



PUBLIC WORKS DEPARTMENT

CITY OF PORTSMOUTH

680 Peverly Hill Road
Portsmouth N.H. 03801
(603) 427-1530 FAX (603) 427-1539

March 30, 2020

Mark Pollins
Director of Water Enforcement
USEPA
OECA
1200 Pennsylvania Ave NW
MAIL CODE 2246A
Washington, DC 20460

Re: Consent Decree 09-cv-283-PB
Monthly Report on Compliance for February 2020
City of Portsmouth, New Hampshire

Dear Mr. Pollins:

In accordance with Consent Decree 09-cv-283-PB, Section V, item paragraph 20, dated August 12, 2009 and as amended by Consent Decree Modification filed July 2, 2012 and approved by the Court on February 15, 2013 and as amended by Consent Decree Second Modification, Section III, item paragraph 6, filed on April 1, 2016 and approved by the Court on September 28, 2016, the City of Portsmouth is submitting this monthly report on compliance.

The Consent Decree Second Modification requires the filing of monthly reports as follows: Within 30 days after the end of each month, the City shall submit a written report to EPA, the State, and CLF for the preceding month that shall include a description or reporting of the following: i) status of required construction, including major work items completed in the preceding month; ii) projected work items to be undertaken in the next month; iii) project percent complete based on payments to Contractor for work completed; iv) project percent complete based on time elapsed; v) status of all required permit applications; vi) status of Consent Decree milestones including identifying any problems encountered or anticipated, together with the proposed or implemented solutions; and vii) the monthly average discharge concentrations of total nitrogen for the preceding month, as required in Paragraph 8.b.ii of the Second Modification.

The Consent Decree, First Modification, Second Modification and Third Modification along with such Monthly Reports on Compliance shall be posted on the City's internet site, and maintained accessible to the public online until termination of the Consent Decree. In addition to the submission of Reports on Compliance, the Parties will participate in quarterly meetings or conference calls, if scheduled by EPA, to review the City's compliance with the terms of the Consent Decree.

i. Status of required construction including major work items completed in the preceding month

Work completed by the Contractor in the month of **February 2020** is as follows:

- Completed placement of grout in Gravity Thickener No. 2
- Completed re-installation of the dome over Gravity Thickener No. 2
- Completed manufacturer's checkout of the scum pumps at the primary clarifiers and Gravity Thickener No. 2
- Completed startup and training for the pressure washers in the Solids Building

ii. Projected work items to be undertaken in the next month

Ongoing work by the Contractor through the month of **March 2020** includes the following:

- Continue minor electrical, HVAC, and plumbing punch list work at the Headworks Building and the Grit Building
- Continue minor electrical, plumbing, and HVAC work in the BAF Building and Solids Building
- Continue integration of the BAF control system with the plant's SCADA system
- Conduct manufacturer's checkout and load testing of hoists in the BAF Building
- Continue startup of the BAF and the biomass development phase, and continue to calibrate and tune control loops
- Continue to export excavated materials and demolition materials off-site
- Continue scum pump installation in the scum well for Gravity Thickener No. 2
- Perform final cleaning and sandblasting waste removal from Gravity Thickener No. 1 and place the thickener in service
- Continue selective demolition of structures and repair of deteriorated concrete in the existing Sludge Processing Building
- Continue PCB abatement in the existing Sludge Processing Building (new Operations/Lab Building) lower level
- Begin PCB encapsulation in the existing Sludge Processing Building (new Operations/Lab Building) lower level
- Continue concrete beam and column repair in the existing Sludge Processing Building (new Operations/Lab Building) lower level
- Continue selective demolition and repairs in the Chlorine Contact Tanks
- Continue construction of ramps and stairs at the Operations/Lab Building
- Begin saw cutting/demolition for the installation of the sump at the Mechanical Room in the existing Sludge Processing Building (new Operations/Lab Building) lower level

Important Note – The above list represents work that was scheduled for March 2020. Due to the Covid-19 pandemic and the impact of the declaration of states of emergency and issuance of executive orders, both at the state and federal level and guidance issued for social distancing, the work described above has been impacted to greater and lesser degrees depending on the trade involved. The consequences of these changes are still unfolding.

Projected work to be completed by the Contractor in the month of **March 2020** includes the following:

- Complete manufacturer's checkout and load testing of hoists in the BAF Building
- Complete selective demolition of structures and repair of deteriorated concrete in the existing Sludge Processing Building
- Complete concrete beam and column repair in the existing Sludge Processing Building (new Operations/Lab Building) lower level
- Complete final cleaning and sandblasting waste removal from Gravity Thickener No. 1 and place the thickener in service

Important Note – The above list represents work that was scheduled for March 2020. Due to the Covid-19 pandemic and the impact of the declaration of states of emergency and issuance of executive orders, both at the state and federal level and guidance issued for social distancing, the work described above has been impacted to greater and lesser degrees depending on the trade involved. The consequences of these changes are still unfolding.

iii. Project percent complete based on payments to Contractor for work completed

The following table provides a summary of the Contractor's requests for payment, and the resulting percent complete:

Original Contract Value	72,785,545.00
Change Order 1 – January 2017	367,290.42
Change Order 2 – May 2017	546,722.46
Change Order 3 – August 2017	93,838.31
Change Order 4 – December 2017	162,869.20
Change Order 5 – May 2018	249,828.16
Change Order 6 – December 2018	292,031.11
Change Order 7 – April 2019	169,138.30
Change Order 8 – October 2019	112,659.75
Contract Value Total	\$74,779,922.71

