

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO**

Civil Action No. 1:16-cv-02745-JLK

UNITED STATES OF AMERICA  
and THE STATE OF COLORADO,

Plaintiffs,

LOWER ARKANSAS VALLEY WATER CONSERVANCY DISTRICT and  
BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF PUEBLO,

Intervenor Plaintiffs,

v.

THE CITY OF COLORADO SPRINGS, COLORADO,

Defendant.

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**CONSENT DECREE**

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WHEREAS, Plaintiffs the United States of America, on behalf of the United States Environmental Protection Agency (“EPA”), and the State of Colorado (“State”), on behalf of the Colorado Department of Public Health and the Environment (“CDPHE”), filed a complaint in this action on November 9, 2016, alleging that Defendant, the City of Colorado Springs (the “City”), violated the Clean Water Act, 33 U.S.C. §§ 1319(b) and (d), and the Colorado Water Quality Control Act (“CWQCA”), §§ 25-8-101 et seq. C.R.S.;

WHEREAS, the United States and CDPHE filed an Amended Complaint on January 26, 2017;

WHEREAS, the Court granted motions to intervene by the Lower Arkansas Valley Water Conservancy District and the Board of County Commissioners of the County of Pueblo (hereinafter collectively referred to as “Plaintiff Intervenors”); both parties were joined as plaintiffs to the Amended Complaint on February 16, 2017;

WHEREAS, the Amended Complaint alleges that the City has violated the Clean Water Act and CWQCA by failing to comply with the terms and conditions of the City's National Pollutant Discharge Elimination System (“NPDES”) permit issued by the State under Section 402(b) of the Clean Water Act, 33 U.S.C. § 1342(b), for discharges of stormwater from the City’s municipal separate storm sewer system (“MS4”);

WHEREAS, the State is authorized to administer a NPDES program pursuant to Section 402(b) of the Clean Water Act, 33 U.S.C. § 1342(b), although the EPA retains concurrent authority to enforce state issued permits. 33 U.S.C. §§ 1319, 1342(i);

WHEREAS, the City has a current NPDES Permit issued by the State for its municipal separate storm sewer system (“MS4 Permit”), which requires the City to develop, implement,

and enforce a Stormwater Management Program (“SMP”), among other provisions. MS4 Permit, Part I.B.;

WHEREAS, a 9-day bench trial was held before the District Court of Colorado from Sept. 5, 2018 through Sept. 17, 2018, addressing the City’s liability with respect to three sites as exemplars of six of the Plaintiffs’ claims—Claims 4, 5, 6, 8, 9, and 10 of the Amended Complaint;

WHEREAS, the District Court issued an order on November 9, 2018, finding that the City violated its MS4 Permit through its actions and inactions at the exemplar sites. The Court ruled in favor of the Plaintiffs for Claims 4, 5, 6, 9 and 10 of the Amended Complaint, finding that the City violated its MS4 Permit by: (1) improperly waiving permanent control measures at Indigo Ranch North at Stetson Ridge Filings 11, 13, and 14 (Claim 4); (2) improperly approving the design and installation of, and failing to ensure the long-term operation and maintenance of, the Morningstar at Bear Creek Control Measure (Claims 5 and 6); (3) failing to oversee and enforce temporary stormwater control measure requirements at the Star Ranch Filing 2 construction site (Claims 9 and 10). The Court ruled in favor of the City on Claim 8 relating to the City’s approval of a grading and erosion control plan at Star Ranch Filing No. 2;

WHEREAS, the Parties have estimated that 1,892 acres of impervious surfaces were added in the City between November 2002, when the implementation of a permanent water quality control program was required under the City’s MS4 Permit, and July 31, 2018, the date of aerial photographs utilized by the Parties for this estimation. Of those acres of impervious area, the Parties estimate that 1,703 acres of impervious area would have been subject to requirements for Permanent Control Measures in accordance with the Permit, which equates to

71 acre-feet (AF) of stormwater runoff treatment design-capacity citywide;

WHEREAS, the Parties have agreed that the City must meet an equivalent or better treatment target of 71 AF that must be addressed through the requirements of this Decree, including the Appendices A (Credit Table) and B (Verification of a Functioning Control Measure), incorporated into this Decree;

WHEREAS, the Parties agree that the City's Construction Stormwater Management Program will be implemented in accordance with the Permit, Stormwater Control Manual ("SCM"), and this Decree;

WHEREAS, the City agrees not to use the Prudent Line management strategy previously authorized in the 2000 Cottonwood Creek Drainage Basin Planning Study, City Council Res. No. 104-00 (June 2000). The City confirmed removal of the Prudent Line management strategy in the final 2019 Cottonwood Creek Drainage Basin Planning Study, approved and adopted by City Council Res. No. 154-19 (Dec. 10, 2019);

WHEREAS, the Parties agree that projects planned and/or completed pursuant to the Intergovernmental Agreement between Pueblo County and the City of Colorado Springs and its Utility Enterprise (April 27, 2016) will ameliorate adverse impacts to water quality in the Cottonwood Creek basin caused by the City's prior use of the Prudent Line management strategy;

WHEREAS, except as provided in Section I (Jurisdiction and Venue), this Decree is not an admission of law or fact by the City;

WHEREAS, the City is bound to comply with the Taxpayer Bill of Rights in the Colorado Constitution ("TABOR") and the City Charter. The City and the State have concluded

that this Consent Decree is consistent with Article X, § 20, Colorado Constitution, and other applicable constitutional and statutory requirements. The City has concluded that this Consent Decree is consistent with the City's Charter. The City intends to appropriate sufficient funds for full and timely performance of all City obligations under this Consent Decree throughout each City fiscal year for so long as this Consent Decree remains in effect;

WHEREAS, an analysis of the City's financial condition as a result of the COVID-19 pandemic demonstrates a need for a structured civil penalty payment plan over two years; and

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

NOW, THEREFORE, before the taking of any further testimony, without further adjudication or admission of any issue of fact or law except as provided in Section I (Jurisdiction and Venue), and with consent of the Parties, IT IS HEREBY ADJUDGED, ORDERED, AND DECREED as follows:

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

1. This Court has jurisdiction over the subject matter of this action and the Parties pursuant to 28 U.S.C. §§ 1331, 1345, 1355, and Section 309(b) of the Clean Water Act, 33 U.S.C. § 1319(b). Venue lies 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 (c) and 1395(a), because the violations in the Amended Complaint are alleged to have occurred in, and the City is located in, this judicial

district. For purposes of this Decree, or any action to enforce this Decree, the City consents to venue in this judicial district.

2. For purposes of this Decree, the City agrees that the Amended Complaint states claims upon which relief may be granted pursuant to Section 309(b) of the Clean Water Act and the CWQCA.

## **II. APPLICABILITY**

3. The obligations of this Consent Decree apply to and are binding upon the United States, the State, the Plaintiff Intervenors, and upon the City.

4. The City shall provide a copy of this Consent Decree to all officers, employees, and agents whose duties might reasonably include compliance with any provision of this Decree, as well as to any contractor or subcontractor retained to perform work required under this Consent Decree. The City shall condition any such contract upon performance of the work in conformity with the terms of this Consent Decree.

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

6. The City will publish this Consent Decree on the City's website for the purposes of posting and maintaining a complete Consent Decree for the public's knowledge and will refer the public to the website link.

## **III. OBJECTIVES**

7. All actions taken pursuant to this Consent Decree, and any Appendix thereto, shall have the objective of causing the City to achieve and maintain full compliance with the Clean

Water Act, applicable state law, and the terms and conditions of its MS4 Permit and to redress the environmental harm caused by past asserted violations of the Clean Water Act, the CWQCA, and its MS4 Permit.

#### **IV. DEFINITIONS**

8. For purposes of this Consent Decree, every term expressly defined by this Section shall have the meaning given that term herein. Every other term used in this Decree that is also defined in the Clean Water Act, or in regulations promulgated pursuant to the Clean Water Act shall have the meanings assigned to them in the Clean Water Act or such regulations, unless otherwise provided in this Decree. Whenever the terms set forth below are used in this Consent Decree, the following definitions shall apply:

- a. “Agencies” means both the United States Environmental Protection Agency and the Colorado Department of Public Health and Environment.
- b. “Amended Complaint” shall mean the amended complaint filed by the United States and CDPHE in this action on January 26, 2017, and which the Plaintiff Intervenors joined on February 16, 2017.
- c. “Approval” means the issuance of an approval document or email from the applicable approval agency (EPA, CDPHE, or both, as specified for each submission required by this Decree). An Approval shall approve or approve with conditions a submission in accordance with Paragraph 25 (Submittal Process).
- d. “Best Management Practices” or “BMPs” means schedules of activities, prohibitions of practices, maintenance procedures, other management practices to prevent or reduce the pollution of State Waters; treatment, operating procedures, and



practices to control site runoff, spillage or leaks, waste disposal, or drainage from material storage; or structural and nonstructural controls.

e. “CDPHE” shall mean the Colorado Department of Public Health and Environment.

f. “City” shall mean the City of Colorado Springs, Colorado. The City of Colorado Springs is a home rule city and a Colorado municipal corporation duly incorporated under Article XX, § 6 of the Colorado Constitution and the Colorado Springs City Charter.

g. “City Stormwater Management Plan” or “CSWMP” shall mean a written plan submitted to the City by a permittee of a construction site that identifies measures that will be implemented to minimize erosion within construction sites and minimizes the discharge of pollutants in stormwater runoff from the construction site in accordance with the City’s Grading and Erosion Control Permit.

h. “City’s MS4” shall mean the entire Municipal Separate Storm Sewer System owned and operated by the City of Colorado Springs.

i. “Compliance Inspection” shall mean an Inspection of an active construction site conducted by the City in accordance with the requirements of the Permit, SCM, and this Decree.

j. “Compliance Report” shall mean the report submitted by the City to Plaintiffs, in accordance with Section X (Recordkeeping and Reporting).

k. “Compliance Reporting Period” shall mean the 12-month period between January 1 through December 31 for each annual Consent Decree Compliance Report.

l. “Consent Decree” or “Decree” shall mean this Consent Decree, including all Appendices.

m. “Construction Control Measure” shall mean any temporary Water Quality Structure or BMP installed for the purpose of reducing the discharge of pollutants in stormwater during active construction and includes both structural and non-structural temporary control measures.

n. “Credited Measure” means a measure that meets the criteria for and has received credit in accordance with Appendix A (Credit Table). This includes:

- (1) Existing Measures; and
- (2) New Measures.

o. “Date of Lodging” shall mean the date that this Decree is lodged with the Clerk of the Court for the United States District Court for the District of Colorado.

p. “Day” or “day” shall mean a calendar day unless expressly stated to be business day. When computing a period of time under this Decree, and when the last day would fall on a Saturday, Sunday, or federal, State or City holiday, the period shall run until the close of business of the next business day.

q. “Drainage Criteria Manual” or “DCM” shall mean the City’s Drainage Criteria Manual Volume II and any subsequent modifications approved by CDPHE.

r. “Effective Date” shall have the definition provided in Section XIX (Effective Date).

s. “EPA” shall mean the United States Environmental Protection Agency and any of its successor departments or agencies.

t. “Existing Measure” means a Permanent Control Measure that was originally built prior to July 31, 2018, and satisfies the criteria in category 2 of Appendix A (Credit Table).

u. “GEC Permit” shall mean a Grading and Erosion Control Permit which a construction owner or operator must obtain from the City prior to discharging stormwater from a construction site, when applicable.

v. “GEC Plan” shall mean a Grading and Erosion Control Plan as used in the DCM and Stormwater Construction Manual.

w. “Good Engineering, Hydrologic, and Pollution Control Practices” shall mean methods, procedures, and practices that are based on scientific fact(s), reflect best industry practices and standards, are appropriate for the conditions and pollutant sources, and provide appropriate solutions to meet the associated Permit requirements.

x. “Initial Inspection” shall mean an inspection performed by a City inspector to confirm that preliminary Construction Control Measures are installed correctly and that the approved GEC Plan and CSWMP are being properly implemented.

y. “Inspection” shall mean an in-person visit by an inspector to a facility or site, including direct observations of facility operations and/or conditions and a written record of observations through which an Inspector must be able to determine whether the site or facility is in compliance, in whole or in part (depending upon the complete or partial nature of the Inspection), with all applicable obligations under the City’s MS4 Permit.

z. “Interest” means the London Interbank Offered Rate on the Effective Date plus 4%.

aa. “Mitigation Project(s)” shall mean the requirements specified in Section VI and Appendix C of this Consent Decree to design and construct mitigation projects to redress the consequences resulting from the City’s alleged violations of the Permit.

bb. “MS4 Permit” or “Permit” shall mean the permit issued by CDPHE through the Colorado Discharge Permit System (“CDPS”) and identified as Permit No. COS-000004. The Permit authorizes discharges from the City’s MS4. The Permit that is in effect and governs the City’s MS4 programs on the Effective Date of this Consent Decree is the MS4 Permit that originally expired in 2016, but was administratively extended by CDPHE.

cc. “Municipally Maintained Permanent Control Measure” means any Permanent Control Measure that the City is responsible to maintain as per the Permit and this Decree.

dd. “Municipally Owned Structure” means any feature owned and required to be maintained by the City under Part I.B.1.a(1) of the Permit. Municipally Owned Structures include detention facilities, open-channel drainageways, storm sewer inlets, catch basins, siphons and storm sewers.

ee. “New Development and Redevelopment Sites” or “NDRD Sites” shall mean sites for which Permanent Control Measures were or are required by the Permit.

ff. “New Measure” means a measure that satisfies the criteria set forth in category 1 and categories 3 through 9 of Appendix A (Credit Table). In general, New

Measures are those built, modified from a pre-existing feature, or otherwise implemented after the Effective Date of this Decree.

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

hh. “Parties” means the United States, the State, the Plaintiff Intervenors, and the City.

ii. “Permanent Control Measure” means any post-construction Water Quality Structure or feature that was built to meet the NDRD requirements of the Permit or this Decree.

jj. “Permittee” shall mean the entity that is issued a GEC Permit from the City.

kk. “Plaintiff Intervenors” shall mean the Lower Arkansas Valley Water Conservancy District and the Board of County Commissioners of the County of Pueblo.

ll. “Project Dollars” means the City’s expenditures and payments incurred or made in carrying out the Mitigation Projects identified under Appendix C to the extent that such expenditures or payments both: (a) comply with the requirements set forth in Section VI and Appendix C; and (b) constitute the City’s direct payments for such projects or the City’s external costs (e.g., for labor and equipment).

mm. “Prudent Line” means a drainage basin management tool intended to identify the boundaries within which development would not be prudent due to hazards associated with erosion and flooding.

nn. “Reporting and Tracking Spreadsheet” means the excel spreadsheet prepared by the City to certify and track Credited Measures as defined in this Consent Decree. The Reporting and Tracking Spreadsheet will be updated annually and the format may be modified or revised upon written agreement of the City, EPA and the State.

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

pp. “Standard Operating Procedure” or “SOP” shall mean a detailed set of instructions created and used by the City to comply with the terms and conditions of the MS4 Permit.

qq. “State” means the State of Colorado, acting on behalf of CDPHE.

rr. “State Waters” shall mean any and all surface and subsurface waters which are contained in or flow in or through the State, except for waters in sewage systems, waters in treatment works of disposal systems, waters in potable distribution systems, and all water withdrawn for use until use and treatment have been completed.

ss. “Stormwater Construction Manual” or “SCM” means the manual. approved by CDPHE on September 15, 2020 that sets forth the minimum requirements and processes for owners or operators of an active construction site to obtain a permit authorizing the discharge of stormwater from an active construction site and that implements the City’s Construction Stormwater Management Program as set forth in the Permit;

tt. “Stormwater Management Program” shall mean the City’s program to manage stormwater, developed pursuant to Part I.B. of the MS4 Permit, including but not limited to, the DCM, and SCM.

uu. “Water Quality Capture Volume” or “WQCV” means a volume of water generated by a storm event, in watershed inches, that is either based on a specific frequency of storm events and/or a specific storm event, as identified in the City’s MS4 program. The WQCV must be determined based on calculations and methods consistent with those outlined in the City’s DCM, Volume II. The City may modify the method for calculated WQCV if an alternative method is allowed in accordance with the City’s MS4 Permit.

vv. “Water Quality Storage Volume” or “WQSV” means a volume of water, in acre feet (AF), calculated as the runoff occurring from the WQCV storm event for a specific area. This is a quantity of water used for the design of certain water quality measures.

ww. “Water Quality Storage Volume Target” or “Target” means 71 AF of water, which is an engineered number that represents a treatment requirement for stormwater originating from NDRD Sites submitted for City approval between 2002 and July 31, 2018.

xx. “Water Quality Structure” means a facility, structure, or device that provides for the removal of pollutants from stormwater runoff or provides for infiltration or evaporation of stormwater, with the result of water quality enhancement.

yy. “United States” means the United States of America, acting on behalf of EPA.

## V. INJUNCTIVE RELIEF

9. Overview. Section V follows the structure and terminology in the City’s Permit. This Paragraph 9 is included only to assist the reader with an overview of certain injunctive relief requirements. This overview of Section V (Injunctive Relief) is not complete or exhaustive and neither limits nor expands any substantive or procedural requirements in this Consent Decree. Section V contains the following requirements, among others:

- a. Paragraph 11 requires that the City will maintain resources adequate to implement the Permit and to carry out the requirements of this Decree.
- b. Paragraph 12 requires the City to:
  - (1) implement practices to ensure all applicable commercial and residential development plans include the requisite Construction Control Measures;
  - (2) implement the Permit’s requirements for the Construction Sites Program, and
  - (3) utilize enforcement, as necessary, to ensure developers comply with City-approved plans.
- c. Paragraphs 13 and Appendices A and B require the City to:
  - (1) inventory and track Credited and Permanent Control Measures with the information necessary for long-term operation and maintenance;



(2) implement practices to ensure proper operation and maintenance of all Municipally-Owned Structures and Permanent Control Measures; and

(3) add 71 acre feet of Water Quality Storage Volume. The City will satisfy this requirement through Paragraph 13 and Appendices A and B of this

Decree to:

(a) verify the functionality of Existing Measures, and

(b) install, implement, and/or repair Credited Measures to address the absence of on-site post-construction control measures at residential and commercial developments that the City approved and have been completed without the required Permanent Control Measures and to address those installed Permanent Control Measures that were improperly designed, installed, and/or maintained.

d. Paragraph 15 requires the City to improve and administer training programs for both the Construction Sites Program and the Commercial and Residential Management Program.

e. Paragraphs 16 and 17 require the City to conduct third-party and supervisory audits of the Construction Sites Program and the Commercial and Residential Management Program.

10. Performance Standard. The City must fully comply with all applicable provisions of the Clean Water Act and the CWQCA. The City must also fully comply with all terms and conditions of the Permit and the Stormwater Management Program, including but not limited to

the DCM and SCM, as approved by the State. The City must use Good Engineering, Hydrologic, and Pollution Control Practices to perform all work required by this Decree, as applicable.

11. Resources. The City shall ensure there are adequate resources, including minimum staffing levels, for each operating year in an amount sufficient to implement all measures necessary to comply with the MS4 Permit, and this Consent Decree, and shall report its compliance with these requirements in the annual Compliance Report required in Section X (Recordkeeping and Reporting). Neither financial constraints nor inadequate staffing shall be a defense to the City's failure to comply with this Consent Decree.

12. Construction Sites Program. The City has a Construction Sites Program that it implements and enforces in order to reduce discharges of pollutants from public and private construction sites, in accordance with its Permit (Part I.B.1(d)) and the SCM. The City's Construction Sites Program includes the following elements to address the active construction site requirements of the Permit: (1) Grading and Erosion Control Plans ("GEC Plans") and City Stormwater Management Plans ("CSWMPs") prepared by Permittees, which are plans for each construction site to reduce the discharge of pollutants into State Waters; (2) City Inspections performed to ensure that owners/operators of construction sites are implementing Construction Control Measures consistent with City-approved GEC Plans and CSWMPs, the Permit, and the SCM; and (3) City-initiated enforcement actions against owners/operators of construction sites when noncompliance with the Permit, SCM, CSWMP, or GEC Plans is identified. On September 15, 2020, CDPHE approved the SCM, which includes revisions and updates to the City's Construction Stormwater Management Program, including design and technical criteria for Construction Control Measures at active construction sites. By one year from CDPHE's approval

of the SCM, the City must implement the updated and revised SCM and amend its City Code, if needed, to prevent any conflicts between the City Code and the SCM or the terms and conditions of this Decree. Major requirements of the SCM are set forth below and are hereby incorporated as terms and conditions of this Decree.

a. Grading and Erosion Control Permit and City Stormwater Management Plan. As set forth in the SCM, the City must require all construction sites that disturb one or more acres of land, or construction activities that are a part of a larger common plan of development or sale that disturb one or more acres, to obtain a GEC Permit, unless the site is specifically excluded by the Permit. The City will issue GEC Permits only after the City has approved the underlying GEC Plan, CSWMP, and other requirements in accordance with the Permit and SCM. The GEC Permit approval process must be conducted by the City in accordance with the SCM and the GEC Plan Document Review and Approval Standard Operating Procedures (“SOP”), and the following requirements:

(1) The City must only approve GEC Plans and CSWMPs that conform with applicable, approved drainage reports and meet the requirements of the SCM and the Permit;

(2) The City must document any GEC Plan or CSWMP variance that the City grants in accordance with the SCM and Permit requirements for GEC Plans and CSWMPs, including the reasons for the variance. The City must complete all documentation within 14 Days of granting the variance. All variance documentation will be included in the Compliance Report;

(3) The City will only approve a GEC Permit for a construction site Permittee once the GEC Plan and CSWMP are reviewed by the City and found to be in compliance with all requirements; and

(4) The City must require construction site Permittees to set up an Initial Inspection with a City inspector at the construction site before the City authorizes the GEC Permit to allow the continuation of construction. The City inspector will conduct an Initial Inspection to determine if: initial Construction Control Measures are installed in accordance with the GEC Permit, SCM, and the site's GEC Plan and CSWMP; no other land disturbance has occurred including the stockpiling of materials; and the GEC Plan and CSWMP are located at the construction site. The City inspector will complete an Initial Inspection Stormwater Checklist, photograph the construction site prior to land disturbance with the exception of the installed initial Construction Control Measures, and provide written verification to the construction site Permittee that the Initial Inspection was completed successfully.

(5) Following the Initial Inspection, a City inspector may only authorize the GEC Permit if the construction site passes the Inspection and the initial Construction Control Measures required by the City-approved GEC Plan and CSWMP are installed in compliance with the SCM and the Permit.

(6) The City must issue a Stop Work Order if, at the time of the Initial Inspection: (a) land disturbance, including the stockpiling of materials, has occurred further than the installation of initial Construction Control Measures, or

(b) the Permittee of the construction site does not have a City-approved GEC Plan and/or CSWMP. The Stop Work Order will require that no additional land disturbance may occur, other than the work needed to bring the site into compliance, until the Permittee (a) obtains a City-approved GEC Plan and CSWMP, (b) installs required Initial Construction Control Measures, and (c) passes an Initial Inspection. The City may provide written exceptions that allow additional work during the Stop Work Order period, if a project is initiated in response to an unanticipated emergency that causes a disruption in essential public services for which the related work requires immediate action to avoid imminent endangerment to human health, public safety or the environment, or to re-establish essential public services.

(7) The City must submit a GEC Plan Document Review and Approval SOP to the Agencies in accordance with Section VII, Table II (Deadlines for Submittals) and Paragraph 25 (Submittal Process). The City must implement the GEC Plan Document Review and Approval SOP by 60 days after Approval. Engineering Reviewers must use the SOP when reviewing and approving GEC Plans and CSWMPs. The SOP must include GEC Plan review form checklists to be completed by the Engineering Reviewers for the receipt, review and approval of each submitted GEC Plan and CSWMP, which will be retained on file with the approved GEC Plan. The SOP must also include the following sections:

(a) Section 1: GEC Document Review and Approval Program Organizational Structure that specifies positions involved in the intake, review, and approval of GEC documents;

(b) Section 2: GEC Permitting and Review Process, including a flow chart depicting the intake, review, rejection, re-review and approval of GEC documents;

(c) Section 3: GEC Document Review, Rejection, and Approval Procedures that set forth the process for how the City will review documents in compliance with the SCM and the Permit;

(d) Section 4: Quality Control/Quality Assurance Procedures that list the annual requirements for review of Third-Party Audit Reports;

(e) Section 5: GEC Document Reviewer Training sets forth the requirements and the procedures for external and internal trainings; and

(f) Section 6: Public Education and Outreach on the GEC Permit approval process.

b. Construction Site Stormwater Inspections. The City must conduct Inspections of applicable active and regulated construction sites within the City, in accordance with the Permit, SCM, this Decree, and all applicable procedures of the GEC Inspection and Enforcement Program SOP. By one year from CDPHE's approval of the SCM, the City must implement programmatic changes to City Inspections of construction sites as set forth in the SCM and this Decree:

(1) After a site passes an Initial Inspection, a City inspector will perform Compliance Inspections at each active construction site no less than every 56 Days during November-March and no less than every 28 Days from April-October.

(2) For each Inspection, City inspectors will determine if any pollutant sources, from disturbed areas or other sources, are present on the site without being addressed by a Construction Control Measure that complies with the Permit and SCM requirements, prior to discharge. If a City inspector observes that a pollutant source is not being addressed by a Construction Control Measure, the City inspector will require the Permittee to correct the deficiency immediately or, in all cases, within 3 Days after the deficiency is observed by the City inspector, and to provide documentation of the correction of the deficiency within 3 Days.

(3) During each Inspection, the City inspector will evaluate if Construction Control Measures are implemented in accordance with the Permit, the applicable City-approved GEC Plan and CSWMP, and the SCM.

