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

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| UNITED STATES OF AMERICA and the STATE OF MISSOURI | ) | |
| Plaintiffs, | ) | |
| v. | ) | CIVIL ACTION NO. |
| CITY OF LEBANON, MISSOURI | ) | |
| Defendant. | ) | |

**CONSENT DECREE**

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## INTRODUCTION

WHEREAS, Plaintiffs, the United States of America ("United States"), by the authority of the Attorney General of the United States and through its undersigned counsel, acting at the request and on behalf of the Administrator of the United States Environmental Protection Agency ("EPA"), and the State of Missouri (the "State" or "Missouri") have filed a Complaint in this action alleging that the Defendant, City of Lebanon, Missouri ("City of Lebanon", "Lebanon" or "City"), has committed violations of the Clean Water Act, 33 U.S.C. § 1251 *et seq.* ("CWA"), and the Missouri Clean Water Law, Mo. Rev. Stat. § 644.006 *et seq.* ("MCWL"), and seeking injunctive relief and civil penalties pursuant to Section 309 of the Clean Water Act, 33 U.S.C. § 1319 for the City's violations of the Act;

WHEREAS, the City of Lebanon is a political subdivision of the State of Missouri with approximately 12,500 residents. The City owns and operates the Lebanon Wastewater Treatment Facility located in Laclede County, Missouri, which treats wastewater for the City of Lebanon, Missouri and discharges into the Dry Auglaize Creek, and is also the owner and operator of the related wastewater collection and transmission systems;

WHEREAS, the United States alleges that the City has violated and continues to violate Section 301 of the Clean Water Act, 33 U.S.C. § 1311, by: (1) discharging pollutants from its treatment facilities into waters of the United States without a permit in violation of Section 301 of the Clean Water Act, 33 U.S.C. § 1311; (2) discharging untreated sewage from its sewage collection system without a permit in violation of Section 301 of the Clean Water Act, 33 U.S.C. § 1311;

Whereas, the City of Lebanon does not admit, and specifically denies the non-jurisdictional allegations of the United States and the State of Missouri's Complaint;

WHEREAS, the United States, Missouri, and Lebanon, without adjudication or admission of facts or law (except as provided in Section I ("Jurisdiction") and Section II ("Venue")), agree, and the Court finds, that (a) settlement of the claims alleged in the Complaint, without further litigation or trial of any issues, is in the best interest of the parties and the public; and (b) that the entry of this Consent Decree without litigation is the most appropriate way of resolving the claims alleged in the Complaint.

NOW THEREFORE, it is hereby ORDERED, ADJUDGED and DECREED as follows:

## I. JURISDICTION

This Court has jurisdiction over the subject matter of this action and over the Parties, pursuant to Section 309(b) of the Act, 33 U.S.C. § 1331, and 28 U.S.C. §§ 1331, 1345, and 1355. This Court has supplemental jurisdiction over the claims asserted by the State of Missouri pursuant to 28 U.S.C. § 1367. The United States' Complaint states a claim upon which relief may be granted against the City of Lebanon pursuant to Section 309 of the Act, 33 U.S.C. § 1319, for injunctive relief and civil penalties. The State's Complaint states claims upon which relief can be granted pursuant to Mo. Rev. Stat. § 644.076. The Parties agree not to contest the jurisdiction of the Court to enter and enforce this Decree. Authority to bring suit herein on behalf of the United States is vested in the United States Department of Justice by Section 506 of the Clean Water Act, 33 U.S.C. § 1366, and 28 U.S.C. §§516 and 519.

## II. VENUE

Venue is proper in the United States District Court for the Western District of Missouri,

Southern Division, pursuant to Section 309(b) of the Clean Water Act, 33 U.S.C. § 1319(b), and 28 U.S.C. §§ 1391(b) and 1395(a).

## III. PARTIES

A. Plaintiff, United States of America ("United States"), is acting at the request and on behalf of the Administrator of the United States Environmental Protection Agency.

B. Plaintiff, State of Missouri, is acting at the request of the Director of the Missouri Department of Natural Resources ("MDNR") and the Missouri Clean Water Commission.

C. The City of Lebanon is a political subdivision of the State of Missouri and is a "municipality" as defined in Section 502(4) of the CWA, 33 U.S.C. § 1362(4) , and a "person" as defined in Section 502(5) of the CWA, 33 U.S.C. § 1362(5), and 40 C.F.R. § 122.2.

## IV. BINDING EFFECT

A. The provisions of this Consent Decree shall apply to, and be binding upon the City and its officers, directors, employees, agents, servants, successors and assigns, and upon all persons, firms and corporations who assist the City in performing its obligations under this Consent Decree. The Consent Decree is also binding upon and applies to the United States and the State of Missouri and their respective representatives.

B. Effective from the Date of Lodging of this Consent Decree until its termination, the City shall give written notice of this Consent Decree to any successors in interest prior to transfer of ownership or operation of any portion of its Wastewater Treatment Plant and Sanitary Sewer System and shall provide a copy of this Consent Decree to any successor in interest. The City shall notify EPA and MDNR in writing, as specified in Section XXIV, of any successor in interest at least twenty-one (21) days prior to any such transfer.

C. The City shall provide a copy of this Consent Decree or make the Consent Decree available to each engineer, consultant and contractor retained to perform any activities required by this Decree, and shall provide a copy to each engineer, consultant and contractor already retained for such purpose no later than thirty (30) days after the Date of Lodging of this Consent Decree.

## V. OBJECTIVES

It is the express purpose of the Parties entering into this Consent Decree:

1) To require the City to comply with its National Pollutant Discharge Elimination System ("NPDES") permit, the CWA and the MCWL;

2) To require the City to abide by the work plan and schedules incorporated herein, under which the City shall investigate and locate on City and private property sources of inflow and infiltration ("I/I") in its sewer collection system and implement a rehabilitation program with the goal of eliminating Sanitary Sewer Overflows from its collection system;

3) To further the goals and objectives of the CWA, particularly Sections 101, 301 and 307, 33 U.S.C. §§ 1251, 1311, and 1317.

## VI. DEFINITIONS

A. Unless otherwise defined herein, terms used in this Consent Decree shall have the meaning given to those terms in the Clean Water Act, 33 U.S.C. §§ 1251 et seq., and the regulations promulgated thereunder.

B. The following terms used in this Consent Decree shall be defined as follows:

"Calendar Quarter" shall mean the three-month periods ending on March 31st, June 30th, October 31th, and December 31st.

"City" shall mean the City of Lebanon, Missouri.

"Consent Decree" shall mean this Consent Decree.

"Date of Entry" shall mean the date the Consent Decree is approved and signed by a United States District Court Judge.

"Date of Lodging" shall mean the date the Consent Decree is filed for lodging with the Clerk of the Court for the United States District Court for the Western District of Missouri, Southern Division.

"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, federal holiday or legal holiday for the City, the City shall have until the next calendar day that is not one of the aforementioned days for submittal of such report or other deliverable.

"Infiltration" shall mean the water entering a sewer system and service connections from the ground, through such means as, but not limited to, pipes, pipe joints, connections, or manhole walls.

"Inflow" shall mean water other than wastewater that enters a sewer system (including sewer service connections) from sources such as, but not limited to, roof leaders, cellar drains, yard drains, area drains, drains from springs and swampy areas, manhole covers, cross connections between storm sewer and sanitary sewers, catch basins, cooling towers, storm waters, surface runoff, street wash waters, or drainage.

"I/I" shall mean the total quantity of water from both infiltration and inflow without distinguishing the source.

"Paragraph" shall mean a portion of this Consent Decree identified by an uppercase letter.

