

SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT is made between the State of Missouri, by and through the Missouri Department of Natural Resources (hereinafter “the Department”), Chris Koster, Attorney General of Missouri (hereinafter “the Attorney General”) and the City of Independence, (hereinafter “Independence”). The parties stipulate and agree as follows:

WHEREAS, Chris Koster is the duly elected, qualified, and acting Attorney General of the State of Missouri.

WHEREAS, the Department director or his designee, on behalf of the Missouri Clean Water Commission, administers the provisions of the Missouri Clean Water Law, Chapter 644 of the Revised Statutes of Missouri (as amended).

WHEREAS, Independence, as part of its services, owns and operates the Rock Creek Wastewater Treatment Facility (hereinafter “the Facility”) and the collection system conveying sewage to the Facility, for the treatment of domestic, commercial, and industrial wastewater. The Facility currently utilizes an activated sludge design, with removed sludge either incinerated on site or hauled to a landfill. The current design flow for the Facility is 10,000,000 gallons per day (hereinafter “GPD”) and the average actual flow is approximately 8,700,000 GPD.

WHEREAS, the Facility is located in the N ½, NE ¼, Sec. 32, T50N, R32W, of Jackson County and discharges treated effluent from outfall No. 001 and outfall No. 003 to into Rock Creek, an unclassified tributary to the Missouri River, pursuant to the terms and conditions contained in Missouri State Operating Permit No. MO-0089681 (Permit).

WHEREAS, Rock Creek, an unclassified stream, is the receiving stream for discharges from the Facility and is waters of the state as defined in Section 644.016(26), RSMo.

WHEREAS, on October 24, 2008 the Department placed on public notice a draft Missouri State Operating Permit, MO-0089681 (“draft permit”). This draft permit includes more stringent water quality based effluent limits for Oil & Grease and Copper than those contained in the previous permit for the Facility. The draft permit also includes water quality based effluent limits for Ammonia as Nitrogen and Bacteria (E. Coli), which did not have effluent limits in the previous permit for the Facility. This draft permit included a three (3) year schedule to bring the facility into compliance with these new effluent limits.

WHEREAS, in accordance with 10 CSR 20-7.031(10), the Department cannot issue a permit granting longer than three (3) years to achieve compliance with new water quality based effluent limits, except with respect to Bacteria (E. Coli), for which the Department may grant up to five (5) years but no later than December 31, 2013 for a facility to achieve compliance in accordance with 10 CSR 20-7.015(9)(H).

WHEREAS, Independence and the United States have agreed to the lodging and entry of the attached Consent Decree, See Attachment A, to address alleged noncompliance with the Clean Water Act and its implementing regulations.

WHEREAS, the Consent Decree will require, among other things, that Independence upgrade the Facility and the collection system serving the Facility in accordance with certain deadlines.

WHEREAS, in the Consent Decree, the United States reserves the right to withdraw or withhold its approval of the Consent Decree if any public comments regarding the Consent Decree disclose facts or considerations indicating that the Consent Decree is inappropriate, improper, or inadequate.

WHEREAS, Independence submitted comments on the draft permit, which were received by the Department on October 24 and November 26, 2008. Some revisions were made to the permit in response to comments, as described in the Fact Sheet for the revised permit. The revised permit and accompanying Fact Sheet are attached hereto as Attachment B (“Revised Permit”), and are incorporated by reference herein. Among the comments submitted, Independence asserted that the work needed to comply with new lower effluent limits within the timeframes contained in the draft permit must be coordinated with the schedule and scope of work for construction projects required by the Consent Decree.

WHEREAS, the United States has agreed to a deadline of April 20, 2015 for Independence to complete all the wastewater treatment plant upgrades needed to address all remedial measures set forth in the Consent Decree.

