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October 14, 2019

Re: *United States and State of Texas v. City of Houston, Texas*, D.J. Ref. No. 90-5-1-1-08687/1

To Mr. Ledbetter:

Texas Housers thanks the Texas Attorney General for the opportunity to submit comments to the consent decree with the City of Houston that addresses thousands of sewage overflows across Houston caused by the City's aging wastewater infrastructure. Texas Housers is a 501(c)(3) nonprofit that has worked for over 30 years with low-income Texans to achieve the American dream of living in a quality home in a quality neighborhood. In addition to advocating for affordable, high-quality housing, Texas Housers is committed to improving neighborhood equity by addressing the need for more fair and equitable resource allocation in low-income neighborhoods and segregated neighborhoods of color, including spending for infrastructure improvements.

In furtherance of this commitment, Texas Housers has been documenting and analyzing disparate treatment in the City's provision of infrastructure and other public services for the last 5 years. The City has since been subject to Title VI investigations by HUD over its racially discriminatory practices in the provision of affordable housing and flood protection infrastructure. The City has also entered into voluntary conciliation agreement with HUD to address the City's illegal distribution of subsidized affordable housing in majority-minority, low-opportunity neighborhoods. Information from the City and news media in conjunction with the present consent decree suggests that the City has engaged in similar discriminatory denial of equitable access to wastewater infrastructure.

This consent decree is an opportunity to reassess the City's wastewater infrastructure program and offers a once-in-a-generation chance to improve local water quality, reduce local contributions to climate change, and address historic inequities that have inexcusably left low-income and racially segregated neighborhoods to bear the burden of Houston's failing wastewater infrastructure.

I. EPA should conduct a Title IV investigation to assess the City's compliance with the Civil Rights Act of 1964.

First, and foremost, Texas Housers requests that Environmental Protection Agency (EPA) act upon the mounting evidence that the City has historically violated, and is continuing to violate, its responsibilities under the Civil Rights Act and **immediately institute a Title VI**

investigation to determine whether illegal discriminatory practices have deprived people of color equitable access to resource allocation in the City’s wastewater program.

Title VI of the Civil Rights Act of 1964 prohibits the spending of federal funds through programs or activities in a manner that discriminates on the basis of race, color, or national origin.¹ As President John F. Kennedy so succinctly stated the year before this momentous law was enacted,

“[s]imple justice requires that public funds, to which all taxpayers of all races contribute, not be spent in any fashion which encourages, entrenches, subsidizes or results in racial discrimination.”²

Both the City wastewater and storm water infrastructure programs have been the recipient of federal funding through various grant programs, including the Clean Water State Revolving Fund. For example, the City received almost \$65 million in funding in 2018, alone, to assist the City with wastewater infrastructure improvements.³

The City is therefore responsible for ensuring that federal money received for its wastewater program is spent in a manner that does not violate the anti-discrimination requirements found in Title VI of the Civil Rights Act. Yet, there are numerous, clear examples of low-income, racially segregated neighborhoods of color continuing to bear the brunt of the City’s failing wastewater infrastructure. The Houston Chronicle has reported on the widespread impact of the City’s failure to maintain properly functioning wastewater infrastructure in these neighborhoods.⁴ Some of these examples highlight the astoundingly unsafe and unsanitary conditions in which residents must live. In one particularly egregious example, the City has reported that over 12,000 gallons of raw waste have overflowed into peoples’ homes and onto the surrounding property in the last 7 years at an apartment in northeast Houston called Crofton Place Apartments. Notably, the apartment is located in a neighborhood where more than 90% of the population is non-white.⁵ At least one Crofton Place resident reported becoming ill after being forced to clean up a sewage back-up in her home that destroyed her furniture and clothes.⁶ And additional data suggests that this is not an isolated incident: upwards of 66% of zip codes that have experienced the highest number of sewage over-flows also have higher rates of poverty and higher percentages of African American or Hispanic residents as compared to city-wide demographics.⁷

This is consistent with a pattern of actions by the City in the provision of public services that are racially discriminatory. In 2017, the Department of Housing and Urban Affairs (HUD) found that the City violated Title VI of the Civil Rights Act when it effectively prevented a subsidized

¹ Title IV of the Civil Rights Act of 1964, 42 U.S.C. § 2000d, et seq.

