

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF INDIANA
HAMMOND DIVISION**

UNITED STATES OF AMERICA, and)	
STATE OF INDIANA,)	
)	
Plaintiffs,)	
)	Civil Action No.
)	
v.)	
)	
THE CITY OF GARY, INDIANA, and)	
GARY SANITARY DISTRICT)	
)	
Defendants.)	

CONSENT DECREE

TABLE OF CONTENTS

I.	BACKGROUND.....	1
II.	OBJECTIVES	2
III.	JURISDICTION AND VENUE.....	3
IV.	APPLICABILITY	3
V.	EFFECT OF PRIOR CONSENT DECREES, JUDGMENTS AND ORDERS	5
VI.	DEFINITIONS	5
VII.	GENERAL COMPLIANCE REQUIREMENTS	13
VIII.	CSO OPERATIONAL PLAN AND LONG-TERM CONTROL PLAN REQUIREMENTS	17
IX.	RALSTON STREET LAGOON AND GRAND CALUMET RIVER.....	26
	REMEDIATION REQUIREMENTS.....	26
X.	SUPPLEMENTAL ENVIRONMENTAL PROJECT	29
XI.	REPORTING AND CERTIFICATION REQUIREMENTS.....	32
XII.	SPECIAL ADMINISTRATOR.....	37
XIII.	CIVIL PENALTY	42
XIV.	STIPULATED PENALTIES	43
XV.	FORCE MAJEURE.....	52
XVI.	DISPUTE RESOLUTION	54
XVII.	ACCESS TO INFORMATION AND DOCUMENT RETENTION.....	57
XVIII.	NOTICES AND SUBMISSIONS	59
XIX.	PLAINTIFFS’ APPROVAL OF PLANS AND OTHER SUBMISSIONS	62
XX.	EFFECT OF SETTLEMENT AND RESERVATION OF RIGHTS.....	64
XXI.	COSTS.....	65
XXII.	RETENTION OF JURISDICTION	66
XXIII.	MODIFICATIONS	66
XXIV.	TERMINATION	67
XXV.	PUBLIC NOTICE AND COMMENT	68
XXVI.	SIGNATORIES/SERVICE.....	68

XXVII.	INTEGRATION	69
XXVIII.	APPENDICES	69
XXIX.	FINAL JUDGMENT	70

I. BACKGROUND

WHEREAS, Plaintiffs the United States of America (“United States”), on behalf of the United States Environmental Protection Agency (“EPA”), and the State of Indiana (“Indiana” or “State”), on behalf of the Indiana Department of Environmental Management (“IDEM”), have filed a Complaint in this case concurrently with the lodging of this Consent Decree alleging that Defendants the City of Gary, Indiana (“Gary” or “the City”) and Gary Sanitary District (“GSD”): (1) violated Sections 301 and 309 of the Clean Water Act (“CWA”), 33 U.S.C. §§ 1311 and 1319, the applicable provisions of Title 13 of the Indiana Code and Title 327 of the Indiana Administrative Code, and terms and conditions of GSD’s National Pollutant Discharge Elimination System (“NPDES”) Permit issued in 2006; and (2) failed to comply with a request for information issued by EPA on or around March 22, 2010, pursuant to EPA’s authority under Section 308 of the CWA, 33 U.S.C. § 1318;

WHEREAS, the Parties or their predecessors in interest were parties to consent decrees previously entered by the Court on January 3, 1979, June 15, 1983, September 8, 1987, October 23, 1992, and May 12, 2003, in *United States and Ind. Dept. of Envntl. Mgmt. v. City of Gary*, Case No. 2:78-cv-29 and 86-540 (N.D. Ind.);

WHEREAS, prior consent decrees entered among the Parties, including but not limited to the Modified Consent Decree and Judgment - 2002, entered on May 12, 2003, in Case No. 78-29 and 86-540 (“Modified Consent Decree and Judgment—2002”), have created and maintained the position of the Special Administrator and the Technical Monitor of the Gary Sanitary District, and set forth the Special Administrator’s and Technical Monitor’s duties, responsibilities and authorities;

WHEREAS, Section X of the Modified Consent Decree and Judgment - 2002 required GSD to maintain a separate, interest bearing account (“Remediation Account”) for funds needed to study and remediate the river sediments in the Grand Calumet River, as required under that Section. GSD maintains \$2,816,782.48 in such account as of the date of execution of this Decree by Defendants;

WHEREAS, Section V.C of the Modified Consent Decree and Judgment - 2002 requires Defendants to perform all aspects and meet all requirements of the Disposal/Clean Up alternative to be selected by the United States for the Ralston Street Lagoon. On April 7, 2009, EPA issued the Final Decision for Proposed Remedy for the Ralston Street Lagoon, which is attached to this Decree as Appendix 4;

WHEREAS, Defendants do not admit any liability to the United States or the State arising out of the occurrences alleged in the Complaint;

WHEREAS, the Parties recognize, and the Court by entering this Decree finds, that the Parties negotiated this Consent Decree in good faith, that the Consent Decree will avoid prolonged and complex litigation among the parties, and that this Consent Decree is fair, reasonable, and in the public interest;

NOW, THEREFORE, before the taking of any testimony, without the adjudication or admission of any issues of fact or law and with the consent of the Parties, the Court ORDERS, ADJUDGES AND DECREES, as follows:

II. OBJECTIVES

1. The objective of this Consent Decree is to cause Defendants to take those steps that are necessary to: (1) bring its Publicly Owned Treatment Works (“POTW”) located at 3600 West 3rd Avenue in Gary, Lake County, Indiana, into compliance with: (a) the Clean Water Act,

33 U.S.C. § 1251 *et seq.*, and the regulations promulgated thereunder; (b) EPA’s Combined Sewer Overflow (“CSO”) Control Policy found at 59 Fed. Reg. 18,688 (April 19, 1994); (c) Title 13 of the Indiana Code, IND. CODE § 13; and Article 5 of Title 327 of the Indiana Administrative Code, 327 IND. ADMIN. CODE 5; (d) Defendants’ 2012 NPDES Permit, as defined below, and any successor NPDES permits; and (2) address the outstanding requirements of the Modified Consent Decree and Judgment – 2002, as regards the Ralston Street Lagoon and the Remediation Account

III. JURISDICTION AND VENUE

2. This Court has jurisdiction over the subject matter of this action pursuant to Section 309(b) of the CWA, 33 U.S.C. § 1319(b), and 28 U.S.C. §§ 1331, 1345, and 1355, and personal jurisdiction over the Parties. The Court has supplemental jurisdiction over the State law claims asserted by Indiana pursuant to 28 U.S.C. § 1367(a). Venue is proper in this District 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), because Defendants are located in this judicial district and the violations alleged in the Complaint are alleged to have occurred in this judicial district. For purposes of this Decree, or any actions to enforce this Decree, Defendants consent to the Court’s jurisdiction to enter and enforce this Decree and Defendants also consent to venue in this judicial district.

3. For purposes of this Consent Decree, Defendants agree that the Complaint states claims on which relief may be granted pursuant to Section 309 of the Clean Water Act, 33 U.S.C. § 1319, and Title 327 of the Indiana Administrative Code, 327 IND. ADMIN. CODE.

IV. APPLICABILITY

4. The obligations established in this Consent Decree shall apply to, and are binding on, the United States, Indiana, and on the City of Gary, the Gary Sanitary District, and any

successors and assigns, or other persons or entities otherwise bound by law. Any change in ownership, corporate status, or other legal status of either Defendant shall in no way alter Defendants' responsibilities under this Consent Decree.

5. If Defendants transfer any ownership or operation of their WWTP, or any other portion of their POTW, to another party, Defendants shall give written notice and a copy of this Consent Decree to any proposed transferee at least 30 Days prior to such transfer. Defendants shall condition any transfer, in whole or in part, of ownership, operation or other interest of the WWTP, or any other portion of the POTW, upon successful performance and compliance with the terms and conditions of this Consent Decree as provided in a written agreement between Defendants and the proposed transferee, enforceable by the United States and Indiana as third party beneficiaries of such agreement. At least 30 Days before such transfer, Defendants shall provide written notice of the prospective transfer, together with a copy of the proposed written agreement, to the United States and Indiana, in accordance with Section XVIII (Notices and Submissions). Any attempt to transfer ownership or operation of Defendants' WWTP or any other portion of Defendants' POTW without complying with this Paragraph constitutes a violation of this Decree. No transfer of ownership or operation of Defendants' WWTP or any other portion of Defendants' POTW, whether in compliance with this Paragraph or otherwise, shall relieve Defendants of their obligation to ensure that the terms of this Consent Decree are implemented.

6. Defendants shall provide a copy of this Consent Decree to all of Defendants' officers, employees, and agents whose duties reasonably might include ensuring compliance with any provision of this Decree, and any contractor retained to perform work required pursuant to this Consent Decree. Defendants shall condition any such contract on performance of the work

in compliance with the terms of this Consent Decree. The requirement to provide a copy of this Consent Decree can be satisfied if Defendants provide an electronic copy or a link to a website where the Consent Decree can be found.

7. In any action to enforce this Consent Decree, Defendants shall not raise as a defense the failure by any of their officers, directors, employees, agents, or contractors to take any actions necessary to comply with the provisions of this Decree.

V. EFFECT OF PRIOR CONSENT DECREES, JUDGMENTS AND ORDERS

8. This Consent Decree supersedes and replaces all consent decrees, judgments, and orders previously entered on January 3, 1979, June 15, 1983, September 8, 1987, October 23, 1992, and May 12, 2003, between the Parties or their predecessors in interest in this District in *United States and Ind. Dept. of Env'tl. Mgmt. v. City of Gary*, Case No. 2:78-cv-29 and 86-540 (N.D. Ind.). Defendants' obligations under this Consent Decree supplant all obligations imposed by any of those prior consent decrees, judgments, and orders.

VI. DEFINITIONS

9. Unless otherwise defined in this Section, terms used in this Decree shall have the meaning(s) assigned to them in the: (a) CWA, 33 U.S.C. § 1251 *et. seq.*, and the regulations promulgated pursuant to the CWA at 40 C.F.R. Part 122; (b) Title 13 of the Indiana Code, IND. CODE § 13, and the Indiana Administrative Code, 327 IND. ADMIN. CODE 5; and (c) Defendants' 2006 NPDES Permit, Defendants' 2012 NPDES Permit, and any successor NPDES permit. The following definitions shall apply to the terms used in this Consent Decree:

“2006 NPDES Permit” means NPDES Permit No. IN0022977 that was issued to Defendants by IDEM on June 13, 2006, pursuant to Section 402(b) of the CWA, 33 U.S.C.

§ 1342(b), and IND. CODE § 13-13-5-1(1), and became effective on July 1, 2006, and any modifications, revisions, or amendments of such permit.

“2012 NPDES Permit” means NPDES Permit No. IN0022977 that was issued to Defendants by IDEM on April 18, 2012, pursuant to Section 402(b) of the CWA, 33 U.S.C. § 1342(b), and IND. CODE § 13-13-5-1(1), and that became effective on July 1, 2012, and any modifications, revisions, or amendments of such permit.

“City” means the City of Gary, Lake County, Indiana.

“Collection System” means the municipal wastewater collection and transmission system owned and operated by Defendants, including all pipes, interceptors, force mains, gravity sewer lines, lift stations, pumping stations, manholes, and appurtenances thereto designed to collect and convey municipal sewage (including domestic, commercial, and industrial sewage) and storm water to the WWTP or to a Combined Sewer Overflow Outfall. The “Collection System” includes both the Combined Sewer System and Sanitary Sewer System.

“Combined Sewer Overflow Discharge” or “CSO Discharge” means any discharge of wastewater from the Combined Sewer System at any point prior to the headworks of the WWTP, including but not limited to discharge from any of the designated CSO Outfalls identified in Attachment A of the 2012 NPDES Permit.

“Combined Sewer Overflow Outfall” or “CSO Outfall” means any Outfall through which wastewater and/or storm water is discharged from the Combined Sewer System into the receiving waters, including the Grand Calumet River and the Little Calumet River, at any point prior to the headworks of the WWTP. CSO Outfalls include any Outfall identified in Attachment A to the 2006 NPDES Permit and/or 2012 NPDES Permit and any outfall through

which Defendants will be authorized to discharge wastewater and/or storm water from the Combined Sewer System into the receiving waters pursuant to any successor NPDES permit.

“Combined Sewer System” or “CSS” means the portion of Defendants’ Collection System that is designed and constructed to collect and convey municipal sewage (including domestic, commercial, and industrial sewage) and storm water through a single-pipe system to the WWTP or to CSO Outfalls. This term also includes any facilities and/or CSO Control Measures that are constructed pursuant to terms and conditions of this Decree.

“Complaint” means the Complaint filed by the United States and the State of Indiana in this action.

“Consent Decree” or “Decree” means this Consent Decree, all Appendices attached hereto and listed in Section XXVIII, and all Attachments to such Appendices listed in Section XXVIII.

“CSO Control Measures” means any physical and/or operational measures that are to be constructed, operated, or otherwise implemented, as set forth in the approved LTCP, to eliminate, reduce, mitigate, treat, or otherwise control the number, volume, duration, and frequency of CSO Discharges or otherwise eliminate, reduce, or control pollutant levels in CSO Discharges.

