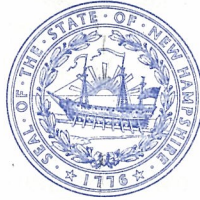


CHAIRMAN  
Amy L. Ignatius

COMMISSIONERS  
Michael D. Harrington  
Robert R. Scott

EXECUTIVE DIRECTOR  
Debra A. Howland

THE STATE OF NEW HAMPSHIRE



**PUBLIC UTILITIES COMMISSION**  
21 S. Fruit Street, Suite 10  
Concord, N.H. 03301-2429

DW 13-249

TDD Access: Relay NH  
1-800-735-2964

Tel. (603) 271-2431

FAX (603) 271-3878

Website:  
[www.puc.nh.gov](http://www.puc.nh.gov)

NHPUC 17DEC13PM4:31

December 17, 2013

Debra A. Howland  
Executive Director  
New Hampshire Public Utilities Commission  
21 South Fruit Street, Suite 10  
Concord, NH 03301

Re: DW 13-249, City of Portsmouth  
Petition for Expansion of Franchise Area in Town of Rye  
Staff Recommendation to Approve

Dear Ms. Howland:

On August 30, 2013, the City of Portsmouth (Portsmouth) filed a petition with the Commission pursuant to RSA 362:4 III(a) and RSA 374:22 seeking approval to expand its service area in the Town of Rye (Rye). Portsmouth is a municipal sewer utility which currently provides sewer services to approximately 6,400 customers with seasonal variations. The Portsmouth wastewater collection system consists of approximately 120 miles of sewer mains, 20 pumping stations and two wastewater treatment plants. The Portsmouth municipal wastewater collections system serves the City of Portsmouth and limited areas of the surrounding towns of Rye, New Castle and Greenland. Staff has conducted discovery and Portsmouth's responses are attached to this letter. After review, Staff recommends approval.

In this docket, Portsmouth seeks permission to expand service under its existing tariff for customers outside its municipal boundaries, to an area in Rye known as Sagamore Road/Foye's Corner. Sewer extensions will be made as new users make available the funds necessary to pay for and construct the new infrastructure. At this time, a new sewer line will be constructed to City specifications to service what is shown as Lot 21 on the map included in the filing.

On August 29, 2012, an Inter-Municipal Agreement (Agreement) was entered into between Portsmouth and Rye. The Agreement detailed the conditions set forth in extending Portsmouth's sewer system to certain portions of Rye that are presently served

DW 13-249 City of Portsmouth  
Petition to Extend Sewer Service in Rye  
Staff Recommendation to Approve Petition

by Portsmouth's municipal water system as shown on the map attached to the agreement (Sagamore Road/Foye's Corner.) Per the Agreement, the sewer extension costs will be borne by the new users in Rye, and all plans and specifications need to be approved by the City, the Rye Sewer Commission (for the part of the sewer extension in Rye) and the NHDES. Once completed, ownership of the infrastructure will be transferred to the City.

Per the Inter-Municipal Agreement, the areas of Rye to which the sewer line may be extended are presently served by the City of Portsmouth's municipal water system. The City generally bills sewer usage based on metered municipal water usage, and remedies for non-payment are exercised through the termination of water service. Should any sewer line extension include a property not connected and served by municipal water, such property owner must reach an agreement with the City as to metering, collection and termination of service.

Through Staff inquiry, the City provided evidence of the Portsmouth City Council vote, the Rye Town Meeting vote, and the Rye Sewer Commission vote authorizing the Inter-Municipal Agreement. These are attached to this letter as part of the City's discovery responses.

Staff has reviewed the petition and other information submitted by the City of Portsmouth in this docket. Staff believes Portsmouth's filing and discovery responses demonstrate that it has the managerial, financial and technical capabilities to serve the franchise area in Rye, as required by RSA 374:22, I. Staff also believes that since Portsmouth will provide service under the same terms and conditions as provided to customers within municipal boundaries, Portsmouth's provision of sewer service should remain exempt from Commission jurisdiction pursuant to RSA 362:4 III(a). The statute does not exempt a municipality from the need for franchise approval under RSA Chapter 374, and Staff recommends the Commission grant such approval for the franchise area in Rye as described in the petition. Staff therefore supports approval of Portsmouth's request, and recommends the Commission approve Portsmouth's franchise expansion.

If you have any questions regarding this matter, please let me know.

