I. STATUTORY AUTHORITY

The following FINDINGS are made and ADMINISTRATIVE ORDER ON CONSENT ("Consent Order") issued pursuant to Sections 308(a) and 309(a)(3) of the Clean Water Act, as amended (the "Act"), 33 U.S.C. §§ 1318(a) and 1319(a)(3). Section 309(a)(3), 33 U.S.C. § 1319(a)(3), of the Act grants to the Administrator of the U.S. Environmental Protection Agency ("EPA") the authority to issue orders requiring persons to comply with Sections 301, 302, 306, 307, 308, 318, and 405 of the Act and any permit condition or limitation implementing any of such sections in a National Pollutant Discharge Elimination System ("NPDES") permit issued under Section 402 of the Act, 33 U.S.C. § 1342. Section 308(a) of the Act, 33 U.S.C. § 1318(a), authorizes EPA to require the submission of any information required to carry out the objectives of the Act. These authorities have been delegated to the EPA, Region I Administrator, and in turn, to the Director of the EPA, Region I Enforcement & Compliance Assurance Division ("Director of ECAD").

The Consent Order herein is based on findings of violation of Section 301 of the Act, 33 U.S.C. § 1311, and the conditions of NPDES Permit No. MA0100781 and Small MS4 General Permit No. MAR041140. Pursuant to Section 309(a)(5)(A) of the Act, 33 U.S.C. § 1319(a)(5)(A), the Consent Order provides a schedule for compliance that the Director of ECAD has determined to be reasonable.
II. DEFINITIONS

Unless otherwise defined herein, terms used in this Consent Order shall have the meaning given to those terms in the Clean Water Act, 33 U.S.C. §§ 1251 et seq., the regulations promulgated thereunder, and any applicable NPDES permit. For the purposes of this Consent Order, “NPDES Permit” means the City of New Bedford, Massachusetts NPDES Permit, No. MA0100781, and all amendments and modifications thereto, and renewals thereof, as are applicable and in effect at the time. For the purposes of this Consent Order, “2003 Small MS4 General Permit” means the 2003 NPDES General Permit for Stormwater Discharges from Small Municipal Separate Storm Sewer Systems in Massachusetts and New Hampshire, and all amendments or modifications thereto and renewals thereof as are applicable, and in effect at the time, including without limitation the 2016 Massachusetts Small MS4 General Permit that became effective on July 1, 2018 (the “2016 Small MS4 General Permit”). The 2003 Small MS4 General Permit and the 2016 Small MS4 General Permit are collectively referred to herein as the “Small MS4 General Permits.”

III. FINDINGS

The Director of ECAD makes the following findings:

1. The City of New Bedford (“New Bedford” or “City”) is a municipality, as defined in Section 502(4) of the Act, 33 U.S.C. § 1362(4), established under the laws of the Commonwealth of Massachusetts.

2. The City is a person under Section 502(5) of the Act, 33 U.S.C § 1362(5). The City is the owner and operator of a Publicly Owned Treatment Works (“POTW”), which includes a wastewater collection system (“Collection System”) consisting of approximately 266 miles of combined and separated sewer pipeline and force mains, 29 pump stations, a wastewater treatment plant (the “WWTP”) and 27 combined sewer overflow (“CSO”) outfalls, from which pollutants, as defined in Sections 502(6) and (12) of the Act, 33 U.S.C §§ 1362(6) and (12), are discharged from point sources, as defined in Section 502(14) of the Act, 33 U.S.C § 1362(14), to Inner and Outer New Bedford Harbor, Clark’s Cove, and the Acushnet River.

3. The WWTP is a secondary treatment facility designed to treat an annual average daily flow
of 30 million gallons per day ("MGD") and a maximum daily flow of 75 MGD. The WWTP serves a population of approximately 104,000 residents in New Bedford and portions of Acushnet and Dartmouth, which are co-permittees.

4. In 1987, the United States, the Commonwealth of Massachusetts, Conservation Law Foundation and the City signed a consent decree to resolve the City’s alleged violations of Section 301 of the Act, 33 U.S.C. § 1311, which was entered by the Court on December 7, 1987 (the "Consent Decree"). The Consent Decree required the City’s preparation of a CSO Facilities Plan but reserved to plaintiffs the future right to seek to require, by agreement or by order of court, specific actions to control combined sewer overflow ("CSO") discharges. The Consent Decree was modified in 1990 and 1995 without addition of such requirements. Nonetheless, over the past 28 years, by the City’s calculations, it expended $283 million to address CSOs resulting in a reduction of 94% in the volume of CSO discharges and an increase in the capture rate to 93 percent. According to the City’s draft Long Term CSO Control and Integrated Capital Improvements Plan, which is described below in Paragraph III.22, in 2016 the estimated annual volume of CSO discharges was 183 million gallons.

5. On September 26, 2008, the City was issued NPDES Permit No. MA0100781 (the “NPDES Permit”) by EPA under the authority of Section 402 of the Act, 33 U.S.C. § 1342. The NPDES Permit became effective December 1, 2008 and superseded a permit issued on November 2, 2000. The NPDES Permit expired on November 30, 2013 and, based upon the City’s timely re-application, the conditions of the NPDES Permit remain in effect pursuant to 40 C.F.R. § 122.6.