“CSO Control Policy” means the EPA’s Combined Sewer Overflow (CSO) Control Policy found at 59 Fed. Reg. 18,688 (April 19, 1994).

“CSO Financial Guidance” means EPA Office of Water/Office of Wastewater Management, *Combined Sewer Overflows - Guidance for Financial Capability Assessment and Schedule Development*, EPA 832-B-97-004 (February 1997).

“CSO Guidance” means one, or a combination of, the following guidance documents prepared by EPA: EPA Office of Water, *CSO Post Construction Compliance Monitoring Guidance*, EPA 833-K-11-001 (May 2012); EPA Office of Water, *Guidance: Coordinating CSO Long-Term Planning with Water Quality Standards Reviews* (July 2001); EPA Office of Water, *Combined Sewer Overflows Guidance for Monitoring and Modeling*, EPA 832-B-99-002 (Jan. 1999); EPA Office of Water, *Combined Sewer Overflows Guidance for Long-Term Control Plan*, EPA 832-B-95-002 (Sep. 1995); EPA Office of Wastewater Management, *Combined Sewer Overflows: Guidance for Screening and Ranking* (Aug. 1995); EPA Office of Wastewater Management, *Combined Sewer Overflows Guidance for Permit Writers* (Aug. 1995); EPA Office of Wastewater Management, *Combined Sewer Overflows Screening and Ranking Guidance*, EPA 832-B-95-004 (Aug. 1995); EPA Office of Water, *Combined Sewer Overflows Guidance for Funding Options*, EPA 832-B-95-007 (Aug. 1995); EPA Office of Water, *Combined Sewer Overflows: Guidance for Nine Minimum Controls* (May 1995).

“CSOOP” means the Combined Sewer Overflow Operational Plan for Defendants’ POTW, prepared by or on behalf of Defendants and approved by IDEM in 1994, and any updates, revisions, modifications, or subsequent versions of that Plan.

“Date of Lodging” means the Date on which this Consent Decree is filed for lodging with the Clerk of the Court for the Northern District of Indiana.

“Day” or “day” means a calendar day unless expressly stated to be a working day. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next working day.

“Defendants” means the City of Gary, Indiana (including the City of Gary Common Council) and the Gary Sanitary District, either or both of them.

“Effective Date” means the date of entry of this Consent Decree by the Court, after satisfaction of the public notice and comment procedures set forth in Section XXV (Public Notice and Comment) of this Consent Decree and 28 U.S.C. § 50.7: (a) as recorded on the Court Docket; or (b) if the Court instead issues an order approving the Consent Decree, the date such order is recorded on the Court Docket.

“EPA” means the United States Environmental Protection Agency and any successor agency.

“Gary” means the City of Gary, Lake County, Indiana.

“Green Infrastructure” or “GI” means systems and practices that use or mimic natural processes to infiltrate, evapotranspire, or harvest storm water runoff on or near the site where it is generated.

“GSD” means the Gary Sanitary District, a department of the City.

“IDEM” means the Indiana Department of Environmental Management and any successor department or agency.

“Indiana” means the State of Indiana.

“Industrial User” means any of the following: (a) any user of the Collection System who discharges or causes the discharge of non-domestic wastewater into Defendants’ Collection System; (b) any commercial or industrial facility that discharges or causes the discharge of non-domestic wastewater into a combined or separate sanitary sewer that eventually reaches Defendants’ WWTP or any of Defendants’ CSO Outfalls; or (c) any such Industrial User

located in contract communities that are serviced by the Defendants and that currently include the City of Hobart, the City of Lake Station, and the Merrillville Conservancy District, Indiana.

“Knee of the curve,” as described in EPA’s *Combined Sewer Overflows Guidance for Long-Term Control Plan*, EPA 832-B-95-002 (Sept. 1995), means the point of diminishing returns in a cost-performance analysis of the CSO Control Measure alternatives.

“LTCP” means the Long-Term Control Plan that is under development and is to be completed by Defendants in accordance with this Decree, Section IV of Attachment A to the 2012 NPDES Permit, and Subpart C of Section II of the CSO Control Policy.

“Maximum Peak Treatable Flow” means the maximum flow rate, derived through the stress test required by and described in Paragraph 16 that was initiated by Defendants in 2013, at which the WWTP can treat wastewater without causing violations of final effluent limits of the applicable NPDES Permit, or otherwise impairing the WWTP’s ability to continue receiving and treating wastewater flows to achieve limits and conditions of the applicable NPDES Permit.

“Maximum Sustained Treatable Flow” means the maximum flow rate, derived through the stress test required by and described in Paragraph 16 that was initiated by Defendants in 2013, at which the WWTP can treat wastewater on a “Sustained” basis without causing violations of final effluent limits of the applicable NPDES permit or otherwise impairing the WWTP’s ability to continue receiving and treating wastewater flows to achieve limits and conditions of the applicable NPDES permit. “Sustained” shall mean the greater of: (a) 24 hours or (b) twice the duration of the Maximum Peak Treatable Flow determined pursuant to Paragraph 16.b.

“MGD” means million gallons per day.

“Nine Minimum Controls” means the nine minimum technology-based controls on CSOs enumerated in Section II, Subsection B of the CSO Control Policy, and Section III of Attachment A to the 2012 NPDES Permit.

“NPDES” means the National Pollutant Discharge Elimination System permit program described in Section 402 of the CWA, 33 U.S.C. § 1342, and other provisions of the Act.

“Outfall” means any point source that serves as a discharge point from the Defendants’ POTW.

“Paragraph” means a portion of this Decree identified by an Arabic numeral.

“Party” or “Parties” means the United States of America (on behalf of EPA), the State of Indiana (on behalf of IDEM), the City of Gary, and/or the Gary Sanitary District.

“Plaintiffs” means the United States of America and the State of Indiana.

“POTW” means the entire publicly-owned treatment works that is owned and operated by Defendants and that includes the WWTP and the Collection System.

“Precipitation” means rainfall, sleet, snow fall, and ice/snow melt.

“Pump Station” means a facility comprised of pumps that lift wastewater to a higher hydraulic elevation, including all related electrical, mechanical, and structural systems necessary to the operations of that pump station.

“RSL Final Decision” means EPA’s Final Decision for Proposed Remedy for the Ralston Street Lagoon issued on April 7, 2009, pursuant to Modified Consent Decree and Judgment—2002, and EPA Approval of GSD Request for Revised Schedule, dated September 27, 2010, attached to this Decree as Appendix 4, and any modifications, revisions, or amendments thereof.

“Receiving Waters” means the Grand Calumet River, Little Calumet River, and any of their tributaries.

“Remediation Account” means an interest bearing account established by Defendants as required by Section X, and specifically Paragraph 50, of Modified Consent Decree and Judgment - 2002.

“Sanitary Sewer System” means the portion of the Collection System designed to convey municipal sewage (domestic, commercial, and industrial wastewater) to the WWTP or to the CSS. This term does not include the portion of the Collection System that is part of the Combined Sewer System.

“Section” means a portion of this Decree identified by a Roman numeral.

“Sewer Use Ordinance” means the ordinance passed and adopted by the Common Council of the City of Gary on March 2, 2010, amending the City of Gary Municipal Code, Title XV, Section 158.

“State” means the State of Indiana.

“Storm Water Sewer System” means the portion of the Collection System designed to convey only storm water to the Receiving Waters and/or to the CSS.

“Typical Year” means the volume, intensity, frequency and duration of Precipitation that occurred during 1986 as recorded at South Bend, Indiana.

“United States” means the United States of America.

“User Charge” means the set of rates at which users of any part of the Collection System are charged for the processing of wastewater they introduce into the system.

“WWTP” means the wastewater treatment plant owned and operated by Defendants, located at 3600 West Third Avenue, Gary, Indiana, 46406.

VII. GENERAL COMPLIANCE REQUIREMENTS

10. Defendants shall at all times comply with: all terms and conditions of the 2012 NPDES Permit and any successor NPDES permit applicable to the POTW; all the applicable provisions of the CWA, 33 U.S.C. § 1251 *et seq.*; all the applicable regulations promulgated pursuant to the CWA, including but not limited to wastewater monitoring and sampling requirements set forth at 40 C.F.R. Part 136; Title 13 of the IND. CODE § 13, and the Indiana regulations, 327 IND. ADMIN. CODE 5.

11. Defendants shall at all times comply with the terms of this Decree, its Appendices (including Attachments to the Appendices), and any reports, plans or deliverables generated pursuant to the terms of the Decree or the Appendices. All reports, plans and deliverables generated pursuant to the terms of the Decree or the Appendices are incorporated by reference into this Decree and enforceable under the Decree.

12. Final Effluent Limits. Defendants shall at all times comply with all applicable requirements related to discharges from Outfall 001 A and Outfall 001 B that are specified in Part I.A.1 of the 2012 NPDES Permit, and all applicable requirements related to discharges from Outfalls 001 A and 001 B that shall be specified in any successor NPDES permit, including but not limited to any limits on quantities, loadings and/or concentrations of the listed parameters, and the related monitoring requirements.

13. Consent Decree Compliance Funding Requirements.

a. Defendants shall at all times provide sufficient funding to meet the terms and requirements of this Decree, the 2012 NPDES Permit and any successor NPDES permit, and all applicable provisions of the CWA and State law. Defendants' failure to provide such funding shall not be a defense of any kind to any failure to comply with this Decree, the 2012 NPDES

Permit and any NPDES successor permit, or any applicable provision of the CWA or State law. If unable to meet the requirements of this Decree, the 2012 NPDES Permit and any successor NPDES permit, or the requirements of any applicable provisions of the CWA or State law due to insufficient funding, Defendants shall act to obtain sufficient revenue as needed for the proper operation, maintenance, and equipment replacement needs of the POTW and for achieving compliance with this Decree, the 2012 NPDES Permit and any successor NPDES permit, and all applicable provisions of the CWA and State law. Except as provided in Paragraph 13.c, the action that is required under this subparagraph shall include, but is not limited to: (1) acting to increase the amounts charged to the users of the POTW, including contract communities; and (2) acting to increase/levy any taxes available to Defendants.

b. Defendants shall act to increase the amounts charged to the users of the POTW, including contract communities, or enact/raise any other fee or increase/levy any taxes otherwise available to Defendants, no later than 120 days after certifying that funding is inadequate pursuant to Paragraph 36 (Certificate of Sufficient Funding) of this Decree or failing to certify that such funding is adequate.

c. If Defendants choose to select another method of securing sufficient funding for compliance with the legal requirements outlined in Paragraphs 13.a and 13.b (*i.e.*, other than increasing user charges or enacting/raising available fees, levies, or taxes), Defendants shall notify EPA in writing no later than 15 Days after Defendants certify that funding is inadequate pursuant to Paragraph 36 or no later than February 15 of any calendar year during which Defendants fail to certify that such funding is adequate. Such notification shall describe: (1) the source(s) of funding; (2) the steps that Defendants have taken or plan to take to secure the funding; (3) the time period within which Defendants will obtain the funding; (4) the amount(s)

that Defendants expect to obtain; (5) the specific terms and requirements of this Decree, the applicable NPDES permit, the CWA, and/or State law that will not be complied with because of a delay in obtaining the funding; and (6) the expected date(s) of compliance with such terms and requirements.

d. The City shall repay all loans that have been extended to it by GSD, through the Effective Date of this Decree. The repayments shall be made in annual payments within seven years of the Effective Date in the following amounts:

Year 1: \$300,000

Year 2: \$300,000

Year 3: \$500,000

Year 4: \$600,000

Year 5: \$750,000

Year 6: \$1,000,000

Year 7: the remaining loan balance (approximately \$1,900,000)

The first payment shall occur within six months of the Effective Date and each subsequent annual payment shall occur on or before January 31 of each subsequent calendar year.

e. No further loans shall be extended by GSD from the funds that are available to it, to the City or any other subdivision of the City. This includes but is not limited to the funds that GSD collects through levying of taxes, collection of user charges and/or issuance of municipal bonds.

14. Retention of Contractors to Operate the POTW.

a. Defendants may appoint an independent contractor to operate and maintain the POTW in full compliance with this Decree, the 2012 NPDES Permit and any

successor NPDES permit, and any applicable provisions of the CWA and State law. The appointment of a contractor shall not relieve Defendants of any obligations under the Decree, the 2012 NPDES Permit or any successor NPDES permit, the CWA, or State law. Defendants shall at all times remain responsible for compliance with all applicable provisions of this Decree, the 2012 NPDES Permit and any successor NPDES permit, and any applicable provisions of the CWA and State law. This requirement expressly includes, but is not limited to, the duty set forth in Section 308 of the CWA, 33 U.S.C. § 1318, to maintain and provide, upon request by EPA, information that is reasonably required for EPA to determine whether the Defendants and/or their contractors, agents, consultants, or any other representatives, are operating the POTW in compliance with the CWA.

b. In the event of continuous non-compliance with this Decree, the 2012 NPDES Permit and any successor NPDES permit, or any applicable provisions of the CWA or State law, Plaintiffs may require Defendants to appoint a contract operator that shall be granted sufficient independent authority to take any steps necessary to operate and maintain the complete wastewater system in compliance with this Consent Decree, the 2012 NPDES Permit, any successor NPDES permit, and any applicable provisions of the CWA and State law. Prior to invoking their right under the preceding sentence, Plaintiffs shall provide Defendants with notice of their intent to do so and the Parties shall meet and confer within 30 days of the Defendants' receipt of such notice. After such meeting, Plaintiffs may issue a written demand to Defendants that Defendants appoint a contract operator. Within 180 Days of receiving a written demand from Plaintiffs, Defendants shall notify EPA and the State in writing of the name, title, and qualifications of the entity proposed by Defendants to act as the contract operator. EPA will issue a notice of disapproval or an authorization to proceed regarding hiring of the proposed

contract operator. If at any time thereafter, Defendants propose to change a contract operator, Defendants shall give such notice to EPA and the State and shall obtain an authorization to proceed from EPA, after a reasonable opportunity for review and comment by the State, before retaining the new contract operator.

