UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

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

CONSENT DECREE

WHEREAS, the City of Brockton, Massachusetts (the "City" or "Brockton"), discharges pollutants into navigable waters of the United States from its publicly-owned treatment works ("POTW") pursuant to National Pollutant Discharge Elimination System ("NPDES") Permit No. MA 0101010 (the "Permit");

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

WHEREAS, the Commonwealth of Massachusetts ("Commonwealth"), on behalf of the Massachusetts Department of Environmental Protection ("MADEP"), has filed an assented-to motion to intervene as a plaintiff in the action brought by the United States and has filed a

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 has waived 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, attorneys, successors, and assigns, and upon those persons in active concert or participation with them who receive actual notice of this Consent Decree. The City shall provide a copy of this Consent Decree in a manner sufficient to provide actual notice of the Consent Decree to all contractors and consultants retained to perform any obligation required by this Consent Decree on behalf of the City. The City shall also provide a copy of this Consent Decree in a manner sufficient to provide actual notice of the Consent Decree to each municipality that is connected to the City's POTW, including the towns of Abington and Whitman, and shall similarly provide a copy of this Consent Decree promptly to any municipality that subsequently connects to the City's POTW.

IV. DEFINITIONS

4. 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. "Collection System" shall mean the wastewater collection, storage and transmission system owned or operated by the City, including, but not limited to, all devices,

of the EFT authorization form, the EFT record, and the transmittal letter to the EPA and the United States Department of Justice as specified in Section XVII (Form of Notice).

8. The City shall make payment to the Commonwealth by FedWire Electronic Funds Transfer in the amount of $60,000.00 in accordance with current EFT procedures, referencing the Massachusetts Office of the Attorney General's Case No. 14/596 and referencing this action. The City shall send a copy of the EFT authorization form for this transfer, the EFT record and the transmittal letter to the MADEP and the Massachusetts Attorney General's Office as specified in Section XVII (Form of Notice). The costs of such EFT shall be the responsibility of the City.

9. Payments of the civil penalty shall be made within 30 days after the City receives notice of entry of the Consent Decree. If the City fails to pay the civil penalty in accordance with the prior sentence, the City shall pay interest on the late payment. Interest shall accrue on the debt to the United States and the Commonwealth from the date of entry of the Consent Decree at the rate provided for in 28 U.S.C. § 1961.

VII. SUPPLEMENTAL ENVIRONMENTAL PROJECTS

10. Brockton shall complete three supplemental environmental projects ("SEPs"), which the parties agree are intended to achieve significant environmental or public health protection and improvements, to be conducted in accordance with the provisions of the Scope of Work in the attached Appendices A, B and C, respectively, all three of which are incorporated herein by reference: (i) a comprehensive receiving water assessment SEP (the "Receiving Water Assessment SEP"), Appendix A; (ii) participation in a regional wastewater alternatives study (the "Regional Wastewater Management Planning SEP"), Appendix B; and (iii) a pilot program for

collecting and analyzing water samples to identify lead levels in drinking water at schools and day care facilities (the "Lead Analysis SEP"), Appendix C.

11. Brockton shall complete each SEP according to the schedule set forth for each in Appendix A, Appendix B, and Appendix C, respectively (collectively, the "Brockton SEPs").

12. The total expenditure for the Brockton SEPs shall be at least $180,000, as follows: $80,000 for the Receiving Water Assessment SEP; $75,000 for the Regional Wastewater Planning SEP; and $25,000 for the Lead Analysis SEP.

13. The City may reallocate a portion of project costs among the three projects, in order that a total of $180,000 or more will be spent on the Brockton SEPs, with the written approval of the EPA and MADEP.

14. Until the time that all of the work pursuant to each of the Brockton SEPs is completed, and a SEP Completion Report is submitted for each of the Brockton SEPs pursuant to paragraph 15 below, each Quarterly Report submitted pursuant to paragraph 42 below shall contain a narrative description of the SEP activities undertaken to date, an itemization (with copies of supporting documentation) of costs incurred on the SEP, and a report of any difficulties or delays in the implementation of any of the Brockton SEPs.

15. Brockton shall submit a SEP Completion Report for each of the Brockton SEPs to EPA and MADEP at the time of the next Quarterly Report following the completion of each SEP. Each SEP Completion Report shall contain the following information:

a. A detailed description of the SEP as implemented;

b. A description of any implementation problems encountered and the solutions for each;

c. Itemized costs, with acceptable documentation for all eligible SEP costs. For this paragraph, "eligible SEP costs" may include work done by the City's own personnel to actually perform an SEP provided there is a record and verification of the time spent on the project and the cost is based on the employee's hourly pay rate, plus the costs of taxes and benefits. Costs associated with the City's oversight of the SEP, or the administrative work done to implement an SEP, is not creditable. For purposes of this paragraph, "acceptable documentation" includes invoices, purchase orders, or other documentation that specifically identifies and itemizes the individual costs of the goods and/or services for which payment is being made. Canceled drafts do not constitute acceptable documentation unless such drafts specifically identify and itemize the individual costs of the goods and/or services for which payment is being made. For costs incurred in-house, those costs shall be Brockton's actual costs as determined in accordance with Brockton's standard cost accounting principles;

d. Certification that the subject SEP has been fully implemented pursuant to the provisions of this Consent Decree;

e. A description of the environmental and public health benefits resulting from implementation of each of the Brockton SEPs, including, if feasible, a quantitative analysis of the benefits and pollution reduction associated with each.

16. After receipt of each SEP Completion Report described in the preceding paragraph, EPA will, in consultation with MADEP, either (i) indicate in writing that EPA, in consultation with MADEP, concludes that the subject SEP has been completed satisfactorily; (ii) indicate in writing that EPA, in consultation with MADEP, has determined that the subject SEP has not been completed satisfactorily and seek stipulated penalties in accordance with paragraph

57 below; or (iii) notify Brockton in writing of any deficiencies in the subject SEP Completion Report or the SEP and specify a reasonable schedule for curing such deficiencies. If EPA notifies Brockton pursuant to clause (iii) above that the SEP Completion Report is deficient, but EPA has not yet made a final determination about the adequacy of SEP completion itself, Brockton shall, within 30 days of receipt of such notice, cure any deficiencies in the SEP Completion Report. If EPA notifies Brockton pursuant to clause (iii) above of deficiencies in the performance of the SEP, Brockton shall cure the deficiencies in accordance with the schedule specified by EPA, in consultation with MADEP. For purposes of this paragraph, each SEP shall be considered "satisfactorily" completed if performed in accordance with Appendix A, Appendix B, and Appendix C, respectively, and the applicable provisions of the Consent Decree.

