

CITY OF SEATTLE
ORDINANCE 127061
COUNCIL BILL 120810

AN ORDINANCE relating to Seattle Public Utilities; authorizing the General Manager and Chief Executive Officer of Seattle Public Utilities to submit for approval to the U.S. District Court for the Western District of Washington a First Material Modification to the 2013 Consent Decree entered into by the United States Environmental Protection Agency, the State of Washington Department of Ecology, and The City of Seattle in Civil Action No. 2:13-cv-00678, and to fulfill the obligations set forth therein.

WHEREAS, The City of Seattle (“City”) owns, maintains, and operates a combined wastewater collection system that collects residential and industrial wastewaters, as well as stormwater, as part of Seattle Public Utilities’ drainage and wastewater system; and

WHEREAS, in 2010 the City was issued Permit No. WA0031682 under the National Pollutant Discharge Elimination System (“NPDES Permit”), which specifies the conditions under which the City is authorized to discharge combined sewer overflows from more than 80 permitted combined sewer overflow (“CSO”) outfalls; and

WHEREAS, the United States of America, on behalf of the United States Environmental Protection Agency (“EPA”), the State of Washington, by and through the State of Washington Department of Ecology (“Ecology”), and The City of Seattle are parties to the Consent Decree entered by the United States District Court for the Western District of Washington on July 3, 2013 (Civil Action No. 2:13-cv-00678) (“CSO Consent Decree”); and

WHEREAS, on August 6, 2019, the City formally requested to begin conversations with EPA and Ecology, describing its interests in modifying the CSO Consent Decree; and

1 WHEREAS, the City, EPA, and Ecology have negotiated a First Material Modification to
2 Consent Decree (“First Material Modification”) in good faith, and the First Material
3 Modification is fair, reasonable, and in the public interest; and

4 WHEREAS, the First Material Modification requires the City to implement key parts of its CSO
5 reduction program by December 31, 2037; and

6 WHEREAS, the First Material Modification calls for coordination and optimization between the
7 City and King County on their current and future wastewater system operation; and

8 WHEREAS, the City desires to fulfill its obligations under the First Material Modification;

9 NOW, THEREFORE,

10 **BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:**

11 Section 1. The General Manager and Chief Executive Officer (“GM/CEO”) of Seattle
12 Public Utilities is authorized to submit for approval to the U.S. District Court for the Western
13 District of Washington the First Material Modification to Consent Decree, substantially in the
14 form of Attachment 1 to this ordinance, and to fulfill the City’s obligations set forth therein.

15 Section 2. It is possible that before submitting the First Material Modification to Consent
16 Decree to the court, amendments that are not material changes to Attachment 1 to this ordinance
17 may be agreed by the United States Environmental Protection Agency, the United States
18 Department of Justice, the State of Washington Department of Ecology, and The City of Seattle.
19 If all parties agree to such amended language, then the GM/CEO of Seattle Public Utilities is
20 authorized to submit the First Material Modification to Consent Decree with the amended
21 language and to implement it upon approval by the court.

1 Section 3. This ordinance shall take effect as provided by Seattle Municipal Code
2 Sections 1.04.020 and 1.04.070.

3 Passed by the City Council the 30th day of July, 2024,
4 and signed by me in open session in authentication of its passage this 30th day of
5 July, 2024.

6 


7 President _____ of the City Council

8
9 Approved / returned unsigned / vetoed this 6th day of August, 2024.

10 

11 Bruce A. Harrell, Mayor

12 Filed by me this 6th day of August, 2024.

13 

14 Scheereen Dedman, City Clerk

15 (Seal)

16 Attachments:
17 Attachment 1 – First Material Modification to Consent Decree
18

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

UNITED STATES OF AMERICA)	
)	
and)	
)	
THE STATE OF WASHINGTON,)	
)	
Plaintiffs,)	
)	Civil Action No. 2:13-cv-678
v.)	
)	
THE CITY OF SEATTLE, WASHINGTON)	
)	
Defendant.)	

