State of Utah

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MEMORANDUM

TO: Water Quality Board

THROUGH: Walter L. Baker, P.E.
Leah Ann Lamb

FROM: Jeff Studenka, Storm Water Section Manager
Rhonda Thiele, MS4 Program Coordinator

DATE: January 15, 2016

SUBJECT: Request for Approval to proceed with EPA joint Consent Decree Settlement Agreement for Salt Lake County MS4 Program, UPDES Permit No. UTS000001

PRELUDE

The Utah Water Quality Act (UCA 19-5-104 (3) (h) (i, ii)) requires that any Settlement Agreement negotiated by the Director, in excess of $25,000, must be reviewed and approved or disapproved by the Water Quality Board.

BACKGROUND

An EPA inspection of unincorporated Salt Lake County's (County) municipal storm water program was conducted on March 5, 2012 – March 9, 2012. The inspection was prompted as part of EPA's Municipal Infrastructure National Enforcement Initiative, which is a nation-wide initiative and includes Municipal Separate Storm Sewer Systems (MS4s) as well as sanitary sewer overflows. The purpose of the inspection was to verify compliance with the County's UPDES MS4 Permit, No. UTS0000001. The County's MS4 permit is comprised of six minimum control measures which include; 1)Public Education and Outreach on Storm Water Impacts, 2) Public Involvement/Participation, 3) Illicit Discharge Detection and Elimination (IDDE), 4) Construction Site Storm Water Runoff Control, 5) Long-term Storm Water Management, and 6) Pollution Prevention and Good Housekeeping for Municipal Operations.

As a Phase I medium-sized MS4, the County is also required to develop Industrial and High Risk Runoff and Wet Weather Monitoring programs. The County is required to develop a Storm Water

Management Program (SWMP) document which describes how the permit requirements will be addressed including measurable goals, interim milestones and frequency of actions.

The EPA inspection consisted of an opening conference outlining the inspection process, a records review, interviews with personnel and a tour/field visit of municipal areas, industrial facilities, monitoring locations, and construction sites. The County's MS4 permit was also reviewed by the EPA as part of the Municipal Infrastructure National Enforcement Initiative to support permit reissuance. Although this was not officially a "joint inspection" with DWQ & EPA, DWQ personnel were present at all times and did actively participate in reviewing files and documenting other observations, including an illicit discharge scenario as described below, during specific field inspections.

EPA completed and submitted their inspection report on June 19, 2012. The report consists of corrective actions and recommendations to address EPA's inspection findings. DWQ also previously conducted an inspection of the County's MS4 program in August 2007. EPA found many repeat findings in which the County failed to address deficiencies noted by DWQ's 2007 inspection report. One of the most significant repeat findings was the failure to conduct training on storm water best management practices for preventing and reducing polluted runoff from municipal operations.

Other deficiencies as observed included:

- Lack of training and clear procedures for coordination and identification of organizations and/or employees responsible for implementation of the SWMP was observed in multiple areas of the MS4 program.
- An illicit discharge was discovered during the EPA's inspection of the County's Parks and Recreation Maintenance Facility. The facility was using a storm drain inlet for the discharge of non-storm water related to equipment and vehicle washing as well as for oil and fuel disposal. This storm drain ultimately discharged to Millcreek. Other violations included the County's failure to implement the SWMP plan as it is written, in particular, the scheduled inspections and other activities for the Construction Site Runoff Control program and Industrial and High Risk Runoff Program.
- The County has also failed to operate and maintain each of its five wet weather monitoring stations, take appropriate enforcement procedures or actions against entities responsible for illicit discharges to the MS4, develop a land use master plan and comprehensive master planning process to address storm water runoff from new development and redevelopment, and develop and implement a plan for ensuring, post-construction, the continued maintenance of storm water system controls at new developments and redevelopments.

Upon receiving the EPA inspection report, Salt Lake County provided their formal responses to EPA and DWQ on September 5, 2012 and subsequent information was then exchanged and

reviewed over the next two years leading up to EPA enlisting the U.S. Department of Justice (DOJ) to lead an enforcement action, with DWQ as a joint party, against the County. The DOJ conducted a settlement discussion meeting with the County on March 11, 2015 at the County offices, with EPA, DWQ and the Utah Attorney General Office (AG) present as well. Over the next several months, the DOJ and EPA worked up a draft Consent Decree Settlement Agreement (SA) and negotiated with the County on all final terms and conditions. DWQ and AG offices reviewed and ultimately concurred with the final terms of the SA, which was signed by the County in early December 2015.

Included in the attached SA is; Compliance Requirements, Civil Penalty, Reporting Requirements, Stipulated Penalties for future non-compliance, as well as other general provisions and conditions.

The terms of the financial settlement in the SA are as follows:

Monetary Penalty to be paid to EPA	$140,000
Monetary Penalty to be paid to DWQ	$140,000
Optional Mitigation Projects (may offset a portion of payment to DWQ)	TBD
Total Settlement	**$280,000**

CONCLUSION

The public comment period for the proposed SA ran from December 23, 2015 through January 22, 2016. At the time of this memo, no comments have been received. Any comments received will be addressed separately as appropriate.

It is the Division of Water Quality's recommendation to approve this settlement and proceed with EPA/DOJ to finalize as appropriate.

Attachment: EPA Joint Consent Decree Settlement Agreement (DWQ-2015-014350)

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH

UNITED STATES OF AMERICA, and THE STATE OF UTAH,	)	
Plaintiffs,	)	
v.	)	Civil Action No.
	)	CONSENT DECREE
SALT LAKE COUNTY, UTAH,	)	
Defendant.	)	

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The United States of America, on behalf of the United States Environmental Protection Agency ("EPA"), and the State of Utah, on behalf of the Utah Division of Water Quality ("UDWQ"), have filed a complaint in this action concurrently with this Consent Decree alleging that Defendant Salt Lake County, Utah (the "County"), violated the Clean Water Act ("Act") and Utah Code Ann. §§ 19-5-107 and 108.

Specifically, the Complaint alleges that the County failed to operate its municipal separate storm sewer system ("MS4") in accordance with the requirements of its National Pollutant Discharge Elimination System ("NPDES") permit.[1]

The County does not admit any liability to the United States or the State arising out of the transactions or occurrences alleged in the Complaint.

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 litigation among the Parties, and that this Consent Decree is fair, reasonable, and in the public interest.

