

THE CIRCUIT COURT OF ETOWAH COUNTY, ALABAMA

**ALABAMA DEPARTMENT of
ENVIRONMENTAL MANAGEMENT,**

Plaintiff,

v.

Civil Action No. CV-2022-900009.00

**WATER WORKS & SEWER BOARD
OF THE CITY OF GADSDEN,
ALABAMA,**

Defendant.

**ADVANCE ETOWAH, INC.,
COOSA RIVERKEEPER, INC.,
CENTER FOR BIOLOGICAL
DIVERSITY, and OUR CHILDREN'S
EARTH FOUNDATION,**

Intervenors,

v.

**WATER WORKS & SEWER BOARD
OF THE CITY OF GADSDEN,
ALABAMA,**

Defendant.

ORDER ON SETTLEMENT AGREEMENT

**I.
INTRODUCTION AND PARTIES**

A. The Alabama Department of Environmental Management ("ADEM," the "Department," or "Plaintiff") filed a complaint in this action on January 12, 2022, alleging that the Water Works & Sewer Board of the City of Gadsden, Alabama ("Defendant"), a municipal corporation formed under Alabama law and a "person" within the meaning of § 22-22-1(b)(7) of

the Act, is in violation of the Alabama Water Pollution Control Act, § 22-22-1, *et seq.*, Code of Alabama, 1975 ("AWPCA"). In addition, in Alabama, the United States Environmental Protection Agency ("USEPA") has delegated to ADEM the primary authority to issue and enforce National Pollution Discharge Elimination ("NPDES") permits. The Plaintiff is seeking injunctive relief and the assessment of civil penalties, pursuant to § 22-22A-5(18)b, of the Code of Alabama, 1975.

B. The complaint alleges that the Defendant operates two wastewater treatment plants ("WWTPs"), known as the Gadsden East River WWTP and the Gadsden West River WWTP. The Gadsden East River WWTP is located at 601 Paden Road, in Gadsden, Alabama, and is operated by the Defendant under the authority of NPDES Permit No. AL0022659. The Gadsden East River WWTP Permit establishes limitations, terms, and conditions on the discharge of pollutants and stormwater from point sources from the Gadsden East River WWTP into the Coosa River (Neely Henry Lake), a water of the State. The Gadsden West River WWTP is located at 2000 Wills Creek Road, in Gadsden, Alabama, and is operated by Defendant under the authority of NPDES Permit No. AL0053201. The Gadsden West River WWTP Permit establishes limitations, terms, and conditions on the discharge of pollutants and stormwater from point sources from the Gadsden West River WWTP into the Coosa River (Neely Henry Lake) and Big Wills Creek, waters of the State.

C. Sewage and other wastes arrive at the WWTPs through a sewer collection system owned, operated, and maintained by the Defendant. The sewer collection systems consist of approximately 292 miles of gravity collection mains, thousands of manholes, 28 sewer pumping stations, and 38 miles of force main that all convey sewage to the two WWTPs.

D. Each of Defendant's WWTPs and appurtenant sewer collection systems constitutes a publicly owned treatments works ("POTW") within the meaning of the federal Clean Water Act,

33 U.S.C. § 1251, *et seq.* Defendant's NPDES permits regulate the operation and maintenance of all parts of the POTWs which are installed or used to achieve compliance, including the collection systems, and prohibit any discharges throughout the POTW except at the designated points of discharge identified in the NPDES permits. Defendant's NPDES permits were issued pursuant to the above-cited statutes of the State of Alabama and § 402 of the Clean Water Act, 33 U.S.C. § 1342.

E. Intervenor Advance Etowah, Inc. and Coosa Riverkeeper, Inc., non-profit organizations, filed a Motion to Intervene on March 28, 2022. Intervenor Center for Biological Diversity and Our Children's Earth Foundation, non-profit organizations, filed a Motion to Intervene on June 27, 2025.¹ Intervenor is "person[s]" with "an interest which is or may be adversely affected" by the outcome of an action within the scope of §§ 22-22A-5(18)b and 22-22A-5(19), of the Code of Alabama, 1975. In their Complaint in Intervention, the Intervenor sought declaratory relief, injunctive relief, assessment of civil penalties, and an award of fees and costs. The Complaint in Intervention alleged that Defendant was responsible for unpermitted discharges of pollution and was violating various provisions of the NPDES permits, including monitoring, maintenance, and reporting provisions. The Court granted the Intervenor's Motions to Intervene on March 29, 2022 and July 1, 2025, respectively.

F. The Intervenor filed a separate federal lawsuit against Defendant in the United States Court for the Northern District of Alabama on February 1, 2022, styled *Coosa Riverkeeper, Center for Biological Diversity, Advance Etowah, and Our Children's Earth Foundation v. The Water Works and Sewer Board of the City of Gadsden*, No. 22-cv-130, (the "Federal Case"),

¹ Advance Etowah, Inc., Coosa Riverkeeper, Inc., Center for Biological Diversity, and Our Children's Earth Foundation are collectively referred to as "Intervenor."

alleging that the Defendant is in violation of Sections 301 and 402 of the Clean Water Act, 33 U.S.C. § 1311, 1342. The Intervenor seek injunctive relief, the assessment of civil penalties, an award of attorneys' fees and costs, and other relief pursuant to Section 505 of the Clean Water Act, 33 U.S.C. § 1365. The State is not a party to the Federal Case. As provided below and herein, the Federal Plaintiffs, who are also the Intervenor in this case, have agreed to the dismissal of the Federal Case, with prejudice.

G. The complaints in this action and in the Federal Case allege that Defendant is responsible for violations of the NPDES permits, including sanitary sewer overflows of untreated sewage from points within the collection system. Defendant GWWSB has answered the complaints in the state and federal cases, including the complaint in intervention.

H. Since the complaints in this action and the Federal Case were filed, Defendant has carried out investigations and repairs to the POTWs.

I. In this Settlement Agreement, Defendant agrees to carry out additional investigations, complete further repairs, and take other actions as described below.

J. The Plaintiff, the Intervenor, and the Defendant are collectively referred to in this Order on Settlement Agreement ("Settlement Agreement") as "the Parties."

K. The Plaintiff, the Intervenor, and the Defendant have consented to the entry of this Settlement Agreement without further adjudication of any of the factual or legal issues raised by the complaint in this case, the federal complaint, and subject to the dismissal of the Federal Case with prejudice in accordance with subsection F., above. In entering the Settlement Agreement, it is the intent of the Parties to resolve all of ADEM's claims as well as those of the Intervenor.

L. In addition to the dismissal of the Federal Case with prejudice, the Intervenor covenant not to sue and agree to release Defendant (including its representatives, elected officials,

assigns, agents, employees, officers, attorneys and consultants) from any and all claims, causes of action, or liability under CWA Section 505, 33 U.S.C. § 1365, for damages, penalties, fines, injunctive relief, or any other claim or relief (a) relating to or resulting from any allegations and claims set forth in the Notice Letter dated November 18, 2021 and (b) for any past violations of the NPDES permits at issue, or that could have been alleged, in the Federal Case. Defendant covenants not to sue and releases Intervenor (including their representatives, assigns, agents, employees, officers, attorneys and consultants) from any and all claims, causes of action, or liability related to this action or the Federal Case. This paragraph does not constitute a waiver or release of any claim for enforcement of this Settlement Agreement. This paragraph does not constitute a waiver of the Intervenor's rights to bring a future action based on future violations of the NPDES Permits that occur after the Termination of this Settlement Agreement.

M. Although ADEM has primary enforcement authority for NPDES permits and unpermitted discharges, this Settlement Agreement is also intended to resolve the Intervenor's claims raised in the Federal Case pursuant to Section 505 of the Clean Water Act, 33 U.S.C. § 1365. Therefore, this Settlement Agreement was submitted to the United States Department of Justice and the United States Environmental Protection Agency ("EPA") for the 45-day statutory review period required pursuant to Section 505(c), 33 U.S.C. § 1365(c).