FIRST MATERIAL MODIFICATION TO CONSENT DECREE

WHEREAS, the United States of America (“United States”), the State of Washington (“the State”), and the City of Seattle, Washington (“the City”) are Parties to the Consent Decree entered by this Court on July 3, 2013 (ECF No. 6);

WHEREAS, on May 29, 2015, the City submitted its Final Long Term Control Plan (“LTCP”) specifying, among other things, all combined sewer overflow (“CSO”) Control Measures that the City must implement, and an implementation schedule, in accordance with the Consent Decree to ensure compliance with the Clean Water Act and State regulations;

WHEREAS, on August 26, 2015, the U.S. Environmental Protection Agency (“EPA”) and the Washington Department of Ecology (“Ecology”) approved the Final LTCP;

WHEREAS, the City has completed construction of all Early Action Projects required by the 2013 Consent Decree and construction of LTCP-required control projects affecting more than 28 Outfalls to date. The City has also commenced construction on the largest CSO control project

required by the 2013 Consent Decree. The City reports that this project, when complete, combined with those already completed, will reduce CSO discharge frequency by 88% and CSO discharge volume by 89% from the amounts contemplated when the Parties entered into the Consent Decree;

WHEREAS, on August 6, 2019, the City formally requested that EPA and Ecology agree to modify the Consent Decree because of unexpected increases in CSO volumes requiring control due, in part, to climate change and variability of location, duration, and intensity of weather events;

WHEREAS, EPA and Ecology agreed to entertain specific modification requests from the City, and the Parties began informal negotiations to clarify the scope and content of potential modifications;

WHEREAS, EPA and Ecology requested additional supporting documentation on March 15, 2022, which the City provided on December 7, 2022;

WHEREAS, on December 7, 2022, the City submitted its specific modification requests and supporting documentation. The City sought Material Modifications to the descriptions, control measures, and critical milestone dates of several CSO control projects due to significantly greater CSO volumes requiring control than the Parties anticipated when they entered into the Consent Decree. The modifications clarify certain terms and allow for adaptive management of planned CSO control projects due in part, to the impact of climate change and variability of weather events, and in particular, the need to manage larger volumes of stormwater run-off than anticipated;

WHEREAS, the Parties resumed negotiations to reach agreement on modifications to the Consent Decree based on the City's request;

WHEREAS, the Parties entered into a Non-Material Modification to the Consent Decree on July 10, 2023 not filed with the Court, authorizing the City to provide notifications,

submissions, or other communications required by the Consent Decree by email or mail, with a preference for email;

WHEREAS, the Parties have agreed, pursuant to Paragraph 104 of the Consent Decree, to the material modifications to the Consent Decree detailed herein;

WHEREAS, this First Material Modification made herein constitutes a material change to the Consent Decree, requiring Court approval under Paragraph 104 of the Consent Decree; and

WHEREAS, the Parties recognize, and the Court by entering this First Material Modification finds, that this Modification has been negotiated by the Parties in good faith and that this Modification is fair, reasonable, and in the public interest.

NOW THEREFORE, with the consent of the Parties, IT IS HEREBY ADJUDGED, ORDERED, AND DECREED as follows:

1. Except as specifically modified herein, all provisions of the Consent Decree entered by this Court on July 3, 2013 (ECF No. 6) shall remain unchanged and in full force and effect.
2. The deadline to obtain Construction Completion of all CSO Control Measures shall be modified to December 31, 2037.
3. Paragraph 9(x) shall be replaced with the following:

“Performance Criteria” or “performance criteria” shall mean achieving Controlled status for each CSO Outfall.

4. Paragraph 9(ee) shall be replaced with the following:

ee) “Twenty-Year Moving Average” or “20-Year Moving Average” shall mean the average number of untreated discharge events per CSO Outfall over a twenty-year period and is the averaging period used to assess compliance with the State’s CSO “control” standard of “greatest reasonable reduction” defined in WAC 173-245-020(22). The Twenty-Year Moving Average will be calculated at least annually and reported in the City’s Annual Report. The number of discharge events per year shall be based on representative monitoring records. For years where monitored data do not exist (e.g., during CSO control project design) or are not representative (e.g., due to the completion of CSO reduction projects; non-capital modifications; operational adjustments), the number of discharge events per year shall use the predicted discharge frequency as calculated through modeling. The model for each CSO Outfall shall be established by the LTCP or approved engineering report for CSO control project design and be based on historical rainfall data, hydraulic information (including climate change projections), and the control project design expected efficacy.

5. The following definition shall be added as new Paragraph 9(hh):

hh) “Optimization” shall mean the application of adjustable controls, operational improvements, or capacity modifications to achieve improved flow management with limited capital modifications to the system. Examples include but are not limited to: installing or adjusting controls for gates or pump stations; using additional monitoring locations to refine control settings; modifying weir elevations; and adding conveyance capacity to resolve a localized capacity limitation. The primary objective is to maximize the use of available storage and conveyance capacities more rapidly and effectively than typical capital projects.

