

IN THE CIRCUIT COURT OF MOBILE COUNTY, ALABAMA

SYNOVUS BANK,)	
)	
Plaintiff,)	
)	CIVIL ACTION NO.
v.)	
)	CV-2023-901332
THE WATER WORKS AND SEWER)	
BOARD OF THE CITY OF PRICHARD,)	
)	
Defendant.)	

NOTICE OF FILING RECEIVER’S REPORT

On behalf of the Receiver appointed in this action, the undersigned gives notice of the filing of the attached Supplement to Receiver Monthly Report No. 2, dated January 31, 2024.

/s/ W. Patton Hahn

W. PATTON HAHN (HAH 002)
One of the attorneys for the Receiver

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CERTIFICATE OF SERVICE

I hereby certify that on January 31, 2024, the foregoing has been sent via this Court's electronic filing system to all counsel of record:

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/s/ W. Patton Hahn
OF COUNSEL

IN THE CIRCUIT COURT OF MOBILE COUNTY, ALABAMA

SYNOVUS CORPORATE TRUST,)	
)	
Plaintiff,)	
)	
v.)	Case No. 02-CV-2023-901332.00
)	
WATER WORKS AND SEWER BOARD)	
OF CITY OF PRICHARD,)	
)	
Defendant.)	

John S. Young Jr. LLC,
Receiver of the Prichard Water Works and Sewer Board
Supplement to Receiver Monthly Report #2

January 31, 2024

Comes now John S. Young, Jr., LLC, Receiver for the Prichard Water Works and Sewer Board (“PWWSB”), and files this Supplement to Receiver Monthly Report #2 attaching copies of:

1. Agreement for Professional Services between Prichard Water Works and Sewer Board and Hazen and Sawyer for Water Source/Treatment and Asset Evaluation dated January 22, 2024 (attached hereto as Exhibit 1), such agreement representing the contract for an asset management/source of supply study referenced in Receiver Monthly Report #2; and
2. Consent Order No. 24-037-CDW entered by and between PWWSB and the Alabama Department of Environmental Management (“ADEM”) on January 25, 2024 (attached hereto as Exhibit 2), the purpose and negotiation of such Consent Order having been referenced in Receiver Monthly Report #2.

Dated this 31st day of January, 2024.

John S. Young, Jr. LLC
Receiver of the Prichard Water Works and Sewer
Board

/s/ John S. Young, Jr.

By: John S. Young, Jr., Sole Member of John S.
Young, Jr. LLC

EXHIBIT 1

**AGREEMENT
FOR PROFESSIONAL SERVICES**

Between

**Prichard Water Works and Sewer
Board**

And

Hazen and Sawyer

FOR

**Water Source/Treatment and
Asset Evaluation**

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OWNER: [Prichard Water Works and Sewer Board]

PROJECT: [Water Source/Treatment and Asset Evaluation]

**AGREEMENT BETWEEN PRICHARD WATER WORKS AND SEWER BOARD
AND HAZEN AND SAWYER
FOR PROFESSIONAL SERVICES**

This Agreement, dated the _____ day of January , 2024 is made and entered into between

Prichard Water Works and Sewer Board (Owner, hereinafter "**OWNER**")

ATTN; John S. Young, Jr. LLC (Receiver)

c/o John S. Young, Jr. Sole Member of Receiver

125 East Clark Avenue

Prichard, AL 36610

and

Hazen and Sawyer (hereinafter "**ENGINEER**")

2 Chase Corporate Drive,

STE 170

Birmingham, AL 35244.

WHEREAS, the Receiver was appointed by the Circuit Court of Mobile County, Alabama in the case styled *Synovus Corporate Trust v. Water Works and Sewer Board of City of Prichard* by the order entered on November 10, 2012 ("Receiver Order"). Further Synovus Corporate Trust is the Indenture Trustee ("Trustee") as reflected in the Receiver Order;

WHEREAS, the Receiver is authorized to enter this Agreement on behalf of the Owner pursuant and subject to the terms of the Receiver Order;

WHEREAS, **OWNER's** Project, of which **ENGINEER's** services under this Agreement are a part, is generally identified as follows:

Water Source/Treatment and Asset Evaluation for the Water and Sewer System owned by the Prichard Water Works and Sewer Board ,
(hereinafter "**PROJECT**"); and

WHEREAS, **OWNER** requests **ENGINEER's** services in connection with the **PROJECT**;

NOW THEREFORE, in consideration of the mutual promises herein contained, **OWNER** and **ENGINEER** agree as follows:

Art. 1 THE AGREEMENT DOCUMENTS

- 1.1 Included Documents. The Agreement consists of: (1) this Agreement, including Schedule A, Scope of Services, and Schedule B, Compensation, attached hereto.
- 1.2 Entire Agreement. The Agreement represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral.
- 1.3 Modification. **Unless otherwise provided for herein**, no amendments, changes, alterations, or modifications of this Agreement shall be effective unless in writing and executed by **OWNER** and **ENGINEER**.

Art. 2. SCOPE OF SERVICES AND DIVISION OF RESPONSIBILITIES

- 2.1 OWNER Responsibilities. In addition to other responsibilities of **OWNER** as set forth in this Agreement, **OWNER** must designate its representative to fulfill the following responsibilities, at its expense, which **ENGINEER** shall rely upon:
 - a) Provide **ENGINEER** with all criteria and full information as to **OWNER's** requirements for the **PROJECT**, including design objectives and constraints, flexibility, expandability, capacity and performance requirements, budgetary limitations, operating and testing data, as-built drawings, and previous reports if any. Provide **ENGINEER** with copies of all design and construction standards that **OWNER** will require to be included in the Drawings and Specifications, and provide copies of **OWNER's** standard forms, conditions, and related documents for **ENGINEER** to include in the bid documents, when applicable.
 - b) Provide to **ENGINEER** any other available information pertinent to the **PROJECT** including reports and data relative to previous designs, or investigation at or adjacent to the Site.
 - c) Following **ENGINEER's** assessment of initially available **PROJECT** data and upon **ENGINEER's** request, provide or make available such additional **PROJECT** related information and data as is reasonably required to enable **ENGINEER** to complete its services. Such additional information or data includes the following:
 1. Property descriptions.
 2. Zoning, deed, and other land use restrictions.
 3. Property, boundary, easement, right-of-way, and other special surveys or data, including establishing relevant reference points.
 4. Explorations and tests of subsurface conditions at or contiguous to the Site, drawings of physical conditions relating to existing surface or

- subsurface structures at the Site, or hydrographic surveys, with appropriate professional interpretation thereof.
5. Environmental assessments, audits, investigations, impact statements, and other relevant environmental or cultural studies as to the **PROJECT**, the Site, and adjacent areas.
 6. Data or consultations as required for the **PROJECT** but not otherwise identified in the Agreement or the Exhibits thereto.
- d) Provide prompt written notice to **ENGINEER** whenever **OWNER** observes or otherwise becomes aware of the presence at the Site of any environmental concern, or of any other development that affects the scope or time of performance of **ENGINEER** services, or any defect or nonconformance in **ENGINEER** services, the Work, or in the performance of any contractor.
 - e) Arrange safe access to and make all provisions for **ENGINEER** to enter upon public and private property as required for **ENGINEER** to perform services under the Agreement.
 - f) Provide reviews, approvals, and permits from all governmental authorities having jurisdiction to approve all phases of the **PROJECT** designed or specified by **ENGINEER** and such reviews, approvals, and consents from others as may be necessary for completion of each phase of the **PROJECT**.

Art. 3. NOTICE TO COMMENCE WORK AND DURATION OF AGREEMENT

- 3.1 Commencement. **ENGINEER** is authorized to begin rendering services as of the effective date and issuance of Notice-to-Proceed and will terminate either: (1) upon the satisfactory completion of **ENGINEER's** scope of services set forth in Schedule A; (2) on the date specified in Schedule B, if such date is specified, as applicable; or (3) as otherwise terminated under this Agreement.
- 3.2 Time for Completion. **ENGINEER** shall complete its obligations within a reasonable time. Specific periods of time for rendering services are set forth or specific dates by which services are to be completed are provided in Schedules A and/or B. If, through no fault of **ENGINEER**, such periods of time or dates are changed, or the orderly and continuous progress of **ENGINEER's** services is impaired, or **ENGINEER's** services are delayed or suspended, then the time for completion of **ENGINEER's** services, and the rates and amounts of **ENGINEER's** compensation, shall be adjusted equitably. If **OWNER** authorizes changes in the scope, extent, or character of the **PROJECT**, then the time for completion of **ENGINEER's** services, and the rates and amounts of **ENGINEER's** compensation, shall be adjusted equitably. **OWNER** shall make decisions and carry out its other responsibilities in a timely manner so as not to delay **ENGINEER's** performance of its services.

Art. 4. PAYMENT AND BILLING

- 4.1 Payment Amount(s). As compensation for the services to be performed by **ENGINEER**, **OWNER** shall pay **ENGINEER** the amount(s) set forth in Schedule B, attached hereto. The method of compensation shall be set forth in Schedule B. **OWNER** agrees only to be liable for payment to **ENGINEER** for **ENGINEER's** proper performance of services, as provided for in Schedule B.
- 4.2 Invoicing and Documentation. **ENGINEER** shall keep accurate back-up documentation of the time expended in executing its scope of work. Payment for services performed by **ENGINEER** shall be based upon **ENGINEER's** satisfactory completion of services as properly invoiced and documented by **ENGINEER**. **ENGINEER's** invoices and documentation shall be subject to verification by **OWNER** prior to payment. Engineer will receive payment on invoices directly from the **TRUSTEE**. All invoices shall be sent to **OWNER** and **TRUSTEE** at the following addresses: Invoices submitted by **ENGINEER**, at a minimum, shall:
- a) accurately describe the services rendered during the invoice period;
 - b) identify any other authorized expenses incurred hereunder; and
 - c) make reference to this Agreement, and otherwise identify the invoice in such manner as **OWNER** may reasonably require.

ENGINEER will receive payment on invoices directly from the **TRUSTEE**. All invoices and billing documentation shall be sent to **OWNER** and **TRUSTEE** at the following address:

Prichard Water Works and Sewer Board
Attention: John S. Young, Jr. LLC (Receiver)
125 East Clark Avenue
Prichard, AL 36610
j.young@comcast.net

To Trustee:
Attention: Dean D. Matthews
Managing Director, Corporate Trust
Synovus Bank
800 Shades Creek Parkway- STE 275
Birmingham, AL 35209
(205) 868-4873 (direct)
deanmatthews@synovus.com

- 4.3 Failure to Pay. If **OWNER** fails to make any payment due to **ENGINEER** for services and expenses within 30 days after receipt of **ENGINEER's** invoice, then:
- a) amounts due to **ENGINEER** will be increased at the rate of 1.0% per month (or the maximum rate of interest permitted by law, if less) from the thirtieth day; and
 - b) **ENGINEER** may, after giving seven days written notice to **OWNER**, suspend services under this Agreement until **OWNER** has paid in full all amounts due

for services, expenses, and other related charges. **OWNER** waives any and all claims against **ENGINEER** for any such suspension.

