSO Outfall” shall mean the outfalls from which CSOs are authorized at the time of the discharge as identified in Appendix D to this Consent Decree, or that may be identified and authorized pursuant to a future issued Kaw Point Permit to discharge to waters of the United States or the State.

“Consent Decree” or “Decree” shall mean this Partial Consent Decree or the Final Consent Decree and all their appendices. In the event of a conflict between this document and any appendices, this document shall control.

“Date of Lodging” shall mean the date on which this Decree is lodged by the United States with the United States District Court for the District of Kansas for a period of public comment.

“Day” or “days” (whether or not capitalized) shall mean a calendar day or calendar days, unless expressly stated otherwise. In computing due dates under this Consent

Decree, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business – 5:00 pm Central Time – of the next working day.

“Defendants” shall mean the Unified Government of Wyandotte County and Kansas City, Kansas, the State of Kansas, and any successors thereto.

“Design Year” shall mean a theoretical long term median rainfall distribution pattern that shall be used to model the CSS to determine current system performance and the effectiveness of CSO control alternatives. The Design Year shall be developed based on an evaluation of historical rainfall and precipitation event characteristics.

“Deliverable” shall mean any written document or other work product, whether in hard copy or electronic format, required to be prepared and/or submitted by or on behalf of the Unified Government pursuant to this Decree.

“EPA” shall mean the United States Environmental Protection Agency, including any successor departments or agencies of the United States.

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

“Force Main” shall mean all Sewer System lines that operate under pressure due to pumping of wastewater at a pump station except for those Sewer System lines that serve a single structure or building.

“Green Infrastructure” shall mean, for purposes of this Consent Decree, the range of stormwater control measures that use plant/soil systems, permeable pavement, or stormwater harvest and reuse, to store, infiltrate, or evapotranspire stormwater and reduce flows to the

Sewer System. Green Infrastructure may include, but is not limited to, bioretention and extended detention wetland areas as well as green roofs and cisterns.

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

“Industrial Facility” shall mean any facility located within the MS4 jurisdictional limits of the Unified Government from which there is a “stormwater discharge associated with industrial activity,” as defined in 40 C.F.R. § 122.26(b)(14)(x).

“Industrial User” shall mean a non-domestic discharger to the Unified Government’s Sewer System, as that term is defined by Section 502(18) of the CWA, 33 U.S.C. § 1362(18), and 40 C.F.R. § 403.3(j).

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

“Infiltration” shall mean water other than wastewater that enters the Sewer System, as defined by 40 C.F.R. § 35.2005(b)(20) .

“Inflow” shall mean water other than wastewater that enters the Sewer System, as defined by 40 C.F.R. § 35.2005(b)(21).

“Information Management System” or “IMS” shall mean a system designed and implemented in a manner to efficiently and effectively collect, retain and utilize information and data, including information necessary to implement effective Asset Management, regarding the Unified Government’s MS4, Sewer System and Wastewater Treatment Plants.

“Kansas public health statutes” shall mean the Kansas public health statutes as provided in Kansas Statutes Annotated (“K.S.A.”) 65-161 *et seq.*, and the regulations promulgated pursuant thereto.

“KDHE” shall mean the Kansas Department of Health and Environment of the State of Kansas, or its successor.

“Level of Service” shall mean a measure to determine the effectiveness of elements of the Sewer System in eliminating SSOs for a rainfall or flow event with a specified recurrence interval.

“Maximum Extent Practicable” shall mean the standard of performance for MS4 programs as described in Section 402(p) of the CWA, and regulations promulgated thereunder at 40 C.F.R. § 122.26.

“MS4” shall mean the Unified Government’s municipal separate storm sewer system, as that term is defined in 40 C.F.R. § 122.26(b)(8).

“MS4 Permit” shall mean NPDES Permit No. KS0095656 (“MS4 Permit”), with an effective date of October 1, 2007, and any subsequently issued permit, which authorizes discharges from the Unified Government’s MS4 in accordance with conditions specified therein.

“NPDES” shall mean National Pollutant Discharge Elimination System, as established by 33 U.S.C. § 1342.

“NPDES Permit” shall mean the most recently issued NPDES permits issued to the Unified Government for the WWTPs and the MS4 Permit. The current permits as of the Date of Lodging are listed in Appendix A.

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

“Parties” shall mean the parties to this Consent Decree: the United States, the State, and the Unified Government.

“Private Lateral” shall mean that portion of the Sewer System not owned by the Unified Government used to convey wastewater from a building or buildings to that portion of the Sewer System owned by the Unified Government. Private Laterals include connector joints at the Unified Government’s sewer line.

“Private Property Backup” shall mean any release of wastewater from the Unified Government’s Sewer System to buildings or private property that occurs when a wastewater backup occurs into a building and is caused by blockages, flow conditions, or other conditions in the Sewer System. For purposes of this Consent Decree a wastewater backup that is caused solely by conditions in a Private Lateral is not a Private Property Backup.

“Pumping Station” or “pump station” as used within this Consent Decree shall mean facilities owned or operated by the Unified Government comprised of pumps that lift wastewater to a higher hydraulic elevation or increase the flow rate/volume through the collection system, including all related electrical, mechanical and structural systems necessary to the operation of that pump station. The term Pumping Station shall also apply to facilities referred to as a lift station.

“Sanitary Sewer Overflow” or “SSO” shall mean, for purposes of this Consent Decree, an overflow, spill, diversion, or release of wastewater from or caused by the Unified Government’s SSS. This term shall include discharges to the waters of the United States from

the City's SSS, as well as any release of wastewater from the City's SSS to public or private property that does not reach waters of the United States, including Private Property Backups. SSOs do not include temporary rerouting of one portion of the SSS or CSS to another portion thereof during collection system repairs.

“Sanitary Sewer System” or “SSS” shall mean the wastewater collection, retention, and transmission systems owned or operated by the Unified Government designed to collect and convey municipal sewage (domestic, commercial and industrial), and not stormwater, to a WWTP.

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

“Sewershed” shall mean a section of the Unified Government's Sewer System that is a distinct drainage or wastewater collection area and designated as such by the Unified Government. For purposes of this Consent Decree, the Sewersheds are identified in Appendix B to this Consent Decree.

“Sewer System” shall mean the municipal sanitary wastewater collection and transmission systems, whether serving CSS or SSS areas, including all pipes, force mains, gravity sewer lines, lift stations, pumping stations, manholes and appurtenances thereto, which are owned or operated by the Unified Government.

“State” shall mean the State of Kansas acting through the Kansas Department of Health and Environment.

“Stormwater Management Program” or “SWMP” shall mean the Unified Government's program to manage municipal stormwater.

“Unauthorized CSO” shall mean for purposes of this Consent Decree, any overflow, spill, diversion, or release of wastewater within the CSS at a location other than an authorized CSO Outfall, as defined herein, that is from or caused by the Unified Government’s Sewer System. This term shall include discharges to the waters of the United States from the City’s CSS at an unauthorized CSO Outfall, as well as any release of wastewater from the City’s CSS to public or private property that does not reach waters of the United States, including Private Property Backups.

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

“Unpermitted Bypass” shall mean any Bypass from a WWTP that constitutes a prohibited bypass as defined in 40 C.F.R. § 122.41(m).

“Wastewater Treatment Plant” or “WWTP” shall mean any devices or systems used in the storage, treatment, and reclamation of municipal wastewater. For the purposes of this Consent Decree, this definition shall include all such facilities owned, managed, operated and/or maintained by the Unified Government, including the facilities for which NPDES permits are identified in Appendix A to this Consent Decree.

“Work” shall mean all activities the Unified Government is required to perform under this Consent Decree.

## **V. INFORMATION MANAGEMENT SYSTEM**

9. No later than September 30, 2013, the Unified Government shall submit to EPA, for review and comment, an Information Management Gap Analysis (“IMGA”) and Information Management System (“IMS”) Program Plan. The IMGA will include an inventory and

assessment of existing information management elements, and an assessment of the needed components to ensure all necessary information and data related to identification, tracking, operation, maintenance, management, assets and planning for the Unified Government's wastewater and stormwater programs are consistently, efficiently and effectively managed. The IMS Program Plan shall include a framework and schedule for considering and implementing alternatives to address information and asset management gaps identified in the IMGGA, as described in Paragraph 10, below. If EPA provides comments on the IMGGA and/or IMS Program Plan within thirty (30) days of the Unified Government's submittal, the Unified Government may, within thirty (30) days after receipt of such comments, revise the IMGGA and/or IMS Program Plan to address the comments and resubmit it/them to EPA.

10. The IMS shall include the capacity to track significant activities and deadlines pursuant to applicable WWTP and MS4 permits and in plans under this Consent Decree, including but not limited to: the SWMP; the Nine Minimum Control Plan; the Fats, Oils and Grease Control Program Plan; the Collection System Release Response Plan; the Capacity, Maintenance, Operation and Management Program Plan; and the IOCP.

## **VI. COMPLIANCE MEASURES RELATING TO STORM SEWER SYSTEM**

11. SWMP Implementation. Except to the extent certain SOPs are addressed by Paragraph 12, below, the Unified Government shall implement the SWMP, incorporated into the Consent Decree and attached hereto as Appendix E, and the SOPs identified therein immediately upon the Date of Lodging in a manner that meets the requirements of the Unified Government's MS4 Permit. If the Unified Government makes revisions to the SWMP and/or its SOP(s), other than minor corrections or adjustments, the Unified Government shall submit such revised

provisions to the EPA for review, with a copy to the State, in the Annual or Semiannual Report, pursuant to Paragraph 60(b)(v). Such revisions shall not be considered modifications to the Consent Decree for purposes of Section XXII of this Consent Decree (Modification).

12. Standard Operating Procedures. The Unified Government shall provide to EPA, for review and comment, with a copy to the State, the SOPs listed below in Subparagraphs (a) through (c) to implement the SWMP. If EPA, after consultation with the State, provides comments on any such SOP within thirty (30) days of Unified Government's submittal of that SOP, the Unified Government may, within thirty (30) days after receipt of such comments, revise the SOP to address the comments and submit the revised SOP to EPA. The Unified Government shall by no later than March 31, 2013, submit to EPA, with a copy to the State, the following SOPs:

- (a) SWMP Section 7.A.1 (Plan Review SOP);
- (b) SWMP Section 7.A.2 (Inspection SOP); and
- (c) SWMP Section 7.A.3 (Enforcement SOP).

13. Within thirty (30) days following the review and comment process described in Paragraph 12 above, the Unified Government shall implement the procedures in each such SOP in a manner that meets the requirements of the Unified Government's MS4 permit.

14. Legal Authority. By June 30, 2014, and to the extent provided under applicable law, the Unified Government shall certify that it has adopted and will maintain ordinances that:

- (a) Confer authority on the Unified Government to perform inspections necessary and appropriate to administer the Illicit Discharge Program, Industrial Stormwater

Management Program, Construction Site Stormwater Management Program, and Post-Construction Stormwater Management Program.

(b) Confer authority on the Unified Government to assess penalties for violation of any Illicit Discharge Program, Industrial Stormwater Management Program, Construction Site Stormwater Management Program, and Post-Construction Stormwater Management Program requirement.

(c) Confer authority on the Unified Government to issue enforceable orders compelling the elimination of any Illicit Connections to its MS4 or the elimination of illicit discharges, and as appropriate, recuperate costs from responsible parties that fail to eliminate discharges within a reasonable time following demand for cessation of discharge.

(d) Confer authority on the Unified Government to issue stop-work orders, where appropriate, compelling the cessation of construction activity at any Active Construction Site (a site requiring construction stormwater permit from KDHE where construction activity is ongoing) and to issue injunctions to prohibit construction activities, when appropriate, until corrections are made at any Inactive Construction Site (a site requiring a construction stormwater permit from KDHE that has not yet reached final stabilization and/or does not meet the requirements to terminate the permit) that is in violation of any of the Unified Government ordinances relating to stormwater management at Active and Inactive Construction Sites.

(e) Confer authority on the Unified Government consistent with 40 C.F.R. § 122.26(d)(2)(iv)(C) to require Industrial Facilities and High-Risk Commercial Facilities, as described therein, and within the area served by the MS4, to address any discharges to the MS4, to install or undertake stormwater control measures on their properties and, if otherwise required

by federal or State law, to conduct monitoring and provide the monitoring results to the Unified Government.

(f) Confer authority on the Unified Government to require owners of privately-owned retention and detention basins and other privately-owned stormwater control structures associated with new development or significant redevelopment, within the area served by the MS4, following entry of this Consent Decree to perform necessary maintenance and repairs on such structures and authorize the issuance of schedules for compliance and the assessment of penalties to compel such maintenance and repairs.

15. Funding. Beginning with its first fiscal year after the Effective Date of this Consent Decree, the Unified Government shall ensure there is adequate funding for each operating year in an amount reasonably expected to be sufficient to implement all measures in the SWMP, comply with the MS4 Permit, and comply with all the requirements of this Section of the Consent Decree (Compliance Measures Relating to Storm Sewer System). The Unified Government shall include in the Annual Report for each year, pursuant to Section XII, information regarding its SWMP implementation budget.

