

## MEMORANDUM OF AGREEMENT

WHEREAS, the Rhode Island Department of Environmental Management (“RIDEM”) issued a Notice of Violation (“NOV”) to the Town of Portsmouth on September 15, 2010, alleging violations of the Rhode Island Water Pollution Act and RIDEM’s Water Quality Regulations;

WHEREAS, the Town of Portsmouth (“the Town”) submitted a timely request for a hearing on the NOV with RIDEM’s Administrative Adjudication Division;

WHEREAS, the RIDEM and the Town, collectively “the Parties” have reached agreement on a plan which could lead to a consent agreement to resolve the NOV. The terms of such plan are set forth in this Memorandum of Agreement (“MOA”).

The Parties acknowledge and agree as follows:

By January 1, 2015, the Town shall submit to RIDEM a Wastewater Management Ordinance (the “Ordinance”) and an Onsite Wastewater Management Plan (“OWMP”) that, at a minimum, incorporate the following requirements:

- Inspections of all cesspools and Onsite Wastewater Treatment System (“OWTS”) in Island Park and Portsmouth Park by January 1, 2017 and all other cesspools and OWTS in Portsmouth by 2022.
- Inspections shall be sufficient to document and evaluate compliance with RIDEM design requirements for Island Park/Portsmouth Park (“IP/PP”) and sampling of any discharges from embankments or retaining walls for fecal coliform bacteria. The Town shall require that inspection results are reported using a form approved by RIDEM. RIDEM shall retain authority to define the term “failure” for purposes of these inspections.
- Cesspools and/or unpermitted systems within 50 feet of a Town or State storm drain must be replaced by the earlier of the following: (1) immediately, if the system is failed, (2) the deadline specified in R.I.G.L. §23-19.15, if applicable and as amended, (3) the point of sale of the subject property, or (4) by January 1, 2020. Other cesspools and/or unpermitted systems in the Town must be replaced by the earlier of the following: (1) immediately, if the system failed, (2) the deadline specified in R.I.G.L. §23-19.15, if applicable and as amended, (3) the point of sale of the subject property, or (4) by January 1, 2025.

The Town shall not be responsible for taking enforcement action against property owners that fail to replace: a failed system or a cesspool subject to deadlines specified in R.I.G.L. §23-19.15.

The Ordinance and OWMP, and any subsequent modifications thereto, shall be subject to RIDEM review, modification and approval. Within thirty (30) days of approval by RIDEM, the Town shall formally adopt the approved Ordinance and OWMP. Within fourteen (14) days of adoption, the Town shall provide a copy of the Ordinance and OWMP to RIDEM.

The Town will become eligible to participate in the Community Septic System Loan Program upon formal adoption of a RIDEM-approved Ordinance and OWMP.

Upon adoption, the Town shall implement the Ordinance and the OWMP, consistent with the requirements and deadlines specified therein and in this MOA.

By January 1, 2015, the Town will submit a scope of work and schedule for the investigation and elimination of illicit discharges to storm drains in Portsmouth Park and Island Park. At a minimum, the investigation portion of the plan shall be completed by January 1, 2017. The plan shall be subject to RIDEM review, modification and approval. Upon approval by RIDEM, the Town shall implement the approved plan.

By January 1, 2015, the Town will submit a scope of work and schedule for the monitoring of all storm drains in Portsmouth and Island Park. At a minimum, the monitoring shall include periods of high groundwater and influence by rainfall. The plan shall be subject to RIDEM review, modification and approval. Upon approval by RIDEM, the Town shall implement the approved plan

Within six (6) months of execution of this agreement, the Town shall hire a Wastewater Manager.

The Parties agree to review the terms of the MOA in the event that any applicable state law is amended.

RIDEM will enforce the provisions of the Rhode Island Cesspool Act of 2007 in Portsmouth.

RIDEM may make further revisions to the design requirements for OWTS in Island Park/Portsmouth Park.

RIDEM will allow the Town to dedicate funding, not including state or federal monies, equivalent to the amount of the assessed penalty in the NOV to implement the terms of this MOA and assist homeowners in upgrades and compliance, in lieu of payment of the penalty to RIDEM. RIDEM will credit the funds spent by the Town under this paragraph against the payment of any penalty assessed in the NOV proceedings.

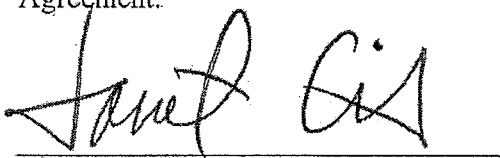
The Town shall summarize and submit the results of the inspections for IP/PP properties to RIDEM no later July 1, 2017.

The Town shall submit a report documenting the status of implementation of the requirements of the MOA to RIDEM by no later than June 30, 2020.

The Parties agree to stay the administrative adjudicatory proceedings associated with the Town's appeal of the NOV until December 31, 2025. The Parties shall jointly file a Motion for Stay the NOV with the Administrative Adjudication Division upon execution of the MOA. The Parties may file for extensions of this deadline, if appropriate. The Parties understand and agree that RIDEM may move to lift the stay for failure by the Town to comply with the requirements of the MOA. If RIDEM moves to lift the stay any obligations of the Town under this agreement shall terminate.

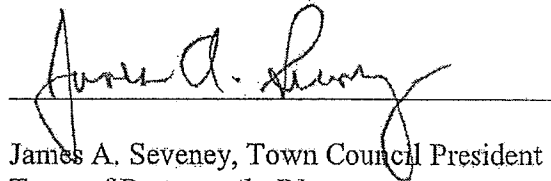
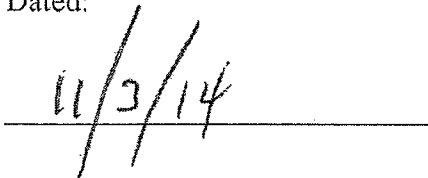
The Town's compliance with any portion of the MOA shall not constitute a waiver of any of its rights to a hearing/appeal on the NOV. The Parties understand and agree that the MOA shall not be used as evidence in any appeal proceedings, in compliance with Rule 408 of the Rhode Island Rules of Evidence. Nothing contained herein is intended to be or shall be deemed to be an admission of liability on the part of any Party or of the existence of facts upon which an admission could be based.

Any modification of this MOA must be agreed upon in writing by each Party to this Agreement.



Janet Coit, Director  
Rhode Island Department  
of Environmental Management

Dated:



James A. Seveney, Town Council President  
Town of Portsmouth, RI

Dated:

