

# **ATTACHMENT G**

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW HAMPSHIRE

_____	)	
UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
STATE OF NEW HAMPSHIRE,	)	CIVIL ACTION NO. 20-cv-762-SM
	)	
Plaintiff-Intervenor,	)	
	)	
v.	)	
	)	
CITY OF MANCHESTER, NEW HAMPSHIRE,	)	
	)	
Defendant.	)	
_____	)	

CONSENT DECREE

## TABLE OF CONTENTS

<b>I. STATEMENT OF CLAIM.....</b>	<b>7</b>
<b>II. JURISDICTION AND VENUE.....</b>	<b>7</b>
<b>III. APPLICABILITY .....</b>	<b>8</b>
<b>IV. DEFINITIONS.....</b>	<b>9</b>
<b>V. OBJECTIVES .....</b>	<b>13</b>
<b>VI. COMPLIANCE REQUIREMENTS .....</b>	<b>15</b>
<b>VII. REPORTS ON COMPLIANCE.....</b>	<b>39</b>
<b>VIII. REVIEW AND APPROVAL OF SUBMISSIONS .....</b>	<b>41</b>
<b>IX. STIPULATED PENALTIES.....</b>	<b>43</b>
<b>X. FORCE MAJEURE.....</b>	<b>48</b>
<b>XI. DISPUTE RESOLUTION .....</b>	<b>511</b>
<b>XII. RIGHT OF ENTRY/INFORMATION COLLECTION AND RETENTION.....</b>	<b>54</b>
<b>XIII. FORM OF NOTICE .....</b>	<b>566</b>
<b>XIV. EFFECT OF SETTLEMENT/RESERVATION OF RIGHTS.....</b>	<b>59</b>
<b>XV. COSTS.....</b>	<b>61</b>
<b>XVI. EFFECTIVE DATE .....</b>	<b>61</b>
<b>XVII. RETENTION OF JURISDICTION .....</b>	<b>62</b>
<b>XVIII. MODIFICATION.....</b>	<b>62</b>
<b>XIX. FUNDING.....</b>	<b>63</b>
<b>XX. TERMINATION .....</b>	<b>63</b>
<b>XXI. WAIVER OF SERVICE.....</b>	<b>64</b>
<b>XXII. PUBLIC COMMENT.....</b>	<b>64</b>
<b>XXIII. SIGNATORIES .....</b>	<b>65</b>
<b>XXIV. INTEGRATION .....</b>	<b>65</b>
<b>XXV. FINAL JUDGMENT.....</b>	<b>65</b>
<b>XXVI. APPENDICES.....</b>	<b>66</b>

WHEREAS, Plaintiff, the United States of America (“United States”), on behalf of the United States Environmental Protection Agency (“EPA”), filed a complaint simultaneously herewith, alleging that the City of Manchester, New Hampshire (“City,” “Manchester,” or “Defendant”) has violated its National Pollutant Discharge Elimination System (“NPDES”) Permit No. NH0100447 and Section 301(a) of the Clean Water Act (“CWA”), 33 U.S.C. § 1311(a), by discharging pollutants into waters of the United States from its Publicly Owned Treatment Works, as defined at 40 C.F.R. § 403.3, that includes a Wastewater Treatment Plant and Wastewater Collection System, including Combined Sewer Overflow (“CSO”) outfalls;

WHEREAS, Section 309(e) of the CWA, 33 U.S.C. § 1319(e), requires that whenever the United States brings a civil enforcement action against a municipality under Section 309, the state in which the municipality is located shall be joined as a party;

WHEREAS, the State of New Hampshire (the “State”), on behalf of the New Hampshire Department of Environmental Services (“NHDES”), has filed an assented-to motion to intervene as a plaintiff in the action brought by the United States and has filed a complaint alleging that the City has violated the Permit, which has been adopted as a State permit by NHDES pursuant to the New Hampshire Water Pollution and Waste Disposal Act, NH RSA 485-A (“New Hampshire Act”), and Section 301(a) of the CWA, 33 U.S.C. § 1311(a);

WHEREAS, the framework for compliance with CWA requirements for CSOs is set forth in EPA’s Combined Sewer Overflow Control Policy, which was published in the Federal Register on April 19, 1994 (59 Fed. Reg. 18688) and later added to the CWA in Section 402(q)(1), 33 U.S.C. § 1342(q)(1) (“CSO Control Policy”);

WHEREAS, the CSO Control Policy set forth the following objectives: (1) to ensure that if the CSO discharges occur, they are only as a result of wet weather, (2) to bring all wet weather

CSO discharge points into compliance with the technology-based requirements of the CWA and applicable federal and state water quality standards, and (3) to minimize water quality, aquatic biota, and human health impacts from wet weather flows;

WHEREAS, the CSO Control Policy explains that municipalities shall immediately implement best available technology economically achievable or best conventional pollutant control technology (“BAT/BCT”), and that at a minimum, BAT/BCT should include nine minimum controls (“NMCs”), including the prohibition of dry weather overflows from CSOs;

WHEREAS, the City has been implementing NMCs pursuant to the 1994 CSO Control Policy, the City’s NMC document originally submitted to EPA on May 8, 1995, as amended, and the Permit;

WHEREAS, in accordance with a Compliance Order entered into with EPA in 1999, as modified in 2002 (“1999 Compliance Order”), the City performed Phase I CSO abatement controls over the course of ten years;

WHEREAS, in performing Phase I CSO abatement controls in accordance with the 1999 Compliance Order and the City’s NMCs, the City spent \$58 million to eliminate 13 CSO outfalls, including all of the discharges to the Piscataquog River upstream of Bass Island through sewer separation, thereby reducing the overall CSO discharges to the west side of the Merrimack River by 99% (from approximately 53.2 million gallons to 0.2 million gallons) and the total annual CSO discharge volume of the City by approximately 17%, exceeding the original goal of achieving a level of CSO controls of no more than an average of four overflow events per year by controlling CSOs on the west side of the Merrimack River to less than one overflow per year on average;

WHEREAS, in performing Phase I CSO abatement controls in accordance with the 1999 Compliance Order and the City's NMCs, the City constructed modifications to its Wastewater Treatment Plant to accommodate additional wet weather treatment capacity by bypassing secondary treatment for high flows, whereby the bypassed flows would receive only primary treatment (screening, grit removal, and primary sedimentation) and disinfection;

WHEREAS, following the completion of the City's Phase I CSO abatement controls, performed in accordance with the 1999 Compliance Order, the City was eliminating or capturing for treatment approximately 83% by volume of the City's annual wet-weather combined sewage, an estimated 1,367 million gallons out of a total of 1,647 million gallons (based on projected 2030 future baseline conditions), leaving approximately 17% by volume, 280 million gallons, of untreated wet-weather combined sewage still discharged annually;

WHEREAS, in accordance with the 1999 Compliance Order and the CSO Control Policy, on March 12, 2010, the City submitted to EPA a *Revised Long-Term CSO Control Plan* ("Revised LTCP") to *inter alia* evaluate the effectiveness of the CSO abatement projects performed in accordance with the 1999 Compliance Order, include an updated alternatives analysis for the remaining CSOs, and recommend additional CSO abatement projects;

WHEREAS, the City began performing certain CSO abatement projects at the Wastewater Treatment Plant in 2010 in accordance with the Revised LTCP and the 2010 *Wastewater Treatment Facility—Facility Plan Report* ("WWTF-Facility Plan Report") to further improve the wet-weather performance of its Wastewater Treatment Plant and to reduce sewage backups into basements and street flooding through sewer separation, including increasing the capacity of the Wastewater Treatment Plant for primary and secondary treatment to 42 million

gallons per day (“mgd”) and wet-weather flows to 72 mgd (with flows between 42 mgd and 72 mgd receiving only primary treatment and disinfection), at a cost of \$22 million;

WHEREAS, since 2010, the City completed the Chestnut Street Sewer Separation Project and North Chestnut Street Sewer Separation Project (both together known formerly as the North Chestnut St./Elm St. South Project), identified as recommended Phase II CSO abatement projects in the 2010 Revised LTCP, at costs of \$6.45 million and \$11.85 million, respectively;

WHEREAS, the City’s CSO abatement controls to be performed in accordance with this Consent Decree include projects identified in the 2010 Revised LTCP as Phase II abatement projects, including the removal of Cemetery Brook, a tributary to the Merrimack River that was incorporated into the City’s Collection System as the City expanded beyond the banks of the Merrimack River, from the Combined Sewer System and the separation of portions of the Combined Sewer System into two separate pipe systems (one dedicated to sewage and the other to stormwater), as well as the Christian Brook removal and Christian Brook area sewer separation project;

WHEREAS, following the completion of the City’s Phase I CSO abatement controls, Wastewater Treatment Plant upgrades and sewer separation projects performed since 2010, and CSO abatement controls in accordance with this Consent Decree, the City is expected to be eliminating or capturing for treatment 95% by volume of the City’s annual wet-weather combined sewage, an estimated 1,574 million gallons out of a total of 1,647 million gallons (based on projected 2030 future baseline conditions);

WHEREAS, the Wastewater Treatment Plant upgrades and sewer separation projects performed since 2010 and the City’s completion of CSO abatement controls in accordance with this Consent Decree are expected to cost approximately \$271 million (in June 2019 dollars) and

will reduce the total annual remaining CSO discharge volume of the City by approximately 74% (from approximately 280 million gallons to 73 million gallons);

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 that this Consent Decree is fair, reasonable, and in the public interest;

NOW, THEREFORE, before the taking of any testimony, without the adjudication or admission of any issue of fact or law except as provided in Sections I (Statement of Claim) and II (Jurisdiction and Venue), with the consent of the Parties, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED as follows:

### **I. STATEMENT OF CLAIM**

1. The Complaints state claims upon which relief can be granted against the Defendant pursuant to Section 309 of the CWA, [33 U.S.C. § 1319](#), and, with respect to the State's complaint, also pursuant to Section 12 of the New Hampshire Act, NH RSA 485-A:12.

### **II. JURISDICTION AND VENUE**

2. 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](#). This Court has supplemental jurisdiction over the State law claims asserted by the State pursuant to [28 U.S.C. § 1367](#) and under the doctrine of pendent jurisdiction. This Court has personal jurisdiction over the Parties to this Consent Decree. Venue properly lies in this district pursuant to Section 309(b) of the CWA, [33 U.S.C. § 1319\(b\)](#), and [28 U.S.C. §§ 1391\(b\) and \(c\)](#). For purposes of this Decree, or any action to enforce this Decree, the City consents to the Court's jurisdiction over this Decree and any such action and over the City and consents to venue in this judicial district.



### **III. APPLICABILITY**

3. The provisions of this Consent Decree shall apply to and be binding upon the United States and the State, and upon the City and any successors, assigns, or other entities or persons otherwise bound by law.

4. No transfer of any ownership interest in or any interest in the operation of the Wastewater Treatment Plant or Wastewater Collection System, whether in compliance with this Paragraph or otherwise, shall relieve the City of its obligation to ensure that the terms of this Consent Decree are implemented. Any transfer involving ownership or operation of the Wastewater Treatment Plant or Wastewater Collection System, or any portion thereof, to any other person or entity must be conditioned upon the transferee's agreement to undertake the obligations required by all provisions of this Consent Decree, as provided in a written agreement between the City and the proposed transferee, enforceable by the United States as a third-party beneficiary of such agreement. At least sixty (60) Days prior to such transfer, the City shall provide a copy of this Consent Decree to the proposed transferee and shall simultaneously provide written notice of the prospective transfer, together with a copy of the above-referenced proposed written agreement, to EPA, the United States Attorney, the United States Department of Justice, New Hampshire Attorney General's Office, and NHDES in accordance with Section XIII (Form of Notice). Any noncompliance with this Paragraph constitutes a violation of this Consent Decree.

5. The City shall provide a copy of this Consent Decree to all officers, directors, employees, and agents whose duties might reasonably include compliance with any provisions of this Consent Decree. The City shall also provide a copy of this Consent Decree to all contractors and consultants retained to perform any obligation required by this Consent Decree on behalf of

the City, and condition any such contract upon performance of the work in conformity with the terms of this Consent Decree. Such contractors and consultants shall be deemed agents of the City for the purposes of this Consent Decree. In any action to enforce this Consent Decree, the City shall not assert as a defense the failure by any of its officers, directors, employees, agents, consultants, contractors, successors, and assigns to take actions necessary to comply with this Consent Decree.

#### **IV. DEFINITIONS**

6. Unless otherwise expressly provided herein, terms used in this Consent Decree which are defined in the CWA or in regulations promulgated under the CWA shall have the meaning ascribed to them in the CWA or in the regulations promulgated thereunder. Whenever the terms listed below are used in this Consent Decree, the following definitions shall apply.

a. “Approval by EPA and NHDES” or “Approved by EPA and NHDES” shall mean the issuance of one joint, written approval document from both EPA and NHDES, or an approval from each, EPA and NHDES, approving, approving with conditions, and/or modifying a submission in accordance with Section VIII (Review and Approval of Submissions).

b. “Approval by NHDES” or “Approved by NHDES” shall mean the issuance of a written approval document from NHDES approving, approving with conditions, and/or modifying a submission in accordance with Section VIII (Review and Approval of Submissions).

c. “Building/Private Property Backup” shall mean a release of wastewater into a building or onto private property that is caused by blockage(s), flow condition(s), or Collection System malfunction(s). A wastewater backup or release that is caused solely by

conditions in the Private Lateral is not a Building/Private Property Backup for purposes of this Consent Decree.

d. “City” or “Manchester” shall mean Defendant City of Manchester, New Hampshire.

e. “Combined Sewer Overflow” or “CSO” shall mean a discharge from the Combined Sewer System at a CSO outfall designated in the City’s Permit, as shown in Appendix A.

f. “Combined Sewer Overflow Control Policy” or “CSO Control Policy” shall mean the policy issued by EPA regarding combined sewer overflows, entitled “Combined Sewer Overflow (CSO) Control Policy,” 59 Fed. Reg. 18688 (April 19, 1994), and as identified in Section 402(q)(1) of the CWA, 33 U.S.C. § 1342(q)(1).

g. “Combined Sewer System” or “CSS” shall mean the portion of the Wastewater Collection System, including pipelines, pumping stations, treatment facilities, and appurtenances in the City, that is designed to convey wastewater and stormwater through a single pipe system to the Wastewater Treatment Plant and/or CSO outfalls.

h. “Complaints” shall mean the complaints filed by the United States and the State in this action.

i. “Consent Decree” or “Decree” shall mean this Consent Decree and all appendices attached hereto. In the event of conflict between this Decree and any appendix, this Decree shall control.

j. “CSO Control Measures” shall mean the construction, control measures, actions, and other activities set forth in Section VI (Compliance Requirements).

k. “CWA” shall mean the Federal Water Pollution Control Act (commonly referred to as the Clean Water Act), as amended, 33 U.S.C. § 1251 *et seq.*

l. “Date of Lodging” shall mean the Day this Consent Decree is filed for lodging in the United States District Court for the District of New Hampshire.

m. “Day” shall mean a calendar day. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or federal or State holiday, the period shall run until the close of business of the next business day.

n. “Dry Weather Overflow” shall mean a discharge that occurs at a permitted CSO outfall during dry weather (any calendar day on which there is less than 0.1 inches of rainfall and no snow melt). Dry weather flow includes domestic sewage, groundwater infiltration, commercial and industrial wastewaters, and any other non-precipitation related flows.

o. “Effective Date” shall have the definition provided in Section XVI (Effective Date).

p. “EPA” shall mean the United States Environmental Protection Agency and any successor departments or agencies of the United States.

q. “Manchester Consent Decree Gantt Chart” shall mean the Gantt chart of CSO abatement and Wastewater Treatment Plant projects and post-construction monitoring to be performed by the City in accordance with this Consent Decree. The Manchester Consent Decree Gantt Chart is attached to this Consent Decree as Appendix B.

r. “New Hampshire Act” shall mean the New Hampshire Water Pollution and Waste Disposal Act, NH RSA 485-A.

s. “NHDES” shall mean the New Hampshire Department of Environmental Services and any successor departments or agencies of the State.

t. “Paragraph” shall mean a portion of this Consent Decree identified by an Arabic numeral, a lower-case letter, or a lower-case Roman numeral.

u. “Parties” shall mean the United States, the State, and the City.

v. “Permit” shall mean NPDES Permit No. NH0100447, issued on February 11, 2015, or the then current superseding modified or reissued permit.

w. “Private Lateral” shall mean pipes and any other appurtenances not owned by the City that are used to convey wastewater from a building or buildings to the Wastewater Collection System.

x. “Revised LTCP” shall mean the March 2010 *Revised Long-Term CSO Control Plan*.

y. “Section” shall mean a portion of this Consent Decree identified by an upper-case Roman numeral.

z. “State” shall mean the State of New Hampshire.

aa. “Substantial Completion” shall mean construction of the project or a specified part thereof is sufficiently completed, in accordance with the contract documents, so that the project or specified part can consistently operate in such a way as to fully accomplish the intended function, even though all construction close-out activities may not yet be completed.

bb. “Unauthorized Discharge” shall mean any discharge of wastewater to waters of the United States from the Collection System not in accordance with the terms and conditions of the Permit, including a Dry Weather Overflow.

cc. “Unauthorized Release” shall mean any overflow, spill, diversion, or release of wastewater within the Combined Sewer System not in accordance with the terms and conditions of the Permit that is not an Unauthorized Discharge. This term shall include any release of wastewater from the Combined Sewer System to public or private property that does not reach waters of the United States, including Building/Private Property Backups.

dd. “United States” and “U.S.” shall mean the United States of America.

ee. “Wastewater Collection System” or “Collection System” shall mean the municipal wastewater (domestic, commercial, and industrial) collection, storage and transmission system owned or operated by the City, including, but not limited to, all pipes, siphons, devices, pump stations, force mains, gravity sewer lines, manholes, and appurtenances thereto. This term includes the CSS and the separate sanitary system.

ff. “Wastewater Treatment Plant” or “WWTP” shall mean the wastewater treatment plant owned and operated by the City and located at 300 Winston Street, Manchester, New Hampshire, and all components of such wastewater treatment plant.

gg. “WWTF-Facility Plan Report” shall mean the September 2010 *Wastewater Treatment Facility—Facility Plan Report*.

## **V. OBJECTIVES**

7. It is the express purpose of the Parties in entering into this Consent Decree to require the City to undertake measures necessary to achieve and maintain compliance with the CWA, the New Hampshire Act, the Permit, and any applicable federal and State regulations, including, but not limited to, the elimination of Unauthorized Discharges and Unauthorized Releases from the CSS and to bring all wet weather CSO discharge points into compliance with the technology-based and water-quality based requirements of the CWA.

8. All work pursuant to this Consent Decree shall be performed using sound engineering practices to ensure that construction, management, operation, and maintenance of the Wastewater Collection System and Wastewater Treatment Plant comply with the CWA, including practices to improve the resilience of the Wastewater Collection System and Wastewater Treatment Plant. Engineering designs and analyses required to be performed pursuant to this Consent Decree shall be conducted using sound engineering practices, and, as applicable, consistent with: (a) EPA's "Handbook: Sewer System Infrastructure Analysis and Rehabilitation," EPA/625/6-91/030, October 1991, as amended; (b) "Standards of Design and Construction for Sewerage and Wastewater Treatment Facilities," New Hampshire Code of Administrative Rules Chapter Env-Wq 700; (c) "Existing Sewer Evaluation and Rehabilitation," WEF MOP FD-6, 2009, as amended; (d) "Guide to Short Term Flow Surveys of Sewer Systems," WRc Engineering (Undated); (e) the National Association of Sewer Service Companies' "Manual of Practice"; (f) New England Interstate Water Pollution Control Commission's TR-16 "Guides for the Design of Wastewater Treatment Works," 2011, as revised in 2016, as amended; (g) EPA's "Computer Tools for Sanitary Sewer System Capacity Analysis and Planning," EPA/600/R-07/111, October 2007, as amended; (h) EPA's Creating Resilient Water Utilities (CRWU) Initiative, available on the EPA-maintained website at <https://www.epa.gov/crwu>; and (i) EPA's Climate Resilience Evaluation and Awareness Tool (CREAT) version 3.0, referenced at EPA 815-B-16-004, May 2016, available on the EPA-maintained website at <https://www.epa.gov/crwu/build-resilience-your-utility>. Should there be a conflict between two or more of these sources, EPA's judgment as to which source to follow shall control.

## **VI. COMPLIANCE REQUIREMENTS**

9. The City shall implement the following CSO Control Measures, which include the projects identified in the 2010 Revised LTCP as components of the proposed Phase II CSO abatement program and the Christian Brook removal and Christian Brook area sewer separation project, in accordance with the milestones and deadlines below. All CSO Control Measures shall be fully constructed (including all construction close-out activities), completed, and be in full operation in no event later than twenty (20) years after the Effective Date of this Consent Decree, provided, however, that the Revere Ave. area sewer separation project shall achieve Substantial Completion in no event later than twenty (20) years after the Effective Date of this Consent Decree, and shall be fully constructed, completed, and be in full operation in no event later than twenty and a half (20.5) years after the Effective Date of this Consent Decree.

10. Where any compliance obligation in this Section (Section VI) requires the City to obtain a federal, state or local permit or approval, the City shall submit timely and complete applications that meet the requirements of applicable federal, state and local laws and regulations, and take all other actions necessary to obtain all such permits or approvals. The City may seek relief under the provisions of Section X (Force Majeure) of this Consent Decree for any delay in the performance of any such obligation resulting from a failure to obtain, or a delay in obtaining, any permit or approval required to fulfill such obligation, if the City has submitted timely and complete applications and has taken all other actions necessary to obtain all such permits or approvals.

### **A. Permanent Closures of Inactive CSO Outfalls**

11. The City shall permanently close inactive CSO outfalls in accordance with the milestones and deadlines set forth in this Paragraph. Within six (6) months of the Effective Date



of the Consent Decree, the City shall evaluate, with the goal of permanently closing, inactive CSO outfalls 011, 018, 031B, 043, 051, and 053, as shown in Appendix A. In this evaluation, the City shall determine if a particular CSO continues to be necessary for the Wastewater Collection System at this time in order to provide hydraulic relief. At the end of the six-month CSO outfall evaluation period, listed as Item 4 in the Manchester Consent Decree Gantt Chart, the City shall submit for review and Approval by EPA and NHDES a technical memorandum summarizing its findings and conclusions. In the technical memorandum, if the City recommends permanently closing any such CSO outfall, the City shall provide dates for construction start and construction completion. If the City does not recommend permanently closing any such CSO outfall, the City shall provide the reasons why closing any such CSO outfall is not being recommended. The City shall achieve Substantial Completion of recommended permanent closing of CSO outfall(s) in accordance with the schedules in the technical memorandum, as Approved by EPA and NHDES.

#### **B. Removal of Brook Flows and Sewer Separation**

12. The City shall implement the following projects to remove brooks (Cemetery Brook and Christian Brook, tributaries to the Merrimack River that were incorporated into the City's Collection System as the City expanded beyond the banks of the Merrimack River) from the Combined Sewer System and to separate portions of the Combined Sewer System into two separate pipe systems (one dedicated to sewage and the other to stormwater) (see Map of the Cemetery Brook Drainage Area and Christian Brook Drainage Area Projects (Appendix C) and Map of the Extent of the Christian Brook Removal and Christian Brook Area Sewer Separation Project (Appendix D)), in accordance with the milestones and deadlines below, which are premised upon a review and approval period for NHDES that is no longer than sixty (60) Days,

provided, however, that the City shall provide submissions no less than sixty (60) Days before deadlines requiring the City to obtain Approval by NHDES of such submissions:

a. Cemetery Brook Drain Basis of Design (shown as Item 5 in the Manchester Consent Decree Gantt Chart): Upon the Effective Date of the Consent Decree, the City shall initiate basis of design of the Cemetery Brook Drain, which will serve as a new trunk drain for the Cemetery Brook basin to convey brook flow and stormwater drainage to the Merrimack River from the Outfall to East of Mammoth Rd. (Contracts 2 through 5 in the Manchester Consent Decree Gantt Chart). The scope of the basis of design, which is shown as Item 5 in the Manchester Consent Decree Gantt Chart, shall include: survey of the entire route including rights of way; basis of design of the drain including a preliminary profile, initial geotechnical, archeological, historical and environmental reviews; recommended construction contract delineation; and sequencing and related services. The City shall submit for review and comment by EPA and NHDES initial and final basis of design of the Cemetery Brook Drain in accordance with New Hampshire Code of Administrative Rules Chapter Env-Wq 700. Within two (2) years of the Effective Date of this Consent Decree, the City shall submit for review and obtain Approval by NHDES of the final Cemetery Brook Drain Basis of Design Report.

b. Cemetery Brook Drain (Outfall to Queen City Ave. at Elm St.) Construction Project: (shown as Contract 2 in the Manchester Consent Decree Gantt Chart): The City shall design and construct the Outfall to Queen City Ave. at Elm St. portion of the Cemetery Brook Drain, as described on Pages 8-12 and 8-13, 10-30 to 10-34, and 11-5 to 11-6, Tables 8-3 and 10-4, and Figures 8-2, 10-16, 11-1, 11-2, and 11-3 of the Revised LTCP and shown as Contract 2 in the Manchester Consent Decree Gantt Chart, which will serve as a new trunk drain

for the Cemetery Brook basin to convey brook flow and stormwater drainage to the Merrimack River.

i. Upon Approval by NHDES of the Cemetery Brook Drain Basis of Design Report, the City shall initiate design of this portion of the Cemetery Brook Drain.

ii. The City shall submit for review and comment by EPA and NHDES initial and final design plans and specifications prepared for construction of this portion of the Cemetery Brook Drain in accordance with New Hampshire Code of Administrative Rules Chapter Env-Wq 700. EPA and NHDES may provide comments on these initial and final design plans and specifications. The omission or delay of EPA and/or NHDES to provide comments shall not alter or affect the City's obligation to achieve Substantial Completion pursuant to subparagraph iv, below.

iii. Within one and a half (1.5) years of initiation of design of this portion of the Cemetery Brook Drain in accordance with subparagraph i, above, the City shall submit for review and obtain Approval by NHDES of the final design construction plans and specifications for this portion of the Cemetery Brook Drain.

iv. Within three (3) years of Approval by NHDES of the final design of this portion of the Cemetery Brook Drain submitted pursuant to subparagraph iii, above, the City shall achieve Substantial Completion of the construction of this portion of the Cemetery Brook Drain (Outfall to Queen City Ave. at Elm St.) in accordance with the plans and specifications submitted in accordance with subparagraph iii, above, as Approved by NHDES.

c. Cemetery Brook Drain (Queen City Ave. at Elm St. to Beech St.) Construction Project (shown as Contract 3 in the Manchester Consent Decree Gantt Chart): The City shall design and construct the Queen City Ave. at Elm St. to Beech St. portion of the

Cemetery Brook Drain, as described on Pages 8-12 to 8-13, 10-30 to 10-34, and 11-5 to 11-6, Tables 8-3 and 10-4, and Figures 8-2, 10-16, 11-1, 11-2, and 11-3 of the Revised LTCP and shown as Contract 3 in the Manchester Consent Decree Gantt Chart, which will serve as a new trunk drain for the Cemetery Brook basin to convey brook flow and stormwater drainage to the Merrimack River.

i. Within one and a half (1.5) years of Approval by NHDES of the final design construction plans and specifications for Contract 2, the City shall initiate design of this portion of the Cemetery Brook Drain.

ii. The City shall submit for review and comment by EPA and NHDES initial and final design plans and specifications prepared for construction of this portion of the Cemetery Brook Drain in accordance with New Hampshire Code of Administrative Rules Chapter Env-Wq 700. EPA and NHDES may provide comments on these initial and final design plans and specifications. The omission or delay of EPA and/or NHDES to provide comments shall not alter or affect the City's obligation to achieve Substantial Completion pursuant to subparagraph iv, below.