"Sanitary Sewer Overflow" or "SSO" shall mean an overflow, spill, release, or diversion of wastewater from a sanitary sewer system. SSOs include: (A) overflows or releases of wastewater that reach waters of the United States; (B) overflows or releases of wastewater that do not reach waters of the United States: and (C) wastewater backups into buildings that are caused by blockages or flow conditions in a sanitary sewer other than a building lateral. Wastewater backups into buildings caused by a blockage or other malfunction of a building lateral that is privately owned are not SSOs.

"Section" shall mean a portion of this Consent Decree identified by an uppercase Roman Number.

"Sewer System" or "Sanitary Sewer System" shall mean all portions of the wastewater collection and transmission system owned or operated by the City designed to collect and convey municipal sewage (domestic, commercial and industrial) to the City's Wastewater Treatment Plant.

"Surcharge" means the condition that exists when the supply of wastewater to be carried is greater than the capacity of the pipes to carry it. The surface of the wastewater in manholes rises above the top of the sewer pipe, or the sewer is under pressure or head, rather than at atmospheric pressure.

"Wastewater Treatment Plant" ("WWTP") shall refer to the Lebanon Municipal Wastewater Treatment Facility, which is a Publicly Owned Treatment Works ("POTW") as that term is defined in 40 C.F.R. § 122.2.

## VII. COMPLIANCE WITH THE CLEAN WATER ACT

The City shall comply at all times with the Clean Water Act, the regulations promulgated thereunder, and its NPDES permit.

## VIII. SUBMISSIONS REQUIRING EPA/MDNR APPROVAL

A. Lebanon shall submit two copies of any document requiring EPA/MDNR approval to both EPA and MDNR at the addresses listed in Section XXIV of this Consent Decree. Within 60 days of any such submission, EPA shall, after consultation with MNDR, either approve or disapprove the submission in writing. If EPA disapproves any submission, or any portion thereof, it shall provide written comments to Lebanon and, where appropriate, identify changes or additional information necessary to make the submission approvable. Lebanon shall make the necessary changes to address EPA/MNDR's concerns and/or provide the additional information necessary to support the submission, within thirty (30) days of receipt of such comments. If the City disagrees with EPA/MDNR's proposed changes, the City may invoke the Dispute Resolution provisions of Section XVIII of this Decree.

B. If EPA/MDNR fail to notify the City of their approval or disapproval, or otherwise provide comments, within sixty (60) days after each has received the submission, the completion dates for each milestone in the submission, once approved, shall be deemed extended by the number of days beyond sixty (60) that EPA/MNDR took for such approval, disapproval or comment.

### C. City's Obligation Upon Final EPA/MDNR Approval

1. Upon EPA's/Missouri's final approval of a submission, the City shall proceed to take any action required by the plan, report or other item as approved or modified by

EPA/MDNR.

2. All plans, reports and other items required to be submitted to EPA/MDNR for review and approval under this Consent Decree, shall upon final approval by EPA/MDNR, be enforceable under this Consent Decree.

## IX. REMEDIAL MEASURES

### A. Sewer System Evaluation Survey ("SSES")

1. No later than October 31, 2003, Lebanon shall submit to EPA/MDNR for approval, pursuant to section VIII of this Consent Decree, a completed Sanitary Sewer System Evaluation Survey ("SSES"). The City shall complete the SSES in two phases. Phase I shall consist of 1) an assessment of system-wide I/I including rainfall and flow monitoring results from one hundred percent (100%) of the system which shall include both public and private property, 2) physical inspection and diagnostic testing in the Dry Auglaize and a portion of Cobb Creek Watersheds, and 3) interim removal of I/I as specified in subsection IX.B. Phase II of the SSES will consist of physical inspection and diagnostic testing in the Goodwin-Hollow Watershed and the remaining portion of Cobb Creek, as well as interim removal of I/I as specified in subsection IX.B. The City shall perform the SSES in accordance with industry standards and applicable approved EPA test methods and standards. The SSES shall include at a minimum: (1) identification and quantification of the sources of infiltration and inflow from both public and private property, (2) collection system modeling (3) a capacity assessment of the collection system and WWTP, including identification of specific areas in the collection system that are hydraulically overloaded, (4) an initial alternatives analysis, and (5) reports pursuant to Paragraph IX.D. The City shall complete the SSES by October 31, 2003.

2. Assessment of System-wide Inflow/Infiltration - The City of Lebanon has undertaken a comprehensive flow monitoring program during the Spring months of 2000 to measure, quantify and evaluate wastewater flows in its collection system. Wastewater flows were monitored on a continuing basis at strategic locations throughout the wastewater collection system. The City shall use the resultant flow data to determine for each monitoring site: 1) the average daily flow 2) peak daily flow 3) peak infiltration, and 4) peak inflow. In addition, the City will use this data to establish the linear relationship between rainfall and wet weather induced I/I for each basin within the City's three principle watersheds. This analysis will determine the "sensitivity" of each of the basins to both rainfall and saturated ground conditions. Results of the analysis will also be used during model calibration as specified in section IX.A.4 in order to analyze system hydraulic capacity and improvements. The results of this Assessment shall be included in the SSES Report required under section IX.D.

3. I/I Investigation - A detailed and intensive program to locate, evaluate, and characterize sources of I/I in the collection system shall be undertaken by the City during a two-year period, which shall be completed by October 31, 2003. The City shall conduct a series of field inspections and diagnostic tests at specific times during the year. These field activities will include the following: manhole inspections, pipe lamping, smoke testing, selective cleaning/CCTV inspections, interior building (basement) inspections, and dyed water testing. The entire collection system will be included in the I/I Investigation phase, beginning with the Dry Auglaize and a portion of the Cobb Creek Watersheds. The Goodwin-Hollow Watershed will be studied subsequently. All data will be collected and entered into I/I management computer software provided by the City's consultant. This software will analyze the data and

create a series of reports that will prioritize and rank all identified sources of I/I.

4. Modeling - The City shall develop a computer hydraulic model of the entire wastewater system, including all main and lateral sewers, pumping stations, force mains, and control structures. The model will utilize data from Sections IX.A.2 and A.3, along with as-built and record drawings of the collection system to establish a working model of the system. Once calibrated, the model will allow the City to evaluate the hydraulic behavior of the collection system under a variety of dry and wet weather conditions. Initial results of the calibrated model will be used to identify specific areas in the collection system that are hydraulically overloaded and likely responsive to I/I removal. These sites will be compared with reported SSO locations to verify the modeling results.

5. Capacity Assessment - The City shall use the results of the flow monitoring, I/I field investigation, and calibrated hydraulic model to comprehensively evaluate the hydraulic and treatment capacity of its Sewer System and WWTP. This assessment shall specifically identify all portions of the Sewer System that lack sufficient capacity to prevent SSOs under current dry and wet weather flow conditions and under projected (for at least the next twenty (20) years) dry and wet weather flow conditions. This assessment shall in particular identify those portions of the Sewer System that experience and/or are expected to experience Surcharge conditions under current or projected future dry and wet weather flow conditions, and the degree to which those portions experience and/or are expected to experience such Surcharge conditions.