- 4.4 Disputed Invoices. If **OWNER** contests an invoice, **OWNER** shall promptly advise **ENGINEER** of the specific basis for doing so, may withhold only that portion so contested, and must pay the undisputed portion.
- 4.5 Legislative Actions. If after the Effective Date any governmental entity takes a legislative action that imposes taxes, fees, or charges on **ENGINEER's** services or compensation under this Agreement, then **ENGINEER** may invoice such new taxes, fees, or charges as a reimbursable expense. **OWNER** shall reimburse **ENGINEER** for the cost of such invoiced new taxes, fees, and charges; such reimbursement shall be in addition to the compensation to which **ENGINEER** is entitled under the terms of Schedule B.
- 4.6 Opinions of Probable Construction Cost. **ENGINEER's** opinions of probable construction cost are to be made on the basis of **ENGINEER's** experience and qualifications and represent **ENGINEER's** best judgment as an experienced and qualified professional generally familiar with the construction industry. However, because **ENGINEER** has no control over the cost of labor, materials, equipment, or services furnished by others, or over contractors' methods of determining prices, or over competitive bidding or market conditions, **ENGINEER** cannot and does not guarantee that proposals, bids, or actual construction cost will not vary from opinions of probable construction costs prepared by **ENGINEER**. If **OWNER** requires greater assurance as to probable construction cost, **OWNER** must employ an independent cost estimator.
- 4.7 Opinions of Total Project Costs. The services, if any, of **ENGINEER** with respect to total project costs shall be limited to assisting the **OWNER** in collating the various cost categories which comprise total project costs. **ENGINEER** assumes no responsibility for the accuracy of any opinions of total project costs.

Art. 5. DATA AND INFORMATION

- 5.1 All documents are instruments of services in respect to this **PROJECT** and **ENGINEER** shall retain an ownership and property interest therein (including the copyright and the right of reuse at the discretion of **ENGINEER**) whether or not the **PROJECT** is completed. **OWNER** shall not rely in any way on any document unless it is in printed form, signed or sealed by **ENGINEER** or one of its consultants.
- 5.2 **OWNER** may make and retain copies of documents for information and reference in connection with use on the **PROJECT** by **OWNER**. **ENGINEER** grants **OWNER** a limited license to use the documents on the **PROJECT**, extensions of the **PROJECT**, and for related uses of the **OWNER**, subject to receipt by **ENGINEER** of full payment for all services relating to preparation of the documents and subject to the following limitations: (1) **OWNER** acknowledges that such documents are not intended or represented to be suitable for use on the **PROJECT** unless completed by **ENGINEER**, or for use or reuse by **OWNER** or others on extensions of the **PROJECT**, on any other project, or for any other use or purpose, without

written verification or adaptation by **ENGINEER**; (2) any such use or reuse, or any modification of the documents, without written verification, completion, or adaptation by **ENGINEER**, as appropriate for the specific purpose intended, will be at **OWNER's** sole risk and without liability or legal exposure to **ENGINEER** or to its officers, directors, members, partners, agents, employees, and consultants; (3) **OWNER** shall indemnify and hold harmless **ENGINEER** and its officers, directors, members, partners, agents, employees, and consultants from all claims, damages, losses, and expenses, including attorneys' fees, arising out of or resulting from any use, reuse, or modification of the documents without written verification, completion, or adaptation by **ENGINEER**; and (4) such limited license to **OWNER** shall not create any rights in third parties.

- 5.3 If **ENGINEER** at **OWNER's** request verifies the suitability of the documents, completes them, or adapts them for extensions of the **PROJECT** or for any other purpose, then **OWNER** shall compensate **ENGINEER** at rates or in an amount to be agreed upon by **OWNER** and **ENGINEER**.

Art. 6. SUBCONTRACTING

Performance of this Agreement shall not be subcontracted in whole or in part without the consent of **OWNER** which shall not be unreasonably withheld. In the event **OWNER** consents to such subcontract, **ENGINEER** shall remain bound by the terms of this Agreement until the satisfactory completion of all work hereunder or the termination or expiration hereof, whichever shall first occur. **ENGINEER** may employ consultants as **ENGINEER** deems necessary to assist in the performance or furnishing of the services, subject to reasonable, timely, and substantive objections by **OWNER**.

Art. 7. CONFLICTS OF INTEREST

- 7.1 Neither **ENGINEER** nor its employees shall have or hold any continuing or frequently recurring employment or contractual relationship that is substantially antagonistic or incompatible with **ENGINEER's** loyal and conscientious exercise of judgment related to its performance under this Agreement.
- 7.2 **ENGINEER** agrees that none of its officers or employees shall, during the duration of this Agreement, serve as an expert witness against **OWNER** in any legal or administrative proceeding in which he or she is not a party, unless compelled by court process, nor shall such persons give sworn testimony or issue a report or writing, as an expression of his or her expert opinion, which is adverse or prejudicial to the interests of **OWNER** for the work performed under this Agreement or in connection with any such pending or threatened legal or administrative proceeding. The limitations of this section shall not preclude such persons from representing themselves in any action or in any administrative or legal proceeding.
- 7.3 In the event **ENGINEER** is permitted to utilize subcontractors to perform any services required by this Agreement, **ENGINEER** agrees to prohibit such subcontractors, by written contract, from having any conflicts within the meaning of this Article 7.

Art. 8. SUSPENSION OF SERVICES

- 8.1 By OWNER. **OWNER** may suspend, delay, or interrupt the **PROJECT** for up to 60 days upon 7 days written notice to **ENGINEER**. The written notice must be in advance of the effective time and date of suspension and will fix the date on which performance of such services will be resumed. **ENGINEER** shall be entitled to an adjustment in compensation, an extension of time, or both, directly attributable to any such suspension, to the extent that such suspension was not due to any fault of **ENGINEER**.
- 8.2 By ENGINEER. **ENGINEER** may suspend, delay, or interrupt its services, or any portion thereof, for a period of 60 days upon 7 days written notice to **OWNER** for nonpayment.

Art. 9. TERMINATION

- 9.1 Termination for Cause by Either Party. Either party may terminate this Agreement at any time for cause by giving the other party **seven days** written notice if the other party fails to perform its obligations under this Agreement and fails to cure within such **seven-day** period.
- 9.2 Termination for Cause by ENGINEER. Upon seven days written notice if **OWNER** demands that **ENGINEER** furnish or perform services contrary to **ENGINEER**'s responsibilities as a licensed professional; or upon seven days written notice if **ENGINEER**'s services for the **PROJECT** are delayed or suspended for more than 60 days for reasons beyond **ENGINEER**'s control, **ENGINEER** may terminate this Agreement. **ENGINEER** shall have no liability to **OWNER** on account of such termination.
- 9.3 Termination for Convenience. **OWNER** may terminate this Agreement at any time with or without cause upon at least **fourteen days** written notice to **ENGINEER**. In the event of such a termination for convenience, **ENGINEER** will be paid for that portion of the work satisfactorily completed prior to termination.
- 9.4 Payments Upon Termination. In the event of any termination, **ENGINEER** will be entitled to invoice **OWNER** and to receive full payment for all services performed or furnished in accordance with this Agreement and all reimbursable expenses incurred through the effective date of termination. In the event of termination by **OWNER** for convenience or by **ENGINEER** for cause, **ENGINEER** shall be entitled, in addition to invoice **OWNER** and to payment of a reasonable amount for services and expenses directly attributable to termination, both before and after the effective date of termination, such as reassignment of personnel, costs of terminating contracts with **ENGINEER**'s subcontractors or consultants, and other related close-out costs.

Art. 10. CHANGES IN THE SERVICES

- 10.1 Written Change Order. **OWNER** may, by written order to **ENGINEER**, request additional services, issue revisions or direct the omission of services within the general scope of this Agreement. Any additional services shall be performed upon execution of an applicable change order regarding compensation and extensions

of time. No changes will be made absent specific written direction and agreement for payment.

- 10.2 Equitable Adjustment. If such changes cause an increase or decrease in **ENGINEER's** cost of, or time required for, performance of any services under this Agreement, an equitable adjustment may be made in price and/or time of performance, provided that any claim for an adjustment must be made in strict accordance with the terms of this Agreement. **ENGINEER** shall submit such claim in writing within **30 days** of receipt of said written order.

Art. 11. NOTICES

All notices or orders provided for in this Agreement shall be in writing, addressed to the appropriate party at the address which appears below (or as modified in writing by such party) and given personally, by United States mail (return receipt requested), or by a courier service. All notices shall be effective upon the date of receipt.

OWNER if mailed by certified or registered mail, postage prepaid to:

Prichard Water Works and Sewer Board
Attention: John S. Young, Jr. - Receiver
125 East Clark Avenue
Prichard, AL 36610;

or

ENGINEER if mailed by certified or registered mail, postage prepaid to:

Hazen and Sawyer
Attention: Stephen H. King
2 Chase Corporate Drive,
STE 170
Birmingham, AL 35244.

Art. 12. CLAIMS AND DISPUTES

- 12.1 Applicable Law. This Agreement shall be interpreted and construed in accordance with the laws of the state where the **PROJECT** is located.
- 12.2 Dispute Resolution Procedure. **OWNER** and **ENGINEER** each hereby waives any rights it may have to a trial by jury of any such litigation. Further, any such claims or disputes and any action involving the enforcement or interpretation of any rights hereunder shall be submitted to the jurisdiction of the courts of the state in which the **PROJECT** is located.
- 12.3 Neither **OWNER** nor **ENGINEER** shall be liable to the other for any special, incidental, indirect or consequential damages whatsoever arising out of or relating in any way to this Agreement.

Art. 13. INSURANCE

- 13.1 ENGINEER Coverage. **ENGINEER** shall procure and maintain insurance as set forth below. **ENGINEER** shall cause **OWNER** to be listed as an additional insured on any applicable general liability insurance policy carried by **ENGINEER**.
- 13.2. Minimum Coverage of ENGINEER. **ENGINEER** shall maintain at a minimum the following insurance policies and coverage with carriers authorized to cover risks and licensed to underwrite policies and have an A.M. Best's rating of A-VII or higher:
- (a) Worker's Compensation & Disability Insurance as required by all applicable state and federal laws.
 - (b) Employer's Liability with limits of **\$500,000** each accident, **\$500,000** Disease (each employee) and **\$500,000** Disease (policy limit).
 - (c) Comprehensive General Liability with minimum limits of **\$1,000,000** per occurrence and **\$1,000,000** in the aggregate.
 - (d) Professional Liability with limits of not less than **\$1,000,000**, per claim and **\$1,000,000** in the aggregate, insuring the professional liability of **ENGINEER**.
 - (e) Business Auto Insurance for all owned, hired, non-owned and Employers' non-ownership vehicles with minimum limits of **\$1,000,000** combined single limit.
 - (f) Other Insurance Coverage Requirements: None
- 13.3 Certificates of Insurance. **ENGINEER** shall deliver to **OWNER** certificates of insurance evidencing the coverages indicated in Sections 13.1 and 13.2 above. Such certificates shall be furnished prior to commencement of **ENGINEER's** services and at renewals thereafter during the life of the Agreement.
- 13.4 At any time, **OWNER** may request that **ENGINEER** or its consultants, at **OWNER's** sole expense, provide additional insurance coverage, increased limits, or revised deductibles.
- 13.5 Cancellation, Renewal or Modification. Should coverage afforded under any policy be canceled, non-renewed, materially changed (materially changed defined as a reduction in the policy limit by endorsement during the policy period), or allowed to expire, **ENGINEER** shall provide **OWNER** with at least 30 days prior written notice or, in the event of non-payment, ten days prior written notice.
- 13.6 Failure to Maintain Insurance. In the event **ENGINEER** fails to maintain any of the insurance required under this Agreement, it shall constitute a material breach of this Agreement.