Payment Application No.	Work Conducted Through	Amount	Payment Application No. (continued)	Work Conducted Through (continued)	Amount	Cumulative Amount	% Complete Based on Contract Value Total
1	09/30/2016	\$1,393,500.00	22	06/30/2018	\$2,638,097.36		
2	10/31/2016	\$2,855,100.00	23	07/31/2018	\$1,250,957.12		
3	11/30/2016	\$1,717,330.09	24	08/31/2018	\$2,351,471.12		
4	12/31/2016	\$1,374,011.19	25	09/30/2018	\$1,402,132.42		
5	01/31/2017	\$1,524,496.35	26	10/31/2018	\$1,382,568.22		
6	02/28/2017	\$1,327,078.04	27	11/30/2018	\$1,655,719.55		
7	03/31/2017	\$2,767,152.62	28	12/31/2018	\$1,409,179.62		
8	04/30/2017	\$2,449,209.70	29	01/31/2019	\$906,134.53		
9	05/31/2017	\$1,876,920.03	30	02/28/2019	\$902,482.79		
10	06/30/2017	\$2,345,659.10	31	03/31/2019	\$1,198,046.56		
11	07/31/2017	\$2,242,655.50	32	04/30/2019	\$1,138,709.83		
12	08/31/2017	\$4,028,468.63	33	05/31/2019	\$990,898.97		
13	09/30/2017	\$2,757,371.30	34	06/30/2019	\$1,112,297.85		
14	10/31/2017	\$2,306,338.15	35	07/31/2019	\$862,001.79		
15	11/30/2017	\$1,884,478.12	36	08/31/2019	\$1,068,359.68		
16	12/31/2017	\$2,151,295.60	37	09/30/2019	\$763,764.66		
17	01/31/2018	\$1,621,113.58	38	10/31/2019	\$1,151,181.27		
18	02/28/2018	\$1,218,795.24	39	11/30/2019	\$1,953,458.46		
19	03/31/2018	\$1,737,412.52	40	12/31/2019	\$1,319,747.16		
20	04/30/2018	\$1,546,079.40	41	01/31/2020	\$260,271.98		
21	05/30/2018	\$1,428,583.12	42	02/29/2020	\$410,670.38		
						\$68,681,199.60	91.84%

Project percent complete based on time elapsed

The contract time to the EPA required milestone for the BAF treatment system completion is 1186 calendar days. The total value of the contract (item iii) is based on the City's contractual milestone for project substantial completion is 1398 calendar days.

The BAF treatment substantial completion was achieved on December 31, 2019. As of February 29, 2020, the project is 89.3% complete based on the project substantial completion date of June 30, 2020.

The project substantial completion date was extended by 30 days by the execution of Change Order #7. No Consent Decree milestone dates are affected by this change.

iv. Status of all required permit applications

There are no pending permit applications.

v. Status of Consent Decree milestones including identifying any problems encountered or anticipated, together with the proposed or implemented solutions

The construction contract with Methuen Construction Company, Inc. was executed on August 25, 2016. A summary of all milestones required by the Consent Decree Second Modification is provided in the table below.

Milestone	Date	Status
Execute Contract to Construct Upgrades	July 1, 2016 September 1, 2016*	August 25, 2016
Submit Two Additional Milestones for EPA Review and Approval	December 1, 2016	November 29, 2016
Additional Milestone 1: Transfer of the existing SCADA system to the new Headworks Building	November 21, 2017	October 18, 2017
Additional Milestone 2: Startup and testing of the Secondary Influent Pump Station in the new Solids Building	May 9, 2019	May 7, 2019
BAF Substantial Completion	December 1, 2019 December 31, 2019	December 31, 2019**
Achieve Compliance with NPDES Permit Limits	April 1, 2020	On Schedule

*At the request of the City of Portsmouth, all parties agreed that the Contract Execution Date could be revised to September 1, 2016 to allow more time for bidding and to accommodate the Portsmouth City Council's review of barging alternatives prior to contract execution. The Contractor's schedule for completion was reduced to accommodate the modified contract execution delay.

**The BAF substantial completion date was extended by approval from the EPA in a letter dated December 9, 2019. Documentation is provided in the December 2019 Monthly Report on Compliance and available online.

Webpage: <https://www.cityofportsmouth.com/publicworks/wastewater/resources>
Report: <http://files.cityofportsmouth.com/files/ww/2019/wwepadec2019rpt.pdf>

vi. The monthly average discharge concentrations of total nitrogen for the preceding month, as required in Paragraph 8.b.ii of the Second Modification.

The average concentration of effluent total nitrogen in the month of February 2020 was 17.9 mg/L TN. See attached report on page 12, which was submitted with the City's February 2020 Discharge Monitoring Report (DMR) for NPDES Permit NH0100234.

As requested by the EPA, Consent Decree Mitigations, as required in Section IV, Paragraph 8, of the Consent Decree Second Modification, will be outlined in this monthly report.

ATTACHMENT A: A summary of the City's mitigation initiatives is provided detailing the status of each initiative.

ATTACHMENT A1: A summary of the City's commitments to date as required in Paragraph 8.e., Water Quality and Ecosystem Health Project, of the Consent Decree Second Modification.

ATTACHMENT A2: Supplemental Compliance Plan Sewer Separation Projects per Consent Decree, Section IV, Paragraph 12.c. On January 24, 2018, EPA, with NHDES concurrence, approved the updated CSO Supplemental Compliance Plan and implementation schedule as contained in the plan.

These monthly construction reports are posted on the City's wastewater website at: <https://www.cityofportsmouth.com/publicworks/wastewater/resources>

As required by the Consent Decree:

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. Please contact me at (603) 766-1416 if you have any questions or require additional information.

Sincerely,



Peter H. Rice, P.E.
Director of Public Works

cc: Solanch S. Pastrana-Del Valle, U.S. EPA Region 1
Tracy L. Wood, NHDES Wastewater Engineering Bureau Administrator
Allen Brooks, Esq., Department of Justice, Environmental Protection Bureau Chief
Tonia Bandrowicz, Senior Enforcement Counsel, USEPA Region 1
David Gordon, Esq., U.S. Department of Justice
Tom Irwin, Esq., Conservation Law Foundation
Karen S. Conard, City Manager, City of Portsmouth
Nancy Colbert Puff, Deputy City Manager
Suzanne Woodland, Deputy City Attorney
Brian Goetz, Deputy Director of Public Works
Terry Desmarais, City Engineer

ATTACHMENT A: MITIGATION

This document summarizes the City's mitigation initiatives as required in Section IV, Paragraph 8, of the Consent Decree Second Modification.

- a) Interim Enhanced Primary Treatment: Perform full scale piloting of alternative coagulant chemicals to see if settling performance can be improved.

<i>Current Status:</i>	<i>Completed:</i>
COMPLETED	JANUARY 9, 2018
<i>Comments:</i>	
EPA issued letter of approval to the City on January 9, 2018. Documents are available on the City's wastewater and sewer webpage: https://www.cityofportsmouth.com/publicworks/wastewater/resources	

- b) Nitrogen Removal: For a five-year period, commencing June 1, 2020 achieve specific seasonal average total nitrogen effluent concentrations and monthly average total nitrogen effluent concentrations for the Peirce Island WWTF with the upgrade.

<i>Current Status:</i>	<i>Anticipated Completion Date:</i>
TREATMENT FACILITY UNDER CONSTRUCTION	NOTED ABOVE
<i>Comments:</i>	
A summary for this item is not necessary until the new Biological Aerated Filter (BAF) system construction is completed and fully operational. This is not required until April 1, 2020.	

- c) Stormwater Project: The City will implement a green infrastructure project(s) using innovative low-impact development approaches to significantly reduce stormwater pollution from one or more existing sites. Cost of project will be \$500,000.

<i>Current Status:</i>	<i>Anticipated Completion Date:</i>
ONGOING	DECEMBER 31, 2020
<i>Comments:</i>	
In September, City staff and the design team met with representatives from CLF to review the preliminary design for the stormwater project located at 680 Peverly Hill Road. The project will abut the City's new multipurpose recreation fields and is intended to provide educational components as well as treatment.	
The project has received all permits and approvals except for the Alteration of Terrain (AOT) permit from the Department of Environmental Services. The design of the stormwater treatment system is complete and the design team is currently working on putting together the bid package for the project.	
Presentations were made to the City Council in February 2020, to review the overall scope of the project, but mainly focused on an update on the status of the playing fields.	
The project is on schedule for bid and contract award this spring with construction taking place this summer. The stormwater facility is on schedule for completion within the December 31, 2020 deadline. Water quality sampling protocols have been established so that water quality can be measured before and after completion of the project.	

- d) Sagamore Avenue Sewer Extension Project: Implement a sewer extension project to provide public sewer service to approximately 83 existing parcels adjacent to or near Sagamore Avenue with the intent to improve water quality in Sagamore Creek.

<i>Current Status:</i>	<i>Anticipated Completion Date:</i>
FINAL DESIGN PHASE 1	SUBSTANTIAL COMPLETION BY JUNE 30, 2022
<i>Comments:</i>	
<p>The City executed a Design Phase Engineering Services contract with Wright-Pierce. A kickoff meeting was held on September 3, 2019 and a Public Information Meeting was held on September 4, 2019. Property owners have voiced concerns regarding elements of the project and this has required additional public process and slowed the design work. Additional Public Information Meetings were held on November 25, 2019 and December 9, 2019.</p> <p>The City created a webpage to provide project updates and improve communication with the public. www.cityofportsmouth.com/publicworks/sagamore-ave-sewer-extension-project</p> <p>The City has requested an extension of time to commence construction due to the delay in getting final approval from the City Council on various project elements. The City has also notified EPA, DES and CLF of potential further impacts to the schedule due to the Covid-19 pandemic. Communications are attached.</p>	

- e) Water Quality and Ecosystem Health Project:

<i>Current Status:</i>	<i>Anticipated Completion Date:</i>
ONGOING	N/A
<i>Comments:</i>	
<p>The City of Portsmouth has continued to coordinate with members of Great Bay 2020 and CLF regarding funding commitments for 2020. Expenditures and the current list of commitments are documented on Attachment A1.</p> <p>ATTACHMENT A1 details financial commitments.</p>	

ATTACHMENT A1: WATER QUALITY AND ECOSYSTEM HEALTH PROJECTS

This document summarizes payments made for the City's obligations under the Consent Decree Second Modified (No. 09-cv-283-PB), Paragraph 8.e. This item requires a contribution of \$500,000 over a period of five years to support water quality and ecosystem health efforts related to the Great Bay Estuary.

