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WHEREAS, on May 22, 2019, the Court entered a Partial Consent Decree (hereinafter referred to as “2019 Partial Decree”) settling claims of the Plaintiffs the United States of America (“United States”), on behalf of the United States Environmental Protection Agency (“EPA”), and Commonwealth of Massachusetts (“Commonwealth”), on behalf of the Massachusetts Department of Environmental Protection (“MassDEP”), against the Defendant the City of Holyoke, Massachusetts (the “City”) (together, the United States, the Commonwealth, and the City are the “Parties”), for alleged violations of the City’s National Pollutant Discharge Elimination System (“NPDES”) Permit No. 0101630 and Section 301(a) of the federal Clean Water Act (“CWA”), 33 U.S.C. § 1311(a), and for the alleged violations of the City’s Massachusetts Permit No. 0101630, and the Massachusetts Clean Waters Act (“Massachusetts Act”), M.G.L. c. 21, §§ 26, *et seq.*, for the discharge of pollutants into waters of the United States from the City’s publicly owned treatment works (the “POTW”), as defined at 40 C.F.R. § 403.3, which includes a wastewater treatment plant located at One Berkshire Street, Holyoke, Massachusetts (the “WWTP”) and collection system (the “Collection System”);

WHEREAS the United States and Commonwealth had alleged violations consisting of, among other things: (i) discharging pollutants during wet and dry periods from combined sewer overflows (“CSOs”) in the City’s Collection System that caused or contributed to water quality violations in the Connecticut River; and (ii) discharging pollutants from other unpermitted components of the City’s Collection System to the Connecticut River;

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

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

WHEREAS, the CSO Control Policy sets forth nine minimum controls, including the

prohibition of dry weather overflows from CSOs, as a minimum best available technology economically achievable and best conventional technology established on a best professional judgment basis for CSO control;

WHEREAS, under the 2019 Partial Decree, the City agreed to prepare and submit an approvable updated CSO long term control plan (“Updated CSO LTCP”);

WHEREAS, under the 2019 Partial Decree, upon approval of the Updated CSO LTCP, the Parties were to negotiate the remedial work to be completed on the City’s Collection System;

WHEREAS, under Paragraph 12 of the 2019 Partial Decree, any approved final remedy and schedule, and any necessary related measures, of the Updated CSO LTCP would be “incorporated into, and shall be an enforceable part of, a modification of [the 2019 Partial Decree] ... or shall be incorporated into a new consent decree.”

WHEREAS, on April 4, 2016, EPA reissued a NPDES General Permit for Stormwater Discharges from Small Municipal Separate Storm Sewer Systems (“Small MS4 General Permit”) under CWA section 402(p), 33 U.S.C. § 1342(p), for which Holyoke applied and under which it received coverage;

WHEREAS, the United States’ Complaint against the City alleges that the City violated and continues to violate Section 301 of the CWA by discharging pollutants into waters of the United States from its municipal separate storm sewer system (“MS4”) drains without authorization under the Small MS4 General Permit, any other NPDES permit, or any other provision of the Act;

WHEREAS, under Paragraph 48 of the 2019 Partial Decree, the Plaintiffs did not resolve and retained, without prejudice, the right to seek further relief to address the claims in the Complaints of the Plaintiffs, or any future claims, including the right to obtain civil penalties, which are addressed in this Final Consent Decree (hereafter “Consent Decree” or “Decree”);

WHEREAS, the Parties recognize, without admission of facts or law by the City except as may be expressly stated herein, and the Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith and will avoid additional litigation among the Parties, and

that this Consent Decree is fair, reasonable, and in the public interest;

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

I. STATEMENT OF CLAIM

1. The separate Complaints of the United States and the Commonwealth state claims upon which relief can be granted against the City pursuant to Section 309 of the CWA, 33 U.S.C. § 1319, and, with respect to the Commonwealth's Complaint, pursuant to the Massachusetts Clean Waters Act, M.G.L. c. 21, §§ 42, 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, 1355, and 1367(a). This Court has personal jurisdiction over the Parties to this Consent Decree. Venue properly lies in this district pursuant to Section 309(b) of the CWA, 33 U.S.C. § 1319(b), and 28 U.S.C. §§ 1391(b) and (c). The City waives all objections it might have raised to such jurisdiction or venue.

III. APPLICABILITY

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

4. No transfer of any ownership interest in or any interest in the operation of the WWTP or Collection System, whether in compliance with this Paragraph or otherwise, shall relieve the City of its obligation to ensure that the terms of this Consent Decree are implemented unless (1) the transferee agrees to undertake the obligations required by this Decree and to be substituted for the City as a Party under this Decree and thus be bound by its terms, and (2) the United States and Commonwealth consent in writing to relieve the City of its obligations. At least 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 for the District of Massachusetts, the United States Department of Justice, and MassDEP, in accordance with Section XIV, below (Form of Notice). Any noncompliance with this Paragraph constitutes a violation of this Consent Decree. The United States' decision to refuse to approve the substitution of the transferee for the City shall not be subject to judicial review.

5. The City shall provide a copy of this Consent Decree to all officers, employees, and agents whose duties might reasonably include compliance with any provisions of this Consent Decree. The City shall also provide a copy of this Consent Decree to all contractors and consultants (including engineering firms) 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. The City shall condition any such contract upon performance of the work in conformity with the terms of this Consent Decree.

6. In an action to enforce this Consent Decree, the City shall not assert as a defense the failure by any of its officers, directors, employees, agents, or contractors to take any actions necessary to comply with the provisions of this Consent Decree.

IV. DEFINITIONS

7. Unless otherwise expressly provided herein, terms used in this Consent Decree which are defined in the CWA or in regulations promulgated under the CWA shall have the meaning ascribed to them in the CWA or in the regulations promulgated thereunder. Whenever the terms listed below are used in this Consent Decree, the following definitions shall apply:

a. "Effective Date" shall have the definition provided in Section XVII (Effective Date).

b. “Catchment” shall mean the geographical area served by and drained to a distinct portion of the City’s MS4.

c. “Clean Water Act” or “CWA” shall mean the Federal Water Pollution Control Act (commonly referred to as the Clean Water Act), as amended, 33 U.S.C. §§ 1251, *et seq.* The “Massachusetts Clean Waters Act” or the “Massachusetts Act” shall mean the Massachusetts Clean Waters Act, as amended, M.G.L. c. 21, §§ 26-53.

d. “Collection System” shall mean the wastewater (domestic, commercial, and industrial) collection, storage and transmission system (including, but not limited to, all pipes, siphons, devices, pump stations, force mains, gravity sewer lines, manholes, and appurtenances thereto) that is owned or operated by the City of Holyoke, at any time from the Effective Date of this Consent Decree until its termination under Section XXI (Termination), and that is designed to collect and convey municipal sewage to the WWTP.

e. “Combined Sewer Overflow” or “CSO” shall mean a discharge from the Combined Sewer System at a CSO outfall designated in the City’s Permit.

f. “Combined Sewer System” or “CSS” shall mean the pipelines, pumping stations, treatment facilities, and appurtenances in the Collection System that are designed to convey wastewater and stormwater through a single pipe system to the WWTP and/or CSO outfalls.