iii. Within one and a half (1.5) years of initiation of design of this portion of the Cemetery Brook Drain in accordance with subparagraph i, above, the City shall submit for review and obtain Approval by NHDES of the final design construction plans and specifications for this portion of the Cemetery Brook Drain.

iv. Within three (3) years of Approval by NHDES of the final design of this portion of the Cemetery Brook Drain submitted pursuant to subparagraph iii, above, the City shall achieve Substantial Completion of the construction of this portion of the Cemetery

Brook Drain (Queen City Ave. at Elm St. to Beech St.) in accordance with the plans and specifications submitted in accordance with subparagraph iii, above, as Approved by NHDES.

d. Cemetery Brook Drain (Beech St. to Valley St.) Construction Project (shown as Contract 4 in the Manchester Consent Decree Gantt Chart): The City shall design and construct the Beech St. to Valley St. portion of the Cemetery Brook Drain, as described on Pages 8-12 to 8-13, 10-30 to 10-34, and 11-5 to 11-6, Tables 8-3 and 10-4, and Figures 8-2, 10-16, 11-1, 11-2, and 11-3 of the Revised LTCP and shown as Contract 4 in the Manchester Consent Decree Gantt Chart, which will serve as a new trunk drain for the Cemetery Brook basin to convey brook flow and stormwater drainage to the Merrimack River.

i. Within one and a half (1.5) years of Approval by NHDES of the final design construction plans and specifications for Contract 3, the City shall initiate design of this portion of the Cemetery Brook Drain.

ii. The City shall submit for review and comment by EPA and NHDES initial and final design plans and specifications prepared for construction of this portion of the Cemetery Brook Drain in accordance with New Hampshire Code of Administrative Rules Chapter Env-Wq 700. EPA and NHDES may provide comments on these initial and final design plans and specifications. The omission or delay of EPA and/or NHDES to provide comments shall not alter or affect the City's obligation to achieve Substantial Completion pursuant to subparagraph iv, below.

iii. Within one and a half (1.5) years of initiation of design of this portion of the Cemetery Brook Drain in accordance with subparagraph i, above, the City shall submit for review and obtain Approval by NHDES of the final design construction plans and specifications for this portion of the Cemetery Brook Drain.

iv. Within three (3) years of Approval by NHDES of the final design of this portion of the Cemetery Brook Drain submitted pursuant to subparagraph iii, above, the City shall achieve Substantial Completion of the construction of this portion of the Cemetery Brook Drain (Beech St. to Valley St.) in accordance with the plans and specifications submitted in accordance with subparagraph iii, above, as Approved by NHDES.

e. Cemetery Brook Drain (Valley St. to East of Mammoth Rd.) Construction Project (shown as Contract 5 in the Manchester Consent Decree Gantt Chart): The City shall design and construct the Valley St. to East of Mammoth Rd. portion of the Cemetery Brook Drain, as described on Pages 8-12 to 8-13, 10-30 to 10-34, and 11-5 to 11-6, Tables 8-3 and 10-4, and Figures 8-2, 10-16, 11-1, 11-2, and 11-3 of the Revised LTCP and shown as Contract 5 in the Manchester Consent Decree Gantt Chart, which will serve as a new trunk drain for the Cemetery Brook basin to convey brook flow and stormwater drainage to the Merrimack River.

i. Within one and half (1.5) year of Approval by NHDES of the final design construction plans and specifications for Contract 4, the City shall initiate design of this portion of the Cemetery Brook Drain.

ii. The City shall submit for review and comment by EPA and NHDES initial and final design plans and specifications prepared for construction of this portion of the Cemetery Brook Drain in accordance with New Hampshire Code of Administrative Rules Chapter Env-Wq 700. EPA and NHDES may provide comments on these initial and final design plans and specifications. The omission or delay of EPA and/or NHDES to provide comments shall not alter or affect the City's obligation to achieve Substantial Completion pursuant to subparagraph iv, below.

iii. Within one and a half (1.5) years of initiation of design of this portion of the Cemetery Brook Drain in accordance with subparagraph i, above, the City shall submit for review and obtain Approval by NHDES of the final design construction plans and specifications for this portion of the Cemetery Brook Drain.

iv. Within three (3) years of Approval by NHDES of the final design of this portion of the Cemetery Brook Drain submitted pursuant to subparagraph iii, above, the City shall achieve Substantial Completion of the construction of this portion of the Cemetery Brook Drain (Valley St. to East of Mammoth Rd.) in accordance with the plans and specifications submitted in accordance with subparagraph iii, above, as Approved by NHDES.

f. Queen City Ave./Cheney Pl. and Union St. Area Sewer Separation Project (shown as Contract 8 in the Manchester Consent Decree Gantt Chart): The City shall design and construct facilities necessary to provide separate conveyance systems for wastewater and stormwater in the Queen City Ave./Cheney Pl. and Union St. Area, as described on Pages 8-16 to 8-19, 10-30 to 10-34, and 11-6, Tables 8-6 and 10-4, and Figures 10-16, 11-1, 11-2, and 11-3 of the Revised LTCP and shown as Contract 8 in the Manchester Consent Decree Gantt Chart, which shall include the conveyance of the separated stormwater to the Cemetery Brook Drain.

i. Within six (6) months of Substantial Completion of Contract 2, the City shall initiate design of this sewer separation project.

ii. The City shall submit for review and comment by EPA and NHDES initial and final design plans and specifications prepared for construction of this sewer separation project and modification of the drainage system, including an engineering analysis that determines whether wastewater and/or stormwater pipes are to be constructed for this sewer separation project, in accordance with New Hampshire Code of Administrative Rules Chapter

Env-Wq 700. EPA and NHDES may provide comments on these initial and final design plans and specifications. The omission or delay of EPA and/or NHDES to provide comments shall not alter or affect the City's obligation to achieve Substantial Completion pursuant to subparagraph iv, below.

iii. Within one (1) year of initiation of design of this sewer separation project in accordance with subparagraph i, above, the City shall submit for review and obtain Approval by NHDES of the final design construction plans and specifications for this sewer separation project.

iv. Within three (3) years of Approval by NHDES of the final design of this sewer separation project submitted pursuant to subparagraph iii, above, the City shall achieve Substantial Completion of the sewer separation project in the Queen City Ave./Cheney Pl. and Union St. Area in accordance with the plans and specifications submitted in accordance with subparagraph iii, above, as Approved by NHDES.

g. Cilley Rd. and South Lincoln/South Willow St. Area Sewer Separation Project (shown as Contract 9 in the Manchester Consent Decree Gantt Chart): The City shall design and construct facilities necessary to provide separate conveyance systems for wastewater and stormwater in the Cilley Rd. and South Lincoln/South Willow St. Area, as described on Pages 8-16 to 8-19, 10-30 to 10-34, and 11-6, Tables 8-6 and 10-4, and Figures 10-16, 11-1, 11-2, and 11-3 of the Revised LTCP and shown as Contract 9 in the Manchester Consent Decree Gantt Chart, which shall include the conveyance of the separated stormwater to the Cemetery Brook Drain.



i. Within one and a half (1.5) years of Approval by NHDES of the final design construction plans and specifications for Contract 8, the City shall initiate design of this sewer separation project.

ii. The City shall submit for review and comment by EPA and NHDES initial and final design plans and specifications prepared for construction of this sewer separation project and modification of the drainage system, including an engineering analysis that determines whether wastewater and/or stormwater pipes are to be constructed for this sewer separation project, in accordance with New Hampshire Code of Administrative Rules Chapter Env-Wq 700. EPA and NHDES may provide comments on these initial and final design plans and specifications. The omission or delay of EPA and/or NHDES to provide comments shall not alter or affect the City's obligation to achieve Substantial Completion pursuant to subparagraph iv, below.

iii. Within one (1) year of initiation of design of this sewer separation project in accordance with subparagraph i, above, the City shall submit for review and obtain Approval by NHDES of the final design construction plans and specifications for this sewer separation project.

iv. Within three (3) years of Approval by NHDES of the final design of this sewer separation project submitted pursuant to subparagraph iii, above, the City shall achieve Substantial Completion of the sewer separation project in the Cilley Rd. and South Lincoln/South Willow St. Area in accordance with the plans and specifications submitted in accordance with subparagraph iii, above, as Approved by NHDES.

h. Shasta/Somerville/Silver St. Area Sewer Separation Project (shown as Contract 10 in the Manchester Consent Decree Gantt Chart): The City shall design and construct

facilities necessary to provide separate conveyance systems for wastewater and stormwater in the Shasta/Somerville/Silver St. Area, as described on Pages 8-16 to 8-19, 10-30 to 10-34, and 11-6, Tables 8-6 and 10-4, and Figures 10-16, 11-1, 11-2, and 11-3 of the Revised LTCP and shown as Contract 10 in the Manchester Consent Decree Gantt Chart, which shall include the conveyance of the separated stormwater to the Cemetery Brook Drain.

i. Within one and a half (1.5) years of Approval by NHDES of the final design construction plans and specifications for Contract 9, the City shall initiate design of this sewer separation project.

ii. The City shall submit for review and comment by EPA and NHDES initial and final design plans and specifications prepared for construction of this sewer separation project and modification of the drainage system, including an engineering analysis that determines whether wastewater and/or stormwater pipes are to be constructed for this sewer separation project, in accordance with New Hampshire Code of Administrative Rules Chapter Env-Wq 700. EPA and NHDES may provide comments on these initial and final design plans and specifications. The omission or delay of EPA and/or NHDES to provide comments shall not alter or affect the City's obligation to achieve Substantial Completion pursuant to subparagraph iv, below.

iii. Within one (1) year of initiation of design of this sewer separation project in accordance with subparagraph i, above, the City shall submit for review and obtain Approval by NHDES of the final design construction plans and specifications for this sewer separation project.

iv. Within three (3) years of Approval by NHDES of the final design of this sewer separation project submitted pursuant to subparagraph iii, above, the City shall

achieve Substantial Completion of the sewer separation project in the Shasta/Somerville/Silver St. Area in accordance with the plans and specifications submitted in accordance with subparagraph iii, above, as Approved by NHDES.

i. Harvard/Belmont (S)/Hayward St. Area Sewer Separation Project (shown as Contract 11 in the Manchester Consent Decree Gantt Chart): The City shall design and construct facilities necessary to provide separate conveyance systems for wastewater and stormwater in the Harvard/Belmont (S)/Hayward St. Area, as described on Pages 8-16 to 8-19, 10-30 to 10-34, and 11-6, Tables 8-6 and 10-4, and Figures 10-16, 11-1, 11-2, and 11-3 of the Revised LTCP and shown as Contract 11 in the Manchester Consent Decree Gantt Chart, which shall include the conveyance of the separated stormwater to the Cemetery Brook Drain.

i. Within six (6) months of Approval by NHDES of the final design construction plans and specifications for Contract 10, the City shall initiate design of this sewer separation project.

ii. The City shall submit for review and comment by EPA and NHDES initial and final design plans and specifications prepared for construction of this sewer separation project and modification of the drainage system, including an engineering analysis that determines whether wastewater and/or stormwater pipes are to be constructed for this sewer separation project, in accordance with New Hampshire Code of Administrative Rules Chapter Env-Wq 700. EPA and NHDES may provide comments on these initial and final design plans and specifications. The omission or delay of EPA and/or NHDES to provide comments shall not alter or affect the City's obligation to achieve Substantial Completion pursuant to subparagraph iv, below.

iii. Within one (1) year of initiation of design of this sewer separation project in accordance with subparagraph i, above, the City shall submit for review and obtain Approval by NHDES of the final design construction plans and specifications for this sewer separation project.

iv. Within three (3) years of Approval by NHDES of the final design of this sewer separation project submitted pursuant to subparagraph iii, above, the City shall achieve Substantial Completion of the sewer separation project in the Harvard/Belmont (S)/Hayward St. Area in accordance with the plans and specifications submitted in accordance with subparagraph iii, above, as Approved by NHDES.

j. Belmont (N)/Porter/Jewett St. Area Sewer Separation Project (shown as Contract 12 in the Manchester Consent Decree Gantt Chart): The City shall design and construct facilities necessary to provide separate conveyance systems for wastewater and stormwater in the Belmont (N)/Porter/Jewett St. Area, as described on Pages 8-16 to 8-19, 10-30 to 10-34, and 11-6, Tables 8-6 and 10-4, and Figures 10-16, 11-1, 11-2, and 11-3 of the Revised LTCP and shown as Contract 12 in the Manchester Consent Decree Gantt Chart, which shall include the conveyance of the separated stormwater to the Cemetery Brook Drain.

i. Within six (6) months of Approval by NHDES of the final design construction plans and specifications for Contract 11, the City shall initiate design of this sewer separation project.

ii. The City shall submit for review and comment by EPA and NHDES initial and final design plans and specifications prepared for construction of this sewer separation project and modification of the drainage system, including an engineering analysis that determines whether wastewater and/or stormwater pipes are to be constructed for this sewer

separation project, in accordance with New Hampshire Code of Administrative Rules Chapter Env-Wq 700. EPA and NHDES may provide comments on these initial and final design plans and specifications. The omission or delay of EPA and/or NHDES to provide comments shall not alter or affect the City's obligation to achieve Substantial Completion pursuant to subparagraph iv, below.

iii. Within one (1) year of initiation of design of this sewer separation project in accordance with subparagraph i, above, the City shall submit for review and obtain Approval by NHDES of the final design construction plans and specifications for this sewer separation project.

iv. Within three (3) years of Approval by NHDES of the final design of this sewer separation project submitted pursuant to subparagraph iii, above, the City shall achieve Substantial Completion of the sewer separation project in the Belmont (N)/Porter/Jewett St. Area in accordance with the plans and specifications submitted in accordance with subparagraph iii, above, as Approved by NHDES.

k. Revere Ave. Area Sewer Separation Project (shown as Contract 13 in the Manchester Consent Decree Gantt Chart): The City shall design and construct facilities necessary to provide separate conveyance systems for wastewater and stormwater in the Revere Ave. Area, as described on Pages 8-16 to 8-19, 10-30 to 10-34, and 11-6, Tables 8-6 and 10-4, and Figures 10-16, 11-1, 11-2, and 11-3 of the Revised LTCP and shown as Contract 13 in the Manchester Consent Decree Gantt Chart, which shall include the conveyance of the separated stormwater to the Cemetery Brook Drain.

i. Upon Approval by NHDES of the final design construction plans and specifications for Contract 12, the City shall initiate design of this sewer separation project.

ii. The City shall submit for review and comment by EPA and NHDES initial and final design plans and specifications prepared for construction of this sewer separation project and modification of the drainage system, including an engineering analysis that determines whether wastewater and/or stormwater pipes are to be constructed for this sewer separation project, in accordance with New Hampshire Code of Administrative Rules Chapter Env-Wq 700. EPA and NHDES may provide comments on these initial and final design plans and specifications. The omission or delay of EPA and/or NHDES to provide comments shall not alter or affect the City's obligation to achieve Substantial Completion pursuant to subparagraph iv, below.

iii. Within one (1) year of initiation of design of this sewer separation project in accordance with subparagraph i, above, the City shall submit for review and obtain Approval by NHDES of the final design construction plans and specifications for this sewer separation project.

iv. Within three (3) years of Approval by NHDES of the final design of this sewer separation project submitted pursuant to subparagraph iii, above, the City shall achieve Substantial Completion of the sewer separation project in the Revere Ave. Area in accordance with the plans and specifications submitted in accordance with subparagraph iii, above, as Approved by NHDES.