Sincerely,



Robyn J. Descoteau  
Utility Analyst

Attachments

cc: Service List



PROPOSED SEWER  
FRANCHISE EXTENSION

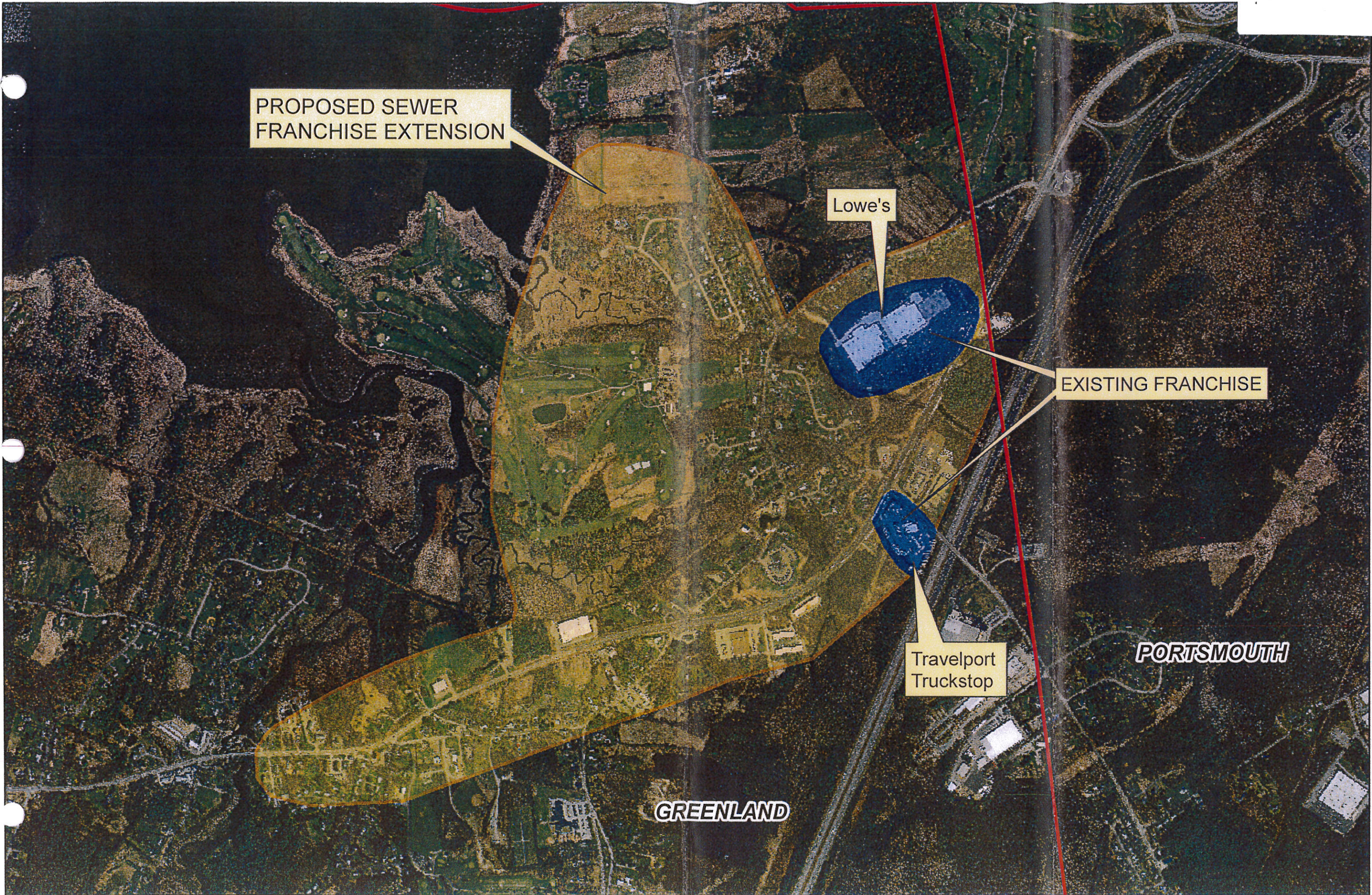
Lowe's

EXISTING FRANCHISE

Travelport  
Truckstop

*PORTSMOUTH*

*GREENLAND*







## CITY OF PORTSMOUTH

LEGAL DEPARTMENT

Robert P. Sullivan, City Attorney – 603-610-7204 (Direct Dial)  
Kathleen M. Dwyer, Assistant City Attorney – 603-427-1338 (Phone/Fax)  
Suzanne M. Woodland, Assistant City Attorney – 603-610-7240 (Direct Dial)

Municipal Complex  
1 Junkins Avenue  
Portsmouth, NH 03801  
(603) 431-2000  
(603) 427-1577 (FAX)

November 19, 2013

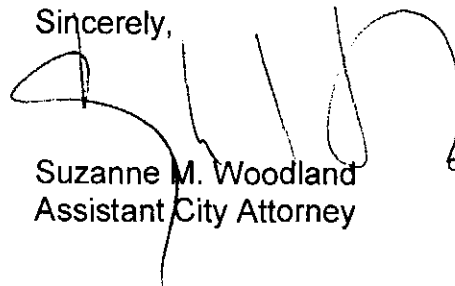
Mark A. Naylor  
Director, Gas & Water Division  
New Hampshire Public Utilities Commission  
21 S. Fruit St., Ste 10  
Concord, N.H. 03301-2429

**RE: Petition to Extend Sewer Service Franchise Area  
Docket No.: DW 13-249**

Dear Mark,

Enclosed please find the City of Portsmouth's Data Responses with respect to the above-captioned matter.

Sincerely,



Suzanne M. Woodland  
Assistant City Attorney

SMW/rao

enclosure

cc: Susan Chamberlin, Esq., (Consumer Advocate)  
Michael Donovan, Esq. (Town of Rye) (w/o enclosure)  
Sharon Cuddy Somers, Esq. (Third Party Attorney) (w/o enclosure)  
David Allen, Deputy City Manager (w/o enclosure)  
Peter Rice, Public Works Director (w/o enclosure)  
Brian Goetz, Deputy Public Works Director (w/o enclosure)  
Terry Desmarais, Jr., City Engineer (w/o enclosure)

h:\smw\public worl.s\sewer and water\rye\puc filing\ltr to puc w-data responses

THE STATE OF NEW HAMPSHIRE

PUBLIC UTILITIES COMMISSION

In re: City of Portsmouth

Docket No.: DW 13-249

**Responses to Staff Data Requests – Set 1**

- 1. Staff 1-1: Please provide a timeline for the upgrade to the 4.8 mgd advanced primary plant at Peirce Island. It was stated in paragraphs #1 and #15 of the petition that the Peirce Island Plant is scheduled to be upgraded to a secondary 6.13 mgd treatment facility.**

The City of Portsmouth is currently operating under a Consent Decree with the Environmental Protection Agency to complete an upgrade of the Peirce Island Wastewater Treatment Plant to secondary treatment capability by May 2017. Earlier this year, the City began discussions with EPA to extend the design and construction schedule by 18 months to November 2018. Certain assumptions have changed since the initial establishment of the upgrade schedule contained in the Consent Decree; those assumptions include the size of the plant and the treatment technology to be used. The selected high rate treatment technology, a Biological Aerated Filter system that will have the ability to provide nitrogen removal, requires the complete demolition of an existing structure at the current treatment plant and the relocation of the electrical service for the plant. Discussions with the EPA as to the extension request are ongoing. The New Hampshire Department of Environmental Services has indicated its support for the extension request. There is current capacity for additional users and the upgrade design includes additional capacity for growth.

Date of Response: 11/18/13  
Witness: Terry Desmarais, P.E.  
City Engineer, Water and Sewer Division

- 2. Staff 1-2: Please provide a copy of the current sewer rates and fees set during the most recent annual budget process by Portsmouth.**

See attached copy of current sewer rates and fees set during the most recent annual budget.

Date of Response: 11/18/13  
Witness: Brian Goetz, P.E.  
Deputy Director of Public Works

- 3. Staff 1-3: Please provide the latest update on the status of Portsmouth's negotiations with the Town of New Castle to assume responsibility for its system, as referenced in paragraph #4 of the petition, and indicate whether an additional franchise expansion would be necessary.**

The dialogue between the City of Portsmouth and the Town of New Castle continues and an inventory of existing infrastructure and needed upgrades is almost complete. The City currently receives and treats New Castle's waste in bulk, but if the discussions result in a proposed transfer of the sewer assets and service obligations the City would assume responsibility for operation and maintenance of the sewer system and bill New Castle residents served by the sewer system; consequently an additional franchise expansion is anticipated to be needed.

Date of Response: 11/18/13  
Witness: Brian Goetz, P.E.  
Deputy Director of Public Works

4. **Staff 1-4: Please provide a copy of the latest agreement between Portsmouth and Siegal Limited Partnership and/or the Travel Centers of America, LLC, for 108 Ocean Road, Greenland, NH.**

See attached copy of the current agreement between Portsmouth and Siegal Limited Partnership and/or the Travel Centers of America, LLC, for 108 Ocean Road, Greenland, NH.

Date of Response: 11/18/13  
Witness: Terry Desmarais, P.E.  
City Engineer, Water and Sewer Division

5. **Staff 1-5: Please provide a copy of the latest agreement between Portsmouth and Packard Development for 1450 Greenland Road, Greenland, NH.**

See attached copy of the current agreement between Portsmouth and Packard Development for 1450 Greenland Road, Greenland, NH.

Date of Response: 11/18/13  
Witness: Terry Desmarais, P.E.  
City Engineer, Water and Sewer Division

6. **Staff 1-6: Please provide the latest status update for the Sagamore Road/Foye's Corner project.**

The status of the Sagamore Road/Foye's Corner project consists of two parts. The infrastructure work to be done on the sewer expansion in the road is intended to commence immediately upon approval of the pending PUC petition to extend sewer service franchise as well as an approval of the pending application to NH DES for Application for Sewer Connection Permit. Execution of the work will be subject to DOT rules for non-excavation during the period of November 15 through March 15 and will subject to the expectation that the work will be performed during the closure and replacement of the Sagamore Bridge. Work on the Sagamore Bridge began in November of 2013. As well, the timing of the Sagamore Road/Foye's Corner project is also driven by the acquisition of land use approvals for development of property located at Foye's Corner and owned by Bluestone Properties of Rye, LLC (hereinafter "Bluestone"). Currently, Bluestone has received variances from the Town of Rye Zoning Board of Adjustment for setback to wetlands, parking stall sizes and two driveways on a corner lot.

Bluestone has submitted a site review application before the Rye Planning Board. It is currently under review and Bluestone anticipates approval from the Rye Planning Board by mid December 2013.

