

UNITED STATES DISTRICT COURT
DISTRICT OF NEW HAMPSHIRE

UNITED STATES OF AMERICA,)
)
)
 Plaintiff, and)
)
)
 STATE OF NEW HAMPSHIRE,)
)
)
 Plaintiff-Intervenor,)
)
)
 v.)
)
)
 CITY OF LEBANON, NEW HAMPSHIRE,)
)
)
 Defendant.)

CONSENT DECREE

UNITED STATES DISTRICT COURT
DISTRICT OF NEW HAMPSHIRE

UNITED STATES OF AMERICA,)	
)	
Plaintiff, and)	
)	
STATE OF NEW HAMPSHIRE,)	
)	CIVIL ACTION NO.
Plaintiff-Intervenor,)	
)	
v.)	
)	
CITY OF LEBANON, NEW HAMPSHIRE,)	
)	
Defendant.)	

Consent Decree
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Appendix A: NPDES Permit No. NH0100366 effective January 22, 2006

Appendix B: September 1998 draft *CSO Master Plan* and the December 2005 *CSO Engineering Study* prepared by Wright-Pierce

Appendix C: map of the City of Lebanon Wastewater Collection System, dated May 2008, provided by the City to EPA and the NH DES, which identifies all of the CSOs described in this Consent Decree

Appendix D: October 2004 *Illicit Discharge Detection and Elimination: A Guidance Manual for Program and Technical Assessments*

Appendix E: *CMOM Program Self-Assessment Checklist*

Appendix F: Lebanon, New Hampshire CSO Consent Decree, Deadlines and Compliance Dates of the Consent Decree

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CONSENT DECREE

WHEREAS, the plaintiff, the United States of America, on behalf of the United States Environmental Protection Agency (“EPA”), has filed a complaint simultaneously herewith, alleging that the City of Lebanon, New Hampshire (“City” or “Lebanon”) has violated its National Pollutant Discharge Elimination System (“NPDES”) Permit No. NH0100366 (the “Permit”) (included as Appendix A) and Section 301(a) of the Clean Water Act (“CWA”), 33 U.S.C. § 1311(a), by discharging pollutants into navigable waters of the United States from its publicly-owned treatment works (“POTW”) as defined at 40 C.F.R. § 403.3 that includes a Wastewater Treatment Plant and Wastewater Collection and Transmission System (“WCTS”) including Combined Sewer Overflow (“CSO”) outfalls;

WHEREAS, the State of New Hampshire (the “State”), on behalf of the New Hampshire Department of Environmental Services (“NH DES”), has filed an assented-to

motion to intervene as a plaintiff in the action brought by the United States and has filed a complaint that alleges that the City was, and is, in ongoing violation of Section 301 of the CWA, 33 U.S.C. § 1311, the New Hampshire Water Pollution and Waste Disposal Act, NH RSA 485-A (“New Hampshire Act”), and provisions of the Permit and State Permit No. NH0100366 issued by the NH DES under the New Hampshire Act (said Federal and State permits having been jointly issued as a single permit);

WHEREAS, entry of this Consent Decree by the Court will resolve all civil claims in the complaint of the United States and the complaint of the State (referred to herein collectively as the “Complaints”) as set forth in Section XIV (Effect of Settlement); and

WHEREAS, the United States, the State, and the City (referred to herein collectively as the “Parties”) agree that neither the execution of this Consent Decree nor any action taken hereunder is an admission of any fact, liability, or wrongdoing of any kind, except as expressly stated herein, that settlement of this matter is in the public interest and that entry of this Consent Decree without further litigation is an appropriate resolution, and the Parties consent to the entry of this Consent Decree;

NOW, THEREFORE, 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 City pursuant to Section 309 of the CWA, 33 U.S.C. § 1319, and 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 the claims in the United States' complaint pursuant to Section 309(b) of the CWA, 33 U.S.C. § 1319(b), and 28 U.S.C. §§ 1331, 1345, and 1355, of the claims in the State's Complaint 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), 28 U.S.C. §§ 1391(b) and (c), and 28 U.S.C. § 1395. The City waives all objections it might have raised to such jurisdiction or venue.

III. APPLICABILITY

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

4. Effective from the Date of Entry of this Consent Decree until its termination, the City shall give at least 30 days prior written notice of the existence of this Consent Decree to any person or entity to whom the City intends to transfer any ownership interest or responsibility for operation of its Wastewater Treatment Plant or WCTS or any other portion of its Wastewater Treatment Plant and WCTS and shall, with written notice, simultaneously provide a copy of this Consent Decree to any such person or entity. The City shall notify EPA and the United States Department of Justice in writing of any future successor in interest at least 30 days prior to any such transfer. Any sale or transfer of the City's interests in or operating role with respect to the City's Wastewater

Treatment Plant and WCTS shall not in any manner relieve the City of its responsibilities in meeting the terms and conditions of this Consent Decree.

5. The City shall provide a copy of this Consent Decree to all officers 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. The City shall require that such contractors and consultants provide a copy of this Consent Decree to their subcontractors. Such Parties shall be deemed agents for the purposes of this Consent Decree. In an action to enforce this Consent Decree, the City shall not assert as a defense against an action by EPA or the State the failure by any of its officers, directors, employees, agents, servants, consultants, engineering firms, 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. "Building/Private Property Backup" shall mean a Sanitary Sewer Overflow in the form of wastewater release or backup into a building or onto private property that is caused by blockages, flow conditions, or other malfunctions in the

WCTS. A wastewater backup or release that is caused by blockages, flow conditions, or other malfunctions of a Private Lateral is not a Building/Private Property Backup for purposes of this Decree.

B. "Combined Sewer System" ("CSS") shall mean the pipelines, pumping stations, treatment facilities and appurtenances in Lebanon and West Lebanon that are designed to convey wastewaters and stormwater through a single pipe system to combined sewer overflow outfalls and/or treatment works.