16. Personnel and Training. The Unified Government shall maintain adequate personnel and/or retain sufficient contractors to comply with this Section of this Consent Decree. The Unified Government shall, consistent with the provisions of the SWMP, attached hereto as Appendix E, and relevant SOPs, ensure that all personnel with responsibilities for compliance with this Section of this Consent Decree receive necessary and appropriate training to carry out their obligations for MS4 program implementation.

**VII. ONGOING CONSTRUCTION AND PROGRAMMATIC ACTIVITIES FOR THE SEWER SYSTEM**

**A. Construction of Improvements at the Kaw Point WWTP.**

17. The Unified Government shall complete the following projects pursuant to the schedules listed below for each project. The Unified Government shall include in each Annual Report, pursuant to Section XII, information regarding its efforts to comply with this Paragraph.

(a) **Design and Construct a 48 Million Gallons Per Day UV Disinfection Facility.** The Unified Government shall design and construct a 48 million gallons per day (“MGD”) ultra violet disinfection facility at the Kaw Point WWTP. Construction and start-up shall be completed by September 30, 2015.

(b) **Solids Dewatering Improvements at Kaw Point WWTP.** The Unified Government shall design, construct and begin operations of solids dewatering improvements at the Kaw Point WWTP no later than December 31, 2016, that will produce sludge residuals suitable for landfilling in accordance with 40 C.F.R. Part 503. The Unified Government is constructing the solids dewatering facilities to replace sludge handling after abandonment of the Kaw Point sewage sludge incinerators.

**B. Construction of Improvements in the SSS and CSS Service Areas.**

18. The Unified Government shall complete the following projects pursuant to the schedules listed below for each project. Unless otherwise indicated herein, the Unified Government shall include in each Annual Report, pursuant to Section XII, information regarding its efforts to comply with each of the projects identified in this Paragraph.

(a) **Investigation and Elimination of Specific CSOs:**

(i) **Closure of CSO 82 and Manhole 064-146 (11<sup>th</sup> and Troup).**

The Unified Government shall conduct an analysis of alternatives for closure of this constructed overflow. The analysis and closure of the overflow shall be completed by Dec. 31, 2013, and reported in the February 15, 2014 Annual Report, pursuant to Section XII.

(ii) **Investigation of CSOs 20, 34-38, 46, 68, and 83.** The Unified Government shall conduct an investigation of CSOs 20, 34-38, 46, 68, and 83, using smoke testing or other means to determine stormwater inputs or connection to the CSS. The Unified Government shall also survey and provide a condition assessment of approximately 130 manholes and a physical survey of the 10 outfalls and diversion structures in the Central Industrial District area. The Unified Government shall submit a report of the investigation in the February 15, 2014 Annual Report, pursuant to Section XII, which shall:

(A) confirm that the CSOs receive stormwater inputs, or if no stormwater input is identified reclassify the CSOs as constructed SSOs; and

(B) evaluate the feasibility of plugging any of the CSOs that were reclassified as constructed SSOs. Where technically feasible and without risk of adverse impacts elsewhere in the system, the Unified Government shall provide a schedule to plug or otherwise eliminate such constructed SSOs by September 30, 2016. If the Unified Government determines that plugging or otherwise eliminating any of the reclassified constructed SSOs is not feasible by September 30, 2016, the Unified Government shall address those SSOs as part of the IOCP.

(b) **North Jersey Creek Sewer System Repairs 12th Street to 18th Street.**

The Unified Government shall repair and rehabilitate clay pipe and brick or stone manholes in the area of North Jersey Creek which is generally bounded by N. 12th St. on the East, N. 17th St. on the West, Parallel Ave. on the South and Quindaro Ave. on the North. The scope of the work includes repair and rehabilitation of clay pipe and brick or stone manholes in the combined sewer system. Rehabilitation of pipes will include approximately 9,000 lineal feet of cured in place pipe (“CIPP”) lining and spot repair of approximately 25 additional pipe segments. Manhole rehabilitation will include cementitious lining of approximately 1,000 vertical feet of manhole wall and cone and replacement of approximately 50 frames and covers. Implementation of all repairs and rehabilitation work shall be completed no later than December 31, 2013.

(c) **CSO Structure Study and Minor Modifications.** The Unified

Government shall conduct an evaluation including a desktop study and field review of all CSO diversion structures to evaluate whether minor structural modifications can be made to enhance system capacity while the IOCP is being developed and implemented. Modifications, such as weir height adjustment, will be constructed if determined to be beneficial and feasible (technically and avoiding adverse impacts elsewhere in the system). The CSO Structure Study, analyzing each diversion structure, shall be submitted as part of the February 15, 2015 Annual Report pursuant to Section XII. The modifications determined beneficial and feasible shall be completed no later than December 31, 2016.

(d) **67th & Parallel - Aerial Sanitary Sewer Line Stabilization.** The

Unified Government shall investigate, design and construct stabilization to stream banks as

necessary to stabilize and protect the aerial sewer support structures at 67<sup>th</sup> Street and Parallel Parkway. Construction shall be completed no later than March 30, 2014.

(e) **SSS Pump Station Repair and Rehabilitation Evaluation.** The Unified Government shall evaluate all pump stations in the SSS to identify the physical condition of each Pumping Station, including individual pump capacity, station firm capacity and stand-by power, to determine their condition, reliability and capacity. The evaluation will provide the basis for prioritizing repair and rehabilitation activities including integration with IOCP planning and implementation. The goal of the repair and rehabilitation work is to improve pump station condition and reliability and thereby reduce the potential for mechanical and/or electrical failure-related sewer overflows. The evaluation for the first 34 pump stations within the SSS will be completed according to the criteria set forth in Subparagraph (i) below, and compiled into a summary report and schedule for repair to be submitted to EPA, with a copy to the State, no later than June 30, 2013. The remaining 30 pump stations in the SSS will be evaluated according to the criteria set forth in Subparagraph (i) below, and compiled into a summary report and schedule for repair to be submitted to EPA, with a copy to the State, no later than June 30, 2014. The Unified Government shall commit to spending at least \$700,000 on an annual average basis for five years from the date of entry of the Consent Decree to implement the highest priority pump station repairs identified in the evaluation. The Unified Government shall include in each Annual Report submitted pursuant to Paragraph 60(c)(ii), a list and brief description of all pump station repairs implemented pursuant to this Paragraph during the reporting year and the costs associated with those repairs. Any additional pump station repairs identified in the evaluation that are not completed pursuant to the above shall be addressed in the approved IOCP and/or

scheduled for completion as part of Capacity, Management, Operations, and Maintenance Program Plan implementation, as addressed by Subsection G, below.

(i) The Pump Station evaluation criteria shall include, but not be limited to criteria for when a pump station must be repaired or rehabilitated, identification of firm pump capacity, provisions for alternate power, general physical condition, and existing/planned supervisory control and data acquisition (“SCADA”). For pump stations of 1,000 gallons per minute (“gpm”) firm capacity or more, the evaluation shall also include field-development of the pumping system head curves.

(f) **Stream Crossing Inspection.** The Unified Government shall conduct a field inspection to locate exposed pipelines and immediately adjacent structures that are at risk due to stream bank erosion. Findings of the inspection will be used for planning and budgeting for future corrective action. The inspection shall be completed and the results compiled into a summary report, including a preliminary schedule for repairs, submitted to EPA, with a copy to the State, no later than December 31, 2013. The preliminary schedule will be finalized through the subsequent Unified Government budgeting and planning process. The Unified Government shall correct all defects and/or make repairs identified by the inspection by September 30, 2016 or include the project in the IOCP. The Unified Government shall include in each Annual Report, pursuant to Section XII, information regarding activities to comply with this Paragraph.

(g) **Brush Creek Service Area.** The Unified Government shall make interim repairs or replace Pump Station 37 to enhance its capacity and reliability and reduce potential overflows until such time as the remedial measures for Brush Creek Service Area identified in the IOCP are implemented. Repairs or replacement of Pump Station 37 shall be completed by

December 31, 2014. The Unified Government will confirm completion of the repairs or replacement of Pump Station 37 in the February 15, 2015, Annual Report, pursuant to Section XII.

**C. Fats, Oil and Grease Control Program Plan**

19. The Unified Government shall implement the Fats, Oil and Grease (“FOG”) Control Program Plan, incorporated into the Consent Decree and attached hereto as Appendix F, to reduce the potential for grease accumulations which may impact Sewer System capacity and contribute to Sewer System Overflows. The FOG Control Program Plan includes an implementation schedule for the various aspects of the Plan.

20. No later than July 1, 2014, the Unified Government shall report and certify to EPA, in accordance with Section XII, that it has adopted appropriate legal authority to administer its FOG Control Program, attached to this Consent Decree as Appendix F, and that the FOG Control Program Plan is being fully implemented in accordance with the schedule, therein.

21. The Unified Government shall periodically review and update the FOG Control Program Plan and the associated SOPs, as necessary, to ensure effective and efficient implementation of the FOG Control Program. If the Unified Government makes revisions to the FOG Control Program Plan and/or its SOP(s), other than minor corrections or adjustments, the Unified Government shall submit such revised provisions to the EPA for review, with a copy to the State. Such revisions shall not be considered modifications to the Consent Decree for purposes of Section XXII of this Consent Decree (Modification).

22. The Unified Government shall include in the Annual Report each year, pursuant to Section XII, information regarding implementation of the FOG Program Plan.

**D. Collection System Release Response Plan**

23. The Unified Government shall implement the Collection System Release Response Plan (“CSRRP”) incorporated into the Consent Decree and attached hereto as Appendix G.

24. The Unified Government shall periodically review and update the CSRRP and the incorporated SOPs, as necessary, to ensure effective and efficient implementation of the CSRRP. If the Unified Government makes revisions to the CSRRP and/or its SOP(s), other than minor corrections or adjustments, the Unified Government shall submit such revised provisions to the EPA for review, with a copy to the State, in the Annual or Semiannual Report, pursuant to Paragraph 60(b)(v). Such revisions shall not be considered modifications to the Consent Decree for purposes of Section XXII of this Consent Decree (Modification).

**E. Abandonment of Sewer Services Program and New Sewer Construction**

25. The Unified Government shall evaluate its legal authority regarding abandonment of sanitary sewer services to assess whether it is sufficient to effectively reduce ongoing excessive I/I following abandonment of sewer services. If determined appropriate based on the above evaluation, the Unified Government shall revise its legal authority. The evaluation shall focus on ensuring that the lateral sewer lines will be plugged at the connection point to the Unified Government-owned main, where feasible. The Unified Government shall provide a copy of the ordinance or other legal authority and any recommended changes thereto, together with a schedule for adopting such changes, to EPA in the 2014 Annual Report.

26. The Unified Government shall enforce its Sewer Ordinance (Ord. No. O-46-05, § 1, 6-2-2005; Sewer Use Ordinance Chapter 30, Article V, Section 30-122) as to new

construction in order to prohibit discharges of stormwater, surface waters, ground waters, roof runoff, cooling water, and Excessive I/I to the Sewer System.

**F. Nine Minimum Controls Plan for the Combined Sewer System**

27. The Unified Government shall implement the Nine Minimum Controls Plan (“NMCP”) incorporated into the Consent Decree and attached hereto as Appendix H.

28. The Unified Government shall periodically review and update the NMCP, as necessary, to ensure effective and efficient implementation of the NMCP. If the Unified Government makes revisions to the NMCP, other than minor corrections or adjustments, the Unified Government shall submit such revised provisions to the EPA for review, with a copy to the State, in the Annual or Semiannual Report, pursuant to Paragraph 60(b)(v). Such revisions shall not be considered modifications to the Consent Decree for purposes of Section XXII of this Consent Decree (Modification).

**G. Capacity, Management, Operations, and Maintenance Program Plan**

29. The Unified Government shall submit by December 31, 2013, for review and approval by EPA in accordance with the requirements of Section XII, with a copy to the State, a comprehensive Capacity, Management, Operations, and Maintenance (“CMOM”) Program Plan with a proposed implementation schedule. The CMOM Program Plan and other submittals shall be based on good engineering practices and in accordance with accepted industry standards, using the following documents as guidance, as applicable: (a) EPA’s Handbook: Sewer System Infrastructure Analysis and Rehabilitation, EPA/625/6-91/030, 1991 (hereafter “EPA Handbook”); (b) National Association of Sewer Service Companies Sewerage Rehabilitation Manual; and (c) Water Environment Federation Manual of Practice FD-6 – Existing Sewer

Evaluation and Rehabilitation, Third Edition. The CMOM Program Plan shall incorporate the following elements: statement of program goal; establishment of performance goals; organizational structure and communication; legal authority; training; maintenance activities for gravity sewers, interceptors, public laterals, pump stations and force mains; and design construction and testing standards for new and rehabilitated gravity sewers, force mains and manholes. Until such time as the CMOM Program Plan may be modified to conform to the approved IOCP, the CMOM Program Plan shall establish maintenance, inspection, and rehabilitation/replacement levels in a manner designed to maintain the existing level of wet weather capacity service. The CMOM Program Plan shall describe:

- (a) Standard procedures for documentation of:
  - (i) Customer complaints and response thereto;
  - (ii) Work order tracking and management; and
  - (iii) Updates to sewer system inventory and mapping.
- (b) Preventive and routine maintenance procedures for cleaning and closed-circuit television (“CCTV”) inspection of gravity lines.
- (c) Routine inspection and maintenance procedures for pump stations, including standard procedures for inspections and maintenance.
- (d) Routine inspection and maintenance procedures for force mains, including standard procedures for assessment and maintenance.
- (e) Integration of the Unified Government’s ongoing operation, maintenance and response programs, including but not limited to the FOG Control Program, the CSRRP and a root control program.

