

Office of the Mayor  
Chokwe Lumumba, Mayor



219 South President Street  
Post Office Box 17  
Jackson, Mississippi 39205-0017  
Telephone: 601-960-1084  
Facsimile: 601-960-2193

Chief, Environmental Enforcement Section  
Environment and National Resources Division  
U.S. Department of Justice  
Box 7611 Ben Franklin Station  
Washington, D.C. 20044-7611  
Re: DOJ No. 90-5-1-1-09841

Brad Ammons  
Environmental Engineer  
Clean Water Enforcement Branch  
Municipal & Industrial Enforcement Section  
U.S. EPA Region 4  
61 Forsyth St., SW  
Atlanta, GA 30303

Karl Fingerhood  
Environmental Enforcement Section  
U.S. Department of Justice  
Box 7611 Ben Franklin Station  
Washington, D.C. 20044-7611

September 30, 2013

RE: City of Jackson  
EPA Consent Decree  
1<sup>st</sup> Semi-Annual Report, March – August 2013 and Sewershed Prioritization Work Plan

Dear Gentlemen,

Enclosed please find the Semi-Annual Report for the period of March through August 2013. The report was developed and submitted by the City in accordance with the EPA Consent Decree dated March 1, 2013 and your correspondence of May 31, 2013. Also enclosed is Sewershed Prioritization Work Plan prepared pursuant to the Consent Decree.

Finally, enclosed is an executed copy of the Supplemental Environmental Project Escrow Agreement and the Account Statement showing the first deposit in the amount of \$175,000.00 made on August 30, 2013.

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 evaluated the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering such information, the information submitted is, to the best of my knowledge and belief, true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

Sincerely,

Chokwe Lumumba  
Mayor

cc: Les Herrington, P.E., Mississippi Department of Environmental Quality  
Pieter Teeuwissen, City Attorney  
Dan Gaillet, P.E., Director, Department of Public Works  
Public Depository, Eudora Welty Public Library

ESCROW AGREEMENT  
FOR CITY OF JACKSON, MISSISSIPPI  
SUPPLEMENTAL ENVIRONMENTAL PROJECT

THIS ESCROW AGREEMENT (the "Agreement") is made this 30<sup>th</sup> day of August, 2013, by and among the City of Jackson, a municipal corporation, ("City"), and Trustmark National Bank ("the Escrow Agent"):

WHEREAS, CITY and the United States Environmental Protection Agency ("EPA") are signatories to that certain Consent Decree, entered by the United States District Court, Southern District of Mississippi, on or about March 1, 2013, in the matter styled "United States, et al. vs. City of Jackson, Mississippi, Civil Action No. 3:12-cv-790 TSL-MTP";

WHEREAS, the Consent Decree requires CITY to perform a Supplemental Environmental Project ("SEP") in accordance with the provisions of Section VIII of the Consent Decree;

WHEREAS, the Consent Decree requires CITY to deposit the sum of \$875,000.00 in an interest-bearing escrow account to be held for the benefit of the United States for purposes of performing and completing the SEP;

WHEREAS, funds for the SEP placed in the escrow account will be used by CITY to pay plumbers/contractors ("Plumbers") for the repair or replacement of defective residential Private Laterals or removal of illicit connections on private residential property ("Services");

WHEREAS, CITY has selected Trustmark National Bank as "Escrow Agent;" and

WHEREAS, the Escrow Agent may distribute escrow account funds to CITY upon presentation of documentation that funds are needed to pay Plumbers for Services pursuant to the terms of the Consent Decree and SEP.

NOW, THEREFORE, for good and valuable consideration, the delivery and receipt of which is hereby acknowledged, CITY and Escrow Agent hereby agree as follows:

1. Escrow Agent. Escrow Agent shall be Trustmark National Bank, acting through Sheila Johnson, one of its officers, or such other persons as may be designated by Bank. Escrow Agent hereby agrees to act as an escrow agent and to hold, safeguard and disburse the Escrow Funds (defined in subparagraph 2(b) below) pursuant to the terms and conditions hereof.

2. Establishment of Escrow Accounts.

(a) Escrow Agent shall establish an escrow account ("SEP Escrow Account"). The SEP Escrow Account shall be an interest-bearing account, earning non-taxable interest at a commercially reasonable rate for non-taxable investments, in a national banking association doing business in the State of Mississippi (including the Escrow Agent or a bank affiliated with the Escrow Agent) on the terms as herein provided. CITY agrees and directs that the Escrow Funds be deposited in account number: 1050007365. CITY acknowledges and agrees that Escrow Agent will not provide any supervision, recommendation, or advice relating to either the investment of moneys held in Escrow Account or the purchase, sale, retention, or other disposition of any investment. Any loss or expense incurred as a result of an investment will be borne solely by the Escrow Account. The Escrow Agent is authorized to execute

purchases and sales of permitted investments through the facilities of its own trading or capital market operations or those of any affiliated entity. The Escrow Agent shall send monthly statements to CITY reflecting activity in the Escrow Account.

