

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

THE UNITED STATES OF)
AMERICA AND THE STATE OF)
GEORGIA,)

Plaintiffs,)

v.)

THE CITY OF ATLANTA,)

Defendant.)

CIVIL ACTION FILE
NO.1:98-CV-1956-TWT

SECOND AMENDMENT TO FIRST AMENDED CONSENT DECREE

INTRODUCTION

WHEREAS, the United States of America, 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 Georgia, at the request of the Georgia Department of Natural Resources, Environmental Protection Division (“EPD”) (collectively, “Government Plaintiffs”), filed a Complaint in this action alleging that the City of Atlanta (“Defendant”) had committed violations of the Clean Water Act, 33 U.S.C. § 1251 *et seq.* (“CWA”) and the Georgia Water Quality Control Act, O.C.G.A. § 1251 *et seq.* (“GWQCA”); and

WHEREAS, on September 24, 1998, the Court entered a Consent Decree resolving the allegations in the Complaint regarding the Defendant’s Combined Sewer Overflow (“CSO”) treatment facilities as well as CSO-related claims brought by citizen plaintiffs in Civil Action No. 1:95-CV-2550-TWT; (“CSO Consent Decree”); and

WHEREAS, on December 22, 1999, the Court entered the First Amended Consent Decree, resolving all other allegations in the Complaint regarding the Defendant’s wastewater treatment facilities and Defendant’s wastewater collection and transmission system; and

WHEREAS, on April 28, 2003, the Court entered Amendments to the First Amended Consent Decree to allow substitution of certain projects required under the First Amended Consent Decree; and

WHEREAS, the Defendant has satisfied the obligations under Section VII of the First Amended Consent Decree and Section VII was thus terminated by the Court on March 31, 2004; and

WHEREAS, the Defendant represents that it has completed the majority of the work required to satisfy the remaining obligations under the First Amended Consent Decree by, among other things, reducing the total volume of sewage overflows by 95% dating from 2004; and

WHEREAS, the Defendant represents that it has taken significant measures to fund the work required under the CSO Consent Decree and First Amended Consent Decree, which included raising water and sewer rates by 252% over the past ten years and imposing a 1% municipal option sales tax within the municipal boundaries of the City of Atlanta; and

WHEREAS, EPA's financial consultant, Industrial Economics, Inc., has reviewed the City's financial information and model and has concluded that the City's financial model is based on reasonable assumptions and supports the City's assessment of its capital financing limitations; and

WHEREAS, EPA's cost estimating consultant, P&G Environmental, LLC, has concluded that the City's cost estimates for the work to be performed under the amended Consent Decree schedule are not unreasonable; and

WHEREAS, the Plaintiffs have evaluated the Defendant's financial condition and have determined that schedule relief is appropriate to allow the Defendant to complete the requirements of the First Amended Consent Decree within Defendant's limited financial resources; and

WHEREAS, as a result of this determination, the Plaintiffs have agreed to replace certain terms of the First Amended Consent Decree; and

WHEREAS, the Parties are in agreement that the First Amended Consent Decree may be amended as requested by the Defendant pursuant to the Second Amendment to the First Amended Consent Decree ("Second Amendment");

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

1. VI.B.20 shall be removed and replaced with the following language:

"Sewer Group" shall mean a group of Sewersheds with a common level of priority for evaluation, rehabilitation and relief requirements. These groups may be comprised of Sewersheds within a single Sewerbasin or within more than one (1) Sewerbasin and need not be contiguous. In a letter dated June 30, 2005, EPA

and EPD approved a revised designation of Sewer Groups as indicated on Exhibits F and G. As shown on Exhibit F, the Sewer Groups for sewer rehabilitation projects are organized on the basis of "worst-comes-first" and are located throughout the Defendant's Collection and Transmission System. As shown on Exhibit G, Sewer Groups for capacity relief projects are organized on a Sewerbasin-wide approach.

2. Sections VIII.C.5.b.(i) and VIII.C.5.b.(ii) shall be removed and replaced with the following language:

(i) that each Major Gravity Sewer shall be capable of managing projected peak flows such that Sewage Overflows do not occur.

