INTER-JURISDICTIONAL AGREEMENT PROGRAM

The Inter-Jurisdictional Agreement Program ("IJAP") sets forth the minimum requirements that will apply when Memphis renews existing agreements or enters into new agreements with another municipality that covers the collection, conveyance, and treatment of sewage by Memphis from municipal satellite sewer systems (hereinafter referred to as a "satellite municipality").

When an existing agreement expires or terminates, Memphis may, but shall not be required to, renew any such agreement or enter into a new agreement covering the collection, conveyance, and treatment of sewage from such other municipal satellite sewer system. In the event Memphis does renew such an agreement or enters into any such new agreement, each agreement shall be consistent with the requirements of this IJAP.

For the purposes of this IJAP, an "Agreement" is a contract between Memphis and a satellite municipality subject to the conditions as set forth in this IJAP and such other contractual provisions to which the parties may otherwise agree.

Notwithstanding anything to the contrary in this IJAP, Tennessee Department of Environment and Conservation ("TDEC") continues to be responsible in all respects for enforcing the requirements of any state operating permits issued to municipal satellite sewer systems. Memphis is not responsible for enforcement of any such permits or for management or oversight of any such municipal satellite sewer systems as a requirement of the Consent Decree or this IJAP, and to this extent, shall not be responsible for any liability imputed to such municipal satellite sewer systems.

The following are minimum provisions to be included in such agreements. Except for the explanatory language following Part II ("Pretreatment") and Part III ("Satellite Community as a Limited NPDES Co-Permittee with Memphis"), the following language or that which substantially mirrors the following language will be utilized.

I. Proper Operation and Maintenance of Sewage Collection and Conveyance System

A. "Wastewater Collection and Transmission System" or "WCTS" shall mean the municipal wastewater collection, retention and transmission system, including all pipes, force mains, gravity sewer lines, lift stations, pumps, manholes, and appurtenances thereto, which are owned or operated by Memphis and service Memphis and which flow to the M.C. Stiles and T.E. Maxson WWTPs.

B. For the purposes of this Agreement, "Sanitary Sewer Overflow" or "SSO" shall mean an overflow, spill, or release of wastewater from Memphis' WCTS or WWTPs including: (a) unpermitted discharges; (b) overflows, spills, or releases of wastewater that may not have reached waters of the United States or the State; and (c) building backups.

C. The **[insert name of satellite municipality]** shall properly manage, operate and maintain its sewer collection and conveyance system so as to minimize peak flows into Memphis' WCTS by excluding, to the maximum reasonable extent, the intrusion of surface and ground water

and other extraneous flows. This includes, taking actions to preclude, to the maximum reasonable extent, the discharge of storm water, roof or surface drainage into **[insert name of satellite municipality]**'s sewer system connected to the Memphis WCTS.

D. In no event shall peak flows originating or transmitted through the **[insert name of satellite municipality]** sewers to the Memphis WCTS cause or contribute to a sanitary sewer overflow in Memphis, a condition resulting in flows exceeding the pumping capacity of a City of Memphis pump station, and/or a violation of a Memphis National Pollutant Discharge Elimination System ("NPDES") permit.

E. Where the City of Memphis reasonably determines that flows originating or transmitted through the **[insert name of satellite municipality]** sewers to the Memphis WCTS are or can reasonably be expected to cause or contribute to (1) a sanitary sewer overflow in Memphis, (2) a condition resulting in flows exceeding the pumping capacity of a City of Memphis pump station, and/or (3) a violation of a Memphis NPDES permit, Memphis may impose peak flow limitations upon the [**insert name of satellite municipality**] as Memphis determines are reasonably necessary to avoid such situation.

F. Flow Metering

1. Unless **[insert name of satellite municipality]** already has flow metering satisfactory to Memphis to assure reliable measurement of flows originating or transmitted through the **[insert name of satellite municipality]** sewers to the Memphis WCTS, within 180 days of the effective date of this Agreement (or such other time as Memphis may agree to based upon demonstrated need), **[insert name of satellite municipality]** shall install such flow meters, subject to Memphis' approval, as are necessary to measure peak and other flows originating or transmitted through the **[insert name of satellite municipality]** sewers to the Memphis WCTS. Subject to Memphis' discretion, the flow meters shall be capable of reporting flows volume by hour or such other time period as Memphis deems appropriate. The flow meters shall be installed at the expense of **[insert name of satellite municipality]**.