² President John F. Kennedy, Report to the American People on Civil Rights (June 11, 1963).

³ See, e.g. Underground Construction, “Nearly \$74 Million Awarded for Texas Water and Sewer Projects” (April 16, 2018), available at <https://ucononline.com/news/2018/04/nearly-74-million-awarded-for-texas-water-and-sewer-projects>.

⁴ See, e.g. Morris, M., Houston Chronicle, “Sewer Spills Put City Under EPA Scrutiny” (Aug. 27, 2016), available at <https://www.houstonchronicle.com/news/houston-texas/houston/article/Sewer-spills-put-city-under-EPA-scrutiny-9188683.php>; Morris, M.

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

affordable housing development in a majority white census tract.⁸ Data shows that the City has long engaged in preserving racial segregation through the use of HUD funds by developing over 90% of its subsidized affordable housing in census tracts that have majority-minority populations.⁹ And HUD further concluded that the City's opposition to subsidized affordable housing in predominately white neighborhoods is racially motivated.¹⁰

Not only has the City, for decades, been subsidizing non-elderly affordable housing in racially segregated neighborhoods in Houston, but those residents in census tracts that are at least 75% non-white “bear an absurd proportion of the city's pollution: 78 percent of closed landfills, 84 percent of carcinogen emitters and 88 percent of hazardous waste sites.”¹¹ The disproportionate impacts on these neighborhoods from the City's racially discriminatory practices in its waste water infrastructure program is yet another injustice to which residents are subjected.

Texas Housers and others have also found similar trends in the City's storm water infrastructure and flood protection programs. The Houston Chronicle reported that 88% of the City's open storm water drainage ditches are located in neighborhoods that are majority non-white.¹² And in April 2019, Texas Housers filed a Title VI complaint that both decried Houston's racially-motivated decisions to limit affordable housing developments in whiter, high-opportunity neighborhoods and highlighted the disparities in storm water infrastructure resource allocation. The City's practices have disproportionately subjected African American and Hispanic residents to property damage from flooding and exposure to diseases and viruses associated with the standing water that is frequently found in these open ditches.¹³

It is clear that the City has a history of either ignoring the disproportionate impact of inequitable resource allocation on neighborhoods of color, or, in the case of housing, is explicitly racially motivated in its decisions to support or oppose the construction of subsidized affordable housing. The evidence at hand regarding the City's wastewater infrastructure program suggests that the City is acting in the same, discriminatory manner.

Title VI of the Civil Rights Act of 1964 demands that:

“[w]here previous discriminatory practice or usage tends, on the ground of race...to exclude individuals from participation in, to deny them the benefits of, or to subject them to discrimination under any program or activity to which this part 1 applies, the applicant or recipient has an *obligation to take reasonable action to remove or*

⁸ Texas Housers, “HUD Letter to Mayor Sylvester Turner Find Civil Rights Violations” (January 11, 2017), available at <https://www.scribd.com/document/336506979/HUD-letter-to-Mayor-Sylvester-Turner-find-civil-rights-violations>.

⁹ *Id.*

¹⁰ *Id.*

¹¹ Julian, E., Lott, A., McCain, D., & Palay, C., Houston Chronicle, “Why Houston remains segregated” (Feb. 16, 2017), available at <https://www.houstonchronicle.com/local/gray-matters/article/Why-Houston-remains-segregated-10935311.php#>.

¹² *Id.*

¹³ Texas Housers, Letter to Anne Farias, Office of Fair Housing and Equal Opportunity, HUD (October 31, 2017), available at <https://www.dropbox.com/s/m52f7ere3or32ye/2017.10.31%20.%20Allen%20ltr%20to%20A.%20Farias.pdf?dl=0>.