(4) The City must conduct a Follow-Up Inspection no more than 10 Days after the date of any Inspection in which the Inspector determines that corrective actions are needed at the site. In lieu of Follow-Up Inspection, the City may verify correction of deficiency by review of photographic documentation submitted by the Permittee in accordance with the procedures set forth in the SCM.

(5) If CDPHE or EPA conducts an Inspection at a construction site and notifies the City that noncompliance or potential noncompliance with the Permit

was observed during the Inspection, in accordance with the SCM City inspectors will review the CDPHE/EPA preliminary inspection report and review the City Inspection Report from the most recent City Inspection performed at the site to determine if there are inconsistencies between the City's inspection report and CDPHE/EPA's report. If the City determines, based upon those inconsistencies, that the City failed to identify and/or require corrective actions to be performed by the construction site Permittee, the City must perform a compliance inspection within 7 Days following the City's receipt of the CDPHE/EPA preliminary inspection report.

(6) The Inspector must perform a final Inspection prior to closing out a GEC Permit. The final Inspection must ensure that (a) final stabilization of the site with 70% re-vegetation to pre-disturbance levels has been reached; (b) all work was performed in accordance with the GEC Plan and CSWMP; (c) all Construction Control Measures are removed; (d) Permanent Control Measures were installed in accordance with the Permit and all required design and installation plans; and (e) all construction materials and stockpiles are removed. The City will not close-out a GEC Permit until each of these requirements are completed.

(7) The City will submit a GEC Inspection and Enforcement Program SOP to the Agencies by the deadline set forth in Section VII, Table II, and in accordance with Paragraph 25 (Submittal Process). The SOP will include:



(a) Section 1: GEC Inspection and Enforcement Program Organizational Structure with a chart of positions for City staff involved in construction site inspections and enforcement including descriptions of staff roles and responsibilities;

(b) Section 2: GEC Permitting and Inspection Process with a flow chart describing the GEC permitting and inspection process with appropriate references to the SCM requirements for issuance of a GEC Permit;

(c) Section 3: Construction Site Inspection Procedures that describe the types and frequencies of Inspections and the process for conducting a field construction site inspection and that require City inspectors to have the following available while conducting Inspections: the City-approved GEC Plan for the construction site, City-approved CSWMP for the construction site, and the GEC Inspection and Enforcement Program SOP;

(d) Section 4: GEC Enforcement Procedures that provide policies and procedures for enforcement;

(e) Section 5: State GEC Permit Inspection Comparison and Tracking that describes the policies and procedures for carrying out the requirements of subparagraph 12(b)(5) of this Decree;

(f) Section 6: Quality Control/Quality Assurance Procedures that provide requirements and a description for quarterly internal supervisory audits;

(g) Section 7: GEC Inspector Training Requirements and Procedures that provide for the internal and external training requirements for City inspectors and supervisors; and

(h) Section 8: Public Education and Outreach that describes requirements for stakeholder training and education on the new Permit and SCM certification requirements for owners/operators of construction sites.

c. Enforcement of the City's Construction Sites Program. The City must implement the following Construction Sites Program requirements to ensure City staff identify noncompliance at construction sites and escalate enforcement in conformance with the Permit and SCM requirements.

(1) The City will notify the construction site Permittee of any identified noncompliance and requirements for a return to compliance during the Inspection. If the Permittee is not present during the Inspection, then the City inspector will notify the Permittee of the identified noncompliance within 24 hours. The City will require the Permittee to immediately correct all noncompliance to minimize the discharge of pollutants, but in all cases will require that noncompliance must be corrected within 3 Days of the initial identification of the deficiency in accordance with the enforcement procedures of the SCM. Communications of

noncompliance between Inspectors and owners/operators of construction sites will be documented in accordance with Section X (Recordkeeping and Reporting).

(2) The City must require the Permittee of the construction site to provide documentation demonstrating that the noncompliance has ceased and the deficiency is corrected within 3 Days.

(3) The City inspector must conduct a follow-up Inspection to verify the identified noncompliance was corrected within 5 Business Days but in all cases no more than 10 Business Days of the initial identification of the deficiency. If the City has received evidence from the construction site Permittee demonstrating the deficiencies have been corrected, it may substitute that evidence for the follow-up Inspection.

(4) If the City does not have evidence demonstrating the deficiencies have been corrected, the City will issue a Stop Work Order within 24 Days of the initial identification of the deficiency. The Stop Work Order will temporarily suspend the GEC Permit and immediately stop all work until all noncompliance is corrected. A Stop Work Order will stay in effect until a City inspector has documented that the construction site is fully in compliance with the MS4 Permit, City-approved GEC Plan, CSWMP, and the SCM.

(5) In each case where the City determines not to escalate enforcement in accordance with the procedures and timelines required by the Permit and the SCM, the City must document its decision not to escalate in a written report. This documentation requirement applies, among other things, to: (a) an Inspector not

issuing a Letter of Non-Compliance to the Permittee of a construction site after a City inspector identifies non-compliance at the construction site and the Permittee does not correct the noncompliance within 3 Days; and/or (b) an Inspector not issuing a Stop Work Order when two or more Letters of Non-Compliance in a 6-month period have been identified. The written report must be prepared no later than the date the escalation action would have been required under the Permit and the SCM. The reports will be included in the Compliance Report.

13. Commercial and Residential Management Program. The City's Permit requires a Commercial and Residential Management Program to address stormwater runoff from (a) Municipally Owned Structures; and (b) New Development and Redevelopment ("NDRD") Sites. Beginning on the Effective Date, the City shall inspect and maintain Municipally Owned Structures to minimize stormwater pollution in accordance with the Permit and Stormwater Management Program. The City shall also require the design, installation and maintenance of Control Measures at all NDRD sites to comply with the Permit and Stormwater Management Program.

a. Tracking of Municipally Owned Structures and Permanent Control Measures. The City shall inventory and track all Municipally Owned Structures and Permanent Control Measures as required by the Permit and maintain this information in the City's tracking database (i.e., Cartegraph or equivalent). The tracking database must be searchable and must include at least the following information, as applicable: project identifier (City Site O&M Number and/or City Facility ID if private), measure type and description, ownership, identity of person or entity that will maintain the measure,

required frequency of inspections and maintenance, date of Maintenance Agreement (“MA”) and Inspection and Maintenance Plan (“IMP”), as-built plan date, engineer certification date, most recent inspection date with identified deficiencies, corrective action and repair date; and description of current functional condition based on most recent inspection and/or maintenance activity; location information (including subdivision name if applicable), City acceptance date, and drainage report data (including approval date, total impervious acreage treated, and WQSV or WQCV with drain time). The tracking database shall have mapping capabilities using GIS layers to create and submit a comprehensive MS4 map that identifies key infrastructure and factors influencing proper operation and maintenance of the MS4. Mapping shall include topographic features, stormwater infrastructure, cleaning and repair activities, municipal boundaries, street names, private property delineations, water bodies and watercourses, the City’s MS4 outfalls, municipal pipes, municipal open channel conveyances, municipal catch basins, Municipally Owned Control Measures, and Permanent Control Measures. By 180 Days after the Effective Date, the City shall add all existing Municipally Owned Structures and all Permanent Control Measures completed between July 2018 and the Effective Date to the City’s tracking database. The City shall add to the tracking database, upon acceptance of an as-built plan, each Municipally Owned Structure and Permanent Control Measure constructed after the Effective Date. For Existing and New Measures, the City must add these measures to the tracking database before the City may certify credit under the Credit Table, Appendix A.

b. Operation and Maintenance of Municipally Owned Structures. The City shall implement the approved SOPs and checklists for inspection and maintenance of Municipally Owned Structures described below in accordance with the Stormwater Management Program and the Permit. The City shall distribute copies of all approved SOPs and checklists to all City officers, employees, agents and contractors whose duties might reasonably include operation and maintenance of Municipally Owned Structures.

(1) SOPs for Municipally Owned Structures. The City shall prepare updated SOPs describing how the City will inspect and maintain its Municipally Owned Structures in accordance with MS4 Permit requirements and Good Engineering, Hydrologic, and Pollution Control Practices. The updated SOPs shall be submitted to the Agencies by the deadline in Section VII, Table II, below and in accordance with Paragraph 25 (Submittal Process), below and must be implemented by 60 Days after Approval of the SOP. The SOPs shall include: procedures and schedule for maintenance and a process for ongoing maintenance of installed controls; where appropriate, a minimum frequency for inspections of Municipally Owned Structures; an inspection procedure or inspection checklist associated with each type of Municipally Owned Structure; and a process and timeframe to correct deficiencies or perform required maintenance of Municipally Owned Structures. Inspection and Maintenance SOPs are required for the following Municipally Owned Structures or facilities:

(a) Open Channel;

(b) Stormwater Conveyance Infrastructure, which includes the following;

- (i) Inlet (including Catch Basins and Siphons);
- (ii) Conveyance Piping; and
- (iii) Outlets.

(2) Municipally Owned Structure Inspections and Maintenance. The City shall conduct Inspections and maintenance of all Municipally Owned Structures, in accordance with the Permit, DCM, and all applicable SOPs and checklists. The City shall ensure that all deficiencies are corrected in accordance with Permit, DCM and applicable SOP requirements.

c. New Development and Redevelopment Program. The City shall use the Approved SOPs and checklists described below for inspection and maintenance of Private and Municipally Maintained Permanent Control Measures and associated volume reduction measures, by 60 Days after the SOPs and checklists have been Approved. The City shall distribute copies of all Approved SOPs and checklists to all City officers, employees, agents and contractors whose duties might reasonably include operation and maintenance of Permanent Control Measures.

(1) SOP(s) for Permanent Control Measures. The City shall prepare and revise SOP(s) that describe how the City will conduct inspections and require maintenance of Permanent Control Measures to ensure adequate long-term operation in accordance with the Permit and Good Engineering, Hydrologic, and Pollution Control Practices. The SOP(s) must be submitted to the Agencies by the deadline set forth in Section VII, Table II, below and in accordance with

Paragraph 25 (Submittal Process). The SOP(s) shall include the following minimum requirements: frequency of inspections for each type of Control Measure; an inspection checklist associated with each type of Control Measure that includes a requirement to review the IMP for the Control Measure; a process and timeframe to correct deficiencies or perform required maintenance; a requirement for private parties to submit an annual certification that the inspection and maintenance have been performed, including each date upon which inspection, correction of deficiencies or maintenance was performed; and a process for escalation and enforcement if the established timeframe for correcting deficiencies in function or maintenance are not met. The SOP must address oversight of any associated volume reduction measures including buffers and swales. The required SOPs that must be submitted for review and approval are as follows:

(a) Privately Maintained Permanent Control Measure

Inspection, Tracking and Enforcement; and

(b) Municipally Maintained Permanent Control Measure

Inspection, Tracking and Enforcement;

(2) The SOPs described in subparagraphs 13.c.(1)(a)-(b) above, must include checklists that account for the following types of Permanent Control Measures:

(a) Extended Detention Basin;

(b) Sand Filter;



- (c) Bioretention;
- (d) Constructed Wetland Basin;
- (e) Retention Pond;
- (f) Green Roof; and
- (g) Underground Control Measure.

(3) Inspection and Maintenance of Permanent Control Measures. The City must conduct inspections of all Permanent Control Measures as required by the Permit, DCM, the applicable SOP, checklist, and IMP. The City must ensure that all maintenance is conducted and deficiencies are corrected in accordance with the Permit, DCM, and the applicable SOP, checklists and/or IMP.

d. Permanent Control Measures to Meet the WQSV Target. This compliance requirement addresses (a) the City's alleged failure to require control measures at various NDRD Sites since 2002 in accordance with Permit requirements and (b) where control measures were required at NDRD Sites, the City's alleged failure to require the proper design, installation and maintenance of various control measures. This compliance requirement is described herein and in Appendices A and B. In the event of a conflict between this Decree and the Appendices, the Appendices shall govern.

(1) WQSV Target. Utilizing interpretation of aerial imagery, the Parties agree that an impervious surface area of 1,703 acres, created in the City as a result of new development between November 2002 and July 31, 2018, is subject to Permit requirements for installation of Permanent Control Measures. The Parties further agree that this acreage of impervious surface area is equivalent to 71 AF of

stormwater runoff treatment design capacity, measured as WQSV, that the City must capture to treat runoff from this surface area. The 71 AF is the WQSV Target to be met under this Decree.

(2) Meeting the WQSV Target. To meet the 71 AF Target, the City must certify enough Credited Measures under any of the options listed below to add up to 71 AF. The City must use the Credit Table in Appendix A (described in more detail in subparagraph 13(d)(3)) to calculate the specific amount of credited AF that will be assigned to each certified Credited Measure. The three options for meeting the 71 AF Target are:

(a) verify that an Existing Measure is functioning properly in accordance with Appendix B (Verification of Functioning Control Measures);

(b) repair or correct an Existing Measure that is not functioning properly and then verify it is functioning in accordance with Appendix B (Verification of Functioning Control Measures); or,

(c) build, modify, or implement a New Measure.

(3) Assignment of Credit for Credited Measures (“Credit Table”).

Credited Measures, certified by the City in accordance with Appendices A (Credit Table) and B (Verification of a Functioning Control Measures), will receive credit based on the credit valuation and meeting the credit requirements in the Credit Table included as Appendix A to the Decree. The Credit Table explains how to calculate an AF value, which can be applied toward the Target, using the type of

Credited Measure and the scale of stormwater runoff pollutants the Credited Measure is designed to address. To receive credit, the City must also meet the criteria and requirements for the applicable Credited Measure category in the Credit Table for each Credited Measure.

(4) Verification of Functioning Existing Measures and Repaired or Corrected Existing Measures. To demonstrate that an Existing Measure or a repaired or corrected Existing Measure is functional for the purpose of receiving credit toward the WQSV Target, the City must satisfy the criteria in the Verification of Functioning Control Measures (Appendix B). Once the City has demonstrated the Existing Measure is functional or has been restored to full functionality, the City will receive credit toward the Target in accordance with Credited Measure category No. 2 (Existing Measures) in Appendix A (Credit Table). The City shall certify and track each Existing Measure in accordance with the Reporting and Tracking Spreadsheet referenced in Section X (Recordkeeping and Reporting).

(5) New Measures in the Credit Table. The City shall receive credit for New Measures by certifying that the criteria and requirements for the New Measure in Appendix A (Credit Table) have been met. The City shall certify and track each New Measure in accordance with the Reporting and Tracking Spreadsheet referenced in Section X (Recordkeeping and Reporting).

(6) Minimum Amount of New Measures. The City must certify that at least 14.62 AF of the WQSV counted towards meeting the Target is from New Measures.

(7) Modifications. The City may seek to modify the Credit Table provided in Appendix A, in accordance with the requirements set forth in Section XXI (Modification).

(8) Crediting Milestone Schedule for Achieving Target. At a minimum, the City must meet the following milestones set forth in the Table I below by (i) certifying Credited Measures totaling the required AF toward achieving the WQSV Target, (ii) certifying sufficient New Measures as a subset of the overall AF total to meet the required minimum New Measure AF requirements, and (iii) certifying verification of 100% of existing measures. The City shall provide this certification in the Compliance Report.

<b>Table I. Required Milestones for Achieving QSV Target</b>				
<b>Years after Effective Date</b>	<b>Required AF milestones</b>	<b>% of Target</b>	<b>Required Credited Measure milestones</b>	<b>Additional milestones</b>
4	<b>19.88</b>	28%	New Measures: At least 4.70 AF	
7	<b>39.76</b>	56%	New Measures: At least 9.40 AF	Certify to the verification of 100% of known Existing Measures <u>not</u> needing repairs/corrections, except where the City submits sufficient justification of delay of verification for Existing Measures in the Year 7 Compliance Report.
11	<b>53.25</b>	75%	New Measures: At least 14.10 AF	
15	<b>71</b>	100%	New Measures: At least 14.62 AF	

14. Training. The City shall implement an enhanced training program for all City staff and any City contractors involved in implementing the Construction Sites Program and the Commercial and Residential Stormwater Program. All City staff whose primary job duties are related to implementing these programs must attend annual internal training as set forth herein for the duration of this requirement under the Decree. Training requirements specific to each program are as follows:

a. Construction Sites Program Training. All City engineering reviewers and inspectors who review and approve Construction GEC Plans and CSWMPs or inspect construction sites must complete internal and external trainings as set forth in this subparagraph. All Construction Sites Program staff will complete the external training titled CETC 150 Stormwater Management and Erosion Control Training, or an equivalent, and sign a certification of completion with his/her supervisor within one year after the Effective Date of this Decree. Construction Sites Program staff hired during the implementation of this Decree will complete this external training within 6 months of his/her start date of employment. All Construction Sites Program staff will complete internal training on an annual basis and sign a certification of completion with his/her supervisor, annually. The City must submit a Construction Sites Program Internal Training Plan by the deadline set forth in Section VII, Table II, in accordance with Paragraph 25 (Submittal Process). The Construction Sites Program Internal Training Plan will include sections on the following:

(1) GEC Plan and CSWMP Reviewers. This section of the training plan will describe how the City will train its engineering reviewers to properly review GEC Plans and CSWMPs for compliance with the SCM and the Permit. This section of the training plan will be revised, as necessary, upon receipt of each Third-Party Audit's results and recommendations under Paragraph 15 (Third-Party Audit);

(2) Construction Site Inspector Training. This section of the training plan will describe how the City will train its Inspectors to inspect construction sites for

compliance with the SCM and the Permit. Training will include a field component that demonstrates to each Inspector how each Construction Control Measure is designed, installed, and maintained in accordance with the SCM requirements under various conditions;

(3) Schedules Table. This section of the training plan will set forth the schedules for internal trainings of Construction Sites Program staff on an annual basis; and

(4) Twice Monthly Meetings. Twice monthly, City engineering reviewers will meet with supervisors to discuss identified issues of noncompliance by developers with GEC Plan and CSWMP submittals and determine whether additional public education and outreach can reduce noncompliance. City inspectors will also meet twice monthly with supervisors to discuss issues of noncompliance at construction sites and determine whether additional public outreach can reduce noncompliance.

b. Commercial and Residential Management Program Internal Training. The City must submit a Commercial and Residential Management Program Internal Training Plan by the deadline set forth in Section VII, Table II, in accordance with Paragraph 25 (Submittal Process). All City staff whose primary job duties are related to implementation of the Commercial and Residential Management Program will complete the internal training plan, on an annual basis. All Commercial and Residential Management Program staff will sign a certification of completion of training with his/her supervisor, annually. The internal training plan will be revised, as necessary,

upon receipt of each Third-Party Audit's results and recommendations as provided in Paragraph 15 (Third-Party Audit of Control Measure Installation and Maintenance).

The Commercial and Residential Management Program Internal Training Plan must include the following:

(1) A description of how the City will train its staff to properly review the design, installation, operation and maintenance of Permanent Control Measures and Municipally-Owned Structures for compliance with the Permit, DCM and applicable SOPs; and

(2) Schedules Table. This section will set forth the schedules for internal trainings for relevant City staff on an annual basis.

15. Third-Party Audits.

a. Overview. The City shall utilize one or more qualified independent, third-party consultant(s) ("Auditor(s)") to conduct a third-party audit of (1) the City's approval of GEC Plans and CSWMPs under the Construction Sites Program for the purpose of ensuring the City's compliance with the Permit and the SCM; (2) the City's oversight of installation and maintenance of Permanent Control Measures for the purpose of ensuring compliance with this Decree, the Permit and the DCM; and (3) the City's implementation of Appendix A (Credit Table) and Appendix B (Verification of Functioning Control Measures) for the purpose of ensuring that the City is properly applying those Appendices and is accurately certifying Credited Measures to meet the WQSV Target.

(1) Third-Party Auditor Selection and Work Plan Approval.



(a) The City shall require that the Auditor act independently and objectively when performing all activities related to assessing the City's compliance with the Permit and the Consent Decree terms.

(b) The City shall provide the Auditor with full access to necessary personnel, documents, and sites needed for the Auditor's verification activities.

(c) The City must certify that the Auditor's company has not provided design and planning services for any residential or commercial development projects submitted to the City for approval in the year prior to Work Plan Approval and has no significant perceived conflict of interests. The Auditor will not be eligible for submittal of residential or commercial development projects to the City for approval under the Construction Sites Program or Commercial and Residential Sites Program throughout the term of the third-party audits. In addition, the City must certify that the Auditor has experience in the engineering of Construction Control Measures and Permanent Control Measures, as well as in municipal stormwater management.

(2) Audit Work Plan. The City shall submit a proposed Audit Work Plan by the deadline set forth in Table II, Section VII (Deadlines for Injunctive Relief and Mitigation Project Submittals) and in accordance with Paragraph 25 (Submittal Process) that encompasses each of the audit requirements set forth in subparagraphs 15(b)-(d), below.

(3) Timing and Frequency of Audits. The City will be subject to an annual Audit for at least three years. The first audit shall cover the Effective Date through the first full Compliance Reporting Period after the Effective Date. Each subsequent audit shall cover the Compliance Reporting Period for every year thereafter. The Audit requirement may be extended if the City fails to meet the required compliance rates set forth in subparagraphs 15(b)-(d), below. The Audit covering a given year will be completed within six months after the end of the Compliance Reporting Period.

(4) Draft Third-Party Audit Report. By the deadline set forth in Table II, Section VII (Deadlines for Injunctive Relief and Mitigation Project Submittals) and in accordance with Paragraph 25 (Submittal Process), the City will have the Auditor prepare a draft written report (“Draft Audit Report”) for each annual Audit describing the document review, field audits and conclusions reached regarding (1) the City’s review of GEC Plans and CSWMPs; and (2) the City’s review and oversight of installation and maintenance of Permanent Control Measures; and (3) the City’s compliance with Appendix A (Credit Table) and Appendix B (Verification of Functioning Control Measures) for Credited Measures. The Draft Audit Report will also describe any correspondence/communications with the City regarding the Audit. In addition, the Draft Audit Report will include the following information: every finding of noncompliance with the Permit or this Decree, including the site involved, a detailed description of the noncompliance, when it occurred, the potential cause

of noncompliance; any documentation supporting the finding, including copies of relevant documents and photos; if relevant, recommendations to prevent reoccurrence of the noncompliance; and any concerns that the noncompliance may be part of a pattern of related noncompliance indicating a systematic issue. Following review and comment by the Agencies, the Draft Audit Report shall become the Final Audit Report in accordance with Paragraph 25 (Submittal Process).

(5) Implementation of Corrective Actions Post-Third-Party Audit Report.

The City shall evaluate the findings of the Final Audit Report, determine what corrective actions are appropriate, and implement corrective actions within 90 Days of the Final Audit Report. The City must provide in the Compliance Report the following information regarding each incidence of noncompliance identified by the Auditor: how the noncompliance was corrected; when it was corrected; the staff position(s) responsible for correcting the noncompliance; whether broader corrective action was necessary to prevent the reoccurrence of the noncompliance; and state whether any noncompliance was not corrected and why.

b. Third-Party Audit of Review and Approval of GEC Plans and CSWMPs under the Construction Sites Program. The purpose of this audit is: (i) for each GEC Plan and CSWMP reviewed, to identify any noncompliance with the Permit and SCM requirements; and (ii) to provide feedback and recommendations to the City Reviewers about areas for improvement on GEC Plan and CSWMP approval. The City will re-review GEC Plans and CSWMPs identified as noncompliant and require the correction

of the noncompliance in accordance with the minor and major modification GEC Plan requirements set forth in the SCM for construction sites where the conditions are still present. In addition, the City will incorporate recommendations from the Auditor, as appropriate, into annual training; and/or implement Construction Sites Program changes. The Auditor will conduct the audit as set forth below.

(1) Document Review. The Auditor will review each GEC Plan and CSWMP for all requirements set forth in Chapter 3 of the SCM and Appendices A-D of the SCM. The Auditor will verify that all Construction Control Measures proposed in each GEC Plan and CSWMP are appropriate in the context of the design specifications set forth in Appendix E of the SCM. The Auditor will include all information from this subparagraph in the Draft Audit Report.

(2) Selection of GEC Plans and CSWMPs for Review. GEC Plans and CSWMPs will be selected by the Auditor on a random basis (by the Auditor or computer-generated sample) and must include approximately statistically representative percentages of all City Plan reviewers and permitted construction sites (single family residential, commercial, industrial, mixed use/other, public project). The Audit Work Plan will specify the methodology proposed for achieving the objectives of randomness and representation.

(3) Required Compliance Rates.

