

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
COMMONWEALTH OF MASSACHUSETTS,)	CIVIL ACTION NO.
)	
Plaintiff-Intervenor,)	
)	
v.)	
)	
CITY OF HOLYOKE, MASSACHUSETTS,)	
)	
Defendant.)	

PARTIAL CONSENT DECREE

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WHEREAS, Plaintiff, the United States of America (“United States”), on behalf of the United States Environmental Protection Agency (“EPA”), filed a Complaint concurrently with this Partial Consent Decree (hereinafter referred to as “Consent Decree”), alleging that Defendant, the City of Holyoke, Massachusetts (the “City”), has violated and continues to violate its National Pollutant Discharge Elimination System (“NPDES”) Permit No. 0101630, issued on September 1, 2009, and reissued on October 25, 2016 (the “Permit”) and Section 301(a) of the Clean Water Act (“CWA”), 33 U.S.C. § 1311(a), by discharging pollutants into waters of the United States from its publicly owned treatment works (the “POTW”), as defined at 40 C.F.R. § 403.3, which includes a wastewater treatment plant located at One Berkshire Street, Holyoke, Massachusetts (the “WWTP”) and collection system (the “Collection System”). Such violations consist of, among other things: (i) discharging pollutants during wet and dry periods from combined sewer overflows (“CSOs”) in the City’s Collection System that caused or contributed to water quality violations in the Connecticut River; and (ii) discharging pollutants from other unpermitted components of the City’s Collection System to the Connecticut River;

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

WHEREAS, the Commonwealth of Massachusetts (the “Commonwealth”), on behalf of the Massachusetts Department of Environmental Protection (“MassDEP”), has filed an assented-to motion to intervene as a plaintiff in the action brought by the United States and has filed a complaint alleging that the City was, and is, in ongoing violation of Section 301(a) of the CWA, 33 U.S.C. § 1311(a), the Massachusetts Clean Waters Act, M.G.L. c. 21, §§ 26-53 (the

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“Massachusetts Act”), and the provisions of the federal permit and the Massachusetts Permit No. 0101630, issued by the MassDEP under the Massachusetts Act (said federal and state permits having been jointly issued as the Permit);

WHEREAS, the framework for compliance with CWA requirements for CSOs is set forth in Section 402(q)(1) of the CWA, 33 U.S.C. § 1342(q)(1) (“CSO Control Policy”);

WHEREAS, the CSO Control Policy sets forth the following objectives: (1) to ensure that, if CSO discharges occur, they are only as a result of wet weather; (2) to bring all wet weather CSO discharges into compliance with the technology-based and water-quality based requirements of the CWA; and (3) to minimize water quality, aquatic biota, and human health impacts from CSOs;

WHEREAS, the CSO Control Policy sets forth nine minimum controls, including the prohibition of dry weather overflows from CSOs, as a minimum best available technology economically achievable and best conventional technology established on a best professional judgment basis for CSO control;

WHEREAS, the United States, the Commonwealth, and the City (referred to herein collectively as the “Parties” and individually as a “Party”) to this Consent Decree have negotiated in good faith and have reached a partial settlement of the issues raised in the complaints of the United States and Commonwealth (hereinafter referred to as the “Complaints”);

WHEREAS, the Parties recognize work required by this Consent Decree will not fully resolve the Plaintiffs’ claims alleged in the Complaints;

WHEREAS, the Parties recognize, without admission of facts or law by the City except

as may be expressly stated herein, and the Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith and will avoid litigation between the Parties, and that this Consent Decree is fair, reasonable, and in the public interest;

NOW, THEREFORE, with the consent of the Parties, IT IS HEREBY ADJUDGED, ORDERED, 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, with respect to the Commonwealth's complaint, also pursuant to the Massachusetts Clean Waters Act, M.G.L. c. 21, § 42.

II. JURISDICTION AND VENUE

2. This Court has jurisdiction over the subject matter of this action pursuant to Section 309(b) of the CWA, 33 U.S.C. § 1319(b), and 28 U.S.C. §§ 1331, 1345, 1355, and 1367, and under the doctrine of pendent jurisdiction. This Court has personal jurisdiction over the Parties to this Consent Decree. Venue properly lies in this district pursuant to Section 309(b) of the CWA, 33 U.S.C. § 1319(b), and 28 U.S.C. §§ 1391(b) and (c). 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 upon the United States, the Commonwealth, and upon the City and any successors, and assigns, or other entities or persons otherwise bound by law.

4. No transfer of any ownership interest in or any interest in the operation of the WWTP or Collection System, whether in compliance with this Paragraph or otherwise, shall

relieve the City of its obligation to ensure that the terms of this Consent Decree are implemented. Any transfer involving ownership or operation of the WWTP or Collection System, or any portion thereof, to any other person or entity must be conditioned upon the transferee's agreement to undertake the obligations required by all provisions of this Consent Decree, as provided in a written agreement between the City and the proposed transferee, enforceable by the United States and/or the Commonwealth of Massachusetts as a third-party beneficiary of such agreement. At least thirty (30) Days prior to such transfer, the City shall provide a copy of this Consent Decree to the proposed transferee and shall simultaneously provide written notice of the prospective transfer, together with a copy of the above-referenced proposed written agreement, to EPA, the United States Attorney, the United States Department of Justice, the Commonwealth, and MassDEP in accordance with Section XIII (Form of Notice). Any noncompliance with this Paragraph constitutes a violation of this Consent Decree.