C. "Combined Sewer Overflow" ("CSO") means a discharge from the CSS at a CSO outfall designated in the City of Lebanon's Permit and, for the purposes of this Consent Decree, also includes overflows from the manhole in the vicinity of Mechanic Street where the interceptor sewer crosses the Mascoma River, designated as "CSO #ZZ" on Appendix C.

D. "Consent Decree" shall mean this decree and all appendices attached hereto. In the event of conflict between this Consent Decree and any appendix, this Consent Decree shall control.

E. "Date of Entry" shall mean the date this Consent Decree is approved and signed by a United States District Court Judge for the District of New Hampshire.

F. "Date of Lodging" shall mean the date this Consent Decree is filed for lodging with the Clerk of the Court for the United States District Court for the District of New Hampshire.

G. The terms "day" or "days" as used herein shall mean a calendar day or calendar days. In computing any period of time under this Consent Decree, where the

last day would fall on a Saturday, Sunday, Federal or State holiday, the period shall run until the close of the next business day.

H. "Flow" shall mean all wastewaters conveyed by any portion of the WCTS.

I. "Infiltration" shall mean the water that enters the WCTS (including sewer service connections) from the ground through such means as defective pipes, pipe joints, connections or manholes. Infiltration does not include, and is distinguished from, Inflow.

J. "Inflow" shall mean all water that enters the WCTS (including sewer service connections) from sources such as roof leaders, cellar drains, yard drains, area drains, foundation drains, drains from springs and swampy areas, manhole covers, cross connections between storm sewers and sanitary sewers, catch basins, storm waters, surface runoff, street wash waters, or drainage. Inflow does not include, and is distinguished from, Infiltration.

K. "Infiltration/Inflow" ("I/P") shall mean the total quantity of water from both Infiltration and Inflow without distinguishing the source.

L. "Parties" shall mean the United States, the State of New Hampshire, and the City.

M. "Private Lateral" shall mean that portion of the WCTS, not owned by the City, used to convey wastewater from a building or buildings to that portion of the WCTS owned by the City.

N. "Wastewater Collection and Transmission Systems" ("WCTS") shall mean the municipal wastewater collection and transmission systems, including all pipes,

siphons, manholes, gravity sewer lines, force mains, pumping stations, and appurtenances thereto, which are owned or operated by the City.

O. "Wastewater Treatment Plant" shall mean the wastewater treatment plant operated by the City and located at 130 South Main Street, West Lebanon, New Hampshire, and all components of such wastewater treatment plant.

P. The phrases "approval by the EPA and the NH DES," and "approved by the EPA and the NH DES" shall mean the City's receipt of one joint, written approval document from both, or an approval from each, EPA and the NH DES.

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

V. OBJECTIVES

7. It is the express purpose of the Parties entering into this Consent Decree to further the objectives set forth in Section 101 of the Clean Water Act, 33 U.S.C. § 1251 and to resolve the civil claims of the United States and the NH DES in accordance with Section XIV (Effect of Settlement/Reservation of Rights). In light of these objectives, the City agrees, *inter alia*, to achieve expeditious implementation of the Remedial Measures as set forth in accordance with the schedules applicable under this Consent Decree for the purpose of: (1) eliminating all CSO discharges from its WCTS consistent with the Combined Sewer Overflow Control Policy adopted by EPA in April 1994; (2) achieving full compliance with the City's Permit, and (3) achieving full compliance with the Clean Water Act, including the regulations promulgated thereunder, and New Hampshire's water pollution control laws, and the regulations promulgated thereunder.

8. Engineering designs and analyses required to be performed pursuant to this Consent Decree shall be conducted using sound engineering practices, and, as applicable, shall be consistent with: (a) EPA's Handbook: Sewer System Infrastructure Analysis and Rehabilitation, EPA/625/6-91/030, Oct. 1991; (b) EPA's Handbook for Sewer System Evaluation and Rehabilitation, EPA 430/9-75-021, Dec. 1975; (c) Existing Sewer Evaluation and Rehabilitation, WEF MOP FD-6, 1994; (d) A Guide to Short Term Flow Surveys of Sewer Systems, WRc Engineering (Undated); (e) the National Association of Sewer Service Companies (NASSCO) "Manual of Practice"; and, (f) the currently effective edition of "TR 16: Guides for the Design of Wastewater Treatment Works." EPA has provided copies of all such identified EPA-published documents to the City and tables of contents of all such non-EPA-published documents, and the City hereby acknowledges receipt of the same.

VI. REMEDIAL MEASURES

CSO MITIGATION

9. The City shall eliminate discharges from its CSO outfalls by taking all necessary measures, including separating its CSS into a separate sanitary sewer system and a storm water system by December 31, 2020 ("CSO Mitigation Objective"), identified on the "City of Lebanon NH Wastewater Collection System" map dated May 2008 (Appendix C), and shall achieve the Separation Completion Dates for the CSO abatement sewer separation projects set forth in Table 1 of this Consent Decree. Background reference is also made to the September 1998 draft CSO Master Plan, and the December 2005 CSO Engineering Study prepared by Wright-Pierce (attached hereto as Appendix B). By September 30, 2009, the City shall submit to EPA and NH DES for approval a plan for

monitoring its CSO discharges annually in accordance with Section I.A.1.b of its NPDES Permit, and upon approval by EPA after consultation with NH DES, shall implement such plan.

10. The City shall accomplish the CSO Mitigation Objective through means and methods including, but not limited to CSO abatement sewer separation projects meeting the Separation Completion Dates as set forth in Table 1. The City shall make good faith efforts, with due diligence, to maintain the schedule in Table 1. However, in the event that overflows have been abated without construction or through alternative means not now envisioned, the City shall not be obligated to construct specific improvements as described in the current plans. In the event that the City determines that a site-specific project listed in Table 1 is no longer required for the CSO Mitigation Objective or the Separation Completion Dates the City shall submit such determination to the State and EPA of its determination for approval consistent with Sections XI (Approval of Deliverables) and XIII (Form of Notice). The CSO Mitigation Objective completion date of December 31, 2020, as well as the Separation Completion Dates are enforceable deadlines for elimination of discharges of the CSO outfalls identified in Table 1. Table 1 supersedes all previous schedules, including those in the appendices to this Consent Decree, or agreements between the Parties covering the subject matter hereof.