30. The CMOM Program Plan shall include a section on a capacity assurance plan that will be implemented to maintain capacity following the correction of capacity issues identified and rectified as a result of implementation of the IOCP. The CMOM Program Plan shall also include a section on capacity evaluation for future changes to the Sewer System relating to continued system aging (e.g., increasing I/I) and system growth not envisioned or considered in the IOCP.

31. Until such time as the CMOM Program may be modified to conform to the approved IOCP, the Unified Government shall implement the CMOM Program in a manner designed to maintain the existing level of wet weather capacity service. The Unified Government shall:

(a) Inspect Gravity Sewer Lines:

(i) The Unified Government shall:

(A) conduct an internal inspection of (1) each section of Gravity Sewer pipe that experiences a non-capacity related SSO, and (2) as appropriate, conduct any upstream and/or downstream sections, using CCTV or other appropriate inspection methods (excluding lamping) as soon as is practicable following the resolution of the non-capacity related SSO but not longer than 30 days after the non-capacity related SSO was resolved; and

(B) perform an appropriate inspection no more than 90 days following any permanent repair, rehabilitation, and/or replacement of sewer pipes;

(ii) In addition to the incident-based inspections addressed by Subparagraph (i) above, the Unified Government shall CCTV at least 40 miles of sewer pipe per year, of which at least 28 miles shall be unique. CCTV general priority shall be based on pipe

age, pipe material, and maintenance history and shall include sewers that have experienced non-capacity related SSOs, blockages and/or structural failures. Subject to the requirement that at least 28 unique miles of pipe televised are unique, the Unified Government may include pipe segments that are televised more than one time in the total annual miles of pipe that are televised; and

(iii) The Unified Government shall maintain a data retrieval storage system that allows access to inspection reports and video of sewer pipes.

(b) Clean Gravity Sewer Lines:

(i) The Unified Government shall clean 200 miles of its gravity sewer lines within its collection system annually, of which at least 140 miles shall be unique;

(ii) The Unified Government shall maintain retrievable data records to indicate the location and lengths of gravity sewer cleaned and describing the techniques used to clean each sewer segment. The acquired data shall be used to inform the need for additional CCTV inspections and increased cleaning cycles.

(c) Inspect, repair, rehabilitate, and replace certain Sewer System manholes:

(i) The Unified Government shall inspect no less than 1,000 manholes annually. Inspection shall include the evaluation of manhole frame-to-adjustment ring-to-manhole-barrel seals in its Sanitary Sewer System; and

(ii) The Unified Government shall repair, rehabilitate, and/or replace at least 250 manholes per year on a 3-year rolling annual average.

(d) Rehabilitate, repair and/or replace certain sewer pipes:

(i) The Unified Government shall budget for and permanently repair, rehabilitate, and/or replace sewer pipe in the Sewer System annually based on current CCTV records, pipe age, and material and maintenance history;

(ii) The Unified Government shall repair known defects (i.e., those defects that have caused or increase the risk of a non-capacity related SSO, including conditions leading to structural collapse or that would create blockages) as soon as is practical. The Unified Government shall maintain a log listing discovered sewer line defects in need of expeditious repair or replacement, the date the Unified Government discovered the defect, and the date of project completion.

(e) Implement a routine and preventative maintenance program for Pump Stations:

(i) The Unified Government shall conduct visual inspections no less than monthly for all Pump Stations, no less than twice per month for pump stations between 1 MGD to 5 MGD in peak hydraulic capacity, and no less than weekly for pump stations greater than 5 MGD in peak hydraulic capacity; and

(ii) The Unified Government shall use SCADA to continuously monitor station performance at stations so equipped. The remaining pump stations shall be monitored through dialer alarm systems reporting high wet wells, power failure, pump failures and phase loss.

(f) Implement a corrective and emergency Pump Station response program as identified in the CSRRP:

(i) The Unified Government shall create and maintain a list of backup portable pumping equipment and portable generators available for Pump Stations that rely on redundant storage only to prevent overflows during periods of pumping equipment malfunction or primary power outage.

(g) Inspect and repair of Force Mains:

(i) The Unified Government shall develop and implement an SOP for inspection and repair of Force Mains, incorporating the following:

(A) if warranted, evaluation of nondestructive inspection techniques;

(B) inspection of air and vacuum release valves (“ARVs”);

(C) inspection of force main discharge points for evidence of corrosion; and

(D) periodic review of force main age, construction material and maintenance history; and

(ii) The Unified Government shall repair all defects within one (1) year of discovery, unless impracticable. If unable to complete a repair of such a defect within one year of discovery, the Unified Government will submit a schedule for repair of the defect.

32. CMOM Program Plan Implementation: The Unified Government shall implement the approved CMOM Program Plan in accordance with the schedule provided in Paragraph 29. After approval of the CMOM Program Plan as described in Paragraph 29, the Unified Government shall annually review its CMOM Program Plan and update the program as necessary to ensure that the program is achieving the service levels contained in the approved

IOCP Plan. If the Unified Government makes revisions to the approved CMOM Program Plan, other than minor corrections or adjustments, the Unified Government shall submit such revised provisions to the EPA for review, with a copy to the State, in the Annual or Semiannual Report, pursuant to Paragraph 60(b)(v). Such revisions shall not be considered modifications to the Consent Decree for purposes of Section XXII of this Consent Decree (Modification).

33. Until approval of the IOCP, the Unified Government shall submit the following as part of its Annual Report, pursuant to Paragraph 60(c):

(a) The number of miles of unique and repeat gravity sewer pipe inspected by CCTV during the preceding calendar year as separate totals. If the Unified Government has not achieved the required mileage of CCTV during the reporting year, the Annual Report shall identify and discuss the reasons why the mileage requirement was not achieved;

(b) The number of miles of gravity sewer pipe cleaned during the preceding calendar year. If the Unified Government has not achieved the required mileage of cleaning during the reporting year, the Annual Report shall identify and discuss the reasons why the mileage requirement was not met;

(c) The number of manholes, by category, e.g., combined, separate, storm, that were inspected, repaired, rehabilitated and/or replaced during the preceding calendar year. If the Unified Government has not achieved the required number of manholes inspected, repaired, rehabilitated and/or replaced during the reporting year, the Annual Report shall identify and discuss the reasons why the requirement was not met;

(d) The location and lengths of sewer pipe repaired, rehabilitated, and/or replaced during the preceding calendar year;

(e) The number of Pump Stations inspected or otherwise assessed during the preceding calendar year and a brief description of any completed or scheduled repairs; and

(f) The location and lengths of Force Mains assessed during the preceding calendar year, a brief description of the findings of the assessment and any completed or scheduled repairs.

#### **H. Certification of Legal Authority**

34. The Unified Government hereby certifies that as to the Sewer System, to the extent allowable by applicable law, it has sufficient legal authority to:

- (a) control I/I from private and public sources;
- (b) require that sewers and connections be properly designed and constructed;
- (c) ensure there is proper installation, testing and inspection of new and rehabilitated sewers;
- (d) implement the general and specific prohibitions of the Pretreatment Program as defined in 40 C.F.R. § 403.5 and to implement its approved Pretreatment Program;
- (e) prohibit Inflow to the SSS and provide mechanisms for requiring its removal as warranted; and
- (f) control the introduction of fats, oil, and grease from commercial institutions and establishments.

35. The legal authority may be in the form of sewer use ordinances, service agreements, contracts or other legally binding mechanisms.

## **VIII. EVALUATION OF SEWERSHEDS WITHIN THE UNIFIED GOVERNMENT'S SEWER SYSTEM**

36. The Unified Government's Sewer System consists of CSS and SSS as depicted on the map attached hereto as Appendix B. The Unified Government shall implement the requirements of this Section for the Sewer System in accordance with any deadlines set forth below and in Section IX.

### **A. Sewer System Evaluation Work Plan**

37. By no later than March 15, 2013, the Unified Government shall submit for review and approval by EPA in accordance with Section XII, with a copy to the State, a Sewer System Evaluation Work Plan ("SSE Work Plan") for completing the evaluations, analysis, modeling, alternatives development, and public participation as identified in Subsections B through F, below: Subsections B and C address the characterization, evaluation and development of the alternatives for addressing overflows in the SSS; Subsections D and E address the characterization, evaluation and development of alternatives for addressing overflows in the CSS; and Section F addresses public and stakeholder involvement. The SSE Work Plan shall include a detailed description of work to be performed and shall serve as the framework for the development of the IOCP. Upon approval by EPA, the Unified Government shall implement the SSE Work Plan. The Unified Government shall include in each Annual and Semiannual Report, pursuant to Section XII, information regarding implementation of the approved SSE Work Plan.

### **B. Sanitary Sewer System Characterization**

38. The Unified Government shall complete a characterization of its SSS ("SSS Characterization") in accordance with the requirements of this Subsection and Subsection C, below. The Unified Government shall summarize the actions taken to complete the SSS

Characterization activities in the Annual Report required under Section XII for the twelve-month period in which the requirements were completed. The results of the SSS Characterization shall be reported in the SSS Characterization Report and submitted to EPA for review and comment no later than August 31, 2015, with a copy to the State. If EPA provides comments on the SSS Characterization Report within forty-five (45) days of the Unified Government's submittal, the Unified Government may, within thirty (30) days after receipt of such comments, revise the SSS Characterization Report to address the comments and resubmit it/them to EPA, with a copy to the State. The final SSS Characterization Report shall be submitted with the IOCP.

39. The SSS Characterization shall be used to develop the remedial measures in the IOCP required pursuant to Section IX, and shall be carried out with consideration of the guidance provided in the appropriate sections of the *Handbook: Sewer System Infrastructure Analysis and Rehabilitation*, EPA/625/6-91/030, 1991; *Existing Sewer Evaluation and Rehabilitation*, WEF MOP FD-6, 2009; the National Association of Sewer Service Companies ("NASSCO") "Manual of Practice;" and sound engineering practice. The SSS Characterization shall:

(a) identify Sewersheds with Excessive I/I that may be causing and/or contributing to capacity-related SSOs (including Private Property Backups) and/or Bypasses at the WWTPs;

(b) identify and quantify, through flow monitoring, modeling, or analyses SSOs within each Sewershed and the volumes associated with each SSO;

(c) identify areas subject to chronic capacity-related Private Property Backups;

- (d) identify typical sources of I/I within the SSS Sewersheds;
- (e) identify the design constraints of Force Mains and Pumping Stations, including failure of individual pumps, lack of redundant pumps, and lack of alternative power sources that contribute to SSOs, including Private Property Backups:
  - (f) identify and quantify sources of I/I within demonstration areas determined to have Excessive I/I rates;
  - (g) identify cross connections between the SSS and sources, such as water supply lines or storm sewers, and unauthorized connections to the SSS within demonstration areas where SSES investigations are performed; and
  - (h) identify physical degradation of the SSS that causes or contributes to SSOs (including Private Property Backups) within demonstration areas where SSES investigations are performed.

40. The SSS Characterization shall include, at a minimum, the following elements:

- (a) Review of existing data concerning SSOs, sewage flows, WWTPs and SSS attributes (i.e., pipe diameters, pipe segment lengths, catchment characteristics, invert elevations), and an evaluation of the accuracy, completeness and adequacy of that data for purposes of supporting the characterization of the SSS. The data review will further identify any additional data needed to satisfy the requirements identified in Paragraph 37 and the Unified Government shall obtain the additional data to complete the SSS Characterization.
- (b) Acquisition of asset data and preparation of a SSS inventory for those sewers to be included in the hydraulic model of the SSS, as shown in Appendix C, including, at a minimum, all gravity interceptor sewers 15- inches and larger; all other sewers to points

at least 1000 feet upstream of known recurring SSOs; emergency overflows; and, force mains serving major pumping stations (capacity of 1000 gpm minimum or greater) in the SSS. Surveys and field investigations for asset data acquisition shall be performed using GPS or other appropriate technology to obtain missing or incomplete asset data.

(c) Completion of an inventory of existing SSS pumping station data for use in the hydraulic modeling. Data defining the installed pumping units, wet well dimensions, and pump operating control settings shall be obtained. As a minimum, pumping unit data shall include field-developed pumping system head curves for all pump stations having firm capacities of 1000 gpm or greater.

(d) Determination of WWTP hydraulic capacities of the major process units in the treatment train performed by in-plant stress-testing, by calculation, review of historical performance records, or by hydraulic modeling.