5. The City shall provide a copy of this Consent Decree to all officers, employees, and agents whose duties might reasonably include compliance with any provisions of this Consent Decree. The City shall also provide a copy of this Consent Decree to all contractors and consultants retained to perform any obligation required by this Consent Decree on behalf of the City and condition any such contract upon performance of the work in conformity with the terms of this Consent Decree. The City shall require that such contractors and consultants provide a copy of this Consent Decree to their subcontractors to the extent the subcontractors are performing work subject to this Consent Decree. Such contractors, consultants and subcontractors shall be deemed agents of the City for the purposes of this Consent Decree. In an action to enforce this Consent Decree, the City shall not assert as a defense the failure by any of its officers, directors, employees,

agents, servants, consultants, engineering firms, contractors, subcontractors, 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. “Effective Date” shall have the definition provided in Section XVII (Effective Date).
- b. “Clean Water Act” or “CWA” shall mean the Federal Water Pollution Control Act (commonly referred to as the Clean Water Act), as amended, 33 U.S.C. §§ 1251, *et seq.* The “Massachusetts Clean Waters Act” or the “Massachusetts Act” shall mean the Massachusetts Clean Waters Act, as amended, M.G.L. c. 21, §§ 26-53.
- c. “Collection System” shall mean the wastewater (domestic, commercial, and industrial) collection, storage and transmission system (including, but not limited to, all pipes, siphons, devices, pump stations, force mains, gravity sewer lines, manholes, and appurtenances thereto) that is owned or operated by the City of Holyoke, at any time from the Effective Date of this Consent Decree until its termination under Section XXI (Termination), and that is designed to collect and convey municipal sewage to the WWTP.
- d. “Combined Sewer Overflow” or “CSO” shall mean a discharge from the Combined Sewer System at a CSO outfall designated in the City’s Permit.
- e. “Combined Sewer System” or “CSS” shall mean the pipelines, pumping

stations, treatment facilities, and appurtenances in the Collection System that are designed to convey wastewater and stormwater through a single pipe system to the WWTP and/or CSO outfalls.

f. “Complaints” shall mean the complaints filed by the United States and the Commonwealth respectively in this action.

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

h. “Date of Lodging” shall mean the Day this Consent Decree is filed for lodging with the Clerk of the Court for the United States District Court for the District of Massachusetts.

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

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

k. “MassDEP” shall mean the Massachusetts Department of Environmental Protection and any successor departments or agencies of the Commonwealth.

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

m. “Parties” shall mean the United States, the Commonwealth, and the City of Holyoke, Massachusetts.

n. “Permit” or “NPDES Permit” shall mean NPDES Permit No. 0101630, issued on September 1, 2009, and reissued on October 25, 2016, and effective January 1, 2017, or any subsequently modified or reissued permit.

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

p. “Commonwealth” shall mean the Commonwealth of Massachusetts.

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

r. “Wastewater Treatment Plant” or “WWTP” shall mean the wastewater treatment plant operated by the City of Holyoke, and all components of such wastewater treatment plant.

V. OBJECTIVES

7. Upon approval by EPA and MassDEP of the City’s revision of its CSO Long Term Control Plan, dated May 2000 (such revised version of the May 2000 CSO Long Term Control Plan, the “Updated CSO LTCP”), such approved Updated CSO LTCP, including any approved final remedy and schedule, and any necessary related measures, shall be incorporated into, and be an enforceable part of, a modification of this Consent Decree under Section XVIII (Modification) below, or shall be incorporated into a new consent decree.

8. The Updated CSO LTCP shall require that sound engineering practices be incorporated in the work undertaken under the Updated CSO LTCP and that engineering designs and analyses required to be performed pursuant to the Updated LTCP are conducted using sound engineering practices, and, as applicable, consistent with the most current version of the following:

(a) EPA’s *Handbook: Sewer System Infrastructure Analysis and Rehabilitation*, EPA/625/6-

91/030, October 1991; (b) *Existing Sewer Evaluation and Rehabilitation*, WEF MOP FD-6, 2009; (c) *Guide to Short Term Flow Surveys of Sewer Systems*, WRc Engineering (Undated); (d) the National Association of Sewer Service Companies' *Manual of Practice*; (e) New England Interstate Water Pollution Control Commission's TR-16 *Guides for the Design of Wastewater Treatment Works*, 2011; (f) EPA's *Computer Tools for Sanitary Sewer System Capacity Analysis and Planning*, EPA/600/R-07/111, October 2007; and (g) EPA's *Creating Resilient Water Utilities (CRWU) Initiative*, referenced at <https://www.epa.gov/crwu>. Should there be a conflict between two or more of these sources, EPA's judgment as to which source to follow shall control.

VI. REMEDIAL MEASURES

CSO LTCP Work Plan and Updated CSO LTCP

9. CSO LTCP Work Plan. On June 11, 2018, EPA and MassDEP approved the City's 2017 work plan for the long-term control of CSOs (the "2017 CSO LTCP Work Plan").

10. Updated CSO LTCP. The City shall submit an approvable Updated CSO LTCP consistent with the approved 2017 CSO LTCP Work Plan to EPA and MassDEP for review and approval by December 31, 2019.

11. Consistent with paragraph 5 of Appendix A to this Consent Decree, the Updated CSO LTCP shall include a schedule for the design, construction, and implementation of all identified discharge control measures.

12. Upon approval by EPA and MassDEP of the Updated CSO LTCP, the Parties agree that such approved Updated CSO LTCP, including any approved final remedy and implementation schedule, and any necessary related measures, shall be incorporated into, and shall be an

enforceable part of, a modification of this Consent Decree under Section XVIII (Modification) below, or shall be incorporated into a new consent decree.

VII. REPORTS ON COMPLIANCE

13. If the City has reason to believe that it may violate any requirement of this Consent Decree, the City shall notify the United States and the Commonwealth of such violation and its likely duration, in writing, within ten (10) Days of the day the City first becomes aware of the possible violation, with an explanation of the violation's likely cause, and of the remedial steps to be taken to prevent or minimize such violation. Nothing in this Paragraph or the following Paragraph relieves the City of its obligation to provide the notice required by Section X (Force Majeure), below.

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

15. The reporting requirements of this Consent Decree do not relieve the City of any reporting obligations required by the CWA or the Massachusetts Act or their implementing regulations, or by any other Federal, State, or local law, regulation, permit, or other requirement.

VIII. REVIEW OF DELIVERABLES

16. After review of the Updated CSO LTCP that is required to be submitted for approval by EPA and MassDEP pursuant to this Consent Decree, EPA and MassDEP shall in writing: (a) approve, in whole or in part, the submission; (b) approve, in whole or in part, the submission upon specified conditions; (c) disapprove, in whole or in part, the submission, directing that the City modify the submission; or (d) any combination of the above. Approval, approval by conditions, or disapproval shall be by the issuance of one joint, written approval document from both EPA and MassDEP or separate written approvals from EPA and from MassDEP.

17. Disapproved Deliverables. Upon receipt of a written notice of disapproval pursuant to this Section, the City shall, within thirty (30) Days or such other time as the City and EPA and MassDEP agree in writing, correct the deficiencies and resubmit the Updated CSO LTCP for approval by EPA and MassDEP. Any stipulated penalties applicable to the original submission shall accrue during the 30-Day period or other specified period, but shall not be payable unless the resubmission is untimely and/or disapproved under this Section; provided that, if the original submission was disapproved by EPA and MassDEP in whole, stipulated penalties applicable to the original submission shall be due and payable upon demand notwithstanding any subsequent resubmission.

18. The resubmitted Updated CSO LTCP shall be subject to review and approval by EPA and MassDEP, as provided under this Section. If the City fails to resubmit the Updated CSO LTCP after a disapproval, or if, upon resubmission, the Updated CSO LTCP, is disapproved by EPA and MassDEP, the City shall be deemed to have failed to submit the Updated CSO LTCP

timely and adequately, unless the City invokes the dispute resolution procedures set forth in Section XI (Dispute Resolution) below, and the City's position is upheld.

IX. STIPULATED PENALTIES

19. The City shall be liable for stipulated penalties to the United States and/or the Commonwealth for violation of this Consent Decree as specified below, unless excused under Section X (Force Majeure), below, or otherwise resolved under Section XI (Dispute Resolution), below. A violation includes failing to perform an obligation required by the terms of this Consent Decree, according to all applicable requirements of this Consent Decree, and within the specified time schedules or by the date(s) established by this Consent Decree.

Remedial Measures. For every Day that the City fails to timely submit the Updated CSO LTCP as required by Section VI (Remedial Measures) of this Consent Decree, the City shall pay a stipulated penalty as follows:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$ 750	1st through 10th Day
\$ 1,000	11th through 20th Day
\$ 2,500	21st Day and beyond.

20. Stipulated penalties shall begin to accrue on the Day after performance is due or on the Day a violation occurs, whichever is applicable, and shall continue to accrue each Day until performance is satisfactorily completed or until the violation ceases. Stipulated penalties shall accrue simultaneously for separate violations of this Consent Decree.

21. Following the United States' and/or the Commonwealth's determination that the City has failed to comply with a requirement of this Consent Decree, the United States and/or the

Commonwealth may give the City written notification of the same and describe the noncompliance. The United States and/or the Commonwealth may send the City a written demand for the payment of the stipulated penalties. However, the stipulated penalties shall accrue as provided in the preceding Paragraph regardless of whether the United States and/or the Commonwealth has notified the City of a violation of or noncompliance with the requirements of this Consent Decree, or demanded payment of stipulated penalties

22. The City shall pay stipulated penalties as specified in this Section by delivering the payments to the United States and/or the Commonwealth, in equal amounts, within thirty (30) Days of the date of a demand for payment of stipulated penalties by either the United States and/or the Commonwealth in accordance with the instructions set forth as follows:

a. Fifty percent (50%) of the stipulated penalties, as 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 Massachusetts. 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 Commonwealth of Massachusetts v. City of Holyoke, Massachusetts*, and shall reference the civil action number and DOJ case number 90-5-1-1-11703, to the United States in accordance with Section XIII (Form of Notice); by email to acctsreceivable.CINWD@epa.gov; and by mail to: EPA Cincinnati Finance Office, 26 Martin Luther King Drive, Cincinnati, Ohio 45268.

b. Fifty percent (50%) of the stipulated penalties, as payments to the

Commonwealth, shall be made, upon written demand, by EFT to the Commonwealth of Massachusetts in accordance with written instructions to be provided to the City by the Commonwealth. 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 Commonwealth of Massachusetts v. City of Holyoke, Massachusetts*, and shall reference the civil action number and the Massachusetts Office of the Attorney General's Case CIV No. 17-06-45384, to the Massachusetts Attorney General's Office in accordance with Section XIII (Form of Notice) herein.

c. If the City fails to pay stipulated penalties according to the terms of this Consent Decree, the City shall be liable for interest on such penalties, as provided for in 28 U.S.C. § 1961, with accrual beginning on the date payment became due. Nothing in this Paragraph shall be construed to limit the United States from seeking any remedy otherwise provided by law for failure of the City to pay any stipulated penalties.

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

e. Stipulated penalties shall continue to accrue during any dispute resolution under Section XI, below, but need not be paid until the following:

f. If the dispute is resolved by agreement or a decision of the United States and/or the Commonwealth that is not appealed to the Court, the City shall pay accrued penalties determined to be owed, together with interest, to the United States and/or the Commonwealth within thirty (30) Days of the effective date of such agreement or the receipt of the United States' and/or the Commonwealth's decision or order.

g. If the dispute is appealed to the Court and the United States and/or the Commonwealth prevail in whole or in part, the City shall pay all accrued penalties determined to be owed, together with interest, within sixty (60) Days of receiving the Court's decision or order, except as provided in the following subparagraph.

h. If any Party appeals the District Court's decision, the City shall pay all accrued penalties determined to be owed, together with interest, within fifteen (15) Days of receiving the final appellate court decision.

23. The stipulated penalties set forth above shall be in addition to any other remedies, sanctions, or penalties which may be available by reason of the City's failure to comply with this Consent Decree. The United States and the Commonwealth expressly reserve any and all legal and equitable remedies, including contempt sanctions, which may be available to enforce the provisions of this Consent Decree.

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

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

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

X. FORCE MAJEURE

26. “Force Majeure,” for purposes of this Consent Decree, is defined as any event arising from causes entirely beyond the control of the City or of any entity controlled by 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 fulfill the obligation. The requirement that the City exercise “best efforts” includes using best efforts to anticipate any potential Force Majeure event and best efforts to address the effects of any such event (a) as it is occurring and (b) after it has occurred to prevent or minimize any resulting delay to the greatest extent possible. “Force Majeure” does not include the City’s financial inability to perform any obligation under this Consent Decree.