Art. 14. INDEMNIFICATION

- 14.1 Indemnification by ENGINEER. To the fullest extent permitted by law, **ENGINEER** shall indemnify and hold harmless **OWNER**, and its officers and employees from and against claims, damages, losses and expenses of any nature or kind including, but not limited to, reasonable attorneys' fees, arising out of, resulting from or relating in any way to negligence, recklessness, intentionally wrongful conduct or breach of contract of **ENGINEER**, its subcontractors, anyone directly employed by them or anyone for whose acts they may be liable. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this Article 14.
- 14.2 Indemnification by OWNER. To the extent permitted by Alabama law, **OWNER** shall indemnify and hold harmless **ENGINEER** and its shareholders, directors, officers, agents and employees from and against claims, damages, losses and expenses of any nature or kind including, but not limited to, attorneys' fees, arising out of, resulting from or relating in any way to negligence, recklessness, intentionally wrongful conduct or breach of contract of **OWNER**, its subcontractors, anyone directly employed by them or anyone for whose acts they may be liable. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this Article 14.
- 14.3 Environmental Indemnification. To the fullest extent permitted by law, **OWNER** shall indemnify and hold harmless **ENGINEER**, and its shareholders, directors, officers, agents and employees from and against any and all claims, costs, losses, and damages (including but not limited to all fees and charges of **ENGINEER**, architects, attorneys and other professionals, and all court, arbitration, or other dispute resolution costs) caused by, arising out of, relating to, or resulting from an environmental concern at, on, or under the site, provided that (1) any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or to the injury or to destruction of tangible property (other than the work itself), including the loss of use resulting therefrom, and (2) nothing in this paragraph shall obligate **OWNER** to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence or willful misconduct.
- 14.4 Mutual Waiver. To the fullest extent permitted by law, **OWNER** and **ENGINEER** waive against each other, and the other's shareholders, directors, officers, agents and employees, any and all claims for or entitlement to special, incidental, indirect, or consequential damages arising out of, resulting from, or in any way related to the **PROJECT**.
- 14.5 This Article 14, Indemnification, shall survive the termination of this Agreement.
- 14.6 Both parties acknowledge and agree that the foregoing obligations are specific considerations for this Agreement and without such duties and obligations neither party would enter this Agreement.

Art. 15. PERFORMANCE STANDARDS

- 15.1 Standard of Care. **ENGINEER** shall perform all professional services with the care and skill ordinarily exercised by members of the same profession currently practicing in the United States, on projects of similar size and complexity at the time the services are performed. **ENGINEER** makes no warranties, express or implied, under this Agreement or otherwise, in connection with **ENGINEER's** services.
- 15.2 Reliance on Others. Subject to the standard of care set forth in Article 15, **ENGINEER** and its consultants may use or rely upon design elements and information ordinarily or customarily furnished by others, including, but not limited to, specialty contractors, manufacturers, suppliers, and the publishers of technical standards.
- 15.3 **ENGINEER** shall not be required to sign any documents, no matter by whom requested, that would result in **ENGINEER** having to certify, guarantee, or warrant the existence of conditions whose existence **ENGINEER** cannot ascertain. **OWNER** agrees not to make resolution of any dispute with **ENGINEER** or payment of any amount due to **ENGINEER** in any way contingent upon **ENGINEER** signing any such documents.
- 15.4 During construction, **ENGINEER** neither guarantees the performance of any contractor nor assumes responsibility for any contractor's failure to furnish and perform the work in accordance with the contract documents.
- 15.5 During construction, **ENGINEER** shall not provide or have any responsibility for surety bonding or insurance-related advice, recommendations, counseling, or research, or enforcement of construction insurance or surety bonding requirements.
- 15.6 During construction, **ENGINEER** shall not be responsible for the acts or omissions of any contractor, subcontractor, or supplier, or of any of their agents or employees or of any other person (except **ENGINEER**; own agents, employees, and consultants) at the site or otherwise furnishing or performing any work; or for any decision made regarding the contract documents, or any application, interpretation, or clarification of the contract documents, other than those made by **ENGINEER**.

Art. 16. RECORDS

- 16.1 If the services to be performed hereunder relate to a state or federal government contract, the Comptroller General of the United States and the department or agency of the government having cognizance over this Agreement, and any of their duly authorized representatives, shall have access to and the right to examine any directly pertinent books, documents, papers and records of **OWNER** or **ENGINEER** involving transactions related to this Agreement.
- 16.2 **ENGINEER** shall grant access to such records until the expiration of **three years** after final payment under this Agreement.

Art. 17. AUDIT RIGHT AND RETENTION OF RECORDS

- 17.1 **OWNER** shall have the right to audit the books and records of **ENGINEER**. **ENGINEER** shall keep such records and accounts as may be necessary in order to record complete and correct entries related to the **PROJECT**.
- 17.2 **ENGINEER** shall preserve and make available, at reasonable times for examination and audit by **OWNER** all financial records, supporting documents, statistical records, and any other documents pertinent to this Agreement until the expiration of **three years** after final payment under this Agreement.

Art. 18. LIMITATION OF LIABILITY

To the fullest extent permitted by law, and notwithstanding any other provision of this Agreement, the total liability, in the aggregate, of **ENGINEER** and **ENGINEER's** officers, directors, members, partners, agents, employees, and Consultants, to **OWNER** and anyone claiming by, through, or under **OWNER** for any and all claims, losses, costs, or damages whatsoever arising out of, resulting from, or in any way related to the **PROJECT** or the Agreement from any cause or causes, including but not limited to the negligence, professional errors or omissions, strict liability, breach of contract, indemnity obligations, or warranty express or implied of **ENGINEER** or **ENGINEER's** officers, directors, members, partners, agents, employees, or Consultants shall not exceed the total compensation received by **ENGINEER** under this Agreement.

Art. 19. SUCCESSORS AND ASSIGNEES

This Agreement is to be binding on the heirs, successors and assignees of **OWNER** and **ENGINEER**, but is not to be assigned by either **OWNER** or **ENGINEER**, without first obtaining the written consent of the other.

Art. 20. MUTUAL WAIVER OF BREACH AND MATERIALITY

Failure by **either party** to enforce any provision of this Agreement shall not be deemed a waiver of such provision or modification of this Agreement. A waiver of any breach of a provision of this Agreement shall not be deemed a waiver of any subsequent breach and shall not be construed to be a modification of the terms of this Agreement. **OWNER** and **ENGINEER** agree that each requirement, duty, and obligation set forth herein is substantial and important to the formation of this Agreement and, therefore, is a material term hereof.

Art. 21. PERMITS, LICENSES, NOTICES AND COMPLIANCE WITH LAWS

- 21.1 **ENGINEER** shall comply with federal, state and local tax laws, social security acts, unemployment compensation acts and worker's compensation acts insofar as applicable to the performance of services under this Agreement.
- 21.2 **ENGINEER** shall not unlawfully discriminate against any person in its operations and activities in its use or expenditure of the funds or any portion of the funds

provided by this Agreement and shall affirmatively comply with all applicable provisions of the Americans with Disabilities Act (ADA) in the course of providing any services funded in whole or in part by **OWNER**, including Titles I and II of the ADA (regarding nondiscrimination on the basis of disability), and all applicable regulations, guidelines, and standards.

- 21.3 **ENGINEER's** decisions regarding the delivery of services under this Agreement shall be made without regard to or consideration of race, age, religion, color, gender, sexual orientation, national origin, marital status, physical or mental disability, political affiliation, or any other factor which cannot be lawfully or appropriately used as a basis for service delivery.
- 21.4 **ENGINEER** shall comply with Title I of the Americans with Disabilities Act regarding nondiscrimination on the basis of disability in employment and further shall not discriminate against any employee or applicant for employment because of race, age, religion, color, gender, sexual orientation, national origin, marital status, political affiliation, or physical or mental disability. In addition, **ENGINEER** shall take affirmative steps to ensure nondiscrimination in employment against disabled persons. Such actions shall include, but not be limited to, the following: employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff, termination, rates of pay, other forms of compensation, terms and conditions of employment, training (including apprenticeship), and accessibility.
- 21.5 **ENGINEER** shall take affirmative action to ensure that applicants are employed, and employees are treated without regard to race, age, religion, color, gender, sexual orientation, national origin, marital status, political affiliation, or physical or mental disability during employment. Such actions shall include, but not be limited to, the following: employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff, termination, rates of pay, other forms of compensation, terms and conditions of employment, training (including apprenticeship), and accessibility.

Art. 22. SEVERANCE

In the event this Agreement or a portion of this Agreement is found by a court of competent jurisdiction to be invalid, the remaining provisions shall continue to be effective unless **OWNER** elects to terminate this Agreement. The election to terminate this Agreement based upon this provision shall be made within **seven days** after the finding by the court becomes final.

Art. 23. JOINT PREPARATION

Preparation of this Agreement has been a joint effort of **OWNER** and **ENGINEER**, and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the parties than any other.

Art. 24. PRIORITY OF PROVISIONS

If there is a conflict or inconsistency between any term, statement, requirement, or provision of any exhibit attached hereto, any document or events referred to herein, or any document incorporated into this Agreement by reference and a term, statement, requirement, or provision of this Agreement, the term, statement, requirement, or provision contained in the Articles of this Agreement shall prevail and be given effect.

Art. 25. PROJECT SPECIFIC TERMS

The following additional **PROJECT** specific terms and conditions are:

_None

Art. 26. COUNTERPARTS


This Agreement may be executed in **counterparts**, each of which shall be deemed to be an original.


Art. 27. APPROVAL

IN WITNESS THEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized officers and is made effective the day and year first above written.


PRICHARD WATER WORKS AND SEWER BOARD


HAZEN AND SAWYER

By: 
John S. Young Jr. LLC, Receiver
By John S. Young, Jr. LLC Sole Member of Receiver
Date: 1-22-2024

By: 
Stephen King, P.E., BCEE
Associate Vice President
Date: 1-11-2024

Witnessed By:


1/22/2024 Date
Attorney-Baker Donelson
Title


1/11/2024 Date
Assistant Engineer III
Title

SCHEDULE A
SCOPE OF SERVICES
Prichard Water Works and Sewer Board
Water Source/Treatment and Asset Evaluation

The scope of work to be provided by **ENGINEER** includes professional services for the elements listed below.