NOW, THEREFORE, before the taking of any testimony, without the adjudication or admission of any issue of fact or law except as provided in Section I, and with the 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, pursuant to 28 U.S.C. §§ 1331, 1345, and 1355, and Section 309(b) of the Act, 33 U.S.C. § 1319(b), and over

[1] The County's NPDES permit is referred to as an UPDES permit, or Utah Pollutant Discharge Elimination System permit, because it was issued by the Utah Department of Environmental Quality, Division of Water Quality.

the Parties. Venue lies in this District pursuant to Section 309(b) of the Act, 33 U.S.C. § 1319(b), and 28 U.S.C. §§ 1391(b) and (c) and 1395(a), because the violations alleged in the Complaint are alleged to have occurred in, and the County is located in, this judicial district. For purposes of this Decree, or any action to enforce this Decree, the County consents to the Court's jurisdiction over this Decree and any such action and over the County and consents to venue in this judicial district.

2. For purposes of this Consent Decree, the County agrees that the Complaint states claims upon which relief may be granted pursuant to Section 309(b) of the Act.

II. APPLICABILITY

3. The obligations of this Consent Decree apply to and are binding upon the United States and the State, and upon the County and any successors, assigns, or other entities or persons otherwise bound by law.

4. The County 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 retained to perform work required under this Consent Decree. The County 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 County shall not raise as a defense the failure by any of its officers, directors, employees, agents, or contractors to take any actions necessary to comply with the provisions of this Consent Decree.

III. OBJECTIVES

6. All actions taken pursuant to this Consent Decree, and any attachment thereto, shall have the objective of causing the County to achieve and maintain full compliance with the Act, applicable state law, and the terms and conditions of its MS4 Permit.

IV. DEFINITIONS

7. Terms used in this Consent Decree that are defined in the Act or in regulations promulgated pursuant to the Act shall have the meanings assigned to them in the 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. "Complaint" shall mean the complaint filed by the United States and the State of Utah in this action;

b. "Consent Decree" or "Decree" shall mean this Decree;

c. "County's MS4" shall mean the entire Municipal Separate Storm Sewer System owned and operated by Defendant Salt Lake County, Utah;

d. "Date of Lodging" shall mean the date that this Consent Decree is lodged with the Clerk of the Court for the United States District Court for the District of Utah;

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

f. "Defendant" shall mean Salt Lake County, Utah (the "County");

g. "EPA" shall mean the United States Environmental Protection Agency and any of its successor departments or agencies;

h. "Effective Date" shall have the definition provided in Section XV;

i. "Full-Time Equivalent" and "FTE" shall mean the total number of hours worked in a week (part time, full time, and contracted) divided by 40 hours. The result is the number of equivalent employees working full-time, where one FTE is equivalent to one employee working full-time. For example: if three employees worked 50 hours, 40 hours, and 10 hours per week respectively – totaling 100 hours – the Full-Time Equivalent calculation would be 100 hours divided by 40 hours, or 2.5 FTE;

j. "Inspection" shall mean a visit by a qualified inspector to a facility or site, including direct observations of facility operations and/or conditions, that is adequate in scope and thoroughness to determine whether the facility or site is in compliance with relevant obligations. The term "Inspection," when used in connection with the Industrial and High Risk Runoff requirements, shall mean an inspection meeting the requirements of Part 4.3.4.2 of the MS4 Permit. "Inspect" shall mean to carry out an Inspection;

k. "Maintain," when used in connection with the staffing requirements in this Consent Decree, shall mean that the County has – either on the County payroll or under contract – the required type and number of personnel. In the event that a County employee or contractor leaves a position (whether as the result of retirement, resignation, termination, or otherwise), that this Decree requires the County to staff, the County shall return to the minimum staffing levels set by this Decree (meaning the employee or contractor has reported for duty) within 90 days of the date of the departing employee's or contractor's departure;

l. "MS4 Permit" shall mean the UPDES permit issued by UDWQ to the County authorizing discharges from the County's municipal separate storm sewer system. The current MS4 Permit is Permit No. UTS000001 with an effective date of September 5, 2013;

m. "New Development and Redevelopment Sites" shall mean construction sites disturbing one or more acres, including projects less than one acre that are part of a larger common plan of development or sale;

n. "Paragraph" shall mean a portion of this Decree identified by an Arabic numeral;

o. "Parties" shall mean the United States, the State of Utah, and the County;

p. "Priority Construction Site" shall mean a construction site that has the potential to threaten water quality when considering the following factors: soil erosion potential; site slope; project size and type; sensitivity of the receiving waterbodies; proximity to receiving waterbodies; non-storm water discharges and past record of noncompliance by operators of the construction site;

q. "Section" shall mean a portion of this Decree identified by a Roman numeral;

f. "Storm Water Management Program" and "SWMP" shall mean the County's program to manage storm water developed pursuant to Part 4.0 of the MS4 Permit;

s. "State" shall mean the State of Utah;

t. "UDWQ" shall mean the Utah Division of Water Quality and any of its successor departments or agencies;

u. "United States" shall mean the United States of America, acting on behalf of EPA.

V. COMPLIANCE REQUIREMENTS

8. Overall Compliance. The County shall fully comply with all applicable provisions of the CWA and the Utah Water Quality Act. The County shall also fully comply with all terms and conditions of its MS4 Permit.

9. SWMP Implementation. No later than November 20, 2015, the County shall submit to EPA and UDWQ, for review and comment, a revised SWMP document (including measurable goals) that meets the requirements of the MS4 Permit and addresses EPA and UDWQ's Evaluation of the County's November 2014 SWMP (which was provided to the County on July 10, 2015). No later than April 29, 2016, the County shall fully implement the SWMP document. If the County makes any changes to the SWMP document, other than minor corrections or adjustments, the County shall submit the revised provisions to EPA for review, with a copy to the State. Changes to the SWMP document shall not be considered modifications of the Consent Decree.

10. Resources. Beginning January 1, 2016, the County shall ensure there are adequate resources for each operating year in an amount reasonably expected to be sufficient to implement all measures in the SWMP, comply with the MS4 Permit, and comply with all requirements of this Consent Decree. The County shall include in the Semi-Annual Reports required by this Decree information regarding its SWMP implementation budget.