Projects	Vendor/Agent	Status	Payment Date	Payment Total
Great Bay Monitoring Collaborative	UNH	Paid	08/17/2016	5,000.00
Sagamore Creek water quality monitoring project	FB Environmental Assoc.	Executed 08/21/2017	Monthly Invoicing	47,798.00
Sagamore Creek VRAP water quality samples	CLF / VRAP / NH Public Health Labs	Paid	02/13/2018	261.00
Teachers on the Estuary (TOTE)	Great Bay Stewards	Paid	09/15/2017	7,000.00
Public outreach/education work	The Nature Conservancy (TNC)	Paid	09/15/2017	14,000.00
Oyster Shell Recycling	CCA NH	Paid	10/20/2017	4,000.00
Great Bay Estuary Monitoring Support	UNH Sponsored Programs Admin	Paid	09/15/2017	6,000.00
Oyster Larval Study: larval supply natural spat recruitment	CLF / UNH *UNH	Paid	05/24/2018	8,000.00
2018 Sagamore Creek water quality monitoring sampling (includes laboratory fees)	FB Environmental Assoc.	Executed 06/19/2018	Intermittent Invoicing	64,164.67
Data Sonde purchase for Piscataqua Region Monitoring Collaborative	UNH	Paid	06/27/2018	20,000.00
Teachers on the Estuary (TOTE)	Great Bay Stewards	Paid	07/26/2018	7,500.00
Connect The Coast	The Nature Conservancy (TNC)	Paid	08/23/2018	11,000.00
Great Bay Estuary clean-up events facilitated by Waterkeeper	Great Bay Stewards	Paid	08/30/2018	4,500.00
Soak Up the Rain initiative (DES, Waterkeeper, Great Bay Stewards)	Great Bay Stewards	Paid	08/30/2018	6,000.00
SeagrassNet	CLF / UNH	Paid	01/07/2019	30,000.00
2019 Sagamore Creek water quality monitoring project (includes laboratory fees)	FB Environmental Assoc.	Executed 05/07/2019	Intermittent Invoicing	64,590.00
Teachers on the Estuary (TOTE)	Great Bay Stewards	Paid	04/24/2019	7,500.00
Comprehensive Coastal Conservation Plan	The Nature Conservancy (TNC)	Paid	10/22/2019	10,000.00
Citizen Science Seaweed Monitoring	UNH PREP (Piscataqua Region Estuaries Partnership)	Paid	05/14/2019	7,500.00
Middle/High School Estuary Intensive	Great Bay Stewards	Paid	05/02/2019	4,000.00
Oyster Restoration Program	The Nature Conservancy (TNC)	Pending		10,000.00
SeagrassNet 2020	CLF / UNH *UNH PREP (Piscataqua Region Estuaries Partnership)	Pending		20,000.00
TOTAL				\$ 358,813.67

4/3/2020 - Vendor/Agent section has been amended. Edits made are noted with an asterisk.

ATTACHMENT A2: SEWER SEPARATION PROJECTS

This document identifies and summarizes six sewer separation projects and one infiltration and inflow project (Contract #1) approved by the EPA in a letter to the City dated January 24, 2018. EPA, with NHDES concurrence, approved the updated CSO Supplemental Compliance Plan and implementation schedule as contained in the plan. The City shall:

- complete the six sewer separation projects and the Contract No. 1 wastewater collection system rehabilitation projects by no later than October 2023;
- complete the LTCP update by no later than October 2025; and
- provide project status on all seven projects as part of the monthly reports on compliance it will be submitting pursuant to Paragraph 6.a. of the Consent Decree Second Modification.

1. FLEET STREET: COURT ST TO HANOVER ST & PORTIONS OF ADJACENT STREETS

<i>Project Name:</i>	<i>Current Status: (phase of work)</i>	<i>Anticipated Construction Completion Date:</i>
FLEET ST	PRELIMINARY DESIGN	TBD
<i>Comments:</i>		
The City executed the Design Phase Engineering Services contract with Underwood Engineers.		

2. PLEASANT STREET: AT THE INTERSECTION WITH COURT ST

<i>Project Name:</i>	<i>Current Status: (phase of work)</i>	<i>Anticipated Construction Completion Date:</i>
PLEASANT ST	COMPLETED	NOVEMBER 2018

3. MCDONOUGH PHASE 3B: MCDONOUGH STREET FROM CORNWALL ST TO BREWSTER ST & LANGDON ST

<i>Project Name:</i>	<i>Current Status: (phase of work)</i>	<i>Anticipated Construction Completion Date:</i>
MCDONOUGH PH 3B	COMPLETED	JUNE 2019

4. ISLINGTON STREET PHASE 1: COLUMBIA ST TO ROUTE 1 BYPASS OVERPASS

<i>Project Name:</i>	<i>Current Status: (phase of work)</i>	<i>Anticipated Construction Completion Date:</i>
ISLINGTON ST PH 1	CONSTRUCTION	2020
<i>Comments:</i>		
Severino Trucking is under contract to construct the base bid portion of the project, which extends from the intersection with Route 1 Bypass to the intersection of Albany Street. Construction is expected to resume in April 2020, with completion in the Fall of 2020.		
The City has requested additional funding for this project through the Capital Improvement Plan (CIP) to extend construction from the intersection with Albany Street to Columbia Street. CIP funding will not be approved until June 2020.		

