

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TENNESSEE  
NORTHERN DIVISION

THE UNITED STATES OF AMERICA,  
THE STATE OF TENNESSEE, THE  
TENNESSEE CLEAN WATER NETWORK,  
and THE CITY OF KNOXVILLE,

Plaintiffs,

v.

THE KNOXVILLE UTILITIES BOARD,

Defendant.

CIVIL ACTION

NOS. \_\_\_\_\_,

3:03-CV-497

CONSENT DECREE

## TABLE OF CONTENTS

<u>SECTION</u>	<u>PAGE</u>
INTRODUCTION	1
I. JURISDICTION	4
II. VENUE	5
III. PARTIES BOUND	5
IV. OBJECTIVES	6
V. DEFINITIONS	7
VI. REVIEW, APPROVAL AND IMPLEMENTATION OF DELIVERABLES	14
VII. PERFORMANCE OF THE WORK	19
A. Obligation to Perform Work	19
B. Right to Audit	20
C. Implementation of SSOER and CAP/ERs	21
1. Sanitary Sewer Overflow Evaluation Report	21
2. Phase 1 Corrective Action Plan/Engineering Report	23
3. Phase 2 Corrective Action Plan/Engineering Report	24
4. Annual Reporting	24
5. Request for Extension	25
D. Management, Operation and Maintenance ("MOM") Programs	25
1. Management Programs	26
(a). Engineering Programs	26

**TABLE OF CONTENTS** (continued)

<u>SECTION</u>	<u>PAGE</u>
(i). Continuing Sewer System Assessment Program for WCTS	26
(ii). Infrastructure Rehabilitation Programs for WCTS	28
(iii). Capacity Assurance Program	30
(iv). Comprehensive Performance Evaluation Program for WWTPs	41
(v). Composite Correction Plan for WWTPs	42
(b). Reporting, Notification & Record Keeping Program for WWTPs	43
(i). Bypass and Diversion Reporting, Notification & Record Keeping	43
(ii). Effluent Limit Violation Reporting, Notification & Record Keeping	45
(c). Customer Service Program	45
(i). Sewer Overflow Response Plan (“SORP”)	45
(d). Legal Support Programs	47
(i). Rules and Regulations Program	47
(ii). Grease Control Legal Support Program	48
(iii). Private Lateral Legal Support Program	49
(e). Water Quality Monitoring Program	50
(i). Routine Water Quality Monitoring	50
(ii). Investigative Water Quality Monitoring	51

<b><u>TABLE OF CONTENTS</u></b> (continued)		
<b><u>SECTION</u></b>		<b><u>PAGE</u></b>
	(iii). Spill Impact Water Quality Monitoring	52
	(iv). Quality Assurance, Sampling, Data Analysis	53
	(v). Water Quality Reporting	53
	(f). Emergency Response Plan	54
2.	Operations Programs	55
	(a). Grease Control Program	55
	(b). Process Controls Program for WWTPs	57
	(c). Operations Record Keeping Program	57
3.	Maintenance Program	58
	(a). Gravity Line Preventative Maintenance Program	58
E.	Other MOM Programs	58
VIII.	SUPPLEMENTAL ENVIRONMENTAL PROJECT	59
IX.	CIVIL PENALTY	63
X.	STIPULATED PENALTIES	64
XI.	FORCE MAJEURE	70
XII.	DISPUTE RESOLUTION	72
XIII.	RIGHT OF ENTRY	76
XIV.	NOT A PERMIT	77
XV.	ONGOING COMPLIANCE OBLIGATIONS	77
XVI.	NON-WAIVER PROVISIONS	78

**TABLE OF CONTENTS** (continued)

<b><u>SECTION</u></b>	<b><u>PAGE</u></b>
XVII. COSTS OF SUIT	80
XVIII. CERTIFICATION OF SUBMISSIONS/RECORD RETENTION	80
XIX. REPORTING REQUIREMENTS	82
XX. FORM OF NOTICE	86
XXI. MODIFICATION	88
XXII. PUBLIC COMMENT	89
XXIII. CONTINUING JURISDICTION OF THE COURT	89
XXIV. FINAL COMPLIANCE AND TERMINATION	89
XXV. RESCISSION OF AGREED ORDER	91
XXVI. FINAL JUDGMENT	91
XXVII. SIGNATORIES	91
APPENDIX A OTHER MOM PROGRAMS	100
APPENDIX B SUPPLEMENTAL ENVIRONMENTAL PROJECT	102
APPENDIX C STATE ENVIRONMENTAL PROJECT	110

## **INTRODUCTION**

\_\_\_\_\_ WHEREAS, the United States of America, on behalf of the Administrator of the United States Environmental Protection Agency ("EPA"), filed a Complaint alleging that Defendant, the Knoxville Utilities Board ("KUB"), has violated the Clean Water Act, 33 U.S.C. § 1251, *et seq.* ("CWA"); and

WHEREAS, the State of Tennessee ("State") has joined in the United States' Complaint as a party plaintiff alleging that KUB has violated the Tennessee Water Quality Control Act ("TWQCA"), Tenn. Code Ann. §§ 69-3-101, *et seq.*; and

WHEREAS, on July 16, 2003, the Tennessee Clean Water Network ("TCWN") issued a sixty (60) day notice of intent to sue KUB pursuant to 33 U.S.C. § 1365; and

WHEREAS, on September 26, 2003, TCWN filed a Complaint in this District under the citizen's suit provisions of the CWA captioned Tennessee Clean Water Network v. Knoxville Utilities Board, No. 3:03-CV-497, alleging that KUB has violated the CWA ("TCWN Suit"); and

WHEREAS, on May 30, 2003, and June 9, 2003, the City of Knoxville ("City") issued sixty (60) day notices of intent to sue to KUB pursuant to 33 U.S.C. § 1365; and

WHEREAS, on November 17, 2003, the City filed a motion to intervene in the action brought by TCWN, which has not yet been ruled upon because the TCWN Suit has been stayed pending settlement discussions; and

WHEREAS, on February 11, 2004, the Court entered an agreed order allowing the City to intervene in the TCWN action as a plaintiff for the limited purpose of participating in settlement negotiations; and

WHEREAS, the United States, the State, TCWN and the City (collectively "Plaintiffs") have moved jointly that the two federal actions be consolidated, and KUB does not oppose that motion; and

WHEREAS, KUB is a governmental entity created by the charter of the City, and exercises all of the powers and duties possessed by the City to construct, acquire, expand and operate certain Treatment Works, and is the holder of National Pollutant Discharge Elimination System ("NPDES") permits authorizing the discharge of pollutants from certain outfalls associated with the Treatment Works; and

WHEREAS, EPA Region 4 invited KUB by letter dated November 6, 1998, to participate in the Management, Operations and Maintenance ("MOM") Programs Project; and

WHEREAS, KUB agreed to participate in the MOM Programs Project, which participation was confirmed through correspondence and KUB's attendance at various meetings from that date through March 12, 1999; and

WHEREAS, through letter dated June 24, 1999, EPA established a completion deadline of October 31, 1999, for KUB's MOM Audit; and

WHEREAS, KUB voluntarily has undertaken a self-assessment of KUB's sanitary sewer collection and transmission systems to evaluate its management, operation and maintenance of the infrastructure, including its effectiveness at minimizing SSOs, and in connection therewith, submitted to EPA its MOM Audit Report on October 29, 1999, and an Addendum, upon EPA request, on June 23, 2000; and

WHEREAS, according to KUB, the MOM Audit Report states that KUB has a business model that reflects the changing environment in water and wastewater utilities; that it has consistently focused on improving performance of the collection and treatment systems; that it has a preventative and corrective maintenance program that applies industry best practices; that it has a staff that is consistently highly skilled and professional with a detailed knowledge of relevant field operation, equipment and methods; and that KUB compares favorably with high-performing utilities across the United States; and

WHEREAS, the MOM Audit Report made several recommendations to improve or refine KUB's current MOM programs; and

WHEREAS, as a result of the MOM Audit process and recommendations, KUB has already modified, refined, created, and is now implementing several additional management, operation and maintenance projects; and

WHEREAS, pursuant to an agreed order entered into by the Tennessee Department of Environment and Conservation ("TDEC") and KUB and approved by the Tennessee Water Quality Control Board ("TWQCB") on May 20, 2003 ("Agreed Order"), KUB paid a civil penalty of \$120,000 as a State environmental project to fund a public awareness/public education program from July 1, 2003 through June 30, 2005 in conjunction with the Ijams Nature Center and WBIR-TV, which is aimed at informing and educating both adults and children about key environmental issues impacting the community and how the public can help address those issues; and

WHEREAS, in this Consent Decree, KUB agrees to pay a civil penalty and to perform injunctive relief in settlement of the civil claims alleged in Plaintiffs' Complaints; and



WHEREAS, by entering this Consent Decree, KUB does not admit any liability to the Plaintiffs arising out of the transactions or occurrences alleged in the Complaints; and

WHEREAS, the Parties recognize, and the Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith, that implementation of this Consent Decree will avoid prolonged and complicated litigation between the Parties, and that this Consent Decree is fair, reasonable, and in the public interest;

NOW THEREFORE, before the taking of any testimony, without admission by KUB of the non-jurisdictional allegations in the Complaints, without adjudication of any issue of fact or law, and upon the consent and agreement of the Parties to this Consent Decree, it is hereby ORDERED, ADJUDGED and DECREED as follows:

#### **I. JURISDICTION**

\_\_\_\_\_A. This Court has jurisdiction over the subject matter herein and the Parties to these consolidated actions pursuant to sections 309, 504 and 505 of the CWA, 33 U.S.C. §§ 1319, 1364 and 1365, and 28 U.S.C. §§ 1331, 1345 and 1355. This Court has subject matter jurisdiction over the claims of the State of Tennessee pursuant to 28 U.S.C. § 1367 and principles of supplemental jurisdiction, because the State's claims are so related to the United States' claims that they form part of the same case or controversy. The Complaints state claims upon which relief may be granted against KUB for injunctive relief and civil penalties. KUB agrees not to contest the jurisdiction of the Court to enter and enforce this Consent Decree. Authority to bring suit herein on behalf of the United States is vested in the United States Department of Justice by 28 U.S.C. §§ 516 and 519, and 33 U.S.C. §§ 1366 and 1369. The State of Tennessee has authority to bring this action on behalf of TDEC in accordance with Tenn. Code Ann. §

8-6-109.

B. KUB specifically reserves the right to fully contest the alleged right of the City to sue KUB in any other proceeding, currently existing or that may be filed in state or federal court after the Date of Entry, for matters addressed in this Consent Decree or of a like nature arising after the Date of Entry.

## **II. VENUE**

\_\_\_\_\_ Venue is proper in the United States District Court for the Eastern District of Tennessee, Northern Division, pursuant to sections 309(b) and 505 of the CWA, 33 U.S.C. §§ 1319(b) and 1365, and 28 U.S.C. §§ 1391(b) and (c) and 1395(a), because it is the judicial district in which KUB is located and in which the alleged violations occurred.

## **III. PARTIES BOUND**

A. This Consent Decree applies to, and is binding upon, the Parties and their officials, officers, directors, employees, agents, servants, successors and assigns, and upon all persons, firms and corporations who assist KUB in performing its obligations under this Consent Decree.

B. KUB shall provide a copy of this Consent Decree to any consultant and contractor selected or retained to perform any activity required by this Consent Decree.

C. No later than twenty-one (21) Days prior to transfer of any ownership interest, operation, management, or other control of the Treatment Works or any portion thereof, KUB shall give written notice and provide a copy of this Consent Decree to any such transferee or successor in interest. KUB shall require, as a condition of any such sale or transfer, that the purchaser or transferee agree in writing to be bound by this Consent Decree and submit to the

jurisdiction of the Court for its enforcement. KUB shall also notify EPA Region 4, DOJ, TDEC and TCWN of any such planned transfer in accordance with Section XX (Form of Notice) of this Consent Decree at least twenty-one (21) Days prior to the transfer, or if that is impossible, as soon as practicable. KUB may transfer within any **twelve (12)** Month period, an ownership interest, operation, management, or other control of portions of the WCTS of up to one hundred (100) residential customer accounts, or the volumetric equivalent thereof, without this Section III.C applying to the KUB successors or assigns who take ownership or control of such portions of the WCTS.

#### **IV. OBJECTIVES**

\_\_\_\_\_ It is the express purpose of the Parties to further the objectives set forth in section 101 of the CWA, 33 U.S.C. § 1251, and to resolve Plaintiffs' claims for civil penalties and injunctive relief alleged in the Complaints in a manner consistent with the CWA, the TWQCA, and regulations promulgated under the CWA and the TWQCA. In light of these objectives, KUB agrees, *inter alia*, to perform the Work set forth in this Consent Decree; to use sound engineering practices to perform the Work; to use sound management, operation and maintenance practices to implement all the requirements of this Consent Decree; and to expeditiously implement this Consent Decree under reasonable schedules using sound engineering practices; to achieve the goals of: (1) full compliance with the NPDES Permits, the CWA, the TWQCA, and their regulations; and (2) the elimination of all Sanitary Sewer Overflows, including Unpermitted Discharges. Any schedules set forth in Deliverables shall reflect KUB's commitment to initiate and complete all Work under reasonable schedules. KUB shall maintain sufficient financial and personnel resources and sufficient equipment and analytical services to administer and

implement the Work.

## **V. DEFINITIONS**

\_\_\_\_\_A. Unless otherwise defined herein, terms used in this Consent Decree shall have the meaning given to those terms in the CWA, 33 U.S.C. §§ 1251, *et seq.*, and the regulations promulgated thereunder. For purposes of this Consent Decree, whenever terms listed below are used in this Consent Decree or appendices attached hereto and/or incorporated hereunder, the following definitions shall apply:

1. "Audited Programs" shall mean all of the following: Continuing Sewer System Assessment Program (Section VII.D.1.a.(i)); Capacity Assurance Program for WCTS and WWTPs (Section VII.D.1.a.(iii)); Customer Service Program (Section VII.D.1.(c)); Legal Support Programs (Section VII.D.1.(d)); Water Quality Monitoring Programs (Section VII.D.1.(e)); Emergency Response Plan (Section VII.D.1.(f)); Operations Programs (Section VII.D.2); Maintenance Program (Section VII.D.3); and Other MOM Programs (Section VII.E).

2. "Building Backup" is a wastewater backup into a building that is caused by blockages, malfunctions, or flow conditions in the WCTS. A wastewater backup into a building that is caused by a blockage or other malfunction of a Private Lateral is not an Building Backup.

3. "Bypass" shall have the meaning set forth at 40 C.F.R. § 122.41(m).

4. "Calendar Quarter" shall mean the three (3) month periods ending on March 31st, June 30th, September 30th, and December 31st.

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

6. "Certification" or "certify" when used in this Consent Decree shall require

KUB to comply with Section XVIII of this Consent Decree.

7. "City" shall mean the City of Knoxville, Tennessee, including all of its departments, agencies and instrumentalities, excluding KUB.

8. "Consent Decree" or "Decree" shall mean this document and all appendices hereto. In the event of a conflict between this document and any appendix, this document shall control.

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

10. "Date of Entry" shall mean the date on which this Decree is entered by the United States District Court for the Eastern District of Tennessee, Northern Division.

11. "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 Eastern District of Tennessee, Northern Division, for a period of public comment.

12. "Day" or "Days" as used herein shall mean a calendar day or calendar days, unless otherwise indicated. When the day a report or other Deliverable is due under this Consent Decree falls on a Saturday, Sunday, or federal holiday, KUB shall have until the next calendar day that is not one of the aforementioned days for submittal of such report or other Deliverable.

13. "Defendant" shall mean KUB, and any successor thereto.

14. "Deliverable" shall mean any written document required to be prepared and/or submitted by or on behalf of KUB pursuant to this Decree.

15. "Diversion" shall have the meaning as defined in Part II.C.6. of KUB's 1994 NPDES Permits, which provides:

"a. 'Diversion' is the intentional rerouting of wastewater within a treatment facility away from a biological portion of the treatment facility.

                     b. A [D]iversion is permissible only when necessary to protect the active biomass from a Washout due to peak flow events and when this action does not cause effluent limitations to be exceeded."

In the event that the definition of this term is changed or replaced in subsequent final NPDES Permits issued during the term of this Consent Decree, the definition in the subsequent final NPDES Permits shall apply to this Consent Decree.

16. "DOJ" shall mean the United States Department of Justice, including any successor departments or agencies of the United States.

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

18. "Fiscal Year" shall mean the twelve (12) month period starting on July 1 and ending on June 30.

19. "Food Service Facility" or "FSF" shall mean any restaurant, eatery, food caterer, cafeteria, or other institution processing and serving food.

20. "I/I" shall mean the total quantity of water from inflow, infiltration, and rainfall-dependent inflow and infiltration, without distinguishing the source.

21. "IMS" shall mean an information management system.

22. "KUB" shall mean the Defendant in these actions, the Knoxville Utilities Board, and any successor thereto.

23. "Major Gravity Trunk Sewer" shall mean sanitary sewers that are

twenty-four (24) inches or greater in diameter.

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

25. "NPDES Permits" shall mean the most recently issued National Pollutant Discharge Elimination System Permits issued to KUB, including, but not limited to, those permits issued for the Kuwahee Sewage Treatment Plant ("STP"), Permit No. TN0023582 issued May 4, 2004, the Fourth Creek STP, Permit No. TN0023574 issued May 4, 2004, the Eastbridge STP, Permit No. TN0061473 issued May 4, 2004, and the Loves Creek STP, Permit No. TN0021822 issued June 30, 2000, except for those provisions explicitly appealed by KUB in its "Petition for Appeal of Commissioner's Imposition of Terms and Conditions" dated July 31, 2000 for Permit No. TN0021822 and dated June 7, 2004 for Permit Nos. TN0023582, TN0023574, TN0061473 ("Permit Appeals"); together with those provisions of the four National Pollutant Discharge Elimination System Permits issued to KUB in 1994 that expressly govern KUB's conduct with respect to the issues raised in the Permit Appeals; and any modification or renewal thereof, after all appeal rights have been exhausted.

26. "Other MOM Programs" shall mean those management, operation and maintenance programs described in Appendix A.

27. "Parties" shall mean the United States on behalf of EPA, the State, TCWN, the City and KUB.

28. "Priority Pollutants" shall mean those pollutants identified in Tables II and III of Appendix D of 40 C.F.R. § 122.

29. "Private Lateral" shall mean that portion of a sanitary sewer conveyance pipe, including that portion in the public right of way, that extends from the wastewater main to the single-family, multi-family, apartment or other dwelling unit or structure to which wastewater service is or has been provided. Private Laterals do not include connector joints that have been installed by KUB.

30. "Public Contacts" shall mean the parties included on a list maintained by KUB for use during an emergency situation as provided in Section VII.D.1.(f).(iii).

31. "Public Document Repository" or "PDR" shall mean the Knoxville Lawson McGee Public Library and the KUB website.

32. "Public Health Authorities" shall mean the Knox County Health Department.

33. "Sanitary Sewer Overflow" or "SSO" shall mean an overflow, spill, or release of wastewater from the WCTS, including: (a) all Unpermitted Discharges; (b) overflows, spills, or releases of wastewater that may not have reached waters of the United States or the State; and (c) all Building Backups.

