

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

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

CONSENT DECREE

WHEREAS, the City of Fitchburg, Massachusetts (the “City” or “Fitchburg”) discharges pollutants into navigable waters of the United States from a publicly owned treatment works (“POTW”) treatment plant that it owns and operates on Lanides Lane in Fitchburg, Massachusetts pursuant to National Pollutant Discharge Elimination System (“NPDES”) Permit No. MA0100986, which was reissued on September 1, 2010 (the “Permit”);

WHEREAS, Fitchburg also discharges pollutants into navigable waters of the United States from combined sewer overflow (“CSO”) discharge points;

WHEREAS, the plaintiff, the United States of America, on behalf of the United States Environmental Protection Agency (“EPA”), has filed a complaint simultaneously with this Consent Decree alleging that the City has violated the Permit and Section 301(a) of the Clean Water Act (“Act” or “CWA”), 33 U.S.C. § 1311(a);

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 that alleges that the City was, and is, in ongoing violation of Section 301 of the CWA, 33 U.S.C. § 1311, the Massachusetts Clean Waters Act, M.G.L. c. 21 § 26, *et seq.* (“Massachusetts Act”), and provisions of the Permit and State Permit No. MA0100986 issued by the MassDEP under the Massachusetts Act (said Federal and State permits having been jointly issued as a single permit);

WHEREAS, the City has implemented a number of projects and measures designed to reduce the frequency, volume and duration of discharges from its Combined Sewer System and bypasses of secondary treatment at the POTW Treatment Plant, but acknowledges that additional projects and measures must be implemented in order to achieve full compliance with the Permit;

WHEREAS, entry of this Consent Decree by the Court will resolve all claims in the complaint of the United States and the complaint of the Commonwealth, referred to herein collectively as the “Complaints”;

WHEREAS, the United States, the Commonwealth, and the City (collectively, the “Parties”), agree, without admission of facts or law except as expressly stated herein, that settlement of this matter is in the public interest and that entry of this Consent Decree without further litigation is an appropriate resolution of the dispute, and the Parties consent to the entry of this Consent Decree; and

WHEREAS, settlement and entry of this Consent Decree does not constitute an admission of liability by the City.

NOW, THEREFORE, it is hereby ordered, adjudged, and decreed as follows:

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

1. The Complaints state claims upon which relief can be granted against the City pursuant to Section 309 of the CWA, 33 U.S.C. § 1319, and pursuant to Sections 43 and 46 of the Massachusetts Act, M.G.L. c. 21, §§ 43 and 46.

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

2. This Court has jurisdiction over the subject matter of this action pursuant to Section 309(b) of the CWA, 33 U.S.C. §1319(b), and 28 U.S.C. §§ 1331, 1345, and 1355, 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), 28 U.S.C. §§ 1391(b) and (c), and 28 U.S.C. § 1395. The City waives all objections it might have raised to such jurisdiction or venue.

### **III. APPLICABILITY**

3. The provisions of this Consent Decree shall apply to and be binding upon the City and its officers, directors, agents, employees acting in their official capacities, its successors, and assigns.

4. No transfer of any ownership interest in or any interest in the operation of the City's Sewer 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 Sewer System, or any portion thereof, to any other person or entity must be conditioned upon the transferee's agreement to be added as a party to the Consent Decree and to be jointly and severally liable with the Defendants to undertake the obligations required by all provisions of the Consent Decree. 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, MassDEP, and the Commonwealth in accordance with Section XV (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 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 against an action by EPA or the Commonwealth the failure by any of its officers, directors, employees, agents, servants, consultants, engineering firms, contractors, successors, and assigns to take actions necessary to comply with this Consent Decree.

#### **IV. DEFINITIONS**

6. Unless otherwise expressly provided herein, terms used in this Consent Decree which are defined in the CWA, regulations promulgated under the CWA, EPA's 1994 CSO Control Policy,

or in the MassDEP guidance document referenced in Paragraph 8.c, shall have the meaning ascribed to them in the CWA, the regulations promulgated thereunder, the CSO Control Policy, or the above referenced MassDEP guidance document. Whenever the terms listed below are used in this Consent Decree, the following definitions shall apply:

a. "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. §§ 1251-1387.

b. "Approval by the EPA and the MassDEP," and "approved by the EPA and the MassDEP" shall mean the City's receipt of written approval from the EPA and/or MassDEP as required by this Consent Decree.

c. "Building/Private Property Backup" shall mean any release of wastewater into buildings or onto private property, except a release that is the result of blockages, flow conditions, or malfunctions of a building lateral or other piping/conveyance system that is not owned or operationally controlled by the City, or is the result of overland, surface flooding not emanating from the City's Sewer System.

d. "Combination Manholes" shall mean those manhole structures wherein are located a sanitary sewer and storm water sewer separated by a vertical masonry wall.

e. "Combined Sewer Overflow" or "CSO" shall mean any wet-weather overflow from a combined sewer in excess of the interceptor or regulator capacity that is discharged into a receiving water without going to the POTW Treatment Plant.

f. "Combined Sewer System" shall mean the pipelines in the City that are designed to convey wastewater and stormwater through a single pipe system to combined sewer overflow outfalls and/or the POTW Treatment Plant.

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

h. “Complaints” shall mean, collectively, the complaint filed by the United States and the complaint filed by the Commonwealth in this action.

i. “Consent Decree” shall mean this Consent Decree and all attachments hereto. In the event of conflict between this Consent Decree and any attachment, this Consent Decree shall control.

j. “Date of Entry” shall mean the date this Consent Decree is approved and signed by a United States District Court Judge for the District of Massachusetts.

k. “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.

l. “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 Commonwealth holiday, the period shall run until the close of business of the next working Day.

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

n. “EPA’s 1994 CSO Control Policy” shall mean EPA’s April 19, 1994 CSO Control Policy, published at 59 Fed. Reg.18,688.

o. “Excessive Infiltration/Inflow” or “Excessive I/I” shall mean the Infiltration/Inflow (“I/I”) and Rainfall-Induced Infiltration that can be cost-effectively eliminated from the City’s Sewer System as determined by a cost effectiveness analysis that

compares the costs of eliminating the I/I with the total costs of transportation and treatment of the I/I (including capital costs of increasing sewage facilities capacity and treatment and the resulting operating costs).

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

q. "Infiltration/Inflow" shall mean, the total quantity of water present from both Infiltration and Inflow without distinguishing the source.

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

s. "MassDEP" shall mean the Massachusetts Department of Environmental Protection and any successor departments or agencies of the Commonwealth.

t. "Minisystem" shall mean a subsystem of the Sewer System in which a key manhole located at the outlet of the subsystem can be used to measure the Infiltration/Inflow that occurs within the subsystem.

u. "Paragraph" shall mean a portion of this Consent Decree identified by an Arabic numeral or an upper or lower case letter.

v. "Parties" shall mean the United States, the Commonwealth of Massachusetts, and

the City of Fitchburg.

w. “Permit” shall mean National Pollutant Discharge Elimination System (“NPDES”) Permit No. MA0100986 as reissued to the City on September 1, 2010.

x. “POTW Treatment Plant” shall mean the publicly owned treatment works wastewater treatment plant that the City of Fitchburg owns and operates on Lanides Lane in Fitchburg, Massachusetts.

y. “Rainfall-Induced Infiltration” shall mean Infiltration that enters the City’s Sewer System and impacts the Sewer System flow rates similar to Inflow. Like Inflow, Rainfall-Induced Infiltration occurs as a result of rainfall. Rainfall-Induced Infiltration is the result of rainfall percolating through the soils into defects in sewer systems which generally lie near the surface.

z. “Sanitary Sewer Overflow” or “SSO” shall mean any overflow, spill, diversion, or release of wastewater from, or caused by, the City’s Sewer System. This term shall include discharges to waters of the United States or the Commonwealth from the City’s Sewer System, as well as any release of wastewater from the City’s Sewer System to public or private property that does not reach waters of the United States or the Commonwealth, including Building/Private Property Backups.

aa. “Section” shall mean a portion of this Consent Decree identified by a Roman numeral.

bb. “Separate Storm Water Sewer System” shall mean the pipelines, conduits, pumping stations, force mains, and all other structures, devices, appurtenances, and facilities used for collecting and managing storm water that does not enter the Sewer System.



cc. "Sewer System" shall mean the pipelines, conduits, pumping stations, force mains, and all other structures, devices, appurtenances, and facilities used for collecting and conveying sanitary wastewaters (domestic, commercial and industrial wastewaters) and/or storm water through a single pipe system to CSO outfalls and/or the POTW Treatment Plant, but shall not include the Separate Storm Water Sewer System.

