

STATE OF ALABAMA)

JEFFERSON COUNTY)



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Shelby Cnty Judge of Probate, AL
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10/14/2020 3:56 PM Doc: AGREE
Judge of Probate
Jefferson County, AL.

Clerk: PEEPLESC

UNIFICATION AGREEMENT

THIS AGREEMENT is between Jefferson County, Alabama (hereinafter the "County") and the City located within the County, identified below (hereinafter the "City").

RECITAL

The County is a defendant in a lawsuit styled Kipp, et al. v. Jefferson County, Alabama, Federal District Court Case No. CV 93-G-2492-S, and United States of America v. Jefferson County, Federal District Court Case No. CV 94-G-2497-S, in which the County has been found to be in violation of the federal Clean Water Act (hereinafter the "Act"). The violations of the Act concern unauthorized discharges of sewage into the receiving streams in violation of the County's National Pollutant Discharge Elimination System permits. These discharges occur at bypass facilities, sewer manholes and from broken and deteriorated sewer pipe connections and other unintended points in the collection system. The discharges result primarily during periods of high rainfall which produce water infiltration and inflow (hereinafter "I&I") into the sewer collection system at the broken and deteriorated points. This results in excess water in the system which greatly exceeds the capacities of the County's wastewater treatment plants (hereinafter "WWTP's"). In order to protect the plants from flooding and washout of their treatment capacity, the system bypass facilities divert some excess water around the affected WWTP's. Following the finding of violation of the Act the District Court ordered the parties to develop a remedy that would eliminate or greatly reduce the unpermitted discharges from the collection system. The parties developed a remedy for incorporation into a Consent Decree. The remedy requires a renovation and restoration of the sewage collection system to reduce the I&I. The sewage collection system is mainly located within the cities in the County and is owned, operated and maintained by the respective cities. The Clean Water Act and the Court would require the County to in turn require each city to investigate and discover the location and extent of the broken and deteriorated collection system and perform the necessary restoration and renovation, all within court-established deadlines. The undertaking of this massive public works simultaneously by the individual cities and the County would result in chaos and disruption of public services and enormous extra costs and could not reasonably be expected to be completed within legally mandated time limits. The cities and the County have concurred and agreed that a unification of the sanitary sewer collection and treatment system under the County will benefit all parties by allowing for orderly, efficient and timely fulfillment of the mandated public works thereby greatly diminishing the disruption of public services and inconveniences as well as enhancing public cost savings.

WHEREFORE, IN CONSIDERATION OF THE PREMISES and in further consideration of the mutual benefits to the parties and the citizens of Jefferson County, the receipt and sufficiency of which as consideration is hereby acknowledged, and upon the determination by the City and the County that it is in the best interest of the City and the County and the citizens thereof, the City hereby agrees to convey to the County and the County hereby agrees to accept from the City, the City's sanitary sewer collection system and facilities in accordance with the following terms and conditions.

1. The City hereby agrees:

(a) To convey to the County without charge the ownership of the City's sanitary sewer system. (The date of conveyance is set out at the end of this Agreement.) The conveyance shall include the sanitary sewers, manholes, sewage pump stations, force mains and all other facilities whatsoever which form the City's sewer system and which collects and convey sewage to the County trunk facilities and treatment plants (hereinafter "sewer facilities"). The form of conveyance shall operate to transfer to the County all right, title and interest of the City in the sewer facilities conveyed. Provided, the conveyance shall not operate to extinguish or diminish any obligation, financial or otherwise, owed to the City by reason of any promissory note or mortgage or contract in payment of sewer construction for individuals or neighborhoods, whether by assessment or by contract. The conveyance of sewer facilities shall be free and clear of any liens or encumbrances whatsoever. If not free and clear, upon request by the County, the City shall, at its cost and expense, immediately take all steps as may be necessary to remove any such liens or encumbrances. This obligation shall survive closing, be continuous, and run with the land as to any such liens or encumbrances existing at the time of conveyance or attaching at any time thereafter by reason of the City's former ownership of the sewer facilities. To the extent allowed by law, the City hereby agrees to indemnify, hold harmless and defend the County against any claim, suit or judgment made or asserted or holding that any individual or entity whatsoever has any lien or encumbrance or legal interest whatsoever in any of such sewer facilities.

