

ORDINANCE NO. 191007

Authorizing the Acting City Manager to execute a non-material modification to the consent decree with the United States of America concerning the City's approved Overflow Control Program to modify the schedule of implementation for certain control measures.

WHEREAS, the United States of America ("United States") and the City of Kansas City, Missouri ("City") (collectively, the "Parties") are parties to a consent decree dated September 27, 2010, concerning the City's approved Overflow Control Program, commonly referred to as the Smart Sewer Program (the "Decree"); and

WHEREAS, the Parties previously agreed to amend the Decree on two separate occasions to reflect certain material modifications; and

WHEREAS, Appendix A to the Decree requires the construction of a 4 million gallon per day pump station and the installation of an automated gate in the existing Gooseneck Arch Sewer located within the Northeast Industrial District Basin by December 31, 2019, with an associated date of post-construction monitoring plan submission of December 31, 2020, and the construction of green infrastructure projects located within the Northeast Industrial District Basin by December 31, 2020 (the "Control Measures"); and

WHEREAS, continuing elevated levels on the Missouri and Blue Rivers have significantly impacted the City's ability to meet the implementation deadlines for the Control Measures; and

WHEREAS, pursuant to Section XIV of the Decree, the City provided notice, by letter dated September 30, 2019, to the United States that the prolonged elevated flood levels on the Missouri and Blue Rivers had substantially impacted the delivery of the Control Measures, such that the City had appreciated a force majeure event; and

WHEREAS, Section XIV of the Decree provides that if the United States agrees that a force majeure event has occurred, the United States shall provide an extension of time for the City to complete the Control Measures and that the Parties shall memorialize the extension through a non-material modification pursuant to Section XXV of the Decree; and

WHEREAS, tentative agreement has been reached between the Parties which provides that the Control Measures shall be realigned to have an implementation deadline of December 31, 2021; and

WHEREAS, the City must execute the proposed non-material modification to the Decree so that the modification can be forwarded to the United States for review and execution; and

ORDINANCE NO. 191007

WHEREAS, the City Council is prepared to authorize execution of the proposed non-material modification to the Decree to memorialize the changes outlined herein; NOW, THEREFORE,

BE IT ORDAINED BY THE COUNCIL OF KANSAS CITY:

Section 1. That the City Council authorizes the Acting City Manager to execute a proposed a non-material modification to the consent decree with the United States of America concerning the City's approved Overflow Control Program to modify the schedule of implementation for certain Control Measures.

Approved as to form and legality:

Matthew Gigliotti
Deputy City Attorney