6. The following definition shall be added as new Paragraph 9(ii):

ii) “Programmatic CSO Control Measure” shall mean the distributed application of CSO Control Measures that the City can scale over time in a CSO Basin. Examples include but are not limited to: Green Infrastructure; infiltration and inflow reduction measures such as mainline or side sewer replacement, repair, or lining and downspout disconnection; stormwater control measures; and separation. Programmatic CSO Control Measures may be located on public or private property and may result from approaches such as capital improvement, redevelopment, or incentives.

7. The following definition shall be added as new Paragraph 9(jj):

jj) “Completion of Bidding” shall mean the City has (1) appropriately allocated funds for a specific CSO Control Measure (or portion thereto); (2) accepted and awarded the bid for construction of the specific CSO Control Measure; (3) issued a

notice to proceed with construction that remains in effect for the specific CSO Control Measure.

8. The following definition shall be added as a new Paragraph (kk):

kk) “Control Volume” shall mean the volume of combined sewage determined through modeling that a CSO control project or combination of projects must reduce, contain, or treat to ensure a CSO Outfall is Controlled.

9. Paragraph 11 shall be replaced with the following:

11. The City shall document the control status of CSO Outfalls that are subject to control by CSO Control Measures after two complete wet seasons (each spanning the period October 1 – April 30) following Construction Completion of each CSO Control Measure. The first complete wet season shall begin October 1 after Construction Completion. The City shall report whether the CSO is Controlled in the next Annual Report submitted pursuant to Section VIII. If the CSO Outfall is not Controlled within this timeframe, the City shall submit to EPA and the State for their review and approval a Supplemental Compliance Plan as set forth in Paragraph 18 below. This Supplemental Compliance Plan shall be submitted by January 30 of the year following the year in which the second wet season concludes.

10. The title of Section V.B shall be replaced with the following:

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

11. Paragraph 12 shall be replaced with the following:

12. In accordance with the schedules in Appendix B, Appendix G, and Section V.B. of this Consent Decree, the City shall complete an update of its Long Term Control Plan (“LTCP”) as set forth in Appendix C. No later than December 31, 2026, the City shall submit an update to the LTCP (the “LTCP Update”) for review and approval (in accordance with the review procedures detailed within Section VI) by EPA and Ecology, that proposes which Control Measures will be selected that satisfy the applicable Control Volume and meet the applicable critical milestones for each CSO control project identified in Appendix G.

12. The first sentence of Paragraph 13 shall be replaced with the following:

EPA and Ecology shall approve or decline to approve with written comments the LTCP Update and any updates to the plan.

13. Paragraph 14 shall be replaced with the following:

14. LTCP Update. The LTCP Update shall specify (a) all CSO Control Measures that the City must implement to ensure compliance with the provisions of the CWA and its implementing regulations that apply to CSOs, any applicable

state law and regulations that apply to CSOs, those portions of the City's NPDES Permit that apply to CSOs, and EPA's CSO Control Policy; (b) all Control Volumes developed for each CSO Control Measure; and (c) a schedule of critical milestones that is no less stringent than that set forth in Appendix G, including, at a minimum, the dates for submission of draft and final engineering reports and draft and final plans and specifications, Completion of Bidding, Construction Start, Construction Completion, and achievement of Controlled status, for each CSO Control Measure. The LTCP Update may include proposed modifications to the approved integrated plan and any Supplemental Compliance Plans, necessary to comply with this Consent Decree, provided that any such modifications are in accordance with Section XIX of this Consent Decree. The schedule in the LTCP Update shall achieve Construction Completion of all CSO Control Measures as soon as possible, but in no event later than December 31, 2037, unless this deadline is extended pursuant to Section XI (Force Majeure), Paragraph 20(c), or Paragraph 23(c). Nothing in this Decree affects the City's obligation to amend its LTCP as required, and to the extent allowed, by the NPDES Permit.

14. Paragraph 15 shall be replaced with the following:

15. The City shall implement the CSO Control Measures in accordance with the descriptions, Control Volume, and critical milestones for each CSO Control Measure as set forth in Appendix G. The City shall design and operate all CSO Control Measures in accordance with sound engineering practices and to achieve Performance Criteria. With the exception of Force Majeure, a delay in the bidding process of the CSO Control Measures shall not extend the date for Construction Completion.