2. At least once every six months, the metering stations as provided for in paragraph I.F.1, above, shall be calibrated both hydraulically and electronically by a qualified commercial entity approved by the **[insert name of satellite municipality]** and Memphis at the expense of **[insert name of satellite municipality]**. In the event a meter fails to accurately measure flow to reasonable engineering standards for three out of twelve consecutive months, **[insert name of satellite municipality]** shall replace it promptly, at its own expense, upon written request from Memphis.

3. **[Insert name of satellite municipality]** agrees to make available all flow metering data to Memphis within thirty (30) calendar days of Memphis' request.

4. **[Insert name of satellite municipality]** agrees that the meters shall be available to Memphis for inspection at all times.

G. Within 30 days of a request from the City of Memphis, **[insert name of satellite municipality]** shall provide Memphis with such information as the City may reasonably request identifying the actions taken by **[insert name of satellite municipality]** to comply with the conditions of this Agreement.

H. Within 180 days of the effective date of this Agreement **[insert name of satellite municipality]** shall develop and submit for Memphis' approval the operating procedures that will be undertaken during the term of this Agreement to implement the provisions as required by paragraph I.C, above. To the extent Memphis and **[insert name of satellite municipality]** cannot agree on appropriate operating procedures, Memphis may commence termination procedures under paragraph IV.C, as it deems appropriate. Notwithstanding any approval of operating procedures by Memphis, nothing herein shall preclude Memphis from taking any action under paragraph I.E, above, or Part IV.C, below, as it deems appropriate.

II. Pretreatment

Explanation: Upon renewal of existing agreements or entering into a new agreement with the satellite municipality, the applicable language will depend upon whether the satellite community currently has discharges of concern and/or whether Memphis will be the municipal entity implementing and enforcing pretreatment requirements in the satellite municipality. Section II.A, below, applies to satellite communities with only commercial users, if at all, and, as such, are not required to have equivalent ordinances/etc. They do, however, need to agree to develop such ordinances and other program requirements before allowing industrial users of concern to be located in their jurisdiction. Alternatively, similar to satellite municipalities with industrial users of concern (i.e., non-commercial industrial users), they can develop ordinances and meet the other pretreatment conditions as set forth in section II.B, below. In addition, municipalities located in a State that has a 40 C.F.R. § 403.10(e) program (*e.g.,* Mississippi) shall, in lieu of the other provisions set forth herein, be subject to paragraph II.C, below.

In the event Memphis and the satellite municipality agree for the satellite municipality to have the primary responsibility for implementing and enforcing the pretreatment program in their jurisdiction, the terms and conditions of the contract between Memphis and such municipality shall be consistent with the contract terms as set forth in U.S. EPA, *Multijurisdictional Pretreatment Programs Guidance Manual,* EPA 833-B-94-005 (June 1994) at B-1 to B-4.

A. Satellite Municipality Without Industrial Users

[**Insert name of satellite municipality**] represents that no industrial users other than light commercial establishments (e.g., restaurants, hotels, etc.), if any, are currently located within **[insert name of satellite municipality]**'s jurisdiction and/or discharge into **[insert name of satellite municipality]** sewer system that would be connected to the Memphis WCTS. No industrial users other than light commercial establishment shall be allowed to operate and discharge to the [**insert name of satellite municipality**] sewer system which transports waste to the Memphis WCTS unless prior notification is provided by [**insert name of satellite**

municipality] to Memphis and a new or modified agreement is entered into addressing implementation and enforcement of the pretreatment program.

B. Satellite Municipality with Industrial Users

1. Facilities located in **[insert name of satellite municipality]** and its annexation reserve area currently or in the future may contribute wastewater which includes industrial waste. These facilities are hereinafter referred to as industrial users.

2. Memphis is required to implement and enforce a pretreatment program to control discharges from industrial users to its WCTS pursuant to requirements set out in the Federal Clean Water Act, 42 U.S.C. § 1251 *et seq.*, and the rules and regulations promulgated thereunder, including 40 C.F.R. Part 403, and Tennessee Code Annotated 68-3-101, all as now stated and as may hereafter be amended. **[Insert name of satellite municipality]** hereby agrees to adopt a sewer use ordinance that subjects the industrial users served by the **[insert name of satellite municipality]** sewer system connected to the Memphis WCTS to the necessary pretreatment controls, and Memphis is authorized to implement and enforce that section of the **[insert name of satellite municipality]** sewer use ordinance pertaining to the pretreatment program for industrial dischargers. In accordance with the foregoing, it is agreed as follows:

   a. Unless it has already done so, **[insert name of satellite municipality]** will, to the extent allowed by law, adopt a local sewer use ordinance which is no less stringent and is as broad in scope as the sewer use ordinance contained in Chapter 33 of the Code of Ordinances of Memphis. Unless this Agreement is a renewal of an existing agreement, **[insert name of satellite municipality]** rights under this Agreement do not commence until it has forwarded to Memphis for review a draft of its proposed sewer use ordinance and its subsequently adopted sewer use ordinance that meets the requirements of this paragraph and is approved by TDEC.