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

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

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

j. “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.

k. “Day(s)” or “day(s)” 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 business day.

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

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

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

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

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

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

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

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

V. OBJECTIVES

8. It is the express purpose of the Parties in entering into this Consent Decree to require the City to take measures necessary to fulfill the objectives of the CWA, and to achieve and maintain compliance with the CWA, the Massachusetts Act, the Permit, and any applicable Federal and State regulations.

9. All work pursuant to this Consent Decree shall be performed using sound, generally accepted engineering practices to ensure that construction, management, operation, and maintenance of the Collection

System complies with the CWA, including consideration of practices to improve the resilience of the Collection System. Engineering designs and analyses required to be performed pursuant to this Consent Decree shall be conducted using sound engineering practices, and, to the extent they are applicable, shall be consistent with: (a) EPA’s “Handbook: Sewer System Infrastructure Analysis and Rehabilitation,” EPA/625/6-91/030, October 1991, or as amended; (b) EPA’s “Handbook for Sewer System Evaluation and Rehabilitation,” EPA/430/9-75/021, December 1975; (c) “Existing Sewer Evaluation and Rehabilitation,” WEF MOP FD-6, 2009, or as amended; (d) “Guide to Short Term Flow Surveys of Sewer Systems,” WRC Engineering (Undated); (e) the National Association of Sewer Service Companies’ “Manual of Practice”; (f) MassDEP’s “Guidelines for Performing Infiltration/Inflow Analyses and Sewer System Evaluation Survey,” revised May 2017, or as amended; (g) New England Interstate Water Pollution Control Commission’s TR-16 “Guides for the Design of Wastewater Treatment Works,” as revised in 2016, or currently effective edition; (h) EPA’s “Computer Tools for Sanitary Sewer System Capacity Analysis and Planning,” EPA/600/R-07/111, October 2007, or as amended; (i) EPA’s Creating Resilient Water Utilities (CRWU) Initiative, available on the EPA-maintained website at <https://www.epa.gov/crwu>; (j) EPA’s Climate Resilience Evaluation and Awareness Tool (CREAT), version 3.0, referenced at EPA 815-B-16-004, May 2016, available on the EPA-maintained website at <https://www.epa.gov/crwu/build-resilience-your-utility>; and (k) the Commonwealth’s Executive Order No. 569 (Establishing an Integrated Climate Change Strategy for the Commonwealth), dated September 16, 2016. Should there be a conflict between two or more of these sources, EPA’s judgment, after consultation with MassDEP, as to which source to follow shall control.

VI. REMEDIAL MEASURES

Combine Sewer Overflow

10. The City shall implement the Updated CSO LTCP submitted on December 30, 2019 (Appendix A), as modified by the City’s April 4, 2022, email to EPA and the MassDEP (Appendix B), and any subsequent modifications or revisions thereto approved pursuant to this Consent Decree (including the design and schedule to remove Day Brook from the collection system), in accordance with the schedule

therein, except that the following specific elements of the Updated CSO LTCP shall be implemented according to the following schedule:

- a. On or before December 31, 2022, the City shall complete construction of the Springdale Pond drain-relocation project (part of CSO Area 8);
- b. On or before July 1, 2024, the City shall submit for approval by MassDEP design plans for the River Terrace (CSO Area 21A) remedial projects;
- c. On or before July 1, 2026, the City shall submit for approval by MassDEP design plans for the River Terrace (CSO Area 21B) remedial projects;
- d. On or before December 31, 2027, the City shall complete the River Terrace (CSO Area 21A) projects, in accordance with design plans approved by MassDEP;
- e. On or before December 31, 2029, the City shall complete the River Terrace (CSO Area 21B) projects, in accordance with design plans approved by MassDEP;
- f. On or before July 1, 2034, the City shall submit for approval by MassDEP design plans for the Springdale Park (CSO Area 8) remedial projects; and
- g. On or before December 31, 2037, the City shall complete the Springdale Park (CSO Area 8) project, in accordance with the design plans approved by MassDEP.

Illicit Discharge Detection and Elimination

11. The City shall inspect and sample its MS4 outfalls, and MS4 discharges to other municipal MS4s or non-City owned outfalls, in accordance with the requirements below. The City shall utilize the following IDDE screening thresholds as guidelines for its analysis of the data generated for each field sample to include:

- Bacteria: Class A or B waters – *E. coli*: equal to or greater than 410 colony forming units /100 milliliters (“cfu/100 ml”) and/or *Enterococcus*: equal to or greater than 130 cfu/100 ml
- Surfactants: equal to or greater than 0.25 milligrams per liter (“mg/l”) via field kits or 0.1 mg/l via laboratory analysis
- Ammonia: equal to or greater than 0.5 mg/l via field kits or 0.1 mg/l via laboratory analysis

Chlorine: equal to or greater than 0.02 mg/l

The following indicators, i.e., subparagraphs a. through e., shall constitute the detection of what shall hereby be referred to as a “Potential Illicit Discharge” and shall be used to prioritize the investigation of the catchment areas associated with the outfalls and interconnections:

- a. outfalls identified by EPA in sampling results previously supplied to the City on May 7-8, 2019 and July 7, 2019 based on field test kit screening;
- b. olfactory or visual evidence of sewage;
- c. an exceedance of a bacterial threshold concurrent with meeting or exceeding of both the surfactant and ammonia thresholds;
- d. an exceedance of both the surfactant and ammonia thresholds concurrent with any detectable level of chlorine; and
- e. an exceedance of a bacterial threshold concurrent with any detectable level of ammonia below its threshold.

An exceedance of a bacterial threshold specified in this paragraph 11 without meeting an indicator described in subparagraphs a., b., c., d., or e., above, may also indicate an illicit discharge that shall, at a minimum, be addressed by “Best Management Practices” as specified in the Consent Decree.