5. MAPLEWOOD AVENUE: AT FAIRVIEW DR

<i>Project Name:</i>	<i>Current Status: (phase of work)</i>	<i>Anticipated Construction Completion Date:</i>
MAPLEWOOD AVE	COMPLETED	MAY 2019

6. UNION STREET: MIDDLE ST TO STATE ST & SECTIONS OF COFFINS COURT & AUSTIN ST

<i>Project Name:</i>	<i>Current Status: (phase of work)</i>	<i>Anticipated Construction Completion Date:</i>
UNION ST	ENGINEERING RFP IN DRAFT	TBD
<i>Comments:</i>		
Design Phase Engineering Services RFP is in draft and will be advertised as soon as possible. The project design scope has expanded to include sewer separation in the Willard Avenue area.		

7. SEWER REHABILITATION PROJECT

<i>Project Name:</i>	<i>Current Status: (phase of work)</i>	<i>Anticipated Construction Completion Date:</i>
CONTRACT NO. 1	DESIGN	TBD
<i>Comments:</i>		
The 60% preliminary design plans have been reviewed by staff and work is progressing toward putting together the final design plans and bid package. Environmental permitting is underway.		

**Peirce Island Effluent Nitrogen
February 2020**

	1003	99959	99960	99961	99962
	Inf Flow	Effluent Ammonia	Effluent Nitrite/Nitrate-	Effluent TKN	Total Nitrogen
Date	MGD	as N	N		
		mg/l	mg/l	mg/l	mg/l
2/1/2020	4.16				
2/2/2020	4.06				
2/3/2020	3.88				
2/4/2020	3.81	16.0	1.0	18.0	19.0
2/5/2020	3.68	18.0	1.0	18.0	19.0
2/6/2020	3.96				
2/7/2020	5.03				
2/8/2020	4.35				
2/9/2020	4.18				
2/10/2020	4.57				
2/11/2020	4.49	13.0	1.0	17.0	18.0
2/12/2020	4.26	22.0	1.0	18.0	19.0
2/13/2020	4.60				
2/14/2020	4.47				
2/15/2020	4.23				
2/16/2020	4.01				
2/17/2020	3.93				
2/18/2020	5.43	15.0	1.0	13.0	14.0
2/19/2020	5.07	20.0	1.0	13.0	14.0
2/20/2020	4.57				
2/21/2020	4.40				
2/22/2020	4.11				
2/23/2020	3.86				
2/24/2020	3.92				
2/25/2020	3.84	15.0	1.0	19.0	20.0
2/26/2020	3.69	17.0	1.0	19.0	20.0
2/27/2020	7.71				
2/28/2020	5.69				
2/29/2020	5.16				
Minimum	3.68	13.0	1.0	13.0	14.0
Maximum	7.71	22.0	1.0	19.0	20.0
Average	4.45	17.0	1.0	16.9	17.9



CITY OF PORTSMOUTH

LEGAL DEPARTMENT

Robert P. Sullivan, City Attorney – 603-610-7204 (Direct Dial)
Suzanne M. Woodland, Deputy City Attorney – 603-610-7240 (Direct Dial)
Kathleen M. Dwyer, Assistant City Attorney – 603-498-2126 (Direct Dial)
Jane M. Ferrini, Assistant City Attorney – 603-610-7256 (Direct Dial)

March 13, 2020

VIA E-MAIL

Tonia Bandrowicz, Esq.
Senior Enforcement Counsel
U.S. Environmental Protection Agency
5 Post Office Square, Suite 100
Mail Code OES 04-3

**RE: City of Portsmouth, NH Consent Decree – Docket #: Civ. No. 09-CV-283-PB
Sagamore Avenue Sewer Extension Project Extension Request**

Dear Ms. Bandrowicz:

The City seeks an extension of time to commence its Sagamore Avenue Area Sewer Extension Project (Sagamore Project); the obligation described under Paragraph 8 (d) of the Consent Decree Second Modification, in the matter of *United States et al v. the City of Portsmouth, Docket No. 09-cv-283-PB* (CD). The CD requires the City to commence construction by June 30, 2020 and complete the project by June 30, 2022. The City seeks an extension of the date to commence construction to April 30, 2021.


On September 4, 2019, City staff held a public informational meeting to kick-off the final design of the Sagamore Project. The purpose of the meeting was to notify residents of the work to be performed in and along the impacted roadways including borings, wetland flagging and other survey work. That informational meeting resulted in a groundswell of unanticipated questions and concerns with regard to the project. Thereafter, staff held additional public meetings (November 25 and December 9) and offered other opportunities for the public to weigh in and for staff to respond to questions. Link below to the project page on the City's website.

<https://www.cityofportsmouth.com/publicworks/sagamore-ave-sewer-extension-project>

What emerged from the several public meetings and dialogue is that the City Council, the City's policy-making body, needed to weigh in on several key aspects of the project, specifically including the apportionment of costs between the sewer fund and the individual property owner impacted. City staff has not yet had an opportunity to get input from the City Council to allow design work to be completed. Seven new City Councilors, including a new mayor, were elected in November (out of a total of 9 City Councilors). This change in the makeup and leadership of the City Council along with a heavy City Council workload in the early part of the year, has resulted in delay in getting before the City Council on this topic.