6. Initial Analysis of Alternatives - As part of its SSES Report required in Paragraph IX.D, the City shall identify and evaluate alternatives to improve the collection system

and to ensure that the condition and capacity of Lebanon's collection system and WWTP are adequate to prevent avoidable Sanitary Sewer Overflows and achieve compliance with the applicable NPDES permit. Alternatives considered shall include, at a minimum, the following: 1) Removal of I/I sources from the public sector (manhole and pipeline rehabilitation), 2) Disconnection of directly and indirectly connected storm sewers, 3) removal of I/I sources from the private sector (downspouts, uncapped cleanouts, etc.), 4) additional and strategic capacity improvements, including storage/ equalization facilities,[1] 5) expanded pumping station capacity, 6) structural rehabilitation, 7) improved operations and maintenance, 8) expanded treatment facilities, including additional clarifiers or other increases in WWTP capacity. The City shall provide estimated cost information (capital, annual O&M and either present value or annualized costs) for all alternatives. The City shall also provide information regarding the expected performance of all alternatives. EPA and MDNR shall consider the information concerning costs and performance of such measures in their review of the City's Master Plan.

**B. <u>Interim Removal of I/I</u>**

The City shall implement a program to provide interim removal of I/I from the collection system by October 31, 2003. As part of this program, the City shall remediate at least the following I/I sources discovered during implementation of the SSES: 1) vented manhole lids, 2) deteriorated manholes adjacent to streams or storm sewers, and 3) direct storm inlet connections which do not require construction of new or extended storm sewers. The City shall submit a list of I/I sources discovered during each quarter pursuant to section IX of this decree and shall

[1] For the purpose of this Consent Decree, if a flow equalization basin is considered as an option, it shall be an equalization basin constructed with reinforced concrete.

identify those I/I sources eliminated pursuant to this section. Any I/I source not remedied during the SSES, shall be remedied in accordance with the schedules submitted as part of the City's Master Plan.

**C. Interim Treatment of Overflows to Dry Auglaize Creek**

By October 31, 2003, the City shall have implemented interim treatment measures for overflows to Dry Auglaize Creek consisting of the installation and use of a geotextile tube to control solids loadings. The City shall continue to implement such measures, if feasible, until completion of remedial measures in July, 2007. The City shall monitor any overflows into Dry Auglaize for the following parameters: BOD, TSS, and fecal coliform. Monitoring shall be performed on the first flush (i.e., within two hours of the onset of the overflow). If continued use of this interim treatment is not feasible, the City shall continue to monitor any overflows as specified. Results of this monitoring shall be submitted with the City's monthly discharge monitoring report (DMR).

**D. Submission of SSES Report**

1. By October 31, 2003, the City shall submit a Report for review, comment and approval, pursuant to Section VIII of this Consent Decree. The Report shall include a thorough analysis of flow monitoring, inspection, rainfall and other data collected during the SSES, including the results of the I/I Investigation, Modeling, Capacity Assessment, and Initial Analysis of Alternatives specified in sections IX.A.3-6

**E. Master Plan**

1. By December 31, 2003, the City shall develop, and submit to EPA/MDNR for review, comment and approval, pursuant to Section VIII of this Consent Decree, a

comprehensive Master Plan for remedial measures needed to address the collection system and WWTP. This Plan shall be based upon the system capacities revealed by the SSES, as well as projected impacts of any sewer improvement projects which the City has completed as part of the program for the Interim Removal of I/I specified in section IX.B. The Master Plan shall provide for: 1) the identification of remedial measures needed to insure that all sewage that enters the City's Sanitary Sewer System, under current and projected future conditions (for at least the next twenty (20) years), is conveyed to the City's Wastewater Treatment Plant for treatment, such that there are no avoidable SSOs to either surface waters, or to public or private property; 2) the identification of any improvements and/or expansions to the existing WWTP necessary to prevent avoidable SSOs and achieve compliance with the applicable NPDES permit.

2. If insufficient capacity, compared to current or projected future conditions (for at least the next twenty (20) years), exists in any portion of the City's Sanitary Sewer System, the City shall identify measures needed to provide adequate capacity to prevent avoidable SSOs and achieve compliance with the applicable NPDES permit.

3. Measures proposed by the City to address capacity limitations may include removal of additional I/I sources, increases in pump station and sewer capacities in the Sanitary Sewer System, storage/equalization facilities, or increases in wastewater treatment plant capacity.

4. The Master Plan shall specify remedial measures chosen by the City to address those capacity limitations, and shall include detailed information on the methodologies used to select the proposed remedial measures.

5. The Master Plan shall provide estimated costs of all proposed measures, and provide as expeditious a schedule as possible for design and construction of all proposed

remedial measures to address the Sanitary Sewer System as well as for the construction of improvements and/or expansions of the existing WWTP necessary to provide adequate capacity to prevent avoidable SSOs and achieve compliance with the applicable NPDES permit (including improvements and/or expansions of the existing WWTP necessary to handle increased hydraulic load resulting from improvements to or rehabilitation of the Sanitary Sewer System). The schedule shall specify critical construction milestones for rehabilitation projects in the Sewer System and for WWTP improvements, including, at a minimum: deadlines for submission of construction plans and specifications, deadlines for construction permit applications to the State, commence construction, and complete construction, and a deadline for the completion date of work for each project addressing the Sewer System or WWTP.

6. As part of the Master Plan, the City shall submit for EPA/MDNR review, comment, and approval, pursuant to Section VIII of this Consent Decree, a Private I/I Abatement Plan describing escalating response actions with timetables to address violations of the City's ordinances prohibiting unauthorized connections on private property. Following approval by EPA/MDNR, the City shall implement its Private I/I Abatement Plan.

7. Upon receipt of EPA's/MDNR's final approval of the Master Plan, the City shall implement the Master Plan in accordance with the schedule included in the approved Master Plan.

8. Implementation of the proposed measures in the Master Plan will be phased over a five (5) year period. Design and construction activities for manhole and pipeline rehabilitation will begin on or before July 1, 2002, and will be completed by January 1, 2005. This phase of the Master Plan will be directed at rehabilitation to effectively reduce inflow and

infiltration. During the period of January 1, 2005, through June 30, 2005, flow monitors will be installed in the collection system to quantify and measure the effectiveness of the rehabilitation phase in reducing wet-weather flows. Results of this post-rehabilitation evaluation will be used to revise or amend, as necessary, the Master Plan. On, or before, July 1, 2005, the City shall update the Master Plan, and shall submit the phase 2 update of the Master Plan to EPA/MDNR for review, comment, and approval, pursuant to Section VIII of this Consent Decree. This second phase will include all capacity-related improvements including recommended relief/replacement sewers, excess-flow holding facilities, and expansions to the WWTP. For any necessary improvement to the existing WWTP or collection system under the second phase of the Master Plan, the City must submit complete engineering plans, specifications, and applications for construction permits by May 1, 2006. All design and construction of Sewer System projects and all improvements to the WWTP shall be completed by July 1, 2007.

**F. Removal of Cross Connections and Inflow Sources on Public Property**

1. By October 31, 2003, the City shall certify that it has conducted a thorough inspection of all known cross connections between sanitary and storm sewers and has permanently closed or eliminated all such connections.

2. The City shall identify and remove all inflow sources on public property, as soon as possible, but no later than October 31, 2003. For purposes of this Paragraph, "public property" means property owned by the City.

3. If the City identifies any cross connection (on public or private property) or source of inflow (on public property) after the dates specified in Sections IX.F.1 and 2 above, the City shall ensure that such cross connection or inflow source is eliminated within sixty (60) days of

identification.

G. **SSO Monitoring And Reporting**

1. No later than October 31, 2003, the City shall establish procedures to provide timely and complete notice to EPA/MDNR, and other appropriate Federal, State, and local agencies of all relevant information regarding all SSOs which it is aware of or that are reported by a third party.

(a) Timely notice includes at least the following: i) The City shall orally report an SSO to MDNR within twenty-four (24) hours from the time the City becomes aware of such SSO; ii) The City shall provide written notice (as described in Paragraph IX.H.1(b), below) to EPA/MDNR within five (5) days of the time the City becomes aware of the SSO; iii) If the City requires more than twenty-four (24) hours to stop a particular SSO discharge event, the City shall also submit a separate written status report to EPA/MDNR every seven (7) days until the SSO discharge has ceased.