**VIII. CSO OPERATIONAL PLAN AND LONG-TERM
CONTROL PLAN REQUIREMENTS**

15. CSO Operational Plan (“CSOOP”). Defendants shall at all times maintain a current copy of the CSOOP on file at the WWTP and operate the POTW in accordance with the CSOOP.

a. No later than 60 Days after the Effective Date, Defendants shall submit to Plaintiffs for review and approval a revised version of the CSOOP that was initially approved by IDEM in 1994. The revised CSOOP shall comply with Section III of Attachment A to the 2012 NPDES Permit and shall include the items identified in Appendix 1 to this Decree that are organized under the following chapters: (1) Document History and Summary of Changes, Revisions and/or Modifications; (2) System Inventory; (3) Administrative Structure; (4) Operation and Maintenance; (5) CSO Operational Control Strategy; and (6) Schedule of Future Activities.

b. By January 31 of each year following the year of submission of the revised CSOOP pursuant to Paragraph 15.a of this Decree, Defendants shall submit to Plaintiffs for Plaintiffs’ approval any updates, modifications, and/or revisions of the CSOOP pursuant to Section XIX (Plaintiffs’ Approval of Plans and Other Submissions) that: (1) Defendants determine to be necessary to achieve and maintain compliance with the CSO Control Policy and a NPDES permit applicable to the POTW at that time; or (2) are required by EPA and/or IDEM. Any such updates, modifications, and/or revisions of the CSOOP shall conform to the

requirements of the 2012 NPDES Permit or other NPDES permit applicable at that time, the CSO Control Policy, and the requirements outlined in Appendix 1 of this Decree.

c. EPA, upon consultation with IDEM, will review and approve the revised CSOOP and any CSOOP updates, modifications and/or revisions described in this Paragraph in accordance with Section XIX (Plaintiffs' Approval of Plans and Other Submissions) of this Decree.

d. Defendants shall implement and operate the POTW in accordance with all the terms of the approved revised CSOOP and any approved updates, modifications, and/or revisions of the CSOOP.

16. Stress Test. Defendants shall perform a stress test ("Stress Test") in accordance with the "Peak Flow Modeling and Stress Test Work Plan" that Defendants submitted to EPA on July 15, 2013 and the requirements set forth in Appendix 2 to this Decree.

a. The Stress Test shall be designed to evaluate the maximum flow rate that the WWTP can hydraulically convey while effectively treating the wastewater to meet the requirements set forth in the 2012 NPDES Permit and any successor NPDES permit applicable to the POTW.

b. The Stress Test shall determine the Maximum Sustained Treatable Flow and Maximum Peak Treatable Flow for the WWTP by identifying the hydraulic conveyance capacity and peak and sustained effective treatment capacities of each of the WWTP's treatment unit processes (preliminary, primary, secondary, tertiary (including the Weisman screen), and disinfection/dechlorination) and the entire WWTP. Defendants' evaluation shall include the determination of the most appropriate duration for the Maximum Peak Treatable Flow. This duration of the Maximum Peak Treatable Flow shall be no less than one hour and no more than

24 hours, and shall be selected so as to maximize the volume of wastewater treated during Defendants' Typical Year. In particular, if a higher Maximum Peak Treatable Flow can be achieved at one or more durations from 1 hour to less than 24 hours than can be achieved at 24 hours, the duration associated with the highest such flow shall be determined to be the Maximum Peak Treatable Flow duration and that highest flow shall be determined to be the Maximum Peak Treatable Flow. The Stress Test may consist of both field monitoring of the WWTP under stressed conditions and modeling of the WWTP's performance under stressed conditions. Defendants shall carry out an adequately detailed evaluation of WWTP hydraulics to identify each treatment unit's hydraulic capacity and limitations, and to identify "bottlenecks" that if eliminated would allow the use of existing "un-tapped" treatment capacity.

c. Within 120 Days of the Effective Date, Defendants shall prepare and submit a report ("Stress Test Report") to Plaintiffs for Plaintiffs' review and approval pursuant to Section XIX (Plaintiffs' Approval of Plans and Other Submissions). The Stress Test Report shall: (1) describe the performed testing and evaluations, identifying the duration (in hours) that GSD has determined is appropriate for the Maximum Peak Treatable Flow; (2) identify any instances in which the evaluations and testing deviated from the July 15, 2013 work plan developed by Defendants; (3) identify the hydraulic conveyance capacity and peak and sustained effective treatment capacities of each of the WWTP's treatment unit processes; and (4) identify the Maximum Sustained Treatable Flow and Maximum Peak Treatable Flow for full treatment at the WWTP. The Stress Test Report shall also describe any limitations of the capacity of the WWTP that were identified and address any comments Plaintiffs have shared with Defendants regarding Defendants' July 15, 2013 work plan and all draft interim Stress Test Reports.

d. Upon receiving EPA's approval of the Stress Test Report, Defendants shall revise the CSOOP, incorporating the Maximum Peak Treatable Flow and Maximum Sustained Treatable Flow for full treatment, submit the revised CSOOP for Plaintiffs' approval in accordance with Paragraph 15.b of this Decree, and shall implement the revised CSOOP and operate the POTW in accordance with the revised CSOOP as soon as it is approved by Plaintiffs.

17. Maximization of Flow.

a. Defendants shall maximize treatment and influent pumping at the WWTP and make maximum use of the transport and storage capacity of the Collection System to minimize the number, duration, and volume of CSO Discharges.

b. Defendants shall operate the POTW at the maximum treatable flow during all wet weather flow conditions to reduce the magnitude, frequency, and duration of CSOs.

c. Defendants shall make maximum use of the Collection System storage capacity. Within 180 days of the Effective Date, Defendants shall survey weir heights and compare them to basement elevations to determine the appropriate height to which the weirs can be raised, thereby increasing Collection System storage. Within 90 days of survey completion, and where possible and effective, Defendants shall raise weirs controlling CSO Discharges in order to minimize overflows without causing basement backups. Within one year of the Effective Date, Defendants shall also evaluate and implement measures, as described in Chapter 3 of EPA's Combined Sewer Overflows Nine Minimum Controls Guidance, EPA 832-B-95-003 (May 1995), to maximize the use of the Collection System for storage. Defendants shall report on Defendants' survey activities, any changes in the position of weirs, and the evaluation and implementation of any measures listed in Chapter 3 of the Combined Sewer Overflows Nine Minimum Control Guidance in the next semi-annual report as described in

Paragraph 32. Measures adopted by Defendants to maximize the use of the Collection System for storage shall be incorporated into the CSOOP.

18. Other Operational and Maintenance Requirements. Defendants shall at all times comply with the following terms and conditions regarding operation and maintenance of the facilities at the POTW, except when given written approval by EPA to deviate from such terms and conditions:

a. Defendants shall at all times keep fully open all influent gate valves of the headworks of the WWTP except as provided herein. Defendants may adjust the position of a gate valve from its fully open position in the event of an emergency, during maintenance or the institution or testing of new headworks. If wet weather requires the gate valves to be throttled, the Defendants may throttle the valves following wet weather standard operating procedures identified in the CSOOP.

b. Defendants shall have no primary clarifiers out of service, except pursuant to the requirements in Part II.B of the 2012 NPDES Permit, or pursuant to the corresponding provision(s) of any successor NPDES permit.

c. Defendants shall have no secondary clarifiers out of service, except pursuant to the requirements in Part II.B of the 2012 NPDES Permit, or pursuant to the corresponding provision(s) of any successor NPDES permit.

d. Defendants shall have no sand filter cells out of service, except pursuant to the requirements in Part II.B of the 2012 NPDES Permit, or pursuant to the corresponding provision(s) of any successor NPDES permit.

e. Defendants shall have no influent pumps out of service, except pursuant to the requirements in Part II.B of the 2012 NPDES Permit, or pursuant to the corresponding provision(s) of any successor NPDES permit

f. Defendants shall have no bar screens or grit tanks out of service, except pursuant to the requirements in Part II.B of the 2012 NPDES Permit, or pursuant to the corresponding provision(s) of any successor NPDES permit.

g. Defendants shall not have the trash rack out of service, except pursuant to the requirements in Part II.B of the 2012 NPDES Permit, or pursuant to the corresponding provision(s) of any successor NPDES permit.

h. Defendants shall operate and maintain the WWTP so as to minimize the amount of time any treatment unit is out of service, and to the extent possible, avoid having more than one type of treatment unit out of service at any one time. Defendants shall to the degree possible schedule necessary maintenance activities so as to avoid having more than one of any of the units or equipment listed above out of service at a time, and shall order replacement parts and carry out the necessary maintenance activities so as to minimize the duration of each such service outage.

19. Long-Term Control Plan Development. Defendants shall develop a long-term control plan (“LTCP”) to control discharges from the CSO Outfalls in accordance with Section IV of Attachment A to the 2012 NPDES Permit, the CSO Control Policy, all applicable provisions of the CWA and Indiana State law, and with the requirements in Appendix 3 of this Consent Decree and the LTCP Development Schedule set forth in Attachment 1 to Appendix 3.

20. Public and Regulatory Agency Participation Plan. No later than 60 Days after the Effective Date, Defendants shall submit to Plaintiffs for Plaintiffs’ approval pursuant to Section

XIX (Plaintiffs' Approval of Plans and Other Submissions) a revised plan for public and regulatory agency participation ("Participation Plan") ensuring that there will be ample opportunities for meaningful public involvement in the decision-making to select long-term CSO Control Measures and ample participation by the Plaintiffs, throughout all stages of Defendants' development of the LTCP. At a minimum, the Participation Plan shall include the following:

a. A description of the measures that the Defendants will take to make the information they develop in the course of the LTCP development process available to the public for review, and the steps that the Defendants will take to solicit public opinion on Defendants' development of the LTCP;

b. An updated schedule for holding public hearings at all relevant times during the LTCP development process in order to provide the public with the developed information and to solicit input from the public regarding the components of the LTCP;

c. A description of the manner in which the Defendants will solicit public opinion and the manner in which the information provided by the public will be incorporated into the LTCP development; and

d. A description of the measures that the Defendants will take to ensure that the Plaintiffs are kept informed of the Defendants' progress in developing the LTCP. These measures shall include scheduling quarterly meetings with EPA and IDEM during the planning process, unless EPA and IDEM determine that a meeting is not necessary.

21. Long-Term Control Plan Submission and Implementation.

a. Defendants shall submit to the Plaintiffs pursuant to Section XVIII (Notices and Submissions) of this Consent Decree and in accordance with the LTCP Development Schedule set forth in Attachment 1 to Appendix 3 of this Decree the Final CSO

Characterization Report that was developed in accordance with Section I of Appendix 3 and the CSO Guidance. Plaintiffs will review and approve the Defendants' submitted Final CSO Characterization Report according to Section XIX (Plaintiffs' Approval of Plans and Other Submissions) of this Consent Decree.

b. Defendants shall submit to the Plaintiffs pursuant to Section XVIII (Notices and Submissions) of this Consent Decree for Plaintiffs' review and comment the following deliverables in accordance with the LTCP Development Schedule set forth in Attachment 1 to Appendix 3 of this Decree: (1) Technology/Alternatives Screening developed in accordance with Section III of Appendix 3; (2) Alternatives Analysis and Recommended Plan Evaluation, that includes the Cost/Performance Analysis, and is developed in accordance with Sections III and IV of Appendix 3 and the CSO Guidance; and (3) Financial Capability Analysis ("FCA") developed in accordance with Section V of Appendix 3.

c. The Defendants shall submit to the Plaintiffs the LTCP that was developed in accordance with Appendix 3 of this Decree and the CSO Guidance, pursuant to Section XVIII (Notices and Submissions) of this Consent Decree and in accordance with the LTCP Development Schedule set forth in Attachment 1 to Appendix 3 of this Decree. The LTCP shall include, at a minimum, the following: (1) description of the required LTCP development steps taken by the Defendants pursuant to Appendix 3 of this Decree; (2) recommended CSO Control Measure alternative, or combination of alternatives ("Recommended Plan"); and (3) plan for post construction compliance monitoring ("PCCM Plan") developed according to requirements set forth in Section VII of Appendix 3 and in EPA's CSO Post Construction Compliance Monitoring Guidance (EPA 833-K-11-001).

i. The Defendants shall include, at a minimum, the following in describing the development of the LTCP pursuant to Appendix 3 of the Decree: (A) details of the Defendants' utilization of CSO Characterization as set forth in Section I of Appendix 3, and other monitoring and modeling information, in developing the LTCP; (B) description of the Defendants' implementation of the Participation Plan set forth in Section II of Appendix 3 and developed pursuant to Paragraph 20 of this Decree during the LTCP development process, including but not limited to, the results of the Participation Plan, public notices disseminated to solicit public participation, summary of public meetings held, and other opportunities provided for public involvement; (C) details of the Defendants' alternatives analysis completed pursuant to Section III of Appendix 3, including cost/performance analysis completed pursuant to Section IV of Appendix 3; (D) description of the Defendants' selection of the CSO Control Measure alternatives, or combination of alternatives, pursuant to the requirements set forth in Section VI.A of Appendix 3; (E) description of Defendants' FCA completed pursuant to Section V of Appendix 3, the results of the FCA, and the use of the FCA to develop the Implementation Schedule pursuant to Section VI.C of Appendix 3.

ii. The Recommended Plan shall include, at a minimum, the following: (A) the selected CSO Control Measure Alternative, or combination of alternatives, as described in Section VI.A of Appendix 3 of the Decree; (B) a table that identifies design criteria and performance criteria for all CSO Control Measure alternatives as described in Section VI.B of Appendix 3 and based on the example table set forth in Attachment 2 to Appendix 3 ("CSO Control Measures, Design Criteria, Performance Criteria and Critical Milestones"); and (C) a schedule for the design, construction, and implementation of all selected CSO Control Measures alternatives ("Implementation Schedule"), as described in Section VI.C of Appendix 3.

d. Plaintiffs will review the Defendants' submitted LTCP and approve the Recommended Plan and the PCCM Plan according to Section XIX (Plaintiffs' Approval of Plans and Other Submissions) of this Consent Decree.

e. Following the Plaintiffs' approval of the Recommended Plan required pursuant to Paragraph 21.d, the approved Recommended Plan shall be incorporated into and made an enforceable part of this Consent Decree. Defendants shall implement the improvements and other measures in the approved Recommended Plan following the Implementation Schedule included in the approved Recommended Plan and developed pursuant to Section VI.C of Appendix 3.