1. Christian Brook Removal and Christian Brook Area (including Pennacook Street) Sewer Separation Project – Christian Brook Main Drain (shown as Contract 15 in the Manchester Consent Decree Gantt Chart and project limits as shown in Appendices C and D):  
The City shall design and construct facilities necessary for the removal of Christian Brook from the Wastewater Collection System (by *inter alia* installing a new Christian Brook Interceptor)

and for the partial sewer separation of wastewater and stormwater in the Christian Brook basin (by providing separate conveyance systems for wastewater and stormwater), as described on Pages 8-8, 8-10, 8-16 to 8-19, 10-30 to 10-34, 11-3, 11-4, and 11-7, Tables 8-3, 8-6 and 10-4, and Figures 8-2, 10-16, 11-1, 11-2, and 11-3 of the Revised LTCP and shown as Contract 15 in the Manchester Consent Decree Gantt Chart.

i. Upon the Effective Date of the Consent Decree, the City shall initiate design of this portion of the Christian Brook removal and sewer separation project.

ii. The City shall submit for review and comment by EPA and NHDES initial and final design plans and specifications prepared for construction of this sewer separation project and modification of the drainage system, including an engineering analysis that determines whether wastewater and/or stormwater pipes are to be constructed for the sewer, in accordance with New Hampshire Code of Administrative Rules Chapter Env-Wq 700. EPA and NHDES may provide comments on these initial and final design plans and specifications. The omission or delay of EPA and/or NHDES to provide comments shall not alter or affect the City's obligation to achieve Substantial Completion pursuant to subparagraph iv, below.

iii. Within two (2) years of initiation of design of this portion of the Christian Brook removal and sewer separation project in accordance with subparagraph i, above, the City shall submit for review and obtain Approval by NHDES of the final design construction plans and specifications for this sewer separation project and modification of the drainage system.

iv. Within three (3) years of Approval by NHDES of the final design of this portion of the Christian Brook removal and sewer separation project submitted pursuant to subparagraph iii, above, the City shall achieve Substantial Completion of this portion of the

Christian Brook removal and the sewer separation project in the Christian Brook Area in accordance with the plans and specifications submitted in accordance with subparagraph iii, above, as Approved by NHDES.

m. Christian Brook Removal and Christian Brook Area (including Pennacook Street) Sewer Separation Project – Christian Brook Laterals (shown as Contract 16 in the Manchester Consent Decree Gantt Chart and project limits as shown in Appendices C and D):

The City shall design and construct facilities necessary for the removal of Christian Brook from the Wastewater Collection System (by *inter alia* installing a new Christian Brook Interceptor) and for the partial sewer separation of wastewater and stormwater in the Christian Brook basin (by providing separate conveyance systems for wastewater and stormwater), as described on Pages 8-8, 8-10, 8-16 to 8-19, 10-30 to 10-34, 11-3, 11-4, and 11-7, Tables 8-3, 8-6 and 10-4, and Figures 8-2, 10-16, 11-1, 11-2, and 11-3 of the Revised LTCP and shown as Contract 16 in the Manchester Consent Decree Gantt Chart.

i. Within one (1) year of the Effective Date of the Consent Decree, the City shall initiate design of this portion of the Christian Brook removal and sewer separation project.

ii. The City shall submit for review and comment by EPA and NHDES initial and final design plans and specifications prepared for construction of this sewer separation project and modification of the drainage system, including an engineering analysis that determines whether wastewater and/or stormwater pipes are to be constructed for the sewer, in accordance with New Hampshire Code of Administrative Rules Chapter Env-Wq 700. EPA and NHDES may provide comments on these initial and final design plans and specifications.



The omission or delay of EPA and/or NHDES to provide comments shall not alter or affect the City's obligation to achieve Substantial Completion pursuant to subparagraph iv, below.

iii. Within two (2) years of initiation of design of this portion of the Christian Brook removal and sewer separation project in accordance with subparagraph i, above, the City shall submit for review and obtain Approval by NHDES of the final design construction plans and specifications for this sewer separation project and modification of the drainage system.

iv. Within three (3) years of Approval by NHDES of the final design of this portion of the Christian Brook removal and sewer separation project submitted pursuant to subparagraph iii, above, the City shall achieve Substantial Completion of this portion of the Christian Brook removal and the sewer separation project in the Christian Brook Area in accordance with the plans and specifications submitted in accordance with subparagraph iii, above, as Approved by NHDES.

**C. Wastewater Treatment Plant ("WWTP") Improvements and System Optimization**

13. Within three (3) years of the Effective Date of the Consent Decree, the City shall achieve Substantial Completion of WWTP improvements, described on Pages 7-7 to 7-9 of the Revised LTCP, Section 5.0 (Recommended Facility Upgrades and Improvements) of the WWTF-Facility Plan Report, and CDM Smith's Phase II CSO Consent Decree WWTP Flow Capacity letter dated October 11, 2019, and shown as Item 1 in the Manchester Consent Decree Gantt Chart. Such improvements include solids handling improvements designed to achieve compliance with the total phosphorus discharge effluent limitations contained in the Permit.

14. System Optimization with Real-Time Controls (shown as Contract 1 in the Manchester Consent Decree Gantt Chart):

a. Within two (2) years of the Effective Date of the Consent Decree, the City shall submit for review and Approval by EPA and NHDES a System Optimization with Real-Time Controls Study (“SO-RTC Study”), as shown as Contract 1 in the Manchester Consent Decree Gantt Chart. The SO-RTC Study shall identify operating measures that reduce CSO overflow volume and frequency from the existing system, provide some surcharging relief for the existing interceptor system, and maximize flow to the WWTP. The SO-RTC Study shall consider all projects described in Sections 7.2 to 7.4 and 11.2.2 of the Revised LTCP. The SO-RTC Study shall recognize all the work completed at the WWTP and throughout the Wastewater Collection System since 2010, particularly those projects that affect the plant’s hydraulic capacity.

b. Within three (3) years of the Effective Date of the Consent Decree, the City shall implement the SO-RTC Study, as Approved by EPA and NHDES, in accordance with the schedule set forth therein.

**D. Nine Minimum Controls**

15. The City shall ensure continuous compliance with the Permit’s Nine Minimum Controls requirements.

a. With respect to Nine Minimum Control No. 8 (public notification), in addition to complying with existing requirements, within one (1) year of the Effective Date of the Consent Decree, the City shall also install and maintain identification signs for all CSO outfalls and informational signs at public access locations. The identification signs for the CSO outfalls shall be located at or near the CSO outfall structures, as shown in Appendix A, and be

easily readable by the public from both the shore and instream locations. These signs shall be a minimum of two feet by two feet in size, shall be printed with white lettering against a green background, shall be made of durable weatherproof material, and shall contain the following language, at a minimum:

**WARNING  
CITY OF MANCHESTER  
DEPARTMENT OF PUBLIC WORKS  
WET WEATHER SEWAGE  
DISCHARGE OUTFALL # \_\_\_\_.  
Exposure to discharge of rainwater  
mixed with sewage may cause illness**

The informational signs at public access locations shall be located at the public access locations identified in Appendix E to advise the public of CSO discharges and potential public health impacts and to provide contact information and website links. These signs shall be posted in English and Spanish.

#### **E. Conditions and Limitations**

16. Interim CSO Discharge Effluent Limitations: The City shall achieve compliance with the Permit's *E. coli* effluent limitations on its CSO discharges in accordance with the schedule set forth in Paragraphs 9 to 14, above. In the interim, the City shall continue to monitor and report the results for *E. coli* in the manner and at the frequency identified in the Permit. This Paragraph does not constitute a waiver or a modification of the Permit. The Permit remains in full force and effect.

17. Interim WWTP Phosphorus Discharge Effluent Limitations: The City shall achieve compliance with the Permit's total phosphorus effluent limitations on its WWTP discharges within three (3) years of the Effective Date of the Consent Decree or after Substantial Completion of construction of WWTP improvements in accordance with Paragraph 13, above,

whichever is sooner. In the interim, the City shall continue to monitor and report the results for total phosphorus in the manner and at the frequency identified in the Permit. This Paragraph does not constitute a waiver or a modification of the Permit. The Permit remains in full force and effect.

18. WWTP Wet Weather CSO-Related Bypass - Current Conditions: Until the effective date of a permit that supersedes NPDES Permit No. NH0100447, issued on February 11, 2015, the City shall process as much flow as possible through the WWTP during wet weather events in accordance with the following requirements:

a. Prior to initiating a bypass of the WWTP secondary treatment process (“CSO-Related Bypass”), the flow through the secondary treatment facilities (aeration and final clarification) shall be maximized. The City shall not bypass the WWTP secondary treatment process unless the flow rate entering the WWTP exceeds the maximum secondary treatment flow capacity of at least 42 mgd. The City shall provide primary treatment and disinfection to the practical limit of the primary facilities (grit removal and primary sedimentation) of 72 mgd under normal operating conditions.

b. While a CSO-Related Bypass is occurring, the blended effluent shall achieve the effluent limitations in the Permit, consistent with Paragraph 17, above (Interim WWTP Phosphorus Discharge Effluent Limitations).

c. The City shall submit for review and Approval by EPA and NHDES an updated High Flow Management Plan (“HFMP”) within one (1) year of the Effective Date of the Consent Decree. The updated HFMP shall include: i) facility management procedures that provide the highest feasible level of CBOD<sub>5</sub>, TSS, and *E. coli* removal by the WWTP’s secondary treatment system while maximizing pollutant removal and disinfection efficiency for

flows that may bypass a portion of the WWTP's treatment process; and ii) a monitoring protocol that demonstrates the effectiveness of wet weather treatment operations by monitoring effluent receiving full secondary treatment, partially treated effluent bypassed around secondary treatment, and the blended effluent. The City shall implement the updated HFMP, as Approved by EPA and NHDES, in accordance with the schedule set forth therein.

**F. CSO Discharge Monitoring and Notification Program**

19. Within six (6) months after the Effective Date of the Consent Decree, the City shall submit for review and Approval by EPA and NHDES a CSO Discharge Monitoring and Notification Program ("CDMNP"), as shown as Item 18 in the Manchester Consent Decree Gantt Chart. The CDMNP shall include requiring the City to determine through measurement and estimation of all discharges from CSO outfalls following sound engineering practices, consistent with Paragraph 8 of this Consent Decree. This determination shall be through direct measurement (the use of continuous flow monitoring devices determined for each specific location that may include depth measurements over a primary device such as a weir, area/velocity measurements, pressure measurements, and/or other accepted industry measurements and calculation methods) for CSO outfalls 044, 031A, 050, 052, 047, and 046 (the cumulative CSO discharge volumes from these six CSO outfalls are estimated to be more than 99% of all of the City's total CSO discharge volumes), and through estimation by modeling (the use of a hydraulic modeling program such as EPA's Storm Water Management Model (SWMM), in-system depth measurement devices, and/or other appropriate estimation methods) in accordance with the Permit for the remaining CSO outfalls. The CDMNP shall require correlation of the CSO discharge monitoring data (both duration (hours) of discharge and volume) with precipitation data. The CDMNP shall include the means for the City's

dissemination of information to the public, including communicating initial, supplemental and annual notifications (see subparagraphs a, b, and c, below), as well as procedures for communicating with public health departments and any other potentially affected entities, including downstream communities, whose waters may be affected by discharges from the City's CSOs. Within six (6) months of Approval by EPA and NHDES of the CDMNP, the City shall begin implementation of the CDMNP as Approved by EPA and NHDES.

a. Initial Notification: Initial notification of a probable CSO activation at CSO outfalls 044, 031A, 050, 052, 047, and 046 shall be provided by the City to the public and any other potentially affected party as soon as practicable, but no later than, four (4) hours after the City has become aware, by monitoring, modeling or other means, that a CSO discharge has occurred. Notification may be made through electronic means such as posting to the City's publicly available website and reasonable efforts to provide other, direct notification. The initial notification shall include the following information:

- i. Date and time of probable CSO discharge; and
- ii. CSO outfall number and location.

b. Supplemental Notification: Supplemental notification for a CSO activation at CSO outfalls 044, 031A, 050, 052, 047, and 046 shall be provided by the City to the public and any other potentially affected party as soon as practicable, but no later than, twenty-four (24) hours (with the exception of volume of discharge; see subparagraph iv, below) after the City has become aware, by monitoring, modeling or other means, of the termination of any CSO discharge(s). Notification may be made through electronic means, such as posting to the City's publicly available website and reasonable efforts to provide other, direct notification. The supplemental notification shall include the following information:

- i. CSO outfall number and location;
- ii. Confirmation of CSO discharge;
- iii. Duration (Date and start time and stop time of the CSO discharge);

and

iv. Volume (gallons) of discharge (supplemental notification of the volume of discharge shall be provided no later than fourteen (14) Days after the City has become aware of the termination of any CSO discharge(s)) by monitoring, modeling or other means.

c. Annual Notification: By no later than March 15th, annual notification of the locations of CSOs, a summary of CSO activations and volumes, and status and progress of CSO abatement work shall be posted by the City to the City's publicly available website.