27. If any event that may delay or prevent the performance of any obligation under this Consent Decree occurs, whether or not caused by a Force Majeure event, the City shall notify EPA and MassDEP within seventy-two (72) hours after the City first knew or should have known that the event might cause a delay. Within five (5) working Days thereafter, the City shall submit for approval by EPA and MassDEP, 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 notify EPA and MassDEP orally within twenty-four (24) hours of becoming aware of any event that presents an imminent threat to the public health or welfare or the environment and provide written notice to EPA within seventy-two (72) hours of discovery of such event. The City shall be deemed to know of any circumstances of which the City, any entity controlled by the City, or the City's contractors knew or should have known. Failure to provide timely and complete notice in accordance with this Paragraph shall constitute a waiver of any claim of Force Majeure with respect to the event in question.

28. If EPA and MassDEP agree that a delay or anticipated delay is attributable to Force Majeure, the time for performance of the obligations under this Consent Decree that are affected by the Force Majeure event shall be extended by EPA, after a reasonable opportunity for review and comment by MassDEP, for a period of time as may be necessary to allow performance of such obligations. EPA will notify the City in writing of the length of the extension, if any, for performance of the obligations affected by the Force Majeure event.

29. If EPA, after a reasonable opportunity for review and comment by MassDEP, does not agree the delay or anticipated delay is attributable to Force Majeure or on the number of Days of noncompliance caused by such event, EPA will notify the City in writing of its decision. The City may then elect to initiate the dispute resolution process set forth in Section XI (Dispute Resolution). In any dispute resolution proceeding, the City shall have the burden of demonstrating

by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a Force Majeure event, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that “best efforts” were exercised to avoid and mitigate the effects of the delay, and that the City complied with the requirements of this Section. If the City carries this burden, the delay at issue shall be deemed not to be a violation by the City of the affected obligation(s) of this Consent Decree identified to EPA, MassDEP, and the Court. 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. Failure of the City to obtain any Federal or State grants or loans shall not be considered a Force Majeure event under this Consent Decree.

XI. DISPUTE RESOLUTION

30. Unless otherwise expressly provided for in this Consent Decree, the dispute resolution procedures set forth in this Section shall be the exclusive mechanism to resolve disputes arising under, or with respect to, this Consent Decree. The City’s failure to seek resolution of a dispute under this Section shall preclude the City from raising any such undisputed issue as a defense to an action by the United States or the Commonwealth to enforce any obligation of the City arising under this Consent Decree. The procedures set forth in this Section shall not apply to actions by the United States or the Commonwealth to enforce obligations that the City has not disputed in accordance with this Section. In the event the City elects to invoke dispute resolution in accordance with this Section, and as permitted by this Consent Decree, with respect to a disapproval, approval, approval with conditions, a force majeure determination, a written demand for payment of stipulated penalties, or any other determination made or action taken by EPA or the

Commonwealth pursuant to this Consent Decree, the City shall do so by giving EPA and the Commonwealth a written Notice of Dispute within twenty (20) Days after receipt in writing of such determination or action. If the City fails to give such notice of dispute, it shall be deemed to have waived any right to invoke dispute resolution regarding such dispute, and the position advanced by EPA and the Commonwealth shall be considered binding. The City's invocation of Informal or Formal Dispute Resolution procedures as to any particular aspect of this Consent Decree does not toll or otherwise affect any deadlines established by or pursuant to other provisions this Consent Decree.

31. 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 the Commonwealth a written Notice of Dispute. Such Notice of Dispute shall state clearly the matter in dispute, and shall be accompanied by a Statement of Position that shall include, but need not be limited to, any factual data, analysis, or opinion supporting that position and any supporting documentation relied upon by the City. The period of informal negotiations shall not exceed thirty (30) Days from the date the dispute arises, unless that period is modified by written agreement between the Parties. EPA shall maintain an administrative record of the dispute containing all statements of the Parties, including supporting documentation submitted pursuant to this Section. If the Parties cannot resolve a dispute by informal negotiations, the position advanced by the United States and the Commonwealth shall be considered binding unless, within fifteen (15) Days after the conclusion of the informal negotiation period, the City invokes the formal dispute resolution procedures set forth below.

32. Formal Dispute Resolution. The City shall invoke formal dispute resolution procedures, within the time period provided in the preceding Paragraph, by serving on the United States and the Commonwealth a written Statement of Position regarding the matter in dispute. The Statement of Position shall include, but need not be limited to, any factual data, analysis, or opinion supporting the City's position and any supporting documentation relied upon by the City.

33. The Plaintiffs, either separately or jointly, shall serve their Statement of Position under Formal Dispute Resolution within forty-five (45) Days of receipt of the City's Statement of Position. The Plaintiffs' Statement of Position shall include, but need not be limited to, any factual data, analysis, or opinion supporting that position and any supporting documentation relied upon by the United States and the Commonwealth. The Plaintiffs' Statement of Position shall be binding on the City, unless the City files a motion for judicial review of the dispute in accordance with the following Paragraph.

34. Judicial Review. The City may seek judicial review of the dispute by filing with the Court and serving on the United States and the Commonwealth, in accordance with Section XIII of this Consent Decree (Form of Notice), a motion requesting judicial resolution of the dispute. The motion must be filed within fifteen (15) Days of receipt of the Plaintiffs' Statement of Position pursuant to the preceding Paragraph. The motion shall contain a written statement of the City's position on the matter in dispute, including any supporting factual data, analysis, opinion, or documentation, and shall set forth the relief requested and any schedule within which the dispute must be resolved for orderly implementation of the Consent Decree.

35. The Plaintiffs shall respond to the 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.

36. Standard of Review in Disputes Concerning Matters Accorded Record Review. Except as otherwise provided in this Consent Decree, in any dispute brought under this Section pertaining to (i) the adequacy or appropriateness of plans; (ii) procedures to implement plans, schedules, or any other items requiring approval by EPA and MassDEP under this Consent Decree; (iii) the adequacy of the performance of work undertaken pursuant to this Consent Decree; and (iv) all other disputes that are accorded review on the administrative record under applicable principles of administrative law, the City shall have the burden of demonstrating, based upon the administrative record, that the Plaintiffs' position is arbitrary and capricious or otherwise not in accordance with law.