N. NOW THEREFORE, without admission by the Defendant of the non-jurisdictional allegations in the complaints, without further adjudication of any issue of fact or law pertaining to this action, and upon the consent and agreement of all of the Parties to this Settlement Agreement, it is hereby ORDERED, ADJUDGED and DECREED as follows:

II.
NO ADMISSION OF LIABILITY

This Settlement Agreement was negotiated, drafted, and executed by the Parties in good faith to avoid further litigation and is a settlement of claims that are contested, denied, and disputed by the Defendant. The execution of this Settlement Agreement is not an admission, by any party, of any allegation, defense, fact, liability, or wrongdoing of any kind regarding any of the matters addressed in the Settlement Agreement.

III. JURISDICTION

The Etowah County Circuit Court has jurisdiction over the subject matter of and the Parties to this action pursuant to Ala. Code § 22-22A-5.

IV. VENUE

Venue is proper in the Circuit Court of Etowah County, Alabama because it is the judicial district in which the Defendant's WWTPs are located and in which the alleged violations occurred.

V. BINDING EFFECT

The provisions of this Settlement Agreement shall apply to, and be binding upon, the Defendant, and its officers, directors, employees, agents, servants, successors, and assigns, and upon all persons, firms, and corporations in active concert or participation with the Defendant and assigns, upon ADEM and its representatives, and upon the Intervenor and their representatives officers, directors, employees, agents, servants, successors, and assigns, and upon all persons, firms, and corporations in active concert or participation with the Intervenor and assigns.

VI. OBJECTIVES

It is the express purpose of the Parties entering into this Settlement Agreement to further the objectives set forth in Section 22-22-2 of the AWPCA and to resolve the issues alleged by the State in its complaint and by the Intervenors in their Complaint in Intervention, as amended, and in the Federal Case. In consideration of the mutual promises and obligations contained in this Settlement Agreement, the entry of this Settlement Agreement as an order of this Court will be immediately followed by the filing of a joint stipulation of voluntary dismissal of the Federal Case. In light of these objectives, the Defendant agrees, *inter alia* (to the extent expressly stated in this Settlement Agreement), to cause the expeditious implementation of the remedial measures as herein set forth and, in accordance with the schedules agreed to by the Parties and approved by the Court, to take all appropriate steps necessary to correct permit limit violations and to prevent bypasses and unpermitted discharges of untreated or partially treated wastewater. In addition, Defendant agrees to comply with the terms and conditions of its NPDES Permits and the Clean Water Act, subject to which EPA has delegated its enforcement authority to ADEM, and to submit to ADEM all NPDES reports in a timely manner and do all lawful acts necessary to effectuate the provisions of this Settlement Agreement.

VII. REMEDIAL ACTIONS

A. The Defendant shall complete the Remedial Actions set forth in this Settlement Agreement to achieve compliance with its Permits and the AWPCA, and the Defendant has also agreed to complete further additional actions set forth in the “Remedial Actions Appendix” (“Appendix,” attached as Exhibit A.) in the manner and by the dates set forth in the Appendix representing its settlement with the Intervenors, which includes the adoption of certain practices identified in that Appendix that go into effect upon entry of this settlement agreement as an order

of the Court. The additional actions set forth in the Appendix are not to conflict with or supplant permit compliance, the AWPCA, or ADEM regulations.

B. On May 10, 2023, the Defendant submitted to the Department an Engineering Report that identified the need for changes in maintenance and operating procedures, the potential for infiltration and inflow, the need for modification of existing treatment and collection system works, and the need for new or additional treatment and collection system works as necessary to achieve compliance with applicable rules and regulations, the Gadsden East River WWTP Permit conditions, and the Gadsden West River WWTP Permit conditions. The Engineering Report was prepared by a professional engineer licensed to practice in the State of Alabama.

C. **WWTP Evaluation:** The Defendant shall complete evaluations of the Gadsden East River WWTP and the Gadsden West River WWTP not later than 120 days after entry of this Settlement Agreement as an order of the Court.

D. **SSO Response Plans:** Not later than 120 days after entry of this Order on Settlement Agreement, the Defendant shall review and revise, if necessary, its SSO Response Plan required by its NPDES Permits for the Gadsden East River and Gadsden West River WWTPs. On the same date, Defendant shall provide the revised SSO Response Plan to the Department and Intervenor for review. The SSO Response Plan shall include additional items as agreed to in the Appendix. No later than one hundred eighty (180) days after entry of the Order on Settlement Agreement, the Defendant shall fully implement the SSO Response Plans developed and/or revised in accordance with this Paragraph of the Settlement Agreement. Defendant shall certify that the SSO Response Plans have been fully implemented in the subsequent Progress Report submitted to the Department.

E. **Updated Engineering Report:** Building on the May 2023 Engineering Report and no later than 390 days after entry of this Settlement Agreement the Defendant shall prepare and submit to the Department and Intervenor an “Updated Engineering Report” that focuses on the collection system and addresses the need for changes in maintenance and operating procedures, the potential for infiltration and inflow, the need for modification of existing collection system works, and the need for new or additional collection system works as necessary to achieve compliance with applicable rules and regulations, the Gadsden East River WWTP Permit conditions, and the Gadsden West River WWTP Permit conditions. If the Department determines through its review of the submitted Updated Engineering Report that the submittal is not sufficient, then the Defendant shall modify the Updated Engineering Report to reasonably address the issues identified by the Department. The Defendant shall submit modifications to the Updated Engineering Report, if required, so that they are received by the Department no later than thirty days after Defendant’s receipt of the Department’s comments. The Updated Engineering Report shall include additional items as agreed to in the Appendix. The Defendant shall complete implementation of the recommendations provided in the Updated Engineering Report regarding the sewer collection system, not later than the dates included in that document or four years after entry of this Settlement Agreement, whichever is sooner.

F. **Second Updated Engineering Report:** Not later than two years after entry of this Settlement Agreement, the Defendant shall submit to the Department and Intervenor an update to the prior Engineering Reports to include additional changes in maintenance and operating procedures, modifications of existing collection system works, or new or additional collection system works necessary to achieve compliance with applicable rules and regulations (“Second Updated Engineering Report”). If the Department determines through its review of the submitted

Second Updated Engineering Report that the submittal is not sufficient, then the Defendant shall modify the Second Updated Engineering Report to reasonably address the issues identified by the Department. The Defendant shall submit modifications to the Second Updated Engineering Report, if required, so that they are received by the Department no later than thirty days after Defendant's receipt of the Department's comments. The Second Updated Engineering Report shall include additional items as agreed to in the Appendix.

G. The Defendant shall complete Inflow and Infiltration rehabilitation, repairs, and upgrades to the sewer collection systems and lift stations for the Gadsden East River WWTP and the Gadsden West River WWTP (including recommendations regarding investments in pump stations and force mains that may become apparent from Defendant's hydraulic monitoring) as necessary to minimize and mitigate SSOs by the deadlines included in the Updated and Second Updated Engineering Reports or no later than six years after entry of this Settlement Agreement, whichever is sooner.

H. The Defendant shall comply with all other terms, conditions, and limitations of the Gadsden East River Permit and the Gadsden West River WWTP Permit immediately upon entry of this Settlement Agreement, including complete and correct notifications and reporting all notifiable SSOs to the public, county health department, the Department, and all other affected entities as required by permit conditions and the retention of all monitoring information, including all calibration and maintenance records, for a period of three years.

I. Except as specified within this Settlement Agreement, the Defendant shall immediately upon entry of this Settlement Agreement comply with the permit requirements for proper operation and maintenance of all facilities and systems of treatment and control which are

installed or used by the Defendant to achieve compliance with the conditions of the Gadsden East River WWTP Permit and the Gadsden West River WWTP Permit.

J. **Progress Reports:** The Defendant shall prepare and submit detailed semi-annual Progress Reports to the Department, with a copy to the Intervenor(s) (collectively), describing the Defendant's progress towards achieving the Remedial Actions set forth in this Settlement Agreement. The Defendant shall submit the Progress Reports so that they are received by the Department no later than ninety days after entry of this Settlement Agreement and continuing every six months thereafter that the Defendant's performance obligations under this Settlement Agreement remain incomplete. Progress Reports shall include additional items as agreed to in the Appendix.

