# STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

### OFFICE OF COMPLIANCE AND INSPECTION

# In Re: Rhode Island Convention Center Authority File No.: OCI-UST-2015-27-03413 AAD No.: 15-016/WME

#### **CONSENT AGREEMENT**

#### A. INTENT & PURPOSE

This Agreement is entered by and between the Rhode Island Department of Environmental Management's Office of Compliance & Inspection ("RIDEM") and Rhode Island Convention Center Authority (the "Respondent"). This Agreement is entered in accordance with Section 42-17.1-2 <u>et seq</u>. 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 the RIDEM on 10 December 2015.

### **B.** STIPULATED FACTS

- (1) WHEREAS, the property is located at 122 West Exchange Street in the city of Providence, Rhode Island (the "Property"). The Property includes 1 underground storage tank ("UST") used for the storage of a petroleum product (the "Facility").
- (2) WHEREAS, the Respondent owns the Property and operates the Facility.
- (3) WHEREAS, the Facility is registered with the DEM and is identified as UST Facility No. 03413.
- (4) WHEREAS, on 10 December 2015, the RIDEM issued a NOV to the Respondent alleging certain violations of the RIDEM's *Rules and Regulations for Underground Storage Facilities Used for Petroleum Products and Hazardous Materials* (the "UST Regulations").
- (5) WHEREAS, the Respondent requested an administrative hearing to contest the NOV.
- (6) WHEREAS, the Respondent complied with paragraphs (2) through (7) of the Order section of the NOV.
- (7) WHEREAS, on 9 May 2016, the Respondent submitted a letter to the RIDEM requesting a variance from Rule 8.09(A)(2) of the UST Regulations to comply with paragraph (1) of the Order section of the NOV (the "Variance Request").

- (8) WHEREAS, on 2 June 2016, the RIDEM approved the Variance Request (the "Variance Approval"). A copy of the Variance Approval is attached hereto and incorporated herein as Attachment A.
- (9) WHEREAS, in lieu of proceeding to an administrative adjudicatory hearing on the NOV and to effect a timely and amicable resolution of the NOV, the RIDEM and the 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.
- (10) WHEREAS, the RIDEM finds that this Agreement is a reasonable and fair settlement and adequately protects the public interest in accordance with the RIDEM's UST Regulations.

## C. AGREEMENT

- (1) <u>JURISDICTION</u> The RIDEM has jurisdiction over the subject matter of this Agreement and has personal jurisdiction over the Respondent.
- (2) <u>FORCE and EFFECT</u> 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) <u>APPLICATION</u> The provisions of this Agreement shall apply to and be binding upon the RIDEM, the Respondent and its agents, servants, employees, successors, assigns and all persons, firms and corporations acting under, through and for the Respondent in the performance of work relating to or impacting the requirements of this Agreement.

#### (4) <u>CONDITIONS</u> –

- (a) The Respondent shall fully comply with the Variance Approval to satisfy paragraph 1 of the Order section of the NOV.
- (b) Penalty The Respondent shall pay to the RIDEM **\$3,250** in administrative penalties assessed as follows:
  - (i) Upon Respondent's execution of this Consent Agreement, the Respondent shall pay to the RIDEM **\$3,250** in administrative penalties.
  - (ii) Penalties that the 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.

(iii) All penalty payments shall be in the form of a certified check, cashiers check, or money order, payable to the *R.I. General Treasurer –Water and Air Protection Account*. All payments shall be delivered to:

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

### D. COMPLIANCE

- (1) <u>EFFECT OF COMPLIANCE</u> Compliance with and fulfillment of this Agreement shall be deemed to resolve all issues raised in the NOV.
- (2) <u>FAILURE TO COMPLY</u> In the event that the Respondent fails to comply with Section C (4)(a) of the Agreement, the Respondent shall pay a stipulated penalty of \$ 500 per month for each and every month during which the noncompliance continues, except that the RIDEM may, for good cause shown, defer or reduce such penalty. The payment of a penalty in accordance with this section shall not preclude the RIDEM from seeking any other appropriate remedy (e.g., injunctive relief in Superior Court).
- (3) <u>COMPLIANCE WITH OTHER APPLICABLE LAWS</u> Compliance with the terms of this Agreement does not relieve the Respondent of any obligation to comply with any other applicable laws or regulations administered by, through or for the RIDEM or any other governmental entity.
- (4) <u>ADDITIONAL ENFORCEMENT ACTIONS</u> 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, the 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 the Respondent may have regarding any new enforcement action commenced by the RIDEM after the execution of this Agreement.
- (5) <u>FUTURE ACTIVITIES AND UNKNOWN CONDITIONS</u> This Agreement shall not operate to shield the Respondent from liability arising from future activities, as of the date of execution of this Agreement.
- (6) <u>SCOPE OF THE AGREEMENT</u> The scope of the Agreement is limited to violations alleged in the NOV.

(7) <u>NOTICE AND COMMUNICATION</u> – Communications regarding this Agreement shall be directed to:

Tracey D'Amadio Tyrrell RIDEM Office of Compliance and Inspection 235 Promenade Street Providence, RI 02908-5767 (401) 222-1360 ext. 7407

> Joseph J. LoBianco, Esq. RIDEM Office of Legal Services 235 Promenade Street Providence, RI 02908-5767 (401) 222-6607

Bruce A. Leach, Esq. DeSimone & Leach One Turks Head Place, Suite 450 Providence, Rhode Island 02903 (401) 421-8200

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

- (8) <u>DEFERRAL</u> 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 the RIDEM in writing at least 15 days prior to the prescribed deadline.
- (9) <u>AMENDMENT</u> The Agreement may be amended by mutual agreement of the parties in writing.
- (10) <u>EFFECTIVE DATE</u> 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 Rhode Island Convention Center Authority

By: \_\_\_\_\_\_ Print Name: \_\_\_\_\_\_ Title: \_\_\_\_\_

Dated: \_\_\_\_\_

State of Rhode Island, Department of Environmental Management

By: \_\_\_\_

\_\_\_\_\_ David E. Chopy, Chief Office of Compliance and Inspection

Dated: \_\_\_\_\_