PREAMBLE

The Director of the Ohio Environmental Protection Agency ("the Director") and the City of Marion, Ohio ("the City") (collectively "the parties") hereto agree as follows:

I. JURISDICTION

These Director's Final Findings and Orders ("Findings and Orders") are issued to the City pursuant to the authority vested in the Director under Ohio Revised Code ("ORC") §§ 3745.01 and 6111.03.

II. PARTIES BOUND

These Findings and Orders shall apply to and be binding upon the City and its successors, interests and assigns, as well as all contractors operating in privity with the City in its fulfillment of its obligations hereunder. No change in the membership of the City's Council or its Mayor position shall in any way alter the City's obligations under these Findings and Orders.

III. DEFINITIONS

Unless otherwise stated, all terms used in these Findings and Orders shall have the same meaning as defined in ORC Chapter 6111 and the rules promulgated thereunder.

IV. FINDINGS

The Director hereby makes the following Findings:

1. The City is located in Marion County, Ohio, and has a population of approximately 37,994 people.

2. The City owns and operates a publicly-owned treatment works ("POTW") located at 1810 Marion-Agosta Road, Marion, Ohio 43302, including a sanitary sewer collection system that is tributary to the POTW. The City is authorized by Ohio EPA to discharge from the POTW to the Little Scioto River, a tributary of the Scioto River, pursuant to National Pollutant Discharge Elimination System ("NPDES") Permit No. 2PD00011*ND,
effective November 1, 2013 (hereinafter “the City’s Current Permit”). The Little Scioto River is a “water of the state” pursuant to R.C. 6111.01.

3. Based on capital improvements completed in 2003, the POTW provides tertiary treatment for flows up to 21 MGD. Wet weather flows exceeding 21 MGD are currently routed around secondary and tertiary treatment, recombined with fully-treated flows at the chlorine contact tank, and then the recombined flow is disinfected and discharged.

4. The City’s collection system is approximately 50% separate sanitary sewers and 50% combined storm and sanitary sewers. Although the system was originally designed and installed as separate, the proximity of nearby storm sewers and age of the system has resulted in cross connections, infiltration and inflow (“I/I”) entering the sanitary lines, and leakage from the sanitary lines into storm lines, and thus part of the system is now considered combined. Due to the combined sewers and significant I/I occurring in the sanitary sewers, the City has two overflows in the collection system, identified as the Silver Street/Holland Road CSO (Station 2PD00011003) and the Columbia Street/Fies Avenue CSO (Station 2PD00011004). A third CSO (Mount Vernon Avenue) was eliminated through a storm sewer separation project completed in 2010.

5. A long term control plan (“LTCP”) was submitted by the City to Ohio EPA in 2000, and a revised LTCP was submitted in 2004 to address Ohio EPA’s comments on the original plan. In 2007, Ohio EPA approved the City’s revised LTCP, which calls for sanitary sewer separation as the solution to address CSOs and excessive I/I, with a current completion date of 2020.
(http://www.epa.ohio.gov/portals/35/cso/ohiocsoinventory.pdf.)

6. Ohio EPA has incorporated the City’s LTCP into schedules imposed in the City’s discharge permit, starting with Ohio EPA Permit No. 2PD00011*MD, effective August 1, 2007, which permit required, among other work, completion of the projects necessary to eliminate the Mount Vernon Avenue CSO. However, Ohio EPA questions whether continued reliance upon storm sewer source separation projects to address the two remaining CSOs will achieve the long-term objectives of the City’s current LTCP. In addition, the City represents that due in part to the 2008 recession and continued stagnation in growth and revenues, the City questions whether the remaining sewer separation projects can realistically be completed by the current completion date in 2020.