The purpose of this Water Source/Treatment and Asset Evaluation Scope of Services (Scope) is to determine the most cost effective and feasible water source and assess the existing condition of water and sewer infrastructure to develop a 20-year Capital Improvement Plan (20-year plan).

This evaluation will cover multiple water source and asset assessments including,

Water Source Assessments:

1. New surface water supply
2. New groundwater supply
3. Associated treatment and pumping facilities

Infrastructure Asset Evaluation:

1. Water storage system
2. Water distribution system
3. Wastewater gravity collection system and force mains
4. Wastewater pump stations
5. Carlos Morris Wastewater Treatment Plant
6. Stanley Brooks Wastewater Treatment Plant

The primary goal of the project is to ensure a sustainable, reliable, and cost-effective water supply and reliable water and sewer infrastructure for the communities served by PWW&SB.

Scope of Services

TASK 1 PROJECT MANAGEMENT

Hazen's project manager will be responsible for managing and administering the project, including:

- Preparing and administering Hazen's internal resources
- Coordinating activities and budgets of subconsultants
- Monitoring project activities, budgets, and schedule
- Communicating with PWW&SB's project manager
- Scheduling and attending progress and review meetings.
- Communicating with PWW&SB's departments and outside agencies, as needed.
- Ensuring that the Project Team follows Hazen's quality assurance and control (QA/QC) policies and procedures throughout the project.

Task 1 Deliverables:

- Submit a monthly project status memorandum with invoice.

TASK 2 WATER SUPPLY AND TREATMENT ALTERNATIVES ANALYSIS

Task 2.1 Water Supply and Treatment Technical Assessment

The technical assessment performed under this task will include the review and analysis of the following water supply related topics. This assessment will be conceptual in nature based on available data and information. All spreadsheets, graphics, and text appropriate for Task 2 will be prepared in a stand-alone Technical Memorandum.

Task 2.1.1 Surface Water Supply

Hazen will perform an assessment of up to two unidentified surface water supplies. At this time, Hazen is unaware of any preliminary review of available potable surface water supplies. As such, this assessment will begin with identifying all potential available surface water bodies (rivers, lakes, etc.) for consideration. Hazen will assess water quality and quantity, including seasonal variations, based on available existing data, information, or technical reports, to determine the suitability of the potential supplies including reliability and treatment requirements of the source. This scope of work does not include safe yield evaluations or sampling to determine water quality trends.

Hazen will include the following in the assessment:

- Location of the potential source water supplies
- Quantity believed to be available based on available flow
- Transmission requirements
- Quality of the potential source water supplies
- Proposed treatment schematic (e.g., coagulation, flocculation, settling, filtration, etc.)

Task 2.1.2 Groundwater Supply

Hazen will perform an assessment of up to two groundwater supplies. At this time, Hazen is aware of some preliminary review of available potable groundwater supplies (see below). As such, this assessment will begin with reviewing all available groundwater sources that have been identified for consideration. Hazen will assess water quality and quantity, including seasonal variations to determine the suitability of the potential supplies including reliability and treatment requirements of the source.

Hazen will include the following in the assessment:

- Location of the potential groundwater water supplies
- Quantity believed to be available based on potential safe yield
- Transmission requirements
- Quality of the potential source water supplies
- Preliminary determination of the characterization of the groundwater with respect to direct influences of surface water.
- Proposed treatment schematic (e.g., coagulation, flocculation, settling, filtration, etc.)

As part of the groundwater assessment, Hazen will perform a review previously collected hydrogeological information (e.g., local information from other utilities, studies, reports, etc.) to assist the Team in efficiently understanding the quality and quantity of groundwater available.

Note: In 2020 and working for Hazen, Cook Hydrogeology completed an initial high-level hydrogeologic feasibility assessment to begin the assessment of whether a groundwater source could be developed to meet PWW&SB's water demands. The existing report evaluated six potential tests well locations that had been identified by previous investigations. In 2021, Cook Hydrogeology also completed a pumping test analysis and water quality evaluation of the Chickasaw Housing Authority Well in Mobile County, Alabama. Results of the pump testing indicated that adequate water quantity and quality would be available to serve the PWW&SB's water demands from the local alluvial aquifer, assuming that multiple supply wells are installed. The sustained pumping rate was projected to be 651 gallons per minute (gpm) over a 20-year period. These reports and other existing literature regarding the local geology and hydrogeology will be reviewed as part of the proposed task.

Task 2.1 Deliverables:

- Tabulation of all materials collected.

Task 2.2 Preliminary Environmental Impact Assessment

Hazen will perform a preliminary environmental impact assessment of the viable, selected alternatives, including the following activities under this subtask:

Task 2.2.1 Surface Water Supply

Hazen will evaluate potential environmental impacts of extracting surface water, including a preliminary assessment of the impact of the proposed diversion on aquatic ecosystems and downstream users. Under this subtask, the Hazen Team will develop preliminary mitigation strategies to minimize potential adverse effects.

Task 2.2.2 Groundwater Supply

Hazen will evaluate the environmental impact of groundwater extraction and assess potential environmental impacts of groundwater extraction including on wetlands. Hazen will identify preliminary measures to protect groundwater quality.

Task 2.2 Deliverables:

- Tabulation of all materials collected.

Task 2.3 Water Supply and Treatment Alternatives Capital and Operational Cost Estimates

Hazen will perform capital and operational cost estimates for the water supply and treatment alternatives under this subtask. The cost estimates will include a Level 5 (AACEI) cost estimate for each viable, selected water source alternative. These estimates will include capital costs, operational expenses, and maintenance costs. The capital and operational cost estimates for each alternative will be compared to the continued costs of purchasing water from Mobile Area Water & Sewer System.

Task 2.3 Deliverables:

- Tabulation of all cost estimating materials collected.

Task 2.4 Regulatory Compliance

Hazen will perform a review of the regulatory compliance issues related to each viable selected alternative. This review will include identifying permits required for each alternative from a water quality and treatment perspective, as well as disinfection and corrosion at the point of entry and at the ends of the distribution system. All current and near-term federal state and local regulations will be considered.

Task 2.4 Deliverables:

- Tabulation of all permitting and regulatory compliance materials collected and analyzed.

TASK 3 INFRASTRUCTURE ASSET EVALUATION

Hazen understands that some water and sewer system due diligence and assessment has already been completed by PWW&SB's consultant, Waggoner, regarding the utility's water and sewer assets, as part of the PWW&SB Consent Order 22-121-CWP and the Water Utility Asset Management Plan submitted to the Alabama Department of Environmental Management (ADEM) in July 2023. All spreadsheets, tables, graphics, and text appropriate for Task 3 will be prepared in a stand-alone Technical Memorandum.

Task 3.1 Vertical Asset Evaluation

Our asset evaluation will seek to validate the existing information relative to the water and wastewater systems' condition as a framework to conduct focused field investigations of the major systems' vertical assets (water storage tanks and associated valves and monitoring systems, wastewater pump stations, the Carlos Morris Wastewater Treatment Plant, and the Stanley Brooks Wastewater Treatment Plant) and serve as a foundation for asset data/information management relative to the potential procurement of a future computerized maintenance management system (CMMS).

Hazen will review the existing facilities and above-ground assets with PWW&SB operations and maintenance personnel and, based on field reviews, will develop an assessment of major equipment and unit processes. This assessment will include the following information:

- Equipment name
- Equipment tag number
- Location
- Year installed
- Condition of the equipment based on appearance, operation and maintenance records, and anecdotal evidence of PWW&SB operations staff
- Estimate of the expected useful life (EUL) of equipment based upon values in published literature and manufacturer's recommendations
- Estimate of the remaining useful life (RUL) of major equipment and facilities on the basis of age, observed condition, and industry standards

Task 3.1 Deliverables:

- Inventory of assessed vertical assets
- Overall condition and RUL of major equipment and facilities, along with a 20-year projection of in-kind renewal and replacement needs for vertical assets

Task 3.2 Linear Asset Evaluation

For buried infrastructure such as water distribution mains, sanitary sewer collection systems, and force mains, Hazen will rely on published literature, manufacturer's recommendations, and relevant experience

to determine pipeline EULs. Existing infrastructure reference material may include recently completed studies, available field inspection and maintenance information including any leak detection and correction programs, main break reports, low pressure reports, and other representative data, as available, to determine RULs for pipeline renewal and replacement projection purposes. Hazen will rely on available asset record information, property records, staff interviews, and construction drawings to determine approximate installation dates.

Task 3.2 Deliverables:

- Inventory of assessed linear assets
- Overall condition and RUL estimations of linear assets, along with a 20-year projection of renewal and replacement needs

Task 3.3 Distribution System Hydraulic Evaluation

As a first step, Hazen will assume the connection to MAWSS will be the recommended solution (an amendment to the agreement will be made if additional effort is needed if a different solution is recommended). The supply connections to MAWSS in conjunction with the asset evaluation for vertical and linear assets, the hydraulic model will be used to inform capital improvement projects and operational improvements to the system. PWW&SB's hydraulic model was updated and calibrated in 2020. This model will be updated with any additional information gained to date and used to identify deficiencies and improvements as described below.

Task 3.3.1 Identify Existing Deficiencies

Hazen will use the calibrated model to map high and low pressures and identify areas where pressures are outside the design criteria agreed upon with PWW&SB staff. Recommendations for reducing excessive pressures will be developed to help reduce non-revenue water. Areas with deficient pressures for current operations will be identified and considered when developing the capital improvement plan.

The model will map available fire flows to identify general areas with low levels of fire protection. Available flows will be compared to needed flows to quantify deficiencies at key locations. Needed flows in these areas will be estimated by Hazen or from information provided by the Fire Department considering building sizes and occupancy. Hydraulic modeling will then test and identify improvements to increase fire flows, including new pipes, pumps, or tanks, as needed.

Hazen will use the model to map water age for existing operation of the system. The model will predict water age based on extended period simulations of existing average daily demand using current pump and valve controls and operating procedures. The map will highlight areas where water age is excessive. The hydraulic model will test operational changes to reduce water age in problem areas.

It is our understanding that customers in Alabama Village will be relocated. Hazen will review the costs associated with replacing the water system in this area, if needed.

Task 3.3.2 Estimate Future Water Demand and Water Supply Alternatives

Hazen will review available population projections within system limits and other planning information made available by PWW&SB. Population and water demands will be projected in each pressure zone for the year 2040. Demand projections will include an evaluation of peaking factors and estimates of average day, maximum day and peak hour in each pressure zone.

Based on the results of prior tasks to evaluate supply, scenarios for two supply alternatives will be created in the model for both existing and future demand.

Task 3.3.3 Identify Future Deficiencies

Modeling will simulate 2040 maximum day demand for two supply scenarios and identify deficiencies where predicted performance does not meet design criteria agreed upon with PWW&SB staff. Further modeling will test alternatives for improvements.

Task 3.3.4 Develop Capital Improvement Plan to Meet Hydraulic Design Criteria

This subtask will include developing recommendations for pipes, control valves, pumps and/or tanks to meet hydraulic design criteria and maintain water quality. Recommendations will take full advantage of the existing distribution system to minimize costs.