TABLE 1

Affected CSO	Site Name-- see Note (a)	Separation Completion Date
CSO #22/10	School Street	11/1/2011
	Woodley Road	
	Hanover Street Area	
	Parkhurst Street	
	Bank Street	
CSO #24	Seminary Hill	11/1/2015
	Pleasant Street	
	Crafts Avenue	
	Dana Street	
	Orcut Avenue	
	Elm Street West	
CSO #23 CSO #ZZ (see Note (b) below)	West Street	11/1/2018
	West/Granite Street	
	Mechanic Street	
CSO #26	Blacksmith Street	11/1/2020
	Romano Circle	
	Terrace View Condos	

(a) For site locations, refer to City of Lebanon, NH Wastewater Collection System (Appendix C).

(b) For purposes of this Consent Decree, overflows from the manhole in the vicinity of Mechanic Street, where the interceptor sewer crosses the Mascoma River, is referred to as "CSO #ZZ." Since the proposed CSO #ZZ is located downstream of all combined sewers in Lebanon, its elimination shall occur on the same schedule as CSO No. 23.

11. By November 1, 2010, the City shall submit to EPA and NH DES for approval a post-construction monitoring plan ("PCMP"). The PCMP shall include a monitoring protocol to assess the effectiveness of the completed sewer separation construction projects for CSO control and elimination pursuant to this Consent Decree. The PCMP

shall include a schedule for assessing the impacts of varying precipitation amounts on effluent characteristics and ambient water quality with respect to *Escherichia coli* levels in Great Brook and the Mascoma River downstream of the CSOs. The City shall submit a post-construction monitoring report ("PCMR"), for construction already completed, annually by May 1st with the first report due in 2014. The PCMR shall identify additional CSO mitigation projects, if necessary, which the City shall undertake in order to achieve compliance with the scope and purpose of the CSO mitigation efforts described in Paragraph 9.

Illicit Discharge Detection and Elimination

12. By November 1, 2011, the City shall develop and submit to EPA for approval a comprehensive Illicit Discharge Detection and Elimination Plan ("IDDE Plan") for identifying and eliminating the sources, including illicit connections, of non-stormwater discharges from its storm drains constructed as part of the CSO mitigation efforts in the areas described in Table 1. The City shall develop the IDDE Plan by applying the provisions of Appendix D which sets out a protocol for the identification and elimination of illicit connections. Where it cannot be demonstrated to EPA's satisfaction that the City's in-house resources are adequate to execute the specific tasks of the IDDE Plan, the City shall execute a contract with a qualified contractor(s) to complete the specific tasks necessary to determine and remove the sources of non-stormwater pollutants in the storm drains discussed above.

A. The City shall implement the IDDE Plan upon approval, conditional approval, or modification by EPA pursuant to Section XI (Approval of Deliverables).

B. Beginning by May 1, 2012, and annually by May 1 thereafter, the City shall submit to EPA for approval a report (“IDDE Report”) documenting the findings and the actions taken by the City to implement the IDDE Plan. The IDDE Report shall include, but shall not be limited to, the following information:

- i. a list of illicit connections identified to date;
- ii. the estimated flow from each connection;
- iii. the actions taken by the City to remove each connection;
- iv. the date each connection was removed;
- v. the cost of removing each connection;
- vi. a map or figure indicating the location of each illicit connection;
and
- vii. an annual monitoring plan for each of its outfalls, constructed as part of CSO mitigation efforts in the areas described in Table 1 of this Consent Decree, in both dry weather and wet weather to demonstrate the effectiveness of its illicit connection removal efforts.

Sanitary Sewer Infrastructure

13. Capacity, Management, Operation and Maintenance (“CMOM”) Program
Assessment

A. Within 180 days of Entry of this Consent Decree the City shall complete and submit to EPA, and to the NH DES, an assessment of its WCTS capacity and its operation and maintenance practices (the “CMOM Program Self Assessment”) to determine whether improvements are necessary in order to preserve the infrastructure of

the WCTS and to prevent future unauthorized releases, overflows and discharges from its WCTS. As part of the CMOM Program Self Assessment, the City shall complete the Wastewater Collection System Capacity, Management, Operation, and Maintenance Program Self-Assessment Checklist (the "CMOM Program Self-Assessment Checklist"), which is included as Appendix E.

B. Within 270 days of the Entry of this Consent Decree, the City shall submit to EPA and to the NH DES a plan (the "CMOM Corrective Action Plan") that shall include the following:

- i. A description of the overall condition of the collection system including a list of recent construction activities;
- ii. A preventive maintenance and monitoring program for the collection system;
- iii. Recommended staffing to properly operate and maintain the sanitary sewer collection system;
- iv. The necessary funding level, the source(s) of funding, for implementing the CMOM Corrective Action Plan;
- v. Identification of known and suspected sanitary sewer overflows. A description of the cause of the identified overflows, and a plan for addressing the overflows consistent with the requirements of the City's NPDES Permit;
- vi. An ongoing program to identify and remove sources of I/I. The program shall include an inflow identification and control program

that focuses on the disconnection and redirection of illegal sump pumps and roof down spouts;

- vii. An educational public outreach program for all aspects of I/I control, particularly private inflow;
- viii. For each of the above activities that are not completed and also implemented as of the submittal date, the CMOM Corrective Action Plan shall provide a schedule for its completion.

C. The CMOM Corrective Action Plan Implementation Schedule submitted pursuant to Paragraph 13.B.viii. of this Consent Decree shall be incorporated and enforceable hereunder upon approval by, and as amended by, EPA.