7. In part to address concerns about the City’s current LTCP, Ohio EPA added several wet weather-related obligations in the City’s Current Permit, including requirements for the City to (a) prepare a comprehensive analysis of feasible alternatives to minimize/eliminate remaining CSOs, reduce I/I in the collection system, reduce the number of wet weather blending events at the POTW, and reduce the occurrence of water in basement events, and submit the analysis to Ohio EPA with a proposed schedule for implementation, (b) evaluate whether equalization/storage basins installed in the collection system is a feasible alternative to eliminate the Silver Street/Holland Road and Columbia Street/Fies Avenue CSOs in lieu of source separation, and construct the basins according to a schedule if an alternative solution is not proposed, (c) develop and submit to Ohio EPA a LTCP post-construction compliance monitoring plan to assess the success
of completed CSO projects, (d) develop and submit to Ohio EPA a sewer overflow response plan, and (e) develop and submit to Ohio EPA a LTCP completion evaluation report. Schedules of varying length were added to the City’s Current Permit for all of these obligations.

8. The City filed an appeal of its Current Permit to the Environmental Review Appeals Commission (Appeal No. ERAC 13-516793). In partial settlement of the appeal, the City proposed that the new wet weather-related obligations be removed from the City’s Current Permit and modified and incorporated into consensual Findings and Orders, so that the City could develop and submit to Ohio EPA a proposed amended LTCP and implementation schedule to address the remaining CSOs, reduce I/I, and reduce wet weather blending of flows at the POTW. Ohio EPA agrees with the proposal, but reserves the right to incorporate the requirements of an amended LTCP and schedule in the City’s Current Permit, or in future renewal permits issued to the City.

V. ORDERS

In recognition of the above Findings and in furtherance of the parties’ mutual interest in resolving the ERAC appeal, the Director hereby issues the following Orders:

1. The wet weather-related obligations referenced above shall be removed from the City’s Current Permit in accordance with Ohio EPA’s procedures for modification of existing NPDES permits. Notwithstanding Ohio EPA’s agreement to take this action, the Agency reserves the right to forego taking such action if U.S. EPA objects to the proposed modified permit.

2. The City shall undertake the following wet weather related steps to address existing CSOs, excess I/I, water in basement events, and blending of flows at the City’s POTW in accordance with the applicable schedules and milestones:

   a. Evaluation and Modification of Existing LTCP

      (1) The City shall conduct a comprehensive analysis of the continued utility of the current LTCP. The analysis shall include all feasible alternatives available under U.S. EPA’s April 1994 CSO Control Policy, as amended, to minimize/eliminate remaining CSOs, reduce I/I, and eliminate water in basement events, including, but not limited to, (a) continued reliance upon existing or enhanced storm sewer source separation projects as the primary means to eliminate the remaining CSOs and water in basement events, (b) use of storm water storage/retention basins in the collection system, (c) new/enhanced I/I investigation and elimination/reduction programs, (d) increasing hydraulic and/or treatment capacity at the POTW, or some combination thereof. The analysis shall include:

         (a) Improvements to the collection system necessary to convey increased sanitary flow to the POTW;

         (b) Storage basins/tanks in the collection system and at the POTW;
(c) Increasing the POTW's biological treatment capacity;

(d) Potential hydraulic and process bottlenecks and improvements needed to eliminate those bottlenecks;

(e) Incorporation of appropriately qualified engineering analysis and possible use of process modeling software, e.g. Biowin;

(f) Evaluation of the success of storm sewer separation projects completed so far, based on number, severity and duration of remaining overflows and any water in basement events;

(g) Identification and ranking of significant remaining sources of I/I in the collection system, including breakdown of relative quantities/percentages of inflow and infiltration at each source, and evaluation of legal means to force disconnection of I/I sources;

(h) Evaluation of the City's existing stormwater collection system, including capacity, location, receiving waters, and potential integration of CSO projects with stormwater collection system improvements;

(i) Updating/expanding stormwater data collection and/or modeling analysis of storm flows as necessary to support recommendations;

(j) Costs and benefits associated with each recommendation; and

(k) Proposed schedule for implementation of recommended improvements, and, if the City proposes a schedule beyond 2020, a financial affordability analysis to support the extended schedule, using U.S. EPA's guidelines for CSO affordability, as amended.

(2) On April 23, 2014, the City submitted a status report to Ohio EPA describing the progress towards completing the comprehensive analysis. The City shall submit a second status report to Ohio EPA no later than February 1, 2016, which shall include all stormwater flow and modeling data collected so far, a summary of alternatives that have been evaluated so far, and rationale for any alternatives that have been discontinued from further consideration as part of the comprehensive analysis.

(3) The City shall submit to Ohio EPA a report containing the comprehensive analysis and proposed modified LTCP and, if applicable, an updated financial affordability analysis, no later than August 15, 2016.

(4) Ohio EPA will review the City's status reports and the City's final submittal of the comprehensive analysis, and provide any necessary comments to the City. The City shall respond to any deficiencies in the status reports and the final submittal as noted by Ohio EPA within 60 days of receiving Ohio EPA comments.
(5) The City shall begin implementation of the selected alternative(s) and schedule in the approved final report within 180 days after receiving the approval. The City’s Current Permit may be modified at that time to include a schedule of compliance for implementation of the selected alternative(s).

b. Contingent Construction Schedule for Storm Water Storage Basin Alternative

The collection system to the City’s POTW contains two CSO sites which are included the City’s Current NPDES Permit as Outfall 003 and Outfall 004. If the City’s final Ohio EPA-approved comprehensive analysis recommends construction of storage basins directly upstream of CSO Outfalls 003 and 004 to collect and contain storm water until the treatment plant can accept and fully treat the flow, the City shall construct the basins in accordance with the following schedule. Unless the final analysis justifies otherwise, each storage basin shall have a minimum effective storage volume of 3 Million Gallons of sewer overflow.

Including this implementation schedule in these Findings and Orders shall in no way be construed as acceptance or approval of detailed plans. In addition, the sizing, location and need for these storage basins, as well as the construction schedule may be modified based on the results of the analysis submitted under Paragraph 2a of these Findings and Orders.

(1) As soon as possible, but no later than 12 months from the date of Ohio EPA’s approval of the City’s final comprehensive analysis, the City shall submit a construction plan to the Ohio EPA Northwest District Office for construction of the storage basins.

(2) As soon as possible, but no later than 18 months from the date of Ohio EPA’s approval of the City’s construction plan, the City shall submit application(s) for Permits-to-Install (PTI) to the Ohio EPA Northwest District Office for construction of the storage basins.

(3) As soon as possible, but no later than 6 months from the date of Ohio EPA’s issuance of PTI approval for the storage basins, the City shall complete bidding, award a contract, and begin construction of the storage basins.

(4) As soon as possible, but no later than 6 months after the City commences construction of the storage basins, the City shall submit a construction progress report to Ohio EPA Northwest District Office.

(5) As soon as possible, but no later than 12 months after commencing construction of the storage basins, the City shall complete construction of the storage basins and put them into operation.

c. Long Term Control Plan Post-Construction Compliance Monitoring Plan
(1) The City submitted to Ohio EPA’s Northwest Office a draft CSO post-construction monitoring plan, dated April 23, 2014, designed to assess the success of past and future wet weather-related improvements. The City shall immediately begin implementing the plan subject to any comments or changes required by Ohio EPA. A final post-construction monitoring plan shall be submitted to Ohio EPA’s Northwest District Office no later than the earlier of: (i) December 31, 2020, which is the deadline for completion of all CSO-related projects in the City’s current LTCP, (ii) 60 days after all CSO-related projects are completed, or (iii) an alternative date for completion of all CSO-related projects agreed to by Ohio EPA. Each post-construction plan shall address the following items:

(a) A summary of the CSO control projects that were constructed and their completion dates;

(b) A summary of all original CSO outfall locations in the collection system;

(c) A summary indicating which CSO locations have been eliminated (meaning permanently sealed) with dates of elimination and photographic documentation;

(d) A summary of the procedures to document the success of the CSO project(s), including reduction in number, duration and severity of upstream and downstream overflows and water in basement events;

(e) A summary of all original CSO locations that are being used as storm water outfalls;

(f) A program to ensure that known sanitary connections have been removed from each stormwater outfall, which shall include:

   (i) Visual screening during several dry weather events to be performed on separate days, during different days of the week, and at different times of the day;


   (iii) Visual inspection of any storm water outfalls that were originally CSOs during wet weather events. Samples should also be collected during observed precipitation events and tested for wastewater indicators. A minimum of six (6) wet weather samples shall be collected and tested at each of the historic CSO outfall locations. The samples results shall be reported with corresponding rainfall data.