11. Personnel. The County shall Maintain adequate personnel to implement the SWMP, comply with the MS4 Permit, and comply with the requirements of this Consent Decree. At a minimum, beginning April 1, 2016, the County shall Maintain at least nine FTE to carry out the County's responsibilities under the SWMP and the MS4 Permit. Of the nine FTE required by this Paragraph, at least one shall be charged with overall management of the County's MS4 Permit and program.

12. Training. The County shall document and ensure that all personnel with responsibilities for compliance with this Section of the Consent Decree receive necessary and appropriate training to carry out their obligations for MS4 program implementation.

13. Illicit Discharge Detection and Elimination

a. The County shall implement and enforce its Illicit Discharge Detection and Elimination ("IDDE") Program to systematically find and eliminate sources of non-storm water discharges.

b. No later than 30 days after the Effective Date, the County shall finalize standard operating procedures with other County departments, including but not limited to Parks and Recreation Operations, that contain formal procedures by which these departments will proactively employ BMPs to prevent non-storm water discharges to the MS4. The County shall ensure that County departments are following these procedures.

c. The County shall provide IDDE training, at least annually, to all field staff who, as part of their normal job responsibilities, might reasonably come into contact with or otherwise observe an illicit discharge (e.g. County facility workers, maintenance staff,

inspectors). The County shall keep current a list of all field staff subject to this sub-paragraph. The County shall provide IDDE training, at least annually, to all staff on the list. The County shall keep records documenting that all staff on the list have completed the training at least annually.

14. Construction Site Storm Water Control

a. Beginning on and after the Effective Date, the County shall implement, in a manner that meets the requirements of the MS4 Permit, the procedures in the (i) Pre-construction Storm Water Pollution Prevention Plan ("SWPPP") Review Standard Operating Procedures ("SOP") (as submitted to EPA and UDWQ on August 10, 2015 and as may thereafter be revised); and (ii) Construction Site Inspection and Enforcement SOP (including a description of the County's enforcement strategy (i.e. when and how escalating enforcement options will be used)) (as submitted to EPA and UDWQ on August 10, 2015 and as may thereafter be revised).

b. Within six months of the Effective Date, the County shall complete a review of the County's construction site database, remove any sites that should be closed out, and ensure that all procedures are followed and documented relating to the close out of a site with the State (e.g. submission of a Notice of Termination). The County shall thereafter ensure that the database is kept current and that the County's procedures for closing out construction sites are followed.

c. The County shall Inspect, at least once every month, all active construction sites disturbing one acre or more or that are part of a common plan of development or sale.

d. The County shall Inspect, at least twice per week, all active Priority Construction Sites.

e. The County shall provide training, at least annually, to all staff whose job duties are related to implementing the construction storm water program, plan review, construction site inspections, and enforcement. The County shall keep current a list of employees and contractors whose jobs relate to implementing the construction storm water program, plan review, construction site inspections, and enforcement. The County shall provide training, at least annually, to all employees on the list. The County shall keep records documenting that all employees on the list have completed the training at least annually.

15. Post-Construction Storm Water Management

a. No later than six months after the Effective Date, the County shall prepare and submit to EPA and UDWQ an inventory of all permanent (post-construction) storm water control structures at New Development and Redevelopment Sites constructed since January 1, 2001.

b. No later than six months after the Effective Date, the County shall develop and submit to EPA and UDWQ for review and comment a plan for the continued maintenance of storm water runoff controls at New Development and Redevelopment Sites. This plan shall include, at a minimum, plan review, confirmation that structures were built to specifications, inspections, enforcement, and maintenance by either the private property owner, a qualified third party, or the County in the event that a maintenance agreement cannot be obtained or is not adequately implemented. Following EPA review and comment, the County shall implement the plan in a manner that meets the requirements of the MS4 Permit.

c. No later than six months after the Effective Date, the County shall develop and enter into letters of intent ("LOI") with each County agency for the continued maintenance of County-owned storm water runoff controls. These LOIs shall require agencies to inspect and maintain storm water controls at facilities they operate and keep records of inspections and any maintenance. The LOIs shall require the agencies to provide the County with all records of inspections and maintenance activities. The County shall keep these records, and provide them to EPA and UDWQ upon request, for at least five years. The County shall meet regularly with agencies to review their compliance with the LOIs and do periodic Inspections of County-owned permanent (post-construction) storm water runoff controls to ensure that they are being properly maintained.

d. Beginning June 1, 2016, and continuing annually thereafter, the County shall certify to EPA and UDWQ that it is maintaining records of post-construction program implementation, including but not limited to LOIs, and provide to EPA and UDWQ an identification of the records it has added to its inventory during the previous 12-month period.

16. Pollution Prevention and Good Housekeeping for Municipal Operations

a. By December 31, 2015, the County shall develop and submit to EPA and UDWQ a training program for preventing or reducing polluted runoff from municipal operations. The training requirements should be based on job duties. The County shall maintain records of all training and shall develop and follow procedures for ensuring that all employees who require training receive that training, at least annually.

b. Within six months of the Effective Date, the County shall develop and implement site-specific Storm Water Pollution Prevention Plans ("SWPPP") for all high priority

County-owned facilities that include, at a minimum, maintenance procedures, good housekeeping, inspection schedules, documentation, and site maps that include the location of storm water BMPs, flow paths, storm drains, chemical storage areas, and vehicle maintenance and maintenance equipment.

17. Industrial and High Risk Runoff

a. Beginning January 1, 2016, and at least annually thereafter, the County shall update its inventory of all industrial and commercial sites as required by Part 4.3.1 of the MS4 Permit.

b. No later than three months after the Effective Date, the County shall develop and document procedures for identifying priority industrial and commercial sites based on the sites' potential to generate polluted storm water runoff to the MS4. These procedures should include consideration of industry type, activities performed at the facility, types of chemicals used at the facility and where they are stored, and any past record of non-compliance at the facility. Following these procedures, the County shall indicate on the inventory which industrial and commercial sites are "priority facilities." As part of the annual update of the inventory, the County shall reconsider which facilities are "priority facilities."

c. The County shall develop an inspection schedule that ensures that the County Inspects at least 20% of all industrial and commercial sites each calendar year and every priority facility at least at a frequency to comply with the requirements in Paragraph 17.e.

d. The County shall Inspect at least 20% of all industrial and commercial sites each calendar year to ensure that all facilities are inspected at least once during the term of the permit.

e. As long as there are no more than 40 priority facilities, the County shall Inspect each priority facility at least once a year. If there are more than 40 priority facilities, the County shall inspect each priority facility at least once every two years.

f. Beginning no later than the Effective Date, the County shall require the use of storm water BMPs and control measures at all industrial and commercial sites to minimize storm water pollution using UDWQ's industrial storm water permit as a guide. The County will impose specific requirements on owners of industrial and commercial sites as needs are identified through inspections.