#### **G. Post-Construction Monitoring Program**

20. Within five (5) years of the Effective Date of this Consent Decree, the City shall submit for review and Approval by EPA and NHDES a Post-Construction Monitoring Program ("PCMP") (as shown as Item 19 in the Manchester Consent Decree Gantt Chart), developed in accordance with the CSO Control Policy and EPA's "CSO Post Construction Compliance Monitoring Guidance," EPA-833-K-11-001, May 2012, as amended. The PCMP shall include, but shall not be limited to, a monitoring protocol to assess the effectiveness of the CSO Control Measures constructed pursuant to this Consent Decree and the attainment of water quality standards, and the metering of all the City's active CSOs. The City shall implement the PCMP, as Approved by EPA and NHDES, in accordance with the schedule set forth therein, except that under no circumstances shall the City's obligation for post-construction monitoring on any construction project commence before Substantial Completion of such construction project.

21. The City shall submit for review and Approval by EPA and NHDES an Interim Post-Construction Monitoring Report following completion of each sewer separation project described in Paragraph 12, above, in accordance with the schedule set forth in the PCMP, as Approved by EPA and NHDES.

22. Within two (2) years of Approval by NHDES of the final design of the Revere Ave. Area sewer separation project submitted pursuant Paragraph 12(k)(iii), above, the City shall submit for review and Approval by EPA and NHDES a Post-Construction Monitoring Report. The Post-Construction Monitoring Report shall include the results of the PCMP, and shall identify the expected frequency of CSOs remaining after full implementation of the compliance requirements in Paragraphs 9 through 19, above, and characterize their impacts.

23. After receipt of the Post-Construction Monitoring Report, if EPA and NHDES determine that additional controls are necessary to achieve compliance with water quality standards, the City shall submit for Approval by EPA and NHDES a Supplemental CSO Control Plan within one (1) year of the determination by EPA and NHDES. The Supplemental CSO Control Plan shall include technical information as is necessary to adequately demonstrate that the proposed additional CSO Control Measures will achieve compliance with water quality standards. The City shall implement the Supplemental CSO Control Plan, as Approved by EPA and NHDES, in accordance with the schedule set forth therein.

## **VII. REPORTS ON COMPLIANCE**

24. Until otherwise directed in writing by EPA, the City shall submit by January 31 and July 31 of each year for review by EPA and NHDES Compliance Reports for the previous six-month period (July 1st through December 31st, and January 1st through June 30th) (“Reporting Period”) regarding its progress in implementing the provisions of this Consent



Decree, as shown as Item 2 in the Manchester Consent Decree Gantt Chart. Each Compliance Report shall at a minimum:

- a. Describe activities undertaken during the Reporting Period directed at achieving compliance with this Consent Decree;
- b. Identify all plans, reports, and other deliverables required by this Consent Decree that have been completed and submitted during the Reporting Period;
- c. Describe the expected activities to be taken during the next Reporting Period in order to achieve compliance with this Consent Decree;
- d. Identify any noncompliance with the requirements of this Consent Decree.

If any noncompliance is reported, the notification shall include the following information:

- i. A description of the noncompliance;
  - ii. A description of any actions taken or proposed by the City to comply with any lapsed requirements;
  - iii. A description of any factors that tend to explain or mitigate the noncompliance; and
  - iv. The date by which the City will perform the required action; and
- e. Provide a list of all Dry Weather Overflows, Unauthorized Discharges, and Unauthorized Releases occurring within the Reporting Period, including the date, location (described and mapped), actual or estimated frequency, duration, and volume of each Dry Weather Overflow, Unauthorized Discharge, and Unauthorized Release, as well as any corrective actions taken as a result of the Dry Weather Overflow, Unauthorized Discharge, and Unauthorized Release. The City may elect to provide this list annually by March 31 for the previous calendar year.

25. Whenever any violation of this Consent Decree or of any applicable permits or any other event affecting the City's performance under this Decree, or the operation of its Wastewater Collection System or WWTP, may pose an immediate threat to the public health or welfare or the environment, the City shall notify EPA and the State orally or by electronic or facsimile transmission as soon as possible, but no later than twenty-four (24) hours after the City first knew of the violation or event. This procedure is in addition to the requirements set forth in the preceding Paragraph.

26. The reporting requirements of this Consent Decree do not relieve the City of any reporting obligations required by the CWA or implementing regulations, or by any other federal, state, or local law, regulation, permit, or other requirement. EPA also reserves the right to seek information additional to that set forth in the above reporting requirements.

27. Any information provided pursuant to this Consent Decree may be used by the United States or the State in any proceeding to enforce the provisions of this Consent Decree and as otherwise permitted by law.

### **VIII. REVIEW AND APPROVAL OF SUBMISSIONS**

28. After review of any plan, schedule, report, or other item that is required to be submitted to EPA and NHDES for review and Approval by EPA and NHDES or Approval by NHDES pursuant to this Consent Decree, EPA and/or NHDES, as appropriate, shall in writing:

- (a) approve, in whole or in part, the submission;
- (b) approve, in whole or in part, the submission upon specified conditions;
- (c) modify, in whole or in part, the submission to cure the deficiencies;
- (d) disapprove, in whole or in part, the submission, directing that the City modify the submission; or
- (e) any combination of the above.

29. In the event of approval, approval upon conditions, and/or modification by EPA and/or NHDES pursuant to Paragraph 28(a), (b), or (c), the plan, schedule, report, or other item, or portion thereof, as approved, approved with conditions, and/or modified by EPA and/or NHDES shall be enforceable under this Consent Decree, and the City shall take all actions required to implement such plan, schedule, report, or other item, or portion thereof, in accordance with the approval, approval with conditions, and/or modification issued by EPA and/or NHDES.

30. In the event that EPA and/or NHDES modify the submission, or portion thereof, to cure the deficiencies pursuant to Paragraph 28(c), EPA and/or NHDES retain their rights to seek stipulated penalties for the City's submission of a deficient plan, schedule, report, or other item, or portion thereof, which shall constitute an unapprovable submission subject to stipulated penalties, as provided in Section IX (Stipulated Penalties).

31. Upon receipt of a written notice of disapproval pursuant to Paragraph 28(d), the City shall, within thirty (30) Days or such other time as the City and EPA and/or NHDES agree in writing, correct the deficiencies and resubmit the plan, schedule, report, or other item, or portion thereof, for approval. Any stipulated penalties applicable to the original submission shall accrue during the thirty (30)-Day period or other specified period, but shall not be payable unless the resubmission is untimely and/or disapproved as provided in Paragraph 28; provided that, if the original submission was disapproved by EPA and/or NHDES in whole, stipulated penalties applicable to the original submission shall be due and payable upon demand notwithstanding any subsequent resubmission.

32. Any resubmitted plan, schedule, report, or other item, or portion thereof, shall be subject to review and approval by EPA and/or NHDES, as provided under this Section. If the

City fails to resubmit a plan, schedule, report, or other item, or portion thereof after a disapproval, or if, upon resubmission, the plan, schedule, report, or other item, or portion thereof, is disapproved or modified by EPA and/or NHDES, the City shall be deemed to have failed to submit such plan, schedule, report, or other item, or portion thereof, timely and adequately, unless the City invokes the dispute resolution procedures set forth in Section XI (Dispute Resolution) and the City's position is upheld.

33. Notwithstanding the receipt of a notice of disapproval pursuant to Paragraph 28(d), the City shall proceed, at the direction of EPA and/or NHDES, to take any action required by any non-deficient portion of the submission. Implementation of any non-deficient portion of a submission shall not relieve the City of any liability for stipulated penalties under Section IX (Stipulated Penalties) for the deficient portions.

34. The failure by EPA or NHDES to timely review or approve a submission is not a violation of the Consent Decree, provided, however, that if such failure prevents the City from meeting one or more deadlines, the City may seek relief under Section X (Force Majeure).

## **IX. STIPULATED PENALTIES**

35. The City shall be liable for stipulated penalties to the United States and the State for violations of this Consent Decree, as set forth below, unless excused under Section X (Force Majeure). A violation includes failing to perform an obligation required by the terms of this Consent Decree, including any work plan or schedule approved under this Decree, according to all applicable requirements of this Consent Decree and within the specified time schedules or by the date(s) established by or approved under this Decree:

a. Reporting and Monitoring Requirements. For every Day that the City fails to timely submit a report required by Paragraph 24 of this Consent Decree, fails to timely meet

the requirements of Paragraphs 20 to 22 (Post-Construction Monitoring Program), or fails to provide the certification required by Paragraph 61, the City shall pay a stipulated penalty as follows:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$500	1st through 10th Day
\$1,250	11th through 20th Day
\$2,500	21st Day and beyond.

b. Compliance Requirements. For every Day that the City fails to timely meet the requirements of Section VI (Compliance Requirements) of this Consent Decree, including but not limited to, submitting an approvable plan, schedule, report, or other item, other than a report required by Paragraph 24, or fails to implement compliance requirements in a plan, schedule, report, or other item Approved by EPA and/or NHDES, the City shall pay a stipulated penalty as follows:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$1,000	1st through 10th Day
\$2,500	11th through 20th Day
\$5,000	21st Day and beyond.

c. Interim Conditions. For every Day that the City fails to comply with the interim conditions under Paragraphs 16 to 18 of this Consent Decree, the City shall pay a stipulated penalty as follows:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$500	1st through 10th Day
\$1,250	11th through 20th Day
\$2,500	21st Day and beyond.

36. Stipulated penalties 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 each Day

until such performance is satisfactorily completed or until the violation ceases. Stipulated penalties shall accrue simultaneously for separate violations of this Consent Decree.

37. The City shall pay stipulated penalties to the United States and/or the State within forty-five (45) Days of a written demand by both Plaintiffs jointly or by either Plaintiff. The Plaintiff making a demand for payment of a stipulated penalty solely shall simultaneously send a copy of the demand to the other Plaintiff. Stipulated penalties shall be paid in accordance with the following instructions:

a. The City shall pay stipulated penalties owing to the United States by FedWire Electronic Funds Transfer (“EFT”) to the U.S. Department of Justice account, in accordance with instructions provided to the City by the Financial Litigation Unit (“FLU”) of the United States Attorney’s Office for the District of New Hampshire after the Effective Date. The payment instructions provided by the FLU will include a Consolidated Debt Collection System (“CDCS”) number, which the City shall use to identify all payments required to be made in accordance with this Consent Decree. The FLU will provide the payment instructions to:

Kevin A. Sheppard, Public Works Director  
City of Manchester  
475 Valley Street  
Manchester, NH 03103  
ksheppard@manchesternh.gov

on behalf of the City. The City may change the individual to receive payment instructions on its behalf by providing written notice of such change to the United States in accordance with Section XIII (Form of Notice). At the time of payment, the City shall send notice that payment has been made: (i) to EPA via email at [cinwd\\_acctsreceivable@epa.gov](mailto:cinwd_acctsreceivable@epa.gov) or via regular mail at EPA Cincinnati Finance Office, 26 W. Martin Luther King Drive, Cincinnati, Ohio 45268; (ii) to the United States Department of Justice and the United States Attorney via email or regular mail

in accordance with Section XIII; and (iii) to EPA in accordance with Section XIII. Such notice shall state that the payment is for stipulated penalties owed pursuant to the Consent Decree in *United States of America and State of New Hampshire v. City of Manchester, New Hampshire*, and shall reference the civil action number, CDCS Number and DOJ case number 90-5-1-1-11620, and shall state for which violation(s) the penalties are being paid.

b. The City shall pay stipulated penalties owing to the State by certified or cashier's check payable to the "Treasurer, State of New Hampshire," and such payment shall be delivered to the Department of Justice, Environmental Protection Bureau, 33 Capitol Street, Concord, New Hampshire 03301, Attn: Bureau Chief. Payments shall be accompanied by a reference to this Consent Decree, and the transmittal letter shall state that the payment is for stipulated penalties and shall state for which violation(s) the penalties are being paid.

c. If the City fails to pay stipulated penalties according to the terms of this Consent Decree, the City shall be liable for interest on such penalties, as provided for in 28 U.S.C. § 1961 ("Interest"), 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 failure of the City to pay any stipulated penalties.

38. Either the United States or the State, or both, may elect to seek stipulated penalties under this Section. Where both elect to seek stipulated penalties for any violation of this Consent Decree, any such penalties determined to be owing shall be paid fifty percent (50%) to the United States and fifty percent (50%) to the State. Where one Plaintiff elects to seek stipulated penalties, and the other Plaintiff does not join in the demand within fifteen (15) Days of its receipt, timely joins in the demand as to only some of the violations in question, or timely joins in the demand but subsequently elects to waive stipulated penalties as to any or all of the

violations in question, the entire amount of the stipulated penalties determined to be owing for each violation as to which only one Plaintiff has sought stipulated penalties shall be payable to the Plaintiff making the demand. Where one Plaintiff reduces the stipulated penalty otherwise payable for any violation, the difference shall be payable to the other Plaintiff. In no case shall the determination by one Plaintiff not to seek stipulated penalties preclude the other Plaintiff from seeking stipulated penalties, as otherwise provided for by, and consistent with, the terms of this Consent Decree.

39. Either Plaintiff may in the unreviewable exercise of its discretion, reduce or waive stipulated penalties otherwise due it under this Consent Decree.

