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

UNITED STATES OF AMERICA, and THE STATE OF WASHINGTON Plaintiffs v. KING COUNTY, WASHINGTON Defendant	Civil Action No. 2:13-cv-677

CONSENT DECREE

13-CV-00677-CNST

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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, King County ("County"), 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 County 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 County is responsible for a regional wastewater collection and treatment system, portions of which they own and operate, serving 34 cities and districts (Component Agencies) in and adjacent to King County covering approximately 420 square miles and a population of approximately 1.5 million.

WHEREAS, the County's wastewater system is the largest in the Puget Sound region, and includes over 350 miles of large pipelines that collect wastewater from smaller pipelines owned and operated by Component Agencies.

WHEREAS, around twenty (20) percent of the County's service area has combined sewers, all located in the City of Seattle. The remainder of the County's service area is served by separated sewers.

WHEREAS, the County represents that it has taken the following actions to reduce CSOs:

A. Since the 1980's, the County's predecessor agency, the Municipality of Metropolitan Seattle ("Metro", which was consolidated with the County in 1994), has been conducting CSO control projects to improve water quality in the Seattle-King County area. Metro's CSO program was first formalized in 1979 with the development of the 1979 Combined Sewer Overflow Control program, which identified nine projects to control CSO events into fresh water areas (such as Lake Washington, Lake Union, and the Ship Canal).

B. In 1988, Metro published the *"Final 1988 Combined Sewer Overflow Control Plan"* which addressed control alternatives for the remaining CSOs in the Ship Canal, Duwamish River, and Elliott Bay in response to RCW 90.48.480 and WAC 173-245 requiring local governments to develop CSO reduction plans to achieve the "greatest reasonable reduction of combined sewer overflows at the earliest possible date" defined as an average of one untreated discharge per year.

C. The County prepared an update/amendment of the *1988 Plan* in 1995. The *1995 CSO Update* included an assessment of the effectiveness of CSO reduction efforts to date, a re-evaluation of priority for CSO sites, and a list of 3 projects the County intended to implement during the next five years.

D. In November 1999, the *Regional Wastewater Services Plan ("RWSP")* was approved by the King County Council. The RWSP described wastewater projects to be built to protect human health and the environment, serve population growth, and meet regulatory requirements. The RWSP included the County's CSO Control plan.

E. In 2000, the County produced an update to the RSWP entitled the *Year 2000 CSO Control Plan Update*. This document summarizes King County's progress on its CSO projects through the date of its publication.

F. Ecology approved the County's *2000 CSO Control Plan Update*, as an amendment to the CSO reduction plan.

G. In April of 2008, the County completed the *2008 CSO Control Plan Update*. The 2008 Plan Update summarizes the County's progress on its CSO projects and the effectiveness of the projects it had undertaken.

H. Since 1988, the types and number of CSO control projects continue to change over time with each CSO Control Plan Update that has been submitted to Ecology. Some CSO projects have been completed while other projects have been delayed or not constructed or have exceeded their originally projected completion dates.

I. The County has a total of 42 CSO outfalls (4 CSO outfalls associated with satellite CSO treatment plants and 38 CSO outfalls not associated with satellite CSO treatment plants). The 38 CSO outfalls not associated with satellite CSO treatment plants are required to meet the requirements of WAC 173-245-020(22). Based on available measured data, 16 of King County's 38 CSO outfall locations not associated with satellite CSO treatment plants are now controlled to the State of Washington Department of Ecology's standard while the remaining 22 CSO outfall locations remain uncontrolled. Eight of these 22 CSO outfall locations not associated with satellite CSO treatment plants currently have projects underway or are early action projects. Three of the eight uncontrolled CSO outfall locations (CSO outfalls 009, 027a, and 037) are being adjusted for full control. Of the 22 uncontrolled CSO outfall locations, the

remaining 14 CSO outfall locations require future capital projects and are the subject of the County's long term control plan as set forth in Appendix B.

WHEREAS, King County does not admit any liability to the United States or the State of Washington arising out of the transactions or occurrences alleged in the Complaint.

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 Sections 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 County is located and where the alleged violations occurred. For purposes of this Decree, or any action to enforce this Decree, the County consents to the Court's jurisdiction over the County, this Decree, and any such action, and further consents to venue in this judicial district.

2. For purposes of this Consent Decree, the County 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 County, its officers, directors, agents, employees, contractors, successors, assigns, and all persons, firms, and corporations acting under the direction and

control of the County, including firms, corporations, and third parties under contract with the County to perform obligations of this Consent Decree.

4. No transfer of ownership or operation of any portion of its publicly owned treatment works whether in compliance with the procedures of this Paragraph or otherwise, shall relieve the County 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 County 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 County shall condition any transfer, in whole or in part, of ownership, operation, or other interest of its publicly owned treatment works upon the successful execution of the terms and conditions of this Decree.

5. If the County seeks to name a successor to assume any or all interests in, or operating role with respect to its publicly owned treatment works, the County 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 County shall also provide documentation to demonstrate that the prospective successor in interest has the technical and financial qualifications to fulfill the County'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 County still believes modification of the Decree and joinder of a successor in interest is appropriate, the County 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 County shall make a copy of this Consent Decree available, either electronically and/or by paper copy, to all its officers, employees, and agents (including contractors and consultants) whose duties might reasonably include compliance with any provision of this Decree. After the Effective Date, the County shall condition any new contract for CSO control work upon performance of the work in conformity with the terms of this Consent Decree.

7. Any action taken by any entity retained by the County to implement the County's obligations under this Consent Decree shall be considered an action of the County for purposes of determining compliance with this Consent Decree. In any action to enforce this Consent Decree, the County 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 Parties enter into this Consent Decree with the objective that all plans, measures, reports, construction, maintenance, operational requirements, and other obligations in this Consent Decree, or resulting from the activities required by this Consent Decree, shall cause the County to obtain Construction Completion of all CSO Outfalls, no later than December 31, 2030, full compliance with the CWA and the regulations promulgated thereunder, applicable state law and regulations, and the terms and conditions of the County's NPDES Permit, and to meet the requirements of the EPA's CSO Control Policy and EPA's Combined Sewer Overflows Guidance for Long Term Control Plan (September 1995).

IV. DEFINITIONS

9. Terms used in this Consent Decree that are defined in the CWA, the Washington Water Pollution Control Law, the implementing regulations promulgated under these laws, or the County's NPDES Permit shall have the meanings assigned to them in the CWA, the Washington Water Pollution Control Law, implementing regulations, or the County's NPDES Permit (defined below) unless otherwise provided in this Consent Decree. Whenever the terms set forth below are used in this Consent Decree, the following definitions shall apply:

a) "County" or "King County" shall mean King County, Washington.

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

c) "Completion of Bidding" shall mean the County has (1) appropriately allocated funds for a specific CSO Control Measure (or portion thereto); (2) accepted and awarded the bid for construction of the specific CSO Control Measure; and (3) issued a notice to proceed with construction that remains in effect for the specific CSO Control Measure.

d) "Construction Completion" shall mean completion of construction and installation of equipment or infrastructure such that equipment or infrastructure has been placed in operation, and is expected to both function and perform as designed, as well as completion of 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.

e) "CSO Control Measure" shall mean the construction, control measures, actions, and other activities set forth in Appendix B or any Supplemental Compliance Plan provided for in Section V.B.

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

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

h) "Combined Sewer System" or "CSS" shall mean that portion of the Wastewater Collection System owned and operated by the County, including the pipes, force mains, gravity sewer segments, pump stations, lift stations, interceptors, diversion structures, manholes, and appurtenances thereto, designed to collect and convey combined municipal sewage, including residential, commercial, and industrial wastewaters, and stormwater, through a single-pipe system to King County's West Point wastewater treatment plant, its CSO treatment plants, or to its permitted CSO Outfalls.