(e) Dry and wet weather flow monitoring with concurrent rainfall monitoring beginning no later than March 1, 2013, as needed to reasonably characterize flows in the system and provide adequate data for development of computer models. Dry weather monitoring shall be carried out so as to allow the characterization of sanitary wastewater flow rates, baseline groundwater infiltration rates, and diurnal flow patterns. Wet-weather monitoring shall be carried out so as to allow the characterization of rainfall-induced infiltration and stormwater inflow rates. Monitoring site selection, equipment selection, equipment installation, calibration, maintenance, and data quality assurance checks shall generally conform to the recommendations presented in the *Code Of Practice For The Hydraulic Modeling Of Sewer Systems Version 3.001*,

December 2002 by The Chartered Institution of Water and Environmental Management (CIWEM, formerly WaPUG).

(f) Analyses of flow monitoring data to estimate I/I that enters the collection system.

(g) Identification of high priority Sewersheds. High priority Sewersheds will be those with constructed SSOs, capacity restrictions, recurring wet-weather SSOs, and/or high I/I rates.

(h) Based on the analysis of the flow monitoring conducted in (e) of this Paragraph, the Unified Government shall select a minimum of three demonstration areas located in high priority Sewersheds. Demonstration areas shall be subject to field investigation for the purpose of identifying and quantifying sources of I/I and establishing rehabilitative procedures for reduction of I/I. Detailed field investigation may include, but not be limited to:

- (i) Flow monitoring;
- (ii) Manhole Inspections;
- (iii) Smoke Testing;
- (iv) Building Inspections;
- (v) Dye Testing;
- (vi) CCTV Inspections; and
- (vii) Data processing and analysis of inspection data to identify and

categorize system defects and I/I sources.

(i) I/I reduction demonstration projects within high priority Sewersheds shall be performed to gather information specific to the Unified Government's SSS and to the

application of various rehabilitation techniques for guidance of future, system-wide I/I reduction. Temporary flow monitoring shall be performed downstream from the I/I reduction demonstration projects prior to commencing rehabilitation projects (pre-construction flow monitoring) and following completion of rehabilitation (post-construction monitoring). Assessment of the flow data from those monitors will include comparing the system's rainfall response to the data collected during the original flow monitoring performed under (e) in this Paragraph, and determining the effectiveness of the demonstration project to reduce I/I and SSOs. The Unified Government will utilize data developed in the I/I reduction demonstration projects along with performance data demonstrated by other communities and other published literature to forecast planning level probable rates of I/I reduction to be utilized in the development of the IOCP. Additional detailed SSE work may be required during the detailed design phase of remedial projects when implementing the IOCP.

(j) Development of a dynamic computerized SSS Hydraulic Model for the assessment of the hydraulic capacity of the SSS, as identified in Appendix C. Identification of the causes of capacity-related SSOs, and the identification of appropriate remedial measures to address capacity limitations identified for a level of service range to be defined in the SSE Work Plan submitted under Paragraph 37 above. The SSS Hydraulic Model shall be capable of providing an understanding of the response of the SSS to wet weather events and an evaluation of the impacts of proposed remedial measures and reduction of I/I flows. The model shall include, at a minimum, all gravity interceptor sewers 15- inches and larger; all other sewers to points at least 1000 feet upstream of known recurring SSOs; and force mains serving major pumping stations (capacity of 1000 gpm minimum) in the SSS. The model shall be developed

and calibrated in accordance with the recommendations presented in the *Code Of Practice For The Hydraulic Modeling Of Sewer Systems Version 3.001*, December 2002 by The Chartered Institution of Water and Environmental Management (CIWEM, formerly WaPUG).

(k) The SSS Hydraulic Model, as depicted in Appendix C, shall be applied for performance of a capacity assessment of the SSS to allow a technically sound evaluation of the causes of capacity-related SSOs and overloading or bypasses at the WWTPs for the defined level of service range. In Sewersheds that are not depicted in Appendix C, desk-top capacity analyses (without modeling) of gravity lines, pumping stations, and force mains for existing and future conditions shall be performed.

### **C. SSO Control Alternatives Development and Evaluation**

41. The Unified Government shall develop and evaluate alternatives that include specific measures that, if implemented, will result in Adequate Capacity in the SSS and/or at the WWTPs, as identified in the approved IOCP, with the goal of eliminating capacity-related SSOs, Unpermitted Bypasses, and wet weather related NPDES permit noncompliance. Alternatives development and evaluation shall include:

(a) Identification of WWTP upgrades and repair measures necessary to achieve WWTP compliance with NPDES permit limitations and requirements to eliminate Bypasses, except as may be specifically authorized pursuant to 40 C.F.R. § 122.41(m).

(b) Assessment of potential SSO reduction technologies appropriate for each Sewershed considering unique Sewershed-specific features. Specific technologies to address capacity limitations may include, but are not limited to, I/I reduction or removal, increases in

pumping station and sewer capacity in the SSS, construction of storage or equalization basin facilities, or increases in wastewater treatment capacity.

(c) Evaluation of I/I removal and reduction to determine the appropriate I/I removal level versus providing additional transport and/or treatment capacity in each Sewershed. Anticipated I/I removal rates shall reflect current industry practice, local experience, and if available, the results obtained from I/I reduction demonstration projects.

(d) Development of recommended SSO control alternatives in each Sewershed that provide Adequate Capacity in the SSS based upon a range of service levels considering the technologies that were screened in (b) above. The following tasks shall be conducted to develop recommended SSO control alternatives:

(i) Evaluation of the expected performance of the specific technology, or combination of technologies to address capacity limitations;

(ii) Application of the SSS Hydraulic Model for each alternative under evaluation. The SSS Hydraulic Model shall be utilized to estimate the sizes of the improvement alternatives;

(iii) Cost evaluations will be performed to help guide selection of alternatives. The Unified Government will consider implementation costs versus the performance for each control alternative;

(iv) Evaluation of the location of control facilities by considering factors such as the availability of sufficient space for the proposed facility as well as environmental, political, or institutional issues; and

(v) Consideration of Green Infrastructure alternatives, as described in Section X.

**D. CSS Characterization**

42. The Unified Government shall conduct a characterization of the CSS (“CSS Characterization”) in accordance with the requirements of this Subsection and Subsection E, below. The Unified Government shall summarize the actions taken to complete the CSS Characterization activities in the Annual Report required under Section XII for the twelve-month period in which the requirements were completed. The results of the CSS Characterization shall be reported in the CSS Characterization Report and submitted to EPA for review and comment no later than May 31, 2015, with a copy to the State. If EPA provides comments on the CSS Characterization Report within forty-five (45) days of the Unified Government’s submittal, the Unified Government may, within thirty (30) days after receipt of such comments, revise the CSS Characterization Report to address the comments and resubmit it/them to EPA, with a copy to the State. The final CSS Characterization Report shall be submitted with the IOCP.

43. The CSS Characterization shall be carried out in accordance with the federal Combined Sewer Overflow Control Policy, 59 Fed. Reg. 18688 (April 19, 1994) (CSO Policy), and shall include:

(a) A review of existing data concerning CSOs, sewage flows, WWTPs and CSS attributes (i.e., diversion structures, outfalls, pipe diameters, pipe segment lengths, drainage areas, catchment characteristics, invert elevations), and an evaluation of the accuracy, completeness and adequacy of that data for purposes of supporting the characterization of the CSS.

(b) Acquisition of asset data and preparation of a CSS inventory for sewers to be included in the hydraulic model of the CSS, as shown in Appendix C, including, at a minimum, all gravity interceptor sewers 15- inches and larger; all other sewers to points at least 1000 feet upstream of all diversion structures; all dry weather outlet sewers from diversion structures to the receiving WWTP; and all wet weather overflow lines from diversion structures to outfalls and force mains serving major pumping stations (capacity of 1000 gpm minimum) in the CSS. Surveys and field investigations shall be performed using GPS or other appropriate technology to obtain missing or incomplete asset data.

(c) Completion of an inventory of existing CSS pumping station data for use in hydraulic modeling. Data defining the installed pumping units, wet well dimensions, and pump operating control settings shall be obtained. As a minimum, pumping unit data shall include field-developed pumping system head curves for all pump stations having firm capacities of 1000 gpm or larger.

(d) Determination of the Kaw Point WWTP hydraulic capacity of the major process units in the treatment train through the performance of one or more of the following, as appropriate: in-plant stress-testing, calculation, review of historical operating data, and/or hydraulic modeling.

(e) Evaluation of precipitation data to define typical rainfall distribution patterns and recurrence intervals. Project and historical data will be used to develop design events and a Design Year that will be applied when modeling existing conditions and alternative control scenarios.

(f) Dry and wet weather flow monitoring with concurrent rainfall monitoring beginning no later than March 1, 2013, to reasonably characterize flows in the system and provide adequate data for the calibration and verification of models that simulate the frequency, magnitude, and duration of CSOs. Dry weather monitoring shall be carried out so as to allow the characterization of sanitary wastewater flows, baseline groundwater infiltration rates and diurnal flow patterns. Wet weather monitoring shall be carried out so as to allow the characterization of the hydraulic response of the CSS to rainfall events. Monitoring site selection, equipment selection and installation, calibration, maintenance, and data quality assurance checks shall generally conform to the recommendations presented in the *Code Of Practice For The Hydraulic Modeling Of Sewer Systems Version 3.001*, December 2002 by The Chartered Institution of Water and Environmental Management (CIWEM, formerly WaPUG).

(g) Development of a dynamic computerized CSS Hydraulic Model for understanding of system hydraulic response to rain events, identification of the causes of Unauthorized CSOs, and for the identification of appropriate remedial measures to address capacity limitations during design events and the Design Year. The model shall include those CSS elements identified in Appendix C including, sewers 15- inches and larger; all other sewers to points at least 1000 feet upstream of all diversion structures; all dry weather outlet sewers from diversion structures to the receiving WWTP; all wet weather overflow lines from diversion structures to outfalls; flow contributions from SSS connections; and force mains serving major pumping stations (capacity greater than 1000 gpm) in the CSS. The CSS Hydraulic Model shall be developed and calibrated in accordance with the recommendations presented in the *Code Of Practice For The Hydraulic Modeling Of Sewer Systems Version 3.001*,

December 2002 by The Chartered Institution of Water and Environmental Management (CIWEM, formerly WaPUG).

(h) The CSS Hydraulic Model will then be applied to evaluate alternative control scenarios and will be used to:

(i) Simulate CSO occurrence, duration, and volume for rain events other than those that occurred during the flow monitoring period;

(ii) Simulate the hydraulic response of portions of the CSS that have not been monitored;

(iii) Simulate the effect of sanitary sewer system connections to the combined sewer system; and

(iv) Develop CSO statistics such as the number of CSO activations and percent of combined sewage captured and treated in a Design Year.

(i) Water Quality Characterization. The objective of the water quality characterization is to assess the impacts of CSO and non-CSO sources on receiving streams.

Work to be performed shall include:

(i) Compilation and analysis of existing water quality and receiving stream data: This task will include compiling and assessing relevant information and data to meet the following objectives:

(A) Identify receiving streams and applicable water quality standards; 303(d) impairments and TMDLs for receiving streams; and available water quality data for CSO discharges and receiving streams;

(B) Identify water quality parameters of concern;

(C) Identify sensitive areas; and

(D) Identify data gaps.

(ii) Water quality monitoring: This task will include designing and implementing a water quality monitoring program to address data gaps related to water quality characterization of CSO and non-CSO sources and receiving streams and support the development and calibration of receiving stream models.

(iii) Receiving stream modeling: This task will include selection, development, calibration, validation, and application of water quality models to characterize the existing impact of CSO and non-CSO sources on receiving streams, assess water quality benefits under various control scenarios, and assess attainment with water quality standards.

**E. CSO Control Alternatives Development and Evaluation**

44. The Unified Government shall consider the range of alternatives specified in the CSO Policy and associated Long Term Control Plan Guidance, including Green Infrastructure storm water infrastructure or BMPs, and varying levels of control within those alternatives, using expected benefits and cost-effectiveness to help guide the evaluation of controls. A series of tasks shall be performed to screen options and determine the most likely approaches for CSO reduction in CSS Sewersheds. Alternatives development and evaluation shall include:

(a) Maximization of Treatment at the Kaw Point WWTP. Proper evaluation of “convey and treat” or “store and treat” alternatives shall require evaluating the capacity of the Kaw Point WWTP to receive and treat wet weather flows. Plant analysis shall include review of methods to maximize treatment during wet weather. Evaluations will assess treatment efficiency impacts due to increased hydraulic loading, rate of increase in loading, and first flush loading.

(b) Performance of a preliminary CSO technology applicability assessment for each CSS Sewershed considering unique Sewershed-specific features such as diversion structures/outfalls, receiving waters, land uses, and public input. Technologies that shall be considered are generally grouped as described in the EPA document entitled “Combined Sewer Overflows - Guidance for Long-Term Control Plan.” Consideration shall also be given to Green Infrastructure alternatives.