40. a. Stipulated penalties shall continue to accrue as provided in Paragraph 36, during any dispute resolution, but need not be paid until the dispute is resolved by agreement of the Parties or a decision of EPA that is not appealed to the Court. The City shall pay accrued penalties determined to be owed, together with Interest, to the United States and the State within forty-five (45) Days of the effective date of the agreement or the receipt of the EPA's decision.

b. If the dispute is appealed to the Court and the United States and/or the State prevail in whole or in part, the City shall pay all accrued penalties determined by the Court to be owed, together with Interest, within sixty (60) Days of receiving the Court's decision or order, except as provided in subparagraph c, below. Notwithstanding Paragraph 36 of this Consent Decree, during such judicial review by the Court, stipulated penalties shall not accrue with respect to the disputed violation during the period, if any, beginning on the 60th Day after the Court's receipt of the motion provided for by Paragraph 52 until the date that the Court issues a final decision regarding such dispute.



c. If any Party appeals the District Court's decision, the City shall pay all accrued penalties determined to be owed, together with Interest, within forty-five (45) Days of receiving the final appellate court decision.

41. The payment of penalties and interest, if any, shall not alter in any way the City's obligation to complete the performance of the requirements of this Consent Decree.

42. Subject to the provisions of Section XIV (Effect of Settlement/Reservation of Rights), the United States expressly reserves the right to seek any other relief it deems appropriate for the City's violation of this Decree or applicable law, including but not limited to an action against the City for statutory penalties, additional injunctive relief, mitigation or offset measures, and/or contempt. However, the amount of any statutory penalty assessed for a violation of this Consent Decree shall be reduced by an amount equal to the amount of any stipulated penalty assessed and paid pursuant to this Consent Decree.

#### **X. FORCE MAJEURE**

43. "Force Majeure," for purposes of this Consent Decree, is defined as any event arising from causes beyond the control of the City or of any entity controlled by the City, or of any of the City's contractors and consultants, that delays or prevents the timely performance of any obligation under this Consent Decree despite the City's best efforts to fulfill the obligation. The requirement that the City exercise "best efforts to fulfill the obligation" includes using best efforts to anticipate any potential Force Majeure event and best efforts to address the effects of any such event (a) as it is occurring and (b) after it has occurred to prevent or minimize any resulting delay to the greatest extent possible. "Force Majeure" does not include the City's financial inability to perform any obligation under this Consent Decree but can include other events if they meet the requirements of this Decree. And under this Decree the COVID-19

pandemic, though already under way, can be a “Force Majeure” if it otherwise meets the requirements of this Decree.

44. If any event occurs which may delay or prevent the performance of any obligation under this Consent Decree, whether or not caused by a Force Majeure event, the City shall notify EPA and NHDES within seventy-two (72) hours after the City first knows or should have known that the event might cause a delay. Within ten (10) Days thereafter, the City shall submit for review and Approval by EPA and NHDES, at the addresses specified in Section XIII (Form of Notice), a written explanation of the cause(s) of any actual or expected delay or noncompliance, the anticipated duration of any delay, the measure(s) taken and to be taken by the City to prevent or minimize the delay, a proposed schedule for the implementation of such measures, the City’s rationale for attributing such delay to a Force Majeure event if it intends to assert such a claim, and a statement as to whether, in the opinion of the City, such event may cause or contribute to an endangerment to public health, welfare, or the environment. The City shall include with any notice all available documentation supporting the claim that the delay was attributable to a Force Majeure. Notwithstanding the foregoing, the City shall notify EPA and NHDES orally within twenty-four (24) hours of becoming aware of any event that presents an imminent threat to the public health or welfare or the environment and provide written notice to EPA within seventy-two (72) hours of discovery of such event. The City shall be deemed to know of any circumstances of which the City, any entity controlled by the City, or any of the City’s agents knew or should have known. Failure to provide timely and complete notice in accordance with this Paragraph shall constitute a waiver of any claim of Force Majeure with respect to the event in question.

45. If EPA and NHDES agree that a delay or anticipated delay is attributable to Force Majeure, the time for performance of the obligations under this Consent Decree that are affected by the Force Majeure event shall be extended by EPA, after a reasonable opportunity for review and comment by NHDES, for such time as is necessary to complete those obligations. An extension of the time for performance of the obligations affected by the Force Majeure event shall not, of itself, extend the time for performance of any other obligation. EPA will notify the City in writing of the length of the extension, if any, for performance of the obligations affected by the Force Majeure event.

46. If EPA, after a reasonable opportunity for review and comment by NHDES, does not agree the delay or anticipated delay is attributable to Force Majeure, or on the number of Days of noncompliance caused by such event, EPA will notify the City in writing of its decision. The City may then elect, within fifteen (15) Days of EPA's notice, to initiate the dispute resolution process set forth in Section XI (Dispute Resolution). In any such dispute resolution proceeding, the City shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a Force Majeure event, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that "best efforts" were exercised to avoid and mitigate the effects of the delay, and that the City complied with the requirements of Paragraphs 43 and 44, above. If the City carries this burden, the delay at issue shall be deemed not to be a violation by the City of the affected obligation(s) of this Consent Decree.

47. Failure of the City to obtain any State or federal grants or loans shall not be considered a Force Majeure event under this Consent Decree.

## **XI. DISPUTE RESOLUTION**

48. Unless otherwise expressly provided for in this Consent Decree, the dispute resolution procedures set forth in this Section shall be the exclusive mechanism to resolve disputes arising under or with respect to this Consent Decree. The City's failure to seek resolution of a dispute under this Section shall preclude the City from raising any such undisputed issue as a defense to an action by the United States or the State to enforce any obligation of the City arising under this Decree.

49. Informal Dispute Resolution. Any dispute subject to dispute resolution under this Consent Decree shall first be the subject of informal negotiations. The dispute shall be considered to have arisen when the City sends the United States and the State a written Notice of Dispute. Such Notice of Dispute shall state clearly the matter in dispute and shall be sent within fifteen (15) Days after receipt of a notice of disapproval, approval with conditions or modification, a Force Majeure determination by EPA, or a written demand for payment of stipulated penalties. If the City fails to give such notice, it shall be deemed to have waived any right to invoke dispute resolution regarding such dispute, and the position advanced by the United States, in consultation with the State, shall be considered binding. The period of informal negotiations shall not exceed thirty (30) Days from the date the dispute arises, unless that period is modified by written agreement between the Parties. If the Parties cannot resolve a dispute by informal negotiations, then the position advanced by the United States, in consultation with the State, shall be considered binding unless, within fifteen (15) Days after the conclusion of the informal negotiation period, unless that period is modified by written agreement of the Parties, the City invokes formal dispute resolution procedures as set forth below.

50. Formal Dispute Resolution. The City shall invoke formal dispute resolution procedures, within the time period provided in the preceding Paragraph, by serving on the United States and the State a written Statement of Position regarding the matter in dispute. The City's Statement of Position shall include, but need not be limited to, any factual data, analysis, or opinion supporting the City's position and any supporting documentation relied upon by the City, and may specify the City's position as to whether formal dispute resolution should proceed under Paragraph 54(a) or 54(b).

51. The United States, in consultation with the State, shall serve its Statement of Position within forty-five (45) Days of receipt of the City's Statement of Position. The United States' Statement of Position shall include, but need not be limited to, any factual data, analysis, or opinion supporting that position and any supporting documentation relied upon by the United States, in consultation with the State. The Director of the Enforcement and Compliance Assurance Division, EPA Region 1, will issue a final decision resolving the matter in dispute. The decision of the Director of the Enforcement and Compliance Assurance Division shall be binding on the City, subject only to the right to seek judicial review, in accordance with the following Paragraph. An administrative record of the dispute shall be maintained by EPA and shall contain all Statements of Position, including supporting documentation, submitted by the Parties, and the decision of the Director of the Enforcement and Compliance Assurance Division. Where appropriate, EPA may allow submission of supplemental statement of position by the Parties.

52. The City may seek judicial review of the dispute by filing with the Court and serving on the United States and the State, in accordance with Section XIII (Form of Notice), a motion requesting judicial resolution of the dispute. The motion must be filed within fifteen (15)

Days of receipt of the EPA's decision pursuant to the preceding Paragraph. The motion shall contain a written statement of the City's position on the matter in dispute, including any supporting factual data, analysis, opinion, or documentation, and shall set forth the relief requested and any schedule within which the dispute must be resolved for orderly implementation of the Consent Decree.

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

54. Standard of Review.

a. Disputes Concerning Matters Accorded Record Review. Except as otherwise provided in this Consent Decree, in any dispute brought under Paragraph 50 pertaining to the adequacy or appropriateness of plans, procedures to implement plans, schedules, or any other items requiring Approval by EPA and NHDES or Approval by NHDES under this Consent Decree; the adequacy of the performance of work undertaken pursuant to this Consent Decree; and all other disputes that are accorded review on the administrative record under applicable principles of administrative law, the City shall have the burden of demonstrating, based upon the administrative record, that the United States' position is arbitrary and capricious or otherwise not in accordance with law.

b. Other Disputes. Except as otherwise provided in this Consent Decree, in any other dispute brought under Paragraph 50, the City shall bear the burden of demonstrating that its position complies with and better furthers the objectives of this Consent Decree.

55. The invocation of dispute resolution procedures under this Section shall not, by itself, extend, postpone, or affect in any way any obligation of the City under this Consent Decree, unless and until final resolution of the dispute so provides. Except as set forth in Paragraph 40(b), stipulated penalties with respect to the disputed matter shall continue to accrue from the first Day of noncompliance, but payment shall be stayed pending resolution of the dispute as provided in Paragraph 40. If the City does not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section IX (Stipulated Penalties).

## **XII. RIGHT OF ENTRY/INFORMATION COLLECTION AND RETENTION**

56. EPA and NHDES and their contractors, consultants, and attorneys shall have authority to enter any property and/or facility owned and/or controlled by the City, at all reasonable times, upon proper identification, for the purposes of: (a) monitoring the progress of activity required by this Consent Decree; (b) verifying any data or information submitted to EPA and NHDES under this Consent Decree; (c) assessing the City's compliance with this Consent Decree; (d) obtaining samples and, upon request, splits of any samples taken by the City or its contractors or consultants; and (e) obtaining documentary evidence, including photographs and similar data. Upon request, EPA and NHDES shall provide the City splits of any samples taken by EPA or NHDES. Upon request, EPA and NHDES shall provide the City with copies of photographs taken by EPA or NHDES. This requirement is in addition to, and does not limit, the authority of EPA or NHDES pursuant to the CWA, the New Hampshire Act, or any other provision of federal or State law or regulation.

57. Until five (5) years after the termination of this Consent Decree, the City shall retain, and shall instruct its 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 agents' possession or control, or that come into its or its agents' possession or control, and that relate in any manner to the City's performance of its obligations under this Consent Decree. 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 City shall provide copies of any documents, records, or other information required to be maintained under this Paragraph.

58. At the conclusion of the information-retention period provided in the preceding Paragraph, the City shall notify the United States and the State at least ninety (90) Days prior to the destruction of any documents, records, or other information subject to the requirements of the preceding Paragraph and, upon request by the United States or the State, the City shall deliver any such documents, records, or other information to EPA or NHDES. The City may assert that certain documents, records, or other information is privileged under the attorney-client privilege or any other privilege recognized by federal law. If the City asserts such a privilege, it shall provide the following: (1) the title of the document, record, or information; (2) the date of the document, record, or information; (3) the name and title of each author of the document, record, or information; (4) the name and title of each addressee and recipient; (5) a description of the subject of the document, record, or information; and (6) the privilege asserted by the City. However, no documents, records, data, reports or other information created or generated pursuant to the requirements of this Consent Decree shall be withheld on grounds of privilege.

59. This Consent Decree in no way limits or affects any right of entry and inspection, or any right to obtain information, held by the United States or the State pursuant to applicable federal or State laws, regulations, or permits, nor does it limit or affect any duty or obligation of



the City to maintain documents, records, or other information imposed by applicable federal or State laws, regulations, or permits.

### **XIII. FORM OF NOTICE**

60. Unless otherwise specified herein, whenever notifications, submissions, or communications are required by this Consent Decree, they shall be made in writing to the following respective addresses. Any Party may, by written notice to the other Parties, change its designated notice recipient, address, or means of notice (including the substitution of electronic notice via email instead of notice via mail). Notices submitted pursuant to this Section shall be deemed submitted upon mailing, unless otherwise provided in this Consent Decree or by written agreement of the Parties.

As to the United States Department of Justice:

Chief, Environmental Enforcement Section  
Environment & Natural Resources Division  
United States Department of Justice  
4CON USPS Mail  
P.O. Box 7611  
Washington, DC 20044  
DJ # 90-5-1-1-11620

As to the United States Attorney:

United States Attorney  
U.S. Attorney's Office  
53 Pleasant Street, 4<sup>th</sup> Floor  
Concord, NH 03301

As to EPA:

Solanch S. Pastrana-Del Valle  
Environmental Engineer  
Water Compliance Section, ECAD  
U.S. Environmental Protection Agency, Region 1  
5 Post Office Square – Suite 100  
Mail Code 04-4

Boston, MA 02109-3912  
pastrana-del-valle.solanch@epa.gov

Man Chak Ng  
Senior Enforcement Counsel  
Office of Regional Counsel  
U.S. Environmental Protection Agency, Region 1  
5 Post Office Square – Suite 100  
Mail Code 04-2  
Boston, MA 02109-3912  
ng.manchak@epa.gov

The City shall provide all submissions and notices required to be submitted to EPA (including report appendices) via electronic mail no later than the due date(s) specified in this Consent Decree, in addition to providing a hard copy in accordance with the terms of this Paragraph. The City shall provide complete copies to both Solanch S. Pastrana-Del Valle and Man Chak Ng of all other submissions and notices required to be made by the City to EPA pursuant to this Decree; except that with respect to copies of reports, schedules, plans, and other items required to be submitted to Man Chak Ng pursuant to Sections VI (Compliance Requirements) and VII (Reports on Compliance), only copies of the transmittal letters need be provided.