D. Until further notice, beginning January 31, 2010 and each January 31st annually thereafter, the City shall submit to the EPA and to the NH DES, a report (the "CMOM Program Implementation Annual Report"), detailing the actions taken by the City during the prior calendar year, or known by the City to have been taken by other parties, to resolve the deficiencies identified in the CMOM Corrective Action Plan and to comply with this Consent Decree. The CMOM Program Implementation Annual Report shall also include, at a minimum:

- i. A tabular summary listing of all unauthorized releases, overflows and discharges from its WCTS that have occurred during the last calendar year, including Building/Private Property Backups that result from capacity limitations or blockages in that portion of the WCTS owned by the City. The tabular summary listing shall be organized chronologically and shall include the date and times on

- which each event was discovered and was stopped, the location by address, the source of notification (property owner, field crew, police), the estimated gallons of wastewater released, the causes of the event, including, but not limited to vandalism, sediments, roots, grease, mechanical, electrical and structural failures, and capacity issues, the measures taken to stop the unauthorized releases, overflows and discharges from the combined portion of the WCTS and to prevent similar events from occurring at the same location in the future, the date of the last unauthorized release, overflow or discharge that occurred at the same overflow location, the estimated gallons of wastewater released, and the name of the receiving water or a description of the ultimate discharge location if the unauthorized discharge did not occur to a surface water;
- ii. A description of the measures and programs implemented by the City to resolve any of the deficiencies identified pursuant to Paragraphs 13.B of this Consent Decree and to reduce the frequency, duration and volume of unauthorized releases, overflows and discharges from its WCTS during the previous calendar year including copies of any contracts signed by the City to address any issues identified in the CMOM Corrective Action Plan. The CMOM Program Implementation Annual Report shall describe all of the activities that the City has implemented to measure the effect and success of its efforts;

- iii. A description of the type of the City's WCTS mapping (i.e. GIS, paper) and the last date the map(s) were updated;
- iv. Copies of the annual WCTS operation and maintenance budget for the current and previous fiscal year noting the source of the funding – e.g. enterprise fund, general tax rate. The CMOM Program Implementation Annual Report shall specifically indicate whether a capital replacement fund (sinking fund) has been established to provide for replacement of aging wastewater WCTS infrastructure. The CMOM Program Implementation Annual Report shall also provide the WCTS maintenance staffing levels for the current fiscal year noting:
 1. budgeted positions;
 2. vacant positions; and
 3. a brief description of the responsibilities of each position clearly distinguishing WCTS maintenance responsibilities from responsibilities for the wastewater treatment facility or other public works operations;
- v. A description of any existing or proposed City programs designed to reduce the levels of extraneous flows and fats, oils and grease that are discharged to, or enter the City's WCTS and the specific measures that were taken by the City under these programs during the past calendar year;

- vi. A projection of the measures that will be taken during the current calendar year to resolve any deficiencies identified in the CMOM Corrective Action Plan and to comply with this Consent Decree.

14. Three years from the Entry of this Consent Decree, the City shall update and submit its responses to the CMOM Program Self-Assessment Checklist to EPA, and to the NH DES. The updated CMOM Program Self-Assessment Checklist shall be submitted in lieu of the CMOM Program Implementation Annual Report for that calendar year. The CMOM Program Implementation Annual Report shall be submitted for all other years during the pendency of the Consent Decree.

VII. REPORTS ON COMPLIANCE

15. Beginning with the first quarter following the date of entry of this Consent Decree and until this Consent Decree is terminated, the City shall, on a quarterly basis by the 15th day of each January, April, July, and October, report to EPA and NH DES on its compliance with Section VI (Remedial Measures). Each progress report submitted under this Section shall:

- A. Describe activities undertaken during the reporting period directed at achieving compliance with this Consent Decree, including a description of the status of construction for each Site Name listed in Table 1 relevant to the upcoming Separation Completion Date from Table 1;

- B. Describe the expected activities to be taken during the next reporting period in order to achieve compliance with this Consent Decree; and

C. Identify any noncompliance with this Consent Decree's requirements, including the schedule set forth in Table 1. If noncompliance is reported, notification should 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 schedule requirements;
- iii. A description of any factors which tend to explain or mitigate the noncompliance; and
- iv. An approximate date by which the City will perform the required action.

16. The reporting requirements set forth in this Section do not relieve the City of its obligation to submit any other reports or information as required by State, Federal or local law.

17. If any event occurs that causes or may cause the City to fail to comply with any requirement of this Consent Decree (not including the appendices to this Consent Decree, except to the extent that they are incorporated as an enforceable part of the Consent Decree), the City shall notify EPA and NH DES in writing within 10 days from the date the City first knew, or in the exercise of reasonable diligence should have known, that compliance with the Consent Decree would be prevented or delayed in accordance with with Section XIII (Form of Notice).

VIII. STIPULATED PENALTIES

18. Unless excused under Section IX (Force Majeure), and subject to the City's right to invoke Dispute Resolution in accordance with Section X of this Consent Decree, the

City shall pay stipulated penalties to the United States and the State of New Hampshire if the City should fail to comply with the requirements of this Consent Decree, as set forth below:

A. For every day that the City fails to timely satisfy the requirements of Section VI (Remedial Measures), including but not limited to, submitting a plan¹ or report (including any report required by Section VII (Reports on Compliance)), or failing to implement remedial requirements in a plan or report approved by EPA after consultation with NH DES, the City shall pay a penalty as follows:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$ 250	1st through 10th day
\$ 500	11th through 20th day
\$ 1,000	21st day and beyond.

B. For each and every day, or a portion thereof, that there is a discharge during dry weather from the WCTS, the City shall pay a stipulated penalty of \$5,000. Notwithstanding the foregoing, the City shall not be liable for such a stipulated penalty if all of the following conditions are met: (i) the City stopped the dry-weather discharge as soon as practicable; (ii) the City is in full compliance with the schedules and requirements set forth pursuant to Section VI of this Consent Decree; and, (iii) the City has complied with all reporting requirements related to such unauthorized discharge, including those set forth in this Consent Decree.

