Bob Hennessey
SPU Consent Decree Mod ORD
January 22, 2013
Version #1

CITY OF SEATTLE

ORDINANCE _____

COUNCIL BILL 117712

AN ORDINANCE relating to Seattle Public Utilities; approving changes to the Consent Decree previously authorized by Ordinance 123908 and authorizing the Director of Seattle Public Utilities to submit the amended Consent Decree to the U.S. District Court and to fulfill the obligations set forth therein; and ratifying and confirming certain prior acts.

WHEREAS, the City approved in June of 2012 approved Ordinance 123908 authorizing the Director of Seattle Public Utilities to enter into and fulfill the obligations of a Consent Decree addressing the City's Combined Sewer Overflows; and

WHEREAS, it is in the interest of the City to modify the Consent Decree approved by Ordinance 123908 to make it consistent with provisions in a parallel Consent Decree negotiated by King County, given that the City and King County have interconnected sewer systems and their roles and responsibilities are intertwined; NOW, THEREFORE,

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. The Director of Seattle Public Utilities is authorized to submit for approval to the U.S. District Court the amended Consent Decree attached hereto as Attachment 1 and to fulfill the City's obligations set forth therein.

Section 2. Any act consistent with the authority of this ordinance and in compliance with the conditions of this ordinance taken after its passage and prior to its effective date is ratified and confirmed.

Section 3. This ordinance shall take effect and be in force 30 days after its approval by the Mayor, but if not approved and returned by the Mayor within ten days after presentation, it shall take effect as provided by Seattle Municipal Code Section 1.04.020

Passed by the City Council the ____ day of _____, 2013, and signed by me in open session in authentication of its passage this _____ day of _____, 2013.

_____

President _____of the City Council

Approved by me this ____ day of _____, 2013.

_____

Michael McGinn, Mayor

Filed by me this ____ day of _____, 2013.

_____

Monica Martinez Simmons, City Clerk

(Seal)

Attachment 1 – Consent Decree

Andrew Lee
SPU Consent Decree Mod ATT1
January 15, 2013
Version #1

ATTACHMENT 1

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA, and THE STATE OF WASHINGTON Plaintiffs v. THE CITY OF SEATTLE, WASHINGTON Defendant	Civil Action No. _____

CONSENT DECREE

Andrew Lee
SPU Consent Decree Mod ATT1
January 15, 2013
Version #1

ATTACHMENT 1

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CONSENT DECREE

WHEREAS, Plaintiffs, the United States of America, on behalf of the United States Environmental Protection Agency ("EPA"), and the State of Washington, by and through the State of Washington Department of Ecology ("Ecology"), have filed a complaint ("Complaint") in this action concurrently with this Consent Decree, alleging that Defendant, the City of Seattle ("City"), violated Sections 301 and 402 of the Clean Water Act, 33 U.S.C. §§ 1311 and 1342, and the conditions and limitations of its National Pollutant Discharge Elimination System ("NPDES") permit issued to the City by Ecology, as authorized by EPA under Section 402(b) of the CWA, 33 U.S.C. § 1342(b).

WHEREAS, the State of Washington has joined as a party to this action, pursuant to Section 309(e) of the CWA, 33 U.S.C. § 1319(e).

WHEREAS, the City owns and operates a Wastewater Collection System that collects residential and industrial wastewaters, as well as stormwater, and conveys the collected wastewater to regional collection systems and wastewater treatment plants owned and operated by King County.

WHEREAS, the Parties recognize, and the Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith and will avoid litigation between the Parties and this Consent Decree is fair, reasonable, and in the public interest.

NOW, THEREFORE, with the consent of the Parties, it is hereby ADJUDGED, ORDERED, AND DECREED as follows:

I. JURISDICTION AND VENUE

1. This Court has jurisdiction over the subject matter of this action, pursuant to Section 309(b) of the CWA, 33 U.S.C. § 1319(b), and 28 U.S.C. §§ 1331, 1345, and 1355, and over the Parties. Venue lies in this District, pursuant to Section 309(b) of the CWA, 33 U.S.C. § 1319(b), and 28 U.S.C. §§ 1391(b) and 1395(a), because it is the judicial district where the City is located and where the alleged violations occurred. For purposes of this Decree, or any action to enforce this Decree, the City consents to the Court's jurisdiction over the City, this Decree, and any such action, and further consents to venue in this judicial district.

2. For purposes of this Consent Decree, the City agrees that the Complaint states claims upon which relief may be granted under the Clean Water Act.

II. APPLICABILITY

3. The provisions of this Consent Decree shall apply to and be binding upon the United States and the State, and upon the City, its successors, assigns, officers, directors, agents, employees, contractors, and all persons, firms, and corporations acting under the direction and control of the City, including firms, corporations, and third parties under contract with the City to perform obligations of this Consent Decree.

4. No transfer of ownership or operation of any portion of its Wastewater Collection System, whether in compliance with the procedures of this Paragraph or otherwise, shall relieve the City of its obligation to ensure that the terms of the Decree are satisfied and implemented. Effective from the Date of Lodging of this Consent Decree until its termination pursuant to Section XX, at least thirty (30) days prior to such transfer, the City shall provide a copy of this Consent Decree to the proposed transferee and shall simultaneously provide written notice of the

prospective transfer, together with a copy of the proposed written agreement, to the United States and the State, in accordance with Section XIII (Notices). The City shall condition any transfer, in whole or in part, of ownership, operation, or other interest of the Wastewater Collection System upon the successful execution of the terms and conditions of this Decree.

5. If the City seeks to name a successor to assume any or all interests in, or operating role with respect to the Wastewater Collection System, the City may request the United States, in writing, to modify this Consent Decree in accordance with the role to be assumed by the proposed successor in interest. Accompanying its proposed modification, the City shall also provide documentation to demonstrate that the prospective successor in interest has the technical and financial qualifications to fulfill the City's obligations and liabilities under this Consent Decree. If the United States agrees to the proposed modification of the Consent Decree, the Parties shall prepare a joint motion to the Court requesting such modification and seeking leave to join the proposed successor in interest. If the United States does not agree, and the City still believes modification of the Decree and joinder of a successor in interest is appropriate, the City may file a motion seeking such modification in accordance with Federal Rules of Civil Procedure 60(b); provided, however, that nothing in this Paragraph is intended to waive the United States' right to oppose such motion and to argue that such modification is unwarranted.

6. The City shall provide copies of this Consent Decree to all officers, directors, employees, and agents of the City whose duties might reasonably include compliance with any provision of this Decree. The City also shall provide copies of the Consent Decree to any engineering, consulting, or contracting firm, or any other entity that the City retains to perform the work, or any portion thereof, required by this Consent Decree upon execution of any contract relating to

the performance of such work. For entities that the City has already retained to perform work in accordance with this Consent Decree, the City shall provide a copy of the Consent Decree to such entities no later than thirty (30) days after the Effective Date. Providing a copy shall include making the Consent Decree available electronically or by paper copy if requested by the entity retained. The City shall condition any such contract upon performance of the work in conformity with the terms of this Consent Decree.

7. Any action taken by any entity retained by the City to implement the City's obligations under this Consent Decree shall be considered an action of the City for purposes of determining compliance with this Consent Decree. In any action to enforce this Consent Decree, the City shall not raise as a defense the act or failure to act by any of its officers, directors, agents, employees, consultants, or contractors.

III. OBJECTIVES

8. The objectives of this Consent Decree are to resolve the claims alleged in the Complaint and to set out the requirements that the City will implement to reduce Combined Sewer Overflows and to achieve the goal of eliminating Sewer Overflows, as required by law, in furtherance of the objectives of the Clean Water Act, EPA's CSO Control Policy, and the objectives of the Washington Water Pollution Control Act.

IV. DEFINITIONS

9. Terms used in this Consent Decree that are defined in the CWA and its implementing regulations, the Washington Water Pollution Control Act and its implementing regulations, or the City's NPDES Permit shall have the meanings assigned to them in the CWA and its implementing regulations, the Washington Water Pollution Control Act and its implementing

regulations, or the City's NPDES Permit unless otherwise provided in this Consent Decree. If these sources assign conflicting or inconsistent meanings to any term used in this Consent Decree but not specifically defined below, priority shall be given in the order listed above. Whenever the terms set forth below are used in this Consent Decree, the following definitions shall apply and have priority over any other conflicting or inconsistent meanings assigned to the same terms used in any state law, regulation, or permit:

a) "City" shall mean the City of Seattle, Washington.

b) "Combined Sewer Overflow" or "CSO" shall mean any discharge from the City's CSO Outfalls as a result of precipitation.

c) "CSO Control Measure" shall mean the construction, control measures, actions, and other activities set forth in the City's Long Term Control Plan or any Supplemental Compliance Plan provided for in Section V.B.

d) "CSO Control Policy" shall mean EPA's Combined Sewer Overflow Control Policy, 59 Fed. Reg. 18688 (April 19, 1994).

e) "CSO Outfall" shall mean the outfall structure from which a CSO is discharged. A list of the City's CSO Outfalls is provided as Appendix A to the Consent Decree.

f) "Combined Sewer System" or "CSS" shall mean the wastewater collection and conveyance system owned or operated by the City, including all pipes, force mains, gravity sewer segments, pump stations, lift stations, interceptors, diversion structures, manholes, and appurtenances thereto, designed to collect and convey municipal sewage, including residential, commercial, and industrial wastewaters, and stormwater, through a single-pipe system to King

County's wastewater treatment plants, King County's CSO treatment plants, or to permitted CSO Outfalls.

g) "Complaint" shall mean the Complaint filed by the United States and the State in this action.

h) "Consent Decree" or "Decree" shall mean this Consent Decree and all appendices hereto (listed in Section XXV).

i) "Construction Completion" shall mean completion of construction and installation of equipment or infrastructure such that equipment or infrastructure has been placed in full operation, and is expected to both function and perform as designed, as well as completion of in-situ modified operations and maintenance manuals. This specifically includes all control systems and instrumentation necessary for normal operations and all residual handling systems. Certain CSO Control Measures required under this Consent Decree may consist of separate components. For those specified CSO Control Measures consisting of separate components, "Construction Completion" shall not be achieved until the last component is completed.

j) "Construction Start" shall mean the date of the Notice-to-Proceed. For those specified CSO Control Measures consisting of separate phases or contracts, Construction Start shall be designated by the date of the Notice-to-Proceed given to a contractor for the first phase of work.

k) "Controlled" shall mean the control of a CSO Outfall in accordance with WAC 173-245-020(22).

l) "Date of Lodging" shall mean the date that the United States lodges a fully executed copy of this Consent Decree with the Court, prior to noticing this Decree in the Federal Register.

m) "Day" shall mean a calendar day unless expressly stated to be a business day. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next business day.

n) "Design Criteria" shall mean the minimum attributes of a given CSO Control Measure, such as storage volumes, treatment capacities, or pumping and/or conveyance capacities as specified in the Long Term Control Plan or any Supplemental Compliance Plan provided for under Section V.B.

o) "Dry Weather CSO" shall mean any discharge or release from the City's CSO Outfall that consists of non-precipitation related flows, which may include, without limitation, the combination of domestic sewage, groundwater infiltration, and commercial and industrial wastewaters.

p) "Ecology" shall mean the State of Washington Department of Ecology.

q) "EPA" shall mean the U.S. Environmental Protection Agency and any of its successor departments or agencies.

r) "Effective Date" or "Date of Entry" shall mean the definition provided in Section XVII.

s) "Green Infrastructure" shall mean systems and practices that use or mimic natural processes to infiltrate, evapotranspire, and/or harvest stormwater on or near the site where it is generated. Green Infrastructure may include, but is not limited to, green roofs, downspout disconnection, trees and tree boxes, rain gardens, vegetated swales, pocket wetlands, infiltration planters, vegetated median strips, permeable pavements, reforestation, and protection and enhancement of riparian buffers and floodplains.

t) "Long Term Control Plan" or "LTCP" shall mean the long term control plan under development by the City in accordance with Section V.B., as well as any additional remedial measures for eliminating or reducing the City's CSOs included in any Supplemental Compliance Plan developed and implemented in accordance with Section V.B.

u) "NPDES Permit" shall mean the City's National Pollutant Discharge Elimination System permit, No. WA-003168-2, issued by the State of Washington Department of Ecology on October 27, 2010 or such permits that succeed this permit issued and in effect at a relevant time under this Consent Decree.

v) "Paragraph" shall mean a portion of this Decree identified by an Arabic numeral.

w) "Parties" shall mean the United States, the State of Washington, and the City of Seattle.

x) "Performance Criteria" shall mean the Performance Criteria specified in the Long Term Control Plan or any Supplemental Compliance Plan provided for under Section V.B.

y) "Post-Construction Monitoring Plan" or "PCMP" shall mean the plan that the City developed in accordance with Section V.B., as well as any additional post-construction monitoring or modeling activities included in any Supplemental Compliance Plan developed and implemented in accordance with Section V.B.

z) "Sanitary Sewer System" shall mean the portion of the Wastewater Collection System designed to convey only sewage, and not stormwater, from residences, commercial buildings, industrial plants and institutions for treatment at a wastewater treatment plant.

aa) "Sewer Overflow" shall mean any overflow, spill, diversion, or release of wastewater from or caused by the Sanitary Sewer System or the Combined Sewer System upstream of a City's CSO Outfall. This term shall include: (i) discharges to surface waters of the State or

United States from the Sanitary Sewer System and (ii) any release of wastewater from the Sanitary Sewer System to public or private property that does not reach waters of the United States or the State.

bb) "Section" shall mean a portion of this Decree identified by a roman numeral.

cc) "Supplemental Compliance Plan" shall mean any plan developed by the City in accordance with Section V.B.

dd) "State" shall mean the State of Washington, acting by and through Ecology.

ee) "Twenty Year Moving Average" shall mean the average number of untreated discharge events per CSO Outfall over a twenty year period for purposes of compliance with WAC 173-245-020(22). For previously Controlled CSO Outfalls and where monitoring records exist for the past 20 consecutive years, the twenty year moving average shall mean the average number of untreated discharges per CSO Outfall over the 20 year record. On an annual basis, the twenty year moving average will be calculated and includes the current monitored year and each of the previous 19 years of monitored CSO data. For CSO reduction projects and Controlled CSO Outfalls where a complete twenty year record of monitored data does not exist, missing annual CSO frequency data will be generated based on the predicted CSO frequency for a given year as established in the approved engineering report or facility plan. For each CSO reduction project, the engineering report or facility plan shall predict the CSO frequency for each CSO Outfall (s) based on long-term simulation modeling using a 20-year period of historical rainfall data, the hydraulic model, the CSO control project design and assuming the CSO control project existed throughout the 20-year period. For CSO reduction projects, the level of control is the number of discharge events per CSO Outfall per year that are estimated to occur based on the designed CSO

control project over a 20-year period. The level of control will be estimated for each year for a period of 20 years in the engineering report or facility plan. For the time period between the approval of the engineering report and the CSO reduction project's Construction Completion date, the City shall use the same model for the approved design along with the corresponding rainfall data for this period of time to derive CSO frequencies. This information will be submitted as an amendment to the engineering report or facility plan. For CSO reduction projects, the 20-year moving average will use the approved level of control, on an annual basis, for each of the preceding years for which monitored data does not exist in conjunction with monitored data after the CSO control project has been constructed.

ff) "United States" shall mean the United States of America, acting on behalf of EPA.

gg) "Wastewater Collection System" shall mean the collection and conveyance system owned or operated by the City, including all pipes, force mains, gravity sewer segments, pump stations, lift stations, interceptors, diversion structures, manholes, and appurtenances thereto, designed to collect and convey municipal sewage, including residential, commercial, and industrial wastewaters, and stormwater, to King County's wastewater treatment plants or to a permitted CSO Outfall. The Wastewater Collection System includes the Combined Sewer System, Sanitary Sewer System, and the partially separated system.