Date of Response: 11/18/13

Witness: Eric Weinrieb, P.E., Altus Engineering,  
Engineer for Bluestone Properties of Rye, LLC

- 7. Staff 1-7: Please provide a copy of the 2011 intermunicipal agreement between Greenland and Portsmouth, referenced in the sixth "whereas" clause of the Intermunicipal Agreement attached to the petition.**

See attached copy of the Intermunicipal Agreement between Greenland and Portsmouth. In 2011, the Town of Greenland approached the City with a request to enter into an intermunicipal agreement that would allow the City, as conditions permitted, to extend the City's sewer service to include an area east of the Winnicutt River along Route 33 and north of Route 33 to certain residential areas around Great Bay. The agreement was negotiated and expansion was conditioned upon approval of the Public Utilities Commission (PUC). The Board of Selectmen of the Town of Greenland initially approved the agreement on August 29, 2011. On Oct 17, 2011, the City Council authorized the Portsmouth City Manager to enter into the proposed agreement. After those approvals, the agreement was sent to the State Attorney General's office for review as required by statute. The Attorney General's office requested minor edits that were not substantive but did provide more clarity to the intended operation of the agreement. Those proposed edits were forwarded to the Town of Greenland but for reasons not entirely clear there was no response and consequently the agreement was not finalized. The Town of Greenland recently realized that the agreement was not final and both parties agreed to the minor edits proposed by the Attorney General's office. It has just recently been fully executed.

Date of Response: 11/18/13

Witness: David Allen, P.E.

Deputy City Manager, (former Deputy Director of Public Works)

- 8. Staff 1-8: Please provide evidence of the December 9, 2011, Portsmouth City Council vote, the March 9, 2010, vote on Article 13 at the Rye Town Meeting, and the August 29, 2012, Rye Sewer Commission vote, referenced in paragraph #12 of the Intermunicipal Agreement attached to the petition.**

See attached the December 19, 2011 City Council Action Sheet (incorrect date provided in the Data Request of December 9, 2011) showing the Portsmouth City Council vote; the March 9, 2010 vote at the Rye Town Meeting; and the August 29, 2012 Rye Sewer Commission vote.

Date of Response: 11/18/13

Witness: David Allen, P.E.

Deputy City Manager, (former Deputy Director of Public Works)

9. **Staff 1-9: Please comment on the potential for additional sewer customers from within or nearby the proposed franchise area, whether through future connection to the existing or proposed sewer lines or by other means, including the extent to which any interest has been expressed in such service.**

The addition of sewer customers within the proposed franchise area will initially consist at a minimum of the properties at Foye's Corner owned by Bluestone. It is possible that the additional commercial properties located within the franchise area on Sagamore Road will also become additional sewer customers following the installation of infrastructure described in question 6 above. Discussions are currently underway between Bluestone and the owners of such properties to determine which owners may wish to be connected to the sewer line. Thereafter, and once the City takes control and ownership of the installed sewer line as contemplated by the intermunicipal agreement, then additional sewer customers within the franchise area may utilize the sewer line in accordance with the terms of the agreement and in accord with the City's ordinances regulating the sewer system.

Date of Response: 11/18/13

Witness: Michael Labrie, Member  
Bluestone Properties of Rye, LLC





Department of Public Works, 680 Peverly Hill Rd, Portsmouth, NH 03801 Phone: (603) 427-1530, Fax: (603) 427-1539 | Contact Us |

## WATER/SEWER BILLING OFFICE

### **BILLING INQUIRIES**

Billing Office SUMMER Hours: Monday 8:00am - 6:00pm  
 Tuesday through Thursday 8:00am - 4:30pm  
 Friday 8:00am to 1:00 pm  
 Billing Office Location: City Hall Building, 1 Junkins Avenue, Room 304  
 Billing Office telephone number: (603) 610-7248 or 610-7237

### **SERVICE REQUESTS**

Services provided by the department Includes: changing or installing water meters and turning service on/off at property.

Maintenance Dept. Hours: 7:30am - 3:30pm, Monday through Friday  
 Maintenance Dept. Location: Public Works Building, 680 Peverly Hill Road  
 Maintenance Dept. telephone number: (603) 427-1552

## **BILLING INFORMATION**

### **FREQUENCY OF BILLING**

The City bills all customers on a monthly billing cycle with readings obtained on the last day of each month.

### **MINIMUM METER SERVICE CHARGE**

The minimum meter service charge is for costs associated with making water service available to each customer and is based on the size of the meter located at the property. This charge is assessed to the water portion of your bill only. There is no minimum meter charge assessed to the sewer portion of the bill.

### **WATER/SEWER CONSUMPTION CHARGES**

Effective July 1, 2013; water and sewer consumption charges will be based on a two-step, inclining block rate structure. One unit equals 100 cubic feet or 748 gallons.

FY14 User Rates, Effective 7/1/13		
	Water Rates	Sewer Rates
<b>First Tier Rate (10 units or less per month)</b>		
General Operations	\$1.04	\$5.02
Capital Related Expenses	\$3.11	\$5.06
<b>Total Tier 1 Rate, per unit</b>	<b>\$4.15</b>	<b>\$10.08</b>
<b>Second Tier Rate (units over 10 per month)</b>		
General Operations	\$1.89	\$5.08
Capital Related Expenses	\$3.11	\$5.06
<b>Total Tier 2 Rate, per unit</b>	<b>\$5.00</b>	<b>\$11.75</b>
<b>Irrigation Meter Rate (All units billed)</b>		
General Operations	\$1.89	
Capital Related Expenses	\$3.11	
<b>Total Irrigation Meter Rate, per unit</b>	<b>\$5.00</b>	

### **ESTIMATED BILLS**

An estimated bill is rendered when we are unable to read your meter, such as when the reading device has become dislodged. Your bill will indicate an estimated reading in the meter reading section of your bill. It is important for the City to obtain an actual reading as soon as possible. A corrected billing or issuance of credit will be applied to your account when an actual reading is obtained.

### **BILLING TERMS**

Your bill is payable upon receipt. You have 30 days from the date of the bill to pay your balance in full before a penalty will be imposed. Penalty per month of 1.5% will be added if not paid within 30 days of bill date. Your prompt payment is appreciated.

**PAYMENT OPTIONS**

The City currently has five payment options available for water/sewer customers:

1. Payments are accepted at the Tax Collector's Department.
2. By mail, the City encloses a self-addressed envelope with each billing. To expedite your payment processing, please include the payment stub with your payment.
3. Payments may be deposited in the white receptacle located in front of City Hall. To expedite your payment processing, please include the payment stub with your payment.
4. Automatic electronic debit transfer from your checking or savings account. Please contact the Water/Sewer Billing office for additional information.
5. Electronic payment using your checking account or a credit card. Only **American Express, Discover Card, and MasterCard may be accepted for water and sewer bills. Please visit the City's website at <http://cityofportsmouth.com/onlinebillpayment.htm>**

**FINAL BILL REQUESTS**

Final bills are generated at the request of property owners or their representative. In order to process the final bill request, the City must obtain a visual reading from the meter. The following guidelines have been established to process final bill requests: readings will be completed within 48 hours of the request, access inside the property is necessary between the hours of 8am - 3pm, and authorization by the owner to perform meter maintenance if required. No final readings will be scheduled on Wednesdays.

The Department will not be responsible if we are unable to process a final bill request due to a failure in following the above guidelines. There will be a final bill charge of \$40.00 assessed to your account to perform the final bill process. Please contact the Water/Sewer Billing Office at (603) 610-7248 or (603) 610-7237 to schedule a final reading or if you need additional information.