18. Monitoring

a. Beginning on and after the Effective Date, the County shall operate and maintain four monitoring locations that meet the requirements of Part 5.2.2 of the MS4 Permit in order to obtain accurate and reliable data during wet weather monitoring events.

b. No later than the Effective Date, the County shall update its outfall inventory to show the location of all municipal storm sewer outfalls. The County shall thereafter ensure that this inventory is updated bi-annually.

19. Approval of Deliverables. After review of any plan, report, or other item that is required to be submitted for approval under this Consent Decree, EPA, after a reasonable opportunity for review and comment by UDWQ, shall in writing: i) approve the submission; ii) approve the submission upon specified conditions; iii) approve part of the submission and disapprove the remainder; or iv) disapprove the submission.

a. If the submission is approved pursuant to Paragraph 19.i, the County shall take all actions required by the plan, report, or other document, in accordance with the schedules

and requirements of the plan, report, or other document, as approved. If the submission is conditionally approved or approved only in part, pursuant to Paragraph 19.ii or .iii, the County shall, upon written direction from EPA, take all actions required by the approved plan, report, or other item that EPA determines are technically severable from any disapproved portions, subject to the County's right to dispute only the specified conditions or the disapproved portions, under Section X (Dispute Resolution).

b. If the submission is disapproved in whole or in part pursuant to Paragraph 19.iii or .iv, the County shall, within 30 days or such other time as the Parties agree to in writing, correct all deficiencies and resubmit the plan, report, or other item, or disapproved portion thereof, for approval, in accordance with the preceding subparagraphs. If the resubmission is approved in whole or in part, the County shall proceed in accordance with the preceding subparagraph.

20. Any stipulated penalties applicable to the original submission, as provided in Section VIII, shall accrue during the 30-day period or other specified period, but shall not be payable unless the resubmission is untimely or is disapproved in whole or in part; provided that, if the original submission was so deficient as to constitute a material breach of the County's obligations under this Decree, the stipulated penalties applicable to the original submission shall be due and payable notwithstanding any subsequent resubmission.

21. If a resubmitted plan, report, or other item, or portion thereof, is disapproved in whole or in part, EPA, after a reasonable opportunity for review and comment by UDWQ, may again require the County to correct any deficiencies, in accordance with the preceding Paragraphs, or may itself correct any deficiencies, subject to the County's right to invoke Dispute

Resolution and the right of EPA and the State to seek stipulated penalties as provided in the preceding Paragraphs.

VI. CIVIL PENALTY

22. The County shall pay the sum of $280,000 as a civil penalty, together with interest accruing from the date on which the Consent Decree is lodged with the Court, at the rate specified in 28 U.S.C. § 1961 as of the Date of Lodging. Of the total amount, the County shall pay 50% (i.e. $140,000 plus associated interest) to the United States and 50% (i.e. $140,000 plus associated interest) to the State.

23. Within 30 days after the Effective Date, the County shall pay the civil penalty due to the United States by FedWire Electronic Funds Transfer ("EFT") to the U.S. Department of Justice in accordance with written instructions to be provided to the County, following lodging of the Consent Decree, by the Financial Litigation Unit of the U.S. Attorney's Office for the District of Utah, 185 South State Street #300, Salt Lake City, Utah 84101, (801) 524-5682. At the time of payment, the County shall send a copy of the EFT authorization form and the EFT transaction record, together with a transmittal letter, which shall state that the payment is for the civil penalty owed pursuant to the Consent Decree in United States, *et al.* v. Salt Lake County, Utah, and shall reference the civil action number and DOJ case number 90-5-1-1-10984, to the United States in accordance with Section XIV (Notices); by email to acctsreceivable.cinwd@epa.gov; and by mail to:

EPA Cincinnati Finance Office
26 Martin Luther King Drive
Cincinnati, Ohio 45268

24. Within 6 months after the Effective Date, the County shall satisfy the civil penalty due to the State of Utah in one of the following ways:

a. By check in the amount of $140,000 (plus associated interest) made payable to the State of Utah and delivered or mailed to:

Delivery:

Utah Department of Environmental Quality
Division of Water Quality
195 North 1950 West, 3rd Floor
Salt Lake City, Utah

Mail:

Utah Department of Environmental Quality
Division of Water Quality
P.O. Box 144870
Salt Lake City, Utah 84114-4870

or

b. By entering into a written agreement with the State to (i) pay a portion of the civil penalty in cash and (ii) satisfy the balance of the penalty by performing one or more mitigation projects in accordance with R317-1-8.4, Utah Administrative Code. If the County and State are unable to agree upon a mitigation project or projects, are unable to agree upon the portion of the civil penalty to be reduced, or are otherwise unable to finalize a written agreement within 6 months after the Effective Date, the County shall pay the entire civil penalty (plus associated interest) to the State in accordance with the payment instructions in Paragraph 24.a.

25. The County shall not deduct any penalties paid under this Decree pursuant to this Section or Section VIII (Stipulated Penalties) in calculating its federal, State or local income tax.

VII. REPORTING REQUIREMENTS

26. The County shall submit the following reports:

a. After the lodging of this Consent Decree, the County shall submit to the United States and the State in accordance with the requirements of Section XIV (Notices), a periodic Semi-Annual Report within 45 days after the end of each half of the calendar year (January through June, and July through December). The Semi-Annual Report shall include the following items: the County's MS4 budget for the current fiscal year, to be included in the report due in February; the number of FTE currently maintained by the County for carrying our SWMP and MS4 Permit responsibilities, as specified in Paragraph 11; the County's annually updated inventory of industrial and commercial facilities as specified in Paragraph 17.a, showing changes made to the inventory since the previous update; the list of all field staff who satisfy the criteria in Paragraph 13.c and records documenting that all staff on the list have completed the training at least annually; records documenting that applicable staff have completed the training required by Paragraphs 14.e and 16.a; and once annually, all items required to be included in the annual report required by the MS4 Permit.

b. The report shall also include a description of any non-compliance with the requirements of this Consent Decree and 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 County violates, or has reason to believe that it may violate, any requirement of this Consent Decree, the County shall notify the United States and the State of such violation and its likely duration, in writing, within 10 days of the day the County 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 County shall so state in the report. The County 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 30 days of the day the County becomes aware of the cause of the violation. Nothing in this Section relieves the County of its obligation to provide the notice required by Section IX (Force Majeure).