6. The NPDES Permit authorizes New Bedford to discharge pollutants from WWTP outfalls 001 and 002 to Outer New Bedford Harbor. Part I.F of the NPDES Permit also authorizes wet weather discharges of stormwater/wastewater from the 27 combined sewer overflow (CSO) outfalls listed in Attachment B of the NPDES Permit to Inner and Outer New Bedford Harbor, Clark’s Cove, and the Acushnet River. These discharges are subject to the effluent limitations, monitoring requirements and other conditions specified in the NPDES Permit.

7. Part I.A.1.a of the NPDES Permit requires that discharges not cause a violation of the water quality standards of the receiving waters.

8. Part I.F.1.a of the NPDES Permit prohibits dry-weather discharges from the City’s CSO

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outfalls.

9. Part I.F.1.b. of the NPDES Permit requires that CSO discharges not cause violations of federal or state water quality standards.

10. The City is also the owner and operator of a municipal separate storm sewer system ("MS4"), which is comprised of a system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, and storm drains) designed to collect, convey, and discharge stormwater to receiving waters.

11. Pursuant to Section 402(p)(6) of the Act, 33 U.S.C. § 1342(p)(6), on December 8, 1999 (64 Fed. Reg. 68722), EPA promulgated regulations at 40 C.F.R. § 122.26 that set forth NPDES permit requirements to address stormwater discharges from small MS4s.


13. On July 30, 2003, the City notified EPA that it was seeking coverage under the 2003 Small MS4 General Permit. Following a public comment period, the City received coverage under the permit on December 4, 2004. The 2003 Small MS4 General Permit Number MAR041140 authorizes the City to discharge from the MS4 outfalls listed in its application, in accordance with the terms and conditions of the 2003 Small MS4 General Permit.

14. Part I(B)(2)(j) of the 2003 Small MS4 General Permit provides that the Permit does not authorize the discharge of stormwater that is mixed with non-stormwater, unless the discharge is in compliance with another NPDES permit or allowable under Part I(F) of the 2003 Small MS4 General Permit.¹

15. Part I(B)(2)(k) of the 2003 Small MS4 General Permit provides that the Permit does not authorize the discharge of stormwater that would cause or contribute to instream exceedances of water quality standards.

16. The City’s 2003 application for coverage under the Small MS4 General Permit lists 94 outfalls from the City’s MS4 that discharge to the following surface waters: Buttonwood

¹ Part I(F) of the Small MS4 General Permit authorizes 18 categories of non-stormwater discharges provided that it has been determined by the permittee that the discharges are not significant contributors of pollutants to the MS4. These categories include water line flushing, landscape irrigation, diverted stream flows, and rising ground waters. In addition, discharges or flows from firefighting activities occurring during emergency situations are authorized as allowable non-stormwater discharges, unless identified by EPA as significant sources of pollutants.

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Park Pond, Copper Pond, Sassaquin Pond, the Acushnet River, New Bedford Inner Harbor, New Bedford Outer Harbor, and Clark’s Cove. Buttonwood Park Pond discharges to Buttonwood Brook, which discharges to Apponagansett Bay.

17. On April 4, 2016, EPA re-issued the general permit for stormwater discharges from Massachusetts small MS4s (the “2016 Small MS4 General Permit”) pursuant to Section 402(p) of the Act, 33 U.S.C. § 1342(p), and 40 C.F.R. § 122.26. The 2016 Small MS4 General Permit became effective on July 1, 2018.

18. The City submitted its Notice of Intent (“NOI”) for coverage under the 2016 Small MS4 General Permit on September 26, 2018. The City’s NOI lists 179 outfalls from the City’s MS4 that discharge to the following surface waters: Buttonwood Park Pond, Buttonwood Brook, Sassaquin Pond, Copper Brook, Nash Pond, Brooklawn Brook, Paskamanset River, Acushnet Cedar Swamp, Deep Brook, the Acushnet River, New Bedford Inner Harbor, New Bedford Outer Harbor, Clark’s Cove, and unnamed wetlands.

19. On March 5, 2019, EPA and MassDEP granted the City authorization to discharge stormwater from the City’s MS4 in accordance with the applicable terms and conditions of the 2016 Small MS4 General Permit.

20. On September 26, 2012, the Director of EPA Region I, Office of Environmental Stewardship issued Administrative Order, Docket No. 12-010 (the “2012 Order”) that required the City to submit information to EPA regarding discharges that were not authorized under the NPDES Permit. In addition, the Order required the City to complete and submit to EPA a Wastewater Collection System Capacity, Management, Operations and Maintenance Program assessment (“CMOM Program Assessment”) Checklist, and develop and implement a long-term preventive maintenance program, a Corrective Action Plan to address deficiencies identified through the CMOM Program Assessment, and a CSO control and monitoring plan (the “CSO Monitoring Plan”). The 2012 Order also requires the City to submit annual reports to EPA and the Massachusetts Department of Environmental Protection (“MassDEP”) that summarize the Collection System’s unauthorized discharges that occurred during the previous calendar year and the measures taken by the City during the previous calendar year to implement the measures identified in the Corrective Action Plan.