12. By May 31, 2023, the City shall submit to EPA for review an IDDE Plan which includes screening and monitoring of all known MS4 outfalls and interconnections in both dry weather (as defined in the Consent Decree) and wet weather (as defined in the Consent Decree) conditions, investigation of all catchment areas, and identification and removal of illicit discharges, consistent with the schedule set forth in this paragraph. The IDDE Plan shall be consistent with EPA Region 1’s “EPA New England Bacterial Source Tracking Protocol,” January 2012 Draft. The City shall further update the IDDE Plan, as needed, to ensure consistency with any requirements in future NPDES Permits issued to the City. The City shall utilize the screening thresholds listed in the Consent Decree to prioritize all MS4 drainage Catchment areas for IDDE investigations. The IDDE Plan shall include:

- a. The current MS4 Catchment area map showing boundaries of each Catchment area and associated outfall or interconnection;
- b. Identification of all combined manholes within these Catchment areas;
- c. A schedule to inspect the identified combined manholes;
- d. A schedule to repair or eliminate the identified combined manholes; and
- e. A prioritization of all Catchment areas based on information and data available, including EPA monitoring results (previously provided to the City), City monitoring results, applicable Total Maximum Daily Loads for impaired waterbodies on the applicable EPA-approved Massachusetts CWA § 303(d) integrated List of Waters, and a schedule for completion of Catchment area investigations.

13. The City shall use the following criteria when conducting dry-weather inspections: under dry-weather conditions (less than 0.1 inches of rain in the preceding 24 hours (but 48 hours when possible) and no significant snowmelt), the City shall inspect all MS4 outfalls and interconnections to other MS4s and sample those with flow. Each outfall and interconnection discharge sample shall be concurrently analyzed for all of the following parameters: *E. coli* bacteria, surfactants, ammonia, total residual chlorine, temperature, conductivity, and salinity using laboratory analysis or instrumentation defined in Tables 1 and 2 of EPA Region 1's "EPA New England Bacterial Source Tracking Protocol," January 2012 Draft. The City shall maintain detailed and accurate records of the date and time that sampling was conducted and the weather conditions both during, and in the 48 hours prior to, each sampling event.

14. The City shall use these criteria when conducting wet-weather inspections: At least once every three years during wet weather conditions, the City shall inspect and sample all MS4 outfalls and interconnections to other MS4s. For the purposes of sampling outfalls or interconnections, "wet-weather conditions" should consist of at least 0.25-inches of rain over the 24-hour period prior to sampling. To facilitate sample planning and execution, however, precipitation events sufficient to produce any flow in outfalls or interconnections to be sampled will also be acceptable. Each outfall or interconnection discharge samples shall be concurrently analyzed for all of the following parameters: *E. coli* bacteria, surfactants,

ammonia, total residual chlorine, temperature, conductivity, and salinity, using laboratory analysis or instrumentation defined in Tables 1 and 2 of EPA Region 1's "EPA New England Bacterial Source Tracking Protocol," January 2012 Draft. The City shall maintain detailed and accurate records of the date and time that sampling was conducted and the weather conditions both during, and in the 24 hours prior to, each sampling event.

15. Illicit discharge removal and abatement: For purposes of the Consent Decree, the "date of verification" of an illicit discharge shall be the date on which the City has identified a point of entry of an Illicit Discharge from a specific location or address that contributes wastewater flow to the MS4. This program shall contain the following for removal of illicit discharges and confirmation of elimination:

a. Upon detection of a Potential Illicit Discharge, the City shall locate, identify and eliminate the illicit discharge as expeditiously as possible. Upon identification of the illicit source, the City shall notify all responsible parties for any such discharge and require immediate cessation of improper disposal practices in accordance with its legal authorities. Where elimination of a direct-plumbed source(s) of an illicit discharge within 60 Days of its identification as the source is not possible, the City shall establish an expeditious schedule, not to exceed one year, for its elimination by the City. If elimination of other identified source(s) (including indirect sources(s)) of an illicit discharge within 60 Days of its identification as the source is not possible, the City shall establish an expeditious schedule, not to exceed three years, for its elimination. Discharges from the MS4 that are mixed with an illicit discharge are not authorized and remain unlawful until eliminated;

b. Within one year following the removal of a verified illicit discharge, the City shall conduct additional dry- and wet-weather monitoring to confirm that the illicit discharge has been eliminated. If confirmatory screening indicates evidence of a continued Potential Illicit Discharge, the Catchment shall be scheduled for additional investigation and illicit discharge removal. In the event EPA informs the City that illicit discharges have not been eliminated from a particular outfall, based upon City data or EPA data

(including EPA's PPCP data), the Catchment shall be scheduled for additional investigation and illicit discharge removal; and

c. Combined Manholes: If it is found that a combined manhole(s) is contributing to contamination within the MS4 the City shall establish an expeditious schedule(s) for its(their) elimination, and report the dates of identification and schedule(s) for removal in the City's Compliance Report. For combined manhole(s) that are overflowing multiple times within one year or are contributing significant contamination to the MS4, the City shall eliminate such combined manhole(s) within one year of such discovery.

16. Upon approval by EPA, the IDDE Plan shall be incorporated into and become enforceable under this Consent Decree and the City shall implement the IDDE Plan, as approved by EPA, in accordance with the schedule set forth therein.

17. The City shall provide information relating to implementation of its IDDE Plan semi-annually in the compliance report required by the Consent Decree.

Best Management Practices (BMPs)

18. The City shall include BMPs as defined in the Consent Decree to eliminate sources of pollutants. If the City's IDDE investigation identifies a source of pollutants to the City's MS4 whose elimination requires implementation of BMPs, the City shall include recommendations for implementing Green Infrastructure ("GI")/Low Impact Development ("LID") BMPs to address the MS4 pollutant discharge. If GI/LID BMPs are not recommended for implementation, the City shall provide a reason why such GI/LID BMP implementation is not being recommended for each particular location and shall include such explanation in the compliance reports required under the consent decree.