   b. Whenever Memphis revises its sewer use ordinance, it will forward a copy of the revisions to **[insert name of satellite municipality]**. To the extent allowed by law, **[insert name of satellite municipality]** will adopt revisions to its sewer use ordinance that are at least as stringent and as broad in scope as those adopted by Memphis. **[Insert name of satellite municipality]** will forward to Memphis for review its proposed revisions within 90 days of receipt of Memphis' revisions. **[Insert name of satellite municipality]** will adopt its revisions within 180 days of receiving approval from Memphis of the content thereof.

   c. Unless it has already done so, [**Insert name of satellite municipality**] will adopt pollutant specific local limits, which address at least the same pollutant parameters and are at least as stringent as the local limits enacted by Memphis within 180 days of the date of this Agreement. If Memphis makes any revisions or additions to its local limits, Memphis will forward to **[insert name of satellite municipality]** a copy of such revisions or additions within 90 days of enactment thereof. **[Insert name of satellite municipality]** will adopt any such revisions or additions within 180 days of

receipt thereof. If Memphis adopts local limit(s) based upon mass of pollutant(s) (rather than concentration), Memphis reserves the right to allocate loadings.

d. **[Insert name of satellite municipality]** hereby designates Memphis as the agent of **[insert name of satellite municipality]** for the purposes of implementation and enforcement of **[insert name of satellite municipality]**'s sewer use ordinance against industrial users who discharge wastewater through the **[insert name of satellite municipality]** sewer system to the Memphis WCTS. Memphis may take any action under **[insert name of satellite municipality]**'s sewer use ordinance that could have been taken by **[insert name of satellite municipality]**, including the enforcement of the ordinance in courts of law.

e. Unless otherwise agreed to by the parties, Memphis, on behalf of and as agent for **[insert name of satellite municipality]**, will perform technical and administrative duties necessary to implement and enforce pretreatment provisions in **[insert name of satellite municipality]**'s sewer use ordinance within **[insert name of satellite municipality]**'s jurisdiction associated with industrial user discharges through the **[insert name of satellite municipality]** sewer system to the Memphis WCTS. This includes the right to, among other things, update the industrial waste survey; issue permits to industrial users; conduct inspections, sampling, and analysis; take appropriate enforcement action provided for by State law and/or in **[insert name of satellite municipality]**'s sewer use ordinance; and perform other technical or administrative duties the parties deem appropriate. In addition, Memphis may, as agent of **[insert name of satellite municipality]**, take emergency action to stop or prevent any discharge which presents or may present an imminent danger to the health or welfare of humans, which reasonably appears to threaten the environment, or which threatens to cause interference, pass through, or sludge contamination.

3. An industrial user located outside the jurisdictional boundaries of **[insert name of satellite municipality]** may be allowed to discharge into the **[insert name of satellite municipality]** sewer system or the sewer facilities located within **[insert name of satellite municipality]** only by agreement of the parties; and **[insert name of satellite municipality]** and Memphis will also enter into an agreement, substantially equivalent to the relevant provisions of this IJAP, with the jurisdiction in which such industrial user is located, if other than Memphis.

4. **[Insert name of satellite municipality]** will reimburse Memphis for all costs incurred in implementing and/or enforcing **[insert name of satellite municipality]**'s sewer use ordinance. Memphis will provide **[insert name of satellite municipality]** with a detailed accounting of all such costs.

5. Industrial dischargers paying their sewer fees to **[insert name of satellite municipality]** and subject to surcharges for higher strength wastewater will pay the surcharge fees as specified in the sewer use ordinance and **[insert name of satellite municipality]** will remit the surcharge fees to Memphis in a reasonable time as otherwise provided in the contract in addition to the **[insert name of satellite municipality]** sewer service charge

otherwise provided in this agreement if that waste water is transported to the Memphis Sewage facilities.