(a) During the period from the Effective Date through December 31, 2021 (“Year 1”), 25% of all GEC Plans and CSWMPs approved by the City will be selected for review by the Auditor;

(b) If the Final Audit Report for Year 1 finds that less than or equal to 10% (“Year 1 Compliance Rate”) of GEC Plans and CSWMPs subject to Document Review were noncompliant, the Auditor will review 10% of the GEC Plans and CSWMPs approved by the City during the second Compliance Reporting Period (“Year 2”);

(c) If the Final Audit Report for Year 1 finds that more than the Year 1 Compliance Rate of the approved GEC Plans and CSWMPs subject to Document Review were noncompliant, the Auditor will review 35% of the GEC Plans and CSWMPs approved by the City in the next Compliance Reporting Period. The Auditor will continue auditing 35% of the GEC Plans and CSWMPs each year until the Year 1 Compliance Rate is achieved, at which point the Auditor will move to the Year 2 review percentages and procedures set forth in subparagraph (b);

(d) If the Final Audit Report for Year 2 finds that less than or equal to 10% (“Year 2 Compliance Rate”) of GEC Plans and CSWMPs subject to Document Review were noncompliant, the Auditor will review 10% of the GEC Plans and CSWMPs approved by the City during the third full Compliance Reporting Period (“Year 3”);

(e) If the Final Audit Report for Year 2 finds that more than the Year 2 Compliance Rate of the approved GEC Plans and CSWMPs subject to Document Review were noncompliant, the Auditor will review 20% of the GEC Plans and CSWMPs approved by the City in the next

Compliance Reporting Period. The Auditor will continue auditing 20% of the GEC Plans and CSWMPs each year until the Year 2 Compliance Rate is achieved, at which point the Auditor will move to the Year 3 review percentages and procedures set forth in subparagraph (d);

(f) If the Final Audit Report for Year 3 finds that no more than the greater of 5% or 2 (“Year 3 Compliance Rate”) of the GEC Plans and CSWMPs subject to Document Review were noncompliant, no additional third-party audits of GEC Plans and CSWMPs will be required;

(g) If, however, the Final Audit Report for Year 3 finds that more than the Year 3 Compliance Rate of the GEC Plans and CSWMPs subject to Document Review were noncompliant, the City will continue to have the Auditor review 20% of GEC Plans and CSWMPs approved by the City during each subsequent Compliance Reporting Period until the Year 3 Compliance Rate is achieved. Once the Year 3 Compliance Rate is achieved, no additional third-party audits of GEC Plans and CSWMPs will be required.

c. Third-Party Audit of the City’s Oversight of Permanent Control Measure Installation and Maintenance. This Audit is intended to confirm the City’s compliance with the oversight requirements in the Consent Decree, Permit, and DCM for Permanent Control Measure installation and maintenance. The Auditor will conduct the audit as set forth below.

(1) Selection of Permanent Control Measures for Audit. The City will generate a list of Permanent Control Measures constructed and approved during the period being audited using the tracking database required by subparagraph 13(a). The City will provide this list to the Auditor. The Permanent Control Measures selected for audit will be selected on a random basis (by the Auditor or computer-generated sample) and must include approximately statistically representative percentages across Permanent Control Measure types (e.g., extended detention basin, filtration with underdrains, infiltration, underground controls, and porous landscape detention), ownership (private versus municipally maintained), and City staff reviewers. The Audit Work Plan described above in subparagraph 15(a)(2) will specify the methodology proposed for achieving the objectives of randomness and representation of the Permanent Control Measures on the list. The list of audited Permanent Control Measures will be submitted annually in the Compliance Report.

(2) Document Review. The Auditor will conduct a document review of all appropriate supporting documentation for each selected Permanent Control Measure including, but not limited to: design documents, construction inspector closeout reports, WQSV (or infiltration volume) verification, PE Certification, as-built plans, annual reports, and applicable IMP.

(3) Field Inspection: The Auditor will also visually inspect the structure and/or control to verify that the City has complied with the oversight requirements in the Permit and DCM.

(4) Auditor Determination of Noncompliance. The Auditor will classify as noncompliant any structure and/or control that has deficiencies in design, installation, or maintenance sufficient to interfere with the Permanent Control Measure's ability to provide water quality treatment in accordance with the applicable design standard, or with Good Engineering, Hydrologic, and Pollution Control Practices in the absence of a design standard. This includes deficiencies that increase the frequency or scale of maintenance necessary to provide the same water quality treatment when such maintenance is not sufficiently addressed in an IMP.

(5) City Response to Final Audit Report: The City shall note any patterns of deficiencies found in the Final Audit Report in the City's oversight of Permanent Control Measures in accordance with the Permit and this Consent Decree and include this information in the next Compliance Report. The City will address any noncompliance issues identified during the Audit by requiring: (1) correction of the noncompliance in accordance with this Consent Decree, design specifications in the DCM or, in the absence of design specifications, in accordance with Good Engineering, Hydrologic, and Pollution Control Practices; (2) if needed, implementation of applicable internal training requirements to prevent noncompliance in the future; and/or (3) implementation of programmatic changes that are needed systemwide in the Commercial and Residential Management Program.



(6) Required Compliance Rate. During the period from the Effective Date through December 31, 2021 (“Year 1”), 25% of all Permanent Control Measures reported in the City’s tracking database required by subparagraph 13(a) as installed during this period under the City’s NDRD Program will be selected for review by the Auditor pursuant to the process for selecting Permanent Control Measures set forth in subparagraph 15(c)(1), above.

(a) If the Final Audit Report during Year 1 finds no more than the greater of 10% or 2 (“Year 1 Compliance Rate”) of the Permanent Control Measures subject to document review and field inspection were noncompliant, the Auditor will review the greater of 10% or 2 of the Permanent Control Measures added to the City’s tracking database required by subparagraph 13(a) in the second Compliance Reporting Period (“Year 2”).

(b) If the Final Audit Report during Year 1 finds that more than the Year 1 Compliance Rate of the Permanent Control Measures subject to document review and field inspection were noncompliant, the Auditor will review 35% of Permanent Control Measures added to the City’s tracking database required by subparagraph 13(a) in Year 2. The Auditor will continue auditing 35% of Permanent Control Measures until the Year 1 Compliance Rate is achieved, at which point the Auditor will move to the Year 2 review percentages and procedures set forth in subparagraph (c).

(c) If the Final Audit Report during Year 2 finds that no more than the greater of 10% or 2 (“Year 2 Compliance Rate”) of Permanent Control Measures subject to document review and field inspection were noncompliant, the Auditor will review the greater of 10% or 2 of Permanent Control Measures added to the City’s tracking database required by subparagraph 13(a) in the third full Compliance Reporting Period (“Year 3”).

(d) If the Final Audit Report during Year 2 finds that more than the Year 2 Compliance Rate of Permanent Control Measures subject to document review and field inspection were noncompliant, the Auditor will review 20% of the of Permanent Control Measures added to the City’s tracking database required by subparagraph 13(a) during the next Compliance Reporting Period. The Auditor will continue auditing 20% of Permanent Control Measures until the Year 2 Compliance Rate is achieved, at which point the Auditor will move to the Year 3 review percentages and procedures set forth in subparagraph (e).

(e) If the Final Audit Report during Year 3 finds that no more than the greater of 5% or 2 (“Year 3 Compliance Rate”) of Permanent Control Measures subject to document review and field inspection were noncompliant, no additional third-party audits of installed Permanent Control Measures will be required.

(f) If, however, the Final Audit Report during Year 3 finds that more than the Year 3 Compliance Rate of the Permanent Control Measures subject to document review and field inspection are noncompliant, the City will continue to audit 20% of the installed Permanent Control Measures annually until the Year 3 Compliance Rate is achieved. Once the Year 3 Compliance Rate is achieved, no additional third-party audits of Permanent Control Measures will be required.

d. Third-Party Audit of Credited Measures. The purpose of this final component of the third-party audit is to confirm the City's compliance with Appendices A and B.

(1) Selection of Existing Measures and New Measures for Audit. The Auditor will review the Reporting and Tracking Spreadsheet and create a list of Credited Measures to be audited consisting of (a) Existing Measures certified as correctly functioning in accordance with Appendix B and claimed by the City for credit against the Target during the previous year and (b) New Measures certified under Appendix A and claimed by the City for credit against the Target during the previous year.

(a) The list of Credited Measures will be selected on a random basis (by the Auditor or computer-generated sample) from the Reporting and Tracking Spreadsheet and must include statistically representative percentages across Credited Measure types (e.g., extended detention basin, filtration with underdrains, infiltration, underground controls, swales, and

porous landscape detention) and ownership (private versus municipally owned and maintained). The list shall also include approximately statistically representative percentages of Existing Measures and New Measures claimed by the City for credit against the Target during the previous year. The Audit Work Plan described above in subparagraph 15(a)(2) will specify the methodology proposed for achieving the objectives of randomness and representation of the Credited Measures on the list. The list of audited Credited Measures will be submitted annually in the Compliance Report.

(2) Document Review. The Auditor will conduct a document review of all appropriate supporting documentation for each selected Credited Measure including, but not limited to: design documents, construction inspector closeout reports, WQSV (or infiltration volume) verification, PE Certification, as-built plans, annual reports, and applicable IMP.

(3) Field Inspection. The Auditor will also visually inspect the permanent Credited Measures to verify that the City has complied with the requirements in Appendices A and B for Existing Measures and New Measures.

(4) Auditor Determination of Noncompliance. The Auditor will classify as noncompliant any Credited Measure that did not satisfy all Criteria/Requirements for the applicable Credited Measure category in Appendix A (including the requirements in Appendix B for category 2 Credited Measures) or that was assigned a credit value not in accordance with the credit calculation

methodology of Appendix A. The City shall also note any patterns of deficiencies found in the Final Audit Report in the City's certification of Credited Measures in accordance with this Consent Decree and include this information in the next Compliance Report. Any Credited Measures that are determined by the Auditor to be noncompliant with Appendix A will not be eligible to be credited against the 71 AF Target until the noncompliance is corrected by the City and supported by documentation in the next Compliance Report. If needed, the City will also address any systemic noncompliance issues identified in the Final Audit Report by instituting appropriate changes to its process for implementing Appendices A and B.

(a) Required Compliance Rate. During the period from the Effective Date through December 31, 2021 ("Year 1"), 25% of all Credited Measures reported in the Reporting and Tracking Spreadsheet will be selected for review by the Auditor pursuant to the process for selecting Credited Measures set forth in subparagraph 15(d)(1), above.

(b) If the Final Audit Report during Year 1 finds that no more than the greater of 10% or 2 ("Year 1 Compliance Rate") of the Credited Measures subject to the audit were noncompliant, the Auditor will review the greater of 10% or 2 of the Credited Measures added to the Reporting and Tracking Spreadsheet in the second Compliance Reporting Period ("Year 2").

(c) If the Final Audit Report during Year 1 finds that more than the Year 1 Compliance Rate of the Credited Measures subject to the audit were noncompliant, the Auditor will review 35% of Credited Measures added to the Reporting and Tracking Spreadsheet in Year 2. The Auditor will continue auditing 35% of the Credited Measures added by the City each subsequent Compliance Reporting Period until the Year 1 Compliance Rate is achieved, at which point the Auditor will move to the Year 2 review percentages and procedures set forth in subparagraph (b).

(d) If the Final Audit Report during Year 2 finds that no more than the greater of 10% or 2 (“Year 2 Compliance Rate”) of Credited Measures subject to the audit were noncompliant, the Auditor will review the greater of 10% or 2 of Credited Measures added to the Reporting and Tracking Spreadsheet in the third Compliance Reporting Period (“Year 3”).

(e) If the Final Audit Report during Year 2 finds that more than the Year 2 Compliance Rate of Credited Measures subject to the audit were noncompliant, the Auditor will review 20% of the of Credited Measures added to the Reporting and Tracking Spreadsheet in Year 3. The Auditor will continue auditing 20% of the Credited Measures added by the City each subsequent Compliance Reporting Period until the Year 2 Compliance Rate is achieved, at which point the Auditor will move to the Year 3 review percentages and procedures set forth in subparagraph (e).

(f) If the Final Audit Report during Year 3 finds that no more than the greater of 5% or 2 (“Year 3 Compliance Rate”) of Credited Measures subject to the audit were noncompliant, no additional third-party audits of installed Credited Measures will be required.

(g) If, however, the Final Audit Report during Year 3 finds that more than the Year 3 Compliance Rate of the Credited Measures subject to the audit were noncompliant, the City will continue to audit 20% of the installed Credited Measures each subsequent Compliance Reporting Period until the Year 3 Compliance Rate is achieved. Once the Year 3 Compliance Rate is achieved, no additional third-party audits of Credited Measures will be required.

16. Supervisory Audits. The City Supervisory Audit shall be completed by the City Water Resources Engineering Division and Stormwater Enterprise Manager or his/her successor or designee (“Supervisory Auditor”). The purpose of this Supervisory Audit is to ensure City personnel and contractors comply with the requirements of the Permit and this Decree in the implementation of the respective programs covered by these audits.

a. Supervisory Audit Reports. For each internal Supervisory Audit completed consistent with the requirements set forth in subparagraphs 16(b)-(c), the Supervisory Auditor will write a report of his/her findings and recommendations to staff. These reports shall be maintained by the City in accordance with Paragraph 34 (Recordkeeping). The results shall be summarized, including a description of how the City will correct any deficiencies and/or necessary corrections identified during the

audit in the Compliance Report submitted pursuant to subparagraph 35(c) in Section X (Recordkeeping and Reporting).

b. Construction Inspector Supervisory Audit. These audits will begin within 60 Days of EPA Approval of the Construction Inspection Supervisory Audit SOP. The purpose of the audits will be to ensure the City inspectors are performing their inspections in accordance with the SCM, Permit, this Decree, and the GEC Inspection and Enforcement Program SOP.

(1) Frequency: The Construction Inspector Supervisory Audits will be conducted in accordance with the SOP described below until terminated in accordance with Paragraph 86 (Partial Termination).

(2) SOP for Construction Inspector Supervisory Audit. The City will develop and submit the SOP by the deadline set forth in Table II, Section VII (Deadlines for Injunctive Relief and Mitigation Project Submittals) and in accordance with Paragraph 25 (Submittal Process). The SOP will set forth the requirements of a supervisory audit process which includes: at least one field assessment of each City inspector on a quarterly basis (hereinafter Construction Inspector Supervisory Field Audits) with, if possible, a different kind of inspection audited each quarter to ensure review of a variety of types of construction sites (e.g., commercial, residential, steep terrain, urban terrain). The SOP will require that the Construction Inspector Supervisory Field Audits include the following:



(a) an assessment by the supervisor of a City Inspection completed by a staff City inspector no more than 24-hours before;

(b) a review by the Supervisory Auditor of the in-the-field site conditions, the inspection checklist completed by the City inspector, and any correspondence with the developer; and

(c) the internal submittal by the Supervisory Auditor of a Construction Inspector Supervisory Audit Report within one week of completing the Construction Inspector Supervisory Field Audit.

c. Long-Term Operation and Maintenance Inspections of Permanent Control Measures Supervisory Audits. The purpose of these Supervisory Audits is to ensure the City is implementing its long-term operation and maintenance program procedures in compliance with the Permit, this Consent Decree, and Good Engineering, Hydrologic, and Pollution Control Practices.

(1) Frequency: No later than three years after the Effective Date of this Decree (“Year 4”) the City will initiate combined document and field Supervisory Audits of Long-Term Operation and Maintenance of Permanent Control Measures. These audits will be conducted on an annual basis until terminated in accordance with Section XXII (Termination).

(2) SOP for Long-Term Operation and Maintenance Inspections of Permanent Control Measures Supervisory Audits. The City shall submit a SOP for Long-Term Operation and Maintenance of Permanent Control Measures Supervisory Audits by the deadline set forth in Table II, Section VII (Injunctive

Relief and Mitigation Project Deadlines and Submittal Process) and in accordance with Paragraph 25 (Submittal Process). The SOP must include the following information:

(a) a description of the methodology proposed for achieving randomness and representation for the selection of Permanent Control Measures for supervisory review to ensure an approximately statistically equal distribution across Permanent Control Measure types, ownership (private versus municipally owned or maintained), and City inspectors; and

(b) a description of the combined field and document audit that requires the Supervisory Auditor review and inspect at least 10% of all Permanent Control Measures inspected by the City in the requisite year.

(3) Document Audit of Long-Term Operation and Maintenance of Permanent Control Measures. The document audit of Long-Term Operation and Maintenance of Permanent Control Measures, at a minimum, shall require the Supervisory Auditor to ensure the availability and adequacy of the following, as applicable: as-built plans, design plans, inspection reports and checklists, inspection photographs, and IMP; City correspondence between the active construction inspector and the operation and maintenance inspector regarding any deficiencies and/or corrections of potential design or installation concerns that could impact the functionality or operation and maintenance of the Permanent Control Measures; City correspondence with the property owner regarding

maintenance needs and any follow-up with the property owner; and documentation of maintenance conducted by the City in the event the property owner fails to complete the required maintenance. The Supervisory Auditor shall review this documentation for consistency with the DCM, applicable SOPs, and the Permit.

(4) Field Audit of Long-Term Operation and Maintenance of Permanent Control Measures. Using the information from the document audit, the Supervisory Auditor shall field audit at least one Permanent Control Measure per City inspector per year by conducting a field inspection of one Permanent Control Measure selected for the document audit to verify compliance with the Permit, this Consent Decree, and Good Engineering, Hydrologic, and Pollution Control Practices.

## **VI. MITIGATION PROJECTS**

17. The City shall implement the Mitigation Project(s) in compliance with this Consent Decree and with the approved plans and schedules for such Projects in Appendix C (Mitigation Projects). The City shall dedicate \$500,000 to fund a geomorphology study as set forth in Appendix C and shall spend \$10,500,000 on project(s) informed by the study. Any unexpended funds remaining after completion of the geomorphology study shall be directed to fund the Mitigation Project(s).

18. The City shall maintain and, within 45 Days of an EPA or CDPHE request, provide copies of all documents to identify and substantiate the Project Dollars expended to implement the Mitigation Project(s) described in Appendix C.

19. Plans and reports prepared by the City, pursuant to the requirements of this Section VI (Mitigation Projects) and Appendix C, are to be submitted to the EPA, CDPHE, and Plaintiff Intervenor. Such plans and reports shall be made available to the public by the City upon request and without charge, except that the City may redact information that it claims business confidential pursuant to Paragraph 65. Plans and reports may be submitted and made available by electronic means.

20. The City shall certify, as part of the Mitigation Projects Work Plan submitted pursuant to Appendix C to EPA and CDPHE for the Mitigation Project(s), that, as of the Effective Date:

- a. the City is not required to perform the Mitigation Project(s) by any federal, state, or local law or regulation or by any agreement, grant, or as injunctive relief awarded in any other action in any forum;
- b. the Mitigation Project(s) are not projects that the City was planning or intending to construct, perform, or implement other than in settlement of the claims resolved in this Consent Decree; and
- c. the City has not received and will not receive credit for the Mitigation Project(s) in any enforcement action.

21. The City shall use its best efforts to secure as much environmental benefit as possible for the Project Dollars expended, consistent with the applicable requirements and limits of this Decree.

22. The City shall comply with the reporting requirements described in Appendix C. Any communication to the public regarding the City's actions or expenditures relating in any

way to the Mitigation Project(s) in this Decree shall include information that is readily noticeable in the communication that the actions and expenditures were required as a part of this Decree.

23. Upon construction completion of each Mitigation Project described in Appendix C, the City shall submit to EPA, CDPHE, and Plaintiff Intervenors in the Compliance Report required by subparagraph 35(c) for the Compliance Reporting Period when construction was completed a report that includes:

- a. certification of construction completion;
- b. certification required by Paragraph 20 above by the City; and
- c. documentation of the date the Mitigation Project(s) was completed; the results achieved by implementing the Mitigation Project(s), including a general discussion of the expected environmental benefits and water quality improvements relative to the success criteria referenced in subparagraph 7(d) in Appendix C; and
- d. the Project Dollars expended by the City for the Mitigation Project(s).

#### **VII. INJUNCTIVE RELIEF AND MITIGATION PROJECT DEADLINES AND PROCESS FOR SUBMITTALS**

24. All reports and submittals in Section V (Injunctive Relief), Section VI (Mitigation Projects), Appendix C (Mitigation Projects), and Section X (Recordkeeping and Reporting) must be submitted by the applicable deadlines of Table II, below, and in accordance with Paragraph 25 (Submittals Process):

<b>Table II. Deadlines for Injunctive Relief and Mitigation Project Submittals</b>			
<b>Submission Title</b>	<b>City Deadline for Submittal</b>	<b>Approval or Review/ Comment</b>	<b>Deadline for Response to City</b>
GEC Plan Document Review and Approval SOP subparagraph 12(a)(7)	90 Days after Effective Date	Approval by both EPA and CDPHE	60 Days for EPA and CDPHE to Approve
Construction Inspection and Enforcement SOP subparagraph 12(b)(7)	90 Days after Effective Date	Approval by both EPA and CDPHE	60 Days for EPA and CDPHE to Approve
SOP for Municipal Structures subparagraph 13(b)(1)	150 Days after Effective Date	Approval by EPA and Review and Comment by CDPHE	90 Days for EPA to Approve
SOPs for Permanent Control Measures subparagraph 13(c)(1)-(2)	90 Days after Effective Date	Approval by EPA and Review and Comment by CDPHE	90 Days for EPA to Approve
Construction Sites Program Internal Training Plan subparagraph 14(a)	180 Days after the Effective Date, or 60 Days after Approval of the GEC Plan Document Review and Approval and Construction Inspection and Enforcement SOPs, whichever is later.	Review and Comment by EPA and CDPHE	60 Days for EPA and CDPHE to Review and Comment

<b>Table II. Deadlines for Injunctive Relief and Mitigation Project Submittals</b>			
<b>Submission Title</b>	<b>City Deadline for Submittal</b>	<b>Approval or Review/ Comment</b>	<b>Deadline for Response to City</b>
Commercial and Residential Management Program Training Plan subparagraph 14(b)	30 Days after EPA Approval of Municipal Structures SOP and NDRD SOPs, whichever is later	Review and Comment by EPA and CDPHE	60 Days for EPA and CDPHE Review and Comment
Third-Party Auditor Selection Certification subparagraph 15(a)(1)	120 Days after the Effective Date	EPA Approval, after consult with CDPHE	30 Days for EPA Approval
Third-Party Audit Work Plan subparagraph 15(a)(2)	180 Days after Effective Date	EPA Approval and Review and Comment by CDPHE	30 Days for EPA Approval
Third-Party Audit List of Selected Control Measures subparagraph 15(c)(1)	Annually in Compliance Report		
Draft Audit Report subparagraph 15(a)(4)	60 Days after completing annual Audit as set forth in Third-Party Audit Work Plan	Review and Comment by EPA and CDPHE	30 Days for EPA and Review and Comment by CDPHE
Final Audit Report subparagraph 15(a)(4)	30 Days after Receipt of Comments from Agencies	N/A	N/A
Supervisory Construction Audit SOP subparagraph 16(b)(2)	180 Days after Effective Date	EPA Approval and CDPHE Review and Comment	60 Days for EPA Approval

<b>Table II. Deadlines for Injunctive Relief and Mitigation Project Submittals</b>			
<b>Submission Title</b>	<b>City Deadline for Submittal</b>	<b>Approval or Review/ Comment</b>	<b>Deadline for Response to City</b>
Supervisory Audit: Long-Term Operation and Maintenance Inspection SOP subparagraph 16(c)(2)	2 Years after the Effective Date	EPA Approval and CDPHE Review and Comment	60 Days for EPA Approval
Checklist for Screening Functionality of Control Measures Not Included in Ensure (Pre-2008) Appendix B	30 Days after Effective Date	EPA Approval and CDPHE Review and Comment	30 Days for EPA Approval
Checklist for City Inspection of Permanent Control Measures That Exceed Allowable Tolerance Appendix B	30 Days after Effective Date	EPA Approval and CDPHE Review and Comment	30 Days for EPA Approval
Mitigation Study Administrator Selection Appendix C	60 Days after Effective Date	Approval by EPA after consult with CDPHE and Plaintiff Intervenor	30 Days for EPA Approval
Initial Mitigation Study Plan (Geomorphology Study) Appendix C	120 Days after the Effective Date or 60 Days after EPA's Approval of Study Administrator, whichever is later.	Approval by EPA after consult with CDPHE and Plaintiff Intervenor	90 Days for EPA Approval



<b>Table II. Deadlines for Injunctive Relief and Mitigation Project Submittals</b>			
<b>Submission Title</b>	<b>City Deadline for Submittal</b>	<b>Approval or Review/ Comment</b>	<b>Deadline for Response to City</b>
Final Mitigation Study Plan Appendix C	One calendar year and 30 Days after the Effective Date, or 180 Days after the Approval of the Initial Mitigation Study Plan, whichever is later	Approval by EPA after consult with CDPHE and Plaintiff Intervenor	60 Days for EPA Approval
Mitigation Study Report Appendix C	Three calendar years and 90 Days after the Effective Date or 2 Calendar Years after Approval of Final Mitigation Study Plan, whichever is later	Approval by EPA after consult with CDPHE and Plaintiff Intervenor	90 Days for EPA Approval
Mitigation Projects Work Plan Appendix C	Three calendar years and 210 Days after the Effective date or 120 Days After Approval of the Mitigation Study Report whichever is later	Approval by EPA after consultation with CDPHE and Plaintiff Intervenor	90 Days for EPA Approval

<b>Table II. Deadlines for Injunctive Relief and Mitigation Project Submittals</b>			
<b>Submission Title</b>	<b>City Deadline for Submittal</b>	<b>Approval or Review/ Comment</b>	<b>Deadline for Response to City</b>
Mitigation Development and Construction Planning Documents Appendix C	30 Days prior to the start of individual project construction	N/A	N/A
City Report and Certification of Construction Completion of Mitigation Project(s) Paragraph 23	Annually in Compliance Report	N/A	N/A
Consent Decree Compliance Report subparagraph 35(c) Table IV	Annually by April 1	N/A	N/A
Rolling Four-Year Plan to Meet Crediting Milestone Schedule for Achieving the Target Paragraph 36	Annually 30 Days prior to the Annual Meeting		

25. Submittal Process.

- a. After review of any SOP, checklist, plan, schedule, report, spreadsheet, or other item that is required to be submitted for Approval by EPA or CDPHE pursuant to Table II, above, the Agencies shall, within the deadline set forth in Table II, in writing:
- (i) approve, in whole or in part, the submission; (ii) approve, in whole or in part, the submission with specified conditions; (iii) disapprove, in whole or in part, the

submission, directing that the City modify the submission; (iv) request additional information or clarification from the City; or (v) any combination of the above.

b. In the event of Approval or Approval with conditions by EPA or CDPHE, those portions of the submittal that were required under this Decree, as approved or approved with conditions, shall be enforceable under this Decree, and the City shall take all actions required to implement the identified portions of such program description, SOP, checklist, plan, schedule, report, spreadsheet, or other item, or portion thereof, in accordance with the Approval and this Decree. The City will identify any portions of the submittal that are not required by the Decree when submitting it for Approval by EPA or CDPHE.

c. Upon receipt of a written notice of disapproval pursuant to subparagraph 25(a), above, the City shall, within 30 Days or such additional time that the EPA and/or CDPHE authorizes in writing, correct the deficiencies and resubmit the SOP, checklist, plan, schedule, report, spreadsheet, or other item, or portion thereof, for Approval. If the resubmission is approved in whole or in part, the City shall proceed in accordance with the preceding subparagraph. Any stipulated penalties applicable to the original submission shall accrue during the 30 Day period or other specified period but shall not be payable unless the resubmission is untimely and/or disapproved as provided in subparagraph 25(e) below.

d. Notwithstanding the receipt of notice of disapproval pursuant to Paragraph 25 (Submittal Process), the City shall proceed, at the direction of the Agencies, to take action required by the non-deficient portion of the submission. Implementation of any

non-deficient portion of a submission shall not relieve the City of any liability for stipulated penalties under Section XI (Stipulated Penalties) for the deficient portions of the submission.

e. Any resubmitted SOP, checklist, plan, schedule, report, spreadsheet, or other item, or portion thereof, shall be subject to review and Approval by the Agency or Agencies, as provided under this Section within 30 Days of receipt of the resubmittal. If the City fails to resubmit a SOP, checklist, plan, schedule, report, spreadsheet, or other item, or portion thereof, that corrects the deficiencies identified in the Agency or Agencies' comments, the City shall have 10 Days from receiving notice from EPA and/or CDPHE that the submittal is still deficient to correct and resubmit it. Failure to correct the identified deficiencies in the second resubmittal within this timeframe shall be deemed as a failure by the City to submit such a SOP, checklist, plan, schedule, report, spreadsheet, or other item, or portion thereof, timely and adequately, unless the City invokes the dispute resolution procedures set forth in Section XIV (Dispute Resolution) and the City's position is upheld.