As to NHDES:

Tracy L. Wood, P.E., Administrator  
Wastewater Engineering Bureau  
New Hampshire Department of Environmental Services  
P.O. Box 95 - 29 Hazen Drive  
Concord, NH 03302-0095  
Tracy.Wood@des.nh.gov

As to the New Hampshire Attorney General's Office:

Bureau Chief, Environmental Protection Bureau  
New Hampshire Attorney General's Office  
33 Capitol Street  
Concord, New Hampshire 03301

The City shall provide all submissions and notices required to be submitted to NHDES (including report appendices) via electronic mail no later than the due date(s) specified in this Consent Decree, in addition to providing a hard copy in accordance with the terms of this Paragraph. The City shall provide complete copies to both Tracy Wood and the New Hampshire Attorney General's Office of all other submissions and notices required to be made by the City to NHDES pursuant to this Decree; except that with respect to copies of reports, schedules, plans, and other items required to be submitted to the New Hampshire Attorney General's Office pursuant to Sections VI (Compliance Requirements) and VII (Reports on Compliance), only copies of the transmittal letters need be provided.

As to the City of Manchester:

City of Manchester  
Department of Public Works  
Environmental Protection Division  
Manchester Wastewater Treatment Plant  
300 Winston Street  
Manchester, NH 03103

Emily Gray Rice, Esq.  
City Solicitor  
One City Hall Plaza  
Manchester, NH 03101

Gregory H. Smith, Esq.  
McLane Middleton, P.A.  
11 South Main Street, Suite 500  
Concord, NH 03301

As to the City of Manchester by electronic mail:

Frederick J. McNeill, P.E., Chief Engineer  
FMcNeill@manchesternh.gov

Kevin Sheppard, Director, Department of Public Works  
KSheppard@manchesternh.gov

Emily Gray Rice, City Solicitor  
erice@manchesternh.gov

Gregory H. Smith, McLane Middleton, P.A.  
greg.smith@mclane.com

The City shall make available on a publicly accessible website electronic copies of all submissions required to be submitted by this Consent Decree, which have been Approved by EPA and/or NHDES, and all Compliance Reports.

61. All written notices, reports or any other submissions required of the City by this Consent Decree shall contain the following certification by a duly authorized representative of the City:

“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 gather and evaluate 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 requirement does not apply to emergency or similar notifications where compliance would be impractical.

#### **XIV. EFFECT OF SETTLEMENT/RESERVATION OF RIGHTS**

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

63. The United States and the State reserve all legal and equitable remedies available to enforce the provisions of this Consent Decree. 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 implementing regulations, or under other federal or State laws, regulations, or permit

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

64. In any subsequent administrative or judicial proceeding initiated by the United States or the State for injunctive relief, civil penalties, other appropriate relief relating to the City's violations, the City shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States or the State in the subsequent proceeding were or should have been brought in the instant case, except with respect to claims that have been specifically resolved pursuant to Paragraph 62.

65. This Consent Decree is not a permit, or a modification of any permit, under any federal, State, or local laws or regulations. The City is responsible for achieving and maintaining complete compliance with all applicable federal, State, and local laws, regulations, and permits; and the City's compliance with this Consent Decree shall be no defense to any action commenced pursuant to any such laws, regulations, or permits, except as set forth herein. The United States and the State do not, by their consent to the entry of this Consent Decree, warrant or aver in any manner that the City's compliance with any aspect of this Consent Decree will result in compliance with provisions of the CWA or with any other provisions of federal, State, or local laws, regulations, or permits. This Consent Decree shall not be construed to constitute EPA and/or NHDES approval of any equipment or technology installed by the City under the terms of this Consent Decree.

66. This Consent Decree does not resolve any claims for contingent liability under Section 309(e) of the Clean Water Act, 33 U.S.C. § 1319(e). The United States specifically reserves any such claims against the State.

67. This Consent Decree does not limit or affect the rights of the City or the United States or the State against any third parties, not party to this Consent Decree, nor does it limit the rights of third parties, not party to this Consent Decree, against the City, except as otherwise provided by law.

68. 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.

#### **XV. COSTS**

69. The Parties shall 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 attorneys' fees) incurred in any action necessary to collect any stipulated penalties due but not paid by the City. In no event shall the United States or the State be responsible for any expenses, costs or attorney's fees incurred by the City.

#### **XVI. EFFECTIVE DATE**

70. The Effective Date of this Consent Decree shall be the date upon which this Consent Decree is entered by the Court or a motion to enter the Consent Decree is granted, whichever occurs first, as recorded on the Court's docket; provided, however, that the City hereby agrees that it shall be bound to perform duties scheduled to occur prior to the Effective Date. In the event the United States withdraws or withholds consent to this Decree before entry, or the Court declines to enter the Consent Decree, then the preceding requirement to perform duties scheduled to occur before the Effective Date shall terminate.

## **XVII. RETENTION OF JURISDICTION**

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

## **XVIII. MODIFICATION**

72. The terms of this Consent Decree, including any attached appendices and any schedule specified in or Approved by EPA and NHDES or Approved by NHDES pursuant to the Consent Decree, may be modified only by a subsequent written agreement signed by all the Parties, except that, without otherwise altering the obligations of this Consent Decree, EPA and/or NHDES may approve submissions upon specified conditions or modify submissions. The City's request for modification may be based, among other things, on: (a) an integrated plan developed in accordance with EPA's "Integrated Municipal Stormwater and Wastewater Planning Approach Framework," issued June 5, 2012; or (b) a current Financial Capability Assessment (per EPA's "Financial Capability Assessment Framework for Municipal Clean Water Act Requirements," issued November 24, 2014). If either the Integrated Municipal Stormwater and Wastewater Planning Approach Framework or the Financial Capability Assessment Framework is modified after the Effective Date, the City's request for modification shall be based on the version of the Framework(s) that is in effect on the day that the request for modification is submitted to the Plaintiffs.

73. Any material modification to the terms of this Consent Decree shall be effective only upon approval of the Court. Any schedule that is included in this Consent Decree may be extended, modified or revised upon written agreement of the Parties, without approval of the

Court, unless any such modification effects a material change to the terms of this Consent Decree or materially affects the ability to meet the objectives of this Decree.

74. Any disputes concerning modification of this Decree shall be resolved pursuant to Section XI (Dispute Resolution), provided, however, that, instead of the burden of proof provided by Paragraph 54, the Party seeking the modification bears the burden of demonstrating that it is entitled to the requested modification in accordance with Federal Rule of Civil Procedure 60(b).

### **XIX. FUNDING**

75. Performance of the terms of this Consent Decree by the City is not conditioned on the receipt of any federal or State grant funds or loans. In addition, performance is not excused by the lack of federal or State grant funds or loans.

### **XX. TERMINATION**

76. After the City has completed the requirements of Section VI (Compliance Requirements) and Section VII (Reports on Compliance), has thereafter maintained continuous satisfactory compliance with this Consent Decree and the City's Permit for a period of two (2) years, and has paid all accrued stipulated penalties and all accrued Interest thereon, as required by Section IX (Stipulated Penalties), the City may serve upon the United States and the State a Request for Termination, stating that the City has satisfied those requirements, together with all necessary supporting documentation.

77. Following receipt by the United States and the State of the City's Request for Termination, the Parties shall confer informally concerning the Request for Termination and any disagreement that the Parties may have as to whether the City has satisfied the requirements for termination of this Consent Decree. If the United States, after consultation with the State, agrees



that this Decree may be terminated, the Parties shall submit, for the Court's approval, a joint stipulation terminating the Decree.

78. If the United States does not agree that the Decree may be terminated, the City may invoke dispute resolution under Section XI (Dispute Resolution). However, the City shall not seek dispute resolution of any dispute regarding termination until sixty (60) Days after service of its Request for Termination.

#### **XXI. WAIVER OF SERVICE**

79. The City hereby agrees to accept service of process by mail with respect to all matters arising under or relating to this Consent Decree and to waive the formal service requirements set forth in Rules 4 and 5 of the Federal Rules of Civil Procedure and any applicable Local Rules of this Court including, but not limited to, service of a summons.

#### **XXII. PUBLIC COMMENT**

80. 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 received disclose facts or considerations which indicate that this Consent Decree is inappropriate, improper or inadequate. The City consents to the 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 Decree, unless the United States has notified the City in writing that it no longer supports entry of this Decree.

### **XXIII. SIGNATORIES**

81. Each undersigned representative of the City, the Department of Justice, and the State 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.

### **XXIV. INTEGRATION**

82. This Consent Decree may be signed in counterparts, and its validity shall not be challenged on that basis.

83. This Consent Decree constitutes the final, complete, and exclusive agreement and understanding among the Parties with respect to the settlement embodied in the Decree and supersedes all prior agreements and understandings, whether oral or written, concerning the settlement embodied herein. Other than submissions that are subsequently submitted and Approved by EPA and NHDES or Approved by NHDES pursuant to this Decree, the Parties acknowledge that there are no representations, agreements, or understandings relating to the settlement other than those expressly contained in this Consent Decree.

### **XXV. FINAL JUDGMENT**

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

## XXVI. APPENDICES

85. The following appendices are attached to and part of this Consent Decree:

- a. “Appendix A” is the Map of the City’s CSO Outfalls.
- b. “Appendix B” is the Manchester Consent Decree Gantt Chart.
- c. “Appendix C” is the Map of the Cemetery Brook Drainage Area and Christian Brook Drainage Area Projects.
- d. “Appendix D” is the Map of the Extent of the Christian Brook Removal and Christian Brook Area Sewer Separation Project.
- e. “Appendix E” is the Map of the City’s Public Access Locations.

Judgment is hereby entered in accordance with the foregoing Consent Decree this 28th day of September, 2020.

  
UNITED STATES DISTRICT JUDGE  
District of New Hampshire

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of *United States of America and State of New Hampshire v. City of Manchester, New Hampshire*.

For Plaintiff UNITED STATES OF AMERICA

JEFFREY B. CLARK  
Assistant Attorney General  
Environment and Natural Resources Division  
United States Department of Justice

/s/ Peter Kautsky  
PETER KAUTSKY  
Trial Attorney  
Environmental Enforcement Section  
Environment and Natural Resources Division  
United States Department of Justice  
4CON USPS Mail  
P.O. Box 7611  
Washington, DC 20044  
(202) 514-3907  
peter.kautsky@usdoj.gov

July 6, 2020  
Date

SCOTT W. MURRAY  
United States Attorney  
District of New Hampshire

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of *United States of America and State of New Hampshire v. City of Manchester, New Hampshire*.

For the UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

/s/ Susan Parker Bodine

SUSAN PARKER BODINE

Assistant Administrator

Office of Enforcement and Compliance Assurance

United States Environmental Protection Agency

1200 Pennsylvania Avenue, N.W.

Washington, DC 20460

June 26, 2020

Date

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of *United States of America and State of New Hampshire v. City of Manchester, New Hampshire*.

For the UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

/s/ Carl F. Dierker  
CARL F. DIERKER  
Regional Counsel  
U.S. Environmental Protection Agency, Region 1  
5 Post Office Square, Suite 100  
Boston, MA 02109-3912

June 25, 2020  
Date

/s/ Man Chak Ng  
MAN CHAK NG  
Senior Enforcement Counsel  
Office of Regional Counsel  
U.S. Environmental Protection Agency, Region 1  
5 Post Office Square, Suite 100  
Boston, MA 02109-3912  
ng.manchak@epa.gov

June 25, 2020  
Date

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of *United States of America and State of New Hampshire v. City of Manchester, New Hampshire*.

For Plaintiff-Intervenor STATE OF NEW HAMPSHIRE

State of New Hampshire  
Department of Environmental Services

By its attorney,

Office of the New Hampshire Attorney General

/s/ K. Allen Brooks

K. ALLEN BROOKS, NH Bar No. 16424  
Senior Assistant Attorney General  
Chief, Environmental Protection Bureau  
Office of the Attorney General  
Concord, NH 03301  
(603) 271-3679  
allen.brooks@doj.nh.gov

June 29, 2020

Date

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of *United States of America and State of New Hampshire v. City of Manchester, New Hampshire*.