V. COMPLIANCE PROGRAMS

A. Early Action CSO Control Programs and Measures

10. The City shall implement all CSO Control Measures necessary to reduce discharges from CSO Outfall numbers 44 and 45 (North Henderson) and CSO Outfall numbers 46 and 47/171 (South Henderson) in order to achieve control levels consistent with Chapter 173-245 WAC and

EPA's CSO Policy. Such CSO Control Measures shall be done in accordance with the City's NPDES Permit and the following deadlines:

a) Construction Completion for CSO Outfall numbers 46 and 47/171 by December 31, 2015;

b) Achievement of Controlled status for CSO Outfalls numbers 46 and 47/171 by December 31, 2016;

c) Construction Completion for CSO Outfalls numbers 44 and 45 by December 31, 2018; and

d) Achievement of Controlled status for CSO Outfalls numbers 44 and 45 by December 31, 2019.

11. One year following Construction Completion of each CSO Control Measure, the City shall document that the associated CSO Outfall has been Controlled; provided, however, that if there is insufficient precipitation during the year following Construction Completion to demonstrate that a CSO Outfall has been Controlled, then the deadline for documenting that a CSO Outfall has been Controlled shall be extended until there is sufficient precipitation to make the demonstration, subject to the approval of EPA and Ecology. The City shall report the CSO as Controlled in the next Annual Report submitted pursuant to Section VIII. If the CSO Outfall is not Controlled within one year following Construction Completion of the CSO Control Measure, the City shall submit to EPA and the State for their approval a Supplemental Compliance Plan as set forth in Paragraph 18 below. This Supplemental Compliance Plan shall be submitted within thirty (30) days after the end of the one year following Construction Completion.

B Development and Implementation of Long Term Control Plan and Post-Construction Monitoring Plan

12. In accordance with the schedule in Appendix B and Section V.B. of this Consent Decree, the City shall complete development of its Long Term Control Plan ("LTCP") as set forth in Appendix C.

13. EPA and Ecology may approve the LTCP or may decline to approve it and provide written comments. Within forty-five (45) days of receiving any comments from EPA and/or Ecology, the City shall either alter the LTCP consistent with EPA's and Ecology's comments and resubmit the LTCP to EPA and Ecology for final approval or submit the matter for dispute resolution under Section XII (Dispute Resolution) of this Consent Decree.

14. LTCP. The LTCP shall specify (a) all CSO Control Measures that the City must implement to ensure compliance with the provisions of the CWA and its implementing regulations that apply to CSOs, any applicable state law and regulations that apply to CSOs, those portions of the City's NPDES Permit that apply to CSOs, and EPA's CSO Control Policy; (b) all Design Criteria and Performance Criteria developed for each CSO Control Measure; and (c) a schedule of critical milestones, including, at a minimum, the dates for submission of draft and final engineering reports and draft and final plans and specifications, Construction Start, Construction Completion, and achievement of Controlled status, for each CSO Control Measure. The LTCP shall provide a schedule that is as soon as possible, but in no event later than December 31, 2025, for Construction Completion of all CSO Control Measures, unless this deadline is extended pursuant to Section XI (Force Majeure), Paragraph 20(c), or Paragraph 23(c).

15. Upon final approval of the LTCP, the City shall construct and implement the CSO Control Measures in accordance with the descriptions, Design Criteria, Performance Criteria, and the critical milestones listed in Paragraph 14 above, for each CSO Control Measure set forth in the approved LTCP. With the exception of Force Majeure, a delay in the bidding process of the CSO Control Measures shall not extend the date for Construction Completion.

16. Permit Compliance. The City shall carry out the requirements of this Consent Decree in compliance with the terms and conditions of its NPDES Permit, the CWA, the Washington Water Pollution Control Act, and the regulations implementing these laws when complying with the requirements of this Consent Decree.

17. Post-Construction Monitoring Program. The City shall develop and perform a Post-Construction Monitoring Program set forth in Appendix C in accordance with the provisions and schedules set forth therein and in Appendix B.

18. Supplemental Compliance Plan. If, after Construction Completion of the CSO Control Measures identified in the approved LTCP, information becomes available at any time before the Consent Decree terminates, including information developed as a result of the Post-Construction Monitoring Plan, that the City: (1) did not construct all CSO Control Measures in accordance with the Design Criteria set forth in the approved LTCP; (2) has not achieved the Performance Criteria for the CSO Control Measures identified in the approved LTCP; or (3) is not complying with all the requirements of its NPDES Permit pertaining to CSOs, the City shall, within sixty (60) days of receipt of notice from EPA or Ecology, pursuant to Section XIII (Notices) of this Consent Decree, submit to EPA and Ecology (1) a plan for performing supplemental remedial measures to achieve compliance and additional post-construction monitoring and modeling

("Supplemental Compliance Plan") and (2) a request for the extension of the deadline for the Construction Completion for the CSO Control Measure at issue to allow for implementation of supplemental remedial measures. The Supplemental Compliance Plan shall include a description of the remedial measures that the City will take to ensure that compliance will be achieved; a schedule that is as expeditious as possible for design, construction, and implementation of the measures; a description of additional post-construction monitoring and modeling needed to assess whether the City has achieved compliance; and a schedule for performing such monitoring and modeling. Upon approval by EPA and Ecology pursuant to Section VI (Review and Approval Procedures), or upon decision by the Court under Section XII (Dispute Resolution), for the City's Supplemental Compliance Plan, the City shall implement the Supplemental Compliance Plan in accordance with the schedule specified therein.

19. The City may request a modification of the critical milestones set forth in its approved LTCP for the sole purpose of revising the priority and sequencing of CSO Control Measures if the City demonstrates that the requested modification (1) reflects good engineering practice, (2) is required to coordinate with King County's CSO infrastructure projects, (3) is necessary to attain cost effective and technically sound CSO Control Measures and (4) will not change, modify, or extend in any way the City's final Construction Completion of December 31, 2025 as provided in Paragraph 14, unless this deadline is extended pursuant to Section XI (Force Majeure), Paragraph 20(c), or Paragraph 23(c).

a) Any request by the City for modification made pursuant to this Paragraph shall be made in writing to EPA and the State and include all documentation necessary to support the request for modification, including all information relevant to the four criteria set forth above. The City

shall provide such additional information requested by the United State or the State as is necessary to assist in evaluating the City's modification request.

b) If EPA and the State disapprove the City's request, the City may invoke Informal Dispute Resolution in accordance with Paragraph 76. The Formal Dispute Resolution and judicial review procedure set forth in Paragraphs 77 to 81 shall not apply to this Paragraph 19(a)-(b). If the dispute is not resolved by Informal Dispute Resolution, then the position advanced by the United States shall be considered binding; provided that the City may, within 30 days after the conclusion of the Informal Dispute Resolution Period, appeal the decision to the Director of the Office of Compliance and Enforcement, EPA Region 10. EPA's Region 10 Compliance and Enforcement Director may approve or disapprove, or approve upon conditions or in a revised form, the proposed modification of the critical milestones. The determination of EPA's Region 10 Compliance and Enforcement Director shall be in her/his discretion and shall be final. The City reserves the right to file a motion seeking relief in accordance with the Federal Rules of Civil Procedure 60(b). Such a motion by the City shall not relieve the City of its obligations pursuant to Section V, unless the Court orders otherwise, and the City shall continue with timely implementation of the CSO Control Measures until the Court rules on any motion described in this Paragraph in a manner that modifies the City's obligations under this Decree.

20. Recognizing the Parties' interest in supporting a comprehensive and integrated planning approach to municipal government's Clean Water Act obligations, the City may submit to the United States and the State for their approval a work plan ("Integrated Plan") that proposes water quality improvement project(s) ("Proposed Project") to be implemented by the City, provided that the Proposed Project(s) will result in significant benefits to water quality beyond those that

would be achieved by implementation of the approved CSO Controls Measures only. The Proposed Project(s) in the Integrated Plan shall be in addition to all CSO Control Measures required in the approved LTCP. If the City chooses to submit an Integrated Plan, the City shall submit such plan no later than June 30, 2018. The Integrated Plan shall:

a) Describe in detail each Proposed Project, including, at a minimum, the following information:

i. the design criteria and cost estimates for each Proposed Project contained within the Integrated Plan;

ii. a cost-benefit analysis for implementation of the Integrated Plan;

iii. a pollutant load reduction analysis, including projected load reductions for conventional pollutant parameters (i.e., biochemical oxygen demand, fecal coliform bacteria, total suspended solids, oil and grease, and pH), metals, nitrogen ammonia, phosphorous, and pathogens, as well as projected dissolved oxygen concentrations, associated with each Proposed Project under the Integrated Plan;

iv. a description of the public participation process that will be utilized by the City in its development and implementation of the Proposed Project(s) under the Integrated Plan;

v. a description of the projected pollutant reductions to water bodies impaired for pathogens, metals, nitrogen ammonia, and dissolved oxygen through implementation of each Proposed Project under the Integrated Plan;

vi. a description of projected pollutant reductions, including toxic organic compounds (e.g., select indicators for PCBs, PBDEs, semi-volatile organic compounds, and pesticides) as appropriate, to water bodies with specialized circumstances, such as beach closure

advisories, protected spawning grounds, and contaminated sediment sites listed under CERCLA or MTCA, through implementation of each Proposed Project under the Integrated Plan; and

vii. a description of projected reductions in pollutant exposure for humans, ecological receptors, and/or threatened or endangered species through implementation of the Proposed Project(s) under the Integrated Plan;

b) Demonstrate that the Integrated Plan will achieve compliance with the CWA and the Washington Water Pollution Control Act, as well as their implementing regulations, the City's NPDES Permit, the City's municipal separate storm sewer system ("MS4") permit, and EPA's CSO Control Policy;

c) Propose a schedule for implementation of the Integrated Plan and all remaining CSO Control Measures that is as expeditious as possible that may include an extension to the final Construction Completion milestone. The schedule shall specify milestones for each Proposed Project, including, at a minimum, the Construction Start and Construction Completion. The schedule for the remaining CSO Control Measure shall include, at a minimum, milestone dates for submission of draft and final engineering reports, as well as draft and final plans and specifications, Construction Start, Construction Completion, and achievement of Controlled status;

d) Propose a plan and schedule for performing any post-construction monitoring required for the Proposed Project(s), in addition to the post-construction monitoring specified in Appendix C, that is necessary to assess whether anticipated water quality benefits have been achieved and the requirements in Paragraph 20(b) and (c) above have been or will be met upon

implementation of the Integrated Plan, as well as a plan and schedule for submitting supplemental milestone reports resulting from such additional monitoring; and

e) Include all documents, models, studies, and information supporting implementation of the Integrated Plan. The City shall provide such additional information requested by the United States or the State as is necessary to assist in evaluating the Integrated Plan.

21. If EPA and the State disapprove the City's Integrated Plan, the City may invoke Informal Dispute Resolution in accordance with Paragraph 76. The Formal Dispute Resolution and judicial review procedure set forth in Paragraphs 77 to 81 shall not apply to Paragraphs 20-22. If the dispute is not resolved by Informal Dispute Resolution, then the position advanced by the United States shall be considered binding; provided that the City may, within 30 days after the conclusion of the Informal Dispute Resolution Period, appeal the decision to the Director of the Office of Compliance and Enforcement, EPA Region 10. EPA Region 10 Compliance and Enforcement Office Director may approve or disapprove, or approve upon conditions or in a revised form, the Integrated Plan. The determination of EPA Region 10 Compliance and Enforcement Office Director shall be in her/his discretion and shall be final. The City reserves the right to file a motion seeking relief in accordance with the Federal Rules of Civil Procedure 60(b). Such a motion by the City shall not relieve the City of its obligations pursuant to Section V, unless the Court orders otherwise, and the City shall continue with timely implementation of the CSO Control Measures until the Court rules on any motion described in this Paragraph in a manner that modifies the City's obligations under this Decree.

22. Upon receipt of EPA and the State's approval of the Integrated Plan, or upon resolution of any disputes pertaining to the Integrated Plan, pursuant to Paragraph 21 above, the City shall

implement the Integrated Plan (including any post-construction monitoring) in accordance with the schedule and terms set forth in the approved Integrated Plan.

23. If the City experiences significant adverse changes to its financial circumstances or other financial or budgetary issues, the City may request a modification of a CSO Control Measure and/or an extension of a CSO Critical Milestone up to a maximum of five years. The request for modification shall be made in writing to the United States and the State, and shall:

a) Provide a detailed discussion of the significant adverse change to the City's financial circumstances or other financial or budgetary issues;

b) Specify which CSO Control Measure and/or CSO Critical Milestone cannot be complied with;

c) Propose a revised CSO Control Measure and/or CSO Critical Milestones that are expeditious as possible and in no event longer than additional 5 years;

d) Demonstrate that the proposed CSO Control Measure will meet the same Performance Criteria as the CSO Control Measure it replaces, as well as comply with all federal and state laws and regulations; and

e) Include all documents and information supporting the request.

24. The City shall provide such additional information requested by the United States and the State to assist in evaluating the modification request. If the Parties agree on a proposed modification to the Consent Decree, the modification shall be incorporated into an amended consent decree that shall be subject to court approval after public notice and comment in accordance with Sections XIX and XXI. If the Parties do not agree that a modification proposal under Paragraph 23 above is warranted, and the City believes modification is appropriate, the

City reserves its rights to file a motion pursuant to FRCP 60(b) seeking modification of a CSO Control Measure and/or CSO Critical Milestone; provided, however, that the United States and the State reserve their rights to oppose any such motion and to argue that such modification is unwarranted. Such a motion by the City shall not relieve the City of its obligations pursuant to Section V, unless the Court orders otherwise, and the City shall continue with timely implementation of the CSO Control Measures until the Court rules on any motion described in this Paragraph in a manner that modifies the City's obligations under this Decree.

C. Capacity, Management, Operations, and Maintenance Performance Program Plan

25. On December 31, 2012, the City submitted to EPA and Ecology for their approval a comprehensive Capacity, Management, Operations, and Maintenance ("CMOM") Performance Program Plan in accordance with the requirements and schedule set forth in Appendix D. The CMOM Performance Program Plan is subject to the Review and Approval Procedures set forth in Section VI of this Decree.