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

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

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

l) "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.

m) "Design Criteria" shall mean the design criteria specified in Appendix B.

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

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

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

q) "Effective Date" shall mean the definition provided in Section XVII.

r) "Gray Infrastructure" shall mean for purposes of this Consent Decree engineered structural control practices to control CSO discharges that are not Green Stormwater Infrastructure as defined in this Consent Decree. Examples of "Gray Infrastructure" include tunnel systems, storage tanks, in-line storage facilities, sewer lines, and high rate clarification treatment facilities.

s) "Green Stormwater Infrastructure" or "GSI" 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 and reduce flows to the combined sewer system. Green Stormwater Infrastructure may include, but is not limited to, green roofs, downspout disconnection, trees and tree boxes, rain gardens, vegetated swales, pocket wetlands, infiltration planters and deep infiltration, vegetated median strips, permeable pavements, reforestation, and protection and enhancement of riparian buffers and floodplains.

t) "NPDES Permit" shall mean the County's National Pollutant Discharge Elimination System permit, No. WA-002918-1, issued by the State of Washington Department of Ecology on June 22, 2009, for the County's Wastewater Collection System (defined herein), or such permits that succeed this permit covering all or any portion of the County's Wastewater Collection System issued and in effect at a relevant time under this Consent Decree.

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

v) "Parties" shall mean the United States, the State of Washington, and the King County.

w) "Performance Criteria" shall mean the performance criteria specified in Appendix B.

x) "Post-Construction Monitoring Plan" or "PCMP" shall mean the County's *Post Construction Monitoring Plan for King County CSO Controls (September 2012),* http://your.kingcounty.gov/dnrp/library/wastewater/cso/docs/ProgramReview/2012/WTDRec/TechMemos/CSO_PostConstructionMonitoringPlan_REPORT,Sept2012.pdf; and Appendices: http://your.kingcounty.gov/dnrp/library/wastewater/cso/docs/ProgramReview/2012/WTDRec/TechMemos/CSO_PostConstructionMonitoringPlan_APPENDICES,Sept2012.pdf, as approved by Ecology by letter dated September 28, 2012, 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.

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

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z) "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 County'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.

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

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

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

dd) "Twenty Year Moving Average" or "20-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 County 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.

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

ff) "Wastewater Collection System" shall mean the collection and conveyance system owned or operated by the County, 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 storm water, to King County's West Point wastewater treatment plant, CSO treatment plants, or to a permitted CSO Outfall. The Wastewater Collection System includes the above-listed facilities serving the Combined Sewer System, Sanitary Sewer System, and the partially separated system covered by the County's NPDES Permit and owned by King County.

V. COMPLIANCE PROGRAMS

A. Currently Underway and Early Action CSO Control Measures

10. Completion of the Ballard Siphon Project: King County is currently constructing the Ballard Siphon Project as a CSO Control Measure to reduce discharges from CSO Outfall 003. Construction Completion of the Ballard Siphon Project shall be by December 31, 2013.

11. Completion of the Beach Projects: King County shall implement all CSO Control Measures necessary to reduce discharges from CSO Outfall numbers 048a and b, 057, 006, and 056 (known as the North Beach, Barton Street, South Magnolia and Murray Avenue CSO Beach Projects or collectively as "CSO Beach Projects") in order to achieve compliance with Chapter 173-245 WAC, EPA's CSO Policy, and EPA's 1995 Guidance for Long-Term Control Plan. Such CSO Control Measures shall be done in accordance with the following approved Facility Plans:

Barton and Murray Combined Sewer Overflow Control Facility Plan (September 2011)

http://www.kingcounty.gov/environment/wtd/Construction/Seattle/BeachCSO/Library/TechInfo/WS-FacPlan.aspx;

South Magnolia Combined Sewer Overflow Control Facility Engineering Report (September 2011)
http://www.kingcounty.gov/environment/wtd/Construction/Seattle/BeachCSO/Library/TechInfo/SM-FacPlan.aspx; and

North Beach CSO Reduction Facility Plan (September 2011)

http://your.kingcounty.gov/dnrp/library/wastewater/wtd/construction/CSOBeach/TechDocs/FacilityPlans/NBeach/1109_NorthBeachCSOControlFacilityPlan.pdf

and the following deadlines:

a) Submission of Final Plans and Specifications for CSO Control Measures to address CSO Outfall numbers 006, 048a, 048b, 056, and 057 by December 31, 2012;

b) Start of Construction for CSO Control Measures to address CSO Outfall numbers 006, 048a, 048b, 056, and 057 by December 31, 2013;

c) Construction Completion for CSO Control Measures to address CSO Outfall numbers 006, 048a, and 048b by December 31, 2015;

d) Construction Completion for CSO Control Measures to address CSO Outfall numbers 056 and 057 by December 31, 2016.

12. One year following Construction Completion of each CSO Control Measure identified in Paragraphs 10 and 11 the County shall document in its Annual Report submitted pursuant to Section VIII that the associated CSO Outfall has been Controlled. If the CSO Outfall is not controlled within one year following Construction Completion of the CSO Control Measure, the County shall submit to EPA and the State for their approval a Supplemental Compliance Plan as set forth in Paragraph 20 below. This Supplemental Compliance Plan shall be submitted within thirty (30) days from the end of the one year following Construction Completion (i.e., January 30, 2014 for Ballard Siphon CSO Outfall no. 003).

13. Control of CSO Outfalls 009 (Dexter Ave. Regulator), 027a (Denny Way Regulator), and 037 (Harbor Ave. Regulator). No later than 30 days from the Effective Date, the County shall submit to EPA and Ecology for their approval a plan proposing all modifications on CSO installations, structures, controls, equipment and shall modify operating procedures in order to control CSO Outfalls. Nos. 009, 027a, and 037. For each such CSO Outfall, the plan shall include: (a) a detailed description of the associated installations, structures, controls, equipment and operating procedures; (b) the parameters which impact the status of the CSO Outfall as Controlled or not Controlled; (c) the proposed modification of parameters in order to attain Controlled status; (d) a detailed schedule for completing the proposed modifications and

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attaining Controlled status; and (e) a year by year accounting of the twenty year modeled or monitored data which will be used to calculate the Twenty Year Moving Average for determination of status as Controlled.

14. The County shall document in its 2015 CSO Annual Report to be submitted to EPA and Ecology by July 31, 2016 that CSO Outfalls 009, 027a, and 037, have been Controlled as of December 31, 2015. If the County does not document in its 2015 CSO Annual Report due by July 31, 2016 that these CSO Outfalls are controlled as of December 31, 2015, the County shall submit to EPA and the State for their approval a Supplemental Compliance Plan as set forth in Paragraph 20 below no later than August 31, 2016.

B. Implementation of CSO Control Measures and Post Construction Monitoring

15. King County shall construct and implement the CSO Control Measures in accordance with the descriptions, Design Criteria, Performance Criteria, and the dates for Submission of Facility Plans, Completion of Bidding, and Construction Completion for each CSO Control Measure as set forth in Appendix B.

16. King County shall perform the Post-Construction Monitoring Plan in accordance with the provisions and schedule set forth therein.