Hazen will meet with PWW&SB staff to review preliminary recommendations considering costs, constructability, and community impacts. Final recommendations will be developed based on input from PWW&SB.

Hazen will develop a capital improvement plan (CIP) meeting hydraulic design criteria by prioritizing recommended pipes, control valves, tanks, and booster stations and estimating costs for near-term improvements to address existing deficiencies and long-term improvements for the year 2040. The CIP will tabulate recommended improvements with references to a color-coded map of the distribution system. Planning level cost estimates will include construction, land acquisition, contingencies, engineering, legal and administrative costs. CIP project sheets will summarize drivers for each project, demand triggers, and related projects.

Task 3.3 Deliverables:

- Updated hydraulic model
- 2040 water demand forecast
- Identification of future system deficiencies due to hydraulic limitations (Water Storage analysis to be finalized prior to March 1, 2024).
- 20-year CIP needs based on system deficiencies

Task 3.4 Collection System Evaluation to Locate Infiltration and Inflow Sources and Estimation Capital Improvement Needs

Hazen proposes a rapid assessment approach to identify infiltration and inflow (I/I) sources with the goal of developing a plan for sanitary sewer overflow (SSO) reductions in the future by leveraging rapid assessment level sensor data. The study will focus on identifying and isolating locations of excessive I/I and direct stormwater sources so they can be cost-effectively eliminated in a future phase. It should be

noted that the success of the I-tracker sensors is dependent upon multiple rainfall events during the study period.

Initial Level Sensor Deployment

I-tracker

I-tracker level sensors are used to measure flow depth inside manholes and are effective at rapidly identifying areas with elevated I/I and areas that may have upstream, direct stormwater connections. The collection system will be divided into approximately 35 sewersheds, each with an upstream pipe length of approximately 20,000 LF. Thirty-five (35) I-trackers will be installed to analyze the I/I response from each of these areas, with the goal of capturing enough data to identify the sewersheds that could have excessive I/I and are candidates for a more detailed analysis in Phase 2.

Review of Current CIP and High-Level CIP Needs Analysis

Hazen will conduct a review of the ongoing and planned collection system CIP projects based on information provided and furnished by PWW&SB. Elements will include:

- Status and forecasted completion of ongoing projects. We understand that such thoroughly developed information will generally require a confirmatory review as part of this process. It is envisioned that the evaluation of the PWW&SB CIP will result in a confirmation of projects, schedules and costs.
- Hazen will develop high level 20-year estimates for capital spending needed to address capacity constraints in the current collection system to the extent feasible given the aggressive timeline and available data. Capital improvements may include removal of identified inflow sources, comprehensive rehabilitation (lining main line, laterals to the ROW, and MH rehabilitation), and pipe upsizing or relief sewers. Cost estimates will be considered AACE Level 5. The amount of inflow removed will be estimated based on the pervious and impervious area tributary to the inflow source. For areas assumed to be rehabilitated, the assumed I/I reduction will be based on previous experience and other available resources.

It is important to note that future phases and more refined CIP planning will include hydraulic model calibration, capacity assessments, and a Remedial Measures Plan (RMP) as well as post-rehabilitation monitoring to confirm reductions in peak flows from inflow removal and comprehensive rehabilitation.

Task 3.5 Comprehensive Asset Renewal and Replacement Capital Needs Identification

Using the raw data and information gathered in the field, our approach to the identification of capital renewal and replacement needs is to assess each of the major facilities and asset systems with respect to the following:

- Asset condition (Mechanical, Structural, and Electrical/I/C)
- Remaining Useful Life (RUL)
- Risk Assessment Score inclusive of Probability of Failure and Consequence of Failure

For each major facility or asset system, we will prepare a table summarizing the field findings, RUL and Risk Score. A table of the current projected capital improvement plan (CIP) and schedule to address system deficiencies will be compared to the field findings and summarized

as part of this task. Hazen will also conduct a review of the ongoing and planned projects based on information not included in the CIP and furnished by PWW&SB. Elements will include:

- Overview of the CIP. This will summarize planned major capital projects, purpose (includes functionality and regulatory compliance, expansion, renewal/replacement), budget and schedule of planned expenditure to the extent information is available.
- Status and forecasted completion of ongoing projects. We understand that such thoroughly developed information will generally require a confirmatory review as part of this process. It is envisioned that the evaluation of the PWW&SB CIP will result in a confirmation of projects, schedules and costs.
- Recommendations for CIP projects for water distribution pipes, control valves, pumps and/or tanks to meet level of service criteria (pressure, fire flow, and water age), coupled with the capital needs identified under Task 3.4. Recommendations will take full advantage of the existing distribution system to minimize costs.
- Comparison of existing projected CIP to recommended renewal and replacements. This will identify any recommended modifications to the existing CIPs resulting from the focused infrastructure condition assessments and hydraulic modeling conducted and will outline an overall recommended CIP to address existing deficiencies and long-term improvements over the next 20 years to bring the water and sewer systems back into a reliable state of operations. Hazen will meet with PWW&SB staff to review preliminary recommendations considering costs, constructability, and community impacts. Final recommendations will be developed based on input from PWW&SB.

Task 3.5 Deliverables:

- Comparison of existing projected CIP to recommended renewal and replacements
- Comprehensive 20-year CIP
- Meeting with PWW&SB staff for preliminary recommendations review

Task 4 Executed Summary Technical Memorandum

Hazen will prepare an Executive Summary Technical Memorandum (TM) that will include a synopsis of the research, analytical, and evaluation efforts performed in the previous tasks. The TM will present a Summary of Findings and Recommendations for future action, including a discussion of the strengths and weaknesses of alternatives considered with corresponding ranking/selection criteria. A Projected 20-year CIP will be provided based on any proposed new facilities and R&R needs of existing assets and system deficiencies.

The TM will provide recommendations for the most viable and sustainable options for PWW&SB, and will include a phased implementation plan and potential timelines for major activities.

Task 4 Deliverables:

- Draft Final Technical Memorandum
- Final Technical Memorandum

Assumptions

1. All water quality data will be available.
2. PWW&SB will provide documentation regarding the presence or absence of lead service lines, either public or private, in its service area. The testing approach does not include lead service lines. If lead service lines are identified, additional testing with harvested lead service lines, such as pipe loop testing, may be needed. If necessary, this can be provided in an amended or separate scope and fee.
3. Laboratory analysis of samples is not included in the budget.
4. Two meetings, one prior to work starting and one after work is completed, are anticipated to be conducted with ADEM.
5. Kickoff Meeting is to be determined if it is in person and/or over Microsoft Teams.
6. Assumed two (2) full 8-hour days for site visits, including travel and lodging that is not included with Kickoff Meeting.
7. No right of entry or public notification requirements or interactions are included. Hazen will not be required to provide support for public meetings or coordination for this project.
8. No topographic survey will be necessary.
9. No utility test pits, or geotechnical studies will be necessary.
10. Assumed 10 full 8-hr days for asset evaluation site visits covering all vertical assets/facilities
11. Hazen will use available data regarding install dates, diameter, and material for water and sewer pipe network segments and available in existing GIS or other documented (Waggoner Engineering) asset records.
12. Hazen will use available GIS data.
13. No water quality simulations will be performed for this Phase. Potential corrosion and disinfection approaches will be considered for each option by standard corrosion indices and typical disinfection information in industry standard literature.
14. Development of a wastewater collection system hydraulic model and/or evaluation of the system capacity and level of service is not included.
15. Evaluation of asset needs for upgrades or process improvements beyond R&R is not included.
16. Evaluation of potentially available parcels for test/supply wells will be limited to publicly available on-line GIS databases and/or existing reports. No surveying services or property/title search work is included in this proposal.
17. PWW&SB to attend monthly progress meetings for updates and general coordination on the program.
18. Hazen will assume the connection to MAWSS will remain for the Water Storage Analysis.

Supplemental Services (only as authorized)

Collection System Evaluation to Locate Infiltration and Inflow Sources and Estimation Capital Improvement Needs

Flow Monitoring

The flow monitoring will include the installation of 25 temporary flow meters, five (5) rain gauges, and five (5) depth only meters to collect data for a period extending from the wet season to the dry season for a period of about 6 months. The purpose of this effort is to support both I/I evaluation and future hydraulic model calibration. The future calibrated hydraulic model will allow for the analysis of various scenarios to develop a remedial measure plan to address SSOs.

I-tracker Deployment in Priority Areas Identified in Initial Phase

Based on the results of the initial I-tracker deployment in the initial phase, additional I-trackers will be deployed in sewersheds with suspected excessive I/I. The I-tracker network will be installed such that each sensor is 800 LF to 1,000 LF apart, or approximately one for every 3-4 segments of pipe. This dense level sensor network will enable Hazen to isolate the sources of I/I in great detail, which will support the highly efficient allocation of capital dollars for I/I removal, especially where direct stormwater sources are clearly present. For budgeting purposes, it has been assumed that 50% of the collection system will be evaluated with the I-tracker during this phase of the work.

Smoke Testing

Smoke testing will be performed to identify and confirm direct stormwater connections or other sources of inflow in segments where the I-tracker network indicates such inflow sources are likely to exist.

Deliverables

Flow monitoring data, results from the I-tracker study, and the smoke testing will all be provided.

Additional detail for the high-level 20-year CIP in brief Tech Memo for addressing SSOs including maps showing inflow sources and areas recommended for comprehensive rehabilitation. Future modeling and evaluation will be needed to refine the CIP.

TIME OF COMPLETION
Prichard Water Works and Sewer Board
Water Source/Treatment and Asset Evaluation

TIME OF COMPLETION

Schedule

TASK	TASK DESCRIPTION	TASK DURATION (weeks from NTP)
1	Project Management	15
2	Water Supply and Treatment Alternatives Analysis	
2.1	Water Supply and Treatment Technical Assessment	8
2.2	Preliminary Environmental Impact Assessment	9
2.3	Water Supply and Treatment Alternatives Capital and Operational Cost Estimates	12
2.4	Regulatory Compliance	12
3	Infrastructure Asset Evaluation	
3.1	Vertical Asset Evaluation	8
3.2	Linear Asset Evaluation	10
3.2	Distribution System Hydraulic Evaluation	12
3.4	Collection System Evaluation and Replacement Capital Needs Identification	14
3.5	Comprehensive Asset Renewal and Replacement Capital Needs Identification	14
4	Final Technical Memorandum	15

This schedule assumes a two-week comment period for deliverables, beginning the first business day after the submittal of each deliverable. One week after the comment period commences, a review workshop will be held with all applicable PWW&SB stakeholders. Hazen will conduct the workshop(s) and will schedule workshop(s) at the commencement of the task to hold a date for each workshop. Once comments are received and addressed, Hazen will compile a comment log for the deliverables. The log shall include a summary of the comment, the individual providing the comment, and Hazen's response to each comment.

Schedule - Supplemental Services (only as authorized)

Task	Task Duration (weeks from NTP)
Flow monitoring	28*
I-tracker Network	14
Smoke Testing	14
Deliverables	18

*Flow monitoring will need to cover both wet and dry season. The duration shown may change based on the NTP date.

