

**STATE OF RHODE ISLAND
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT
OFFICE OF COMPLIANCE AND INSPECTION**

In Re: 292 East School Street, LLC
308 East School Street, LLC

File Nos.: OCI-UST-19-48-18812
and OCI-UST 19-49-326

AAD Nos.: 20-009/WME and
20-010/WME

CONSENT AGREEMENT

A. INTENT & PURPOSE

This Agreement is entered by and between the Rhode Island Department of Environmental Management (“RIDEM”) and 292 East School Street, LLC and 308 School Street, LLC (collectively, “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 two Notices of Violation (“NOVs”) issued to Respondent by RIDEM on 28 August 2020.

B. STIPULATED FACTS

- (1) WHEREAS the subject properties are located at 292 East School Street and 308 School Street in Woonsocket, Rhode Island, otherwise identified as Woonsocket Tax Assessor’s Plat 20B, Lot 61 (“292 Property”) and Plat 20B, lot 23 (“308 Property”) (collectively, “Properties”).
- (2) WHEREAS Respondent owns the Properties.
- (3) WHEREAS on 1 March 2018, RIDEM inspected the 292 Property. The inspection revealed the presence of an unregistered underground storage tank (“UST” or “tank”) installed on the Property. RIDEM’s inspector was informed the UST was not in use, but formerly utilized for the storage of heating oil. Upon information and belief, the UST has the capacity of 73,000 gallons and is constructed of concrete. As such, the UST is subject to Rhode Island’s *Rules and Regulations for Underground Storage Facilities Used for Regulated Substances and Hazardous Materials* (250-RICR-140-25-1) (“UST Regulations”).

- (4) WHEREAS also on 1 March 2018, RIDEM inspected the 308 Property, which is registered with RIDEM as UST Facility 00326. The inspection revealed that the one tank remaining on the property was not in use and that it had been abandoned.
- (5) WHEREAS on 28 August 2020, RIDEM issued two NOVs to Respondent (one for each of the Properties) alleging certain violations of the UST Regulations.
- (6) WHEREAS parallel to settlement negotiations regarding the two NOVs, on or about 23 February 2022, Respondent requested review under RIDEM's *Expedited Policy for Remediation of Environmental Simple Sites* ("EXPRESS Policy") for the Properties. Respondent was notified on 24 February 2022 that RIDEM found that the Properties were not appropriate for an EXPRESS Application. The Properties were rejected under Sections B.4 and B.5 of the EXPRESS Policy. RIDEM determined the Properties contain total petroleum hydrocarbon exceedances of the GB Leachability Criteria and have jurisdictional materials under the Leaking Underground Storage Tank program.
- (7) WHEREAS Respondent requested an administrative hearing to contest the NOVs.
- (8) WHEREAS on 1 March 2022, Respondent was notified by RIDEM's Office of Land Revitalization and Sustainable Materials Management ("LRSMM") to submit a Site Investigation Report ("SIR") in accordance with the UST Regulations.
- (9) WHEREAS on or about 10 March 2022, Respondent submitted a Hazardous Material Release Notification Form to the Office of LRSMM's Site Remediation Program in accordance with Part 1.6 of the *Rules and Regulations for the Investigation and Remediation of Hazardous Material Releases* (250-RICR-140-30-1) ("Remediation Regulations").
- (10) WHEREAS on or about 10 March 2022, Respondent submitted two Proposed Scopes of Work for Supplemental Assessment ("Proposed SOW") of the Properties' soil and groundwater that was prepared by a qualified consultant – one to the Site Remediation Program and one to the UST Program.
- (11) WHEREAS on or about 13 May 2022, Respondent submitted to LRSMM's UST Program a *Site Investigation Report* ("UST SIR") prepared by a qualified consultant following a site investigation of the 292 East School Street property.
- (12) WHEREAS on or about 20 June 2022, Respondent submitted to the LRSMM's Site Remediation Program a *Site Investigation Report* ("Site Remediation SIR") prepared by a qualified consultant following a site investigation of both properties.
- (13) WHEREAS on or about 8 July 2022, LRSMM's Site Remediation Program issued an SIR Comment Letter in response to the Site Remediation SIR, to which Respondent responded on 31 August 2022.
- (14) On or about 27 September 2022, Light Non-Aqueous Phase Liquid (LNAPL) (petroleum product) was discovered in the Property's groundwater monitoring wells. The department was notified via email on 29 September 2022 of the LNAPL

discovery. The consultant also recommended excavation of contaminated soils in response to the LNAPL. LRSMM's UST Program emailed excavation approval on 11 October 2022. The consultant notified the Department by email on 28 October 2022 that the excavation was completed.