[return to Public Works](#)



**City of Portsmouth  
Fee Schedule  
Water / Sewer Divisions**

**(Indicates change from current fee)**

<u>Ordinance / Non-Ordinance</u>	<u>NOTES</u>	<u>Description</u>	<u>Fiscal Year</u> <u>Last Adjusted</u>	<u>FY 2012</u> <u>Schedule</u>	<u>FY 2013</u> <u>Schedule</u>	<u>Suggested</u> <u>FY 2014</u> <u>Schedule</u>
Title						

**Chapter 11: Article III Section 204**

Private Sewage Disposal

see Chapter 15, Part II of II: Section 106.5.2  
for Septic System fee(per dwelling)

Inspection Fee

PRE FY 02

N/A

N/A

**Chapter 11: Article III Section 205**

Building Sewers and Connections

Permit and Inspection Fee

PRE FY 02

\$10.00

\$10.00

\$10.00

Storm Water Connection Permit Fee (Dependent upon revision of ordinance)

Permit and Inspection Fee

FY 06

\$200.00

\$200.00

\$200.00

Industrial Discharge Permit Fee, Including Permit Renewals

Class 1, Permit and Inspection Fee

FY 08

Consultant Based Fee

Consultant Based Fee

Consultant Based Fee

Industrial Discharge Permit Fee, Including Permit Renewals

Class 2, Permit and Inspection Fee

FY 08

Consultant Based Fee

Consultant Based Fee

Consultant Based Fee

Industrial Discharge Permit Fee, Including Permit Renewals

Class 3, Permit and Inspection Fee

FY 08

\$500.00

\$500.00

\$500.00

Industrial Discharge Permit Fee, Including Permit Renewals

Class 4, Permit and Inspection Fee

FY 08

\$500.00

\$500.00

\$500.00

Industrial Discharge Permit Fee, Including Permit Renewals

Class 5, Permit and Inspection Fee

FY 08

\$500.00

\$500.00

\$500.00

Oil and Grease Trap Permit Fee

Permit and Inspection Fee

FY 06

\$100.00

\$100.00

\$100.00

Oil and Grease Trap Permit Renewal Fee

Permit and Inspection Fee

FY 06

\$50.00

\$50.00

\$50.00

Non-Ordinance

FY12 Occurrences were as follows

Occurrences

Revenue

Non-Ordinance

Non-Ordinance

200

\$5,000

Non-Ordinance

151

\$3,775

Non-Ordinance

330

\$11,550

Non-Ordinance

Non-Ordinance

Occurrences not tracked individually

Non-Ordinance

10

\$350

Non-Ordinance

**WATER and SEWER FEES**

Finance Charge, Unpaid balances after due date

PRE FY 02

18% annual

18% annual

18% annual

Time On

PRE FY 02

\$20.00

\$20.00

\$20.00

Time Off

PRE FY 02

\$15.00

\$15.00

\$15.00

Final Billing Payment

PRE FY 02

\$10.00

\$10.00

\$10.00

Hydrant Rental Deposit

FY 08

\$1,000.00

\$1,000.00

\$1,000.00

Yearly Account History

PRE FY 02

\$10.00

\$10.00

\$10.00

Frozen Meter Repairs <= 1 1/2"

PRE FY 02

\$35.00

\$35.00

\$35.00

Frozen Meter Repairs >1 1/2"

PRE FY 02

\$50.00

\$50.00

\$50.00

City of Portsmouth  
 Fee Schedule  
 Water / Sewer Divisions

\* (Indicates change from current fee)

			Fiscal Year			Suggested
			FY 2012			FY 2014
Ordinance / Non-Ordinance	NOTES	Description	Last Adjusted	Schedule	Schedule	Schedule
Title						
Non-Ordinance	1	\$190				
		If parts exceed the minimum charge, customer is charged for parts.				
		Emergency Callout	FY 12	\$190.00	\$190.00	\$190.00
		Based on current wages + benefits				
		Minimum callout=4 hours overtime per union contracts				
Non-Ordinance		Meter Testing <1 1/2"	PRE FY 02	\$35.00	\$35.00	\$35.00
Non-Ordinance		Meter Testing >1 1/2"	PRE FY 02	\$80.00	\$80.00	\$70.00
		When requested by customer, (if meter test fails no charge to customer)				
Non-Ordinance		Water Services Application Fee	FY 08	\$100.00	\$100.00	\$100.00
Non-Ordinance		Meter Reading System Repairs	FY 12	\$50.00	\$50.00	\$50.00
Non-Ordinance		Plus cost of parts				
Non-Ordinance		Fire Flow Testing	FY 13	N/A	\$200.00 per Test	\$200.00
Non-Ordinance		Fire Services, Fee per Month				
Non-Ordinance		1"	FY 08	\$2.55	\$2.55	\$2.55
Non-Ordinance		1 1/2"	FY 08	\$3.82	\$3.82	\$3.82
Non-Ordinance		2"	FY 08	\$5.09	\$5.09	\$5.09
Non-Ordinance		2 1/2"	FY 08	\$7.64	\$7.64	\$7.64
Non-Ordinance		3"	FY 08	\$12.22	\$12.22	\$12.22
Non-Ordinance		4"	FY 08	\$19.35	\$19.35	\$19.35
Non-Ordinance		5"	FY 08	\$31.57	\$31.57	\$31.57
Non-Ordinance		6"	FY 08	\$38.69	\$38.69	\$38.69
Non-Ordinance		8"	FY 08	\$71.28	\$71.28	\$71.28
Non-Ordinance		10"	FY 08	\$107.93	\$107.93	\$107.93
Non-Ordinance		12"	FY 08	\$162.88	\$162.88	\$162.88
Non-Ordinance	1,040	\$104,000	Hydrant Rentals to Municipalities per hydrant	PRE FY 02	\$100.00	\$100.00
Non-Ordinance	2,096	\$104,800	Backflow Test	PRE FY 02	\$50.00	\$50.00



City of Portsmouth  
Fee Schedule  
Water / Sewer Divisions

\* (Indicates change from current fee)