#### V. OBJECTIVES

7. It is the express intent of the Parties in executing this Consent Decree to require the City to perform all measures necessary to achieve and maintain compliance with the CWA, the Massachusetts Act, the Permit, and any applicable State and Federal regulations; to meet the objectives of the EPA's April 19, 1994 CSO Control Policy, 59 Fed. Reg. 18688 ("CSO Policy"); and to eliminate i) all SSOs from the Sewer System, ii) all prohibited bypasses at the POTW Treatment Plant, iii) all unauthorized discharges, and iv) all other violations of the Permit, the CWA and the Massachusetts Act.

8. Engineering designs and analyses required to be developed and performed pursuant to this Consent Decree shall be conducted using sound engineering practices, and, as applicable, consistent with:

a. EPA's Handbook: Sewer System Infrastructure Analysis and Rehabilitation, EPA/625/6-91/030, Oct. 1991;

b. EPA's Handbook for Sewer System Evaluation and Rehabilitation, EPA 430/9-75-021, Dec. 1975;

c. The MassDEP document entitled "Guidelines for Performing Infiltration/Inflow Analysis and Sewer System Evaluation Survey" revised January 1993; and

d. The currently effective edition of “TR 16: Guides for the Design of Wastewater Treatment Works.”

#### VI. PENALTY FOR PAST VIOLATIONS

9. The City shall pay a civil penalty in the amount of one hundred forty-one thousand dollars (\$141,000) (“Civil Penalty”), together with interest accruing from the Date of Entry, at the rate specified in 28 U.S.C. § 1961, one half to the United States and one half to the Commonwealth in satisfaction of the claims for civil penalties alleged in the Complaints through the Date of Lodging of the Consent Decree. Payment of the civil penalty shall be made within 30 Days after the Date of Entry of the Consent Decree.

10. The City shall make payment of seventy thousand five hundred dollars (\$70,500) by FedWire Electronic Funds Transfer (“EFT”) to the United States Department of Justice in accordance with written instructions to be provided to the City, following lodging of the Consent Decree by the United States Attorney's Office for the District of Massachusetts, Financial Litigation Unit, Boston, Massachusetts. The costs of such electronic funds transfer shall be the responsibility of the City. At the time of payment, the City shall send a copy of the EFT authorization form, the EFT transaction record, and a transmittal letter, which shall state that the payment is for the Civil Penalty owed pursuant to the Consent Decree in United States v. City of Fitchburg, Massachusetts, and shall reference the civil action number and DOJ case number 90-5-1-1-07874 to the EPA and the United States Department of Justice as specified in Section XV (Form of Notice) by email to [acctsreceivable.CINWD@epa.gov](mailto:acctsreceivable.CINWD@epa.gov), and by mail to:

EPA Cincinnati Finance Office  
26 Martin Luther King Drive  
Cincinnati, Ohio 45268.

If the City fails to tender payment within 30 Days after the Date of Entry of this Consent Decree, then interest shall accrue on the debt to the United States, from the Date of Entry of this Consent Decree, at the rate provided for in 28 U.S.C. § 1961.

11. Within 30 Days after receiving notice of entry of the Consent Decree, the City shall also pay a civil penalty to the Commonwealth in the form of a certified or cashier's check in the amount of seventy thousand five hundred dollars (\$70,500), made payable to "Commonwealth of Massachusetts" and referencing this Consent Decree and the purpose of the payment (e.g., civil penalty, stipulated penalty), and mailed to: Commonwealth of Massachusetts, Office of the Attorney General, One Ashburton Place, Room 1813, Boston, Massachusetts, 02108, Attention: Louis Dundin, Assistant Attorney General, Environmental Protection Division. If the City fails to tender payment within 30 Days of entry of this Consent Decree, then interest shall accrue on the debt to the Commonwealth, from the date of entry of this Consent Decree, at the rate provided for in M.G.L. c. 231 § 6B and shall pay all expenses associated with collection by the Commonwealth of the unpaid amounts and interest for any period of nonpayment after the payment obligation becomes due, including reasonable attorneys' fees and costs of collection incurred by the Commonwealth.

## **VII. REMEDIAL MEASURES**

### **A. SEWER SYSTEM**

#### **Sewer System Operation & Maintenance**

12. EPA and the MassDEP have reviewed and conditionally approved the City's Sewer System Operation and Maintenance ("MOM") submittal (which is attached as Attachment 1) subject to the submission by October 31, 2012, of updated assessments of staffing levels,

equipment inventories, and preventative maintenance practices.

**Long-Term Sewer System Preventive Maintenance Plan**

13. EPA and the MassDEP have reviewed and approved the City's Long-Term Sewer System Preventative Maintenance Program Plan ("Preventative Maintenance Plan"), which is designed as a reference guide for the City's employees.

14. The approved Preventative Maintenance Plan (which is attached at Attachment 2) is incorporated and enforceable hereunder and shall be continuously implemented.

15. By October 31, 2012, the City shall submit to EPA and the MassDEP an assessment of the adequacy of the City's Sewer System maintenance staff, equipment and spare parts inventories.

**MOM Corrective Action Plan**

16. By October 31, 2012, the City shall submit to EPA and the MassDEP for review and approval a plan to correct any identified operation and maintenance-related deficiencies ("MOM Corrective Action Plan") that includes the following:

- a. a list of any operation and maintenance-related deficiencies identified by the MOM Program Self Assessment;
- b. a list of the operation and maintenance-related causes and contributing factors that led to the unauthorized discharges identified in the MOM Program Self-Assessment Checklist;
- c. a description of the specific short- and long-term actions that the City is taking, or plans to take, in addition to those measures required by this Consent Decree, to address the deficiencies identified during the completion of the MOM Program Self-Assessment Checklist;
- d. updated assessments of staffing levels, equipment inventories, and preventative

maintenance practices and

e. a schedule for the implementation of the MOM Corrective Action Plan.

17. The MOM Corrective Action Plan and schedules shall be incorporated and enforceable hereunder upon their approval or conditional approval by EPA and the MassDEP.

**Priority Cleaning Plan**

18. EPA and the MassDEP have reviewed and approved the City's Priority Cleaning Plan ("Priority Cleaning Plan").

19. The approved Priority Cleaning Plan and schedules (which are attached as Attachment 3) are incorporated and enforceable hereunder.

**Routine Cleaning Plan**

20. EPA and the MassDEP have reviewed and approved the City's Routine Cleaning Plan.

21. The approved Routine Cleaning Plan and schedules (which are attached as Attachment 4) are incorporated and enforceable hereunder.

**Geographic Information System ("GIS") Map**

22. EPA and the MassDEP have reviewed and approved the City's currently available geographic information system ("GIS") and other digital mapping of the City's Sewer System which will facilitate the City's operation and maintenance of its Sewer System and its compliance with the requirements of this Consent Decree. Annually, in February of each year, the City shall submit updated maps reflecting newly developed and/or discovered information, corrections, and modifications for review and approval by EPA and the MassDEP in conjunction with the Compliance Reports submitted pursuant to Paragraph 70 of this Consent Decree. Such mapping shall be designed to provide a comprehensive depiction of key infrastructure and

factors influencing the proper operation and maintenance of both systems and each update shall include progress toward achieving that design. Mapping themes shall include: sanitary and storm sewer infrastructure, prior investigation and study findings, cleaning and repair activities, capital projects, and water resource and topographic features. The scale and detail of the maps shall be appropriate to facilitate a clear understanding of the Sewer System by the City, EPA and the MassDEP. In addition, the mapping shall serve as a planning tool for the implementation of future Sewer System remedial measures; and shall delineate the extent of completed and planned investigations and corrections; and other related capital projects. To ensure legible mapping, information shall be grouped appropriately and represented thematically (e.g., by color coding) with legends or schedules where possible. Mapping shall be updated as necessary to reflect newly developed and discovered information, corrections or modifications. The following information and features, as updated and modified with approval, shall at a minimum be included in the mapping:

Base Map

- Municipal boundaries;
- Street names; and
- Private property delineations.

Infrastructure

- Municipal sanitary sewer system (including inter-municipal connections);
- Municipal combined sewer system;
- Municipal separate storm sewer system (including inter-municipal and private connections where available)
- Thematic representation of sewer material, size, and age;

- Sewer flow direction and flow type (e.g., pressure, vacuum, gravity);
- Select rim and invert elevations (for comparison with water table and vertical separation between systems);
- Aerial delineations of major separate storm sewer catchment areas, sanitary sewersheds, combined sewersheds, and areas served by on-site subsurface disposal systems;
- Common/twin-invert manholes or structures (“Combination Manholes”) (i.e., structures serving or housing both separate storm and sanitary sewers);
- Sanitary and storm sewer alignments served by known or suspected underdrain systems;
- Sewer alignments with common trench construction and major crossings representing high potential for communication during high groundwater conditions;
- Pump stations (public and private), and other key sewer appurtenances;
- Sewersheds or sewer alignments experiencing inadequate level of service (with indication of reason(s));
- Location(s) of known sanitary sewer overflows (“SSOs”) and combined sewer overflows (“CSOs”) (with indication of cause(s); and
- Location of all catch basins, and their respective discharge locations (storm sewer, sanitary sewer, or combined sewer systems).