The Stormwater project required under Paragraph 9(e) of the CD is scheduled to go out to bid within the next 30 days with completion before year end. With regard to the City's upgrade of the Peirce Island Wastewater Treatment Facility, the secondary treatment system is operational and the City anticipates meeting permit compliance by the scheduled April 1, 2020 date.

Sincerely,



Suzanne M. Woodland
Deputy City Attorney

Suzanne M. Woodland
Deputy City Attorney



CITY OF PORTSMOUTH

LEGAL DEPARTMENT

Robert P. Sullivan, City Attorney – 603-610-7204 (Direct Dial)
Suzanne M. Woodland, Deputy City Attorney – 603-610-7240 (Direct Dial)
Kathleen M. Dwyer, Assistant City Attorney – 603-498-2126 (Direct Dial)
Jane M. Ferrini, Assistant City Attorney – 603-610-7256 (Direct Dial)

March 16, 2020

VIA E-MAIL AND MAIL

Tonia Bandrowicz
Senior Enforcement Counsel
Office of Environmental Stewardship
New England Office of the
U.S. Environmental Protection Agency
5 Post Office Square
Suite 100 (Mail Code OES 04-3)
Boston, MA 02109-3912

**RE: United States of America, State of New Hampshire, and Conservation
Law Foundation v. City of Portsmouth
United States District Court, District of New Hampshire
Civil Action No. 09-cv-283-PB**

Dear Ms. Bandrowicz:

This letter follows up my communication of March 13, 2020 relative to the Sagamore Avenue Area Sewer Extension Project (Sagamore Project) as described in the Consent Decree Second Modification at Article IV, Paragraph 8(d) completion of the Sagamore Project by June 30, 2022.

Please be advised that on Saturday March 14, 2020, the Portsmouth City Manager and the Portsmouth City Mayor elected to postpone the Sagamore Project Work Session scheduled for March 16, 2020. All items on the City Council agenda that would have involved public input were postponed due to Covid-19 concerns. I attach the modified agenda and a copy of the communication that was posted to the City's website. As you know a State of Emergency was declared at the federal level on Friday March 13, 2020 and by the State of New Hampshire on March 13, 2020.

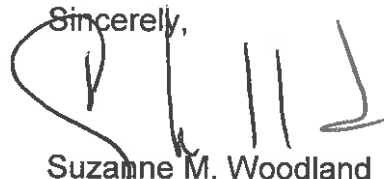
The City has prepared this communication to reserve its right to make a claim for Force Majeure under Article VII, paragraph 36 of the Consent Decree. The City is concerned that this further delay to the project could impact the scheduled completion date of June 30, 2022. As you know from the March 13, 2020 letter, that completion date was already at risk, but staff was evaluating how the work might be accomplished within the timeframe if the City Council could act quickly.

It is the City's opinion that although the Sagamore Project will improve water quality over time, the possible delay in the completion of the project will not cause or contribute to an "endangerment to public health, welfare, or the environment." Known

failed septic systems in the area are being routinely pumped and water quality would not be made worse by this delay.

I trust you will distribute this communication to the Attorney General's office and to others within EPA as may be appropriate. As the situation continues to unfold locally we will keep you apprised. Feel free to contact me if you have questions or concerns.

Sincerely,



Suzanne M. Woodland
Deputy City Attorney

SMW/smr

Attachments

cc: Allen Brooks, Esq., Department of Justice, Environmental Protection Bureau
Thomas F. Irwin, Esq., Conservation Law Foundation
Solanch Pastrana-Del Valle, Enforcement, EPA
Tracy L. Wood, P.E., NHDES Wastewater Engineering Bureau
Terry Desmarais, Jr., P.E., City Engineer

A SPECIAL MESSAGE FROM CITY OF PORTSMOUTH REGARDING THE CITY COUNCIL MEETING ON MONDAY, MARCH 16, 2020

March 14, 2020

"Out of an abundance of caution, recognizing the declaration of emergency by both President Trump and Governor Sununu, Mayor Becksted and City Manager Conard have made an adjustment to the City Council meeting agenda for Monday night, March 16.

The Sagamore Avenue Sewer Extension Project Work Session and Public Comment Session will be postponed to a future date. Only the most essential and time sensitive agenda items will be heard. The modified agenda will be posted on the City website as soon as it is finalized.

The emergency measures strongly encourage people not to gather in groups. So residents are asked to watch the City Council meeting at home on Channel 22 Comcast (live-streamed online) and not attend in person. Thank you," said Karen S. Conard, Portsmouth City Manager in a message to residents this morning.

The message continued:

Please be advised that the situation may change, pending additional information and updates. City Manger Karen Conard and City Health Officer Kim McNamara, with Police and Fire, are leading the City's emergency management response and will continue maintaining regular communication with staff, community stakeholders, and state officials to stay abreast of the situation. Further updates will be provided to the community as we receive them.

We continue to encourage staff and visitors¹⁷ to stay home if they feel sick and to

follow recommended hygiene practices. Making sure everyone is safe and healthy is our top priority.

Many of the things you do to help prevent colds and the flu can help protect you against other respiratory viruses:

- Wash your hands often with soap and warm water for at least 20 seconds.
- Avoid touching your eyes, nose and mouth.
- Clean things that are frequently touched (like doorknobs and countertops) with household cleaning spray or wipes.
- Cover your mouth when you cough or sneeze. Use a tissue or your inner elbow, not your hands.
- Stay home if you are sick and avoid close contact with others. For more information on Coronavirus (COVID-19), please visit the U.S. CDC's website, or the NH Department of Health & Human Services Joint information Center website.