26. The City shall implement the approved CMOM Performance Program Plan within thirty (30) days of receipt of EPA and Ecology's approval. The City shall annually review its CMOM Performance Program Plan and update the program as necessary to ensure the City is achieving the performance thresholds contained in the approved CMOM Performance Program Plan. The City shall report in its Annual Report the metrics regarding SSO performance set forth in Appendix D at Paragraph E(1)-(7). If the Annual Report indicates that the City has not achieved the performance thresholds as set forth in its approved CMOM Performance Program Plan, the City shall identify and discuss the reasons why the performance threshold was not achieved, and implement the corrective actions, subject to EPA and Ecology approval. Should the City make

any substantive changes to its performance thresholds of its CMOM Performance Program Plan, the City shall submit any proposed changes, subject to EPA and Ecology's approval. Upon approval of revised performance thresholds, said approved, revised thresholds shall supersede previously approved thresholds.

D. **Fats, Oils, and Grease Control Program Plan**

27. On December 31, 2012, the City submitted to EPA and the State for their approval a Fats, Oils, and Grease ("FOG") Control Program Plan designed to ensure that grease accumulations are not restricting the capacity of the Wastewater Collection System contributing to overflows. The FOG Control Program shall include, at a minimum, the requirements set forth in Appendix D at Paragraph B.3. The FOG Control Program Plan is subject to the Review and Approval Procedures set forth in Section VI of this Decree.

28. The City shall implement the revised FOG Control Program Plan within thirty (30) days of receipt of EPA and the State's approval of such plan. The City shall annually review its FOG Program Plan and update the program as necessary. The City shall submit as part of its Annual Report summaries of FOG inspections and enforcement actions taken by the City during the preceding year. The City shall submit any substantive updates, changes or revisions to its FOG Program Plan, subject to EPA and Ecology's approval. Upon approval of any changes to the FOG Program Plan, such changes shall supersede previously approved provisions.

E. Revised Floatable Solids Observation Program Plan

29. On December 31, 2012, the City submitted to EPA and the State for their approval a revised Floatable Solids Observation Program Plan in accordance with Appendix E. The

Floatable Solids Observation Program Plan is subject to the Review and Approval Procedures set forth in Section VI of this Decree.

30. The City shall implement the revised Floatable Solids Observation Program Plan within thirty (30) days of receipt of EPA and the State's approval of such plan. The City shall annually review and update its Floatable Solids Observation Program Plan as appropriate. The City shall submit any substantive updates, changes or revisions to its Floatable Solids Observation Program Plan, subject to EPA and Ecology's approval. Upon approval of any changes to the Floatable Solids Observation Program Plan, such changes shall supersede previously approved provisions.

F. Joint Operations and System Optimization Plan Between City and King County

31. No later than March 1, 2016, the City shall submit to EPA and the State for their approval a Joint Operations and System Optimization Plan ("Joint Plan") that the City will work with King County in jointly developing and which satisfies the requirements of Appendix F. This Joint Plan shall be applicable to the City's and the County's respective CSO systems, and (a) be consistent with each entity's operational objectives, (b) ensures the optimal level of coordination and information sharing is maintained, and (c) optimizes system and joint operations.

32. The City shall submit progress reports to EPA and the State on the development of the Joint Plan by December 31, 2013 and December 31, 2014.

33. The City shall implement the approved Joint Plan upon receipt of EPA and the State's approval. The City, in coordination with King County, shall review the Joint Plan every three years and update the plan as necessary to ensure the optimal level of coordination and information sharing is maintained between the two entities. Any substantive updates, changes, or revisions to the Joint Plan that affect the operations of CSO facilities covered by this Consent

Decree shall be approved by the City and King County and submitted to EPA and Ecology for their approval upon renewal of the City's NPDES Permit. Upon approval of any changes to the Joint Plan, such changes shall supersede previously approved provisions.

VI. REVIEW AND APPROVAL PROCEDURES

34. After review of any plan, report, and other item that the City is required to submit to EPA and Ecology for their review in accordance with this Consent Decree, EPA and the State shall in writing: (a) approve the submission; (b) approve the submission upon specified conditions; (c) approve part of submission and disapprove the remainder; or (d) disapprove the submission.

35. If the submission is approved pursuant to Paragraph 34(a), the City shall take all actions required by the plan, report, or other document, in accordance with the schedules and requirements of the plan, report, or other document, as approved. If the submission is conditionally approved or approved only in part, pursuant to Paragraph 34(b) or (c), the City shall, upon written direction from EPA and the State, take all actions required by the approved plan, report, or other item that EPA and the State determines are technically severable from any disapproved portions, subject to the City's right to dispute only the specified conditions or the disapproved portions, under Section XII of this Decree (Dispute Resolution).

36. If the submission is disapproved in whole or in part pursuant to Paragraph 34(c) or (d), the City shall, within sixty (60) Days or such other time as the Parties agree to in writing, correct all deficiencies and resubmit the plan, report, or other item, or disapproved portion thereof, for approval, in accordance with the preceding Paragraphs. If the resubmission is approved in whole or in part, the City shall proceed in accordance with the preceding Paragraph.

37. Any stipulated penalties applicable to the original submission, as provided in Section X of this Decree, shall accrue during the 60-Day period, or other specified period, but shall not be payable unless the resubmission is untimely or is disapproved in whole or in part; provided that, if the original submission was so deficient as to constitute a material breach of the City's obligations under this Consent Decree, the stipulated penalties applicable to the original submission shall be due and payable notwithstanding any subsequent resubmission.

38. If a resubmitted plan, report, or other item, or portion thereto, is disapproved in whole or in part, EPA and Ecology may again require the City to correct any deficiencies, in accordance with the preceding Paragraphs, or may themselves correct any deficiencies, subject to the City's right to invoke Dispute Resolution and the right of EPA and the State to seek stipulated penalties as provided in the preceding Paragraphs.

39. All work plans, reports, and other materials required to be submitted to EPA and Ecology under this Consent Decree shall, upon approval by EPA and Ecology, be enforceable under this Consent Decree.

40. EPA and Ecology agree to use their best efforts to expeditiously review and comment on submittals that the City is required to submit for approval pursuant to this Consent Decree. If EPA and Ecology fail to act on a submittal within ninety (90) days of receipt of the submittal, any subsequent milestone date dependent upon such action shall be extended by the number of Days beyond the 90-Day review period that EPA and Ecology use to act on the submittal. In this event, the City must notify EPA and Ecology in writing, at the time of the submittal, of the end date of the 90-Day review period plus any specific milestone dates that the City believes would be extended under this Paragraph if EPA and the State fail to act within 90 days. This Paragraph

does not apply to EPA and Ecology's review of, or actions taken with regard to, revisions of water quality standards, permits, or any matters other than submittals that the City is specifically required to submit to EPA and Ecology for approval pursuant to this Consent Decree. Nothing in this Paragraph shall change, modify, or extend in any way the date of December 31, 2025 for the City's Construction Completion of all CSO Control Measures.

41. Permits. Where any compliance obligation under this Section requires the City to obtain federal, state, or local permits or approval, the City shall submit timely and complete applications to the required authorities and take all reasonable steps to obtain all such permits or approvals. The City may seek relief under the provisions of Section XI (Force Majeure) of this Consent Decree for any delay in the performance of any such obligation resulting from a failure to obtain, or a delay in obtaining, any permit or approval required to fulfill such obligation, if the City has submitted timely and complete applications and has taken all reasonable steps to obtain all such permits or approvals. The City is not required to file a lawsuit to demonstrate that it has taken all reasonable steps to obtain a necessary permit or approval.

VII. FUNDING

42. The City's duty to comply with the terms of this Consent Decree is not contingent upon the receipt of any federal, State or local funds. The City's failure to comply is not excused by the lack of federal or state grant funds, by the processing of any applications for the same, or by the City's financial capabilities except as expressly provided by Paragraph 23 of this Consent Decree. Application for construction grants, State revolving loan funds, or any other grants or loans, or delays in processing or receipt of federal, state or local funds caused by inadequate

facility planning or plans and specifications on the part of the City shall not be cause for extension of any required compliance date in this Consent Decree.

VIII. REPORTING REQUIREMENTS

43. Beginning with the first full calendar quarter after the Effective Date of this Consent Decree and annually thereafter until this Consent Decree terminates in accordance with Section XX (Termination) of this Consent Decree, the City shall submit a written Annual Report to EPA and Ecology. The Annual Report shall not duplicate reports that are otherwise required assuming that EPA and the State receive such reports that are otherwise required. The Annual Report shall include at a minimum:

a) a description of the following: (i) the status of any work plan or report development; (ii) the status of any design and construction activities; (iii) the status of all Consent Decree compliance measures and specific reporting requirements for each program plan as required by the applicable Section for the Early Action CSO Control Programs and Measures set forth in Section V.A., the LTCP, Post-Construction Monitoring Program Plan, CMOM Performance Program Plan, FOG Control Program Plan, Revised Floatable Solids Observation Program Plan, and Joint Operations and System Optimization Plan Between City and King County; (iv) the project costs incurred during the reporting period; (v) any problems anticipated or encountered, along with the proposed or implemented solutions; (vi) the status of any applications for permits relating to the City's Wastewater Collection System; (vii) any reports submitted to state or local agencies relating to the City's Wastewater Collection System; (viii) any anticipated or ongoing operation and maintenance activities relating to the City's Wastewater Collection System; and

(ix) remedial activities that will be performed in the upcoming year to comply with the requirements of this Consent Decree.

b) a description of any non-compliance with the requirements of this Consent Decree and an explanation of the likely cause and duration of the violation and any remedial steps taken, or to be taken, to prevent or minimize such violation. If the cause of the violation cannot fully be explained at the time the report is due, the City shall so state in the report. The City shall investigate the cause of the violation and shall then submit an amendment to the report, including a full explanation of the cause of the violation, within thirty (30) Days following the day the City becomes aware of the cause of the violation. Nothing in this Paragraph or the following Paragraph relieves the City of its obligation to provide the notice required by Section XI (Force Majeure) of this Consent Decree.

44. If the City violates, or has reason to believe that it may violate, any requirement of this Consent Decree, the City shall notify EPA and Ecology of such violation and its likely duration, in a written report, within ten (10) Days following the Day the City first becomes aware of the violation, with an explanation of the likely cause and duration of the violation and any remedial steps taken, or to be taken, to prevent or minimize such violation. If the cause of the violation cannot be fully explained at the time the report is due, the City shall so state in the report. The City shall investigate the cause of the violation and shall then submit an amendment to the report, including a full explanation of the cause of the violation, within thirty (30) Days following the Day the City becomes aware of the cause of the violation. Nothing in this Paragraph or the following Paragraph relieves the City of its obligation to provide the notice required by Section XI of this Consent Decree (Force Majeure).

45. Whenever any violation of this Consent Decree or any other event affecting the City's performance under this Consent Decree, or the operation of its Wastewater Collection System, may pose an immediate threat to the public health or welfare or the environment, the City shall notify EPA and Ecology orally or electronically as soon as possible, but in no event later than twenty-four (24) hours following when the City first becomes aware of the violation or event. This procedure is in addition to the requirements set forth in the preceding Paragraphs.

46. All Annual Reports, or other reports required under this Section VIII, shall be submitted to EPA and Ecology in accordance with Section XIII (Notices) of this Consent Decree.

47. Each report submitted by the City under this Section VIII shall be signed by an official of the submitting party and include the following certification:

> I certify under penalty of law that this document and all attachments were prepared under my direction or supervision, in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

This certification does not apply to emergency notifications where compliance would be impractical.

48. Any information provided pursuant to this Consent Decree may be admissible evidence in any proceeding to enforce the provisions of this Consent Decree and as otherwise permitted by law.

49. The reporting requirements of this Consent Decree do not relieve the City of any reporting obligations required by the CWA or its implementing regulations, or by any other federal, state, or local law, regulation, permit, or other requirement.

IX. CIVIL PENALTIES

50. Within thirty (30) Days from the Effective Date, the City shall pay the sum of $350,000 as a civil penalty as set forth in Paragraphs 51-53 below.

51. Of the total civil penalty amount of $350,000, the City shall pay the United States $175,000 and the State $175,000.

52. The payment of the civil penalty to the United States of $175,000 shall be made by FedWire Electronic Funds Transfer ("EFT") to the United States Department of Justice ("DOJ"), in accordance with written instructions to be provided to the City, following entry of this Consent Decree, by the Financial Litigation Unit of the U.S. Attorney's Office for the Western District of Washington, 700 Stewart Street, Suite 5220, Seattle, Washington 98101(206-553-7970). At the time of payment, the City shall send a copy of the EFT authorization form and the EFT transaction record, together with the transmittal letter, which shall state that the payment is for the civil penalty owed pursuant to the Consent Decree in United States of America and State of Washington v. City of Seattle, and shall reference the civil action number ____ and DOJ case number 90-5-1-1-10066, to the United States, in accordance with Section XIII (Notices) of this Consent Decree, and by mail to:

EPA Cincinnati Finance Office
26 Martin Luther King Drive
Cincinnati, OH 45268.

In the event that the City fails to pay all or any portion of the civil penalty owed to the United States within thirty (30) Days of the Effective Date, the City shall pay to the United States interest on the balance due from the 31st day after the Effective Date to date of full payment, at the rate calculated pursuant to 28 U.S.C § 1961.

53. The payment of the civil penalty to the State of $175,000 shall be made by check payable to "Department of Ecology", and mailed to:

Department of Ecology
Cashiering Unit
P.O. Box 47611
Olympia, WA 98504-7611.

At the time of payment, the City shall send a copy of the check, together with the transmittal letter, which shall state that the payment is for the civil penalty owed pursuant to the Consent Decree in this case, and shall reference the civil action number ____, to the State, in accordance with Section XIII (Notices) of this Consent Decree.

54. The City shall not deduct any penalties paid under this Decree pursuant to this Section or Section X (Stipulated Penalties) in calculating its federal and State taxes.

X. STIPULATED PENALTIES

55. The City shall be liable to the United States and the State for stipulated penalties in the amounts set forth in this Section for failure to comply with the requirements of this Consent Decree as specified below, unless excused under Section XI (Force Majeure). "Compliance" or "to comply" shall include meeting all requirements of this Consent Decree and any applicable permit, as well as completing the activities under this Consent Decree, or any work plan or other plan approved under this Consent Decree, in accordance with all applicable requirements of this

Consent Decree, and within the specified time schedules established by and approved under this Consent Decree.

56. Late Payment of Civil Penalties. If the City fails to pay the civil penalty required to be paid under Section IX (Civil Penalties) of this Consent Decree when due, the City shall pay a stipulated penalty of $10,000 for each Day that the payment is late.

57. Failure to Comply with the Compliance Program Requirements. The following stipulated penalties shall accrue per Day for any failure to comply with any of the Compliance Program requirements of this Consent Decree set forth in Section V.A. (Early Action CSO Control Programs and Measures), Section V.B. (Development and Implementation of the LTCP and PCMP), Section V.C. (CMOM Performance Program Plan), Section V.D. (FOG Control Program Plan); Section V.E. (Revised Floatable Solids Observation Program Plan), and Section V.F. (Joint Operations and System Optimization Plan):

Period of Non-compliance	Stipulated Penalty
1st to 14th Day	$3,000 per day per violation
15th to 30th Day	$4,000 per day per violation
After 31st Day and beyond	$5,000 per day per violation

58. Failure to Comply with Other Reporting Requirements. The following stipulated penalties shall accrue per Day for any failure to comply with the reporting requirements of this Consent Decree (excluding all reporting requirements required under the Compliance Programs set forth in Section V):

59.