In addition, no later than fourteen days following each due date herein, the Defendant shall submit to the Department, with a copy to the Intervenor(s) (collectively), a written notice of noncompliance, if applicable. Notices of noncompliance shall state the cause(s) of noncompliance, the corrective action taken, and shall describe the Defendant's ability to comply with any remaining requirements of this Settlement.

K. The Defendant shall submit a certification to the Department, with a copy to the Intervenor(s) (collectively), signed by a professional engineer licensed to practice in the State of Alabama, indicating whether the Defendant is in compliance with all requirements of this Settlement Agreement. The Defendant shall submit the certification so that it is received by the Department no later than six years and 30 days after entry of this Settlement Agreement.

VIII. EFFLUENT LIMITATIONS

Nothing in this Settlement Agreement shall relieve the Defendant of its obligation to comply at all times with all effluent limitations in its NPDES Permits, including any modifications, extensions, or reissuances.

IX.
CIVIL PENALTY

Defendant is assessed and agrees to pay a civil penalty in the amount of \$90,000.00. The Defendant shall submit payments to the Alabama Department of Environmental Management by certified check to the address listed below on or within forty-five days after entry of the Order on Settlement Agreement:

**ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT
MONTGOMERY OFFICE
ATTN: OFFICE OF GENERAL COUNSEL
1400 COLISEUM BOULEVARD
MONTGOMERY, AL 36110-2400**

X. ENVIRONMENTAL BENEFIT PROJECTS

A. Defendant agrees to pay a total of \$510,000.00 for projects that secure environmental benefits to the Coosa River watershed ("Environmental Benefit Projects"). Within 45 days after entry of this Settlement Agreement, Defendant shall make the following payments:

1. \$500,000.00 to establish a "Lateral Repair Fund" that will provide grants from Defendant to eligible customers for the repair of defective private laterals that contribute inflow and infiltration to the collection system and thus contribute to sanitary sewer overflows and excess flows at the WWTPs. A document summarizing the Lateral Repair Fund's eligibility / participation requirements as well as how it will be funded and administered is attached as Exhibit B.

2. \$10,000 to the Alabama Aquatic Biodiversity Center for use on projects that reduce pollution, conserve native Alabama aquatic species, or help restore habitat in the Coosa River watershed.

B. Defendant shall notify the Department and the Intervenor when the payments are sent and shall provide proof of payment concurrently, such as a tracking number or wire information as appropriate. None of these payments shall be disbursed to any of the Intervenor.

XI.

STIPULATED PENALTIES

A. Milestones

1. The Defendant shall pay to ADEM stipulated civil penalties for each day it fails to meet any of the paper deliverable milestone dates established by Section VII. E (Updated Engineering Report), F (Second Updated Engineering Report), J (Progress Reports), and K (Certification) of this Settlement Agreement. The stipulated civil penalties for failure to meet each milestone date, except for Force Majeure Acts as hereinafter defined or acts which occur beyond the Defendant's control, shall be as follows:

<u>Period of Noncompliance</u>	<u>Penalty per Day per Violation</u>
1st to 30th day	\$300
31st to 60th day	\$600
After 60 days	\$1,200

B. Stipulated civil penalties shall automatically begin to accrue on the first day the Defendant fails to meet any of the paper deliverable schedules of performance required by Section VII. E (Updated Engineering Report), F (Second Updated Engineering Report), J (Progress Reports), and K (Certification) of this Settlement Agreement. Payment of stipulated civil penalties

as set forth above shall not abate any other rights or remedies which may be available to the State of Alabama or its agencies by reason of the Defendant's failure to comply with requirements of this Settlement Agreement, and all applicable federal, state or local laws, regulations, NPDES permits and all other applicable permits. Notification to the Defendant by ADEM of the assessment of any stipulated penalty is not required.

C. Stipulated civil penalties shall be paid by submitting a cashier's or certified check payable to the Alabama Department of Environmental Management and tendered to the General Counsel, Alabama Department of Environmental Management, 1400 Coliseum Boulevard, P.O. Box 301463, Montgomery, Alabama 36110-2059.

D. In the event a stipulated civil penalty is not paid when due, the stipulated civil penalty shall be payable with interest from the original due date to the date of payment, at the statutory judgment rate set forth at 28 U.S.C. § 1961(a). Under no circumstances shall the Stipulated Penalties exceed \$25,000.

XII.

FORCE MAJEURE

A. "Force Majeure" for the purposes of this Settlement Agreement is defined as an event arising from causes beyond the control of the Defendant or of any entity employed by the Defendant, including its consultants and contractors, which delays or prevents the performance of any obligation under this Settlement Agreement. Force Majeure does not include Defendant's financial inability to perform any obligation under this Settlement Agreement, inability to obtain financing, failure to obtain grants and loans, or inadequate planning. However, Defendant filing for bankruptcy may qualify as a "Force Majeure" event under this Settlement Agreement.

B. When circumstances are occurring or have occurred which may delay the completion of any requirement of this Settlement Agreement, whether or not due to a Force Majeure event, the Defendant shall so notify the Department and the Intervenors in writing within fifteen (15) days after the Defendant knew, or should have known, of the delay or anticipated delay. The notice shall describe in detail the basis for the Defendant's contention that it experienced or anticipates that it will experience a Force Majeure delay, the anticipated length of the delay, the precise cause or causes of the delay, the measures taken or to be taken to prevent or minimize the delay, and the timetable by which those measures will be implemented. Failure to so notify the Department and Intervenors shall constitute a waiver of any claim of Force Majeure as to the event in question.

C. If the Department finds that a delay in performance is, or was, caused by a Force Majeure event, it shall extend the time for performance, in writing, for a period to compensate for the delay resulting from such event and stipulated penalties shall not be due for such period.

D. In proceedings on any dispute between the Department or any of the Intervenors and Defendant regarding a delay in performance, the dispute resolution provisions of section XIII, RETENTION OF JURISDICTION/DISPUTE RESOLUTION shall apply and the Defendant shall have the burden of proving that the delay is, or was, caused by a Force Majeure event, and that the amount of additional time requested is necessary to compensate for that event.

E. Compliance with a requirement of this Settlement Agreement shall not by itself constitute compliance with any other requirement. An extension of one compliance date based on a particular event shall not automatically extend another compliance date or dates. The Defendant shall make an individual showing of proof regarding the cause of each delayed incremental step

or other requirement for which an extension is sought. The Defendant may petition for the extension of more than one compliance date in a single request.

XIII.

RETENTION OF JURISDICTION/DISPUTE RESOLUTION

A. This Court shall retain jurisdiction of this matter for the purposes of implementing and enforcing the terms and conditions of this Settlement Agreement and for the purpose of adjudicating all disputes among the parties that may arise under the provisions of this Settlement Agreement. The Parties may apply to the Court for such further order or relief as may be necessary regarding compliance with this Settlement Agreement that is not inconsistent with the purposes of the Settlement Agreement and that does not increase the obligations of the Defendant beyond those specifically undertaken in conjunction with this Settlement Agreement.

B. Submission of any matter to the Court for resolution shall not extend any of the deadlines set forth in this Settlement Agreement unless all Parties agree or the Court allows an extension in ruling upon a motion.

C. In resolving any dispute arising between the Intervenors and Defendant, the Court shall have discretion to award attorneys' fees and costs. The relevant provision of the Clean Water Act, 33 U.S.C. § 1365, and the jurisprudence developed pursuant to that law, shall govern the allocation of fees and costs in connection with the resolution of any disputes before the Court. Notwithstanding the above, the Court shall allow a reasonable period of time (to be determined at the Court's discretion but not fewer than 30 days) for Defendant or Intervenors to cure any deficiency and/or resolve any such dispute prior to the Court awarding attorney's fees or costs.

XIV.