17. Two wet seasons (October-April) following Construction Completion of each CSO Control Measure identified in Appendix B that are associated with CSO Outfalls numbers 041 and 039 (Brandon St. and S. Michigan) and 032, 030, 028, and 029 (Hanford #2, Lander St., King St., and Kingdome) at the County's new satellite CSO treatment plants, the County shall document in its Annual Report submitted pursuant to Section VIII that these CSO satellite treatment plants and associated CSO Outfalls meet the effluent limits in the County's NPDES Permit and State water quality standards. If one of these new satellite CSO treatment plants and

associated CSO Outfalls does not meet the effluent limits in the County's NPDES Permit or water quality standards within two wet seasons following Construction Completion of the CSO Control Measure, the County shall submit to EPA and the State for their approval a Supplemental Compliance Plan as set forth in Paragraph 20 below. This Supplemental Compliance Plan shall be submitted within thirty (30) days from the end of the second year following Construction Completion (i.e. January 30, 2024 for Brandon St./S. Michigan CSO Outfall nos. 041/039).

18. One year following Construction Completion of each CSO Control Measure identified in Appendix B that addresses all remaining CSO Outfalls other than CSO Outfalls numbers 039, 041, 028, 029, 030, and 032, the County shall document in its Annual Report submitted pursuant to Section VIII that these CSO Outfalls have been Controlled. If one of these CSO Outfalls is not controlled within one year following Construction Completion of the CSO Control Measure, the County shall submit to EPA and the State for their approval a Supplemental Compliance Plan as set forth in Paragraph 20 below. This Supplemental Compliance Plan shall be submitted within thirty (30) days from the end of the one year following Construction Completion (i.e. January 30, 2020 for Hanford #1 CSO Outfall no. 031).

19. Permit Compliance. The County shall comply with all terms and conditions of its NPDES Permit, the CWA, Washington laws, and the regulations implementing these laws as they relate to King County's CSS.

20. Supplemental Compliance Plan. If, after Construction Completion of the CSO Control Measures identified in Appendix B, 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 County: (1) did not construct all CSO Control Measures in accordance

with the Design Criteria set forth in Appendix B or any approved modifications pursuant to Paragraph 21 or Section XIX of this Decree; (2) has not achieved the Performance Criteria for the CSO Control Measures identified in Appendix B; or (3) is not complying with all the requirements of its NPDES Permit pertaining to CSOs, the County 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 County 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 County 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 County's Supplemental Compliance Plan, the County shall implement the Supplemental Compliance Plan in accordance with the schedule specified therein.

21. The County may request that the Design Criteria for the CSO Control Measures listed in Appendix B be revised if it can demonstrate that the requested revision (1) reflects good engineering practice and (2) shall continue to achieve the Performance Criteria specified in Appendix B. The Design Criteria review process set forth in this Paragraph shall be the exclusive means by which the County may seek modification of Design Criteria:

a. Any request by the County for modification made pursuant to this Paragraph shall be made in writing to EPA and the State pursuant to Paragraph 85, with all documentation necessary to support the request for modification, including all information relevant to the two criteria set forth above.

b. If EPA and the State disapprove the County's proposal, the County may invoke Informal Dispute Resolution in accordance with Paragraph 78. The Formal Dispute Resolution and judicial review procedure set forth in Paragraphs 79 to 83 shall not apply to Paragraph 21(a)-(f).

c. 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 County 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.

d. EPA's Region 10 Compliance and Enforcement Office Director may approve or disapprove, or approve upon conditions or in a revised form, the proposed modification of the Design Criteria. The determination of EPA's Region 10 Compliance and Enforcement Office Director shall be in her/his discretion and shall be final. The County reserves the right to file a motion seeking relief in accordance with the Federal Rules of Civil Procedure 60(b).

e. If EPA and the State approve a greater than 20% revision of Design Criteria, the modification shall not be effective until a modification of the Consent Decree is approved by the Court in accordance with Paragraph 104 of the Consent Decree.

f. Any proposed modification of the Consent Decree resulting from a greater than 20% modification of Design Criteria pursuant to Paragraph 21 shall be subject to public

notice and comment pursuant to 28 C.F.R. § 50.7. The United States and the State reserve their rights to withdraw or withhold their consent to any such proposed modification of the Consent Decree if public comments received disclose facts or considerations which indicate that the modified Consent Decree would be inappropriate, improper, or inadequate.

22. In accordance with the terms and conditions set forth in Appendix E of this Consent Decree, the County may propose revisions to the CSO Control Measures listed in Appendix B for CSO Outfalls 004, 014, 015, and 042/038 to use Green Stormwater Infrastructure control measures to substitute in part for Gray Infrastructure control measures included in Appendix B for these CSO Outfalls, provided that any proposed Green Stormwater Infrastructure control measures provide the same or greater level of control, in terms of gallons controlled and the number of CSO activations in a typical year, as those Gray Infrastructure control measures to be reduced, subject to the limitations listed in Appendix E. The terms of Paragraphs 34-38 and Section XII (Dispute Resolution) of this Consent Decree do not apply to EPA and State's review of any Green Stormwater Infrastructure Project Proposal ("Proposal") submitted by the County; rather, the review process set forth herein shall control. In the event that EPA and the State are unable to complete their review of a Proposal within 90 days, the terms of Paragraph 40 of this Consent Decree shall apply to the extension of any milestone dates dependent upon EPA and the State's action. Upon review of the County's Proposal, EPA and the State will either approve or disapprove the Proposal or approve the Proposal upon certain specified conditions. If the Proposal is disapproved by EPA and the State, the disapproval decision is final. If the Proposal is approved by EPA and the State, the County shall either (a) construct and implement the Green Stormwater Infrastructure control measures and any associated Gray Infrastructure in accordance with the provisions and schedule in the approved Proposal and Appendix E, or (b) construct and

implement the original Gray Infrastructure control measures in accordance with the Design Criteria, Performance Criteria, and Critical Milestones set forth in Appendix B. Following construction, implementation, and evaluation of any Green Stormwater Infrastructure Proposal, if the County is required to prepare a Green Infrastructure Supplemental Compliance Plan ("GISCP") as described in Appendix E, the terms of Paragraphs 34-40 shall apply to EPA and the State's review of any GISCP, but Section XII (Dispute Resolution) shall not apply to EPA and the State's review. Upon review of the GISCP, following an opportunity for consultation with the State, EPA's decision is final.

23. The County may request a modification of the critical milestones set forth in Appendix B for the sole purpose of revising the priority and sequencing of its CSO Control Measures if the County demonstrates that the requested modification (1) reflects good engineering practice, (2) is required to coordinate or align with the City of Seattle's stormwater or 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 County's final Construction Completion of December 31, 2030.

(a) Any request by the County 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 County shall provide such additional information requested by EPA or the State as is necessary to assist in evaluating the County's modification request.

(b) If EPA and the State disapprove the County's request, the County may invoke Informal Dispute Resolution in accordance with Paragraph 78. The Formal Dispute Resolution and judicial review procedure set forth in Paragraphs 79 to 83 shall not apply

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to this Paragraph 23(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 County 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 County 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 County shall not relieve the County of its obligations pursuant to Section V, unless the Court orders otherwise, and the County 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 County's obligations under this Decree.

24. Recognizing the Parties' interest in supporting a comprehensive and integrated planning approach to municipal governments' obligations under the Clean Water Act, the County 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 County or jointly by the County and other entities, provided that the Proposed Project(s) will result in significant benefits to surface 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 Appendix B. If the

County chooses to submit an Integrated Plan, the County 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 County 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

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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 how the Integrated Plan will achieve compliance with the CWA and the Washington Water Pollution Control Act, as well as their implementing regulations, the County's NPDES wastewater permits, the County's NPDES stormwater permits, 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 and each remaining CSO Control Measure, including, at a minimum, milestone dates for submission of draft and final engineering reports, as well as draft and final plans and specifications, Completion of Bidding, 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 the Post-Construction Monitoring Plan, that is necessary to assess whether anticipated water quality benefits have been achieved and the requirements in Paragraph 24(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 County shall provide such additional information requested by the United States or the State as is necessary to assist in evaluating the Integrated Plan.