15. Paragraph 18 shall be modified to add the following to the end of the paragraph:

CSO Outfall Corrective Actions Report(s) submitted in accordance with NPDES Waste Discharge Permit No. WA0031682 shall satisfy the requirements for Supplemental Compliance Plan described in this Paragraph.

16. Paragraph 19 shall be replaced with the following:

19. Proposed Modifications to Critical Milestones, Control Volumes, and CSO Control Measures: The City may request modifications of the critical milestones, Control Volumes, or CSO Control Measures in accordance with this Paragraph.

a) Modifications to Critical Milestones. In addition to a modification pursuant to Paragraph 23, the City may request a modification of the critical milestones set forth in Appendix G for the sole purpose of revising the priority and sequencing of CSO Control Measures if the City demonstrates that the requested modification (1) reflects good engineering practice; (2) is required to coordinate with King County's CSO infrastructure projects; (3) is necessary to attain cost effective and technically sound CSO Control Measures; and (4) will not change, modify, or extend in any way the City's

final Construction Completion of December 31, 2037 as provided in Paragraph 14. Any request by the City for modification of critical milestones pursuant to this subparagraph (a) shall be made in writing to EPA and the State, and include all documentation necessary to support the request for modification, including all information relevant to the four criteria set forth above. The City shall provide such additional information requested by the United States or the State as is necessary to assist in evaluating the City's modification request.

b) Control Volumes. Control Volumes listed within Appendix G shall be enforceable requirements of this Consent Decree provided that Seattle's engineering report submitted for the relevant Outfall (submitted in accordance with WAC 173-240-060 or Appendix C, Section C.5.a) demonstrates that the Control Volume for the associated CSO Control Measure will ensure the relevant Outfall is Controlled. Alternatively, the City may propose a different Control Volume for the associated CSO Control Measure in accordance with subparagraph (c) of this Paragraph.

c) Modifications to Control Volumes and CSO Control Measures. The City may propose a revision to Control Volumes and/or CSO Control Measures listed in Appendix G by submitting a proposal to EPA and Ecology for review and approval (in accordance with the review procedures detailed within Section VI) by no later than the date of submission of the Engineering Report for that CSO control project. Each proposal for revised and/or alternative Control Volumes and/or CSO Control Measures pursuant to this subparagraph (c) shall be made in writing to EPA and the State, and include all documentation necessary to support the request for modification, including all information relevant to the five criteria set forth below. The City shall provide such additional information requested by the United States or the State as is necessary to assist in evaluating the City's modification request. Any such proposal shall also include:

i) Detailed project information, such as the size and length of new sewer lines, sewer infrastructure rehabilitation, inflow source reduction or storage capacity; the volume of storage, or scope of sewer separation activities; and the anticipated discharge volume reduction;

ii) An implementation schedule for completion of the revised and/or alternative CSO Control Measure, or for the CSO Control Measure with revised and/or alternative Control Volume, by the same Construction Completion date for the CSO control project set forth in Appendix G;

iii) A demonstration that the revised and/or alternative Control Volume or CSO Control Measure will meet or exceed the Performance Criteria;

iv) A description of the public engagement process concerning the revised and/or alternative Control Volume or CSO Control Measure; and

v) A demonstration that the proposed revision of or change in Control Volume or CSO Control Measure will not cause any adverse impacts to sensitive water bodies or beneficial uses of affected waters, or any disproportionate impact on any one or more geographic areas.

d) EPA and State approval of proposed revised and/or alternative Design Criteria or CSO Control Measures consistent with subparagraph (c) above shall be considered a non-material modification for the purposes of Section XIX of this Consent Decree; provided, however, that, if EPA and the State approve a change to the type of CSO Control Measure that is not already included as an option for that CSO control project in Appendix G (e.g., using treatment instead of storage when treatment is not listed as an option in Appendix G), this shall be considered a material modification and shall not be effective until it is approved by the Court in accordance with Paragraph 104 of this Consent Decree. Any such proposed material modification of this Consent Decree shall, furthermore, be subject to public notice and comment pursuant to 28 C.F.R. § 50.7. The United States and the State reserve their rights to withdraw or withhold their consent to any such proposed modification of this Consent Decree if public comments received disclose facts or considerations that indicate that the modification would be inappropriate, improper, or inadequate.