27. The County shall post to its public website the following information and also notify EPA and UDWQ of the posting web address. The County 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 by EPA and UDWQ, whichever is later:

a. Finalized standard operating procedures the County has developed with other County departments, including but not limited to Parks and Recreation Operations, as required by Paragraph 13.b;

b. The construction site storm water control SOPs required by Paragraph 14.a and b.;

c. The inventory of municipal storm sewer outfalls, including location information, and all bi-annual updates to the inventory, as required by Paragraph 18.b.

28. Whenever any violation of this Consent Decree, the MS4 Permit, or any other event affecting the County's performance under this Decree, may pose an immediate threat to public health or welfare or the environment, the County shall notify EPA and the State orally or by electronic or facsimile transmission as soon as possible, but no later than 24 hours after the

County first knew of the violation or event. This procedure is in addition to the requirements set forth elsewhere in this Section.

29. All reports shall be submitted to the persons designated in Section XIV (Notices).

30. The County shall ensure that each report submitted under this Section is signed by an official of the submitting party and includes the following certification:

> 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 have no knowledge that the information submitted is other than 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 or similar notifications where compliance would be impractical.

31. The reporting requirements of this Consent Decree do not relieve the County of any reporting obligations required by the Clean Water Act or implementing regulations, or by any other federal, state, or local law, regulation, permit, or other requirement.

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

VIII. STIPULATED PENALTIES

33. The County 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 IX

(Force Majeure). 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.

34. Late Payment of Civil Penalty

If the County fails to pay the civil penalty required to be paid under Section VI (Civil Penalty) when due, the County shall pay a stipulated penalty of $1,000 per day for each day that the payment is late.

35. Compliance Requirements.

Consent Decree Violation	Stipulated Penalty
Failure to submit a revised SWMP document as required by Paragraph 9	$250 per day for the first 15 days of noncompliance; $500 per day from the 16th to 30th days of noncompliance; and $1,000 per day thereafter
Failure to implement the SWMP document as required by Paragraph 9	$250 per violation for the first through fifth occurrences; $500 per violation for the sixth through 10th occurrences; and $1,000 for each violation thereafter
Failure to maintain at least nine FTE, including at least one charged with overall management of the MS4 program, as required by Paragraph 11	$500 per day per missing FTE for the first 15 days of noncompliance; $1,000 per day per missing FTE from the 16th to 30th days of noncompliance; and $1,500 per day per missing FTE thereafter
Failure to finalize SOPs with other County departments as required by Paragraph 13.b	$100 per day per missing SOP for the first 15 days of noncompliance; $200 per day per missing SOP from the 16th to 30th days of noncompliance; and $500 per day per missing SOP thereafter
Failure to provide annual IDDE training in	$250 per person, up to a maximum of $3,000

accordance with the requirements of Paragraph 13.c, as determined by a lack of records documenting the delivery of IDDE training	per calendar year in which the County fails to complete the requirements of Paragraph 13.c
Failure to implement the procedures in the Pre-Construction SWPP Review SOP and/or Construction Site Inspection and Enforcement SOP as required by Paragraph 14.a	$250 per violation for the first through fifth occurrences; $500 per violation for the sixth through 10th occurrences; and $750 for each violation thereafter
Failure to complete a review of the construction site database, remove any sites that should be closed out, and ensure that all procedures are followed and documented relating to the close out of a site as required by Paragraph 14.b	$250 per day for the first 15 days of noncompliance; $500 per day from the 16th to 30th days of noncompliance; and $1,000 per day thereafter
Failure to Inspect, at least once every month, all active construction sites disturbing one acre or more or that are part of a common plan of development or sale as required by Paragraph 14.c	$250 per missed inspection
Failure to Inspect, at least twice per week, all active Priority Construction Sites as required by Paragraph 14.d	$250 per missed inspection
Failure to provide annual training to all staff whose job duties are related to implementing the construction storm water program, plan review, construction site inspections, and enforcement as required by Paragraph 14.e, as determined by a lack of records documenting the delivery of this training	$250 per person, up to a maximum of $3,000 per calendar year in which the County fails to complete the requirements of Paragraph 14.f
Failure to prepare and submit an inventory of all permanent (post-construction) storm water control structures at New Development and Redevelopment Sites as required by Paragraph 15.a	$100 per day for the first 15 days of noncompliance; $200 per day from the 16th to 30th days of noncompliance; and $300 per day thereafter
Failure to develop and submit a plan for the continued maintenance of storm water runoff controls at New Development and	$250 per day for the first 15 days of noncompliance; $500 per day from the 16th to 30th days of noncompliance; and $1,000 per

Redevelopment Sites as required by Paragraph 15.b	day thereafter
Failure to develop and enter letters of intent (LOI) with each County agency for the continued maintenance of County-owned storm water runoff controls as required by Paragraph 15.c	$100 per day per missing LOI for the first 15 days of noncompliance; $200 per day per missing LOI from the 16th to 30th days of noncompliance; and $500 per day per missing LOI thereafter
Failure to certify maintenance of records of post-construction program implementation or failing to identify records added to inventory as required by Paragraph 15.d	$100 per day for the first 15 days of noncompliance; $200 per day from the 16th to 30th days of noncompliance; and $300 per day thereafter
Failure to develop and submit a training program for preventing or reducing polluted runoff from municipal operations as required by Paragraph 16.a, as determined by a lack of records documenting the delivery of this training	$250 per day for the first 15 days of noncompliance; $500 per day from the 16th to 30th days of noncompliance; and $1,000 per day thereafter
Failure to develop and implement site-specific SWPPPs for all County-owned facilities as required by Paragraph 16.b	$100 per day per missing SWPPP for the first 15 days of noncompliance; $200 per day per missing SWPPP from the 16th to 30th days of noncompliance; and $500 per day per missing SWPPP thereafter
Failure to prepare or update an inventory of all industrial and commercial sites as required by Paragraph 17.a	$100 per day for the first 15 days of noncompliance; $200 per day from the 16th to 30th days of noncompliance; and $300 per day thereafter
Failure to develop and document procedures for identifying priority industrial and commercial sites as required by Paragraph 17.b	$250 per day for the first 15 days of noncompliance; $500 per day from the 16th to 30th days of noncompliance; and $1,000 per day thereafter
Failure to inspect at least 20% of all industrial and commercial sites each calendar year as required by Paragraph 17.d	$1,000 per missed inspection
Failure to inspect priority facilities as required by Paragraph 17.e	$1,000 per missed inspection