*overcome the consequences of the prior discriminatory practice or usage, and to accomplish the purpose of the Act.”*¹⁴

EPA has a duty to ensure that the City is complying with Title VI of the Civil Rights Act of 1964 before the City obtains any further federal funding. Title VI requires the City to operate its wastewater program in a manner that proactively addresses the well-documented discriminatory practices that have led to such vast racial inequity in the quality of wastewater infrastructure across Houston. Moreover, if EPA chooses to enter into a settlement agreement with the City, EPA has a duty to require the City to implement consent decree activities that will result in equitable resource allocation to neighborhoods of color. This should include collecting and making publicly available data that demonstrates the City’s compliance with Title VI. Practices that, to date, the City has clearly failed to implement.

II. Texas Housers urges the DOJ to address key shortcomings in the current consent decree.

As drafted, the consent decree falls short in several key areas. Texas Housers submits these comments and urges the DOJ to work with the City of Houston and federal and state regulators to add the following provisions to the consent decree before it is final:

- **Addressing inequity in low-income neighborhoods and neighborhoods of color.** Houston’s low-income neighborhoods and neighborhoods of color already bear the greatest burden of the City’s wastewater problems.¹⁵ City officials have stated that most of the wastewater infrastructure, itself, has been upgraded under previous decrees and the primary issue now is improving the maintenance of the pipes, including regularly cleaning pipes to prevent blockages. It appears, then, that the hugely disparate burden that low-income and segregated neighborhoods of color are currently facing has much to do with the City’s intentional choices to allocate fewer resources to cleaning out and maintaining good pipe conditions in these communities. Not only have these neighborhoods been consistently last in line for planned wastewater (and other) infrastructure upgrades or maintenance, but the residents have borne the financial and health burdens of the City’s failing pipelines by having to replace the pipes on their property that connect to the city infrastructure (just to find, in some cases, that the pipes in their homes weren’t causing the problem) or spending hundreds of dollars cleaning their homes after waste has backed up into their kitchens and bathrooms.¹⁶

The consent decree currently does not provide any priority in its activities schedule that would ensure infrastructure repairs and replacements in low-income neighborhoods and neighborhoods of color first and the lack of such a provision in the Houston consent decree is glaring in light of those in other parts of the country (Chicago, Cleveland, Memphis, and St. Louis, e.g.). As an example, the consent decree as currently written does not include even an early action project for Almeda Sims Waste Water Treatment Plant (WWTP), despite the facility having the second highest number of sewage over

¹⁴ 24 CFR 1.4(b)(6) (emphasis added).

¹⁵ *Supra*, n. 5.

¹⁶ *Id.*

flows in the City. Notably, the block groups immediately surrounding this WWTP have at least 85% residents of color.¹⁷ A revised activity schedule will prioritize the communities that have, for decades, been dealing with pipes backing up into their homes, being unable to flush their toilets, and living with regular sewer overflows in their streets. The City must take this opportunity to clearly address and compensate for the decisions made over the years that have channeled resources away from these communities into infrastructure improvements in largely wealthier, whiter parts of the City.

The consent decree should also require the City to ensure that water rates for low-income neighborhoods and segregated neighborhoods of color will not be increased. These neighborhoods have already been disproportionately financially burdened by the City's failures for generations. And the City's continued failure to use its bond authority to more equitably share the burden of these costs has disparately impacted low-income people and people of color. Permitting the City to now place the burden back on the wastewater fee system will almost certainly have a disparate racial impact given the relatively lower incomes of people of color in these neighborhoods and that people of color are already more burdened by the current waste water rates.¹⁸ The City should be required to explore options such as selling general obligation bonds to finance the infrastructure repairs and maintenance or create a sliding-scale approach for increasing water rates such that higher-income neighborhoods are bearing more of the financial burden.

- **Climate change.** All planning and work under the consent decree must result in a more resilient wastewater network by integrating the best available data regarding projected rainfall,¹⁹ flooding, and sea-level rise, and integrating climate risk into all new wastewater infrastructure.²⁰ To reduce the City's contributions to climate change, the City must invest in cogeneration technology at its wastewater treatment plants.

The consent decree recognizes the connection between storm water and waste water infrastructure function and ensuring the resiliency of the City's wastewater infrastructure in light of the expected future flood events is another important component of addressing neighborhood equity in Houston. Low-income neighborhoods and segregated neighborhoods of color across Houston have already been experiencing the worst impacts from increasing flooding and storm severity over the last decade and this is unlikely to

¹⁷ EJ Screen map overlaid with data showing the percent of minority households from 2012-2016 ACS data, available at <https://ejscreen.epa.gov/mapper/>.

¹⁸ Morris, M., Houston Chronicle, "Is your Houston water bill too high? A \$2B EPA sewer mandate won't help" (July 23, 2019), available at <https://www.houstonchronicle.com/news/houston-texas/houston/article/Is-your-Houston-water-bill-too-high-A-2B-EPA-14117979.php>.

¹⁹ National Oceanic and Atmospheric Administration, "NOAA updates Texas rainfall frequency values" (Sept. 27, 2018), available at <https://www.noaa.gov/media-release/noaa-updates-texas-rainfall-frequency-values>.

²⁰ Bovarnick, B., Polefka, S., & Bhattacharyya, A., Rising Waters, Rising Threat. How Climate Change Endangers America's Neglected Wastewater Infrastructure (October 2014), available at <https://cdn.americanprogress.org/wp-content/uploads/2014/10/wastewater-report.pdf>.

change.²¹ Houston is highly likely to continue to experience record storm events²² and the City must prioritize the safety of these residents by ensuring that any improvements to wastewater infrastructure make these neighborhoods more likely to withstand the consequences of climate change. To address these needs, the consent decree should require that the City utilize a portion of its Community Development Block Grant disaster recovery mitigation funds from Hurricane Harvey to address wastewater and storm water infrastructure upgrades needed to protect these neighborhoods rather than burdening rate payers of color in low-income neighborhoods.

- **Community engagement and public information.** Houston consistently falls short when it comes to community engagement²³ and the complete lack of transparency surrounding this consent decree is unacceptable and highly unusual for this type of environmental consent decree.²⁴ The City did not have a public meeting or make public any data that would help residents understand how this consent decree will affect them. Moreover, communities across Houston are recovering from Tropical Storm Imelda and have had little time to thoroughly review the consent decree.

We call on the DOJ to extend the comment period by 60 days and use this additional time to hold public meetings and explain how the consent decree will address persistent overflows like those seen during Imelda - and benefit future generations of Houstonians with cleaner water, cleaner neighborhoods, and a strong buffer against a changing climate.

Further, the consent decree should require the City of Houston to center community voices throughout the 15-year life of the consent decree by requiring creation of a Community Wastewater Committee. Engaged, informed community members can monitor for discriminatory practices and ensure that consent decree activities are implemented equitably, help the City liaison with local residents, comply with the consent decree in a cost-effective manner, and exceed its requirements by using green infrastructure, adapting to climate change, and keeping sewer rates low.

Low-income communities and segregated communities of color must be represented on the Community Wastewater Committee and engaged throughout the life of these projects. The consent decree should require that the City actively engage with the residents of the neighborhoods that have dealt with the highest numbers of sewer overflows and backups so that City officials can better understand what these community members need to be

²¹ Rosenzweig-Ziff, D., SoJourners, "Houston Neighborhood Shows Who Bears the Brunt of Climate Change" (Jan. 31, 2019), available at <https://sojo.net/articles/houston-neighborhood-shows-who-bears-brunt-climate-change>.

²² Freedman, A., Washington Post, "Climate change more than doubled the odds of Houston's most recent deluge, study finds" (Sept. 27, 2019), available at <https://www.washingtonpost.com/weather/2019/09/27/climate-change-more-than-doubled-odds-houstons-most-recent-deluge-study-finds/>.

²³ Lappie, J., 2018 Houston Civic Health Index (2018), available at <https://kinder.rice.edu/sites/g/files/bxs1676/f/documents/2018%20Houston%20Civic%20Health%20Index.pdf>.

