

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

OFFICE OF COMPLIANCE AND INSPECTION

In Re: RSM Employer Parking, LLC
Donigian Park, LLC
Michael Izzi d/b/a Izzi and Sons Partnership

File No.: OCI-SR-12-1
AAD No.: 13-001/SRE

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 RSM Employer Parking, LLC, Donigian Park, LLC and Michael Izzi d/b/a Izzi and Sons Partnership (the "Respondents"). 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 administrative enforcement action set forth in a Notice of Violation ("NOV") issued to the Respondents by the RIDEM on 30 October 2013.

B. STIPULATED FACTS

- (1) WHEREAS, the properties are located at 100 Amherst Street and 181 Valley Street in the city of Providence, Rhode Island (the "Amherst Street Property" and the "Valley Street Property", respectively).
- (2) WHEREAS, Donigian Park, LLC ("Donigian") owns the Amherst Street Property. Donigian acquired the title to the Amherst Street Property on 7 July 2012.
- (3) WHEREAS, RSM Employer Parking, LLC ("RSM") owns the Valley Street Property. RSM acquired the title to the Valley Street Property on 7 July 2012.
- (4) WHEREAS, the Valley Street Property is a contaminated site as defined in the RIDEM's *Rules and Regulations for the Investigation and Remediation of Hazardous Material Releases* (the "Remediation Regulations") and was pending issuance of a Letter of Compliance from the RIDEM at the time of issuance of the NOV.
- (5) WHEREAS, on 2 July 2009 Izzi and Sons Partnership ("Izzi") submitted to the RIDEM a Remedial Action Work Plan ("RAWP") to remediate contaminated soil at the Valley Street Property. The RAWP was signed by Michael Izzi.
- (6) WHEREAS, on 30 November 2011 the RIDEM approved the RAWP through issuance of a Remedial Approval Letter to Izzi.

- (7) WHEREAS, on 30 October 2013, the RIDEM issued a NOV to the Respondents alleging certain violations of Rhode Island's *Refuse Disposal Act* and the RIDEM's Remediation Regulations. The NOV alleged that RSM and Donigian transported contaminated soil from the Valley Street Property and deposited it at the Amherst Street Property without the approval of the RIDEM (the "Fill Material"). The NOV also alleged that Izzi failed to notify the RIDEM of the change in ownership of the Valley Street Property.
- (8) WHEREAS, the Respondents requested an administrative hearing to contest the NOV.
- (9) WHEREAS, on 3 July 2013 the RIDEM received a copy of a report entitled "Soil Removal and Disposal" prepared by Alliance Environmental Group, Inc. The report stated that all of the Fill Material was removed from the Amherst Street Property and disposed at a licensed facility.
- (10) 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 Respondents 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.
- (11) WHEREAS, the RIDEM finds that this Agreement is a reasonable and fair settlement and adequately protects the public interest in accordance with Rhode Island's *Refuse Disposal Act* and the RIDEM's Remediation Regulations.

C. AGREEMENT

- (1) JURISDICTION – The RIDEM has jurisdiction over the subject matter of this Agreement and has personal jurisdiction over the Respondents.
- (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. 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)(v).
- (3) APPLICATION – The provisions of this Agreement shall apply to and be binding upon the RIDEM, the Respondents and their 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. Notwithstanding the foregoing, the obligation to make payment pursuant to Section C(4) hereof shall be the obligation of Donigian and RSM only, jointly and severally, and shall not be the obligation of Izzi.

(4) **PENALTY** – The Respondents shall pay the sum of \$30,840 in administrative penalties assessed as follows:

- (a) **Upon execution of this Agreement by the Respondents**, the Respondents shall be obligated to pay to the RIDEM the sum of \$11,740 in 12 equal monthly installments of \$978.33, commencing on 1 November 2014 and continuing on the first day of each month thereafter until paid in full and shall pay to the Woonosquatucket River Watershed Council (“WRWC”), a 501 (c)(3) nonprofit organization, the sum of \$19,100 for a Supplemental Environmental Project (“SEP”) (as hereinafter defined), in 2 payments, the first of which shall be in the amount of \$5,000 and shall be paid on 15 November 2014 and the second of which shall be in the amount of \$14,100 and shall be paid on 1 April 2015. Notwithstanding the foregoing, nothing provided herein shall prevent the Respondents from making payments in greater amounts or more frequently, as their resources may allow.
- (b) The payment to the WRWC shall fund 3 projects to be performed by the WRWC as a Supplemental Environmental Project (“SEP”). The SEP involves the removal of tree debris and solid waste at several locations along and within the Woonosquatucket River as described in the following documents: a project narrative prepared by the WRWC, attached hereto and incorporated herein as Attachment A, and a memorandum prepared by Fuss & O’Neill dated 14 August 2014, attached hereto and incorporated herein as Attachment B. Specifically, the SEP involves the following:
 - (i) \$8,000 to complete the entire project identified as “Project \$8,000” on Attachment A, which is located in the area identified as “Site 1” on the map included on Attachment B;
 - (ii) \$4,300 to complete the debris removal identified as “Project 17,750” on Attachment A; and
 - (iii) \$6,800 to complete the entire project identified as “Site 5-Adjacent to Riverside Park” on Attachment B.
- (c) The payment to the RIDEM shall be in the form of a certified check, cashier’s check, or money order made payable to the ***R.I. General Treasurer – Environmental Response Fund Account*** and delivered to:

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

- (d) The payment to the WRWC shall be in the form of a certified check, cashier’s check, or money order made payable to the Woonosquatucket River Watershed Council. A copy of the payment shall be delivered to:

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

- (e) Penalties that the Respondents agree 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.

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) COMPLIANCE WITH OTHER APPLICABLE LAWS – Compliance with the terms of this Agreement does not relieve the Respondents of any obligation to comply with any other applicable laws or regulations administered by, through or for the RIDEM or any other governmental entity.
- (3) 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, the RIDEM reserves the right to take additional enforcement actions as provided by law 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 Respondents may have regarding any new enforcement action commenced by the RIDEM after the execution of this Agreement.
- (4) FUTURE ACTIVITIES AND UNKNOWN CONDITIONS – This Agreement shall not operate to shield the Respondents from liability arising from future activities, as of the date of execution of this Agreement.
- (5) SCOPE OF THE AGREEMENT – The scope of the Agreement is only violations alleged in the NOV.
- (6) EFFECTIVE DATE – This Agreement shall be deemed entered as of the date of execution by all parties.
- (7) NO ADMISSION OF LIABILITY – The parties hereto acknowledge that this Consent Agreement represents the settlement of a disputed claim, and that by entering into and performing its obligations under this Consent Agreement, the Respondents admit no liability for the violation of any applicable laws, rules or regulations, and any such liability shall not be deemed to be found, concluded or admitted by the execution and delivery hereof.

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

For RSM Employer Parking, LLC

By: _____ (Print Name)

Its: _____ (Title)

Dated: _____

For Donigian Park, LLC

By: _____ (Print Name)

Its: _____ (Title)

Dated: _____

For Michael Izzi d/b/a Izzi and Sons Partnership

By: _____ (Print Name)

Its: _____ (Title)

Dated: _____

*For the State of Rhode Island Department of
Environmental Management*

David E. Chopy, Chief
Office of Compliance and Inspection

Dated: _____