(b) Complete written notice to EPA/MDNR as required by subparagraph (a)(ii), above, shall include at least the following: (i) the cause of the SSO (known or suspected causes); (ii) estimated volume; (iii) description of the source (e.g., manhole, pump station); (iv) location, by street address or any other appropriate method; (v) date and duration of event; (vi) ultimate destination of the flow [e.g., name of surface water body, land use location, name of surface water body via municipal separate storm sewer system (reference location by basin and street address and/or cross streets)]; (vi) corrective actions or plans to eliminate future discharges (If the City believes that future discharges will be eliminated pursuant to corrective actions planned pursuant to the Master Plan required by Paragraph IX.E., it shall so note this.);

(vii) name and title of person reporting the discharge; and (viii) weather conditions including precipitation amount within forty-eight (48) hours preceding the SSO event; and (ix) a detailed description of water quality or other environmental impacts to the receiving stream.

2. The City shall provide EPA/MDNR and the local health department with monthly summaries of the information collected pursuant to Section IX.G.1. The City shall provide the reports to EPA/MDNR. These reports to EPA/MDNR do not take the place of requirements for reporting to Missouri pursuant to the terms of the NPDES permit.

**H. <u>SSO Response Plan</u>**

1. By October 31, 2003, the City shall submit an SSO Response Plan to EPA/MDNR for review, comment, and approval, pursuant to Section VIII of this Consent Decree. This SSO Response Plan will provide procedures for responding to SSOs so as to minimize the environmental impact and potential human health risk of SSOs.

2. The SSO Response Plan shall include but not be limited to:

(a) procedures to provide expedient public notice and to limit public access to and contact with areas affected by an SSO;

(b) procedures to remediate, as expeditiously as possible, unsanitary conditions near or from the SSO (including but not limited to solids resulting from sewage) after discharge from that SSO;

(c) a program to ensure the rapid dispatch of personnel and equipment to assess the condition causing or contributing to an SSO, and, if possible, to correct or repair the immediate cause of the condition causing or contributing to any SSO pursuant to this Consent Decree;

(d) a program to ensure the preparedness, including responsiveness training, of the City's employees and contractors necessary for the effective implementation of the SSO Response Plan in the event of any SSO;

(e) a program to minimize the volume of untreated wastewater discharged during an SSO;

(f) an investigative approach to determine the causes of any SSO; and

(g) staff and equipment resources committed and available to respond to SSOs.

3. Upon receipt of EPA's/MDNR's final approval of the SSO Response Plan, the City shall implement the approved SSO Response Plan.

## I. Sanitary Sewer System Operation and Maintenance Program

1. By October 31, 2003, the City shall submit a program, to EPA/MDNR for review, comment, and approval, pursuant to section VIII of this Consent Decree, specifying interim procedures for Operation and Maintenance (O&M) for the following: a) root eradication for the City's main interceptors (10 inches or larger in size); b) and pump station and force main evaluation and maintenance. The City shall begin implementing these interim O&M procedures upon receipt of final approval by EPA/MDNR.

2. By December 31, 2003, the City shall submit to EPA/MDNR for review, comment, and approval, pursuant to section VIII of this Consent Decree, a final Sanitary Sewer System Operation and Maintenance ("O&M") Program. The City's Sanitary Sewer System O&M Program shall provide proper management, operation and maintenance of the gravity

sewer lines, force mains, pump/ejector stations, and other equipment associated with its Sanitary Sewer System while minimizing failures due to a lack of preventative care. This program shall be developed in conjunction with the implementation of the SSES plan. The Program shall include, but not be limited to, the following:

(a) routine physical inspection and testing procedures (CCTV, visual, smoke, dyed water, and others);

(b) preventative and routine maintenance procedures and schedules and operating procedures and schedules;

(c) corrective maintenance;

(d) schedules for the maintenance of right-of ways (e.g., on-street and off-street) and easements;

(e) current staffing, organization, and resource commitments;

(f) an inventory management system that includes: (i) lists of critical equipment and critical spare parts; (ii) an inventory of the critical spare parts and critical equipment stored at the City's facilities, and a list of where the remaining critical spare parts and critical equipment may be secured to allow repairs in a minimal amount of time and maintain proper operation of the City's Sewer System; and (iii) procedures for maintaining the routine/critical spare parts and equipment inventories, and procedures for updating this information in the inventory management system;

(g) an information system that the City shall use to track implementation of the Sanitary Sewer System O&M Program and calculate management, operation, and maintenance performance indicators such as: (i) the annual linear footage of

gravity sewer inspections; (ii) the annual linear footage of gravity sewers mechanically cleaned; (iii) the number of manholes visually inspected annually; (iv) the number of SSOs per mile of gravity sewer; and (v) the percent of labor hours of overtime.

(h) a tracking and record keeping system for all maintenance activities, including pump station equipment histories;

(i) procedures for generation of maintenance work orders; and

(j) reports listing equipment problems and work orders generated during the prior month.

3. Preventative maintenance activities shall be scheduled appropriately, and shall include, but not be limited to, the following:

(a) periodic service and calibration of all instrumentation such as flow meters, liquid level sensors, alarm systems, elapsed time meters, and remote monitoring equipment;

(b) routine inspection and service for all pumps including, but not limited to: engines, motors, generators, pumps, wet wells, impellers, seals, bearings, wear clearances, couplings, drives, and related equipment; and routine inspection and service for air release valves;

(c) inspection and cleaning of all gravity-flow portions of the City's Sanitary Sewer System and manholes; and

(d) routine inspection of all sewer and force main right-of-ways, including inspection of: creek crossings and related appurtenances, stream bank encroachment towards gravity sewer lines and force mains, and right-of-way or easement

accessibility (including the need to control vegetative growth or encroachment of man-made structures or activities that could threaten the integrity of the affected gravity sewer lines or force mains). Inspections shall include the development of written reports, and, where appropriate, representative photographs or videos of appurtenances being inspected (manholes, creek crossings, etc.). The O&M Program shall specifically include procedures by which field inspection personnel shall report, both verbally and in writing, to designated management officials of any observed SSOs and any evidence of SSOs that may have occurred since the last inspection.

4. Upon receipt of EPA's/MDNR's final approval of the Sanitary Sewer System O&M Program, or upon receipt of EPA's/MDNR's modified Program, the City shall implement the approved O&M Program.

**J. <u>WWTP Operation and Maintenance</u>**

1. By October 31, 2003, the City shall undertake and complete an operation and maintenance program to ensure proper operation and maintenance of the WWTP on a day-to-day basis, and thereafter continue to implement these procedures and strategies in order to attain and maintain compliance with its NPDES permit.

2. By October 31, 2003, the City shall complete and submit to EPA/MDNR an Operations & Maintenance Manual for the WWTP, including preventive and routine maintenance schedules and procedures, current staffing, organization, and resource commitments, and an implementation schedule. Upon receipt of EPA's/MDNR's final approval of the WWTP O&M program, the City shall comply with the WWTP Operation and Maintenance program in accordance with the procedures and schedules therein.

## K. Assurance of Adequate Capacity

1. Prior to completion of all remedial measures as specified under its approved comprehensive Master Plan, the City of Lebanon shall assure that any new connection to the sewage collection system will not result in the WWTP exceeding the existing design average daily hydraulic treatment capacity of the WWTP as specified in the applicable NPDES permit.

2. The City of Lebanon shall assure that any new sewer connection approved by the City does not result in a flow to a tributary lift station exceeding that lift station's rated hydraulic capacity.