(c) Development of recommended CSO control alternatives considering the technologies that were screened in (b) above. The following tasks shall be conducted to develop recommended control alternatives:

(i) Assurance that control alternatives are consistent with the regulatory requirements of the Nine Minimum Controls;

(ii) Evaluation of the expected performance of the technology, or combination of technologies, which make up the alternative under consideration. Performance evaluation in each Sewershed will consider eliminating individual overflow locations; relocating (when appropriate and possible) overflow locations; reducing overflow frequency and/or volume; and partial treatment and discharge (when appropriate). Elimination and reduction evaluations will include sewer separation (partial or total, whichever is appropriate) and combinations of storage and transport for treatment alternatives. Relocation evaluations will include diversion structure and outfall consolidation (where appropriate) and relocation of outfalls to locations where impacts will not be as significant on receiving waters. Green Infrastructure technologies or BMPs will be evaluated for reducing overflow volumes and frequency and replacement of

storage alternatives where determined to be feasible through the assessment performed pursuant to Subparagraph (b) of this Paragraph.

(iii) Application of the CSS Hydraulic Model for each alternative under evaluation. The CSS Hydraulic Model shall be utilized to estimate improvement sizes necessary to achieve ranges of percent wet weather capture as well as an average number of overflow events in the Design Year consistent with the CSO policy. The CSS Hydraulic Model outputs from the most promising alternatives shall also be input to the water quality model to assess resulting receiving waters quality impacts.

(iv) Perform cost evaluations to help guide selection of controls. These evaluations shall consider a range of controls at different costs of implementation. Modeling results, both CSS and water quality, generated during the performance evaluations, shall be utilized when assessing the benefits to be attained by each control alternative. Implementation costs for each control alternative shall be developed and performance versus cost comparisons shall then be made for the range of alternatives considered.

(v) Performance of preliminary siting considerations evaluations considering availability of sufficient space for the proposed facility, distance of the site from CSO diversion structure(s) or outfall(s) that it will control, and environmental, political, or institutional issues related to locating the control facility on the site.

#### **F. Public Participation and Stakeholder Involvement**

45. The Unified Government shall identify in the SSE Work Plan a public participation program that will ensure there is adequate public participation during the

development of the Unified Government's IOCP. The public participation program shall include, at a minimum, the following:

(a) The means by which the Unified Government will make information pertaining to the completion of the development of the IOCP available to the public for review. These activities may include website development, neighborhood/project meetings, newsletters, media management, and special events.

(b) The means by which the Unified Government shall solicit comments from the public on the completion of the development of the IOCP. The Unified Government shall make appropriate efforts to reach, at a minimum, homeowners, commercial businesses, industrial businesses, the media, community groups and neighborhood associations, civic organizations and clubs, business and trade associations, schools, service organizations, and related special interest organizations.

(c) Consideration of comments provided by the public as Unified Government completes the development of the IOCP.

#### **IX. INTEGRATED OVERFLOW CONTROL PLAN**

46. By no later than September 30, 2016, the Unified Government shall submit to EPA for review and approval in accordance with Section XII, with a copy to the State, an IOCP for the Sewer System developed using the information collected pursuant to Section VIII and reported in the SSS Characterization Report and the CSS Characterization Report. As part of the IOCP, the Unified Government shall complete the development of the LTCP for the CSS and a remedial plan for the SSS. The IOCP shall include specific measures and schedules that, when implemented, will ensure the Unified Government shall achieve and maintain compliance with

the requirements of its WWTP permits, the CWA and regulations promulgated thereunder, and EPA's CSO Policy.

47. The IOCP shall include an evaluation of the range of alternatives, developed for each Sewershed under Part IX, for efficacy in reducing or treating CSOs for the Design Year for providing Adequate Capacity in the SSS, based upon the range of control levels evaluated in the SSE Work Plan, for eliminating Bypasses (except as authorized under 40 C.F.R. § 122.41(m)) at the WWTPs, and for implementing Green Infrastructure technologies or BMPs, where feasible and appropriate. This evaluation shall consider the costs, effectiveness (e.g., for the CSS area, in terms of overflow volume reduction, pollutant of concern loading reductions, and frequency of activation reductions, etc.), and water quality benefits of the selected alternatives. The alternatives evaluated for the CSS as part of the IOCP shall be consistent with those identified in the CSO Policy.

48. In identifying, assessing and prioritizing alternatives for its IOCP, the Unified Government shall include an analysis of the following factors:

- (a) impact on areas with low-income and minority communities, including the schedule for implementation, in consideration of EPA's Plan EJ 2014 (<http://www.epa.gov/environmentaljustice/plan-ej/index.html>) and Presidential Executive Order 12898;
- (b) human health and environmental impact risks;
- (c) frequency and volume of SSOs, CSOs, Unauthorized CSOs and Bypasses;
- (d) integration of SSO remedial measures with LTCP projects; and

(e) effect of any changed (increased or decreased) SSS flows to the CSS and WWTPs.

49. In identifying, assessing and prioritizing alternatives for the CSS area in its IOCP, the Unified Government shall give the highest priority to controlling overflows to sensitive areas in accordance with the CSO Policy.

50. For each alternative or combination of alternatives evaluated as part of the IOCP applicable to the CSS area, including maximizing flow to the WWTP, the Unified Government's assessment shall include, at a minimum:

(a) the reduction in the average number of untreated CSOs for the Design Year;

(b) the percent wet weather capture achieved for the Design Year;

(c) a determination, expressed in present value, consistent, year-specific dollars, of the "project costs," as that term is described in Section 3.4.1 of EPA's August 1995 *Guidance for Long Term Control Plans*, for each alternative or combination of alternatives;

(d) an evaluation of the expected water quality improvements for every pollutant of concern in the receiving waters for the Design Year;

(e) an analysis of the estimated peak hourly and sustained flows to the Kaw Point WWTP for a variety of storm events of varying durations and return frequencies, and their effects on maximizing flows to the WWPT and treating such flows; and

(f) a "knee of the curve" cost-performance analysis for each selected alternative or combination of alternatives that will allow for the comparison of the costs to:

(i) the associated expected water quality improvements;

- (ii) the reduction in volume of the CSOs;
- (iii) the reduction in CSO events; and
- (iv) the reduction in pollutant of concern loading from CSOs.

51. The LTCP shall utilize the methodology outlined in EPA's February 1997 *Combined Sewer Overflows: Guidance for Financial Capability Assessment and Schedule Development* ("EPA FCA"). As indicated in the EPA FCA, the Unified Government may also submit any additional documentation that would create a more accurate and complete picture of its financial capability.

52. For each alternative or combination of alternatives evaluated as part of the IOCP applicable to the SSS area, the Unified Government's assessment shall include, at a minimum:

- (a) SSO reduction performance for the level of service range to be identified in the SSE Work Plan submitted under Paragraph 37 above;
- (b) the integration on the range of alternatives considered for the CSS for areas of the SSS tributary to the CSS; and
- (c) the estimated capital, annual operation and maintenance, and life-cycle costs expressed in present value, consistent, year-specific dollars.

53. The IOCP shall include:

- (a) the selection of CSO control and treatment measures, including the construction of all Sewer System and WWTP improvements, necessary to ensure compliance with the technology-based and water-quality based requirements of the CWA, State law and regulation, and the Unified Government's Kaw Point Permit for the Design Year; and

(b) the selection of SSS control and construction projects, including the construction of all Sewer System and WWTP improvements, necessary to ensure compliance with the technology-based and water-quality based requirements of the CWA, with the goal of eliminating SSOs and Bypasses, other than Bypasses specifically authorized pursuant to 40 C.F.R. § 122.41(m), State law and regulation, and the Unified Government's applicable WWTP Permits.

54. The IOCP evaluation of alternatives for the CSS and SSS shall include an evaluation of the Unified Government's financial capability to fund the selected alternative or combination of alternatives. The Unified Government may present additional information to support the financial capacity analysis.

55. The IOCP shall include a proposed schedule for the design, construction, and implementation of all measures for the SSS and CSS areas. The schedule shall include a deadline for the completion of all construction and full implementation of all measures under the IOCP, which will be established by the Final Consent Decree. The schedule shall also specify the critical construction milestones for each measure, including, at a minimum, dates for:

- (a) completion of design;
- (b) commencement of construction; and
- (c) achievement of full operation.

56. The IOCP shall include a Post-Construction Monitoring Program which shall be used to assess the effectiveness of the selected and completed control measures. The post-construction monitoring program shall be adequate to:

- (a) measure compliance with water quality standards and protection of designated uses;
- (b) assess and document the environmental benefits attributable to CSO control measures and SSS mitigation actions;
- (c) update and enhance the collection system computer models; and
- (d) provide public education and information on the need for implementation of the CSO control measures and SSS mitigation actions, any water quality improvements, and the progress made in achieving the performance criteria.

## **X. GREEN INFRASTRUCTURE**

57. The Unified Government shall consider Green Infrastructure (“GI”) alternatives as part of the SSS and CSS control alternatives under the IOCP. The IOCP shall contain the following minimum considerations for proposing a Green Infrastructure alternative to traditional gray controls:

- (a) Identification of potential locations for GI: The Unified Government shall identify potential areas within the SSS and/or the CSS that would be suitable for development of a GI control measure. Each potential area shall be prioritized using considerations such as the ability to develop effective GI control measures, availability of land and benefits to minority and low income neighborhoods.
- (b) Pilot Projects: The Unified Government shall, at its discretion, select pilot project(s) to develop demonstration GI control measures. The purpose of the pilot project(s) shall be to evaluate the effectiveness of the GI measure to reduce overflow volumes and frequency so that the Unified Government may choose to implement more extensive GI

projects. The selection of pilot project(s) shall include details regarding the design, construction, operation, post-construction monitoring and evaluation of the effectiveness of the pilot project.

(i) Design criteria: The Unified Government shall establish design criteria for each pilot project so as to maximize the benefit of the GI control measure.

Considerations may include the type of control measure (storage, infiltration, evapotranspiration, etc.), long term maintenance requirements, the ability of the Unified Government to properly operate and maintain the control measure and functionality of the control measure.

(ii) Post-construction monitoring: The Unified Government shall establish and implement a post-construction monitoring plan to evaluate the performance and effectiveness of the GI control measure pilot projects. Monitoring shall include at a minimum, rainfall and flow monitoring to gauge storage and/or infiltration performance.

(c) GI control measures proposal: Based on the performance of the pilot project(s), the Unified Government may propose, with EPA approval, to replace or supplement gray controls with GI controls during IOCP implementation.

58. The IOCP shall contain a schedule for the development of any GI pilot project(s) including specific milestones for the following activities:

- (a) Project identification;
- (b) Design;
- (c) Construction;
- (d) Performance monitoring/evaluation; and
- (e) Final report with recommendations.

## **XI. IMPLEMENTATION OF THE INTEGRATED OVERFLOW CONTROL PLAN**

59. After approval of the IOCP, and associated schedules, by EPA pursuant to the provisions of Section XII (Reporting, Certification and Approval of Submittals), the Unified Government agrees without anything further to modify this Consent Decree to incorporate the approved IOCP as an enforceable part of this Consent Decree.

## **XII. REPORTING, CERTIFICATION AND APPROVAL OF SUBMITTALS**

60. Reports. The Unified Government shall submit the following notices and reports:

(a) Periodic Reports. After the Effective Date of this Consent Decree and until termination of this Decree pursuant to Section XXIII (Termination), the Unified Government shall submit to EPA Annual and Semiannual Reports, as identified in Subparagraphs (b) and (c), below, by email and by either U.S. Mail or an overnight delivery service determined appropriate in accordance with Section XIX (Notices). A copy of each Annual and Semiannual Report shall be provided to the State. The first Annual Report shall include information for the period of time beginning after the Effective Date of this Consent Decree to December 31, 2013, and shall be submitted no later than February 15, 2014. Succeeding Annual Reports shall be submitted no later than February 15 each year until termination of this Consent Decree. Semiannual Reports shall be submitted no later than August 15 each year until termination of this Consent Decree.

(b) Each Annual and Semiannual Report shall cover the activities completed in the immediately preceding reporting period, i.e., January 1 through June 30 activities are reportable in the Semiannual Report and July 1 through December 31 activities are reportable in the Annual Report. Each such Report shall include, at a minimum:

(i) a description of major projects and activities conducted during the most recently completed six-month period to comply with the requirements of this Consent Decree;

(ii) a summary of SSOs, Unauthorized CSOs and Bypasses during the six month period, including the date, locations and associated WWTP collection system, estimated volume, rainfall event as measured by the nearest gauge, and cause (if known) of all Sewer System Overflows for the most recently completed six month period;

(iii) the anticipated major projects and activities that will be performed in the next six month period to comply with the requirements of this Consent Decree;

(iv) if the Unified Government violates any requirement of this Consent Decree or has reason to believe that it is likely to violate any requirement of this Consent Decree in the future, the Unified Government shall notify the United States of such violation and its likely duration, with an explanation of the violation's likely cause and of the remedial steps taken, and/or to be taken, to prevent or minimize such violation. If the cause of a violation cannot be fully explained at the time the report is due, the Unified Government shall include a statement to that effect in the report. The Unified Government shall investigate to determine the cause of the violation and then shall submit an amendment to the report, including a full explanation of the cause of the violation, within thirty (30) days after the date of submittal of the semiannual report;

(v) any additional information that demonstrates that the Unified Government is implementing the remedial measures required in this Consent Decree; and

(vi) any report or other information required by this Consent Decree to be submitted or included in an Annual or Semiannual Report due on a specific date.