C. Penalties shall continue to accrue as provided in accordance with Section X (Dispute Resolution) during any dispute resolution, with interest on accrued penalties

¹ Reference to "a plan" in this Section is not intended to include construction plans and specifications, which documents are submitted by the City to NH DES in the regular course of construction contract administration.

payable and calculated at the rate established by the Secretary of the Treasury, pursuant to 28 U.S.C. § 1961, but need not be paid until the following:

- i. If the dispute is resolved by agreement or by a decision of EPA that is not appealed to the Court, accrued penalties determined to be owing, together with accrued interest, shall be paid to the United States within thirty (30) days of the effective date of the agreement or the receipt of EPA's decision or order;
- ii. If the dispute is appealed to the Court and the United States prevails in whole or in part, the City shall, within sixty (60) days of receipt of the Court's decision or order, pay all accrued penalties determined by the Court to be owing, together with accrued interest, except as provided in Subparagraph iii, below;
- iii. If the Court's decision is appealed by any Party, the City shall, within fifteen (15) days of receipt of the final appellate court decision, pay all accrued penalties determined to be owing to the United States, together with accrued interest.

D. In accordance with Subparagraph F. below stipulated penalty payments as specified in this Section shall be made by delivering such payments to the United States and the State of New Hampshire, in equal amounts, unless otherwise specified, in accordance with the instructions set forth below.

- i. Fifty percent (50%) of the stipulated penalty payments to the United States shall be made, upon written demand, by FedWire Electronic Funds Transfer ("EFT") to the U.S. Department of

Justice in accordance with written instructions to be provided to the City by the Financial Litigation Unit of the U.S. Attorney's Office for the District of New Hampshire. At the time of payment, the City shall send a copy of the EFT authorization form and EFT transaction record, together with a transmittal letter, which shall state that the payment is for stipulated penalties owed pursuant to the Consent Decree in United States and State of New Hampshire v. City of Lebanon, New Hampshire, and shall reference the civil action number and DOJ case number 90-5-1-1-09277, to the United States in accordance with Section XIII of this Decree; by email to acctsreceivable.CINWD@epa.gov; and by mail to: EPA Cincinnati Finance Office, 26 Martin Luther King Drive, Cincinnati, Ohio 45268.

- ii. Fifty percent (50%) of the stipulated penalty payments to the State shall be made, upon written demand, by certified or cashier's check payable to the "Treasurer, State of New Hampshire" and 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. Payments shall be made within 30 days of receipt of written demand.
- iii. In the event that a stipulated penalty payment is not made on time to the United States or the State, such penalty (or portion thereof)

shall be subject to interest at the statutory judgment rate set forth at 28 U.S.C. § 1961, for each day of late payment or non-payment.

Nothing in this Section 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.

E. The stipulated penalties set forth above shall be in addition to any other remedies, sanctions, or penalties that may be available by reason of the City's failure to comply with the requirements of this Consent Decree. The United States and State expressly reserve any and all legal and equitable remedies, including contempt sanctions, which may be available to enforce the provisions of this Consent Decree, and in such event, the City expressly reserves the right to assert any and all legal and equitable defenses that may be available to it with respect to a claim for such legal and equitable remedies.

F. Either the United States, or the State, or both may elect to seek stipulated penalties under this Section. Where both sovereigns elect to seek stipulated penalties for any violation of this Consent Decree, any such penalties determined to be owing shall be paid fifty percent to the United States and fifty percent to the State. Where one sovereign elects to seek such stipulated penalties, and the other sovereign does not join in the demand within 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 sovereign has sought stipulated penalties shall be payable to the sovereign making the

demand. Where one sovereign reduces the stipulated penalty otherwise payable for any violation, the difference shall be payable to the other sovereign. In no case shall the determination by one sovereign not to seek stipulated penalties preclude the other sovereign from seeking stipulated penalties, as otherwise provided for by, and consistent with, the terms of this Consent Decree.

IX. FORCE MAJEURE

19. "Force Majeure," for purposes of this Consent Decree, is defined as any event arising from causes beyond the control of the City, including its engineers, consultants, contractors and subcontractors, that delays or prevents the timely performance of any obligation under this Consent Decree notwithstanding the City's best efforts to avoid the delay. "Best efforts" include anticipating any potential Force Majeure event and addressing 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. Stipulated penalties shall not be due for those days of noncompliance caused by a Force Majeure event as defined in this Section in which compliance could not be achieved despite the "best efforts" of the City, provided that the City complies with the terms of this Section. Force Majeure does not include normal inclement weather, unanticipated or increased costs or expenses of work, the financial difficulty of the City to perform such work, acts or omissions attributable to the City's contractors or representatives, and the failure of the City or the City's contractors or representatives to make complete and timely application of any required approval or permit.

20. 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 NH DES within 72 hours after the City first knew, or should have known, that the event might cause a delay. Within seven working days thereafter, the City shall provide to EPA and NH DES, 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, 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. Notwithstanding the foregoing, the City shall orally notify EPA and NH DES within 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, including but not limited to by electronic or facsimile transmission, to EPA and NH DES within five days 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 the City's contractors knew or should have known.

21. If the EPA and NH DES 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 the United States, after a reasonable opportunity for review and comment by NH DES, for a period of time as may be necessary to allow prompt performance of such obligations. The United States 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.

22. If EPA, after a reasonable opportunity for review and comment by NH DES, does not agree the delay or anticipated delay is attributable to Force Majeure, or on the number of days of noncompliance that should be excused by such event, EPA will notify the City in writing of its decision. The City may then elect to initiate the dispute resolution process set forth in Section X (Dispute Resolution). If the City does not initiate the dispute resolution process set forth in Section X (Dispute Resolution) within 10 days of receiving written notice that EPA disagrees as to whether a delay or anticipated delay is attributable to Force Majeure, or on the number of days of noncompliance attributable to such circumstances, then the City shall be deemed to have waived any Force Majeure claims or any rights to initiate Dispute Resolution with regard to such claims.