Failure to require the use of storm water BMPs and control measures at all industrial and commercial sites as required by Paragraph 17.f	$500 per violation for the first through fifth occurrences; $1,000 per violation for the sixth through 10th occurrences; and $2,000 for each violation thereafter
Failure to operate and maintain the four monitoring locations as required by Paragraph 18.a	$250 per day per monitoring location for the first 15 days of noncompliance; $500 per day per monitoring location thereafter
Failure to update outfall inventory as required by Paragraph 18.b	$2,500 for the first occurrence; $5,000 each for the second and third occurrences; $10,000 for each occurrence thereafter

36. Reporting Requirements. The following stipulated penalties shall accrue per violation per day for each violation of the reporting requirements of Section VII (Reporting Requirements):

Penalty Per Violation Per Day	Period of Noncompliance
$250	1st through 14th Day
$1,000	15th through 30th Day
$3,000	31st Day and beyond

37. 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.

38. The County shall pay any stipulated penalty within 30 days of receiving the United States' written demand. Stipulated penalties shall be paid 50% to the United States and 50% to the State of Utah in the manner set forth and with the confirmation notices required by

Paragraphs 23 and 24.a respectively, 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.

39. The United States may in the unreviewable exercise of its discretion, reduce or waive stipulated penalties otherwise due it under this Consent Decree.

40. Stipulated penalties shall continue to accrue as provided in Paragraph 37, 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 that is not appealed to the Court, the County shall pay accrued penalties 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 decision or order.

b. If the dispute is appealed to the Court and the United States prevails in whole or in part, the County 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 c, below.

41. If any Party appeals the District Court's decision, the County shall pay all accrued penalties determined to be owing, together with interest, within 15 days of receiving the final appellate court decision.

42. If the County fails to pay stipulated penalties according to the terms of this Consent Decree, the County shall be liable for interest on such penalties, as provided for in 28 U.S.C. § 1961, accruing as of the date payment became due. Nothing in this Paragraph shall be construed to limit the United States and the State from seeking any remedy otherwise provided by law for the County's failure to pay any stipulated penalties.

43. Subject to the provisions of Section XII (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 for the County's violation of this Consent Decree or applicable law. Where a violation of this Consent Decree is also a violation of the Clean Water Act or the MS4 Permit, the County shall be allowed a credit for any stipulated penalties paid against any statutory penalties imposed for such violation.

IX. FORCE MAJEURE

44. "Force majeure," for purposes of this Consent Decree, means any event arising from causes beyond the control of the County, of any entity controlled by the County, or of the County's contractors that delays or prevents the performance of any obligation under this Consent Decree despite the County's best efforts to fulfill the obligation. The requirement that the County 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 County's financial inability to perform any obligation under this Consent Decree.

45. 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 County shall provide notice orally or by electronic transmission to EPA and UDWQ, within 72 hours of when the County first knew that the event might cause a delay. Within seven days thereafter, the County shall provide in writing to EPA and UDWQ 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 County'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 County, such event may cause or contribute to an endangerment to public health or welfare, or the environment. The County 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 County 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 County shall be deemed to know of any circumstance of which the County, any entity controlled by the County, or the County's contractors knew or should have known.

46. If EPA, after a reasonable opportunity for review and comment by UDWQ, 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, after a reasonable opportunity for review and comment by UDWQ, 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 County in writing of the length of the extension, if any, for performance of the obligations affected by the force majeure event.

47. If EPA, after a reasonable opportunity for review and comment by UDWQ, does not agree that the delay or anticipated delay has been or will be caused by a force majeure event, EPA will notify the County in writing of its decision.

48. If the County elects to invoke the dispute resolution procedures set forth in Section X (Dispute Resolution), it shall do so no later than 15 days after receipt of EPA's notice. In any such proceeding, the County 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 County complied with the requirements of Paragraphs 43 and 44, above. If the County carries this burden, the delay at issue shall be deemed not to be a violation by the County of the affected obligation of this Consent Decree identified to EPA and the Court.

X. DISPUTE RESOLUTION

49. 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 County's failure to seek resolution of a dispute under this Section shall preclude the County from raising any such issue as a defense to an action by the United States or the State to enforce any obligation of the County arising under this Decree.

50. Informal Dispute Resolution. Any dispute subject to Dispute Resolution under this Consent Decree shall first be the subject of informal negotiations. The dispute shall be

considered to have arisen when the County sends the United States and the State a written Notice of Dispute. Such Notice of Dispute shall state clearly the matter in dispute. The period of informal negotiations shall not exceed 20 days from the date the dispute arises, unless that period is modified by written agreement. If the Parties cannot resolve a dispute by informal negotiations, then the position advanced by the United States, after consultation with the State, shall be considered binding unless, within 30 days after the conclusion of the informal negotiation period, the County invokes formal dispute resolution procedures as set forth below.

51. Formal Dispute Resolution. The County shall invoke formal dispute resolution procedures, within the time period provided in the preceding Paragraph, by serving on the United States and the State a written Statement of Position regarding the matter in dispute. The Statement of Position shall include, but need not be limited to, any factual data, analysis, or opinion supporting the County's position and any supporting documentation relied upon by the County.

52. The United States, after consultation with the State, shall serve its Statement of Position within 45 days of receipt of the County's Statement of Position. The United States' Statement of Position shall include, but need not be limited to, any factual data, analysis, or opinion supporting that position and any supporting documentation relied upon by the United States. The United States' Statement of Position shall be binding on the County, unless the County files a motion for judicial review of the dispute in accordance with the following Paragraph.

53. The County may seek judicial review of the dispute by filing with the Court and serving on the United States, in accordance with Section XIV (Notices), a motion requesting

judicial resolution of the dispute. The motion must be filed within 14 days of receipt of the United States' Statement of Position pursuant to the preceding Paragraph. The motion shall contain a written statement of the County'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.

54. The United States shall respond to the County's motion within the time period allowed by the Local Rules of this Court. The County may file a reply memorandum, to the extent permitted by the Local Rules.