(c) Annual Reports. Each Annual Report shall, in addition to the information identified in Subparagraph (b), above, also include the following information:

(i) a report on performance measures under the CMOM Program, including:

(A) the number of miles and locations of sewer pipes that were cleaned during the preceding calendar year pursuant to Paragraph 33(b), and if the Unified Government has not achieved the required mileage of sewer pipe cleaning, identify and discuss the reasons why the mileage requirement was not achieved;

(B) the number of manhole inspections, the number of manhole frame adjustments, and the number of manholes that were permanently repaired/rehabilitated/replaced during the preceding calendar year pursuant to Paragraph 33(c), and if the Unified Government has not achieved the required number of manholes inspected and/or repaired, rehabilitated, and replaced, identify and discuss the reasons why these requirements were not achieved;

(C) the locations and number of miles of sewer pipes that were temporarily and/or permanently repaired, rehabilitated or replaced, and a summary of all acute defects repaired during the preceding calendar year pursuant to Paragraph 33(d), and if the Unified Government has not achieved the required mileage of sewer pipe repair, replacement or rehabilitation, identify and discuss the reasons why the mileage requirement was not achieved;

(D) the number of Pump Stations that were inspected, as well as the location and capacity of those Pump Stations inspected during the preceding calendar year pursuant to Paragraph 33(e);

(E) the locations and number of miles of Force Mains that were inspected and/or repaired during the preceding calendar year pursuant to Paragraph 33(f), and if the required number of miles of Force Mains that were inspected and/or repaired has not been achieved, identify and discuss the reasons why the mileage requirement was not achieved; and

(F) if the Unified Government does not meet its service levels as set forth in its CMOM Program Plan pursuant to Paragraph 29, submit for EPA's approval proposed revisions to its CMOM Program Plan that are necessary to achieve the service levels;

(ii) a summary of each remedial measure and capital project implemented during the preceding Calendar Year pursuant to this Consent Decree, including a description of the Unified Government's compliance with the requirements of Sections V through X of this Consent Decree;

(iii) updated information for the preceding year of all known SSOs, Unauthorized CSOs, and Bypasses, providing:

(A) updated map(s) of the Sewer System that identify the locations of the known SSOs, Unauthorized CSOs, Bypasses, Sewersheds, WWTPs, Pumping Stations, Force Mains, wastewater storage facilities, intra- or inter-Sewershed flow control structures, outfalls, and Private Property Backups, that occurred during the preceding year, with a coding system identifying the cause(s) of the Sewer System Overflows;

(B) updated listings of SSOs, Unauthorized CSOs and Bypasses with sufficient information to demonstrate the Unified Government is tracking location, estimated volumes and causes, if known, of such events;

(C) comparison of the number of SSOs, Unauthorized CSOs and Bypasses for the past three years along with corresponding rainfall data measured at the nearest available gauge; and

(D) based in NMC Program implementation, a report on the estimated frequency, volume, if known, and CSO Outfall number(s) for CSO activations.

(d) MS4 Annual Report. The Unified Government shall send to KDHE, with a copy to EPA, its MS4 Annual Report on the date specified in the effective MS4 Permit.

61. All notices and reports required to be submitted pursuant to this Consent Decree shall be submitted to the recipients specified in accordance with Section XIX of this Consent Decree (Notices).

62. Certification Statement. Each written notice, document or report submitted by the Unified Government to the United States under this Consent Decree shall be signed by a responsible party of the Unified Government, as defined by 40 C.F.R. § 122.22, and include the following certification:

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 the 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.

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

63. Nothing in this Section relieves the Unified Government of the obligation to provide the requisite notice for purposes of Section XIV (Force Majeure) of this Consent Decree.

64. The reporting requirements of this Consent Decree do not relieve the Unified Government of any reporting obligations required by the Clean Water Act or its implementing regulations or by any other federal, state, or local law, regulation, permit, or other requirement.

65. Review and Comment by the State. The State may, within thirty (30) days of receipt of a copy of any Deliverable submitted by the Unified Government to the State pursuant to this Consent Decree, provide to EPA written comments or recommendations. If a time constraint imposed by this Consent Decree does not allow thirty (30) days for the State to provide comments to EPA, EPA shall notify the State of the reasonable time period in which it may provide written comments to EPA, and the State shall provide any written comments within that time period. EPA agrees to consider any written comments by the State that are received by EPA within the time periods described in this Paragraph, but EPA may, at its sole unreviewable discretion, adopt or not adopt comments submitted by the State.

66. Approval of Deliverables. After review of any modification of a plan, work plan, statement of work, report, or other item that is required to be submitted pursuant to this Consent Decree for EPA approval, EPA may, in writing: (a) approve the submission; (b) approve the submission upon specified conditions; (c) approve part of the submission and disapprove the remainder; or (d) disapprove the submission. EPA shall make good faith efforts to review and approve, approve with modifications, or disapprove all submittals required by the Consent

Decree within ninety (90) days of EPA's receipt of same. In the event that EPA's review of any submittal exceeds ninety (90) days, then the Unified Government may provide written notice to EPA of all actions under this Consent Decree that will be delayed or otherwise affected by EPA's extended review. Upon providing such notice, the due date for all affected actions will be extended by the number of days beyond ninety (90) that EPA requires to provide its approval, modification and approval, or disapproval to the Unified Government, unless within the 90 day period EPA provides notice, along with a written explanation, to the Unified Government that an extension of a due date is not warranted. If EPA denies the extension of a due date, the Unified Government may initiate dispute resolution pursuant to Section XV of this Consent Decree (Dispute Resolution).

67. If the submission is approved pursuant to Subparagraph 66(a), the Unified Government shall take all actions required by the plan, report, or other document, in accordance with the schedules and requirements of the plan, report, or other document, as approved. If the submission is conditionally approved or approved only in part, pursuant to Paragraph 66, Subparagraphs (b) or (c), the Unified Government shall, upon written direction of EPA take all actions required by the approved plan, report, or other item that EPA determines are technically severable from any disapproved portions, subject to the Unified Government's right to dispute under Section XV of this Decree (Dispute Resolution), the specified conditions and/or determination of severability.

68. If the submission is disapproved in whole or in part pursuant to Paragraph 66, Subparagraphs (c) or (d), then, subject to the Unified Government's right to dispute the disapproval under Section XV of this Consent Decree (Dispute Resolution), the Unified

Government shall correct all deficiencies and resubmit the plan, report, or other item, or disapproved portion thereof, for approval, in accordance with the preceding Paragraphs within ninety (90) days for plans and sixty (60) days for reports or other items, or such longer time as specified by EPA in such notice or agreed to by EPA in writing.

69. Any Stipulated Penalties applicable pursuant to Section XIII, below, to the original submission, as provided in this Section XII of this Decree, shall accrue during the time period specified in Paragraph 68 above, but shall not be payable unless the resubmission is untimely or is disapproved for material deficiencies; provided that, if the original submission was so deficient as to constitute a material breach of the Unified Government's obligations under this Decree, the Stipulated Penalties applicable to the original submission shall be due and payable notwithstanding any subsequent resubmission.

70. If a resubmitted plan, report, or other item, or portion thereof, is disapproved in whole or in part, EPA may again require the Unified Government to correct any deficiencies, in accordance with the preceding Paragraphs subject only to the Unified Government's right to invoke Dispute Resolution. EPA may also deem the Unified Government to be out of compliance with this Consent Decree for failure to timely submit the submittal in compliance with the requirements of this Consent Decree, and may assess stipulated penalties pursuant to this Consent Decree, subject only to the rights of the Unified Government under the Dispute Resolution provisions of this Consent Decree.

71. Obligation to Implement. In the event that EPA approves or approves upon conditions any submittal pursuant to this Section, the Unified Government shall proceed to take

any action required to implement the submittal as approved by EPA, subject only to the rights of the Unified Government under the dispute resolution provisions of this Consent Decree.

72. Submittals are Enforceable. All submittals required to be approved, including all schedules set forth therein, shall be enforceable under this Consent Decree as if they were set forth herein upon approval or approval upon conditions (after conclusion of any Dispute Resolution period). Any portion of a submittal that is not specifically disputed by the Unified Government shall be enforceable during any Dispute Resolution period, provided that implementation of the non-disputed portions of the submittal is not dependent upon implementation of the disputed portion.

73. Revisions to Submittals. The United States and the Unified Government recognize that the Unified Government may need or want to revise certain submittals during the term of this Consent Decree. Such revisions shall not be considered modifications to the Consent Decree for purposes of Section XXII of this Consent Decree (Modification). The Unified Government must obtain EPA's prior written approval of any revision to the substance of any submittal initially required to be approved.

### **XIII. STIPULATED PENALTIES**

74. The Unified Government shall be liable for Stipulated Penalties to the United States for violations of obligations of this Consent Decree unless excused under Section XIV (Force Majeure). A violation includes failing to perform any obligation required by the terms of this Decree, including any statement of work or schedule approved under this Decree, according to all applicable requirements of this Decree and within the specified time schedules established by or approved under this Decree.

75. Compliance Measures Related to Storm Sewer System: The following Stipulated Penalties shall accrue for each violation by the Unified Government of Section VI of this Decree, as follows:

(a) Failure to timely submit each SOP pursuant to Paragraph 12 of this Consent Decree. “Timely submit” shall mean the report or submittal is made by the date specified in this Consent Decree.:

<u>Period Beyond Submittal Date</u>	<u>Penalty Per Violation Per 30-Day Period</u>
1-30 days	\$5,000 per 30-day period
more than 30 days	\$7,500 per 30-day period

(b) Failure to demonstrate through documentation and/or explanation in its Annual MS4 Report, submitted pursuant to Paragraph 60(d) of this Consent Decree, timely implementation or completion, as applicable, of each Best Management Practice (“BMP”) by the annual completion date specified in the Compliance Schedule for each BMP identified in the SWMP, attached as Appendix E:

<u>Period of Noncompliance</u>	<u>Penalty Per BMP Violation Per 30-Day Period</u>
1st through 90th day	\$4,000 per 30-day period
91st day through 120th day	\$7,500 per 30-day period
121st day and beyond	\$10,000 per 30-day period

(c) Failure to timely adopt or maintain an ordinance as required by Paragraph 14 of this Decree.

<u>Period of Noncompliance</u>	<u>Penalty Per Violation Per 30-Day Period</u>
1st through 90th day	\$4,000 per 30-day period
91st day through 120th day	\$7,500 per 30-day period



<u>Period Beyond Completion Date</u>	<u>Penalty Per Violation Per Day</u>
1 - 30 days	\$1,000 per day
31 - 60 days	\$2,000 per day
61 days and beyond	\$4,000 per day

(c) Sewer System Overflows.

(i) Dry Weather CSOs from CSO Outfalls: For each CSO that occurs after the Date of Lodging of the Partial Consent Decree from a permitted CSO Outfall during a dry weather period, the Unified Government shall pay a stipulated penalty of \$2,500 per day during which the CSO occurs.

(ii) Capacity-Related SSOs and Unauthorized CSOs: For each Capacity-Related SSO or Unauthorized CSO that occurs after the Unified Government has completed the remedial measures for that Sewershed pursuant to Section VII of the Consent Decree or Section IX of the Consent Decree, as implemented pursuant to Section XI (Implementation of the IOCP) that reaches waters of the United States, the Unified Government shall pay a stipulated penalty in the following amounts:

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

\$2,500 for any discharge more than 1,000 gallons but less than 10,000; and

\$5,000 for any discharge of 10,000 gallons or more.

(iii) O&M-Related SSOs and Unauthorized CSOs: For each non-capacity related SSO or Unauthorized CSO, other than a Private Property Backup, that occurs due to the Unified Government's failure to properly implement the requirements of subsection VII.F. or VII.G. of this Decree (Nine Minimum Controls Plan or CMOM Program Plan), as

applicable, the Unified Government shall pay a stipulated penalty of \$2,500 per day of occurrence. The Unified Government bears the burden of demonstrating that any such non-capacity related SSO or Unauthorized CSO occurred despite the Unified Government's best efforts to implement the Nine Minimum Control Plan or CMOM Program Plan, as applicable.

(iv) Unpermitted Bypasses:

(A) For each Unpermitted Bypass at the Kaw Point WWTP that occurs before the deadline established for eliminating such bypasses pursuant to the terms of the approved IOCP, as implemented pursuant to Section XI (Implementation of the IOCP) of this Consent Decree, the Unified Government shall pay a stipulated penalty of \$1,000 per day during which an Unpermitted Bypass occurs;

(B) For each Unpermitted Bypass at the Kaw Point WWTP that occurs after the deadline established for eliminating such bypasses to an agreed level of service, pursuant to the terms of the approved IOCP, as implemented pursuant to Section XI (Implementation of the IOCP) of this consent Decree, the Unified Government shall pay a stipulated penalty of \$5,000 per day during which an Unpermitted Bypass occurs; and

(C) For each Unpermitted Bypass at any WWTP other than the Kaw Point WWTP, the Unified Government shall pay a stipulated penalty of \$5,000 each day during which an Unpermitted Bypass occurs.