3. The City shall provide a quarterly report to EPA/MDNR, pursuant to Section XV. of this Consent Decree, regarding any new sewer connection authorized by the City during that period, describing the nature, location and estimated flow volume of the new sewer connection or extension. Each report shall include a certification by a professional engineer registered in the State of Missouri that any new connection to the sewage collection system will not result in the WWTP exceeding the existing design average daily hydraulic treatment capacity of the WWTP.

## X. DESIGNATION OF A QUALIFIED CONSULTANT

Within thirty (30) days of the Date of Lodging of this Consent Decree, the City shall submit to EPA/MDNR the name of the independent qualified consultant(s) which are not already pre-approved, that the City intends to use to perform the engineering analyses and prepare the engineering reports required under this Consent Decree. The City shall notify EPA/MDNR of any change of the qualified consultant(s) used.

## XI. CIVIL PENALTY

A. Within 60 days after the Date of Entry of this Consent Decree, the City shall pay a civil penalty in the amount of $72,000 in full satisfaction for past violations as alleged by the United States and the State in their Complaint through the Date of Lodging of this Consent Decree.

B. Within 60 days of the Date of Entry of this Consent Decree, the City shall pay $36,000 to the United States. The City shall make this payment of this amount to the United States by tendering a check payable to the "Treasurer, United States of America," and sending it to the United States Attorney for the Western District of Missouri Charles Evans Whittaker Courthouse, 400 E. 9th Street 5th Floor, Kansas City, Missouri 64106.

C. Within 60 days of the Date of Entry of this Consent Decree, the City shall pay $36,000 to the State of Missouri. The portion of said civil penalty payment due to the State of Missouri shall be paid by check payable to the "Laclede County Treasurer as Trustee for the Laclede County School Fund" and shall be delivered to:

Joseph P. Bindbeutel
Assistant Attorney General
P.O. Box 899
Jefferson City, MO 65102-0899

D. The United States shall be deemed a judgement creditor for purposes of collection of this penalty.

E. If the City fails to tender all or any portion of the civil penalty payment within sixty days (60) of the Date of Entry of this Consent Decree, interest on the unpaid amount shall accrue and be paid from the date said payment was due, in accordance with the provisions of 28 U.S.C. § 1961.

## XII. NATURAL RESOURCE DAMAGES UNDER STATE LAW

Within 60 days of the Date of Entry of this Consent Decree, Lebanon agrees to pay to the "State of Missouri" the amount of two thousand one hundred twenty eight dollars and eight cents ($2,128.08) . Said payment represents the actual damages for the fish killed on or about July 9, 1999, as determined by the Missouri Department of Conservation, as well as the investigative costs of the Department of Natural Resources. A check in said amount shall be made payable to the State of Missouri and shall be delivered in the same manner as described in paragraph XI.C.

## XIII. SUPPLEMENTAL ENVIRONMENTAL PROJECT

The City shall dedicate and restrict a parcel of real property, consisting of 35.70 acres described herein, for community betterment and as an environmental green space. The purpose of this Supplemental Environmental Project ("SEP") is to provide a greenway/buffer to protect a watershed that has been impacted by Sanitary Sewer Overflows. Dedication of the property will include the placement of a restrictive covenant on the property deed which precludes the City from allowing development of the property or any activity on the property which would diminish its value as a green space. Within 120 days of the Lodging of this Consent Decree, the City will provide public access to the property in question, including hiking/nature trails and a graveled parking lot. No further development of the property shall be permitted without the prior written approval of EPA/MDNR. The minimum value of the property to be dedicated is Six Thousand Dollars ($6,000) per acre, or a total of Two Hundred Fourteen Thousand Two Hundred Dollars ($214,200). The dedicated property is in Laclede County, Missouri, and includes two parcels of property which total 35.70 acres, and are legally described as:

Parcel 1:

All of the West Half of Lot Three (3) of the Northeast Quarter (NE¼) of Section Four (4), Township Thirty-Four (34), Range Sixteen (16), except that part lying South of Lebanon Brice Road (also known as Gateway Road) and except a tract described as:

commencing at the Southeast corner W ½ lot 3 NE¼ section 4, Township 34, Range 16, Laclede County, Missouri, thence N 2°03'45"W along the East line of said W½ ; lot 3 NE¼ 350.00 feet, thence N89°20'15"W 410.00 feet to the East side of Sho-Me Power easement, thence along said easement S8°8'15"W 355.00 feet to the South line of W½ lot 3 NE¼, thence along said South line S89°20'15"E 480.00 feet to the point of beginning. Said tract contains 3.60 acres.

Parcel 2:

That part of Lot 4 of the NW¼ of that part of Lot 3 NW¼, all in Section 4, township 34, Range 16 described as follows: commencing at the Northeast corner of said Lot 4 of the NW¼, said corner being marked by a railroad tie corner post, thence south along the quarter section line 1301.5 feet to the point of beginning, said point of beginning being where a wire fence crosses the quarter section line, thence south along quarter section line 1041.1 feet to the northerly right of way line of the county road, said right of way line being located 25 feet northerly of and parallel with the center line of said county road, thence north 66 degrees 57 minutes west along said right of way line, 67.3 feet, thence north 0 degrees 03 minutes East 690.4 feet, thence north 2 degrees 22 minutes east 267.2 feet to an 18 inch walnut tree in the fence line, thence north 2 degrees east 43.7 feet to a 24 inch sycamore tree in the fence line, thence north 77 degrees 58 minutes east, 45.1 feet to a 30 inch post oak tree in the fence line, thence north 47 degrees 19 minutes east 5 feet to the point of beginning. Containing 1.40 acres.

The property to be dedicated does not include a 1.7 acre parcel utilized by the Humane Society.

Within sixty (60) days of the Date of Lodging of this Consent Decree, the City shall file with the Laclede County, Missouri, Recorder of Deeds, a restrictive covenant on the deeds of the described property to effectuate the described restrictions. The City will provide a copy of the restrictive covenant to EPA and MDNR at the time of filing. It is agreed that the Restrictive Covenant, to be recorded by the City as stated herein, may be amended at the request of the City with the consent of EPA and MDNR.

If the City fails to record the restrictive covenant on the deeds of the described property as

provided for above, within 60 days of the Date of Lodging of this Consent Decree, the City shall pay stipulated penalties as provided for in Section XIV.F. of this decree. Such stipulated penalty shall be paid within 30 days of a written demand in the manner provided for in sections XIV.G-I of this Consent Decree.

The City certifies that it is not required to perform or develop this SEP by any state or local law or regulation, nor is the City required to perform or develop this SEP by agreement, grant or as injunctive relief in this or any other case, or in compliance with state or local requirements. The City further certifies that it is has not received, and will not seek, credit in any other enforcement action for this SEP.

## XIV. STIPULATED PENALTIES

### A. Failure to Submit Timely and Complete Documents

The City shall be subject to the following stipulated penalties for each failure to timely submit any of the following: the SSES Report, the Master Plan, the Private I/I Abatement Plan, the SSO Response Plan, and the Sanitary Sewer System O&M Program:

| | |
|---|---|
| 1-30 days | $1,500/day |
| 31-60 days | $3,000/day |
| over 60 days | $4,000/day |

"Timely submit", as used in this Section, shall mean that the submittal is made by the date specified in this Consent Decree or in a document approved pursuant to this Consent Decree.

"Timely submit" shall further mean that the submittal must include 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. These stipulated penalties apply both to initial and final submittals of documents.