For Defendant CITY OF MANCHESTER

/s/ Joyce Craig

The Honorable Joyce Craig

Mayor

City of Manchester

Mayor's Office

One City Hall Plaza

Manchester, NH 03101

June 19, 2020

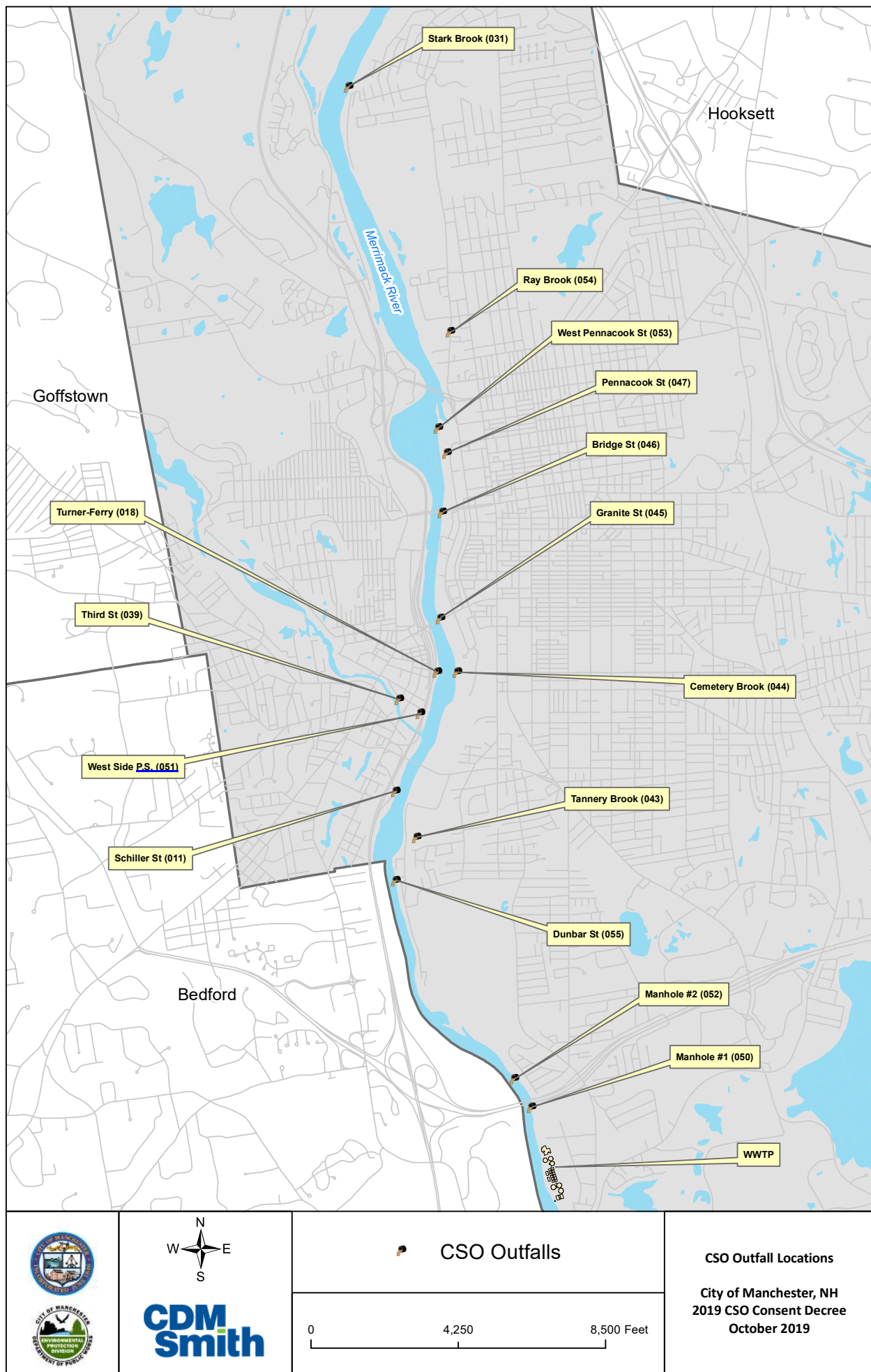
Date





## APPENDIX A

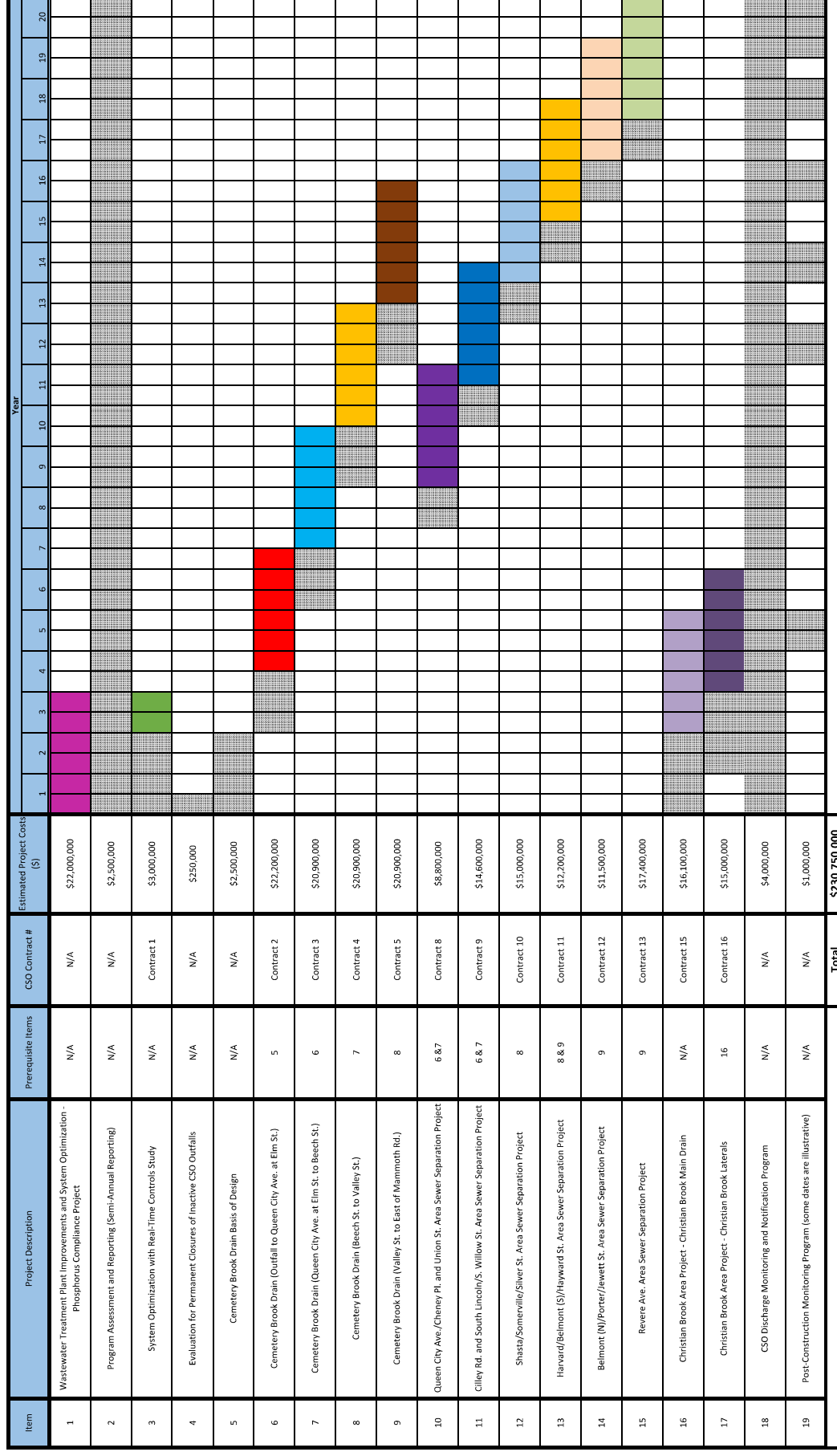
### Map of the City's CSO Outfalls



## APPENDIX B



### Manchester Consent Decree Gantt Chart

**Manchester, NH**  
**Manchester Consent Decree Gantt Chart**



Note: Gantt Chart milestones and deadlines are premised upon a review and approval period for NHDES that is no longer than 60 days, provided, however, that the City shall provide submissions no less than 60 days before deadlines requiring the City to obtain approval by NHDES of such submissions.

All costs in June 2019 Dollars.

 Study/Design/Report Activity
  Construction Activity

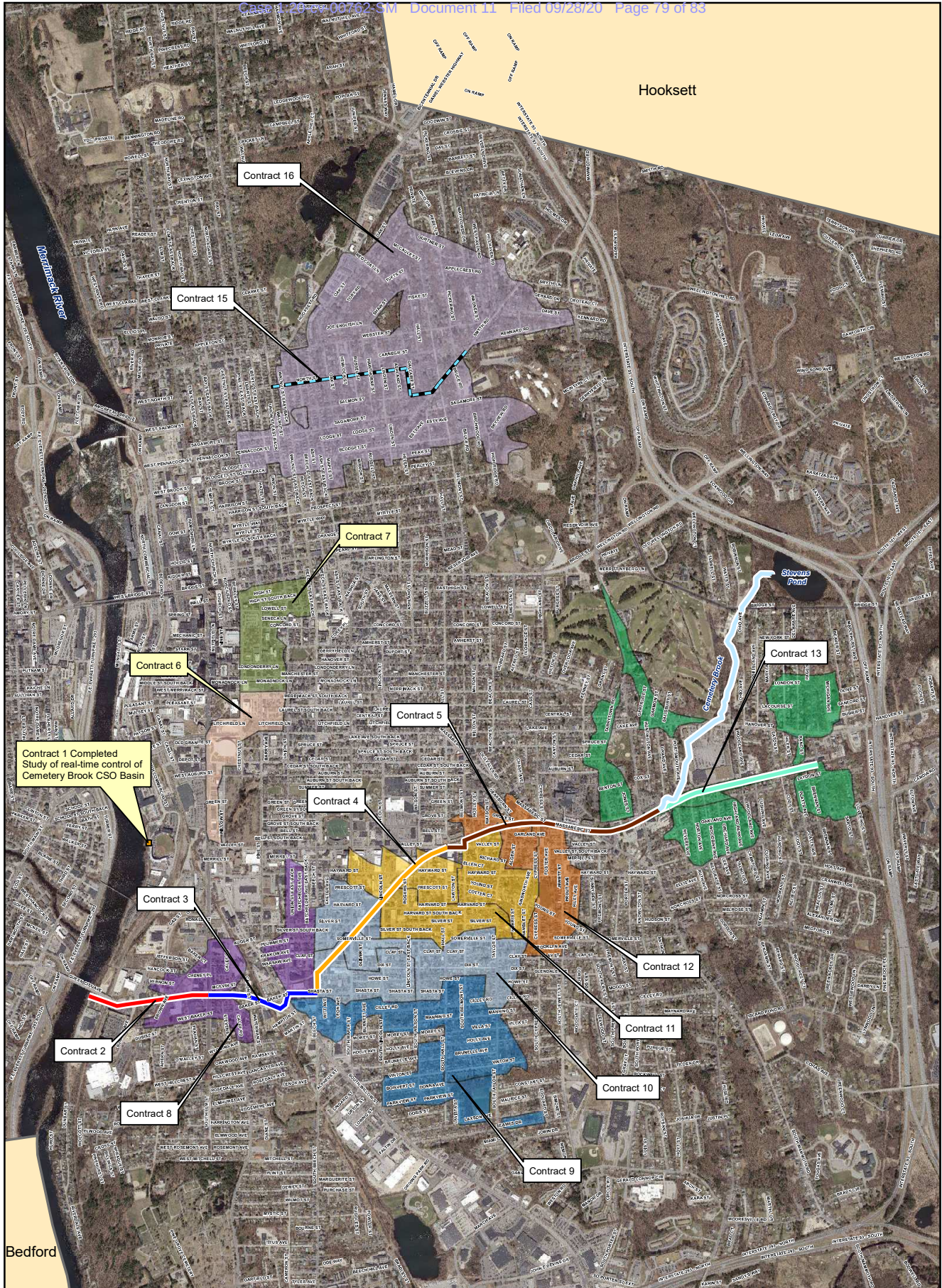
## Projects Completed

Project Description	Prerequisite Items	CSO Contract #	Project Costs (\$)
Increase WWTP Primary and Secondary Treatment to 42 MGD and WWTP Primary Treatment and Disinfection for Flows between 42 MGD and 72 MGD.	N/A	N/A	\$22,000,000
Chestnut St Separation (formerly North Chestnut St./Elm St. South)	N/A	Contract 6	\$6,450,000
North Chestnut St Separation (formerly North Chestnut St./Elm St. South)	Contract 6	Contract 7	\$11,845,000
		<b>TOTAL</b>	<b>\$40,295,000</b>

## APPENDIX C

Map of the Cemetery Brook Drainage Area and Christian Brook Drainage Area Projects





**Cemetery Brook and Christian Brook Drainage Culvert Legend**

- Contract 2
- Contract 3
- Contract 4
- Contract 5
- Contract 6
- Contract 7
- Contract 8
- Contract 9
- Contract 10
- Contract 11
- Contract 12
- Contract 13
- Contract 15
- Contract 16

**Sewer Separation Areas Legend**

- |   |  |  |
|---|--|--|
| <span style="background-color: #f9cb9c; border: 1px solid black; padding: 2px;"> </span> Contract 6 (Completed) | <span style="background-color: #a6c9ec; border: 1px solid black; padding: 2px;"> </span> Contract 9  | <span style="background-color: #f4cccc; border: 1px solid black; padding: 2px;"> </span> Contract 12 |
| <span style="background-color: #c6e0b4; border: 1px solid black; padding: 2px;"> </span> Contract 7 (Completed) | <span style="background-color: #cce5ff; border: 1px solid black; padding: 2px;"> </span> Contract 10 | <span style="background-color: #d9ead3; border: 1px solid black; padding: 2px;"> </span> Contract 13 |
| <span style="background-color: #f4cccc; border: 1px solid black; padding: 2px;"> </span> Contract 8             | <span style="background-color: #fff2cc; border: 1px solid black; padding: 2px;"> </span> Contract 11 | <span style="background-color: #f4cccc; border: 1px solid black; padding: 2px;"> </span> Contract 16 |



0 0.1 0.2 0.4 Miles

**City of Manchester, New Hampshire**  
**Revised Long-Term CSO Control Plan**  
 November 26, 2019

**Phase II CSO Program**  
**Draft Contract Areas**



Note: The exact pipe routing and limits for each project will be further defined in the Basis of Design Report and Final Designs



## APPENDIX D

Map of the Extent of the Christian Brook Removal and  
Christian Brook Area Sewer Separation Project

**EXTENT OF PROPOSED CHRISTIAN BROOK STORM DRAIN**



## APPENDIX E

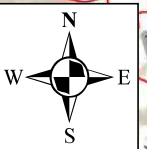
### Map of the City's Public Access Locations



# Access Sites Merrimack River Map 3: Manchester & Bedford

2012

1 0.5 0 1 Mile



★ Boat Access

● Beach

▲ Other

■ Dam

— Active Rail Line

— Inactive Rail Line

9027. Access site number  
in public access database

9027.  
Amoskeag Canoe Launch  
Cartop  
(PSNH)

9029. Arms Park  
Passive  
(City - Manchester)

9028. Stark Landing  
Trailer (High Water)  
(City - Manchester)

9030. Bass Island Park  
Boat Launch  
(City - Manchester)

0006. Bedford Scenic Easement  
Boat Ramp  
(State - DOT)

0011. NH Heritage Trail  
Walk-in/Fishing  
(Town - Bedford)