Governor Chris Sununu, the New Hampshire Department of Health and Human Services and NH Homeland Security and Emergency Management have also mobilized 211NH to handle all COVID-19 related calls from New Hampshire residents. **All residents with questions or concerns surrounding the COVID-19 outbreak can call 2-1-1.**



City of **PORTSMOUTH** Home >

CITY COUNCIL MEETING

MUNICIPAL COMPLEX, EILEEN DONDERO FOLEY COUNCIL CHAMBERS, PORTSMOUTH, NH
DATE: MONDAY, MARCH 16, 2020 TIME: 7:00 pm

AN ANTICIPATED NON-PUBLIC SESSION WILL BE HELD AT THE END OF THE CITY COUNCIL MEETING RE: MCINTYRE – RSA 91-A:3, II (e)

- I. 6:00PM WORK SESSION – SAGAMORE AVENUE SEWER EXTENSION - **POSTPONED**
- II. PUBLIC DIALOGUE SESSION *[when applicable – every other regularly scheduled meeting]* - **N/A**
- III. CALL TO ORDER [7:00 p.m. or thereafter]
- IV. ROLL CALL
- V. INVOCATION
- VI. PLEDGE OF ALLEGIANCE
- VII. ACCEPTANCE OF MINUTES – JANUARY 28, 2020
- VIII. RECOGNITIONS AND VOLUNTEER COMMITTEE REPORTS - **POSTPONED**
 - Recognition of 5th Grade Little Harbour School student Aadhavan “Addy” Veerendra, winner of the NH Spelling Bee with Principal Lawson and Spelling Bee Club teacher Molly Green
- IX. PUBLIC COMMENT SESSION - **POSTPONED**
- X. PUBLIC DIALOGUE SUMMARY *[when applicable]* - **N/A**
- XI. PUBLIC HEARING AND VOTES ON ORDINANCES AND/OR RESOLUTIONS - **POSTPONED**
 - A. First reading of Ordinance amending Chapter 7, Article I, Section 7.105 C – Designated Motorcycle Parking Area (*Sample motion – move to pass first reading and schedule a public hearing and second reading at the April 6, 2020 City Council meeting*)
- XII. MAYOR BECKSTED
 1. Appointments to be Considered:
 - Appointment of Beth Margeson to the Conservation Commission as an Alternate
 - Reappointment of Jessica Blasko to the Conservation Commission
 - Reappointment of Allison Tanner to the Conservation Commission
 - Reappointment of Jackie Cali-Pitts to the Recreation Board
 - Reappointment of Lisa Louttit to the Recreation Board
 2. *Appointments to be Voted:
 - Reappointment of Barbara McMillan to the Conservation Commission
 - Reappointment of William Townsend to the Peirce Island Committee
 - Reappointment of John Simon to the Peirce Island Committee
 - Appointment of Kara Rodeneizer to the Portsmouth Housing Authority
 - Reappointment of Robin Pickering to the Portsmouth Housing Authority – Resident Member

- Appointment of David Cosgrove to the Citywide Neighborhood Committee
 - Appointment of Mark Syracuse to the Citywide Neighborhood Committee
3. *Establish Committee for Negotiations Re: Boyle

XIII. CITY COUNCIL MEMBERS

A. ASSISTANT MAYOR

SPLAINE

1. *Jones Avenue Landfill
2. *Coronavirus Planning and Preparation – and Observations/Concerns from Economic Development Commission meeting of Friday, March 6, 2020

B. COUNCILOR McEACHERN

1. *Creation of a Subcommittee comprised of 2 Council members and 4 residents selected by the Mayor and approved by the Council to discuss current ADU Approval process and ways to improve

C. COUNCILOR WHELAN

1. *McIntyre Subcommittee Report

D. COUNCILOR KENNEDY

1. Impact Fees
I would recommend the following suggestions to support The City of Portsmouth's Infrastructure:
 For projects over two units the following impact fees would apply:
 1-Bedroom or 1,000 sq. ft. or less \$25,000/unit
 2-Bedrooms or 1,500 sq. ft. or less \$50,000/unit
 3-Bedrooms or 2,000 sq. ft. or less \$75,000/unit
 4-Bedrooms or 2,500 sq. ft. or less \$100,000/unit
 5-Bedrooms or 3,000 sq. ft. or less \$125,000/unit
 The following motion I will be making:
(Sample motion – move to have the City Manager, Legal Staff, Fees Committee and Planning Board Review and Report Back on the suggested Impact Fees by the April 20, 2020 City Council meeting. I would also encourage other suggestions from these groups on Impact Fees with a Report Back on April 20, 2020)

E. COUNCILOR HUDA

1. Annual Budget Spending Request by Department

Does that mean the Department Manager has the ability to spend those dollars on anything as long as they stay within the budget dollars appropriated to them?