RIGHT OF ENTRY

Without limiting the authority otherwise available to it, ADEM and its authorized representatives and contractors shall have authority at all times, upon the presentation of credentials, to enter the premises of the Defendant to:

1. Monitor the program of activities required by this Settlement Agreement;
2. Verify any data or information submitted to ADEM;
3. Obtain samples from the municipal treatment and collection system;
4. Inspect and evaluate any portions of the Defendant's treatment and collection system; and

5. Inspect and review any records required to be kept under the terms and conditions of this Settlement Agreement or any NPDES Permit and the AWPCA. This provision of this Settlement Agreement is in addition to and in no way limits or otherwise affects ADEM's statutory authorities to conduct inspections, to require monitoring and to obtain information from the Defendant as authorized by law.

6. ADEM agrees to provide Defendant an opportunity to obtain split samples of wastewater samples taken by ADEM from the Defendant's treatment or collection system. ADEM further agrees to provide the Defendant with the quality assured/quality controlled laboratory analytical results of samples obtained from the Defendant's treatment or collection system, and any non-privileged (including non-attorney work product) reports prepared concerning such results. ADEM will use its best efforts to coordinate field inspections of the Defendant's treatment or collection system with the Defendant by notifying the Defendant, if practicable, of such inspections upon arrival at the field inspection location.

XV.
NOT A PERMIT/COMPLIANCE WITH OTHER STATUTES/REGULATIONS

A. This Settlement Agreement is not and shall not be construed as a permit, nor a modification of any existing permit, issued pursuant to the Alabama Water Pollution Control Act, nor shall it in any way relieve the Defendant of its obligations to obtain a permit for its wastewater treatment and collection system or facilities and to comply with the requirements of any NPDES permit or with any other applicable federal or state law or regulation. Any new permit, or modification of existing permits, must be complied with in accordance with applicable federal and state laws and regulations.

B. Nothing herein shall be construed as relieving the Defendant of the duty to comply with the AWPCA, the regulations promulgated thereunder and all applicable permits issued thereunder, or as relieving the Defendant of its duty to comply with State law and the regulations promulgated thereunder. ADEM reserves the right to seek additional relief should Defendant fail to achieve substantial compliance with the terms and conditions of its permits.

XVI. **NON-WAIVER PROVISIONS**

A. The Settlement Agreement in no way affects or relieves the Defendant of any responsibility to comply with any federal, state, or local law or regulation.

B. Nothing contained in this Settlement Agreement shall be construed to prevent or limit ADEM's rights to obtain penalties or further or additional injunctive relief under the AWPCA or other State statutes or regulations, including, but not limited to, criminal punishment under § 22-22-14 of the Act, for other violations not expressly specified in the complaint.

C. The Parties agree that the Defendant is responsible for achieving and maintaining complete compliance with all applicable federal and state laws, regulations, and permits, and that

compliance with this Settlement Agreement shall be no defense to any actions commenced pursuant to said laws, regulations, or permits, except as set forth herein.

D. This Settlement Agreement does not limit or affect the rights of the Defendant or ADEM against any third parties which are not parties to this Settlement Agreement. The Parties recognize that this Settlement Agreement resolves only matters between ADEM, the Intervenor, and the Defendant and that its execution does not preclude the Defendant from asserting any legal or factual position in any action brought against the Defendant by any person or entity not a party to this Settlement Agreement.

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

F. This Settlement Agreement shall not limit any authority of ADEM under any applicable statute, including the authority to seek information from the Defendant or to seek access to the property of the Defendant, nor shall anything in this Settlement Agreement be construed to limit the authority of ADEM to undertake any action against any person in response to conditions that may present an imminent and substantial endangerment to the environment or to the public health or welfare.

G. Application for construction grants, State Revolving Loan Funds, or any other grants or loans, or delays caused by inadequate facility planning or plans and specifications, on the part of the Defendant shall not be cause for extension of any required compliance date in this Settlement Agreement.

H. Obligations of the Defendant under the provisions of this Settlement Agreement to perform duties scheduled to occur after the date of entry of this Settlement Agreement shall be legally enforceable from that date. Liability for stipulated penalties, if applicable, shall accrue for

violation of such obligations and payment of such stipulated penalties may be demanded by ADEM as provided in this Settlement Agreement.

I. It is the intent of the Parties that the clauses of this Settlement Agreement are severable and should any clause(s) be declared by a court of competent jurisdiction to be invalid and unenforceable, then the remaining clauses shall remain in full force and effect. Except that Section III (continuing jurisdiction of the Court) is not severable and, if declared invalid and unenforceable, the Settlement Agreement is voided.

J. ADEM reserves the right to elect to file a civil action for statutory penalties or injunctive relief against the Defendant for any violations of the Alabama Water Pollution Control Act by the Defendant discovered after the Date of Entry of this Settlement Agreement concerning different violations than these set forth herein.

K. The execution of this Settlement Agreement is not an admission of any fact, liability, or wrongdoing of any kind regarding any of the matters addressed in the Settlement Agreement.

XVII.

REVIEW OF SUBMISSIONS

ADEM agrees to use its best efforts to expeditiously review all documents, plans, and other deliverables that the Defendant is required to submit to ADEM pursuant to the terms and conditions of this Settlement Agreement. ADEM agrees to use its best efforts to coordinate with the Defendant to expedite evaluation of permit applications submitted by the Defendant consistent with Alabama law.

XVIII.

FORM OF NOTICE

A. Unless otherwise specified or agreed to in writing by all parties, all reports, notices, or any other written communications required to be submitted under this Settlement Agreement shall be sent to the respective parties at the following U.S. Mail or electronic means as follows:

Alabama Department of Environmental Management
Chief of Water Division
1400 Coliseum Blvd.
Post Office Box 301463
Montgomery, Alabama 36110-2059

Intervenors:

Megan Huizinga, Knowles & Sullivan, LLC
413 Broad St, Gadsden, AL 35901
megan@kkslawgroup.com

Edan Rotenberg, Super Law Group LLC
222 Broadway, 22nd Floor
New York, NY 10017
edan@superlawgroup.com

Justinn Overton, Coosa Riverkeeper
102-B Croft Street
Mount Laurel, AL 35242
justinn@coosariver.org

Hannah Connor, Center for Biological Diversity
1411 K St. NW, Suite 1300
Washington, D.C. 20005
hconnor@biologicaldiversity.org

GWWSB:

Chad Hare
Gadsden Water Works
515 Albert Rains Boulevard
Gadsden, AL 35901
chare@gadsdenwater.org

Mike Haney
Inzer, Haney, McWhorter, & Haney
235 Broad Street
Gadsden, AL 35901

mikehaney@bellsouth.net

Richard E. Davis
Clayton Bromberg
Starnes Davis Florie LLP
100 Brookwood Place, 7th Floor
Birmingham, AL 35209
rdavis@starneslaw.com
cbromberg@starneslaw.com

B. Notifications to or communications with ADEM shall be deemed submitted on the date they are received. Notifications to or communications with Defendant shall be deemed received ten (10) days after the date they are postmarked. Each Party shall promptly notify the other parties of any change in this contact information, including but not limited to a change in representation.

XIX. **MODIFICATION**

This Settlement Agreement contains the entire agreement of the Parties and shall not be modified by any prior oral or written agreement, representation, or understanding. Prior drafts of this Settlement Agreement shall not be used in any action involving the interpretation or enforcement of this Settlement Agreement. If for any reason the Court should decline to approve this Settlement Agreement in the form presented, the Parties agree to continue negotiations in good faith to cure any objection raised by the Court. If the Settlement Agreement is not entered in the form presented, the entire Settlement Agreement is null and void.

This Settlement Agreement, upon entry as an order the Court, may not be amended or modified except by written order of this Court. Any modification of this Settlement Agreement by the Parties shall be in writing and approved by the Court before it will be deemed effective. However, minor changes which do not significantly alter the remedial action to be conducted by

the Defendant may be made by the Parties if such changes are the subject of an agreement set forth in writing.