23. In any dispute resolution procedure in regard to a Force Majeure event, 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 the best efforts were exercised to avoid or mitigate the effect of the delay, and that the City has complied with Paragraphs 20 and 22 above. If the City carries this burden, the delay at issue shall be deemed not to be a violation by the City of the affected obligation of this Consent Decree identified to EPA or the Court.

24. Delay in performance of any obligation under this Consent Decree shall not automatically justify or excuse delay in complying with any subsequent obligation or requirement of this Consent Decree.

25. 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.

X. DISPUTE RESOLUTION

26. The dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising under, or with respect to, this Consent Decree. However, the procedures set forth in this Section shall not apply to actions by the United States or the State to enforce obligations that the City has not disputed in accordance with this Section.

27. 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 EPA, and/or NH DES, as the case may be, a written Notice of Dispute. Such Notice of Dispute shall state clearly the matter in dispute, and the Parties will proceed initially to resolve the matter in dispute by informal means. Such period of informal negotiations shall not exceed 45 days from the date the notice was sent by the City, unless the Parties agree otherwise.

28. Formal Dispute Resolution. If the informal negotiations are unsuccessful, the position of the EPA and/or NH DES shall control, unless within 30 days after the conclusion of the informal negotiation period, the City invokes the formal dispute resolution procedures of this Section by serving on the EPA and the NH DES a written Statement of Position on the matter in dispute, including any supporting factual data, analysis, opinion or documentation.

29. EPA and/or NH DES, shall serve its written Statement of Position on the City within 15 days of receipt of the City's Statement of Position. EPA's and/or NH DES' Statement(s) 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 EPA and/or NH DES.

30. Upon receipt by the City of EPA's and/or NH DES' Statement of Position, the Parties to this Consent Decree shall conduct formal negotiations to resolve any disputes concerning the applicable subject matter. The formal negotiations shall not exceed 45 days from the date the Statement of Position by the EPA or NH DES was received by the City unless agreed upon by all Parties to the negotiations. If the Parties fail to resolve the dispute(s) that led to the formal dispute resolution procedures, the City may seek judicial review of the matter in accordance with the following Paragraph. In the event the City decides not to seek judicial review, the position of EPA and/or NH DES shall control the resolution of the dispute with the City and shall be binding on the City.

31. Judicial Review. The City may seek judicial review of the dispute by filing with the Court and serving on the United States, and/or NH DES, in accordance with Section XIII of this Consent Decree (Form of Notice), a motion requesting judicial resolution of the dispute. The motion shall be filed with the Court within 20 days of the conclusion of formal negotiations 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 a proposal for resolution.

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

33. Standard of Review

A. Disputes Concerning Matters Accorded Record Review. Except as otherwise provided in this Consent Decree, in any dispute brought pertaining to the adequacy or appropriateness of plans, procedures to implement plans, schedules or any other items requiring approval by EPA under this Consent Decree, the adequacy of the performance of work undertaken pursuant to this Consent Decree, additional CSO mitigation projects required by EPA or NH DES under Paragraph 11 of this Consent Decree after the City's submission of the PCMP, 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 on the administrative record, that the position of the United States, and/or NH DES, as the case may be, 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 Section X (Dispute Resolution), the City shall bear the burden of demonstrating that its position complies with this Consent Decree and better furthers the objectives of the Consent Decree.

XI. APPROVAL OF DELIVERABLES

34. After review of any plan or schedule, report, or other item that is required to be submitted pursuant to this Consent Decree², EPA after consultation with NH DES, shall

² Reference to "a plan" in this Section is not intended to include construction plans and specifications, which documents are submitted by the City to NH DES in the regular course of construction contract administration.

in writing: A) approve, in whole or in part, the submission; B) approve the submission upon specified conditions; or C) disapprove, in whole or in part, the submission.

35. Upon approval pursuant to Paragraph 34.A, the City shall take all actions required by the plan or schedule, report, or other item, as approved. In the event of approval in part pursuant to Paragraph 34.A or approval upon specified conditions pursuant to Paragraph 34.B, upon written direction of EPA after consultation with NH DES, the City shall take all actions required by the approved plan or schedule, report, or other item that EPA after consultation with NH DES determine are technically severable from any disapproved portions, subject to the City's right to dispute only the specified conditions or the non-approved portions pursuant to Paragraphs 34 through 38 and Section X (Dispute Resolution).

36. Upon receipt of a written notice of approval in part pursuant to Paragraph 34.A or of disapproval pursuant to Paragraph 34.C, the City shall, within 45 days or such other time as the Parties agree in writing, correct deficiencies and resubmit the plan, report, or other item, or portion thereof, for approval. Any stipulated penalties applicable to the submission shall accrue during the 45-day period or specified period but shall not be payable unless the resubmission is untimely and/or disapproved as provided in Paragraph 38; provided that, if the original submission was so deficient as to constitute a material breach of the City's obligations under this Consent Decree, the stipulated penalties applicable to the original submission shall be due and payable notwithstanding any subsequent resubmission.

37. In the event that a resubmitted plan, report or other item, or portion thereof, is disapproved by EPA after consultation with NH DES, EPA may again require the City to correct the deficiencies, in accordance with the preceding Paragraphs.

38. If upon resubmission, a plan, report, or item, or portion thereof, is disapproved by EPA after consultation with NH DES, the City shall be bound by the decision of EPA unless the City invokes the dispute resolution procedures set forth in Section X (Dispute Resolution) within 30 days of receipt of EPA's last written position. If EPA's disapproval is upheld after dispute resolution, stipulated penalties shall accrue for such violation from the date of the disapproval of the original submission.