34. "Section," when used without a specific reference to a particular paragraph within this Consent Decree, shall mean a portion of this Consent Decree identified by an uppercase Roman numeral.

35. "Sewerbasin" shall mean all portions of the WCTS that are tributary to a Major Gravity Trunk Sewer entering a WWTP, including: First Creek Basin, Second Creek



Basin, Third Creek Basin, Fourth Creek Basin, South Knoxville Basin, Love's Creek Basin, Williams Creek Basin, Northeast Knox Basin and East Knox Basin. Each Sewerbasin is hydraulically independent of other Sewerbasins, unless otherwise noted.

36. "SORP" shall mean the Sewer Overflow Response Plan that KUB provided to the Parties on September 30, 2004.

37. "State" shall mean the State of Tennessee, including all of its departments, agencies and instrumentalities.

38. "TCWN" shall mean the Tennessee Clean Water Network, any successor thereto, and its officers, directors and members.

39. "TDEC" shall mean the Tennessee Department of Environment and Conservation and any successor departments or agencies of the State.

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

41. "Treatment Works" shall have the meaning given to that term in section 212(2) of the CWA, 33 U.S.C. § 1292(2).

42. "TWQCA" shall mean the Tennessee Water Quality Control Act, Tenn.

Code Ann. §§ 69-3-101, *et seq.*

43. "United States" shall mean the United States of America, including its departments, agencies and instrumentalities.

44. "Unpermitted Discharge" shall mean a discharge of pollutants from any location within the Treatment Works which reaches waters of the United States or the State, and which is not authorized by an NPDES Permit, including but not limited to any SSO which reaches waters of the United States or the State.

45. "Washout" shall have the meaning as defined in Section II.C.7. of the NPDES Permits, which provides: "For domestic wastewater plants only, a '[W]ashout' shall be defined as loss of Mixed Liquor Suspended Solids (MLSS) of 30% or more. This refers to the MLSS in the aeration basin(s) only. This does not include MLSS decrease due to solids wasting to the sludge disposal system." In the event that the definition of this term is changed or replaced in subsequent final NPDES Permits issued during the term of this Consent Decree, the definition in the subsequent final NPDES Permits shall apply to this Consent Decree.

46. "Wastewater Collection and Transmission Systems" or "WCTS" shall mean the municipal wastewater collection and transmission systems, including all pipes, force mains, gravity sewer lines, lift stations, pump stations, manholes and appurtenances thereto, which are owned or operated by KUB.

47. "Wastewater Treatment Plant" or "WWTP" shall mean devices or systems used in the storage, treatment, recycling, and reclamation of municipal wastewater. For purposes of this Consent Decree, this definition shall include all facilities owned, managed, operated, and maintained by KUB, including but not limited to the following facilities: Kuwahee STP, Fourth

Creek STP, Loves Creek STP and Eastbridge STP.

48. "Work" shall mean all activities KUB is required to perform under this Consent Decree.

## **VI. REVIEW, APPROVAL AND IMPLEMENTATION OF DELIVERABLES**

\_\_\_\_\_A. 1. Each Deliverable is subject to review by EPA and TDEC. The scope of review varies depending on the nature of the Deliverable.

2. Prior to the submission of a Deliverable to EPA and TDEC, KUB shall notify the Reference Librarian at the Lawson McGee Library identifying the Deliverable to be submitted and providing a one-page instruction flyer containing a brief synopsis of the Deliverable and instructions on how to navigate to KUB's website; shall make available a copy of each Deliverable via KUB's website in the Public Document Repository ("PDR"); and simultaneously shall notify TCWN and the City of the placement of the Deliverable in the PDR. Further, KUB shall make reasonable efforts to provide the same information to the branch offices of the Library, but shall not be subject to stipulated penalties for failure to do so. KUB shall then allow the public a period of thirty (30) Days to inspect and comment to KUB on the Deliverable ("Public Review Requirement"). KUB shall provide instructions **in the PDR** for submitting a comment. Thereafter, KUB shall consider public comments for a period of up to fifteen (15) Days.

3. KUB shall bear the sole responsibility for depositing all Deliverables in the PDR. Within seven (7) Days after its submission to EPA and TDEC, KUB shall place a copy of the submitted version of the Deliverable in the PDR in the same fashion as for the original submission. Within seven (7) Days after EPA's approval, approval upon conditions, or

modification by EPA pursuant to this Section, KUB shall place a copy of such version of the Deliverable in the PDR. Such copy shall replace all previous copies of that Deliverable in the PDR, and shall remain in the PDR along with all comments until termination of this Consent Decree. In addition, KUB shall maintain in the PDR a listing of all Deliverables and comments.

B. Review Level 1 Deliverables.

1. Initial Submittal. All Review Level 1 Deliverables shall be submitted to EPA and TDEC for review. Concurrent with the submittal to EPA and TDEC, all Review Level 1 Deliverables shall be provided to TCWN and the City. After a reasonable period of consultation with the State, EPA may, in its discretion: (a) approve, in whole or in part, the Deliverable; (b) approve the Deliverable upon specified conditions; (c) disapprove, in whole or in part, the Deliverable, directing KUB to modify the Deliverable; or (d) any combination of the above. A disapproval under (c) or (d) of this Section VI.B.1 will set forth the reasons for the deficiencies in sufficient detail for KUB to correct the deficiencies.

2. Right to Comment on Review Level 1 Deliverable. TCWN and the City may provide comments to EPA and TDEC on any Review Level 1 Deliverable within ten (10) Days of KUB's submission of that Deliverable. In the event that TCWN or the City provides comments on a Deliverable under this Section it shall provide such comments to all Parties pursuant to the notice requirements of Section XX (Form of Notice) of this Consent Decree. EPA agrees not to act on a Review Level 1 Deliverable until the comment period expires.

3. Obligation to Implement Review Level 1 Deliverable. In the event EPA approves, or approves upon conditions, the submission, or approves, approves upon conditions, or modifies any resubmission of a Deliverable pursuant to this Section, KUB shall proceed to

take any action required to implement the Deliverable, as approved or modified by EPA, subject only to its right to invoke Dispute Resolution pursuant to Section XII (Dispute Resolution).

4. Resubmission of Disapproved Review Level 1 Deliverable.

(a). Upon receipt of a notice of disapproval pursuant to Section VI.B.1(c) or (d), KUB shall, within thirty (30) Days, or such longer time as specified by EPA in such notice or agreed to in writing by EPA, revise the Deliverable as required by EPA and resubmit the Review Level 1 Deliverable to EPA for approval, subject only to KUB's right to invoke Dispute Resolution pursuant to Section XII (Dispute Resolution). Concurrent with the resubmission to EPA, the revised Deliverable shall also be provided to TDEC, TCWN and the City.

(b). Any portion of a Deliverable that is not specifically disapproved by EPA in a notice of disapproval shall be considered approved and KUB shall proceed to implement the approved portion of the Deliverable, provided that implementation of the approved portion of the Deliverable is not dependent upon implementation of the disapproved portion. Implementation of the approved portion of a Deliverable shall not relieve KUB of liability for stipulated penalties under Section X (Stipulated Penalties).

(c). In the event that a resubmitted Review Level 1 Deliverable, or portion thereof, is again disapproved by EPA, after consultation with the State, EPA may again require KUB to implement changes as required by EPA, in accordance with the preceding paragraphs. EPA, after consultation with the State, may also modify the resubmitted Deliverable to cure the deficiencies, subject only to KUB's right to invoke Dispute Resolution pursuant to Section XII (Dispute Resolution).

5. Review Level 1 Deliverables Are Enforceable. Review Level 1

Deliverables, including all schedules set forth therein, shall be enforceable under this Consent Decree as if they were set forth herein upon approval, approval upon conditions, or modification by EPA, and after conclusion of **any** Dispute Resolution period. Any portion of a Review Level 1 Deliverable that is not specifically disputed by KUB shall be enforceable during any Dispute Resolution period, provided that implementation of the non-disputed portions of the Deliverable is not dependent upon implementation of the disputed portion.

C. Review Level 2 Deliverables.

1. Initial Submittal. All Review Level 2 Deliverables shall be submitted to EPA and TDEC for review. Concurrent with the submittal to EPA and TDEC, all Review Level 2 Deliverables shall be provided to TCWN and the City. After a reasonable period of consultation with the State, EPA shall provide written comments on the Deliverable to KUB, which shall provide sufficient detail for KUB to address such comments.

2. Right to Comment on Review Level 2 Deliverable. TCWN and the City may comment to EPA and TDEC on any Review Level 2 Deliverable within ten (10) Days of KUB's submission of that Deliverable. TCWN and the City shall provide such comments to all Parties pursuant to the notice requirements of Section XX (Form of Notice). EPA agrees not to act on a Review Level 2 Deliverable until the comment period expires.

3. Obligation to Revise and Implement Review Level 2 Deliverable. KUB shall revise a Review Level 2 Deliverable to address any EPA comment within thirty (30) Days of receipt of EPA's comments, or such longer time as agreed to in writing by EPA, subject only to KUB's right to invoke Dispute Resolution pursuant to Section XII (Dispute Resolution).

Thereafter, KUB shall implement the actions required in the revised Deliverable. KUB shall provide a copy of the revised Deliverable to the Parties and shall place a copy of the revised Deliverable in the PDR within seven (7) Days of KUB's revision of the Deliverable.

4. Review Level 2 Deliverables Are Enforceable. Review Level 2 Deliverables, including all schedules set forth therein, shall be enforceable under this Consent Decree as if they were set forth herein upon KUB's incorporation of EPA's comments and after conclusion of any Dispute Resolution period. Any portion of a Review Level 2 Deliverable that is not specifically disputed by KUB shall be enforceable during any Dispute Resolution period, provided that implementation of the non-disputed portions of the Deliverable is not dependent upon implementation of the disputed portion.

D. EPA Review of Deliverables. EPA agrees to use best efforts to expeditiously review and comment on Deliverables. If EPA issues written comments and decisions on the Phase 1 CAP/ER, the Phase 2 CAP/ER, the IRP, or the CCP more than one-hundred and twenty (120) Days after receipt of such submission, or on any other Deliverable more than sixty (60) Days after receipt of such submission, any subsequent deadline or milestone that is dependent upon such comments or decisions shall be extended. The length of the extension shall be determined by calculating the number of Days between EPA's receipt of the submission and the date of EPA's written response, less one-hundred and twenty (120) Days (in the case of the Phase I CAP/ER, the Phase II CAP/ERs, the IRP and the CCP) or sixty (60) Days (in the case of any other Deliverable). Within thirty (30) Days of the date that KUB knows or should know of a deadline or milestone that KUB believes is extended under this paragraph, KUB shall inform EPA, in writing, of its belief and the amount of time KUB believes the deadlines or milestones

are extended. If EPA disagrees with KUB's determination that a deadline is dependent upon such comments or decisions, EPA shall inform KUB in writing. KUB may dispute EPA's conclusion regarding whether a deadline is dependent upon such comments or decisions pursuant to Section XII (Dispute Resolution).

E. Revisions to Deliverables. The Parties recognize that KUB may need or want to revise certain Deliverables during the term of this Consent Decree. Such revisions shall not be considered modifications to the Consent Decree for purposes of Section XXI (Modification). KUB must obtain EPA's prior written approval of any revision to the substance of a Deliverable and shall place copies of any such revised Deliverable in the PDR in accordance with the provisions of Sections VI.A.2 and 3. KUB may revise the form of any Deliverable without consulting EPA and shall place a copy of any such revised Deliverable in the PDR within seven (7) Days after making such revision.

## **VII. PERFORMANCE OF THE WORK**

\_\_\_\_A. Obligation to Perform Work. Upon the Date of Entry, KUB shall implement the Work pursuant to this Consent Decree. KUB is responsible for ensuring that any contractors hired to perform Work pursuant to this Consent Decree comply with all applicable laws and with this Consent Decree. All Work shall be performed using sound engineering practices, which may include appropriate provisions of the *Handbook: Sewer System Infrastructure Analysis and Rehabilitation*, EPA/625/6-91/030, 1991; *Existing Sewer Evaluation and Rehabilitation*, WEF MOP FD-6, 1994; and the *Tennessee Design Criteria* in accordance with Tenn. Comp. R. & Reg., ch. 1200-4-2-.03.



B. Right to Audit. Within the time period between four (4) and eight (8) years after the Date of Entry, EPA and/or TDEC may conduct audits to evaluate the effectiveness of any of the Audited Programs. EPA and/or TDEC shall provide five (5) business Days notice to KUB prior to any such audit. Such notice shall make a good faith effort to identify the expected principle focus of the audit but shall not limit EPA's or TDEC's right to inquire into any activity relating to the Work during such audit. EPA may furnish a written audit report to KUB upon completion of any audit, and shall furnish a copy of any audit report furnished to KUB to all Parties. If EPA identifies a substantial deficiency in the effectiveness of an Audited Program that materially contributes to KUB's inability to achieve the objectives of the Audited Program, EPA may identify revisions to any such Audited Program or other actions to address the identified substantial deficiency. KUB shall respond in writing to EPA's audit report, and implement the identified revisions or actions in response to EPA's audit report, within thirty (30) Days of receipt of the audit report, or provide an action plan for those actions that will take longer than thirty (30) Days. KUB shall provide its response and/or action plan to all Parties in accordance with Section XX (Form of Notice). Under Section XII (Dispute Resolution), KUB may dispute a factual finding in the audit report and any determination arising from the audit that a revision or action is needed. In the event KUB raises such a dispute, stipulated penalties shall not accrue or be assessed prior to or during the Dispute Resolution period for KUB's failure to implement any revision or action in response to an audit report issued under this Section VII.B. The rights created by this Section VII.B are in addition to, and in no way limit or otherwise affect, the authority of the United States and State, including, but not limited to, the authority to enforce KUB's obligation to implement the Work pursuant to this Consent Decree; to conduct

inspections, to require monitoring and to obtain information from KUB as authorized by law; and to seek further or additional relief under the CWA or other federal statutes or regulations, or State laws and regulations.

C. Implementation of SSOER and CAP/ERs.

1. Sanitary Sewer Overflow Evaluation Report ("SSOER"). KUB has prepared, and EPA and the State have approved, the Sanitary Sewer Overflow Evaluation Report ("SSOER") dated September 2004. Within ten (10) Days of the Date of Entry, KUB shall place a copy of the SSOER in the PDR. The SSOER is enforceable as if fully set forth herein.

(a). Beginning on April 30, 2005, and on an annual basis thereafter, until termination of this Consent Decree, KUB shall submit an update to the SSOER to address those conditions that caused the SSOs that occurred during the previous Calendar Year, in accordance with subparagraphs (b) through (e) below ("Annual SSOER Update"). Each Annual SSOER Update is a Review Level 1 Deliverable. Upon request, KUB shall provide EPA and TDEC any additional information in its possession that may be of use to EPA or TDEC in assessing the SSOs covered by the SSOER and all Annual SSOER Updates. All Annual SSOER Updates shall be placed in the PDR for public review and information, but shall not be subject to the Public Review Requirement of Section VI.A.2. However, KUB shall receive questions and comments from the public on such documents for a period of twenty (20) Days after placement in the PDR.

(b). Each Annual SSOER Update shall list the locations of all SSOs identified in the original SSOER and any previous Annual SSOER Update, unless there has been no SSO at that location in the previous three (3) Calendar Years. Each Annual SSOER Update

shall identify, for each SSO: (1) the location of the SSO, including street address, manhole identification number (if applicable) and Sewerbasin; (2) the date of each SSO; (3) the specific cause(s) of each SSO; (4) the estimated volume and duration of each SSO; and (5) commencing with the 2004 Annual SSOER Update, a trends analysis of the number, volume, duration and cause of KUB's SSOs for a rolling twenty-four (24)-Month period updated to reflect the SSOs that occurred during the previous Calendar Year. All SSOs shall be sorted first by Sewerbasin, and then within each Sewerbasin by street address. Separately, KUB shall provide a list of all SSOs sorted chronologically. KUB may elect to provide the information in items (1) through (4) for Building Backups separately from other SSOs.

(c). Each Annual SSOER Update shall analyze the cause(s) of each SSO that occurred during the period of the update. Each Annual SSOER Update shall categorize each SSO as requiring either short-term controls, including controls under KUB's MOM programs ("Short-Term List"), long-term planning and remediation ("Long-Term List"), or both, if necessary.

(d). SSO locations that are placed on the Short-Term List, and which have demonstrated occurrences of two (2) or more SSOs in any twelve (12)-Month period during the two (2)-year evaluation cycle of Calendar Years 2002 and 2003, or any subsequent two (2)-year evaluation cycle for purposes of the Annual SSOER Updates, must also be identified on the Long-Term List unless it can be demonstrated that the conditions that caused the SSOs are addressed adequately under KUB's management, operation and maintenance programs.

(e). SSO locations that are placed only on the Short-Term List, which are not on the Long-Term List, must be accompanied by a description of the measure(s) and

schedules for conducting activities necessary to address the conditions causing SSOs with the goal of eliminating future SSOs at those locations. Such schedules shall not exceed twelve (12) Months.

(f). KUB shall implement the activities set forth in the SSOER, the 2003 SSOER Update and all Annual SSOER Updates pursuant to the schedules established therein.

2. Phase 1 Corrective Action Plan/Engineering Report ("Phase 1 CAP/ER").

On or before November 1, 2005, KUB shall submit a Phase 1 Corrective Action Plan/Engineering Report ("Phase 1 CAP/ER") to address the conditions causing SSOs with the goal of eliminating the SSO locations on the Long-Term List. The Phase 1 CAP/ER is subject to Review Level 1. The Phase 1 CAP/ER shall identify the actions chosen to accomplish the corrective action and any other alternatives considered as a part of KUB's analysis. A project schedule shall be included with the Phase 1 CAP/ER and shall identify the Fiscal Year for beginning and completing all Work specified in the Phase 1 CAP/ER. Among other items, in establishing the project schedule, KUB shall evaluate the frequency and severity of the SSO, the proximity of the SSO to public areas and the complexity of the remedy. All such Work shall be completed by the end of seven (7) years after EPA's approval of the Phase 1 CAP/ER ("Interim Deadline"). The Phase 1 CAP/ER shall include, at a minimum, projects currently under construction, projects planned for construction currently identified in capital improvement plans which are consistent with the Phase 1 CAP/ER, pertinent flow measurement data, and a map clearly identifying the project locations. In addition, upon request, KUB shall make available to EPA and TDEC any additional information in its possession that may be of use to EPA or TDEC

in evaluating the Phase 1 CAP/ER.