6. If the authority of Memphis to act as agent for **[insert name of satellite municipality]** under this Agreement is questioned by any industrial user, court of law, or otherwise, **[insert name of satellite municipality]** will take whatever action is necessary to ensure the implementation and enforcement of its sewer use ordinance against its industrial users, including, but not limited to, implementing and enforcing its sewer use ordinance on its own behalf and/or amending this Agreement to clarify Memphis's authority.

C. Satellite Municipality in a State with an EPA § 403.10(e) Pretreatment Program

1. Pursuant to 40 C.F.R. § 403.10(e), a State with an approved Pretreatment Program may assume responsibility for implementing the POTW Pretreatment Program requirements in lieu of requiring a POTW to develop a program. However, this does not preclude POTWs from independently developing Pretreatment Programs. Memphis acknowledges that the State of Mississippi has a § 403.10(e) pretreatment program and has primary responsibility for implementing and enforcing pretreatment requirements in that State.

2. Nevertheless, **[insert name of satellite municipality]** and Memphis agree that Memphis should be provided the legal authority to control and enforce against industrial users in **[insert name of satellite municipality]** as it deems necessary to protect its wastewater treatment plant, prevent interference or pass through or for such other reasons as it may deem appropriate.

3. To provide Memphis the legal authority to effectuate the objectives as set forth herein, **[insert name of satellite municipality]** agrees to adopt a local sewer use ordinance, adopt specific local limits, designate Memphis as its agent, allow Memphis to perform technical and administrative duties on its behalf, and undertake such actions as are set forth above in paragraphs II.B.2.a through e, and II.B.3 through 6.

4. Notwithstanding anything to the contrary, nothing in this IJAP shall be deemed to require Memphis to implement and/or enforce pretreatment requirements in **[insert name of satellite municipality and State].**

III. Satellite Community as a Limited NPDES Co-Permittee with Memphis

Explanation: EPA's Multijurisdictional Pretreatment Programs Guidance Manual, EPA 833-B-94-005 (June 1994) at 19, contains the following discussion:

> Another means of obtaining cooperation is to have EPA or a state with an approved NPDES program name the contributing jurisdiction as a limited co-permittee on the NPDES permit. The NPDES permit would require the contributing jurisdiction to implement and enforce a local pretreatment program for industrial users located within its jurisdictional boundaries. This can be accomplished as a modification to an existing permit or an addition when the

Control Authority's permit is reissued. The obvious advantage of this approach is that the contributing jurisdiction would be partially responsible for program implementation deficiencies and/or NPDES permit violations, depending upon how the permit conditions are written.

If the contributing jurisdiction owns or operates the collection system within its boundaries, then it is a co-owner or operator of the POTW. As such, it can be included on the POTW's NPDES permit and be required to develop a pretreatment program. Contributing jurisdictions should be made co-permittees where circumstances or experience indicate that it is necessary to ensure adequate pretreatment program implementation.

The City of Memphis believes that having the satellite municipality as a co-permittee for the purposes of pretreatment, as well as for the purposes of properly operating and maintaining the satellite sewage collection system to address peak wet weather flows, as provided for by law, would be one of the most effective means of assuring an effective interjurisdictional program for Memphis. As such, the IJAP provides for the following conditions to be included in an Agreement. Inasmuch as TDEC's NPDES permitting authority is likely limited to facilities located in the State of Tennessee, these provision would only apply to an Agreement with a satellite municipality located in Tennessee.

Nothing herein is deemed to preclude TDEC from requiring an existing satellite community to becoming a NPDES co-permittee with Memphis even though the Agreement with that satellite community is not up for renewal.

A. **[Insert name of satellite municipality**] hereby agrees to be identified and permitted as a co-permittee in an NPDES permit modified or reissued by TDEC to Memphis wherein the NPDES permit requires **[insert name of satellite municipality],** to the extent provided for by applicable law, to:

   1. Undertake pretreatment activities consistent with the provisions set forth in Part II of this IJAP, and

   2. Properly operate and maintain its sewer collection system and control peak flows consistent with the provisions set forth in Part I of this IJAP. For the purposes of this provision the **[insert name of satellite municipality]** would be a "co-permittee" and solely responsible for permit conditions relating to the part of the collection system that is located in the **[insert name of satellite municipality**] jurisdiction.

B. Nothing in this IJAP shall be deemed to create the authority for TDEC to impose permit requirements upon Memphis not otherwise provided for by applicable law.