**SCHEDULE B
COMPENSATION**

**Prichard Water Works and Sewer Board
Water Source/Treatment and Asset Evaluation**

OWNER shall pay **ENGINEER** as full compensation for the services identified under Schedule A the amounts listed below. Task amounts are not limits and may be exceeded provided that the total amount is not exceeded. Compensation shall be lump sum as described below: .

Compensation for the scope of services described herein will be **\$740,500 lump sum** generally assigned by task, as listed below:

Task 1 – Project Management	\$17,600
Task 2 – Water Supply and Treatment Alternatives Analysis	
Task 2.1 – Water Supply and Treatment Technical Assessment	\$40,100
Task 2.2 – Environmental Impact Assessment	\$4,000
Task 2.3 – Capital and Operational Cost Estimates	\$ 26,400
Task 2.4 - Regulatory Compliance	\$5,000
Task 3 – Asset Evaluation	
Task 3.1 – Vertical Asset Evaluation	\$153,100
Task 3.2 – Linear Asset Evaluation	\$96,000
Task 3.3 – Distribution System Hydraulic Evaluation	\$90,000
Task 3.4 – Collection System Evaluation and Capital Needs Identification	\$186,250
Task 3.5 – Comprehensive Asset R&R Capital Needs Identification	\$98,900
Task 4 - Final Technical Memorandum	<u>\$23,200</u>
Total	\$740,550

Compensation for **Supplemental Services** shall be on a lump sum/ cost plus basis as described below only as authorized:

Compensation – Supplemental Services

Flow monitoring- (25 locations for 6 months allowance - cost plus 5%)	\$300,000
Engineering Evaluation for flow monitoring data (lump sum)	\$35,000
I-Tracker Network (approx 390 locations allowance - cost plus 5%)	\$400,000
Smoke Testing (approx 20% of system allowance – cost plus 5%)	\$100,000
20-Year CIP additional effort (lump sum)	\$15,000
Subconsultant markup	<u>\$40,000</u>
Total Supplemental Services (only as authorized)	\$890,000

EXHIBIT 2



Alabama Department of Environmental Management
adem.alabama.gov

1400 Coliseum Blvd. 36110-2400 ■ Post Office Box 301463
Montgomery, Alabama 36130-1463
(334) 271-7700 ■ FAX (334) 271-7950

January 25, 2024

CERTIFIED MAIL 9489 0090 0027 6286 7954 07
RETURN RECEIPT REQUESTED

Mr. John S. Young, Jr., Receiver
Water Works and Sewer Board of the City of Prichard
125 East Clark Avenue
Prichard, Alabama 36610

RE: Consent Order No. 24-037-CDW
Permit Number: AL0001015
PWSID 2022-753
Water Works and Sewer Board of the City of Prichard
Mobile County

Dear Mr. Young:

Please find enclosed ADEM Consent Order No. 24-037-CDW, which requires the Water Works and Sewer Board of the City of Prichard to take certain actions regarding alleged violations of the Alabama Safe Drinking Water Act. This Consent Order has been issued with the consent of the Water Works and Sewer Board of the City of Prichard.

If you have any questions, please do not hesitate to contact Mr. Aubrey H. White at (334) 271-7774.

Sincerely,

A handwritten signature in blue ink that reads "Jeffery W. Kitchens".

Jeffery W. Kitchens, Chief
Water Division

File: ECO / 24-037-CDW

Enclosures

cc: Carrie T. Blanton, Office of General Counsel
Aubrey H. White III, ADEM – Water Division
M. Lynn Battle, ADEM – Public Affairs Office
US EPA Region IV

Executed: 01-25-2024

Mailed: 01-25-2024



ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

IN THE MATTER OF:
Water Works and Sewer Board of the City of Prichard Mobile County, Alabama
PWSID No. AL0001015 PERMIT No. 2022-753

CONSENT ORDER No. 24-037-CDW

PREAMBLE

This Special Order by Consent is made and entered into by the Alabama Department of Environmental Management ("the Department") and the Water Works and Sewer Board of the City of Prichard ("the Permittee" or "PWWSB"), acting by and through John S. Young Jr. LLC in its capacity as the Receiver of PWWSB, pursuant to the provisions of the Alabama Environmental Management Act, Ala. Code §§ 22-22A-1 to 22-22A-17, as amended, the Alabama Safe Drinking Water Act, Ala. Code §§ 22-23-30 to 22-23-53 ("ASDWA"), Ala. Code §§ 22-22-1 to 22-22-14, as amended, and the regulations promulgated pursuant thereto.

STIPULATIONS

- 1. PWWSB operates a "public water system" as defined at Ala. Code § 22-23-31, as amended, located in Mobile County, Alabama. The PWWSB's public water system is a "Community Water System" as defined at Ala. Code § 22-23-31, as amended.
2. The Department is a duly constituted department of the State of Alabama pursuant to Ala. Code §§ 22-22A-1 to 22-22A-17, as amended.
3. Pursuant to Ala. Code § 22-22A-4(n), as amended, the Department is the state agency responsible for the promulgation and enforcement of drinking water regulations in accordance with the Federal Safe Drinking Water Act, 42 U.S.C. §§ 300f to 300j-26. In addition, the Department is authorized to administer and enforce the provisions of the ASDWA.
4. The Department issued Water Supply Permit No. 2016-812 to PWWSB on July 28, 2016, effective August 1, 2016, which authorized the operation of its public water system under

certain terms, limitations, and conditions. The Department issued Water Supply Permit No. 2022-753 ("Permit") to PWWSB on July 25, 2022, effective August 1, 2022, which authorizes the operation of its public water system under certain terms, limitations, and conditions.

5. Public water systems must demonstrate technical, managerial, and financial capacity to maintain a public water supply permit. ADEM Admin. Code r. 335-7-4-.08 states that a water supply permit issued by the Department may be revoked for, among other things, "[f]ailure to comply with the general or special conditions of the permit; [f]ailure to establish and maintain such records, make such reports, maintain treatment equipments or provide satisfactory operation of water facilities; [or] [f]ailure to demonstrate the water system has technical, managerial, and financial capacity." See also ADEM Admin. Code r. 335-7-4-.06 (permit applications for existing systems "must demonstrate technical, managerial, and financial capabilities to reliably meet performance requirements on a long term basis and be self sustaining") and ADEM Admin. Code r. 335-7-4-.13 (a condition of continuing expired permits includes demonstrating technical, managerial and financial capacity).

6. ADEM Admin. Code r. 335-7-1-.01(bbb) defines "Technical, Managerial, and Financial Capacity" as "the overall capability or wherewithal of a water system to consistently produce and deliver satisfactory drinking water and consistently meeting all Departmental regulations. Technical means the physical infrastructure of the water system including water source(s), treatment facilities, water storage, distribution and service connections. Managerial means the management and operational structure of the water system, including but not limited to ownership accountability, staffing and organization, and effective linkages to customers and regulatory agencies. Financial means the financial resources of the water system, including but not limited to revenue sufficiency, credit worthiness, and fiscal controls."

DEPARTMENT'S CONTENTIONS

Technical and Managerial Capacity

7. Part II.C.1. of the Permit and ADEM Admin. Code r. 335-7-10-.06(5) requires PWWSB to maintain a purchase water contract that allows sufficient water to be purchased to meet all system demands during normal operating periods. This permit condition also requires that, upon

expiration of such contract, the system shall not exceed a period of more than 30 consecutive days without a revised contract.

8. On August 1, 2022, the Department notified the PWWSB that the purchase water contract had been expired for more than thirty days and requested the submission of a revised contract by September 15, 2022.

9. On January 20, 2023, the Department issued a Notice of Violation ("NOV") to PWWSB for failure to submit a revised purchase water contract and required a revised contract be submitted by February 20, 2023. On February 9, 2023, the Department acknowledged receipt of the revised contract between the PWWSB and the Mobile Area Water and Sewer System.

10. Part II. C. 3. of the Permit requires that "[d]rinking water equipment and facilities shall be maintained in a safe, clean, and operable condition."

11. On January 21, 2022, the Department conducted a sanitary survey of PWWSB's public water system. The inspection cited, among other things, a leak at the Vigor storage tank, mildew visible on all of the system's storage tanks, and rust spots visible on some of the tanks. The PWWSB reported to the Department that the leak was repaired on May 24, 2022.

12. On January 25, 2023, the Department performed a sanitary survey of PWWSB public water system. The Department transmitted the inspection report to the PWWSB on February 23, 2023 and required the PWWSB to submit a Corrective Action Plan ("CAP") to the Department by April 10, 2023. The report noted the following significant deficiencies:

- a. The water system does not continuously maintain a free chlorine residual of at least 0.2 mg/L in the distribution system.
- b. The backflow prevention devices are not being tested as required according to the Cross Connection Plan.
- c. All water storage tanks have mildew and varying amounts of corrosion.
- d. All water tanks were lacking sufficient screens and covers for their overflow drain pipes. Additionally, the overflow pipes for all tanks were not sufficiently air gapped.
- e. Not all deficiencies in the most recent water storage tank inspections were

addressed.

13. During the January 25, 2023, sanitary survey, the US Environmental Protection Agency (“EPA”) conducted its own inspection alongside Department staff. EPA’s inspection report contained several findings and observations, consistent with those noted in the Department’s inspection report. On August 2, 2023, the Department mailed a letter to PWWSB detailing the results of EPA’s January 25, 2023 inspection, including the areas of noncompliance and areas of concern. In addition to the areas of noncompliance noted by the Department, EPA also noted that there was an overflow that emptied into the storm drain for the Clark Avenue Standpipe and that PWWSB did not have a maintenance plan for all water storage tanks. The letter requested a CAP to be submitted within thirty days. Despite several reminders, as of the date of this Order, a CAP has not been submitted for the EPA sanitary survey.

14. On May 8, the CAP responding to the Department’s sanitary survey was still overdue. As a result, the Department mailed an NOV to PWWSB establishing a new due date of May 31, 2023. The CAP was received on May 31, 2023. It provided information regarding actions the PWWSB was taking to address the deficiencies noted in the sanitary survey. The Department requested a status report on items listed in the CAP on June 30, 2023, and July 14, 2023. On August 2, 2023, PWWSB called the Department to inform it that a detailed report on the status of the CAP items was forthcoming. As of the date of this Order, that status report has not been submitted.