(b) To convey to the County, without charge, ownership of all existing sanitary sewer easements, rights of way, licenses or any other legal interest in land (hereinafter "sewer easements") upon or in which any of the sewer facilities are located. (The date of conveyance is set out at the end of the Agreement.) The form of conveyance shall be the highest level of property conveyance owned or held by the City. Provided, sewage pump stations and any other sewer facilities located on the surface shall be conveyed to the County by fee simple title and shall include right of access sufficient for operation, maintenance and construction work thereon. The conveyance of sewer easements shall be free and clear of any liens or

encumbrances and affirmative promises of obligations whatsoever, unless expressly agreed to by the County. If the City is unable to fulfill this conveyance requirement at closing, the obligation shall survive closing and be continuous until fulfilled. Upon request by the County, the City shall at its cost and expense immediately take all steps as may be necessary to fulfill the conveyance requirement. This shall include the acquisition by purchase or condemnation, if required, of the required sewer easements including fee simple title where required. If it is determined that the City has no standing or power of condemnation, the County may condemn the required easement at the expense of the City. And further, the City shall take legal action including suits as may be necessary to remove liens or encumbrances existing at the time of conveyance or attaching at anytime thereafter by reason of the City's former ownership of the sewer system. To the extent allowed by law, the City hereby agrees to indemnify, hold harmless and defend the County against any claim, suit, or judgment made or asserted, or holding that the sewer system or sewer easement or sewer facility is encroaching or otherwise existing in trespass or other violation of another's property rights; and against any claim, suit, or judgment holding that any individual or entity whatsoever has any lien or encumbrance or legal interest whatsoever in any of such sewer facilities.

(c) To convey to the County, without charge, any such sewer facilities and sewer easements for sewer projects which are under construction or as may be constructed in the future. Such sewer easements include those easements, rights of way, licenses, as are reflected on subdivision plans, development plans and any form of plan, contract or commitment whatsoever approved or filed or otherwise received by the City under its ordinances, rules and regulations relating to construction and development of improvements within the City. The form of conveyance shall operate to transfer to the County all right, title and interest of the City in the sewer facilities and easements conveyed. With respect to those sewer easements reflected on plans as "utilities" or other terminology indicating multiple uses for the easement, the conveyance to the County may be in joint ownership with the City in order to accommodate other "utilities" in addition to sewer facilities, provided, the sewer use shall be predominant and have priority over all other "utilities" that are installed after the sewer installation.

(d) To deliver to the County, without charge, the original or legible copies of all documents, maps, drawings (including electronic format) plans, specifications and any other document whatsoever which shows the location and configuration of the sewer facilities and sewer easements conveyed to the County. The foregoing also shall include as-built drawings, O & M manuals, shop drawings, operational logs, maintenance records and other documents requested by the County. If requested by the County, the City will provide, within reason, personnel to assist the County to locate sewer facilities where not shown, or incorrectly shown on maps provided to the County.

(e) In the event the City elects to dispose of sewer equipment or supplies, give the County a first right of refusal to obtain without charge from the City all parts, supplies, inventory, special tools, machines, equipment and items whatsoever owned by the City whether in actual use or storage, used or intended to be used in the construction, operation and maintenance of sewer facilities.

(f) To waive all permitting and inspection fees for all future construction carried out by or on behalf of the County on all sewer facilities within the City, whether such facilities were previously owned by the City or the County. This waiver includes all construction by the County or its authorized contractors carried out on treatment plants, pump stations or any other sewer or sewer appurtenance. (The foregoing does not change any legal requirement of the County or its contractors to obtain the applicable permits.)

2. The City hereby acknowledges and agrees that any sewer facilities, sewer lines or form of sewage conveyances whatsoever which do not connect directly to County owned sewer trunk lines are not conveyed by this agreement and are expressly excluded from this agreement and will not be the responsibility of the County. The foregoing includes any "package plant," discharge of sewage to any storm water pipe or facility; drain, ditch or form of conveyance whatsoever that is not lawfully connected to a County trunk line. Further, the City hereby agrees to immediately disconnect and remove from the sewer system without charge to the County, any storm water pipe or facility, downspout, drain, ditch or form of conveyance whatsoever that is not designed or intended to receive sewage as a part of the sanitary sewer system. This obligation shall be continuous and effective whenever any such connection may be discovered and notice is given to the City to disconnect and remove it. Provided, this obligation is limited to work within the public right of way.

3. The City hereby acknowledges and agrees that any contract, conveyance, agreement or commitment whatsoever by the City to construct, operate or maintain in any way whatsoever any private sewer systems located within apartment complexes, homeowners associations, condominiums, townhouses, gated communities, shopping centers, industrial developments or any other form of organization or entity whatsoever, which provides for any form of City responsibility or duty to be performed on private property or any property not owned by the City, is hereby expressly excluded from this agreement and will not be the responsibility of the County. Provided, the City may submit to the County for consideration any specific situation which is or may be asserted to be included in the foregoing exclusion. Any agreement by the County with respect to any such situation must be separately approved in writing by the parties.