(Sample motion – move to request a report back from the City Manager on the following: (In a language & format that can be understood by all City residents)
 - ***To Clarify the dollar limit spending authority granted to different positions (i.e. Directors, Department Managers, City Purchasing Agent, City Manager)***

- ***To discuss if there is a dollar limit restriction on the City Department Directors or Managers ability to transfer dollars among the various line items in their appropriated budgets. Do these transfers require the approval of either the Finance Director or City Manager.***
 - ***Please include references to source documentation that authorizes such dollar limits.***
 - ***Please include a discussion on the various controls applied to the above.***
2. To Clarify the City Managers, Interpretation of Section 7.23 Information Technology Management of the City Charter as it relates to the Information Technology section of the Administrative Code?
 - ***Is there any conflict?***
 - ***Based on the interpretation of the above, is the City following the City Charter or the Administrative Code?***

XIV. APPROVAL OF GRANTS/DONATIONS

1. Acceptance of Donations to the Portsmouth Police Department:
 - Mr. Gormley and Ms. Inguchi in support of Portsmouth Police Department – \$1,000.00
 - Ms. Marchi in support of Police Explorer Cadets - \$20.00***(Sample motion – move to accept and approve the donations for the Police Department as presented)***
2. Acceptance of Grant from the NH Department of Safety for Night Vision Equipment - \$37,500.00 ***(Sample motion – move to accept and approve the grant for the Police Department as presented)***

XV. CITY MANAGER'S ITEMS WHICH REQUIRE ACTION

A. CITY MANAGER CONARD

City Manager's Items Which Require Action:

1. Market Street Property Purchase from NH Department of Transportation - **POSTPONED**
2. Report Back from Planning Regarding 27 Thaxter Road - **POSTPONED**
3. Foundry Place Agreements and Easements
4. Request to Establish a Work Session Regarding Prescott Park
5. Request to Renew Seacoast Growers' Association (Farmer's Market) Proposed 2020 License Agreement
6. Request for Public Hearing Regarding Bonding of Fire Apparatus
7. Request to Establish Public Hearing Regarding Petition for Discontinuance of a Portion of Cate Street Connector Road - **POSTPONED**

XVI. CONSENT AGENDA

- A. Request for License to Install Projecting Sign for owner Harrison Schoaneu of Fresh House for property located at 76 Congress Street (***Anticipated action - move to approve the aforementioned Projecting Sign License as recommended by the Planning Director, and further, authorize the City Manager to execute the License Agreement for this request***)
Planning Director's Stipulations
- ***The license shall be approved by the Legal Department as to content and form;***
 - ***Any removal or relocation of projecting sign, for any reason, shall be done at no cost to the City; and***
 - ***Any disturbance of a sidewalk, street or other public infrastructure resulting from the installation, relocation or removal of the projecting sign, for any reason shall be restored at no cost to the City and shall be subject to review and acceptance by the Department of Public Works***
- B. Request for License to Install Projecting Sign for owner Nuttaya Nicholas of 5 Thai Bistro for property located at 40 Pleasant Street (***Anticipated action - move to approve the aforementioned Projecting Sign License as recommended by the Planning Director, and further, authorize the City Manager to execute the License Agreement for this request***)
Planning Director's Stipulations
- ***The license shall be approved by the Legal Department as to content and form;***
 - ***Any removal or relocation of projecting sign, for any reason, shall be done at no cost to the City; and***
 - ***Any disturbance of a sidewalk, street or other public infrastructure resulting from the installation, relocation or removal of the projecting sign, for any reason shall be restored at no cost to the City and shall be subject to review and acceptance by the Department of Public Works***
- C. Letter from Monte Bohanan, Portsmouth Halloween Parade, requesting permission to hold the 26th Annual Portsmouth Halloween Parade on Saturday, October 31, 2020 at 7:00 p.m. (***Anticipated action – move to refer to the City Manager with authority to act***)

XVII. PRESENTATIONS & CONSIDERATION OF WRITTEN COMMUNICATIONS & PETITIONS

- A. Email Correspondence (***Sample motion – move to accept and place on file***)
- B. *Report from the City's Health Department regarding Covid-19
- C. Letter from Marc Stettner Re: Designated Motorcycle Moped Parking Area

- D. Letter from Craig M. Steigerwalt Re: Petition for Release of Interest in Paper Street contiguous to 276 Dennett Street (Tax Map 143, Lot 13) pursuant to RSA 231:51 and 231:52 ***(Sample motion – move to refer to the Planning Board for report back)***
- E. Letter from Attorney Daniel C. Hoefle Re: Request for Release of Paper Street Pursuant to NH RSA 231:51 and 231:52 – 294 Dennett Street (Tax Map 143, Lot 26) ***(Sample motion – move to refer to the Planning Board for report back)***
- F. Letter from Seth Levine regarding the Middle Street Bike Lanes ***(Sample motion – move to accept and place on file)***
- G. Letter from Jim Fernald regarding proposed dock on 21 Fernald Court
- H. Background Information from Deb & Ken Jennings on 27 Thaxter Road

XVIII. CITY MANAGER'S INFORMATIONAL ITEMS

- 1. Market Street Pedestrian Bridge
- 2. *Questions from Councilor Huda from the 3/2/20 City Council meeting
- 3. Memorandum on Consultants, Contracts and Purchases over \$10,000.00

XIX. MISCELLANEOUS BUSINESS INCLUDING BUSINESS REMAINING UNFINISHED AT PREVIOUS MEETING

XX. ADJOURNMENT [at 10:00 p.m. or earlier]

**KELLI L. BARNABY, MMC/CNHMC
CITY CLERK**

** Indicates verbal report*