#### **VIII. CIVIL PENALTY**

26. The City has agreed to pay a civil penalty of \$2 million to the United States and the State.

27. The City shall pay a sum of \$1 million to the United States, together with Interest, as defined in Section IV (Definitions), that accrues from the Date of Lodging of this Consent Decree.

a. The City will pay the civil penalty to the United States in 4 installments, plus Interest, to be paid over a period of 2 years. The first installment of \$400,000 is due on or before 30 Days after the Effective Date of this Consent Decree. The second installment of \$200,000 is due on or before 8 months after the Effective Date of this Consent Decree. The third installment of \$200,000 is due on or before 16 months after the Effective Date of this Consent Decree. The fourth installment is due on or before 2 years after the Effective Date of this Consent Decree. Each installment paid by the City shall include Interest calculated using (1) the amount of the installment and (2) the Date of Lodging of this Consent Decree as the date Interest begins to accrue.

b. The City may pay all or part of this civil penalty earlier than due under this Paragraph 27. Interest on any early payment shall be calculated using (1) the amount paid early and (2) the Date of Lodging of this Consent Decree as the date Interest begins to accrue.

c. The City may contact counsel for the United States to request a calculation of the Interest due on any installment payment or payoff amount.

28. If the City fails to pay any payment required by subparagraph 27(a) by the required due date, all remaining payments and all accrued Interest shall become due immediately upon such failure. Interest shall continue to accrue on any unpaid amounts until the total amount due has been received. Interest required by this Paragraph shall be in addition to any stipulated penalties owed pursuant to Paragraph 42.

29. Federal Payment Instructions. The City shall pay the federal civil penalty by FedWire Electronic Funds Transfer (“EFT”) to the U.S. Department of Justice account in

accordance with current EFT procedures. The costs of such EFT shall be the City's responsibility. Payment shall be made in accordance with instructions to be provided to the City by the Financial Litigation Unit ("FLU") of the U.S. Attorney's Office for the District of Colorado within 14 Days after the Effective Date. The payment instructions provided by the FLU will include a Consolidated Debt Collection System ("CDCS") number that the City shall use to identify all payments required to be made in accordance with this Consent Decree. The FLU will provide the payment instructions to:

Tracy Peters, Accounting Manager, City of Colorado Springs  
Tracy.Peters@coloradosprings.gov

and

City Attorney, City of Colorado Springs  
CityAtty@coloradosprings.gov

on behalf of the City. The City may change the individual to receive payment instructions on its behalf by providing written notice of such change in accordance with Section XVIII (Notices).

At the time of payment, the City shall notify EPA that payment has been made using the following procedures: (i) notice shall be sent to EPA via email at

"acctsreceivable.cinwd@epa.gov" or via regular mail to EPA Cincinnati Finance Office, 26 Martin Luther King Drive, Cincinnati, Ohio 45268; and (ii) notice shall be sent to the United States (including EPA) via email or regular mail in accordance with Section XVIII (Notices).

This notice shall state that the payment is for the civil penalty owed pursuant to the Consent Decree in *United States and the State of Colorado v. City of Colorado Springs, Colorado*, and shall reference the civil action number of this case, the CDCS number, and DOJ case number 90-5-1-1-11293.

30. State Payment Instructions. The City will satisfy its obligation to pay the civil penalty to the State through the City's funding of a Supplemental Environmental Project as directed in Section IX (State-Only Supplemental Environmental Projects). Any additional penalties owed to the State under this Decree shall be paid by certified, corporate or cashier's check drawn to the order of "Colorado Department of Public Health and Environment" and delivered to the attention of Manager, Compliance and Enforcement Section, Water Quality Control Division, 4300 Cherry Creek Drive South, Denver, Colorado 80246-1530. At the time of payment of any penalties owed to the State under this Decree, the City shall send notice that payment has been made to the State in accordance with Section XVIII (Notices). Such notice shall state that the payment is for the civil penalty owed pursuant to the Consent Decree in *United States and the State of Colorado v. City of Colorado Springs, Colorado*, and shall reference the civil action number.

#### **IX. STATE-ONLY SUPPLEMENTAL ENVIRONMENTAL PROJECTS**

31. The City will pay a civil penalty of one million dollars to the State. In lieu of receiving payment, the State agrees that the City shall satisfy the State civil penalty through the performance of a State approved Supplemental Environmental Project in accordance with the CDPHE Supplemental Environmental Project Policy (February 22, 2018) as directed in this Section.

a. In accordance with the agreement between the State and the Lower Arkansas Valley Water Conservancy District entitled "Supplemental Environmental Projects (SEP) Proposal/Agreement for Lower Ark Supplemental Environmental Projects" ("Third Party SEP Agreement"), the Lower Arkansas Valley Water

Conservancy District shall use the City's civil penalty payments solely to administer and implement a number of water quality projects for selenium and additional pollutant reductions within portions of the Lower Arkansas Basin impaired for selenium, as currently identified in State Regulation 93, 5 CCR 1002-93, pursuant to Section 303(d) of the Clean Water Act. These water quality projects include lateral lining, irrigation improvement systems, wetland restoration, pond lining, riparian buffer zones, fertilizer reduction, rotational fallowing, and cover crops or mulching. These water quality projects collectively comprise and define the "State Supplemental Environmental Project."

b. The State has selected and approved the State Supplemental Environmental Project and represents that it will secure significant water quality improvements on the Lower Arkansas River.

c. The City shall pay directly to the Lower Arkansas Valley Water Conservancy District the one million dollar civil penalty owed to the State under this Decree. The City shall transfer this money to the Lower Arkansas Valley Water Conservancy District in four equal installments of \$250,000 over a period of two years as set forth in the Third Party SEP Agreement.

d. The City may pay all or a part of this civil penalty earlier than due under this Section.

e. The State has selected the Lower Arkansas Valley Water Conservancy District to administer, implement and complete the State Supplemental Environmental Project. The State Supplemental Environmental Project shall be administered,



implemented and completed by the Lower Arkansas Valley Water Conservancy District in accordance with the terms and requirements of this Consent Decree and the separate Third Party SEP Agreement.

f. The City shall include with each payment made to the Lower Arkansas Valley Water Conservancy District a cover letter that identifies that the monies transferred are for the State Supplemental Environmental Project pursuant to this Consent Decree. The cover letter shall be addressed as follows: Lower Arkansas Valley Water Conservancy District to the attention of R. Jay Winner, General Manager, 801 Swink, Rocky Ford, CO 81067. Within 30 days of each payment, the City shall also transmit copies of the cover letter and the City's evidence of payment to the State, addressed to the Colorado Department of Public Health and Environment, attention Nathan Moore, Compliance Section Manager, Water Quality Control Division, 4300 Cherry Creek Drive South, Denver, Colorado 80246-1530.

g. The City's sole obligation and responsibility under this Decree with regard to the State civil penalty and the State Supplemental Environmental Project is to transfer money to the Lower Arkansas Water Conservancy District in accordance with this Decree. The City has no other obligation or responsibility of any kind concerning the State civil penalty or the State Supplemental Environmental Project, including but not limited to the selection, administration, implementation, oversight, or completion of the State Supplemental Environmental Project. At the time CDPHE receives demonstration of the final payment to the Lower Arkansas Valley Water Conservancy District in accordance with the instructions in subparagraph 31(f), the City will have

completed its obligations regarding the State Supplemental Environmental Project under this Decree.

32. The City certifies that, as of the Effective Date, it is not required to perform the State Supplemental Environmental Project by any federal, state or local law or regulation or by any agreement, grant or injunctive relief in this or any other case. The City further certifies that it has not received, and is not presently negotiating to receive, credit in any other enforcement action for the State Supplemental Environmental Project.

33. The City and the Lower Arkansas Valley Water Conservancy District shall include in any public statement, oral or written, making reference to the State Supplemental Environmental Project and/or projects completed with the State Supplemental Environmental Project funds the following language: “This project was undertaken in connection with the settlement of an enforcement action taken by the Colorado Department of Public Health and Environment, Water Quality Control Division, against the City of Colorado Springs for violations of water quality laws and regulations.”

#### **X. RECORDKEEPING AND REPORTING**

34. Recordkeeping. The City shall keep records documenting activities being implemented and/or progress being made in implementing the requirements of this Decree. Subject to the requirements in Section XXII (Termination), these records shall be kept for the length of this Decree and be made available upon request to EPA, CDPHE, and Plaintiff Intervenors. These records shall include the following:

<b>Table III. Records to be Maintained</b>	
<b>All Programs</b>	<ul style="list-style-type: none"> <li>• Citizen Drainage Complaint log or database for sites regulated under the Permit.</li> <li>• Third-Party Audit Reports.</li> <li>• Supervisory Audit Reports.</li> <li>• All documents relevant to all Credited Measures used by the City to receive credit toward the Target.</li> <li>• All documents required by subparagraph 35(c), Table IV (Compliance Report) pursuant to this Consent Decree.</li> </ul>
<b>Construction Sites Program</b>	<p><u>In City's Accela Database or equivalent:</u></p> <ul style="list-style-type: none"> <li>• All City-approved GEC Plans and CSWMPs for construction sites, and all review comments from previous drafts, in accordance with subparagraph 12(a).</li> <li>• All Compliance, Initial, Complaint, Follow-Up, and Final Inspection reports completed for all construction sites subject to Permit.</li> <li>• All written communications between Inspectors and owners/operators of construction sites including completed phone logs to document conversations with dates/times with construction site developers and supervisors regarding site compliance.</li> <li>• Enforcement related documentation including: Letters of Noncompliance; Stop Work Orders; suspension of GEC Permits, collection of fees and written reports that are completed by Inspectors for declining to escalate enforcement in accordance with subparagraph 12(c) (Enforcement of the City's Construction Stormwater Program). The City should also maintain internal decision-making documentation—emails, memos, and inspector notes—on enforcement for each construction site.</li> </ul>
<b>Commercial and Residential Management Program</b>	<ul style="list-style-type: none"> <li>• Communications between design review, construction and operation and maintenance staff regarding design, installation and maintenance of Control Measures.</li> </ul>

35. Reporting. The City shall submit the following reports to EPA, CDPHE, and Plaintiff Intervenors at the requisite frequencies:

a. Noncompliance Reports. If the City violates, or has reason to believe that it may violate, any requirement of this Consent Decree, the City shall notify EPA, CDPHE, and Plaintiff Intervenors of such violation and its likely duration, in writing, within 30 Days of the day the City first becomes aware of the violation, with an explanation of the violation's likely cause and of the remedial steps taken, or to be taken, to prevent or minimize such violation. If the cause of a violation cannot be fully explained at the time the report is due, the City shall so state in the report. In such event, the City shall investigate the cause of the violation and shall then submit an amendment to the report, including a full explanation of the cause of the violation, within 60 Days of the day the City becomes aware of the cause of the violation. Nothing in this Section relieves the City of its obligation to provide the notice required by Section XII (Force Majeure).

b. If any violation of this Consent Decree, the MS4 Permit, or any other event affecting the City's performance under this Consent Decree, may pose an immediate threat to public health or welfare or the environment, the City shall notify EPA, CDPHE, and Plaintiff Intervenors orally or by electronic mail as soon as reasonably possible, but no later than 24 hours after the City first knew of the violation or event. This procedure is in addition to (1) requirements set forth elsewhere in this Decree and (2) any federal, state, or local law requiring notice of the threat or a release related to such a threat.

c. Compliance Reports. On each April 1 after the Effective Date through termination of this Consent Decree, the City shall submit to the EPA, CDPHE, and

Plaintiff Intervenor the City’s annual “ Compliance Report” in accordance with the requirements of Section XVIII (Notices). Each annual Compliance Report shall cover the previous 12-month Compliance Reporting Period (January 1 through December 31). The City must continue submitting the Compliance Report on an annual basis until the termination of this Decree in accordance with Section XXII (Termination). Tasks associated solely with a provision in this Decree that has been terminated under Paragraph 86 (Partial Termination) do not need to be included in the Compliance Report starting with the report for the year after termination. Each Compliance Report shall include, at a minimum, the following as provided in Table IV:

**Table IV. Compliance Report**

<b>All Programs</b>	<ul style="list-style-type: none"> <li>• Summary of the Consent Decree work completed over the previous calendar year including, but not limited to, work under Section V (Injunctive Relief ) and Section VI (Mitigation) required by this Consent Decree.</li> <li>• Summary of the projected future work to be performed during the following year, pursuant to this Consent Decree.</li> <li>• List of all tasks completed to date to meet the requirements of this Consent Decree.</li> <li>• Description of the stormwater program staffing for the previous calendar year and written justification for any changes in staffing levels from the prior year of this Decree.</li> <li>• Certification of construction completion of each Mitigation project.</li> <li>• Certifications of completion of training conducted within the Compliance Reporting Period as required by Paragraph 14 (Training).</li> <li>• Summary of the training topics covered in the Compliance Reporting Period for each Program.</li> <li>• Description of any proposed changes to documents as approved by EPA and or CDPHE under the terms of this Consent Decree.</li> <li>• Identification of all Commercial and Residential Management Program and NDRD and Construction Sites Program SOPs, checklists, plans, schedules, reports, spreadsheets, or other items required by this Consent Decree that the City completed and submitted during the Compliance Reporting Period.</li> <li>• Description of how the City addressed each incidence of noncompliance identified by the Third-Party Audit Report, as required by subparagraphs 15(a)(5), 15(c)(5), and 15(d)(4).</li> <li>• Identification of any noncompliance with the requirements of this Consent Decree. If any noncompliance is reported, the notification shall include a description of the following:             <ol style="list-style-type: none"> <li>1. the noncompliance reports required by subparagraph 35(a);</li> <li>2. the impact of any noncompliance on the schedules set forth in the Consent Decree and any actions taken or proposed by the City to comply with any missed requirements; and</li> <li>3. any factors that explain or mitigate the noncompliance.</li> </ol> </li> </ul>
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<b>Table IV. Compliance Report</b>	
	<ul style="list-style-type: none"> <li>• List of all public education and outreach activities as required by this Decree.</li> <li>• Report on budgeted and expended funds during the Compliance Reporting Period and a report on budgeted funds for the next Compliance Reporting Period, including a description of the sources of these funds and a certification that the funds are adequate for the City to meet the requirements of the Permit and this Decree for the next Compliance Reporting Period.</li> <li>• Reports for any Third-Party Audits completed within the Compliance Reporting Period, in compliance with Paragraph 15.</li> </ul>
<b>Construction Sites Program</b>	<ul style="list-style-type: none"> <li>• An annual spreadsheet of the City’s Accela database, or an equivalent database, showing the numbers of routine, complaint-response, and total construction inspections and the number of each type of enforcement action taken for violations.</li> <li>• Documentation of variances granted in City-approved GEC Plans and CSWMPs as required by subparagraph 12(a)(2).</li> <li>• Revisions, if any, to the GEC Document Review and Approval Program SOP or GEC Inspection and Enforcement Program SOP;</li> <li>• A summary of the findings and recommendations of internal supervisory audits and any subsequent revisions to Construction Sites Program Internal Supervisory Audit SOP;</li> <li>• Written reports of decisions not to escalate enforcement in compliance with the Permit and SCM in accordance with subparagraph 12(c)(5).</li> </ul>
<b>Commercial and Residential Stormwater Management Program</b>	<p><u>Municipally Owned Structures:</u></p> <ul style="list-style-type: none"> <li>• A spreadsheet of the Municipally Owned Structure inspections conducted in total, separated by types of facilities and documentation of any repairs required and completed;</li> <li>• Revisions, if any to Municipally Owned Structure SOPs or checklists</li> </ul> <p><u>Permanent Control Measures</u></p> <ul style="list-style-type: none"> <li>• A spreadsheet of the Permanent Control Measures inspections conducted in total, separated by types of facilities and documentation of any repairs required and completed;</li> <li>• A summary of the findings and recommendations of internal supervisory audits and any subsequent revisions to Permanent Control Measures SOPs or checklists</li> <li>• The Third-Party Auditor list of Permanent Control Measures.</li> </ul>

<b>Table IV. Compliance Report</b>	
	<p><u>Credited Measures.</u></p> <ul style="list-style-type: none"> <li>• The City must specify whether it has complied with the Target schedule in Table I (Required Milestones for Achieving WQSV Target), and if not, the reasons for the delay. <ul style="list-style-type: none"> <li>○ An evaluation shall be made to assess the City’s ability to meet the next upcoming deadline for certifying to the minimum Target AF for total Credited Measures, Existing and New Credited Measures required in Table I of this Consent Decree.</li> <li>○ The City shall use the Reporting and Tracking Spreadsheet to certify minimum Credited Measures milestones.</li> <li>○ The Third-Party Auditor list of Credited Measures.</li> </ul> </li> </ul>

36. Annual Meeting and Four-Year Plan. Beginning in 2021 and extending through the term of this Decree, the Parties City, CDPHE, and EPA shall hold an Annual Meeting in person every year on or before October 1, at a mutually agreeable time and place, to review and update the City’s progress toward meeting the Crediting Milestone Schedule set forth in subparagraph 13(d)(8), and to discuss informally any problems that have come up in implementing the Credited Measures requirements as well as any other Decree requirements that the Parties mutually agree to discuss. The Plaintiff Intervenors shall be invited to and may participate in the Annual Meeting. 30 Days prior to the Annual Meeting, the City shall submit to EPA and CDPHE for review a rolling four-year plan to meet the Crediting Milestone Schedule for Achieving Target in subparagraph 13(d)(8), which will be discussed at the Annual Meeting. The four-year rolling plan shall be submitted in accordance with Section VII (Injunctive Relief and Mitigation Project Deadlines and Process for Submittals) and shall include:



a. the number of Existing Measures planned to be verified and/or repaired as necessary to meet the requirements of the Credit Table in subparagraph 13(d)(4), during each of the next four-years covered by the Consent Decree;

b. the AF credit that the City anticipates will be treated by each Existing Measure; and

c. the number of New Measures in each New Measures Category in the Credit Table and the AF credit that the City anticipates will be treated by each New Measure. For each New Measure that will be initiated and/or completed during the next four years, the rolling Four-Year Plan shall also include: potential issues obtaining easements, land acquisitions or private-owner maintenance agreements, planned construction timeline, and expected completion date.

37. Certification. The City shall ensure that each report submitted under this Section is signed by the City Stormwater Enterprise Manager, or his or her successor or equivalent position, charged with the overall management of the City's MS4 Permit and program. The report shall include the following certification signed by the same person:

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

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

38. Public Notice. The City shall post to its public website the following information and notify EPA, CDPHE, and Plaintiff Intervenors of the posting web address. The City shall post this information within 30 Days following the due date for each of the requirements referenced in this Paragraph, or within 30 Days following Approval, whichever is later:

- a. the SCM and any approved changes;
- b. the DCM and any approved changes;
- c. annual updates to the Reporting and Tracking Spreadsheet; and
- d. each Final Third-Party Audit Report.

39. The reporting requirements of this Consent Decree do not relieve the City of any reporting obligations required by the Clean Water Act or the CWQCA, or implementing regulations, or by any other federal, state, or local law, regulation, permit, or other requirement. Any information provided pursuant to this Consent Decree may be used by the United States or the State in any proceeding to enforce the provisions of this Decree and as otherwise permitted by law.

## **XI. STIPULATED PENALTIES**

40. The City shall be liable for stipulated penalties to the United States and the State for violations of this Consent Decree as specified below, unless excused under Section XII (Force Majeure), or reduced or waived by the United States and/or the State pursuant to Paragraph 49 of the Decree. A violation includes failing to perform any obligation required by the terms of this Decree, including any work plan or schedule approved under this Decree, according to all applicable requirements of this Decree and within the specified time schedules established by or approved under this Decree.

## 41. Compliance Requirements.

<b>Table V. Stipulated Penalties</b>	
<b>Consent Decree Violation</b>	<b>Stipulated Penalty</b>
Failure to require GEC Plans and CSWMPs that conform with the requirements of the Permit and SCM for each construction site as required by subparagraph 12(a)(1).	\$1,000 per violation.
Failure to timely submit SOPs, checklists or plans as required by subparagraphs 12(a)(7) (GEC Plan); 12(b)(7) (GEC Inspection Enforcement Program SOP); 13(b)(1) (Municipally Owned Structures); 13(c)(1)-(2) (NDRD); 14(a) (Construction Program Internal Training Plan); 14(b) (Commercial and Residential Stormwater Management Program Internal Training Plan).	\$500 per Day per violation.
Failure to record and maintain GEC Permits and CSWMP approvals for each construction site in construction database (i.e. Accela or equivalent) as required by Table III.	\$2,500 for each missing GEC Plan, CSWMP, or missing GEC Plan checklist, required to be completed by engineering reviewer.
Failure to conduct construction site inspections in accordance with the SCM and Permit as required by subparagraph 12(b).	\$2,500 per violation.
Failure to enforce against construction site owners and operators, or, alternatively, to provide adequate written justification for determination not to enforce, in accordance with the SCM and the Permit as required by subparagraph 12(c).	\$2,500 per violation.
Failure to maintain an inventory of all Municipally Owned Structures and Permanent Control Measures, in accordance with the first sentence of subparagraph 13(a).	\$2500 per violation.
Failure to conduct and record inspections of all Municipally-Owned Structures in accordance with applicable SOP(s), as required by subparagraph 13(b)(2).	\$2500 per violation.
Failure to correct deficiencies or perform required maintenance of all Municipally-Owned Structures in accordance with applicable SOP(s), as required by subparagraph 13(b)(2).	\$2500 per violation.

Failure to conduct inspections of all Control Measures in accordance with applicable SOP(s), as required by subparagraph 13(c)(3).	\$2500 per violation.
Failure to ensure that deficiencies are corrected or that required maintenance is performed for all Control Measures, in accordance with applicable SOP(s), as required by subparagraph 13(c)(3).	\$2500 per Control Measure with violations present.
Failure to complete, and record by certificate of completion, annual Construction Site Program Internal Training for all staff pursuant to approved Training Plan as required by subparagraph 14(a).	\$500 per violation, as determined by the lack of records documenting the delivery and/or attendance of the training.
Failure to complete, and record by certificate of completion, Construction Site Program External Training for all staff as required by subparagraph 14(a).	\$500 per violation, as determined by the lack of records documenting the delivery and/or attendance of the training.
Failure to complete, and record by certificate of completion, annual internal Commercial and Residential Stormwater Management Training pursuant to approved Training Plan as required by subparagraph 14(b).	\$500 per violation, as determined by the lack of records documenting the delivery and/or attendance of the training.
Failure to update and post on the City's stormwater management website, within 30 Days of the due date or Approval under this Decree, whichever is later: SCM updates, DCM updates, annual updates to the Reporting and Tracking Spreadsheet, and each Final Third-Party Audit Report as required by Paragraph 38.	\$500 per month per violation.
Failure to meet Credited Measure milestone 4 years after Effective Date, as required by Table I. (19.88 AF, with 4.70 AF in New Measures)	\$1,000 per Day for the first 30 Days of noncompliance; \$2,000 per day from Day 31 to Day 90; \$5,000 per day from Day 91 to 180; \$7,500 for each day thereafter.
Failure to meet Credited Measure milestone 7 years after Effective Date, as required by Table I. (39.76 AF, with 9.4 AF in New Measures.	\$1,000 per Day for the first 30 Days of noncompliance; \$2,000 per day from Day 31 to Day 90; \$5,000 per day from Day 91 to 180; \$7,500 for each day thereafter.
Failure to certify the City's verification of 100% of known Existing Measures 7 years after Effective Date without sufficient justification as required by Table I.	\$1,000 per Day.