#### Water Resources and Topographic Features

- Water bodies and watercourses identified by name; and
- Topography

#### Extraneous Flow Investigations, Remediation, and Capital Projects completed on or after 2009

- Alignments, dates, and thematic representation of work completed (with legend) of past extraneous flow investigations (e.g. flow isolation, dye testing, CCTV, etc.);
- Locations of suspected, confirmed, and corrected illicit discharges (with dates and flow estimates) to the sanitary sewer system;
- Recent and planned sewer infrastructure cleaning and repair projects;

- Alignments and dates of past and planned Infiltration/Inflow (“I/I”) investigations and sanitary sewer remediation work;
- Planned Sewer System and storm sewer system capital projects; and
- Proposed phasing of future extraneous flow reduction measures.

**Combination Manholes**

23. The City shall comply with Part E (Combination Manholes) of its September 1, 2010 NPDES permit and all subsequent re-issuances or modifications of that provision of the City’s NPDES permit.

**Extraneous Flow Projects and Investigations**

**Priority Extraneous Flow Reduction Projects**

24. On June 29, 2011, the City submitted a Priority Extraneous Flow Reduction Projects Report, which included a list of cost-effective extraneous flow reduction projects, a general description of the projects and their locations, the estimated extraneous flow reductions that would be achieved by implementation of each of the projects, and the proposed implementation schedules. Attachment 5) includes specific descriptions and schematics of each of the projects. The projects and schedules are incorporated and enforceable hereunder.

25. By March 31, 2014, the City shall submit to EPA and the MassDEP for review and approval, a report that evaluates the feasibility of eliminating all remaining intermittent and continuous stream connections to the City’s Sewer System that are not remedied by the projects identified in Paragraph 24 and that can be identified with equipment and materials available to the City and its contractors. The report shall delineate the conditions under which the streams discharge to the Sewer System, the estimated extraneous flow contributions to the Sewer System, and a recommendation for the removal of each stream discharge. The report shall include the



costs associated with each removal, and a schedule for each stream discharge that will be relocated. The report's recommendations including a full description of specific projects and schedules shall be incorporated and enforceable hereunder upon their approval or conditional approval by EPA and the MassDEP.

**SSES Scope of Work**

26. By December 31, 2015, the City shall submit to EPA and the MassDEP for review and approval, a Sewer System Evaluation Survey ("SSES") Scope of Work ("SOW") for the separate sanitary sewer system. For those mini-systems determined to contain excessive I/I, the SSES SOW shall include recommendations, and schedules for their implementation, for additional extraneous flow investigations necessary to identify and, where practicable, quantify both public and private sources of infiltration, Rainfall-Induced Infiltration, and Inflow. The SSES SOW shall be incorporated and enforceable hereunder upon its approval or conditional approval by EPA and the MassDEP.

**SSES/SSES Report**

27. The City shall conduct an SSES in accordance with the approved SSES SOW and shall submit to EPA and the MassDEP, for review and approval, an SSES Report that identifies all remaining sources of extraneous flow that are cost effective to remove and includes a comprehensive plan for their removal. It shall include, but need not be limited to, the following information for each mini-system investigated under the SSES.

Infiltration/Inflow - Public Sources

- a. a listing of identified public sources of I/I;
- b. a listing of the public sources that were deemed "Excessive";

c. a narrative description of the cost-effectiveness analyses that were used to determine which public sources of I/I are more cost-effective to remediate than to transport and treat, and the bases of the analyses;

d. proposals for rehabilitating or replacing components found to be structurally deficient or sources of Excessive I/I during the SSES and a schedule for implementing the recommended rehabilitation/replacement measures, including engineering design and construction; and

Infiltration/Inflow - Private Sources

e. Identification of each mini-system in which excessive Rainfall-Induced Infiltration or Inflow is determined to exist. For each mini-system in which excessive Rainfall-Induced Infiltration or Inflow is determined to exist, the SSES shall include, but need not be limited to, the following information:

i. a street map of the mini-system that delineates the location of properties discharging to Sewer System, the location of each property that was determined to be an actual, or potential source of extraneous flow to the Sewer System during any of the City's extraneous flow investigations. The map shall highlight those properties that have disconnected extraneous flows from the Sewer System as well as those properties the City has yet to inspect. The City shall supplement the map with:

ii. a description and address listing of all identified private sources of extraneous flow;

iii. an address listing of the sources that were remediated and the type of remedial measure that was implemented;

- iv. the date the remedial measure was implemented;
- v. the date that the property was re-inspected to verify that the extraneous flow remains redirected;
- vi. the measures that the City plans to use in the future to verify the redirection of private sources of extraneous flow, and a schedule for their implementation;
- vii. the measures that the City plans to implement to require other confirmed or potential private sources of extraneous flow to redirect the extraneous flow and a schedule for their implementation; and
- viii. a determination of whether it is cost-effective to remediate or redirect identified private sources of extraneous Rainfall-Induced Infiltration and Inflow or to modify the Sewer System to convey the extraneous flow to the City's POTW Treatment Plant. The analysis shall include, but need not be limited to:
  - 1) recommendations regarding the disposition of each identified source of private extraneous flow;
  - 2) an assessment of whether conditions permit redirection of the identified sources to the ground and the range of costs associated with this type of remedial measure;
  - 3) an assessment of the availability of storm sewers and storm sewer capacity and/or whether the Separate Storm Water Sewer System can be extended to receive the identified extraneous flow sources and the range of costs associated with this type of remedial measure;
  - 4) an assessment of the cost of conveyance of extraneous flows to the

City's POTW without exacerbating downstream overflows;

5) an assessment of cost apportionment, between the City and users, as well as potential incentives for the removal of private sources of extraneous flow;

6) the framework of a City-wide public education plan to promote the elimination of private sources of Rainfall-Induced Infiltration and Inflow and a schedule for the plan's implementation;

7) an evaluation of whether changes in the City's ordinances or by-laws are necessary to implement or facilitate the planned remedial measures. If the City determines that changes in the City's ordinances or by-laws, or in the ordinance(s) of other entities that contribute wastewater to the City's Sewer System are necessary to implement or facilitate the planned remedial measures, the City shall submit a proposed schedule for implementing said ordinances or by-laws and shall:

(a) notify the other entities that contribute wastewater to the City's Sewer System in writing of the changes requested to their ordinances; and

(b) make changes to inter-municipal agreements to require necessary ordinance changes; and

8) a schedule to implement the private extraneous source reduction recommendations of the SSES.

#### **SSES Report Implementation Schedule**

28. The SSES recommendations and implementation schedules shall be incorporated and enforceable hereunder upon their approval or conditional approval by EPA and the MassDEP.

**Combined Sewer System**

29. On April 19, 2011, the City modified CSO regulator 023 to restrict overflows from that location, and convey all flows from upstream of that point to the downstream section of the Sewer System, and convey those flows, to the Sewer System's maximum capacity to the POTW Treatment Plant.

30. By December 31, 2014, the City shall advise EPA whether it is able to permanently close Regulator 023.

31. On February 28, 2012, the City advised EPA and the MassDEP that it had installed continuous monitoring devices (level indicators and high level alarms) to quantify and record the discharges from those CSO locations that were not previously continuously monitored.

32. The City has certified to EPA and the MassDEP that it is inspecting its CSO outfalls in accordance with the Part I.D.2.b of NPDES Permit No. MA0100986. The City shall annually submit for review and approval the inspection certification required by its NPDES Permit to EPA and the MassDEP by February 28th of each year.

33. The City has certified to EPA and the MassDEP that it is quantifying and recording discharges from each of its CSO outfalls and recording hourly precipitation, and cumulative precipitation during CSO discharge events in accordance with the Part I.D.2.e of NPDES Permit No. MA0100986. The City shall submit to EPA and the MassDEP a spreadsheet, organized chronologically, listing the duration of each discharge, the calculated or estimated volume of each discharge, and the cumulative precipitation that occurred during each discharge Day for the preceding calendar year. If quantification of the discharges is not made through direct measurement, the City shall provide the basis of any estimates that are submitted. The City shall

annually submit the above certification and spreadsheet for the previous calendar year to EPA and the MassDEP by February 28th of each year.