55. Standard of Review

a. Disputes Concerning Matters Accorded Record Review. Except as otherwise provided in this Consent Decree, in any dispute pertaining to the adequacy or appropriateness of plans, procedures to implement plans, schedules or any other items requiring approval by EPA under this Consent Decree; the adequacy of the performance of work undertaken pursuant to this Consent Decree; and all other disputes that are accorded review on the administrative record under applicable principles of administrative law, the County shall have the burden of demonstrating, based on the administrative record, that the position of the United States is arbitrary and capricious or otherwise not in accordance with law.

b. Other Disputes. Except as otherwise provided in this Consent Decree, in any other dispute, the County shall bear the burden of demonstrating that its position complies with this Consent Decree and better furthers the objectives of the Consent Decree.

56. The invocation of dispute resolution procedures under this Section shall not, by itself, extend, postpone, or affect in any way any obligation of the County under this Consent Decree, unless and until final resolution of the dispute so provides. Stipulated penalties with respect to the disputed matter shall continue to accrue from the first day of noncompliance, but payment shall be stayed pending resolution of the dispute as provided in Paragraph 40. If the County does not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section VIII (Stipulated Penalties).

XI. INFORMATION COLLECTION AND RETENTION

57. The United States, the State, and their representatives, including attorneys, contractors, and consultants, shall have the right of entry into any facility covered by this Consent Decree, at all reasonable times, upon presentation of credentials, to:

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

b. verify any data or information submitted to the United States or the State in accordance with the terms of this Consent Decree;

c. obtain samples and, upon request, splits of any samples taken by the County or its representatives, contractors, or consultants;

d. obtain documentary evidence, including photographs and similar data; and

e. assess the County's compliance with this Consent Decree.

58. Upon request, the County shall provide EPA, the State, or their authorized representatives splits of any samples taken by the County. Upon request, EPA and the State shall provide the County splits of any samples taken by EPA or the State.

59. Until five years after the termination of this Consent Decree, the County 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 in any manner to the County's performance of its obligations under this Consent Decree. This information-retention requirement shall apply regardless of any contrary corporate or institutional policies or procedures. At any time during this information-retention period, upon request by the United States or the State, the County shall provide copies of any documents, records, or other information required to be maintained under this Paragraph.

60. At the conclusion of the information-retention period provided in the preceding Paragraph, the County shall notify the United States and the State 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 the State, the County shall deliver any such documents, records, or other information to EPA or the State. The County may assert that certain documents, records, or other information is privileged under the attorney-client privilege or any other privilege recognized by federal law. If the County 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 and recipient; (5) a description of the subject of the document, record, or information; and (6) the privilege asserted by the County.

However, no documents, records, or other information created or generated pursuant to the requirements of this Consent Decree shall be withheld on grounds of privilege.

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

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

XII. EFFECT OF SETTLEMENT/RESERVATION OF RIGHTS

63. This Consent Decree resolves the civil claims of the United States and the State for the violations alleged in the Complaint filed in this action through the date of lodging.

64. The United States and the State reserve all legal and equitable remedies available to enforce the provisions of this Consent Decree, except as expressly stated in Paragraph 62. This Consent Decree shall not be construed to limit the rights of the United States or the State to obtain penalties or injunctive relief under the Act or implementing regulations, or under other federal or state laws, regulations, or permit conditions, except as expressly specified in Paragraph 62.

65. The United States and the State further reserve all legal and equitable remedies to address any imminent and substantial endangerment to public health or welfare or the environment arising at, or posed by, the County's MS4, whether related to the violations addressed in this Consent Decree or otherwise.

66. In any subsequent administrative or judicial proceeding initiated by the United States or the State for injunctive relief, civil penalties, or other appropriate relief relating to the County's MS4, the County shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States or the State in the subsequent proceeding were or should have been brought in the instant case, except with respect to claims that have been specifically resolved pursuant to Paragraph 62 of this Section.

67. This Consent Decree is not a permit, or a modification of any permit, under any federal, State, or local laws or regulations. The County is responsible for achieving and maintaining complete compliance with all applicable federal, State, and local laws, regulations, and permits; and the County'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 and the State do not, by their consent to the entry of this Consent Decree, warrant or aver in any manner that the County's compliance with any aspect of this Consent Decree will result in compliance with provisions of the Act, 33 U.S.C. § 1251 *et seq.*, or with any other provisions of federal, State, or local laws, regulations, or permits.

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

69. 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.

70. Nothing in the Consent Decree limits the rights or defenses available under Section 309(e) of the CWA, 33 U.S.C. Section 1319(e).

XIII. COSTS

71. The Parties 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 County.

XIV. NOTICES

72. Unless otherwise specified in this Consent Decree, whenever notifications, submissions, or communications are required by this Consent Decree, they shall be made in writing via electronic means and addressed as follows. To proceed electronically, the County shall notify all Parties of the mechanism by which notifications, submissions, and communications will be conveyed and be made accessible to all Parties.

To the United States Department of Justice:

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
Box 7611 Ben Franklin Station
Washington, D.C. 20044-7611
Re: DOJ No. 90-5-1-1-10984

To EPA:

Chief, NPDES Enforcement Unit
U.S. Environmental Protection Agency, Region 8
1595 Wynkoop Street, 8ENF-W-NP
Denver, Colorado 80202
Phone: (303) 312-6463
Email: campbell.gwen@epa.gov

with a copy to:

Wendy I. Silver
U.S Environmental Protection Agency, Region 8
1595 Wynkoop Street, 8ENF-L
Denver, Colorado 80202
Phone: (303) 312-6637
Email: silver.wendy@epa.gov

To the State:

Walter L. Baker, Director
Utah Division of Water Quality
195 North 1950 West
P.O. Box 144870
Salt Lake City, Utah 84114-4870

with a copy to:

Sandra K. Allen, Assistant Attorney General
Utah Attorney General's Office
195 North 1950 West, 2nd Floor
P.O. Box 140873
Salt Lake City, Utah 84114-0873

To Defendant:

Salt Lake County Mayor
2001 South State, N2-100
Salt Lake City, Utah 84190

Salt Lake County District Attorney
2001 South State, S3-600
Salt Lake City, Utah 84190

73. Any Party may, by written notice to the other Parties, change its designated notice recipient or notice address provided above.

74. Notices submitted pursuant to this Section shall be deemed submitted upon mailing, unless otherwise provided in this Consent Decree or by mutual agreement of the Parties in writing.