22. Completion of Post Construction Compliance Monitoring. No later than two years following completion of construction and implementation of the CSO Control Measure alternative, or combination of alternatives, set forth in the approved Recommended Plan, the Defendants shall complete post construction compliance monitoring ("PCCM"), in accordance with the approved PCCM Plan, to verify and ascertain the effectiveness of the constructed and implemented CSO Control Measures to meet performance criteria and water quality standards. Defendants shall submit to Plaintiffs for Plaintiffs' approval reports documenting PCCM activities pursuant to Section VII of Appendix 3 of this Consent Decree and in accordance with the LTCP Development Schedule set forth in Attachment 1 to Appendix 3.

**IX. RALSTON STREET LAGOON AND GRAND CALUMET RIVER
REMEDATION REQUIREMENTS**

23. Remediation of the Ralston Street Lagoon under RSL Final Decision.

a. Defendants' obligations with respect to the RSL Final Decision are incorporated into and enforceable under this Decree. For up to two years following the Effective Date, any amendments or modifications to the RSL Final Decision made pursuant to Section

XXIII (Modifications) shall be incorporated into this Decree contemporaneous to such amendments or modifications becoming final, without a motion to this Court to modify this Decree. Any amendments or modification to the RSL Final Decision proposed more than two years after the Effective Date shall be subject to the Court's approval.

b. No later than 60 Days after the Effective Date, Defendants shall submit to EPA, in accordance with Section XIX (Plaintiffs' Approval of Plans and Other Submissions) of this Decree, a proposed schedule for completion of the remediation of the Ralston Street Lagoon in accordance with the RSL Final Decision.

c. The proposed schedule shall include, without limitations, dates for:

i. Application for all necessary permits no later than three months prior to the construction start-up. Defendants shall require their contractors to acquire appropriate permits before construction.

ii. Submission of a detailed design for sludge remediation and capping.

iii. Initiation of construction of the final remedy.

iv. Completion of sludge remediation.

v. Completion of capping and remaining project activities.

24. Remediation Account Funds. Defendants shall continue to maintain the Remediation Account as a separate, interest bearing account designated for the remediation of the sediment of the Grand Calumet River. Funds in the Remediation Account may not be used for investigation or study. Any use of the Remediation Account funds is subject to advance approval by Plaintiffs in writing. Funds used from the Remediation Account may be used as part

of the local share of a larger Grand Calumet River sediment remediation project as provided in Paragraph 25.

25. Grand Calumet River Sediment Remediation. Defendants shall remediate Grand Calumet River sediment in that portion of the Grand Calumet River between the downstream terminus of the U.S. Steel remediation project (upstream of the GSD WWTP final effluent outfalls 001A and 001B) to Cline Avenue. Defendants may enter into a partnership as part of a larger Grand Calumet River sediment remediation project, provided that project is within the reach identified above in the East Branch of the Grand Calumet River. Entry into a partnership as part of a larger Grand Calumet River project does not alter Defendants' obligations to complete sediment remediation in accordance with the schedules set forth in Paragraphs 26-29.

26. Within 18 months of the Effective Date, Defendants shall provide design plans and specifications for removal of sediment from the Grand Calumet River to Plaintiffs in accordance with Section XIX (Plaintiffs' Approval of Plans and Other Submissions). The design plans and specifications shall include the identification of the potential dredging methods, sediment dewatering methods, supernatant and/or sediment treatment options, sediment disposal methods, and a health and safety plan. The design plans and specifications shall also include a list of, and an estimated schedule for, obtaining all necessary federal, state and local permits required for sediment remediation.

27. Within 90 days after receiving the Plaintiffs' approval of the proposed design plans submitted under the preceding Paragraph, Defendants shall submit to Plaintiffs a final design plan that incorporates any modifications that were requested by Plaintiffs.

28. Within 180 days after receiving the Plaintiffs' approval of the final design plan, Defendants shall obtain all required federal, state and local permits to implement the river sediment remediation and initiate construction of the Grand Calumet River remediation.

29. Defendants shall complete the Grand Calumet River sediment remediation within five years of the Effective Date.

30. Defendants shall report on their progress on the Grand Calumet River sediment remediation project, including the remaining amount in the Remediation Account as of the date of each report, in the reports required by Paragraph 35 (Reports Related to the Remediation of the Ralston Street Lagoon and Grand Calumet River Sediment Remediation).

X. SUPPLEMENTAL ENVIRONMENTAL PROJECT

31. Defendants shall complete the supplemental environmental project ("SEP") in accordance with this Section and all provisions of Appendix 5.

a. Commencing with the first semi-annual Report due pursuant to Section XI (Reporting and Certification Requirements) of the Consent Decree, and continuing until completion of the SEP, Defendants shall include in each Semi-Annual Report information describing the progress of the SEP and the amounts expended on the SEP to date.

b. Defendants certify as follows:

i. That all cost information provided to Plaintiffs in connection with the Plaintiffs' approval of the SEP is complete and accurate and that Defendants in good faith estimate that the cost to implement the SEP is \$175,000.

ii. That, as of the date of executing this Decree, Defendants are not required to perform or develop the SEP by any federal, state, or local law or regulation and are

not required to perform or develop the SEP by agreement, grant, or as injunctive relief awarded in any other action in any forum.

iii. That the SEP is not a project that Defendants were planning or intending to construct, perform, or implement other than in settlement of the claims resolved in this Decree.

iv. That Defendants have not received and will not receive credit for the SEP in any other enforcement action.

v. That Defendants will not receive reimbursement for any portion of the SEP from another person or entity.

vi. That Defendants represent that as governmental entities they do not pay federal or state taxes.

vii. That Defendants are not a party to any open federal financial assistance transaction that is funding or could be used to fund the same activity as the SEP.

viii. That, to the best of Defendants' knowledge and belief after reasonable inquiry, there is no open federal financial transaction that is funding or could be used to fund the same activity as the SEP, nor has the same activity been described in an unsuccessful federal financial assistance transaction proposal submitted to EPA within two years of the date that Defendants are signing this Consent Decree (unless the project was barred from funding as statutorily ineligible). For purposes of this certification, the term "open federal financial assistance transaction" refers to a grant, cooperative agreement, loan, federally-guaranteed loan guarantee or other mechanism for providing federal financial assistance whose performance period has not expired.

c. Defendants shall submit to the Plaintiffs in accordance with Section XVIII (Notices and Submissions) a final SEP Completion Report no later than 30 Days from the SEP's completion. The SEP Completion Report must be certified by an appropriate municipal official and shall contain, at a minimum:

- i. A detailed description of the SEP as implemented;
- ii. A description of any problem encountered in completing the SEP and solutions thereto;
- iii. An itemized list of all SEP costs expended, and documentation of all expenditures;
- iv. Evidence of the SEP completion (which may include, but is not limited to, photos, vendor invoices or receipts, correspondence etc.);
- v. To the extent possible, documentation supporting the quantification of benefits associated with the SEP and an explanation of how such benefits were measured or estimated.
- vi. A description of any community input that the Defendants may have sought and received, or may seek and receive, during the development, execution and/or completion of the SEP.
- vii. A certificate stating:

I certify that the project has been fully implemented pursuant to the provisions of the consent decree entered in *United States et al. v. City of Gary et al.* (N.D. Ind.), that I am familiar with the information in this document, and that, based on my inquiry of those individuals responsible for obtaining the information, it is true and complete to the best of my knowledge. I know that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations.

- d. Following receipt of the SEP Completion Report described in the preceding Paragraph, Plaintiffs will notify Defendants in writing that:
- i. Defendants have satisfactorily completed the SEP and the SEP Completion Report; or
 - ii. Defendants have not satisfactorily completed the SEP and/or SEP Completion Report and Plaintiffs will seek stipulated penalties under Paragraph 60.
- e. Any public statement, oral or written in print, film, or other media, made by Defendants making reference to the SEP under this Decree from the date of its execution shall include the following language: “This project was undertaken in connection with the settlement of an enforcement action United States et al. v. City of Gary et al., taken on behalf of U.S. EPA and State of Indiana, to enforce federal and state laws.”

XI. REPORTING AND CERTIFICATION REQUIREMENTS

32. Semi-Annual Reports. By no later than August 31 and March 1 of each calendar year, Defendants shall file with the Court, publish on Gary Sanitary District’s web site, and provide reports to the Plaintiffs as designated in Section XVIII (Notices and Submissions) describing the progress of the Defendants’ compliance with all terms and provisions of this Consent Decree, identifying each term and provision by the appropriate Section and Paragraph. The August 31 report shall cover the prior six-month period concluding on June 30, and the March 1 report shall cover the prior six-month period concluding on December 31. Semi-annual reports described in this Section are separate from and in addition to any other reporting requirements established in this Decree, the 2012 NPDES Permit and any successor NPDES permit. At a minimum, Defendants shall include in each semi-annual report the following information:

a. All obligations, including but not limited to: (1) any performance deadlines established by this Decree that were due to be achieved during the six-month time period covered by the semi-annual report; (2) any performance deadlines, established by this Decree that were due to be achieved during any earlier period and were not achieved at that time; (3) a statement regarding whether those obligations were achieved by the required dates; and (4) an identification of persons with knowledge of the status of compliance with the obligations;

b. If Defendants did not fulfill or meet a required obligation that was due to be achieved during the six-month time period covered by the report or during any other prior reporting period, the Defendants shall describe in detail: (1) reasons why the deadline was not met; (2) all steps taken by the Defendants to fulfill or meet the required deadline or the obligation; and (3) an identification of persons with knowledge of the reasons for the delay;

c. Description of all work completed pursuant to the provisions of this Decree within the six-month time period covered by the semi-annual report and a projection of work to be performed pursuant to this Decree during the next six-month period; and

d. Description of all equipment or facilities used or installed at the WWTP or any portion of the Collection System that had been out of service during the six months covered by the report, including the date the equipment or facilities were first out of service and the date when it returned to service or will be returned to service, as appropriate, including the repair/replacement costs. This includes equipment such as vacuum trucks and street sweepers.

33. If at any time the Defendants have violated, or have reason to believe that they may have violated, any requirement of this Consent Decree, the Defendants shall notify the United States and Indiana of such violation and its likely duration in writing within 10 working days of the day on which the Defendants first become aware of such violation or potential

violation. The notice required under this Paragraph shall include an explanation of the violation's likely cause and any planned or taken remedial steps to prevent or minimize such violation. If the cause of the violation cannot be fully explained at the time the report is due, the Defendants shall include a statement to that effect in the report. The Defendants shall investigate to determine the cause of the violation and then shall submit an amendment to the report, including a full explanation of the cause of the violation, within 30 days of the day the Defendants become aware of the cause of the violation. Nothing in this Paragraph relieves the Defendants of their obligation to provide the requisite notice for purposes of Section XV (Force Majeure).

34. Submissions of Reports Required by NPDES Permits. Defendants shall submit to EPA the following reports that are generated pursuant to the requirements of the 2012 NPDES Permit, or pursuant to the corresponding provision(s) of any successor NPDES permit: (a) Monthly Reports of Operation ("MROs"), Discharge Monitoring Reports ("DMRs") and CSO MROs that are required under Section I.B.3 of the 2012 NPDES Permit; and (b) any notices or reports submitted pursuant to Section II.B.2.d and II.C.3 of the 2012 NPDES Permit. All reports shall be submitted to EPA in the format required by IDEM, at the same time they are submitted to IDEM, and shall contain analyses of samples and other information in accordance with the requirements of the 2012 NPDES Permit and any successor NPDES permit. Any reports that the Defendants submit to IDEM via an electronic portal (*e.g.*, eDMR) shall be submitted by the Defendants to EPA in a text-searchable portable document format (PDF) contained on a portable electronic media (*e.g.*, a compact disc, a digital video disc, a jump drive, or other appropriate device).