21. The NPDES Permit requires that the City quantify and record all discharges from combined

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sewer outfalls, in accordance with the Nine Minimum Controls program included in EPA’s Combined Sewer Overflow Policy, 1994. When estimating discharges, the City shall make reasonable efforts, i.e. gaging, measurements to verify the validity of the estimation technique. Pursuant to the 2012 Order, on January 24, 2013, the City proposed a CSO Monitoring Plan to use the calibrated SWMM model to estimate the volume and frequency of CSO discharges that would be expected in a typical year. In a letter dated August 19, 2015, the City proposed to meter nine (9) locations in fall 2015 to further calibrate the existing SWMM model and gauge CSO activity. In a September 9, 2015 email, the City stated that based on a comment from EPA, it also installed a meter at a tenth (10th) location. The August 19, 2015 letter indicated that based on the metering results, the City would select new locations for the meters for the spring of 2016, as part of its ongoing modeling efforts. EPA approved the City’s approach outlined in the August 19, 2015 letter on September 14, 2015. The August 19, 2015 letter stated that the City would install meters as part of the Integrated Plan to aid in designs and validate the effectiveness of implemented projects. In the annual report dated January 26, 2017, the City stated it was going to install temporary flow meters for the purposes of measuring infiltration/inflow (I/I) in sanitary portions of the sewer system and to assist in the design of new pumping stations. In the annual report dated January 29, 2018, the City stated that it was going to initiate a pilot program of temporary water-level-only sensors at selected regulators to help determine the frequency of CSO discharges. On March 28, 2018, five water-level-only sensors were placed at Regulators 003A, 004G, 006D, 020A and 036A as a pilot program.

22. In January 2017, the City submitted to EPA and the MassDEP a draft Long Term CSO Control and Integrated Capital Improvements Plan (the “Integrated Plan”) prepared by CDM Smith, Inc. The Integrated Plan provides a schedule for addressing the future CSO, wastewater and stormwater collection, flood control, and treatment needs of the City based on statutory, regulatory, and permit requirements effective as of the date of the Integrated Plan.

23. As of the effective date of this Consent Order, the City has completed, or is in the process of completing, the following projects that were recommended in the Integrated Plan:
   a. Initial wastewater facilities planning consistent with project WWTP1 (completed

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b. Evaluation of feasibility of a regional “waste to energy” organics facility consistent with Integrated Plan project WWTP3 (ongoing). The City retains sole discretion to proceed with or to abandon this project;

c. Equipment upgrades consistent with the first-year implementation of project WWTP4 (ongoing);

d. Front Street pumping station upgrades consistent with project PS8 (ongoing);

e. Merrimac Street pumping station upgrades consistent with project PS16 (ongoing);

f. Hurricane Barrier Collector and Cove Road Collector Cleaning (Phase 1 – Pipeline Inspection) consistent with project CSO1D (ongoing);

g. Union Street sewer separation work consistent with project CSO5 (completed – March 2018);

h. Outfall 026 and Regulator 027C IDDE work and an over-under manhole inspection program consistent with projects CSO8A and CSO8G, respectively (ongoing);

i. Overflow monitoring pilot consistent with project CSO11 (ongoing);

j. Coggeshall Street Sewer Separation and Outfall 040 improvements consistent with project SWW6 (completed – June 2017);

k. MacArthur Drive and Shawmut Avenue sewer improvements consistent with project SG3 and SG8, respectively (ongoing);

l. Interceptor and collection sewer inspection program on brick, segmented block, concrete, and vitrified clay (VC) collector sewers, interceptors, and lateral sewers consistent with project SG4 (ongoing);

m. Flow monitoring program consistent with project SG18 (completed – June 2017);

n. Rockdale Avenue stormwater drainage improvements consistent with project SW3 (Mass DOT funded) (ongoing);

o. Projects to improve Sassaquin Pond water quality consistent with project SW9 (ongoing); and

p. Hurricane barrier conduit inspections and gate maintenance consistent with
24. On October 11, 2019, the City submitted to EPA and MassDEP an IDDE program (“IDDE Plan”) that complies with the 2016 Small MS4 General Permit.

25. Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants to navigable waters except, among other things, in compliance with the terms and conditions of a NPDES permit issued pursuant to Section 402 of the Act, 33 U.S.C. § 1342.

26. On July 29, 2015, September 13, 2016, and June 20 and 21, 2018, EPA personnel collected surface water quality samples, in accordance with an EPA-approved Quality Assurance Project Plan, from a number of the City’s CSO and MS4 outfalls. The results of these analyses indicated that the following discharge locations had at least one sample that exceeded the applicable Massachusetts surface water quality single sample standard for enterococci: CSO-016, CSO-023, CSO-024, DP-122, DP-133 (formerly CSO-021), and DP-200. The samples that exceeded the single sample standard for enterococci were also analyzed for, and found to contain, selected pharmaceutical compounds. EPA believes that the presence of the specific pharmaceutical compounds in these samples provides evidence that the sources of the bacterial water quality exceedances are of human origin and due to the presence of sanitary sewage.

27. Chapter 7 of the City’s Integrated Plan describes the presence of known or suspected illicit connections, which the City has been working to identify and eliminate, in, at least, areas that discharge to the following CSO outfalls: CSO-003, CSO-016, CSO-026, and CSO-027. The City represents that the suspected illicit connections referenced in the Integrated Plan for these outfalls were upstream of regulators -003B, -016A, -026A, and -027C, and that the dry weather baseflow at those regulators has been redirected to the sanitary sewer system, thereby addressing the referenced observations for outfalls CSO-003, CSO-016, CSO-026, and CSO-027.