Period of Non-compliance	Stipulated Penalty
1st to 14th Day	$1,000 per day per violation
15th to 30th Day	$1,500 per day per violation
After 31st Day and beyond	$2,000 per day per violation

60. Dry Weather CSOs. The City shall be liable to pay a stipulated penalty of $7,500 per Day for each Dry Weather CSO that occurs more than twenty-four (24) hours after precipitation.

61. Sewer Overflows. The City shall be liable to pay a stipulated penalty of $2,500 per Day for each Sewer Overflow.

62. Any Other Violations of this Consent Decree. The City shall pay a stipulated penalty of $2,000 per violation per Day for any violation of Paragraphs 4, 6, 71, and Section XIV ("Information Collection and Retention") of the Consent Decree.

63. Stipulated penalties under this Section X shall begin to accrue on the Day after performance is due or on the Day a violation occurs, whichever is applicable, and shall continue to accrue until performance is satisfactorily completed or until the violation ceases. Stipulated penalties shall accrue simultaneously for separate violations of this Consent Decree.

64. The United States, or the State, or both, may seek stipulated penalties under this Section by sending a joint written demand to the City, or by either sovereign sending a written demand to the City, with a copy simultaneously sent to the other sovereign. Either sovereign may waive stipulated penalties or reduce the amount of stipulated penalties it seeks, in the unreviewable exercise of its discretion and in accordance with this Paragraph. Where both sovereigns seek stipulated penalties for the same violation of this Consent Decree, the City shall pay 50 percent to the United States and 50 percent to the State within thirty (30) days of the joint written demand. Where only one sovereign demands stipulated penalties for a violation, and the other sovereign does not join in the demand within ten (10) Days of receiving the demand, or timely joins in the demand but subsequently elects to waive or reduce stipulated penalties for that violation, the City shall pay the stipulated penalties due for the violation to the sovereign making

the demand less any amount paid to the other sovereign within thirty (30) days of the demand. Nothing in this Section shall be construed to waive and the City expressly reserves its right to dispute whether the violation occurred and the duration of the violation pursuant to the procedures set forth in Section XII (Dispute Resolution).

65. Penalty Accrual during Dispute Resolution. Stipulated penalties shall continue to accrue as provided in Paragraph 63 during any Dispute Resolution, provided, however, the City may argue to the Court that stipulated penalties and interest should not run after the matter has been fully briefed and submitted to the Court and provided that Plaintiffs can argue the contrary. Upon completion of dispute resolution, any stipulated penalties that are ultimately determined to be due, plus interest as applicable, shall be paid within twenty (20) days of the date the Parties' agreement, the United States and State's written decision, or, if applicable, any Court order.

66. The City shall pay stipulated penalties owing to the United States in the manner set forth and with the confirmation notices required by Paragraph 52, except that the transmittal letter shall state for which violation(s) the penalties are being paid. The City shall pay stipulated penalties owing to the State in the manner set forth and with the confirmation notices required by Paragraph 53. A copy of the transmittal letter to the United States and other evidence of payment to the State will also be sent to the Washington's Attorney General's Office and Ecology.

67. If the City fails to pay stipulated penalties, and any accrued interest, to the United States and the State in accordance with the terms of this Consent Decree, the City shall be liable for interest on such penalties, as provided for in 28 U.S.C. § 1961, accruing as of the date payment became due. Nothing in this Paragraph shall be construed to limit the United States or the State

from seeking any remedy otherwise provided by law for the City's failure to pay any stipulated penalties.

68. Subject to the provisions of Section XVI (Effect of Settlement and Reservation of Rights), the stipulated penalties provided for in this Consent Decree shall be in addition to any other rights, remedies, or sanctions available to the United States or the State for the City's violation of this Consent Decree or applicable law. Where a violation of this Consent Decree is also a violation of the City's NPDES Permit, the Clean Water Act, or the Washington Water Pollution Control Act, the City shall be allowed a credit, for any stipulated penalties paid, against any statutory penalties imposed for such violation and vice versa. (The City shall be allowed a credit for any statutory penalties paid against any stipulated penalties assessed for such violation).

XI. FORCE MAJEURE

69. "Force majeure," for purposes of this Consent Decree, is defined as any event arising from causes beyond the control of the City, of any entity controlled by the City, or of the City's contractors that delays or prevents the performance of any obligation under this Consent Decree, despite the City's best efforts to fulfill the obligation. The requirement that the City exercise "best efforts to fulfill the obligation" includes using best efforts to anticipate any reasonably foreseeable force majeure events and best efforts to address the effects of any such event (a) as it is occurring and (b) after it has occurred to prevent or minimize any resulting delay to the greatest extent possible. Force majeure does not include the City's financial inability to perform any obligation under this Consent Decree or the City's failure to approve contracts necessary to

meet the requirements of this Consent Decree, except as expressly provided in Paragraph 23 of this Decree.

70. If the City believes that a permit contains unreasonable conditions and has appealed the permit condition, the City may request EPA Region 10 Compliance and Enforcement Office Director and Ecology's Water Quality Program Manager to consider it to be a force majeure event. If they determine that the permit condition was not a force majeure event, the City may elect to invoke dispute resolution as set forth in Section XII, informal dispute resolution pursuant to Paragraph 76, or may file a motion for judicial review of the dispute within ten days of EPA and Ecology's determination that the permit condition was not a force majeure event, subject to the standard of review set forth in Paragraph 81. The City may also request that the Court stay consideration of its motion for judicial review of EPA and Ecology's decision that the permit condition was not a force majeure event until the underlying permit appeal is resolved.

71. If any event occurs or has occurred that may delay the performance of any obligations under this Consent Decree, whether or not caused by a force majeure event, the City shall provide notice orally or by electronic or facsimile transmission to EPA and Ecology, within five (5) Days of when the City first knew, or, in the exercise of reasonable diligence under the circumstances, should have known, of such event. Within ten (10) Days thereafter, the City shall provide in writing to EPA and Ecology an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or effect of the delay; the City's rationale for attributing such delay to a force majeure event if it intends to assert such a claim; and a statement as to whether, in the City's

opinion, such event may cause or contribute to an endangerment to public health or welfare, or the environment. The City shall include with any notice all available documentation supporting the claim that the delay was attributable to a force majeure event. Failure to comply with the above requirements shall preclude the City from asserting any claim of force majeure for that event for the period of time for such failure to comply, and for any additional delay caused by such failure.

72. If EPA and Ecology agree that the delay or anticipated delay is attributable to a force majeure event, the time for performance of the obligations under this Consent Decree that are affected by the force majeure event will be extended by EPA and Ecology for such time as is necessary to complete those obligations. An extension of time for performance of the obligations affected by the force majeure event shall not, of itself, extend the time for performance of any other obligation. EPA and Ecology will notify the City in writing of the length of the extension, if any, for performance of any obligations affected by the force majeure event.

73. If EPA and Ecology do not agree that the delay or anticipated delay has been or will be caused by a force majeure event, EPA and Ecology will notify the City in writing of their decision.

74. If the City elects to invoke the dispute resolution procedures set forth in Section XII (Dispute Resolution) of this Consent Decree, it shall do so no later than fifteen (15) days after receipt of EPA's and Ecology's notice of decision. In any such proceeding, the City shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a force majeure event, that the duration of the delay or the

extension sought was or will be warranted under the circumstances, that reasonable efforts were exercised to avoid and mitigate the effects of the delay, and that the City complied with the requirements of Paragraphs 70-74 above. If the City carries this burden, the delay at issue shall be deemed not to be a violation by the City of the affected obligation of this Consent Decree identified to EPA, Ecology and the Court.

XII. DISPUTE RESOLUTION

75. Unless otherwise expressly provided for in this Consent Decree, the dispute resolution procedures of this Section XII shall be the exclusive mechanism to resolve disputes arising under or with respect to this Consent Decree.

76. Informal Dispute Resolution. Any dispute subject to the Dispute Resolution under this Consent Decree shall first be the subject of informal negotiations. The dispute shall be considered to have arisen when the City sends the United States and the State a written Notice of Dispute, in accordance with Section XIII (Notices). Such Notice of Dispute shall state clearly the matter in dispute. As part of the informal negotiations, the Parties may engage in mediation with a third party mediator in order to resolve the dispute, if all Parties mutually agree to such mediation. A Party's decision not to mediate is not subject to dispute resolution procedures. The period of informal negotiations (including mediation, if any) shall not exceed thirty (30) days from the date the dispute arises, unless that period is modified by written agreement. Any negotiation period that precedes the date the City submits a written Notice of Dispute shall not be considered to be part of the informal negotiation period. If the Parties cannot resolve a dispute by informal negotiations, then the position advanced by the United States and the State shall be

considered binding, unless, within thirty (30) days after the conclusion of the informal negotiation period, the City invokes formal dispute resolution procedures as set forth below.

77. Formal Dispute Resolution. The City shall invoke formal dispute resolution procedures within the time period set forth in the preceding Paragraph, by serving the United States and the State, in accordance with Section XIII (Notices) of this Consent Decree, a written Statement of Position regarding the matter in dispute. The Statement of Position shall include, but need not be limited to, any factual data, analysis, or opinion supporting the City's position and any supporting documentation relied upon by the City.

78. The United States and the State shall serve their Statement of Position within forty-five (45) days of receipt of the City's Statement of Position. The Statement of Position served by the United States and the State shall include, but need not be limited to, any factual data, analysis, opinion, or supporting documentation relied upon by the United States and the State. The Statement of Position served by the United States and the State shall be binding on the City, unless the City files a motion for judicial review of the dispute in accordance with the following Paragraph.

79. The City may seek judicial review of the dispute by filing with the Court and serving on the United States and the State, in accordance with Section XIII (Notices) of this Consent Decree, a motion requesting judicial resolution of the dispute. The City must file the motion within twenty-one (21) Days of receipt of the Statement of Position served by the United States and the State pursuant to the preceding Paragraph. The motion shall contain a written statement of the City's position on the matter in dispute, including any supporting factual data, analysis,

opinion, or documentation, and shall set forth the relief requested and any schedule within which the dispute must be resolved for orderly implementation of the Consent Decree.

80. The United States and the State shall respond to the City's motion within the time period allowed by the Local Rules of this Court. The City may file a reply memorandum, to the extent permitted by the Local Rules.

81. Standard of Review. In any dispute brought under this Section, the City shall have the burden of proof, and the standard and scope of review shall be that provided by applicable law. The United States reserves the right to argue that its position is reviewable only on the administrative record and must be upheld unless arbitrary and capricious or otherwise not in accordance with law.

82. The invocation of dispute resolution procedures under this Section shall not, by itself, extend, postpone, or affect in any way any obligation of the City under this Consent Decree, unless and until a final resolution of the dispute so provides. Stipulated penalties with respect to the disputed matter shall continue to accrue from the first Day of non-compliance, but payment shall be stayed pending resolution of the dispute as provided in Paragraph 65. If the City does not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section X (Stipulated Penalties), unless otherwise provided by the Court.

XIII. NOTICES

83. Unless otherwise specified herein, whenever notifications, submissions, or communications are required by this Consent Decree, they shall be made in writing and addressed as follows:

To the United States:

Chief, Environmental Enforcement Section
Environmental and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611

and

United States Environmental Protection Agency

Director, Water Enforcement Division
Office of Civil Enforcement
U.S. Environmental Protection Agency
1200 Pennsylvania Ave., NW
Mail Code: 2243-A
Washington, D.C. 20460

and

Director, Office of Compliance and Enforcement
U.S. Environmental Protection Agency, Region 10
1200 6th Avenue, Suite 900
Seattle, WA 98101

To the State:

Municipal Unit Supervisor
Washington Department of Ecology
Northwest Regional Office
3190 160th Avenue, SE
Bellevue, WA 98008-5452

and

Attorney General of Washington
Ecology Division
P.O. Box 40117
Olympia, WA 98504

To the City of Seattle:

Director

Seattle Public Utilities
City of Seattle
700 Fifth Avenue, Suite 4900
Seattle, WA 98124-4018

Director, Drainage & Wastewater Division
Seattle Public Utilities
City of Seattle
700 Fifth Avenue, Suite 4900
Seattle, WA 98124-4018

and

Director, Environmental Protection Section
City Attorney's Office
City of Seattle
600 Fourth Avenue, Fourth Floor
Seattle, WA 98124-4769

84. Any Party may, by written notice to the other Parties, change its designated notice recipient or notice address provided above.

85. Notices and submissions provided pursuant to this Section XIII shall be deemed submitted upon mailing, unless otherwise provided in this Consent Decree or by mutual agreement of the Parties in writing.

XIV. INFORMATION COLLECTION AND RETENTION

86. The United States, the State, and their representatives, including attorneys, contractors, and consultants, shall have the right of entry into any facility covered by this Consent Decree, at all reasonable times, upon presentation of credentials, to :

a) Monitor the progress of activities required under this Consent Decree;

b) Verify any data or information submitted to the United States or the State, in accordance with the terms of this Consent Decree;

c) Obtain samples and, upon request, splits of any samples taken by the City or its representatives, contractors, or consultants;

d) Obtain documentary evidence, including photographs and similar data; and

e) Assess the City's compliance with this Consent Decree.

87. The United States and the State will use reasonable efforts to coordinate field inspections of the City's Wastewater Collection System with the City by notifying the City, if practicable, of such inspections prior to arrival at the field inspection location, unless the United States or the State determines that it needs to do an unannounced inspection.

88. Upon request, the City shall provide EPA, the State, or their authorized representatives split of any samples taken by the City. Upon request, EPA and the State shall provide the City with splits of any samples taken by EPA or the State. Upon request, EPA and the State shall provide copies of any photographs and similar data obtained during on-site visits conducted pursuant to Paragraph 86 above that is non-exempt and non-privileged under either FOIA or State public disclosure laws.

89. Until five (5) years after the termination of this Consent Decree, the City shall retain, and shall instruct its contractors and agents to preserve, all documents, reports, records, or other information (including documents, records, or other information in electronic form) in its or its contractors' or agents' possession or control, or that come into its or its contractors' or agents' possession or control, and that document the City's performance of its obligations under this Consent Decree. Drafts of final documents or plans do not need to be retained. This information-retention requirement shall apply regardless of any contrary institutional policies or procedures. At any time during this information-retention period, upon request by the United

States or the State, the City shall provide copies of any documents, records, or other information required to be maintained under this Paragraph.

90. The City may assert that certain documents, records, or other information is privileged under the attorney-client privilege or any other privilege recognized by federal or state law. If the City asserts such a privilege, it shall provide the following: (1) the title of the document, record, or information; (2) the date of the document, record, or information; (3) the name and title of each author of the document, record, or information; (4) the name and title of each addressee and recipient; (5) a description of the subject of the document, record, or information; and (6) the privilege asserted by the City. No documents, records, or other information created by or generated pursuant to the requirements of this Consent Decree, however, shall be withheld on grounds of privilege.

91. The City may also assert that information required to be provided to the United States under this Section is protected as Confidential Business Information ("CBI") under 40 C.F.R. Part 2. As to any information that the City seeks to protect as CBI, the City shall follow the procedures set forth in 40 C.F.R. Part 2. If no claim of confidentiality accompanies documents or information when they are submitted to the United States and the State, the public may receive access to such documents or information without further notice, in accordance with 40 C.F.R. Part 2, Subpart B. The City may also assert that information required to be provided to the State under this Section is confidential under state law by following the procedures set forth in RCW 43.21A.160.