B. Failure to Meet Milestones for Interim I/I Removal and Removal of Cross Connections and Inflow Sources on Public Property

The City shall be subject to the following stipulated penalties for each failure to meet a deadline for removal of Interim I/I or removal of Unauthorized Connections:

| | |
|---|---|
| 1-30 days | $1,500/day |
| 31-60 days | $3,000/day |
| over 60 days | $4,000/day |

C. Failure to Meet Master Plan Milestones

The City shall be subject to the following stipulated penalties for each failure to meet a milestone or construction deadline in the schedule for implementation required in the approved Master Plan:

| | |
|---|---|
| 1-30 days | $2,000/day |
| 31-60 days | $4,000/day |
| over 60 days | $6,000/day |

D. Stipulated Penalties for Reporting Requirements

The City shall be subject to the following stipulated penalties for a failure to timely submit any report required under this Consent Decree:

| | |
|---|---|
| 1-30 days | $1,000/day |
| 31-60 days | $2,000/day |
| over 60 days | $3,000/day |

E. Stipulated Penalties for SSOs

1. The City shall be subject to a stipulated penalty of $2,000 for each avoidable SSO that occurs prior to the completion date for remedial measures provided in the Master Plan (Section IX.E) for a given portion of the Sewer System, if the City has failed to

properly implement its Sanitary Sewer System O&M program established under Section IX.I., or has failed to comply with any schedule milestone provided for under Section IX, or the City has failed to follow the SSO Response Plan specified in Section IX.H. above with respect to the SSO.

2. Following the scheduled completion date for remediation for a given portion of the Sewer System as provided in the Master Plan, the City shall be subject to a stipulated penalty of $4,000 for each avoidable SSO. However, as to any SSO to dry land that does not reach waters of the United States or State, the City shall not be subject to a stipulated penalty for such SSO if it occurs on private property and is the result of the property owner's failure to maintain his/her/its lateral sewer line(s).

F. Stipulated Penalties for Other Violations

Failure to comply with any other requirements set forth in this Consent Decree, or in submittals subsequently approved by EPA/MDNR pursuant to the provisions of this Consent Decree, shall subject the City to a stipulated penalty of $1,500 per day for each violation.

G. Stipulated civil penalties shall automatically begin to accrue on the first day the City fails either to meet any of the schedules of performance required by this Consent Decree or to satisfy any other obligation or requirement of this Consent Decree.

H. Stipulated civil penalties shall be paid within thirty (30) days after receiving a written demand from EPA or MDNR regarding non-compliance with any of the requirements of this Consent Decree. Fifty percent (50%) of each payment shall be made to the United States and fifty percent (50%) shall be paid to the Laclede County School Fund.

I. Stipulated penalties owed to the United States shall be paid by submitting a cashier's or certified check payable to "Treasurer, United States of America", and shall be tendered to the Regional Counsel, EPA Region VII. The transmittal letter accompanying the

check shall specify the caption and docket number of this action and the facility and the violations for which the stipulated penalties are being paid. A copy of the letter and the check shall simultaneously be sent to EPA Region VII, Director, Water, Wetlands and Pesticides Division, and to Chief, Environmental Enforcement Section, United States Department of Justice, Post Office Box 7611, Washington, D.C. 20044-7611.

J. Stipulated penalties owed to the State shall be paid by submitting a check payable to the "Laclede County Treasurer as Trustee for the Laclede County School Fund" and shall be delivered to: Joseph P. Bindbeutel, Assistant Attorney General, P.O. Box 899, Jefferson City, MO 65102-0899. The transmittal letter accompanying the check shall specify the caption and docket number of this action and the facility and the violations for which the stipulated penalties are being paid.

K. In the event that a stipulated penalty is not paid when due, the stipulated penalty shall, upon written demand of the United States, be payable with interest from the original due date to the date of payment, at the statutory judgment rate set forth at 28 U.S.C. § 1961(a), unless payment is stayed pursuant to Section XVIII. E of this Consent Decree.

L. Payment of stipulated civil penalties as set forth above shall be in addition to any other rights or remedies that may be available to the United States, the State, or their agencies by reason of the City's failure to comply with requirements of this Consent Decree, and all applicable Federal, state or local laws, regulations, NPDES permit(s) and all other applicable permits. The payment of such stipulated penalties shall not be construed to relieve the City from specific compliance with this Decree or applicable federal or State law, nor shall it limit the authority of EPA or Missouri to require compliance with such laws.

## XV. REPORTING REQUIREMENTS

A. Beginning within the thirty (30) days of the close of the first full Calendar

Quarter following the Date of Lodging of this Consent Decree, and within thirty (30) days of the close of each subsequent Calendar Quarter, the City shall submit to EPA and Missouri, a report containing the following information pertaining to the Calendar Quarter just concluded: the current status of the remedial actions specified in Sections IX of this Consent Decree, progress made with respect to such remedial actions since the last report, a description of compliance or non-compliance with the requirements of this Consent Decree (including reasons for non-compliance, if applicable), and the information required under paragraph IX.K.3. This report shall also include a summary of the work projected to be performed pursuant to this Consent Decree during the then-current Calendar Quarter. Notification to EPA or Missouri pursuant to this Paragraph of any anticipated delay, shall not, by itself, excuse the delay.

## XVI. CERTIFICATION OF SUBMISSIONS/REVIEW OF SUBMISSIONS

A. The City shall maintain copies of any underlying research and data in its possession, custody or control for any and all documents, reports, or permits submitted to EPA/MDNR pursuant to this Consent Decree for a period of five (5) years after submission. The City shall require any independent contractor(s) implementing this Consent Decree to also retain such materials for a period of five (5) years. The City shall submit such supporting documents to EPA/MDNR upon request.

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

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

knowledge and belief, true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

## XVII. FORCE MAJEURE

A. If any event occurs that causes or may cause the City to violate any provision of this Consent Decree, the City shall notify EPA Region VII and the MDNR orally or by telefax as soon as practicable and in writing within fourteen (14) days from the date the City first knew that compliance with the Consent Decree would be prevented or delayed. The notice shall reference this Section of the Consent Decree and shall describe in detail the anticipated length of time the violation may persist, the precise cause or causes of the violation, the measures taken or to be taken by the City to prevent or minimize the violation and the timetable by which those measures will be implemented. The City shall make every effort to avoid or minimize any such violation. Failure by the City to comply with the notice requirements of this paragraph shall constitute a waiver of the City's rights to obtain an extension of time or other relief under this Section based on such incident.

B. If EPA agrees that the violation has been or will be caused entirely by circumstances beyond the control of the City or any entity controlled by it, including its consultants and contractors, and that the City could not have prevented such violation, the time for performance of the requirement in question may be extended for a period not to exceed the actual delay resulting from such circumstance, and stipulated penalties shall not be due for such delay or non-compliance. In the event EPA does not so agree, the City may invoke the dispute resolution provisions in Section XVIII of this Consent Decree.

C. If the City invokes dispute resolution and the United States or the Court determines that the violation was caused entirely by circumstances beyond the control of the City or any entity controlled by it, and that the City could not have prevented such violation, the City shall be excused as to that violation, but only for the period of time the violation continues due to such circumstances.

D. The City shall bear the burden of proving that any delay or violation has been or will be caused entirely by circumstances beyond its control, and that the City could not have prevented such violation, as set forth above. The City shall also bear the burden of establishing the duration and extent of any delay or violation attributable to such circumstances, that such duration or extent is or was warranted under the circumstances and that, as a result of the delay, a particular extension period is appropriate. An extension of one compliance date based on particular circumstance beyond the City's control shall not automatically extend any subsequent compliance date or dates.