XX.
TRANSFER OF OWNERSHIP

No transfer of ownership or operation of any portion of the POTWs shall relieve Defendant of its obligation to implement the terms of this Settlement Agreement unless (a) at least thirty (30) days prior to any transfer, Defendants provide notice of the proposed transfer to the Department and Intervenor and provides a copy of this Decree to the transferee; (b) the transferee agrees to undertake the obligations herein; and (c) the Parties move to amend this Decree to substitute the transferee for Defendants in this Decree.

XXI.
PAYMENT OF CERTAIN ATTORNEYS' FEES AND COSTS OF LITIGATION

A. In the interest of compromise and settlement and to avoid further legal fees and other costs associated with the Federal Case, the Defendant agrees to pay counsel for the Intervenor the amount of \$425,000.00 no later than December 31, 2025. Additionally, the Defendant agrees to pay counsel for Intervenor the amount of \$24,238.00 in costs no later than December 31, 2025.

B. Defendant agrees to pay Intervenor their costs incurred to monitor Defendant's commitments under this Settlement Agreement until the agreement terminates. This includes costs incurred by Intervenor, their counsel, and engineering or other consultants to review Defendant's reports and discuss with representatives of Defendant any potential changes to compliance requirements, as well as to prepare for and participate in any dispute resolution efforts prior to involvement of the Court. Defendant's obligation shall not exceed the sum of \$8,500.00 annually

for engineering services and \$5,000.00 annually for legal services incurred to monitor this Settlement Agreement. Payments will be deposited in Super Law Group's Trust Account for the benefit of the Intervenors. Intervenors will donate any funds not used during the Term of this Decree to the Lateral Repair Fund identified above.

XXII. **TERMINATION**

A. This Settlement Agreement shall terminate upon the granting of a motion to the Court after each of the following has occurred:

1. The Defendant has achieved compliance with all provisions contained in this Settlement Agreement;
2. The Defendant has paid all penalties and other monetary obligations due hereunder and no penalties or other monetary obligations due hereunder are outstanding or owed;
3. The Defendant has certified compliance pursuant to Paragraphs 1 and 2 above to the Court and all Parties; and
4. Upon receipt of such certification from the Defendant, ADEM shall review to determine if compliance has been achieved and shall then respond in writing. If ADEM or the Intervenors dispute the Defendant's full compliance, this Settlement Agreement shall remain in effect pending resolution of the dispute by the Parties or the Court.

B. The Defendant may petition ADEM, with a copy to the Intervenors (collectively) for termination of the obligations of any paragraph of this Settlement Agreement if the Defendant has satisfied each and every term and condition of the paragraph and has certified to ADEM, with a copy to the Intervenors (collectively), its satisfaction of the paragraph. Any objection to a petition

must be accompanied by a reasonable explanation of why the objector believes that the obligation was not satisfied, or why the objector cannot determine whether the obligation was satisfied, and any agreement that an obligation has been satisfied shall not unreasonably be withheld. Any agreement to terminate an obligation under this paragraph shall be in writing signed by all parties.

XXIII.
LIMITED REMEDIES

Defendant and the Intervenor acknowledge and agree that specific performance, declaratory relief, and injunctive relief are the only appropriate remedies for any breach of this Settlement Agreement alleged between Defendant and Intervenor, and under no circumstances shall Intervenor or Defendant seek monetary damages for any breach of this Consent Decree or of the Settlement Agreement. EBPs, awards of fees and costs, and/or penalties payable to ADEM are not monetary damages.

XXV.
SIGNATORIES

The Associate General Counsel of the Alabama Department of Environmental Management, the signatories for the Intervenor, and the signatories for the Defendant certify that they are fully authorized to enter into the terms and conditions of this Settlement Agreement and to execute and legally bind their respective Parties.

Exhibits Attached:

Remedial Action Appendix (with its own exhibits)

Lateral Repair Fund document

To be delivered by GWWSB prior to signatures:

- Maps of each basin showing all manholes
- GWWSB status update as of right before signature 2025 (documenting progress on repairs and improvements since Jan. 2022)

The Parties HEREBY CONSENT to the entry of this Settlement Agreement in *Alabama Department of Environmental Management v. Water Works & Sewer Board of the City of Gadsden, Alabama*, Civil Action No. 31-CV-2022-900009.00.

Done this ___ day of _____, 2025.

**FOR THE PLAINTIFF
ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT:**

Date: 12-30-25



s/ Carrie T Blanton
Carrie T. Blanton (TOM024)
Assistant Attorney General

s/ Mary-Frank Brown
Mary-Frank Brown (BRO156)
Assistant Attorney General

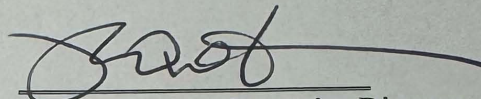
ADDRESS OF COUNSEL:

Alabama Department of Environmental Management
Office of General Counsel
P.O. Box 301463
Montgomery, AL 36130-1463
Telephone: (334) 271-7855
Email: carrie.blanton@adem.alabama.gov
Email: maryfrank.brown@adem.alabama.gov

FOR THE INTERVENORS:

COOSA RIVERKEEPER

Date: December 12, 2023


Justin Overton, Executive Director

CENTER FOR BIOLOGICAL DIVERSITY

Date: _____

[signatory]

OUR CHILDREN'S EARTH FOUNDATION

Date: _____

[signatory]

ADVANCE ETOWAH

Date: _____

[signatory]

Signature of Counsel as to form:

Edan Rotenberg, Attorney for Federal
Plaintiffs

ADDRESS OF COUNSEL:

Super Law Group LLC
180 Maiden Lane, Suite 603
New York, NY 10038
212-242-2355
edan@superlawgroup.com

FOR THE INTERVENORS:

COOSA RIVERKEEPER

Date: _____

Justinn Overton, Executive Director

CENTER FOR BIOLOGICAL DIVERSITY

Date: 12/15/2025



[signatory]- Hannah Connor

OUR CHILDREN'S EARTH FOUNDATION

Date: _____


[signatory]

ADVANCE ETOWAH

Date: _____

[signatory]

Signature of Counsel as to form:



Edan Rotenberg, Attorney for Federal Plaintiffs

ADDRESS OF COUNSEL:

Super Law Group LLC
180 Maiden Lane, Suite 603
New York, NY 10038
212-242-2355
edan@superlawgroup.com

FOR THE INTERVENORS:

COOSA RIVERKEEPER

Date: _____

Justinn Overton, Executive Director

CENTER FOR BIOLOGICAL DIVERSITY

Date: _____

[signatory]

OUR CHILDREN'S EARTH FOUNDATION

Date: 12/15/2025

A. Beaman
Annie Beaman, Executive Director

ADVANCE ETOWAH

Date: _____

[signatory]

Signature of Counsel as to form:

Edan Rotenberg, Attorney for Federal Plaintiffs

ADDRESS OF COUNSEL:

Super Law Group LLC
180 Maiden Lane, Suite 603
New York, NY 10038
212-242-2355
edan@superlawgroup.com

FOR THE INTERVENORS:

COOSA RIVERKEEPER

Date: _____

Justinn Overton, Executive Director

CENTER FOR BIOLOGICAL DIVERSITY

Date: _____

[signatory]


OUR CHILDREN'S EARTH FOUNDATION

Date: _____

[signatory]

ADVANCE ETOWAH

Date: 12/11/2025


David Chadwick, President

Signature of Counsel as to form:

Edan Rotenberg, Attorney for Federal
Plaintiffs

ADDRESS OF COUNSEL:

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180 Maiden Lane, Suite 603
New York, NY 10038
212-242-2355
edan@superlawgroup.com


FOR THE DEFENDANT

Water Works & Sewer Board of the City of Gadsden, Alabama

By: 
Chad Hare, General Manager

Date: 12/16/2025

Signature of Counsel as to form:


Richard E. Davis
C. Clayton Bromberg, Jr.

ADDRESS OF COUNSEL:

Starnes Davis Florie LLP
100 Brookwood Place
Seventh Floor
Birmingham, AL 35209
(205) 868-6000

Dated and entered this _____ day of _____ 2025.

CIRCUIT COURT JUDGE OF
ETOWAH COUNTY

REMEDIAL ACTIONS APPENDIX

GWWSB shall complete the following remedial actions.

1. Inspection and Repair Standards for the Collection Works [at entry of orders]

Effective upon the Court's approval of the Settlement Agreement in the state case and the filing of the Stipulation of Dismissal in the federal case, Defendant shall apply the following standards and practices for inspections and repairs. These standards shall be incorporated into a new operations and maintenance ("O&M") program document (See Section 6).

- a. Defendant shall investigate 10% of the collection system annually.
- b. Defendant will utilize various sanitary sewer inspection techniques, initially in areas of highest probability of sanitary sewer overflow(s) ("SSO(s)"), then continuing throughout the collection system. Where structural defects are suspected, such as in areas with high infiltration, closed-circuit television ("CCTV") and/or manhole inspection shall be used to identify and track structural conditions. Any pipe with a known structural defect shall be reinspected by camera on the appropriate timeline (as set forth below).
- c. Defendant shall continue to utilize NASSCO certified inspections to evaluate gravity mains and manholes. Gravity mains and manholes will be inspected and assessed based on the NASSCO Pipeline Assessment Certification program ("PACP") and Manhole Assessment Certification Program ("MACP") standards.
- d. For any gravity main that cannot be fully inspected, Defendant will use its best efforts to rehabilitate the gravity main as may be reasonably necessary (e.g., spot repair) to

permit appropriate inspection of the gravity main in accordance with reasonable professional judgment.

- e. Defendant will clean all gravity mains in advance of camera inspection. Observations of the quantity and type of debris removed and the required number of passes will be collected during cleaning to inform and, to the extent possible, improve Defendant's routine collection system operation and maintenance program (e.g., determination of cleaning frequencies; identification of pipes with grease accumulation; identification of pipes with severe root intrusion.)
- f. Defendant shall develop a hot spot cleaning program for areas with a history of frequent SSOs and include it in the O&M program document. Defendant will develop a hot spot cleaning list and include standard operating procedures and a quality assurance/quality control program for cleaning in the O&M program document.
- g. When Defendant discovers a public or private inflow source, Defendant shall take reasonable actions to interdict the inflow. Defendant will take direct action to eliminate public inflow sources that it learns about within a reasonable time of discovery. The parties anticipate that elimination of a public inflow source will typically be achieved within 6 months of discovery but acknowledge that inflow sources typically do not involve repairs to GWWSB's pipes and thus are outside GWWSB's direct control. If Defendant learns of a defect with a private lateral or other private inflow source, Defendant will take steps to address the issue, including, but not limited to, writing the lateral pipe owners and demanding them to fix the defect or interdict the inflow source. If property owners do not respond to Defendant's satisfaction after a first request, Defendant may send a second request or escalate if deemed appropriate in Defendant's

discretion. If a property owner does not interdict the inflow source after a second request, Defendant will use its legal authority under the Code of Ordinances of the City of Gadsden, Alabama to take escalating actions until the private inflow source is interdicted.

- h. When conducting repairs to gravity mains, Defendant will seal any defective lateral connections present.
- i. When defects in gravity mains and manholes are found, Defendant shall apply the respective corrective action indicated in response:

PIPES	
Defects (PACP grading)	Corrective Action
S5 - Failure Likely	Rehabilitation as soon as possible and generally within six months, to the extent it is possible to complete said rehabilitation within six months. There are very rare circumstances when a repair cannot be completed within six months due to location/depth, material shortages, contractor availability, natural disasters, etc.
S5	Rehabilitation or reinspection within one year of last inspection date
M5 - Infiltration Defect	Rehabilitation as soon as possible and generally within six months, to the extent it is possible to complete said rehabilitation within six months. There are very rare circumstances when a repair cannot be completed within six months due to location/depth, material shortages, contractor availability, natural disasters, etc.
M4 - Infiltration Defect	Evaluation completed within six months; repair completed in three years from initial discovery (i.e. not more than 2.5 years from completed evaluation)
S4	Reinspection within 5 years as part of CMOM program

M5, M4, or M3 - Debris, Roots, or Grease Accumulation Defect	Inclusion in hot spot cleaning program at the appropriate cleaning frequency and FOG program (for grease accumulation defects)
All Other Pipe Defects	Primary collection system pipes will be addressed by either cleaning, inspection, or some combination of approved methods in such quantity that all assets are inspected no less frequently than once every 10 years. Where structural defects are suspected, such as in areas with high infiltration, CCTV shall be used to identify and track structural conditions. Any pipe with a known structural defect shall be reinspected by camera on the appropriate timeline.

MANHOLES	
Defects (MACP Grading)	Corrective Action
Manhole Frame/Cover Identified as Inflow Source	Evaluation within six months to determine the extent of the inflow. Complete rehabilitation/replacement within 1 year. GWWSB will have discretion to complete the priority repairs first and extend the time to complete low priority repairs reasonably beyond one year for this purpose.
Severe Infiltration (gusher) or Structural Defect	Rehabilitation as soon as possible and generally within six months, to the extent it is possible to complete said rehabilitation within six months. There are very rare circumstances when a repair cannot be completed within six months due to location/depth, material shortages, contractor availability, natural disasters, etc.
All Other Manhole Defects	All Runner or Dripper Infiltration Manhole defects to be reinspected within 5 years. All other defects once per 10 years as part of general asset inspection.

Previously Inspected Manholes Adjacent to Lining Projects	Reinspection of manholes after any lining of adjacent mains, upon completion of main, if the manholes were not rehabilitated through lining themselves to identify potential groundwater migration to unrehabilitated infiltration defects in adjacent manholes.
All Manholes	Primary collection system manholes will be addressed by either cleaning, inspection, or some combination of approved methods in such quantity that all assets are inspected no less frequently than once every 10 years. Where structural defects are suspected, such as in areas with high infiltration, manhole inspection shall be used to identify and track structural conditions.

2. SSO Response Plans [120 days and 180 days]

In addition to and without conflicting with the requirements of the Settlement Agreement, Defendant shall also take the following actions to inform the public about SSOs as part of the SSO Response Plan ("SSORP"):

- a. Create a 24/7 ability for the public to inform Defendant of SSOs by phone and e-mail, including the ability to send photos and videos by e-mail. Defendant agrees to provide a mailer to customers regarding the SSO notification procedure and to include periodic reminders via billing statements.
- b. Place signs at an SSO site within 24 hours when reasonable and appropriate. For example, given that SSOs are often tied to extreme weather events, GWWSB will not endanger employees to place the signs (e.g., no placement if there is a risk of tornado, hurricane, severe thunderstorm, or lightning in area).
- c. Maintain and update a city map on its website of all SSOs in Gadsden over the past 180 days.

- d. Provide city residents with instructions on how to subscribe to receive notifications of any SSOs from the ADEM website.
- e. If an SSO enters a ditch or other conduit and the conduit connects to a waterbody directly or via a series of other conduits, then Defendant will report the waterbody, not the ditch or conduit, as the ultimate destination of the SSO.
- f. Ensure that the SSORP will include: (1) GWWSB's volume estimation methodology; (2) an internal GWWSB program for training; (3) inventory of equipment / material to respond to SSOs; and (4) information regarding how SSO data is added to the Computerized Maintenance Management System ("CMMS") (Lucity software).

3. Hydraulic Modeling [180 days]

Defendant shall develop a desktop hydraulic model of the collection system to further evaluate key areas of the system that may have hydraulic constraints. The model will allow for simulations to evaluate potential solutions to address hydraulically deficient sections of the system, including replacement with larger mains and/or grade adjustments. In addition, the model would be used to evaluate existing and future pumping stations, along with existing or upgraded force mains.

To develop the hydraulic model, Defendant will utilize existing system information and the dry and wet weather data that was collected during the 2024 Sewer Flow Study. Defendant will conduct an analysis of the collection system capacity using existing data, including, for example, pipe size, pipe material, data for manholes, and pipe slope. Where pipe slope data is not available, 10 State Standards for minimum pipe slope will be assumed to define capacity. Once capacities have been assigned to all attributes, flow data from the 2024 Sewer Flow Study will be applied within each metered basin to examine the percentage of asset capacity utilization from dry weather

periods and select wet weather events. Additionally, flow volume estimations generated from basin-specific inflow and infiltration prediction graphs for an agreed designed storm event will be applied within each metered basin to similarly examine capacity utilization. This analysis should determine the points at which the system is at a defined critical percentage of capacity.