39. All plans, reports, and other items required to be submitted to EPA and NH DES under this Consent Decree shall, upon approval by EPA after consultation with NH DES, be enforceable under this Consent Decree. In the event EPA after consultation with NH DES approves a portion of a plan, report, or other item required to be submitted under this Consent Decree, the approved portion shall be enforceable under this Consent Decree.

40. In the event a dispute arises among the Parties regarding EPA's approval upon specified conditions or disapproval in part or in whole of any plans, reports, and other items required to be submitted to EPA and the NH DES under this Consent Decree, the position of the EPA shall govern unless the City invokes the dispute resolution process set forth in Section X (Dispute Resolution) within 30 days of receipt of EPA's written position.

XII. RIGHT OF ENTRY

41. EPA and NH DES and their contractors, consultants, and attorneys shall have authority to enter any property and/or facility covered by this Consent Decree at all reasonable times, upon proper identification, for the purposes of monitoring the progress of activity required by this Consent Decree; verifying any data or information submitted to EPA and NH DES under this Consent Decree; assessing the City's compliance with this Consent Decree; obtaining samples; or obtaining documentary evidence. Upon request, the City of Lebanon will be provided with splits of all samples taken by the EPA or NH DES in connection with this Consent Decree. This requirement is in addition to, and does not limit, the authority of EPA or NH DES pursuant to the CWA, the New Hampshire Act, or any other provision of State or Federal law.

42. 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 NH DES 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

43. Submissions required by this Consent Decree shall be made in writing by certified mail with return receipt, or by any reliable commercial delivery service that provides written verification of delivery to the following respective addressees, unless written notice is given that another individual has been designated to receive the submissions. Any submission required by this Consent Decree must be submitted to EPA and/or the NH DES, as appropriate, no later than the date due stated in this Consent Decree.

As to the Department of Justice:

Chief, Environment Enforcement Section
Environment and Natural Resources Division
United States Department of Justice
P.O. Box 7611, Ben Franklin Station
Washington, D.C. 20044
(202) 514-5268

As to the EPA:

Jeffrey Kopf
Senior Enforcement Counsel
U.S. Environmental Protection Agency
One Congress Street, Suite 1100
Mail Code: SEL
Boston, MA 02114-2023

and

Joy Hilton
Environmental Engineer
U.S. Environmental Protection Agency
One Congress Street, Suite 1100
Mail Code: SEW
Boston, MA 02114-2023

Reports and plans required to be submitted by the City to EPA shall be submitted to Joy Hilton, with a copy of the transmittal letter only to Jeffrey Kopf. The City shall provide complete copies to both Joy Hilton and Jeffrey Kopf of all other submissions required to be made by the City to EPA pursuant to this Consent Decree.

As to the NH DES:

Tracy L. Wood, P.E.
Compliance Supervisor
New Hampshire Department of Environmental Services
P.O. Box 95 - 29 Hazen Drive
Concord, NH 03302-0095

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

Reports and plans required to be submitted by the City to NH DES shall be submitted to Tracy Wood, with a copy of the transmittal letter only to Richard Head. The City shall provide complete copies to both Tracy Wood and Richard Head of all other submissions required to be made by the City to NH DES pursuant to this Consent Decree.

As to the City of Lebanon, New Hampshire:

Gregg Mandsager, City Manager
City of Lebanon, New Hampshire
51 North Park Street
Lebanon, NH 03766

and

Adele M. Fulton, Esq.
Gardner Fulton & Waugh PLLC
78 Bank Street
Lebanon, NH 03766

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

45. Notice submitted pursuant to this Section shall be deemed submitted upon mailing, unless otherwise provided in this Consent Decree or by mutual agreement of the Parties in writing.

46. All written notices, reports or any other submissions required 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 notifications where compliance would be impractical.

XIV. EFFECT OF SETTLEMENT/RESERVATION OF RIGHTS

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

48. The United States and NH DES reserve all legal and equitable remedies available to enforce the provisions of this Consent Decree, except as expressly stated in Paragraph 47. This Consent Decree shall not be construed to limit the rights of the United States or NH DES to obtain penalties or injunctive relief under the CWA or implementing regulations, or under other Federal or NH DES laws, regulations, or permit conditions, except as expressly specified in Paragraph 47. The United States and NH DES 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 WCTS and Wastewater Treatment Plant whether related to the violations addressed in this Consent Decree or otherwise.

49. In any subsequent administrative or judicial proceeding initiated by the United States or NH DES for injunctive relief, civil penalties, other appropriate relief relating to the City's Collection System, WCTS and Wastewater Treatment Plant or the City's violations of Federal or State law, 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 NH DES in the subsequent

proceeding were, or should have been, brought in the instant case, except the City expressly reserves its rights to any claim or defense with respect to claims brought by the United States or NH DES that have been resolved pursuant to Paragraph 47 of this Section.

50. 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 NH DES do not, by their consent to the entry of this Consent Decree, warrant or aver in any manner that the City's compliance with this Consent Decree will result in compliance with any provisions of the CWA, or with any other provisions of Federal, State, or local laws, regulations, or permits.

51. This Consent Decree does not limit or affect the rights of the City or of the United States or NH DES 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. Execution of this Consent Decree by the City shall not preclude it from asserting any legal or factual position in any action brought against it by any person or entity not a Party to this Consent Decree.

52. 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

53. Each Party shall bear its own costs and attorneys' fees in this action. The City shall be responsible for all expenses incurred by the United States in collecting any outstanding penalties due under Section VIII (Stipulated Penalties) of this Consent Decree and in enforcing the requirements of this Consent Decree, unless the City prevails before a court in any dispute resolution related thereto brought pursuant to Section X (Dispute Resolution).

XVI. RETENTION OF JURISDICTION

54. The Court shall retain jurisdiction to modify and enforce the terms and conditions of this Consent Decree and to resolve disputes arising hereunder as may be necessary or appropriate for the construction or execution of this Consent Decree and to assess any stipulated penalties that may have accrued because of the City's failure to comply with any of its obligations under this Consent Decree.