35. Reports Related to the Remediation of the Ralston Street Lagoon and Grand Calumet River Sediment Remediation. By no later than the 10th day of the first month of each calendar quarter, Defendants shall file with the Court, publish on Gary Sanitary District's web site, and provide to EPA as designated in Section XVIII (Notices and Submissions) reports that shall describe the progress of the Defendants' compliance with the terms and provisions set forth in the RSL Final Decision. Each report shall cover the period of the preceding quarter. Quarterly reports described in this Paragraph are separate from and in addition to any other reporting requirements established in this Decree, the 2012 NPDES Permit and any successor NPDES permit. Each quarterly report shall include the following information: (a) all performance deadlines established by Paragraph 23 of this Decree and the RSL Final Decision that were due to be achieved during the time period covered by the quarterly report; (b) a statement regarding whether those obligations were achieved by the required dates; (c) description of work related to the obligations under Paragraph 23 of this Decree and the RSL Final Decision that was performed by the Defendants during the covered time period; and (d) an identification of persons with knowledge of the status of compliance with the obligations. If Defendants did not fulfill or meet a required obligation that was due to be achieved during the time period covered by the report, the Defendants shall describe in detail reasons why the deadline was not met, all steps taken or planned by the Defendants to fulfill or meet the required deadline or the obligation, and an identification of persons with knowledge of the reasons for the delay. During construction of the remedy, the EPA Project Manager may require, and the Defendants shall submit, reports at an increased frequency.

36. Certificate of Sufficient Funding. On or before January 31 of each calendar year, the Special Administrator, or the President of the Board of Commissioners of GSD if no Special Administrator is appointed at that time, shall do one of the following:

a. either certify that there are sufficient funds to meet all the obligations of this Decree during that calendar year, in addition to meeting all the other obligations and requirements under the applicable provisions of the NPDES permit applicable at that time, CWA and the State law; or

b. certify that such funds are inadequate; specify any increases in user charges, taxes and fees that are needed to provide sufficient funding; and specify the steps that will be taken to ensure sufficient funding in accordance with Paragraph 13 (Consent Decree Funding Requirements) of this Consent Decree.

The Special Administrator, or the President of the Board of Commissioners of GSD if no Special Administrator is appointed at that time, shall provide certificates of sufficient funding to the Plaintiffs, file them with the Court, and publish them on Gary Sanitary District's web site.

37. Failure to submit and/or file a certificate under either Paragraph 36.a or Paragraph 36.b of this Decree shall be deemed a failure to comply with this Decree on each day after January 31 of each calendar year on which the certificate regarding that calendar year is not submitted.

38. Certification Requirement. Each certificate and report required under this Section shall be signed by the appropriate official. The Certificate of Sufficient Funding required by Paragraph 36 (Certificate of Sufficient Funding) shall be signed by the Special Administrator of GSD, or the President of the Board of Commissioners of GSD if no Special Administrator is

appointed at the time such certificate is due. Each report and certificate required under this Section shall include the following certification:

I certify under penalty of law that I have examined and am familiar with the information submitted in this document and all attachments and that this document and its attachments were prepared either by me personally or under my direction or supervision in a manner designed to ensure that qualified and knowledgeable personnel properly gathered and presented the information contained therein. I further certify, based on my personal knowledge or on my inquiry of those individuals immediately responsible for obtaining the information, that the information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing and willful submission of materially false information.

39. The reporting requirements described in this Section do not relieve the Defendants of any other reporting obligations required by this Decree, the 2012 NPDES Permit or any successor NPDES permit, or any other federal, state, or local law, regulation, or permit.

40. The United States and the State may use any information generated by the Defendants and provided to Plaintiffs pursuant to this Consent Decree in any proceeding to enforce the provisions of this Decree, including but not limited to any proceeding pursuant to Section XVI (Dispute Resolution) of this Decree, and as otherwise permitted by law. Defendants shall not object to the admissibility into evidence of any such information in any of the proceedings described in the preceding sentence.

XII. SPECIAL ADMINISTRATOR

41. Objective. The Special Administrator of the Gary Sanitary District shall take steps to bring the POTW into compliance with this Consent Decree, the 2012 NPDES Permit and any successor NPDES permit, the CWA, and any State law provisions promulgated pursuant to the CWA. The appointment of the Special Administrator, the vacancy in that position, or the termination of the position, do not relieve the Defendants of any of their obligations under the

Consent Decree, the 2012 NPDES Permit and any successor NPDES permit, the CWA, and any State law provisions promulgated pursuant to the CWA. The existence of the position of the Special Administrator does not relieve Defendants of any of their obligations under the Decree.

42. Appointment, Termination and Compensation.

a. Appointment. The Mayor of the City of Gary as of the Date of Lodging, the Honorable Karen Freeman-Wilson, shall be appointed as the Special Administrator for a term of one (1) year, and her appointment shall become effective on the Effective Date. Upon the expiration of that one-year term, any subsequent Special Administrator shall be appointed by the order of this Court, following a motion filed by the Plaintiffs, for a term not to exceed one (1) year. Defendants may seek in writing an extension in the appointment of a Special Administrator, or the appointment of a new Special Administrator, at least 60 Days before the expiration of the existing appointment.

b. Compensation. Compensation of the Special Administrator, if any, shall not exceed \$54,000 annually absent a written agreement from the Plaintiffs.

c. Termination. For cause, the position of the Special Administrator is subject to termination at any time by the Plaintiffs. Plaintiffs will notify the Defendants in writing that the position is terminated. Upon the Defendants' receipt of such notification, the Special Administrator shall no longer be entitled to any compensation or have any authorities or responsibilities described in this Decree. Plaintiffs' decision to terminate the position or not appoint the Special Administrator pursuant to this Paragraph shall not be subject to the provisions of Section XVI (Dispute Resolution) of this Decree.

43. Authorities and Responsibilities.

a. Solely in order to achieve compliance with this Decree, the applicable NPDES permit, the CWA, or any State law promulgated pursuant to the CWA, the Special Administrator shall have full power and authority to control, manage and operate the POTW, and any departments, boards or divisions of the City of Gary or GSD that affect the POTW or the Defendants' compliance with this Consent Decree, the applicable NPDES permit, the CWA, or State law promulgated pursuant to the CWA.

b. The Special Administrator may apply to the Court for an order seeking any appropriate relief necessary to assure the Defendants' compliance with this Decree, the applicable NPDES permit, the CWA, or any State law promulgated pursuant to the CWA. Such an application to the Court shall include: (1) the Decree provision at issue; (2) the nature of the events impeding or frustrating compliance with those provisions; (3) the steps taken by the Administrator to cure these difficulties; and (4) the Special Administrator's recommendation as to the form and substance of the Court order needed to achieve compliance with this Decree, the applicable NPDES permit, the CWA, or any State law promulgated pursuant to the CWA. In addition to filing such an application with the Court, the Special Administrator shall serve the application on the Plaintiffs, and the Plaintiffs may submit to the Court any response or objection to the application within 21 Days, unless the Court instructs otherwise.

c. The Special Administrator shall be vested with the power and authority as provided under Fed. Rule of Civ. P. 70 to perform any act to achieve expeditious compliance with the Decree, the applicable NPDES permit, the CWA, or any State law promulgated pursuant to the CWA.

d. Solely in order to achieve compliance with this Decree, the applicable NPDES permit, the CWA, or any State law promulgated pursuant to the CWA, the Special Administrator shall manage and control all items, assets, properties and articles related to the POTW, including but not limited to: (1) the payment of the POTW's debts; (2) the collection of receivables; (3) entering into and performance of all contractual obligations of the POTW; (4) the supervision of all employees of the POTW, including their hiring or dismissal; (5) the hiring of consultants, contractors, engineering firms or counsel; and (6) securing of necessary funds. All powers delegated to the Special Administrator are subject to the established rights of existing bondholders as set forth in the Bond Ordinances of the City of Gary and/or the Gary Sanitary District, and/or bonds issued pursuant to them.

e. The members of the GSD Board of Commissioners, City Council of the City of Gary, Gary Stormwater Management District Board of Directors, and any and all other boards, departments, agents, servants and employees of the City of Gary shall comply with any and all orders, directives or requests that are issued by the Special Administrator in order to achieve compliance of the POTW with this Consent Decree, the applicable NPDES permit, the CWA, and any State law promulgated pursuant to the CWA.

f. The Special Administrator shall have the full power and authority to raise the user charge (or any other fee or tax otherwise available to the City or GSD) if he/she determines, after considering all funds actually available to the Defendants for use at the complete wastewater treatment system, that the existing user charge is inadequate to comply fully with the obligations in this Decree. The Special Administrator is required to exercise such power and authority in accordance with Section XII of this Decree.

g. The Special Administrator may appoint, subject to the Plaintiffs' written agreement, a Technical Monitor(s) to assist the Special Administrator in overseeing or carrying any of the Defendants' obligations under this Decree, the applicable NPDES permit, the CWA, or any State law promulgated pursuant to the CWA.

h. The Special Administrator may appoint, subject to the Plaintiffs' written agreement, an independent contractor to operate the POTW, in accordance with Paragraph 14 of this Decree.

i. In addition to and consistent with Paragraph 13.e of this Decree, the Special Administrator shall not use his/her powers and authorities to extend any loans or grants by GSD from the funds that are available to it to the City or any other subdivision of the City. This includes but is not limited to the funds that GSD collects through levying of taxes, collection of user charges and/or issuance of municipal bonds.

j. On or before the last day of each month, the Special Administrator shall submit to the Plaintiffs the previous month's GSD Board of Directors' meeting agenda and minutes. The Plaintiffs reserve the right to terminate this requirement, but will only do so in writing.

44. The Superintendent of the WWTP shall submit reports to the Special Administrator on a semi-annual basis describing all work undertaken by the Defendants to achieve compliance with this Decree, the applicable NPDES permit, the CWA, or any State law promulgated pursuant to the CWA. Each report shall contain sufficient information to allow the Special Administrator to determine whether the Defendants are in compliance with the requirements listed in the preceding sentence. The reports shall be due on January 15 and July 15 of each calendar year. The report due on January 15 of each calendar year will cover the

period from July 1 to December 31 of the preceding year. The report due on July 15 of each calendar year will cover the period from January 1 to June 30 of that year. The information received by the Special Administrator from the Superintendent of the WWTP will form the basis, among other things, for the semi-annual compliance reports described in Paragraph 32 of this Decree.

XIII. CIVIL PENALTY

45. Within 30 Days after the Effective Date, Defendants shall pay a total of \$75,000 as a civil penalty, together with the interest accruing from the Effective Date at the rate specified in 28 U.S.C. § 1961, to be allocated between the United States and the State as set forth in Paragraphs 46 and 47.

46. Civil Penalties Payable to the United States: Within 30 Days of the Effective Date, Defendants shall pay \$68,000 of the civil penalty, plus the interest accrued on that amount, to the U.S. Department of Justice account, in accordance with instructions provided to the Defendants by the Financial Litigation Unit (“FLU”) of the United States Attorney’s Office for the Northern District of Indiana after the Effective Date. The payment instructions provided by the FLU will include a Consolidated Debt Collection System (“CDCS”) number, which Defendants shall use to identify all payments required to be made in accordance with this Consent Decree. The FLU will provide the payment instructions to:

Frederic Andes
Barnes & Thornburg LLP
One North Wacker Dr.
Suite 4400
Chicago, IL 60606-2833
(312) 214-8310
fandes@btlaw.com

47. Civil Penalties Payable to the State. Within 30 Days after the Effective Date, Defendants shall pay \$7,000 of the civil penalty to the State of Indiana, plus interest accrued on that amount at the rate established pursuant to IND. CODE § 24-4.6-1-101 from the Effective Date to the date of payment of the penalty. Payment shall be made by a check made payable to “Indiana Department of Environmental Management Special Fund,” delivered to:

Cashier
Indiana Department of Environmental Management
100 N. Senate Ave
MC 50-10C
Indianapolis, IN 46207-7060

48. At the time of payment, Defendants shall send notice that payments have been made to: (i) EPA via email at cinwd_acctsreceivable@epa.gov or via regular mail at EPA Cincinnati Finance Office, 26 W. Martin Luther King Drive, Cincinnati, Ohio 45268; and (ii) the United States via email or regular mail in accordance with Section XVIII (Notices and Submissions). Such notice shall state that the payment is for the civil penalty owed pursuant to the Consent Decree in *United States of America and the State of Indiana v. The City of Gary, Indiana, and Gary Sanitary District* and shall reference the civil action number, CDCS number and DOJ case number 90-5-1-1-2601/2.

49. If Defendants fail to tender the payments required in this Section, interest shall continue to accrue in accordance with the provisions of 31 U.S.C. § 3717.