3. Phase 2 Corrective Action Plan/Engineering Report ("Phase 2 CAP/ER").

Within twelve (12) Months of EPA's approval of the Annual SSOER Update ~~to be~~ submitted by KUB on April 30, 2008, KUB shall submit a Phase 2 CAP/ER to address the conditions causing SSOs with the goal of eliminating the SSO locations on the Long-Term List. The Phase 2 CAP/ER is a Review Level 1 Deliverable. The Phase 2 CAP/ER shall evaluate all SSOs that are added to the Long-Term List pursuant to the Annual SSOER Update to be submitted on April 30, 2008 and all Annual SSOER Updates previously approved by EPA. The Phase 2 CAP/ER shall identify the actions chosen to accomplish the corrective action and any other alternatives considered as a part of KUB's analysis. A project schedule shall be included with the Phase 2 CAP/ER and shall identify the Fiscal Year for beginning and completing all Work specified in the Phase 2 CAP/ER. All scheduled activities shall be completed by June 30, 2016 ("2016 Deadline"). The Phase 2 CAP/ER shall include, at a minimum, projects currently under construction, projects planned for construction currently identified in capital improvement plans which are consistent with the Phase 2 CAP/ER, pertinent flow measurement data, and a map clearly identifying the project locations. In addition, upon request, KUB shall make available to EPA and TDEC any additional information in its possession that may be of use to EPA or TDEC in evaluating the Phase 2 CAP/ER.

4. Annual Reporting. On an annual basis, beginning on July 30, 2006, KUB shall submit a report which shall include specific dates for beginning and completing all Work identified by KUB in both the Phase 1 CAP/ER and Phase 2 CAP/ER for the upcoming twelve (12)-Month period ("Annual CAP/ER Report"). All Annual CAP/ER Reports shall be placed in

the PDR for public review and information, but shall not be subject to the Public Review Requirement of Section VI.A.2. However, KUB shall receive questions and comments from the public on such documents for a period of twenty (20) Days after placement in the PDR.

5. Request for Extension. Except for the Interim Deadline and the 2016 Deadline set forth in subparagraphs 2 and 3 of Section VII.C, KUB may request, and EPA may approve, after consultation with the State, an extension to the project schedules and specific dates established under subparagraphs 2, 3 and 4 of Section VII.C. EPA shall not unreasonably withhold such approval and will endeavor to respond to the request within a reasonable time period. Such approved revisions to project schedules and specific dates shall not be considered Modifications under Section XXI (Modification). Any denial shall be subject to dispute resolution pursuant to Section XII (Dispute Resolution).

D. Management, Operation and Maintenance ("MOM") Programs.

KUB shall develop and implement the MOM programs set forth in this Section. Each program shall include an evaluation of current programs and practices and identify improvements and changes needed to allow current programs to meet the criteria described for each program. Each program shall generally identify the staffing needs and personnel responsible for carrying out the program and shall delineate the lines of authority. Each program shall generally identify equipment needs and other resources needed to implement that program. The programs shall include provisions necessary to maintain, repair and correct deficiencies discovered through implementation of the specific program and shall include an implementation schedule. Once approved and implemented, KUB shall demonstrate continued implementation of each program until termination of the Consent Decree.

1. Management Programs.

(a). Engineering Programs.

(i). Continuing Sewer System Assessment Program ("CSSAP")

for the WCTS. No later than one-hundred and fifty (150) Days after the Date of Entry, KUB shall submit a CSSAP to analyze the infrastructure of the WCTS. This Deliverable is subject to Review Level 1. The CSSAP shall establish procedures for setting Sewerbasin priorities and schedules for undertaking the WCTS assessment components set forth in subparagraphs (A) through (H) below. The CSSAP shall develop these priorities and schedules taking into consideration the nature and extent of customer complaints; flow monitoring, including flow isolation studies; location and cause of SSOs, including those identified pursuant to the SSOER and the Annual SSOER Updates; the Work ongoing pursuant to the Phase 1 CAP/ER and Phase 2 CAP/ER; pump station run times; field crew work orders; any preliminary sewer assessments, such as midnight flow monitoring; and any other relevant information. The CSSAP shall include standard procedures for a CSSAP IMS and performance goals for each component of the CSSAP set forth in paragraphs (A) through (H) below. Upon approval, KUB shall implement the CSSAP and such assessment components in accordance with the schedules established pursuant to the CSSAP to analyze the infrastructure of the WCTS.

(A). Dyed Water Flooding. The Dyed Water Flooding component of the CSSAP shall establish standard procedures for conducting dyed water testing to locate sources of I/I to the WCTS. The Dyed Water Flooding component shall include standard forms for Private Laterals and manholes.

(B). Corrosion Defect Identification. The Corrosion

Defect Identification component of the CSSAP shall establish standard procedures for inspecting and identifying sewer infrastructure that is either corroded or at risk of corrosion. The Corrosion Defect Identification component shall include a system for prioritizing repair of corrosion defects, corrosion identification forms, and procedures for a corrosion defect analysis.

(C). Routine Manhole Inspection. The Routine Manhole Inspection component of the CSSAP shall establish standard procedures for routine inspection of all manholes within the sewer system. The Routine Manhole Inspection component shall include manhole inspection forms and procedures for a manhole defect analysis.

(D). Flow Monitoring. The Flow Monitoring component of the CSSAP shall establish standard procedures for routine flow monitoring during dry and wet weather to support engineering analyses related to sewer system capacity and peak flow studies. Dry weather monitoring shall be carried out so as to allow the characterization of base flows and I/I rates. Wet weather monitoring shall be conducted periodically during events of sufficient duration and intensity that cause significant I/I into the WCTS. The Flow Monitoring component will identify areas susceptible to I/I into the WCTS. The Flow Monitoring Program shall establish a process for determining the number and locations of permanent and temporary flow meters; a program for sewer cleaning associated with flow monitoring; and a procedure for adequate rainfall measurement.

(E). Closed Circuit Television (“CCTV”). The CCTV component of the CSSAP shall establish standard procedures for routine use of CCTV to support sewer assessment activities, and shall include procedures for CCTV cleaning and a process for the retention and access of CCTV data.



(F). Gravity System Defect Analysis. The Gravity System Defect Analysis component of the CSSAP shall establish standard procedures for analysis of gravity sewer system defects. Such procedures shall include Private Lateral investigations to identify sources of I/I to the WCTS. The Gravity System Defect Analysis component shall establish standard defect codes; defect identification procedures and guidelines; and a standardized process for cataloging gravity system defects.

(G). Smoke Testing. The Smoke Testing component of the CSSAP shall establish standard procedures for smoke testing of the gravity sewer system to identify sources of I/I to the WCTS, including cross connections and other unauthorized connections. **Such procedures shall include Private Lateral investigations to identify sources of I/I to the WCTS.** The Smoke Testing component shall include smoke testing forms and procedures for smoke testing defect analysis.

(H). Pump Station Performance and Adequacy. The Pump Station Performance and Adequacy component of the CSSAP shall establish standard procedures for the evaluation of pump station performance and pump station adequacy. The Pump Station Performance and Adequacy component shall require the use of pump run time meters; pump start counters; computation of Nominal Average Pump Operating Time ("NAPOT"); root cause failure analysis protocols; and appropriate remote sensing such as Supervisory Control and Data Acquisition ("SCADA").

(ii). Infrastructure Rehabilitation Program ("IRP") for the WCTS. No later than ninety (90) Days after EPA approval of the CSSAP, KUB shall submit an IRP. This Deliverable is subject to Review Level 1. The IRP shall employ the components

identified in subparagraphs (A) through (D) below to, among other things, address I/I and the other conditions causing SSOs, with the goal of eliminating future SSOs. The IRP shall take into account all information gathered pursuant to the SSOER, the 2003 SSOER Update and the Annual SSOER Updates, the Phase 1 CAP/ER and Phase 2 CAP/ER, and the CSSAP. The IRP shall include standard procedures for an IRP IMS and procedures for analysis of the effectiveness of completed rehabilitation for each component of the IRP set forth in subparagraphs (A) through (D) below. Upon approval, KUB shall implement the IRP and its components in accordance with the schedules established pursuant to the IRP to rehabilitate the infrastructure of the WCTS.

(A). Gravity Line Rehabilitation. The Gravity Line Rehabilitation component of the IRP shall require rehabilitation of all gravity sewer lines and related appurtenances that have been identified as in need of rehabilitation under the CSSAP. The Gravity Line Rehabilitation component shall establish a process for setting gravity line rehabilitation priorities and schedules; shall establish an ongoing inventory of gravity line rehabilitation, including identification of the rehabilitation techniques used; shall require an analysis of the effectiveness of completed rehabilitation; and shall identify currently scheduled gravity line rehabilitation.

(B). Manhole Rehabilitation. The Manhole Rehabilitation component of the IRP shall require rehabilitation of all manholes that have been identified as in need of rehabilitation under the CSSAP. The Manhole Rehabilitation component shall establish a process for setting manhole rehabilitation priorities and schedules; shall establish an ongoing inventory of manhole rehabilitation, including identification of the rehabilitation techniques used; and shall identify currently scheduled manhole rehabilitation.

(C). Pump Station Rehabilitation. The Pump Station Rehabilitation component of the IRP shall require rehabilitation of all pump stations that have been identified as in need of rehabilitation under the CSSAP. The Pump Station Rehabilitation component shall establish a process for setting pump station rehabilitation priorities and schedules; shall establish an ongoing inventory of pump station rehabilitation, including identification of the rehabilitation techniques used; and shall identify currently scheduled pump station rehabilitation.

(D). Force Main Rehabilitation. The Force Main Rehabilitation component of the IRP shall require rehabilitation of all force mains and related appurtenances that have been identified as in need of rehabilitation under the CSSAP. The Force Main Rehabilitation component shall establish a process for setting force main rehabilitation priorities and schedules; shall establish an ongoing inventory of force main rehabilitation, including identification of the rehabilitation techniques used; and shall identify currently scheduled force main rehabilitation.

(iii). Capacity Assurance Program.

(A). The Program. No later than three-hundred and sixty-five (365) Days after Date of Entry, KUB shall submit a Capacity Assurance Program (“CAP”). This Deliverable is subject to Review Level 1. The CAP shall identify each Sewerbasin or part of a Sewerbasin with insufficient capacity under either peak wet weather, or average conditions, or both. It shall also analyze all portions of the WCTS that hydraulically impact all known SSOs and all portions of the WWTPs that may contribute to violations of the NPDES Permits. The CAP shall assess peak flow capacity of all major system components for

existing and proposed flows. The CAP shall enable KUB to authorize new sewer service connections, or increases in flow from existing sewer service connections, only after KUB certifies that the analysis procedures contained in the approved CAP have been used and that KUB has determined, based on those procedures, that there is Adequate Treatment Capacity, Adequate Transmission Capacity and Adequate Collection Capacity as set forth in Section VII.D.1.(a).(iii).(B) through (F) below. At a minimum, the CAP shall contain all of the following components:

(1). the technical information, methodology and analytical techniques, including the model or software, to be used by KUB to calculate collection, transmission and treatment capacity;

(2). the means by which KUB will integrate its certification of Adequate Treatment Capacity, Adequate Transmission Capacity and Adequate Collection Capacity with the issuance of building permits by the City, and KUB's acquisition of new or existing sewers from other owners;

(3). an IMS capable of tracking the Chronic Overflow Locations;

(4). the technical information, methodology and analytical techniques, including the model or software, to be used by KUB to calculate the net (cumulative) increase or decrease in volume of wastewater introduced to the WCTS as a result of KUB's authorization of new sewer service connections and increases in flow from existing connections and the completion of: (a) specific projects that add or restore capacity to the WCTS or WWTPs ("Capacity Enhancing Projects"), (b) specific projects that reduce peak flow through

removal of I/I (“I/I Projects”), and (c) permanent removal of sewer connections (“Removal of Connections”);

(5). an IMS capable of tracking the accumulation of banked credits, earned pursuant to Section VII.D.1.(a).(iii).(D) below, from completion of Capacity Enhancing Projects, I/I Projects and Removal of Connections, the capacity-limited portion of the Sewerbasin in which those credits were earned, and the expenditure of such credits on future increases in flow from new and existing sewer service connections in that capacity-limited portion of the Sewerbasin; and

(6). all evaluation protocols to be used to calculate collection, transmission and treatment capacity including, but not limited to, standard design flow rate rules of thumb regarding pipe roughness, manhole head losses, as-built drawing accuracy (distance and slope), and water use (gallons per capita per day); projected flow impact calculation techniques; and metering of related existing peak flows (flows metered in support of analysis and/or manual observation of existing peak flows). KUB may identify sewer line segments which have been specifically designed and constructed to operate under surcharge conditions (e.g., with welded or bolted joints) and identify the level of surcharge for those segments.

(B). Capacity Certifications. Except as provided in Sections VII.D.1.(a).(iii).(C), (D), and (E) below, after sixty (60) Days of EPA’s approval of the CAP, KUB shall authorize a new sewer service connection, or additional flow from an existing sewer service connection, only after it certifies that the analysis procedures contained in the approved CAP have been used and that KUB has determined, based on those procedures, that

there is Adequate Treatment Capacity, Adequate Transmission Capacity and Adequate Collection Capacity as set forth in Sections VII.D.1.(a).(iii).(B).(1) through (3) below.

(1). Treatment Capacity Certifications. KUB's certification of "Adequate Treatment Capacity" shall confirm that, at the time the WWTP receives the flow from a proposed sewer service connection(s) or increased flow from an existing sewer service connection(s), when combined with the flow predicted to occur from all other authorized sewer service connections (including those which have not begun to discharge into the WCTS), the WWTP will not be in "non-compliance" for quarterly reporting as defined in 40 C.F.R. Part 123.45, Appendix A. In addition, upon EPA's approval of the Process Controls Program, KUB's certification of "Adequate Treatment Capacity" shall confirm that the new or increased flow to the WWTP will not result in Bypasses or Diversions prohibited by the NPDES Permits.

(2). Transmission Capacity Certifications. KUB's certification of "Adequate Transmission Capacity" shall confirm that each pump station, through which the proposed additional flow from new or existing sewer service connections would pass to the WWTP receiving such flow, has the capacity to transmit, with its largest pump out of service, the existing one (1) hour peak flow passing through the pump station, plus the addition to the existing one (1) hour peak flow predicted to occur from the proposed connection, plus the addition to the existing one (1) hour peak flow predicted to occur from all other authorized sewer service connections which have not begun to discharge into the WCTS.

(3). Collection Capacity Certifications. KUB's certification of "Adequate Collection Capacity" shall confirm that each gravity sewer line,

through which the proposed additional flow from new or existing connections would pass, has the capacity to carry the existing one (1) hour peak flow passing through the gravity sewer line, plus the addition to the existing one (1) hour peak flow from the proposed connection, plus the addition to the existing one (1) hour peak flow predicted to occur from all other authorized sewer service connections which have not begun to discharge into the WCTS without causing a Surcharge Condition.

(4). Definition of “One (1) Hour Peak Flow” and “Surcharge Condition”. For purposes of this Section VII.D.1.(a).(iii) only, the term “one (1) hour peak flow” shall mean the greatest flow in a sewer averaged over a sixty (60) minute period at a specific location expected to occur as a result of a representative 2 year-24 hour storm event. For purposes of this Section VII.D.1.(a).(iii) only, the term “Surcharge Condition” shall mean the condition that exists when the supply of wastewater resulting from the one (1) hour peak flow is greater than the capacity of the pipes to carry it and the surface of the wastewater in manholes rises to an elevation greater than twenty-four (24) inches above the top of the pipe or within three (3) feet of the rim of the manhole, and the sewer is under pressure or head, rather than at atmospheric pressure, unless KUB has, pursuant to Section VII.D.1.(a).(iii).(A).(6), above, identified that pipe segment and manhole as designed to operate in that condition, in which case the identified level of surcharge will be used. However any rise in elevation above the top of the pipe shall be considered a Surcharge Condition if the manhole has experienced a wet weather SSO since January 1, 2001, excluding those SSOs that occurred in February 2003 or those caused by severe natural conditions (such as hurricanes, tornados, widespread flooding, earthquakes, and other similar natural conditions), unless KUB engineers can certify that the cause of the SSO has

been corrected through improvements to the WCTS.

(5). Minor Sewer Connections. For minor sewer service connections, KUB may elect to perform a Monthly capacity analysis for each Sewerbasin or part of a Sewerbasin by certifying that the Sewerbasin has adequate capacity, as defined in Sections VII.D.1.(a).(iii).(B).(1) through (3) above, to carry existing peak flows and the additional flows generated by all such minor sewer service connections projected to be approved in the subsequent Month. For any Sewerbasin or part of a Sewerbasin which can be so certified, KUB may approve these projected minor sewer service connections without performing individual certifications for each connection. For the purposes of this subparagraph, a “minor sewer service connection” is a connection with an average flow not to exceed 2,500 gallons per day.

(C). Chronic Overflow Locations. Notwithstanding the provisions of Section VII.D.1.(a).(iii).(B), KUB shall not authorize a new sewer service connection or an increase in flow from an existing connection in any part of a Sewerbasin up sewer from a Chronic Overflow Location unless KUB certifies that the cause(s) of the Chronic Overflow Location has been or will be eliminated, or KUB satisfies the requirements of Section VII.D.1.(a).(iii).(D) below. Any new sewer service connection or increase in flow from an existing connection authorized prior to the elimination of such cause(s) of the Chronic Overflow Location shall be conditioned upon the completion of any project eliminating such cause(s) prior to the time that the new sewer service connection or flow increase is introduced into the WCTS. For purposes of this subparagraph, “Chronic Overflow Location” shall mean those locations within 500 yards of each other that have experienced collectively, within the twelve (12) Months



prior to the date of certification, five (5) or more SSOs; provided, however, for purposes of this definition only, SSOs occurring within 500 yards of each other that are caused by a Single Rainfall Event shall be counted as one (1) SSO at the location of the largest SSO. For purposes of this Section, "Single Rainfall Event" shall have the meaning as defined in Part I.C. of KUB's NPDES Permits, which provides: "A 'rainfall event' is defined as any occurrence of rain, preceded by ten (10) hours without precipitation, that results in an accumulation of 0.01 inches or more. Instances of rainfall occurring within ten (10) hours of each other will be considered a single rainfall event."

(D). Capacity for Treatment, Transmission and Collection in Lieu of Certification. KUB may authorize a new sewer service connection, or additional flow from an existing sewer service connection, even if it cannot satisfy the requirements of Sections VII.D.1.(a).(iii).(B) and/or (C) above, provided KUB certifies that all of the following provisions, where applicable, are satisfied:

(1). KUB is in substantial compliance with this Consent Decree;

(2). the sewer lines which will convey the proposed additional flow from new or existing sewer service connections have not experienced dry weather SSOs due to inadequate capacity within the previous twelve (12) Months; or, in the alternative, the causes of any dry weather SSOs due to inadequate capacity have been eliminated;

(3). KUB has identified the sewer line segment(s), pump station(s) and/or wastewater treatment systems that do not meet the conditions for certification of Adequate Treatment Capacity, Adequate Collection Capacity and/or Adequate

Transmission Capacity;

(4). KUB has identified the sewer line segment(s) that constitute a Chronic Overflow Location(s);

(5). KUB shall complete, prior to the time the proposed additional flow from new or existing sewer service connections is introduced into the WCTS, specific Capacity Enhancing Projects, I/I Projects and/or Removal of Connections which will add sewer capacity or reduce peak flows to the identified sewer line segment(s), pump station(s), wastewater treatment system(s) and/or Chronic Overflow Location(s) in accordance with the factors set forth in subparagraphs (6) and (7) below;

(6). where KUB has undertaken specific Capacity Enhancing Projects that provide for additional off-line storage and/or specific Removal of Connections to satisfy the requirements of subparagraph (5) above, the estimated added capacity resulting from such projects must be equal to or greater than the estimated amount of any proposed additional flow.