92. This Consent Decree in no way limits or affects any right of entry and inspection, or any right to obtain information, held by the United States or the State pursuant to applicable federal

or state laws, regulations, or permits, nor does it limit or affect any duty or obligation of the City to maintain documents, records, or other information imposed by applicable federal or state laws, regulations, or permits.

XV. FAILURE OF COMPLIANCE

93. The United States and the State do not, by their consent to the entry of this Consent Decree, warrant or aver in any manner that the City's compliance with any aspect of this Consent Decree will result in compliance with the provisions of the CWA, 33 U.S.C. § 1251 *et seq.*, or with any other provisions of federal, state, or local laws, regulations, or permits. The City shall remain responsible for compliance with the terms of the CWA and its implementing regulations, applicable state law and regulations, its NPDES Permit, all orders issued by the State, and this Consent Decree. Nothing in this Consent Decree shall be interpreted as limiting the State's right to take enforcement action in response to any violations of the City's NPDES Permit or any orders issued by the State. The pendency or outcome of any proceeding concerning issuance, reissuance, or modification of any NPDES Permit shall neither affect nor postpone the City's duties and obligations as set forth in this Consent Decree.

XVI. EFFECT OF SETTLEMENT AND RESERVATION OF RIGHTS

94. This Consent Decree resolves the civil claims of the United States and the State for the violations alleged in the Complaint filed in this action through the Date of Lodging of this Consent Decree.

95. The United States and the State reserve all legal and equitable remedies available to enforce the provisions of this Consent Decree, except as expressly stated in Paragraph 94. This

Consent Decree shall not be construed to limit the rights of the United States or the State to obtain penalties or injunctive relief under the CWA or its implementing regulations, or under other federal or state laws, regulations, or permit conditions, except as expressly provided in Paragraph 94.

96. The United States and the State further reserve all legal and equitable remedies to address any imminent and substantial endangerment to the public health or welfare or the environment arising at, or posed by, the City's Wastewater Collection System, whether related to the violations addressed in this Consent Decree or otherwise.

97. In any subsequent administrative or judicial proceeding initiated by the United States or the State for injunctive relief, civil penalties, or other appropriate relief relating to the City's Wastewater Collection System or the City's violations, the City shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States or the State in the subsequent proceeding were or should have been brought in the instant case, except with respect to claims that have been specifically resolved pursuant to Paragraph 94.

98. This Consent Decree is not a permit, nor a modification of any permit, under any federal, state, or local laws or regulations. Nothing in this Consent Decree relieves the City of any obligations it has under any applicable federal, state, and local laws, regulations, and permits. The City may seek to admit evidence of its compliance with the Consent Decree in any subsequent proceeding. The United States and the State do not, by their consent to entry of this Consent Decree, warrant or aver in any manner that the City's compliance with any aspect of this

Consent Decree will result in compliance with the CWA or the Water Pollution Control Act, and reserve all rights to object to introduction of such evidence by the City.

99. This Consent Decree does not limit or affect the rights of the Parties against any third parties, not party to this Consent Decree, nor does it limit the rights of third parties, not party to this Consent Decree, against the City, except as otherwise provided by law or by Paragraphs 94 and 100. This Consent Decree shall not be construed to create rights in, or grant any cause of action to, any third party, not party to this Consent Decree.

100. The Complaint and this Consent Decree shall constitute and establish continuing diligent prosecution by the United States, under Section 505(b)(1)(B) of the Clean Water Act, 33 U.S.C. § 1365(b)(1)(B), of all matters alleged in the Complaint arising from the beginning of the applicable statute of limitations through the Date of Lodging.

101. Nothing in this Consent Decree limits the rights or defenses available under Section 309(e) of the Clean Water Act, 33 U.S.C. §1319(e), in the event that the laws of the State, as currently or hereafter enacted, may prevent the City from raising the revenues needed to comply with this Consent Decree.

XVII. EFFECTIVE DATE

102. The Effective Date of this Consent Decree shall be the date upon which this Consent Decree is entered by the Court or a motion to enter the Consent Decree is granted, whichever occurs first, as recorded on the Court's docket, provided, however, that the City hereby agrees that it shall be bound to perform duties scheduled to occur prior to the Effective Date as specified in the City's NPDES Permit.

XVIII. RETENTION OF JURISDICTION

103. The Court shall retain jurisdiction over this case until termination of this Consent Decree for the purpose of resolving disputes arising under this Consent Decree, pursuant to Section XII (Dispute Resolution), or entering orders modifying this Consent Decree, pursuant to Section XIX (Modification), or effectuating or enforcing compliance with the terms of this Consent Decree.

XIX. MODIFICATION

104. The terms of this Consent Decree, including any attached Appendices, may be modified only by a subsequent written agreement signed by all the Parties. Where the modification constitutes a material change to this Consent Decree, it shall be effective only upon approval by the Court.

105. Unless otherwise provided herein, any disputes concerning modification of this Consent Decree shall be resolved pursuant to Section XII (Dispute Resolution) of this Consent Decree, provided, however, that, instead of the burden of proof provided by Paragraph 81, the Party seeking modification bears the burden of demonstrating that it is entitled to the requested modification in accordance with the grounds for relief specified in Federal Rule of Civil Procedure 60(b).

106. Upon issuance of any new federal law or federal regulation governing CSOs; upon EPA approval or promulgation of new or revised water quality standards in accordance with 33 U.S.C. Section 1313(c) and 40 C.F.R. Section 131.21 and 131.22; or upon the issuance of a NPDES permit that contains new requirements, the City may request modification of this Consent Decree (including requests for extensions of time) from the United States to conform this Consent Decree to such regulation, national policy, new or revised water quality standard or permit. Upon

the City's request, the United States and the City shall discuss the matter. If the United States and the City agree on the proposed modification to the Consent Decree, they shall prepare a joint motion to the Court requesting such modification.

107. If the United States and the City do not agree, and the City still believes that modification of this Consent Decree is appropriate, the City may file a motion seeking such modification in accordance with Federal Rule of Civil Procedure 60(b); provided, however, that nothing in this subparagraph is intended to waive the United States' rights to oppose such motion and to argue that such modification is unwarranted.

108. Following the filing of a motion under Rule 60(b), stipulated penalties shall accrue due to the City's failure, if any, to continue performance of obligations under the Consent Decree that are necessarily the subject of the Rule 60(b) motion; provided, however, that such penalties need not be paid if the Court resolves the motion in the City's favor, and the City shall comply with the Consent Decree as modified.

XX. TERMINATION

109. The City may serve upon the United States and the State a Request for Termination of Consent Decree, together with supporting documentation, certifying that the City has satisfied all of its obligations under the Decree including:

a) Completion of all compliance requirements in Section V (Compliance Programs) and that it has achieved and maintained satisfactory compliance with this Consent Decree for a period of twelve consecutive months following completion of its requirements under Section V;

b) Compliance with all other requirements of this Consent Decree; and

c) Payment in full of all civil penalties, any accrued stipulated penalties, and any accrued interest as required by this Consent Decree.

110. Following receipt by the United States and the State of the City's Request for Termination, the Parties shall confer informally concerning the Request for Termination and any disagreement that the Parties may have as to whether the City has satisfactorily complied with the requirements for termination of this Consent Decree. If the United States and the State agree that the Consent Decree may be terminated, the Parties shall submit, for the Court's approval, a joint stipulation terminating the Consent Decree.

111. If the United States and the State do not agree that the Consent Decree may be terminated, the City may invoke dispute resolution under Section XII (Dispute Resolution). The City, however, shall not seek resolution of any dispute regarding termination of this Consent Decree, under Paragraph 77, until ninety (90) days after service of its Request for Termination. The City shall have the burden of proof that it met the conditions for termination of the Consent Decree. This Consent Decree shall remain in effect pending resolution of the dispute by the Parties or the Court, in accordance with Section XII (Dispute Resolution).

XXI. PUBLIC PARTICIPATION

112. This Consent Decree shall be lodged with the Court for a period of not less than thirty (30) days for public notice and comment, in accordance with 28 C.F.R. § 50.7. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts or considerations indicating that the Consent Decree is inappropriate, improper, or inadequate. The City consents to entry of this Consent Decree without further notice and agrees not to withdraw from or oppose entry of this Consent Decree

by the Court or to challenge any provision of this Consent Decree, unless the United States has notified the City in writing that it no longer supports entry of this Consent Decree.

XXII. SIGNATORIES/SERVICE

113. Each undersigned representative of the City, the State, and the Assistant Attorney General for the Environment and Natural Resources Division of the United States Department of Justice, on behalf of the United States, certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind the Party he or she represents to this document.

114. This Consent Decree may be signed in counterparts. The City agrees to accept service of process by mail or courier service to the address set forth in Section XIII with respect to all matters arising under or relating to this Consent Decree and to waive the formal service requirements set forth in Rules 4 and 5 of the Federal Rules of Civil Procedure and any applicable Local Rules of this Court, including, but not limited to, service of a summons.

XXIII. COSTS

115. The Parties shall each bear their own costs of this action, including attorneys' fees, except that the United States and the State may be entitled to collect the costs (including attorneys' fees) incurred in any action necessary to collect any portion of the civil penalty or any stipulated penalties due but not paid by the City.

XXIV. INTEGRATION

116. This Consent Decree and its Appendices constitute the final, complete, and exclusive agreement and understanding among the Parties with respect to the settlement embodied in the

Consent Decree and supersede all prior agreements and understandings, whether oral or written, pertaining to the settlement embodied herein. Other than the deliverables subsequently submitted and approved pursuant to this Consent Decree and incorporated herein, no other document, nor any representation, inducement, agreement, understanding, or promise, constitutes any part of this Consent Decree or the settlement it represents, nor shall it be used in construing the terms of this Consent Decree.

XXV. APPENDICES

117. The following documents are attached to and incorporated into this Consent Decree:

"Appendix A" is the List of Existing CSO Outfalls.

"Appendix B" is the Schedule for LTCP Implementation.

"Appendix C" is the LTCP Requirements.

"Appendix D" is the CMOM Performance Program Plan

"Appendix E" is the Revised Floatable Solids Observation Program.

"Appendix F" is the Joint Operations and System Optimization Plan.

XXVI. FINAL JUDGMENT

118. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute a final judgment of the Court as to the United States, the State, and the City.

Dated and entered this _____ day of _____, 2012.

_____
UNITED STATES DISTRICT JUDGE
Western District of Washington

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States of America and the State of Washington v. City of Seattle, Washington (W.D. Wash.).

FOR PLAINTIFF UNITED STATES OF AMERICA:

_____ DATE:_____

IGNACIA S. MORENO
Assistant Attorney General
Environment and Natural Resources Division
United States Department of Justice
P.O. Box 7611
Washington, D.C. 20044

_____ DATE:_____

KATHRYN C. MACDONALD
Senior Trial Attorney
Environmental Enforcement Section
Environment and Natural Resources Division
United States Department of Justice
P.O. Box 7611
Washington, D.C. 20044

JENNY A. DURKAN
United States Attorney
Western District of Washington

By: _____ DATE:_____

BRIAN C. KIPNIS
Assistant United States Attorney
Senior Litigation Counsel
Office of the U.S. Attorney
Western District of Washington
700 Stewart Street, Suite 5220
Seattle, Washington 98101-1271

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States of America and the State of Washington v. City of Seattle, Washington (W.D. Wash.).

FOR THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY:

_____ DATE:_____

CYNTHIA GILES, Assistant Administrator
Office of Enforcement and Compliance Assurance
United States Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

_____ DATE:_____

SUSAN SHINKMAN, Director
Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
United States Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

_____ DATE:_____

MARK POLLINS, Director
Water Enforcement Division
Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
United States Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

_____ DATE:_____

AMANDA J. HELWIG, Attorney
Water Enforcement Division
Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
United States Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.

Washington, D.C. 20460

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States of America and the State of Washington v. City of Seattle, Washington (W.D. Wash.).

FOR THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY:

_____ DATE:_____

EDWARD J. KOWALSKI
Director, Office of Compliance and Enforcement
United States Environmental Protection Agency
Region 10
1200 Sixth Avenue
Seattle, Washington 98101

_____ DATE:_____

ALLYN L. STERN
Regional Counsel
United States Environmental Protection Agency
Region 10
1200 Sixth Avenue
Seattle, Washington 98101

_____ DATE:_____

TED YACKULIC
Assistant Regional Counsel
United States Environmental Protection Agency
Region 10
1200 Sixth Avenue
Seattle, Washington 98101

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States of America and the State of Washington v. City of Seattle, Washington (W.D. Wash.).

FOR THE STATE OF WASHINGTON:

BOB FERGUSON
ATTORNEY GENERAL

_____ DATE:_____

RONALD L. LAVIGNE, WSBA #18550
Senior Counsel
Attorneys for State of Washington
Department of Ecology
2425 Bristol Ct., SW
Olympia, Washington 98504

_____ DATE:_____

TED L. STURDEVANT
Director
Washington Department of Ecology
P.O. Box 47600
Olympia, Washington 98504-7600

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States of America and the State of Washington v. City of Seattle, Washington (W.D. Wash.).