Measures to Minimize Nitrogen in Stormwater

19. The City shall identify and implement BMPs designed to reduce Nitrogen discharges to waterbodies, or their tributaries. To address Nitrogen discharges the City shall comply with the following requirements:

a. The City shall update its September 2019 Stormwater Management Program (“SWMP”) by May 31, 2023 to incorporate the requirements of this section and document the date of SWMP update.

b. Additional or Enhanced BMPs:

i. The City shall distribute an annual message in the spring (April/May) timeframe that encourages the proper use and disposal of grass clippings and encourages the proper use of slow-release fertilizers. The City shall distribute an annual message in the summer (June/July) timeframe encouraging the proper management of pet waste, including noting any existing ordinances where appropriate. The City shall distribute an annual message in the fall (August/September/October) timeframe encouraging the proper disposal of leaf litter. The City shall deliver an annual message on each of these topics, unless the City determines that one or more of these issues is not a significant contributor of Nitrogen to discharges from the MS4 and retains documentation of this finding in the SWMP;

ii. Stormwater Management in New Development and Redevelopment: the requirement for adoption/amendment of the permittee’s ordinance or other regulatory mechanism shall include a requirement that new development and redevelopment stormwater management BMPs be optimized for Nitrogen removal; and

iii. Good House Keeping and Pollution Prevention for City Owned Operations: The City shall establish requirements for use of slow-release fertilizers on City owned property currently using fertilizer. The City shall establish procedures to properly manage grass cuttings and leaf litter on City property, including prohibiting blowing organic waste materials onto adjacent impervious surfaces; increased street sweeping frequency of all municipal owned streets and parking lots (with the exception of rural uncurbed roads with no catch basins or high speed limited access highways) to a minimum of two times per year, once in the spring (following winter activities such as sanding) and at least once in the fall (Sept 1 – Dec 1; following leaf fall).

c. Nitrogen Source Identification Report

i. By December 31, 2023, the City shall complete a Nitrogen Source Identification Report. The report shall include the following elements: (1) Calculation of total urbanized area within the City's jurisdiction that is within the Connecticut River Watershed, incorporating updated mapping of the MS4 and Catchment delineations, (2) All screening and monitoring results targeting the receiving water segment(s), (3) Impervious area and directly connected impervious area (DCIA) for the target Catchment, (4) Identification, delineation and prioritization of potential Catchments with high Nitrogen loading, and (5) Identification of potential retrofit opportunities or opportunities for the installation of structural BMPs during redevelopment.

ii. The Nitrogen source identification report shall be submitted to EPA in the January 31, 2024 Compliance Report.

d. Potential Structural BMPs

i. By December 31, 2023 the City shall evaluate all City-owned properties or those identified in the Nitrogen Source Identification Report that could potentially be modified or retrofitted with BMPs designed to reduce the frequency, volume, and pollutant loads of stormwater discharges to and from its MS4. The evaluation shall include: (a) the next planned infrastructure, resurfacing or redevelopment activity planned for the property (if applicable) or planned retrofit date; (b) the estimated cost of redevelopment or retrofit BMPs; and (3) the engineering and regulatory feasibility of redevelopment or retrofit BMPs.

ii. The City shall provide a listing of planned structural BMPs and a plan and schedule for implementation in the January 31, 2024 Compliance Report. The City shall plan and install a minimum of one structural BMP as a demonstration project within the drainage area of the water quality limited water or its tributaries by December 31, 2024. The demonstration project shall be installed targeting a Catchment with high Nitrogen load potential. The City shall install the remainder of the structural BMPs in accordance with the plan and schedule provided in the January 31, 2024 Compliance Report.

iii. Any structural BMPs installed by the City shall be tracked and the City shall estimate the Nitrogen removal by the BMP. The City shall document the BMP type, total area treated by the BMP, the design storage volume of the BMP and the estimated Nitrogen removed in mass per year by the BMP in each annual Compliance Report required by the consent decree.

Geographic Information System Maps

20. By December 31, 2022, the City shall update and submit to EPA and MassDEP in electronic format the current version of the City's stormwater collection system and wastewater collection system geographical information system (GIS) map to include the following information:

- a. Outfalls and receiving waters;
- b. Open channel conveyances;
- c. Interconnections with other MS4s and other storm sewer systems;
- d. Municipally-owned stormwater treatment structures;
- e. Waterbodies identified by name and indication of all use impairments; and
- f. Initial Catchment delineations identifying the area that drains to each individual outfall or interconnection.

21. The City shall submit to EPA for review updated maps reflecting newly developed and/or discovered information, corrections, and modifications in conjunction with the compliance reporting required by 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 the City's Collection System and MS4, and each update shall include progress toward achieving that design. Mapping shall include: water resource and topographic features; sanitary and stormwater sewer infrastructure; prior investigation and study findings; cleaning and repair activities; and capital projects. The scale and detail of the maps shall be appropriate to facilitate a clear understanding of the City's Collection System and MS4 by the City, EPA, and MassDEP. In addition, the mapping shall serve as a planning tool for the implementation of future remedial measures, shall delineate the extent of completed and planned investigations and corrections, and shall include 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 shall, at a minimum, be included in the mapping:

- a. Base Map
 - i. Municipal boundaries;
 - ii. Street names;
 - iii. Private property delineations;

- b. Water Resources and Topographic Features
 - i. Water bodies and watercourses identified by name and all use impairments identified in Massachusetts' most recent Integrated List of Waters prepared to fulfill reporting requirements of Section 303(d) of the Clean Water Act;
 - ii. Topography;

- c. Infrastructure
 - i. MS4:
 - ii. Outfalls;
 - iii. Pipes (including size and material);
 - iv. Open channel conveyances (*e.g.*, swales, ditches);
 - v. Catch basins;
 - vi. Manholes;
 - vii. Inter-municipal connections;
 - viii. Municipally-owned stormwater treatment structures (*e.g.*, detention and retention basins, infiltration systems, bioretention areas, water quality swales, gross particle separators, oil/water separators, and other proprietary systems);
 - ix. Delineation of Catchment areas for each outfall;

- d. Collection System:
 - i. Pipes (including size, material, and approximate age);
 - ii. Flow type (*e.g.*, pressure, vacuum, gravity);
 - iii. Manholes;
 - iv. Pump stations (public and private), and other key sewer
 - v. Appurtenances);
 - vi. Locations of interceptor sewers;
 - vii. Delineation of Sewershed areas for each connection to the
 - viii. interceptor sewer;
 - 1) Sewersheds or sewer alignments experiencing inadequate level of service (with indication of reason(s));
 - 2) Common/twin-invert manholes or structures (*i.e.*, structures serving or housing both separate storm and sanitary sewers);
 - 3) Collection System alignments served by known or suspected underdrain systems;
 - 4) Sewer alignments with common trench construction and major crossings representing high potential for communication during high groundwater conditions;

- e. Investigations, remediation, and capital projects completed for the City's MS4 and Collection System in accordance with this Consent Decree, including:
 - i. Alignments, dates, and thematic representation of work completed

- (with legend) of past investigations (e.g., flow isolation, dye testing, closed-circuit television, etc.);
- ii. Locations of suspected, confirmed, and eliminated illicit discharges (with dates and flow estimates) to the City’s MS4;
- iii. Alignments and dates of past and planned infrastructure remediation projects;
- iv. Planned Collection System and MS4 capital projects; and
- v. Proposed phasing of future capital projects.