   (iv) A field form shall be developed and completed to document the results of the inspections in items f. i – iii, above, including:
i. Outfall number or storm water outfall location;

ii. Date and time of inspection;

iii. Staff performing inspection;

iv. Date and total precipitation from the most recent precipitation event;

v. Pipe flow observed (e.g., none, <1/4 full, <1/2 full, etc.); and

vi. Comment section (odors, color, turbidity, floatables, sanitary debris, etc.).

d. Long-Term Control Plan Completion Evaluation Report

(1) By December 31, 2020, or another deadline agreed to by Ohio EPA, the City shall submit to Ohio EPA for acceptance two copies of a Long Term Control Plan ("LTCP") Completion Evaluation Report. This report shall be adequate to determine whether the goals for each project or group of projects implemented have been met, to evaluate the performance of each project in the LTCP separately, and to evaluate whether the goals of the LTCP have been achieved system-wide in accordance with U.S. EPA's April 1994 CSO Control Policy, as amended including:

(a) A list of all of the original CSO locations and a description of the current state of those outfalls (eliminated, open, storm water outfall, etc.);

(b) A summary of the CSO control projects that were constructed and their completion dates;

(c) For the CSO locations that have been eliminated (meaning permanently sealed) dates of elimination and photographic documentation;

(d) A summary of the data collected during the Post-Construction Compliance Monitoring required by Section V.2.c of these Findings and Orders;

(e) A discussion of the findings of the Post-Construction Compliance Monitoring required by Section V.2.c of these Findings and Orders, as they related to the goals of the LTCP;

(f) A summary of:

(i) Any model revision/recalibration efforts;

(ii) Discussion of the collection system and future CSO monitoring that will be performed to (1) accurately characterize overflow characteristics (occurrence, volumes); and (2) provide information for model verification;
(iii) A comparison of model output to monitoring data and an evaluation of the model's ability to accurately characterize collection system performance and overflows;

(iv) Discussion of the Typical Year of rainfall used for modeling;

(v) Model output when run with the typical year rainfall data (i.e., summary table of CSO occurrences and volumes from the typical year analysis);

(g) Discussion of any additional flows that may be tied into the system; and

(h) A final summary assessment of whether the goals of the LTCP have been met.

e. No Feasible Alternatives Analysis (NFA) for Wet Weather Blending Events

(1) As part of the City's comprehensive analysis of wet weather improvement alternatives, the City shall conduct an NFA of its wet weather blending of flows at the POTW. The NFA shall include:

(a) Assessment of POTW component flow and treatment capacities;

(b) Assessment of present base and peak flows to the POTW and projected future flows;

(c) Assessment of potential hydraulic limitations and bottlenecks at the POTW that could be reduced or eliminated to increase flows through all treatment processes;

(d) Analysis of blending events occurring in the last ten years, including number, frequency, estimated volume, and duration of each event, and correlation thereof to rainfall events, including size and duration, in the collection system at the time of each event;

(e) Estimate of collection system I/I contribution toward the occurrence of blending events, and potential for reducing blending events through aggressive I/I reduction programs;

(f) Analysis of potential alternatives to increase or expand treatment capacity at the POTW to reduce the number and/or duration of blending events; and

(g) Cost-benefit analysis of feasible alternatives to reduce the number and duration of blending events.
(2) The City's NFA analysis shall be completed and submitted to Ohio EPA no later than August 15, 2016, for review and approval. If the NFA analysis recommends I/I reduction as the primary means to reduce blending events, the analysis shall include a detailed description of the proposed I/I program, with documentation of the expected reduction in number and duration of blending events to occur following completion of each stage of the I/I reduction program.

(3) Ohio EPA will review the NFA and provide any comments to the City. The City shall respond to any comments received from Ohio EPA on the NFA within sixty (60) days of receipt of such comments. The City shall implement the measures proposed by the NFA within 180 days of receipt of Ohio EPA's concurrence and/or approval of the NFA.