4. Effective upon the date of execution of this agreement the City hereby agrees that all sewer construction projects of the City that will connect to the County sewer system

which have not been put out for bid shall be constructed in accordance with minimum standards included in the County ordinances, rules and regulations. The City shall submit its new sewer construction drawings, plans and specifications to the County for review and approval prior to the City putting them out for bid. Following award, the sewer construction will be inspected by the County for compliance with County requirements. The City will include in all sewer construction contracts the requirement on the contractor to construct all sewer facilities in accordance with minimum standards included in the County ordinances, rules and regulations and that the construction shall be inspected and approved by the County before such sewer construction projects are connected to the sewer system. The City will forward to the County, prior to allowing any connection to the sewer system (unless otherwise authorized by the County), one full set of surveyed record drawings ("As-builts"). Record drawings shall be signed and dated by a representative of the City. The County shall have no legal responsibility or liability whatsoever for any injury including death, or property damage whatsoever, in any way arising out of the City's sewer construction projects. To the extent allowed by law, the City hereby agrees to defend, hold harmless and indemnify the County against any claims, suits or judgments arising out of such City sewer construction projects.

5. Effective upon the date of execution of this agreement, the City hereby agrees to require all private developers, builders and others to submit all their sewer construction plans to the County for review and approval prior to the City's approval of such development plans. The foregoing requirement includes any form of construction or work that may impact, conflict with or interfere with any sewer facility. The County will require the private developer or builder to provide one full set of surveyed record drawings ("As-built") prior to County approval of the connection to the County sewer system. Such record drawings must be signed and dated by a representative of the developer or builder.

6. Effective upon the date of execution of this agreement, the City agrees to require all plumbers, contractors, property owners and others intending to connect any building sewer lines, house sewer lines and any other sewer lines and laterals to the County sewer system to first obtain County approval and inspection for all such taps and connections. Further, the City shall require such applicants to obtain impact connection permits from the County and to perform all work in accordance with County standards and specifications.

7. Effective upon the date of execution, to the extent allowed by law, the city hereby agrees to:

(a) Join the County in requiring sewer customers in the City to repair damaged or defective sewer service connection lines ("service laterals"), or portions thereof, where deemed necessary by the County, which are located on private property. Such repairs must be made in accordance with County specifications. Enforcement of such requirements for repairs may cause the County and the City, to suspend sewer and water service to sewer customers in accordance with Alabama law, until such repairs are made to the satisfaction of the County.



(b) Join and assist the County in establishing and enforcing in the City design and construction standards (including materials of construction) for future service laterals or portions thereof installed on private property.

8. Effective upon the date of execution of this agreement, the City hereby agrees that it will not issue or otherwise approve the issuance of any form of certificate of occupancy or use of any new building, development or improvement whatsoever until the County has inspected and approved the sewer construction all in accordance with County ordinances, rules and regulations and this agreement. Provided, the City shall immediately provide the County with a list of all projects already permitted and under construction, and provide the County with reasonable opportunity to perform inspection for satisfactory workmanship before the City approves the sewer installation. Provided, such inspection shall be for compliance with standards in effect at the time the project was permitted.

9. Effective upon the date of execution of this agreement, the City hereby agrees to assist and join the County as a co-party in any legal action that may be required or result from the County's enforcement of its ordinances, rules and regulations and this agreement with respect to property located within the City's boundaries but outside of Jefferson County.

10. Effective upon the date of execution of this agreement, and to the extent allowed by law, the City hereby agrees to hold harmless and indemnify the County, its elected officials and employees from and against any claims, suits and judgments arising out of any injury to any person, including death, and damage to property which arises out of any event or occurrence occurring before the execution of this agreement and occurring between the execution of this agreement and the date upon which the County accepts the portion of the sewer system or facility which is involved in the occurrence.

11. The City hereby agrees to remain responsible for and to pay all costs of operating and maintaining the sewer system and sewer facilities through the date of conveyance as set out below. This responsibility includes (a) payment of all utility charges for electric power, gas and water; (b) the City shall remain responsible for removal of blockages, repair of breaks and leaks and resulting cleanup and shall resolve any claims for any injury or death resulting from such blockages, breaks or leaks; (c) the City shall remain responsible for the assessment of any fines or penalties by any legal authority including the Environmental Protection Agency and the Alabama Department of Environmental Management.

12. The County hereby agrees:

(a) To accept from the City the conveyance of the City's sanitary sewer system including the sewer facilities and sewer easements in accordance with the provisions of this Agreement.



(b) To use its best efforts to carry out the County's inspection, review and approval functions as provided for in this Agreement.

(c) To operate the sanitary sewer system in accordance with applicable federal and state laws and regulations and the Consent Decree and orders of the Court identified in the RECITAL, above.

(d) To review all new sewer construction plans submitted for such review by the City, private developers, builders and others as expeditiously as possible.

(e) To perform all necessary inspections as expeditiously as possible.

13. The date of conveyance to the County of the City's sanitary sewer system as set out in Paragraph 1, above, is ~~November 30, 1997~~ March 1, 1998.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized representatives, this 15 day of April, ~~1997~~ 1998.

JEFFERSON COUNTY, ALABAMA

By Mary M. Buckelew
Mary M. Buckelew, President
Jefferson County Commission

CITY OF Hoover

By Frank S. Skinner, Jr.
Its: Frank S. Skinner, Jr.
Mayor

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