Water / Sewer Divisions			Fiscal Year	FY 2012	FY 2013	Suggested
NOTES			Last Adjusted	Schedule	Schedule	FY 2014
Ordinance / Non-Ordinance	Description		Schedule			
Title						
Non-Ordinance	Occurrences not tracked individually	Permits	PRE FY 02	\$25.00	\$25.00	\$25.00
Non-Ordinance	Occurrences not tracked individually	Test Only	PRE FY 02	\$10.00	\$10.00	\$10.00
Non-Ordinance	Occurrences not tracked individually	Test and Sampling	PRE FY 02	\$48.00	\$48.00	\$88.00
Non-Ordinance		Sewer Surcharges-BOD Portsmouth	PRE FY 02	\$0.12	\$0.12 per LB	\$0.12
Non-Ordinance	not tracked by location	Pease	PRE FY 02	\$0.12	\$0.12 per LB	\$0.12
Non-Ordinance		TSS Portsmouth	PRE FY 02	\$0.13	\$0.13 per LB	\$0.13
Non-Ordinance	not tracked by location	Pease	PRE FY 02	\$0.13	\$0.13 per LB	\$0.13
Non-Ordinance	2,736 M gals \$98,741	Dumping Fees per 1,000 gals	FY 05	\$60.00	\$60.00	\$60.00
Non-Ordinance	Occurrences not tracked individually	Recreation Vehicles	FY 12	\$25.00	\$25.00	\$25.00
Non-Ordinance	Occurrences not tracked individually	Sewer Connection Permits, as req'd ENV-WQ 703.07	PRE FY 02	\$100.00	\$100.00	\$100.00
(Dependent upon revision of ordinance)		Sewer Connection Fees	PRE FY 02	\$250.00	\$250.00	\$250.00
Non-Ordinance	279 \$4,185	Equipment Rate (Water & Sewer) - Pick Up	FY 12	\$15.00	\$15.00 per hour	\$15.00
Non-Ordinance	164 \$6,540	Backhoe	PRE FY 02	\$45.00	\$45.00 per hour	\$45.00
Non-Ordinance	31 \$2,046	Excavator	PRE FY 02	\$65.00	\$65.00 per hour	\$75.00
Non-Ordinance	120 \$5,020	Dump	PRE FY 02	\$45.00	\$45.00 per hour	\$45.00
Non-Ordinance		Generator	PRE FY 02	\$25.00	\$25.00 per hour	\$15.00
Non-Ordinance		Pump	PRE FY 02	\$15.00	\$15.00 per hour	\$15.00
Non-Ordinance		Roller	PRE FY 02	\$35.00	\$35.00 per hour	\$35.00
Non-Ordinance		Loader	PRE FY 02	\$35.00	\$35.00 per hour	\$35.00
Non-Ordinance		Skidder	PRE FY 02	\$15.00	\$15.00 per hour	\$15.00
Non-Ordinance		Gravel Paver	PRE FY 02	\$25.00	\$25.00 per hour	\$25.00
Non-Ordinance	4 \$260	Van	FY 02	\$65.00	\$65.00 per hour	\$75.00
Non-Ordinance		Pump	PRE FY 02	\$15.00	\$15.00 per hour	\$25.00
Non-Ordinance		TV Camera Vehicle	FY 00	\$75.00	\$75.00 per hour	\$75.00
Ordinance	FY 12 \$47,121	Water - Capacity Improvement Multiplier (CMI) EDU is equivalent to 1000 gals	FY 12	\$427.00	\$427.00 per EDU	\$462.00
Ordinance	FY 12 \$52,938	Sewer - Capacity Improvement Multiplier (CMI) EDU is equivalent to 1000 gals	FY 12	\$114.00	\$114.00 per EDU	\$144.00



AMENDMENT TO SEWAGE AGREEMENT BETWEEN CITY OF PORTSMOUTH  
AND TRAVEL PORTS OF AMERICA, INC., GREENLAND, N.H.

This agreement made this 2 day of April, 1999 by and between the City of Portsmouth (hereinafter referred to as "Portsmouth"), Travel Ports of America, Inc. (hereinafter referred to as "Travel Port") and Siegel Limited Partnership ("Siegel"), 2425 Lafayette Road, P.O. Box 5600, Portsmouth, NH amends the prior agreement of the parties dated 10/10/98; Portsmouth is a municipal corporation located in Rockingham County, New Hampshire, Travel Port is a New York corporation with a principal place of business at 3495 Winton Place, Building C, Rochester, New York, and with a place of business at 108 Ocean Road in Greenland, Rockingham County, New Hampshire (the "Facility"), and Siegel is the owner of the Facility.

WHEREAS, the Facility rented by Travel Port and owned by Siegel currently has a septic system decreed to be failed; and

WHEREAS, Portsmouth has agreed to cooperate with and help Travel Port and Siegel by assisting it addressing the public health problem at the site or to comply with state requirements for the proper treatment and disposal of sewage and to prevent any health, safety and environmental problems; and

WHEREAS, Travel Port desires to construct a sewer line from the Facility along Route 33 to tie into the Portsmouth sewer system (the "Proposed Sewer Line"); and

WHEREAS, RSA 149-I:4 enables Portsmouth to "lease, enter into contracts to provide, sell or purchase sewage or waste treatment facilities to or from any other city, town, village, district or

A large, stylized handwritten signature in black ink, located in the bottom right corner of the document. The signature is cursive and appears to be the name of a person involved in the agreement.



person whenever they judge the same necessary for the public convenience, health and welfare"; and

WHEREAS, Portsmouth, Travel Port and Siegel recognize that the Proposed Sewer Line is necessary for public convenience, health and welfare.

NOW THEREFORE, the parties hereby mutually covenant and agree that:

1. Responsibility of Travel Port and Siegel to Portsmouth. Travel Port and Siegel, and their successors and assigns, are ultimately responsible to Portsmouth for the purposes of this Agreement, for the construction, operation and maintenance of all proposed sewage facilities which service the Facility up to and including the connection point to the Portsmouth system adjacent to Route 33 at the proposed "Park and Ride". The obligations of Travel Port and Siegel under this agreement are joint and several. This provision is applicable both for sewage facilities constructed under this agreement in Greenland and Portsmouth. Portsmouth shall not be responsible for any costs incurred in constructing, operating and maintaining any system to accept sewage flow from the Facility into the Portsmouth Sewage System.

2. The Proposed Sewer Line. Travel Port will construct a private sewer lateral on a route along Route 33 to a sewer tie in as indicated above. This lateral shall be owned by Travel Port. The construction of the Proposed Sewer Line will be according to the specifications approved in writing in advance of commencement of construction by the Portsmouth City Engineer. The tie in shall

not occur until the City completes its planned upgrade of the "Brick Box" section of the Portsmouth sewer system, currently planned for the fall of 1999. Prior to sewage being received by the Portsmouth Sewage System, the construction shall be inspected and approved by the Portsmouth City Engineer. Siegel and Travel Port shall hereby provide Portsmouth with any authority necessary to give Portsmouth access to all points of the systems for maintenance and repair.

3. Handling of Sewage by Portsmouth. The sewage that flows from the Proposed Sewer Line will, after the above construction is completed, be received by Portsmouth for treatment.

4. Permitted Sewage Flow into the Portsmouth Sewer System. The sewage flow from the Facility received by the Portsmouth Sewage System shall not exceed 15,000 gallons during any one day, unless otherwise permitted by Portsmouth. Only sewage generated at the Facility shall be accepted. Portsmouth shall have the right to direct Travel Port and Siegel to release sewage in accordance with a flow schedule to be established by the City Engineer to accommodate the ability of the Portsmouth system to accept the sewage flow from the Facility. Travel Port agrees to comply with the flow schedule except where the storage capacity at the Facility requires a release or where other exigent circumstances exist.

5. Metering of the Permitted Sewage Flow. Travel Port and Siegel will be responsible for appropriate flow meter facilities on the Proposed Sewer Line to measure the sewage flow delivered to the Portsmouth Sewer System. Travel Port and Siegel will be

responsible for all costs of overseeing the installation, operation and maintenance of the required metering facilities. The metering devices shall be of a continuous recording and totalizing type. Details of the location, type and installation shall be approved by Portsmouth prior to this Agreement becoming effective. Representatives of Portsmouth shall have access to the metering for the purposes of obtaining meter readings, inspection of the facility, and/or verification of the accuracy of the flow measuring equipment. Travel Port and Siegel shall be responsible for all reasonable expenses for metering and testing of the meter, on a reasonable schedule to be determined by the City, and/or when necessitated by repair work. Sewer use charges shall be based on sewage flow as metered.

6. Maintenance and Repair. Travel Port and Siegel shall conduct all construction, maintenance and repair work on the system. In the event that Portsmouth is required to perform any work, Portsmouth shall charge the costs of such work to Travel Port and Siegel in an amount calculated to recover all direct and indirect costs associated with the work plus a 25% surcharge.

7. Nature of Sewage Acceptable to Portsmouth. Sewage which Portsmouth accepts will be limited to domestic and sanitary sewage generated at the Facility plus normal infiltration. Portsmouth will not accept industrial wastewater. Neither Travel Port nor Siegel will knowingly discharge or allow the discharge into the Proposed Sewer Line any waste which is toxic or otherwise harmful to the wastewater treatment facilities of Portsmouth. In the event



that such wastes are discharged into the system from the Facility, Travel Port and Siegel shall be responsible for all costs associated with remediation.