3. The City shall develop and implement a Sewer Overflow Response Plan ("SORP") for dealing with both routine and catastrophic emergencies that lead to overflows. Routine emergencies include, but are not limited to, overflowing manholes, sewer backups into homes, vandalism, and line breaks. Catastrophic emergencies include, but are not limited to, floods, tornados, and widespread electrical failure. The goal of the SORP is to minimize the number and duration of overflows, and minimize the population's risk of contact with potentially-contaminated wastewater flow during an overflow event. The requirements of the SORP do not supersede or in any way remove or negate the reporting requirements for overflows contained in the City's current Permit. The SORP shall contain the following elements:

a. Vulnerability assessment of the collection system, POTW, and surrounding community, which assessment shall be completed no later than July 1, 2015. This assessment shall:

(1) Identify areas where the collection system is most vulnerable to overflows using such factors as topography, weather trends, sewer system size, capacity, age and construction, number of, and location and construction of, manholes and lift stations, vandalism, past O&M issues, and other site-specific factors;

(2) Determine the effect and relative severity of collection systems operations, equipment, and public health and safety in the event of a failure that causes an overflow; and

(3) Develop contingency procedures to maximize the probability that collection system operations will continue for the duration of an emergency that causes an overflow.

b. A list of emergency contacts from the local, county, and state level, as appropriate, as well as notification procedures, including (i) a designated response coordinator and alternative response coordinator, and appropriate contact information for both the designated and alternative response coordinator, (ii) identification of the appropriate governmental response units (such as the Police or Fire Department) and
contact information, and (iii) description of the required personnel for an emergency situation and their roles in an emergency situation.

c. Overflow notification/response procedures, including (i) minimum notification procedures for all overflows, (ii) specific notification procedures for larger or more severe overflows, (iii) procedures to respond to overflows both on public and private property, and (iv) procedures to assess/measure the severity of the overflow, risk to public health, and risk to response personnel.

d. A list of items and equipment available to response crews and the location where these items are stored.

e. Specific response procedures tailored to commonly-encountered situations, such as water line breaks, basement backups, and line blockage.

f. Procedures to disseminate information to the public, including a description of impacts such as road closings, service outages and other relevant information, and designated personnel to release information, designated media to receive and disseminate the information, and time frame to release the information.

g. Personnel training for emergency situations, including a training schedule and schedule for refresher training, training to use items and equipment required for emergency situations, training for routine emergency situations, such as line breaks, basement backups and line blockage, and training for non-routine emergency situations.

4. The City submitted a draft SORP and vulnerability analysis to Ohio EPA on May 13, 2015. The City shall submit a final SORP and vulnerability analysis to Ohio EPA’s Northwest District Office no later than 45 days after receiving Ohio EPA’s comments on the draft SORP and vulnerability analysis. Thereafter, the City shall review and, as necessary, revise or update, the SORP every three (3) years to reflect changes in response procedures, contact information, or any other relevant items. A copy of the current SORP shall be kept at the POTW and available for Ohio EPA to review.

VI. TERMINATION

The City’s obligations under these Findings and Orders shall terminate when the City certifies in writing and demonstrates to the satisfaction of Ohio EPA that the City has performed all obligations under these Findings and Orders, and the Chief of Ohio EPA’s Divisions of Surface Water acknowledges, in writing, the termination of these Findings and Orders. The City’s certification shall be signed by a responsible official of the City and submitted by the City to Ohio EPA, and contain the following attestation: “I certify that the information contained in or accompanying this certification is true, accurate and complete.” For the purposes of these Findings and Orders, a responsible official constitutes a resolution passed by a majority of the City’s Council or the signature of the Mayor acting as a duly authorized representative on behalf of the City’s Council.

If Ohio EPA does not agree that all obligations have been performed, Ohio EPA will notify the City of the obligations that have not been performed, in which case the City shall have
an opportunity to address any such deficiencies and re-seek termination as described above.