²⁴ Rice, J., " 'Secrecy Provision' Prevented Public Input On Houston's \$2Billion Deal to Fix Sewers," available at <https://www.houstonpublicmedia.org/articles/news/2019/07/16/339729/secrecy-provision-blocks-public-input-on-houstons-2-billion-deal-to-fix-sewers/>.

able to live safely in their neighborhoods—without fear of coming into contact with waste every time there is a heavy rainfall.

- **Green infrastructure.** Green infrastructure reduces localized flooding during storms, improves water quality, absorbs carbon, and creates healthier, more beautiful urban environments. In wastewater treatment, green infrastructure uses natural processes to manage storm water (like the massive spills into Buffalo Bayou and Halls Bayou during Imelda) and helps avoid repeated sewage spills. The City must be required to evaluate how green infrastructure can improve its wastewater management and reduce sanitary sewer overflows.²⁵
- **Public information.** The consent decree should also address the City of Houston’s lack of transparency in both its wastewater infrastructure program and the activities prescribed by the consent decree by improving the disclosure of public information. In order to address inequity there must be publicly available data that allows residents to understand where the inequity exists, to begin with. And residents must have access to data that allows them to hold the City accountable for the promises made during the life of the consent decree.

The City’s website should include monthly data on sewer overflows across the City and detailed annual reports and public meetings on how it has spent taxpayer money on sewage infrastructure work under the consent decree. Reports should cover, at a minimum, the amount of money raised by the City for this work, all expenditures on sewage infrastructure projects, and a description of exactly what was achieved by the projects. Additionally, the consent decree should require the City to publicly disclose on the website the location of aging or failing wastewater infrastructure that the City has identified as needing repairs or replacement and characteristics of the populations in these areas.

Finally, the City should be required to certify and make public the data needed demonstrate its compliance with Title VI of the Civil Rights Act of 1964 throughout the life of the consent decree. The City cannot truthfully assert that it is complying with Title VI without collecting the data necessary to show that its practices are not racially discriminatory.

- **Public notification.** To protect public health, no matter the volume, the City must notify the public and impacts residents of all discharges or releases of untreated wastewater into parks, neighborhoods, and waterways across Houston within 24 hours.
- **Supplemental Environmental Projects.** The consent decree requires the City of Houston to pay the federal and state governments \$4.4 million in penalties within 60 days after the consent decree is entered by the Court. Despite the City’s representation that the consent decree would include a “supplemental environmental project to replace defective

²⁵ EPA, “Green Infrastructure Permitting and Enforcement Series: Factsheet 3,” available at <https://www.epa.gov/sites/production/files/2015-10/documents/epa-green-infrastructure-factsheet-3-080612.pdf>.

private sewer lines in a low-income area of the City where laterals have caused or contributed to SSOs at no cost to the homeowners,” the consent decree does not include any supplemental environmental projects (SEPs).²⁶

The City and DOJ should address whether any SEPs were considered and, if applicable, why SEPs were rejected in the current consent decree. Further, the opportunity to use penalty money implementing SEPs should be considered moving forward. The City should be required to obtain community input—particularly from low-income neighborhoods and segregated neighborhoods of color—on how the penalty money can be used to improve neighborhood conditions. SEPs to consider include green infrastructure to reduce the impact of storm water flowing into wastewater infrastructure, providing low-cost or free pipe replacement for low-income households, or implementing a program to connect low-income families that are currently on septic tanks to the City’s infrastructure.

There is absolutely no reason why millions of dollars in penalties should be spent on something other than reinvestment into the neighborhoods that the City has so pointedly neglected.

EPA and the City have a unique opportunity to rectify decades of practices in the wastewater infrastructure program that have discriminated against low-income people of color across Houston. Texas Housers respectfully urges DOJ to require EPA and the City to implement the recommendations here.

If you have any questions about these comments, please feel free to contact me.

Sincerely,

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²⁶ Fletcher, A., “How is the City Addressing Thousands of Sewage Overflows” (Aug. 16, 2018), available at <https://www.houstonpublicmedia.org/articles/shows/houston-matters/2018/08/16/300159/how-is-the-city-addressing-thousands-of-sewage-overflows/>.