VII. REPORTS ON COMPLIANCE

22. Until otherwise directed in writing by EPA, the City shall submit by January 31 and July 31 of each year for review by EPA and MassDEP a Compliance Report (“Compliance Report”) for the previous six-month period (January 1st through June 30th, and July 1st through December 31st) (“Reporting Period”) regarding its progress in implementing the Remedial Measures and other provisions of this Consent Decree. Each Compliance Report shall at a minimum:

- a. Describe activities undertaken during the Reporting Period directed at achieving compliance with this Consent Decree;
- b. Identify all plans, reports, and other deliverables required by this Consent Decree that have been completed and submitted during the Reporting Period;
- c. Describe the expected activities to be taken during the next Reporting Period in order to achieve compliance with this Consent Decree; and,
- d. Identify any anticipated or potential areas of noncompliance with this Consent Decree.

Technical Meetings. The technical staff at EPA, the MassDEP, and the City will arrange to meet in person or remotely following the City’s submission of the January 31 and July 31 reports to review the City’s compliance with the terms of the Consent Decree.

Website. The City shall also establish and maintain a public website to provide a means for interested parties to access and view deliverables and modifications to deliverables under the Consent Decree.

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 Federal, Commonwealth or local law or regulation. EPA reserves the right to review and require modifications to the above reporting requirements.

VIII. REVIEW OF DELIVERABLES

23. After review of any plan, schedule, report, or other item that is required to be submitted for approval by EPA and/or MassDEP pursuant to this Consent Decree, EPA and/or MassDEP, as appropriate, shall in writing: (a) approve, in whole or in part, the submission; (b) approve, in whole or in part, the submission upon specified conditions; (c) approve part of the submission and disapprove the remainder; or (d) disapprove the submission.

24. If EPA and/or MassDEP, as appropriate, approves the submission pursuant to Paragraph 23, the City shall take all actions required by the plan, report, or other document, in accordance with the schedules and requirements of the plan, report, or other document, as approved. If EPA and/or MassDEP, as appropriate, provides conditional approval or approval only in part pursuant to the previous Paragraph, the City shall, upon written direction from EPA and/or MassDEP, as appropriate, take all actions required by the approved plan, report, or other item that EPA and/or MassDEP, as appropriate, determines are technically severable from any disapproved portions, subject to the City's right to dispute only the specified conditions or the disapproved portions, under Section XI, below (Dispute Resolution).

25. If EPA and/or MassDEP, as appropriate, disapproves the submission, in whole or in part, pursuant to Paragraph 23, above, the City shall, within 45 Days or such other time as the Parties agree to in writing, correct all deficiencies and resubmit the plan, report, or other item, or disapproved portion thereof, for approval, in accordance with the preceding Paragraphs. If the resubmission is approved in whole or in part, the City shall proceed in accordance with the preceding Paragraph.

26. If EPA and/or MassDEP, as appropriate, disapproves in whole or in part a resubmitted plan, report, or other item, or portion thereof, EPA and/or MassDEP, as appropriate, may again require the City to correct any deficiencies, in accordance with this Paragraph, or may itself correct any deficiencies subject to

the City's right to invoke Dispute Resolution under Section XII and the right of EPA and/or MassDEP, as appropriate, stipulated penalties as provided Section IX. If the City elects to invoke Dispute Resolution as set forth in Section XII herein, the City shall do so by sending a Notice of Dispute in accordance with that Section within 15 Days (or such other time as the Parties agree to in writing) after receipt of the applicable decision.

IX. STIPULATED PENALTIES

27. The City shall pay stipulated penalties to the United States and the Commonwealth for violations or noncompliance with the requirements of this Consent Decree, as set forth below, unless excused under Section XI, below (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 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 Decree: Reporting and Monitoring Requirements. For every Day that the City fails timely to submit a report required by Section VII (Reports on Compliance) herein, or fails to provide the certification required in Section XIV (Form of Notice) herein, the Defendant shall pay a stipulated penalty as follows:

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

28. Remedial Measures. For every Day that the City fails to timely meet the requirements of Section VI (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 Section VII (Reports on Compliance) herein, or fails to implement remedial requirements in a plan, schedule, report, or other item Approved by EPA and/or MassDEP, the Defendant shall pay a stipulated penalty as follows:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$ 1,500	1st through 10th Day

\$ 3,000
\$ 5,000

11th through 20th Day
21st Day and beyond.

29. Transfer of Facility. If the City fails to: (a) provide a copy of this Consent Decree to any proposed transferee; (b) provide written notice to the United States or the Commonwealth at least 30 Days prior to any transfer of any portion of the facility; or (c) provide a copy of the proposed written agreement with the transferee as required by Paragraph 4, the City shall pay a stipulated penalty of \$10,000 per occurrence.

30. Obligations Prior to the Effective Date. Upon the Effective Date, the stipulated penalty provisions of this Decree shall be retroactively enforceable with regard to any and all violations that have occurred prior to the Effective Date, provided that stipulated penalties that may have accrued prior to the Effective Date may not be collected unless and until this Consent Decree is entered by the Court.

31. Stipulated penalties shall continue to accrue under this Section during any Dispute Resolution under Section XI herein but need not be paid until the following:

a. If the dispute is resolved by agreement of the Parties or by a decision of EPA and/or MassDEP that is not appealed to the Court, the City shall pay accrued penalties determined to be owing, together with interest, to the United States and Commonwealth within 30 Days of the effective date of the agreement or the receipt of EPA's and/or MassDEP's, as appropriate, decision or order.

b. If the dispute is appealed to the Court and the United States and/or the Commonwealth prevails in whole or in part, the City shall pay all accrued penalties determined by the Court to be owing, together with interest, within 60 Days of receiving the Court's decision or order, except as provided in subparagraph c., below.

c. If the City appeals the District Court's decision, the Defendant shall pay all accrued penalties determined to be owing, together with interest, within 15 Days of receiving the final appellate court decision.

32. If the City fails to pay stipulated penalties according to the terms of this Consent Decree, the City shall be liable for interest on such penalties, as provided for in 28 U.S.C. § 1961 (“Interest”), accruing as of the date payment became due.