17. Failure to submit any report required by paragraph 14 or 15 above, or cure any deficiencies in accordance with paragraph 16 above, shall be deemed a violation of this Consent Decree and Brockton shall be liable for stipulated penalties pursuant to paragraph 57 below.

18. Brockton shall retain true and accurate copies of all research and data that the City relies on for interim reporting and for each Brockton SEP Completion Report, and shall provide such information to EPA and DEP within 10 days of EPA or MADEP's request for such information. Such records shall be maintained for a period of at least three years after submission of each Brockton SEP Completion Report, unless EPA or the MADEP requests that such records be maintained for a longer period.

19. Brockton hereby certifies that the Receiving Water Assessment SEP; the Lead Analysis SEP; and the Regional Wastewater Planning SEP, are not required under any other state, local or federal law or regulation, and that the Brockton SEPs are not to be implemented as

a consequence of another agreement to which Brockton is a party. Brockton also certifies that it has not negotiated, is not presently negotiating, and will not in the future negotiate to initiate or complete the Brockton SEPs in response to any other local, state or federal enforcement action or in order to receive a grant from any entity.

20. Brockton hereby agrees that EPA and DEP may inspect all records maintained by the City relating to the City's obligations to perform the Brockton SEPs, and the City shall make all such records available to EPA and MADEP for inspection and copying without undue delay upon EPA's or MADEP's written request for production of such records.

21. The City hereby agrees that any written public statement or oral statement made on behalf of the City making reference to any of the Brockton SEPs, shall include the following language: "This Project was undertaken in connection with the settlement of an enforcement action taken by the U.S. Environmental Protection Agency and the Massachusetts Department of Environmental Protection in which the agencies alleged violations of the federal Clean Water Act and the Massachusetts Clean Waters Act."

22. This Consent Decree shall not relieve the City or any other entity of its obligation to comply with all applicable provisions of federal, state or local law, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state or local permit, nor shall it be construed to constitute EPA or MADEP approval of the representations made by or on behalf of the City in connection with the Brockton SEPs undertaken pursuant to this Consent Decree.

VIII. REMEDIAL MEASURES

POTW Upgrade - Phase 1

23. The City has advertised for bids for Phase 1 of the POTW Upgrade Project as described in the October, 2003 Conceptual Design Report prepared by Camp Dresser & McKee ("Conceptual Design Report") and detailed in the October, 2003 Construction Specification for Wastewater Treatment Facility Upgrade, Phase 1.

24. The City has opened general bids and awarded the contract for the construction of Phase 1 of the POTW Upgrade Project.

25. By December 23, 2006, the City shall substantially complete construction and begin operation of Phase 1 of the POTW Upgrade Project.

POTW Upgrade - Phase 2

26. The City has submitted to MADEP for approval and to EPA for review, draft plans and specifications for Phase 2 of the POTW Upgrade Project as described in the Conceptual Design. The Phase 2 projects shall include all of the projects in Phase 2 of the Conceptional Design Report submitted in October, 2003, as supplemented from time to time in accordance with the terms of this Consent Decree by the Parties, including: The secondary clarifier upgrade, effluent filter upgrade, solid (sludge) handling improvements, and Supervisory Control and Data Acquisition (SCADA) system improvements.

27. The MADEP has accepted the plans and specifications for Phase 2 of the POTW Upgrade Project and the City has commenced the procurement process for Phase 2 of the POTW Upgrade Project.

28. On February 9, 2006, the City awarded the contract for the construction of Phase 2 of the POTW Upgrade Project and issued a notice to proceed with work.

29. The City shall substantially complete construction and begin operation of Phase 2 of the POTW Upgrade Project by March 19, 2008.

POTW Upgrade - Phase 3

30. The City has submitted to MADEP for approval and to EPA for review, draft plans and specifications for Phase 3 of the POTW Upgrade Project as set forth in the Conceptual Design Report. Phase 3 shall include all of the projects in Phase 3 of the Conceptual Design Report, as supplemented from time to time in accordance with the terms of this Consent Decree by the parties, including but not limited to: The north aeration basins upgrade, south blower building upgrade, headworks/primary odor control, disinfection system upgrade ("Disinfection Upgrade"), process equipment replacement, and operations building upgrade (except those operation building upgrade projects listed in section 5.9 of the Facilities Assessment - Brockton Advanced Wastewater Treatment Facility - Evaluation Report dated July 2002). The Disinfection Upgrade shall consist of an ultra violet radiation disinfection.

31. Within 30 days of MADEP's approval of the plans and specifications for Phase 3 of the POTW Upgrade Project, the City shall commence the procurement process by starting the prequalification phase for Phase 3 of the POTW Upgrade Project in accordance with applicable state laws.

32. The City shall award the contract for the construction of Phase 3 of the POTW Upgrade Project and issue a notice to proceed with work by no later than September 29, 2006.

33. The City shall substantially complete construction and begin operation of Phase 3 of the POTW Upgrade Project within 750 days from the date specified to commence work in the notice to proceed.

34. Within 150 days of the date the City is required to substantially complete construction and begin operation of Phase 3 of the POTW Upgrade Project pursuant to the previous paragraph, but in no event later than March 31, 2009, the City shall comply with all effluent limitations, conditions, and requirements of its Permit, except with respect to those mass loading based pollutants for which interim limits remain in effect pursuant to paragraph 44, and with respect to copper, which shall be governed by the Administrative Order issued by EPA in AO 06-09 (the "Copper AO").

Inflow & Infiltration Removal

35. Within 30 days of the entry of this Consent Decree, the City shall submit to EPA and MADEP for approval a preliminary plan for controlling and reducing Infiltration/Inflow within the Collection System, which preliminary plan will outline the measures that the City intends to include in its proposed final plan pursuant to this Consent Decree. Such preliminary plan shall be based on the already approved Sewer System Evaluation Study Report (see paragraph 37(b) below) and also include a private inflow component as described in paragraph 37(c) below.