(7). where KUB has undertaken specific I/I Projects or Capacity Enhancing Projects, other than those that provide for additional off-line storage, to satisfy the requirements of subparagraph (5) above, the estimated reduction in peak flows or added capacity resulting from such projects must exceed the estimated amount of any proposed additional flow by the following factors: (a) a factor of 4:1 for I/I projects and such other Capacity Enhancing Projects related to a Chronic Overflow Location; and (b) a factor of 3:1 for I/I projects and such other Capacity Enhancing Projects not related to a Chronic Overflow Location;

(8). commencing on January 31, 2006 and annually thereafter, KUB has performed a review of specific Capacity Enhancing Projects and I/I Projects undertaken to determine if actual added capacity and peak flow reductions are in line with what KUB originally estimated for such projects; and KUB has used the results of this review to adjust future estimates as necessary;

(9). any new sewer service connection or increase in flow to an existing connection authorized prior to the completion of a necessary added capacity or peak flow reduction project as set forth above shall be conditioned upon completion of such project prior to the time that the new sewer service connection or flow increase is introduced into the WCTS; and

(10). in implementing the provisions of this Section VII.D.1.(a).(iii).(D), KUB may use a “banking credit system” for the sewer line segment(s), pump station(s), wastewater treatment systems, and/or Chronic Overflow Locations for which KUB is not able to satisfy the conditions set forth in Sections VII.D.1.(a).(iii).(B) and (C) above. The addition of sewer capacity and/or reduction in peak flows from Capacity Enhancement Projects, I/I Projects and Removal of Connections, completed after January 17, 2003, to the affected sewer line segment, pump station, wastewater treatment system or Chronic Overflow Location may be accumulated in the form of credits in accordance with the factors set forth in subparagraphs (6) and (7) above, which may then be used for authorization of future sewer service connections or increases in flow from existing connections to the affected sewer line segment, pump station, wastewater treatment system or Chronic Overflow Location in the capacity-limited portion of the Sewerbasin.

(E). Essential Services. Notwithstanding the provisions of Sections VII.D.1.(a).(iii).(B) and (C) above, KUB may authorize a new sewer service connection, or additional flow from an existing sewer service connection, even if it can not certify that it has Adequate Transmission Capacity, Adequate Collection Capacity and/or Adequate Treatment Capacity as set forth in Sections VII.D.1.(a).(iii).(B).(1), (2) and (3) above for health care facilities, public safety facilities and public schools and, subject to EPA review and approval, for government facilities; and in those cases where a pollution or sanitary nuisance condition exists, as determined by Knox County Health Department or its regulatory successor, as the result of a discharge of untreated wastewater from an on-site septic tank. For all such new service connections, or additions to flow from an existing connection, KUB shall make the appropriate subtraction to the balance in the credit bank described in Section VII.D.1.(a).(iii).(D) above and modify the list described in Section VII.D.1.(a).(iii).(G) below.

(F). Existing Illicit Connections. Notwithstanding the provisions of Sections VII.D.1.(a).(iii).(B) and (D) above, KUB may authorize a new sewer service connection, or additional flow from an existing sewer service connection, even if it can not certify that it has Adequate Transmission Capacity and/or Adequate Collection Capacity and/or Adequate Treatment Capacity as set forth in Sections VII.D.1.(a).(iii).(B).(1), (2) and (3) above for any illicit connections or discharge of wastewater to the stormwater system or to waters of the State. For all such new service connections or additions to flow from an existing connection, created before the Date of Entry that result from the elimination of illicit connections or discharges, KUB shall not be required to make a subtraction from the balance in the credit bank described in Section VII.D.1.(a).(iii).(D) above or to modify the list described in Section

VII.D.1.(a).(iii).(G) below. For all such new service connections or additions to flow from an existing connection created after the Date of Entry that result from the elimination of illicit connections or discharges, KUB shall make a subtraction from the balance in the credit bank described in Section VII.D.1.(a).(iii).(D) above and modify the list described in Section VII.D.1.(a).(iii).(G) below.

(G). Reconnections Following Termination as a Result of KUB's Private Lateral Legal Support Program. Notwithstanding the provisions of Sections VII.D.1.(a).(iii).(B) and (D) above, in the event of a temporary suspension or interruption of a customer's service as a result of KUB's Private Lateral Legal Support Program, any service that is resumed from a newly replaced or repaired Private Lateral shall not be deemed to be a new service connection or an addition to flow from an existing connection.

(H). Certifications. All certifications pursuant to this Section VII.D.1.(a).(iii) shall be made by a professional engineer registered in the State of Tennessee and shall be approved by a responsible party of KUB as defined by 40 C.F.R. § 122.22(b). KUB shall maintain all such certifications, and all data on which the certifications are based, in its offices for inspection by EPA and TDEC. EPA, TDEC and TCWN may request, and KUB shall provide, any and all documentation necessary to support any certification made by KUB pursuant to this Section VII.D.1.(a).(iii), and make available, to the extent possible, individuals providing such certifications to meet with EPA and TDEC.

(I). Within sixty (60) Days of the Date of Entry, KUB shall establish a list of all authorized new sewer service connections or increases in flow from existing connections which flows have not yet been introduced into the WCTS. The following

information shall be recorded for each authorized connection: street address, estimated average daily flow, estimated peak flow, Sewerbasin, WWTP, date authorized, and estimated Calendar Quarter when the additional flow from the connection will begin. KUB shall update and maintain this list as necessary until full implementation of the CAP, as approved by EPA. In addition, upon its execution of this Consent Decree and until EPA approves the CAP as required by this Section VII.D.1.(a).(iii), KUB agrees to continue to implement its current capacity program, consistent with the CAP Procedures Manual submitted to TDEC on May 27, 2004, to ensure that new sewer service connections, or increases in flow from existing sewer service connections, are authorized only if there will be adequate treatment, transmission and collection capacity prior to the time such proposed additional flow is introduced into the WCTS.

(iv). Comprehensive Performance Evaluation ("CPE") Program for the WWTPs. No later than sixty (60) Days after the Date of Entry, KUB shall submit an initial scope for a CPE for the Kuwahee, Fourth Creek and Loves Creek WWTPs. This Deliverable is subject to Review Level 1 but shall not be subject to the Public Review Requirement of Section VI.A.2. The full CPE shall be submitted to EPA within three-hundred (300) Days of EPA's approval of the initial scope. The full CPE is subject to Review Level 1. The purpose of the CPE is to identify flow and/or loading rate restricted treatment process unit(s) at each WWTP. To the extent applicable, the CPE shall be consistent with the EPA publications *Improving POTW Performance Using the Composite Correction Approach*, EPA CERL, October 1984, and *Retrofitting POTWs*, EPA CERL, July 1989. The CPE shall require an in-depth diagnostic evaluation of the capacity and operation of each of the identified WWTPs and their ability to meet all terms of the NPDES Permits. The CPE shall establish a schedule and

procedures that KUB will use to prepare a Composite Correction Plan ("CCP"), as set forth below, based on the results of the CPE. The CPE shall employ flow modeling and other appropriate techniques to evaluate WWTP capacity and operation, taking into account the net (cumulative) increase or decrease to the existing volume of wastewater introduced to the WWTP as a result of KUB's actual and anticipated increases in flow from the authorization of new sewer service connections and/or from existing sewer service connections pursuant to Section VII.D.1.(a).(iii), and the reduction of I/I into the WCTS. The CPE shall also identify the flow at which each of the identified WWTPs is designed to operate without experiencing a Bypass or a Diversion prohibited under the NPDES Permits. KUB has represented that the Eastbridge WWTP is not designed for Diversions. KUB shall not cause any Diversions to occur at the Eastbridge WWTP. KUB shall propose, as part of its CPE, a schedule for submission of the CCP set forth below, such schedule not to exceed twelve (12) Months after EPA's approval of the CPE.

(v). Composite Correction Plan for the WWTPs. KUB shall submit a Composite Correction Plan ("CCP") pursuant to the schedule set forth in the CPE. This Deliverable is subject to Review Level 1. The purpose of the CCP is to identify rehabilitation and/or upgrades to the Kuwahee, Fourth Creek and Loves Creek WWTPs to address the problems identified in the CPE. To the extent applicable, the CCP shall be consistent with the EPA publications *Improving POTW Performance Using the Composite Correction Approach*, EPA CERL, October 1984, and *Retrofitting POTWs*, EPA CERL, July 1989; and the *Tennessee Design Criteria* in accordance with Tenn. Comp. R. & Reg., ch. 1200-4-2-.03. The CCP shall:

(A) address all factors which limit or which could limit a WWTP's operating efficiency and/or

the ability to achieve NPDES Permit compliance; (B) address the peak flow handling procedures and peak flow capacity of the WWTP; and (C) identify specific actions and schedules to correct each limiting factor, including capital improvements to the existing WWTP where appropriate. The CCP shall evaluate all appropriate alternatives and provide schedules for achieving compliance. KUB has represented that the Eastbridge WWTP is not designed for Diversions. KUB shall not cause any Diversions to occur at the Eastbridge WWTP. In the event that there are changes in the law or any NPDES Permit that require modifications to the CCP prior to or during implementation of the CCP, KUB shall submit such CCP modifications as a Deliverable subject to Review Level 1 within a reasonable time to be determined by KUB and EPA, after consultation with the TDEC. After approval, KUB shall implement the modified CCP.

(b). Reporting, Notification & Record Keeping Program for WWTPs.

No later than ninety (90) Days after the Date of Entry, KUB shall develop and submit a Reporting, Notification and Record Keeping Program as described below. This Deliverable is subject to Review Level 1. Nothing in this Section shall relieve KUB of full compliance with the reporting and other obligations of this Consent Decree, the NPDES Permits, the CWA, the TWQCA, and all regulations promulgated pursuant to the CWA and the TWQCA.

(i). Bypass and Diversion Reporting, Notification & Record Keeping.

(A). Reporting to EPA and TDEC. As required by the NPDES permits, KUB shall report all Bypasses and Diversions to TDEC. KUB shall also report all Bypasses and Diversions to EPA in accordance with Section XIX (Reporting Requirements).



(B). Standard Forms. As part of its Bypass and Diversion Reporting, Notification and Record Keeping Program, following EPA's approval of the Operations Record Keeping Program for the WWTPs, KUB shall use standard recordkeeping procedures and forms. An appropriate form shall be available to all personnel responsible for such recordkeeping, and all such personnel shall be adequately trained in the recordkeeping procedures. The forms shall, at a minimum, record the following information:

- (1). Description of the location of the Bypass or Diversion;
- (2). Name of the receiving water;
- (3). Volume of the Bypass or Diversion;
- (4). Description of system component that was bypassed or diverted;
- (5). Date and time Bypass or Diversion started and stopped;
- (6). Root cause or suspected root cause of Bypass or Diversion;
- (7). Steps taken and/or to be taken to reduce or eliminate Bypass or Diversion;
- (8). Identification of all employees who initiated the Bypass or Diversion;
- (9). Documentation of supervisory or managerial approval of the Bypass or Diversion; and
- (10.) During the time of the Bypass or Diversion: total plant flow, primary clarifier flow, secondary treatment flow, mixed liquor suspended solids, final clarifier sludge blanket depths, and other relevant data, if any.

(ii). Effluent Limit Violations Reporting, Notification & Record Keeping.

(A) Reporting to EPA and TDEC. KUB shall report all effluent limit violations to TDEC as required by its NPDES Permits. KUB shall report all effluent limit violations to EPA in accordance with Section XIX (**Reporting Requirements**).

(B) Quality Control Procedures. This program shall include procedures to ensure that all monitoring data and operational records are correctly reported to TDEC and EPA. This program shall also include performance measures for ensuring that the information reported is accurate.

(c). Customer Service Program. KUB shall develop and implement the Customer Service Program set forth below.

(i). SORP. No later than seventy-five (75) Days after the Date of Entry, KUB shall revise and submit the SORP to provide for KUB's timely and effective response to all SSOs, as set forth below. For purposes of this Section **VILD.1.(c)**, KUB may elect to address Unpermitted Discharges, Building Backups, and other SSOs separately. The Deliverable shall consist of all portions of the SORP, other than the previously-approved portions that relate exclusively to customer complaint response, reporting and unscheduled maintenance, as identified in Appendix A (Other MOM Programs). This Deliverable is subject to Review Level 1. The revised SORP shall have the following components:

(A) Staff Communication and Duties. KUB shall establish procedures for ensuring that it is made aware of all SSOs as expeditiously as possible, and shall document in writing the responsibilities of employees charged with responding to

SSOs;

(B) Prompt Response to SSOs. KUB shall make all reasonable efforts to respond to an SSO within forty-five (45) minutes of notification. KUB shall maintain records of all SSO responses, including response times. KUB may maintain a log for Building Backups separately from other SSOs.

(C) Assessment of Cause and Impact. KUB shall establish procedures for identifying the cause of an SSO, and for assessing any adverse impact to human health or the environment from the SSO. The SORP shall clearly identify the process a customer may follow to dispute a determination by KUB that a wastewater backup into a building is caused by a blockage or other malfunction of a Private Lateral, and therefore is not a Building Backup.

(D) Elimination of Cause and Mitigation of Impact. KUB shall establish procedures for remedying the cause of an SSO. Standard repairs for typical SSO causes shall be identified, as shall the resources needed and available for such repairs. Procedures for diverting flow around blockages or line failures shall be included, as shall procedures for minimizing human contact with overflowed sewage. Standard containment procedures for typical SSOs shall be identified.

(E) Cleanup of SSOs. KUB shall establish procedures for cleaning up all SSOs completely and expediently, and for minimizing any further adverse impact to human health or the environment from the SSO. With respect to Building Backups, the repair and mitigation procedures shall include measures necessary to disinfect and/or remove items potentially contaminated by the Building Backup. These may include wet vacuuming or

other removal of spillage, wiping floors and walls with cleaning solution and disinfectant, flushing out and disinfecting plumbing fixtures, carpet cleaning and/or replacement and other appropriate measures to disinfect and/or remove items potentially contaminated by the Building Backup.

(F) Routine Reports to the Public. KUB shall provide notice to TDEC of an SSO within twenty-four (24) hours of the time it becomes aware of an SSO only as required by the NPDES Permits. KUB shall continue to post the date, time, volume and location of each SSO, excluding Building Backups, on its web site within twenty-four (24) hours of KUB's knowledge of each SSO. Once cleanup activities are completed, KUB shall post the date cleanup is completed. Such postings shall remain archived and indexed on the KUB web site.

(d). Legal Support Programs. KUB shall implement the Legal Support Programs described below.

(i). Rules and Regulations Program. KUB has determined, after thorough analysis and documentation, and has represented to Plaintiffs (1) that it has the legal authority to take all actions necessary to implement this Consent Decree; (2) that it has properly exercised that legal authority by providing, among other things, fair notice to the public of the creation of all rules and regulations that are necessary to implement this Consent Decree; (3) that it has in place a legal process that allows it to enforce all such rules and regulations; and (4) that it is in fact enforcing all such rules and regulations, as necessary to implement this Consent Decree. If it becomes apparent to KUB, after the Date of Entry, that KUB lacks the appropriate authority to enforce its rules and regulations, KUB and the City shall, as promptly as

possible, take all legal and available actions to correct that deficiency. If it becomes apparent to KUB, after the Date of Entry, that KUB has improperly exercised its authority to establish a rule or regulation that is necessary to implement this Decree, or lacks a process sufficient to enforce a rule or regulation that is necessary to implement this Decree, KUB shall, as promptly as possible, take all legal and available actions to correct that deficiency. Within thirty (30) Days after discovery of any deficiency, KUB shall notify the Plaintiffs of the deficiency and its intended plan for correction of that deficiency. Upon correction of the deficiency, KUB shall represent to Plaintiffs that it has, in fact, corrected the deficiency.

(ii). Grease Control Legal Support Program. No later than thirty (30) Days after the Date of Entry, KUB shall prepare an enforcement response guide to address violations of the Grease Control Program set forth in Section VII.D.2.(a) and other applicable rules and regulations. This Deliverable is subject to Review Level 2. It shall be placed in the PDR for public review and information, but shall not be subject to the Public Review Requirement of Section VI.A.2. However, KUB shall receive questions and comments from the public on this Deliverable for a period of twenty (20) Days after placement in the PDR. The guide, in conjunction with the rules and regulations, shall include an array of tools available to KUB in the enforcement of the Grease Control Program and applicable rules and regulations. The guide and/or rules and regulations shall identify the process a customer must follow to request a waiver of any of the obligations imposed by the Grease Control Program and the other applicable rules and regulations, and the process KUB will use to consider granting and revoking such waivers. KUB shall maintain records of all decisions to grant or revoke such waivers, and the basis for each such decision. The guide shall set forth a series of graduated enforcement

responses for violations of the Grease Control Program and of other applicable rules and regulations, such as (a) unauthorized grease discharges to the WCTS; (b) unauthorized modifications to an approved grease interceptor; (c) failure to properly operate and maintain an approved grease interceptor; (d) failure to follow standard operating procedures; (e) failure to maintain adequate manifest documentation or to use permitted haulers; and (f) failure to timely pay administrative fees. The guide and/or the rules and regulations shall describe the notice KUB provides to customers who are found to be in violation and the process a customer must follow in order to challenge the issuance of a penalty or termination of services.

(iii). Private Lateral Legal Support Program. No later than one-hundred and eighty (180) Days after the Date of Entry, KUB shall prepare an enforcement response guide to address Private Laterals that may contain defects and/or improper connections that (1) are potential sources of I/I to the WCTS that may cause or contribute to SSOs or other violations of the NPDES Permits; (2) allow for the possible exfiltration of wastewater onto or below the surface of the ground that could then enter the stormwater system; or (3) allow roots and/or debris to enter the WCTS through cracks, holes, or poorly sealed joints, thus restricting flow and increasing the likelihood of SSOs. This Deliverable is subject to Review Level 1. The guide, in conjunction with KUB's rules and regulations, shall include an array of tools available to KUB to require customers to repair or replace Private Laterals identified as having such defects and/or improper connections. The guide and/or rules and regulations shall identify the process that KUB will follow to require customers to repair or replace the identified Private Laterals. The guide shall set forth a series of graduated enforcement responses by KUB, including termination of services, in the event a customer fails to repair or replace the identified

Private Laterals. The guide and/or rules and regulations shall describe the notice KUB provides to customers to require repair or replacement of identified Private Laterals and the process a customer must follow in order to challenge KUB's determination that repair or replacement is necessary or KUB's enforcement response, such as termination of services. The guide and/or rules and regulations shall identify the process a customer must follow to request a waiver of any of the obligations to properly operate and maintain Private Laterals imposed by KUB's rules and regulations and the process KUB will use to consider granting and revoking such waivers. KUB shall maintain records of all decisions to grant or revoke such waivers and the basis for each such decision.