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

34. Accrual of Penalties. Stipulated penalties accrue from the date performance is due, or the day a noncompliance occurs, whichever is applicable, until the date the requirement is completed or the final day of the correction of the noncompliance. Nothing in this Decree prevents the simultaneous accrual of separate penalties for separate violations of this Decree. Stipulated penalties accrue regardless of whether the City has been notified of its noncompliance, and regardless of whether the City has initiated Dispute Resolution under Section XI, provided, however, that no penalties will accrue as follows:

a. with respect to a submission that EPA and/or MassDEP, as appropriate, subsequently determines is deficient under Section VIII (Review of Deliverables), during the period, if any, beginning on the 31st day after EPA’s and/or MassDEP’s, as appropriate, receipt of such submission until the date that EPA notifies the City of any deficiency.

b. with respect to a matter that is the subject of Dispute Resolution under Section XII, during the period, if any, beginning on the 21st day after the later of the date that EPA’s and/or MassDEP’s, as appropriate, Statement of Position is received or the date that the City’s reply thereto (if any) is received until the date of the formal decision under Paragraphs 42 and 44.

c. with respect to a matter that is the subject of judicial review by the Court under Paragraphs 45, during the period, if any, beginning on the 31st day after the Court’s receipt of the final submission under Paragraph 46, below, regarding the dispute until the date that the Court issues a final decision regarding such dispute.

35. Demand and Payment of Stipulated Penalties. EPA or the Commonwealth or both may send the City a demand for stipulated penalties. Where both sovereigns elect to seek stipulated penalties for any

violation of this Consent Decree, any such penalties determined to be owing shall be paid fifty percent (50%) to the United States and fifty percent (50%) to the Commonwealth. Where one sovereign elects to seek such stipulated penalties, and the other sovereign does not join in the demand within 15 Days of its receipt of written notice, timely joins in the demand as to only some of the violations in question, or timely joins in the demand but subsequently elects to waive stipulated penalties as to any or all of the violations in question, the entire amount of the stipulated penalties determined to be owing for each violation as to which only one sovereign has sought stipulated penalties shall be payable to the sovereign making the demand. Where one sovereign reduces the stipulated penalty otherwise payable for any violation, the difference shall be payable to the other sovereign. In no case shall the determination by one sovereign not to seek stipulated penalties preclude the other sovereign from seeking stipulated penalties, as otherwise provided for by, and consistent with, the terms of this Consent Decree.

36. The demand will include a description of the noncompliance and will specify the amount of the stipulated penalties owed. The City may initiate Dispute Resolution under Section XII within 30 days after receipt of the demand. The City shall pay the amount demanded or, if it initiates dispute resolution, the uncontested portion of the amount demanded, within 30 days after receipt of the demand. The City shall pay the contested portion of the penalties determined to be owed, if any, within 30 days after the resolution of the dispute. Each payment for (a) the uncontested penalty demand or uncontested portion, if late; and (b) the contested portion of the penalty demand determined to be owed, if any, must include an additional amount for Interest accrued from the date of receipt of the demand through the date of payment.

37. Notwithstanding any other provision of this Section, the United States or the Commonwealth, as appropriate, may, in its/their unreviewable discretion, waive any portion of stipulated penalties that have accrued under this Decree.

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

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

39. The Defendant shall pay stipulated penalties as specified in this Section by delivering the payments to the United States and the Commonwealth, in equal amounts, within 30 Days of the date of a demand for payment of stipulated penalties in accordance with the instructions set forth as follows:

a. One half of the stipulated penalties (unless a different division is required under Paragraph 26 above), as payment to the United States, shall be made, upon written demand, by FedWire Electronic Funds Transfer (“EFT”) to the U.S. Department of Justice in accordance with written instructions to be provided to the Defendant by the Financial Litigation Unit of the U.S. Attorney’s Office for the District of Massachusetts. The cost of such electronic transfer shall be the responsibility of the City. At the time of payment, the Defendant shall send a copy of the EFT authorization form and EFT transaction record, together with a transmittal letter, which shall state that the payment is for stipulated penalties owed pursuant to the Consent Decree in United States and Commonwealth of Massachusetts v. City of Holyoke, Massachusetts, and shall reference the civil action number and DOJ case number 90-5-1-1-11703, to the United States in accordance with Section XIV (Form of Notice) herein; by email to acctsreceivable.CINWD@epa.gov; and by mail to: EPA Cincinnati Finance Office, 26 Martin Luther King Drive, Cincinnati, Ohio 45268.

b. The City shall also make one-half of any stipulated payment to the Commonwealth by Electronic Funds Transfer (“EFT”) to the Commonwealth in accordance with current EFT procedures, using the following account information:

Commonwealth of Massachusetts, Office of Attorney General
ABA#: 011075150
ACCOUNT#: 00088882022
SANTANDER BANK
75 STATE STREET
BOSTON, MA 02109

TIN: 046002284

and shall include the following in the payment information: “EPD, Commonwealth v. City of Holyoke.” Any payments received by the Commonwealth after 4:00 P.M. (Eastern Time) will be credited on the next business day. At the time of payment, Holyoke shall send notice, by electronic mail, that such payment has been made to the Commonwealth to I. Andrew Goldberg, Environmental Protection Division at andy.goldberg@mass.gov and shall include all of the payment information stated in this Paragraph in addition to the amount of the payment.

40. In the event the Defendant 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.

41. Stipulated penalties are not the United States’ or Commonwealth’s exclusive remedy for violations of this Consent Decree. Subject to the provisions of Section XV (Effect of Settlement/Reservation of Rights), the United States and Commonwealth expressly reserve the right to seek any other relief it deems appropriate for the City’s violation of this Consent Decree or applicable law, including but not limited to an action against the City for statutory penalties, additional injunctive relief, mitigation or offset measures, and/or contempt. The amount of any statutory penalty assessed for a violation of this Consent Decree shall be reduced by the amount of any stipulated penalty assessed and paid pursuant to this Consent Decree.

X. CIVIL PENALTY

42. Within thirty (30) Days after the Effective Date, the City shall pay a civil penalty of \$ 50,000, together with interest accruing from the Effective Date at the rate specified in 28 U.S.C. § 1961, which shall be divided between the Plaintiffs as follows:

- a. \$ 25,000, plus applicable interest, to the United States; and
- b. \$ 25,000, plus applicable interest, to the Commonwealth.

The City shall pay the civil penalty in the manner specified in Paragraph 39, above.

XI. FORCE MAJEURE

43. “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.