36. Within 90 days of approval of the preliminary plan described in paragraph 35 above, the City shall submit to EPA and MADEP for approval a final plan (the "I/I Removal Plan") for continuing the City's efforts to control and reduce Infiltration/Inflow within the Collection System which includes steps for public outreach. The City shall implement the I/I

Removal Plan as approved by EPA and the MADEP, and shall undertake and substantially complete each of the projects set forth in the I/I Removal Plan within the time period designated for each such project as approved by EPA and the MADEP.

37. The approved I/I Removal Plan shall be deemed incorporated in this Consent Decree, and shall detail a program for identifying and removing sources of Infiltration/Inflow within the City's Collection System. The I/I Removal Plan shall include:

(a) an estimate of the necessary funding level for each fiscal year to accomplish the requirements of the I/I Removal Plan, and a description of the anticipated sources of funding for such projects. The grouping and scheduling of the projects in the I/I Removal Plan should not be arranged such that a disproportionate effort is planned towards the end of the plan. The schedule shall provide that completion shall be within six and one half years of the approval of the I/I Removal Plan for those construction projects identified in item (b) below, and those construction projects and inspections and other actions that will be required to be performed in the inflow plan to be developed in item (c) below.

(b) the details of project work packages, separated into contract work packages and/or projects, to be completed by specified dates within designated fiscal or calendar years, of all projects for public Infiltration/Inflow removal identified in the following tables included in the City's report, issued in the year 2000 and entitled, "A City Wide Sewer System Evaluation Study" (the "SSES Report"): Table 8-1 Prioritized Listing of Cost - Effective Lateral Sewer Groups; Table 8-2, Lateral Sewer Pipe Recommended for Value Effective Rehabilitation; Table 8-3, Interceptor Pipe Recommended for Value Effective Rehabilitation; Table 8-5, Interceptor

Pipe Recommended for Heavy Cleaning; Table 5-1, Exfiltration Study Summary and Recommendations; and Table 6-3, Cost - Effectiveness Analysis for Manhole Rehabilitation.

(c) the details of specific measures designed to address private Inflow removal, that shall include methods that ensure that the City has:

(i) the ability to inspect properties to determine potential Inflow sources, including, but not limited to, if access to some homes is denied, conducting inspections of the service connection from the sewer main.

(ii) procedures to follow-up and confirm that identified Inflow sources have been removed and not re-established;

(iii) a schedule to provide for follow-up testing to determine the presence of Inflow sources where additional survey work was identified in earlier surveys;

(iv) enforcement procedures in place to police the "no inflow source" requirement contained in the City's sewer use regulations;

(v) a schedule to complete the inspections within those 39 sub-areas where house-to-house inspections were not completed during the field work conducted for the SSES Report;

(vi) an estimated budget and source of funding to implement the program; and

(vii) addressed all sources of private inflow including sump pumps, roof leaders and floor drains.

In specifying the measures to address private inflow, the City shall also identify:

(viii) who will be performing the field work;

(ix) legal issues associated with implementation of the work described in paragraphs (c)(i) - (vii), above; and

(x) an implementation process and schedule to conduct the work described in paragraphs (c)(i) - (vii), above.

Notwithstanding the time frame in paragraph 37(a) above, all inspections pursuant to this subparagraph must be completed within three years of the approval of the I/I Removal Plan by EPA and MADEP. The City also must use its best efforts to remove all private Inflow sources within six months after the date the City first becomes aware of them.

38. The City agrees that within 90 days of the approval by EPA and DEP of the final I/I Removal Plan submitted by the City pursuant to this Consent Decree, the City shall secure funding of the approved I/I Removal Plan incorporated in this Consent Decree pursuant to paragraphs 35, 36, and 37 as follows:

(a) the City shall fully fund the public I/I work required by paragraph 37(b); and

(b) because the City will fund the private Inflow work required by paragraph 37(c) (the "Private Inflow Work") as a recurring annual operation and maintenance cost, the City shall fully fund by the above-referenced date the Private Inflow Work to be conducted in the remainder of that fiscal year, and shall thereafter by no later than July 1 of each succeeding fiscal year fully fund the Private Inflow Work to be conducted in that fiscal year pursuant to the approved I/I Removal Plan.

39. Moreover, if the City fails to perform its obligations pursuant to the approved I/I Removal Plan incorporated in this Consent Decree pursuant to paragraphs 35, 36, and 37 above, the United States and the Commonwealth intend to seek to compel compliance with this Consent

Decree through all available means, including, without limitation, by requesting that the Court impose a sewer connection limitation program upon the City.

40. The City shall use its best efforts to require any municipality that is connected to the City's POTW to make reasonable efforts to: (i) identify sources of Infiltration/Inflow; and (ii) to remove sources of Excessive Infiltration/Inflow from the City's Collection System. If any such municipality fails to meet the City's requirements set forth above, the City shall notify the Commonwealth and EPA that its best efforts to compel compliance have been unsuccessful, include a detailed account of such efforts, and request assistance in compelling such other municipalities to comply. The City shall promptly notify the towns of Abington and Whitman, municipalities that are currently connected to the City's POTW, and shall promptly notify any municipalities that subsequently connect to the POTW, of the City's obligations as set forth in this Consent Decree, and shall promptly provide a copy of this Consent Decree to each such municipality as set forth in paragraph 3 of this Consent Decree, within seven (7) days of lodging of the Consent Decree.

Funding of Operations and Maintenance

41. On or before August 1 of each calendar year in which this Consent Decree is in effect, the City shall submit a copy of its POTW and Collection System operating budgets for the upcoming fiscal year to EPA and MADEP. The POTW and Collection System operating budget submissions shall be accompanied by a written summary of all maintenance activities performed by the City during the prior fiscal year and shall also include an assessment of whether the revenues collected by the City's enterprise fund are sufficient to support proper operation and maintenance of the City's POTW and Collection System. If revenues are not

sufficient, the City shall propose modifications to the enterprise fund and a schedule for implementing the modifications.