77. 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

Unified Government shall pay any Stipulated Penalty within thirty (30) days of receiving a written demand by the United States, unless the United States and the Unified Government enter into Dispute Resolution, in which case the provisions of Paragraph 79 apply.

78. The United States may, in the unreviewable exercise of its discretion, reduce or waive any Stipulated Penalties otherwise due the United States under this Consent Decree.

79. Stipulated Penalties shall continue to accrue as provided in Paragraph 77, above, during any Dispute Resolution, but need not be paid until the following:

(a) If the dispute is resolved by agreement or by a decision of the United States that is not appealed to the Court, the Unified Government shall pay accrued penalties agreed or determined to be owing to the United States within thirty (30) days of the effective date of the agreement or the receipt of the United States' decision or order;

(b) If the dispute is appealed to the Court, the Unified Government shall pay all accrued penalties determined by the Court to be owing within sixty (60) days of receiving the Court's decision or order, except as provided in Subparagraph (c), below;

(c) If there is an appeal of the District Court's decision, the Unified Government shall pay all accrued penalties determined to be owed within fifteen (15) days of receiving the final appellate court decision.

80. The Unified Government shall make payment of Stipulated Penalties owing to the United States in accordance with instructions provided to the Unified Government by the Financial Litigation Unit ("FLU") of the United States Attorney's Office for the District of Kansas. The FLU shall provide the payment instructions to:

Lew Levin, Chief Financial Officer  
Unified Government of Wyandotte County/Kansas City, Kansas  
701 North 7th Street, Suite 330

Phone: 913-573-5270  
Fax: 913-573-2890  
E-mail: llevin@wycokck.org

Jody Boeding, Chief Counsel  
Unified Government of Wyandotte County/Kansas City, Kansas  
701 N. 7th Street  
Suite 961  
Phone: 913-573-5060  
Fax: 913-573-5243  
E-mail: jboeding@wycokck.org

81. At the time of payments of stipulated penalties required by this Section, the Unified Government shall simultaneously send written notice of payment and a copy of any transmittal documentation to the United States in accordance with Section XIX of this Decree (Notices). The notices shall reference the Civil Action Number and DOJ Number 90-5-1-1-09463. The notice shall state that the payment is for Stipulated Penalties and shall state for which violation(s) the penalties are being paid.

82. If the Unified Government fails to pay Stipulated Penalties according to the terms of this Consent Decree, the Unified Government 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.

83. Payment of stipulated penalties as set forth above shall be in addition to any other rights or remedies which may be available to the United States by reason of the Unified Government's failure to comply with requirements of this Consent Decree, and any applicable federal, State or local laws, regulations, NPDES Permits, and all other applicable permits.

#### **XIV. FORCE MAJEURE**

84. A "force majeure event" is any event arising from causes beyond the control of the Unified Government, its contractors, or any entity controlled by the Unified Government,

that delays or prevents the performance of any obligation under this Consent Decree despite the Unified Government's best efforts to fulfill the obligation. The requirement that the Unified Government exercise best efforts to fulfill the obligations includes using best efforts to anticipate any potential force majeure event and best efforts to address the effects of any such event (a) as it is occurring and (b) after it has occurred to prevent or minimize any resulting delay to the greatest extent possible. "Force Majeure" does not include the Unified Government's financial inability to perform any obligation under this Consent Decree.

85. If any event occurs or has occurred that may delay the performance of any obligation under this Consent Decree, whether or not caused by a force majeure event, the Unified Government shall provide written notice to EPA by electronic or other means (in accordance with Section XIX) within 15 days after the time the Unified Government first knew of, or by the exercise of due diligence, should have known of, a claimed force majeure event. The notice shall state the anticipated duration of any delay, its cause(s), the Unified Government's past and proposed actions to prevent or minimize any delay, a schedule for carrying out those actions, the Unified Government's rationale for attributing any delay to a force majeure event, and a statement as to whether, in the opinion of the Unified Government, such event may cause or contribute to an endangerment to public health, welfare or the environment. The Unified Government shall include with any notice all available documentation supporting the claim that the delay was attributable to a force majeure. Failure to comply with the above requirements shall preclude the Unified Government from asserting any claim of force majeure for that event for the period of time of such failure to comply, and for any additional delay caused by such failure. The Unified Government shall be deemed to know of any

circumstance of which the Unified Government, any entity controlled by the Unified Government, or the Unified Government's contractors knew or should have known.

86. If the United States agrees that a force majeure event has occurred, the United States will agree to extend the time for the Unified Government to perform the affected requirements for the time necessary to complete those obligations. An extension of time to perform the obligations affected by a force majeure event shall not, by itself, extend the time to perform any other obligation. The United States will notify the Unified Government in writing of the length of the extension, if any, for performance of the obligations affected by the force majeure event. When the United States agrees to a material extension of time, the appropriate modification shall be made pursuant to Section XXII of this Consent Decree (Modification).

87. If the United States does not agree that the delay or anticipated delay has been or will be caused by a force majeure event, the United States will notify the Unified Government in writing of their decision. The United States' position shall be binding, unless the Unified Government invokes Dispute Resolution under Section XV of this Consent Decree. In any such dispute, the Unified Government bears the burden of proving, by a preponderance of the evidence, that each claimed force majeure event is a force majeure event, that the Unified Government gave the notice required by Paragraph 85, that the force majeure event caused any delay that the Unified Government claims was attributable to that event, that the duration of the extension sought will be warranted under the circumstances, and that the Unified Government exercised best efforts to prevent or minimize any delay of the performance of any obligation under this Consent Decree caused by the event.

## **XV. DISPUTE RESOLUTION**

88. Unless otherwise expressly provided for in this Consent Decree, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising under or with respect to this Consent Decree.

89. 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 Unified Government sends the United States a written Notice of Dispute. Such Notice of Dispute shall state clearly the matter in dispute. The period of informal negotiations shall not exceed thirty (30) days from the date the dispute arises, unless that period is modified by written agreement of the United States and the Unified Government. If the United States and the Unified Government cannot resolve a dispute by informal negotiations, then the position advanced by the United States shall be considered binding unless, within thirty (30) days after the conclusion of the informal negotiation period, the Unified Government invokes formal dispute resolution procedures as set forth below.

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

91. The United States shall serve its Statement of Position within forty-five (45) days of receipt of the Unified Government's Statement of Position. The United States' Statement of

Position shall include, but may not necessarily be limited to, any factual data, analysis, or opinion supporting that position and any supporting documentation relied upon by the United States. If within ten (10) days of receiving the United States' Statement of Position, the Unified Government requests to confer with the United States about the Statement of Position, the United States will confer (in person and/or by telephone) with the Unified Government, but such a conference shall be concluded no later than twenty-one (21) days after the issuance of the United States' Statement of Position. The United States will reaffirm or amend their Statement of Position within fourteen (14) days after the conclusion of the conference. The United States' Statement of Position shall be binding on the Unified Government unless the Unified Government files a motion for judicial review of the dispute in accordance with the following Paragraph.

92. The Unified Government may seek judicial review of the dispute by filing with the Court and serving on the United States in accordance with Section XIX of this Consent Decree (Notices) a motion requesting judicial resolution of the dispute. If no conference was requested pursuant to Paragraph 91, the Unified Government's motion must be filed within thirty (30) days of receipt of the United States' Statement of Position pursuant to Paragraph 91. If a conference was requested pursuant to the previous Paragraph, the Unified Government's motion must be filed within thirty (30) days of receipt of the United States' reaffirmation of its original Statement of Position or issuance of an amended Statement of Position. The motion shall contain a written statement of the Unified Government'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 proposed schedule within which the dispute must be resolved for orderly implementation of the Consent Decree.

93. The United States shall respond to the Unified Government's motion within the time period allowed by Local Rule 6.1(d) of this Court. The Unified Government may file a reply memorandum, within the time period allowed by Local Rule 6.1(d).

94. Standard of Review:

(a) Disputes Concerning Matters Accorded Record Review. Except as otherwise provided in this Consent Decree, in any dispute brought under Paragraph 90 pertaining to the adequacy or appropriateness of plans, procedures to implement plans, schedules or any other items requiring approval by EPA under this Consent Decree; the adequacy of the performance of work undertaken pursuant to this Consent Decree; and all other disputes that are accorded review on the administrative record under applicable principles of administrative law, the Unified Government shall have the burden of demonstrating, based on the administrative record, that the position of the United States is arbitrary and capricious or otherwise not in accordance with law.

(b) Other Disputes. Except as otherwise provided in this Consent Decree, in any other dispute brought under Paragraph 90, the Unified Government shall bear the burden of demonstrating that its position complies with the requirements of this Consent Decree and fulfills the Objectives specified in Section III.

95. The invocation of dispute resolution procedures under this Section shall not, by itself, extend, postpone, or affect in any way any obligation of the Unified Government under

this Consent Decree, unless and until final resolution of the dispute so provides. Stipulated Penalties shall be assessed and paid as provided in Section XIII (Stipulated Penalties).

#### **XVI. INFORMATION COLLECTION AND RETENTION**

96. The United States and its representatives, including attorneys, contractors, and consultants, shall have the right to enter the Unified Government facilities 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 in accordance with the terms of this Consent Decree;
- (c) obtain samples;
- (d) obtain documentary evidence, including photographs and similar data; and
- (e) assess the Unified Government's compliance with this Consent Decree.

97. The Unified Government shall maintain copies of any reports, plans, permits, and documents submitted to EPA pursuant to this Consent Decree, including any underlying research and data supporting such submittals, for a period of five (5) years from the date of submission. Where a contractor fails to retain such documents, and the Unified Government can demonstrate that the contractor's missing or destroyed documents contained the same information as documents in the possession of the Unified Government, the Unified Government shall not be liable for the contractor's failure to retain such documents. Drafts of final documents or plans, and non-substantive correspondence and emails do not need to be retained. This record retention requirement shall apply regardless of any corporate or institutional document retention policy to

the contrary. At any time during this record-retention period, the United States may request copies of any documents or records required to be maintained under this Paragraph.

98. Before destroying any documents or records subject to the requirements of the preceding Paragraph, the Unified Government shall notify the United States at least ninety (90) days prior to the destruction of any such records or documents, and, upon request by the United States, the Unified Government shall deliver any such records or documents to EPA. The Unified Government 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 Unified Government asserts such a privilege, it shall provide the following: (a) the title of the document, record, or information; (b) the date of the document, record, or information; (c) the name and title of the author of the document, record, or information; (d) the name and title of each addressee and recipient; (e) a description of the subject of the document, record, or information; and (f) the privilege asserted.

99. 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, nor does it limit or affect any duty or obligation of the Unified Government to maintain records or information imposed by applicable federal or state laws, regulations, permits, or orders.

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

100. This Consent Decree is a partial remedy for the civil claims of the United States for the violations alleged in the Complaint filed in this action. Therefore, this Consent Decree does not resolve these civil claims and is without prejudice to the United States' right to seek

further relief to address these claims or any future claims, including, but not limited to, further injunctive relief, and civil penalties, and the right of the United States to seek further administrative relief to address these claims. It is the present intention of the Parties to seek to negotiate a modification to this Consent Decree or a subsequent consent decree to fully resolve the civil claims of the United States for the violations alleged in the Complaint. However, the Parties recognize that such negotiations may not result in such a resolution and that the United States reserves the right to take such actions as it deems appropriate and necessary to resolve these claims and any future claims. In this and any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, civil penalties, or other appropriate relief relating to the Unified Government's compliance with the Clean Water Act, the Unified Government 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 in the subsequent proceeding were or should have been brought in the instant case. In this and any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, civil penalties, or other appropriate relief relating to the Unified Government's compliance with the Clean Water Act, Plaintiff shall not assert, and may not maintain, that the Unified Government is barred or in any way hindered from asserting any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim preclusion, claim-splitting, or other principles based upon any contention that the defense or claim raised by the Unified Government in the subsequent proceeding were or should have been brought in the instant case.

101. The United States reserves all legal and equitable remedies available to enforce the provisions of this Consent Decree, except as expressly stated herein, and the Unified Government reserves all defenses thereto. This Consent Decree shall not be construed to prevent or limit the rights of the United States to obtain penalties or injunctive relief under the Clean Water Act or its implementing regulations, or under other federal or state laws, regulations, or permit conditions. The United States further reserves all legal and equitable remedies to address any imminent and substantial endangerment to the public health or welfare or the environment arising at, or posed by, the Unified Government, whether related to the violations addressed in this Consent Decree or otherwise.