44. If any event occurs which may delay or prevent the performance of any obligation under this Consent Decree, whether or not caused by a Force Majeure event, the City shall notify EPA and MassDEP within 72 hours after the City first knew or should have known that the event might cause a delay. Within five working Days thereafter, the City shall submit for approval by EPA and MassDEP, at the addresses specified in Section XIV (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 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 72 hours of discovery of such event. Such notification does not supplant any other notifications that may be required under applicable law. 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.

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

46. If EPA, after a reasonable opportunity for review and comment by MassDEP, does not agree the delay or anticipated delay is attributable to Force Majeure or on the number of Days of noncompliance caused by such event, EPA will notify the City in writing of its decision. The City may then elect to initiate the dispute resolution process set forth in Section XII (Dispute Resolution). In any dispute resolution proceeding, the City shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a Force Majeure event, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that “best efforts” were exercised to avoid and mitigate the effects of the delay, and that the City complied with the requirements of this Section. If the City carries this burden, the delay at issue shall be deemed not to be a violation by the City of the affected obligation(s) of this Consent Decree identified to EPA, MassDEP, and the Court.

47. 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.

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

XII. DISPUTE RESOLUTION

49. 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.

50. 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 DOJ, EPA, and the Commonwealth a written Notice of Dispute. Such Notice of Dispute shall state clearly the matter in dispute. The period of informal negotiations shall not exceed 20 Days from the date the dispute arises, unless that period is modified by written agreement of the Parties. If the Parties cannot resolve a dispute by informal negotiations, then the position advanced by the United States and/or the Commonwealth, as appropriate, shall be considered binding unless, within 10 Days after the conclusion of the informal negotiation period, the City invokes formal dispute resolution.

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

52. The United States and/or the Commonwealth will send the City its Statement of Position within 45 Days of receipt of the City's Statement of Position. The United States' and/or the Commonwealth's, as appropriate, Statement(s) of Position shall include, but need not be limited to, any factual data, analysis, or opinion supporting that position and any supporting documentation relied upon by the United States. The Director of the Enforcement and Compliance Assurance Division, EPA Region 1, will issue a final decision resolving the matter in dispute. The decision of the Director of the Enforcement and Compliance Assurance Division, EPA Region 1, shall be binding on the City, subject only to the right to seek judicial review, in accordance with the following Paragraph. 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, and the decision of the Director of the Enforcement and Compliance Assurance Division, EPA Region 1. The United States' and/or the Commonwealth's Statement(s) of Position is binding on the City, unless the City files a motion for judicial review of the dispute in accordance with the following Paragraph.

53. **Judicial Dispute Resolution.** The City may seek judicial review of the dispute by filing with the Court and serving on the United States and/or the Commonwealth, as appropriate, a motion requesting judicial resolution of the dispute. The motion must be filed within 10 Days of receipt of the United States' and/or the Commonwealth's Statement(s) of Position pursuant to the preceding Paragraph. The motion shall contain a written statement of Defendant'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.

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

55. **Standard of Review: Disputes Concerning Matters Accorded Record Review.** Except as otherwise provided in this Consent Decree, in any dispute brought under this Section regarding the adequacy or appropriateness of plans, procedures to implement plans, schedules or any other items requiring approval by EPA under this Consent Decree, regarding the adequacy of the performance of work undertaken pursuant to this Consent Decree, or that is accorded review on the administrative record under applicable principles of administrative law, the City shall have the burden of demonstrating, based on the administrative record, that the position of the United States and/or the Commonwealth, as appropriate, is arbitrary and capricious or otherwise not in accordance with law.

56. **Standard of Review: Other Disputes.** Except as otherwise provided in this Consent Decree, in any other dispute brought under Paragraph 51 (Formal Dispute Resolution), the City shall bear the burden

of demonstrating that its position complies with this Consent Decree and better furthers the objectives of the Consent Decree set forth in Section V (Objectives).

57. 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.

XIII. RIGHT OF ENTRY/INFORMATION COLLECTION AND RETENTION

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

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

60. 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 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/or MassDEP. The City may assert that certain documents, records, or other information are privileged under the attorney-client privilege or any other privilege recognized by Federal law. If the City asserts such a privilege, it shall provide the following: (1) the title of the document, record, or information; (2) the date of the document, record, or information; (3) the name and title of each author of the document, record, or information; (4) the name and title of each addressee and recipient; (5) a description of the subject of the document, record, or information; and (6) the privilege asserted by the City. However, no documents, records, data, reports or other information created or generated pursuant to the requirements of this Consent Decree shall be withheld on grounds of privilege.

61. 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.

XIV. FORM OF NOTICE

62. All agreements, approvals, consents, deliverables, modifications, notices, notifications, objections, proposals, reports, waivers, and requests specified in this Decree must be in writing unless otherwise specified. Whenever a notice is required to be given or a report or other document is required to be sent by one Party to another under this Decree, it must be sent as specified below. All notices under this Section are effective upon receipt, unless otherwise specified. In the case of emailed notices, there is a rebuttable presumption that such notices are received on the same day that they are sent. Any Party may change the method, person, or address applicable to it by providing notice of such change to all Parties.

As to DOJ: As to the U.S. Department of Justice

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

As to EPA: *via email to:*
Tonia Bandrowicz, Sr. Enf. Counsel
bandrowicz.toni@epa.gov

Douglas Koopman, Environmental Engineer
koopman.doug@epa.gov

As to Massachusetts
Attorney General's
Office:

via email to:
Assistant Attorney General I. Andrew Goldberg
Environmental Protection Division
andy.goldberg@mass.gov

As to MassDEP: *via email to:*

Christine Y. LeBel, Chief Regional Counsel
Christine.LeBel@mass.gov

Saadi Motamedi, Acting Deputy Regional Director,
Bureau of Water Resources
Saadi.Motamedi@mass.gov

As to City of Holyoke: Lisa A. Ball, City Solicitor
Holyoke City Hall Annex
Holyoke, MA 01040
ball@holyoke.org

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

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

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

am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

XV. EFFECT OF SETTLEMENT/RESERVATION OF RIGHTS

65. 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, as well as violations of the City's Small MS4 General Permit that are specifically addressed in this Consent Decree, through the date of lodging.