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

17. In Paragraph 33, the period for the City, in coordination with King County, to review the Joint Plan shall be modified from every three years to every five years. Furthermore, Paragraph 33 shall be modified to add the following to the end of the paragraph:

The City and King County shall engage in a Coordinated Optimization Evaluation (“COE”) as part of the next update of the Joint Plan. The COE is a significant effort that will identify and evaluate optimization opportunities that reduce CSOs by taking advantage of potential capacities through improving system-wide or basin specific controls and/or by installing new minor system components. The COE will also inform development of the County’s and City’s LTCP Update and project engineering report.

18. Paragraph 43(a) shall add the following as new item (x) in the list of the items to be included in the City’s Annual Report:

(x) the Twenty-Year Moving Average for each CSO Outfall, as required by Paragraph 9(ee).

19. Paragraph 117 shall be modified to include the following two descriptions for appendices:

“Appendix F” is the Joint Operations and System Optimization Plan and Coordinated Optimization Evaluation Between the City of Seattle and King County.

“Appendix G” is the CSO Control Measures, Control Volumes, and Critical Milestones.

20. The “Status” column in Appendix A shall be changed to “2012 Status.” The following language shall be added to the footnote to “2012 Status”:

Outfall status (Controlled or not Controlled) is reported annually in the City’s CSO Annual Report.

21. Appendix B shall be replaced with the following:

APPENDIX B: Schedule for LTCP Implementation

DELIVERABLE	DUE DATE
Submit Draft LTCP	May 30, 2014 [Completed]
Submit Financial Analysis	December 31, 2014 [Completed]

Submit CSO Alternative Analysis	December 31, 2014 [Completed]
Submit LTCP Implementation Schedule	December 31, 2014 [Completed]
Submit Final LTCP and PCMP for approval	May 30, 2015 [Completed]
Submit Draft LTCP Update	December 31, 2026
Construction Completion of all CSO Control Measures in the approved LTCP Update	December 31, 2037
Complete Post-Construction Monitoring for all CSO Outfalls	December 31, 2040
Submit Final Post-Construction Monitoring Report for all CSO Outfalls	April 15, 2041

22. Appendix C, Section C.5.a. shall be replaced with the following:

C. Long Term Control Plan

...

5. Assessment of CSO Control Measures:

...

- a. Programmatic CSO Control Measures: The City may utilize Programmatic CSO Control Measures as appropriate to reduce or replace gray CSO Control Measures included in the LTCP, provided that any Programmatic CSO Control Measures proposed, together with gray measures proposed, provide substantially the same or greater level of control as alternative gray CSO Control Measures alone. If the City relies on other entities to implement Programmatic CSO Control Measures, the City must have agreements in place to ensure proper operation and maintenance of the technologies.
 - i. For Programmatic CSO Control Measures submitted as part of the LTCP, consistent with the second footnote to Appendix G of this Consent Decree for proposals to use Programmatic CSO Control Measures to reduce or replace gray CSO Control Measures, the City shall submit an engineering report to EPA and Ecology for approval subject to Section VI of this Consent Decree. The engineering report shall at a minimum include the following for each program:
 - 1. Data on location, sizing, design, program participation, and the performance levels expected to be achieved with the implementation of the program, utilizing the information and models that the City used in developing the LTCP, as well as any monitoring information used in formulating the proposal, along with an assessment of the long term effectiveness and performance expected to be achieved with implementation of the program;
 - 2. A description of the work required to implement the program and a schedule for completion of this work that includes a proposed rate of implementation of the program that is consistent with this Consent

Decree, its Appendices, and the deadline of December 31, 2037 for Construction Completion of all CSO Control Measures, unless this deadline is extended pursuant to Section XI (Force Majeure), Paragraph 20(c), or Paragraph 23(c) of this Consent Decree;

3. If applicable, a description of the proposed ownership and access agreements, and where the City relies on other entities to implement the program, the City must explain the agreements necessary to ensure proper operation and maintenance of assets, as well as how these agreements will be enforced;
 4. A description of any post-construction monitoring and modeling to be performed to determine whether the Performance Criteria will be met upon completion and implementation of the program; and
 5. An alternative gray CSO Control Measure to be implemented if the program is unsuccessful. The proposal shall include a description of the proposed gray CSO Control Measure, as well as a schedule for completion and implementation of the project that is consistent with this Consent Decree, its Appendices, and the deadline of December 31, 2037 for Construction Completion of all CSO Control Measures, unless this deadline is extended pursuant to Section XI (Force Majeure), Paragraph 20(c), or Paragraph 23(c) of this Consent Decree.
- ii. Upon review of the City's Programmatic CSO Control Measure project proposals, EPA and Ecology will comment, approve, disapprove, or approve in part, the proposal. The City shall implement each Programmatic CSO Control Measure project approved by EPA and Ecology, in accordance with the provisions and schedule in the approved proposal.