XIV. STIPULATED PENALTIES

50. The Defendants shall be liable for stipulated penalties to the Plaintiffs in the amounts set forth in this Section for failure to comply with the requirements of this Consent Decree as specified below, unless excused under Section XV (Force Majeure). “Compliance” by the Defendants shall include performance of all obligations required under this Decree and/or its

Appendices, including the performance of all work pursuant to any plans or other documents approved by Plaintiffs pursuant to this Consent Decree and within the specified time schedules established by and approved under this Consent Decree.

51. Payment of Civil Penalty. Defendants shall pay \$1,000 per Day for each Day on which the civil penalty to either the United States or to the State of Indiana is not made by the due dates listed in Section XIII.

52. Bypassing of Treatment Facilities. Defendants shall pay \$500 per Day per bypass, as defined by 40 C.F.R. § 122.41(m), per each treatment unit, when the bypass is prohibited under Part II.B of the 2012 NPDES Permit or any applicable provision of a successor NPDES permit that prohibits bypassing.

53. Dry Weather Discharges. Defendants shall pay the following stipulated amounts for each Day on which a dry weather discharge occurs. One or more dry weather discharges on a single Day shall be considered as separate violations for the purposes of this Paragraph.

<u>Period of Noncompliance</u>	<u>Stipulated Penalty</u>
1st to 3rd Day of a dry weather discharge	\$ 500 per Day per violation
4th to 10th Day of dry weather discharge	\$ 750 per Day per violation
After 10 Days of dry weather discharge	\$ 1,250 per Day per violation

54. Final Effluent Limits. For each violation of the requirement under Paragraph 12 of this Decree to comply with all daily, weekly, or monthly effluent limits on parameters set forth in Part I.A.1 of the 2012 NPDES Permit, or any corresponding provision(s) establishing final effluent limits under any successor NPDES permit, Defendants shall pay a stipulated penalty as follows:

\$500 for each violation of each daily limit;

\$1,000 for each violation of each weekly or seven-day limit;

\$3,000 for each violation of each monthly or 30-day limit.

55. Ralston Street Lagoon and Grand Calumet River Remediation Requirements. For failure to comply with the requirements set forth in Section IX of this Consent Decree, including any requirements to meet any deadline set forth in that Section or any documents developed pursuant to the requirements of that Section, the Defendants shall pay a stipulated penalty as follows:

<u>Period of Noncompliance</u>	<u>Stipulated Penalty</u>
1st to 30th Day of Violation	\$1,000 per Day per violation
31st to 90th Day of Violation	\$2,000 per Day per violation
After 90 Days of Violation	\$3,000 per Day per violation

56. CSOOP. Defendants shall pay the stipulated amount of \$250 per Day for each Day on which they fail to do one or more of the following: (a) submit the revised CSOOP by the time period provided in Paragraph 15.a of the Decree; (b) submit annual modifications and/or revisions of the CSOOP as required by Paragraph 15.b of the Decree; (c) implement the provisions of the revised CSOOP and any modifications/revisions or updates, as required by Paragraph 15.d of this Decree.

57. Maximizing Flow. Defendants shall pay the stipulated amount of \$100 per Day per CSO Discharge per CSO Outfall when, at the time of such CSO Discharge, the Defendants fail to maximize flow in accordance with Paragraph 17 of this Decree.

58. Public and Regulatory Agency Participation Plan. Defendants shall pay the stipulated amount of \$500 per Day for failure to submit the Public and Regulatory Agency Participation Plan in accordance with Paragraph 20.

59. Long-Term Control Plan Submission and Implementation. Defendants shall pay the following stipulated penalty for each Day on which they fail to submit any deliverables and perform any actions by the deadlines established in the LTCP Development Schedule and the Implementation Schedule, as required by Paragraph 21.

<u>Period of Noncompliance</u>	<u>Stipulated Penalty</u>
1st to 14th Day of violation	\$1,000 per Day per violation
14th through 60th Day of violation	\$2,000 per Day per violation
After 60 Days of violation	\$4,000 per Day per violation

60. Stipulated Penalties for Failure to Implement SEP. If Defendants violate any requirement outlined in Section X, Defendants must pay stipulated penalties as follows, in addition to any stipulated penalties set forth in Section XIV (Stipulated Penalties):

a. If Defendants do not complete the SEP according to the requirements of Section X and Appendix 5, Defendants must pay a penalty amounting to \$175,000.

b. If Defendants complete the SEP satisfactorily, but spend less than \$175,000, Defendants must pay a penalty amounting to the difference between \$175,000 and the amount actually spent.

c. If Defendants do not meet one or more of the deadlines set forth in Appendix 5, Defendants shall pay penalties in the following amounts for each Day after the deadline:

<u>Penalty per Violation per Day</u>	<u>Period of Violation</u>
\$200	1st through 14th Day
\$500	15th through 30th Day
\$1,000	31st Day and beyond

d. If Defendants do not submit the SEP Completion Report required by Paragraph 31.c above in a timely manner, Defendants must pay penalties in the following amounts for each Day after the report was due until Defendants submit the report:

<u>Penalty per Violation per Day</u>	<u>Period of Violation</u>
\$100	1st through 14th Day
\$250	15th through 30th Day
\$500	31st Day and beyond

61. Noncompliance with Reporting, Notice and Submission Requirements.

Defendants shall pay the following stipulated penalty for each Day on which they fail to submit to the Plaintiffs by the specified deadlines any work plan, report, or any other submission under this Decree not otherwise specified and addressed in this Section. The submissions to which this requirement applies include, but are not limited to: submissions under Section XI (Reporting and Certification Requirements) and Section XVIII (Notices and Submissions) of this Decree.

<u>Period of Noncompliance</u>	<u>Stipulated Penalty</u>
1st to 30th Day of violation	\$100 per Day per violation
31st to 60th Day of violation	\$200 per Day per violation
After 60 Days of violation	\$500 per Day per violation

62. Inadequate Funding: Defendants shall pay a stipulated penalty of \$1,000 per day for each Day on which non-compliance with any portion of this Decree is caused by insufficient funding.

63. Certification of Sufficient Funding: Defendants shall pay a stipulated penalty of \$250 per Day for each Day on which the Special Administrator or the President of the Board of Commissioners of GSD fails to meet the deadline for the required written certification as to

whether sufficient funds are available to the Defendants in accordance with Paragraph 36 of this Decree.

64. Increase of User Charge and Other Fees, Taxes or Charges: Defendants shall pay a stipulated penalty of \$1,000 per Day whenever the Special Administrator or the President of the Board of Commissioners of GSD: (a) certifies pursuant to Paragraph 36 of this Decree that GSD does not have adequate funds available to comply with this Decree, in addition to other regulatory requirements specified in that Paragraph; and (b) 120 Days elapse after such determination without the Defendants completing the process of increasing the user charge or any other fee, tax or charge to supply adequate funds as required by Paragraph 13 and certifying that the Defendants will thus have adequate funds available to comply with the Decree and the CWA. The stipulated penalty under this Paragraph shall start accruing on the Day on which the 120-Day period specified herein elapses.

65. Other Violations: Defendants shall pay the stipulated penalty of \$500 per Day for any other noncompliance with any other requirement of the Decree that is not specified in this Section.

66. All stipulated penalties shall begin to accrue on the Day after the performance is due or on the day a violation occurs, whichever is applicable, and shall continue to accrue through the final day of the correction of noncompliance or until the violation ceases. Nothing herein shall prevent the simultaneous accrual of separate penalties outlined in this Section for separate violations of this Consent Decree.

67. Defendants shall pay any stipulated penalty within 30 Days of receiving a written demand by either Plaintiff. However, penalties shall accrue as provided in the preceding Paragraph regardless of whether the Plaintiffs have notified the Defendants of a violation. Either

the United States, or the State, or both, may elect to demand stipulated penalties under this Section. However, the United States and the State shall consult with each other before making any demand. Where both Plaintiffs demand stipulated penalties, any such penalties determined to be owing shall be paid 50 percent to the United States and 50 percent to the State. Where only one Plaintiff demands stipulated penalties, the entire amount of stipulated penalties determined to be owing shall be payable to that Plaintiff. The Plaintiff making a demand for payment of a stipulated penalty shall simultaneously send a copy of the demand to the other Plaintiff. In no case shall the determination by one Plaintiff not to seek stipulated penalties preclude the other Plaintiff from seeking stipulated penalties in accordance with this Decree. A decision by the United States or the State to waive, in whole or in part, penalties otherwise due under this Section shall not be subject to judicial review.

68. Penalty Accrual During Dispute Resolution. Stipulated penalties shall continue to accrue during any dispute resolution as described in Section XVI (Dispute Resolution), with interest on accrued penalties payable and calculated at the rate established by the Secretary of the Treasury, pursuant to 28 U.S.C. § 1961 (for penalties payable to the United States) and at the rate established pursuant to IND. CODE § 24-4.6-1-101 (for penalties payable to the State), but need not be paid until the following:

a. If the dispute is resolved by agreement or by a decision of a Plaintiff that is not appealed to this Court, accrued penalties determined to be owing shall be paid within 30 Days of the agreement or the receipt of the decision or order;

b. If the dispute is appealed to this Court and the United States and/or Indiana substantially prevail, Defendants shall, within 60 Days of receipt of the District Court's

decision or order, pay all accrued penalties determined by the Court to be owing, together with accrued interest, except as provided in Paragraph 68.c, below;

c. If the District Court's decision is appealed by any Party, the Defendants shall, within 15 days of receipt of the final appellate order in which Plaintiffs substantially prevail, pay all accrued penalties determined to be owing to the Plaintiffs, together with accrued interest.

69. If the Defendants fail to pay stipulated penalties when due, Defendants shall pay Interest on the unpaid stipulated penalties as follows: (1) if the Defendants have timely invoked dispute resolution such that the obligation to pay stipulated penalties has been stayed pending the outcome of dispute resolution, Interest shall accrue from the date stipulated penalties are due pursuant to Paragraph 68 until the date of payment; and (2) if the Defendants fail to timely invoke dispute resolution, Interest shall accrue from the date of demand under Paragraph 67 until the date of payment. If the Defendants fail to pay stipulated penalties and Interest when due, the Plaintiffs may institute proceedings to collect the penalties and Interest.

70. Payment of Stipulated Penalties to the United States.

a. Payment. Stipulated penalties payable to the United States shall be paid in accordance with instructions set forth in Paragraphs 46 and 48, except that the transmittal letter shall state that the payment is for stipulated penalties and shall state for which violation(s) the penalties are being paid.

b. Late Payment. If Defendants fail to pay stipulated penalties and accrued interest payable to the United States in accordance with the terms of this Decree, Defendants shall be liable for Interest as provided in Paragraph 69, accruing as of the date payment became

due, together with the costs (including attorneys' fees) incurred in any action necessary to collect any such stipulated penalties, interest, or late payment costs or fees.

71. Payment of Stipulated Penalties to the State

a. Payment. Stipulated penalties payable to the State shall be paid by certified or cashier's check in the amount due, payable to the "Indiana Department of Environmental Management Special Fund," and delivered to:

Indiana Department of Environmental Management
Cashier's Office – Mail Code 50-10C
100 N. Senate Avenue
Indianapolis, IN 46204-2251

b. Late Payment. Should Defendants fail to pay stipulated penalties and accrued interest payable to the State in accordance with the terms of this Decree, the State shall be entitled to collect interest and late payment costs and fees, as set forth in Paragraph 70.b. (Payment of Stipulated Penalties to the United States) together with the costs (including attorneys' fees) incurred in any action necessary to collect any such stipulated penalties, interest, or late payment costs or fees.

72. Subject to the provisions of Section XX of this Decree (Effect of Settlement and Reservation of Rights), the stipulated penalties provided in this Decree shall be in addition to any other rights, remedies, or sanctions available to the United States or the State for Defendants' violation of this Decree, applicable laws or regulations, and applicable permits.

73. The payment of penalties and interest, if any, shall not alter in any way Defendants' obligation to comply with all provisions of this Decree,

74. Notwithstanding any other provision of this Section, the United States or the State may, in its unreviewable discretion, waive any portion of stipulated penalties that have accrued

pursuant to this Consent Decree. A decision by the United States or the State to waive, in whole or in part, penalties otherwise due under this Section shall not be subject to judicial review.

XV. FORCE MAJEURE

75. “Force majeure,” for purposes of this Decree, is defined as any event arising from causes beyond the control of Defendants, their agents, consultants and contractors, or any entity controlled by Defendants that delays or prevents the performance of any obligation under this Decree despite Defendants’ best efforts to fulfill the obligation. The requirement that Defendants 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 such event: (a) as it is occurring; and (b) after it has occurred to prevent or minimize any resulting delay to the greatest extent possible. “Force Majeure” does not include Defendants’ financial inability to perform any obligation under this Consent Decree.

76. When Defendants know or if Defendants should know, by the exercise of reasonable diligence, of an event that might delay completion of any requirement of this Consent Decree, whether or not the event is a Force Majeure event, Defendants shall provide notice to Plaintiffs orally or by electronic or facsimile transmission within five Days after Defendants first knew, or in the exercise of reasonable diligence under the circumstances, should have known of such event. Within 10 Days thereafter, Defendants shall provide in writing to Plaintiffs an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; Defendants’ rationale for attributing such delay to a Force Majeure event if they intend to assert such a claim; and a statement as to whether, in their opinion, such event may cause or contribute to an

endangerment to public health, welfare, or the environment. Defendants shall include with any notice all available documentation supporting the claim that the delay was attributable to a Force Majeure event. Failure to comply with the above requirements shall preclude Defendants from asserting any claim of Force Majeure for that event for the period of time for such failure to comply, and for any additional delay caused by such failure. Defendants shall be deemed to know of any circumstances of which Defendants, any entity controlled by Defendants, or Defendants' contractors knew or should have known.

77. If Plaintiffs agree that the delay or anticipated delay is attributable to a Force Majeure event, the time for performance of the obligations under this Consent Decree that are affected by the Force Majeure event will be extended by Plaintiffs for such time as is necessary to complete those obligations. An extension of the time for performance of the obligations affected by the Force Majeure event shall not, of itself, extend the time for performance of any other obligation. Plaintiffs will notify Defendants in writing of the length of the extension, if any, for performance of the obligations affected by the Force Majeure event.

78. If Plaintiffs do not agree that the delay or anticipated delay has been or will be caused by a Force Majeure event, Plaintiffs will notify Defendants in writing of their decision within 60 Days of receipt of the submission described in Paragraph 76 above.

79. If Defendants elect to invoke the dispute resolution procedures set forth in Section XVI (Dispute Resolution), they shall do so no later than 15 Days after receipt of Plaintiffs' notice. In any such proceeding, Defendants shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a Force Majeure event, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate the

effects of the delay, and that Defendants complied with the requirements of Paragraph 76, above. If Defendants carry this burden, the delay at issue shall be deemed not to be a violation by Defendants of the affected obligation of this Consent Decree identified to Plaintiffs or the Court.

80. Defendants' failure to apply for a required permit or approval, or to provide in a timely manner all information required to obtain a permit or approval, that is necessary to meet the requirements of this Consent Decree shall not, in any event, serve as a basis for excusing violations of or granting extensions of time under this Consent Decree. However, a permitting authority's failure to act in a timely manner on an approvable permit application may serve as a basis for an extension under the Force Majeure provision of this Consent Decree. Defendants shall make a showing of proof regarding the cause of each delayed incremental step or other requirements for which an extension is sought under this Paragraph. Defendants may petition for the extension of more than one compliance date in a single request.

81. Compliance with the terms of this Decree is not conditioned on the receipt of any federal, State or local funds. Applications 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 Defendants shall not be considered Force Majeure nor a cause for extension of any compliance date in this Decree. Changed financial circumstances or unanticipated or increased costs or expenses associated with implementation of this Consent Decree shall not constitute Force Majeure events nor serve as bases for excusing violations of or granting extensions of time under this Consent Decree.

XVI. DISPUTE RESOLUTION

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

under or with respect to this Consent Decree. If a dispute is subject to this Section, Defendants' failure to seek resolution of the dispute under this Section shall preclude Defendants from raising any such issue as a defense to an action by the Plaintiffs to enforce any obligation of Defendants arising under this Decree.

83. Informal Negotiations. Any dispute which arises under or with respect to this Decree shall first be the subject of informal negotiations between the parties to the dispute. The dispute shall be considered to have arisen when Defendants send the Plaintiffs a written Notice of Dispute in accordance with Section XVIII (Notices and Submissions). Such Notice shall state clearly the matter in dispute. The period of informal negotiations shall not exceed 45 Days from the date the dispute arises, unless the Parties agree in writing to extend this period. If the Parties cannot resolve a dispute by informal negotiations, then the position advanced by the Plaintiffs shall be considered binding unless, within 30 Days after the conclusion of the informal negotiation period, Defendants invoke formal dispute resolution procedures as set forth below.

84. Formal Dispute Resolution. Defendants shall invoke formal dispute resolution procedures, within the time period provided in the preceding Paragraph, by serving on the Plaintiffs, in accordance with Section XVIII (Notices and Submissions) of this Decree, a written Statement of Position regarding the matter in dispute. The Statement of Position shall include, but need not be limited to, any factual data, analysis, or opinion supporting Defendants' position and any supporting documentation relied upon by Defendants.

85. The Plaintiffs shall serve their Statement of Position within 45 Days of their receipt of Defendants' Statement of Position. The Plaintiffs' Statement of Position shall include, but need not be limited to, any factual data, analysis, or opinion supporting that position and any supporting documentation relied upon by the Plaintiffs.

86. An administrative record of the dispute shall be maintained by EPA and shall contain all statements of position, including supporting documentation, submitted pursuant to Paragraphs 83-85.

87. The Plaintiffs' Statement of Position shall be binding on Defendants, unless Defendants file a motion for judicial review of the dispute in accordance with the following Paragraph. In the event the Plaintiffs are unable to reach agreement with regard to Defendants' claim, the position of the United States shall be the Plaintiffs' final position.

88. Defendants may seek judicial review of the dispute by filing with the Court and serving on the Plaintiffs, in accordance with Section XVIII of this Decree (Notices and Submissions), a motion requesting judicial resolution of the dispute. The motion must be filed within 30 Days of receipt of the Plaintiffs' Statement of Position pursuant to the preceding Paragraph. The motion shall contain a written statement of Defendants' 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 Decree.

89. The Plaintiffs shall respond to Defendants' motion within the time period allowed by the Local Rules of this Court. Defendants may file a reply memorandum, to the extent permitted by the Local Rules.

90. Standard of Review

a. Disputes Concerning Matters Accorded Record Review. Except as otherwise provided in this Decree, in any dispute brought under Paragraph pertaining to the adequacy or appropriateness of plans, procedures to implement plans, schedules, or any other items requiring approval by the Plaintiffs under this Decree, the adequacy of the performance of

work undertaken pursuant to this Decree, and all other disputes that are accorded review on the administrative record under applicable principles of administrative law, Defendants shall have the burden of demonstrating based on the administrative record that the Plaintiffs' position is arbitrary and capricious or otherwise not in accordance with law.

b. Other Disputes. Except as otherwise provided in this Decree, in any other dispute brought under Paragraph 84, Defendants shall bear the burden of demonstrating that their position complies with this Decree and better furthers the objectives of the Decree. Any judicial review of such dispute shall not be based on the administrative record.

91. The invocation of dispute resolution procedures under this Section shall not, by itself, extend, postpone, or affect in any way any obligation of the Defendants under this Decree, unless and until final resolution of the dispute so provides. Stipulated penalties with respect to the disputed matter shall continue to accrue from the first Day of noncompliance, but payment shall be stayed pending resolution of the dispute as provided in Paragraph 68. If Defendants do not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section XIV (Stipulated Penalties)

XVII. ACCESS TO INFORMATION AND DOCUMENT RETENTION

92. The United States, the State, and their representatives, including attorneys, contractors, and consultants, shall have the right of entry into any facility covered by this Consent Decree at all reasonable times upon presentation of credentials to allow such representatives to: (a) monitor the progress of activities required under this Decree; (b) verify any data or information submitted to the United States or the State in accordance with the terms of this Decree; (c) obtain samples and, upon request, splits of any samples taken by Defendants

or their representatives, contractors, or consultants; (d) obtain documentary evidence, including photographs and similar data; and (e) assess Defendants' compliance with this Decree.

93. Upon request, Defendants shall provide to Plaintiffs or their authorized representatives splits of any samples taken by Defendants. Upon request, Plaintiffs shall provide to Defendants splits of any samples taken by Plaintiffs.

94. Until five years after the termination of this Decree, Defendants shall retain, and shall instruct their contractors and agents to preserve, all non-identical copies of all documents, records, or other information (including documents, records, or other information in electronic form) in their or their contractors' or agents' possession or control, or that come into their or their contractors' or agents' possession or control, and that relate in any manner to Defendants' performance of their obligations under this Decree. This information retention requirement shall apply regardless of any contrary corporate or institutional policies or procedures. At any time during this information-retention period, upon request by the United States or the State, Defendants shall provide copies of any documents, records, or other information required to be maintained under this Paragraph.

95. At the conclusion of the information retention period provided in the preceding Paragraph, Defendants shall notify the Plaintiffs at least 90 Days prior to the destruction of any records subject to the requirements of and listed in the preceding Paragraph and, upon request by the United States or the State, Defendants shall deliver any such documents, records, or other information to Plaintiffs. Defendants may assert that certain documents, records, or other information is privileged under the attorney-client privilege or any other privilege recognized by federal law. If Defendants assert such a privilege, they shall provide the following: (a) the title of the document, record, or information; (b) the date of the document, record, or information; (c)

the name and title of each author of the document, record, or information; (d) the name and title of each addressee and recipient; (e) a description of the subject of the document, record, or information; and (f) the privilege asserted by Defendants. However, no documents, records, or other information created or generated pursuant to the requirements of this Decree shall be withheld on grounds of privilege.

96. Defendants may also assert that information required to be provided under this Section is protected as Confidential Business Information (“CBI”) under 40 C.F.R. Part 2. As to any information that Defendants seek to protect as CBI, Defendants shall follow the procedures set forth in 40 C.F.R. Part 2. If no claim of confidentiality accompanies documents or information when they are submitted to EPA, the public may be given access to such documents or information without further notice in accordance with 40 C.F.R. Part 2, Subpart B.

97. This Decree in no way limits or affects any right of entry and inspection, or any right to obtain information, held by the United States or the State pursuant to applicable federal or state laws, regulations, or permits, nor does it limit or affect any duty or obligation of Defendants to maintain documents, records, or other information imposed by applicable federal or state laws, regulations, or permits.

XVIII. NOTICES AND SUBMISSIONS

98. Whenever, under the terms of this Consent Decree, written notice is required to be given or a report or other document is required to be sent by one Party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Parties in writing. All notices and submissions shall be considered submitted on the date they are postmarked and sent by certified mail, overnight delivery service or electronic mail. Notices required to be sent to EPA, and not the

United States, under the terms of this Consent Decree should not be sent to the U.S. Department of Justice.

To the United States:

EES Case Management Unit
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611
Re: DJ # 90-5-1-1-2601/2

eescdcopy@usdoj.gov
Re: DJ # 90-5-1-1-2601/2

and

United States Attorney
Northern District of Indiana
5400 Federal Plaza, Suite 1500
Hammond, IN 46320

To U.S. EPA:

Chief, Water Enforcement and Compliance Assurance Branch
(WC-15J)
U.S. Environmental Protection Agency, Region 5
77 West Jackson Boulevard
Chicago, IL 60604

and

Project Manager (LU-9J) (for Paragraph 32 and Section IX only)
Land and Chemicals Division
U.S. Environmental Protection Agency, Region 5
77 West Jackson Boulevard
Chicago, IL 60604

and

Regional Counsel (C-14J)
U.S. Environmental Protection Agency, Region 5
77 West Jackson Boulevard
Chicago, IL 60604

To the State:

Chief, Environmental Section
Office of the Attorney General
Indiana Government Center South
5th Floor
402 West Washington Street
Indianapolis, IN 46204

and

Chief, Compliance Branch
Indiana Department of Environmental Management
Office of Water Quality, Mail Code 65-40
100 North Senate Avenue
Indianapolis, IN 46204-2251

and

Office of Legal Counsel
Mail Code 60-01
100 North Senate Street
Indianapolis, IN 46204-2251

To Defendants:

Director
Gary Sanitary District
3600 West Third Avenue
Gary, IN 46402

and

Corporation Counsel
City of Gary
401 Broadway
Gary, IN 46402

99. Each notice or submission submitted by Defendants under this Consent Decree shall be signed by an official of the submitting Party and shall include the following

“Certification Language”:

I certify under penalty of law that I have examined and am familiar with the information submitted in this document and all attachments and that this document and its attachments were prepared under my direction or supervision in a manner designed to ensure that qualified and knowledgeable personnel properly gather and present the information contained therein. I further certify, based on my inquiry of those individuals immediately responsible for obtaining the information, that I believe that the information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment.

100. Any information provided pursuant to this Consent Decree may be used by the Plaintiffs in any proceeding to enforce the provisions of this Consent Decree and as otherwise permitted by law.

XIX. PLAINTIFFS’ APPROVAL OF PLANS AND OTHER SUBMISSIONS

101. Following receipt of any report, plan, or other submission by Defendants under this Decree, the Plaintiffs may do one of the following, in writing: (a) approve the submission; (b) approve the submission upon specified conditions; (c) approve part of the submission and disapprove the remainder; (d) disapprove the submission; or (e) any combination of the foregoing.

102. Plaintiffs also may modify the initial submission to cure deficiencies in the submission if: (a) Plaintiffs determine that disapproving the submission and waiting for a resubmission would cause substantial disruption to the Work; or (b) previous submission(s) has/ have been disapproved due to material defects and the deficiencies in the initial submission under consideration indicate a bad faith lack of effort to submit an acceptable plan, report or deliverable.

103. Resubmissions. Upon receipt of a notice of disapproval under Paragraph 101(c) or 101(d), or if required by a notice of approval upon specified conditions under Paragraph 101(b), Defendants shall, within 10 days or such longer time as specified by Plaintiffs in such notice, correct the deficiencies and resubmit the plan, report, or other deliverable for approval. After review of the resubmitted plan, report, or other deliverable, Plaintiffs may: (a) approve, in whole or in part, the resubmission; (b) approve the resubmission upon specified conditions; (c) modify the resubmission; (d) disapprove, in whole or in part, the resubmission, requiring Defendants to correct the deficiencies; or (e) any combination of the foregoing.