IX. REPORTS ON COMPLIANCE

42. Upon lodging of this Consent Decree and until completion of construction of all the Remedial Measures in Section VIII, the City shall report to EPA and MADEP on its compliance with Section VIII every three months. After completion of construction of all the Remedial Measures in Section VIII, and until this Consent Decree is terminated, the City shall report to EPA and MADEP every six months. 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. Identify all plans, reports, and other deliverables required by this Consent Decree that the City 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;

d. Identify any anticipated noncompliance with this Consent Decree in the next reporting period; and

e. Identify any noncompliance with this Consent Decree's requirements. 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 elapsed schedule requirements;

(iii) A description of any factors which tend to explain or mitigate the noncompliance; and

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

43. Satisfying the reporting requirements set forth in this section will not relieve the City of its obligation to submit any other reports or information as required by state, federal or local law, and will not relieve the City of any responsibility for any violations.

X. INTERIM OPERATIONAL PRACTICES

44. At all times prior to the date by which the City is required to achieve compliance with paragraph 34 above, the City shall operate the POTW in accordance with the requirements of the Consent Decree and to maximize compliance with the CWA, the Massachusetts Act, and the Permit.

a. In developing the plans and specifications for the work to be performed under Section VIII of this Consent Decree, whenever such work requires the City to take a component of the POTW off-line, and whenever having such equipment off-line may have a significant adverse impact on the operational performance of the POTW, the City shall include with the plans and specifications: (1) a description of all measures the City intends to take to maximize the POTW's compliance with the CWA, the Massachusetts Act and the Permit during the period of time when the equipment will be off-line; and (2) all measures the City intends to take to minimize the impact to the environment of taking such equipment off-line.

b. Whenever there is a change in the plans and specifications regarding when the City plans on taking a component of the POTW off-line and whenever having such

equipment off-line may have a significant adverse impact on the operational performance of the POTW, the City shall notify EPA and the MADEP at least 30 days before such equipment is proposed to be taken off-line. The City shall include in such notification: (1) a description of all measures the City intends to take to maximize the POTW's compliance with the CWA, the Massachusetts Act, and the Permit, during the period of time when the equipment will be off-line; and (2) all measures the City intends to take to minimize the impact to the environment of taking such equipment off-line. EPA and the MADEP may require that the City provide notice to the public (both in the City of Brockton and any affected downstream communities), of the proposed action and its impact on the POTW. Whenever there is an unanticipated and unintentional event requiring that a major component of the POTW be taken off-line and that has a significant adverse effect on the performance of the POTW, the City shall notify EPA, the MADEP, and the public (both in the City of Brockton and any affected downstream communities), within 24 hours of such occurrence. Public notification shall be performed by issuing a press release to the Boston Globe, Boston Herald and the Brockton Enterprise adequately describing the subject event, the components taken off line or to be taken off line, and the anticipated adverse effect of the event on the performance of the POTW.

(c) At least 60 days prior to the actual date for substantial completion of Phase 2 of the POTW Upgrade Project, the City shall provide a written proposal for interim limitations for all parameters included in the Permit with justification to EPA and the MADEP. The interim limitations shall become effective upon the EPA and MADEP approval and shall continue in effect until the dates by which the City is required to comply with the effluent limitations and requirements of the Permit under paragraph 34, except for the Permit's copper effluent

limitations. The City's compliance with the Permit's copper effluent limitations shall be governed, except as discussed below, in all respects by the Copper AO. Notwithstanding the provisions of the Copper AO, the City shall not be required to prepare a copper optimization report on account of any copper interim limit exceedences unless such exceedences occur at least 60 days after substantial completion of Phase 2 of the POTW Upgrade Project. The City may also propose interim limits for mass loading based pollutants that continue in effect until completion of the I/I construction pursuant to paragraphs 35, 36, and 37 of this Consent Decree. At all times, the City shall continue to comply with the monitoring, reporting and Infiltration/Inflow removal requirements in the Permit.

XI. REVIEW AND APPROVAL

45. After review of any plans, specifications, scope of work, report, proposal or other item that is required to be submitted pursuant to Section VIII or X of this Consent Decree, EPA and/or MADEP, as appropriate, shall in writing:

a. approve, in whole or in part, the submission;

b. approve the submission upon specified conditions; or

c. disapprove, in whole or in part, the submission. Any such written disapproval shall include specific reasons for the disapproval.

46. Upon receipt of a written notice of approval, or approval in part, pursuant to paragraph 45, the City shall implement all actions required by the plans, specifications, scope of work, report, or other item, as approved by EPA and/or MADEP, as appropriate, and in accordance with the schedule approved by EPA and/or MADEP, as appropriate.

47. Upon receipt of a written notice of approval with conditions, pursuant to paragraph 45, the City shall take all actions required by the plans, specifications, scope of work, report, or other item, as conditioned by EPA and/or MADEP, as appropriate, and in accordance with the schedule approved by EPA and/or MADEP, as appropriate.

48. Upon receipt of a written notice of disapproval, in whole or part, pursuant to paragraph 45, the City shall, within 30 days or such other longer time as specified by EPA and/or MADEP, as appropriate, correct the deficiencies and resubmit the plans, specifications, scope of work, report, or other item, for approval. Stipulated penalties applicable to the submission, as provided in Section XII (Stipulated Penalties), shall not accrue during the 30-day period or specified period for revision if the resubmission is timely and approved.

49. If upon resubmission after disapproval, the plans, specifications, scope of work, report, or other item, are again disapproved by EPA and/or MADEP, as appropriate, the City shall be deemed to have failed to submit such plans, specifications, scope of work, report, or other item, as of the date they were notified the original submission was deficient unless the City invokes the dispute resolution procedures set forth in Section XV (Dispute Resolution) to challenge the disapproval. If the disapproval of the EPA and/or MADEP, as appropriate, is upheld after dispute resolution, stipulated penalties shall accrue for such violation from the date on which they were notified the original submission was deficient.

50. All plans, specifications, scope of work, report, or other item required to be submitted to EPA and MADEP under this Consent Decree shall, upon approval by EPA and/or MADEP, as appropriate, be enforceable under this Consent Decree. In the event EPA and/or MADEP, as appropriate, approves a portion of any plans, specifications, scope of work, report, or

other item required to be submitted under this Consent Decree, the approved portion shall be enforceable under this Consent Decree.