NOW, THEREFORE, in consideration of the mutual promises contained herein and other good and valuable consideration, the Department, the Attorney General, and Independence further stipulate and agree as follows:

1. The provisions of this Agreement shall apply to and be binding upon the parties executing this Agreement, as well as their successors in interest, and their successors in office. Further, the City of Independence agrees to provide a copy of this Settlement Agreement to its contractors, agents, subsidiaries, affiliates, lessees, officers, servants, or any person or entity acting pursuant to, through, or for the parties, including anyone under contract with the parties to perform obligations under this Agreement. The copy shall be provided to such parties upon execution of any contract for work to perform obligations under this Agreement. Within 30 days of the effective date of this Agreement, Independence shall provide a copy of this Agreement to any such parties who at the effective date of this Agreement already work under contracts for

work to perform the obligations under this Agreement. Any action taken by any contractor or consultant retained by Independence to implement the City's obligations under the Settlement Agreement shall be considered an action of Independence for purposes of determining compliance with this Settlement Agreement. In an action to enforce this Agreement, Independence shall not assert as a defense any act or failure to act by any of its officers, directors, employees, agents, servants, consultants, engineering firms, contractors, successors and assigns. However, Independence retains any rights it may have against such officers, directors, employees, agents, servants, consultants, engineering firms, contractors, successors and assigns.

2. The Department placed Independence's draft permit on public notice on October 24, 2008. Independence submitted comments on the draft permit, which the Department took into account in the Revised Permit which is attached to this Settlement Agreement as Attachment B.

3. Because the Department will issue the permit in substantially the same form as contained in Attachment B, Independence hereby waives its right to appeal or otherwise contest the revised permit and waives its right to file a petition for a variance under 644.061, RSMo. However, nothing in this waiver or this Agreement shall be interpreted as a waiver by Independence of its right to participate as a party or otherwise in any appeal of the permit by a third person.

4. The Department recognizes that Independence is unable to immediately eliminate Outfall 002, and may not achieve compliance with the effluent limits for Ammonia as Nitrogen and Bacteria (E. Coli) within the timeframes required by the revised permit because the work required under the Consent Decree deadline (April 20, 2015) is, in part, the work required to

meet the Ammonia as Nitrogen and Bacteria effluent limitations. Consequently, Independence and the Department agree that such potential noncompliance will be addressed in accordance with the following schedule. For the purpose of being consistent with paragraph VI.F of the federal Consent Decree, the Department will follow the following document review procedure. For all submittals which require approval by the Department, the Department shall make a good faith effort to review and approve, approve with modifications, or disapprove such submittals within ninety (90) days of the Department's receipt of same. In the event the Department's review of any submittal exceeds ninety (90) days, then the City shall provide written notice to the Department of all actions that will be delayed or otherwise affected by the Department's extended review. Upon providing such notice, the due date for all affected actions will be extended by the number of days beyond ninety (90) that the Department requires to provide its approval, modification and approval, or disapproval to Independence, unless the Department notifies Independence that an extension of a due date is not warranted. If the Department denies the extension of a due date, Independence may initiate dispute resolution pursuant to paragraph 9 of this Agreement.

a. No later than July 1, 2009, Independence shall submit to the Department for review and approval an Operation & Maintenance (O&M) Plan for the peak flow clarifier, formerly outfall 002. The O&M Plan must describe the practices utilized to ensure that treatment through outfall 001 is maximized, bypasses from the former outfall 002 are minimized, and, when the peak flow clarifier is utilized, the maximum practicable treatment is achieved by the peak flow clarifier, such that bypassed wastewater is of the highest quality achievable with this technology. Once approved, Independence shall immediately comply with the O&M Plan.