37. Standard of Review in Other Disputes. Except as otherwise provided in this Consent Decree, in any other dispute brought under this Section, the City shall bear the burden of demonstrating that its position complies with and better furthers the objectives of this Consent Decree and that the City is entitled to relief under applicable principles of law.

38. The invocation of dispute resolution procedures under this Section shall not, by itself, extend, postpone, or affect in any way any obligation of the City under this Consent Decree, unless and until final resolution of the dispute so provides. Stipulated penalties with respect to the disputed matter shall continue to accrue from the first Day of noncompliance, but payment shall be stayed pending resolution of the dispute as provided in Section X (Stipulated Penalties). If the City

does not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section IX (Stipulated Penalties).

XII. RIGHT OF ENTRY/INFORMATION COLLECTION AND RETENTION

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

40. Until five years after the termination of this Consent Decree, the City shall retain non-identical copies of all documents, records, or other information (including documents, records, or other information in electronic form) generated by the City, and all data collected and all reports generated by the City's contractors (including data and reports in electronic form), that relate in any manner to the City's performance of its obligations under this Consent Decree. This information retention requirement shall apply regardless of any contrary corporate or institutional policies or procedures. At any time during this information-retention period, upon request by the

United States or the Commonwealth, the City shall provide copies of any documents, records, or other information required to be maintained under this Paragraph.

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

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

As to the U.S. Department of Justice:

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
United States Department of Justice
P.O. Box 7611 - Ben Franklin Station
Washington, DC 20044
DJ # 90-5-1-1-11703

As to EPA Headquarters:

Director, Water Enforcement Division Office of Civil Enforcement
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue NW
Mail Code: 2243-A
Washington, DC 20460

As to EPA Region 1:

Doug Koopman
Environmental Engineer Water Technical Unit
U.S. Environmental Protection Agency, Region 1
5 Post Office Square – Suite 100
Mail Code OES04-4
Boston, MA 02109-3912
koopman.douglas@epa.gov

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Tonia Bandrowicz
Senior Enforcement Counsel
Office of Environmental Stewardship
U.S. Environmental Protection Agency, Region 1
5 Post Office Square – Suite 100
Mail Code OES04-2
Boston, MA 02109-3912
bandrowicz.toni@epa.gov

As to MassDEP:

Brian Harrington
Deputy Regional Director—Water Resources
Massachusetts Department of Environmental Protection
Western Regional Office
436 Dwight Street
Springfield, MA 01103
Brian.D.Harrington@mass.gov

Christine LeBel
Chief Regional Counsel
Massachusetts Department of Environmental Protection
Western Regional Office
436 Dwight Street
Springfield, MA 01103
Christine.LeBel@mass.gov

As to the Massachusetts Attorney General's Office:

I. Andrew Goldberg
Assistant Attorney General
Environmental Protection Division Office of the Attorney General
One Ashburton Place, 18th Flr.
Boston, MA 02108
andy.goldberg@mass.gov

As to the City of Holyoke, Massachusetts:

Tasha Marshal, Esq.
City of Holyoke Law Department
20 Korean Veterans Plaza, Room 204
Holyoke, MA 01040
marshallt@holyoke.org

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DPW Superintendent
63 N Canal St
Holyoke, MA 01040
mcmanusm@holyoke.org

City Engineer
Holyoke City Hall Annex, Room 300
20 Korean Veterans Plaza
Holyoke, MA 01040-5019
peirent@holyoke.org

44. The City shall provide all submissions and notices required to be submitted to EPA Region 1 (including report appendices) via electronic mail no later than the due date(s) specified in this Consent Decree, in addition to providing a hard copy in accordance with the terms of this Paragraph. The City shall provide complete copies to both Doug Koopman and Tonia Bandrowicz of all other submissions and notices required to be made by the City to EPA pursuant to this Consent Decree; except that with respect to copies of reports, schedules, plans, and other items required to be submitted to Tonia Bandrowicz pursuant to Sections VI (Remedial Measures) and VII (Reports on Compliance), only copies of the transmittal letters need be provided.

45. The City shall provide all submissions and notices required to be submitted to MassDEP (including report appendices) via electronic mail no later than the due date(s) specified in this Consent Decree, in addition to providing a hard copy in accordance with the terms of this Paragraph. The City shall provide complete copies to both Brian Harrington, Deputy Regional Director—Water Resources, at MassDEP, and Assistant Attorney General I. Andrew Goldberg at the Massachusetts Attorney General’s Office of all other submissions and notices required to be made by the City to MassDEP pursuant to this Consent Decree; except that with respect to copies of reports, schedules, plans, and other items required to be submitted to the Massachusetts Attorney

General's Office pursuant to Sections VI (Remedial Measures) and VII (Reports on Compliance), only copies of the transmittal letters need be provided.

46. The City shall make an electronic copy of all submissions required to be submitted by this Consent Decree, including Compliance Reports, available on a publicly accessible website.

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

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

XIV. EFFECT OF SETTLEMENT/RESERVATION OF RIGHTS

48. This Consent Decree is a partial remedy for the civil claims of the United States and Commonwealth for the violations alleged in the Complaints filed in this action. Therefore, this Consent Decree does not resolve these civil claims and is without prejudice to the United States' and Commonwealth's right to seek further relief to address these claims or any future claims, including, but not limited to, further injunctive relief, and civil penalties, and the right of the United States and Commonwealth to seek further administrative relief to address these claims. It is the present intention of the Parties to seek to negotiate a modification to this Consent Decree or a subsequent consent decree to fully resolve the civil claims of the United States and Commonwealth for the violations alleged in the Complaints. However, the Parties recognize that such negotiations may not result in such a resolution and that the United States and Commonwealth reserve the right

to take such actions as they deem appropriate and necessary to resolve these claims and any future claims.