51. In the event a dispute arises among the Parties regarding the conditional approval or disapproval of the EPA and/or MADEP, as appropriate, of any plans, specifications, scope of work, report, or other item required to be submitted to EPA and the MADEP under this Consent Decree, the position of the EPA and/or MADEP, as appropriate, shall govern unless the City invokes the dispute resolution process set forth in Section XV (Dispute Resolution) and the conditional approval or disapproval at issue is overturned.

XII. STIPULATED PENALTIES

52. The City shall pay stipulated penalties to the United States and the Commonwealth for violations of this Consent Decree, as set forth below:

a. Two hundred fifty dollars ($250) per violation per day for each day the City is late in conducting testing, monitoring, or inspections required under its Permit, in submitting any report required by Sections IX (Reports on Compliance), fails to provide the certification required by paragraph 73, or is late in delivering the civil penalty payment required by Section VI (Civil Penalty).

b. For every day that the City is late in meeting the requirements of paragraphs 23 to 37 of Section VIII (Remedial Measures), including but not limited to, submitting a plan or report, or fails to implement remedial requirements in a plan or report approved by EPA and/or MADEP, as appropriate, the City shall pay a penalty as follows:

Penalty Per Violation Per Day	Period of Noncompliance
$ 250	1st through 10th day
$ 500	11th through 20th day
$2000	21st day and beyond.

53. The City shall pay stipulated penalties to the United States and the Commonwealth for violations of the interim effluent limits established pursuant to paragraph 44 of this Consent Decree as set forth below:

a. Four hundred dollars ($400) per day for each day the City violates any daily maximum discharge limitation or requirement.

b. One thousand dollars ($1000) for each violation of the monthly average discharge limitation or requirement.

54. The City shall pay stipulated penalties to the United States and the Commonwealth for violations of any final permit effluent limits that occur after the deadline for compliance established in paragraphs 34 and 44 of this Consent Decree established as set forth below:

a. Seven hundred fifty ($750) per day for each day the City violates any daily maximum discharge limitation or requirement.

b. Two thousand dollars ($2000) for each violation of the weekly average discharge limitation or requirement.

c. Five thousand dollars ($5000) for each violation of the monthly average discharge limitation or requirement.

55. Stipulated penalty payments as specified in this Section shall be made by delivering such payments to the United States and the Commonwealth, in equal amounts, in accordance with the instructions set forth in this paragraph.

a. Stipulated penalty payments to the United States shall be made, upon demand, by certified check payable to "Treasurer, United States of America" and shall be delivered by certified mail to the Office of the United States Attorney for the District of Massachusetts, with

notice to EPA and the Department of Justice, at the addresses listed in Section XVII (Form of Notice). Such demand shall be in writing, and sent by first class mail or Federal Express to the City of Brockton at the address listed in Section XVII (Form of Notice). Payments shall be made within 15 days of the date that such written demand is sent to the City of Brockton in accordance with the requirements of this paragraph.

b. Stipulated penalty payments to the Commonwealth shall be made, upon demand, by certified or cashier's check payable to the "Commonwealth of Massachusetts" and shall be delivered to the Office of the Attorney General, Environmental Protection Division, One Ashburton Place, 18th Floor, Boston, MA 02108, to the attention of I. Andrew Goldberg, Assistant Attorney General. Payments shall be accompanied by a reference to this Consent Decree. Such demand shall be in writing, and sent by first class mail or Federal Express to the City of Brockton at the address listed in Section XVII (Form of Notice). Payments shall be made within 15 days of the date that such written demand is sent to the City of Brockton in accordance with the requirements of this paragraph.

c. In the event that a stipulated penalty payment is not made on time to the United States or the Commonwealth pursuant to this paragraph, such penalty (or portion thereof) shall be subject to interest at the statutory judgment rate set forth at 28 U.S.C. § 1961, for each day of late payment or non-payment. Nothing in this 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 or to meet a requirement of its Permit.

56. 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 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.

XIII. SEP STIPULATED PENALTIES

57. In the event that the City fails to comply with any of the terms or provisions of this consent decree relating to the performance of the Brockton SEPs described in paragraphs 10 - 22 above and/or to the extent that the actual expenditures for any of the Brockton SEPs do not equal or exceed the projected costs for that SEP described in paragraphs 12 and 13 above, Brockton shall be liable to the United States and the Commonwealth of Massachusetts for stipulated penalties according to the provisions set forth below:

i. If Brockton's total expenditures for the completed Brockton SEPs are less than $180,000, Brockton shall pay a stipulated penalty equal to the difference between the actual cost of the SEPs and $180,000, plus interest on such stipulated penalty accruing from the date of entry of this decree at the rate provided for in 28 U.S.C. 1961. Notwithstanding the above, if the City completes the Brockton SEPs to the satisfaction of EPA and MADEP, and has spent at least $162,000, then the City shall not be liable for payment of a penalty. Any penalty payments made by Brockton pursuant to subparagraph ii below shall be deducted from the penalty due under this subparagraph.

ii. Independent of subparagraph i above, in the event that any of the Brockton SEPs are not designed and performed in accordance with paragraph 10 and Appendices A, B, and C hereto, Brockton shall pay a stipulated penalty equal to the projected SEP cost for the part of the SEP not performed, plus interest on such stipulated penalty accruing from the date of entry of this Consent Decree at the rate provided for in 28 U.S.C. § 1961. When evaluating whether to reduce the amount of stipulated penalty due, EPA, in consultation with MADEP, may take into account the extent to which a SEP has been completed and is being performed as contemplated herein and Brockton's expenditures for the SEP. Brockton shall pay any such additional penalty to the United States and the Commonwealth of Massachusetts according to the procedures in paragraph 58 below within 30 days of demand.

iii. Notwithstanding subparagraph 57(ii) above, if any of the Brockton SEPs is not completed in accordance with paragraph 10 above and Appendices A, B, and C hereto, but EPA, in consultation with MADEP, determines that Brockton: a) made good faith and timely efforts to complete the SEP; and b) certifies, with supporting documentation, that at least 90 percent of the amount of money which was required to be spent was expended on the SEP, Brockton shall not be liable for any stipulated penalty.

iv. The City shall pay a stipulated penalty to the United States and the Commonwealth of Massachusetts totaling $250 for each day that it is late in completing any SEP described in Appendices A, B, and C. In addition, if Brockton is more than six months late in completing the SEP, the payment provisions contained in subparagraph ii above shall apply.

v. For failure to submit the any SEP Completion Report required by paragraph 15 above or for failure to cure deficiencies as required by paragraph 16 above, the City shall pay a stipulated penalty to the United States and the Commonwealth of Massachusetts in an amount totaling $250 for each day that the City is late in submitting the report or curing the deficiencies.

vi. The determination of whether the City has made a good faith, timely effort to implement the SEP shall be in the sole discretion of EPA, in consultation with MADEP.

58. The SEP Stipulated Penalties pursuant to paragraph 57 above, shall be paid upon demand on or before the 15th day of the month following that in which the violation(s) occurred. The payments shall be made to the United States and the Commonwealth of Massachusetts in equal amounts and tendered in the manner set forth in paragraph 55. Each such check shall be accompanied by a letter describing the basis for each penalty. Copies of all such letters shall be mailed concurrently to EPA and MADEP. If the City fails to pay in accordance with the provisions of this paragraph any SEP Stipulated Penalties pursuant to paragraph 57 above, the United States and the Commonwealth shall be entitled to recover all documented costs actually incurred in collecting such penalty, including attorneys' fees, together with interest on such unpaid stipulated penalty at the statutory judgment interest rate provided for in 28 U.S.C. § 1961, which is in effect on the date of entry of this Consent Decree, accruing from the time such penalty is owed; provided, however, that the United States and the Commonwealth shall not be entitled to costs or attorneys' fees if the Court determines that no stipulated penalty is due. Nothing in this paragraph shall be construed to limit the United States or the Commonwealth in seeking any remedy or civil or criminal penalty otherwise provided by law (1) for any misrepresentation or material omission by

61. 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 the MADEP 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 provide to EPA and MADEP, at the addresses specified in Section XVII (Forms 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 MADEP orally within 24 hours of becoming aware of any event which presents an imminent threat to the public health or welfare or the environment and provide written notice to EPA and MADEP within three business days. Failure to give 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.

62. If EPA and MADEP 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 mutual agreement of the Parties for only the period of time as may be necessary to allow performance of such obligations to the extent the delay was caused by a Force Majeure event.

63. If the Parties are unable to agree as to whether a delay or anticipated delay is attributable to Force Majeure, or on the number of days of noncompliance caused by such event, the City may initiate the dispute resolution process set forth in Section XV (Dispute Resolution). If the City does not initiate the dispute resolution process set forth in Section XV within 10 days of

receiving written notice that EPA and/or MADEP disagree with the City as to whether a delay or anticipated delay is attributable to Force Majeure, or on the number of days of noncompliance caused by such circumstances, then the City shall be deemed to have waived any Force Majeure claims or any rights to initiate Dispute Resolution with regard to such claims.

64. 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.

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

XV. DISPUTE RESOLUTION

66. The dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising under, or with respect to, this Consent Decree, in which the City properly invokes this Section. However, 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.

67. If the City objects to disapproval or conditions in an approval of any plans, specifications, scope of work, report, or other item, required to be submitted to EPA and/or MADEP under this Consent Decree, or if the Parties are unable to agree as to whether a delay or anticipated delay is attributable to Force Majeure or the number of days of noncompliance caused by such event, or on the amount of Stipulated Penalties due, or other disputes arise under this Consent Decree, the City may initiate informal, good faith negotiations among the Parties to the dispute for a period of up to 30 days from the time the City gives notice of the existence of the dispute, provided that the City gives EPA and MADEP notice of the existence of the dispute within

10 working days after receipt of a notice of disapproval or conditional approval, or a Force Majeure or Stipulated Penalty determination by EPA and/or MADEP, as appropriate. The period for negotiations may be extended by written agreement of the Parties.

68. In the event that the Parties cannot resolve any such dispute by informal negotiations under the preceding paragraph, then the position advanced by EPA and/or MADEP shall be considered binding unless, within 15 working days of the end of the negotiation period, the City shall file a petition with this Court setting forth the matter in dispute, the efforts of the Parties to resolve it, and the relief requested. EPA and/or MADEP, as appropriate, shall then have 30 days to respond to any such petition.

69. In proceedings on any dispute regarding a delay in performance as set forth in this Section, the City shall have the burden of proving that: (1) the delay or noncompliance is, or was, caused by a Force Majeure event, and (2) the amount of additional time requested is necessary to compensate for that event. In no event shall the time for performance be extended for a period longer than the actual delay resulting from the Force Majeure event.

70. Notwithstanding the previous paragraph, in all other disputes under this Section, the City shall have the burden of proving, that the position of the United States and/or Commonwealth is arbitrary and capricious, an abuse of discretion or not in compliance with the law. EPA and/or MADEP shall maintain an administrative record of the dispute, which shall contain all statements of the Parties, including supporting documentation, submitted pursuant to this section.

XVI. RIGHT OF ENTRY

71. EPA and MADEP and their contractors, consultants, and attorneys shall have authority to enter any property and/or facility covered by this Consent Decree at all reasonable times, upon proper identification, for the purposes of monitoring the progress of activity required

by this Consent Decree, verifying any data or information submitted to EPA and MADEP under this Consent Decree, and assessing the City's compliance with this Consent Decree. This requirement is in addition to, and does not limit, the authority of EPA or MADEP pursuant to the CWA, the Massachusetts Act, or any other provision of state or federal law.