Failure to meet Credited Measure milestone 11 years after Effective Date, as required by Table I. (53.25 AF, with 14.10 AF in New Measures)	\$1,000 per Day for the first 30 Days of noncompliance; \$2,000 per day from Day 31 to Day 90; \$5,000 per day from Day 91 to 180; \$7,500 for each day thereafter.
Failure to meet Credited Measure milestone 15 years after Effective Date, as required by Table I. (100% completion, 71AF, with at least 14.62 AF in New Measures)	\$1,000 per Day for the first 30 Days of noncompliance; \$2,000 per day from Day 31 to Day 90; \$5,000 per day from Day 91 to 180; \$7,500 for each day thereafter.
Failure to certify Third-Party Auditor selection, as required by subparagraph 15(a)(1).	\$500 per Day per violation.
Failure to submit Third-Party Audit plans or reports as required by subparagraph 15(a)(2) (Work Plan); subparagraph 15(a)(4) (Draft Report); subparagraph 15(a)(4) (Final Report documenting completion of the audit according to the required schedule).	\$500 per Day per violation.
Failure to submit Supervisory Construction Audit SOP as required by subparagraph 16(b)(2).	\$500 per Day per violation.
Failure to submit Supervisory Audit: Long-Term Operation and Maintenance Inspection SOP as required by subparagraph 16(c)(2).	\$500 per Day per violation.
Failure to conduct Supervisory Audits according to the schedule and as required in Paragraph 16.	\$5,000 per missed audit.
Failure to submit Mitigation Study Administrator, as required by Appendix C.	\$500 per Day per violation.
Failure to submit plans and reports as required by Section VI (Mitigation Projects) and Appendix C (Initial Mitigation Study Plan, Final Mitigation Study Plan, Mitigation Study Report, Mitigation Projects Work Plan).	\$500 per Day per violation.
Failure to submit Mitigation Development and Construction Planning Documents, as required by Appendix C.	\$2,000 per Day per violation.
Failure to complete construction of Mitigation Project(s) within 4 years after EPA Approval of Mitigation Projects Work Plan or 7 years and 180 Days after the Effective Date, whichever is later as required by Appendix C.	\$1,000 per Day for the first 30 Days of noncompliance; \$2,000 per Day from Day 31 to Day 90; \$5,000 per Day from Day 91 to 180; \$7,500 for each Day thereafter.

Failure to substantially comply with the requirement to implement the monitoring (Appendix C, 7(e)) and the long-term operation and maintenance plans (Appendix C, 7(f)), as required by the approved Mitigation Projects Work Plan.	\$10,000 for each of the first two violations, and \$25,000 for each subsequent violation.
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42. Late Payment of Civil Penalty. If the City fails to pay the civil penalty required to be paid under Section VIII (Civil Penalty) when due, the City shall pay a stipulated penalty of \$500 per Day for each Day that the payment is late to the United States, and a stipulated penalty of \$500 per Day for each Day that the payment of funds to the Lower Arkansas Valley Water Conservancy District for the State-approved Supplemental Environmental Project is late. Late payment of the civil penalty shall be made in accordance with the payment instructions in Section VIII (Civil Penalty). All transmittal correspondence shall state that any such payment is for late payment of the civil penalty due under this Decree, or for stipulated penalties for late payment, as applicable, and shall include the identifying information set forth in Section VIII (Civil Penalty).

43. Reporting Requirements. Stipulated penalties shall accrue at \$500 per Day per violation of the reporting requirements of Paragraph 35 (Reporting).

44. Additional Violations of this Decree. For violation of any other provision of this Consent Decree, the City shall pay \$250 per Day per violation.

45. Stipulated penalties under this Section shall begin to accrue on the Day after performance is due or on the Day a violation occurs, whichever is applicable, and shall continue to accrue until performance is satisfactorily completed or until the violation ceases. Stipulated penalties shall accrue simultaneously for separate violations of this Consent Decree.

46. The City shall pay stipulated penalties to the United States and the State within 30 Days of a written demand by either the United States or the State, unless the City invokes the dispute resolution procedures under Section XIV (Dispute Resolution) within the 30-Day period. 50% of the total stipulated penalty amount due in accordance with this Section, shall be paid to the United States and, 50% of the total stipulated penalty amount shall be paid to the State. A written demand by the United States or the State for payment of stipulated penalties will identify the specific violation(s) to which the stipulated penalty relates, the stipulated penalty amount the United States or the State is demanding for each violation, the calculation method underlying the demand, and the grounds upon which the demand is based. Prior to issuing a written demand for stipulated penalties, the United States or the State may, in their individual unreviewable discretion, contact the City for informal discussion of matters that the United States or the State believes may merit stipulated penalties. If the United States or State government make a demand for payment of a stipulated penalty, that government shall simultaneously send a copy of the demand to the other government.

47. Stipulated penalties shall continue to accrue as provided in Paragraph 45, during any Dispute Resolution, but need not be paid until the following:

- a. if the dispute is resolved by agreement or by a decision of EPA or the State that is not appealed to the Court, the City shall pay accrued penalties agreed to or determined to be owing, together with interest, to the United States and the State within 30 Days of the effective date of the agreement or the receipt of EPA's or the State's decision or order;

b. if the dispute is appealed to the Court and the United States or the State prevails in whole or in part, the City shall pay all accrued penalties determined by the Court to be owing, together with interest, within 60 Days of receiving the Court's decision or order, except as provided in subparagraph 47(c) below; or;

c. if any Party appeals the Court's decision, the City shall pay all accrued penalties as determined by the appellate court, together with interest, within 15 Days of receiving the final appellate court decision.

48. If the City fails to pay stipulated penalties within 30 Days after receiving the United States' or the State's written demand as required by Paragraph 46 the City shall pay interest on unpaid stipulated penalties as provided in 28 U.S.C. § 1961, as follows: (a) if the City has timely invoked dispute resolution such that the obligation to pay stipulated penalties has been stayed pending the outcome of dispute resolution, interest accrues from the date stipulated penalties are due pursuant to Paragraph 47 until the date of payment; and (b) if the City does not timely invoke dispute resolution, interest accrues from the City's receipt of the written demand pursuant to Paragraph 46 until the date of payment. Nothing in this Paragraph limits the United States or the State from seeking any remedy otherwise provided by law for the City's failure to pay any stipulated penalties or interest.

49. Either the United States or the State may, in the unreviewable exercise of their respective discretion, reduce or waive the stipulated penalties otherwise due to it under this Consent Decree. The determination by one Plaintiff not to seek stipulated penalties, or subsequently to waive or reduce the amount it seeks, shall not preclude the other Plaintiff from seeking the full amount of the stipulated penalties owing. Stipulated penalties to be paid to the



United States and the State collectively shall not exceed the amounts specified in this Consent Decree for the violations included in the demand.

50. The City shall pay stipulated penalties owing to the United States in the manner set forth and with the confirmation notices required by Paragraph 29 (Federal Payment Instructions), 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. The City shall pay stipulated penalties owing to the State in the manner set forth and with the confirmation notices required by Paragraph 30 (State Payment Instructions) except that the transmittal letter shall state the payment is for stipulated penalties and shall state for which violation(s) the penalties are being paid.

51. Subject to the provisions of Section XVI (Effect of Settlement/Reservation of Rights), the stipulated penalties provided for in this Consent Decree shall be in addition to any other rights, remedies, or sanctions available to the United States or the State for violation of this Decree or applicable law. Where a violation of this Decree is also a violation of relevant statutory or regulatory requirements, the City shall be allowed a credit, for any stipulated penalties paid, against any statutory penalties imposed for such violation under the applicable Federal or State requirement.

## **XII.FORCE MAJEURE**

52. A “force majeure,” for purposes of this Consent Decree, means any event arising from causes beyond the control of the City, of any entity controlled by the City, or of the City’s contractors that delays or prevents the performance of any obligation under this Consent Decree despite the City’s best efforts to fulfill the obligation. The requirement that the City 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 the City’s financial inability or lack of staffing to perform any obligation under this Consent Decree.

53. If any event occurs or has occurred that may delay the performance of any obligation under this Consent Decree, whether or not caused by a force majeure event, the City shall provide notice orally or by electronic transmission to EPA, CDPHE, and Plaintiff Intervenor, within 72 hours of when the City first knew that the event might cause a delay. Within 7 Days thereafter, the City shall provide in writing to EPA, CDPHE and Plaintiff Intervenor 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; the City’s rationale for attributing such delay to a force majeure event if it intends to assert such a claim; and a statement as to whether, in the opinion of the City, such event may cause or contribute to an endangerment to public health or welfare, or the environment. The City shall include with any notice all available documentation supporting the claim that the delay was attributable to a force majeure. Failure to comply with the above requirements shall preclude the City from asserting any claim of force majeure for that event for the period of time of such failure to comply, and for any additional delay caused by such failure. The City shall be deemed to know of any circumstance of which the City, any entity controlled by the City, or the City’s contractors knew or should have known.

54. If EPA, after consultation with CDPHE and Plaintiff Intervenors, agrees 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 EPA 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. EPA will notify the City in writing of the length of the extension, if any, for performance of the obligations affected by the force majeure event.

55. If EPA, after consultation with CDPHE and Plaintiff Intervenors, does not agree that the delay or anticipated delay has been or will be caused by a force majeure event, EPA will notify the City in writing of its decision.

a. If the City elects to invoke the dispute resolution procedures set forth in Section XIV (Dispute Resolution), concerning a force majeure event, it shall do so no later than 15 Days after receipt of EPA notice. In any such proceeding, the City 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 the City complied with the requirements of Paragraphs 52 and 53, above. If the City carries this burden, the delay at issue shall be deemed not to be a violation by the City of the affected obligation of this Consent Decree identified to EPA, CDPHE, Plaintiff Intervenors, and the Court.

### **XIII. CONTROLLING DOCUMENT**

56. The City's obligations under this Consent Decree are in addition to the City's obligations under the Permit. To the extent there is a conflict between an obligation in this Consent Decree and the Permit, the more stringent obligation shall apply.

57. CDPHE will issue the City's renewal MS4 Permit sometime after the Effective Date of this Consent Decree. The EPA will review and approve this renewal MS4 Permit before it is effective.

### **XIV. DISPUTE RESOLUTION**

58. 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. The City's failure to seek resolution of a dispute under this Section shall preclude the City from raising any such issue as a defense to an action by EPA, CDPHE, and Plaintiff Intervenors to enforce any obligation of the City arising under this Decree.

59. Informal Dispute Resolution. Any dispute subject to Dispute Resolution under this Consent Decree shall first be subject to informal, good-faith discussion and negotiation among the Parties. The Parties shall cooperate in these informal discussions and negotiations. The Parties shall use their best efforts to address, discuss, and resolve any dispute by using this informal stage of dispute resolution. The dispute shall be considered to have arisen when the City sends the EPA, CDPHE, and Plaintiff Intervenors a written Notice of Dispute. Such Notice of Dispute shall state clearly the matter in dispute. The period of informal negotiations shall not

exceed 21 Days from the date the dispute arises, unless that period is modified by written agreement.

a. Upon receipt of a Notice of Dispute, the Parties shall promptly schedule and attend an Informal Dispute Resolution meeting. The Informal Dispute Resolution meeting shall be scheduled by the Parties within 7 Days of receipt of a Notice of Dispute, and the Informal Dispute Resolution meeting shall take place within 15 Days of receipt of the Notice of Dispute, although this schedule can be altered by the written agreement of all the participating Parties. The Parties shall use their best efforts in the Informal Dispute Resolution meeting to: (1) reach a complete understanding of the nature and ramifications of the dispute, and (2) resolve the dispute. Any resolution of a dispute shall be reduced to writing by the Parties.

b. If the Parties cannot resolve a dispute by informal negotiations, then the position advanced by the EPA, after consultation with CDPHE and Plaintiff Intervenors, shall be considered binding unless, within 35 Days after the conclusion of the informal negotiation period, the City invokes formal dispute resolution procedures as set forth below.

60. Formal Dispute Resolution. The City shall invoke formal dispute resolution procedures, within the time provided in the preceding Paragraph, by serving on the EPA, CDPHE, and Plaintiff Intervenors a written Statement of Position regarding the matter in dispute. The Statement of Position shall briefly but plainly explain the matter in dispute, the nature of the dispute, attempts to resolve the dispute, and the specific resolution sought by the City. The Statement of Position shall include, but need not be limited to, any factual data, analysis, or

opinion supporting the City's position and any supporting documentation relied upon by the City. The Statement of Position shall be transmitted to the other Parties utilizing the notification procedures in Section XVIII (Notices).

a. Upon receipt of a Statement of Position, EPA, CDPHE, or Plaintiff Intervenor may notify the other Parties that the notifying Party does not wish to participate in Formal Dispute Resolution. The notifying Party shall then be excused from further participation.

b. EPA, after consultation with CDPHE and Plaintiff Intervenor, shall serve its Statement of Position within 45 Days of receipt of the City's Statement of Position. The Statement of Position, by EPA shall include, but need not be limited to, any factual data, analysis, or opinion supporting that position and any supporting documentation relied upon. The Statement of Position by EPA shall be binding on the City, unless the City files a motion for judicial review of the dispute in accordance with the following subparagraph.

c. The City may seek judicial review of the dispute by filing with the Court and serving EPA, CDPHE, and Plaintiff Intervenor in accordance with Section XVIII (Notices), a motion requesting judicial resolution of the dispute. The motion must be filed within 14 Days of receipt of the EPA Statement of Position pursuant to the preceding Paragraph. The motion shall contain a written statement of the City's position on the matter in dispute, including any supporting factual data, analysis, opinion, or documentation, and shall set forth the relief requested and any schedule

within which the dispute must be resolved for orderly implementation of the Consent Decree.

d. EPA, after consultation with CDPHE and Plaintiff Intervenors, shall respond to the City's motion within the time period allowed by the Local Rules of this Court. The City may file a reply memorandum, to the extent permitted by the Local Rules.

61. Standard of Review. In any dispute under this Section, the City shall bear the burden of demonstrating by a preponderance of the evidence that its position complies with this Consent Decree and the Clean Water Act, and furthers the objectives of the Consent Decree. The United States reserves the right to argue that its position is reviewable only on the administrative record and must be upheld unless arbitrary and capricious or otherwise not in accordance with law, and the City reserves the right to oppose any such argument.

#### **XV. INFORMATION COLLECTION AND RETENTION**

62. The United States, CDPHE, 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 conduct the activities specified in subparagraphs a-f, below. Where a facility covered by this Decree is not owned or operated by the City, the City shall use best efforts to gain the United States, CDPHE, and their representatives, including attorneys, contractors, or consultants the right of entry into any facility to conduct the activities specified in subparagraphs a-f, below:

a. monitor the progress of activities required under this Consent Decree;

- b. verify any data or information submitted to the United States or CDPHE in accordance with the terms of this Consent Decree;
- c. obtain samples and, upon request, splits of any samples taken by the City or its representatives, contractors, or consultants;
- d. obtain documentary evidence, including photographs and similar data; and
- e. assess the City's compliance with this Consent Decree.
- f. Upon request, the City shall provide EPA, CDPHE, or their authorized representatives splits of any samples taken by the City. Upon request, EPA and CDPHE shall provide the City splits of any samples taken by EPA or CDPHE.

As used in this Section, "best efforts" means the efforts that a reasonable person in the position of the City would use so as to achieve the goal in a timely manner. If the City is unable to accomplish what is required through "best efforts", it shall notify EPA and CDPHE, and include a description of the steps taken to comply with the requirements. If the United States or CDPHE deems it appropriate, it may assist the City, or take independent action, in obtaining right of entry.

63. Until five years after the termination of this Consent Decree, the City shall retain, and shall instruct its 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 its or its contractors' or agents' possession or control, or that come into its or its contractors' or agents' possession or control, and that relate to the City's performance of its obligations under this Consent Decree. If this Consent Decree is partially terminated pursuant to the Termination Section, information related to the obligations that are terminated need only be



retained for 5 years from the termination of those obligations, unless a longer retention period is required by law. 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, CDPHE, or Plaintiff Intervenors, the City shall provide copies of any documents, records, or other information required to be maintained under this Paragraph.

64. At the conclusion of the information-retention period provided in the preceding Paragraph, the City shall notify the United States and CDPHE at least 90 Days prior to the destruction of any documents, records, or other information subject to the requirements of the preceding Paragraph and, upon request by the United States or CDPHE, the City shall deliver any such documents, records, or other information to EPA or CDPHE. The City may assert that certain documents, records, or other information are privileged under the attorney-client privilege or any other privilege recognized by law. If the City asserts such a privilege, it shall provide the following: (1) the title of the document, record, or information; (2) the date of the document, record, or information; (3) the name and title of each author of the document, record, or information; (4) the name and title of each addressee or recipient; (5) a description of the subject of the document, record, or information; and (6) the privilege asserted by the City. However, no documents, records, or other information created or generated under to the requirements of this Consent Decree shall be withheld on grounds of privilege.

65. The City 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 the City seeks to protect as CBI, the City shall follow the procedures set forth in 40 C.F.R. Part 2.

66. This Consent Decree does not limit or otherwise affect any right of entry and inspection, or any right to obtain information, held by the United States or CDPHE pursuant to applicable federal or state laws, regulations, or permits, nor does it limit or affect any duty or obligation of the City to maintain documents, records, or other information imposed by applicable federal or state laws, regulations, or permits.

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

67. This Consent Decree resolves the civil claims of the United States, CDPHE, and the Plaintiff-Intervenors for the violations alleged in the Amended Complaint filed in this action through the Date of Lodging.

68. The Parties reserve all legal and equitable remedies available to enforce the provisions of this Consent Decree, except as expressly stated in Paragraph 67, above. This Consent Decree does not limit the rights of the United States, CDPHE, or the other Parties to obtain penalties or injunctive relief under the Clean Water Act or implementing regulations, or under the CWQCA, or under other federal or state laws, regulations, or permit conditions, except as expressly specified in Paragraph 67, above.

69. The United States, the State, and Plaintiff Intervenors further reserve all legal and equitable remedies to address any imminent and substantial endangerment to public health or welfare or the environment concerning the City's MS4 program, whether related to the matters addressed in this Consent Decree or otherwise.

70. This Consent Decree is not a permit, and is not a modification of any permit, under Federal, State, or local laws or regulations. The City is responsible for achieving and maintaining complete compliance with all applicable Federal, State, and local laws, regulations, and permits; and the City's compliance with this Consent Decree shall be no defense to any action commenced pursuant to any such laws, regulations, or permits, except as set forth herein. The United States, the State, or Plaintiff Intervenors do not, by their consent to the entry of this Consent Decree, warrant or aver in any manner that the City's compliance with any aspect of this Consent Decree will result in compliance with provisions of the Clean Water Act, 33 U.S.C. § 1251 *et seq.*, the CWQCA, §§ 25-8-101 *et seq.*, or with any other provisions of Federal, State, or local laws, regulations, or permits.

71. The State is a plaintiff and a signatory to this Consent Decree, and pursuant to Section 309(e) of the Clean Water Act, 33 U.S.C. § 1319(e), Colorado is required to be joined as a party to this action. The State shall have no liability under this Consent Decree except, as set forth in Section 309(e), to the extent that the laws of Colorado prevent the City from raising revenues needed to comply with this Consent Decree. The State represents that its current laws do not prevent the City from raising revenues needed to comply with this Consent Decree. The State reserves all defenses to any claims pursuant to Section 309(e), including among other defenses that Colorado law does not prevent the City from raising revenues needed to comply with this Consent Decree.

72. This Consent Decree does not limit or affect any rights of the Parties with respect to persons or entities who are not Parties to this Consent Decree. This Consent Decree does not

limit any rights of third parties, not party to this Consent Decree, against any Party, except as otherwise provided by law.

73. This Consent Decree shall not be construed to create rights in, or grant any cause of action to, any third-party not party to this Consent Decree. Nothing in the Consent Decree limits rights or defenses available under Section 309(e) of the CWA, 33 U.S.C. § 1319(e).

#### **XVII. COSTS**

74. The United States, the State, and the City shall bear their own costs of this action, including attorneys' fees, except that the United States and the 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 the City. Within 30 Days of the Effective Date, the City shall pay the Plaintiff Intervenors \$125,000 in settlement of their potential claims for costs, including attorneys' fees, (\$100,000 to Lower Arkansas Valley Water Conservancy District and \$25,000 to Pueblo County Board of County Commissioners).

#### **XVIII. NOTICES**

75. Unless otherwise specified in this Consent Decree, and whenever notifications, submissions, or communications ("notifications" or "notices") are required by this Decree, they shall be made electronically, unless otherwise requested, addressed as follows, and in accord with the other requirements contained in this Section:

As to the United States by  
email:

eescdcopy.enrd@usdoj.gov  
Re: DJ # 90-5-1-1-11293

As to the United States by  
mail:

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 # 90-5-1-1-11293

As to EPA:

Director, Water Enforcement Division  
Office of Civil Enforcement  
USEPA Headquarters,  
1200 Pennsylvania Ave., NW  
Washington, D.C. 20460  
Attn: Bruce Fergusson  
Fergusson.Bruce@epa.gov

Director, Enforcement and Compliance Assurance  
Division  
Environmental Protection Agency, Region 8  
1595 Wynkoop Street  
Denver, CO 80202  
Attn: Mike Boeglin  
Boeglin.Michael@epa.gov

As to the State of Colorado:

First Assistant Attorney General  
Water Quality Unit  
Natural Resources Section  
Colorado Attorney General's Office  
1300 Broadway, 7th Floor  
Denver, CO 80203  
Attn: Carrie Noteboom  
carrie.noteboom@coag.gov

As to CDPHE:

Compliance & Enforcement Program Manager  
Colorado Department of Public Health and  
Environment  
Water Quality Control Division  
4300 Cherry Creek Drive South  
Denver, CO 80246-1530  
Attn: Nathan Moore  
nathan.moore@state.co.us

As to the Plaintiff Intervenors: County Attorney, Pueblo County Courthouse  
215 W. 10th Street  
Room 312  
Pueblo, CO 81003

General Manager  
Lower Arkansas Valley Water Conservancy District  
801 Swink Avenue  
Rocky Ford, CO 81067

Special Water Counsel  
Lower Arkansas Valley Water Conservancy District  
c/o Berg Hill Greenleaf Ruscitti LLP  
1712 Pearl Street  
Boulder, CO 80302

As to the City: Stormwater Enterprise Manager  
City of Colorado Springs  
30 South Nevada Avenue, Suite 401  
Colorado Springs, CO 80903

City Attorney  
City of Colorado Springs  
30 South Nevada Avenue, Suite 501  
Colorado Springs, CO 80903

76. Any Party may change its recipients for notifications, or other information for notifications by providing notification in accord with this Section.

77. Notices are submitted upon the proper electronic transmission or mailing of the notice under this Section, unless otherwise provided in this Consent Decree or by written agreement of the Parties. Notices to or communications mailed or emailed to the Parties shall be deemed to be received on the earlier of: (i) actual receipt by Parties, or (ii) receipt of an electronic version sent to the addresses set forth in this Section. An email is presumed received on the day it is sent. With the exception of notices sent pursuant to Section XII (Force Majeure), if the date for submission of a report, study, notification, or other communication falls on a

Saturday, Sunday, or federal, State, or City holiday, the report, study, notification, or other communication is timely if it is submitted the next Business Day.

**XIX. EFFECTIVE DATE**

78. The Effective Date of this Consent Decree is the date upon which the approval of the Decree is recorded on the Court's docket.

**XX. RETENTION OF JURISDICTION**

79. The Court retains jurisdiction over this case until termination of this Consent Decree pursuant to Section XXII (Termination) for the purpose of resolving disputes arising under this Decree or entering or approving orders modifying this Decree, pursuant to Sections XIV (Dispute Resolution) and XXI (Modification), or effectuating or enforcing compliance with the terms of this Decree.

**XXI. MODIFICATION**

80. The terms of this Consent Decree, including appendices, may be modified only by a subsequent written agreement signed by all the Parties. If the modification is a material change to this Consent Decree, the modification is effective only upon approval by the Court. Any documents that are developed pursuant to the requirements of this Consent Decree and that become part of the Decree that effect a material change to the terms of the Consent Decree shall become effective upon a subsequent written agreement signed by all the Parties and approved by the Court. Any schedule that is included in this Consent Decree or any document developed pursuant to the Decree may be extended, modified, or revised upon written agreement of the Parties, without Court approval, unless the schedule extension effects a material change to the

terms of the Decree. Addition of an alternative Credited Measure to the Appendix A (Credit Table) is not a material modification of this Decree and does not require approval of the Court.

81. If the City seeks to modify the Credit Table provided in Appendix A to make use of an alternative Credited Measure that is expected to provide a reduction in pollutant discharges consistent with what would be expected for other Credited Measures in the Credit Table, the City must:

a. Submit to CDPHE for review and Approval and after an opportunity for review and comment with the EPA and Plaintiff Intervenors: a study, report, or evidence that supports the addition of the alternative Credited Measure to Appendix A (Credit Table). The study, report or evidence will include:

- (1) the associated proposed criteria/requirements;
- (2) proposed allowable credit for the alternative Credited Measure;
- (3) documentation demonstrating that implementation of the proposed alternative Credited Measure would be expected to meet or exceed the water quality benefit resulting from the control of pollutants in, or reduction of, stormwater runoff that would be expected on a per credit basis for an Existing Measure; and
- (4) documentation of, or reference to design plans, specifications, and maintenance requirements similar to those provided for in the DCM for an Existing Measure.

b. CDPHE will Approve or deny the alternative Credited Measure within 60 Days of receipt of the modification and supporting documentation. If Approved, the



City can modify the Credit Table to include the alternative Credited Measure. If CDPHE disapproves the alternative Credited Measure, CDPHE will provide written reasons for the denial and the City can resubmit upon incorporation of the Agencies' feedback.