VII. OTHER CLAIMS

Nothing in these Findings and Orders shall constitute or be construed as a release from any claim, cause of action or demand in law or equity against any person, firm, partnership or corporation, not a party to these Findings and Orders, for any liability arising from, or related to, the operation of the City’s WWTP and sewer collection system. Nothing in these Findings and Orders shall constitute an admission by Ohio EPA as to the merits of the assignments of error asserted in the City’s ERAC appeal.

VIII. OTHER APPLICABLE LAWS

All actions required to be taken pursuant to these Findings and Orders shall be undertaken in accordance with the requirements of all applicable local, State and federal laws and regulations. These Findings and Orders do not waive or compromise the applicability and enforcement of any other statutes or regulations applicable to the City.

IX. MODIFICATIONS

These Findings and Orders may be modified by agreement of the parties hereto. Modifications shall be in writing and shall be effective on the date entered in the journal of the Director of Ohio EPA.

X. UNAVOIDABLE DELAYS

The City shall cause all work to be performed in accordance with applicable schedules and timeframes unless any such performance is prevented or delayed by an event which constitutes an unavoidable delay. For purposes of these Findings and Orders, an “unavoidable delay” shall mean an event beyond the control of the City which prevents or delays performance of any obligation required by these Findings and Orders and which could not be overcome by due diligence on the part of the City. Increased cost of compliance shall not be considered an event beyond the control of the City.

The City shall notify Ohio EPA in writing within ten (10) days after the occurrence of an event which the City contends is an unavoidable delay. (Ohio EPA may waive the 10 day notification.) Such written notification shall describe the anticipated length of the delay, the cause or causes of the delay, the measures taken and to be taken by the City to minimize the delay, and the timetable under which these measures will be implemented. The City shall have the burden of demonstrating that the event constitutes an unavoidable delay.

If Ohio EPA does not agree that the delay has been caused by an unavoidable delay, Ohio EPA will notify the City in writing. If Ohio EPA agrees that the delay is attributable to an unavoidable delay, Ohio EPA will notify the City in writing of the length of the extension for the performance of the obligations affected by the unavoidable delay.
XI. NOTICE

Except as otherwise provided in these Findings and Orders, all documents required to be submitted pursuant to these Findings and Orders shall be addressed to:

Elizabeth Wick, DSW Manager or successor  
Ohio EPA  
347 N. Dunbridge Road  
Bowling Green, Ohio 43402

and

Jim Bischoff, Public Works Director or successor  
City of Marion  
233 West Center Street  
Marion, Ohio 43302

XII. RESERVATION OF RIGHTS

Ohio EPA and the City each reserve all rights, privileges and causes of action, except as specifically waived in Section XIII of these Findings and Orders.

XIII. WAIVER

In order to resolve disputed claims, without admission of fact, violation or liability, and in lieu of enforcement by Ohio EPA of the wet weather-related terms and conditions in the City’s Current Permit, the City consents to the issuance of these Findings and Orders and agrees to comply with these Findings and Orders.

The City hereby waives the right to appeal the issuance, terms and conditions, and service of these Findings and Orders, and the City hereby waives the right to intervene and participate in such appeal. In such event, the City shall continue to comply with these Findings and Orders either in law or equity.

Notwithstanding the preceding, Ohio EPA and the City agree that if these Findings and Orders are appealed by any other party to the Environmental Review Appeals commission, or to any court, the City retains the right to intervene and participate in such appeal. In such event, the City shall continue to comply with these Findings and Orders, notwithstanding such appeal and intervention, unless these Findings and Orders are stayed, vacated, or modified.

XIV. EFFECTIVE DATE

The effective date of these Orders is the date these Findings and Orders are entered into the Ohio EPA Director’s Journal.
XV. SIGNATORY AUTHORITY

Each undersigned representative of the parties to these Findings and Orders certifies that he or she is fully authorized to enter into these Findings and Orders and to legally bind such party to these Findings and Orders.

SO ORDERED AND AGREED:

Ohio Environmental Protection Agency

[Signature]
By: Craig W. Butler
Title: Director, Ohio EPA

Date: 2/8/17

SO AGREED

City of Marion, Ohio

[Signature]
By: [Name]
Title: [Title]

Date/Number of Council Resolution: 1-3-17