XVII. FORM OF NOTICE

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

Barbara Healy Smith
Assistant U.S. Attorney
John Joseph Moakley U.S. Courthouse
1 Courthouse Way, Suite 9200
Boston, MA 02210

As to the EPA

Tonia Bandrowicz
Sr. Enforcement Counsel
U.S. EPA
Mail Code: SEL
One Congress Street
Boston, MA 02114-2023

Steven Couto
Environmental Engineer
U.S. EPA
Mail Code: SEW
One Congress Street
Boston, MA 02114-2023

As to the MADEP

Anne Bingham
Massachusetts Department of
Environmental Protection
Southeast Regional Office
20 Riverside Drive
Lakeville, MA 02347

As to the Massachusetts Attorney General's Office

I. Andrew Goldberg
Assistant Attorney General
Massachusetts Office of the
Attorney General
One Ashburton Place
18th Floor
Boston, MA 02108

As to the City of Brockton, Massachusetts

Michael Thoreson
Commissioner of Department of Public Works
City of Brockton
Department of Public Works
45 School Street
Brockton, MA 02401

City Solicitor
City of Brockton
Law Department
45 School Street
Brockton, MA 02401

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

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

XVIII. EFFECT OF SETTLEMENT

74. This Consent Decree is neither a permit nor a modification of an existing permit under any federal, state, or local law and in no way relieves the City of its responsibilities to comply with all applicable federal, state, and local laws and regulations, nor shall it be construed to constitute EPA's approval of any equipment or technology installed by the City under the terms of this Consent Decree.

75. This Consent Decree resolves the civil claims of the United States and the Commonwealth for the violations alleged in the Complaint filed in this action through the date of lodging. The United States will take action to promptly enter the Consent Decree following lodging. This Consent Decree shall not be construed to prevent or limit the rights of the United States or the Commonwealth to obtain penalties or injunctive relief under the CWA, the Massachusetts Act, or under other federal or state laws, regulations, or permit conditions, except as expressly specified herein. This Consent Decree does not limit any rights or remedies available to the United States or the Commonwealth for any criminal violations. Nor does it limit the ability of the United States to take action pursuant to Section 504 of the CWA, 33 U.S.C. § 1364, or the ability of the Commonwealth to take action pursuant to Section 46 of the Massachusetts Act, M.G.L. c. 21, § 46. This Consent Decree does not limit the standing of any person under Section 505 of the CWA, 33 U.S.C. § 1365, to sue for any future violation of the CWA not addressed by

this Consent Decree. 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 specifically 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 the respective authority of each, 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.

76. Neither the United States nor the Commonwealth, by consent to the entry of this Consent Decree, warrant or aver in any manner that the City's compliance with this Consent Decree will result in compliance with the CWA, the Massachusetts Act, or any regulations or permits issued thereunder.

XIX. COSTS

77. Each party shall bear its own costs and attorneys' fees in this action. The City shall be responsible for all expenses incurred by the United States and/or the Commonwealth in collecting any outstanding penalties due under Sections VI, XII and XIII of this Consent Decree and in enforcing the requirements of this Consent Decree, unless the City prevails before a court in any dispute resolution brought pursuant to Section XV.

XX. RETENTION OF JURISDICTION

78. 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. This paragraph does not

constitute a waiver of the bar to judicial review of administrative decisions, including, but not limited to, approval of plans and other submissions, and permitting decisions.

XXI. MODIFICATION

79. Any material modification to the terms of this Consent Decree shall be by written agreement of the Parties and approval of the Court. Any nonmaterial modification to the terms of this Consent Decree, such as approval of modifications to submissions to EPA and MADEP, shall be effective upon approval by EPA and MADEP. Modifications to the schedules specified in this Consent Decree that do not otherwise alter the obligations of the Consent Decree may be made by written agreement among the City, EPA, and MADEP and shall become effective upon agreement of the City, EPA and MADEP.

XXII. FUNDING

80. 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.

XXIII. SEVERABILITY PROVISION

81. 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.

XXIV. TERMINATION

82. The Court shall terminate this Consent Decree upon joint motion of the Parties after the City has paid all outstanding penalties, completed all SEPs as required under Section VII of this Consent Decree, completed all remedial measures required under Section VIII of this Consent

Decree, and has achieved substantial compliance with the Permit, except for the Permit's copper effluent limits, as determined by EPA and the MADEP, continuously for a period of one year.

XXV. FINAL JUDGMENT

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

XXVI. WAIVER OF SERVICE OF SUMMONS AND COMPLAINT

84. 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.

XXVII. PUBLIC COMMENT

85. The City consents to the entry of this Consent Decree without further notice. This Consent Decree shall be lodged with the Court for a period of not less than thirty (30) days for public notice and comment in accordance with 28 C.F.R. § 50.7. The United States and the Commonwealth reserve the right to withdraw or withhold their consent if the comments regarding the Consent Decree disclose facts or considerations indicating that the Consent Decree is inappropriate, improper, or inadequate. 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 _____ day of _____ .

_____
UNITED STATES DISTRICT JUDGE

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

For Plaintiff UNITED STATES OF AMERICA

By: _____ _____
Sue Ellen Wooldridge, Date
Assistant Attorney General
Environment & Natural Resources Division
United States Department of Justice
P.O. Box 7611, Ben Franklin Station
Washington, D.C. 20044
(202)514-5268

MICHAEL J. SULLIVAN,
United States Attorney

By: _____ _____
Barbara Healy Smith Date
Assistant United States Attorney
United States Attorney
District of Massachusetts

For the UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

By: _____ JUNE 29, 2006

Stephen S. Perkins — Date

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

For the COMMONWEALTH OF MASSACHUSETTS

THOMAS F. REILLY
ATTORNEY GENERAL

By: _____ _____
I. Andrew Goldberg, BBO# 560843 Date
Assistant Attorney General
Environmental Protection Division
Massachusetts Office of the Attorney General
One Ashburton Place
18th Floor
Boston, MA 02108
(617) 727-2200

For Defendant City OF BROCKTON, MASSACHUSETTS

By: _____ 6/26/2006
Hon. James E. Harrington, Mayor Date
City of Brockton
45 School Street
Brockton, MA 02401

APPENDIX A

Comprehensive Receiving Water Assessment

(i) By no later than January 31, 2009, the City shall begin a comprehensive receiving water assessment (the "Assessment"), the scope of which is to be determined in accordance with this section, but which shall include, at a minimum, two low flow surveys conducted over a period not to exceed three years. Low flow shall be defined as flows equal to the August median flow or lower. It is the intention of the Parties that the Assessment not be commenced until after the POTW upgrades described in paragraphs 23 through 34 of this Consent Decree are completed.