Among other analyses that Defendant may conduct with the hydraulic model, Defendant shall evaluate hydraulic constraints and other model outputs in a 10-year, 24-hour storm scenario and shall report the results of that scenario with the model. A 10-year, 24-hour storm scenario here is defined as 5.59 inches of total rainfall in 24 hours.

Defendant shall utilize the results of the hydraulic modeling to determine additional collection system improvements projects to address capacity constraints and enhance the overall effectiveness of the collection system and treatment works. These additional projects would be expected to include replacement gravity mains, associated manholes, and upgrades to pumping stations. Projects might also include larger and/or additional force mains and additional pumping stations. The goal of upsized and/or re-graded replacement mains will be to reduce SSOs by providing additional storage capacity within the mains during peak flow conditions. Pumping station work and new force mains would likely improve efficiencies in conveying wastewater to the plants and potentially free up capacity in the gravity collection system.

No later than 180 days after entry of this Settlement Agreement, Defendant shall provide the Intervenor with a Master Plan/Capacity Assessment Report that contains:

- a. the methodology and results of modeling, including the modeling of a 10-year, 24-hour storm, identifying hydraulic capacity constraints and other concerns emerging from the modeling;

- b. an evaluation of the current condition of all pumping stations and their equipment (based on Defendant's continuing routine assessments and investigations); and
- c. recommendations regarding future capital investments in pump stations, force mains, or other GWWSB equipment.

4. Verifying Completion of Additional Flow Monitoring [300 days]

Defendant shall certify that additional flow monitoring in basins FM-20, 21, and 23 are complete no later than 300 days after entry of this Settlement Agreement.

5. FOG Program [360 days]

No later than 360 days from the entry of this Settlement Agreement, the Defendant will review its Fats, Oils, and Grease ("FOG") program to provide for verification (a) that regular inspection of all grease-generating establishments is conducted, (b) that requirements for grease removal devices at all grease-generating establishments are sufficient for the properties' generation of FOG, (c) that appropriate enforcement mechanisms are used, and (d) that educational material on proper grease disposal and grease removal device maintenance are provided to grease-generating establishments.

The FOG program shall be detailed in the O&M program document.

6. O&M Program and Program Document [draft 360 days, final 390 days]

The Defendant will, consistent with Section 5 of the May 2023 Engineering Report, finalize and implement an O&M program for its collection system and pump stations, which includes development of the internal performance metrics, recommended operations and maintenance changes to the collection system, recommended program activities, and periodic program review and revision process. This includes periodic scheduled assessments of adequate funding to ensure

proper operation and maintenance of the system to achieve compliance with the conditions of its Permits. Defendant will record the O&M program in an O&M program document.

The Defendant will operate the Gadsden East and Gadsden West POTWs in accordance with the O&M program document.

The Defendant shall submit a draft of the new O&M program document for review by the Intervenors no later than 360 days after entry of this Settlement Agreement. The Intervenors shall provide any comments on the new O&M program document to GWWSB no later than 390 days after entry of this Settlement Agreement.

The O&M procedures for pump stations shall include routine exercising of air valves at pump stations.

The O&M program document shall include practices and activities that are consistent with the terms of this Settlement Agreement.

No later than 420 days after entry of this Settlement Agreement, Defendant shall provide ADEM and the Intervenors a copy of Defendant's O&M program document.

7. Updated Engineering Report (collection system) [390 days to report and 4 years to complete repairs]

In addition to and without conflicting with the requirements of the Settlement Agreement, with respect to the gravity-based portion of the collection system, the Updated Engineering Report (collection system) (the "Updated Engineering Report") shall include:

- a. An overall summary of completed collection system investigations and the status of ongoing investigations.

- b. An update on GWWSB's progress towards its goal of instituting routine monitoring of 10% of the collection system every year and confirmation that 10% of the collection system was investigated since entry of the Settlement Agreement.
- c. A report of the findings from flow monitoring in basins FM-20, 21, and 23, with identification of the most appropriate locations for further investigations and remediation of the system and a schedule for specific further investigations or repairs.
- d. A report of GWWSB's progress towards completing smoke testing, visual inspections, and dye testing in all parts of the city designated for those analyses in the 2024 Sewer Flow Study.
- e. Confirmation that the Airport Road and Walnut Creek projects have been completed, with acceptance letters, and all post-construction camera and smoke testing are complete in those areas.
- f. A "Defects and Inflows Report," in the format specified in the immediately following section 8.

With respect to pumping stations and force mains, the Updated Engineering Report shall include:

- g. confirmation that routine assessments and investigations of pumping stations are continuing;
- h. an update on the current condition of force mains and pumping stations based on the most recent results of routine assessments and any one-off investigations, noting any needed repairs or maintenance; and
- i. an update on Defendant's progress towards implementing recommendations in the Master Plan/Capacity Assessment Report.

With respect to the collection system as a whole, the Updated Engineering Report shall include:

- j. a compliance plan (the "Compliance Plan") with a schedule for implementation of necessary corrective actions and cost of such necessary corrective actions, if known.

At the complete implementation of the recommendations provided in the Updated Engineering Report, Defendant shall certify to ADEM, with copy to the Intervenor, that these obligations were satisfied..

8. Defects and Inflows Report

On the date that a Defects and Inflows Report is due, defendant will provide the report in the spreadsheet format attached to the Settlement Agreement as Exhibit 1, which shall contain, to the extent that the information is reasonably available to Defendant on the date that a version of the report is due, the information indicated by Exhibit 1, regarding the status of known defects in gravity mains and manholes, and known inflow sources.

When a Defects and Inflows Report is due, Defendant will provide a copy to the Intervenor in native (spreadsheet) format.

Defect and Inflows Reports shall be due: with the Updated Engineering Report (see 7.f, supra); with the Second Updated Engineering Report (see 9, infra); and a final Defect and Inflows Report shall be due six years from the Effective Date.

9. Second Updated Engineering Report (completing "Additional Investigations") [2 years to report and 6 years to complete repairs]

In addition to and without conflicting with the requirements of the Settlement Agreement, a Second Updated Engineering Report (completing "Additional Investigations") (the "Second Updated Engineering Report") shall document and report on Defendant's successful

completion of the additional investigations identified in Table 5.1 of the 2024 Sewer Flow Study (the “Additional Investigations”).

The Second Updated Engineering Report shall report on the findings of the Additional Investigations. The report shall include an Updated Defects and Inflows Report identifying all defects and inflow sources found through the investigative process in the same format and at the same level of detail as the prior Defect and Inflows Report.

At that time of completion of implementation of the recommendations provided in the Second Updated Engineering Report, Defendant shall certify to ADEM, with a copy of the certification to the Intervenors, that these obligations have been completed.

10. Progress Reports and Other Updates

Any concurrence or inaction by Intervenors upon receipt of a written notice of noncompliance from the Defendant shall not be deemed an admission of the adequacy of the proposed or completed corrective action to meet the requirements of this Settlement Agreement, the NPDES permits, or the Clean Water Act.

Defendant shall provide additional documents reasonably requested by the Intervenors relating to the implementation of this Settlement Agreement, subject to Alabama’s Public Records and Open Meetings Laws.

11. Mutual Wording of Public Statements

All public comments, statements, or releases to the media, including postings on the internet, by Defendant or by the Intervenors announcing this Settlement Agreement and the resolution of all matters associated with it shall include the mutually agreed wording provided as Exhibit 2 to this Appendix.