25. If EPA and the State disapprove the County's Integrated Plan, the County may invoke Informal Dispute Resolution in accordance with Paragraph 78. The Formal Dispute Resolution and judicial review procedure set forth in Paragraphs 79 to 83 shall not apply to Paragraphs 24-26. 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 County 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 County 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 County shall not relieve the County of its obligations pursuant to Section V, unless the Court orders otherwise, and the County 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 County's obligations under this Decree.

26. 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 25 above, the County shall implement the Integrated Plan (including any post-construction monitoring) in accordance with the schedule and terms set forth in the approved Integrated Plan.

27. If the County experiences significant adverse changes to its financial circumstances or other financial or budgetary issues, the County 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 County'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 complies with all federal and state laws and regulations; and

e) Include all documents and information supporting the request.

28. The County 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 27 above is warranted, and the County believes modification is appropriate, the County 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 County shall not relieve the County of its obligations pursuant to Section V, unless the Court orders otherwise, and the County 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 County's obligations under this Decree.

C. Sewer System Operations Program Plan

29. No later than 90 days from the Effective Date, the County shall submit to EPA and Ecology for their approval, a Sewer System Operation Program Plan ("SSOP") for its Wastewater Collection System in accordance with Appendix C. The SSOP shall be used to operate the system during wet weather in order to maximize flow to the West Point treatment plant, maximize storage of wet weather flow, maximize treatment of CSOs, and provide for the real-time coordination with upstream CSO communities. The SSOP shall ensure that CSOs from all Controlled CSO Outfalls comply with the technology based and water quality based requirements of the CWA, state law and regulation, and the County's NPDES Permit.

30. The County shall implement the SSOP within thirty (30) days of receipt of EPA and Ecology's approval of such plan. The County shall annually review its SSOP and update the program as necessary. The County shall submit as part of its Annual Report, documentation of implementation of the SSOP, including staff training on SSOP implementation, SSOP review and update activities and any problems encountered and corrective actions taken during SSOP implementation, during the preceding year. The County shall submit any substantive updates, changes or revisions to its SSOP, subject to EPA and Ecology's approval. Upon approval of any changes to the SSOP, such changes shall supersede previously approved provisions.

D. Joint Operations and System Optimization Plan Between City of Seattle and the County

31. No later than March 1, 2016, the County shall submit to EPA and the State for their approval a Joint Operations and System Optimization Plan ("Joint Plan") that the County will work with the City of Seattle in jointly developing and which satisfies the requirements of Appendix D. This Joint Plan shall be applicable to the County's and the City'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 County 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 County shall implement the approved Joint Plan upon receipt of EPA and the State's approval. The County, in coordination with the City of Seattle, 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 County and City of Seattle and submitted to EPA and Ecology for their approval upon renewal of the County'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 County is required to submit to EPA and Ecology for their approval in accordance with this Consent Decree, EPA and Ecology 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 County 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 County

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 determine are technically severable from any disapproved portions, subject to the County'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 County shall, within forty-five (45) 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 County 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 45-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 County'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 County to correct any deficiencies, in accordance with the preceding Paragraphs, or may themselves correct any deficiencies, subject to the County's right to invoke the 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. In the event that EPA and Ecology approves, partially approves, or conditionally approves a portion of a work plan, report, or other material required to be submitted to EPA and Ecology under this Consent Decree, the approved portion shall be enforceable under this Consent Decree, unless such portion of a work plan, report, or other material remains directly dependent upon an unapproved portion of the submission or resubmission and the County invokes its right to dispute resolution under Section XII (Dispute Resolution) of this Consent Decree.

40. EPA and Ecology agree to use their best efforts to expeditiously review and comment on submittals that the County 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 County 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 County 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 County is specifically required to submit to EPA and Ecology for approval pursuant to this Consent Decree. Nothing in this Paragraph, by itself, shall change, modify, or extend in any way the date of December 31, 2030 for the County's Construction Completion of all CSO Control Measures.

41. Permits. Where any compliance obligation under this Section requires the County to obtain federal, state, or local permits or approval, the County shall submit timely and complete

applications to the required authorities and take all reasonable actions necessary to obtain all such permits or approvals.

VII. FUNDING

42. The County'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 County'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 County's financial capabilities except as expressly provided by Paragraph 27 of this 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 County 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 at the same time that the County submits its CSO annual report as required by its NPDES Permit until this Consent Decree terminates in accordance with Section XX (Termination) of this Consent Decree, the County shall submit a written Annual Report to EPA and Ecology. The Annual Report shall not duplicate reporting requirements that are otherwise required assuming that EPA and the State receive such reporting items that are otherwise required. The Annual Report shall include at a minimum:

a) a description of the following: (i) the status of all Consent Decree compliance measures, including Currently Underway and Early Action CSO Control Measures, the implementation of all CSO Control Measures in Appendix B, Post-Construction Monitoring Plan, SSOP, and Information Sharing/Coordination Program Plan Between

County and the City of Seattle; (ii) any problems anticipated or encountered, along with the proposed or implemented solutions; (iii) any anticipated or ongoing operation and maintenance activities relating to all CSO Control Measures; and (iv) 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 County shall so state in the report. The County 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 County becomes aware of the cause of the violation. Nothing in this Paragraph or the following Paragraph relieves the County of its obligation to provide the notice required by Section XI (Force Majeure) of this Consent Decree.

44. If the County violates, or has reason to believe that it may violate, any requirement of this Consent Decree, the County shall notify EPA and Ecology of such violation and its likely duration, in a written report, within ten (10) Days following the Day the County 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 County shall so state in the report. The County 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 County becomes aware of the cause of the violation. Nothing in this Paragraph or the following Paragraph relieves the County of its obligation to provide the notice required by Section XI of this Consent Decree ("Force Majeure").

45. Whenever any event (including any violation of this Consent Decree) affecting the County's performance under this Consent Decree may pose an immediate threat to the public health or welfare or the environment, the County 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 County 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 County 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 County 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 County shall pay the sum of $400,000 as a civil penalty as set forth in Paragraphs 51-54 below.

51. Of the total civil penalty amount of $400,000, the County shall pay the United States $200,000 and the State $200,000.

52. The payment of the civil penalty to the United States of $200,000 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 County, 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 County 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. King County of Seattle, and shall reference the civil action number ____ and DOJ case number 90-5-1-1-10030, 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 County 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 County 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 $200,000 shall be made by check payable to "Department of Ecology", shall reference the civil action number and be mailed to:

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

54. At the time of payment, the County 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.

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

X. STIPULATED PENALTIES

56. The County 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.

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

58. Failure to Comply with Effluent Limits. The following stipulated penalties shall accrue for each failure to comply with the following numerical effluent limits imposed by the County's NPDES permit for the CSO Outfalls ## 027b (Elliott West CSO Treatment Plant), 044 (MLK/Henderson CSO Treatment Plant), 046 (Carkeek CSO Treatment Plant), and 051 (Alki CSO Treatment Plant) (excluding CSO Outfall #001 for the West Point Wastewater Treatment Plant):

Parameter	Stipulated Penalty
Total Suspended Solids removal efficiency	$10,000 per annum
Fecal Coliform geometric mean	$2,000 per month
Settleable Solids (annual average)	$10,000 per annum
Settleable Solids (maximum per event)	$2,000 per event
Total Residual Chlorine (maximum daily)	$2,000 per day

59. 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 Actions), Section V.B. (Implementation of the CSO Control Measures and PCMP), Section V.C. (SSOP), and Section V.D. (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

60. 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):

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

61. Dry Weather CSOs. The County 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.

62. Sewer Overflows. The County shall be liable to pay a stipulated penalty of $2,500 per Day for each Sewer Overflow. For purposes of this Paragraph, Sewer Overflow does not include any overflow or release of wastewater caused by a construction activity if that overflow or release is fully captured and contained within a containment system that was designed for the purpose of containing an overflow or release of wastewater during the construction activity.