104. Material Defects. If a resubmitted plan, report, or other deliverable contains a material defect, and the plan, report, or other deliverable is disapproved or modified by Plaintiffs under Paragraphs 101, 102 or 103 due to such material defect, then the material defect shall constitute a lack of compliance for purposes of Section XIV (Stipulated Penalties). The provisions of Section XVI (Dispute Resolution) and Section XIV (Stipulated Penalties) shall govern the accrual and payment of any stipulated penalties regarding the Defendants' submissions under this Section.

105. Implementation. Upon approval, approval upon conditions, or modification by Plaintiffs of any plan, report, or other deliverable, or any portion thereof: (a) such plan, report, or other deliverable, or portion thereof, shall be incorporated into and enforceable under this Consent Decree; and (b) Defendants shall take any action required by such plan, report, or other deliverable, or portion thereof, subject only to their right to invoke the dispute resolution procedures set forth in Section XVI (Dispute Resolution) with respect to the modifications or conditions made by the Plaintiffs. The implementation of any non-deficient portion of a plan,

report, or other deliverable submitted or resubmitted under this Section shall not relieve Settling Defendant of any liability for stipulated penalties under Section XIV (Stipulated Penalties).

XX. EFFECT OF SETTLEMENT AND RESERVATION OF RIGHTS

106. This Decree resolves the civil claims of the United States and the State for the violations alleged in the Complaint filed in this action through the Date of Lodging.

107. The Plaintiffs reserve all legal and equitable remedies available to enforce the provisions of this Consent Decree, except as expressly stated in Paragraph 106. This Decree shall not be construed to limit the rights of the Plaintiffs to obtain penalties or injunctive relief under the CWA or implementing regulations, or under other federal or state laws, regulations, or permit conditions, except as expressly specified in Paragraph 106. The Plaintiffs further reserve all legal and equitable remedies to address any imminent and substantial endangerment to the public health or welfare or the environment arising at, or posed by, Defendants' POTW, whether related to the violations addressed in this Decree or otherwise.

108. In any subsequent administrative or judicial proceeding initiated by the United States or the State for injunctive relief, civil penalties, other appropriate relief relating to the POTW or Defendants' violations, Defendants shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, *res judicata*, collateral estoppel, issue preclusion, claim preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States or the State in the subsequent proceeding were or should have been brought in the instant case, except with respect to claims that have been specifically resolved pursuant to Paragraph 106.

109. This Decree is not a permit, or a modification of any permit, under any federal, State, or local laws or regulations. Defendants are responsible for achieving and maintaining

complete compliance with all applicable federal, State, and local laws, regulations, and permits, and Defendants' compliance with this Decree shall not be a defense to any action commenced by the Plaintiffs pursuant to any such laws, regulations, or permits, except as set forth herein. The Plaintiffs do not, by their consent to the entry of this Decree, warrant or aver in any manner that Defendants' compliance with any aspect of this Decree will result in compliance with provisions of the CWA or with any other provisions of federal, State, or local laws, regulations, or permits.

110. This Decree does not limit or affect the rights of Defendants or of the United States or the State against any third parties, not party to this Consent Decree, nor does it limit the rights of third parties, not party to this Consent Decree, against Defendants, except as otherwise provided by law.

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

112. This Decree shall not be construed to create rights in, or grant any cause of action to, any third party not party to this Decree.

113. Performance of the terms of this Decree by Defendants is not conditioned on the receipt of any federal, State or local funds. 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 Defendants shall not be cause for extension of any required compliance date in this Decree.

XXI. COSTS

114. The Parties shall each bear their own costs of litigation of this action, including attorneys' fees, except that the United States and State shall be entitled to collect the costs

(including attorneys' fees) incurred in any action necessary to collect any portion of the civil penalty or any stipulated penalties due but not paid by Defendants.

XXII. RETENTION OF JURISDICTION

115. The Court shall retain jurisdiction of this case until termination of this Decree, for the purpose of resolving disputes arising under this Decree or entering an order modifying this Decree, pursuant to Sections XVI (Dispute Resolution) and XXIII (Modifications), or effectuating or enforcing compliance with the terms of this Decree.

XXIII. MODIFICATIONS

116. The terms of this Consent Decree may be modified only by a subsequent written agreement signed by all the Parties or by an order of the Court. Defendant's request for modification may be based, among other things, on: (a) an integrated plan developed in accordance with EPA's Integrated Municipal Stormwater and Wastewater Planning Approach Framework, issued on June 5, 2012; or (b) a current Financial Capability Assessment (per EPA's Financial Capability Assessment Framework, issued on November 24, 2014). If either the Integrated Municipal Stormwater and Wastewater Planning Approach Framework or the Financial Capability Assessment Framework is modified after the Effective Date, the Defendants' request for modification shall be based on the version of the Framework(s) that is in effect on the day that the request for modification is submitted to the Plaintiffs.

117. Any modification of this Consent Decree or any documents that are developed pursuant to the requirements of this Decree and that become a part of the Decree, that effect a material change to the terms of the Decree or materially effects the ability to meet the objectives of the Decree shall become effective upon a subsequent written agreement signed by all Parties and approved by the Court as a modification to this Decree. Any schedule that is included in this

Decree or in any document developed pursuant to the Decree may be extended, modified or revised upon written agreement of the Parties, without Court approval, unless any such modification effects a material change to the terms of this Decree or materially affects the ability to meet the objectives of this Decree.

118. Any disputes concerning the modification of this Consent Decree, as defined in Section VI, shall be resolved pursuant to Section XVI (Dispute Resolution), provided, however, that, instead of the burden of proof provided by Paragraph 90, the party seeking the modification of the Decree bears the burden of demonstrating that it is entitled to the requested modification in accordance with Fed. R. Civ. P. 60(b).

XXIV. TERMINATION

119. After Defendants have complied with all obligations under this Decree, have paid the civil penalty contained in Section XIII (Civil Penalty), and all stipulated penalties accrued under Section XIV (Stipulated Penalties) which they did not successfully challenge under Section XVI (Dispute Resolution), and have demonstrated satisfactory compliance with the requirements of this Decree and the NPDES Permit in effect at such time for a period of one year, Defendants may file and serve upon the Plaintiffs a “Request for Termination of Consent Decree,” with supporting documentation demonstrating that the conditions for termination set forth in this Section have been met.

120. Following the Plaintiffs’ receipt of Defendants’ Request for Termination, the Parties shall confer informally concerning the Request and any disagreement that the Parties may have as to whether Defendants have satisfactorily complied with the requirements for termination of this Decree. If the United States, after consultation with the State, agrees that the

Decree may be terminated, the Parties shall submit, for the Court's approval, a joint stipulation terminating the Decree.

121. If the United States, after consultation with the State, does not agree that the Decree may be terminated, Defendants may invoke dispute resolution under Section XVI (Dispute Resolution) of this Decree. However, Defendants shall not seek dispute resolution of any dispute regarding termination, under Section XVI, until 60 days after service of its Request for Termination. Defendants shall have the burden of proof that the conditions for termination of the Decree have been satisfied. This Decree shall remain in effect pending resolution of the dispute by the Parties or the Court in accordance with Section XVI (Dispute Resolution).

XXV. PUBLIC NOTICE AND COMMENT

122. This Consent Decree shall be lodged with the Court for a period of not less than 30 Days for public notice and comment in accordance with 28 C.F.R. § 50.7. The Plaintiffs reserve the right to withdraw or withhold their consent if the comments regarding the Decree disclose facts or considerations indicating that the Decree is inappropriate, improper, or inadequate. Defendants consent to entry of this Decree without further notice and agree not to withdraw from or oppose entry of this Decree by the Court or to challenge any provision of the Decree, unless the Plaintiffs have notified Defendants in writing that they no longer support entry of this Decree.

XXVI. SIGNATORIES/SERVICE

123. Each undersigned representative of Defendants, the State, and the Assistant Attorney General for the Environment and Natural Resources Division of the Department of Justice certifies that he or she is fully authorized to enter into the terms and conditions of this Decree and to execute and legally bind the Party he or she represents to this document.

124. This Decree may be signed in counterparts, and its validity shall not be challenged on that basis. Defendants hereby agree to accept service of process by mail with respect to all matters arising under or relating to this Decree and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable Local Rules of this Court including, but not limited to, service of a summons.

XXVII. INTEGRATION

125. This Decree, as defined in Section VI, and the documents approved under this Decree constitute the final, complete, and exclusive agreement and understanding among the Parties with respect to the settlement embodied in the Decree and supersede all prior agreements and understandings, whether oral or written. Other than the Decree, as defined in Section VI, and documents that are required under this Decree and that will be incorporated into this Decree, no other document, nor any representation, inducement, agreement, understanding, or promise, constitutes any part of this Decree or the settlement it represents, nor shall it be used in construing the terms of this Decree.

XXVIII. APPENDICES

- Appendix 1: CSOOP Requirements.
- Appendix 2: Stress Test Requirements.
- Appendix 3: LTCP Development Requirements.
 - Attachment 1 to Appendix 3: LTCP Development Schedule.
 - Attachment 2 to Appendix 3: CSO Control Measures, Design Criteria, Performance Criteria and Critical Milestones.
- Appendix 4: EPA's Final Decision for Proposed Remedy for the Ralston Street Lagoon, dated April 7, 2009 and EPA Approval of GSD Request for Revised Schedule, dated September 27, 2010.
- Appendix 5: Supplemental Environmental Project Proposal.

Attachment 1 to Appendix 5: Map of the Location of the Supplemental Environmental Project.

XXIX. FINAL JUDGMENT

126. Upon approval and entry of this Decree by the Court, this Decree shall constitute a final judgment between the United States, the State, and Defendants. 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.

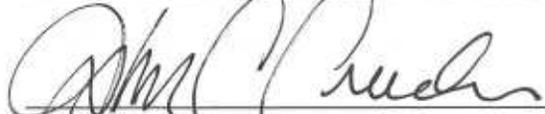
SO ORDERED THIS _____ DAY OF _____, _____.

United States District Judge

Signature Page for the Consent Decree in *United States and the State of Indiana v. The City of Gary, Indiana et al.* (N.D. Ind.):

DATE: _____

FOR THE UNITED STATES OF AMERICA:



JOHN C. CRUDEN
Assistant Attorney General
Environment & Natural Resources Division
U.S. Department of Justice
Washington, D.C. 20530

DATE: 12/12/2016



IVA ZIZA
Trial Attorney
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611
(202) 514-3211

DAVID CAPP
United States Attorney

WAYNE T. AULT
Assistant United States Attorney
Northern District of Indiana
5400 Federal Plaza, Suite 1500
Hammond, IN 46320

Signature Page for the Consent Decree in *United States and the State of Indiana v. The City of Gary, Indiana et al.* (N.D. Ind.):

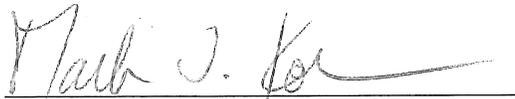
FOR THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY:

DATE: 10/12/14



ROBERT A. KAPLAN
Acting Regional Administrator
U.S. Environmental Protection Agency, Region 5
77 West Jackson Boulevard
Chicago, IL 60604

DATE: 9/26/16



MARK J. KOLLER
Associate Regional Counsel
U.S. Environmental Protection Agency, Region 5
77 West Jackson Boulevard
Chicago, IL 60604

Signature Page for the Consent Decree in *United States and the State of Indiana v. The City of Gary, Indiana et al.* (N.D. Ind.):

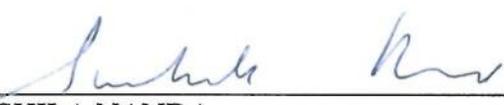
FOR THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY:

DATE: _____



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

DATE: _____



SUSHILA NANDA
Attorney Advisor
Water Enforcement Division
Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
United States Environmental Protection Agency

Signature Page for the Consent Decree in *United States and the State of Indiana v. The City of Gary, Indiana et al.* (N.D. Ind.):

FOR THE STATE OF INDIANA

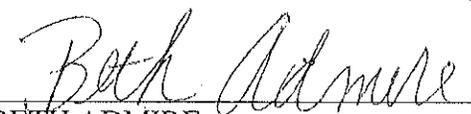
DATE: 11/1/2014



CAROL S. COMER

Commissioner
Indiana Department of Environmental Management
100 North Senate Street
P.O. Box 6015
Indianapolis, IN 46206

DATE: 11/1/2014



BETH ADMIRE

Attorney
Indiana Department of Environmental Management
100 North Senate Street
P.O. Box 6015
Indianapolis, IN 46206

DATE: November 29, 2014



PATRICIA ORLOFF ERDMANN

Chief Counsel for Litigation
Office of the Indiana Attorney General
402 West Washington Street
IGCS, 5th Floor
Indianapolis, IN 46204

Signature Page for the Consent Decree in *United States and the State of Indiana v. The City of Gary, Indiana et al.* (N.D. Ind.):

FOR THE CITY OF GARY

DATE: NOV 18 2016



Mayor
City of Gary
401 Broadway
Gary, IN 46402

FOR THE GARY SANITARY DISTRICT

DATE: 11-18-16



President of the Board of Commissioners
Gary Sanitary District
3600 West Third Avenue
Gary, IN 46406