82. Any disputes concerning modification of this Decree shall be resolved pursuant to Section XIV (Dispute Resolution), provided, however, that, instead of the burden of proof provided by Paragraph 61, the Party seeking the modification bears the burden of demonstrating that it is entitled to the requested modification in accordance with Federal Rule of Civil Procedure 60(b).

83. Approved Stormwater Management Program Documents. Modifications to the City's stormwater program that are approved by the United States or the State — whether to the Permit, the SCM, the DCM, or to other State-approved stormwater program documents or requirements — are not material modifications to this Consent Decree and do not require Court approval. Changes to City stormwater program documents that do not require United States or State Approval are not material modifications to this Consent Decree and do not require Court approval.

## **XXII. TERMINATION**

84. This Consent Decree terminates as described in this Section XXII (Termination).

85. Final Termination. The City may serve upon the Plaintiffs a request for Final Termination of the Consent Decree, together with all necessary supporting documentation, certifying that the City has satisfied all of its obligations under the Consent Decree, including:

a. completion of all requirements of subparagraph 13(d) (Permanent Control Measures to Meet the WQSV Target) and Section VI (Mitigation Projects) of this Consent Decree;

b. compliance with all other requirements of this Consent Decree; and

c. payment in full of all civil penalties required under Section VIII (Civil Penalty), and any accrued stipulated penalties as required under Section XI (Stipulated Penalties) of this Consent Decree not waived or reduced by the Plaintiffs.

86. Partial Termination. After no earlier than four years from the Effective Date (except as noted below in subparagraph 86(g)), if the City has (1) satisfied its obligations in subparagraph 85(c) above; (2) maintained full compliance with each provision for at least one year prior to the request for Partial Termination; and (3) successfully completed any applicable Third-Party Audit covering the provision, the City may serve upon the Plaintiffs a request for Partial Termination of the Consent Decree with respect to each of the following provisions:

a. Paragraph 12 (Construction Sites Program);

b. Subparagraph 13(a) (Tracking of Municipally Owned Structures and Permanent Control Measures);

c. Subparagraph 13(b) (Operation and Maintenance of Municipally Owned Structures);

d. Subparagraph 13(c) (New Development and Redevelopment Program);

e. Paragraph 14 (Training);

f. Subparagraph 16(b) (Construction Inspector Supervisory Audit); and

g. Subparagraph 16(c) (Long-Term Operation and Maintenance Inspections of Permanent Control Measures Supervisory Audit) and the associated Supervisory Audit Report (subparagraph 16(a)). The City may request Partial Termination for this provision no earlier than five years from the Effective Date.

A finding by the Auditor in the Final Audit Report for Year 3 that a GEC Plan, CSWMP, or Permanent Control Measure is noncompliant will not be construed as a failure by the City to maintain full compliance with the associated provision as long as the Year 3 Compliance Rate has been achieved. The requirements in Paragraphs 10 (Performance Standard) and 11 (Adequate Resources) will also terminate with respect to any provisions that are terminated under this Paragraph.

87. Following receipt by the United States, the State, and Plaintiff Intervenors of the City's Request for Final Termination or Partial Termination, the Parties shall confer informally concerning the Request and any disagreement that the Parties may have as to whether the City has satisfactorily complied with the requirements for termination of the Consent Decree.

88. If the United States, after consultation with the State and Plaintiff Intervenors, agrees that the Consent Decree may be terminated in whole or in part, the Parties shall submit, for the Court's approval, a joint stipulation terminating all or part of the Consent Decree.

89. If the United States, after consultation with the State and Plaintiff Intervenors, does not agree that the Consent Decree may be terminated in whole or in part, the City may invoke Dispute Resolution under Section XIV of this Decree. However, the City shall not seek Dispute Resolution of any dispute regarding termination, under Section XIV, until after service of its Request for Termination.

### **XXIII. CERTIFICATION**

90. The City hereby certifies, to the best of its knowledge and belief, after thorough inquiry: (a) that it has submitted to the United States information concerning the financial impact of the COVID-19 pandemic that fairly, accurately, and materially sets forth its financial circumstances; (b) that those circumstances have not materially changed since June 2020 and the date that the City signed this Consent Decree; and (c) that it does not have any insurance policies that may cover any payment of a civil penalty relating to this matter.

### **XXIV. PUBLIC PARTICIPATION**

91. This Consent Decree will 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 United States reserves the right to withdraw or withhold its consent if the comments regarding the Decree disclose facts or considerations indicating that the Decree is inappropriate, improper, or inadequate. The City consents to entry of this Decree without further notice and agrees not to withdraw from or oppose entry of this Decree by the Court or to challenge any provision of the Decree, unless the United States has notified the City in writing that it no longer supports entry of the Decree.

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

92. Each undersigned signatory representative of the City, the State, the EPA, the Assistant Attorney General for the Environment and Natural Resources Division of the Department of Justice, the Lower Arkansas Valley Water Conservancy District, and the Board of County Commissioners of the County of Pueblo certifies, by his or her signature, that the

representative is fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind the Party he or she represents to this document.

93. This Consent Decree may be signed in counterparts by the Parties, and its validity may not be challenged on that basis.

#### **XXVI. INTEGRATION/HEADINGS**

94. This Consent Decree and all attachments and Appendices constitute the final, complete, and exclusive agreement and understanding among the Parties with respect to the settlement embodied in the Decree. The Parties acknowledge and confirm that there are no representations, agreements, or understandings relating to this settlement other than those expressly contained in this Decree. Headings to the Sections and subsections of this Consent Decree are for convenience. Headings do not affect the meaning or interpretation of the provisions of this Consent Decree.

#### **XXVII. FINAL JUDGMENT**

95. Upon approval and entry of this Consent Decree by the Court, this Consent Decree is a final judgment of the Court as to the United States, the State, Plaintiff Intervenors, and the City.

#### **XXVIII. APPENDICES**

96. The following Appendices are attached to and made a part of this Consent Decree:

“Appendix A” is the Credit Table

“Appendix B” is Verification of a Functioning Permanent Control Measure Built Prior to July 31, 2018.

“Appendix C” is Mitigation Projects

Dated and entered this \_\_\_\_ day of \_\_\_\_\_, 2021.

Date: \_\_\_\_\_

---

JUDGE JOHN L. KANE  
SENIOR UNITED STATES DISTRICT JUDGE

THE UNDERSIGNED PARTY enters into this Consent Decree in this action captioned *United States et al v. the City of Colorado Springs*.

FOR THE UNITED STATES OF AMERICA:

JONATHAN D. BRIGHTBILL  
Principal Deputy Assistant Attorney General  
Environment and Natural Resources Division  
U.S. Department of Justice

Date: \_\_\_\_\_

\_\_\_\_\_  
KATHERINE M. KANE  
ALEXANDRA B. SHERERTZ  
Environmental Enforcement Section  
Environment and Natural Resources Division  
U.S. Department of Justice  
999 18th Street  
South Terrace, Suite 370  
Denver, Colorado 80202  
Tel: (303) 844-1378 (Katherine)  
Tel: (202) 514-0414 (Alexandra)  
Email: [Katherine.Kane@usdoj.gov](mailto:Katherine.Kane@usdoj.gov)  
Email: [Alexandra.Sherertz@usdoj.gov](mailto:Alexandra.Sherertz@usdoj.gov)

THE UNDERSIGNED PARTY enters into this Consent Decree in this action captioned *United States et al v. the City of Colorado Springs*.

FOR THE U.S. ENVIRONMENTAL  
PROTECTION AGENCY, OFFICE OF  
ENFORCEMENT AND COMPLIANCE  
ASSURANCE

SUSAN  
BODINE

Digitally signed by  
SUSAN BODINE  
Date: 2020.10.13 13:32:48  
-04'00'

Date: \_\_\_\_\_

---

SUSAN PARKER BODINE  
Assistant Administrator  
Office of Enforcement and Compliance Assurance

ROSEMARIE KELLEY  
Office Director  
Office of Civil Enforcement  
Office of Enforcement and Compliance Assurance

MARK POLLINS  
Division Director  
Water Enforcement Division  
Office of Civil Enforcement  
Office of Enforcement and Compliance Assurance

BRUCE FERGUSON  
Attorney-Advisor  
Water Enforcement Division  
Office of Civil Enforcement  
Office of Enforcement and Compliance Assurance



THE UNDERSIGNED PARTY enters into this Consent Decree in this action captioned *United States et al v. the City of Colorado Springs*.

FOR THE U.S. ENVIRONMENTAL  
PROTECTION AGENCY, REGION 8:

Date: 10/15/20

Digitally signed by  
GREGORY SOPKIN  
Date: 2020.10.15  
07:01:10 -06'00'

\_\_\_\_\_  
GREGORY SOPKIN  
Regional Administrator

SUZANNE J. OHAN  
Director  
Enforcement and Compliance Assurance Division


KENNETH J. CHEFSKI  
Regional Counsel  
Office of Regional Counsel

LAURIANNE M. JACKSON  
LAUREN HAMMOND  
Senior Assistant Regional Counsel  
Legal Enforcement Branch  
Office of Regional Counsel

THE UNDERSIGNED PARTY enters into this Consent Decree in this action captioned *United States et al v. City of Colorado Springs, Colorado*.

FOR THE STATE OF COLORADO:

Date: 10-22-20



JOHN PUTNAM  
Director of Environmental Programs  
Colorado Department of Public Health and  
Environment

Date: 10/23/20



CARRIE NOTEBOOM  
First Assistant Attorney General  
Natural Resources and Environment Section  
Office of the Attorney General

THE UNDERSIGNED PARTY enters into this Consent Decree in this action captioned *United States and the State of Colorado v. City of Colorado Springs, Colorado*.

FOR THE LOWER ARKANSAS VALLEY  
WATER CONSERVANCY DISTRICT:

Date: 10/23/2020



---

LYNDEN GILL  
Chairman

Date: 10-23-2020



---

PETER D. NICHOLS  
Special Water Counsel

THE UNDERSIGNED PARTY enters into this Consent Decree in this action captioned *United States and the State of Colorado v. City of Colorado Springs, Colorado*.

FOR THE BOARD OF COUNTY  
COMMISSIONERS OF THE COUNTY OF  
PUEBLO:

Date: 10/27/20



\_\_\_\_\_  
GARRISON M. ORTIZ  
Chair

Date: 10/27/20

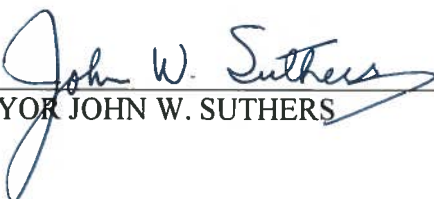


\_\_\_\_\_  
CYNTHIA L. MITCHELL  
Pueblo County Attorney

THE UNDERSIGNED PARTY enters into this Consent Decree in this action captioned *United States and the State of Colorado v. City of Colorado Springs, Colorado*.

FOR THE DEFENDANT, THE CITY OF  
COLORADO SPRINGS, COLORADO

Date: 10/27/2020

  
MAYOR JOHN W. SUTHERS

## **APPENDIX A**

### **I. CREDIT TABLE OVERVIEW**

1. The Credit Table, below, establishes criteria and requirements for each type of Credited Measure and provides methods for the City of Colorado Springs (City) to claim credits for: (a) Existing Measures that the City verifies as functioning in accordance with Appendix B; (b) Existing Measures that are not functioning properly but that the City repairs or corrects and then verifies as functioning in accordance with Appendix B; or (c) New Measures that the City builds, modifies from existing Permanent Control Measures, or implements to ensure that the Credited Measures result in a level of pollutant control for stormwater runoff discharges from the MS4 that would be equivalent to, or exceed, the treatment design capacity required under the MS4 Permit.

2. Using aerial imagery, the Parties determined an agreed-upon 1,892 acres of impervious surface area was created in the City as a result of new development between October 29, 2003 and July 31, 2018. The Parties reduced the initial acreage calculation by 10 percent, from 1,892 to 1,703 acres, to account for impervious surface areas built in the City between October 29, 2003 and July 31, 2018, at new developments of less than one acre for which Permanent Control Measures were not required by the Permit. The Parties utilized the Water Quality Storage Volume (WQSV) calculation in the DCM to convert the agreed-upon 1,703 acres to 71 acre-feet (AF) of stormwater runoff treatment design capacity, measured as WQSV for the Permanent Control Measures required by the Permit to control runoff from the impervious areas. The 71 AF is the Target for the purposes of this Consent Decree. The Parties made the following assumptions in calculating the Target:

(a) In general, new developments for which water quality was required by the Permit shall have Permanent Control Measures implemented and maintained to reduce pollutants in the stormwater runoff from the developments.

(b) In utilizing aerial imagery, the Parties agreed to the October 29, 2003, start date because NDRD Sites submitted for approval in November of 2002, when the City first implemented the requirement for Permanent Control Measures, were generally not constructed until the following year. The Parties used the end date of July 31, 2018, based on the availability of relevant aerial maps at the time of the analysis and commitments made by the City that reduced the likelihood of uncontrolled runoff from new developments after that date.

## II. DEFINITIONS

**“Credited Measure”**: A measure that meets the criteria for and has received credit in accordance with this document. This includes Existing Measures meeting the requirements in Appendix B and receiving credit in accordance with Appendix A, and New Measures receiving credit in accordance with Appendix A.

**“Excess Urban Runoff Volume (EURV)”**: The volume of runoff, in acre feet, intended to approximate the incremental difference between the developed and undeveloped runoff volume for the range of storms that produce runoff from impervious land surfaces. The EURV must be determined either based on calculations and methods consistent with those outlined in the City’s Drainage Criteria Manual, Volume 1 (2014) or the volume of runoff generated from a 2-year, 2-hour storm event. The City may modify the method for calculating EURV if an alternative method is allowed in accordance with the City’s MS4 Permit.

**“Existing Measure”**: A Permanent Control Measure that was originally built prior to

July 31, 2018 and satisfies the criteria in category 2 of this Credit Table.

**“Infiltration Credit”**: Credit received for stormwater runoff from the target storm event infiltrating into the ground without release to the MS4.

**“Minimizing Directly Connected Impervious Area (MDCIA)”**: Runoff reduction strategies based on reducing impervious areas and routing runoff from impervious surfaces over pervious areas to slow runoff and promote infiltration.

**“MS4 Permit”**: MS4 Permit or “Permit” shall mean the permit issued by CDPHE through the Colorado Discharge Permit System (“CDPS”) and identified numerically as Permit No. COS-000004, which authorizes discharges from the City’s MS4.

**“MS4 Program”**: The program implemented to comply with the MS4 permit requirements for implementation of a stormwater management program to control pollutants in discharges from the MS4 to the maximum extent practicable.

**“New Measure”**: New Measure shall mean a measure that satisfies the criteria set forth in categories 1 and 3-9 of this Credit Table. In general, New Measures are those built, modified from a pre-existing feature, or otherwise implemented after the Effective Date.

**“Permanent Control Measure”**: Permanent Control Measure shall mean any post-construction Water Quality Structure or feature that was built to meet the new development and redevelopment (NDRD) requirements of the Permit or this Decree.

**“Water Quality Capture Volume (WQCV)”**: A volume of water generated by a storm event, in watershed inches, that is either based on a specific frequency of storm events and/or a specific storm event, as identified in the City’s MS4 Program. The WQCV must be determined based on calculations and methods consistent with those outlined in the City’s Drainage Criteria Manual, Volume II (2014). The City may modify the method for calculating WQCV if an



alternative method is allowed in accordance with the City’s MS4 Permit.

**“Water Quality Storage Volume (WQSV)”**: A volume of water, in acre-feet, calculated as the runoff occurring from the WQCV storm event for a specific area. This is a quantity of water used for the design of certain water quality measures.

**“WQSV Measure”**: A measure obtaining credit in accordance with categories 1, 2, 8, or in accordance with category 7 where the credit calculation includes the “Pollutant Removal Credit Volume” factor. The Parties recognize that category 8 measures (New Flow-Through Pollutant Removal Control Measures) do not provide treatment via storage but are intentionally included in this definition.

**“WQSV Target or Target”**: Target shall mean 71-acre feet (AF) of water, an engineered number that represents a treatment goal for stormwater originating from new development and redevelopment (NDRD) Sites submitted for approval by the City between 2002 and July 31, 2018.

### **III. CALCULATION OF CREDIT**

1. Credit for a Credited Measure will be applied to the Target following all required steps for (a) construction, maintenance and verification of the implementation of a Credited Measure as outlined in this document, and (b) the completion of the required documentation, plans, and agreements for long-term operation and maintenance. For category 5 (New Development Infiltration – City Wide Standard), a one-time credit would instead be applied upon meeting the specific criteria identified in that category.

2. For Credited Measures obtaining credit in accordance with category 1 or 2, the credit will be based on a calculation of the WQSV for a 40-hour drain time, even if the actual storage volume of the Credited Measure is determined using a shorter drain time. For example, if

a constructed wetland pond Credited Measure is designed based on a 24-hour drain time, per the current design criteria, the actual credit will still be based on a WQSV using a 40-hour drain time.

3. Where the Credit Table limits the amount of credit for infiltration up to the runoff volume generated by the WQCV or EURV storm events, the volume from the WQCV and EURV events will be calculated based on the greater of the 12-hour drain time volume or the volume based on the actual drain time (infiltration time) of the infiltration Credited Measure. Unlike controls for capture and release, the credit will not be based on a 40-hour event because the table already provides additional credit for infiltration versus capture and release-Credited Measures.

4. All credit based on a design runoff volume is limited to the volume calculated based on the actual impervious area contributing flows to the Credited Measure in accordance with the formulas and methods in the DCM Vol II (2014) or Urban Storm Drainage Criteria Manual (USDCM) Vol 3 (2015), as appropriate, or an alternative method allowed by the City's MS4 Permit. This limitation is in addition to any volume limitation for specific Credited Measures below.

5. Except for the credits in categories 5 and 6 for NDRD, credit will not be given for runoff, or addressing runoff through treatment or infiltration, that originates from impervious area that was added or redeveloped after July 31, 2018, and was therefore not counted as impervious area as part of the Target determination. For a Credited Measure used to address runoff from both impervious area added or redeveloped after July 31, 2018, and from impervious area existing prior to July 31, 2018, however, credit can be applied in accordance with the table

for the runoff from all impervious area including the portion of the runoff that was from the pre-July 31, 2018 impervious area.

6. For an Existing Measure, credit will not be given for runoff originating entirely from an area not subject to the permanent, post construction requirements in the City's Permit.

7. The credits in the table limit cumulative credits for flows generated from a specific area to those scenarios explicitly addressed in the credit table.

#### **IV. BASIC CREDIT CRITERIA**

8. The City must implement a long-term operation and maintenance process for all Credited Measures, and the Credited Measures must be included in the City's Ensure database.

9. If a water quality control measure or a water quantity pond that was previously installed is modified to meet the credit criteria, the requirements in this part apply to both the control measure features that were already in place (e.g., the WQCV or flood control design features) and the modified features (e.g., added infiltration features), which may require the development of a new as-built plan for the entire facility.

10. The following conditions apply depending on the applicable credit criteria applied:

(a) For any Existing Measure meeting the criteria of category 2, the City must complete all the requirements and documentation in Appendix B, "Verification of a Functioning Permanent Control Measure Built Prior to July 31, 2018," including the long-term operation and maintenance.

(b) For all other Credited Measures (category 1, and 3-9):

i. An as-built plan must be completed and on file. For Credited Measures associated with minimizing directly connecting impervious area (MDCIA) or other non-facility based Credited Measures that are incorporated into

the overall site drainage plan, a certification of completion of the required drainage elements in accordance with the City-approved plan, with documented verification by the City, would be used in place of an as-built plan.

ii. The City must implement the construction and acceptance process consistent with its review, inspection, and enforcement program for Permanent Control Measures under its MS4 permit.

iii. For any Credited Measure that will not be owned by the City, an active Maintenance Agreement (MA) with the owner, and successors in interest, establishing requirements for management of the Credited Measure must be in place. In addition, an Inspection/Maintenance Plan (IMP) must be in place. The IMP for the Credited Measure may use a standardized IMP (as compared to a site-specific IMP); however, any standardized IMP must accurately address the conditions and maintenance needs at the site to which it is applied.

11. Infiltration Requirements: An underdrain that discharges to the MS4 or a water of the state does not qualify for Infiltration Credit. A separation distance of 2 feet is required between the bottom of the infiltration control measure and the elevation of the top of bedrock or the expected seasonally high ground water table, including alluvial groundwater.

12. MDCIA Requirements: Credit for MDCIA practices are limited to those that involve routing runoff from impervious surfaces to pervious surfaces, and credits are applied only to the calculated runoff reductions.

13. For the purposes of this credit table, the credited EURV shall be limited to the volume within the EURV in excess of the WQSV.

14. All Credited Measures must be designed and implemented in accordance with good engineering, hydrologic and pollution control practices. Good engineering, hydrologic and pollution control practices are methods, procedures, and practices that:

- (a) Are based on basic scientific fact(s);
- (b) Reflect best industry practices and standards;
- (c) Are appropriate for the conditions and pollutant sources; and
- (d) Provide appropriate solutions to meet the associated permit requirements, including practice-based and numeric effluent limits.

#### **V. GENERAL CREDIT CONCEPTS**

15. All Credited Measures will be subject to the permit standard for long-term operation and maintenance in future MS4 permit terms.

16. The Credit Table includes requirements that certain Credited Measures and Credited Measure features must be located outside of the 10-year or 50-year floodplains. These requirements only apply to floodplains for classified state waters<sup>1</sup> that are located after the MS4 permit discharge. Floodplain restrictions do not apply to flood plains for portions of the MS4.

(a) For Credited Measures that cannot be located within the outer boundary of the 10-year floodplain, the measure must be located either:

- (1) above the level of the Water Surface Elevation (WSEL) of the 10-year event; or

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<sup>1</sup> “Classified state waters” are state waters, as defined in Section 25-8-103(19), C.R.S., that have been classified by the Water Quality Control Commission pursuant to Section 25-8-203, C.R.S. The classifications for each segment in the Arkansas River Basin can be found in Water Quality Control Commission Regulation 32, 5 CCR 1002-32.

(2) at least two feet above the WSEL of the 2-year event. The reason for elevating the measure in the floodplain is to prevent it from being inundated and scoured during frequent runoff events.

(b) For Credited Measures that cannot be located outside of the outer boundary of the 50-year floodplain, the measure must be located above the level of the WSEL of the 50-year event.

17. The EPA or the State may disapprove or modify any credits that do not comply with the above general crediting concepts and/or the requirements and procedures of the Credit Table.