- (15) WHEREAS on or about 13 December 2022, Respondent submitted to the LRSMM's Site Remediation Program an SIR Addendum that was prepared by a qualified consultant.
- (16) WHEREAS on or about May 4, 2023, LRSMM's Site Remediation Program issued a Program Letter ("Program Letter"), acknowledging that site investigation activities required by the Site Remediation Regulations are complete, and approving the proposed preferred remedial alternative for public notice.
- (17) WHEREAS on or about May 9, 2023, LRSMM's UST Program issued an SIR Update letter ("UST SIR Update Letter"), withdrawing a previous requirement, and clarifying that two additional rounds of post-excavation groundwater gauging are required before the site can be re-evaluated.
- (18) WHEREAS the Administrative Adjudication Division is a division of RIDEM.
- (19) WHEREAS in lieu of proceeding to an administrative adjudicatory hearing on the NOV's and to affect a timely and amicable resolution of the NOV's, 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's.
- (20) WHEREAS RIDEM finds that this Consent Agreement ("Agreement") is a reasonable and fair settlement of all claims against Respondent and adequately protects the public interest in accordance with the UST Regulations.
- (21) 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) RECORDING OF AGREEMENT AND RELEASE OF NOV – **Within 10 days of the receipt of the fully executed Agreement from RIDEM**, Respondent shall record this Agreement within the land evidence records of the City of Woonsocket, Rhode Island for each property, and shall provide a copy of the recorded Agreement to RIDEM. The recordings shall be at the sole expense of Respondent.
- (5) CONDITIONS – Respondent shall complete the following actions to comply with the Order section of the NOV:
- (a) Continue to comply with deadlines and requirements set by the Site Remediation program in any letters or approvals that may be issued.
 - (b) Conduct post-excavation groundwater gauging in June and September of 2023 and submit those results to the RIDEM UST Program for review and approval. Continue to comply with deadlines and requirements set by the UST Program in any letters or approvals that may be issued.
 - (c) Any letters or orders of approval or requests for additional information or correction of deficiency and the deadlines contained therein from RIDEM shall become enforceable as part of this Agreement. All work as specified in any order of approval issued by LRSMM shall be completed by 29 November 2023, unless otherwise extended in writing by LRSMM.
 - (d) Penalty – Respondent shall pay to RIDEM the sum of **\$8,130** in administrative penalties assessed as follows:
 - (i) **Upon execution of this Agreement by Respondent**, Respondent shall pay to RIDEM the sum of **\$2,130**.
 - (ii) The remainder of the penalty, **\$6,000**, shall be paid to RIDEM in 6 equal and consecutive monthly installments of **\$1,000**. The remaining payments shall be made on the first day of each consecutive month until the penalty is paid in full, on or before 31 December 2023.
 - (iii) 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.
 - (iv) In the event that Respondent fails to remit to RIDEM a payment on or before its due date, that payment will be considered late, and Respondent will be in default. If the payment is not received within 30 days of its due date, interest shall begin to accrue on the entire unpaid balance at the rate of 12 percent per annum. Interest will accrue at this rate beginning with the day after the due date specified in this Agreement until such date all past due installment payments and interest owed are remitted. Interest

shall be calculated using the following generally established accounting principle:

Interest due = (number of days late/365) x (0.12) x (amount of unpaid balance)

This provision does not preclude RIDEM from seeking additional penalties according to Section D for failure to comply with the remaining provisions of this Agreement.