23. Appendix C, Section D shall be replaced with the following:

D. LTCP Update

The City will update the approved 2015 LTCP as required by Appendix B. The update must identify changes necessary to bring the LTCP into compliance with this Consent Decree. The LTCP Update will include:

1. An updated Participation Program that provides opportunity for participation by the public and the Plaintiffs;
2. Evaluation of a range of CSO Control Measures, including Optimization, optimizing King County's and the City's interdependent combined sewer systems, and/or Programmatic CSO Control Measures; and
3. An implementation schedule that will achieve construction completion of all CSO Control Measures no later than December 31, 2037, and the critical milestones identified in Appendix G.

24. The following section shall be added as new Appendix C, Section E:

E. Post-Construction Monitoring Program

1. After two complete wet seasons (each spanning the period October 1 – April 30) following Construction Completion of each CSO Control Measure, the City shall document that the associated CSO Outfall has been Controlled. The first complete wet season shall begin October 1 after Construction Completion.
2. The City shall implement the requirements in the conditionally approved Post-Construction Monitoring Plan, dated May 29, 2015, as modified by all approved updates and amendments. The City shall update or amend the conditionally approved Post-Construction Monitoring Plan as necessary to account for changes to Critical Milestones since May 29, 2015, provided that any update or amendment that would modify a requirement of this Consent Decree shall be subject to the Modification provisions of Section XIX of this Consent Decree.

25. Appendix F shall be replaced with the following:

APPENDIX F: Joint Operations and System Optimization Plan and Coordinated Optimization Evaluation Between the City of Seattle and King County

- A. Paragraph 1’s references to the preparation of the Joint Operations and System Optimization Plan shall be in the past tense, such that the fourth through sixth sentences of Paragraph 1 shall read:

The City worked with King County in jointly preparing a Joint Operations and System Optimization Plan (“Joint Plan”) for the City’s Wastewater Collection System and those interdependent portions of King County’s regional wastewater conveyance and treatment system that are hydraulically connected to the City’s system. The result of this effort has been development of a Joint Plan that is consistent with both entities’ operational objectives, ensures the optimal level of coordination and information sharing is maintained, and optimizes system and joint operations between both entities. The Joint Plan describes a procedure for operating their existing systems and includes a process for incorporating the Joint Plan into the design of new capital projects for the combined systems.

- B. A new Paragraph 2 shall be added as follows:

The City and the County continue to work together to ensure both systems are utilized to their full potential without adversely affecting the other. Prior work includes installing real time data sharing between facilities, wet season preparedness meetings, gate optimizations, and a live shared overflow tracking website. These

efforts are in part a result of the commitments made by each agency in the Joint Plan.

- C. The first sentence of what will now be Paragraph 3 shall read: The Joint Plan shall continue to include, but not be limited to, the following items:
- D. Item 3(k) is changed to reflect that updates the Joint Plan must be made every five years instead of every three years.
- E. A new Paragraph 4 shall be added as follows:

4. The next update to the Joint Plan will be submitted to EPA and the State by March 1, 2027. The Update will include the results of the Coordinated Optimization Evaluation, which began in 2023, and any optimization actions implemented as of March 1, 2027. The Coordinated Optimization Evaluation will include the following elements:

- a. Opportunities to strategically remove stormwater and infiltration and inflow from the County’s and City’s collection systems;
- b. Opportunities to optimize the use of available capacity to maximize use of existing collection system transport, storage, and treatment infrastructure for wastewater flows, including wet weather flows;
- c. Opportunities for coordinated operation of the County and City’s combined systems, including the potential use of real time controls that can react and/or anticipate wet weather conditions and assessing controls for greater capacity through operational changes and minor system improvements; and
- d. Definition of planning parameters for future Long Term Control Plan Updates and project engineering report.