63. Any Other Violations of this Consent Decree. The County shall pay a stipulated penalty of $2,000 per violation per Day for any violation of Paragraphs 4, 6, 73, and Section XIV ("Information Collection and Retention") of the Consent Decree.

64. 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.

65. The United States, or the State, or both, may seek stipulated penalties under this Section by sending a joint written demand to King County, or by either sovereign sending a written demand to King County, 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, King County 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, King County 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 County 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).

66. Penalty Accrual during Dispute Resolution. Stipulated penalties shall continue to accrue as provided in Paragraph 64, during any Dispute Resolution, provided, however, the County 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.

67. The County 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 County 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.

68. If the County 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 County 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 County's failure to pay any stipulated penalties.

69. 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 for the County's violation of this Consent Decree or applicable law. Where a violation of this Consent Decree is also a violation of the County's NPDES Permit, the Washington Water Pollution Control Act, or the Clean Water Act, the County shall be allowed a credit, for any stipulated penalties paid, against any statutory penalties imposed for such violation and vice versa. (The County shall be allowed a credit for any statutory penalties paid against any stipulated penalties assessed for such violation).

XI. FORCE MAJEURE

70. "Force majeure," for purposes of this Consent Decree, is defined as any event arising from causes beyond the control of the County, of any entity controlled by the County, or of the County's contractors, that delays or prevents the performance of any obligation under this Consent Decree, despite the County's best efforts to fulfill the obligation. The requirement that the County 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 County's financial inability to perform any obligation under this Consent Decree or the County's failure to approve contracts necessary to meet the requirements of this Consent Decree, except as expressly provided in Paragraph 27 of this Decree.

71. Failure to apply for a required permit or approval, or failure to provide in a timely manner all information required to obtain a permit or approval, that is necessary to meet the requirements of this Consent Decree shall not constitute a force majeure event under this Consent Decree. Failure to obtain, or a delay in obtaining a permit or approval required to fulfill such obligation is an event of force majeure if the County has submitted a timely and complete application for such permit or approval and has taken all other reasonable actions within the County's control to obtain such permit or approval. If a permit or approval has been denied, the County is not required to file a lawsuit to demonstrate that it has taken all reasonable steps to obtain a necessary permit or approval

72. If the County believes that a permit contains unreasonable conditions and has appealed the permit condition, the County 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, King County may elect to invoke dispute resolution as set forth in Section XII, informal dispute resolution pursuant to Paragraph 78, 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 83. The County 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.

73. 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 County shall provide notice orally or by electronic or facsimile transmission to EPA and Ecology, within five days of when the County first knew, or, in the exercise of reasonable diligence under the circumstances, should have known, of such event. Within ten (10) days thereafter, the County 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 County'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 County's opinion, such event may cause or contribute to an endangerment to public health or welfare, or the environment. The County 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 County 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.

74. If EPA and Ecology agree that a force majeure event has occurred, EPA and Ecology shall agree in writing by letter or email to extend the time for the County to perform the obligations under this Consent Decree that are affected by the force majeure event for such time as is necessary to complete those obligations. An extension of time to perform the obligations

affected by the force majeure event shall not, by itself, extend the time to perform any other obligation. EPA and Ecology will notify the County in writing of the length of the extension, if any, for performance of any obligations affected by the force majeure event.

75. If EPA and Ecology do not agree that the delay or anticipated delay has been or will be caused by a force majeure event, or do not agree to the extension of time sought by the County, EPA and Ecology will notify the County in writing of their decision.

76. The Plaintiffs' written decision shall be binding unless the County invokes the dispute resolution procedures set forth in Section XII (Dispute Resolution) of this Consent Decree within fifteen (15) days after receipt of Plaintiffs' written decision. In any such dispute, the County bears the burden of proving by a preponderance of the evidence that (a) each claimed force majeure event is a force majeure event; (b) the force majeure event caused the delay or anticipated delay that the County claims is or was attributable to that force majeure event, (c) the County exercised reasonable efforts to prevent or minimize any delay caused by the event and the effects of such delay; (d) the duration of the delay or the extension sought was or will be warranted under the circumstances; and (e) the County complied with the requirements of Paragraphs 71-76 above. If the County carries this burden, then the delay at issue shall not be deemed a violation of this Consent Decree.

XII. DISPUTE RESOLUTION

77. 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.

78. 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 County 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 County 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 County invokes formal dispute resolution procedures as set forth below.

79. Formal Dispute Resolution. The County 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 County's position and any supporting documentation relied upon by the County.

80. The United States and the State shall serve their Statement of Position within forty-five (45) days of receipt of the County'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

County, unless the County files a motion for judicial review of the dispute in accordance with the following Paragraph.

81. The County 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 County 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 County's position on the matter in dispute, including any supporting factual data, analysis, opinion, or documents, and shall set forth the relief requested and any schedule within which the dispute must be resolved for orderly implementation of the Consent Decree.

82. The United States and the State shall respond to the County's motion within the time period allowed by the Local Rules of this Court or any extension of time the Court orders. The County may file a reply memorandum, to the extent permitted by the Local Rules, within the time period allowed by the Local Rules of this Court, or any extension of time the Court orders.

83. Standard of Review. In any dispute brought under this Section, King County 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.

84. The invocation of dispute resolution procedures under this Section shall not, by itself, extend, postpone, or affect in any way any obligation of the County under this Consent Decree, unless and until a final resolution of the dispute so provides. Stipulated penalties, if applicable, 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 66 of this Consent Decree. If the County 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

85. 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 County:

Director, Wastewater Treatment Division
King County Department of Natural Resources and Parks
KSC-NR-0512
201 South Jackson Street
Seattle, WA 98104-3856

and

Chief of the Civil Division
King County Prosecuting Attorney's Office
King County Courthouse
516 3rd Avenue, Room W400
Seattle, WA 98104

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

87. 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

88. 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;

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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 County or its representatives, contractors, or consultants;

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

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

89. Upon request, the County shall provide EPA, the State, or their authorized representatives split of any samples taken by the County. Upon request, EPA and the State shall provide the County 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 88 above that is non-exempt and non-privileged under either FOIA or State public disclosure laws.

90. Until five (5) years after the termination of this Consent Decree, the County shall retain, and shall instruct its contractors and agents to preserve, all non-identical copies of all documents, 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 relate in any manner to the County'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 corporate or institutional policies or procedures. At any time during this information-retention period, upon request by the United States or the State, the County shall provide copies of any documents, records, or other information required to be maintained under this Paragraph.

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

92. The County may also assert that information required to be provided under this Section is protected as Confidential Business Information ("CBI") under 40 C.F.R. Part 2. As to any information that the County seeks to protect as CBI, the County 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.

93. 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 County to maintain documents, records, or other information imposed by applicable federal or state laws, regulations, or permits.

XV. FAILURE OF COMPLIANCE

94. 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 County'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 County 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 County'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 County's duties and obligations as set forth in this Consent Decree.

XVI. EFFECT OF SETTLEMENT AND RESERVATION OF RIGHTS

95. 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.

96. 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 95. 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 95.

97. 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 County's publicly owned treatment works, whether related to the violations addressed in this Consent Decree or otherwise.