- (v) 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:

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

- (6) **RIGHT OF ACCESS** – Respondent provides to RIDEM, its authorized officers, employees, and representatives an irrevocable right of access to each of the Properties at all reasonable times to monitor compliance with this Agreement. Respondent shall ensure that assignees, successors in interest, lessees, sublessees, tenants in possession and/or occupants of each of the Properties shall provide the same access and cooperation if they control one or both Properties. Respondent shall provide a copy of this Agreement to any current lessee, sublessee, tenant in possession and/or occupant of either of the Properties as of the effective date of this Agreement. Any subsequent leases, subleases, assignments, or transfers of either of the Properties or an interest in either of the Properties shall include this right of access provision and shall otherwise be consistent with the terms of this Agreement.

D. COMPLIANCE

- (1) **EFFECT OF COMPLIANCE** – Compliance with and fulfillment of this Agreement shall be deemed to resolve all issues raised in the NOV's. Upon Respondent's successful completion of the requirements set forth in this Agreement for each of the Properties, RIDEM shall issue a no further action letter pursuant to Part 1.14(I)(10) of the UST Regulations and a Release and Discharge of the NOV and Agreement for that property to Respondent for recording. The recordings shall be at the sole expense of Respondent.
- (2) **FAILURE TO COMPLY** – If Respondent fails to comply with items specified in subsection C (5)(a), (b), (c) or (d) of the Agreement, Respondent shall pay a stipulated penalty of \$500 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 and the conditions identified in the Site Investigation Reports.
- (7) NOTICE AND COMMUNICATION – Communications regarding this Agreement shall be directed to:

Tracey D’Amadio Tyrrell
Supervising Environmental Scientist
RIDEM Office of Compliance and Inspection
235 Promenade Street
Providence, RI 02908-5767
(401) 222-1360 ext. 2777407
tracey.tyrrell@dem.ri.gov

RIDEM Office of Legal Services
235 Promenade Street
Providence, RI 02908-5767
(401) 222-6607

Christopher Roberts
PO Box 1085
308 East School Street
Woonsocket, RI 02895
Business: 401.769.4956
Fax: 401.769.0066
wixfilters@gmail.com

292 East School Street, LLC
308 East School Street, LLC
c/o Melissa M. Horne, Resident Agent
10 Dorrance Street, Suite 400
Providence, RI 02903

- (a) At any time prior to full compliance with the terms of this Agreement, Respondent agrees to notify RIDEM in writing of any change in ownership of either of the Properties and provide the name and address of the new owner. Notice of any change in address/telephone/fax of either party shall be sent to all other parties by certified mail.
- (b) 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.

[Signatures on following pages]

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

292 East School Street, LLC

By: _____

Print Name: _____

Title: _____

Dated: _____

In my capacity, as _____ of 292 East School Street, LLC, I hereby aver that I am authorized to enter into this Agreement and thereby bind 292 East School Street, LLC to satisfy any obligation imposed upon it pursuant to said Agreement.

STATE OF RHODE ISLAND
COUNTY OF _____

In _____, in said County and State, on this _____ day of _____ 2022, before me personally appeared _____, the _____ of 292 East School Street, LLC, a Rhode Island corporation, to me known and known by me to be the party executing the foregoing instrument on behalf of 292 East School Street, LLC, and he/she/they acknowledged said instrument by him/her/them executed, to be his/her/their free act and deed in said capacity and the free act and deed of 292 East School Street, LLC.

Notary Public
My Commission Expires: _____

308 East School Street, LLC

By: _____

Print Name: _____

Title: _____

Dated: _____

In my capacity, as _____ of 308 East School Street, LLC, I hereby aver that I am authorized to enter into this Agreement and thereby bind 308 East School Street, LLC to satisfy any obligation imposed upon it pursuant to said Agreement.

STATE OF RHODE ISLAND
COUNTY OF _____

In _____, in said County and State, on this _____ day of _____ 2022, before me personally appeared _____, the _____ of 308 East School Street, LLC, a Rhode Island corporation, to me known and known by me to be the party executing the foregoing instrument on behalf of 308 East School Street, LLC, and he/she/they acknowledged said instrument by him/her/them executed, to be his/her/their free act and deed in said capacity and the free act and deed of 308 East School Street, LLC.

Notary Public
My Commission Expires: _____

State of Rhode Island, Department of Environmental
Management

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

Dated: _____