(b) The funds to be deposited in the SEP Escrow Account (the "Escrow Funds") shall be deposited by CITY according to the schedule attached as Exhibit A hereto. In the event that funds in the SEP Escrow Agreement drop below \$100,000.00, CITY will accelerate the next scheduled payment.

(c) CITY and each party authorized to give instructions to the Escrow Agent shall each execute and deliver to Escrow Agent a certificate of authority substantially in the form of Exhibit B attached hereto for the purposes of establishing the identity of the respective representatives authorized to issue instructions or directions to Escrow Agent. In the event the identity of any such representative changes, a new certificate of authority shall be executed and delivered to the Escrow Agent by the appropriate party. The Escrow Agent shall be fully entitled to rely without inquiry on any current certificate on file with Escrow Agent until such time as Escrow Agent shall receive a new certificate.

3. Disbursement of Funds. The Escrow Agent agrees to and is authorized to disburse the amounts, including interest, in the SEP Escrow Account to the CITY, upon the City's presentation of documentation that funds are needed to pay Plumbers for Services pursuant to the SEP. Such documentation shall consist of a summary of invoices for Services for which payment is due and the following certification by the City providing the following:

- (1) The owner of the property on which Services were performed meets the financial hardship qualifications developed under the SEP;
- (2) The Plumber performing the Services has submitted documentation that the work has been properly completed at the referenced property.

Concurrent with any disbursement of any amount of the SEP Escrow Account to CITY, the Escrow Agent shall provide notice to CITY identifying the amount so disbursed and the instructions pursuant to which such amount was disbursed. CITY acknowledges and agrees that any disbursement of the Escrow Funds is subject to the sale and final settlement of permitted investments. Escrow Agent shall be entitled to rely upon any written directions or approvals that it, in good faith, believes to be genuine, without inquiry and without requiring substantiating evidence of any kind.

4. Escrow Account Fees. CITY shall pay Escrow Agent an escrow fee as agreed to between CITY and Escrow Agent and all reasonable, out of pocket expenses, and charges incurred or made by the Escrow Agent in performance of its duties hereunder (the "Escrow Fees"). Escrow Fees shall be paid within forty-five (45) days of CITY's receipt of written documentation identifying such escrow fee and reasonable, out-of-pocket expenses and charges. The amounts due under this Section 4 shall not be deductible from the principal or interest in the SEP Escrow Account. CITY shall be responsible for all of the Escrow Fees.

5. Termination. This Agreement will automatically terminate after Escrow Agent provides an accounting to CITY and EPA upon the full disbursement of the SEP Escrow Account, including interest, in accordance with Section 3 or at the end of nine (9) years after the date of entry of the Consent Decree, whichever occurs first.

6. Notices. The parties to this Agreement and EPA shall receive copies of any notices, demands, or requests given hereunder. All notices, demands and requests given or required to be given hereunder shall be in writing, and shall be deemed to have been duly given when delivered by hand; within 24 hours of deposit with a nationally-recognized overnight courier (or 48 hours if the day of the deposit precedes a day in which the overnight courier does not make delivery); within four business days of deposit with the United States Postal Service via first class registered or certified mail, postage prepared, return receipt requested; or upon confirmed receipt if delivered by electronic mail or by facsimile directed as follows:

To: The City of Jackson, Mississippi

Mayor  
Post Office Box 17  
Jackson, Mississippi 39205-0017

Public Works Director  
Post Office Box 17  
Jackson, Mississippi 39205-0017

To: Trustmark National Bank

Attention: Sheila Johnson  
248 East Capitol Street, Suite 820  
Jackson, MS 39201

To: Chief, Clean Water Enforcement Branch  
Water Protection Division

U.S. Environmental Protection Agency, Region 4  
ATTN: Brad Ammons  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303

Notice shall be sent to such other place or person as either CITY or EPA may from time to time designate by prior written notice given to all other parties as herein required. Escrow Agent shall be entitled to rely upon any notice, signature or writing which it shall in good faith believe to be genuine and to be signed or presented by a proper party or parties.

7. Responsibility of Escrow Agent. Although the actions of CITY hereunder must be consistent with the terms of the Consent Decree, Escrow Agent shall not be required to recognize, nor be chargeable with any knowledge of terms and conditions concerning any other agreement between the other parties hereto, even though reference thereto may be made herein, or copies or provisions thereof may be annexed as exhibits hereto, and whether or not it may have knowledge thereof. It is the intent of the parties hereto that Escrow Agent's duties and responsibilities are only those expressly set forth herein. Escrow Agent shall have no other responsibility under this Agreement. Escrow Agent shall have the right to consult with counsel of its choice and shall not be liable for action taken or omitted in accordance with advice of such counsel. The obligations of CITY contained in this Section 7 shall survive the expiration or termination of this Agreement.