28. Without authorization to do so, during the past five years, New Bedford has periodically discharged untreated sewage during dry and wet weather from CSO outfalls that are listed in Attachment B of its NPDES Permit, from MS4 outfalls, and from other components of its Collection System to Inner and Outer New Bedford Harbor, Clark’s Cove, and the Acushnet River.
29. The Acushnet River flows to Inner and Outer New Bedford Harbor. Inner and Outer New Bedford Harbor, Clark’s Cove, and Apponagansett Bay are all embayments of the Buzzards Bay coastal drainage area, which opens into the Atlantic Ocean. These water bodies are all “navigable waters” under Section 502(7) of the Act, 33 U.S.C. § 1362(7).

30. The various components of the Collection System and the MS4 outfalls from which the City has discharged untreated sewage are point sources, as defined in Section 502(14) of the Act, 33 U.S.C. § 1362(14).

31. Untreated sewage contains bacteria, including enterococci and Escherichia coli (“E. coli”) bacteria and fecal coliform, which are pollutants within the meaning of Sections 502(6) and (12) of the Act, 33 U.S.C. §§ 1362(6) and (12).

32. Untreated sewage that the City has discharged, and continues to discharge, to Inner and Outer New Bedford Harbor, Clark’s Cove, and the Acushnet River through the City’s CSO outfalls, MS4 outfalls, and other components of the Collection System contains concentrations of enterococci bacteria that caused, and continues to cause, water quality standard violations in Inner and Outer New Bedford Harbor, Clark’s Cove, and the Acushnet River.

33. By discharging wastewater that caused and continues to cause water quality standard violations in Inner and Outer New Bedford Harbor, Clark’s Cove, and the Acushnet River in contravention of the NPDES Permit and the Small MS4 General Permits, the City violated the NPDES Permit and the 2003 Small MS4 General Permit and continues to violate the NPDES Permit and the 2016 Small MS4 General Permit.

34. The City’s unauthorized discharges of pollutants to Inner and Outer New Bedford Harbor, Clark’s Cove, and the Acushnet River in violation of the NPDES Permit and the Small MS4 General Permits violates Section 301(a) of the Act, 33 U.S.C. § 1311(a).

35. The City neither admits nor denies the findings in this Section.

IV. ORDER

Accordingly, pursuant to Sections 308 and 309(a)(3) of the Act, the Parties agree, and it is hereby ordered that the City shall:

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Combined Sewer Overflow (CSO) Projects

1. CSO1E - CSO Regulator 003B IDDE Program.
   a. By December 31, 2020, the City shall submit to EPA and MassDEP a work plan and schedule for the completion of project CSO1E identified in the City’s Integrated Plan.
   b. The City shall substantially complete project CSO1E by December 31, 2023.

2. CSO4A - Howland Street Pumping Station Replacement.
   a. By December 31, 2019, the City shall submit to EPA and MassDEP a work plan and schedule, including design and construction milestones, for the completion of project CSO4A identified in the City’s Integrated Plan.
   b. The City shall substantially complete project CSO4A by September 30, 2023.

3. CSO7C - Coggeshall Street Sewer Separation Phase 3.
   a. By December 31, 2020, the City shall submit to EPA and MassDEP a work plan and schedule, including design and construction milestones, for the completion of project CSO7C identified in the City’s Integrated Plan.
   b. The City shall substantially complete project CSO7C by December 31, 2023.

4. CSO8A - CSO Outfall 026 and Regulator 027C IDDE Program.
   a. By December 31, 2019, the City shall submit to EPA and MassDEP a work plan and schedule for the completion of project CSO8A identified in the City’s Integrated Plan.
   b. The City shall substantially complete project CSO8A by December 31, 2022.

5. CSO8D - Howard Avenue Pumping Station Replacement.
   a. By December 31, 2022, the City shall submit to EPA and MassDEP a work plan and schedule, including design and construction milestones, for the completion of project CSO8D identified in the City’s Integrated Plan.
   b. The City shall substantially complete project CSO8D by December 31, 2025.
6. **CSO8G - CSO Outfalls 026 and 027 Over-Under Manhole Reconfiguration Study.**

   a. By December 31, 2019, the City shall submit to EPA and MassDEP a work plan and schedule for the completion of project CSO8G identified in the City’s Integrated Plan.

   b. By December 31, 2022, the City shall submit to EPA and MassDEP a report consistent with project CSO8G identified in the City’s Integrated Plan.

**Non-CSO Integrated Plan Projects**

7. The selection of projects required pursuant to Paragraphs 1-6 of this Section IV is based on the Parties’ expectation that the City will implement the following projects, as set forth in Section 26 of the City’s Integrated Plan (“Non-CSO Integrated Plan Projects”) with schedule as modified in Attachment 1: Wastewater Treatment Plant (WWTP) Projects WWTP1, WWTP5, WWTP10, WWTP11; Wastewater Pumping Station (PS) Projects PS8, PS16, PS23; Wet Weather Sewer (SWW) Projects SWW2, SWW6; General Sewer (SG) Projects SG3, SG4, SG8, SG9, SG18; Stormwater (SW) Projects SW2, SW3; and Flood Control Structure Project FC1. The City shall report and explain any changes to the schedule set forth in Attachment 1 in the annual reports submitted in accordance with Paragraph IV.13, below.