15. Part II.D.4.c. of the Permit and ADEM Admin. Code r. 335-7-10-.06 requires the PWWSB to submit monthly operating reports, including water loss information. The PWWSB has reported water loss as follows:

<u>Month</u>	<u>Corrected</u> <u>Water</u> <u>Loss (%)</u>	<u>Uncorrected</u> <u>Water Loss</u> <u>(%)</u>	<u>Line</u> <u>Breaks (gal)</u>	<u>Flushing</u> <u>(gal)</u>
July 2021	49	51	189,394	2,955,500
August 2021	48	55	5,295,212	3,190,700
September 2021	31	51	19,381,170	6,191,600
October 2021	10	55	55,247,297	3,503,300
November 2021	53	60	6,887,741	2,513,400
December 2021	42	57	16,953,809	2,963,800
January 2022	28	56	35,338,701	-

February 2022	56	62	6,604,397	2,342,544
March 2022	28	55	27,559,393	3,515,000
April 2022	45	58	14,918,820	2,271,075
May 2022	11	57	55,893,599	3,152,300
June 2022	1	60	79,422,382	-
July 2022	54	57	1,056,175	2,390,749
August 2022	27	61	45,047,054	2,322,781
September 2022	54	59	3,846,537	2,421,324
October 2022	32	59	34,252,913	2,196,079
November 2022	51	64	14,913,524	1,881,824
December 2022	46	59	13,348,758	2,437,951
January 2023	39	64	38,263,088	3,222,236
February 2023	38	66	42,218,807	3,670,897
March 2023	21	56	38,532,842	3,142,300
April 2023	25	57	35,752,640	4,162,062
May 2023	48	57	8,381,952	3,264,530
June 2023	49	57	7,042,411	3,871,076
July 2023	46	52	2,028,884	4,872,548

16. On April 10, 2023, Waggoner Engineering issued a memorandum to PWWSB regarding a water loss study in the Alabama Village area of Prichard. The study noted a water loss for the entire system in February 2023 of 66% and stated “[t]his is over six times the industry’s best management practice goal of 10% [which] has a significant impact on the Board’s financial stability.” The study concluded that leaks in that area alone were costing the PWWSB \$75,000 per month in water loss. Further, due to the system’s “age and lack of maintenance along the right-of-way and utility easements” the PWWSB “has no easily affordable way to repair and maintain the water system in this area.”

17. Part III. A. of the Permit requires PWWSB to submit an asset management plan to the Department no later than July 31, 2023.

18. On July 31, 2023 the PWWSB submitted an asset management plan to the Department. The cover letter stated that “[l]imitations were encountered due to the availability and quality of attribute data such as asset age, material, and work order history. Consequently, risk assessment results should not carry significant weight until asset inventory data quality is improved. Many of the records required to obtain this critical asset data are missing due to factors outside the control of the current management team and the records that are available

will require significant man hours to review and document. Over the next few months, efforts will be made to review records that are available in the hopes of improving the asset attribute data, providing more accurate risk assessments.”

Financial Capacity

Audit Reports

19. On February 4, 2022, the Department received a funding request from PWWSB for \$100,000,000 to repair leaks in its water mains. Upon review of the application, the Department determined PWWSB was ineligible for funding because it had not prepared audited financial statements since at least fiscal year 2018.

20. On November 16, 2022, the Department awarded a \$400,000 grant to PWWSB for preparation of audited financial statements for fiscal years 2019, 2020, 2021, and 2022. Using the Departmental grant, the PWWSB engaged Carr, Riggs & Ingram, LLC (“CRI”) to conduct an audit of the financial statements of the PWWSB.

21. On April 3, 2023, prior to the completion of CRI’s audits, BMSS, LLC issued an independent auditor’s report¹ on PWWSB’s financial statements as of September 30, 2021. The report contained a disclaimer of opinion because the auditor was “unable to obtain sufficient appropriate audit evidence regarding several areas of the financial statements [...]” In addition, the auditor’s reported that “the Board’s [PWWSB’s] significant operating losses and failure to comply with debt covenants raise substantial doubt about its ability to continue as a going concern.”

22. CRI’s independent auditor’s reports have been issued to the Department for fiscal years 2019 through 2021. The 2022 report is outstanding. The CRI reports only express an audit opinion on the statement of net position; CRI did not audit statements of revenues, expenses, and changes in net position and cash flows. The reports note “[m]anagement has omitted management’s discussion and analysis that accounting principles generally accepted in the United States of America require to be presented to supplement the basic financial statements. Such missing information, although not a part of the basic financial statements, is required by

¹ <https://emma.msrb.org/P21733399.pdf> (Accessed: September 7, 2023)

the Governmental Accounting Standards Board, who considers it to be an essential part of financial reporting for placing the basic financial statements in an appropriate operational, economic, or historical context.” The unaudited statement of revenues, expenses, and changes in net position reflect a deficit change in net position of \$420,421 in 2019; \$2,596,071 in 2020; and \$2,491,987 in 2021. The unaudited statement of expenses for 2021 reports a net operating loss of \$436,408 prior to nonoperating revenues and expenses, and the unaudited end of year position reported was \$5,163,556.

Synovus Revenue Bonds

23. On November 20, 2019, PWWSB issued water and sewer revenue bonds, Series 2019, in the amount of \$55,780,000, with Synovus Bank as its Trustee.²

24. In February 2022, S&P Global Ratings lowered its rating of the Series 2019 bonds from BBB+ to BBB-, citing “[t]he downgrade reflects notable environmental, social, and governance factors considered in our analysis, including weak risk management practices such as deferred maintenance, which we believe have contributed to the utility’s high rate of water loss and rising water costs, as well as social capital affordability concerns given high rates and low incomes in the service area, which could affect the board’s ability to raise rates in the future [. . .].” The downgrade further cited declining debt service coverage, a lack of internal controls, and other factors.³

25. In March, S&P Global Ratings again downgraded the Series 2019 bonds from BBB- to BB+, citing, among other factors, ”a lack of risk management and oversight surrounding the board’s management of operating revenues, which has resulted in the alleged mismanagement of funds by former utility employees [. . .].”⁴

26. The following month, S&P Global Ratings downgraded the Series 2019 bonds from BB- to B, citing “further potential pressure on the utility’s financial position following additional civil litigation filed against the board,” and “inadequate risk management, oversight, and internal controls” among other factors.⁵

² <https://emma.msrb.org/ER1392848.pdf> (Accessed: September 7, 2023)

³ <https://emma.msrb.org/P11624990.pdf> (Accessed: September 7, 2023)

⁴ <https://emma.msrb.org/P21623014.pdf> (Accessed: September 7, 2023)

⁵ <https://emma.msrb.org/P11653335.pdf> (Accessed: September 7, 2023)

27. On December 9, 2022, Synovus Bank issued a notice to bondholders of the Series 2019 bonds that PWWSB failed to make a required deposit into the Debt Service Fund, as required by the Trust Indenture.⁶ This was the first of many such notices.⁷

28. In the beginning of 2023, Synovus Bank issued the first in a series of Notices of Default for PWWSB's failure to comply with the terms of the Series 2019 Trust Indenture.⁸

29. Ultimately, Synovus Corporate Trust ("Synovus") filed civil action CV-2023-901332.00 in the Circuit Court of Mobile County, Alabama, against the Permittee seeking the appointment of a receiver over the Permittee's water and sewer system (the "Synovus Litigation"). In the complaint, Synovus asserts that PWWSB "has demonstrated an unwillingness or inability to comply with the terms of the Indenture, to perform critical maintenance to its System, and to ensure proper controls to protect itself from fraud and abuse."

30. On August 9, 2023, Synovus Bank issued a notice to bondholders of the Series 2019 bonds that PWWSB continues to be in default and owes approximately \$800,000 in overdue payments.⁹

31. On November 10, 2023, the Circuit Court in the Synovus Litigation entered an order ("Receiver Order") finding that an event of default occurred and is continuing, and concluded that "[a]s a result of years of mismanagement and fiscal irresponsibility, PWWSB's assets have dissipated and fallen into ruin." The Order granted Synovus' Receiver Motion and appointed John S. Young, Jr., LLC as receiver for the Water Works and Sewer Board of the City of Prichard (the "Receiver"). The Receiver Order authorized the Receiver to exercise all rights and powers of PWWSB with respect to the operation and control of the public water and sewer system (the "System"). The Receiver Order further provided that the "Receiver shall comply with the rules and regulations promulgated by ADEM applicable to public drinking water systems and public sewer systems in Alabama including with respect to providing notices to residents."

32. The Department acknowledges that the rights, duties, powers of the Receiver and any associated liabilities of the Receiver are expressly governed by and subject to the terms of the

⁶ <https://emma.msrb.org/P11685937.pdf> (Accessed: September 7, 2023)

⁷ <https://emma.msrb.org/IssuerHomePage/IssuerPid=5B0E3DEB951E8D7202786CE8536F4CF0&type=G>

⁸ <https://emma.msrb.org/P21692653.pdf> (Accessed: September 7, 2023)

⁹ <https://emma.msrb.org/P21753453.pdf> (Accessed: September 7, 2023)

Receiver Order.

33. On November 13, 2023, PWWSB filed a motion to stay the Receiver Order with the Circuit Court.

34. On November 17, 2023, the Circuit Court entered an order denying PWWSB's motion to stay finding: "The Court determined that there were numerous events of default by PWWSB on its obligations under the Indenture, thus justifying the appointment of a receiver without regard to any 'compelling circumstances' for the appointment of a receiver. Nevertheless, the Court did find compelling circumstances for the appointment of a receiver, as set out in the November 10, 2023 Order."

35. On November 22, 2023, the PWWSB filed a Notice of Appeal with the Alabama Supreme Court.

36. On December 12, 2023, the PWWSB filed with the Alabama Supreme Court a motion to stay the Receiver Order pending appeal of said order.

37. On December 13, 2023, the Receiver filed with the Circuit Court a motion to stay the underlying Synovous Litigation until July 31, 2024. The motion expressly excluded the appeal of the Receiver Order filed by PWWSB on December 12, 2023 with the Alabama Supreme Court.

38. On December 19, 2023, Synovus filed with the Alabama Supreme Court an objection to PWWSB's motion to stay the Receiver Order pending appeal of said order.

39. On January 5, 2024, the Circuit Court entered an order granting the Receiver's motion to stay the underlying Synovous Litigation until July 31, 2024, however the appeal of the Receiver Order by PWWSB in the Alabama Supreme Court continues.

40. As set forth above, the Department contends that PWWSB has failed to demonstrate to the Department that it has the technical, managerial, and financial capacity, as defined by ADEM Admin. Code r. 335-7-1-.01(bbb), to consistently deliver satisfactory drinking water and consistently meet all applicable requirements of ADEM Admin. div. 335-7.

41. The Department and the Permittee mutually agree to the terms of this Consent Order in an effort to resolve the violations cited herein without the unwarranted expenditure of State resources in further prosecuting the alleged violations. The Department has determined that the

terms contemplated in this Consent Order are in the best interests of the citizens of Alabama.

RECEIVER'S CONTENTIONS ON BEHALF OF THE PERMITTEE

42. The Permittee, acting by and through the Receiver pursuant to the Receiver Order, agrees to the terms of this Consent Order in an effort to resolve the violations and to conserve the PWWSB's financial and operational resources in defending the alleged violations.

43. The rights, duties, powers of the Receiver and any associated liabilities of the Receiver are expressly governed by and subject to the terms of the Receiver Order.

44. The Receiver does not have sufficient knowledge or information to attest to the accuracy of any plans, documents, reports, communication or other information provided by PWWSB to the Department prior to the entry of the Receiver Order on November 10, 2023.

45. On December 1, 2023, the Receiver sent a letter to PWWSB's board members advising them in part that it was taking immediate action to reduce operating expenses of the System by declining to fund the PWWSB's legal expenses incurred after December 1, 2023 in the Synovus Litigation and advising PWWSB's board members that since it was exercising all rights and powers of the Permittee, they were no longer authorized to perform any services related to the operation and control of the System.

46. On December 15, 2023, the Receiver held the initial meeting of the Prichard Citizens (the "Advisory Council"), which was appointed pursuant to the terms of the Receiver Order.

47. On December 18, 2023, the Receiver filed its first Monthly Report ("Receiver Monthly Report #1) with the Circuit Court advising:

"The PWWSB system's financial and operational condition was not stabilized when the Receiver took over control of the system. There were insufficient funds in the bank accounts of PWWSB to timely pay the ordinary expenses of the System. The Board's adoption of the FY2024 "operating budget" and the associated rate increase **did not** (a) stabilize the financial condition of PWWSB; (b) allow PWWSB to meet its obligations under the indenture; or (c) enable it to start making capital improvements to the water or sewer system."

48. In an effort to (a) resolve the technical, managerial, and financial capacity issues identified by the Department, (b) meet all applicable requirements of ADEM Admin. Code Div.

335-7, and (c) satisfy the obligations outlined in the Receiver Order, the Receiver acting on behalf of PWWSB recommends a Four-Step approach.

49. **Step one** will include a hydraulic analysis of the water distribution system by professional engineer licensed in Alabama. The analysis will provide a baseline assessment of how the water system currently operates from a hydraulic standpoint, which will assist the engineer in determining how best to utilize the water tanks in the System. It is anticipated that some of the tanks in the System can be potentially decommissioned resulting in avoidance of repair expenses. The results of the hydraulic analysis and system recommendations will be contained in a report by the engineer that will be completed on or before March 1, 2024. The results of this report will be necessary in identifying the actions that will be taken to address the storage tank deficiencies noted in the sanitary surveys conducted by the Department and EPA's inspection on January 25, 2023.

50. **Step Two** will include the commissioning of an Asset Management Plan ("AMP") that meets the requirements of ADEM Admin. Code r. 335-7-4-.04(1)(f) and Part III.1. of the Permit. The AMP will address both the water system and the sewer system and will include a 20-year Capital Improvement Plan. The AMP will be completed on or before May 31, 2024.

51. **Step Three** consists of preparing a **Public Water System Alternatives Analysis** ("PWSAA"). The PWSAA will recommend the most cost-effective and feasible long-term ownership and/or operational structure solution that maintains reliable and efficient service for customers. The PWSAA will be completed on or before July 31, 2024.

52. **Step Four.** Once there is concurrence among the required entities on the appropriate solution for the long-term ownership and/or operational structure of the System, the Receiver will undertake a detailed Technical, Managerial, and Financial Capacity ("TMF") analysis for the selected long-term solution to determine the initiatives required to consistently deliver satisfactory drinking water and consistently meet all applicable requirements of ADEM Admin. div. 335-7. It is anticipated that a report detailing the TMF analysis will be completed on or before October 31, 2024 (the "TMF Report"). The TMF Report will include a "compliance plan", based on the TMF analysis, with a schedule for implementation (including milestones) of

necessary corrective actions, revenue enhancements and costs of such necessary corrective actions reasonably anticipated.

ORDER

THEREFORE, the Permittee along with the Department, desires to resolve and settle the compliance issues cited above. The Department has carefully considered the facts available to it as well as the need for timely and effective enforcement, and the Department has determined that the following conditions are appropriate to address the violations alleged herein. Therefore, the Department and the Permittee, acting by and through the Receiver, (collectively "Parties") agree to enter into this CONSENT ORDER with the following terms and conditions:

A. No later than March 1, 2024, the Permittee shall submit to the Department a report identifying the actions that have or will be taken to address the deficiencies noted in the inspections conducted by the Department and EPA on January 25, 2023. The report shall also include a hydraulic analysis of the water distribution system prepared by a professional engineer licensed in Alabama. The report shall include a compliance timeline with a schedule for implementation of necessary corrective actions and cost of such necessary corrective actions, if known.

B. No later than May 31, 2024, the Permittee shall submit to the Department an AMP prepared by a professional engineer licensed in Alabama that meets the requirements of ADEM Admin. Code r. 335-7-4-.04(1)(f) and Part III.1. of the Permit. This Plan will include a proposed 20-year Capital Improvement Program.

C. No later than July 31, 2024, the Permittee shall submit a PWSAA report which analyzes the public water system supply and management options and outlines the options for long term ownership and operational structure. This PWSAA will recommend the most cost-effective and feasible long-term ownership and operational control structure that maintains reliable and efficient service for customers (the "Structure"). The alternatives analysis shall identify, at a minimum, the following possible alternatives:

- i. Changes to the current Permittee's operation, management, governance and finances that would enable the Permittee to provide proper water service in compliance with the Permit and ADEM Admin. Code Div. 335-7.
- ii. Consolidation, sale, or transfer of ownership of the public drinking water system to another public entity permitted to supply public drinking water.
- iii. Contractual agreements with third-party entities to provide significant management and/or administrative functions.
- iv. A combination of the alternatives in subparagraphs i.-iii. above.

D. If the Structure includes a plan to sell, dispose, or transfer System assets, it will first be proposed by the Receiver to the Board of the Permittee, the Trustee, the Advisory Council, the City of Prichard, the City of Chickasaw and the Circuit Court as required by the Receiver Order.

E. Within 90 days after notification by the Department of its concurrence with the proposed Structure and the concurrence by any other required entity (whichever is later), the Permittee shall submit a TMF Report detailing the TMF analysis and compliance plan for implementation. The TMF Report shall include at a minimum a description of the proposed Structure that addresses the:

- i. Technical Capacity of the system including its assets and their operation.
- ii. Managerial Capacity of the system including its governance and administrative structure, staffing and employees' capabilities and training.
- iii. Financial Capacity of the system including projected revenues and water rates, operating costs, debt obligations and long-term financial sustainability.

F. The TMF Report will include a compliance plan, based on the capacity analysis in the TMF Report, with a schedule for implementation (including milestones) of necessary corrective actions, revenue enhancements and costs of such necessary corrective actions reasonably anticipated.

G. The Permittee shall submit modifications to the TMF Report and the Compliance Plan if required, so that they are received by the Department no later than thirty days after Permittee's receipt of the Department's comments. The Permittee shall complete implementation of the

recommendations provided in the TMF Report not later than the compliance dates for the individual milestones included in the Compliance Plan as well as the final compliance date in the Compliance Plan as accepted by the Department.

H. The Permittee shall prepare and submit detailed quarterly Progress Reports to the Department describing the Permittee's progress towards achieving compliance with the items presented in the Compliance Plan, including the cost of necessary corrective actions. The Permittee shall submit the Progress Reports so that they are received by the Department no later than ninety days after issuance of this Order and continuing every ninety days thereafter that the Permittee's performance obligations under this Order remain incomplete.

I. The Permittee shall submit a certification to the Department indicating whether the Permittee is in compliance with all requirements of this Order. The Permittee shall submit such certification so that it is received by the Department no later than 30 days after the final compliance date in the Compliance Plan.

J. The Permittee shall comply with all other terms, limitations, and conditions of the Permit immediately upon issuance of this Consent Order.

K. This Consent Order shall apply to and be binding upon both Parties, their directors, officers, and all persons or entities acting under or for them. Each signatory to this Consent Order certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Order, to execute this Consent Order on behalf of the respective Parties, and to legally bind said Parties.

L. Subject to the terms agreed to by the Parties of this Consent Order and subject to provisions otherwise provided by statute, this Consent Order is intended to operate as a full resolution of the violations which are cited in this Consent Order.

M. The Permittee is not relieved from any liability if it fails to comply with any provision of this Consent Order.

N. For purposes of this Consent Order only, the Department may properly bring an action to compel compliance with the terms and conditions contained herein in the Circuit Court of Montgomery County. In any action brought by the Department to compel compliance with the

terms of this Agreement, the Permittee shall be limited to the defenses of *Force Majeure*, compliance with this Agreement and physical impossibility. A *Force Majeure* is defined as any event arising from causes that are not foreseeable and are beyond the reasonable control of the Permittee, including its contractors and consultants, which could not be overcome by due diligence (i.e., causes which could have been overcome or avoided by the exercise of due diligence will not be considered to have been beyond the reasonable control of the Permittee) and which delays or prevents performance by a date required by the Consent Order. Events such as unanticipated or increased costs of performance, changed economic circumstances, normal precipitation events, or failure to obtain federal, state, or local permits shall not constitute *Force Majeure*. Any request for a modification of a deadline must be accompanied by the reasons (including documentation) for each extension and the proposed extension time. The Permittee shall submit this information so that it is received by the Department a minimum of ten working days prior to the original anticipated completion date. If the Department, after review of the extension request, finds the work was delayed because of conditions beyond the control and without the fault of the Permittee, the Department may extend the time as justified by the circumstances. The Department may also grant any other additional time extension as justified by the circumstances, but it is not obligated to do so.

O. The sole purpose of this Consent Order is to resolve and dispose of all allegations and contentions stated herein concerning the factual circumstances referenced herein. Should additional facts and circumstances be discovered in the future concerning the Permittee's public water system which would constitute possible violations not addressed in this Consent Order, then such future violations may be addressed in orders as may be issued by the Director, litigation initiated by the Department, or such other enforcement action as may be appropriate. The Permittee shall not object to such future orders, litigation or enforcement action based on the issuance of this Consent Order if such future orders, litigation or other enforcement action addresses new matters not raised in this Consent Order. Notwithstanding the foregoing, the Permittee does not waive its right to object to future orders, litigation or enforcement action regarding new matters that are not related to the existence of this Consent Order.

P. This Consent Order shall be considered final and effective immediately upon signature of all Parties. This Consent Order shall not be appealable, and the Permittee does hereby waive any hearing on the terms and conditions of same.

Q. This Consent Order shall not affect the Permittee's obligation to comply with any Federal, State, or local laws or regulations.

R. Should any provision of this Consent Order be declared by a court of competent jurisdiction or the Environmental Management Commission to be inconsistent with Federal or State law and therefore unenforceable, the remaining provisions hereof shall remain in full force and effect.

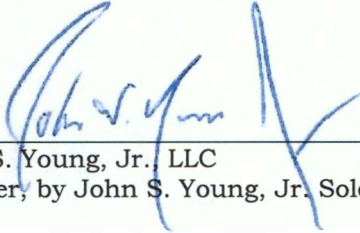
S. Any modifications of this Consent Order shall be agreed to in writing signed by both Parties.

T. Except as set forth herein, this Consent Order is not and shall not be interpreted to be a permit or modification of an existing permit under Federal, State or local law, and shall not be construed to waive or relieve the Permittee of its obligations to comply in the future with any permit.

Executed in duplicate, with each part being an original.

THE WATER WORKS AND SEWER BOARD
OF THE CITY OF PRICHARD

ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT



John S. Young, Jr., LLC
Receiver, by John S. Young, Jr. Sole Member



Lance R. LeFleur
Director

Date: 01/22/2024

Date: 1/25/2024