(e). Water Quality Monitoring Program. No later than one-hundred and eighty (180) Days after Date of Entry, KUB shall submit the Water Quality Monitoring Program described below to: (a) identify Unpermitted Discharges originating at sewer pipe creek crossings and other isolated or remote sewer locations adjacent or in proximity to waterways; (b) locate the source or sources of such Unpermitted Discharges; and (c) assess the impact upon the environment and public health of such Unpermitted Discharges. The Water Quality Monitoring Program set forth in this Section is subject to Review Level 1. The Water Quality Monitoring Program shall also include standard sampling and quality assurance procedures and an IMS. The Water Quality Monitoring Program is in addition to any other sampling required by the NPDES Permits.

(i). Routine Water Quality Monitoring Component. KUB shall develop and implement a Routine Water Quality Monitoring Component to detect Unpermitted Discharges originating at or in proximity to stream crossings or other isolated and remote sewer

locations. This Component shall provide for scheduled sampling during both dry and wet weather periods from a network of monitoring stations located in each of the following Sewerbasins: First, Second, Third, Fourth, Baker, Goose, Loves and Williams Creeks. The Routine Water Quality Monitoring Component shall propose the exact number and location of monitoring points depending upon drainage configuration and other factors, but in no event shall the number of monitoring points be less than twenty-four (24) monitoring points. The Routine Water Quality Monitoring Component shall include a map of all sampling locations, and shall specify sampling frequency and sampling parameters, including pH, water temperature, dissolved oxygen, fecal coliform and *E. coli* bacteria.

(ii). Investigative Water Quality Monitoring Component. KUB shall develop and implement an Investigative Water Quality Monitoring Component to determine whether the WCTS and/or any WWTP is a source of pollution identified as a result of complaints, routine water quality monitoring pursuant to subparagraph (i) above, or by other means. The Component shall specify the conditions under which KUB will initiate an investigation under this subparagraph. The Investigative Water Quality Monitoring Component shall include a requirement for development of a map of all actual sampling locations, and shall specify a protocol for determining sampling parameters to be used depending on the type of pollution identified or suspected. The Investigative Water Quality Monitoring Component shall include the following:

(A). Dry Weather Monitoring. The purpose of dry weather monitoring shall be to detect chronic line leaks. Dry weather sampling shall be conducted for a definite period of time, e.g., one week ("Testing Period"). During the Testing



Period, KUB shall collect fecal coliform samples at least twice a day at locations to be investigated.

(B). Wet Weather Monitoring. The purpose of wet weather monitoring shall be to detect capacity problems. The wet weather sampling period shall be defined using rainfall and stream stage data or sewer flow data. During the sampling period, KUB shall collect fecal coliform samples at least four (4) times a day at locations to be investigated.

(C). Location of Source of Release. If necessary, the isolated stream segment shall be sampled at defined intervals to identify the source of the release. Fecal coliform samples shall be taken in each of the monitoring locations. After repair of the source, KUB shall take additional samples to ensure that the repair has been successful.

(iii). Spill Impact Water Quality Monitoring Component. KUB shall develop and implement a Spill Impact Water Quality Monitoring Component to assess any impact upon public health and the environment of pollution resulting from any Unpermitted Discharges, and to assist in assessing the need for any environmental and/or public health response. KUB shall consult with EPA, TDEC and Public Health Authorities during development and implementation of the Spill Impact Water Quality Monitoring Component. As part of the Spill Impact Water Quality Monitoring Component, KUB shall develop protocols for mapping all actual sampling locations, for determining the frequency and duration of sampling (depending upon the potential impact of the spill on public health and the environment), and for sampling for pH, water temperature, dissolved oxygen, fecal coliform and *E. coli* bacteria. Sampling shall be limited to dry weather events. The sampling protocol shall include sampling

upstream (control) and downstream of the spill. The sampling protocol also shall identify the circumstances under which KUB shall sample for those Priority Pollutants known to be present in the wastewater of any Significant Industrial User that discharges into the portion of the WCTS upsewer of the Unpermitted Discharge. The Water Quality Monitoring IMS shall contain a list of the Priority Pollutants, if any, in wastewater discharged by any Significant Industrial User to the WCTS, and the lines affected by any such discharge.

(iv). Quality Assurance, Sampling, Data Analysis. KUB shall use analytical procedures, sample containers, preservation techniques, and sample holding times that are specified in 40 C.F.R. Part 136. Upon request, KUB shall allow split or duplicate samples to be taken by EPA, TDEC, or their authorized representatives. In addition, EPA and TDEC shall have the right to take any additional samples that EPA or TDEC may deem necessary.

(v). Water Quality Reporting. KUB shall report, pursuant to the requirements of Section XIX (Reporting Requirements), the following information: (a) the actions which have been taken under this Section during the previous Calendar Quarter, including the dates and times of all sampling; (b) a summary of all results of sampling during the previous Calendar Quarter; and (c) all actions including, but not limited to, data collection, which are scheduled for the next Calendar Quarter.

(f). Emergency Response Plan. No later than two-hundred and seventy (270) Days after the Date of Entry, KUB shall submit an Emergency Response Plan. This Deliverable is subject to Review Level 1. The Plan shall address both routine and catastrophic emergencies. Routine emergencies include such situations as overflowing manholes, line breaks,

localized electrical failure and pump station outages. Catastrophic emergencies include floods, tornados, earthquakes or other natural events, serious chemical spills and widespread electrical failure. The Plan shall address areas of vulnerability and determine the effect of such a failure to operations, equipment and public safety and health based upon such factors as topography, weather, sewer system size, and other site-specific factors. The Plan shall include standard forms. The Plan shall have the following components:

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

(ii). WCTS. The WCTS component of the Emergency Response Plan shall establish standard operating procedures for use in emergency operations, including identification of the actions staff should take in the event of emergency situations (specific to the type of emergency that could occur); criteria for initiating and ceasing emergency operations; identification of appropriate repair equipment and sources thereof; and instructions on how to operate equipment and systems during an emergency when they are not functioning as intended but are not fully inoperable.

(iii). Public Notification of Emergencies. In addition to the reporting requirements set forth in Section XIX (Reporting Requirements), KUB shall establish, in coordination with Public Health Authorities: (A) criteria to be used as the basis for immediately notifying the public and other impacted entities, such as users with a downstream water intake, of an emergency situation caused by an SSO, Diversion, Bypass, or effluent limit violation; (B) a list identifying, by name, phone number and pager number, all KUB staff who

are responsible for notifying the public; (C) a list identifying, by name and phone number, all Public Contacts, including TCWN, the City and local media outlets, who must be contacted during an emergency situation; (D) a list identifying KUB staff who are authorized to make public statements during emergency situations; and (E) pre-scripted news releases for various types of emergency situations.

(iv). Notification of Regulatory Authorities. In addition to the notification requirements set forth in the NPDES Permits, and the reporting requirements set forth in Section XIX (Reporting Requirements), KUB shall establish, in coordination with Public Health Authorities: (A) criteria to be used as the basis for immediately notifying regulatory authorities, TDEC, the City and the Public Health Authorities of any emergency situation caused by an SSO, Diversion, Bypass, or effluent limit violation; (B) a list identifying, by name, phone number and pager number, all KUB staff who are responsible for notifying the regulatory authorities; (C) a list identifying, by name and phone number, all officials who must be contacted; and (D) standard reporting forms.

2. Operations Programs.

(a). Grease Control Program. KUB shall continue to implement its Grease Control Program, which KUB submitted and EPA approved on October 15, 2004, after consultation with the State. The Grease Control Program is a Deliverable for purposes of this Consent Decree. The following documents constitute KUB's Grease Control Program, and KUB will, within twenty-one (21) Days of the Date of Entry, place the documents in the PDR:

- (i) Grease Control Program Document;
- (ii) Grease Inspection Process Flow Chart;

- (iii) Flow Chart for "Existing" FSFs (Draft);
- (iv) Flow Chart for "New" FSFs (Draft);
- (v) Grease Trap Inspection Form;
- (vi) Grease Interceptor Cleaning Record/Maintenance Log;
- (vii) Grease Control Program General Guidelines;
- (viii) Recommended Grease Interceptor Sizing Model;
- (ix) Fat Free Sewers Brochure;
- (x) Summary Report of New FSFs (CIS System query);
- (xi) "No Grease" Sign;
- (xii) Pre-Inspection Form Letter;
- (xiii) Post-Inspection Form Letter (Compliance);
- (xiv) Post-Inspection Form Letter (Increased maintenance required);
- (xv) Post-Inspection Form Letter (Grease interceptor required);
- (xvi) Post-Inspection Form Letter (Multiple commercial and residential contributors);
- (xvii) Example Customer Numbers, Names and Addresses (Landviewer query);
- (xviii) Example Graphic (Landviewer query);
- (xix) Example Grease Investigation Report;
- (xx) Form Letter (Potential residential contributors);
- (xxi) Residual Grease Disposal Education Program Proposal;

- (xxii) Education Effort: Can the Grease Program;
- (xxiii) Can the Grease Pre-Survey;
- (xxiv) Can the Grease Pre-Survey Results;
- (xxv) Can the Grease Brochure; and
- (xxvi) Grease Control Program Performance Goals and Measures.

(b). Process Controls Program for the WWTPs. No later than one-hundred and fifty (150) Days after Date of Entry, KUB shall submit a Process Controls Program for the Kuwahee, Fourth Creek and Loves Creek WWTPs for use during wet weather operating conditions. This Deliverable is subject to Review Level 1. The Process Controls Program shall establish standard operating procedures to ensure optimum treatment of wastewater in order to achieve NPDES Permit compliance. The Process Controls Program shall establish criteria, such as plant flow, secondary treatment flow, mixed liquor suspended solids (MLSS), sludge blanket levels and other appropriate criteria, to initiate process control changes. The Program shall also require the use of available laboratory and on-line instrumentation data before making a decision to change process controls. KUB has represented that the Eastbridge WWTP is not designed for Diversions. KUB shall not cause any Diversions at the Eastbridge WWTP.

(c). Operations Record Keeping Program for the WWTPs. No later than sixty (60) Days after the Date of Entry, KUB shall submit an Operations Record Keeping Program for the WWTPs. This Deliverable is subject to Review Level 2. It shall be placed in the PDR for public review and information, but shall not be subject to the Public Review Requirement of Section VI.A.2. However, KUB shall receive questions and comments from the public on this Deliverable for a period of twenty (20) Days after placement in the PDR. The

Operations Record Keeping Program shall establish a system for accurately recording KUB's operation of the WWTPs. The Program shall include Operator Logs, Activity Reports, Performance Reports and documentation of all Bypass and Diversion events. The Program shall also include performance measures for ensuring that the reports being kept pursuant to this Program are accurate.

3. Maintenance Program

\_\_\_\_\_ (a). Gravity Line Preventative Maintenance Program. No later than ninety (90) Days after the Date of Entry, KUB shall submit a Gravity Line Preventative Maintenance Program that includes the following components: (i) blockage abatement (including both hydraulic and mechanical cleaning); (ii) root control; and (iii) manhole preventative maintenance. This Deliverable is subject to Review Level 1. KUB shall maintain all program and implementation documentation on-site for review by EPA and TDEC. At a minimum, each component of the Gravity Line Maintenance Program shall include the following for preventative maintenance activities: (A) identification and provision of all personnel and equipment needed; (B) determination of the frequency; (C) establishment of procedures; (D) establishment of priorities for scheduling; (E) development and implementation of standard forms; (F) establishment of record keeping requirements; (G) establishment of performance measures; and (H) integration of all data collected under the Program with KUB's IMS.

E. Other MOM Programs. On February 13, 2004, KUB submitted to TDEC a MOM Summary Report. In addition, on February 16, 2004, KUB responded to an information request letter dated January 14, 2004 issued by EPA pursuant to Section 308 of the CWA, 33 U.S.C. § 1318. Included in the MOM Summary Report and the Section 308 response were KUB

representations that it was implementing the Other MOM Programs not specifically mentioned in Section VII.D of this Consent Decree, which are also necessary for the successful and proper management, operation and maintenance of KUB's WCTS and WWTPs. The Other MOM Programs are described in Appendix A. Within ten (10) Days of the Date of Entry, KUB shall place in the PDR all documents that constitute these programs (referenced in Appendix A). KUB hereby agrees to continue to implement the Other MOM Programs in substantially the same manner as represented in Appendix A and the documents identified therein. In addition, in the event KUB desires to substantially change or discontinue implementation of all or a portion of any Other MOM Program, KUB shall submit such proposed change or request for discontinuance as a Review Level 2 Deliverable. The proposed change or discontinuance shall be placed in the PDR for public review and information, but shall not be subject to the Public Review Requirement of Section VI.A.2. However, KUB shall receive questions and comments from the public on such documents for a period of twenty (20) Days after placement in the PDR. For purposes of this paragraph, a substantial change to an Other MOM Program or to the way in which an Other MOM Program is implemented shall mean a change that materially or significantly hampers the beneficial purpose of that program.

#### **VIII. SUPPLEMENTAL ENVIRONMENTAL PROJECT**

\_\_\_\_\_A. KUB shall perform and complete the Supplemental Environmental Project ("SEP") set forth in Appendix B, which has the objective of securing significant environmental or public health protection and improvements. KUB shall complete the SEP in accordance with the schedule and requirements set forth in Appendix B. The SEP shall be completed within eight (8) years of the Date of Entry.



B. The total expenditure for the SEP shall be not less than \$2,000,000. KUB shall include documentation of the expenditures made in connection with the SEP as part of the SEP Completion Report described in Section VIII.E below. In the event that KUB fails to perform and complete the SEP as set forth in Appendix B, it shall pay stipulated penalties in accordance with Section X (Stipulated Penalties).

C. KUB is responsible for the satisfactory completion of the SEP in accordance with the requirements of this Decree. KUB shall be deemed to have satisfactorily completed the SEP when (1) EPA determines that KUB made good faith efforts to spend the entire amount set forth in Section VIII.B; and (2) KUB certifies, with supporting documentation, that at least ninety (90) percent of the amount of money required to be spent on the SEP has been disbursed to pay for the repair or replacement of Private Laterals, or removal of illicit connections by eligible residential property owners.

D. KUB hereby certifies that, as of the date of this Consent Decree, KUB is not required by any federal, state, or local law or regulation to perform or develop the SEP; nor is KUB required by agreement, grant, or as injunctive relief in this or any other case to perform or develop the SEP. KUB further certifies that it has not received, and is not presently negotiating to receive, credit in any other enforcement action for the SEP; nor will KUB realize any profit attributable to or associated with the SEP, or receive any reimbursement for any portion of the SEP from any other person.

E. SEP Completion Report. KUB shall complete the SEP within eight (8) years from the Date of Entry. KUB shall submit a SEP Completion Report to the Parties within thirty (30) Days after completion of the SEP. The SEP Completion Report shall contain the following

information:

1. A detailed description of the SEP as implemented;
2. A description of any implementation problems encountered and the solutions thereto;
3. An itemization of all SEP costs and acceptable evidence of such costs;
4. Certification that the SEP has been fully implemented pursuant to the provisions of this Consent Decree, including Appendix B;
5. A description of the environmental and public health benefits resulting from implementation of the SEP (with a quantification of the benefits and pollutant reductions to the extent feasible); and
6. Copies of any brochures, databases, software, or similar information relating to the SEP.

F. Periodic Reports. While the SEP is being planned and implemented, KUB shall submit semiannual reports to the Parties describing the progress of the SEP up to and during the most recent Calendar Quarter within one (1) Month after the end of the second and fourth Calendar Quarters following the Date of Entry. Each periodic report shall contain the information described in Appendix B.

G. Following receipt of the SEP Completion Report described in Section VIII.E above, EPA, after consultation with TDEC, will do one of the following in writing:

1. accept the SEP Completion Report; or
2. reject the SEP Completion Report, notifying KUB, in writing, of deficiencies in the SEP Completion Report.

If EPA rejects the SEP Completion Report, KUB shall have one (1) Month from the date of receipt of EPA's notice in which to correct any deficiencies and submit a revised SEP Completion Report. KUB agrees to comply with any SEP related requirements imposed by EPA's notice, subject to Dispute Resolution.

H. If upon receipt of the SEP Completion Report, EPA, after consultation with TDEC, determines that part or all of the SEP has not been implemented in accordance with this Consent Decree, including Appendix B, and any statements of work, EPA may require KUB: (1) to perform additional tasks; (2) to repeat any deficient tasks; or (3) if specific tasks set forth in Appendix B were not performed at all, to perform such tasks. EPA shall provide any such requirement to KUB in writing. KUB agrees to comply with any SEP related requirements imposed by EPA's notice, subject to Dispute Resolution.

J. KUB bears the burden of segregating eligible SEP costs from costs not eligible for SEP credit. Any cost evidence that contains costs that are both eligible and not eligible for SEP credits shall be disallowed in its entirety. For purposes of this Section VIII, "acceptable evidence" includes invoices, purchase orders, or other documentation that specifically identifies and itemizes the individual costs of the goods or services for which payment is made. Canceled drafts are not acceptable evidence unless such drafts specifically identify and itemize the individual costs of the goods or services for which payment is made.

K. KUB hereby agrees that, in estimating the cost of the SEP, it did not take into account any savings KUB expects to achieve by claiming deductions on its state or federal tax returns. KUB further agrees that it will not claim a deduction on such tax returns based upon any funds expended by KUB in the performance of the SEP. KUB, at the time of completion of

the SEP, shall submit to the United States and the State written certification that any funds expended in the performance of the SEP have not been and will not be claimed as a deduction on such taxes.

L. Any public statement, oral or written, in print, film, or other media, made by KUB making reference to the SEP shall include the following language, "This project was undertaken in connection with the settlement of a civil enforcement action taken by the United States for violations of the Clean Water Act." If KUB fails to include such language, it shall immediately issue a retraction of its public statement.

#### **IX. CIVIL PENALTY**

A. KUB shall pay a civil penalty as follows:

1. KUB shall make a payment to the United States of \$167,000 within thirty (30) Days after the Date of Entry. Payment to the United States shall be made by electronic funds transfer, in accordance with written instructions to be provided by the United States after Date of Lodging of this Consent Decree. The costs of such electronic funds transfer shall be the responsibility of KUB. KUB shall send a copy of the electronic funds transfer authorization form, the electronic funds transfer transaction record, and the transmittal letter to the Parties as specified in Section XX (Form of Notice) below. The transmittal letter shall reference the case name, USAO File Number, and DJ No. 90-5-1-1-08186.

2. KUB shall make a payment to the State as follows: KUB shall spend \$167,000 on the State environmental project set forth in Appendix C of this Consent Decree. TDEC has approved this payment as an appropriate State environmental project recognizing the value of this project and its potential to positively impact the local environment.

3. The payment to the State of \$167,000, together with the payment to the United States of \$167,000, constitutes a total civil penalty of \$334,000.

B. In the event that full payment is not made within thirty (30) Days of the Date of Entry, KUB shall pay interest on the balance due from the original due date to the date of payment, at the rate calculated pursuant to 28 U.S.C. § 1961.

C. KUB shall not claim as a deduction on federal or state income tax returns the civil penalty or any portion thereof, any accrued interest paid to the United States or the State provided for in this Section, or any stipulated penalties provided for in Section X (Stipulated Penalties).