E. Changed financial circumstances or unanticipated or increased costs or expenses associated with implementation of this Consent Decree, shall not serve as a basis for excusing violations of or granting extensions of time under this Decree. The City shall make an individual showing of proof regarding the cause of each delayed incremental step or other requirement for which an extension is sought. The City may petition for the extension of more than one compliance date in a single request.

## XVIII. DISPUTE RESOLUTION

A. This Court shall retain jurisdiction of this matter for the purposes of implementing and enforcing the terms and conditions of this Consent Decree and for the purpose

of adjudicating all disputes among the Parties that may arise under the provisions of this Consent Decree, to the extent that this Consent Decree provides for resolution of disputes by the Court.

B. Any dispute that arises with respect to the meaning, application, implementation, interpretation, amendment or modification of this Consent Decree, or with respect to the City's compliance herewith or any delay hereunder, the resolution of which is not expressly provided for in this Consent Decree, shall in the first instance be the subject of informal negotiations. If any Party believes it has a dispute with any other Party, it shall notify all the other Parties in writing, including notice to the U.S. Department of Justice and the Missouri Attorney General, setting forth the matter(s) in dispute, and the Parties will proceed initially to resolve the matter in dispute by informal means. Such period of informal negotiations shall not exceed thirty (30) days from the date the notice was sent, unless the Parties agree otherwise.

C. If the informal negotiations are unsuccessful, the position of the United States and the State, which shall be provided in writing to the City, shall control unless the City files a petition with the Court describing the nature of the dispute and a proposal for its resolution. The City's petition must be filed no more than thirty (30) days after receipt of the United States' and the State's written position. The United States and/or the State shall then have 30 days to file a response setting forth its/their position and proposal for resolution. In any such dispute, the City shall have the burden of proving that the position of the United States or the State is inconsistent with the terms, conditions, requirements and objectives of this Consent Decree. Nothing shall prevent the United States or the State from arguing that the Court shall apply the arbitrary and capricious standard to all disputes arising under this Decree.

D. Submission of any matter to the Court for resolution shall not extend any of the deadlines set forth in this Consent Decree, unless the Parties agree to such extension in writing or the Court allows the extension upon motion.

E. Stipulated penalties with respect to any disputed matter (and interest thereon) shall accrue in accordance with Paragraphs XIV.G.; however, payment of stipulated penalties, and any accrued interest, shall be stayed pending resolution of the dispute, as follows:

1. If the dispute is resolved by informal agreement before appeal to this Court, accrued penalties (and interest), if any, determined to be owing shall be paid within 30 days of the agreement or the receipt of the United States' and/or the State's final position in writing.

2. If the dispute is appealed to this Court and the United States and/or the State prevails in whole or in part, the City shall pay all accrued penalties (and interest) determined to be owed within 30 days of receipt of the Court's decision or order.

3. In the event of an appeal, the stipulated penalty amount in dispute shall be placed in an escrow account until a final decision no longer subject to judicial review has been rendered. The City shall pay all accrued penalties (and interest) determined to be owed within 30 days of receipt of such final decision.

## XIX. RIGHT OF ENTRY

A. Until termination of this Consent Decree, the United States and the State, and their authorized representatives and contractors shall have authority at all reasonable times, upon the presentation of credentials, to enter the City's premises to:

1. Monitor the program of activities required by this Consent Decree;

2. Verify any data or information submitted to the United States and/or the State;

3. Obtain samples from the WWTP and Sewer System;

4. Inspect and evaluate the City's WWTP and Sewer System; and

5. Inspect and review any records required to be kept under the terms and conditions of this Consent Decree or any NPDES Permit and the Clean Water Act.

B. This provision of this Consent Decree is in addition to, and in no way limits or otherwise affects, the United States' or the State's statutory authorities to conduct inspections, to require monitoring and to obtain information from the City as authorized by law.

C. The United States and the State agree to make available to the City split samples of wastewater samples taken by the United States or the State from the Sewer System. The United States and the State further agree to provide the City with the quality assured/quality controlled laboratory analytical results of samples obtained from the WWTP and/or Sewer System, and any non-privileged (including non-attorney work product) reports prepared concerning such results. The United States and the State will use best efforts to coordinate field inspections of the WWTP and Sewer Collection System with the City by notifying them, if practicable, of such inspections prior to arrival at the field inspection location in sufficient time for City representation.

## XX. NOT A PERMIT/COMPLIANCE WITH OTHER STATUTES/REGULATIONS

A. This Consent Decree is not and shall not be construed as a permit, or a modification of any existing permit, issued pursuant to Section 402 of the Clean Water Act, 33

U.S.C. § 1342, nor shall it in any way relieve the City of its obligations to obtain permits for its wastewater treatment facilities and to comply with the requirements of its applicable NPDES permit or with any other applicable federal or state law or regulation. By signing this Consent Decree, the City is not waiving any rights under Federal or State law that it may have in the permit-issuance process, including but not limited to the right to appeal the terms of a permit or permit modification pursuant to the procedural routes available under State or Federal law or regulations.

B. The pendency or outcome of any proceeding concerning issuance, reissuance or modification of any NPDES permit shall not affect or postpone the City's responsibilities under this Decree.

C. Nothing herein shall be construed as relieving the City of the duty to comply with the Clean Water Act, the regulations promulgated thereunder, and all applicable permits issued thereunder, or as relieving the City of its duty to comply with State law and the regulations promulgated thereunder.

## XXI. FAILURE OF COMPLIANCE

The United States and the State do not, by their consent to the entry of this Consent Decree, warrant or aver in any manner that the City's complete compliance with this Consent Decree will result in compliance with the provisions of the Clean Water Act, 33 U.S.C. §§ 1251 *et seq.*, or the Missouri Clean Water Law, Mo. Rev. Stat. § 644.006 *et seq*, respectively, or with the City's NPDES permits. Notwithstanding the United States' and the States' review or approval of any plans, reports, policies or procedures formulated pursuant to this Consent Decree, the City shall remain solely responsible for any non-compliance with the terms of this

Consent Decree, all applicable permits, and the Clean Water Act and regulations promulgated thereunder.

## XXII. EFFECT OF CONSENT DECREE AND NON-WAIVER PROVISIONS

A. Nothing contained in this Consent Decree shall be construed to prevent or limit the United States' or the State's rights to obtain penalties or further additional injunctive relief under the Clean Water Act or other federal statutes or regulations, including, but not limited to, criminal punishment under Section 309(c) of the Act, 33 U.S.C. § 1319(c), or state laws and regulations respectively except as expressly specified herein.

B. This Consent Decree resolves the civil claims of the United States and the State for injunctive relief and civil penalties for the violations alleged in the Complaint filed herein through the date of Lodging of this Decree.

C. The United States and State further reserve all rights against the City with respect to any CWA violations by the City discovered after the Date of Lodging of this Consent Decree, and/or for any violations of the Clean Water Act not specifically alleged in the Complaint filed herein, whether they occurred before or after the Date of Lodging of this Decree.

D. In any subsequent administrative or judicial proceeding initiated by the United States or the State for injunctive relief, penalties, or other appropriate relief relating to the City's violation of the Clean Water Act, the City shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States or the State in the subsequent proceeding were or should have been brought in the instant case.

E. The Consent Decree in no way affects or relieves the City of any responsibility to comply with any federal, state, or local law or regulation.

F. The Parties agree that the City is responsible for achieving and maintaining complete compliance with all applicable federal and state laws, regulations, and permits, and that compliance with this Consent Decree shall be no defense to any actions commenced pursuant to said laws, regulations, or permits, except as set forth herein.

G. This Consent Decree does not limit or affect the rights of the Parties as against any third Parties that are not Parties to this Consent Decree. The Parties recognize that this Consent Decree resolves only matters between Plaintiffs and the City and that its execution does not preclude the City from asserting any legal or factual position in any action brought against them by any person or entity not a Party to this Consent Decree.

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

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

J. 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 the City shall not be cause for extension of any required compliance date in this

Consent Decree.

K. Obligations of the City under the provisions of this Consent Decree to perform duties scheduled to occur after the signing, but prior to the Date of Entry, shall be legally enforceable from the date this Consent Decree is signed by the City. Liability for stipulated penalties, if applicable, shall accrue for violation of such obligations from the date specified in the Consent Decree and payment of such stipulated penalties may be demanded by the United States as provided in this Consent Decree. The contempt authority of this Court shall also extend to violations of such obligations.

## XXIII. COSTS OF SUIT

A. Each Party shall bear its own costs and attorneys' fees with respect to matters related to this Consent Decree.

B. Should the City subsequently be determined by the Court to have violated the terms and conditions of this Consent Decree, then the City shall be liable to the United States and/or the State for any reasonable costs and reasonable attorneys' fees incurred by the United States and/or the State in such actions against the City for non-compliance with this Consent Decree.

## XXIV. NOTICE

All notices and correspondence under this Decree shall be sent to the following addresses:

For EPA:

Martha Steincamp
Regional Counsel
EPA, Region VII

91 N. 5th
Kansas City, Kansas 66101

For U.S. Department of Justice

U.S. Department of Justice
Chief, Environmental Enforcement Section
Environment and Natural Resources Division
Post Office Box 7611
Washington, D.C. 20044-7611
Reference DJ # 90-5-1-1-06400

For Missouri Department of Natural Resources:

Jim Hull
Director, Water Pollution Control Program
Missouri Department of Natural Resources
P.O. Box 176
Jefferson City, MO 65102

For the City of Lebanon:

Mr. Stanley H. Allen
P.O. Box 111
Lebanon, Missouri 65536-3096

## XXV. MODIFICATION

A. This Consent Decree shall not be amended or modified except by the written consent of the parties to this Decree or by the Court. Any material modification of this Consent Decree by the parties shall be in writing and approved by the Court before it will be deemed effective. However, minor modifications which the parties determine and agree do not warrant formal modification and which do not significantly alter the remedial action to be conducted by the City may be made by the parties, provided such changes are agreed upon in writing by EPA, MDNR, and the City.

B. The City may request modification of this Consent Decree from EPA/MDNR upon EPA's promulgation or issuance of any new final regulation or final guidance pertaining to SSOs, and the EPA/MDNR shall not unreasonably withhold approval of the request for modification. If a final SSO regulation is issued by EPA that includes an affirmative defense concerning SSOs, the City shall be entitled to assert this affirmative defense, to a demand for stipulated penalties for a sanitary sewer overflow made under this Consent Decree, where the City meets all requirements for such an affirmative defense.

## XXVI. CONTINUING JURISDICTION

The Court shall retain jurisdiction to 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 Decree.

## XXVII. CONTINGENT LIABILITY OF STATE OF MISSOURI

This Consent Decree does not resolve the contingent liability of the State of Missouri under Section 309(e) of the Act, 33 U.S.C. § 1319(e). The United States specifically reserves its claims against the State, and the State reserves its defenses.

## XXVIII. TERMINATION

A. Two years following completion of all remedial measures and improvements required pursuant to paragraph IX.E., the City may request termination of the consent decree by submitting a certification to the United States and the States that all of the following have occurred:

1. The City has completed implementation of all measures, including

construction of all improvements, required under the Master Plan;

2. The City has subsequently maintained compliance with this Consent Decree, and its NPDES permit for twelve consecutive months;

3. The City has paid all penalties and other monetary obligations due hereunder, and no penalties or other monetary obligations due hereunder are outstanding or owed to the United States or the State;

B. Upon the United States determination that all of the above conditions have been met, the decree may be terminated upon motion of any party to the Court. If the United States and/or the State dispute(s) the City's full compliance, this Consent Decree shall remain in effect pending resolution of the dispute by the Parties or the Court.

## XXIX. PUBLIC COMMENT

This Consent Decree shall be lodged with the Court for a period of not less than 30 days, for public notice and comment in accordance with the provisions of 28 C.F.R. § 50.7. The United States reserves the right to withdraw or withhold its consent if the comments received disclose facts or considerations which indicate that the Consent Decree is inappropriate, improper or inadequate. The City hereby agrees not to withdraw from, oppose entry of, or to challenge any provision of this Consent Decree, unless the United States has notified the City in writing that it no longer supports entry of the Consent Decree.

## XXX. SIGNATORIES/SERVICE

A. This Consent Decree may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

B. The Assistant Attorney General for the Environment and Natural Resources Division of the United States Department of Justice, on behalf of the United States, the Missouri Assistant Attorney General signing this Decree, on behalf of the State, and the undersigned representatives of the the City each certifies that he or she is authorized to enter into the terms and conditions of this Consent Decree and to execute and bind legally such Party to this document.

C. The City shall identify, on the attached signature page, the name and address of an agent who is authorized to accept service of process by mail on behalf of the City with respect to all matters arising under or relating to this Consent Decree. The City hereby agrees to accept service 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.

SO ORDERED, this ___ day of _____ 2003.

_____
United States District Judge

WE HEREBY CONSENT to the entry of this Consent Decree in United States v. City of Lebanon subject to the public notice requirements of 28 C.F.R. § 50.7.

FOR PLAINTIFF THE UNITED STATES OF AMERICA:

Date: 3.12.04

THOMAS L. SANSONETTI
Assistant Attorney General
Environment and Natural Resources
Division
U.S. Department of Justice

Date: 1/8/04

JOSEPH G. THEIS
Special Attorney
Environmental Enforcement Section
Environmental and Natural Resources
Division
U.S. Department of Justice
401 M. Street, S.W. (2243A)
Washington, D.C. 20460
(202) 564-4053

TODD P. GRAVES
United States Attorney for the
Western District of Missouri

Date: _____

By : _____
CHARLES M. THOMAS
Assistant United States Attorney
Charles Evans Whittaker Courthouse
400 E. 9th Street
5th Floor
Kansas City, Mo 64106

Date: 1/9/04

for JOHN PETER SUAREZ
Assistant Administrator for Enforcement
and Compliance Assurance
U.S. Environmental Protection Agency

Date: _____

_____
JAMES B. GULLIFORD
Regional Administrator
U.S. Environmental Protection
Agency, Region VII

Date: _____

_____
MARTHA R. STEINCAMP
Regional Counsel
U.S. Environmental Protection
Agency, Region VII

WE HEREBY CONSENT to the entry of this Consent Decree in United States v. City of Lebanon subject to the public notice requirements of 28 C.F.R. § 50.7.

FOR THE STATE OF MISSOURI:

JEREMIAH W. (JAY) NIXON
Attorney General of Missouri

DATE: October 24, 03

JOSEPH P. BINDBEUTEL
Chief Counsel
Office of the Attorney General
P.O. Box 899
Jefferson City, MO 65102

MISSOURI DEPARTMENT OF
NATURAL RESOURCES

DATE: 11-3-2003

SCOTT TOTTEN, DIRECTOR
Water Protection and Soil Conservation Div.
Missouri Department of Natural Resources
P.O. Box 899
Jefferson City, MO 65102

WE HEREBY CONSENT to the entry of this Consent Decree in United States v. City of Lebanon subject to the public notice requirements of 28 C.F.R. § 50.7.

FOR THE CITY OF LEBANON, MISSOURI:

Date: 10/17/03

By: _____
(Name)

Mayor
(Title)

AGENT FOR SERVICE OF PROCESS:

_____
(Name)

_____
(Address)