C. Inasmuch as EPA's Action on Deliverables pursuant to paragraph 15 of the Consent Decree requires EPA consultation with TDEC, EPA's approval of this IJAP shall be deemed to reflect TDEC's agreement to expeditiously modify or reissue a Memphis NPDES permit, as applicable, identifying **[insert name of satellite municipality]** as a limited co-permittee consistent with Paragraph III.A, above.

IV. Term, Modification and Termination of Agreement

A. Term of Agreement: This Agreement shall terminate upon **[insert agreed upon time]**.

B. Modification of Agreement: Each and every modification and amendment of this Agreement must be in writing by each of the parties thereto.

C. Termination of Agreement:

1. Notwithstanding paragraph IV.A, above, either party, at its option, may give three (3) months written notice to the other party of the intent to terminate this agreement whenever one or more of the following conditions occur:

   a. Any order which would make the terms of this agreement unfeasible is issued by a Court, the United State of America, United State Environmental Protection Agency, State of Tennessee or any other agency having regulatory jurisdiction over said municipalities; but as soon as either party becomes aware of the possibility of the entry of such an order, it shall give the other party notice and permit it to participate in any proceedings to the extent allowed by applicable law relative to the possible entry and/or appeal of such order.

   b. Unresolved violations of any terms of this Agreement or of applicable provisions of Chapter 33, Code of Ordinances, City of Memphis; and/or

   c. **[Insert name of satellite municipality]** and Memphis do not agree to operating procedures under Paragraph I.H, above; and/or

2. During the three (3) months' notice period, if the violation is one which can be cured by the payment of money and is cured then the notice shall be withdrawn. If the violation is one which cannot be cured simply by the payment of money, then the party responsible for such violation shall have three (3) months to attempt to cure the violation and upon effectuating such cure, the notice shall be withdrawn. Unless the parties agree that **[insert name of satellite municipality]** will be funding upgrades to the Memphis WCTS to handle increased flows, the following shall not be considered a violation that can be cured simply by the payment of money: flows originating or transmitted through the **[insert name of satellite municipality]** sewers to the Memphis WCTS that cause or contribute to a sanitary sewer overflow in Memphis, a condition resulting in flows exceeding the pumping capacity of a City of Memphis pump station, and/or a violation of a Memphis NPDES permit. Where necessary and where the party responsible for the violation has proceeded diligently and in good faith to cure such violation, then the cure period shall be extended in writing by the party giving notice of termination, for such time as the party giving notice of termination deems reasonably necessary to effectuate such cure.

3. In the event that conditions constituting breach(es) of this Agreement continue without cure being timely made as provided above, Memphis may:

   a. Restrict the flow, plug, or otherwise physically disconnect **[insert name of satellite municipality**]'s sewer system from the Memphis WCTS;

   b. Provide written notice to **[insert name of satellite municipality]** providing for phasing out the terms of this Agreement at the end of a reasonable time not to exceed two (2) years after the date of the initial three-month notice provided in paragraph IV.C.1 above;

   c. Request that **[insert name of satellite municipality]** submit a corrective action plan requiring compliance with this Agreement in an expeditious manner which, if approved by Memphis, is deemed to be a condition of this Agreement; and/or

   d. Take such other action(s) as Memphis deems appropriate.

4. Notwithstanding the above, Memphis may provide **[insert name of satellite municipality]** such time as Memphis deems appropriate for **[insert name of satellite municipality]** to construct its own wastewater treatment plant, connect its flows to a WCTS owned by another municipality, or implement another long-term solution. Nothing, herein, shall be deemed to authorize or require Memphis to allow a condition to continue that can reasonably be expected to cause or contribute to a sanitary sewer overflow in Memphis, a condition resulting in flows exceeding the pumping capacity of a City of Memphis pump station, and/or a violation of a Memphis NPDES permit. Memphis may condition such **[insert name of satellite municipality**] additional time as provided herein upon **[insert name of satellite municipality]** agreeing to such conditions as Memphis deems appropriate (*e.g.*, **[insert name of satellite municipality]** payment of fines, penalties, stipulated penalties, *etc.*).

5. Notwithstanding any provision to the contrary, Memphis may terminate this Agreement immediately if the flows originating from or transmitted through the **[insert name of satellite municipality]** sewers to the Memphis WCTS are deemed by EPA, TDEC and/or Memphis to be an imminent danger to the health or welfare of humans, which reasonably appears to threaten the environment, or which threatens to cause interference, pass through, or sludge contamination.

V. Severability Clause

If any term of this Agreement is held to be invalid in any judicial action, the remaining terms will be unaffected.