#### **X. STIPULATED PENALTIES**

A. EPA may assess against KUB stipulated penalties under the circumstances described below. Fifty (50) percent of each payment due pursuant to this Section shall be paid to the United States and fifty (50) percent shall be paid to the State.

1. Unpermitted Discharges. For each Unpermitted Discharge from the WCTS EPA may assess a stipulated penalty. Any such penalty shall be determined as follows:

If Unpermitted Discharge Occurs:	Penalty per Unpermitted Discharge:
Within 24 Months of Date of Entry	\$350
More than 24 Months of Date of Entry but before the Interim Deadline	\$1,000
After the Interim Deadline but before June 30, 2016	\$2,000
After June 29, 2016	\$3,000

2. Prohibited Diversions. After approval of the Process Controls Program, for each Diversion at a WWTP that is in violation of the Process Controls Program, EPA may assess a stipulated penalty of \$7,500 if the Diversion occurs prior to the completion of implementation of the Composite Correction Plan and \$15,000 if the Diversion occurs after implementation of the Composite Correction Plan has been completed. In the event that Diversions are further restricted, but not completely prohibited, following final resolution of KUB's appeal of the NPDES Permits, EPA may not assess a penalty under this paragraph for a failure to comply with the new restrictions until the compliance period to be established by TDEC following final resolution of KUB's appeal has expired.

3. Prohibited Bypasses. For each Bypass at a WWTP that is prohibited by 40 C.F.R. § 122.41(m), EPA may assess a stipulated penalty of \$15,000. In the event that all Diversions are prohibited following final resolution of KUB's appeal of the NPDES Permits, EPA may assess a penalty under this paragraph for any Diversion that occurs after the expiration of the compliance period to be established by TDEC following final resolution of KUB's appeal.

4. Failure to Timely Submit Deliverable. For each Day KUB fails to Timely submit any Deliverable, EPA may assess daily stipulated penalties for each such Deliverable as follows:

Period of Noncompliance:	Penalty Per Deliverable Per Day:
1 - 10 Days	\$300
11 - 20 Days	\$600
21 - 60 Days	\$1,000
more than 60 Days	\$2,000

With respect to a Review Level 2 Deliverable, KUB may seek confirmation from EPA that it has Timely submitted the Review Level 2 Deliverable. EPA may not assess a stipulated penalty under this paragraph during the period between KUB's request for such confirmation and EPA's response to that request.

5. Failure to Timely Implement Work. For each Day KUB fails to Timely implement any Work (other than the Timely submittal of a Deliverable or implementation of a SEP), EPA may assess daily stipulated penalties for each such item of Work as follows:

Period of Noncompliance:	Penalty Per Violation Per Day:
1 - 14 Days	\$1,000
15 - 30 Days	\$2,000
31 - 60 Days	\$3,000
60-180 Days	\$4,000
more than 180 Days	\$7,500

6. Failure Related to Capacity Assurance Program. For each sewer connection or increase in flow from an existing sewer connection KUB authorizes that is not in conformance with Section VII.D.1.(a).(iii) of this Consent Decree, EPA may assess a stipulated penalty of \$32,500 for non-residential connections with a predicted flow of more than 2,500 gallons per day, and \$10,000 for all other connections.

7. Failure to Timely Implement SEP Milestones. For each Day KUB fails to Timely implement a SEP milestone set forth in Section VIII or Appendix B, EPA may assess daily stipulated penalties as follows:

Period of Noncompliance:	Penalty Per Violation Per Day:
1 - 15 Days	\$1,000
16 - 30 Days	\$1,500
31 - 60 Days	\$2,500
over 60 Days	\$4,000

8. Failure to Complete a SEP or Failure to Spend Agreed-Upon Amount. In the event that KUB fails to complete a SEP in accordance with the terms of this Consent Decree relating to the performance of the SEP as described in Section VIII and Appendix B, and/or to the extent that KUB's actual expenditures for the SEP do not equal or exceed the required cost of the SEP as described in Section VIII.B, EPA may assess stipulated penalties according to the provisions set forth below:

\_\_\_\_\_(a). Except as provided in subparagraph (b) immediately below, if the SEP that has not been completed satisfactorily, EPA may assess a stipulated penalty in the amount of \$250,000.

\_\_\_\_\_(b). If the SEP is not completed in accordance with Section VIII and Appendix B, but EPA determines that KUB (i) has made good faith efforts to complete the SEP; and (ii) has certified, with supporting documentation, that at least 90 percent of the amount of money required to be spent on the SEP, KUB shall not be liable for any stipulated penalty.



(c). For failure to submit a SEP Completion Report required by Section VIII.E, EPA may assess a stipulated penalty in the amount of \$1,000 for each Day after the report was originally due until the report is submitted.

\_\_\_\_\_(d). For failure to submit any other report required by Section VIII, or Appendix B, EPA may assess a stipulated penalty of \$500 for each Day after the report was originally due until the report is submitted.

9. Delay in Payment of Civil Penalty. In the event KUB fails to pay the United States and/or the State the civil penalty pursuant to Section IX.A and Appendix C, EPA or the State may assess a stipulated penalty of \$2,000 for each Day that KUB is late in paying. In the event that the Escrow Agent returns funds to KUB pursuant to the term of the Escrow Agreement described in Paragraph G of Appendix C, and KUB fails to deposit such funds into the SEP Escrow described in Appendix B within thirty (30) Days of KUB's receipt of such funds from the Escrow Agent, the State may assess a stipulated penalty of \$2,000 for each day that KUB is late in paying.

B. Stipulated penalties shall automatically begin to accrue on the first Day of noncompliance as specified in paragraph A above, and shall continue to accrue through the final Day of the correction of the noncompliance, but shall only be payable as provided in Section X.C below.

C. KUB shall pay stipulated penalties within thirty (30) Days of receipt of a written demand for payment. All stipulated penalties paid to the United States pursuant to this Section shall be made by electronic funds transfer, in accordance with written instructions to be provided by the United States after Date of Lodging of this Consent Decree. The costs of such electronic

funds transfer shall be the responsibility of KUB. KUB shall send a copy of the electronic funds transfer authorization form, the electronic funds transfer transaction record, and the transmittal letter to the Parties as specified in Section XX (Form of Notice) below. The transmittal letter shall reference the case name, USAO File Number, and DJ No. 90-5-1-1-08186. All stipulated penalties paid to the State shall be paid by check payable to "The State of Tennessee." Each check shall reference the case name and civil action numbers herein and shall be sent to:

Elizabeth P. McCarter  
Office of the Tennessee Attorney General  
Environmental Division  
P. O. Box 20207  
Nashville, TN 37202

D. In the event that a stipulated penalty is not paid in full when due, KUB shall pay interest on the balance due calculated pursuant to 28 U.S.C. § 1961 ("Interest"). Interest shall accrue from the date payment of the stipulated penalty is due to the date of payment.

E. Upon receipt of a written demand for payment of a stipulated penalty, KUB may dispute its liability for such stipulated penalty pursuant to the Dispute Resolution provisions of Section XII of this Consent Decree. In that event, any stipulated penalties and Interest that are ultimately determined to be due under this Consent Decree shall be paid within thirty (30) Days of the date of EPA's written decision or, if applicable, any Court order. Stipulated penalties and Interest shall continue to accrue during the pendency of the dispute, and EPA shall have the right to collect all penalties and Interest that accrued during the dispute.

F. The payment of stipulated penalties shall not alter in any way KUB's obligation to implement or complete all Work required under this Consent Decree.

G. The United States may, in the unreviewable exercise of its discretion, reduce or

waive stipulated penalties otherwise due it under the Consent Decree. In exercising its discretion under this paragraph, the United States shall consider, among other factors, the amount of time that has elapsed between the date that EPA became aware of the violation and the date of EPA's assessment of a penalty for that violation.

H. 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 or the State by reason of KUB'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, including but not limited to penalties and relief remedies under the CWA for future violations of the CWA, regardless of whether EPA could demand a stipulated penalty under this Consent Decree for those violations.

## **XI. FORCE MAJEURE**

\_\_\_\_A. "Force Majeure" for the purposes of this Consent Decree is defined as an event arising from causes beyond the control of KUB or of any entity employed by KUB, including, but not limited to, its consultants and contractors, which delays or prevents the performance of any obligation under this Consent Decree, despite KUB's best efforts to fulfill the obligation. The requirement that KUB exercise "best efforts to fulfill the obligation" includes using best efforts to anticipate any potential Force Majeure event and best efforts to address the effects of any potential Force Majeure event (1) as it is occurring and (2) following the potential Force Majeure event, such that delay is minimized to the greatest extent possible. Force Majeure does not include unanticipated or increased costs, financial inability to perform an obligation required by this Consent Decree, or a failure to achieve compliance with the NPDES permits, the TWQCA,

or the CWA. Application for construction grants, State Revolving Loan Funds, or any other grants or loans, or delays caused by inadequate facility planning or plans and specifications on the part of KUB do not constitute Force Majeure.

      B. Solely for purposes of this Consent Decree, KUB shall be deemed to know of any circumstance of which KUB or any entity controlled by KUB, including KUB's consultants and contractors, knew or should have known.

C. Where any compliance obligation under this Consent Decree requires KUB to obtain a federal, State or local permit or approval, KUB shall submit timely and complete applications and take all other actions necessary to obtain such permits and approvals. KUB may seek relief under this Section for any delay in performance of any such obligation resulting from a failure to obtain or a delay in obtaining, any permit or approval required to fulfill such obligation, if KUB has submitted timely and complete applications and has taken all other actions necessary to obtain all such permits and approvals.

D. When circumstances are occurring or have occurred which may delay the completion or prevent the performance of any requirement of this Consent Decree, whether or not due to a Force Majeure event, KUB shall notify EPA and TDEC in writing no later than twenty (20) Days after KUB knew, or in the exercise of reasonable due diligence under the circumstances, should have known, of the event. Notice shall be provided pursuant to Section XX (Form of Notice), with copies of such notice to TCWN and the City. The notice shall specifically reference this Section of the Decree and describe in detail: the basis for KUB's contention that it experienced or will experience a Force Majeure event if KUB intends to make a claim of Force Majeure; the obligations for which KUB believes performance will be delayed;

the anticipated length of the delay; the precise cause or causes of the delay; the measures taken or to be taken to prevent or minimize the delay; and the timetable by which those measures will be implemented. Failure to so notify EPA and TDEC shall constitute a waiver of any claim of Force Majeure as to the event in question.

E. If EPA, after consultation with TDEC, finds that a delay or prevention in performance is, or was, caused by a Force Majeure event, it shall extend the time for performance, in writing, for a period not exceeding the delay actually caused by such event, and stipulated penalties shall not be due for such period. In proceedings on any dispute regarding a delay in performance or prevention of performance, the dispute resolution provisions of Section XII shall apply, and KUB shall have the burden of proving that the delay in performance or prevention of performance is, or was, caused by a Force Majeure event, and that the amount of additional time requested is necessary to compensate for that event.

F. Compliance with a requirement of this Consent Decree shall not by itself constitute compliance with any other requirement. An extension of one compliance date based on a particular event shall not automatically extend another compliance date or dates. KUB shall make an individual showing of proof regarding the cause of each delayed incremental step or other requirement for which an extension is sought. KUB may petition for the extension of more than one compliance date in a single request.

## **XII. DISPUTE RESOLUTION**

\_\_\_\_A. Unless otherwise expressly provided for in this Consent Decree, the dispute resolution procedures of this Section shall be the exclusive mechanism available for resolving any disputes under this Decree between KUB and the United States. However, such procedures

shall not apply to actions by the United States to enforce obligations of KUB that have not been disputed in accordance with this Section. The Parties acknowledge that the procedures of this Section shall not extend to disputes concerning the modification, revocation, renewal or reissuance of NPDES permits, which shall be governed by prevailing law. Disputes among any other Parties shall be resolved by filing a motion with the Court.

B. Disputes with respect to any portion of a requirement of this Consent Decree shall not delay implementation of any portion of that requirement that is not in dispute and that is entirely independent of the requirement being disputed unless EPA agrees in writing, after consultation with the State, TCWN and the City, to a stay of KUB's obligation to perform, or the Court grants an order staying KUB's obligation to perform.

C. Informal Dispute Resolution. KUB shall invoke the informal dispute resolution procedures of this Section by notifying all other Parties in writing of the matter(s) in dispute and of KUB's intention to resolve the dispute under this Section. The notice shall: (1) outline the nature of the dispute; (2) include KUB's proposed resolution; (3) include all information or data relating to the dispute and the proposed resolution; and (4) request negotiations pursuant to this Section to informally resolve the dispute. KUB and the United States shall then attempt to resolve the dispute informally for a period of thirty (30) Days from the date of the notice (or such longer period as KUB and the United States may agree in writing), with the goal of resolving the dispute in good faith, without further proceedings. Notice of any such extension shall be provided by KUB to the State, TCWN and the City. The State, TCWN and the City shall have the right to participate in informal negotiations between the United States and KUB as to disputes under this Consent Decree and all Parties may file a written statement of position.

However, resolution of the dispute shall be solely between the United States and KUB. The period for such negotiations may be extended by written agreement of the United States and KUB. Notice of any such extension shall be provided by KUB to the State, TCWN and the City. If informal negotiations result in an agreement between the United States and KUB, such agreement shall be set forth in a single document in writing and KUB shall provide a copy to all Parties. If the United States and KUB 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, KUB invokes formal dispute resolution procedures as set forth below.

D. Formal Dispute Resolution. KUB 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 KUB's position and any supporting documentation relied upon by KUB.

E. The United States shall serve its Statement of Position within forty-five (45) Days of receipt of KUB'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. The United States shall consult with the State, TCWN and the City during preparation of its Statement of Position. The United States' Statement of Position shall be binding on KUB, unless KUB files a motion for judicial review of the dispute in accordance with the following paragraph.

F. Judicial Dispute Resolution. KUB may seek judicial review of the dispute by filing with the Court and serving on the United States, in accordance with Section XX (Form of Notice) and the Local Rules, a motion requesting judicial resolution of the dispute. The motion must be filed within thirty (30) Days of receipt of the United States' Statement of Position pursuant to the preceding paragraph. The motion shall contain a written statement of KUB's position on the matter in dispute, including any supporting factual data, analysis, opinion, or documentation, and shall set forth the relief requested and any schedule within which the dispute must be resolved for orderly implementation of the Consent Decree.

G. The United States shall have at least sixty (60) Days in which to respond to KUB's motion. The United States and KUB may file reply memoranda to the extent permitted by the Local Rules, or allowed by the Court.

H. A dispute concerning EPA's failure to act on a submittal (i.e., to accept, require modification of, or reject the submittal), which KUB is required to submit for EPA's approval, shall be governed by the procedures of this Section. If KUB petitions the Court for resolution of such a dispute, KUB shall seek only an order from the Court directing EPA to act on the submittal within an appropriate period of time.

I. Except as provided in this Consent Decree, or agreed to in writing by the United States and KUB, or allowed by the Court, submission of any matter for dispute resolution under this Section shall not extend any of the deadlines set forth in this Consent Decree, or act as a stay of the disputed requirement and all dependent requirements.

J. In any dispute in Court under this Section, KUB shall bear the burden of proving by a preponderance of the evidence that KUB's position on the issues in dispute should prevail



over the United States' position. The United States or KUB may request an evidentiary hearing for good cause.

K. Stipulated penalties with respect to the disputed matter shall continue to accrue from the first Day of noncompliance, but payment shall be stayed pending resolution of the dispute as provided in Section X.E. If KUB does not prevail on the disputed issue, stipulated penalties may be assessed and shall be payable as provided in Section X (Stipulated Penalties).

### **XIII. RIGHT OF ENTRY**

\_\_\_\_\_A. The United States and State and their authorized representatives and contractors shall have authority at all times, upon the presentation of proper credentials, to enter the premises of KUB to:

1. Monitor the Work required by this Consent Decree;
2. Verify any data or information submitted to the United States and State;
3. Obtain samples from any portion of the WWTPs or WCTS;
4. Inspect and evaluate any portions of the WWTPs or WCTS;
5. Inspect and review any records required to be kept under the terms and conditions of this Consent Decree or any NPDES Permit, the CWA and the TWQCA; and
6. Otherwise assess KUB's compliance with federal and state environmental laws and this Consent Decree.

B. The rights created by this Section are in addition to, and in no way limit or otherwise affect, the authority of the United States and State to conduct inspections, to require monitoring and to obtain information from KUB as authorized by law.

C. The United States and the State agree to provide KUB an opportunity to obtain split samples of samples taken by the United States or the State. The United States and State further agree to make available to the Parties on a timely basis the quality assured/quality controlled laboratory analytical results of samples obtained by the United States or the State from the WWTPs and the WCTS during the term of this Consent Decree, and any non-privileged (including non-attorney work product) reports prepared concerning such results.

#### **XIV. NOT A PERMIT**

\_\_\_\_\_ This Consent Decree is not and shall not be construed as a permit, nor a modification of any existing permit, issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342, nor shall it in any way relieve KUB of its obligations to obtain permits for its WWTPs and related operations or facilities and to comply with the requirements of any NPDES permit or with any other applicable federal or State law or regulation. Any new permit, or modification of existing permits, must be complied with in accordance with applicable federal and State laws and regulations.

#### **XV. ONGOING COMPLIANCE OBLIGATIONS**

\_\_\_\_\_A. Nothing herein shall be construed to relieve KUB of the duty to comply with the CWA or the TWQCA, the regulations promulgated thereunder, and all applicable permits issued thereunder, including the NPDES Permits, or to relieve KUB of its duty to comply with other applicable federal, State and local laws and regulations.

B. The United States and State, by their consent to the entry of this Consent Decree, do not warrant or aver in any manner that KUB's compliance with this Consent Decree will result in compliance with the provisions of the CWA, the TWQCA, or with the NPDES Permits.

C. Notwithstanding review or approval by the United States or State of any plans, reports, policies or procedures formulated pursuant to this Consent Decree, KUB shall remain solely responsible for any noncompliance with the terms of this Consent Decree, all applicable permits, including the NPDES Permits, the TWQCA, the CWA, applicable local laws, and regulations promulgated thereunder.

#### **XVI. NON-WAIVER PROVISIONS**

\_\_\_\_\_A. This Consent Decree is entered in full and final settlement of the civil claims for the violations alleged in the Plaintiffs' Complaints, but shall not affect rights or obligations not specifically addressed herein, as to which the Parties specifically reserve their rights.

B. Nothing contained in this Consent Decree shall be construed to prevent or limit the rights of the United States or the State to seek penalties or further or additional relief under the CWA or other federal statutes or regulations, or State laws and regulations. The United States and the State reserve the right to file a civil action for statutory penalties or injunctive relief against KUB for any violations of the CWA and/or the TWQCA by KUB not expressly identified as violations in their Complaint. This Consent Decree does not relieve KUB of any criminal liability.

C. This Consent Decree in no way affects or relieves KUB of any responsibility to comply with any federal, state, or local law or regulation. The Parties agree that KUB is responsible for achieving and maintaining compliance with all applicable federal, State and local laws, regulations, permits and ordinances.