26. The following language shall be added as new Appendix G:

APPENDIX G: CSO Control Measures, Control Volume, and Critical Milestones

CSO Control Project and Outfall Number^{1,2}	CSO Control Measure(s)	Control Volume	Critical Milestones^{3,4}
Ship Canal Water Quality Project (147/ 151/ 152/ 174)	Joint City-County Storage Tunnel	147: 2.9 MG 151: 1.8 MG 152: 5.8 MG 174: 1.6 MG	• Construction Completion by December 31, 2027

CSO Control Project and Outfall Number ^{1,2}	CSO Control Measure(s)	Control Volume	Critical Milestones ^{3,4}
Central Waterfront (71)	Installation of additional piping to provide interconnection	<0.1 MG	<ul style="list-style-type: none"> • Construction Completion by December 31, 2024
Vine St. (69)	Joint City-County Project <i>and/or</i> Optimization <i>and/or</i> Programmatic CSO Control Measure <i>and/or</i> Storage	0.2 MG	<ul style="list-style-type: none"> • Submission of Engineering Report by June 30, 2025 • Completion of Bidding by May 30, 2028 • Construction Completion by December 31, 2031
Duwamish Area (99/ 107/ 111)	Joint City-County Project <i>and/or</i> Optimization <i>and/or</i> Programmatic CSO Control Measure <i>and/or</i> Storage	99: 0.4 MG 107: <0.1 MG 111: 0.1 MG	<ul style="list-style-type: none"> • Submission of Engineering Report by December 31, 2026 • Completion of Bidding by July 31, 2029 • Construction Completion by December 31, 2034
University Area (13/ 15/ 18)	Joint City-County Project <i>and/or</i> Optimization <i>and/or</i> Programmatic CSO Control Measure <i>and/or</i> Storage	13: 1.0 MG 15: <0.1 MG 18: 0.5 MG	<ul style="list-style-type: none"> • Submission of Engineering Report by December 31, 2029 • Completion of Bidding by December 31, 2032 • Construction Completion by December 31, 2037

CSO Control Project and Outfall Number ^{1,2}	CSO Control Measure(s)	Control Volume	Critical Milestones ^{3,4}
Montlake Area (28/ 30/ 31/ 32/ 34/ 138/ 139/ 140)	Joint City-County Project <i>and/or</i> Optimization <i>and/or</i> Programmatic CSO Control Measure <i>and/or</i> Storage	28: <0.1 MG 30: <0.1 MG 31: 0.4 MG 32: <0.1 MG 34: <0.1 MG 138: 0.2 MG 139: 0.1 MG 140: 0.1 MG	<ul style="list-style-type: none"> • Submission of Engineering Report by December 31, 2029 • Completion of Bidding by December 31, 2032 • Construction Completion by December 31, 2037
All remaining Outfalls, unless controlled	Optimization <i>and/or</i> Programmatic CSO Control Measure <i>and/or</i> Storage	38: 0.1 MG 40: 0.4 MG 41: 0.4 MG 42: 0.1 MG 43: 0.5 MG 44: <0.1 MG 47: 0.5 MG 49: 0.7 MG 68: <0.1 MG 95: <0.1 MG 165: <0.1 MG 168: 1.5 MG 169: 1.0 MG 171: 0.5 MG	<ul style="list-style-type: none"> • Submission of Engineering Report by December 31, 2029 • Construction Start by December 31, 2032 • Construction Completion by December 31, 2037
Natural Drainage System Partnering Program	N/A – Integrated Plan Stormwater Projects	N/A	<ul style="list-style-type: none"> • Construction Completion by December 31, 2028
South Park Water Quality Facility	N/A – Integrated Plan Stormwater Project	N/A	<ul style="list-style-type: none"> • Construction Completion by December 31, 2030

Footnote	Description
1	Outfalls are grouped by currently expected control project(s). Outfalls may be controlled by an alternative project(s) if approved pursuant to Paragraph 19 (Proposed Modifications to Critical Milestones, Control Volumes, and CSO Control Measures) of this Consent Decree. Any alternative project(s) must comply with the critical milestones for the currently expected control project(s).
2	The City and County shall submit concurrent modification requests for changes to critical milestones on projects that are intended to control both City and County Outfalls.
3	All engineering reports submitted for wastewater facilities must comply with the requirements of WAC 173-240-060. All engineering reports submitted for Programmatic CSO Control Measures must comply with the requirements of amended Appendix C, Section C.5.a.

4	“Completion of Bidding” for these CSO Control Projects shall be achieved when the City (or the County, for County-managed joint projects) has accepted and awarded the bid for the first project component.
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27. The effective date of this Modification shall be the date upon which this Modification is entered by the Court or the motion to enter this Modification is granted, whichever occurs first, as recorded on the Court’s docket.