<b>Credit Table</b>		
<b>Credited Measure</b>	<b>Criteria/Requirements</b>	<b>Credit (40-hr drain time WQSV, in acre-feet)</b>
<p><b>1. New WQSV Measures</b></p>	<p>A. This credit can apply to permeable pavement systems with subsurface storage, bioretention, extended detention basins, sand filters, constructed wetland ponds, and retention ponds that are designed and constructed in accordance with the City’s MS4 program. If the State incorporates an allowance in a future term of the City’s MS4 permit, to use additional WQSV control measures with slow release as an equivalent alternative to those listed above, the City may also use those approved control measures to obtain this credit modification to the City’s MS4 program; or</p> <p>B. This credit can also apply to underground control measures that are designed to satisfy the requirements for capture and slow release of the WQSV (e.g., underground sedimentation vaults or sand filters). The control measures must be based on and designed in substantial conformance with the criteria for surface-based control measures and have the same drain time constant as the equivalent above ground control measure. The underground control measure must also meet the additional criteria for Underground BMPs Based on a Surface BMP design, described in USDCM Vol 3 (2015) or equivalent criteria incorporated into the City’s MS4 program.</p> <p>C. The control must be designed to capture the WQSV for the entire area contributing runoff</p>	<p><b>1 credit per 1 acre-foot of the WQSV</b> calculated assuming a 40-hour drain time (regardless of the actual control measure drain time)</p>

<b>Credit Table</b>		
<b>Credited Measure</b>	<b>Criteria/Requirements</b>	<b>Credit (40-hr drain time WQSV, in acre-feet)</b>
	<p>and detain for the minimum detention time per the applicable design criteria.</p> <p>D. The credit applies to newly constructed control measures installed following the Effective Date. The City may also choose to use this credit, in place of the credit in category 2 below, for modification of control measures installed prior to July 31, 2018 (i.e., to treat the control measure as a New Measure versus one subject to the process for Verification of a Functioning Permanent Control Measure Built Prior to July 31, 2018 set forth in Appendix B). For example, the City may choose this approach to allow for modification of the design based on the broader criteria allowed in subpart A.</p> <p>E. Up Gradient WQSV Measures: If any WQSV Measures are present within area contributing runoff to the new category 1 Credited Measure, the following will occur:</p> <ul style="list-style-type: none"> <li>i. The new category 1 Credited Measure will be sized for capture and release of the full WQSV, including runoff flowing through the up gradient WQSV Measures; and</li> <li>ii. Runoff from areas flowing through the up gradient WQSV Measure(s) will <b>not</b> be included in the calculation of the credit for the new category 1 Credited Measure.</li> </ul> <p>F. The control measures must be installed outside of the 10-year floodplain according to General Concept 16. If the control measure is within the 50-year floodplain according to</p>	



<b>Credit Table</b>		
<b>Credited Measure</b>	<b>Criteria/Requirements</b>	<b>Credit (40-hr drain time WQSV, in acre-feet)</b>
	<p>General Concept 16, either:</p> <ul style="list-style-type: none"> <li>i. A forebay or equivalent pretreatment feature will be located outside of the 50-year floodplain; or</li> <li>ii. In addition to the standard maintenance procedures for the control measure, all collected sediment will be removed from the control measures at least once per year.</li> </ul>	
<p><b>2. Existing Measures Subject to City’s Process for Verification of a Functioning Permanent Control Measure</b></p>	<ul style="list-style-type: none"> <li>A. The credit only applies to Permanent Control Measures installed prior to July 31, 2018.</li> <li>B. This credit can apply to any Permanent Control Measure implemented to address the WQSV either through capturing and treating, infiltration, or a combination of the two. Note that the process in subpart C for this credit</li> </ul>	<p><b>1 credit per 1 acre-foot of the WQSV</b> calculated assuming a 40-hour drain time (regardless of the actual Permanent Control</p>

<b>Credit Table</b>		
<b>Credited Measure</b>	<b>Criteria/Requirements</b>	<b>Credit (40-hr drain time WQSV, in acre-feet)</b>
<p><b>Built Prior to July 31, 2018 set forth in Appendix B</b></p>	<p>will require confirmation against the MS4 Program’s permanent water quality control measure criteria in place at the time of original design approval.</p> <p>C. The City must complete the requirements of the City’s process for Verification of a Functioning Permanent Control Measure Built Prior to July 31, 2018 set forth in Appendix B for evaluation, modification/repair as necessary, and verification of the Permanent Control Measure. No “major deficiencies,” as defined in Appendix B, shall exist.</p> <p>D. The City can obtain credit for the water quality storage volume for Existing Measures built to provide WQSV for new development and redevelopment within the areas for which new impervious area was developed or redeveloped between October 29, 2003 and July 31, 2018 that are larger than required in order to treat impervious surface area developed prior to October 29, 2003.</p> <p>E. Up Gradient WQSV Measures: If any WQSV Measures are present within the area contributing runoff to the category 2 Credited Measure, runoff from areas flowing through the up gradient WQSV Measure(s) will not be included in the calculation of the credit for the category 2 Credited Measure.</p>	<p>Measure drain time)</p>

<p><b>3. New and Retrofitted Infiltration/ volume reduction/ green infrastructure control measures</b></p>	<p>A. This credit applies to the quantity of runoff infiltrated through engineered measures that retain stormwater runoff for infiltration or MDCIA development practices where the runoff is directed from an impervious area to a pervious area.</p> <p>B. The credit applies to newly constructed Credited Measures installed following the Effective Date, including where infiltration is integrated in a pre-existing QSV Measure.</p> <p>C. Down Gradient QSV Measures: If any QSV Measures are down gradient of, or in the same location as, the new category 3 Credited Measure; all credit for the new category 3 Credited Measure will be calculated using the Reduced Credit Calculation.</p> <p>D. Up Gradient QSV Measures: If any QSV Measures are present within the area contributing runoff to the new category 3 Credited Measure; the credit calculated based on the portion of the runoff from areas flowing through the up gradient QSV Measure(s) will be calculated using the Reduced Credits Calculation. The credit calculated for any portion of the runoff to the new category 3 Credited Measure that does not flow through a QSV Measure, either up gradient per this subcategory D or down gradient per subcategory C above, will be calculated using the Full Credits Calculation.</p> <p>E. For MDCIA practices (in addition to the requirements in A. – D.):</p> <p>i. MDCIA practices must be designed, implemented, and infiltration volumes predicted in accordance with the MS4 program’s process for quantifying runoff reduction associated with MDCIA development practices.</p> <p>ii. Flows across pervious area relied on for infiltration shall be designed as sheet flow.</p>	<p><b>Full Credit Calculation:</b> Used for calculating the credit for all or a portion of the runoff, to a category 3 Credited Measure that does not flow through an up gradient or down gradient QSV Measure:</p> <ul style="list-style-type: none"> <li>• 1.5 credits per 1 acre foot of infiltrated water up to the QSV</li> <li>• 0.25 credit per 1 acre foot of infiltrated water in excess of the-QSV but less than or equal to the EURV</li> </ul> <p><b>Reduced Credit Calculation:</b> Used for the calculating the credit where a QSV Measure is down gradient of, or in the same location as, the category 3 Credited Measure, or for the portion of the runoff that flows through an up gradient QSV Measure:</p> <ul style="list-style-type: none"> <li>• 0.5 credit per acre foot of infiltrated water up to the-QSV</li> <li>• 0.25 credit per acre foot of infiltrated water in excess of the-QSV but less than or equal to the EURV.</li> </ul> <p>For Credited Measures</p>
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<b>Credit Table</b>		
<b>Credited Measure</b>	<b>Criteria/Requirements</b>	<b>Credit</b> (40-hr drain time WQSV, in acre-feet)
	<p>Swales may be used to provide for the required pervious area where constructed to spread flow across the bottom width to obtain sheet flow conditions. Only the wetted perimeter of a swale during a WQCV storm event is considered for the purpose of identifying infiltrating pervious area.</p> <p>iii. The ratio of impervious area contributing runoff to the pervious area relied on for infiltration shall not exceed 10:1.</p> <p>F. For engineered Credited Measures that retain and infiltrate stormwater runoff (in addition to the requirements in A.-D.):</p> <p>i. Infiltration quantities used for determining credits will be based on site specific engineering and calculation of infiltrated runoff during the target storm event. Calculations must be based on industry accepted criteria and design manuals or peer reviewed and published technical articles.</p> <p>ii. The Credited Measure must be installed outside of the 10-year floodplain according to General Concept 16, above.</p> <p>G. If the Credited Measure is within the 50-year floodplain according to General Concept 16, either:</p> <ul style="list-style-type: none"> <li>• A forebay or equivalent pretreatment feature will be located outside of the 50-year floodplain; or</li> <li>• In addition to the standard maintenance procedures for the Credited Measure, all collected sediment will be removed from the Credited Measure at least once per</li> </ul>	<p>up gradient of or expanding another Credited Measure that provides infiltration, the volume of water infiltrated by both Credited Measures combined must be calculated and the credit will be applied only to the increase in infiltration, as follows.</p> <ul style="list-style-type: none"> <li>• 1.5 credits per acre foot of additional infiltrated water up to the WQSV</li> <li>• 0.25 credit per acre foot of additional infiltrated water in excess of the WQSV but less than or equal to the EURV</li> </ul>

<b>Credit Table</b>		
<b>Credited Measure</b>	<b>Criteria/Requirements</b>	<b>Credit (40-hr drain time WQSV, in acre-feet)</b>
	year.	
<b>4. Green Roofs</b>	<p>A. This credit applies to green roofs that meet or exceed the retention results of the EPA green roof section, which is a modular system using trays that allow for 4 inches of growing medium and designed in accordance with USDCM Vol 3's (Nov 2015) green roof fact sheet or the City's MS4 program if incorporated as an allowed alternative to providing a WQSV control measure for the underlying structure.</p> <p>B. The credit can only apply to the following two categories of roofs:</p> <ul style="list-style-type: none"> <li>i. Modification of existing roofs where the building was in place prior to the Effective Date and was counted as impervious area as part of the "debt" determination.</li> <li>ii. New roofs and modifications of any roof that occurs after the Effective Date if the building is <u>not</u> part of a new development or redevelopment project subject to the NDRD requirements in the MS4 permit (i.e., projects for which construction activities do not disturb greater than or equal to one acre, including projects less than one acre that are part of a larger common plan of development or sale).</li> </ul>	<ul style="list-style-type: none"> <li>• 0.05 credit per acre of green roof</li> </ul>
<b>5. New Development Infiltration – City Wide Standard Credit</b>	<p>A. This is a one-time credit based on the City passing and maintaining through the period of the consent decree a requirement for low impact development/green infrastructure (LID/GI) City-wide on new development. At a minimum:</p> <ul style="list-style-type: none"> <li>i. Applies to projects for which construction</li> </ul>	One-time credit of 1.5 acre feet for meeting the identified criteria

	<p>activities disturb greater than or equal to one acre, including projects less than one acre that are part of a larger common plan of development or sale.</p> <p>a. The reduction shall require that one of the following standards (i) or (ii) be met:</p> <p>(i.) The required percent volume reduction through infiltration, and evapotranspiration required shall be no less than: 4% for the 2-year rainfall event, or 10% for the WQCV event. Implementation of a green roof(s) may be used to meet or contribute to the WQSV target and it may be assumed that 100% of WQCV is removed for the precipitation directly to the green roof area.</p> <p>(ii.) At least 20-percent of the imperviousness areas must be disconnected and drain through a receiving pervious area comprising of at least 10-percent of the disconnected impervious area. Implementation of a green roof(s) may be used to reduce the targeted impervious area on a 1:1 basis (e.g., 1000 sf of green roof, would reduce the impervious area required to flow through a pervious area control measure by 1000 sf).</p> <p>b. Green roofs used to meet one of the above standards must meet or exceed the retention results of the EPA green roof section, which is a modular system using trays that allow for 4 inches of growing medium and designed in accordance with USDCM Vol 3's (2015) green roof fact sheet or the MS4 program if incorporated as an allowed</p>	
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<b>Credit Table</b>		
<b>Credited Measure</b>	<b>Criteria/Requirements</b>	<b>Credit (40-hr drain time WQSV, in acre-feet)</b>
	<p style="text-align: center;">alternative to providing a WQSV control measure for the underlying structure.</p> <p>B. The City may waive this requirement for a specific site based on site specific constraints that make meeting the standard not practicable. However, if over a rolling 5-year period the City waives the requirement for more than 35% of newly approved drainage reports, based on a reasonable measure of impervious area of the development, then the one-time credit provided under the consent decree will be reduced by a corresponding percent.</p> <p>C. To receive this credit, the City must implement this requirement no later than 2 years following the Effective Date.</p>	
<p><b>6. New Development or Redevelopment Infiltration – Development Specific Credits</b></p>	<p>A. This credit applies to the quantity of runoff infiltrated through engineered Credited Measures that retain stormwater runoff for infiltration or MDCIA Credited Measures where the runoff is directed from an impervious area to a pervious area and that are in addition to or part of a Permanent Control Measure required by the Permit.</p> <p>B. The credit applies to newly constructed Credited Measures installed following the Effective Date.</p> <p>C. This credit would be applied in addition to the one-time credit in category 5, even if the infiltration occurs as a result of the City implementing the standard required to receive the category 5 credit.</p> <p>D. This credit applies to infiltration from Credited Measures that are in addition to or part of the Permanent Control Measures required by the Permit for new development</p>	<p>This Credited Measure category will be available for at least 5 years following the Effective Date. If the City’s Permit ever includes a new provision that would require MDCIA or infiltration at new development or redevelopment projects, this Credited Measure will no longer be available upon 5 years after the Effective Date or the effective date of the MDCIA or infiltration requirement in the Permit, whichever is</p>

	<p>or redevelopment projects subject to the NDRD requirements in the Permit</p> <p>i. The City remains responsible for compliance with the Permit for these developments, including providing for a WQSV control measure in accordance with Permit requirements. Note that this infiltration credit is the only credit applied to runoff from these development areas.</p> <p>E. For MDCIA Credited Measures:</p> <p>i. MDCIA Credited Measures must be designed, implemented, and infiltration volumes predicted in accordance with the MS4 Program’s process for quantifying runoff reduction associated with MDCIA development practices.</p> <p>ii. Flows across pervious area relied on for infiltration shall be designed as sheet flow. Swales may be used to provide for the required pervious area where constructed to spread flow across the bottom width. Only the wetted portion of the swale with cross sectional slopes of less than 4:1 (horizontal: vertical) shall be considered for the purpose of identifying the bottom width’s infiltrating pervious area (note, that swales not meeting this criteria can be considered under subsection F).</p> <p>F. For engineered Credited Measures that retain and infiltrate stormwater runoff:</p> <p>i. Infiltration quantities used for determining credits will be based on site-specific engineering and calculation of infiltrated runoff during the target storm event. Calculations must be based on industry accepted criteria and design manual or peer</p>	<p>later.</p> <p>Note that for infiltration greater than the WQSV, the total credit would be the total of both of the following credits.</p> <ul style="list-style-type: none"> <li>• 0.5 credit per acre foot of infiltrated water up to the WQSV</li> <li>• 0.25 credit per acre foot of infiltrated water in excess of the WQSV but less than or equal to the EURV</li> </ul>
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<b>Credit Table</b>		
<b>Credited Measure</b>	<b>Criteria/Requirements</b>	<b>Credit</b> (40-hr drain time WQSV, in acre-feet)
	<p>reviewed and published technical articles.</p> <p>ii. The Credited Measure must be installed outside of the 10-year floodplain according to General Concept 16. If the Credited Measure is within the 50-year floodplain according to General Concept 16, either:</p> <p>a. A forebay or equivalent pretreatment feature will be located outside of the 50-year floodplain; or</p> <p>b. In addition to the standard maintenance procedures for the measure, all collected sediment will be removed from the Credited Measure at least once per year.</p>	
<p><b>7. Replace existing concrete channel with natural channel</b></p>	<p>A. This credit can apply to vegetated swale conversion from a concrete channel that is not a state water. The credit applies when the concrete channel is converted to a natural channel that provide infiltration and treatment through straining of runoff.</p> <p>B. The credit applies to newly constructed Credited Measures installed following the Effective Date.</p> <p>C. Down Gradient WQSV Measures: If any WQSV Measures are down gradient of the new category 7 Credited Measure, all credit for the new category 7 Credited Measure will be calculated using the Reduced Credit Calculation.</p> <p>D. Up Gradient WQSV Measures: If any WQSV Measures are present within area contributing runoff to the new category 7 Credited Measure, the credit calculated based on the</p>	<p>The following variables are used in calculating the credits Infiltration Volume Credit Volume (<math>I_{WQSV}</math>):</p> <p>The volume in acre-feet, determined by the following steps:</p> <ol style="list-style-type: none"> <li>1. Determine the length of natural channel (ft)</li> <li>2. Determine the length of the channel's wetted perimeter for</li> </ol>

	<p>portion of the runoff from areas flowing through the up gradient WQSV Measure(s) will be calculated using the Reduced Credits Calculation. The credit calculated for any portion of the runoff to the new category 7 Credited Measure that does not flow through a WQSV Measure, either up gradient per this subcategory D or down gradient per subcategory C above, will be calculated using the Full Credits Calculation.</p> <p>E. The natural channel will be designed in accordance with the design criteria in USDCM (2015) or the MS4 program, and include:</p> <ul style="list-style-type: none"> <li>i. Maximum design flow velocity in the swale should not exceed City criteria for stable open channel velocities and in accordance with good engineering practices to minimize channel erosion.</li> <li>ii. The longitudinal slope shall not exceed 4% (drop structures can be used to reduce slope).</li> <li>iii. Maximum flow depth should not exceed one foot at the 2-year peak flow rate.</li> </ul> <p>F. The Pollutant Removal Credit portion of the equation will only be used if:</p> <ul style="list-style-type: none"> <li>i. The total surface area of the natural channel exceeds 1% of the area that drains to the swale (500 sf per acre). Only sections of the swale where the full wetted cross section during the 80th percentile storm event is comprised of turf grass vegetation may be counted.</li> <li>ii. Maximum flow depth should not exceed 2” during the 80th percentile storm event.</li> <li>iii. The natural channel is designed in accordance with the grass swale design criteria in USDCM Vol 3 (2015) or the MS4 program.</li> </ul>	<p>a 1-year, 2-hour storm event (ft)</p> <ul style="list-style-type: none"> <li>3. Determine the saturated hydraulic conductivity of the soil in the channel from the NRCS Web Soil Survey (converted to ft/hour), or use site-specific infiltration testing performed by a licensed PE, performed at a minimum spacing of every 100’ along the channel using professional judgement</li> <li>4. Apply 3 hours as the default assumption for the residency time with flow in the channel</li> <li>5. Multiply results of 1, 2, 3 (convert number 3 units to feet per hour) and 4 to get the <math>I_{WQSV}</math> = Volume of runoff reduction provided per year (cubic feet)</li> <li>6. Convert the result of 5 to acre-feet to obtain the <math>I_{WQSV}</math></li> </ul>
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		<p>Pollutant Removal Credit Volume (<math>P_{WQSV}</math>): The <b>WQSV</b> in acre-feet for the drainage area calculated assuming a 12-hour drain time minus the <math>I_{WQSV}</math>. This is the design volume of water discharge during the WQSV that benefits from pollutant removal in the natural channel.</p> <p><b>Full Credit Calculation:</b> Used for calculating the credit for all or a portion of the runoff, to a category 7 Credited Measure that does not flow through an up gradient or down gradient WQSV Measure:</p> <ul style="list-style-type: none"> <li>• Credit = <math>1.5 * I_{WQSV} + P_{WQSV}</math></li> </ul> <p><b>Reduced Credit Calculation:</b> Used for calculating the credit where a WQSV measure is down gradient of the category 7 Credited Measure, or for the portion of the runoff that flows through an up gradient WQSV Measure:</p> <ul style="list-style-type: none"> <li>• Credit = <math>0.5 * I_{WQSV}</math></li> </ul>
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<b>Credit Table</b>		
<b>Credited Measure</b>	<b>Criteria/Requirements</b>	<b>Credit (40-hr drain time WQSV, in acre-foot)</b>
<p><b>8. New Flow-Through Pollutant Removal Control Measures,</b></p>	<p>A. This credit applies to Credited Measures that do not provide the WQSV but provide pollutant removal through hydrodynamic separation (swirl concentrators), gravitational separation (density separation systems), screening (screening vaults), straining (catch basin inserts), or filtration.</p> <p>B. The credit applies to newly constructed Credited Measures following the Effective Date.</p> <p>C. Up Gradient WQSV Measures: If any WQSV Measures are present within area contributing runoff to the new category 8 Credited Measure, the following will occur:</p> <ul style="list-style-type: none"> <li>i. The new category 8 Credited Measure will be sized to treat the runoff generated from the WQCV for the full drainage area, including runoff flowing through the up gradient WQSV Measures.</li> <li>ii. Runoff from areas flowing through the up gradient WQSV Measures will <b>not</b> be included in the calculation of the credit for the category 8 Credited Measure.</li> </ul> <p>D. The Credited Measure must be installed outside of the 10-year floodplain according to General Concept 16, above. If the Credited Measure is within the 50-year floodplain according to General Concept 16, either:</p> <ul style="list-style-type: none"> <li>i. A forebay or equivalent pretreatment feature will be located outside of the 50-year floodplain; or</li> <li>ii. In addition to the standard maintenance procedures for the control measure, all</li> </ul>	<ul style="list-style-type: none"> <li>• Discharge is to a stable channel: <b>1 credit per acre-foot of runoff generated from the WQCV for the drainage area</b></li> <li>• Discharge is to a channel that is not a stable channel: <b>0.25 credit per acre-foot of runoff generated from the WQCV for the drainage area</b></li> </ul> <p style="text-align: center;">- -</p>

<b>Credit Table</b>		
<b>Credited Measure</b>	<b>Criteria/Requirements</b>	<b>Credit (40-hr drain time WQSV, in acre-feet)</b>
	<p>collected sediment will be removed from the control measures at least once per year.</p> <p>E. The Credited Measure is designed to treat at a minimum the runoff generated from the WQCV. The Credited Measure shall be designed to treat stormwater runoff in a manner expected to reduce the event mean concentration of total suspended solids (TSS) to a median value of 30 mg/L or less. Alternatively, the Credited Measure can be designed to meet a different treatment standard for flow through pollutant removal control measures if incorporated into the MS4 program (e.g., based on an alternative indicator pollutant or removal standard).</p> <p>F. Credits are based on the receiving water of the state being a stable channel, per the following definitions and requirements. All receiving waters not meeting the definition of a stable channel are not considered to be a stable channel:</p> <p>G. Stable Channel: At least 2 out of 3 of the two channel banks and channel bottom are classified as in good condition, and all three are classified as at least in fair condition. Classification of the channel will be completed by the city based on the outfall location where the runoff from the new Credited Measure is discharged into the receiving water and down the channel a minimum of 500 feet. The following definitions apply:</p> <p>i. Good Condition Channel Banks are those where evidence of erosion or bank failure is absent or minimal, there is little potential for</p>	

<b>Credit Table</b>		
<b>Credited Measure</b>	<b>Criteria/Requirements</b>	<b>Credit (40-hr drain time WQSV, in acre-feet)</b>
	<p>future problems, and less than 5% of the bank is not in good condition.</p> <p>ii. Fair Condition Channel Banks are those with infrequent, small areas of erosion mostly healed over, and between 5 to 30% of the bank in the reach has areas of erosion.</p> <p>iii. Good Condition Channel Bottom are those where evidence of head-cutting or active incision is absent or minimal, there is little potential for future degradation, and less than 5% of the channel bottom is not in good condition.</p> <p>iv. Fair Condition Channel Bottom are those with infrequent, small areas of head-cutting or active incision, and between 5 to 30% of channel bottom is not in good condition.</p>	

<p><b>9. Vegetated Buffers</b></p>	<p>A. This credit can apply to vegetated buffer Credited Measures that provide infiltration and treatment through straining of runoff.</p> <p>B. The credit applies to newly constructed Credited Measures after the Effective Date.</p> <p>C. Up Gradient WQSV Measures: If any WQSV Measures are present within area contributing runoff to the new category 9 Credited Measure; the credit calculated based on the portion of the runoff from areas flowing through the up gradient WQSV Measure(s) will be calculated using the Reduced Credits Calculation. The credit calculated for any portion of the runoff to the new category 9 Credited Measure that does not flow through a WQSV Measure, will be calculated using the Full Credits Calculation.</p> <p>D. Down Gradient Credited Measures: Due to the need for appropriately locating this category 9 Credited Measure, no other Credited Measures may be located down gradient of the new category 9 Credited Measure.</p> <p>E. The vegetated buffer will be designed in accordance with the grass buffer design criteria in USDCM Vol 3 (2015) ) or the MS4 program, and include:</p> <ul style="list-style-type: none"> <li>i. Flows across the buffer shall be sheet flow</li> <li>ii. The width must meet the minimum width in USDCM Vol 3 (2015), (i.e., <math>W = Q^2/0.05</math>)</li> <li>iii. The length must be at least 14 feet.</li> <li>iv. Vegetation coverage must be at least 80%</li> </ul> <p>F. The Credited Measures must be installed above the expected 2-year flow water surface elevation when adjacent to an open channel.</p> <p>-</p>	<p>The following variables are used in calculating the credits</p> <p><b>Infiltration Volume Credit Volume (<math>I_{WQSV}</math>):</b> The volume in acre-feet of water infiltrated by the vegetated buffer based on calculations in accordance with the MS4 Program’s process for quantifying runoff reduction associated with MDCIA development practices.</p> <p><b>Pollutant Removal Credit Volume (<math>P_{WQSV}</math>):</b> The <b>WQSV</b> in acre-feet for the drainage area calculated assuming a 12-hour drain time minus the <math>I_{WQSV}</math>. This is the design volume of water discharge during the WQSV that benefits from pollutant removal in the control measure.</p> <p><b>Full Credit Calculation:</b> Used for calculating the credit for all or a portion of the runoff, to a category 9 Credited Measure that does not flow</p>
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<b>Credit Table</b>		
<b>Credited Measure</b>	<b>Criteria/Requirements</b>	<b>Credit (40-hr drain time WQSV, in acre-feet)</b>
		through an up gradient: <ul style="list-style-type: none"> <li>• Credit = 1.5 * <math>I_{WQSV} + P_{WQSV}</math></li> </ul> <p><b>Reduced Credit Calculation:</b> Used for calculating credit for the portion of the runoff to a new category 9 Credited Measure that flows through an up gradient WQSV Measure:</p> <ul style="list-style-type: none"> <li>• Credit = 0.5 * <math>I_{WQSV}</math></li> </ul>



## APPENDIX B

### VERIFICATION OF A FUNCTIONING PERMANENT CONTROL MEASURE BUILT PRIOR TO JULY 31, 2018

1. Overview. This Appendix sets forth the requirements for classification as a functioning Permanent Control Measure built prior to July 31, 2018. Paragraph 2, below, establishes the requirements for Permanent Control Measures that have an as-built plan and are included in the City's Ensure O&M Database (Ensure) (2008-Present). Paragraph 3 of this Appendix establishes the requirements for Permanent Control Measures that are not included in Ensure (Pre-2008). Finally, Paragraph 4 establishes the additional requirements for Permanent Control Measures considered in Paragraph 2 that do not have an as-built plan. For purposes of determining whether a Permanent Control Measure can be verified under Paragraph 2, the Permanent Control Measure will be considered as included in Ensure if the City approved the control measure construction drawings on or after June 4, 2008, which is the initial date of the Ensure program.

2. Permanent Control Measures Included in Ensure with an As-Built Plan (2008-Present). The City will receive the credit assigned for category 2 in the Credit Table of Appendix A for the Permanent Control Measure if it satisfies the requirements set forth in either Paragraph 2(a) or 2(b), and all the requirements set forth in subparagraphs 2(c)-(f), below.

a. For Permanent Control Measures that Have an Active Maintenance Agreement ("MA") (if Applicable) and Inspection and Maintenance Plan ("IMP"): IMPs may be site-specific or typical plans applicable to multiple categories of Permanent Control Measures with similar inspection and maintenance needs.

(1) For Private Permanent Control Measures with an Active MA and IMP: “Active” means there is an executed MA and the City has the most current required annual inspection report from the responsible party on file.

(2) For Public Permanent Control Measures with an Active IMP: “Active” means the City has the IMP and a copy of the most current required inspection report on file.

b. For Private Permanent Control Measures that Do Not Have an Active MA or IMP: Permanent Control Measures must satisfy either Option 1 or Option 2 below. Public Permanent Control Measures must have an IMP to receive credit.

(1) Option 1: The City will require the owner to fulfill the maintenance obligations for the Permanent Control Measure by meeting the following:

(a) The City will use City Code Subpart 7.7.1527 or another regulatory mechanism to require the property owner to enter into an Active MA with an associated IMP.

(b) The City will assume responsibility for twice per year inspections until both of the MA and IMP are filed.