12. Criteria for GWWSB’s designation of properties required to conduct lateral inspections

With respect to the proposed amendment to the Gadsden City Code requiring homeowners of properties designated by GWWSB to conduct lateral inspections in order to be eligible to obtain a building permit, GWWSB shall utilize the criteria outlined in Exhibit 3 to determine the initial list of properties to designate. Notwithstanding the above, GWWSB shall have the sole discretion to revise the designated list of properties and/or the criteria in its reasonable judgment.

to be attached:

Exhibit 1, the spreadsheet format for a Defects and Inflows Report

Exhibit 2, mutual wording of public statements

Exhibit 3, Criteria for GWWSB's designation of properties required to conduct lateral inspections

Exhibit 2 to Remedial Action Appendix
Parties' Agreed Wording for Public Statements

Alabama Department of Environmental Management (ADEM), a coalition of conservation groups, and the Gadsden Water Works and Sewer Board (GWWSB) have resolved a lawsuit for alleged unpermitted discharges of pollutants and violations of permit terms related to the City of Gadsden's wastewater treatment plant and sewer system that enter Neely Henry Lake on the Coosa River and some of its tributaries. The groups are Coosa Riverkeeper, Advance Etowah, the Center for Biological Diversity, and Our Children's Earth Foundation.

Without admitting liability and in its continuing efforts to provide outstanding service to its customers, GWWSB has agreed to extensive repairs to, more frequent inspections of, and increased maintenance for its sewer system. GWWSB will also undertake additional engineering analysis to prevent sewage overflow to the extent reasonably feasible. GWWSB has also agreed to pay a civil penalty to the ADEM, pay litigation expenses, and enact a process that is intended to assist eligible residents who are GWWSB customers pay for any necessary repairs to their private lateral sewer pipes that connect their homes to the GWWSB sewer system even though the private laterals are not otherwise the responsibility of GWWSB.

GWWSB has also agreed to provide one-time funding to the Alabama Aquatic Biodiversity Center, which is run by the Alabama Department of Conservation and Natural Resources. The Alabama Aquatic Biodiversity Center breeds and protects endangered fish and shellfish, including some species that reside in the Coosa River, which, as the source water for GWWSB is important to everyone in the area.

This settlement also resolves a separate federal lawsuit brought by the conservation groups.

Exhibit 3 to Remedial Action Appendix

Criteria for GWWSB's Designation of Properties Required to Conduct Lateral Inspections

GWWSB's designation of properties required to conduct sanitary sewer lateral inspections shall be based on a combination of the following factors:

- Areas upstream of and contributing to recent hydraulically caused sanitary sewer overflows (SSOs).
- Areas of recent, concentrated, and large volume, sewer back-up calls/responses directly related to wet weather.
- Areas displaying elevated infiltration and inflow (I&I) rates that originate from sanitary sewer laterals, as determined by field studies performed, including, but not limited to, flow monitoring, smoke testing, and CCTV inspections.

EXHIBIT B – LATERAL REPAIR FUND

GWWSB will create a lateral repair fund program (“Fund”) for the inspection and rehabilitation of private laterals, subject to the following terms and conditions.

A. Management of Fund

GWWSB will manage the Fund directly and will provide ADEM and Intervenors with certain information regarding the Fund—specifically, the number of applications, the number of repairs, the amount of total expenditures as well expenditures per address, and the overall Fund balance--on an annual basis from the date of the entry of this Settlement Agreement as an order of the Court (“Effective Date”) until the Fund is exhausted or six years from the Effective Date, whichever occurs first. GWWSB may allocate expenditures from the Fund over six years from the date of settlement, but GWWSB will use reasonable efforts to make covered repairs at a rate of at least 16.7% of the Fund per year until exhaustion.

B. Eligibility for GWWSB account holders

All of the following requirements must be met to establish eligibility to receive assistance from the Fund:

- The applicant must be a GWWSB account holder.
- The applicant must be the owner of a single-family home or a multi-family residential building.
- The property must be a single-family home or a multi-family residential building.
- The property must be in GWWSB’s wastewater service area.
- The sewer lateral to be repaired must be connected to GWWSB’s sanitary sewer collection system as of the Effective Date and cannot be connected to a private sewer system.
- The applicant has not previously received any assistance from the Fund for the property that is the subject of the application.
- The applicant must not have any outstanding liens or fees owed to GWWSB but can become eligible if the applicant pays off the outstanding liens or fees.
- The applicant may receive assistance from the Fund only once and only for the applicant’s primary residence.

C. Eligibility for plumbers

Lateral inspections must be conducted by a pre-qualified licensed plumber. GWWSB will require plumbers who participate in the program to complete an application to be pre-qualified and to certify their current licensure and insurance. GWWSB will provide account holders with a list of pre-qualified plumbers. Any plumber who applies and can show proof of current licensure and insurance in accordance with the insurance requirements established by the State of Alabama shall be granted pre-qualified status.

D. Application process for financial assistance from the Fund

1. Application

Any GWWSB account holder meeting all of the criteria set forth above in Section B (Eligibility for account holders) shall be eligible to fill out an application for financial assistance (as defined in D.2.,below) from the Fund.

2. Inspection/repair

Upon notification of selection for the Fund, the applicant will have 30 days to accept or decline participation in the Fund. If the applicant accepts participation in the Fund, the applicant must submit the pre-qualified plumber's inspection report, any recommended repairs, and the estimated cost of the repairs within 60 days of the initial notification. GWWSB will determine whether the Fund will provide financial assistance and, if so, the amount of financial assistance for which the applicant qualifies based on the estimate of repairs up to a maximum of \$5,000 for the inspection and any repair (combined) (hereinafter, the "financial assistance") within 60 days of GWWSB's receipt of the application. The maximum financial assistance for which an account holder can qualify is \$5,000. Any work that a pre-qualified plumber performs above this maximum threshold for financial assistance shall be the sole responsibility of the account holder.

If the application is accepted and financial assistance provided, the pre-qualified plumber will provide an estimated inspection/repair timeline to the homeowner and to the GWWSB.

Inspection/repair work covered by the Fund shall be limited to inspections and essential repair work and shall not include any landscaping or other cosmetic improvements (which shall be the applicant's sole responsibility).

If the lateral repair is on city right-of-way, then the repair will be performed either by GWWSB or by a State of Alabama Certified General Contractor ("CGC") with the required classification. If the lateral repair is outside of the city right-of-way, the repair will be completed by a pre-qualified plumber. If GWWSB performs any inspection/repair work that would otherwise be performed by a pre-qualified plumber or a CGC in conjunction with an application to the Fund, then GWWSB shall be entitled to make a charge not to exceed \$5,000 per account holder against the Fund for the actual cost of the work.

3. Payment to plumber

The Fund will pay the pre-qualified plumbers who actually perform any inspections or repair work as part of the Fund program directly in an amount reasonably consistent with their repair estimates and, in any event, shall not pay more than a maximum amount of \$5,000 in financial assistance for the inspection and any repair (combined). The Fund shall not reimburse GWWSB account holders directly. GWWSB shall confirm completion of the inspection and/or repair prior to the Fund making any payment to a pre-qualified plumber. Any pre-qualified plumber

who fails to comply with the Fund's requirements, including current licensure and insurance requirements, shall not be entitled to payment from the Fund and shall be disqualified from further participation.

4. Priority areas

Applications that meet any of the following criteria shall receive priority for financial assistance from the Fund:

- Applicants who have received a smoke testing defect notification letter from GWWSB since January 2022.
- Applicants who are required to conduct lateral inspections in order to be eligible to obtain a City of Gadsden building permit. For applicants seeking a building permit, the cost of the lateral inspection itself is not eligible for reimbursement from the Fund.
- Applicants whose designated property is within a priority sanitary sewer rehabilitation basin, as determined by GWWSB. These areas are designated as priority basins based on the following factors:
 - repeat, hydraulically caused SSOs within the sewer basin;
 - high volume, concentrated, sewer back-up calls/responses after wet weather events, and/or;
 - field studies (including, but not limited to, flow monitoring, smoke testing, or CCTV inspections) reveal areas of deteriorated sanitary sewer laterals that contribute elevated amounts of infiltration and inflow (I&I).
- Applicants whose designated property is within a current or planned GWWSB sanitary sewer improvement project.