98. 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 County's publicly owned treatment works or the County's violations, the County 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 95.

99. This Consent Decree is not a permit, nor a modification of any permit, under any federal, state, or local laws or regulations. The County is responsible for achieving and maintaining complete compliance with all applicable federal, state, and local laws, regulations, and permits. The County 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 County'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 County. 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 County, except as otherwise provided by law. 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 County 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, provided, however, that the County hereby agrees that it shall be bound to perform duties scheduled to occur prior to the Effective Date as specified in the County'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 (Modifications), 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. Any non-material modifications of this Consent Decree shall be in writing and signed by all Parties.

105. Unless otherwise provided herein, any disputes concerning modification of this Consent Decree shall be resolved pursuant to Section XV (Dispute Resolution) of this Consent Decree, provided, however, that, instead of the burden of proof provided by Paragraph 83, 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 County 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 County's request, the United States and the County shall discuss the matter. If the United States and the County 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 County do not agree, and the County still believes that modification of this Consent Decree is appropriate, the County 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 County'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 County's favor, and the County shall comply with the Consent Decree as modified.

XX. TERMINATION

109. The County may serve upon the United States and the State a Request for Termination of Consent Decree, together with supporting documentation, certifying that the County 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 required by Section IX (Civil Penalties), any accrued stipulated penalties required by Section X (Stipulated Penalties), and any accrued interest as required by this Consent Decree.

110. Following receipt by the United States and the State of the County'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 County 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 County may invoke dispute resolution under Section XII (Dispute Resolution). The County, however, shall not seek dispute resolution of any dispute regarding termination of this Consent Decree, under Paragraph 79, until ninety (90) days after service of its Request for

Termination. The County 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 County 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 County in writing that it no longer supports entry of this Consent Decree.

XXII. SIGNATORIES/SERVICE

113. Each undersigned representative of the County, 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.

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 shall be entitled to collect the costs (including reasonable

attorneys' fees) incurred in any court action necessary to collect any portion of the civil penalty or any stipulated penalties due but not paid by the County.

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 supersedes 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 CSO Control Measures, Design Criteria, Performance Criteria, and Critical Milestones;

"Appendix C" is the Sewer System Operations Plan;

"Appendix D" is the Joint Operations and System Optimization Plan; and

"Appendix E" is the Requirements Applicable to Proposals for Green for Gray Partial Substitutions.

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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 County.

Dated and entered this 3 day of July, 2013.

UNITED STATES DISTRICT JUDGE
Western District of Washington

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

FOR PLAINTIFF UNITED STATES OF AMERICA:

Ignacia S. Moreno DATE: 4/4/13

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

Kathryn C. Macdonald DATE: 4/8/2013

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: 3/13/13

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. King County, Washington (W.D. Wash.).

FOR THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY:

_____ DATE: 3/29/13
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: 3/28/13
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: 3/27/13
LOREN DENTON, Chief
Municipal Enforcement Branch
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: 3/26/13
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

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

FOR THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY:

_____ DATE: 3/7/2013

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

_____ DATE: 3·4·13

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

_____ DATE: 3-4·13

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

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

FOR THE STATE OF WASHINGTON:

ROBERT W. FERGUSON
ATTORNEY GENERAL

DATE: 3/4/13

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

DATE: 3/5/13

MAIA D. BELLON
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. King County, Washington (W.D. Wash.).

FOR KING COUNTY, WASHINGTON:

Christopher J. True DATE: 2/13/2013
Director, KCDNRP

DOW CONSTANTINE
King County Executive
King County Chinook Building
401 5th Avenue, Suite 800
Seattle, Washington 98104

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APPENDIX A: List of Existing CSO Outfalls

CSO Outfall	CSO Name	Status
003	Ballard Siphon Regulator via Seattle Storm Drain	U[1]
004	East Ballard (aka 11th Ave NW)	U
006	Magnolia Overflow	U[1]
007	Canal Street Overflow	C
008	3rd Ave W and Ewing St.	U
009	Dexter Ave Regulator	U
011	E Pine St. Pump Station Emergency Overflow	C
012	Belvoir Pump Station Emergency Overflow	C
013	Martin Luther King Way Trunkline Overflow	C
014	Montlake Overflow	U
015	University Regulator	U
018	Matthews Park Pump Station Emergency Overflows	C
027b	Elliot West CSO Treatment Facility	NA
027a	Denny Way Regulator	U
028	King Street Regulator	U
029	Connecticut St. Regulator (aka Kingdome Regulator)	U
030	Lander St. Regulator	U
031	Hanford #1 Overflow (Hanford at Rainer)	U
032	Hanford #2 Regulator	U
033	Rainier Ave Pump Station	C
034	E. Duwamish Pump Station	C
035	W. Duwamish Pump Station	C
036	Chelan Ave Regulator	U
037	Harbor Avenue Regulator	U
038	Terminal 115 Overflow	U
039	Michigan Regulator (aka S. Michigan Regulator)	U
040	8th Ave South Regulator (West Marginal Way PS)	C
041	Brandon Street Regulator	U
042	West Michigan Regulator (SW Michigan St regulator)	U
043	East Marginal Pump Station	C
044a	Norfolk Outfall	C
044b	Henderson/MLK CSO Treatment Facility	NA

045	Henderson Pump Station	C
046	Carkeek CSO Treatment Facility	NA
048b	North Beach Pump Station (inlet structure)	U[1]
048a	North Beach Pump Station (wet well)	U[1]
049	30th Avenue NE Pump Station	C
051	Alki CSO Treatment Facility	NA
052	53rd Avenue SW Pump Station	C
054	63rd Avenue SW Pump Station	C
055	SW Alaska Street Overflow	C
056	Murray Street Pump Station	U[1]
057	Barton Street Pump Station	U[1]

"C" reflects that the CSO Outfall has already been Controlled by King County.

"U" reflects that the CSO Outfall is uncontrolled because it does not currently meet the requirements of WAC 173-245-020(22), thus King County is required to implement the associated CSO Control Measure identified in Appendix B.

"U[1]" reflects that the CSO Outfall is uncontrolled; however, King County already has a Facility Plan to be implemented pursuant to its NPDES Permit.

"NA" reflects that the CSO Outfall is associated with a satellite CSO treatment plant, and thus not subject to WAC 173-245-020(22) because the discharges associated with these CSO treatment plants are considered treated discharges that must comply with the effluent limits set forth in the NPDES Permit and the State water quality standards.

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APPENDIX B: CSO Control Measures, Design Criteria, Performance Criteria, and Critical Milestones

CSO Control Project and Discharge Serial Number (DSN)	CSO Control Measure(s)	Description	Design Criteria	Performance Criteria in a Typical Year	Critical Milestones	Estimated Project Cost in 2010 Million Dollars
Hanford #1 (DSN 031)	Increased Conveyance and Storage Tank	Increased conveyance to the Bayview Tunnel and storage tank near Rainier Avenue	0.34 MG of peak CSO storage with conveyance[2]	Reduce to one overflow event per year on a 20-Year Moving Average	• Submission of Facilities Plan by December 31, 2014 • Completion of Bidding by December 31, 2016 • Construction Completion by December 31, 2019	$19.2
Brandon St./S. Michigan St. (DSN 041/039)	CSO Treatment and Conveyance	High rate clarification treatment to control CSOs along the East Waterway	66 MGD of peak CSO treatment and new conveyance system	CSOs shall meet all NPDES Permit limits and State water quality standards	• Submission of Facilities Plan by December 31, 2015 • Completion of Bidding by December 31, 2017 • Construction Completion by December 31, 2022	$139.7