**CSO Unauthorized Discharge Investigations**

8. The City shall continue its efforts to identify and eliminate unauthorized discharges from its CSO outfalls to waters of the United States as follows:

   a. By September 30, 2020, identify the source, estimated volume and frequency of unauthorized discharges in the areas tributary to CSO-023 and CSO-024 downgradient of the regulators in those portions of the Collection System and develop a schedule to eliminate such unauthorized discharges,

   b. By September 30, 2021, identify the source, estimated volume and frequency of unauthorized discharges in the areas tributary to CSO-016 downgradient of the regulator(s) in that portion of the Collection System and develop a schedule to eliminate such unauthorized discharges,
c. By September 30, 2020, submit to EPA and MassDEP sampling results for at least one dry weather screening sample at outfall CSO-041 collected and analyzed in accordance with Section 2.3.4.7.b.iii of the 2016 Small MS4 General Permit. If the City does not observe flow during the first screening event, the City shall revisit the outfall at least one additional time during dry weather within 30 days of the initial screening event and collect and analyze a sample in accordance with this paragraph and submit any results to EPA and MassDEP, and

d. The investigations required by this paragraph shall not be considered to be complete until confirmatory dry weather sampling conducted in accordance with Section 2.3.4.7.b.iii of the 2016 Small MS4 General Permit indicates no evidence of unauthorized discharges. If confirmatory sampling indicates evidence of unauthorized discharges\(^2\), additional investigation of storm sewers that connect downgradient of the regulator(s) that are tributary to the outfalls listed in Paragraphs IV.8.a. and IV.8.b., as appropriate, shall be scheduled to begin no later than 4 months after the confirmatory sampling was conducted.

**MS4 Illicit Discharge Detection and Elimination (IDDE) Investigations**

9. The City shall complete the following IDDE investigations in accordance with the IDDE Plan submitted by the City on October 11, 2019:

   a. By September 30, 2020, IDDE investigations of the areas tributary to DP-200; and

   b. By September 30, 2021, IDDE investigations of the areas tributary to DP-133 (formerly CSO-021) and DP-122.

**Collection System Continuous Flow Monitoring**

10. The City submitted a CSO Monitoring Plan on January 24, 2013 that provided an approach to estimate the volume and frequency of CSO discharges. The City also submitted an Integrated Plan on January 20, 2017 which provided the framework for validating the

\(^2\) The following constitutes evidence of unauthorized discharges:
- ammonia \(\geq 0.5\) mg/L, surfactants \(\geq 0.25\) mg/L, and bacteria levels greater than the water quality criteria applicable to the receiving water; or
- ammonia \(\geq 0.5\) mg/L, surfactants \(\geq 0.25\) mg/L, and detectable levels of chlorine.
effectiveness of projects on system performance. The City shall develop and submit to EPA and MassDEP a new CSO Monitoring Plan, as follows:

a. As outlined in the City’s CSO annual report dated January 29, 2018, the City shall continue to implement the pilot program of the water-level-only sensors installed on March 28, 2018 at five (5) locations in the Collection System (CSO 003A, 004G, 006D, 020A and 036A). Five meters were installed at representative regulator configurations of the City’s regulators. Selection considered regulator type, sensitive receiving water, locations without current block testing and hydraulic configuration to validate the effectiveness of the sensors.

b. By November 15, 2019, the City shall submit to EPA and MassDEP a technical memorandum summarizing the results of the water-level-only sensor pilot program, along with results of any other meters, gauges or other data collected, as described below. The technical memorandum shall provide, at a minimum, the following information:

i. A summary of the program including selected locations, justification for selection of the locations, and the technology used to meter the CSO regulators.

ii. A map showing the location of the water-level-only sensors and other gauges (if any installed).

iii. A table comparing the City’s CSO block testing data (from locations at which it is physically feasible to perform block testing) to the measured number of activations by the water-level-only sensors at each of the metered CSO regulators. Precipitation data shall also be provided.

iv. Comparisons of calculated CSO overflows from the water-level-only sensors against continuous depth and velocity meters (or similar based on the most appropriate meter type) that the City shall install for up to 12 weeks in the spring 2019 at three locations where water-level-only sensors were also installed. Reasons for selecting the meters’ locations included but are not limited to locations where block testing data is not available,
where accurate metering data could be collected as determined by the metering company, where stormwater inflows downstream of the weir or tailwater conditions do not disrupt data collection, and accessibility. The measured vs. calculated CSO volumes, presented as a table, will inform the assessment of the efficacy of water-level-only sensors for the different regulator configurations.

v. Justification for the use of calculated or metered CSO volumes.

vi. Recommendations for expansion or modification of the metering program based on the findings of the assessment. Justification for moving forward or changes to the program shall be provided. A schedule for implementing the program shall also be provided along with estimated annual implementation cost/capital costs.

c. By December 31, 2019, the City shall develop and submit to EPA for review and approval, after consultation with MassDEP, a new CSO Monitoring Plan that will outline an approach for quantifying and recording the volume and frequency of CSO discharges on an annual basis, consistent with the requirements of the NPDES Permit at Part I.F.2.e. An approved CSO Monitoring Plan consistent with this Paragraph IV.10.c.i-v shall be deemed to satisfy the requirements of the NPDES Permit at Part I.F.2.e regarding quantification of CSO discharges. At a minimum, the CSO Monitoring Plan shall:

i. Incorporate the recommendations of the submittal required under Paragraph IV.10.b for the purposes of proposing a plan to document the volume and frequency of CSO discharges at each of the City’s 27 CSOs on an annual basis.