8. Sewer Use Charges. Travel Port and Siegel shall be charged for sewer use in accordance with the normal policies procedures of Portsmouth as if Travel Port were a resident of Portsmouth except where this agreement indicates otherwise.

9. Security. As security for the performance of obligations of Travel Port and Siegel under this Agreement, prior to the commencement of construction, Siegel will deliver to Portsmouth valid first and second mortgages as follows: the first mortgage to secure the parties' obligation to pay Portsmouth a total of \$300,000 pursuant to paragraph 15; the second mortgage to secure performance of all other obligations of Travel Port and Siegel under this Agreement. Travel Port shall subordinate its leasehold rights and option rights to these mortgages. Portsmouth may foreclose on these mortgages in order to satisfy any obligations owed to Portsmouth under this Agreement by Travel Port or Siegel after first giving Travel Port or Siegel 30 days written notice to cure the default.

10. Term. The term of this Agreement shall be thirty (30) years from the date of the execution of the Agreement.

11. Assignment. This Agreement and the rights and obligations hereunder shall be assignable by Travel Port and Siegel to other owners, lessors or operators of the Facility, only after

prior written approval of Portsmouth City Manager which approval shall not be unreasonably withheld.

12. Sewer Uses. This Agreement authorizes use of the Portsmouth sewer system solely by the Facility of Travel Port and Siegel. Any other person and/or entity that wishes to utilize the sewer line installed by Travel Port/~~Siegel~~ must have the approval of the City and of Travel Port/~~Siegel~~.

13. Travel Port's Interim Disposal of Sewage at Portsmouth Treatment Facilities. From the date this Agreement is executed until the Proposed Sewer Line is operational, Travel Port will have the right to deliver up to 15,000 gallons of sewage during any one day to a Portsmouth Wastewater Treatment Plant for disposal at the usual and customary sewer rate paid by Portsmouth residents.

14. Termination of Service. Travel Port and Siegel agree to maintain compliance at all times with all ordinances, policies and regulations of the City regarding sewer use. In the event of non-compliance, Portsmouth may terminate sewer use if Travel Port and Siegel unreasonably fail to remedy the non-compliance within 30 days of written notice. Travel Port and Siegel shall have an opportunity for a hearing before the City Manager to show cause why service should not be terminated.

15. Payment. Travel Port and Siegel shall pay Portsmouth, as a contribution for capital improvements, the sum of Three Hundred Thousand (\$300,000) Dollars to be paid in installments of \$30,000 per year for ten (10) years. On or about January 5, 1998, the City of Portsmouth received a Twenty-Five Thousand (\$25,000.00) Dollar

payment from Travel Port and Siegel, which was paid pursuant to the agreement between the parties which this agreement amends. Upon execution of this Amendment, Travel Port and Siegel shall pay to the City of Portsmouth an additional Five Thousand (\$5,000.00) Dollars so that the total monies paid through execution of this agreement will be Thirty Thousand (\$30,000.00) Dollars. Such Thirty Thousand (\$30,000.00) Dollars together with any other payments made to the City, hereunder, shall be held as a deposit by the City of Portsmouth until such time as Travel Port and Siegel are able to enter the City's sewer system. Upon that date, such deposit shall be immediately released to the City of Portsmouth. Travel Port and Siegel shall pay the City the sum of Thirty Thousand (\$30,000.00) Dollars on January 1, 2000 and on January 1<sup>st</sup> of each successive year until the entire Three Hundred Thousand (\$300,000.00) Dollars has been paid. If payment is not made when due, it shall be subject to simple interest of eighteen (18%) percent per year (or 1.5% per month) on the unpaid balance.

16. Amendment. This Agreement may be amended only by written agreement signed by all parties.

17. Contingencies. In the event that Travel Port and Siegel are unable to obtain any required approvals for the construction and/or use of this line, or otherwise decide individually or collectively not to proceed with the Project, this Agreement shall be deemed void and the deposit referred to in paragraph 15 returned. In the event that the proposed sewer line is constructed and put into use and subsequently that Travel Port is unable or



unwilling to continue to use the proposed sewer line, then Travel Port shall have the right to terminate this Agreement on thirty (30) days written notice delivered to the Portsmouth City Manager. Upon termination of the Agreement, Portsmouth shall cease receiving sewage from the Facility and Travel Port and/or Siegel shall be responsible for all costs of disconnecting the proposed sewer line. Travel Port and Siegel shall have no further obligations to make any payments including those referred to in paragraph 15, to Portsmouth after termination of the Agreement except as provided in Section 18 below. However, Travel Port and Siegel shall not be entitled to reimbursement of any payments made to Portsmouth prior to the effective date of termination.

18. Travel Port and Siegel shall be responsible to hold harmless and indemnify the City and its officers, agents and employees from any and all costs of construction, maintenance or use of any sewage facility constructed pursuant to this Agreement, including but not limited to, environmental harm or damage caused to the City or others attributable in any way to the construction, existence or use of those facilities. This indemnity shall survive termination of this Agreement.

CITY OF PORTSMOUTH  
By its City Manager

Raeline A. O'Neil  
Witness

J. B. B. B.  
TRAVEL PORTS OF AMERICA, INC.  
By its President

Joann M. Malt  
Witness

[Signature]  
SIEGEL LIMITED PARTNERSHIP  
By its General Partner

Joan V. Callahan  
Witness

[Signature]

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SEWAGE AGREEMENT BETWEEN CITY OF PORTSMOUTH  
AND TRAVEL PORTS OF AMERICA, INC., GREENLAND, N.H.

Agreement made this \_\_\_\_ day of \_\_\_\_\_, 1997 by and between the City of Portsmouth (hereinafter referred to as "Portsmouth"), Travel Ports of America, Inc. (hereinafter referred to as "TravelPort") and Siegel Limited Partnership ("Siegel"), 2425 Lafayette Road, P.O. Box 5600, Portsmouth, NH; Portsmouth is a municipal corporation located in Rockingham County, New Hampshire, TravelPort is a New York corporation with a principal place of business at 3495 Winton Place, Building C, Rochester, New York, and with a place of business at 108 Ocean Road in Greenland, Rockingham County, New Hampshire (the "Facility"), and Siegel is the owner of the Facility.

WHEREAS, the Facility rented by Travelport and owned by Siegel currently has a septic system decreed to be failed; and

WHEREAS, Portsmouth has agreed to cooperate with and help TravelPort and Siegel by assisting it addressing the public health problem at the site or to comply with state requirements for the proper treatment and disposal of sewage and to prevent any health, safety and environmental problems; and

WHEREAS, TravelPort desires to construct a sewer line from the Facility along Ocean Road to tie into the Portsmouth sewer system (the "Proposed Sewer Line"); and

WHEREAS, RSA 149-I:4 enables Portsmouth to "lease, enter into contracts to provide, sell or purchase sewage or waste treatment facilities to or from any other city, town, village, district or






person whenever they judge the same necessary for the public convenience, health and welfare"; and

WHEREAS, Portsmouth, TravelPort and Siegel recognize that the Proposed Sewer Line is necessary for public convenience, health and welfare.

NOW THEREFORE, the parties hereby mutually covenant and agree that:

1. Responsibility of TravelPort and Siegel to Portsmouth. TravelPort and Siegel, and their successors and assigns, are ultimately responsible to Portsmouth for the purposes of this Agreement, for the construction, operation and maintenance of all proposed sewage facilities which service the Facility up to and including the connection point to the Portsmouth system on Ocean Road. The obligations of TravelPort and Siegel under this agreement are joint and several. This provision is applicable both for sewage facilities constructed under this agreement in Greenland and Portsmouth. Portsmouth shall not be responsible for any costs incurred in constructing, operating and maintaining any system to accept sewage flow from the Facility into the Portsmouth Sewage System.

2. The Proposed Sewer Line. TravelPort will construct approximately 8,000 linear feet of private sewer lateral on a route along Ocean Road to a sewer tie in as indicated above. This lateral shall be owned by TravelPort. The construction of the Proposed Sewer Line will be according to the specifications approved in writing in advance of commencement of construction by




the Portsmouth City Engineer. Prior to sewage being received by the Portsmouth Sewage System, the construction shall be inspected and approved by the Portsmouth City Engineer. Siegel and TravelPort shall hereby provide Portsmouth with any authority necessary to give Portsmouth access to all points of the systems for maintenance and repair.

3. Handling of Sewage by Portsmouth. The sewage that flows from the Proposed Sewer Line will, after the above construction is completed, be received by Portsmouth for treatment.

4. Permitted Sewage Flow into the Portsmouth Sewer System. The sewage flow from the Facility received by the Portsmouth Sewage System shall not exceed 15,000 gallons during any one day, unless otherwise permitted by Portsmouth. Only sewage generated at the Facility shall be accepted. Portsmouth shall have the right to direct TravelPort and Siegel to release sewage in accordance with a flow schedule to be established by the City Engineer to accommodate the ability of the Portsmouth system to accept the sewage flow from the Facility. TravelPort agrees to comply with the flow schedule except where the storage capacity at the Facility requires a release or where other exigent circumstances exist.


5. Metering of the Permitted Sewage Flow. TravelPort and Siegel will be responsible for appropriate flow meter facilities on the Proposed Sewer Line to measure the sewage flow delivered to the Portsmouth Sewer System. TravelPort and Siegel will be responsible for all costs of overseeing the installation, operation and maintenance of the required metering facilities. The metering



devices shall be of a continuous recording and totalizing type. Details of the location, type and installation shall be approved by Portsmouth prior to this Agreement becoming effective. Representatives of Portsmouth shall have access to the metering for the purposes of obtaining meter readings, inspection of the facility, and/or verification of the accuracy of the flow measuring equipment. TravelPort and Siegel shall be responsible for all reasonable expenses for metering and testing of the meter, on a reasonable schedule to be determined by the City, and/or when necessitated by repair work. Sewer use charges shall be based on sewage flow as metered.

6. Maintenance and Repair. TravelPort and Siegel shall conduct all construction, maintenance and repair work on the system. In the event that Portsmouth is required to perform any work, Portsmouth shall charge the costs of such work to TravelPort and Siegel in an amount calculated to recover all direct and indirect costs associated with the work plus a 25% surcharge.

7. Nature of Sewage Acceptable to Portsmouth. Sewage which Portsmouth accepts will be limited to domestic and sanitary sewage generated at the Facility plus normal infiltration. Portsmouth will not accept industrial wastewater. Neither TravelPort nor Siegel will knowingly discharge or allow the discharge into the Proposed Sewer Line any waste which is toxic or otherwise harmful to the wastewater treatment facilities of Portsmouth. In the event that such wastes are discharged into the system from the Facility,






TravelPort and Siegel shall be responsible for all costs associated with remediation.

8. Sewer Use Charges. TravelPort and Siegel shall be charged for sewer use in accordance with the normal policies procedures of Portsmouth as if TravelPort were a resident of Portsmouth except where this agreement indicates otherwise.

9. Security. As security for the performance of obligations of TravelPort and Siegel under this Agreement, prior to the commencement of construction, Siegel will deliver to Portsmouth valid first and second mortgages as follows: the first mortgage to secure the parties' obligation to pay Portsmouth \$250,000 pursuant to paragraph 15; the second mortgage to secure performance of all other obligations of TravelPort and Siegel under this Agreement. TravelPort shall subordinate its leasehold rights and option rights to these mortgages. Portsmouth may foreclose on these mortgages in order to satisfy any obligations owed to Portsmouth under this Agreement by TravelPort or Siegel after first giving TravelPort or Siegel 30 days written notice to cure the default.

10. Term. The term of this Agreement shall be thirty (30) years from the date of the execution of the Agreement.

11. Assignment. This Agreement and the rights and obligations hereunder shall be assignable by TravelPort and Siegel to other owners, lessors or operators of the Facility, only after prior written approval of Portsmouth City Manager which approval shall not be unreasonably withheld.




12. Sewer Uses. This Agreement authorizes use of the Portsmouth sewer system solely by the Facility of TravelPort and Siegel. No other person, entity or property shall have any right to such use under this Agreement.

13. TravelPort's Interim Disposal of Sewage at Portsmouth Treatment Facilities. From the date this Agreement is executed until the Proposed Sewer Line is operational, TravelPort will have the right to deliver up to 15,000 gallons of sewage during any one day to a Portsmouth Wastewater Treatment Plant for disposal at the usual and customary sewer rate paid by Portsmouth residents.

14. Termination of Service. TravelPort and Siegel agree to maintain compliance at all times with all ordinances, policies and regulations of the City regarding sewer use. In the event of non-compliance, Portsmouth may terminate sewer use if TravelPort and Siegel unreasonably fail to remedy the non-compliance within 30 days of written notice. TravelPort and Siegel shall have an opportunity for a hearing before the City Manager to show cause why service should not be terminated.


15. Payment. TravelPort and Siegel shall pay Portsmouth as a contribution for capital improvements the sum of \$250,000 to be paid in installments of \$25,000 per year for ten (10) years. The first payment shall be due January 1, 1998 and payments shall be due January 1 each successive year thereafter. Payments not made when due shall be subject to simple interest of 18% per year (1.5% per month) on the unpaid balance.



16. Amendment. This Agreement may be amended only by written agreement signed by all parties.

17. Contingencies. In the event that TravelPort and Siegel are unable to obtain any required approvals for the construction and/or use of this line, or otherwise decide individually or collectively not to proceed with the Project, this Agreement shall be deemed void. In the event that the proposed sewer line is constructed and put into use and subsequently that TravelPort is unable or unwilling to continue to use the proposed sewer line, then Travelport shall have the right to terminate this Agreement on thirty (30) days written notice delivered to the Portsmouth City Manager. Upon termination of the Agreement, Portsmouth shall cease receiving sewage from the Facility and TravelPort and/or Siegel shall be responsible for all costs of disconnecting the proposed sewer line. TravelPort and Siegel shall have no further obligations to make any payments to Portsmouth after termination of the Agreement except as provided in Section 18 below. However, TravelPort and Siegel shall not be entitled to reimbursement of any payments made to Portsmouth prior to the effective date of termination.

18. TravelPort and Siegel shall be responsible to hold harmless and indemnify the City and its officers, agents and employees from any and all costs of construction, maintenance or use of any sewage facility constructed pursuant to this Agreement, including but not limited to, environmental harm or damage caused to the City or others attributable in any way to the construction,



existence or use of those facilities. This indemnity shall survive termination of this Agreement.