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CSO Control Project and Discharge Serial Number (DSN)	CSO Control Measure(s)	Description	Design Criteria	Performance Criteria in a Typical Year	Critical Milestones	Estimated Project Cost in 2010 Million Dollars
W. Michigan St./Terminal 115 (DSN 042/038)	Storage Pipe[1]	Storage pipe along West Marginal Way	0.32 MG of peak CSO storage[2]	Reduce to one overflow event per year on a 20-Year Moving Average	• Submission of Facilities Plan by December 31, 2020 • Completion of Bidding by December 31, 2022 • Construction Completion by December 31, 2025	$14.8
Chelan Ave. (DSN 036)	Storage Tank	Storage tank near West Duwamish Waterway	3.85 MG of peak CSO storage on West Duwamish Waterway near Chelan Avenue	Reduce to one overflow event per year on a 20-Year Moving Average	• Submission of Facilities Plan by December 31, 2018 • Completion of Bidding by December 31, 2020 • Construction Completion by December 31, 2023	$51.7

CSO Control Project and Discharge Serial Number (DSN)	CSO Control Measure(s)	Description	Design Criteria	Performance Criteria in a Typical Year	Critical Milestones	Estimated Project Cost in 2010 Million Dollars
Hanford #2/ Lander St./King St./Kingdome (DSN 032/030/028/029)	CSO Treatment	High rate clarification treatment facility in South Seattle neighborhood	151 MGD of peak CSO treatment and modifications to existing conveyance system	CSOs shall meet all NPDES Permit limits and State water quality standards	• Submission of Facilities Plan by December 31, 2024 • Completion of Bidding by December 31, 2026 • Construction Completion by December 31, 2030	$270.8
3rd Avenue West (DSN 008)	Joint City-County Storage Tank OR Independent County Storage Tank	Storage tank on north side of Ship Canal OR Storage tank near Seattle Pacific University ($56.4 million)	7.23 MG of peak CSO storage OR 4.18 MG of peak CSO storage	Reduce to one overflow event per year on a 20-Year Moving Average at one County site and multiple City sites	• Submission of Facilities Plan by December 31, 2018 • Completion of Bidding by December 31, 2020 • Construction Completion by December 31, 2023	$50.3
University (DSN 015)	Joint City-County Storage Tank[1] OR Independent County Storage Tank[1]	Storage tank near University of Washington OR Storage tank near University of Washington ($54.5 million)	5.23 MG of peak CSO storage OR 2.94 MG of peak CSO storage	Reduce to one overflow event per year on a 20-Year Moving Average at one County site and multiple City sites	• Submission of Facilities Plan by December 31, 2023 • Completion of Bidding by December 31, 2025 • Construction Completion by December 31, 2028	$45.2

CSO Control Project and Discharge Serial Number (DSN)	CSO Control Measure(s)	Description	Design Criteria	Performance Criteria in a Typical Year	Critical Milestones	Estimated Project Cost in 2010 Million Dollars
Montlake (DSN 014)	Joint City-County Storage Tank[1] OR Independent County Storage Tank[1]	Storage tank near south side of Montlake Cut OR Storage tank on south side of Montlake Cut ($102.8 million)	7.87 MG of peak CSO storage OR 6.6 MG of peak CSO storage	Reduce to one overflow event per year on a 20-Year Moving Average at one county site and multiple city sites	• Submission of Facilities Plan by December 31, 2023 • Completion of Bidding by December 31, 2025 • Construction Completion by December 31, 2028	$95.4
11th Ave. NW (DSN 004)	Increased conveyance[1]	Increased conveyance	3,200 feet of 84-inch-diameter pipe conveyance.	Reduce to one overflow event per year on a 20-Year Moving Average	• Submission of Facilities Plan by December 31, 2026 • Completion of Bidding by December 31, 2028 • Construction Completion by December 31, 2030	$23.7

[1]The County may propose, subject to EPA and the State's approval, to use Green Stormwater Infrastructure control measures to partially substitute for Gray Infrastructure control measures in accordance with Paragraph 22 and Appendix E of this Consent Decree.

[2]Because of the small design criteria of the CSO Control Measures for Hanford #1 (.34 MG storage) and W. Michigan St./Terminal 115 (.32 MG of storage), any proposed modification representing a greater than 40% revision to the design criteria of only these two CSO Control Measures shall be subject to court approval and public notice and comment, as well as all other requirements of Paragraph 21 of the Consent Decree.

APPENDIX C: Sewer System Operations Plan

Within 90 days of the Effective Date, the County shall prepare and submit to EPA and Ecology for approval a comprehensive Sewer System Operations Plan (SSOP) for use in planning, maintaining and operating its Wastewater Collection System (WSC). The plan shall cover the operation of all collection, transport, and treatment facilities during both dry and wet weather in its WCS. The SSOP shall be made available to all member communities.

1. The SSOP shall be developed in cooperation with the King County Metropolitan District member communities. Member communities shall be consulted during development and shall have the opportunity to give input on development of the plan.
2. The SSOP shall address all aspects of operation and shall, at a minimum include sections on General Characterization Information, Dry Weather Operations, Wet Weather Operations, Maintenance Information, Inspection and Monitoring Information, Maps and Diagrams and Record Keeping.
3. The SSOP shall address all components of the King County's Wastewater Collection System including West Point wastewater treatment plant, CSO treatment plants, pump stations, interceptors, regulators, tidegates and outfalls. Information on the operation and maintenance of the West Point Treatment Plant, the Alki CSO Treatment Plant, the Carkeek CSO Treatment Plant, the Elliot West CSO Treatment Plant and the MLK/Henderson CSO Treatment Plant may be included directly or by reference to their individual O&M manuals and Standard Operating Procedures (SOPs).
4. The SSOP shall contain detailed operating information and shall include, at a minimum, information addressing the following:
   a) The SSOP shall address requirements found in WAC 173-240-080.
   b) The SSOP shall address requirements found in Ecology's Criteria for Sewage Works Design.
   c) The SSOP shall include the development of a CSO Notebook of all CSOs. The notebook shall include an overall map of the system, a map of each CSO regulator, overflow and outfall locations, a detail engineering diagram of the regulator and overflow and photographs of the access location, the regulator vault and the overflow structure.
   d) The SSOP shall include a description and procedures for use of the Combined Sewer System Supervisory Control and Data Acquisition system.
   e) The SSOP shall include a description of the Combined Sewer System Hydraulic Model. The plan shall include a description of the use of the Hydraulic Model in planning for operation of the CSS during wet weather, the use of the Hydraulic Model in managing the system during wet weather and the use of the Hydraulic Model to analyze the reaction of the system to a wet weather event for the purpose of modifying operation procedures.
   f) The SSOP shall include SOPs for each CSO control and wet weather conveyance facility including preparation of the facility for wet weather, operation of the facility during wet weather, operating set points, and post-wet weather activities.
   g) The SSOP shall integrate and incorporate the requirements of the Information Sharing and Coordination Program Plan.
   h) The SSOP shall be updated as necessary. The process for SSOP updates shall be identified in the original SSOP submittal.

APPENDIX D: Joint Operations and System Optimization Plan – Between the City of Seattle and King County

1. While King County and the City of Seattle 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 County will work with the City of Seattle 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 the 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 County and the City's combined 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 County and City's CSO long-term control plans; and
    k. A process for updating the Joint Plan every three years.

APPENDIX E: Requirements Applicable to Proposals for Green for Gray Partial Substitutions

Any Proposal to substitute in part Green Stormwater Infrastructure control measures for Gray Infrastructure control measures ("Green for Gray partial substitutions") shall result in compliance with the CSO control Performance Criteria and Critical Milestones in Appendix B. Proposed reductions in Gray Infrastructure control measures shall be offset for Green Stormwater Infrastructure control measures located within the drainage area of the Gray Infrastructure control measures to be reduced. All Proposals submitted pursuant to this Appendix shall meet the requirements of Section 1 below.