D. This Consent Decree does not limit or affect the rights of the Parties as against any third parties which are not Parties to this Consent Decree. The Parties recognize that this

Consent Decree resolves certain matters between the Parties, and that its execution does not preclude KUB from asserting any legal or factual position in any action brought against KUB by any person or entity not a Party to this Consent Decree. KUB reserves the right to contest all factual and legal positions taken in any pending and future proceedings other than an action to enforce this Consent Decree brought by a Party.

E. The Parties reserve any and all legal and equitable remedies available to enforce the provisions of this Consent Decree.

F. This Consent Decree shall not limit any authority of EPA or TDEC under any applicable statute, including the authority to seek information from KUB or to seek access to the property of KUB nor shall anything in this Consent Decree be construed to limit the authority of the United States or State to undertake any action against any person, including KUB, in response to conditions that may present an imminent and substantial endangerment to the environment or to the public health or welfare.

G. Obligations of KUB under the provisions of this Consent Decree to perform duties that may occur prior to the Date of Entry, shall be legally enforceable from the Date of Entry. Liability for stipulated penalties, if applicable, shall accrue for violation of such obligations and payment of such stipulated penalties may be demanded by EPA after the Date of Entry.

H. This Consent Decree was negotiated, mutually drafted, and executed by the Parties in good faith to avoid further litigation and is a settlement of claims that were vigorously contested, denied and disputed. Neither the execution of this Consent Decree nor any action taken hereunder is an admission of any fact, liability, or wrongdoing of any kind regarding any of the matters addressed in the Consent Decree.

## **XVII. COSTS OF SUIT**

\_\_\_\_\_A. The Parties shall bear their own costs and attorneys' fees with respect to matters related to this Consent Decree, except as provided in Sections XVII.B. and XVII.C.

B. In the event that the United States or the State must enforce this Consent Decree, KUB shall pay all attorneys' fees and costs incurred by the United States or the State if the United States or the State prevails in whole or part on the issue for which enforcement is sought.

C. KUB agrees to pay TCWN's reasonably related attorney fees and expenses and consultant fees and expenses as detailed in the itemization provided to KUB's attorneys by written correspondence dated September 3, 2004 (in the sum of \$74,169.17); and KUB agrees to pay TCWN's reasonably related attorney fees and expenses at the previously stated rates from the date of the last itemization, August 31, 2004, until the Consent Decree has been signed by all parties and approved by the Court, including any appearances in the Federal Court for the Eastern District, Knoxville, Tennessee, up to the date the Court approves the Consent Decree. TCWN and its attorneys and consultants will make no further claim for fees or expenses incurred in this action after the Date of Entry, except for any staff time and expenses incurred while identifying a TPO pursuant to Appendix C up to \$2,500. KUB agrees to reimburse TCWN for all such staff time and expenses within thirty (30) Days of being presented with a statement or invoice.

## **XVIII. CERTIFICATION OF SUBMISSIONS/RECORD RETENTION**

\_\_\_\_\_A. KUB shall retain all data, documents, plans, records and reports, including research reports that KUB has relied upon, (1) that relate to KUB's performance under any Deliverable, Other MOM Program or SEP, and (2) which are in the possession, custody, or control of KUB or its consultants or contractors. KUB shall retain all such materials for five (5)

years from the date of origination. Drafts of final documents, plans, records, or reports do not need to be retained.

B. At any time during this retention period, upon request by EPA or TDEC, KUB shall submit copies of such materials required to be maintained under this Section within thirty (30) Days of such request, or such longer time as agreed upon by the requesting Party. The requesting Party shall not unreasonably refuse to extend such deadline. At the time that KUB provides the documents, it shall notify the City and TCWN of the production and shall provide those documents to the City and TCWN upon their request. This Section does not limit or affect any duty or obligation of KUB to maintain records or information required by the NPDES Permits.

C. At the conclusion of this retention period, KUB shall notify EPA, DOJ, the State and TCWN at least one-hundred and twenty (120) Days prior to the destruction of any such materials, and upon request by any of these Parties, KUB shall deliver any such materials to that Party or other specified Party.

D. In all notices, documents or reports submitted to the United States and/or State pursuant to this Consent Decree, KUB shall, by a responsible party of KUB, as defined by 40 C.F.R. §122.22 or Part I.D.1 of the NPDES Permits, sign and certify each such notice, document and report as follows:

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

knowing violations.

### **XIX. REPORTING REQUIREMENTS**

\_\_\_\_\_A. Beginning thirty (30) Days after the first Calendar Quarter following the Date of Entry, and thirty (30) Days after each Calendar Quarter thereafter until termination of the Consent Decree, KUB shall submit to the Parties, and simultaneously place in the PDR, a Quarterly Progress Report. Quarterly Progress Reports shall not be subject to the Public Review Requirement of Section VI.A.2. However, KUB shall receive questions and comments from the public for KUB's review for a period of twenty (20) Days following placement in the PDR. Each Quarterly Progress Report shall contain:

1. A summary of compliance with and activities related to implementation of the Phase 1 CAP/ER and Phase 2 CAP/ER, including: the status of construction projects in comparison to the schedules that have been established pursuant to the Consent Decree for those projects; and schedule deadlines and milestones achieved during Calendar Quarter and expected during next Calendar Quarter;
2. A summary of compliance with and activities related to implementation of the CPE and CCP;
3. A summary of implementation of and compliance with the Process Controls Program;
4. A summary of the implementation of the Capacity Assurance Program for that Calendar Quarter, including the number of, and anticipated flow from, sewer connections that have been authorized, by Sewerbasin, a description of the projects that have been authorized and the number of credits earned and banked by KUB that will be expended for those projects, by

Sewerbasin, and any exceptions granted for connections for essential services;

5. Identification of any transfer of an ownership interest, operation, management, or other control of the Treatment Works, or any portion thereof.

6. A description of the status of compliance or non-compliance with the requirements of this Decree and, if applicable, the reasons for non-compliance, including a list of all violations that are subject to stipulated penalties under Section X of this Decree.

7. A spreadsheet and summary of all SSOs, Bypasses, Diversions and effluent limitation violations that occurred during the previous Calendar Quarter. Information on Building Backups may be provided in separate spreadsheets and summaries from other SSOs. The spreadsheets and summaries shall identify:

- a. For all SSOs, the location, source, date, time, duration, pathway (if any), receiving water (if any), the reason for each SSO, the total SSO volume, the volume returned to the WCTS, and the volume not captured;
- b. For all Bypasses and Diversions, the location, date, time, duration, volume and reason for each Bypass and Diversion; and the total Bypass and Diversion volumes;
- c. For all effluent limit violations, all information required to be reported on KUB's Discharge Monitoring Reports.

8. The water quality monitoring data and other information required pursuant to Section VII.D.1.(e).(v).

B. Beginning on March 1, 2006, and every twelve (12) Months thereafter until



termination of this Consent Decree, KUB shall submit to the Parties, and simultaneously place in the PDR, an Annual MOM Progress Report. The Annual MOM Progress Report shall cover the most recent Calendar Year. The Annual MOM Progress Report shall not be subject to the Public Review Requirement of Section VI.A.2. However, KUB shall accept questions and comments from the public for KUB's review for a period of twenty (20) Days following placement in the PDR. Each Annual MOM Progress Report shall contain:

1. Grease-Related Information.

- (a). A summary table identifying: (i) the FSFs required to have grease interceptors, (ii) the interceptor capacity required by each FSF, (iii) the actual capacity installed, (iv) the FSFs receiving initial inspections, (v) the FSFs receiving routine inspections, (vi) the FSFs receiving follow-up inspections as a result of being found to be in violation during an initial or routine inspection, and (vii) any enforcement actions taken, the status of each pending enforcement action and the outcome of each concluded enforcement action;

- (b). A summary of grease-related problems identified as resulting from residential areas, a description of the problem area, the number of residents in the problem area, the number of letters mailed, the number of grease cans distributed, and the number of feet of collection system line added to the preventative maintenance program or to be cleaned on a more frequent basis as a result of the problem; and

- (c). A listing of the number of grease related blockages and SSOs.

2. A summary of the status of MOM program implementation for the following Work, including a comparison of actual performance with any performance measures that have been established:

- (a). Continuing Sewer System Assessment Program;
- (b). Infrastructure Rehabilitation Program;
- (c). Sewer Overflow Response Plan (excluding those components identified in Appendix A); and
- (d). Gravity Line Preventative Maintenance Program.

3. A representation that the Other MOM Programs continue to be implemented in substantially the same manner as represented in Appendix A and the documents identified therein.

4. A summary identifying: (a) the Private Laterals that are being addressed through the Private Lateral Legal Support Program, (b) the number of notifications sent to Private Lateral owners during the reporting period, (c) the number of Private Laterals repaired during the reporting period, (d) any enforcement actions taken by KUB, the status of each pending enforcement action and the outcome of each concluded enforcement action, and (e) any requests for waivers received and KUB's decision with respect to each such request.

C. Compliance with this Section does not relieve KUB of any other reporting obligation imposed under any law, regulation, or permit.

D. Notification to EPA or TDEC pursuant to this Section of an anticipated delay shall not by itself excuse the delay or otherwise satisfy the notification requirements set forth in Section XI (Force Majeure).

E. KUB may request in writing a modification of the items to be addressed in the Quarterly Progress Report or the Annual MOM Progress Report. This may include a request to move items currently addressed in the Quarterly Progress Report to the Annual MOM Progress

Report. Any such modification is a Non-Material Modification under Section XXI (Modification).

## **XX. FORM OF NOTICE**

A. Unless otherwise specified, or as may be changed from time to time, all reports, notices, or any other written communications required to be submitted under this Consent Decree shall be sent to the respective Parties at the following addresses:

As to the United States:

Chief, Environmental Enforcement Section  
Environment and Natural Resources Division  
U.S. Department of Justice  
Post Office Box 7611  
Washington, D.C. 20044-7611  
Reference DOJ Case No. 90-5-1-1-08186

United States Attorney  
Eastern District of Tennessee  
800 Market Street  
P.O. Box 872  
Knoxville, TN 37901-0872

Chief  
Water Programs Enforcement Branch  
Water Management Division  
U.S. Environmental Protection Agency,  
Region 4  
Atlanta Federal Center  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303

For oral notification: Doug Mundrick, Chief, Water Programs Enforcement Branch, (404) 562-9328 (subject to change on written notice to KUB).

As to the State of Tennessee:

Elizabeth P. McCarter  
Senior Counsel  
Environmental Division  
Office of the Tennessee Attorney General  
P. O. Box 20207  
Nashville, TN 37202

As to TDEC:

E. Joseph Sanders  
General Counsel  
Tennessee Department of Environment and Conservation  
20th Floor, L & C Tower  
401 Church Street  
Nashville, TN 37243

As to TCWN:

Renée Victoria Hoyos  
Executive Director  
Tennessee Clean Water Network  
706 Walnut St., Knoxville, TN 37902  
Phone: (865) 522-7007  
Fax: (865) 329-2422  
[www.tcwn.org](http://www.tcwn.org)

As to the City:

Mayor  
City of Knoxville  
City/County Building  
Post Office Box 1631  
Knoxville, Tennessee 37901  
Phone: (865) 215-2040

As to KUB:

Chief Operating Officer  
Knoxville Utilities Board  
445 S. Gay Street  
Knoxville, TN 37902-1109  
P.O. Box 59017  
Knoxville, TN 37950-9017

Hiram G. Tipton  
Hodges, Doughty & Carson, PLLC  
617 Main Street  
Knoxville, Tennessee 37902  
Phone No.: (865) 292-2307  
Fax No.: (865) 292-2321

B. Notifications to or communications with the Parties shall be deemed submitted on the date they are postmarked.

## **XXI. MODIFICATION**

This Consent Decree, including Appendices, contains the entire agreement of the Parties and shall not be modified by any prior oral or written agreement, representation, or understanding. Prior drafts of this Consent Decree shall not be used in any action involving the interpretation or enforcement of this Consent Decree. Except as set forth below, this Consent Decree may not be materially amended or modified except by written agreement of the Parties, and approval of this Court (“Material Modification”). Any Material Modification of this Consent Decree shall be effective upon approval of the Court. Except as provided in the following sentence, non-material modifications of the Consent Decree which do not significantly alter the requirements of this Consent Decree may be made in writing by the United States after consultation with the State (“Non-Material Modification”). Non-Material Modifications which affect only KUB’s obligations to the State, TCWN or the City may be made by written agreement

of the affected Parties, as applicable. Except as provided in Section VI.D, any changes to the deadlines established in Sections VII.C.2 (completion of Phase I CAP/ER activities), VII.C.3 (completion of Phase 2 CAP/ER activities) and XXIV (Final Compliance and Termination) of this Consent Decree shall be considered Material Modifications.

## **XXII. PUBLIC COMMENT**

\_\_\_\_\_The Parties agree and acknowledge that final approval by the United States and entry of this Consent Decree are subject to the requirements of 28 C.F.R. § 50.7, which provides for notice of the lodging of this Consent Decree in the Federal Register, an opportunity for public comment, and consideration of any comments. KUB, the State, TCWN, and the City each consent to the entry of this Consent Decree without further notice.

## **XXIII. CONTINUING JURISDICTION OF THE COURT**

\_\_\_\_\_The Court shall retain jurisdiction to effectuate and enforce the terms and conditions and achieve the objectives of this Consent Decree and to resolve disputes arising hereunder as may be necessary or appropriate for the construction, modification, implementation, or execution of this Consent Decree.

## **XXIV. FINAL COMPLIANCE AND TERMINATION**

\_\_\_\_\_A. KUB shall achieve final compliance with all terms of this Consent Decree no later than December 31, 2016. All Work required under this Consent Decree shall be completed by that time. The United States' determination that the Consent Decree should be terminated shall be based on a consideration of whether all of the following have occurred, after consultation with the State, TCWN and the City:

1. KUB has paid all civil and stipulated penalties it is obligated to pay under this Consent Decree;

2. KUB has completed all Work required pursuant to Sections VII (Performance of the Work); VIII (Supplemental Environmental Project); XVIII (Certification of Submissions/Record Retention) and XIX (Reporting Requirements) of this Consent Decree; and

3. KUB has provided certification of its payment of all outstanding penalties and its completion of performance of the Work described in Section XXIV.A.2 above.

B. KUB may request that the United States make a determination pursuant to Section XXIV.A that this Consent Decree may be terminated. Any such request shall be in writing and shall include a certification, that the requirements of Section XXIV.A have been met. KUB shall serve a copy of any such request on all Parties.

C. If the United States agrees, after consultation with the State, TCWN and the City, that KUB has met the requirements of Section XXIV.A above, the United States will file a motion with the Court seeking an order terminating the Consent Decree. If the United States determines not to seek termination of the Consent Decree, the United States shall so notify the Parties in writing. The United States' notice shall summarize the basis for its decision and describe the actions necessary to achieve final compliance. If KUB disagrees with any such determination by the United States not to seek termination of the Consent Decree, KUB must invoke the dispute resolution procedures of Section XII (Dispute Resolution) before filing any motion with the Court regarding the disagreement.

## **XXV. RESCISSION OF AGREED ORDER**

\_\_\_\_\_The State will take the necessary steps to have the TWQCB rescind the Agreed Order as of the Date of Entry of this Consent Decree. KUB's obligations under the Agreed Order shall thus terminate on the Date of Entry of this Consent Decree.

## **XXVI. FINAL JUDGMENT**

\_\_\_\_\_Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute a final judgment between and among the Parties. The Court finds that there is no just reason for delay and therefore enters this judgment as a final judgment under Fed. R. Civ. P. 54 and 58.

## **XXVII. SIGNATORIES**

\_\_\_\_\_A. The Assistant Attorney General, on behalf of the United States, and the signatories for the State, TCWN, the City and KUB, certify that they are fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind such Parties to this document.

B. KUB, the State, TCWN and the City agree not to oppose entry of this Consent Decree by this Court or to challenge any provision of this Consent Decree unless the United States has notified them in writing that it no longer supports entry of this Consent Decree.

C. KUB's agent identified on the attached signature page is authorized to accept service of process by mail on KUB's behalf with respect to all matters arising under or related to this Consent Decree. KUB agrees to accept service of process in that manner and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of this Court, including but not limited to service of a summons.



Dated and entered this \_\_\_\_ day of \_\_\_\_\_ 2004.

---

UNITED STATES DISTRICT JUDGE

WE HEREBY CONSENT to the entry of this Consent Decree in United States, et al. v. Knoxville Utilities Board, Civil Action Nos. 3:03-CV-497 and \_\_\_\_\_, subject to the public notice and comment requirements of 28 C.F.R. § 50.7.

FOR PLAINTIFF THE UNITED STATES OF AMERICA

DATE: \_\_\_\_\_

\_\_\_\_\_  
THOMAS L. SANSONETTI  
Assistant Attorney General  
Environment and Natural Resources Division  
United States Department of Justice

DATE: \_\_\_\_\_

\_\_\_\_\_  
PATRICIA L. HURST  
Trial Attorney  
Environmental Enforcement Section  
Environment and Natural Resources Division  
United States Department of Justice  
Post Office Box 7611  
Washington, D.C. 20044  
(202) 307-1242

DATE: \_\_\_\_\_

\_\_\_\_\_  
JOHN T. BUCKINGHAM  
Assistant United States Attorney  
Eastern District of Tennessee  
800 Market Street  
P.O. Box 872  
Knoxville, TN 37901-0872  
(865) 545-4167, Ext. 210

DATE: \_\_\_\_\_

\_\_\_\_\_  
THOMAS V. SKINNER  
Acting Assistant Administrator  
Office of Enforcement and Compliance Assurance  
United States Environmental Protection Agency  
1200 Pennsylvania Avenue, NW  
Washington, DC 20460

DATE: \_\_\_\_\_

\_\_\_\_\_  
CHERYL T. ROSE  
Attorney-Advisor  
Office of Enforcement and Compliance Assurance  
United States Environmental Protection Agency  
Mail Code 2243A  
1200 Pennsylvania Avenue, NW  
Washington, DC 20460

DATE: \_\_\_\_\_

\_\_\_\_\_  
MARY KAY LYNCH  
Regional Counsel  
United States Environmental  
Protection Agency - Region 4  
Atlanta Federal Center  
61 Forsyth Street, S.W.  
Atlanta, GA 30303

DATE: \_\_\_\_\_

\_\_\_\_\_  
WILLIAM B. BUSH, JR.  
Associate Regional Counsel  
United States Environmental  
Protection Agency - Region 4  
Atlanta Federal Center  
61 Forsyth Street, S.W.  
Atlanta, GA 30303  
(404) 562- 9538

WE HEREBY CONSENT to the entry of this Consent Decree in United States, et al. v. Knoxville Utilities Board, Civil Action Nos. 3:03-CV-497 and \_\_\_\_\_.

FOR PLAINTIFF THE STATE OF TENNESSEE

DATE: \_\_\_\_\_

\_\_\_\_\_  
ELIZABETH P. McCARTER  
Senior Counsel  
Environmental Division  
Office of the Tennessee Attorney General  
Post Office Box 20207  
Nashville, TN 37202-0207  
(615) 532-2582

WE HEREBY CONSENT to the entry of this Consent Decree in United States, et al. v. Knoxville Utilities Board, Civil Action Nos. 3:03-CV-497 and \_\_\_\_\_.