34. By February 28th, 2013, and annually thereafter, the City shall provide an itemized list of weir adjustments or other regulator changes that the City has implemented during the prior calendar year. The list must include a description of the changes that were made, the location of the regulator and the date that the changes were made. The listing shall be organized chronologically, and sorted by CSO regulator, highlighting those regulators that are part of the CSO outfall structure.

35. On February 28, 2012, the City described to EPA and the MassDEP the measures that it has implemented to determine whether any of its CSO outfalls discharge during dry-weather. By February 28<sup>th</sup> of each year, the City shall certify whether, and to what extent, if any, dry-weather discharges from its CSO outfalls have occurred during the previous calendar year.

36. The City shall complete the sewer separation projects described in Attachment No. 6) (CSO Separation Projects 2B and 3C) in accordance with the following schedule:

a. Having awarded construction contracts by February 29, 2012, place the constructed facilities in operation by December 31, 2013.

b. By December 31, 2014, submit a report to EPA and the MassDEP assessing the effectiveness of the sewer separation projects implemented pursuant to this Paragraph that includes a listing of the public and private Inflow sources that were redirected to the Separate Storm Water Sewer System and a schedule for closure of the affected CSO regulators. If the City determines that the CSO regulator(s) cannot be permanently closed, the City shall submit a schedule for the conduct of additional rehabilitation/replacement measures necessary to close

the affected regulators including, but not limited, to the identification and redirection of the remaining public and private sources of Inflow.

37. The City shall complete the sewer separation projects described in Attachment No. 7) (CSO Separation Project 4D) in accordance with the following schedule:

a. Having by December 6, 2011, awarded a design contract, by June 30, 2013, award the construction contract.

b. By December 31, 2014, place the constructed facilities in operation.

c. By December 31, 2015, submit a report to EPA and the MassDEP assessing the effectiveness of the sewer separation projects implemented pursuant to this Paragraph that includes a listing of the public and private Inflow sources that were redirected to the Separate Storm Water Sewer System and a schedule for closure of the affected CSO regulators. If the City determines that the CSO regulator(s) cannot be permanently closed, the City shall submit a schedule for the conduct of additional rehabilitation/replacement measures necessary to close the affected regulators including, but not limited, to the identification and redirection of the remaining public and private sources of Inflow.

38. By December 31, 2012, the City shall submit to EPA and the MassDEP for review and approval a post-construction monitoring plan ("PCMP"). The PCMP shall include a monitoring protocol to assess how effective CSO controls constructed pursuant to this Consent Decree are in terms of capturing and treating storm water and protecting receiving waters from CSO impacts. The PCMP shall include a schedule for: a) assessing the impacts of varying precipitation amounts on the discharge characteristics and ambient water quality; and, b) submitting a post-construction monitoring report ("PCMR") to EPA and the MassDEP, which shall be submitted

no later than December 31, 2016. The PCMR shall: compare actual frequency of CSO discharges after completion of combined sewer separation projects 1A, 2B, 3C and 4D to the frequency of CSO discharges predicted by the Hydraulic Model updated pursuant to Paragraph 41, using actual rainfall records as model input; identify the expected frequency of CSOs remaining in a typical year after full implementation of sewer separation projects 1A, 2B, 3C and 4D; characterize the impacts of the expected remaining CSOs in a typical year; and, identify a full range of alternatives for eliminating the environmental impacts from any remaining CSOs.

**Emergency Response Plan**

39. EPA and the MassDEP have reviewed and approved the City's Emergency Response Plan.

40. The approved Emergency Response Plan (which is attached as Attachment 8) shall continuously be implemented.

**Hydraulic Model**

41. By December 31, 2016, the City shall update its hydraulic model ("Model") of its Sewer System to include all areas tributary to the POTW Treatment Plant and shall submit a report ("Modeling Report") of the City's Sewer System using a hydraulic modeling software package to EPA and the MassDEP for review and approval. This Model shall evaluate those portions of the Sewer System that surcharge or overflow, including contiguous interceptor sewers 12-inch and greater (unless modeling of smaller diameter sewers is necessary for adequate model calibration/verification). The physical characteristics of each CSO regulator shall be verified and documented.

42. The City shall use the Model to:



- a. Assess the hydraulic capacity of each Minisystem that is tributary to, or that contributes to, a capacity-related surcharge, SSO or CSO;
- b. Assist in the identification of the appropriate remedial measures to address all capacity limitations identified in the Sewer System;
- c. Provide a detailed understanding of both the sanitary sewer system's and combined sewer system's response to seasonal groundwater conditions and wet-weather events; and
- d. Evaluate the impacts and prioritize proposed sewer separation projects, remedial measures, and the planned removal of extraneous flows on the volume and frequency of Sewer System surcharges, SSOs and CSOs, and the peak flow delivered to the POTW Treatment Plant.

43. The City shall configure the Model to accurately represent, in accordance with currently accepted engineering practice, each of the City's mini-systems that are tributary to, or that contribute to a Sewer System surcharge, SSO or CSO. The City may model its Sewer System in different levels of detail and with different types of models, as necessary, to identify the causes of all known surcharges or overflows and to assess proposed remedial measures to eliminate those surcharges and overflows. The City shall also identify critical antecedent and seasonal Sewer System flow conditions that contribute to the capacity-related overflows.

44. The City shall configure the Model using adequate, accurate, and sufficiently current physical data (including, but not limited to invert and ground elevations, pipe diameters, slopes, pipe run lengths, Manning roughness factors, manhole sizes and configurations, and pumping station performance factors) for its Sewer System. In particular, the City shall sufficiently field

verify physical data to allow calibration and verification of the Model.

45. The City shall calibrate and verify the Model using appropriate rainfall data, actual hydrographs and Sewer System and CSO outfall monitoring flow data, including, but not limited to the data generated by the additional meters that will be installed pursuant to Paragraph 31 of this Consent Decree. The City shall use at least three separate data sets for calibration and verification. As part of the calibration process, the City shall either use existing sensitivity analyses for the selected Model, or carry out its own sensitivity analyses, to maximize calibration effectiveness.

46. The Modeling Report submitted pursuant to Paragraph 41 shall specifically include the following:

- a. A description of the Model;
- b. Specific attributes, characteristics, and limitations of the Model;
- c. Identification of all input parameters, constants, assumed values, and expected outputs;
- d. Digitized map(s) and schematics that identify and characterize the portions (including the specific gravity sewer lines) of the Sewer System that shall be included in the Model;
- e. A schematic of each regulator;
- f. Identification of input data to be used;
- g. Configuration of the Model;
- h. Procedures and protocols for performance of sensitivity analyses (such as how the Model responds to changes in input parameters and variables);

- i. Procedures for calibrating the Model to account for values representative of the Sewer System's actual system data (e.g., flow data); and
- j. procedures for verifying the Model's performance using additional, independent actual Sewer System and POTW Treatment Plant flow data.

**Capacity Assessment**

47. Within 180 Days of approval or conditional approval by EPA and the MassDEP of the updated Hydraulic Model, the City shall submit a professional engineering evaluation of the conveyance capacity of all Minisystems that are tributary to, or contribute to, any Sewer System surcharges, SSOs and CSOs ("Capacity Assessment") to EPA and the MassDEP for review and approval. The Capacity Assessment shall utilize the Model developed pursuant to Paragraph 41 and shall include an evaluation of all interceptor sewers, pumping stations, force mains and siphons, known areas of Sewer System surcharges, SSOs and CSOs. It shall also address any other portions of the Sewer System that must be assessed so as to allow for a technically-sound evaluation of the causes of all capacity-related surcharges, SSOs and CSOs. It shall also:

- a. Identify the hydraulic capacities of the portions of the Sewer System upstream and downstream of all Sewer System surcharges, SSOs and CSOs, and compare those capacities to existing and future projected wet-weather flows. The Capacity Assessment shall identify, within the aforementioned portions of the City's Sewer System, i) those portions of the Sewer System that have caused, or are expected to cause or contribute to, capacity-related Sewer System surcharges, SSOs and CSOs under existing and future peak wet-weather flows, ii) the impacts of capacity-related surcharges, and iii) the frequency and volume of overflow, including Private Property/Building Backup;

b. Consider local rainfall data, critical antecedent in-system flow conditions, and the impact of an appropriate range of rainfall events, based on return frequency and duration, and an appropriate continuous period of rainfall records on peak wet-weather flows within those portions of the City's Sewer System that are tributary to, or contribute to, capacity-related surcharges and overflows;

c. Characterize Sewer System performance by identifying, for each condition considered, each pipe segment operating in surcharge and overflow condition, each manhole or structure at which an SSO or CSO might be expected to occur; and

d. Evaluate the City's ability to comply with its NPDES Permit, and eliminate its capacity-related surcharges, SSOs and CSOs based on the Sewer System work performed and POTW Treatment Plant and Sewer System rehabilitation and remedial measures planned for the future. Long-term model simulations are preferred for evaluating abatement alternatives. Unless otherwise approved by EPA and the MassDEP, a five-year period with historical hourly rainfall that represents a variety of weather conditions (average wet, dry) shall be used to characterize the level of CSO control (annual volume and number of annual activations).

**B. POTW TREATMENT PLANT**

**Phosphorus Upgrades**

48. By May 31, 2012, the City shall award the construction contract for the implementation of the WWTF measures outlined in Attachment No. 8

49. By May 31, 2013, the City shall complete construction of the WWTF measures outlined in Attachment No. 8.

**Long-Term Preventive Maintenance Plan**

50. EPA and the MassDEP reviewed and approved the City's Long-Term POTW Treatment

Plant Preventative Maintenance Program Plan (“Preventative Maintenance Plan”) subject to conditions set forth in an approval letter dated April 26, 2012.

51. The conditionally approved Preventative Maintenance Plan (which is attached as Attachment 9) is incorporated and enforceable hereunder and shall continuously be implemented.

**POTW Treatment Plant Optimization Evaluation Report**

52. EPA and the MassDEP have reviewed and approved the City’s POTW Optimization Evaluation Report submitted on January 31, 2012.

53. The approved POTW Optimization Evaluation Report’s recommended capital improvement plan and implementation schedule, including power source upgrade milestones, (which are attached as Attachment 10) are incorporated and enforceable hereunder except as modified by Paragraph 55.a. of this Consent Decree.

**Wet-Weather Operations**

54. Pending the implementation of wet weather chemically-enhanced primary treatment in accordance with Paragraph 49 of this Consent Decree and the recommendations of the POTW Treatment Plant Optimization Evaluation Report (including the secondary system improvement project outlined therein) approved pursuant to Paragraph 52, or until the installation of septage storage capacity as approved by EPA and the MassDEP, the City shall not introduce septage or high-strength side streams not associated with plant operations into any portion of the process train that bypasses the secondary treatment system when secondary treatment is being bypassed or when a secondary treatment system bypass is likely to occur within two (2) hours.

**C. WASTEWATER MANAGEMENT PLAN**

55. By July 1, 2018, the City shall submit to EPA and the MassDEP for review and approval

a Wastewater Management Plan (“WMP”) that reflects all relevant information collected as a result of implementation of this Consent Decree. The WMP shall:

a. Include an itemized schedule for the construction of facilities necessary to meet the seasonal (April 1-October 31) total phosphorus concentration-based limit of 0.2 mg/l, found in Part I.A.1 of the Permit, at page 3; and the seasonal (April 1-October 31) total phosphorus mass-based limit of 20.7 lb/day, found in Part I.A.1 of the Permit, at page 3 (the “Total Phosphorus Permit Limits”) as expeditiously as practicable within the City’s financial capacity and consistent with sound engineering practice and normal construction practices.

b. Include an itemized schedule for commencement and completion of proposed additional investigations, remedial measures, and capital improvements to the City's wastewater collection and treatment infrastructure, necessary to meet the CSO conditions in the Permit by no later than December 31, 2030, including compliance with conditions based on water quality standards established and revised under 40 C.F.R. Part 131 in accordance with the guidance set forth in (i) Coordinating CSO Long-Term Planning with Water Quality Standards Reviews, EPA-833-R-01-002, July 31, 2001, and (ii) MassDEP Guidance for Abatement of Pollution from CSO Discharges (August 11, 1997), as one or both may be amended in the future.

c. In proposing its WMP schedule, the City shall consider: i) the extent to which each proposed project will decrease pollutant loading to the receiving water and the impact on the impairment of uses; ii) the cost and cost-effectiveness of each proposed project; and iii) the schedules for completing the projects. The WMP and the schedules incorporated therein shall be enforceable hereunder upon the WMP's approval or conditional approval by EPA and the

MassDEP.

d. The WMP shall include the results of any water quality standards review, including a use attainability analysis if such an analysis is conducted. If a standards review is in progress but has not been completed, the WMP shall describe the status of the standards review and include a schedule for completing the review, including any use attainability analysis.

e. In developing the WMP, the City is encouraged to consider evaluating potential Best Management Practices, including the use of all appropriate “green infrastructure” and “low impact development” techniques currently available to reduce Inflow.

f. The WMP shall be incorporated and enforceable hereunder upon its approval or conditional approval by EPA and the MassDEP

56. On or before December 31, 2020 and December 31, 2023, the City shall submit to EPA and MassDEP for review and approval an updated WMP report that shall include, at a minimum, a description of all infrastructure improvements and programs that have been implemented during the previous period to comply with the conditions of this Consent Decree and to meet the limits and other conditions of the Permit, the cost of such efforts to date, a description of efforts planned for the next 3-year period, and an assessment of the abatement anticipated to be achieved related to such efforts.

D. **ILLICIT CONNECTIONS**

57. By June 30, 2012, the City shall submit to EPA and the MassDEP for review and approval an amendment to its February 17, 2011 letter report documenting the findings and the actions taken by the City in response to its dry-weather and wet-weather monitoring submitted to

EPA on November 29, 2007, and December 31, 2008, respectively. The IDDE Report shall include, but shall not be limited to, the following information:

- a. A list of illicit connections identified to date;
- b. The estimated flow from each connection;
- c. The specific actions taken by the City to remove each connection;
- d. The date each connection was removed;
- e. The cost of removing each connection;
- f. A map or figure indicating the location of each illicit connection;
- g. For those identified illicit connections that have yet to be redirected from the City's Separate Storm Water Sewer System, the City shall provide a schedule for their redirection; and
- h. The measures taken to verify that each identified illicit connection is removed.

**E. INTERIM PHOSPHORUS LIMITS**

58. From the effective date of this Consent Decree until the date the WWTF improvements outlined in Attachment No. 8 are fully operational, or if EPA determines that the City has not complied with the POTW Treatment Plant schedule milestones set forth in Paragraphs 48 and 49 of this Consent Decree, the City shall comply with the interim effluent limitations and monitoring requirements contained in Attachment No. 13 of this Consent Decree. Upon both (i) the completion of the tasks required by Paragraphs 48 and 49 of this Consent Decree; and (ii) when the WWTF improvements outlined in Attachment No. 6 are fully operational, the City shall comply with the interim effluent limitations and monitoring requirements contained in Attachment No. 11 of this Consent Decree.



### VIII. SUPPLEMENTAL ENVIRONMENTAL PROJECT

59. The City shall implement a Supplemental Environmental Project consisting of stream bank stabilization for Falulah Brook (“SEP”) for a portion of the stream bank in Fitchburg’s Coolidge Park. The SEP will result in the restoration of approximately 300 linear feet of the stream bank.

60. The City is responsible for the satisfactory completion of the SEP in accordance with the requirements of this Decree. “Satisfactory completion” means fulfilling the requirements described in Attachment 12. The City may use contractors or consultants in planning and implementing the SEP.

61. The City certifies the truth and accuracy of each of the following:

a. That all cost information provided to EPA in connection with EPA’s approval of the SEP is complete and accurate and that the City in good faith estimates that the cost to implement the SEP is at least \$100,000;

b. That, as of the date of executing this Consent Decree, the City is not required to perform or develop the SEP by any federal, state, or local law or regulation and is not required to perform or develop the SEP by agreement, grant, or as injunctive relief awarded in any other action in any forum;

c. That the SEP is not a project that the City was planning or intending to construct, perform, or implement other than in settlement of the claims resolved in this Consent Decree;

d. That the City has not received and will not receive credit for the SEP in any other enforcement action; and

e. That the City will not receive any reimbursement for any portion of the SEP from

any other person.

62. SEP Completion Report

a. Within 30 Days after the date set for completion of the SEP, the City shall submit a SEP Completion Report to the United States, EPA, and the MassDEP in accordance with Section XV of this Consent Decree (Form of Notice). The SEP Completion Report shall contain the following information:

- i. a detailed description of the SEP as implemented;
- ii. a description of any problems encountered in completing the SEP and the solutions thereto;
- iii. an itemized list of all eligible SEP costs expended;
- iv. certification that the SEP has been fully implemented pursuant to the provisions of this Consent Decree; and
- v. a description of the environmental and public health benefits resulting from implementation of the SEP (with a quantification of the benefits and pollutant reductions, if feasible).