ii. Incorporate the use of the existing calibrated collection system model for the purposes of comparing measured/calculated CSO volumes to what would be expected in a “typical year” (Note – the typical year is defined within the Integrated Plan) to assess impacts from rainfall frequency, intensity and groundwater variations at each of the City’s 27 CSOs.
iii. Incorporate any additional system metering as deemed appropriate for the purposes of quantifying and recording CSO discharges.

iv. Provide justification for the proposed approach for reporting the CSO volume and frequency of discharge.

v. Provide an approach for validating Integrated Plan project effectiveness and tracking CSO abatement by project as outlined in the City’s Integrated Plan.

11. The City shall implement the approved CSO Monitoring Plan per the schedule contained therein. The location and type of meters described in the approved CSO Monitoring Plan shall be revised and updated, as appropriate, based on monitoring results that the City has collected and that it collects after initiating the CSO Monitoring Plan, and to validate the effectiveness of the implemented Integrated Plan projects. Monitoring results and proposals to revise the CSO Monitoring Plan to add or move meters to new locations shall be described in the annual reports submitted in accordance with Paragraph IV.13, below. The Parties agree that, upon a change of applicable law or adoption of new applicable law or regulation relating to CSO monitoring or reporting, they will meet and confer to determine whether modification of Paragraphs IV.10 or IV.11 pursuant to Paragraph VI.2 of this Consent Order is necessary to conform those paragraphs to the City’s obligations under then-existing law.

**Effect of Consent Order on 2012 Order**

12. This Order shall supersede the 2012 Order in its entirety. However, the City shall continue to implement its Capacity, Management, Operations and Maintenance ("CMOM") Program, consistent with its CMOM Corrective Action Plan, its CMOM Long-Term Preventative Maintenance Plan/Program, and its Third Year CMOM Program Self-Assessment pursuant to this Consent Order. The City shall also continue to submit a CMOM Program Implementation Report as described in the Paragraph IV.13.f below.

**Annual Reports**

13. Until further notice from EPA, beginning September 30, 2020, and each September 30 annually thereafter, covering the activities conducting during the previous July 1 to June 30th
period (the “Reporting Period”), the City shall submit an annual report (the “Annual Report”) that includes the following information or, references filed reports\(^3\) that include the following information for that portion of the Reporting Period covered by such reports:

a. A description of the progress made during the Reporting Period implementing CSO projects in accordance with this Consent Order. For each CSO project being implemented, the Annual Report shall include (i) whether the project, or any project components, were completed, (ii) if not completed, the progress made on the project or project components, including significant milestones achieved, (iii) the expenditures made on the project during the Reporting Period, and cumulative to date, (iv) the estimated volume of annual CSO discharge eliminated by the completed project, or any project components, and (v) a schedule with expected costs for the work planned for the project in the upcoming Reporting Period.

b. A description of the progress made during the Reporting Period implementing Non-CSO Integrated Plan Projects in accordance with this Consent Order. For each Non-CSO Integrated Plan Project implemented, the Annual Report shall include (i) whether the project, or any project components, were completed, (ii) if not completed, the progress made on the project or project components, including significant milestones achieved, (iii) the expenditures made on the project during the Reporting Period, and cumulative to date, (iv) a schedule with expected costs for the work planned for the project in the upcoming Reporting Period, and (v) any necessary changes, with an explanation of the basis for such changes, and the implications of such changes on the City’s recommended spending plan, as shown in Attachment 1 to this Order.

c. The cumulative total Integrated Plan expenditures for the Reporting Period, and the expected cumulative total Integrated Plan expenditures for the next Reporting Period, with a description of progress achieved and planned for Integrated Plan

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\(^3\) For purposes of this Paragraph IV.13, a properly submitted MS4 Annual Report shall satisfy the reporting obligations of this Paragraph IV.13.d, IV.13.f.i, IV.13.f.ii, and IV.13.f.v, provided that the submitted MS4 Annual Report includes all of the information required by these subparagraphs, and a properly submitted NPDES Annual Report shall satisfy the reporting obligations of this Paragraph IV.13.e and IV.13.f.vii, provided that the submitted NPDES Annual Report includes all of the information required by these subparagraphs.
projects, except as reported under (a) or (b) above. The Annual Report shall explain any changes from the City’s recommended spending plan, as shown in Attachment 1 to this Order.

d. A description of the efforts during the previous Reporting Period to implement the investigations required under Paragraphs IV.8 and IV.9 of this Consent Order, including the following, which shall be provided in a spreadsheet or other easily interpreted and manipulated format, as appropriate:

i. The actions taken by the City to investigate and address each unauthorized or MS4 illicit discharge\(^4\) during the Reporting Period, or planned for the next Reporting Period;

ii. All MS4 illicit discharges that the City has identified (i.e., for which the City has identified a point of entry from a specific location or address that contributes unauthorized flow) during the previous Reporting Period, and a schedule, with an explanation of the process, to remove each illicit discharge that is consistent with the requirements of the 2016 Small MS4 General Permit;

iii. The source, estimated volume, and estimated frequency (if appropriate) of identified CSO unauthorized discharges, and a schedule, with an explanation of the process, to remove each CSO unauthorized discharge;

iv. The date each unauthorized or illicit discharge was removed, the address or specific location of the unauthorized or illicit discharge, the associated estimated gallons of flow removed for the unauthorized or illicit discharge, data that demonstrates the elimination of unauthorized or illicit discharge(s) consistent with the 2016 Small MS4 General Permit, and the cost of removing such discharge(s);

v. The estimated gallons of flow removed from the City’s MS4 or combined sewer system during the Reporting Period, and the method used to