FOR PLAINTIFF TENNESSEE CLEAN WATER NETWORK

DATE: \_\_\_\_\_

\_\_\_\_\_  
AXEL RINGE  
President, Board of Directors  
Tennessee Clean Water Network  
706 Walnut St., Knoxville, TN 37902  
(865) 522-7007

DATE: \_\_\_\_\_

\_\_\_\_\_  
RENEE VICTORIA HOYOS  
Executive Director  
Tennessee Clean Water Network  
706 Walnut St., Knoxville, TN 37902  
(865) 522-7007

OF COUNSEL:

DATE: \_\_\_\_\_

\_\_\_\_\_  
JOE W. McCALEB  
(BPR No. 3505)  
Attorney at Law  
315 West Main Street, Suite 112  
Hendersonville, TN 37075  
(615) 826-7245

WE HEREBY CONSENT to the entry of this Consent Decree in United States, et al. v. Knoxville Utilities Board, Civil Action Nos. 3:03-CV-497 and \_\_\_\_\_.

FOR PLAINTIFF CITY OF KNOXVILLE

DATE: \_\_\_\_\_

\_\_\_\_\_  
BILL HASLAM  
Mayor  
City of Knoxville  
City/County Building  
Post Office Box 1631  
Knoxville, Tennessee 37901  
(865) 215-2040

OF COUNSEL:

DATE: \_\_\_\_\_

\_\_\_\_\_  
W. MORRIS KIZER  
(BPR No. 1571)  
Attorney for the City of Knoxville  
Post Office Box 1631  
Knoxville, Tennessee 37901  
(865) 215-2050

WE HEREBY CONSENT to the entry of this Consent Decree in United States, et al. v. Knoxville Utilities Board, Civil Action Nos. 3:03-CV-497 and \_\_\_\_\_.

FOR DEFENDANT KNOXVILLE UTILITIES BOARD

DATE: \_\_\_\_\_

\_\_\_\_\_  
MINTHA E. ROACH  
President and Chief Executive Officer  
Knoxville Utilities Board  
P.O. Box 59017  
Knoxville, TN 37950-9017

OF COUNSEL:

DATE: \_\_\_\_\_

\_\_\_\_\_  
J. Michael Haynes (BPL No. 001344)  
Hiram G. Tipton (BPL No. 001637)  
Hodges, Doughty & Carson, PLLC  
617 Main Street  
Knoxville, Tennessee 37902  
(865) 292-2307

Agent authorized to accept service of process on behalf of KUB:

Chief Operating Officer  
Knoxville Utilities Board  
445 S. Gay Street  
Knoxville, TN 37902-1109



## **APPENDIX A**

### **CITATIONS TO OTHER MOM PROGRAMS**

1. Sewer Mapping Program: Section 4, Summary of the Elements of KUB's Management, Operations and Maintenance (MOM) Program submitted to Tennessee Department of Environment and Conservation, February 13, 2004 ("MOM Summary Report").\*
2. Sewer System Design Program: Section 11, MOM Summary Report.
3. Sewer Construction Inspection Program: Section 12, MOM Summary Report.
4. Rehabilitation Inspection Program: Section 12, MOM Summary Report.
5. SSO Reporting, Notification and Record Keeping - Reporting to EPA and TDEC and Standard Forms: those portions of Sections 4.4, 4.5, and 4.6 of the SORP that relate exclusively to the reporting of SSOs to EPA and TDEC.\*
6. Equipment and Tools Management Programs: Section 9, MOM Summary Report.
7. Complaint Management Program: Section 6.7, MOM Summary Report and those portions of Sections 2.3, 3.3, 4.1, 4.4 and 4.8 through 4.11 of the SORP that relate exclusively to KUB's management of customer complaints.
8. Public Information Program: Public Information/Public Input Plan dated November 18, 2003.\*
9. Public Education Program: Public Information/Public Input Plan dated November 18, 2003.
10. Pretreatment Legal Support Program: Draft KUB Wastewater Rules and Regulations, dated October 15, 2004.

11. Septic Tank Haulers Program, including Legal Support Program: Draft KUB Wastewater Rules and Regulations, dated October 15, 2004.
12. Pump Station Operations Programs: Sections 6.9 and 6.10, MOM Summary Report.
13. Pump Station Preventive Maintenance Programs: Section 6.5, 6.6 and 6.9, MOM Summary Report.
14. Force Main Preventative Maintenance Programs: Section 6, MOM Summary Report.
15. Maintenance of Way Programs: Section 8, MOM Summary Report.
16. Unscheduled Maintenance Program for WCTS: Sections 6 and 7, MOM Summary Report and those portions of Sections 3 and 4 of the SORP that relate exclusively to unscheduled maintenance for the WCTS.
17. WWTP Maintenance Programs: Sections 6.9 and 6.10 of MOM Summary Report.

\* Citations to the MOM Summary Report, the SORP and the Public Information/Public Input Plan shall be deemed to include any other document or material referenced or otherwise specifically identified therein.

## **APPENDIX B**

### **SUPPLEMENTAL ENVIRONMENTAL PROJECT**

#### **A. PURPOSE OF THE SEP**

The purpose of Supplemental Environmental Project ("SEP") is to reduce extraneous flows entering the WCTS through defective residential Private Laterals and through illicit connections from residential properties. For purposes of this SEP, an illicit connection is any residential connection to the WCTS that discharges any substance or solution, that is not intended to be transferred via the WCTS, such as stormwater, surface water runoff and roof runoff. The WCTS becomes a conduit for stormwater when defective Private Laterals or illicit connections allow rain or groundwater to enter the WCTS. Certain components of the CSSAP required by Section VII.D.1.(a).(i) of the Consent Decree will assist KUB in identifying defective Private Laterals in need of repair or replacement and illicit connections to the WCTS.

In this SEP, KUB will dedicate \$2,000,000.00 to the repair and replacement of residential Private Laterals and removal of illicit connections for eligible residential property owners.

The goals of the SEP are:

- Repair or replace defective residential Private Laterals and remove illicit connections from residential properties;
- Bring aged defective Private Laterals into compliance with current plumbing code;
- Reduce I/I to the WCTS;
- Reduce SSOs;
- Decrease wet-weather flow to the WWTPs; and
- Provide financial assistance to eligible residential property owners to repair or replace Private Laterals and remove illicit connections.

The SEP will not only benefit the public at large, but it will also benefit the residential property owner who is receiving the repair/replacement services who might otherwise face financial hardship due to the cost of the work.

#### B. ROLE OF KUB AND THIRD PARTY ADMINISTRATOR

KUB's Customer Service Manager will be the project manager for the SEP. The Customer Service Manager will be responsible for coordinating the project's completion. KUB shall contract with a local non-profit entity such as Community Action Corps ("CAC") or a similar agency to administer the project ("Third Party Administrator"). KUB shall provide to eligible residential property owners a list of pre-qualified plumbers/contractors from which the property owner may select a plumber or contractor to repair or replace defective residential Private Laterals or remove the illicit connection on private residential property ("Services"). KUB shall ensure that its contract with the Third Party Administrator establishes that the Third Party Administrator shall pay the plumber/contractor directly, upon submission of an invoice and documentation that the work has been properly completed.

A summary of the roles that KUB and the Third Party Administrator shall play in performance of this SEP are as follows:

1. KUB
  - Draft and submit proposed Escrow Agreement for EPA approval.
  - Identify proposed Escrow Agent for EPA approval.
  - Establish Escrow Account and fund SEP.
  - Contract with Third Party Administrator.
  - Provide information to residential property owners advising of the potential availability of

SEP funding source, directing the residential property owner to contact the Third Party Administrator.

- Provide information to residential property owners on the need to secure appropriate permits for the work.
- Determine that actions taken to repair or replace Private Laterals or remove illicit connections pursuant to this SEP are taken in a timely manner and in conformance with appropriate standards.
- Ensure SEP completion on time.
- Report as required by Consent Decree.
- Provide administrative and legal services as needed to support SEP.
- Maintain records of deposit of funds to the SEP Escrow.

## 2. KUB and Third Party Administrator

KUB will work with its selected Third Party Administrator to perform the following tasks and ensure that its contract with the Third Party Administrator requires such performance:

- Develop list of approved contractors and plumbers who will perform Services at agreed upon costs and in accordance with current plumbing code requirements ("Plumbers").
- Develop contracts to be used to retain selected Plumbers.
- Train personnel to administer program.
- Develop IMS to maintain records of disbursement of funds to Plumbers and records of location data of residential property owners who have had Services performed at their property under this SEP.
- Develop financial hardship qualifications to identify eligible residential property owners for payment to Plumbers for Services under this SEP, using 2000 census information to identify moderate, low and very low income levels eligible to receive SEP funds.
- Determine if residential property owners meet financial hardship qualifications and, if so, assist them in securing a Plumber to complete required work under this program.
- Receive invoices from Plumber, obtain funds from the SEP Escrow and disburse payment

to Plumber upon receipt of final invoice and documentation that the work has been properly completed.

- Maintain records of disbursement of funds from escrow to Plumbers and records of location data of residential property owners who have had Services performed at their property as part of the SEP program.
- Prepare monthly status reports to provide KUB Program Manager with pertinent information for preparation of Consent Decree progress reports to allow KUB Program Manager to monitor compliance with SEP.

#### C. SEP COSTS

KUB shall spend at least \$2,000,000.00 for the repair and/or replacement of Private Laterals or removal of illicit connections for eligible residential property owners. The \$2,000,000.00 will cover the costs of Plumbers performing Services on Private Laterals and illicit connections owned by private residential customers only. The costs of KUB staff, the Third Party Administrator and program administration costs to support this SEP shall not be counted against the \$2,000,000.00.

The average cost of the Services on each private residential property is expected to range from \$1,000 to \$1,800 for repair or replacement of a defective Private Lateral and \$200 to \$500 for removal of an illicit connection. Actual costs will depend on negotiated costs with Plumbers, length of Private Lateral, surface and sub-surface interferences to the Private Lateral, and other pertinent factors. While initial expectations anticipate repair or replacement of 1400 Private Laterals and removal of 100 illicit connections, the actual number of Private Laterals repaired or replaced and illicit connections removed pursuant to this SEP may be higher or lower.

D. PROGRAM SCHEDULE

1. Payments into the SEP Escrow

KUB shall deposit \$2,000,000.00 to an interest-bearing escrow account ("SEP Escrow") to be held for the benefit of the United States. KUB shall be responsible for paying any taxes owed on the interest earned on the SEP Escrow funds. The Escrow Agreement shall authorize the Third Party Administrator to obtain funds to pay for Services from the SEP Escrow. The Escrow Agent shall be authorized under the Escrow Agreement to disburse funds to the Third Party Administrator upon presentation of documentation that funds are needed to pay Plumbers for Services pursuant to the terms of the SEP. KUB shall allow the United States to review and approve the proposed Escrow Agent and proposed Escrow Agreement prior to depositing any funds in the SEP Escrow. KUB shall provide a copy of the executed Escrow Agreement within thirty (30) Days of KUB's initial deposit to the SEP Escrow. KUB shall provide EPA with documentation of the deposits to the SEP Escrow within thirty (30) Days of each such deposit. The interest earned on the SEP Escrow funds shall be distributed to the Third Party Administrator, along with KUB's deposits equaling \$2,000,000.00, to pay for Services pursuant to this SEP. KUB shall make deposits to the SEP Escrow according to the following schedule:

Thirty (30) Days after Date of Entry	\$150,000.00
Six (6) Months after Date of Entry	\$150,000.00
Eighteen (18) Months after Date of Entry	\$200,000.00
Twenty-four (24) Months after Date of Entry	\$250,000.00
Thirty (36) Months after Date of Entry	\$250,000.00
Forty-two (42) Months after Date of Entry	\$250,000.00
Forty-eight (48) Months after Date of Entry	\$250,000.00
Sixty (60) Months after Date of Entry	\$200,000.00
Seventy-two (72) Months after Date of Entry	\$150,000.00
Seventy-eight (78) Months after Date of Entry	\$150,000.00

Provided, however, that the Third Party Administrator may request and KUB shall make accelerated deposit of an upcoming payment if the amount of funds in the SEP Escrow account drops below \$100,000.00 due to disbursements.

## 2. Project Implementation

KUB shall perform the following tasks through the KUB Program Manager unless otherwise specified according to the following schedule:

### **Months 1 through 12 after Date of Entry:**

- Develop list of Plumbers who will perform Services at agreed-upon costs for standard scopes of work and in accordance with current plumbing code requirements.
- Identify and retain Third Party Administrator.
- Train personnel of Third Party Administrator.
- Develop standard notification letter to residential property owners advising of the potential availability of SEP funding, and directing the residential property owner to contact the Third Party Administrator.
- Develop scopes of work, fee schedule, forms, and contracts to be used by Third Party Administrator, Plumbers, and residential property owners.
- Third Party Administrator to develop financial hardship qualifications for eligibility for payment of Plumber for Services.
- Develop IMS to be used by Third Party Administrator to maintain records of disbursement of funds from escrow and records of location data of residential property owners who have had Services performed on their property as part of the SEP program.

### **No later than 13 Months after Date of Entry and ongoing until completion of the SEP:**

- Notify residential property owner of defective Lateral or illicit connection and associated legal requirements and provide informational brochure advising the property owner of the potential availability of the SEP funding source.
- Third Party Administrator to determine if residential property owners meet financial



hardship qualifications and, if so, assists property owner in securing a Plumber to complete the work.

- Plumber may contact KUB CSIP team leader to receive relevant information regarding the results of the CSSAP.
- Third Party Administrator shall pay Plumber using SEP Escrow funds upon receipt of all invoices and final invoice and documentation that the work has been properly completed from the Plumber.
- Third Party Administrator will obtain required funds for disbursement to Plumbers upon presentation of such documentation to the SEP Escrow Agent.
- KUB shall ensure that it receives monthly reports from Third Party Administrator of the Services performed and name and address of all property owners receiving Services during the preceding Month.

### 3. Reporting Schedule

KUB will provide semiannual reports to EPA within one (1) Month after the second and fourth Calendar Quarters of each year of the status of implementation of the SEP, including documentation of the following that has occurred during the preceding six (6) Months:

- Deposit of funds to the SEP Escrow by KUB.
- Disbursement of funds from the SEP Escrow by the Escrow Agent to the Third Party Administrator to pay Plumbers for Services completed.
- The balance of funds in the SEP Escrow.
- Payment of funds by the Third Party Administrator to Plumbers for Services completed.
- Locations of private residential properties where Services have been performed under SEP program, including the property address and the name and address of the owner of the property.
- Description of other tasks required performed to implement the SEP during the past two (2) Calendar Quarters.

On or before eight (8) years after Date of Entry, KUB will submit a Final Completion Report to

EPA as provided in the Consent Decree, Section VIII.

## **APPENDIX C**

### **STATE ENVIRONMENTAL PROJECT**

A. In satisfaction of the State's claims for civil penalties, KUB shall perform and complete the State environmental project ("State Project"), in accordance with the schedule and requirements set forth herein. The State Project shall require KUB to place funds in Escrow for use by a neutral third party organization ("TPO") to acquire interests in real property in the Williams Creek watershed of the City of Knoxville ("Project Property") to protect, restore and/or enhance water quality, wetlands areas, and/or riparian areas, including wildlife habitat and, further, to prevent any use of such property that will impair, degrade, alter, or otherwise interfere with the restoration and preservation of the property in its natural condition.

B. The total expenditure for the State Project shall be not be less than \$167,000. Within thirty (30) Days after the Date of Lodging, KUB shall submit to the State for review and approval the proposed Escrow Agent and the proposed Escrow Agreement. Within thirty (30) Days of the State's approval of the Escrow Agent and Escrow Agreement, or the Date of Entry, whichever is later, KUB will deposit \$167,000 in an interest-bearing escrow account ("Escrow") to be held for the benefit of the State. In the event that KUB fails to complete the requirements of this paragraph, KUB shall pay stipulated penalties in accordance with Section X.A.9 (Stipulated Penalties).

C. The Escrow Agreement shall authorize the Escrow Agent to distribute funds to the TPO if:

1. A TPO is identified by TCWN and approved by the State;
2. The TPO certifies to the State and the Escrow Agent that the TPO will use the

funds to acquire Project Property to protect, restore and/or enhance water quality, wetlands areas, and/or riparian areas, including wildlife habitat and, further, to prevent any use of such real property that will impair, degrade, alter, or otherwise interfere with the restoration and preservation of such property in its natural condition; and

3. The TPO certifies to the State and the Escrow Agent that the TPO will place appropriate easements or other deed restrictions upon the Project Property to effectuate the purpose of this State Project.

D. The Escrow Agreement shall also authorize the Escrow Agent to disperse funds to a TPO for qualifying expenses associated with the acquisition of the Project Property, or with the placement of appropriate easements or other deed restrictions upon title to the Project Property, if:

1. A TPO is identified by TCWN and approved by the State; and
2. The TPO certifies to the State and the Escrow Agent that the TPO has incurred qualifying associated expenses. For purposes of this Appendix C, "qualifying associated expenses" shall mean all costs of closing, including but not limited to title searches, surveys, transfer taxes, environmental assessments, real estate broker commissions and attorneys' fees associated with closing; and all costs of recording any easement or other appropriate deed restrictions.

E. The Escrow Agreement shall further specify that if, after the expiration of a period three (3) years from the Date of Entry, any funds remain in Escrow, the Escrow Agent shall disperse all such funds to KUB.

F. KUB shall provide the State and TCWN with proof of the funding of the Escrow and a

copy of the executed Escrow Agreement within thirty (30) Days of depositing the \$167,000. The interest earned from money deposited into Escrow shall be available for distribution to the TPO pursuant to paragraph C or D above. KUB shall be responsible for paying any taxes owed on the interest earned on the Escrow funds.

G. In the event that the Escrow Agent disperses funds from Escrow to KUB pursuant to the provision of the Escrow Agreement described in paragraph E above, KUB shall apply all such funds to the Supplemental Environmental Project set forth in Section VIII and Appendix B of the Consent Decree. KUB shall deposit such funds in the SEP Escrow described in Appendix B within thirty (30) Days of receipt of such funds from the Escrow Agent. Such funds shall be in addition to the amounts required to be spent pursuant to Section VIII and Appendix B. In the event that KUB fails to complete the requirements of this paragraph, KUB shall pay stipulated penalties in accordance with Section X.A.9 (Stipulated Penalties).

H. KUB hereby agrees that, in estimating the cost of the State Project, KUB did not subtract the estimated savings achieved from deducting the cost of the State Project in calculating state and federal taxes, and that any funds expended by KUB in the performance of the State Project shall not be deductible for purposes of such taxes. KUB, at the time of completion of the State Project, shall submit to the State written certification that any funds expended in the performance of the State Project have not been and will not be deducted for purposes of such taxes.

I. Any public statement, oral or written, in print, film, or other media, made by KUB making reference to the State Project shall include the following language, "This project was undertaken in connection with the settlement of a civil enforcement action taken by the State for violations of the Tennessee Water Quality Control Act."