

**STATE OF RHODE ISLAND
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT**

OFFICE OF COMPLIANCE AND INSPECTION

In Re: City of Warwick

File No.: OCI-WP-19-50

X-ref RIPDES RI0100234

AAD No.: 20-001/WRE

CONSENT AGREEMENT

A. INTENT & PURPOSE

This Agreement is entered by and between the Rhode Island Department of Environmental Management (“RIDEM”) and the City of Warwick, Rhode Island (“Respondent”). This Agreement is entered in accordance with Section 42-17.1-2 *et seq.* of the Rhode Island General Laws (“R.I. Gen. Laws”) for the purpose of resolving the alleged violations set forth in a Notice of Violation (“NOV”) issued to Respondent by RIDEM on 28 January 2020.

B. STIPULATED FACTS

- (1) WHEREAS Respondent owns a wastewater collection and treatment system (the “Facility”).
- (2) WHEREAS the Facility includes 2 major interceptors, identified as Oakland Beach (the “Oakland Beach Interceptor”) and Airport Road (the “Airport Road Interceptor”).
- (3) WHEREAS on 30 September 2008, RIDEM issued to Respondent Rhode Island Pollutant Discharge Elimination System Permit No. RI0100234 (the “Permit”), which became effective on 1 December 2008.
- (4) WHEREAS the Permit authorizes Respondent to discharge treated wastewater from the Facility to Pawtuxet River through outfall 001A.
- (5) WHEREAS the Permit does not authorize Respondent to discharge wastewater from the Facility to any other waters of the State or from any location other than outfall 001A.

- (6) WHEREAS on 28 January 2020, RIDEM issued a NOV to Respondent alleging certain violations of the Permit and Rhode Island's *Water Pollution Act, Water Quality Regulations, Regulations for the Rhode Island Pollutant Discharge Elimination System* and *Rules and Regulations for the Operation and Maintenance of Wastewater Treatment Facilities*.
- (7) WHEREAS Respondent requested an administrative hearing with the Administrative Adjudication Division (“AAD”) to contest the NOV.
- (8) WHEREAS AAD is a division of RIDEM.
- (9) WHEREAS in October 2019, Respondent contracted with National Water Main to perform video condition assessment of approximately 79,098 linear feet of the Facility’s gravity interceptors and manholes ranging in diameter from 12 inches to 48 inches and 300 manholes (the “Sewerage System Assessment”).
- (10) WHEREAS on 25 August 2020, Respondent’s attorney submitted a letter to RIDEM that stated the following:
 - (a) The Sewerage System Assessment revealed that the Oakland Beach Interceptor and the Airport Road Interceptor require repair.
 - (b) A Capacity, Management, Operation and Maintenance (“CMOM”) program has been established for the wastewater collection system at the Facility.
 - (c) In January 2020, reimplementation, and improvement of the CMOM program was initiated.
 - (d) A metric to identify staffing deficiencies for the Facility (the “Staffing Assessment”) has been established.
 - (e) A contract with Sunbelt Rentals was entered to provide emergency services for failures within the wastewater collection system at the Facility (the “Emergency Services Contract”).
- (11) WHEREAS in lieu of proceeding to an administrative adjudicatory hearing on the NOV and to effect a timely and amicable resolution of the NOV, RIDEM and Respondent hereby agree that it is in the best interest of the parties and in the public interest to resolve the issues raised in the NOV.
- (12) WHEREAS RIDEM finds that this Agreement is a reasonable and fair settlement and adequately protects the public interest in accordance with Rhode Island's *Water Pollution Act, Water Quality Regulations, Regulations for the Rhode Island Pollutant Discharge Elimination System* and *Rules and Regulations for the Operation and Maintenance of Wastewater Treatment Facilities*.
- (13) WHEREAS Respondent finds that this Agreement is reasonable and fair and enters into this Agreement with full knowledge and understanding of its terms.

C. AGREEMENT

- (1) JURISDICTION – RIDEM has jurisdiction over the subject matter of this Agreement and has personal jurisdiction over Respondent.
- (2) FORCE and EFFECT – This Agreement shall have the full force and effect of a final compliance order issued after a full hearing on the merits pursuant to the Administrative Procedures Act, R.I. Gen. Laws Section 42-35-1 et seq. and R.I. Gen. Laws Section 42-17.7-1 et seq. from which no timely appeal was taken, and which is enforceable in Superior Court in accordance with R.I. Gen. Laws Section 42-17.1-2(21)(vi).
- (3) APPLICATION – The provisions of this Agreement shall apply to and be binding upon RIDEM, Respondent and its agents, servants, employees, successors, assigns and all persons, firms and corporations acting under, through and for Respondent in the performance of work relating to or impacting the requirements of this Agreement.
- (4) CONDITIONS –
 - (a) **Within 30 days of execution of the Agreement**, Respondent shall complete the following actions to comply with the Order section of the NOV:
 - (i) Submit to RIDEM all reports of the Sewerage System Assessment.
 - (ii) Submit to RIDEM a schedule to repair the Oakland Beach Interceptor and Airport Road Interceptor.
 - (iii) Submit to RIDEM the CMOM program and a status report on the program. Respondent agrees to implement the CMOM program to address 20% of the system each year and shall submit to RIDEM annual reports on the status of the implementation of the program by July 1 of each year beginning in calendar year 2022.
 - (iv) Submit to RIDEM the Staffing Assessment along with a schedule to address any deficiencies identified in the Staffing Assessment.
 - (v) Submit to RIDEM the Emergency Services Contract.
 - (b) The reports, program, schedules, assessment, and contract described in subsection C(4)(a) shall be subject to RIDEM’s review and approval. Upon review, RIDEM shall provide written notification either granting formal approval or stating the deficiencies therein. Within 14 days (unless a longer time is specified) of receiving a notification of deficiencies, submit to RIDEM additional information to correct the deficiencies.

(c) Penalty – Respondent shall pay **\$22,000** in administrative penalties as follows:

- (i) **Upon execution of this Agreement by Respondent**, Respondent shall submit a check to RIDEM for \$22,000 to perform a Supplemental Environmental Project (the “SEP”). The SEP involves 1 shellfish transplant to take place in calendar year 2022.
- (ii) The SEP shall be administered by the Narragansett Bay Commission (“NBC”).
- (iii) The check shall be made payable to the Narragansett Bay Commission and the memo of check shall state: “Supplemental Environmental Project Shellfish Transplant Funding”.
- (iv) NBC shall make payments to eligible fishermen in line with criterion previously established by RIDEM in prior transplant programs and perform all ancillary support for the transplant including, but not limited to, bag counting, paperwork and check cutting.
- (v) Penalties that Respondent agrees to pay in this Agreement are penalties payable to and for the benefit of the State of Rhode Island and are not compensation for actual pecuniary loss.
- (vi) The check shall be delivered to:

Administrator, RIDEM Office of Compliance and Inspection
235 Promenade Street
Providence, RI 02908-5767.

D. COMPLIANCE

- (1) EFFECT OF COMPLIANCE – Compliance with and fulfillment of this Agreement shall be deemed to resolve all issues raised in the NOV.
- (2) FAILURE TO COMPLY – If Respondent fails to comply with the items specified in subsections C (4)(a) or (b) of the Agreement, Respondent shall pay a stipulated penalty of \$1,000 per month for each month during which the noncompliance continues, except that RIDEM may, for good cause shown, defer or reduce such penalty. The payment of a penalty in accordance with this section shall not preclude RIDEM from seeking any other appropriate remedy (e.g., injunctive relief in Superior Court).
- (3) COMPLIANCE WITH OTHER APPLICABLE LAWS – Compliance with the terms of this Agreement does not relieve Respondent of any obligation to comply with any other applicable laws or regulations administered by, through or for RIDEM or any other governmental entity.

- (4) ADDITIONAL ENFORCEMENT ACTIONS – Upon a determination by the Director that there is a threat to the public health or the environment, or upon discovery of any new information, RIDEM reserves the right to take additional enforcement actions as provided by statute or regulation, including, but not limited to, the issuance of “Immediate Compliance Orders” as authorized by R.I. Gen. Laws Section 42-17.1-2(21). This Agreement shall not restrict any right to hearing or other right available by statute or regulation that Respondent may have regarding any new enforcement action commenced by RIDEM after the execution of this Agreement.
- (5) FUTURE ACTIVITIES AND UNKNOWN CONDITIONS – This Agreement shall not operate to shield Respondent from liability arising from future activities, as of the date of execution of this Agreement.
- (6) SCOPE OF THE AGREEMENT – The scope of the Agreement is limited to violations alleged in the NOV.
- (7) NOTICE AND COMMUNICATION – Communications regarding this Agreement shall be directed to:

David E. Chopy, Administrator
RIDEM Office of Compliance and Inspection
235 Promenade Street
Providence, RI 02908-5767
(401) 222-1360 ext. 2777400
david.chopy@dem.ri.gov

Joseph J. LoBianco, Esquire
RIDEM Office of Legal Services
235 Promenade Street
Providence, RI 02908-5767
(401) 222-6607
joseph.lobianco@dem.ri.gov

Mary B. Shekarchi, Esquire
33 College Hill Road, Suite 15-E
Warwick, RI 02886
(401) 828-5030
marybali@aol.com

BettyAnne Rogers, Executive Director
Warwick Sewer Authority
125 Arthur W Devine Boulevard
Warwick, RI 02886
(401) 468-4718
BettyAnne.Rogers@warwickri.com

All communications regarding compliance with this Agreement shall be forwarded to the above-referenced addressees by certified mail.

- (8) DEFERRAL – The Director may, for good cause shown, defer any of the compliance dates prescribed herein. Good cause for deferral of any compliance date shall be forwarded to RIDEM in writing at least 15 days prior to the prescribed deadline.
- (9) AMENDMENT – The Agreement may be amended by agreement of the parties in writing.
- (10) EFFECTIVE DATE – This Agreement shall be deemed entered as of the date of execution by all parties.

IN WITNESS WHEREOF, the undersigned consent to this Agreement in substance and in form.

For Respondent

By: _____
BettyAnne Rogers, Executive Director
Warwick Sewer Authority

Dated: _____

For the State of Rhode Island, Department of
Environmental Management

By: _____
David E. Chopy, Administrator
Office of Compliance and Inspection

Dated: _____