\(^4\) For purposes of this section (d) and Paragraph IV.9 of this Consent Order, “illicit discharge” shall have the meaning assigned to that term in Section 2.3.4.1 of the 2016 Small MS4 General Permit.
estimate the volume, for each individual unauthorized or illicit discharge, cumulative for the Reporting Period, and cumulative for all unauthorized or illicit discharges to date; and

vi. For each Sub-Catchment area associated with the CSO/MS4 outfalls identified under Paragraphs IV.8 and IV.9 of this Consent Order, the percentage within each Sub-Catchment area investigated during the Reporting Period (and for MS4 Sub-Catchment areas, identification of tracking indicators and measures of progress based on those indicators), and the cumulative percentage of investigations completed for each Sub-Catchment area to date.

e. A CSO Report that includes, at a minimum, the information required in Part I.F.2.e of the NPDES Permit, the CSO Monitoring Plan monitoring results, and any proposals to revise the CSO Monitoring Plan, including adding, removing or moving meters to new locations, with a detailed explanation.

f. A CMOM Program Implementation Report detailing the actions taken by the City during the prior Reporting Period or known by the City to have been taken by other parties, to implement its CMOM Program. The CMOM Program Implementation Report shall include, at a minimum:

i. A summary listing of all overflows, spills, and releases that have occurred during the Reporting Period (excluding permitted wet-weather CSO discharges), including building/private property backups that result from capacity limitations, blockages, vandalism, and mechanical, electrical, and structural failures in that portion of the Collection System owned by the City. The tabular listing shall be organized chronologically and shall include:

1. the dates and times that each event began and was stopped, or if it is continuing, a schedule for its termination;
2. the location (nearest address) of each such event;
3. the source of the notification to the City;

4. the cause of the event including, but not limited to, whether it was caused by debris, fats, oils, and grease, or root blockages, collapsed pipes, mechanical, electrical and structural failures, hydraulic overloads and/or vandalism;

5. the estimated gallons of wastewater released, and the method used to estimate the volume;

6. a clear statement of whether the release did or did not reach a stormwater catch basin or any other portion of the City’s MS4. If the release occurred to the ground or street, regardless of whether the discharge reached any portion of the City’s MS4, the City shall provide the distance to the nearest downgradient stormwater catch basin and the name of the receiving water to which the catch basin discharges;

7. a clear statement of whether the release did or did not reach any surface water. If the release reached a surface water, the City shall include the name of the surface water and a description of the exact location where the release reached the surface water;

8. the estimated gallons of wastewater discharged to the MS4 or surface water and the method used to estimate the volume;

9. the measures taken to stop the overflow, spill, or release and prevent future overflows, spills, and releases at the same location;

10. the date that the event was reported to EPA and MassDEP; and

11. the date of the last event that occurred at the same location.

ii. The location of each event included in the summary listing in subparagraph i, above, shall also be noted on a map of the City’s Collection System.

iii. A description of the measures and programs implemented by the City to
resolve any of the deficiencies identified in the CMOM Corrective Action Plan noted in Paragraph IV.12, above, to reduce the frequency, duration and volume of overflows, spills, and releases from the City’s Collection System during the previous calendar year including copies of any contracts signed by the City to address any issues identified in the CMOM Corrective Action Plan. The report shall also include a description of the activities that the City has implemented to measure the effect and success of its efforts.

iv. A description of the measures and programs undertaken by the City to implement its CMOM Program.

v. A description of any significant updates to the City’s Collection System mapping system (e.g., GIS, paper).

vi. A copy of the annual Collection System operation and maintenance budgets for the current fiscal year noting the source of the funding (e.g., enterprise fund, general tax rate).

vii. A description of the specific measures that were taken by the City under the programs designed to reduce the levels of extraneous flows, including infiltration and inflow, that enter the City’s Collection System during the past Reporting Period.

viii. A description of the City’s easement maintenance program and the number of lost or buried manholes that remain in the Collection System and the specific measures that were taken by the City under these programs during the past Reporting Period.

ix. A projected list of the measures that will be undertaken during the upcoming Reporting Period to resolve deficiencies identified in the CMOM Corrective Action Plan or to implement the CMOM Program.

14. The reporting requirements set forth in the prior Paragraph IV.13 does 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 reasonable modifications to the above reporting requirements.

Work Objectives

15. All work pursuant to this Consent Order shall be performed using sound, generally accepted engineering practices to ensure that construction, management, operation, and maintenance of the City’s POTW and MS4 complies with the Act, including applicable practices to improve the resilience of the POTW and MS4 to the impacts of climate change.