(c) If maintenance is required before the MA and IMP are filed, the City will ensure maintenance is performed by property owner or the City will perform the maintenance. Maintenance must occur no later than 3 months after the completion of the required inspection identifying the need for maintenance.

(d) The City will document and maintain records of maintenance activities associated with the annual inspection.

(e) Cartegraph, or a similar tracking database, will be populated with all required information noted in subparagraph 2(f), below, which includes the name or title of the party responsible for maintenance. Attachment of the inspection record satisfies this requirement.

(f) The City certifies, as required by the Consent Decree, that the above requirements in lieu of an MA or IMP have been satisfied and are documented for the particular Permanent Control Measure.

(2) Option 2: The City assumes permanent responsibility for maintenance of the private Permanent Control Measure by meeting the following:

(a) The City assumes all maintenance responsibilities in the IMP template applicable to the particular Permanent Control Measure type.

(b) The City assumes responsibility for twice per year inspections until no functionality issues are found for a period of three years. After the three-year requirement has been satisfied, the City will perform inspections at the frequency of public Permanent Control Measures and in accordance with the applicable checklist Approved by EPA and CDPHE for publicly maintained Permanent Control Measures in accordance with subparagraph 2(a)(2), above.

(c) The City ensures the ability to sustain operation, maintenance and inspections through easement or other appropriate mechanism for right of access.

(d) The City will document and maintain records of all inspection and maintenance activities.

c. No Major Deficiencies Limiting the Functionality of the Permanent Control Measure. The City will receive credit for a Permanent Control Measure only if it has no major deficiencies that limit functionality. If a public or private Permanent Control Measure has any of the deficiencies provided in this Paragraph, the deficiency must be repaired or replaced, in accordance with Good Engineering, Hydrologic, and Pollution Control Practices, to receive credit for the Permanent Control Measure's WQSV. Major deficiencies that will be considered as limiting the functionality, for both private and public Permanent Control Measures, are as follows (with many applicable to basins only, as described):

(1) Excessive vegetation that inhibits the hydraulic functionality of the Permanent Control Measure.

(2) Debris plugging outlet or Permanent Control Measure not draining.

(3) Visible excess sedimentation (more than 6" of excess sediment measurable) in the bottom pool (i.e., outside of a forebay if present) of basins.

(4) Severely eroded inlets resulting in an ongoing pollutant source or potential structural failure.

(5) Permanently submerged inlet or forebay which renders the inlet or forebay as unmaintainable or negatively impacts the overall functionality of the facility, defined as any of the following qualitatively observable conditions: resuspension of previously settled materials, short-circuiting (which requires an observation during runoff conditions), or erosion of the structure.

(6) Compromised outlet structure, including but not limited to crumbling, demolished, or defective outlet structure that prevents the slow release of stormwater as designed.

(7) Missing outlet plate, riser pipe, or equivalent; or other modifications to the outlet plate that removes or reduces the ability of the Permanent Control Measure to detain the WQSV for the design period.

(8) Modification to the Permanent Control Measure that would reduce the WQSV by more than 20% including, but not limited to, placement of a structure or fill within the basin.

(9) Compromised berms that prevent the detention or retention of stormwater as designed.

(10) Missing overflow spillway for basins, or alternative for stable discharge, unless there is no potential for discharge due to storm events up to the 100-year event.

(11) Missing, incorrectly sized (defined as having holes larger than the smallest release orifice and not meeting the criteria at the time of design), or non-functional trash rack on outlet structures.

(12) Missing wetland vegetation where wetland vegetation is part of the Permanent Control Measure design, for example, in a constructed wetland. The amount of remaining vegetation must be within the limits of good engineering practices to be considered fully functional.

(13) Modifications reducing the surface area of infiltration Permanent Control Measures by more than 20% including, but not limited to, removal of porous pavement, rerouting of roof drains previously directed to pervious areas, removal of curb cuts or placement of fill on top of a sand filter.

(14) Modifications to site drainage that result in a bypass of WQSV flows around the Permanent Control Measure.

(15) Other modifications, removals, or errors in water quality capture volume calculations that would result in a lack of functionality to a Permanent Control Measure that would reasonably be expected to significantly reduce the expected pollutant removal based on the design standards in a manner similar to those listed above.

d. As-built: The Permanent Control Measure must have an as-built plan on file with the City. If a Permanent Control Measure does not have an as-built plan on file, but has an active MA, it may be credited if the conditions found in Paragraph 4 of this Appendix B are satisfied in addition to all the other requirements in Paragraph 2.

e. City Inspection: The Permanent Control Measure must have been subject to a City inspection within the last 5 years and Cartegraph, or similar tracking database, must have been updated with any missing information about features, ownership and

maintenance prior to receiving credit for the Permanent Control Measure. The most recent inspection cannot have identified any unaddressed maintenance needs from self-inspection, annual reports or elsewhere that remain outstanding at the time the Permanent Control Measure receives credit.

f. Cartegraph: All information in Cartegraph, or a similar tracking database, required to describe the presence and/or absence of design components of the particular Permanent Control Measure must be included. The absence of, or defect in, any components that would be identified as a “minor deficiency” or “major deficiency” must be addressed by the City as described below.

(1) Minor Deficiencies: When applicable to the design elements of a specific Permanent Control Measure, minor deficiencies are defined as follows (with many applicable to certain Permanent Control Measures only):

- (a) deficient trickle channel;
- (b) improperly sized forebay;
- (c) lack of energy dissipation in forebay;
- (d) lack of a forebay;
- (e) improperly sized micropool;
- (f) lack of a micropool;
- (g) missing initial surcharge volume;
- (h) standing pool of water larger than the micropool;
- (i) insufficiently designed or installed weir/spillway;
- (j) lack of or insufficient maintenance access road;

- (k) side banks steeper than criteria requirements;
- (l) insufficient inlet; or
- (m) erosion under the inlet(s).

(2) Additional City Inspections: For all of the fields in Cartegraph, or a similar tracking database, that correspond to the presence or absence of design components that would be identified as “minor deficiencies,” as described in subparagraph 2(f)(1), above, the City must document and certify that the MA (as applicable) and IMP are appropriate to ensure required operation and maintenance given the absence of these design elements. As part of this confirmation, the City must also conduct additional City Inspections consistent with the process in subparagraph 4(c)(1) before the Permanent Control Measure can receive credit.

(3) Major deficiencies, as set forth in subparagraph 2(c), above, must be fully corrected.

3. Permanent Control Measures That are Not Included in Ensure (Pre-2008). The City will receive the credit assigned for category 2 in the Credit Table in Appendix A for the Permanent Control Measure if the City has completed the following steps set forth in subparagraph 3(a)-(d), below:

a. The City must complete subparagraph 3(a)(1)-(3) of this Appendix to determine whether the Permanent Control Measure is non-functional due to a Major Deficiency and therefore must be addressed under subparagraph 3(c) below.

(1) A qualitative field verification will be performed by City staff or a contractor that is trained and knowledgeable of the applicable design criteria and



in both field and design review for the type of Permanent Control Measures inspected. The qualitative field verification will be performed in accordance with subparagraphs 3(a)(2) or (a)(3), below, as applicable.

(2) If an as-built plan is available, the City inspects a Permanent Control Measure for functionality using the as-built plan. If any components do not match the specification in the design criteria, the Permanent Control Measure is treated by subparagraph 3(a)(3), below, as if an as-built plan is not available.

(a) The as-built plan should also be accompanied by an engineering certification letter.

(b) If a certification letter is not present, the City will compare the as-built plan to the design criteria in effect at the time of approval. All applicable components identified within the list of Major Deficiencies in subparagraph 2(c) must match the specification in the design criteria.

(3) If an as-built plan is not available, the City shall inspect it using a Checklist for Screening Functionality of Control Measures Not Included in Ensure (Pre-2008). The City shall submit this checklist to EPA in accordance with Table II (Deadlines for Submittals) and Paragraph 25 (Submittals Process) of the Consent Decree.

b. After completing the qualitative field verification in subparagraph 3(a), above, the City must complete either Option 1 or Option 2, below:

(1) Option 1—Revocable Permit:

(a) The City issues a revocable permit that requires an annual certification from the owner of the facility to the City stating the facility has been inspected and maintained in the prior year and is currently functioning as designed. The owner conducts its own compliance inspection in order to annually certify that the facility was inspected and maintained.

(b) The City must conduct an initial compliance inspection and then, every 3 years, the City must conduct an oversight inspection.

(c) If no annual certification is submitted by the owner for any given year, the City must perform a compliance inspection within 3 months following the date the certification was due. This compliance inspection can be used in place of an oversight inspection for that year.

(d) The City must document and maintain records of maintenance activities associated with the relevant inspection.

(2) Option 2—the City Assumes Permanent Responsibility for Operation and Maintenance:

(a) The City assumes all maintenance responsibilities in the IMP template applicable to the particular Permanent Control Measure type.

(b) The City assumes responsibility for twice per year inspections until no functionality issues are found for a period of three years. After the three-year requirement has been satisfied, the City will perform inspection at the frequency of public Permanent Control

Measures and in accordance with applicable checklist Approved by EPA and CDPHE for publicly maintained Permanent Control Measures.

(c) The City secures access rights through easement or other appropriate mechanism to sustain its operation, maintenance and inspection responsibilities.

(d) The City will document and maintain records of maintenance activities associated with the relevant inspection.

c. If the Permanent Control Measure is non-functional due to a major deficiency, as set forth in subparagraph 2(c) above, and confirmed during the qualitative field verification of subparagraph 3(a), above, the City must perform all necessary actions to restore functionality as a condition to obtain credit for the Permanent Control Measure. If the Permanent Control Measure is found to be non-functional during a subsequent inspection by the City or owner, the City must perform all necessary actions to restore functionality as soon as reasonably possible. As an alternative, the City may follow its enforcement escalation process against the owner according to City Code. To obtain and maintain credit in accordance with the Credit Table, the City must ensure that all necessary work to restore functionality, by repairing or replacing the deficiency, is completed as soon as practicable in accordance with good engineering, hydrologic and pollution control practices to receive credit for the Permanent Control Measure's WQSV. The City will document and maintain records of all restoration activities.

d. The City must add the Permanent Control Measure to Cartegraph, or a similar tracking database, and include all the required information in the database that

corresponds to ownership, City inspections, and presence/absence of design components of the particular control measure (e.g., for EDBs, the required information including energy dissipation, micropool, low-flow channel, forebay, outlet structure, and overflow structure).

4. Permanent Control Measure has No As-Built Plan (2008-Present pursuant to subparagraph 2(d) of this Appendix): The City must complete a Field Measurement to receive credit, identified in category 2 of the Credit Table, for a Permanent Control Measure that does not have an as-built plan. The City must complete the following steps set forth in subparagraphs 4.a.-c., below, and must comply with all other requirements in Paragraph 2, above:

a. Investigation—Field Measurement Process. The City must measure water quality treatment capacity of the public or private Permanent Control Measure. Assessment must include the storage volume, outlet structure and acreage of impervious area to be treated according to the applicable design criteria in effect at time of design approval.

(1) The Permanent Control Measure shall be surveyed by a Colorado Professional Land Surveyor or an approved alternative method of survey data collection in sufficient detail to calculate the capacity for WQSV and Excess Urban Runoff Volume (if applicable).

(2) The City must measure the outlet structure, including its position and orifice hole dimensions, where applicable, using elevations collected from use of survey equipment.

(3) The City must measure the filter area and media, where applicable, to identify the media characteristics as necessary for comparison to the applicable design specifications, using one or more of the following methods:

(a) visual documentation, if section of filter area or media is visible;

(b) hand drilling;

(c) auguring, using a minimum 4" diameter auguring or sampling equipment, to verify the correct media installation; and/or

(d) ATV mounted drilling or auguring equipment, to verify the correct media installation.

b. Evaluation—Design Verification and Acceptable Tolerances: The City must evaluate the field measurements in subparagraph 4(a), above, using available documentation including, but not limited to, the applicable drainage report and the design criteria applicable to the Permanent Control Measure in effect at the time of design approval to determine if it was constructed as designed, within the allowable tolerances as described below. As part of this evaluation, the City must evaluate the following:

(1) Treated/infiltrated volume(s) as applicable to the Credit applied

(a) All measurements are in conformance only if the calculated volume lies within 20% of what was specified in the design report.

(b) If field measurements for volume do not match the calculations in the design report, exceeding the 20% tolerance, but the field measurements still comply with the original design criteria, the City

may correct design deficiencies to ensure the Permanent Control Measure meets the WQSV.

(c) To ensure the design report complies with the design criteria (i.e., to correct design deficiencies) and receive credit for the Permanent Control Measure, the City would need to reevaluate the design to verify the design meets the original WQSV criteria.

(d) If no design report is available, for purposes of subparagraph 4(b)(1)(a)-(b), above, the measured volume is compared to a new volume calculation by the City based on the criteria in effect at the time of design approval. This calculation will use the appropriate version of an Urban Drainage and Flood Control District (“UDFCD”) spreadsheet, City approved spreadsheets, or criteria in the appropriate version of the City of Colorado Springs DCM.

(2) Orifice Holes

(a) Orifice hole horizontal and vertical spacing measurements will be deemed to be in conformance if the spacing matches what was designed within a tolerance of 5%.

(b) Orifice hole area measurements will be deemed to be in conformance if the total area for each elevation matches what was designed within a tolerance of 5%.

(c) If no design report is available, for purposes of subparagraph 4(b)(2)(a)-(b), above, the measured area is compared to a new area

calculation by the City based on the criteria in effect at the time of design approval. This calculation will use the appropriate version of a UDFCD spreadsheet, City approved spreadsheets, or criteria in the appropriate version of the City of Colorado Springs DCM.

(3) Sand Filter / Bioretention

(a) Filter media will be deemed to be in conformance if the depth of media that was specified in the original design report is within 20% tolerance and the media type generally conforms to what was specified in the original design report.

(b) If field measurements for media depth do not match what is specified in the design report, exceeding the 20% tolerance, but the field measurements still comply with the original design criteria, the City may receive credit for the facility.

(c) To ensure the design report complies with the design criteria (i.e., to correct design deficiencies) and receive credit for the Permanent Control Measure, the City would need to reevaluate the design to verify the design meets the original media depth criteria.

(d) If no design report is available, for purposes of subparagraph 4(b)(3)(a)-(b), above, the measured media depth is compared to the media depth required by the criteria in effect at the time of design approval.

c. Corrective Measure—Additional City Requirement for Permanent Control

Measures that Exceed Allowable Tolerance:

(1) If any measured components of the Permanent Control Measure exceed the allowable tolerances for conformance with the applicable design report or design criteria as outlined in subparagraph 4(b), above, the City will address the issue by conducting an additional City Inspection, described below, to assess what, if any, impact these deficiencies have on the performance of the Permanent Control Measure. The additional City Inspection must be conducted using a checklist approved by the EPA, submitted by the City in accordance with Table II (Deadlines for Submittals) and Paragraph 25 (Submittal Process) of the Consent Decree. The additional City Inspection requirements are as follows:

(a) The City must inspect the Permanent Control Measure annually for a period of three years. This City Inspection is in addition to the required annual self-inspection by the private owner or the most current required City Inspection for public Permanent Control Measures.

(b) If no functionality issues are found during inspections for a period of three years, the additional City inspection requirement ends. If functionality issues are found, the City inspection requirement will continue until there are no functionality issues identified for a continuous period of three years.

(c) The City will not receive credit for the Permanent Control Measure until functionality issues are fully addressed and the additional City compliance inspection requirements are met, and there are no functionality issues identified for a period of three years.



(d) The City must document and maintain records of maintenance activities associated with the additional City inspection.

**APPENDIX C**  
**MITIGATION PROJECTS**

1. Geomorphology Study Overview. The City will fund a Mitigation Study (“the Study”) to provide a fluvial geomorphic assessment of Fountain Creek and its tributaries. The scope of the study will be established in the Final Mitigation Study Plan, in accordance with Paragraph 5 below. The Study’s purpose is to provide informed recommendations for mitigation projects to redress the consequences resulting from the City’s alleged violations of its Permit. The Study will accomplish this by developing a detailed fluvial geomorphic assessment of Fountain Creek and its tributaries, which will provide a basis for: (a) understanding current and future hydromodification and sediment supply in Fountain Creek and its tributaries most impacted by the City’s existing, ongoing, and planned development, which will include, at a minimum, Monument Creek and Sand Creek; and (b) developing recommended management strategies to improve water quality and minimize impacts from future hydromodification, sediment supply and transport within the Fountain Creek watershed, and to improve the health and resiliency of the associated aquatic and riparian ecosystems. The recommended management strategies will inform the type, design and placement of the mitigation project(s), described below. The intent of the mitigation project(s) is to improve water quality, aquatic and riparian habitats, and channel stability in Fountain Creek and its selected tributaries. The Study will also generate estimates of current and projected sediment supply in the upper Fountain Creek watershed from stream segments, determined by the Study Administrator, to be significant sources of sediment loading into the watershed. These estimates will help inform current and future projects in the Fountain Creek watershed even beyond the mitigation project(s).

2. Study Cost. The City will dedicate \$500,000 to fund the Study, and the Study will not exceed \$500,000. Any unexpended funds remaining after completion of the Study shall be directed to fund the mitigation project(s) described below.

3. The Study Administrator. The City shall submit to the EPA, in writing: (a) the name of the Study Administrator who will conduct the Study, and (b) a statement of credentials for the Study Administrator in accordance with Table II (Deadlines for Submittals) and Paragraph 25 (Submittals Process) of the Consent Decree. The Study Administrator will be an organization or individual with the following minimum credentials:

- a. experience in hydraulic modeling, in-stream data gathering, and sediment supply, loading and transport; and
- b. the completion of a minimum of three fluvial geomorphic assessment projects in the intermountain west or nearby plains within the last five years.

The Study Administrator may partner with an organization or individuals that do not otherwise meet these minimum credentials if the Study Administrator remains primarily responsible for supervising the Study and verifying the analysis and conclusions in the Study.

4. Initial Mitigation Study Plan. The Study Administrator shall submit an Initial Mitigation Study Plan to the EPA in accordance with Table II (Deadlines for Submittals) and Paragraph 25 (Submittal Process) of the Consent Decree. The Initial Mitigation Study Plan will include a detailed description of how the Study Administrator will use, at a minimum, the following methods and approaches:

- a. A literature and data analysis review, which may include the following sources and as well as others the Study Administrator determines are relevant: (1) U.S.

Geological Survey flow and water quality data; (2) the report from the Fountain Creek Corridor Watershed Assessment of River Stability and Sediment Supply; and (3) other existing data from studies of sediment transport, water quality, aggradation and degradation within the Fountain Creek watershed. The Study Administrator shall identify and may utilize existing studies and literature concerning the reach of Fountain Creek from the City's jurisdictional boundary as far down as the USGS gage station 07109500 Arkansas River near Avondale, Colorado, consistent with the Study Administrator's ability to fulfill the purpose of the Study;

b. Collection and analysis of field data, where necessary, to characterize channel geometry and sediment supply and transport within Fountain Creek and its selected tributaries, as described in Paragraph 1 above;

c. Quantification of sediment supply present in stormwater at locations determined appropriate by the Study Administrator in the upper Fountain Creek watershed over a range of hydrologic conditions (from baseflow to flood flows);

d. Evaluation of the overall effectiveness of stream improvements due to projects planned or completed under the Intergovernmental Agreement Between Pueblo County and the City of Colorado Springs and Its Utility Enterprise (April 27, 2016); and

e. Use of a channel evolution model to describe in general terms the historic and anticipated geomorphic impacts from hydromodifications on select transects of Fountain Creek and its most important tributaries, as described in Paragraph 5 below.

5. Final Mitigation Study Plan. After the Study Administrator has completed the literature review and existing data analysis, as described in Paragraph 4(a) above, the Study

Administrator will collaborate with the City to determine areas to be included in the Study, and what modifications may be necessary to the methods and approaches of the Initial Mitigation Study Plan. The Final Mitigation Study Plan will describe these modifications and list the areas determined to be included in the Study. The City shall schedule a meeting with the EPA, CDPHE, and the Plaintiff Intervenors to discuss the planned study areas no fewer than 30 Days prior to submitting the Final Mitigation Study Plan for Approval, in accordance with Table II (Deadlines for Submittals) and Paragraph 25 (Submittal Process) of the Consent Decree. Subject to the existing available data, cost considerations, and consistency with the purpose of this Appendix C, the upstream extent of the Study will include Fountain Creek and its tributaries within the City's jurisdictional boundaries most impacted by the City's existing, ongoing and planned development, as determined by the Study Administrator. Subject to the existing available data, cost considerations, and consistency with the purpose of this Appendix C, the downstream extent of the Study will continue from the City's jurisdictional boundary to the confluence of Fountain Creek and the Arkansas River.

6. Mitigation Study Report. The Mitigation Study Report will be submitted to the EPA in accordance with Table II (Deadlines for Submittals) and Paragraph 25 (Submittal Process) of the Consent Decree. The Mitigation Study Report will contain, at a minimum, the following components:

- a. A detailed summary of the methods and analysis used and the assessments and findings resulting from implementation of the Initial and Final Mitigation Study Plans;

b. Recommended management strategies for improving water quality and channel stability and for minimizing impacts from future hydromodification in Fountain Creek and its tributaries. Strategies in the Mitigation Study Report will meet the following criteria:

(1) Include potential mitigation projects that would address any priority areas that contribute to degradation of water quality;

(2) Consider practicability given limitations in available resources to obtain the best results for improving water quality and stabilizing Fountain Creek and its tributaries;

(3) Consider projects planned and/or completed pursuant to the Intergovernmental Agreement Between Pueblo County and the City of Colorado Springs and Its Utility Enterprise (April 27, 2016) to ensure the potential mitigation project(s) do not duplicate the improvements to water quality achieved by these IGA projects;

(4) Prioritize potential projects with respect to optimal timing of implementation; and

(5) Identify any gaps in the data collected and analyzed by the Study, and any future data that could not be collected within the scope of the Study but would further advance the fluvial geomorphic assessment of the Fountain Creek watershed.

7. Mitigation Projects Work Plan. The City shall submit a proposed plan for the mitigation project(s) (the Mitigation Projects Work Plan) to the EPA in accordance with Table II

(Deadlines for Submittals) and Paragraph 25 (Submittal Process) of the Consent Decree. The Mitigation Projects Work Plan shall be consistent with this Paragraph and Paragraph 8 below and the recommended management strategies in the Final Mitigation Study Report; and must include an explanation of how each project meets the recommended management strategies. In developing the Mitigation Projects Work Plan, the City shall follow the applicable sections of the EPA's publicly available document, *General Guidelines for Development of Habitat Mitigation and Monitoring Proposals*, as relevant for the type of mitigation project. The Mitigation Projects Work Plan shall contain the following for each mitigation project:

- a. A detailed description of the project, including identification of anticipated permits;
- c. An anticipated schedule for commencement through completion of construction with all significant planning and intermediate construction milestones;
- d. A description of anticipated final success criteria that define when the project has achieved successful implementation of its objective;
- e. A schedule for monitoring the project after completion of construction that is appropriate for the type of mitigation project and that extends no less than three years beyond completion of construction to determine whether the project has achieved its expected success criteria described in Paragraph 7.d. above; and
- f. A description of the long-term operation and maintenance plan for the project after completion of the monitoring of the project required by Paragraph 7.e. above. The long-term operation and maintenance plan shall include periodic inspections at least

annually, the anticipated routine maintenance requirements for the specific project, and how the City will undertake this maintenance.

8. Design, Construction, Monitoring and Maintenance of the Mitigation Project(s).

Each mitigation project set forth in the Mitigation Projects Work Plan shall be closely tailored to redress, to the maximum extent practicable, the consequences resulting from the City's alleged illicit stormwater discharges into Fountain Creek and its tributaries due to development within the City, with the goal of improving water quality in Fountain Creek and its selected tributaries as described in Paragraph 1 above. The City shall propose a minimum of three mitigation projects. The City may propose fewer than three mitigation projects, however, provided the projects meet the water quality objectives discussed above and the City provides sufficient justification in the Mitigation Projects Work Plan. The mitigation project(s) must be from one or more of the following categories: habitat restoration, channel restoration, constructed wetlands and similar projects intended to attenuate stormwater pollutants entering Fountain Creek or its tributaries, bed and/or bank stabilization, and channel realignment. The City may propose an alternate type of mitigation project that still meets the water quality objectives discussed above in the Mitigation Projects Work Plan provided that the City provides sufficient justification. Prior to beginning construction, the City shall submit construction documents (design plans and specifications) necessary to construct the mitigation project(s) to the EPA, State, and Plaintiff Intervenors pursuant to Section XVIII (Notices) of the Consent Decree. The City shall complete construction of the mitigation project(s) within 4 years after the EPA's approval of the Mitigation Projects Work Plan or 7 years and 180 days after the Effective Date, whichever is later. The City shall certify construction completion of each mitigation project in the Compliance



Report in accordance with subparagraph 35(c) and Section X of this Decree (Recordkeeping and Reporting). The City shall monitor, operate, and maintain the mitigation project(s) after completion of construction for the normal anticipated life of the projects(s) in accordance with the approved Mitigation Project Work Plan and any approved modifications, including the long-term operation and maintenance plan described therein.

9. Cost of Mitigation Project(s). The City shall spend \$10,500,000 in the design and construction of the mitigation project(s). Any amounts remaining following completion of construction of all the approved mitigation project(s) shall be used for one or more additional projects to be proposed by the City and approved by EPA, after reasonable opportunity for CDPHE and Plaintiff Intervenors to review and comment. Any such additional mitigation projects shall meet all the water quality objectives in this Appendix C and the approval and completion requirements in this Decree and be completed within nine years of the Effective Date of this Decree.