49. The United States and the Commonwealth expressly reserve all rights and remedies legal and equitable, available to enforce the provisions of this Consent Decree. This Consent Decree shall not be construed to limit the rights of the United States or the Commonwealth to obtain penalties or injunctive relief under the CWA or implementing regulations, the Massachusetts Act, or other Federal or State laws, regulations or permit conditions. The United States and the Commonwealth further reserve all legal and equitable remedies to address any imminent and substantial endangerment to the public health and welfare or the environment arising at, or posed by, the City's POTW, whether related to the violations addressed in this Consent Decree or otherwise.

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

51. In any subsequent administrative or judicial proceeding initiated by the United States or the Commonwealth for injunctive relief, civil penalties, or other appropriate relief relating to the City's POTW, or the City's violations of Federal, State, or local laws, regulations, and permits, including the violations alleged in the Complaints, the City shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States or the Commonwealth in the subsequent proceeding were or should have been brought in the instant case, nor with respect to the Complaints, any defense or claim based upon the expiration of the statute of limitations.

52. This Consent Decree does not limit any rights or remedies available to the United States or the Commonwealth for any criminal violations.

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

54. This Consent Decree does not limit or affect the rights of the City or the United States 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.

55. 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

56. The Parties shall bear their own costs of this action, including attorneys' fees, except that the United States and the Commonwealth shall be entitled to collect the costs (including

attorneys' fees) incurred in any action necessary to collect any stipulated penalties due but not paid by the City.

XVI. EFFECTIVE DATE

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

XVII. RETENTION OF JURISDICTION

58. 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.

XVIII. MODIFICATION

59. The terms of this Consent Decree, including any attached appendices, may be modified only by a subsequent written agreement signed by all the Parties. Any material modification to the terms of this Consent Decree shall be effective only upon approval of the Court.

60. Any disputes concerning modification of this Consent Decree shall be resolved pursuant to Section XI (Dispute Resolution), provided, however, that, instead of the burden of

proof provided in Section XI, the Party seeking the modification bears the burden of demonstrating that it is entitled to the requested modification in accordance with Federal Rule of Civil Procedure 60(b).

XIX. FUNDING

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

XX. SEVERABILITY

62. The provisions of this Consent Decree shall be severable, and should any provision be declared by a court of competent jurisdiction to be unenforceable, the remaining provisions shall remain in full force and effect.

XXI. TERMINATION

63. After the City completes all of the requirements of Section VI (Remedial Measures), including submission, approval, and subsequent incorporation of the Updated CSO LTCP into either a modification of this Consent Decree or a new consent decree and Section VII (Reports on Compliance), complies with all other requirements of the Consent Decree, and has fully satisfied any accrued stipulated penalties and any accrued interest thereon, as required by Section IX (Stipulated Penalties) of this Consent Decree, the City may serve upon the United States and the Commonwealth a Request for Termination, certifying that the City has satisfied those requirements, together with all applicable supporting documentation.

64. Following receipt by the United States and the Commonwealth of the City's Request for Termination, the Parties shall confer informally concerning the Request for

Termination and any disagreement that the Parties may have as to whether the City has satisfied the requirements for termination of this Consent Decree. If the United States, after consultation with the Commonwealth, agrees that this Consent Decree may be terminated, the Parties shall submit, for the Court's approval, a joint stipulation terminating the Consent Decree.

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

XXII. PARTIAL JUDGMENT

66. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute a partial judgment of the Court as to the Parties. The Parties recognize that final resolution of the claims set forth in the Complaints will require further remedial action, and this Consent Decree is without prejudice to the Parties' positions as to the merits of any such further relief.

XXIII. WAIVER OF SERVICE OF SUMMONS AND COMPLAINT

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

XXIV. PUBLIC COMMENT

68. This Consent Decree shall be lodged with the Court for a period of not less than thirty (30) Days for public notice and comment in accordance with 28 C.F.R. § 50.7. The United

States reserves the right to withdraw or withhold its consent if the comments received disclose facts or considerations which indicate that this Consent Decree is inappropriate, improper, or inadequate. The City consents to the entry of this Consent Decree without further notice and agrees not to withdraw from, or oppose entry of, this Consent Decree by the Court or to challenge any provision of this Consent Decree, unless the United States has notified the City in writing that it no longer supports entry of this Consent Decree.

XXV. SIGNATORIES

69. Each undersigned representative 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.

XXVI. INTEGRATION

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

71. This Consent Decree constitutes the final, complete, and exclusive agreement and understanding among the Parties with respect to the settlement embodied herein, and supersedes all prior agreements and understandings, whether oral or written, concerning the settlement embodied herein, except that Administrative Order Docket No. CWA-AO-R01-FY16 remains in full force and effect. Other than deliverables that are subsequently submitted and approved by EPA and MassDEP pursuant to this Consent 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.

United States and Massachusetts v. City of Holyoke Partial Consent Decree
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XXVII. APPENDICES

72. The following appendix is attached to and part of this Consent Decree:
- a. “Appendix A” is the *Elements of the Long Term CSO Control Plan for the City of Holyoke Wastewater Collection and Treatment System*.

Judgment is hereby entered in accordance with the foregoing Consent Decree this _____
day of _____, 2018.

UNITED STATES DISTRICT JUDGE
District of Massachusetts

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of *United States of America and Commonwealth of Massachusetts v. City of Holyoke, Massachusetts*.

For Plaintiff UNITED STATES OF AMERICA

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



BRIAN G. DONOHUE
Senior Attorney
Environmental Enforcement Section
Environment and Natural Resources Division
United States Department of Justice
P.O. Box 7611, Ben Franklin Station
Washington, DC 20044-7611

2/11/19
Date

ANDREW E. LELLING
United States Attorney,
District of Massachusetts




BRIAN M. LAMACCHIA
Assistant United States Attorney
United States Attorney's Office, District of Massachusetts
One Courthouse Way, Suite 9200
Boston, MA 02110

2/20/2018
Date

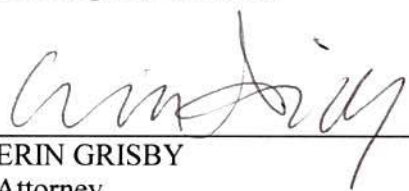
THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of *United States of America and Commonwealth of Massachusetts v. City of Holyoke, Massachusetts*.