102. This Consent Decree is not a permit, or a modification of any permit, under any federal, state, or local laws or regulations, and the Unified Government's compliance with the Consent Decree shall be no defense to any action commenced by the United States pursuant to any such laws, regulations, or permits. The Unified Government is responsible for achieving and maintaining complete compliance with all applicable federal, state, and local laws, regulations, and permits. The United States does not, by its consent to the entry of this Consent Decree, warrant or aver in any manner that the Unified Government's compliance with any aspect of this Consent Decree will result in compliance with provisions of the Clean Water Act or with any other provisions of federal, state, or local laws, regulations, or permits.

103. This Consent Decree does not limit or affect the rights of the Unified Government or of the United States against any third parties, not party to this Consent Decree. The effect of this Consent Decree on the rights of third parties, not party to this Consent Decree, against the Unified Government shall be as provided by law.

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

105. 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.

#### **XVIII. COSTS**

106. The Parties shall bear their own costs of this action, including attorneys fees, except that the United States shall be entitled to collect the costs (including attorneys fees) incurred in any action necessary to enforce this Consent Decree or to collect any portion of the civil penalty or any Stipulated Penalties due but not paid by the Unified Government.

#### **XIX. NOTICES**

107. Unless otherwise specified herein, whenever notifications, submissions, or communications are required by this Consent Decree, they shall be made in writing, indicate the title “United States v. Unified Government and the State of Kansas” in the subject matter line of the transmittal’s cover page, and be 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. 90-5-1-1-09463

&

Chief, Water Enforcement Branch  
Water, Wetlands and Pesticides Division  
Environmental Protection Agency, Region 7  
11201 Renner Road  
Lenexa, Kansas 66219

&

Chief, Water Programs Branch  
Office of Regional Counsel  
Environmental Protection Agency, Region 7  
11201 Renner Road  
Lenexa, Kansas 66219

To EPA only, as opposed to the United States:

Chief, Water Enforcement Branch  
Water, Wetlands and Pesticides Division  
Environmental Protection Agency, Region 7  
11201 Renner Road  
Lenexa, Kansas 66219

&

Chief, Water Programs Branch  
Office of Regional Counsel  
Environmental Protection Agency, Region 7  
11201 Renner Road  
Lenexa, Kansas 66219

For verbal notification:  
Chief, Water Enforcement Branch  
913/551-7544

To the State of Kansas through KDHE:

Director, Bureau of Water  
Kansas Department of Health and Environment  
1000 Jackson St. – Suite 420  
Topeka, KS 66612-1367

For verbal notification:  
Director, Bureau of Water  
785/296-5500

To The Unified Government:

Chief Counsel  
Department of Legal Services  
Unified Gov't of Wyandotte County/KCK  
701 N. 7<sup>th</sup> Street  
Suite 961  
Kansas City, Kansas 66101

Director of Public Works  
Unified Gov't of Wyandotte County/KCK  
701 N. 7th Street, 7th Floor  
Kansas City, Kansas 66101

108. Where specifically authorized within this Consent Decree, or as agreed by the Parties in writing, submittals may be made via electronic transmittal to the e-mail address for each addressee identified in Paragraph 107, above.

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

110. Notices submitted pursuant to this Section shall be deemed submitted upon the date they are postmarked and mailed, provided to a reputable overnight delivery service, or where appropriate, sent via electronic mail, provided a message of non-deliverability is not received, unless otherwise provided in this Consent Decree or by mutual agreement of the Parties in writing.

#### **XX. EFFECTIVE DATE**

111. The Effective Date of this Consent Decree shall be the date upon which this Consent Decree is entered by the Court; provided however, that the Unified Government agrees that it shall be bound to perform duties scheduled to occur prior to the Effective Date. In the event the United States withdraws or withholds consent to this Decree before entry, or the Court declines to enter the Decree, then the preceding requirement to perform duties scheduled to occur prior to the Effective Date shall be null and void.

#### **XXI. RETENTION OF JURISDICTION**

112. The Court shall retain jurisdiction over the case until termination of this Consent Decree, for the purpose of resolving disputes arising under this Decree or entering orders modifying this Decree, pursuant to Sections XV (Dispute Resolution) and XXII (Modification), or effectuating or enforcing compliance with the terms of this Decree.

## **XXII. MODIFICATION**

113. The terms of this Consent Decree may be modified only by a subsequent written agreement signed by the United States and the Unified Government or by further order of the Court. Where a modification agreed upon by the United States and the Unified Government constitutes a material change to any term of this Decree, it shall be effective only upon approval by the Court. Non-material changes to this Decree (including Appendices) may be made by written agreement of the United States and the Unified Government without Court approval.

114. Any disputes concerning modification of this Decree shall be resolved pursuant to Section XV of this Decree (Dispute Resolution), provided, however, that, instead of the burden of proof provided by Paragraph 94, the Party seeking the modification bears the burden of demonstrating that it is entitled to the requested modification in accordance with Federal Rule of Civil Procedure 60(b).

## **XXIII. TERMINATION**

115. The Consent Decree is subject to termination only after the Unified Government certifies that it has achieved and maintained compliance with all requirements of this Consent Decree, including, without limitation, (a) payment of all penalties and stipulated penalties due, (b) submission of all Deliverables and approval of all plans required in Sections V, VI and VII or in any amendment to this Consent Decree, (c) completion of all Work and implementation of all the requirements in the plans required in Sections V, VI, VII, VIII, IX, X and XI of this Consent Decree or in any modification of this Consent Decree. A determination by EPA that the Consent Decree should be terminated shall be based on a consideration of whether the Unified Government has satisfied all of the requirements listed above.

116. Notwithstanding the above, the following portions of this Consent Decree may be terminated after the Unified Government certifies that it has met all requirements of the respective portions of the Consent Decree and has satisfactorily complied with its required plan or program for a period of five (5) years following the date of approval of the plan or program by EPA: Section V (Information Management System), Section VI (Compliance Measures Relating to Storm Sewer System), Section VII(D) (Collection System Release Response Plan), Section VII(F) (Nine Minimum Controls Plan), and Section VII(G) (Capacity, Management, Operation, and Maintenance). The Fats, Oil and Grease Control Program Plan, pursuant to Section VII(C), may be terminated after the Unified Government certifies that it has met all requirements of that portion of the Consent Decree and has satisfactorily complied with its plan for a period of two (2) years following certification by the Unified Government, pursuant to Paragraph 20, that it is fully implementing the FOG Control Program Plan.

117. The Unified Government may serve upon the United States a request that the United States and the Unified Government jointly determine that this Consent Decree be terminated, in whole or in part. Any such request shall be in writing and shall include a certification that the requirements of this Consent Decree have been met. If the United States agrees that the Unified Government has satisfied the requirements of this Consent Decree, the United States and the Unified Government shall submit for the Court's approval, a joint stipulation terminating the Consent Decree, or appropriate portions thereof. If the United States determines not to seek termination of the Consent Decree in whole or in part because the requirements of this Consent Decree have not been met, it shall so notify the Unified Government in writing. The notice shall summarize the basis for its decision and describe the

actions necessary to achieve compliance. If the Unified Government disagrees with any such determination, it shall invoke the dispute resolution procedures of this Consent Decree before filing any motion with the Court regarding the disagreement. However, the Unified Government shall not seek dispute resolution of any dispute regarding termination until ninety (90) days after service of its request for Termination.

#### **XXIV. PUBLIC PARTICIPATION**

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

#### **XXV. SIGNATORIES/SERVICE**

119. Each undersigned representative of the Unified Government and State and the Assistant Attorney General for the Environment and Natural Resources Division of the United States 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.

120. This Consent Decree may be signed in counterparts, and its validity shall not be challenged on that basis.

121. The Unified Government agrees not to oppose entry of this Consent Decree by the Court or to challenge any provision of the Decree, unless the United States has notified the Unified Government in writing that it no longer supports entry of the Decree.

122. The Unified Government agrees to accept service of process by mail with respect to all matters arising under or relating to this Consent Decree and to waive the formal service requirements set forth in Rules 4 and 5 of the Federal Rules of Civil Procedure and any applicable Local Rules of this Court including, but not limited to, service of a summons.

#### **XXVI. INTEGRATION**

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

#### **XXVII. PARTIAL JUDGMENT**

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

Dated and entered this \_\_\_\_ day of \_\_\_\_\_, 2013.

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UNITED STATES DISTRICT JUDGE  
District of Kansas

WE HEREBY CONSENT to the entry of this Consent Decree in the matter of U.S. v. Unified Government of Wyandotte Co. and Kansas City, Kansas and the State of Kansas, subject to the public notice and comment provisions of 28 C.F.R. § 50.7:

FOR THE UNITED STATES OF AMERICA:

Dated: 3/19/13



IGNACIA S. MORENO  
Assistant Attorney General  
U.S. Department of Justice  
Environment and Natural Resources Division

Dated: 3/20/13



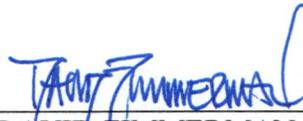
ERIKA M. ZIMMERMAN  
Trial Attorney  
U.S. Department of Justice  
Environment and Natural Resources Division  
Environmental Enforcement Section  
c/o NOAA, Damage Assessment  
7600 Sand Point Way, N.E.  
Seattle, Washington 98115  
Telephone: (206) 526-6608  
Facsimile: (206) 526-6665  
erika.zimmerman@usdoj.gov

WE HEREBY CONSENT to the entry of this Consent Decree in the matter of U.S. v. Unified Government of Wyandotte Co. and Kansas City, Kansas and the State of Kansas, subject to the public notice and comment provisions of 28 C.F.R. § 50.7:

FOR THE UNITED STATES OF AMERICA (Continued):

BARRY R. GRISSOM  
United States Attorney  
District of Kansas

Dated: 3/19/2013



DAVID ZIMMERMAN  
Assistant United States Attorney  
District of Kansas  
500 State Ave., Suite 360  
Kansas City, Kansas 66101  
Telephone: (913) 551-6730  
Facsimile: (913) 551-6541  
D. Kan. No. 23486

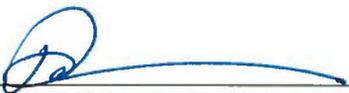
WE HEREBY CONSENT to the entry of this Consent Decree in the matter of U.S. v. Unified Government of Wyandotte Co. and Kansas City, Kansas and the State of Kansas, subject to the public notice and comment provisions of 28 C.F.R. § 50.7:

FOR THE UNITED STATES OF AMERICA (Continued):

Dated: 3/7/13

  
\_\_\_\_\_  
KARL BROOKS  
Regional Administrator  
United States Environmental Protection Agency  
Region 7  
11201 Renner Road  
Lenexa, Kansas 66219  
Telephone: (913) 551-7587  
Facsimile: (913) 551-9587

Dated: 3/5/2013

  
\_\_\_\_\_  
PATRICIA GILLISPIE MILLER  
Senior Counsel  
United States Environmental Protection Agency  
Region 7  
11201 Renner Road  
Lenexa, Kansas 66219  
Telephone: (913) 551-7283  
Facsimile: (913) 551-9283

WE HEREBY CONSENT to the entry of this Consent Decree in the matter of U.S. v. Unified Government of Wyandotte Co. and Kansas City, Kansas and the State of Kansas, subject to the public notice and comment provisions of 28 C.F.R. § 50.7:

FOR THE UNITED STATES OF AMERICA (Continued):

Dated: March 8, 2013

  
MARK POLLINS  
Division Director  
Water Enforcement Division  
Office of Civil Enforcement  
Office of Enforcement and Compliance Assurance  
U.S. Environmental Protection Agency

Dated: Feb 28, 2013

  
LOREN DENTON  
Municipal Branch Chief  
Water Enforcement Division  
Office of Civil Enforcement  
Office of Enforcement and Compliance Assurance  
U.S. Environmental Protection Agency

Dated: February 21, 2013

  
BENJAMIN BAHK  
Staff Attorney  
Water Enforcement Division  
Office of Civil Enforcement  
Office of Enforcement and Compliance Assurance  
U.S. Environmental Protection Agency

WE HEREBY CONSENT to the entry of this Consent Decree in the matter of U.S. v. Unified Government of Wyandotte Co. and Kansas City, Kansas and the State of Kansas:

FOR DEFENDANT UNIFIED GOVERNMENT OF WYANDOTTE COUNTY AND KANSAS CITY, KANSAS:

Dated: 2-28-2013

  
\_\_\_\_\_  
Mayor

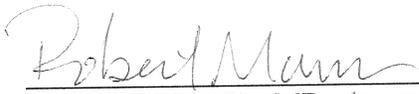
  
\_\_\_\_\_  
Jody Boeding, Esq.  
Misty Brown, Esq.  
Legal Department  
Unified Government of Wyandotte County/Kansas City, Ks  
Attorneys of Record for the Unified Government

Telephone: (913) 573-5060  
Facsimile: (913) 573-5243

WE HEREBY CONSENT to the entry of this Consent Decree in the matter of U.S. v. Unified Government of Wyandotte Co. and Kansas City, Kansas and the State of Kansas, subject to the public notice and comment provisions of 28 C.F.R. § 50.7:

FOR DEFENDANT THE STATE OF KANSAS:

Dated: March 15, 2013

  
\_\_\_\_\_  
ROBERT MOSER, MD  
Secretary  
Kansas Department of Health and Environment