Throughout the Outfall 002 Elimination Project, Independence shall continue to maximize treatment through outfall 001 and minimize bypasses to the extent practicable.

b. The Department hereby approves the Capacity Assessment Work Plan that Independence submitted November 11, 2008 to EPA and the United States under the federal Consent Decree.

c. No later than January 1, 2010, Independence shall submit a progress report detailing steps taken to bring the facility into compliance with final effluent limits for outfall 001.

d. No later than January 1, 2011, Independence shall submit a progress report to the Department detailing steps taken to bring the facility into compliance with final effluent limits for outfall 001.

e. No later than May 1, 2011, Independence shall submit for Department review and approval a status report for the Outfall 002 Elimination Project in the form of a copy of the Wastewater Treatment Plant Remedial Measures Plan required by Paragraph VIII.G of the federal Consent Decree identifying the measures needed to result in adequate capacity in the wastewater treatment plant, including capacity needed to accommodate wastewater that currently bypasses secondary treatment via the former outfall 002. This plan shall include a complete application for Antidegradation Review in accordance with 10 CSR 20-7.031(2) of the proposed upgraded wastewater treatment facility addressing any new or expanded discharges. In the event the Department has any comments on antidegradation review, Independence agrees to respond to those comments within 30 days of receipt from the Department.

f. Within 270 days of receiving approval from the Department of the Wastewater Treatment Plant Remedial Measures Plan and the Antidegradation Review,

Independence shall submit to the Department a complete application for a construction permit, including plans and specifications for upgrades necessary to bring the wastewater treatment plant into compliance with final effluent limits for outfall 001.

g. By July 1, 2012, Independence shall submit to EPA and the Department a construction progress report.

h. By July 1, 2013, Independence shall submit to EPA and the Department a construction progress report.

i. No later than five years following issuance of the revised permit as described in paragraph 2 above, Independence shall achieve compliance with final effluent limits for Ammonia as Nitrogen at Outfall 001.

j. No later than December 31, 2013, Independence shall achieve compliance with final effluent limits for Bacteria (E. coli) at Outfall 001.

k. No later than April 20, 2015, Independence shall have eliminated outfall 002. Independence shall satisfy this requirement by the submittal to the Department of a Statement of Work Complete and an application to the Department to modify its operating permit to comply with Missouri Clean Water Law and its implementing regulations.

5. Except as provided in paragraph 4 above, Independence agrees to comply with all State of Missouri environmental laws and implementing regulations for any and all future activities. Nothing herein shall be construed as a waiver of the State's authority to pursue enforcement regarding future non-compliance with the Missouri Clean Water Law and implementing regulations, and the Department expressly reserves the right to seek any other relief it deems appropriate against Independence in the future, including but not limited to, statutory penalties, injunctive relief, and/or damages, costs, and expenses as described in Section

644.096, RSMo. In addition, the Department expressly reserves and Independence acknowledges the Department's right to issue appropriate administrative orders authorized by Chapter 644, RSMo.

6. The Department and the Attorney General hereby release Independence from civil penalties up through the effective date of this Settlement Agreement for those claims for violations of the Missouri Clean Water law that would arise under the facts alleged in the federal complaint, so long as Independence completes all remedial measures required by Section VIII of the federal Consent Decree no later than April 20, 2015. This release does not affect the rights of the federal government to pursue stipulated penalties or other relief as set out in the Consent Decree or the right of the State to pursue stipulated penalties as indicated in Paragraph 7, below.

7. **Stipulated Penalties.** Independence shall pay to the State stipulated penalties as set forth below for each day the City fails to make timely submittals or meet compliance dates pursuant to paragraphs 4.a and 4.c through k:

Period of Non Compliance	Penalty per Violation per day
1 st to 15 th day	\$150
16 th to 30 th day	\$300
31 st to 60 th day	\$1,000
More than 60 days	\$3,500

Any such stipulated penalty shall be paid within 10 days of written demand by the Attorney General's Office except where Independence asserts and the State agrees that a force majeure has occurred, in which case the penalty will not be assessed for the length of time caused by the force majeure. The check for payment shall be mailed to:

Ms. JoAnn Horvath
Collection Specialist
Office of the Attorney General
P.O. Box 899
Jefferson City, MO 65102-08998.

The stipulated penalties provided for in this Settlement Agreement shall be in addition to any other rights, remedies, or sanctions available to the State of Missouri for Independence's violation of this Agreement or applicable state laws. In the event that the State takes any additional enforcement action seeking civil penalties for any act or omission, as reserved by the preceding sentence, Independence shall receive a credit against any civil penalties, whether agreed to or imposed, for any stipulated penalties paid for that same act or omission. The State agrees to first request stipulated penalties in advance of any demand for civil penalties, provided, however, that the failure to make such a request shall not be a defense to any action filed by the state.