FOR THE CITY OF SEATTLE:

_____ DATE:_____

MICHAEL P. MCGINN
Mayor
City of Seattle
600 Fourth Avenue
P.O. Box 94749
Seattle, Washington 98124-4749

_____ DATE:_____

PETER S. HOLMES
City Attorney
City of Seattle
600 Fourth Avenue
P.O. Box 94769
Seattle, Washington 98124-4769

APPENDIX A: List of Existing CSO Outfalls

CSO NPDES No.	CSO Name	Status*
12	NE 60th Street at NE Windermere Road	C
13	Windermere Park NE 50th St.	U
14	55th Ave. NE at NE 43rd St.	C
15	51st Ave. NE at NE Laurelhurst Ln.	U
16	Webster Pt NE at W Laurelhurst Drive	C
18	38th Ave. NE at NE 41st St.	U
19	NE 45th Street at Montlake Blvd. NE	C
20	Shelby St. at E. Park Drive	U
22	39th Avenue E at E Lakeside Blvd.	C
24	43rd Ave. E. at E. Lee St.	C
25	43rd Ave. E. at E. Lee St.	U
26	Denny Blaine Pl. E.	C
27	Lake Washington Blvd.	C
28	Lake Washington Blvd. E. at E. Pike St.	U
29	Lake Washington Blvd. E. at E. James St.	U
30	Lake Washington Blvd. E. at E. Alder St.	C
31	Lake Washington Blvd. S. at S. Main St.	U
32	Lake Washington Blvd. S. at S. Dearborn St.	U
33	Lake Washington Blvd. S. at S. Charles St.	C
34	Lake Washington Blvd. S. at S. Charles St.	U
35	Lake Washington Blvd. S. at S. Massachusetts St.	U
36	Lake Washington Blvd. S. at S. College St.	U
38	Lake Washington Blvd. S. at 45th Ave. S.	C
40	Lake Washington Blvd. S. at 49th Ave. S.	U
41	Lake Washington Blvd. S. at 50th Ave. S.	U
42	Lake Washington Blvd. S. at S. Snoqualmie St.	C
43	Lake Washington Blvd. S at S Alaska Street	U
44	Lake Washington Blvd. S - S of Juneau Street	U
45	57th Avenue South at South Brighton Street	U
46	S Island Drive at S Grattan Street	U
47	Seward Park Avenue S at S Henderson Street	U
48	Rainier Avenue S at S Perry Street	C
49	Rainier Ave. S. at S. Cooper Street	U
57	Seaview Avenue NW at NW 68th Street	C

59	Seaview Ave. NW at NW 57th Street	C
60	W Cramer Street at 39th Avenue NW	U
61	W Ray Street at Logan Avenue W	C
62	W Ray Street at Logan Avenue W	C
64	32nd Avenue W at Logan Avenue W	C
68	W Garfield Street at 17th Avenue W	U
69	Alaskan Way at Vine Street	U
70	Alaskan Way at University Street	C
71	Alaskan Way at Madison Street	U
72	Alaskan Way S at S Washington Street	C
78	Harbor Avenue SW at Fairmont Avenue SW	C
80	Harbor Avenue SW at SW Maryland Place	C
83	Alki Avenue SW at SW Arkansas Street	C
85	Alki Avenue SW at Point Place SW	C
88	SW Beach Drive – N of SW Bruce Street	C
90	SW Beach Drive at Murray Avenue SW	C
91	Fauntleroy Way SW - N of SW Trenton St. in Lincoln Park	C
94	Fauntleroy Avenue SW - N of SW Director Street	C
95	Fauntleroy Avenue SW at SW Brace Pt Drive	U
99	SW Hinds Street at Duwamish River West Waterway	U
107	SW Hinds Street at Alaskan Way S	U
111	S. Oregon St. at East Duwamish	U
120	Westlake Avenue N at Aurora Avenue N	C
121	Westlake Avenue N at Crockett Street	C
124	Westlake Avenue N - S of Aloha Street	C
127	Fairview Avenue E at Yale Avenue E	C
129	Fairview Avenue E at E Newton Street	C
130	Fairview Ave. E. at E. Lynn St.	C
131	Fairview Avenue E at Louisa Street	C
132	Fairview Avenue E. at E. Roanoke E.	C
134	Fairview Avenue E at E Allison Street	C
135	Eastlake Avenue E at Portage Bay Place E	C
136	Portage Bay Place E at E Allison Street	C
138	E. Shelby Street - Portage Bay	U
139	16th Avenue E at Louisa Street	U
140	E Shelby Street at W Park Drive	U
141	Brooklyn Avenue NE at Boat Street	C

144	Latona Avenue NE at NE Northlake Way	C
145	N 36th Street at NE Northlake Way	C
146	Carr Place N at N Northlake Way	C
147	Stone Way N. at Northlake Way	U
148	8th Avenue NW at NW 41st Street	C
150/151	24th Avenue NW and NW Market Street	U
	24th Avenue NW and NW Market Street	U
152	28th Avenue NW and NW Market Street	U
161	N.E. 65th Street and 65th Avenue N.E.	C
165	Lake Washington Blvd. at S Alaska Street	C
168	Delridge Avenue SW at SW Myrtle Street	U
169	Between 24th and 25th Ave. SW N/O SW Thistle St.	U
170	27th Avenue SW at SW Webster Street	C
171	Rainier Ave. S at Ithaca Place S	U
174	NW 36th Street at 2nd Ave. NW	U
175	E Garfield Street at Fairview Avenue E	C

* CSO Outfall is controlled (C), or uncontrolled (U).

APPENDIX B: Schedule for LTCP Implementation

DELIVERABLE	DUE DATE
Submit Draft LTCP	May 30, 2014
Submit Financial Analysis	December 31, 2014
Submit CSO Alternative Analysis	December 31, 2014
Submit LTCP Implementation Schedule	December 31, 2014
Submit Final LTCP and PCMP for approval	May 30, 2015
Construction Completion of all CSO Control Measures in the approved LTCP	December 31, 2025
Complete Post-Construction Monitoring for all CSO Outfalls except Nos. 71, 99, 111, 147, 174, and 151	December 31, 2028
Submit Final Post-Construction Monitoring Report for all CSO Outfalls except Nos. 71, 99, 111, 147, 174, and 151	December 31, 2029
Complete Post-Construction Monitoring of CSO Outfalls Nos. 71, 99, 111, 147, 174, and 151	December 31, 2035
Submit Final Post-Construction Monitoring Report for CSO Outfalls Nos. 71, 99, 111, 147, 174, and 151	April 30, 2036

APPENDIX C: LTCP Requirements

The City shall continue development of its Long Term Control Plan ("LTCP") to provide for the construction and implementation of all Wastewater Collection System improvements necessary to comply with those portions of the CWA and its implementing regulations, RCW 90.48, and WAC 173.245 that apply to CSO control. The LTCP shall be developed and implemented in accordance with EPA's CSO Control Policy.

A. Public and Regulatory Agency Participation Program.

The City shall implement a Public and Regulatory Agency Participation Program (the "Participation Program") designed to ensure that there is ample public participation and ample participation by the Plaintiffs, throughout all stages of development of the City's Long Term Control Plan. The Participation Program shall include, at a minimum, the following elements:

1. The means by which the City will make information pertaining to the development of the LTCP available to the public for review.
2. The means by which the City will solicit comments from the public on the development of the LTCP.
3. Summary of public hearings at meaningful times during the LTCP development process to provide the public with information and to solicit comments from the public regarding the components of the LTCP.
4. Program for consideration of comments provided by the public as the City develops its LTCP.
5. Measures that the City will employ to ensure that Plaintiffs are kept informed of the City's progress in developing its LTCP, including scheduling periodic meetings with Plaintiffs at meaningful times during the LTCP development process and regular submittal of reports to Plaintiffs summarizing the public comments received throughout implementation of the Program.

B. Hydraulic Model Development and Hydraulic Model Report

1. On or about December 26, 2012, the City submitted its hydraulic model of the City's Wastewater Collection System with the exception of Basin 107 ("Hydraulic Model") to be used in conjunction with the results of the monitoring program as published and available in the Flow Monitoring Report. At a minimum, the Hydraulic Model shall be capable of predicting stormwater flows and resulting combined sewer overflows generated by various wet weather events. The Hydraulic Model shall be capable of the following:
   a. developing wet weather hydrographs for both combined catchment areas, as well as for the separate sewer areas that are tributaries to the CSS. The hydrographs shall be developed for various storm recurrence intervals and shall be combined with baseline wastewater flow and routed through gravity sewer lines, pump stations, force mains, regulators and interceptors by the Hydraulic Model. The Hydraulic Model shall include methods for estimating wastewater flow, groundwater infiltration, and rain induced infiltration and inflow. The hydrographs shall be developed using historical flow and rainfall data and data collected as a result of the City's Flow Monitoring Program.

b. predicting the hydraulic grade lines, volume and flow rates of wastewater in force mains and gravity sewer lines during a variety of appropriate wet weather events;
c. predicting the hydraulic pressure and flow of wastewater at any point in force mains throughout the Wastewater Collection System;
d. predicting the flow capacity of each pump station;
e. predicting the flow capacity of gravity sewer lines;
f. predicting the peak flows during wet weather and dry weather conditions for pump stations and gravity sewer lines;
g. predicting the likelihood, location, duration and volume of discharge from each CSO for a variety of storm events of varying durations and return frequencies that would be expected in a typical calendar year;
h. conducting both continuous and event-specific simulations; and
i. evaluating various CSO control alternatives and being able to determine (i) how the CSS hydraulics and CSO frequency and duration will change under various control alternatives; and (ii) the best combination of control technologies across the system.

2. On or about December 26, 2012, the City submitted a Hydraulic Model Report which shall include, at a minimum:
   a. description of the Hydraulic Model;
   b. specific attributes, characteristics, and limitations of the Hydraulic Model;
   c. identification of all input parameters, constants, assumed values, and outputs;
   d. a digitized map(s) and schematics that identify and characterize the portions (including the specific gravity sewer lines) of the Wastewater Collection System included in the Hydraulic Model;
   e. identification of input data used;
   f. configuration of the Hydraulic Model;
   g. procedures and protocols for performance of sensitivity analyses (i.e., how the Hydraulic Model responds to changes in input parameters and variables);
   h. procedures for calibrating the Hydraulic Model to account for values representative of the Wastewater Collection System using actual data (e.g., flow data);
   i. procedures to verify the Hydraulic Model's performance using actual data (e.g., flow data); and
   j. procedures for modeling wet weather flows from separate sewer areas.

C. Long Term Control Plan

1. The City shall continue development and implementation of its Long Term Control Plan, which shall provide for the construction and implementation of all improvements and other measures necessary to meet the performance criteria for controlling combined sewer overflows, pursuant to Chapter 173-245 of the Washington Administrative Code and Revised Code of Washington 90.48.480. The LTCP shall be conducted using the LTCP guidelines, but the alternatives analysis shall be modified in order to meet the performance criteria. Meeting the performance criteria is equivalent to meeting the presumption approach in the LTCP guidance.
2. The LTCP shall build upon the alternative analysis work that was performed as part of the development of the City's 2010 CSO Reduction Plan Amendment (2010 Plan). Alternatives that were screened out as part of the 2010 Plan will not be evaluated further in the LTCP.

3. For each alternative or combination of alternatives evaluated as part of the LTCP, the City's assessment shall include, at a minimum, an evaluation of the technical feasibility and applicability of each alternative or combination of alternatives at each CSO Outfall or grouping of CSO Outfalls.
4. For each alternative or combination of alternatives evaluated as part of the LTCP, the City's assessment shall include a determination of the estimated "project costs," as that term is described on pages 3-49 through 3-51 of the EPA's "Combined Sewer Overflows Guidance for Long-Term Control Plan," for each alternative or combination of alternatives. The determination of the estimated "project costs" shall include:
    a. "capital costs," "annual operation and maintenance costs," and "life cycle costs," as those terms are described on pages 3-49 through 3-51 of EPA's "Combined Sewer Overflows Guidance for Long-Term Control Plan;" and
    b. An itemization of the "capital costs" and "annual operation and maintenance costs" used to determine the total "project costs" for each separate component of each alternative or combination of alternatives.
5. Assessment of CSO Control Measures: In developing the LTCP, the City must conduct or document prior analysis of alternatives for reducing the City's CSOs. The assessment must include, at a minimum, (a) an evaluation of the annual performance capabilities and effectiveness, measured in terms of CSO activation frequencies and overflow volumes, of various CSO control alternatives to meet performance criteria for controlling CSOs, pursuant to WAC 173-245 and RCW 90.48.480; (b) an analysis of design and development capabilities for the CSO control alternatives, including basin-specific information on flow management, topographical or hydrological constraints, and construction capacities; (c) an evaluation of project costs, including capital costs, annual operations and maintenance costs, and total present worth, for the CSO control alternatives; (d) the screening of selected CSO control alternatives, involving additional evaluation of the geotechnical environment and property information, as well as the preparation of the appropriate environmental review, for the identified project area; and (e) the basis for the City's selection of the preferred alternatives to implement as the CSO Control Measures in the LTCP.
    a. Green Infrastructure: EPA and Ecology encourage the City to utilize Green Infrastructure as appropriate to reduce or replace gray CSO Control Measures included in the LTCP, provided that any green measures proposed, together with gray measures proposed, are anticipated to provide substantially the same or greater level of control as alternative gray CSO Control Measures alone. If the City relies on other entities to implement green technologies, the City must have agreements in place to ensure proper operation and maintenance of the green technologies.
        i. For any Green Infrastructure submitted as part of the LTCP, the City shall submit to EPA and Ecology an Engineering Report. The Engineering Report shall at a minimum include the following for each project:
            1. Data on location, sizing, design, and the performance levels expected to be achieved with the implementation of the Green Infrastructure project (hereinafter GI Performance Criteria), utilizing the information and models that the City used in developing the LTCP, as well as any monitoring information used in formulating the proposal, along with an assessment of the long term effectiveness and performance expected to be achieved with

implementation of the project;

2. A description of the work required to implement the Green Infrastructure project and a schedule for completion of this work and implementation of the project that is consistent with this Consent Decree, its Appendices, and the deadline of December 31, 2025 for Construction Completion of all CSO Control Measures, unless this deadline is extended pursuant to Section XI (Force Majeure), Paragraph 20(c), or Paragraph 23(c) of the Consent Decree;
3. A description of the proposed ownership of and access to the Green Infrastructure project, and where the City relies on other entities to implement green technologies, the City must explain the agreements necessary to ensure proper operation and maintenance of the green technologies, as well as how these agreements will be enforced;
4. A description of any post-construction monitoring and modeling to be performed to determine whether the GI Performance Criteria will be met upon completion and implementation of the Green Infrastructure project; and
5. An alternative gray CSO Control Measure to be implemented if the Green Infrastructure project is disapproved. The proposal shall include a description of the proposed gray CSO Control Measure, as well as a schedule for completion and implementation of the project that is consistent with this Consent Decree, its Appendices, and the deadline of December 31, 2025 for Construction Completion of all CSO Control Measures, unless this deadline is extended pursuant to Section XI (Force Majeure), Paragraph 20(c), or Paragraph 23(c) of the Consent Decree.

ii. Upon review of the City's Green Infrastructure project proposals, EPA and Ecology will comment, approve, disapprove, or approve in part, the proposal. The City shall implement each Green Infrastructure project approved by EPA and Ecology, in accordance with the provisions and schedule in the approved proposal.

iii. In the event that the City implements an approved Green Infrastructure project proposal that fails to meet the GI Performance Criteria set forth in the project proposal and LTCP, the City shall propose, within 180 days after submittal of the applicable post-construction monitoring report documenting said failure, additional CSO Control Measures designed to achieve the GI Performance Criteria with a schedule for completion of this work and implementation of the project that is consistent with this Consent Decree, its Appendices, and the deadline of December 31, 2025 for Construction Completion of all CSO Control Measures, unless this deadline is extended pursuant to Section XI (Force Majeure), Paragraph 20(c), or Paragraph 23(c) of the Consent Decree. In the alternative, where the City has substantially met the GI Performance Criteria, the City may, within sixty (60) days after discovering a project's failure to meet the GI Performance Criteria, petition EPA and Ecology for a

change in the GI Performance Criteria. In the event that EPA and Ecology disapprove of the City's request for a change in the GI Performance Criteria, the City shall, within 180 days following EPA and Ecology's disapproval, propose additional CSO Control Measures designed to achieve the GI Performance Criteria with a schedule for completion of this work and implementation of the project that is consistent with this Consent Decree, its Appendices, and the deadline of December 31, 2025 for Construction Completion of all CSO Control Measures, unless this deadline is extended pursuant to Section XI (Force Majeure), Paragraph 20(c), or Paragraph 23(c) of the Consent Decree.