XVII. MODIFICATION

55. Any material modification to the terms of this Consent Decree shall be by written agreement of the Parties and approval of the Court. Any nonmaterial modifications to the terms of this Consent Decree, such as approval of modifications to submissions to EPA and NH DES, shall be effective upon approval by the EPA and the NH DES.

XVIII. CONTINGENT LIABILITY OF THE STATE OF NEW HAMPSHIRE

56. This Consent Decree does not resolve the contingent liability of the State of New Hampshire under Section 309(e) of the Clean Water Act, 33 U.S.C. § 1319(e). The United States specifically reserves its claims against the State, and the State specifically

reserves all defenses to any such claims, including that State law does not prevent the City from raising revenues needed to comply with such judgment.

XIX. FUNDING

57. 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 any federal or state grant funds or loans.

XX. TERMINATION

58. The Court shall terminate this Consent Decree upon joint motion of the Parties after the City has paid all outstanding penalties and has completed all remedial measures to meet the CSO Mitigation Objective described in Paragraph 9 (including post-construction monitoring for a period of one year after completion of all construction) required under Section VI of this Consent Decree.

XXI. FINAL JUDGMENT

59. Entry of this Consent Decree constitutes Final Judgment under Rule 54 of the Federal Rules of Civil Procedure.

XXII. WAIVER OF SERVICE OF SUMMONS AND COMPLAINT

60. The City hereby acknowledges receipt of the Complaints and waives service of the summonses pursuant to Rule 4 of the Federal Rules of Civil Procedure.

XXIII. PUBLIC COMMENT

61. This Consent Decree shall be lodged with the Court for a period of not less than 30 days, for public notice and comment in accordance with the provisions of 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 hereby agrees not to withdraw from, oppose entry of, or to challenge any provision of this Consent Decree, unless the United States has notified the City in writing that it no longer supports entry of this Consent Decree.

XXIV. SIGNATORIES/SERVICE

62. The undersigned representative of the City, the Assistant Attorney General for the Environment and Natural Resources Division of the Department of Justice, and the Bureau Chief of the Environmental Protection Bureau of the New Hampshire Department of Justice 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.

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

XXV. INTEGRATION

64. Subject to Section XVIII (Modification), this Consent Decree constitutes the final, complete, and exclusive agreement and understanding among the Parties with respect to the settlement embodied in the Consent Decree and supersedes all prior agreements and understandings, whether oral or written, concerning the settlement embodied herein. Other than deliverables that are subsequently submitted and approved pursuant to this Decree, no other document, nor any representation, inducement, agreement, understanding, or promise, constitutes any part of this Consent Decree or the settlement it represents, nor shall it be used in construing the terms of this Consent Decree.

XXVI. CONFLICTS

65. In the event of any conflicts between this Consent Decree and any information within appendices or related documents addressing any obligation herein, this Consent Decree shall control.

XXVII. APPENDICES

66. The following appendices are attached to and incorporated into this Consent Decree:

- A. "Appendix A" is the NPDES Permit No. NH0100366 effective January 22, 2006.
- B. "Appendix B" is the September 1998 draft *CSO Master Plan* and the December 2005 *CSO Engineering Study* prepared by Wright-Pierce.
- C. "Appendix C" is a map of the City of Lebanon Wastewater Collection System, dated May 2008, provided by the City to EPA and the NH DES, which identifies all of the CSOs described in this Consent Decree.
- D. "Appendix D" is the October 2004 *Illicit Discharge Detection and Elimination: A Guidance Manual for Program and Technical Assessments*
- E. "Appendix E" is the *CMOM Program Self-Assessment Checklist*.

F. "Appendix F" is the Table showing the Lebanon, New Hampshire CSO
Consent Decree, Deadlines and Compliance Dates of the Consent Decree.

Judgment is hereby entered in accordance with the foregoing Consent Decree this
_____ day of _____, 2009.

UNITED STATES DISTRICT JUDGE
DISTRICT OF NEW HAMPSHIRE

United States and State of New Hampshire v. The City of Lebanon, New Hampshire
United States District Court
District of New Hampshire
Consent Decree

United States and State of New Hampshire v. The City of Lebanon, New Hampshire
United States District Court
District of New Hampshire
Consent Decree

For Plaintiff UNITED STATES OF AMERICA, Continued

MICHAEL GUNNISON, Acting United States Attorney
District of New Hampshire

T. David Plourde, AUSA
Acting Civil Chief
NH Bar No. 2044
U.S. Attorney's Office
53 Pleasant Street, 4th Floor
Concord, NH 03301-3904
Tel: 603-225-1552

DATE

United States and State of New Hampshire v. The City of Lebanon, New Hampshire
United States District Court
District of New Hampshire
Consent Decree

For the UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

Mark Pollins
Director
Water Enforcement Division
Office of Civil Enforcement
United States Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20004

4/2/09
DATE

United States and State of New Hampshire v. The City of Lebanon, New Hampshire
United States District Court
District of New Hampshire
Consent Decree

For the UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

Susan Studlien
Director, Office of Environmental Stewardship
United States Environmental Protection Agency,
Region I
One Congress Street
Boston, MA 02114

04/09/09
DATE

United States and State of New Hampshire v. The City of Lebanon, New Hampshire
United States District Court
District of New Hampshire
Consent Decree

For Plaintiff STATE OF NEW HAMPSHIRE

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

4/14/09

DATE

United States and State of New Hampshire v. The City of Lebanon, New Hampshire
United States District Court
District of New Hampshire
Consent Decree

For Defendant CITY OF LEBANON, NEW HAMPSHIRE
Duly Authorized by Vote of the City Council of Lebanon March 18, 2009.

Gregg Madsager, City Manager
City of Lebanon, New Hampshire
51 North Park St
Lebanon, NH 03766

4/24/09
DATE