For the UNITED STATES ENVIRONMENTAL PROTECTION AGENCY



MARK POLLINS
Director
Water Enforcement Division
Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
United States Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460

11/5/18
Date



ERIN GRISBY
Attorney
Water Enforcement Division
Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
United States Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460

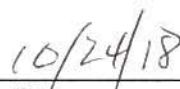
10/31/18
Date

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of *United States of America and Commonwealth of Massachusetts v. City of Holyoke, Massachusetts*.

For the UNITED STATES ENVIRONMENTAL PROTECTION AGENCY



Tim Conway
Acting Director
Office of Environmental Stewardship
U.S. Environmental Protection Agency, Region 1
5 Post Office Square, Suite 100
Boston, MA 02109-3912



Date



TONIA BANDROWICZ
Senior Enforcement Counsel
Office of Environmental Stewardship
U.S. Environmental Protection Agency, Region 1
5 Post Office Square, Suite 100
Boston, MA 02109-3912

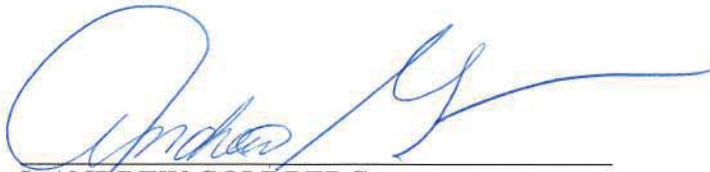


Date

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of *United States of America and Commonwealth of Massachusetts v. City of Holyoke, Massachusetts*.

For the COMMONWEALTH OF MASSACHUSETTS

MAURA HEALEY
Attorney General



I. ANDREW GOLDBERG
BBO # 560843
Assistant Attorney General
Environmental Protection Division
Office of the Attorney General
One Ashburton Place, 18th Floor
Boston, MA 02108
(617) 727-2200



Date

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of *United States of America and Commonwealth of Massachusetts v. City of Holyoke, Massachusetts.*

For the CITY OF HOLYOKE, MA

Alex Morse

Mayor

10-4-18

Date

APPENDIX A

ELEMENTS OF THE LONG TERM CSO CONTROL PLAN FOR THE CITY OF HOLYOKE WASTEWATER COLLECTION AND TREATMENT SYSTEM HOLYOKE, MASSACHUSETTS

The Long Term CSO Control Plan ("CSO LTCP") the City prepares to satisfy the requirements in this Consent Decree shall be consistent with the *Combined Sewer Overflow Control Policy*, 59 Fed. Reg. 18688, April 19, 1994 ("CSO Control Policy"), the EPA's *Guidance for Nine Minimum Controls*, as referenced at EPA 832-13-95-003, May 1995, *Combined Sewer Overflows Guidance for Long-Term Control Plan*, EPA-832-B-95-002, September 1995, and EPA's guidance entitled *Combined Sewer Overflows-Guidance for Financial Capability Assessment and Schedule Development* (EPA832-B-97-004, March 1997) ("Financial Capability Guidance"), and shall include, but not be limited to, the elements described below. The CSO LTCP may be incorporated in any integrated plan that the City develops.

1. System Characterization. The purpose of the system characterization shall be to support the modeling and alternative evaluation efforts described in Paragraphs 2 and 3, below. The system characterization must include the following:

(a) A description of the physical characteristics and attributes of the City's publically-owned treatment works, including its sanitary sewer collection system ("Collection System") and wastewater treatment plant ("WWTP"), that updates the information provided in the *Draft CSO Long-Term Control Plan*, May 2000 ("2000 CSO LTCP"). The description shall be compiled from existing records with field confirmation of pipe and appurtenance characteristics and may utilize the information compiled for the City's Capacity Management, Operations, and Maintenance ("CMOM") program. If necessary, data shall be collected to augment existing records to produce a complete and accurate description of those portions of the Collection System to be modeled. Pipe characteristics shall include diameter, shape, length, slope, elevation and interior surface condition (*i.e.*, representative friction coefficients). Appurtenance characteristics shall include shape, size, elevation, interior condition and capacity as appropriate.

(b) A description of the Collection System. The description shall include a schematic of the Collection System, the direction of flow in these pipes, their material of construction where information presently exists, all pump stations and force mains, all overflow points, regulators, and other control structures, and all permitted and any non-permitted discharge points.

(c) A description of how the Collection System and WWTP responds to a range of precipitation events by identifying the frequency and volumes of overflow discharged from each discharge point.

2. Collection System Model. The City shall develop a new (or update the existing) Collection System model to, as accurately as possible, aid in the identification of a range of potential water pollution treatment and/or control alternatives.

(a) Hydraulic Model. At a minimum, the Collection System model shall be a hydraulic model capable of predicting the following in sewers and force mains, subject to modeling as defined in Paragraph 2(b), below:

- (i) volume of wastewater flow, under both dry and wet conditions, in the force mains and major interceptor sewer lines;
- (ii) flow capacity of each pump station;
- (iii) the flow capacity of all major interceptor sewer lines;
- (iv) the peak flows during wet weather and dry weather conditions for each pump station and major interceptor sewer lines;
- (v) the likelihood, location, duration and volume of discharge from each discharge location for a range of precipitation events;
- (vi) wet weather flows from tributary separate sewer areas, including estimating wastewater flow, and precipitation-induced Infiltration/Inflow (this subparagraph shall not be construed to require a Sanitary Sewer Evaluation Study ("SSES")); and
- (vii) the peak instantaneous and sustained flows for a variety of storm events.

(b) Water Quality Monitoring and Modeling Program. The City may rely on existing data to identify water quality impacts from its CSO activity and need not generate additional in-stream data or refine existing models as a part of this CSO LTCP development.