6. The LTCP shall include an evaluation of the City's financial capability to fund the selected alternative or combination of alternatives, consistent with EPA's February 1997 "Combined Sewer Overflows – Guidance for Financial Capability Assessment and Schedule Development" and relevant financial factors as deemed appropriate by the United States and the State.
7. The LTCP shall include the selection of CSO Control Measures, including the construction of all Wastewater Collection System improvements, necessary to ensure compliance with the technology-based and water quality based requirements of those portions of the CWA, RCW 90.48.110, WAC 173-245, and the City's NPDES Permit that apply to CSO control.
8. The LTCP shall include an expeditious schedule for the design, construction, and implementation of all CSO Control Measures. If it is not possible for the City to design and construct all measures simultaneously, the LTCP shall include a phased schedule based on the relative importance of each measure, with highest priority being given to those projects which most reduce the discharge of pollutants. The schedule shall specify critical milestones for each specific measure, including, at a minimum, dates for: (i) submission of draft and final engineering reports; (ii) submission of draft and final plans and specifications; (iii) Construction Start; (iv) Construction Completion; and (v) achievement of Controlled status.
9. The City's assessment of the costs, benefits, and effectiveness of the alternatives evaluated for reducing CSOs;
10. The City's basis for determining that the CSO Control Measures set forth in the LTCP will ensure that the City's CSOs comply with the CSO Control Policy, and those portions of the CWA and its implementing regulations, RCW 90.48.110, WAC 173-245, and the City's NPDES Permit that apply to CSO control;
11. The City's basis for determining that the schedule for implementing the LTCP attains Construction Completion of all CSO Control Measures as expeditiously as practicable, and in no event later than December 31, 2025 for Construction Completion of all CSO Control Measures, unless this deadline is extended pursuant to Section XI (Force Majeure), Paragraph 20(c), or Paragraph 23(c) of the Consent Decree; and
12. The City's Financial Capability Assessment, conducted pursuant to Section II.C.8 of the CSO Control Policy and further addressed in EPA's guidance document entitled, "Combined Overflows – Guidance for Financial Capability Assessment and Schedule Development."
13. The LTCP shall include, as attachments, all documents and reports generated in order to develop the LCTP.

D. Post-Construction Monitoring Program

1. One year following Construction Completion of each CSO Control Measure, the City shall document that the associated CSO Outfall has been Controlled; provided, however, if there is insufficient precipitation during the year following Construction Completion to demonstrate that a CSO Outfall has been Controlled, then the deadline for documenting that a CSO Outfall has been Controlled shall be extended until there is sufficient precipitation to make the demonstration, subject to the approval of EPA and Ecology.
2. The City shall implement the Post-Construction Monitoring Plan, dated April 1, 2010, as conditionally approved by the State by letters dated June 3, 2010 and August 10, 2010, by developing and implementing Quality Assurance Project Plans ("QAPPs") for each CSO Control Measure, in accordance with the schedule identified in the LTCP. If the results of the Post-Construction Monitoring Plan indicate areas of non-compliance, the City shall, within sixty (60) days, submit to EPA and Ecology a Supplemental Compliance Plan that includes the actions that the City will take to achieve compliance, as well as a schedule for taking such actions. Upon approval of the Supplemental Compliance Plan, the City shall implement the Supplemental Compliance Plan in accordance with the schedule specified therein.
3. Post-Construction Monitoring Plan Report: Within 120 days after complete implementation of the Post-Construction Monitoring Plan in accordance with the schedule set forth therein, the City shall submit a Post-Construction Monitoring Plan Report to EPA and Ecology for approval.
    a. The Post-Construction Monitoring Plan Report shall demonstrate that the City performed the Post-Construction Monitoring Plan in accordance with its approved provisions and schedule.
    b. The Post-Construction Monitoring Plan Report shall summarize the data collected pursuant to the Post-Construction Monitoring Plan and analyze whether the completed CSO Control Measures have met and continue to meet the Design Criteria and Performance Criteria specified in the LTCP and whether the City's operation of its Combined Sewer System complies with the CSO Control Policy, and those portions of the CWA and its implementing regulations, all applicable state law and regulations, and the City's NPDES Permit that apply to CSO control.
    c. EPA and Ecology may approve the Post-Construction Monitoring Plan Report or may decline to approve it and provide written comments. Within forty-five (45) days of receiving any comments from EPA and/or Ecology, the City shall either alter the Post-Construction Monitoring Plan Report consistent with EPA's and Ecology's comments and resubmit the Post-Construction Monitoring Plan Report to EPA and Ecology for final approval or submit the matter for dispute resolution under Section XII (Dispute Resolution) of this Consent Decree. Approval of the Post-Construction Monitoring Plan Report constitutes EPA's and Ecology's approval that the Post-Construction Monitoring Plan Report contains the information required by Section V of the Consent Decree. By approving the Post-Construction Monitoring Plan Report, neither EPA nor Ecology verifies that the City has complied with any other requirement of this Consent Decree or applicable federal or state law, regulations, or permits.

APPENDIX D: Capacity, Management, Operation and Maintenance Performance Program Plan

The City's Capacity, Management, Operation and Maintenance ("CMOM") Performance Program Plan will incorporate Asset Management and Risk Management processes. The City shall follow a performance based approach, which utilizes adaptive management to develop and periodically modify as necessary focused programs with the goal of eliminating all SSOs. The Program Plan shall include the following requirements:

A. CMOM Performance Program Plan:

1. The City manages its CMOM program according to asset management principles where condition assessment, risk and consequence of failure (SSO) are used in prioritizing maintenance, rehabilitation and repair of the system. The City shall annually review its CMOM Performance Program and update the program as necessary to ensure that the City is achieving the approved CMOM Performance Program Plan thresholds.
2. The City's CMOM Performance Program Plan shall include SSO performance thresholds with the goal of eliminating all SSOs:
   a) If the performance in the Annual Report indicates that the City has achieved an SSO rate that is equal or better than the performance threshold defined in the CMOM Performance Program, the City continues to manage and update its own program according to asset management principles where condition assessment, risk of failure (SSO) and consequence are used in prioritizing maintenance, rehabilitation and repair of the system and the City provides an Annual Report of the results to EPA and the State.
   b) If the performance in the Annual Report indicates that the City's SSO rate exceeds the performance threshold, then the City shall develop a focused corrective action plan for SSO elimination and submit the plan to EPA and the State for approval, and the City shall implement the plan following EPA and State approval.
3. CMOM Performance Program changes resulting from the annual review will be submitted with the Annual Report. Should the City make any substantive changes to its performance thresholds of its CMOM Performance Program Plan, the City shall submit any proposed changes, subject to EPA and Ecology's approval. Upon approval of revised performance thresholds, said approved, revised thresholds shall supersede previously approved thresholds.
4. On December 31, 2012, the City submitted to EPA and the State for their approval, the City's CMOM Performance Program Plan for its Wastewater Collection System. The CMOM Performance Program Plan components shall include two components, the CMOM Roadmap SSO Reduction Initiatives and the SSO Performance Thresholds:
   a) The CMOM Roadmap SSO Reduction Initiatives component will include a series of initiatives that the City is currently planning on implementing over the next 6 years. For each initiative, the Plan will include: the purpose of the initiative, a general description of the initiative, and a development and implementation timeframe.

b) The SSO Performance Thresholds component will include definitions of SSO performance thresholds, performance trends, and threshold triggers for focused corrective action updates to the program.

B. CMOM Roadmap SSO Reduction Initiatives

The CMOM Roadmap shall meet the following objectives:

- Prepare the City for CMOM compliance with potential CMOM guidelines/requirements.
- Identify and prioritize opportunities for improvement into initiatives.
- Develop and implement a six-year strategic plan to implement each of the initiatives.

The CMOM Roadmap component shall include the following items:

1. Planning and Scheduling

a) Risk Based Scheduling

Description: Implement tools and processes to prioritize and group cleaning work orders to simultaneously minimize SSO risk and drive time.

b) Planning and Scheduling Centralization

Description: Optimize the planning and scheduling function at the City to maximize effectiveness and productivity.

c) Maximo 7 Reimplementation

Description: Design, testing, training and rollout of system functionality for the Maximo Reimplementation that will support future business practices and processes.

2. Sewer Cleaning

a) Cleaning Optimization Tool Enhancement

Description: This initiative provides enhancements to the functionality in the cleaning optimization tool (COTools) application implemented in 2011. Current functionality includes optimizing sewer cleaning frequencies using various data sources in order to reduce risk of SSOs.

b) Standard Operating Procedures (SOPs)

Description: Develop Standard Operating Procedures (SOPs) for sewer cleaning crews and crew chiefs based on industry best practices and the unique needs of the City. SOPs will focus on procedures, practices, equipment and tool selection, maintenance, planning, data collection, etc.

c) Crew Training

Description: Update the existing Training Plan with additional detail regarding the sewer cleaning training initiative. The training plan will include strategies for training (such as a

'train-the-trainer' program) and a schedule. The work includes development of training materials, a schedule, and classroom/field training sessions.

d) QAQC Plan

Description: Increase sewer cleaning effectiveness through the development and implementation of a Quality Assurance/Quality Control (QAQC) program. The program will include setting thresholds, measuring and tracking the effectiveness of cleaning activities, providing constructive feedback to crews to promote continual improvement, and ultimately reducing O&M related SSOs.

3. Fats, Oil and Grease (FOG)

a) FOG Management Plan

Description: Develop a comprehensive FOG Management Plan. This Plan will support the City's FOG Program by documenting short term and long term program goals, mitigation strategies, approach for focusing limited resources, workload forecast and staffing plans, and performance tracking and reporting.

b) FSE Inventory Management Plan

Description: Develop and update a comprehensive Food Service Establishment (FSE) Inventory Management Plan.

c) Standard Operating Procedures and Outreach Materials

Description: Develop Standard Operating Procedures (SOPs) based on industry best practices and the unique needs of the City for inspectors and other City staff (such as analysts) who are responsible for executing FOG management strategies. SOPs will focus on procedures, practices, equipment and tool selection, planning, and data collection for inspections, enforcement, residential outreach, alternative FOG treatment, new facility evaluation (plan reviews), communication protocols, and FOG characterization. Update or develop new outreach materials for both commercial and residential FOG contributors.

d) FOG Inspector Training

Description: Provide City's FOG Inspection staff with practical information and guidance for conducting FSE inspections associated with FOG Source Control.

4. Repair, Rehabilitation and Replacement (3R)

a) Repair, Rehabilitation and Replacement (3R) Process and Tool

Description: The objective of this initiative is to develop and enhance a process and interim tool to support the City in making effective and efficient 3R decisions.

b) Capital Improvement Plan and Workload Forecasting

Description: Develop a condition based capital renewal estimate and implementation plan.

5. Condition Assessment

a) Force Main Assessment Strategy

Description: Develop and document a risk-based condition assessment strategy for force mains. The goal is to reduce force main related failures and SSOs through an appropriate level of proactive inspections.

b) CCTV Standard Operating Procedures

Description: Develop Standard Operating Procedures (SOPs) for crews and crew chiefs responsible for gravity pipe CCTV inspections, based on industry best practices and the unique needs of the City. SOPs will focus on procedures, practices, equipment and tool selection, maintenance, planning, data collection, etc.

c) CCTV Training Plan

Description: Increase the City's CCTV crew effectiveness through the development of a comprehensive training plan. The training plan will include content, strategies for training (such as a 'train-the-trainer' program) and a schedule.

d) CCTV QAQC Plan

Description: Increase sewer CCTV effectiveness through the development and implementation of a Quality Assurance/Quality Control (QAQC) program.

6. SSO Response

a) Standard Operating Procedures (SOPs)

Description: Develop new or update existing SOPs for crews, crew chiefs, and analysts who are responsible for responding to, tracking, and reporting SSOs. SOPs will focus on procedures, practices, maintenance, planning, data collection, etc.

b) Tools and Equipment Usage Plans

Description: Assess the tools and equipment currently used for SSO response and update tool and equipment usage polices and plans to effectively and efficiently respond to and mitigate SSOs.

c) Field Training Program

Description: Develop and provide periodic SSO response refresher training/exercises to maintain skills (investigation methods, volume estimating, containment/recovery, clean-up, documentation, and reporting) for field staff who respond to an SSO event.

C. SSO Performance Thresholds

The City shall submit for EPA and Ecology's approval proposed SSO performance thresholds for the City's CMOM Program Plan with the goal of eliminating all SSOs.

D. Modifications to the CMOM Performance Program

The City's adaptive, performance based management approach makes the CMOM Performance Program Plan a living document that will periodically need to be adjusted based on the most current performance data. All modifications to the above program details will be submitted as part of the Annual Report. Should the City make any substantive changes to its performance thresholds of its CMOM Performance Program Plan, the City shall submit any proposed changes, subject to EPA and Ecology's approval. Upon approval of revised performance thresholds, said approved, revised thresholds shall supersede previously approved thresholds.

E. Annual Report

Beginning the first year after the Effective Date, the City shall submit an Annual Report to EPA and the State by April 1st for the prior year that includes the following CMOM Performance information:

1. SSO performance.
2. The number of miles of sewer that were cleaned, inspected, and repaired/replaced/rehabilitated.
3. The number of pump station inspections and the capacity of each pump station inspected.
4. The number of manholes and force mains inspected and repaired/replaced/rehabilitated.
5. The number and type of CSO regulators inspected.
6. Summaries of inspections and cleanings of each CSO control structure.
7. Summaries of Fats, Oil, and Grease (FOG) inspections and enforcement actions taken by the City during the preceding year.

APPENDIX E: Revised Floatable Solids Observation Program Plan

The City will observe approximately 5 outfalls per year at which to attempt observations, with the understanding that observations of overflow events may or may not occur at those outfall locations, as overflow events are weather dependent, and the City's ability to observe those events may be affected by logistics, and the timing of the overflow events that do occur. The City will continue to attempt overflow observations at approximately 5 outfall locations per year each year until 10 outfall locations are observed, or until the end of 2014, whichever comes first, provided that the City has made reasonable attempts to observe overflows and the lack of the desired number of observations has occurred due to a lack of overflow events or other reasonable logistic issues.

Observation Plan

The City will conduct visual observations of receiving waters in the vicinity of the combined sewer overflow outfall and/or employ camera technology to observe overflow events within a combined sewer overflow control structure. If solids or floatables are observed within combined sewer overflow structures or in receiving waters during or soon after combined sewer overflow events, the City will, as deemed appropriate by the method, timing, amount, and type of solids and floatables observed, conduct additional investigation to evaluate the source and impact of the solids and floatables observed. The City will quantify and document, as best as the observation methods allow, the type and amount of solids or floatables observed, and observations made regarding potential sources and receiving water impacts.

As part of its Annual Report required by Section VIII of the Consent Decree, the City shall document and report the observations of the overflow events that occurred during the preceding year.

APPENDIX F: Joint Operations and System Optimization Plan Between The City of Seattle and King County

1. While the City and King County own and operate discrete wastewater collection and conveyance systems, parts of King County's system are interconnected with the City's where the operation of one impacts the operation of the other. All of the separate and combined wastewater collected in the City's Wastewater Collection System is discharged to King County owned interceptor for transport to one of King County's wastewater treatment plants. In addition, the City owns CSO Outfalls which are located upstream and in close proximity to King County owned CSO Outfalls. The City will work with King County in jointly preparing a Joint Operations and System Optimization Plan ("Joint Plan") for the City's Wastewater Collection System and those interdependent portions of King County's regional wastewater conveyance and treatment system that are hydraulically connected to the City's system. The result of this effort is development of a Joint Plan that is consistent with both entities' operational objectives, ensures the optimal level of coordination and information sharing is maintained, and optimizes system and joint operations between both entities. The Joint Plan shall describe a procedure for operating their existing systems and will include a process for incorporating the Joint Plan into the design of new capital projects for the combined systems.