XV. EFFECTIVE DATE

75. The Effective Date of this Consent Decree shall be the date upon which this Consent Decree is entered by the Court or a motion to enter the Consent Decree is granted, whichever occurs first, as recorded on the Court's docket; provided, however, that the County agrees that it shall be bound to perform duties scheduled to occur prior to the Effective Date. In the event the United States withdraws or withholds consent to this Consent Decree before entry, or the Court declines to enter the Consent Decree, then the preceding requirement to perform duties scheduled to occur before the Effective Date shall terminate.

XVI. RETENTION OF JURISDICTION

The Court shall retain jurisdiction over this case until termination of this Consent Decree, for the purpose of resolving disputes arising under this Decree or entering orders

modifying this Decree, pursuant to Sections X (Dispute Resolution) and XVII (Modification), or effectuating or enforcing compliance with the terms of this Decree.

XVII. MODIFICATION

76. The terms of this Consent Decree, including any attached appendices, may be modified only by a subsequent written agreement signed by all the Parties. Where the modification constitutes a material change to this Decree, it shall be effective only upon approval by the Court.

77. Any disputes concerning modification of this Decree shall be resolved pursuant to Section X (Dispute Resolution), provided, however, that, instead of the burden of proof provided by Paragraph 54, 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).

XVIII. TERMINATION

78. No earlier than three years after the Effective Date, if (i) the County is in compliance with the requirements of Section V (Compliance Requirements), (ii) for the 12-month period preceding the County's request for termination, the County Maintained compliance with the staffing requirements of Paragraph 11 (Personnel) and complied with the Inspection requirements of Paragraphs 14.c and 14.d (Construction Site Storm Water Control) and 17.d, and 17.e (Industrial and High Risk Runoff), and (iii) the County has paid the civil penalty and any accrued stipulated penalties as required by this Consent Decree, the County may serve upon the United States and the State a Request for Termination, stating that the County has satisfied those requirements, together with all necessary supporting documentation.

79. Following receipt by the United States and the State of the County's Request for Termination, the Parties shall confer informally concerning the Request and any disagreement that the Parties may have as to whether the County has satisfactorily complied with the requirements for termination of this Consent Decree. The period of informal discussions shall not exceed 45 days from the date of the County's Request for Termination, unless that period is extended by written agreement. If the United States, after consultation with the State, agrees that the Decree may be terminated, the Parties shall submit, for the Court's approval, a joint stipulation terminating the Decree.

80. If the United States, after consultation with the State, does not agree that the Decree may be terminated, the County may file and serve a motion seeking termination of the Consent Decree; provided, however, that the County shall not file or serve such a motion until 30 days after the conclusion of the period or informal consultation provided by Paragraph 78.

XIX. PUBLIC PARTICIPATION

81. This Consent Decree shall be lodged with the Court for a period of not less than 30 days for public notice and comment in accordance with 28 C.F.R. § 50.7. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts or considerations indicating that the Consent Decree is inappropriate, improper, or inadequate. This Consent Decree shall also be submitted to the Utah Water Quality Board to review and approve or disapprove in accordance with Subsection 19-5-104(3)(h) of the Utah Code Ann. The County consents to entry of this Consent Decree without further notice and agrees not to withdraw from or oppose entry of this Consent Decree by the Court or to challenge

any provision of the Decree, unless the United States or the State has notified the County in writing that it no longer supports entry of the Decree.

XX. SIGNATORIES/SERVICE

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

83. This Consent Decree may be signed in counterparts, and its validity shall not be challenged on that basis. The County agrees to accept service of process by mail with respect to all matters arising under or relating to this Consent Decree and to waive the formal service requirements set forth in Rules 4 and 5 of the Federal Rules of Civil Procedure and any applicable Local Rules of this Court including, but not limited to, service of a summons.

XXI. INTEGRATION/HEADINGS

84. This Consent Decree constitutes the final, complete, and exclusive agreement and understanding among the Parties with respect to the settlement embodied in the Decree and supercedes all prior agreements and understandings, whether oral or written, concerning the settlement embodied herein. Other than deliverables that are subsequently submitted and approved pursuant to this Decree, no other document, nor any representation, inducement, agreement, understanding, or promise, constitutes any part of this Decree or the settlement it represents, nor shall it be used in construing the terms of this Decree.

85. Headings to the Sections and Paragraphs of this Consent Decree are provided for convenience and do not affect the meaning or interpretation of the provisions of this Consent Decree.

XXII. FINAL JUDGMENT

86. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute a final judgment of the Court as to the United States, the State, and the County.

SO ORDERED this ____ day of _____, 2016.

_____
UNITED STATES DISTRICT JUDGE
District of Utah

FOR PLAINTIFF UNITED STATES OF AMERICA:

Date: _____

JOHN C. CRUDEN
Assistant Attorney General
Environment and Natural Resources Division
U.S. Department of Justice

Date: _____

MARK C. ELMER
Senior Counsel
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
999 18th Street, Suite 370
Denver, CO 80202
Phone: (303) 844-1352
Mark.Elmer@usdoj.gov

FOR THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY:

Date: 11/20/15

MARK POLLINS
Director, Water Enforcement Division
Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency

FOR THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY REGION 8:

Date: 12/16/15

SUZANNE J. BOHAN
Assistant Regional Administrator
Office of Enforcement, Compliance and
Environmental Justice
Region 8
U.S. Environmental Protection Agency
1595 Wynkoop Street
Denver, CO 80202

Of Counsel:

WENDY SILVER
Senior Enforcement Attorney
Legal Enforcement Program
Office of Enforcement, Compliance and
Environmental Justice
Region 8
U.S. Environmental Protection Agency
1595 Wynkoop Street
Denver, CO 80202

FOR PLAINTIFF STATE OF UTAH:

Date: _____

_____
WALTER L. BAKER
Director
Utah Division of Water Quality
Utah Department of Environmental Quality

Approved as to form:

Date: _____

_____
SANDRA K. ALLEN
Assistant Attorney General
Utah Office of Attorney General, Environment
P.O. Box 140873
Salt Lake City, UT 84114-0873
Phone: (801) 536-4122
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FOR DEFENDANT SALT LAKE COUNTY, UTAH:

Date: 12/8/15

BEN McADAMS
Mayor, Salt Lake County Utah

APPROVED AS TO FORM
District Attorney's Office

By: _____
Deputy District Attorney

Adam Miller
Print Name

Date: 2 Dec 2015