V. NOTIFICATION PROCEDURES

1. Where this Consent Order requires a specific action to be performed within a certain time frame and specifically excluding projects enumerated in Paragraph 7 of Section IV of this Consent Order, the City shall submit a written notice of compliance or noncompliance with each deadline. Notices of compliance may be made by electronic mail within fourteen (14) days after each required deadline. Notification of noncompliance shall be mailed within fourteen (14) days after each required deadline. The timely submission of a required report or work plan shall satisfy the requirement that a notice of compliance be submitted.

2. If noncompliance is reported, notification should include the following information:
   a. A description of the noncompliance;
   b. A description of any actions taken or proposed by the City to comply with the lapsed schedule requirements;
   c. A description of any factors that explain or mitigate the noncompliance; and
   d. An approximate date by which the City will perform the required action.

3. After a notification of noncompliance has been filed, compliance with the past-due requirement shall be reported by submitting all required documents or providing EPA with a written report indicating that the required action has been achieved.

4. Except as provided above, submissions required by this Consent Order shall be in writing and shall be mailed to the following addresses:

   United States Environmental Protection Agency
   Region 1, New England
   Enforcement & Compliance Assurance Division
   5 Post Office Square - Suite 100

DOCKET NO. CWA-AO-R01-FY20-15
Boston, MA 02109-3912  
Attn: David Turin (Mail Code: OES04-3)  

and to:

Massachusetts Department of Environmental Protection  
Southeast Regional Office  
20 Riverside Drive  
Lakeville, MA 02347  
Attn: David Burns

In addition, electronic copies of submissions shall be emailed to turin.david@epa.gov and david.burns@state.ma.us. EPA and MassDEP shall notify the City in writing of any changes to the contact person or address.

VI. GENERAL PROVISIONS

1. The City agrees to comply with and be bound by the terms of this Consent Order and further agrees, for and limited to the purpose of authorizing entry of this Consent Order, not to contest the basis or validity of this Consent Order or its terms as specified herein.

2. The Parties anticipate, consistent with EPA’s Integrated Planning policies, that this Consent Order may need to be modified as the City develops, designs, submits work plans and schedules for review, and implements various projects and measures, including those involving green infrastructure/low impact development; as well as in the event of changes in law or regulation; if the City does not implement projects identified in Paragraph 7 of Section IV as anticipated; changes in water quality standards, including, without limitation, new or revised water quality standards that have been approved or promulgated by EPA in accordance with 33 U.S.C. § 1313(c) and 40 C.F.R. §§ 131.21 and 131.22; extraordinary capital obligations required to comply with the 2016 Small MS4 General Permit as a result of determinations made after the effective date of this Consent Order by EPA or MassDEP; an extraordinary increase in the operating or capital cost of operating the POTW; or issuance of a permit that contains new or revised requirements, including, without limitation, renewal or re-issuance of the NPDES Permit if the permit contains new or revised requirements for controlling nitrogen discharges. EPA and the City intend to respond to requests to modify this Consent Order under the conditions described here in a timely manner. Further, EPA and the City intend to evaluate and respond to such requests in a manner i) consistent with
EPA’s Integrated Municipal Stormwater and Wastewater Planning Approach Framework, May 2012, including the expectation that enforcement mechanisms provide “sufficient flexibility ... to allow for adaptive management approaches” and ii) that adheres to the standard established for the Administrator to provide for a reasonable schedule consistent with Section 309(a)(5)(A) of the Act, 33 U.S.C. § 1319(a)(5)(A).

3. If the Parties agree on a proposed material modification to the terms of this Consent Order, such modification shall be by written agreement. Any nonmaterial modifications to the terms of this Consent Order, such as approval of modifications to submissions to EPA and MassDEP, or the due dates of such submissions, shall be effective upon written approval from EPA.

4. EPA may grant extensions of the compliance schedule/deadlines set forth herein by written notice to the City, without further formal amendment to this Consent Order.

5. This Consent Order does not constitute a waiver or a modification of the terms and conditions of the NPDES Permit or the 2016 Small MS4 General Permit. The NPDES Permit and the 2016 Small MS4 General Permit remain in full force and effect. EPA reserves the right to seek any and all remedies available under Section 309 of the Act, 33 U.S.C. § 1319, as amended, for any violation cited in this Consent Order.

6. For and limited to the purposes of this Consent Order, the City waives any and all claims for relief and otherwise available rights or remedies to judicial or administrative review which the City might have with respect to any issue of fact or law set forth in this Consent Order, including, but not limited to, any right of judicial review of this Consent Order under the Administrative Procedure Act, 5 U.S.C. §§ 701-708. The City reserves the right to contest any such issue in any other proceeding.

7. This Consent Order shall become effective upon signature by both Parties.
Jon Mitchell, Mayor
City of New Bedford, Massachusetts

Karen McGuire, Director
Enforcement & Compliance Assurance Division
Environmental Protection Agency, Region 1

DOCKET NO. CWA-AO-R01-FY20-15
## Attachment 1 - City of New Bedford Administrative Order

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<th>Description</th>
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### Estimated Cost – Debt-funded Projects

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### Notes
1. Costs are in 2016 dollars and are shown in millions (M) of dollars.
2. Cost represents the expected monies to be expended under the Administrative Order. Costs may vary depending on project scope and bid results.
3. Schedule is shown in “Calendar Years”.
4. CSD 8D shall be completed by CY 2025 as required by Section 4, Paragraph 5.b of the AO.
5. Annual expenditures for CSD 8D proposed at $0.8M in CY23, $0.8M in CY24 and $1.5M in CY25.