63. EPA may, in its sole discretion, require information in addition to that described in the preceding Paragraph in order to evaluate the SEP Completion Report.

64. After receiving the SEP Completion Report, the United States shall notify the City whether or not the City has satisfactorily completed the SEP. If the City has not completed the SEP in accordance with this Consent Decree, stipulated penalties may be assessed under Section XI of this Consent Decree (Stipulated Penalties).

65. Disputes concerning the satisfactory performance of the SEP and the amount of eligible

SEP costs may be resolved under Section XIII of this Consent Decree (Dispute Resolution). No other disputes arising under this Section shall be subject to Dispute Resolution.

66. Each submission required under this Section shall be signed by an official with knowledge of the SEP and shall bear the certification language set forth in Paragraph 104.

67. Any public statement, oral or written, in print, film, or other media, made by the City making reference to the SEP under this Decree shall include the following language: “This project was undertaken in connection with the settlement of an enforcement action, United States v. the City of Fitchburg, Massachusetts, taken on behalf of the U.S. Environmental Protection Agency under the Clean Water Act.”

68. The City certifies that it is not a party to any open federal financial assistance transaction that is funding or could be used to fund the same activity as the SEP. The City further certifies that, to the best of its knowledge and belief after reasonable inquiry, there is no such open federal financial transaction that is funding or could be used to fund the same activity as the SEP, nor has the same activity been described in an unsuccessful federal financial assistance transaction proposal submitted to EPA within two years of the date of this settlement (unless the project was barred from funding as statutorily ineligible). For the purposes of this certification, the term “open federal financial assistance transaction” refers to a grant, cooperative agreement, loan, federally-guaranteed loan guarantee or other mechanism for providing federal financial assistance whose performance period has not yet expired.

#### **IX. REPORTING**

69. As soon as practicable, but no later than twenty-four (24) hours after learning of any SSO, discharge of sanitary flows to a storm drain, discharge from a combined sewer during dry

weather, or Building/Private Property Backup, the City shall provide an oral report to EPA by calling Michael Fedak at (617) 918-1766 and to MassDEP by calling Robert Kimball during regular business hours, at (508) 767-2722. If the City learns of such event at any time other than normal business hours, the City shall also notify EPA at the above phone number and MassDEP's Emergency Response Unit by calling (888) 304-1133. The oral report shall identify the location, estimated volume and receiving water(s), if any, of such event. The City, shall also, within five (5) Days of learning of such event, send a facsimile report to EPA, to the attention of Michael Fedak, at (617) 918-0766 and to MassDEP, to the attention of Robert Kimball at (508) 849-4035. The facsimile reports shall be submitted in the form attached as Attachment 11 and shall include the following information:

- a. The date, time and location of the event, including a description of the Sewer System component from which the release occurred (e.g., manhole, constructed overflow pipe, crack in pipe);
- b. The circumstances that led to the event;
- c. The estimated volume of the wastewater released;
- d. Whether the released flows reached a wetland or surface water and, if so, the identity of the receiving waters and the estimated volume of the flows that reached those waters;
- e. Steps taken (or the steps to be taken) to mitigate the impact(s) of the event, including treatment of any of the discharge, and when those steps were (or will be) taken;
- f. If any of the flow was treated, the volume of the flow treated and the volume of treated flow that reached receiving waters;
- g. The steps taken (or the steps to be taken) to eliminate and prevent reoccurrence of

the event and when those steps were (or will be) taken;

- h. A description of the cleanup efforts taken or intended to be taken; and
- i. The date of the last overflow event at the same location.

EPA and the MassDEP will advise the City in writing in the event of any change in personnel to whom oral and facsimile reports should be made.

70. By February 28, 2013, and every six months by each February 28<sup>th</sup> and August 31<sup>st</sup> thereafter until completion of all the Remedial Measures in Section VII, the City shall report to EPA and MassDEP on its compliance with Section VII during the preceding six-month period (February 1<sup>st</sup> through July 31<sup>st</sup>, and August 1<sup>st</sup> through January 31<sup>st</sup>). Each progress report submitted under this Paragraph shall:

- a. Describe activities undertaken during the reporting period directed at achieving compliance with this Consent Decree;
- b. Describe the expected activities to be taken during the next reporting period in order to achieve compliance with this Consent Decree; and
- c. Identify any noncompliance with this Consent Decree's requirements, including any schedules set forth or incorporated herein. If noncompliance is reported, notification should include the following information:
  - i. A description of the noncompliance;
  - ii. A description of any actions taken or proposed by the City to comply with any missed schedule milestones;
  - iii. A description of any factors that might explain or mitigate the noncompliance; and

iv. An approximate date by which the City will perform the required action.

d. A statement on the frequency and volume of CSOs that occurred during the reporting period.

71. By January 31, 2013, and annually thereafter, the City shall submit to EPA and the MassDEP a Compliance Report that shall include, at a minimum, the following items:

a. A list of SSO and dry-weather CSO events that occurred during the Reporting Period, including all releases with a reasonable potential to reach surface waters such as releases to streets or areas with storm drain catch basins; a list of Building/Private Property Backups during the Reporting Period; and a list of citizen reports of SSO and dry-weather CSO events or Building/Private Property Backups during the Reporting Period. The three separate tabular listings of all such events shall be organized chronologically and shall include the following:

i. The date and times each event was discovered/reported and was stopped;

ii. The location by address;

iii. The final disposition of the wastewater from each such event, including whether it discharged to the ground, the street, or surface water (Note: In all instances, the name of the water body, street, or intersecting streets nearest each event shall be provided, and if the release occurred to the ground or street, the name of the nearest downgradient stormwater catch basin and the name of the receiving water of the separate stormwater sewer system shall be noted);

iv. The source of notification (e.g., property owner, general public, field crew, police);

- v. The cause(s) of the event (including, but not limited to, vandalism, sediments, roots, grease, mechanical, electrical and structural failures, and capacity issues);
  - vi. A determination of whether the event was caused blockages or hydraulic limitations within the publicly-owned portion of the Sewer System;
  - vii. The measures taken to stop the event;
  - viii. The estimated gallons of wastewater released, the estimated gallons of wastewater that reached a surface water, and the bases for these estimates; and
  - ix. The date of the last release of wastewater that occurred at the event location.
  - x. A GIS map or figure, consistent with the requirements of Paragraph 22, indicating the location of each event.
- b. A brief explanation of how the City expects to meet its water quality-based CSO compliance obligations.

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

#### **X. REVIEW AND APPROVAL**

73. After review of any plan, schedule, report, or other item that is required to be submitted for approval by EPA and the MassDEP pursuant to this Consent Decree, EPA and the 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; or

c. disapprove, in whole or in part, the submission.

74. In the event of approval pursuant to Paragraph 73.a, the City shall take all actions required to implement such plan, schedule, report, or other item, as approved. In the event of approval in part pursuant to Paragraph 73.a, or approval upon specified conditions pursuant to Paragraph 73.b, upon written direction of EPA and MassDEP, the City shall take all actions required by the approved plan or schedule, report or other item that EPA and MassDEP determine are technically severable from any disapproved portions, subject to the City's right to dispute only the specified conditions or non-approved portions pursuant to Section XIII (Dispute Resolution).

75. Upon receipt of a written notice of disapproval pursuant to Paragraph 73.c, the City shall, within thirty (30) Days or such other time as the City, the MassDEP and EPA agree in writing, correct the deficiencies and resubmit the plan, schedule, report, or other item, or portion thereof, for approval. Any stipulated penalties applicable to the original submission shall accrue during the thirty (30) Day period or other specified period, but shall not be payable unless the resubmission is untimely and/or disapproved as provided in Paragraph 73; provided that, if the original submission was disapproved by EPA and the MassDEP in whole, stipulated penalties applicable to the original submission shall be due and payable upon demand notwithstanding any subsequent resubmission.

76. In the event that a resubmitted plan, report or other item, or portion thereof, is disapproved by EPA and the MassDEP, the Plaintiffs may again require the City to correct the deficiencies in accordance with the preceding Paragraphs.



77. If upon resubmission, a plan, report, or item, or portion thereof, is disapproved by EPA and the MassDEP, the City shall be bound by the Plaintiffs' decision unless the City invokes the dispute resolution procedures set forth in Section XIII (Dispute Resolution) within ten (10) Days of receipt of EPA's and the MassDEP's last written position. If EPA's and the MassDEP's disapproval is upheld after dispute resolution, stipulated penalties shall accrue for the violation from the date of the disapproval of the original submission.