3. Alternatives Evaluation. The City shall update its 2000 CSO LTCP, taking into account the construction and performance of any recent CSO alterations, and identify, screen, develop, and evaluate alternatives which shall provide for measures necessary to ensure that CSO discharges from all CSO discharge outfalls comply with the technology-based and water-quality-based requirements of the CWA, state law and regulation, and the City's NPDES Permit. At a minimum, the alternatives evaluation shall perform the following activities:

(a) Give highest priority to controlling CSO overflows to sensitive areas. Sensitive areas, as determined by the NPDES authority in coordination with State and Federal agencies, as appropriate, include but are not limited to designated Outstanding National Resource Waters, National Marine Sanctuaries, waters with threatened or endangered species and their habitat, waters with primary contact recreation, public drinking water intakes or their designated protection areas, and shellfish beds. For such areas, the alternative remedies identified under this CSO LTCP must:

- (i) prohibit new or significantly increased overflows;
- (ii) eliminate or relocate CSO overflows that discharge to sensitive areas wherever technically feasible and economically achievable, except where elimination or relocation would provide less environmental protection than additional treatment; and
- (iii) where elimination or relocation is not physically possible and economically achievable, or would provide less environmental protection than additional treatment, provide the level of treatment for remaining overflows deemed necessary to meet water quality standards for full protection of existing and designated uses.

(b) Develop goals and objectives for CSO control consistent with control needs identified through the water quality modeling and water quality impact analysis and with water uses for the Connecticut River and its tributaries in Holyoke.

(c) Screen an appropriate range of technologies for eliminating, reducing, or treating CSO discharges, including an evaluation of varying levels of control such as complete elimination and alternatives that will reduce the volume of CSO discharges and the number of untreated CSOs down to a range of overflows per CSO outfall per year (0, 1 to 4, and 5 to 8). This preliminary screening summary shall consider and summarize various technologies, including but not limited to:

- (i) no action;
- (ii) modification of existing controls to improve performance;
- (iii) separation of various portions of the combined sewer system;
- (iv) installation of various sizes of storage or equalization basins at the City's waste water treatment facilities and/or in the sewer system;
- (v) construction of green infrastructure to remove stormwater from the system;
- (vi) construction of high rate solids removal facilities capable of providing the equivalent of primary treatment;
- (vii) construction of new intercepting sewers from the sewer system to the facilities;
- (viii) construction of additional facilities for providing disinfection (and dechlorination, if necessary) of CSO charges;
- (ix) construction of facilities for removing floatables from CSO discharges;
- (x) construction of relief sewers; and
- (xi) removal of storm water sources (such as roof and driveway drains) from the combined sewer system.

This preliminary screening shall result in the identification of an appropriate list of technologies for further evaluation.

(d) Develop in detail and evaluate system-wide alternatives based on the technologies advanced from preliminary screening or combinations of these technologies. The technologies advanced from preliminary screening shall be applied to develop system-wide CSO control alternatives. The detailed evaluation of alternatives shall consider the costs, effectiveness (in terms of overflow volume reduction, pollutant loading reductions, etc.) and the water quality improvements of the appropriate system-wide alternatives, including a comparison of the costs per unit of measure (in mass) of pollutants removed from the discharge for each

of the alternatives that are being considered. The detailed evaluation shall be performed utilizing the guidance presented in the '*Evaluation of Alternatives for CSO Control*' portion of EPA's '*Combined Sewer Overflows Guidance for Long-Term Control Plan*,' EPA-832-B-95-002, September 1995. Priority shall be given to alternatives which maximize treatment at the existing WWTP and to alternatives to maximize the use of green infrastructure methods. In performing the evaluation, the City shall use the results of the hydraulic model and the water quality model. The City shall submit its detailed evaluation of alternatives to EPA and Massachusetts Department of Environmental Protection ("MassDEP") for approval.

(e) In accordance with the CSO Control Policy and Financial Capability Guidance evaluate the City's financial capability to fund the selected alternative or combination of alternatives, including, but not limited to, an updated analysis of:

- (i) median household income/total project cost per household;
- (ii) per capita debt as a percent of full market property value;
- (iii) property tax revenues as a percent of full market property value;
- (iv) property tax collection rate;
- (v) unemployment rate;
- (vi) current and projected residential, commercial and industrial user fees;
- (vii) bond rating;
- (viii) bond capacity for the next twenty years;
- (ix) grant and/or loan eligibility and availability;
- (x) other viable funding mechanisms and sources of financing; and
- (xi) other factors which may be applicable to the financial evaluation.

4. Remedy Selection. The City shall submit for review and approval by EPA and MassDEP a description of the measures the City proposes as final CSO discharge control measures, including the construction of all sewer system, green infrastructure, and facility improvements, necessary to ensure compliance with water quality standards.

5. Remedy Implementation. The City shall submit for review and approval by EPA and MassDEP an expeditious implementation schedule, consistent with the financial capabilities documented in Paragraph 3(e), above, for the design, construction, and implementation of all proposed discharge control measures

identified by the City or approved by EPA and MassDEP pursuant to Paragraph 4, above. If it is not feasible for the City to design and construct all such measures simultaneously, the proposed implementation schedule may provide for implementation of the discharge control measures in a series of discrete projects, in which event the proposed implementation schedule shall include a detailed description of the scope of each proposed project and a phased schedule providing for the design and construction of each such project. Any such phased schedule shall take into account the relative importance of each discharge control measure, with highest priority being given to eliminating discharges to sensitive areas and to those projects which most reduce the discharge of pollutants. The implementation schedule shall specify critical milestones for each specific measure.

6. Post-Construction Monitoring. The CSO LTCP shall include a post-construction monitoring program which will result in the assessment of the effectiveness of the selected and completed CSO discharge controls for CSO outfalls that are not eliminated. This program shall be consistent with CSO Guidance and EPA's *Combined Sewer Overflows Guidance for Long-Term Control Plan*, EPA-832-B-95-002, September 1995.

7. Public Participation. The City shall employ a public participation process that ensures that the affected public is actively involved in the selection of appropriate CSO controls. The public shall be kept informed of information including, but not limited to, water quality goals, CSO control goals, the types of control alternatives available and being considered to meet CSO control goals, and the process of evaluating various CSO control alternatives. The CSO LTCP shall detail the process by which the public will be provided an opportunity to participate in the development and implementation of each of the? phases of the CSO LTCP.

8. All data, reports, plans, schedules, or any other documents to be submitted pursuant to this Appendix shall be submitted to EPA and MassDEP for approval.