8. A "force majeure" event, for purposes of this Settlement Agreement, is any event beyond the control of Independence, its contractors, or any entity controlled by Independence that delays the performance of any obligation under this Agreement despite the City's best efforts to fulfill the obligation. "Best efforts" includes anticipating any potential force majeure event and addressing the effects of any such event as it is occurring and after it has occurred, to prevent or minimize any resulting delay to the greatest extent possible. Unanticipated increased costs or expenses and changed financial ability associated with implementing this Agreement shall not, in any event, be considered a "force majeure event." If any event occurs that may delay the performance of any obligation under this Settlement Agreement, Independence shall provide notice (verbal, written, email or facsimile) as soon as possible, but not later than 24 hours after the time Independence first knew, or by the exercise of due diligence, should have known, that the event might cause delay. Within seven days thereafter Independence shall provide in writing to the State an explanation and description of the anticipated delay, the anticipated duration of delay, and the best efforts of Independence to prevent or minimize any

delay caused by the force majeure. The Department will reply to the written notice to notify Independence of agreement or disagreement as to whether a force majeure event has occurred, and if the Department agrees that a force majeure event has occurred it will provide an appropriate amendment to this Agreement to reflect the same and the revised deadline for the obligations of Independence affected by the force majeure.

9. If Independence disagrees in good faith with any decision or determination made by the Department under this Agreement, then Independence shall notify the State of the basis of its objections in writing within 10 calendar days of receipt of such decision. Independence and the State shall have 20 calendar days to attempt to informally resolve the dispute. The parties may extend this informal dispute resolution period by mutual consent. If the parties are unable to reach agreement on the issue in dispute, the parties will within 15 calendar days of the conclusion of the informal dispute resolution period submit their positions in writing to the Director of the Division of Environmental Quality, who will issue a written decision resolving the dispute. This decision shall become the final decision of the Department and shall be binding on Independence unless Independence timely files a petition for judicial review of the decision, to which the State may respond. Judicial review of any disputed decision shall be governed by Section 536.150, RSMo, and other applicable provisions of law.

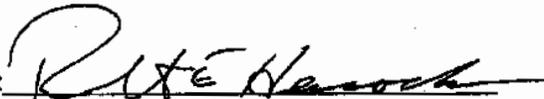
10. Execution of this Settlement Agreement shall be complete when the Department has signed and dated the Settlement Agreement. As the last party signing the Settlement Agreement, the Department shall promptly distribute copies of the executed Settlement Agreement to the other signatories.

11. The terms stated hereinabove constitute the entire and exclusive agreement of the parties hereto. There are no other obligations of the parties, be they expressed or implied, oral or

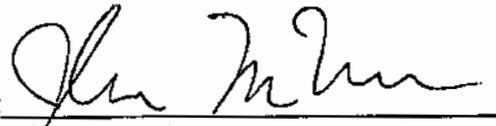
written, except those which are expressly set forth hereinabove. The terms of this Agreement supersede all previous memoranda of understanding, notes, conversations, and agreements expressed or implied. This agreement may not be modified orally.

SIGNATURES

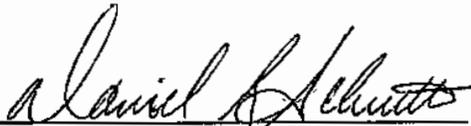
CITY OF INDEPENDENCE

By:  Date: 3/30/09
Robert E. Heacock
City Manager

CHRIS KOSTER ATTORNEY GENERAL OF MISSOURI

By:  Date: 3/31/09
John K. McManus
Assistant Attorney General

MISSOURI DEPARTMENT OF NATURAL RESOURCES

By:  Date: 3/31/09
Daniel R. Schuette, Director
Division of Environmental Quality