8. Jurisdiction. This Agreement shall be governed by and be construed in accordance with the laws of the State of Mississippi, without regard to conflicts of laws principles. Disputes arising under this Agreement will be resolved in the Circuit or Chancery courts of the First Judicial District of Hinds County, Mississippi.

9. Resignation, Removal, Successor. Escrow Agent may resign from this Agreement, and thereby become discharged from the obligations hereby created, by

notice in writing given to the CITY and EPA not less than thirty (30) days before such resignation is to take effect. In the event of such resignation, Escrow Agent shall prorate the annual fee and return to CITY any unearned portion of the annual fee connected to this Agreement and shall be deemed to have relinquished all claims for fees.

Escrow Agent may be removed at any time by an instrument or concurrent instruments in writing delivered to Escrow Agent and signed by (i) the duly authorized representative of CITY, or (ii) EPA.

If at any time hereafter, Escrow Agent shall resign, be removed, or otherwise become incapable of acting, or the position of Escrow Agent shall become vacant for any reason, CITY shall promptly appoint as Escrow Agent a successor that is mutually acceptable to CITY and EPA. Upon such appointment, such successor shall execute, acknowledge, and deliver to its predecessor, and also to CITY, an instrument in writing accepting such appointment hereunder, and thereupon, such successor without any further act, shall become fully vested with all the rights, immunities, and powers, and shall be subject to all of the duties and obligations of its predecessor, and every predecessor Escrow Agent shall promptly deliver all property and monies held by it hereunder to such successor.

In the event that a successor has not been appointed within thirty (30) days of the date of such resignation, removal, dissolution, incapacity, or vacancy, Escrow Agent shall deposit the full amount of the Escrow Funds with the clerk of the United States District Court, Southern District of Mississippi, and shall interplead CITY and EPA.



Upon so depositing the Escrow Funds and filing its pleading, Escrow Agent shall be released from all further liability under the terms hereof.

10. Headings. The headings in this Agreement are merely for convenience and shall not be used in interpreting any of the provisions.
11. Binding Effects; Successors, and Assigns. This Agreement shall be binding upon, and inure to the benefit of, the respective parties hereto and their successors and assigns to the extent permitted under Mississippi law and recognizing the newly elected governing authorities may terminate this Agreement upon assuming office.
12. Counterparts. This Agreement may be executed in separate counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.
13. Modification. This Agreement may not be amended, altered, or modified except by written instrument duly executed by all of the parties to this Agreement and authorized by the CITY's governing authorities.
14. Third-Party Beneficiary. Although the United States is not a party to this Agreement, CITY and Escrow Agent intend that the United States stand as a third-party beneficiary of this Agreement.
15. Entire Agreement. This Agreement supersedes all prior agreements among the parties with respect to its subject matter and constitutes (along with the documents referred to in this Agreement, if any) a complete and exclusive statement of the terms of the agreement between the parties with respect to its subject matter.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as an agreement under seal as of the day and year first written above.

ESCROW AGENT

Trustmark National Bank

Sheila Johnson

By: Sheila Johnson

Its: VP and Trust Officer

CITY OF JACKSON, MISSISSIPPI

Chokwe Lumumba

By: Chokwe Lumumba

Its: Mayor

Attachment A

Schedule of SEP Deposits. \*

September 2, 2013.....	\$175,000.00
September 1, 2014.....	\$100,000.00
September 1, 2015.....	\$100,000.00
September 1, 2016.....	\$100,000.00
September 1, 2017.....	\$100,000.00
September 3, 2018.....	\$100,000.00
September 2, 2019.....	\$100,000.00
September 1, 2020.....	\$100,000.00

\* If date falls on a weekend or federal holiday, deposit will be made on the immediately following business day

**Attachment B**

**Certificate of Authority**

The undersigned \_\_\_\_\_  
of the City of Jackson, Mississippi, hereby certifies that the following named  
individuals are duly appointed, qualified, and acting in the capacity set forth opposite  
his/her name, and the following signature is the true and genuine signature of said  
individual.

Name	Position	Signature
_____	_____	_____
_____	_____	_____
_____	_____	_____

Such individuals are hereby authorized to furnish the Escrow Agent with directions relating to any matter concerning this Escrow Agreement and the funds and/or property held pursuant thereto.

In witness whereof, the City of Jackson, Mississippi has caused this Certificate of Authority to be executed by its duly authorized officer this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

City of Jackson, Mississippi

By: \_\_\_\_\_  
Its: \_\_\_\_\_