(ii) that each Major Gravity Sewer shall be capable of carrying projected peak flow such that Sewage Overflows do not occur.

3. Section VIII.C.8.(a) shall be removed and replaced with the following language:

a. (i) Except as provided in subparagraphs VIII.C.8.a.(ii) and VIII.C.8.b. below, in no case shall schedules for remedial actions under subparagraph VIII.C. extend beyond July 1, 2009 for Sewer Group one (1); July 1, 2014 for Sewer Group two (2); July 1, 2020 for Sewer Group three (3); July 1,

2025 for Sewer Group four (4); July 1, 2026 for Sewer Group five (5) and July 1, 2027 for Sewer Group six (6).

(ii) Defendant shall complete those projects identified on and described in Exhibit H ("Major Projects") on or before the schedule date provided in Exhibit H.

4. A new subparagraph VIII.C.8.c. shall be added:

c. On July 1, 2020, Defendants shall submit to EPA/EPD for review and comment, a Financial Report, utilizing a cash flow forecasting model, that demonstrates Defendant's proposed allocation and prioritization of financial resources for capital expenditures for Defendant's drinking water and wastewater system and assesses Defendant's financial capability to accelerate any completion dates for Sewer Groups four (4) through (6) under subparagraph VIII.C.8.(a). If such capability to accelerate any completion date for Sewer Groups four (4) through six (6) is identified, the Financial Report will include a proposed revised schedule for completion of Sewer Groups four (4) through six (6). This Financial Report will include, but not be limited to, an evaluation of the following items:

i. Projected revenue performance, which may include changes in water use patterns, system account growth or decline, and rate and fee increases, all up to, and including, 2027;

- ii. *Available supplemental sources of revenue such as impact fees and interest and sales tax revenues (including impacts of loss of any supplemental sources of revenue such as sales tax revenues);*
- iii. *Projected revenue requirements up to, and including 2027;*
- iv. *Projected debt service coverage and operating fund balances;*
- v. *Projected contingency funds for unexpected events and for liquidity to support favorable credit ratings;*
- vi. *Two or more years of actual versus budgeted operations and maintenance expenses, including experienced cost inflation;*
- vii. *Current and projected capital financing terms;*
- viii. *Current Median Household Income ("MHI") statistics for the City of Atlanta as made available through the United States Census Bureau;*
- ix. *Average annual bill per household as a percent of MHI, inclusive of taxes and fees, imposed to support water and wastewater system financing;*
- x. *Current socio-demographic, population and economic conditions;*

- xi. Recent and projected operations and maintenance expenses, cost escalation rate (inflation) and annual capital cost escalation;*
- xii. Capital needs and prioritization of projects for Defendant's drinking water and wastewater system priority capital projects will include, but not be limited to, projects indentified under Section VIII.C.8.(a), projects required to comply with newly-promulgated or revised requirements and annual system renewal and rehabilitation requirements.*

Within sixty (60) days of the date of receiving EPA/EPD's comments on the Financial Report, the Defendant shall modify the Financial Report consistent with EPA/EPD's comments and submit the modified Financial Report to EPA/EPD for final approval. In the event that Defendant disagrees with EPA/EPD regarding the Financial Report and/or any revised schedule, Defendant may invoke Dispute Resolution under Paragraph XIII.

5. The introductory paragraph of Subparagraph VIII.E.1. shall be removed and replaced as follows, with the only revisions to Subparagraphs VIII.E.1.a. through VIII.E.1.o. as noted below in Paragraphs 6 and 7 of this Second Amendment:

1. *Beginning July 1, 2012 and each six months thereafter, the Defendant shall submit to EPA/EPD and simultaneously place in the Public Document Repository, a report containing the following information:*

6. Subparagraph VIII.E.1.a. through Subparagraph VIII.E.1.n. shall be revised to replace the words "calendar quarter" with the words "*six month period*" at all places that such words appear in these subsections such that all quarterly reporting requirements under Subparagraph VIII.E.1. shall become semiannual reporting requirements.

7. Subparagraph VIII.E.1.o. shall be deleted.

8. Section XXVII., Exhibits, shall be amended to add the following Exhibits, which are attached hereto:

Exhibit F Sewer Groups for Sewer Rehabilitation Projects

Exhibit G Sewer Groups for Sewer Relief Projects

Exhibit H Major Project Schedule

Dated and entered this _____ day of _____ 2012.