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

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

#### **XI. STIPULATED PENALTIES**

80. The City shall pay stipulated penalties to the United States and the MassDEP for violations or noncompliance with the requirements of this Consent Decree, as set forth below, unless excused under Section XII (Force Majeure). A violation or noncompliance includes failing to perform an obligation required by the terms of this Consent Decree, including any

work plan or schedule approved under 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 or approved under this Consent Decree:

a. Late Payment of Civil Penalty. If the City fails to pay the Civil Penalty required to be paid under Section VI (Civil Penalty) when due, 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.

b. Reporting Requirements. For every Day that the City fails to timely submit a report required by Paragraphs 69, 70 or 71 of this Consent Decree or fails to provide the certification required by Paragraph 104, the City shall pay a stipulated penalty as follows:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$ 500	1st through 14th Day
\$ 750	15th through 30th Day
\$ 1,000	31st Day and beyond.

c. Unpermitted Discharges. For each Day that an SSO or dry-weather CSO occurs, the City shall pay a stipulated penalty of \$5,000. Notwithstanding the foregoing, the City shall not be liable for such a stipulated penalty if all of the following conditions are met: (i) the City stopped the SSO or dry-weather CSO as soon as reasonably practicable; (ii) the City is in full compliance with the schedules and other requirements set forth pursuant to Section VII (Remedial Measures) of this Consent Decree related to the particular facility from which the overflow occurred; and (iii) the City has complied with all reporting requirements related to the

SSO or dry-weather CSO discharges, including but not limited to those set forth in Paragraph 71 of this Consent Decree.

d. Remedial Measures. For every Day that the City fails timely to meet the requirements of Section VII (Remedial Measures) of this Consent Decree, including but not limited to, submitting an approvable plan, schedule, report, or other item, other than a report required by Paragraphs 69 thru 71, or fails to implement remedial requirements in a plan, schedule, report, or other item approved by EPA and the MassDEP, the City shall pay a stipulated penalty as follows:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$ 750	1st through 14th Day
\$ 1,000	15th through 30th Day
\$ 2,500	31st Day and beyond.

81. Stipulated penalties shall automatically begin to accrue on the Day after performance is due or on the Day a violation occurs and shall continue to accrue each Day until performance is satisfactorily completed or until the violation or noncompliance ceases. Stipulated penalties shall accrue simultaneously for separate violations of or instances of noncompliance with this Consent Decree.

82. Following the United States' or the MassDEP's determination that the City has failed to comply with a requirement of this Consent Decree, the United States or the MassDEP may give the City written notification of the same and describe the noncompliance. The United States or the MassDEP 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 or the MassDEP has notified the City of a violation of or

noncompliance with the requirements of this Consent Decree, or demanded payment of stipulated penalties.

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

a. The City shall pay stipulated penalties, fifty percent to the United States and fifty percent to the Commonwealth of Massachusetts in the manner set forth and with the confirmation notices required by Paragraphs 10 and 11, except that the transmittal letters shall state that the payment is for stipulated penalties and shall state for which violation(s) or noncompliance the penalties are being paid.

b. In the event the City fails to pay stipulated penalties according to the terms of this Consent Decree, such penalty (or portion thereof) shall be subject to interest at the statutory judgment rate set forth at 28 U.S.C. § 1961, accruing as of the date payment became due. Nothing in this Paragraph shall be construed to limit the United States or the Commonwealth from seeking any remedy otherwise provided by law for failure of the City to pay any stipulated penalties.

84. Stipulated penalties shall continue to accrue as provided in Paragraph 81, during any dispute resolution, but need not be paid until the following:

a. If the dispute is resolved by agreement or a decision of the United States that is not appealed to the Court, the City shall pay accrued penalties determined to be owed, together with interest accruing at the rate specified in 28 U.S.C. § 1961, to the United States and the

Commonwealth within thirty (30) Days of the effective date of the agreement or the receipt of the United States' decision or order.

b. If the dispute is appealed to the Court and the United States prevails in whole or in part, the City shall pay all accrued penalties, together with interest, within thirty (30) Days of receiving the Court's decision or order, except as provided in Subparagraph c below

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

85. 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 the requirements of 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.

## **XII. FORCE MAJEURE**

86. "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. Stipulated Penalties shall not be due for the number of Days of noncompliance caused by a Force Majeure event as defined in this Section, provided that the City complies with the terms of this Section.

87. If any event occurs that may delay or prevent the performance of any obligation under this Consent Decree, whether or not caused by a Force Majeure event, the City shall notify EPA and the MassDEP within seventy-two (72) hours after the City first knew or should have known that the event might cause a delay. Within ten (10) working Days thereafter, the City shall submit for review and approval by EPA, at the addresses specified in Section XV (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 and MassDEP 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.

88. If EPA agrees 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.

89. If EPA 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 XIII (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 Paragraphs 86 and 87, above. If the City carries this burden, the delay at issue shall be deemed not to be a violation by the City of the affected obligation(s) of this Consent Decree identified to EPA and the Court.

90. 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.

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

### **XIII. DISPUTE RESOLUTION**

92. 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.

93. Informal Dispute Resolution. Any dispute subject to dispute resolution under this Consent Decree shall first be the subject of informal negotiations. The dispute shall be considered to have arisen when the City sends the United States and the 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, which shall contain all statements of the Parties, including supporting documentation, submitted pursuant to this Section.

94. In the event that the City elects to invoke dispute resolution according to this Section, the City shall do so by giving the United States and the Commonwealth written notice of the



existence of the dispute within ten (10) Days after receipt of a notice of disapproval, approval with conditions or modification, a Force Majeure determination by EPA, or a written demand for payment of stipulated penalties. If the City fails to give such notice, it shall be deemed to have waived any right to invoke dispute resolution regarding such dispute, and the position advanced by the United States and/or the Commonwealth as appropriate shall be considered binding.

95. If the Parties cannot resolve a dispute by informal negotiations, then the position advanced by the United States or the United States and the Commonwealth as appropriate shall be considered binding unless, within thirty (30) Days after the conclusion of the informal negotiation period, the City seeks judicial review of the dispute by filing with the Court and serving on the United States and the Commonwealth, in accordance with Section XV (Form of Notice), a motion requesting judicial resolution of the dispute. Any such 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.

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

97. Standard of Review.

a. Disputes Concerning Matters Accorded Record Review. Except as otherwise provided in this Consent Decree, any dispute brought under this Section pertaining to the

adequacy or appropriateness of plans, procedures to implement plans, schedules, or any other items requiring approval by EPA and MassDEP under this Consent Decree; the adequacy of the performance of work undertaken pursuant to this Consent Decree; and all other disputes that are accorded review on the administrative record under applicable principles of administrative law, the City shall have the burden of demonstrating, based upon the administrative record, that the United States' and the Commonwealth's positions are arbitrary and capricious or otherwise not in accordance with law.

b. Other Disputes. Except as otherwise provided in this Consent Decree, in any other dispute brought under this Section, the City shall bear the burden of demonstrating that its position complies with this Consent Decree, furthers the objectives of this Consent Decree more positively than the position advanced by the United States and the Commonwealth, and that the City is entitled to relief under applicable principles of law

98. 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 Paragraph 84. If the City does not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section XI (Stipulated Penalties).

#### **XIV. RIGHT OF ENTRY AND DOCUMENT RETENTION**

99. EPA and MassDEP and their contractors, consultants, and attorneys shall have authority to enter any property and/or facility owned 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 or 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.

100. Until five years after the termination of this Consent Decree, the City shall retain all 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.

101. 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 and the MassDEP. The City may assert that certain documents, records, or other information is

privileged under the attorney-client privilege or any other privilege recognized by federal law. If the City asserts such a privilege, it shall provide the following: (a) the title of the document, record, or information; (b) the date of the document, record, or information; (c) the name and title of each author of the document, record, or information; (d) the name and title of each addressee and recipient; (e) a description of the subject of the document, record, or information; and (f) 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.

102. 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 Commonwealth 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 Commonwealth laws, regulations, or permits.

#### **XV. FORM OF NOTICE**

103. Submissions required by this Consent Decree shall be made electronically, in writing by certified mail with return receipt, or by any reliable commercial delivery service that provides written verification of delivery to the following respective addressees, unless written notice is given that another individual has been designated to receive the submissions. Any submission required by this Consent Decree must be received by EPA and/or the MassDEP, as appropriate, upon the due date stated in this Consent Decree.