2. The Joint Plan shall include, but not be limited to, the following items:
    a. Overview of those interdependent portions of King County's regional wastewater, conveyance, and treatment system and the City's Wastewater Collection System;
    b. Methods to accommodate each agency's operational objectives while complying with their contractual obligations;
    c. Shared operational objectives for the City and King County's combined sewer systems;
    d. Organizational structure;
    e. Modes of operation (dry, wet, transition) for identified CSO facilities;
    f. Each agency's operational decision hierarchy;
    g. Identified CSO facilities, if any, that may be beneficial to jointly operate and/or monitor;
    h. Real-time communication plans/protocols;
    i. Emergency and special operations protocols;
    j. A process for incorporating the Joint Plan into the design of new capital projects for the combined system, including the City and King County CSO Long-Term Control Plans; and
    k. A process for updating the Joint Plan every three years.

Andrew Lee
SPU Consent Decree FISC
January 22, 2013
Version #2

Form revised: December 6, 2011

FISCAL NOTE FOR NON-CAPITAL PROJECTS

Department:	Contact Person/Phone:	CBO Analyst/Phone:
Seattle Public Utilities	Andrew Lee /3-9066	Karl Stickel/4-8085

Legislation Title:
AN ORDINANCE relating to Seattle Public Utilities; approving changes to the Consent Decree previously authorized by Ordinance 123908 and authorizing the Director of Seattle Public Utilities to submit the amended Consent Decree to the U.S. District Court and to fulfill the obligations set forth therein; and ratifying and confirming certain prior acts.

Summary of the Legislation:
The proposed ordinance would slightly amend the Consent Decree which the Council previously authorized the director of Seattle Public Utilities to sign and implement. The Consent Decree is with the U.S. Environmental Protection Agency (EPA) and the State of Washington Department of Ecology (Ecology) to reduce overflows from the City's 90 Combined Sewer Overflow (CSO) outfalls. After Council authorized the Consent Decree, EPA and Ecology negotiated a similar Consent Decree with King County. Some of the language in the King County Consent Decree differs from language in Seattle's and would be beneficial to the City. The proposed legislation authorizes SPU to submit to the Court an amended Consent Decree that is consistent with King County's consent decree.

Background:
The City of Seattle owns, maintains and operates a system of sanitary sewers and storm and surface water drainage as part of Seattle Public Utilities' drainage and wastewater system. The EPA determined sewage discharges from Seattle's combined sewers violate the federal Clean Water Act and the conditions and limitations of the National Pollutant Discharge Elimination System (NPDES) permit issued by Ecology. The EPA made Findings and Conclusions and issued a Consent Decree pursuant Section 402 of the Clean Water Act, 33 U.S.C. §1342(b).

The City last June approved Ordinance 123908 authorizing the Director of Seattle Public Utilities to enter into and fulfill the obligations of a Consent Decree addressing the City's Combined Sewer Overflows. Before finalizing the City's CSO Consent Decree, the federal government agreed to revise the Seattle's Consent Decree to give it the benefit of any favorable provisions included in King County's Consent Decree, which was completed in early November. Accordingly, SPU is seeking approval to change the Consent Decree approved pursuant to Ordinance 123908 with respect to the following:

- The City and County must submit an Integrated Plan for operating their sewer systems by March 1, 2016 and the EPA is allowed to resolve disputes over it.

- The City's Integrated Plan is no longer limited to stormwater control projects and may instead include any water quality improvement project (e.g. street sweeping) resulting in significant water quality benefits beyond those expected from CSO control measures alone. This change will allow the City to undertake a wider variety of projects to improve water quality.

- The revised Consent Decree expressly authorizes EPA and Ecology to reduce stipulated penalties for violating the Decree and recognizes either agency may opt not to demand stipulated penalties for a violation.

- The revised Consent Decree more clearly states the City may seek relief for failing to comply with the Decree if it experiences significant adverse changes to its financial circumstances. It also allows the City to seek changes to CSO controls or deadlines based on financial or budgetary problems.

- The parties may now agree to use a third-party mediator to resolve disputes arising from implementation of the Consent Decree.

- The courts would no longer be required to apply an "arbitrary and capricious" standard of review for any disputes referred to it for resolution. Under this standard of review, the court generally defers to the regulatory agency's position. This new language allows the City to argue the court should give more weight to the City's position in the dispute.

The new Consent Decree is in other respects essentially identical to the one approved earlier by Council. The City would still be required to develop and implement a CSO long-term control plan by 2025.

Please check one of the following:

____ **This legislation does not have any financial implications.**

_X_ **This legislation has financial implications.**

The financial implications of this legislation are the same as those associated with Ordinance 123908. No 2013 appropriation actions are required by this proposed Council Bill. There are, however, significant financial impacts that result from the regulatory requirements being placed on SPU by Ecology and the EPA, which are the subject of the Consent Decree.

Other Implications:

a) **Does the legislation have indirect financial implications, or long-term implications?**
Yes, the legislation has long-term financial implications. Those implications are described in Exhibit A.

b) **What is the financial cost of not implementing the legislation?**
The alternative to signing a Consent Decree is for EPA to sue the City. The resulting court order would likely impose much more stringent and costly requirements. The nature of these requirements is unpredictable and would make it difficult for the City to plan its projects. An order also would impose heavy penalties, which can be up to $25,000 per day for each violation of the Clean Water Act. Criminal prosecution is possible against the City and against individuals. To prove a criminal case, the federal government only has to prove that the defendant was aware that pollutants were being discharged.

c) **Does this legislation affect any departments besides the originating department?**
This legislation primarily impacts SPU. However, the types of projects implemented to comply with the Consent Decree (e.g., pipelines, pump stations, small retrofits, green stormwater infrastructure, and underground storage structures) may have impacts on the Department of Planning and Development, the Department of Parks and Recreation, the Seattle Department of Transportation, and other City departments. Coordination with other City departments will be necessary to ensure successful implementation of the Consent Decree requirements. The Department of Parks and Recreation and the Seattle Center also are major drainage and wastewater ratepayers and, like all rate payers, will be impacted by the rate increases that are discussed in the attachment to the fiscal note.

d) **What are the possible alternatives to the legislation that could achieve the same or similar objectives?**
There are no alternatives to the legislation that could achieve the same or similar objectives.

e) **Is a public hearing required for this legislation?**
No.

f) **Is publication of notice with *The Daily Journal of Commerce* and/or *The Seattle Times* required for this legislation?**
No.

g) **Does this legislation affect a piece of property?**
This legislation does not have an immediate impact on a particular piece of property. However, the types of projects that will be implemented to comply with the Consent Decree (e.g., pipelines, pump stations, small retrofits, green stormwater infrastructure (GSI), and underground storage structures) will have impacts on both private and public

property. These projects will be constructed in the public right-of-way, in City-owned lands, and/or on private property.

h) Other Issues:
None.

List attachments to the fiscal note below:

Exhibit A – Financial Impacts Summary (for reference – originally submitted to Council with CB 117408)

Exhibit A

City of Seattle Combined Sewer Overflow Reduction Program
2012 Environmental Protection Agency Consent Decree
Financial Impacts Summary

4/24/2012

Background

The City of Seattle (City) owns, maintains and operates a system of sanitary sewerage and storm and surface water drainage as part of Seattle Public Utilities' Drainage and Wastewater System. The Environmental Protection Agency (EPA) has determined that the City has violated Sections 301 and 402 of the Clean Water Act, 33 U.S.C. §§ 1311 and 1342, and the conditions and limitations of its National Pollutant Discharge Elimination System (NPDES) permit issued by the State of Washington Department of Ecology (Ecology). The EPA has made Findings and Conclusions and issued a Consent Decree pursuant Section 402 of the Clean Water Act, 33 U.S.C. §1342(b).

The City, EPA and Ecology have been negotiating the Consent Decree since 2011. The Consent Decree requires the City to pay a civil penalty of $350,000 for violations of the Clean Water Act. The Consent Decree also requires the City to implement its combined sewer overflow (CSO) reduction program by 2025, but includes provisions which allow the City to defer CSO investments if alternative projects which yield greater benefit to the receiving waters can be identified by 2018. The Consent Decree allows the City to use a significantly more cost effective asset management approach to performing operations and maintenance of sewerage infrastructure. The Consent Decree calls for coordination and optimization between the City and King County on their current and future wastewater system operation. Lastly, the Consent Decree provides protection for the City from certain 3rd party lawsuits.

Financial Impact of Implementing the Consent Decree Requirements

The budget estimate for completing SPU's CSO Reduction Program by 2025 ranges from $182 million to $627 million (*2010 CSO Reduction Plan Amendment, p. 5-18)*. For purposes of estimating the financial impact of the Consent Decree, SPU has conservatively assumed remaining program expenditures will be approximately $500 million.

The current projected spending path from 2012-2025 is shown in Figure 1 (page 2) and Table 1 (page 3).

Exhibit A

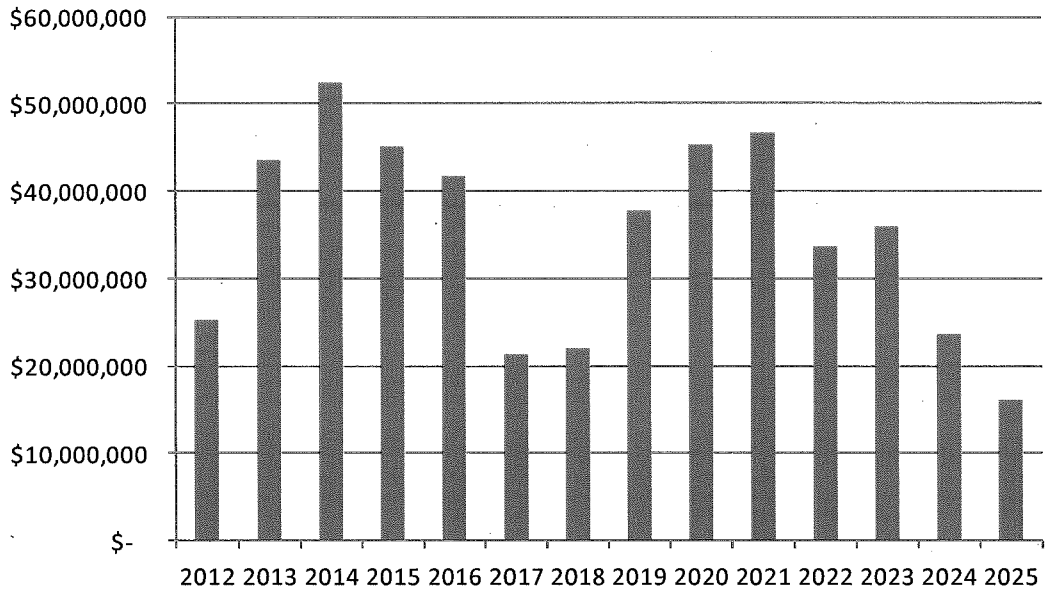

Figure 1. Annual CIP Expenditures for Implementing Consent Decree Requirements

In October 2010, SPU submitted a long-range spending projection (2011-2025) in a memorandum to the City Council that accompanied an ordinance to approve a State of Washington Department of Ecology Administrative Order. The spending path shown in Figure 1 is similar to the 2010 projection in that the total program expenditures are still estimated to be approximately $500 million. However, the current spending path differs from the projection in 2010 in several ways:

- Expedited Schedules for Genesee & Henderson Projects: In 2010, SPU's timelines for implementing projects had project durations that were longer than are necessary. SPU has identified that it can shorten the duration of its projects by 1-3 years. As a result, the Genesee and Henderson projects are being implemented on a faster schedule. The expediting of schedules has led to projected spending in 2013-2016 that is higher than what was anticipated in 2010. However, the overall program costs have not increased as a result in the schedule acceleration. (CIP expenditures are lower than originally projected from 2017-2019.)
- Added Emphasis on Green Stormwater Infrastructure (GSI) Projects: In 2011, through its Long-Term Control Plan (LTCP) project, SPU identified additional opportunities to construct green stormwater infrastructure (GSI) in CSO basins early on to reduce the size of underground storage projects, which would be constructed from 2017-2025. This correlates to a $12 million increase in green stormwater infrastructure (GSI) spending from 2011-2016 above the 2010 projection. The size of the GSI investments from 2012-2016 is still being analyzed and will depend on a number of factors including public involvement and rates.

Exhibit A

- Outfall Rehabilitation Program: In the late Fall of 2010, SPU received a new requirement in its NPDES permit to rehabilitate deteriorated outfalls. Two of those outfalls are located in the Henderson CSO Basin (Outfall #45 and Outfall #44). SPU is planning on replacing those two outfalls as part of the S Henderson project, which is leading to an increase in that project's budget.

Rate Impact of Implementing the Consent Decree Requirements

Regardless of the program completion date, rate increases will be necessary to fund the CSO capital program. Executing the requirements of the Consent Decree will require a cumulative maximum rate increase of approximately $8 per month for a typical drainage and wastewater customer by the year 2025. This is consistent with the long-range rate projection that was presented to the City Council in 2010.

Exhibit A

Table 1. Annual CIP Expenditures for 2012-2025 for Implementing Consent Decree Requirements

(in year of expenditure, or 'nominal', dollars)

	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023	2024	25
CSO Reduction Capital Program	$25,352,065	$43,576,950	$52,589,392	$45,113,282	$41,751,299	$21,330,151	$22,024,175	$37,916,263	$45,317,925	$46,744,875	$33,695,263	$35,976,896	$23,595,347	$16,126,629

City of Seattle
Office of the Mayor

January 29, 2013

Honorable Sally J. Clark
President
Seattle City Council
City Hall, 2nd Floor

Dear Council President Clark:

I am pleased to transmit the attached proposed Council Bill which would authorize the director of Seattle Public Utilities to sign and fulfill the obligations in a Consent Decree by the U. S. Environmental Protection Agency and the State of Washington Department of Ecology.

Over the last four decades King County and the City of Seattle, through their respective Combined Sewer Overflow (CSO) reduction programs, have reduced annual sewer overflow volumes by approximately 20 billion gallons. Despite that success, discharges from Seattle's combined sewers continue to impact public health and the environment, thereby violating the federal Clean Water Act and the conditions of the City's wastewater discharge permit from the Department of Ecology.

Last June the City Council approved legislation authorizing the Director of Seattle Public Utilities to fulfill the obligations of a Consent Decree addressing Seattle's CSOs. During discussions leading up to the agreement, the federal government agreed to revise the Seattle's Consent Decree to give it the benefit of any favorable provisions included in King County's Consent Decree, which was completed in early November. With this legislation, the City is agreeing to modify the Consent Decree approved last year to make it more favorable to the City.

It is critical that we make major improvements in CSO control to meet regulatory requirements and the City's environmental goals. This legislation builds on many decades of significant and continuous effort to create a legacy we and our children can be proud of. If you have any questions, please contact Andrew Lee at 733-9066.

Sincerely,

Michael McGinn
Mayor of Seattle

cc: Honorable Members of the Seattle City Council

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