66. The United States and the Commonwealth reserve all legal and equitable rights and remedies, available to enforce the provisions of this Consent Decree. This Consent Decree shall not be construed to limit the rights of the United States or the Commonwealth to obtain penalties or injunctive relief under the CWA or implementing regulations, the Massachusetts Act, or other Federal or Commonwealth laws, regulations or permit conditions except as expressly specified in Paragraph 65, above. The United States and the Commonwealth further reserve all legal and equitable remedies to address any imminent and substantial endangerment to the public health and welfare or the environment arising at, or posed by, the City's WWTP, whether related to the violations addressed in this Consent Decree or otherwise.

67. This Consent Decree is not a permit, or a modification of any existing permit, under any Federal, Commonwealth, or local laws or regulations. 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 expressly specified in Paragraph 65, above. 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.

68. 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 WWTP, or the City's violations of Federal, Commonwealth or local laws, and regulations and permits, including the violations alleged in the Complaints, the City shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States or the Commonwealth in the subsequent proceeding were or should have been brought in the instant case, nor with respect to the Complaints, any defense or claim based upon the expiration of the statute of limitations, except with respect to claims that have been specifically resolved pursuant to Paragraph 65, above.

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

70. 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.

71. This Consent Decree does not limit or affect the rights of the City or the United States against any third parties, not party to this Consent Decree, nor does it limit the rights of third parties, not party to this Consent Decree, against the City, except as otherwise provided by law.

72. 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.

XVI. COSTS

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

any action necessary to collect any portion of the civil penalty or any stipulated penalties due but not paid by Defendant.

XVII. EFFECTIVE DATE

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

XVIII. RETENTION OF JURISDICTION

75. The Court shall retain jurisdiction over this case until termination of this Consent Decree, for the purpose of resolving disputes arising under this Decree or entering orders modifying this Decree, pursuant to Sections XII or XIX, respectively, or effectuating or enforcing compliance with the terms of this Decree.

XIX. MODIFICATION.

76. The terms of this Consent Decree, and any submitted and approved deliverables, 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 Decree, and (b) EPA and/or MassDEP may approve submissions upon specified conditions or modify submissions. Where the modification constitutes a material change to this Decree, such as an extension of the final construction date, it shall be effective only upon approval by the Court

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

XX. FUNDING

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

XXI. SEVERABILITY

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

XXII. TERMINATION

80. After the City completes all of the requirements of Section VI (Remedial Measures) and Section VII (Reports on Compliance), above, complies with all other requirements of the Consent Decree, and has paid the civil penalty and any accrued stipulated penalties as required by this Consent Decree, the City may serve upon the United States and the Commonwealth a Request for Termination, certifying that the City has satisfied those requirements, together with all applicable supporting documentation.

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

82. If the United States and/or the Commonwealth do/does not agree that the Consent Decree may be terminated, the City may invoke dispute resolution under Section XII (Dispute Resolution), above.

However, the City shall not seek dispute resolution of any dispute regarding termination until Sixty (60) Days after service of its Request for Termination.

XXIII. SIGNATORIES / SERVICE

83. Each undersigned representative of the City, Commonwealth of Massachusetts, EPA, and the Assistant Attorney General for the Environment and Natural Resources Division of the Department of Justice identified on the DOJ signature page below, certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind the Party he or she represents to this document.

84. This Consent Decree may be signed in counterparts, and its validity shall not be challenged on that basis. The City agrees to accept service of process by mail with respect to all matters arising under or relating to this Consent Decree and to waive the formal service requirements set forth in Rules 4 and 5 of the Federal Rules of Civil Procedure and any applicable Local Rules of this Court including, but not limited to, service of a summons. The City need not file an answer to the U.S. Complaint nor the Commonwealth's Plaintiff-Intervenor Complaint in this action unless or until the Court expressly declines to enter this Consent Decree.

XXIV. PUBLIC PARTICIPATION

85. This Consent Decree shall be lodged with the Court for a period of not less than 30 Days for public notice and comment in accordance with 28 C.F.R. § 50.7. The United States reserves the right to withdraw or withhold its consent if the comments received disclose facts or considerations which indicate that this Consent Decree is inappropriate, improper or inadequate, and the Commonwealth reserves the right to withdraw or withhold consent if the United States withdraws or withholds consent and/or if the comments received disclose facts or considerations which indicate that this Consent Decree is inconsistent with state law. The City consents to the entry of this Consent Decree without further notice and agrees not to withdraw from or oppose entry of this Consent Decree by the Court or to challenge any provision of this Decree, unless the United States has notified the City in writing that it no longer supports entry of this Decree.

XXV. INTEGRATION

86. This Consent Decree, including deliverables that are subsequently approved pursuant to this Decree, constitutes the entire agreement among the Parties regarding the subject matter of the Decree, and supersedes all prior representations, agreements, and understandings, whether oral or written, concerning the subject matter of the Decree herein. Other than submissions that are subsequently submitted and approved pursuant to this Decree, no other document, nor any representation, inducement, agreement, understanding, or promise, constitutes any part of this Decree or the settlement it represents, nor shall it be used in construing the terms of this Decree.

XXVI. SIGNATORIES

87. Each undersigned representative certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind the Party he or she represents to this document.

XXVII. APPENDICES

88. The following appendices are attached to and part of this Consent Decree:

“Appendix A” is the “Executive Summary” of the City’s Updated CSO LTCP submitted to EPA and MassDEP on December 30, 2019; and

“Appendix B” is the City’s modifications to the December 30, 2019, Updated CSO LTCP as set forth in the City’s April 4, 2022, email to EPA and the MassDEP.

XXVIII. FINAL JUDGMENT

89. Upon approval and entry of the Consent Decree by the Court, this Consent Decree shall constitute a final judgment of the Court as to the United States, the Commonwealth of Massachusetts, and Defendant.

Judgment is hereby entered in accordance with the foregoing Consent Decree this _____

day of _____, 2023.

UNITED STATES DISTRICT JUDGE
District of Massachusetts

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

FOR THE COMMONWEALTH OF MASSACHUSETTS:

ANDREA JOY CAMPBELL
Attorney General

I. ANDREW GOLDBERG
Assistant Attorney General
Environmental Protection Division
One Ashburton Place, 18th Floor
Boston, MA 02108
(617) 727-2200
andy.goldberg@mass.gov

Date

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

For the UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

CARL DIERKER
Regional Counsel
U.S. Environmental Protection Agency, Region 1
5 Post Office Square, Suite 100
Boston, MA 02109

Date

Of Counsel

TONIA BANDROWICZ
Senior Enforcement Counsel
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 1
5 Post Office Square,
Boston, MA 02109

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

For Defendant CITY OF HOLYOKE, MA

Mayor Joshua A. Garcia

Date