(ii) The Assessment shall include chemical and biological sampling of approximately 10 stations in locations upstream of the Brockton discharge to the confluence of the Matfield and Town Rivers, including all major tributaries and reporting the results of the chemical and biological sampling. The chemical sampling would include diurnal dissolved oxygen levels, pH, alkalinity, hardness, turbidity, conductivity, total dissolved solids, nitrogen series, cholorphyl a, and total and dissolved ortho phosphorus. The biological sampling would include macroinvertebrates and habitat assessment, fish community, periphyton (quantitative) and macrophytes (qualitative), and is intended to be conducted in years one and three of the study. The above descriptions of sampling sites and chemical and biological investigations is intended to be representative of the work to be completed. The specific scope of work will be developed pursuant to clauses (iv) and (v) below.

(iii) The City shall expend a total of no more than $80,000 toward the cost of the Assessment. The City shall coordinate with EPA and the MADEP in accordance with this section in determining how such funds will be expended. The City shall include documentation of the expenditures made in connection with the Assessment as part of the SEP Completion Report.

(iv) By March 1, 2009, the City shall submit to EPA and MADEP for approval (and for comment to other interested parties, including local watershed groups, identified by EPA and MADEP) a draft Scope of Services for the Assessment ("Scope of Work"), including a schedule for completion of the Assessment and identification of the consultant the City intends to use to conduct the Assessment. In developing the final Scope of Work, the City shall convene meetings and solicit input from EPA, the MADEP and other interested parties, including the local watershed groups.

(v) Within 15 days of receiving comments on the draft Scope of Work, the City shall submit a final Scope to EPA and MADEP for approval. The final Scope shall address EPA and MADEP's reasonable comments (which may include input from interested parties, including the local watershed groups) on the draft Scope.

Comments submitted by EPA and/or MADEP with respect to the sufficiency of the sampling locations to assess water quality on the main stems of the Salisbury Plain, Matfield and Taunton Rivers shall be presumed reasonable. The final approved Scope of Work and schedule is incorporated by reference into this Consent Decree and fully enforceable herein. The schedule shall reflect a date for submittal of a final report no later than March 31, 2012.

(vi) Upon approval of the final Scope of Work by EPA and MADEP, the City shall conduct the Assessment in accordance with the approved final scope of work and schedule for the Assessment.

APPENDIX B

Regional Wastewater Management Planning

Recognizing that recent comprehensive wastewater management plans prepared by towns near or adjacent to Brockton have disclosed difficulties in identifying acceptable groundwater disposal locations for moderate to large quantities of treated wastewater effluent, the City agrees to expend $75,000 to undertake a study to identify viable solutions to this problem.

(i) Initially the City will endeavor to enter into a written agreement (the "Agreement") with the Old Colony Planning Council (OCPC) to do a Brockton regional area wastewater study. The Agreement shall be developed in accordance with the following guidelines and requirements.

(a) Within 60 days of the lodging of this Consent Decree, the City shall provide to EPA and MADEP for approval a draft Agreement between the City and OCPC for work related to the basin-wide wastewater study. Such Agreement shall provide, among other things, that:

(1) In exchange for undertakings by OCPC described below, the City shall make a cash payment to OCPC in the amount of seventy five thousand dollars ($75,000) for the performance of work in support of the development and assessment of possible regional wastewater solutions for the City and communities surrounding the City;

(2) OCPC will provide to the City a semi-annual accounting of funds expended;

(3) OCPC shall be limited to force account charges of no more than 15% ($11,250) for administration of the professional services agreement and participation during the execution of the Agreement;

(4) OCPC shall limit overhead charges to no more than its approved overhead rate for federal contracts;

(5) OCPC shall coordinate with the City and surrounding communities on the development of a scope of work to commence an evaluation of potential regional wastewater options;

(6) OCPC shall assemble a workgroup of interested communities to provide technical guidance in the

APPENDIX C

Pilot Program for Collection of Drinking Water Samples at the City of Brockton Schools and Child Care (daycare and nursery) Facilities in City buildings for Analysis of Lead.

Brockton, a Public Water System (PWS), supplies drinking water to the City of Brockton including its schools, and daycare and nursery facilities (Brockton's daycare and nursery facilities, the "childcare facilities"). Pursuant to the 1991 Lead and Copper Rule under the Safe Drinking Water Act (SDWA), the City has optimized corrosion control treatment and passed two rounds of sampling without exceeding the SDWA lead action level. In 2004, the City also submitted to MADEP a completed response to the "Lead in School Drinking Water Maintenance Checklist."

The parties agree on the importance of being able to assess the effectiveness of communities' efforts concerning lead in drinking water programs for schools; the City has volunteered to pilot a more comprehensive testing program for water supplies in its schools and childcare facilities, and agreed to spend up to $25,000 on the project, as set forth below.

(i) within 90 days of the lodging of this Consent Decree, the City shall submit for approval to EPA and MADEP a work plan for completion of sampling of drinking water in the schools and childcare facilities listed below. The plan will prioritize the school and childcare facilities to be sampled, set forth a timetable for completion of collection and evaluation of water samples from representative faucets and fixtures used for water for human consumption in schools and childcare facilities. The schools and childcare facilities listed below shall be sampled in the order of their priority until the $25,000 allocated to this SEP has been expended. The plan will include, at minimum:

(a) identification of the City personnel or a qualified contractor who will carry out the work;

(b) identification of all faucets and fixtures in the schools and childcare facilities in public buildings, prioritizing of each outlet for sampling based on children's access or use of the outlet as a source of drinking water, beverage or food preparation (and whether a fixture or faucet has been tested within the last five years by a MADEP laboratory certified for testing for lead in potable water and passed such test); and proposal for the number and location for sampling at each school or childcare facility;

(c) development of a sampling protocol that complies with the October 6, 2005 draft EPA document: "Getting the Lead Out: A Guide for Reducing Lead in Drinking Water in Schools" [http://www.epa.gov/OGWDW/lcrmr/schools/index.html] or in accordance with the MADEP's "Recommended Remediation Actions to Reduce or Eliminate Lead Exposure from Drinking Water in Schools" guidance [http://mass.gov/dep/water/drinking/leadothe.htm], and that in any event includes two