THOMAS W. THRASH
UNITED STATES DISTRICT JUDGE
Northern District of Georgia

WE HEREBY CONSENT to the entry of this Second Amendment to the First Amended Consent Decree in United States, et al. v. City of Atlanta, Georgia, Case No. 1: 98-CV-1956-TWT, subject to the public notice and comment requirements of 28 C.F.R. § 50.7.

FOR PLAINTIFF THE UNITED STATES OF AMERICA:

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FOR PLAINTIFF THE UNITED STATES OF AMERICA (Continued):

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FOR PLAINTIFF THE UNITED STATES OF AMERICA (Continued):

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WE HEREBY CONSENT to the entry of this Second Amendment to the First Amended Consent Decree in United States, et al. v. City of Atlanta, Georgia, Case No. I: 98-CV-1956-TWT, subject to the public notice and comment requirements of 28 C.F.R. § 50.7.

FOR PLAINTIFF THE UNITED STATES OF AMERICA (Continued):

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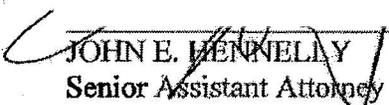
WILLIAM B. BUSH, JR.
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Plaintiff, State of Georgia, enters into this Second Amendment to the First Amended Consent Decree in United States, et al. v. City of Atlanta, Georgia, Case No. 1: 98-CV-1956-TWT.

FOR PLAINTIFF STATE OF GEORGIA:

SAMUEL S. OLENS
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ISAAC BYRD
Deputy Attorney General
Georgia Bar No. 101150



JOHN E. KENNELLY
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The Defendant, City of Atlanta, enters into this Second Amendment to the First Amended Consent Decree in United States, et al. v. City of Atlanta, Civil Action No. 1:98-CV-1956-TWT.

FOR THE DEFENDANT CITY OF ATLANTA:

KASIM REED
Mayor of Atlanta

Municipal Clerk

FORIS WEBB III
DEPUTY MUNICIPAL CLERK

APPROVED AS TO FORM:

R. ROGER BHANDARI
Deputy City Attorney
Georgia Bar No. 056340
MARC GONCHER
Senior Assistant City Attorney
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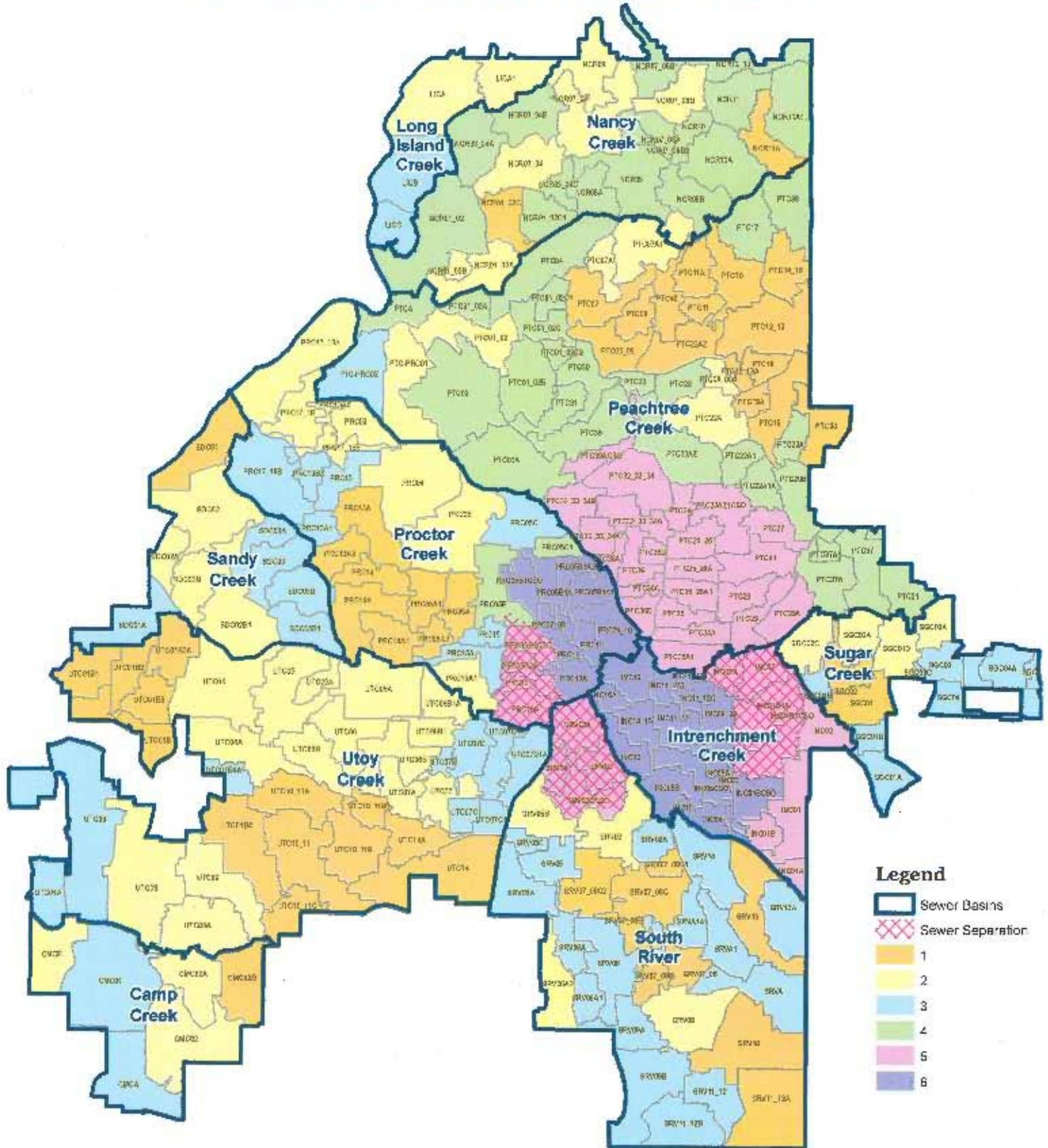
Agent authorized to accept service of process on behalf of the City of Atlanta:

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EXHIBIT F

Sewer Groups for Rehabilitation Projects

Sanitary Sewer Evaluation Survey/Sewer Rehabilitation Sewer Groups



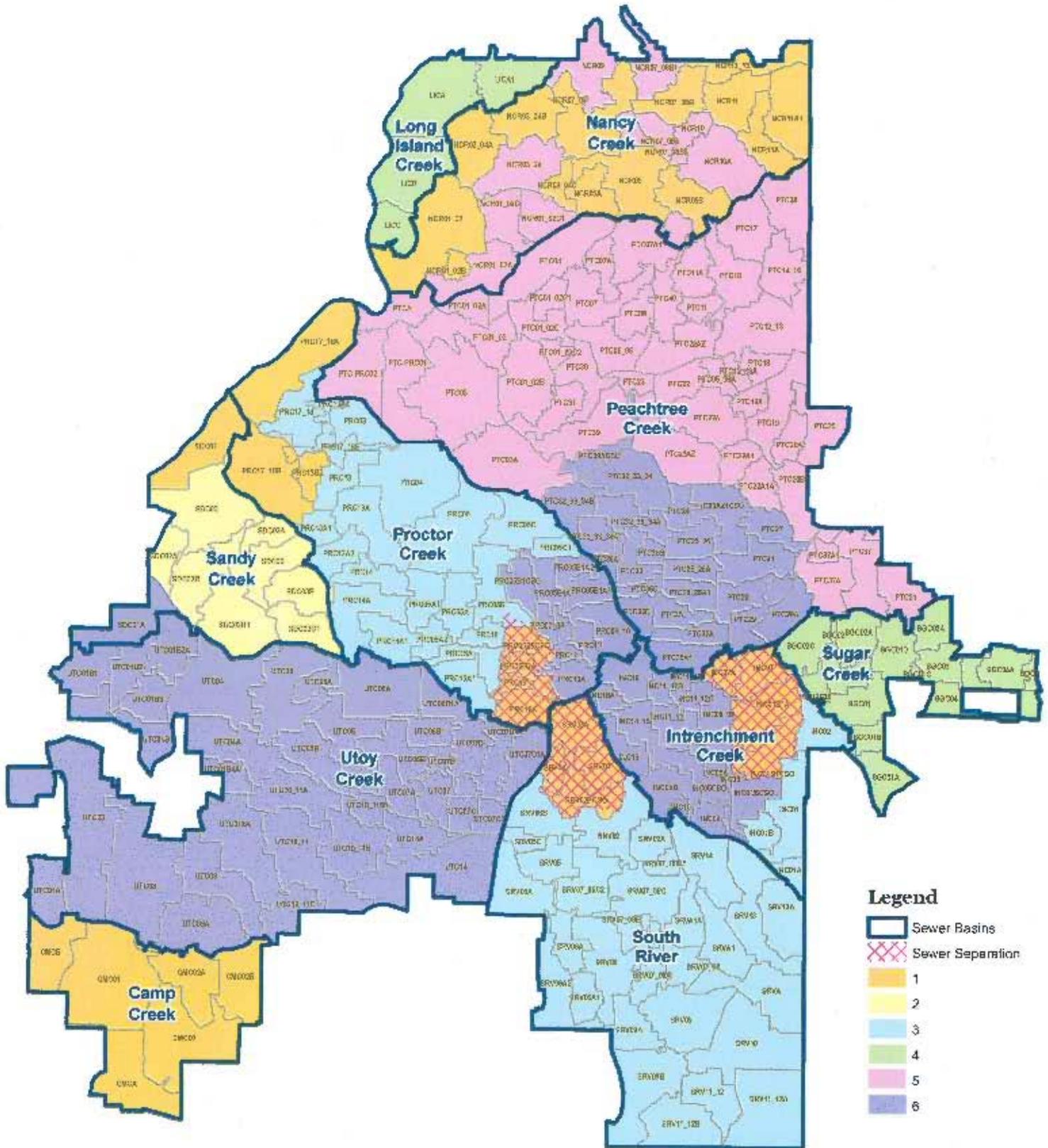
In a letter dated June 30, 2005, EPA and EPD approved revisions to the System-wide Prioritization Plan and Macro System Evaluation Report that authorized the creation of different sewer groups for capacity relief projects and sewer rehabilitation projects. The original sewer groups based on the "worst comes first" principle and located throughout the City were retained for sewer rehabilitation projects while capacity relief projects were grouped to be accomplished on a sewer basin-wide approach. This reorganization of the sewer groups was authorized to allow the City more effective use of its resources by optimizing the use of hydraulic data and other information pertinent to evaluate capacity relief needs, thus avoiding incomplete and ineffective capacity projects based on a widespread sewerwide approach. Sewer Groups 1 through 6 were retained and still correspond to a specific completion date mandated by the First Amended Consent Decree.



EXHIBIT G

Sewer Groups for Sewer Relief Projects

SSO Capacity Relief Sewer Groups



In a letter dated June 30, 2005, EPA and EPD approved revisions to the System-wide Prioritization Plan and Macro System Evaluation Report that authorized the creation of different sewer groups for capacity relief projects and sewer rehabilitation projects. The original sewer groups based on the "worst comes first" principle and located throughout the City were retained for sewer rehabilitation projects while capacity relief projects were grouped to be accomplished on a sewer basin-wide approach. This reorganization of the sewer groups was authorized to allow the City more effective use of its resources by optimizing the use of hydraulic data and other information pertinent to evaluate capacity relief needs, thus avoiding incomplete and ineffective capacity projects based on a widespread sewerwide approach. Sewer Groups 1 through 6 were retained and still correspond to a specific completion date mandated by the First Amended Consent Decree.



EXHIBIT H
MAJOR PROJECTS SCHEDULE

PEACHTREE CREEK STORAGE AND PUMP STATION

07/01/2014 Construction Substantial Completion.

The Peachtree Creek Storage Project will divert wet weather flows, primarily from DeKalb County, to a storage facility or facilities, which may either be above or below ground. The storage and pumping system will reduce significantly the demand on the existing Peachtree Trunk and Peachtree Trunk Relief, both of which experience numerous surcharge and spill incidents during wet weather events.