28. This Modification shall be lodged with this Court for a period of at least thirty (30) days for public notice and comment in accordance with 28 C.F.R. § 50.7. The United States reserves the right to withdraw or withhold its consent if the comments regarding this Modification disclose facts or considerations indicating that this Modification is inappropriate, improper, or inadequate. The City consents to entry of this Modification as proposed without further notice and agrees not to withdraw from or oppose entry of this Modification by the Court or to challenge any provision of this Modification, unless the United States or the State has notified the City in writing that the United States or the State no longer supports entry of this Modification.

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

30. This Modification to the Consent Decree constitutes the final, complete, and exclusive agreement and understanding among the Parties with respect to this Modification to the Consent Decree, and this Modification supersedes all prior agreements and understandings, whether oral or written, concerning the Modification embodied herein.

31. This Modification may be executed in counterparts, and its validity shall not be challenged on that basis.

Dated and entered this ____ day of _____, 2024.

THE HON. JOHN C. COUGHENOUR
SENIOR UNITED STATES DISTRICT JUDGE

The undersigned hereby consents and certifies that he or she is authorized to consent to the terms and conditions of this First Material Modification to the Consent Decree in the matter of *United States of America and the State of Washington v. the City of Seattle, Washington*, No. 2:13-cv-678 (W.D. Wash.).

FOR PLAINTIFF UNITED STATES OF AMERICA:

TODD KIM
Assistant Attorney General
United States Department of Justice
Environment and Natural Resources Division

/s/ Eric D. Albert
ERIC D. ALBERT, Senior Attorney
Charles Fletcher, Trial Attorney
United States Department of Justice
Environment and Natural Resources Division
Environmental Enforcement Section
P.O. Box 7611
Washington, DC 20044

Date: June 11, 2024

TESSA M. GORMAN
United States Attorney
Western District of Washington

By: /s/ Brian C. Kipnis
BRIAN C. KIPNIS
Assistant United States Attorney
Office of the United States Attorney
Western District of Washington
700 Stewart Street, Suite 5220
Seattle, WA 98101-1271

Date: June 11, 2024

The undersigned hereby consents and certifies that he or she is authorized to consent to the terms and conditions of this First Material Modification to the Consent Decree in the matter of *United States of America and the State of Washington v. the City of Seattle, Washington*, No. 2:13-cv-678 (W.D. Wash.).

FOR THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY:

BENJAMIN BAHK
Director, Water Enforcement Division
Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
United States Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

Date: _____

HANNAH ANDERSON
Attorney, Water Enforcement Division
Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
United States Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

Date: _____

The undersigned hereby consents and certifies that he or she is authorized to consent to the terms and conditions of this First Material Modification to the Consent Decree in the matter of *United States of America and the State of Washington v. the City of Seattle, Washington*, No. 2:13-cv-678 (W.D. Wash.).

FOR THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, REGION 10:

Date: _____
EDWARD J. KOWALSKI
Director, Enforcement and Compliance Assurance Division
United States Environmental Protection Agency
Region 10
1200 Sixth Avenue, Suite 155
Seattle, WA 98101

Date: _____
BEVERLY F. LI
Regional Counsel
United States Environmental Protection Agency
Region 10
1200 Sixth Avenue
Seattle, WA 98101

Date: _____
TED YACKULIC
Assistant Regional Counsel
United States Environmental Protection Agency
Region 10
1200 Sixth Avenue, Suite 900
Seattle, WA 98101

The undersigned hereby consents and certifies that he or she is authorized to consent to the terms and conditions of this First Material Modification to the Consent Decree in the matter of *United States of America and the State of Washington v. the City of Seattle, Washington*, No. 2:13-cv-678 (W.D. Wash.).

FOR THE STATE OF WASHINGTON:

ROBERT W. FERGUSON
Attorney General

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

Date: _____

LAURA WATSON
Director
Washington Department of Ecology
P.O. Box 47600
Olympia, WA 98504-7600

Date: _____

The undersigned hereby consents and certifies that he or she is authorized to consent to the terms and conditions of this First Material Modification to the Consent Decree in the matter of *United States of America and the State of Washington v. the City of Seattle, Washington*, No. 2:13-cv-678 (W.D. Wash.).

FOR THE CITY OF SEATTLE, WASHINGTON:

BRUCE HARRELL
Mayor
City of Seattle
600 Fourth Avenue
P.O. Box 94749
Seattle, WA 98124-4749

Date: _____

ANN DAVISON
City Attorney
City of Seattle
701 Fifth Avenue, Suite 2050
Seattle, WA 98104-7095

Date: _____