1. Proposals to Meet Performance Criteria in Appendix B by Partial Substitution of Green Stormwater Infrastructure Measure(s) for Gray Infrastructure Control Measure(s)

Upon a determination by King County to incorporate Green Stormwater Infrastructure control measures as a partial substitution for Gray Infrastructure control measures to achieve the Performance Criteria set forth in Appendix B, King County shall submit to EPA and the State a detailed Green Stormwater Infrastructure Project Proposal ("Proposal").[1] Each such Proposal shall at a minimum include all Green Stormwater Infrastructure control measures that King County proposes to substitute in part for a reduction in a particular Gray Infrastructure control measure. For example, a Proposal shall include all the Green Stormwater Infrastructure control measures that King County intends to substitute in part for the reduction in the capacity of a given storage tank or pipe. This Proposal shall meet the requirements of this Consent Decree and shall at a minimum include the following:

a. A detailed plan (to include specific technologies to be employed, project dimensions and configurations, material specifications and characteristics, scaled project drawings that include the drainage area tributary to the proposed Green Stormwater Infrastructure control measures, intended mode(s) of operation, and any other available information that may aid EPA and the State in their assessment of the Proposal) of the Green Stormwater Infrastructure control measures, a description of the proposed reductions in Gray Infrastructure control measures, all tasks required to implement the Proposal, a detailed planning level cost estimate that is consistent with King County's Technical Memo 620, and a schedule for completion of this work and implementation of the Proposal that is consistent with this Consent Decree including its Appendices.

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[1] EPA and the State encourage King County to informally consult with the agencies in the early stages of preparing a Green for Gray partial substitution Proposal to identify any questions or concerns about the nature of the partial substitution being considered.

b. A detailed comparative analysis of the typical year performance expected to be achieved with the implementation of the Green Stormwater Infrastructure control measures, and of the Gray Infrastructure control measures to be substituted in part or downsized by the Green Stormwater Infrastructure control measures. This analysis shall identify: (i) the expected baseline performance of the Gray Infrastructure control measures to be substituted in part or downsized in terms of activation frequency, gallons of combined sewage controlled, and remaining gallons of CSO discharge; (ii) the expected performance of the downsized Gray Infrastructure control measures in terms of activation frequency, gallons of combined sewage controlled, and remaining gallons of CSO discharge; (iii) the expected performance of the Green Stormwater Infrastructure control measures in terms of activation frequency, gallons of combined sewage controlled, and remaining gallons of CSO discharge; and (iv) the expected performance of the combination of the downsized Gray Infrastructure control measures and the Green Stormwater Infrastructure control measures in terms of activation frequency, gallons of combined sewage controlled, and remaining gallons of CSO discharge. These analyses shall be carried out using the information and models used to develop King County's *CSO Control Program Review Report (June 2012)* and King County's *Recommended Combined Sewer Overflow Control Plan (June 2012)*, as adopted by the County Council and approved by EPA and Ecology, appropriate available performance data for the proposed Green Stormwater Infrastructure control measures, and all monitoring information and data used in formulating the Proposal. The Proposal shall include detailed documentation of King County's analyses, including detailed modeling results, engineering calculations, summaries of underlying assumptions and the bases for those assumptions, and detailed summaries of all data relied upon. The Proposal shall also include a discussion of the long term effectiveness and performance expected to be achieved with implementation of the Proposal.

c. A description of the Green Stormwater Infrastructure control measure operation and maintenance activities to be carried out, including a periodic preventative maintenance plan.

d. A description of how King County shall ensure it will be able to retain permanent access and sufficient control over the land devoted to the Green Stormwater Infrastructure control measures set forth in the Proposal. For example, King County may provide this demonstration by showing how it will acquire ownership of land parcels, or obtain legally-binding agreements with the City of Seattle, or the pertinent governing authority or landowner, to retain permanent access and sufficient control of the parcels.

e. A description of post-construction monitoring and modeling to be performed to determine whether the Performance Criteria set forth in Appendix B will be met upon completion and implementation of the Gray Infrastructure and Green Stormwater Infrastructure control measures outlined in the Proposal.

f. A description of the type of supplemental remedial measures, in compliance with Paragraph 20 of the Consent Decree, that can be undertaken if post-construction monitoring of the Green Stormwater Infrastructure control measures do not demonstrate that the Performance Criteria for the Proposal are being met.

g. A description of stakeholder outreach and public participation, implemented and planned, associated with the proposed Green Stormwater Infrastructure control measures. The public participation for proposed Green-for-Gray partial substitutions shall include, but will not be limited to, people, households, and neighborhoods in the service area that have low household incomes or concentrated minority populations.

2. Reviews/Approvals of Green for Gray Partial Substitution Proposals

EPA and the State shall review each Green for Gray partial substitution Proposal submitted by King County, and may request clarifications or supplemental information to make informed decisions on the Proposal. Upon the conclusion of review of the Proposal, EPA and the State will approve the Proposal, approve with conditions, or disapprove the Proposal.

3. Provisions Applicable to Approved Green Stormwater Infrastructure Control Measures

Upon approval of a Green for Gray partial substitution Proposal, King County is authorized to implement Green Stormwater Infrastructure control measures in conformance with the approved Proposal. The following additional provisions apply to implementation of Green Stormwater Infrastructure control measures.

a. King County shall ensure permanent access and sufficient control over the land devoted to the Green Stormwater Infrastructure control measures.

b. King County shall carry out the public participation activities described in the approved Proposal.

c. King County shall implement the periodic maintenance plan described in the approved Proposal.

d. King County shall track its implementation, operation, and maintenance of the Green Stormwater Infrastructure control measures, and report on such activities and accomplishments as part of the annual reporting required under Paragraph 43 of this Consent Decree.

e. The post-construction monitoring and modeling provisions of the Proposal shall be implemented to verify if the Performance Criteria for the Green Stormwater Infrastructure control measures have been met.

f. If, following full completion of construction and implementation of the approved Green Stormwater Infrastructure control measures, the post-construction monitoring of those measures fails to demonstrate that the Green Stormwater Infrastructure control measures have met the Performance Criteria on which the substitution was based, King County shall submit to EPA and the State a Green Infrastructure Supplemental Compliance Plan as required pursuant to Paragraph 20 of the Consent Decree.

4. Evaluating the Co-Benefits of Green Stormwater Infrastructure Control Measures

King County shall submit a report to EPA quantifying the co-benefits of King County's Green for Gray partial substitution Proposals by December 31, 2019 for W. Michigan St./Terminal 115 (DSN 042/038), by December 31, 2022 for University (DSN 015) and Montlake (DSN 014), and by December 31, 2025 for 11th Avenue (DSN 004). Co-benefits, for the purposes of this Consent Decree, means the benefits, in addition to mitigating wet weather flow, that are achieved by King County's CSO Control Measures in Appendix B. In the report, King County shall describe the methods to be used to identify/analyze co-benefits. The co-benefits to be evaluated and quantified include, at a minimum, the following:

a. Life-cycle costs
b. Ecological benefits (ecosystem services)
c. Socio-economic and/or quality of life benefits to low-income or minority populations
d. Provision of recreational benefits
e. Climate change-related effects, including change in carbon footprint
f. Energy savings
g. Air quality
h. Aesthetics
i. Jobs
j. Property values

5. No Material Change

EPA and the State's approval of King County's request to make Green for Gray partial substitutions shall not be considered to be a material change in the Consent Decree.