As to the Department of Justice

Chief, Environment Enforcement Section  
Environment and Natural Resources Division

United States Department of Justice  
P.O. Box 7611, Ben Franklin Station  
Washington, D.C. 20044  
(202) 514-5268

As to the United States Attorney

Anton P. Giedt  
Assistant U.S. Attorney  
John Joseph Moakley U.S. Courthouse  
1 Courthouse Way, Suite 9200  
Boston, MA 02210

As to the EPA

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

Michael Fedak  
Environmental Engineer  
U.S. EPA  
Mail Code: OES04-3  
5 Post Office Square  
Boston, MA 02109-3912

Michael Wagner  
Enforcement Counsel  
U.S. EPA  
Mail Code: OES04-3  
5 Post Office Square  
Boston, MA 02109-3912

As to the MassDEP

Robert Kimball  
Massachusetts Department of  
Environmental Protection  
Central Regional Office  
627 Main Street  
Worcester, MA 01608

As to the Commonwealth

Louis Dundin  
Assistant Attorney General  
Massachusetts Office of the  
Attorney General  
One Ashburton Place  
Boston, MA 02108

As to the City of Fitchburg, Massachusetts

Lenny Laakso  
Commissioner  
Department of Public Works  
City of Fitchburg  
718 Main Street  
Fitchburg, MA 01420

Joseph Jordan  
Deputy Commissioner  
Fitchburg Wastewater Treatment Facilities  
718 Main Street  
Fitchburg, MA 01420

John B. Barrett  
City Solicitor  
City of Fitchburg  
718 Main Street  
Fitchburg, MA 01420

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

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

penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

#### **XVI. EFFECT OF SETTLEMENT**

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

106. This Consent Decree is neither a permit nor a modification of any existing permit under any federal, Commonwealth, or local law or regulation. The City is responsible for achieving and maintaining complete compliance with all applicable federal, Commonwealth, 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, Commonwealth, 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.

107. This Consent Decree does not limit any rights or remedies available to the United States or the Commonwealth for any violation by the City of the CWA, the Massachusetts Act, and associated regulations or permit conditions other than those claims alleged in the Complaints through the Date of Lodging. This Consent Decree does not limit any rights or remedies available to the United States or the Commonwealth for any criminal violations. The United States and the Commonwealth expressly reserve all rights and remedies, legal and equitable,

available to each of them for all violations of the CWA, the Massachusetts Act, or other applicable law where such violations are not alleged in their respective Complaints, and reserve all rights and remedies, legal and equitable, available to enforce the provisions of this Consent Decree. Nothing herein shall be construed to limit the power of the United States or the Commonwealth, consistent with their respective authorities, to undertake any action against any person, in response to conditions which may present an imminent and substantial endangerment to the public's health or welfare, or the environment.

108. 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 Sewer System, or the City's violations of federal or Commonwealth law, the City shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States or the Commonwealth in the subsequent proceeding were or should have been brought in the instant case, except with respect to claims that have been specifically resolved pursuant to Paragraph 105 of this Section.

109. 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, and the Commonwealth specifically reserves all defenses to any such claims.

110. This Consent Decree does not limit or affect the rights of the City, the United States, or the Commonwealth 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.

111. 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

#### **XVII. COSTS**

112. Each Party shall bear its own expenses, costs and attorney's fees in this action. The City shall be responsible for all documented expenses, costs and attorney's fees incurred by the United States and the Commonwealth in collecting any penalties due and payable under Sections VI (Civil Penalty) and XI (Stipulated Penalties) of this Consent Decree. In no event shall the United States or the Commonwealth be responsible for any expenses, costs or attorney's fees incurred by the City.

#### **XVIII. EFFECTIVE DATE**

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

#### **XIX. RETENTION OF JURISDICTION**

114. 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 during the term of the Consent Decree.

#### **XX. MODIFICATION**

115. The terms of this Consent Decree, including any attachments, may be modified only by a subsequent written agreement signed by all the Parties, except that, without otherwise altering the obligations of the Consent Decree, (a) the Parties may by written agreement modify the schedules specified in this Consent Decree, and (b) EPA and the MassDEP may approve submissions upon specified conditions. Any other modification to the terms of this Consent Decree shall be effective only upon approval of the Court. Any disputes concerning modification of this Consent Decree shall be resolved pursuant to Section XIII (Dispute Resolution), provided, however, that, instead of the burden of proof provided by Paragraph 97, 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).

#### **XXI. FUNDING**

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

#### **XXII. SEVERABILITY PROVISION**

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

**XXIII. TERMINATION**

118. After the City has paid all outstanding penalties, and has completed all remedial measures and reports required under Sections VII and VIII of this Consent Decree, the City may serve upon the United States and the Commonwealth a Request for Termination, stating that the City has satisfied those requirements, together with all applicable supporting documentation.

119. Following receipt by the United States and the Commonwealth of the City's Request for Termination, the Parties shall confer informally concerning the Request 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 and the Commonwealth agree that this Consent Decree may be terminated, the Parties shall submit, for the Court's approval, a joint stipulation terminating the Consent Decree.

120. If the United States and the Commonwealth do not agree that the City has paid all outstanding penalties and completed all remedial measures required under Section VII, and therefore, that this Consent Decree may be terminated, the City may invoke dispute resolution under Section XIII (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.

**XXIV. FINAL JUDGMENT**

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

**XXV. WAIVER OF SERVICE OF SUMMONS AND COMPLAINT**

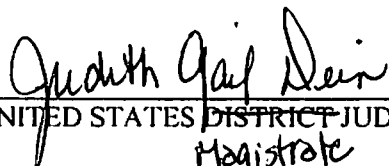
122. The City hereby acknowledges receipt of the Complaints and waives service of

the summonses pursuant to Rule 4 of the Federal Rules of Civil Procedure.

**XXVI. PUBLIC COMMENT**

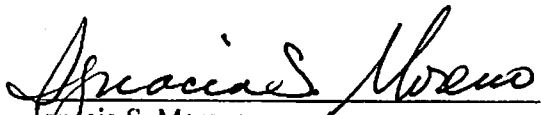
123. The City consents to the entry of this Consent Decree without further notice. Final approval of this Consent Decree is subject to the public notice requirements of 28 C.F.R. § 50.7. After reviewing the public comments, if any, the United States shall advise the Court by motion whether it supports entry of the Consent Decree.

Judgment is hereby entered in accordance with the foregoing Consent Decree this 2d  
day of October, 2012

  
UNITED STATES DISTRICT JUDGE  
Magistrate

The following parties hereby consent to the entry of this Consent Decree:

For Plaintiff UNITED STATES OF AMERICA



Ignacia S. Moreno  
Assistant Attorney General  
Environment & Natural Resources Division  
United States Department of Justice

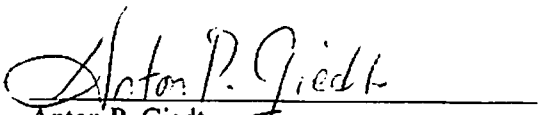
8/8/12  
DATE



Brian Donohue  
Senior Attorney  
Environmental Enforcement Section  
Environment & Natural Resources Division  
United States Department of Justice  
P.O. Box 7611, Ben Franklin Station  
Washington, D.C. 20044  
(202) 514-5413  
Brian.donohue@usdoj.gov

8/13/12  
DATE

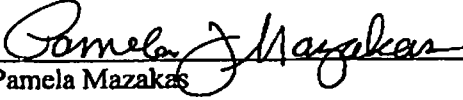
Carmen M. Ortiz  
United States Attorney  
District of Massachusetts




Anton P. Giedt  
Assistant U.S. Attorney  
United States Attorney's Office  
United States Department of Justice  
John J. Moakley Courthouse  
1 Courthouse Way, Suite 9200  
Boston, MA 02210  
(617) 748-3309 (Voice)  
anton.giedt@usdoj.gov

8/14/2012  
DATE

For the UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

  
Pamela Mazakas  
Acting Director  
Office of Civil Enforcement  
United States Environmental Protection Agency  
1200 Pennsylvania Avenue, N.W.  
Washington, D.C. 20460

7/27/12  
Date

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

06/12/12  
Date

For the COMMONWEALTH OF MASSACHUSETTS

Martha Coakley  
Attorney General  
One Ashburton Place  
Boston, MA 02108



8/7/12

Louis D'Amico  
Assistant Attorney General  
Environmental Protection Division  
Office of the Attorney General  
One Ashburton Place  
Boston, MA 02108  
617-963-2433

For Defendant City of Fitchburg, MASSACHUSETTS



6/1/12

\_\_\_\_\_

Date

For the COMMONWEALTH OF MASSACHUSETTS

Martha Coakley  
Attorney General  
One Ashburton Place  
Boston, MA 02108

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Louis Dandin  
Assistant Attorney General  
Environmental Protection Division  
Office of the Attorney General  
One Ashburton Place  
Boston, MA 02108  
617-963-2433

For Defendant City of Fitchburg, MASSACHUSETTS



6/1/12

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Date