CITY OF PORTSMOUTH  
By its City Manager

\_\_\_\_\_  
Witness

*Jerry Beaman* 8.22-97  
Witness

*Valerie L. Uffa*  
Witness

\_\_\_\_\_  
TRAVEL PORTS OF AMERICA, INC.  
By its President

\_\_\_\_\_  
SIEGEL LIMITED PARTNERSHIP  
By its General Partner

*[Signature]* 9/5/97

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**AGREEMENT BETWEEN  
CITY OF PORTSMOUTH AND PDNED GREENLAND LLC  
FOR SEWER SERVICE, GREENLAND, NH**

This agreement made this 9<sup>th</sup> day of July, 2009 by and between the City of Portsmouth (hereinafter referred to as "Portsmouth"), PDNED Greenland LLC (hereinafter, together with its successors and assigns as permitted hereunder, referred to as "PDNED"). Portsmouth is a municipal corporation located in Rockingham County, New Hampshire. PDNED is a Delaware limited liability company with a principal place of business at One Wells Avenue, Newton, Massachusetts, and has acquired the property being Tax Map R21, Lot 44, 44A, 44B, 44C and 44D in Greenland, and Map R-279, Lot 6, Portsmouth, Rockingham County, New Hampshire, commonly known as the former Sylvania Property (the "Property").

WHEREAS, PDNED currently is constructing an approximately 350,000 square foot retail facility on the property (the "Facility"); and

WHEREAS, RSA 149-I:4 enables Portsmouth to lease, enter into contracts to provide, sell or purchase sewage or waste treatment facilities to or from any other city, town, village, district, or person whenever they judge the same necessary for the public convenience, health, and welfare; and

WHEREAS, Portsmouth and PDNED recognize that it is for the public convenience, health, and welfare that the facility have access to municipal waste water management as opposed to an on-site septic system; and

WHEREAS, the New Hampshire Public Utilities Commission has granted Portsmouth authority to extend sewer services to the property pursuant to its Order No. 24,865 issued on June 20, 2008.

NOW THEREFORE, the parties hereby mutually covenant and agree that:

1. Responsibility of PDNED to Portsmouth.

A. PDNED and its successors and assigns, are responsible to Portsmouth for the purposes of this Agreement, for the construction, operation, and maintenance of all proposed sewage facilities which service the Facility up to the connection to a public sewer manhole located in Grafton Road near the intersection of Country Club Lane in the City of Portsmouth (the "Connection Point") and shown on the plans attached hereto as Exhibit A entitled "Greenland Pumping Station Force Main - PDNED Greenland LLC - Portsmouth, New Hampshire," dated October 2008, prepared by Camp Dresser & McKee, Inc. (the "Sewer Extension Plans"). The sewer line and all appurtenances shown on the Sewer Extension Plans are hereinafter referred to as the "Private Sewer Line." This provision is applicable both for portions of the Private Sewer Line constructed under this agreement in Greenland and in Portsmouth. Portsmouth shall not be responsible for any costs incurred in constructing, operating, and maintaining any system to accept sewage flow from the Facility into the Portsmouth Sewage System.

B. Notwithstanding the foregoing, the City of Portsmouth shall have the right but not the obligation to assume the ownership, operation, and maintenance of the Private Sewer Line, or any portion thereof upon providing PDNED with written notice thereof which notice shall specify the date upon which the ownership, operation, and maintenance of the private sewer line shall be assumed by Portsmouth.

2. Sewer Line. PDNED will construct the Private Sewer Line from the Property to the Connection Point, at its sole cost and expense. The construction of the Private Sewer Line will be according to the specifications approved in writing in advance of commencement of

construction by the Portsmouth City Engineer. Prior to sewage being received by the Portsmouth Sewage System, the construction shall be inspected and approved by the Portsmouth City Engineer. Notwithstanding PDNED's responsibility for the maintenance and repair of the Private Sewer Line, Portsmouth shall have access to all points of the systems for maintenance and repair.

3. Additional Sewer System Improvements. PDNED will pay to the City of Portsmouth a private sewer line access fee of One Million Dollars (\$1,000,000.00) intended for the design and construction of downline improvements to the Portsmouth Sewer System as Portsmouth shall determine to be necessary and appropriate to accommodate the additional flows from the Facility and as may otherwise be deemed necessary or desirable by the City of Portsmouth. All design and construction work shall be done by the City of Portsmouth and shall be done at such times as the City of Portsmouth shall determine to be appropriate. The payment by PDNED shall be in the amount of One Million Dollars (\$1,000,000.00), regardless of the actual cost of such improvements, which amount shall be paid pursuant and in the manner set forth in Paragraph 9 hereof.

4. Handling of Sewage by Portsmouth. The sewage that flows from the Facility through the Private Sewer Line will, after its construction is completed as provided herein, be received by Portsmouth for treatment.

5. Permitted Sewage Flow into the Portsmouth Sewer System. The sewage flow from the Facility received by the Portsmouth Sewage System shall not exceed 20,000 gallons of flow during any one calendar day, unless otherwise permitted by Portsmouth. Only sewage generated at the Facility shall be accepted. In order to eliminate odor emanating from or caused by sewerage from the Facility which is disposed into the Private Sewer Line, PDNED shall

participate as may be reasonably necessary in any odor control efforts at its own cost as may be directed by the City of Portsmouth.

6. Metering of the Permitted Sewage Flow. PDNED will be responsible for appropriate flow meter facilities on the Private Sewer Line to measure the sewage flow delivered to the Portsmouth Sewer System. PDNED will be responsible for all costs of overseeing the installation, operation, and maintenance of the required metering facilities unless and until Portsmouth exercises its rights under Paragraph 1B. The metering devices shall be of a continuous recording and totalizing type. Details of the location, type, and installation shall be approved by Portsmouth prior to commencement of construction of the Private Sewer Line. Representatives of Portsmouth shall have access to the metering for the purposes of obtaining meter readings, inspection of the facility, and/or verification of the accuracy of the flow measuring equipment. PDNED shall be responsible for all reasonable expenses for metering and testing of the meter, on a reasonable schedule to be determined by Portsmouth, and/or when necessitated by repair work. PDNED shall submit to the City Engineer monthly flow records and such additional flow records as may from time to time be reasonably requested. PDNED shall also submit annually proof of calibration of the flow meter by a qualified contractor.

7. Maintenance and Repair. PDNED shall conduct all construction, maintenance, and repair work on the Private Sewer Line. In the event that Portsmouth determines that (i) following the commencement of construction of the Private Sewer Line, PDNED has failed to diligently prosecute such construction to completion, or (ii) PDNED has failed to perform any required maintenance or repair work in a diligent manner, and if such failure continues for a period of five (5) days following Portsmouth's delivery of written notice thereof to PDNED, sent in accordance with the provisions of Paragraph 19 (except in the case of an emergency when

such shorter notice, if any, as may be deemed reasonable by Portsmouth shall be given), Portsmouth may perform such work, and if Portsmouth does, PDNED shall pay the costs of such work in an amount calculated to recover all direct and indirect costs associated with the work plus a 25% surcharge.

8. Nature of Sewage Acceptable to Portsmouth. Sewage which Portsmouth accepts will be limited to domestic and sanitary sewage of the type normally discharged from retail establishments located at the Facility plus normal infiltration. Portsmouth will not accept industrial wastewater. Neither PDNED nor its tenants will knowingly discharge or allow the discharge into the Private Sewer Line any waste which is toxic or otherwise harmful to the wastewater treatment facilities of Portsmouth. In the event that such wastes are discharged into the system from the Facility, PDNED shall be responsible for all costs associated with remediation. PDNED agrees to comply, in the same manner as other Portsmouth sewer users, with any grease trap requirements.

9. Hook Up and Access Charge. PDNED shall pay to the City of Portsmouth a private sewer line hook up fee payable over a period of ten (10) years in the amount of One Million Dollars (\$1,000,000.00) with interest at a rate of 4.1% per annum. Each annual payment shall be in the amount of \$123,905 as set forth in the attached Exhibit B. The first annual payment shall be due and payable thirty (30) days following the issuance by the Town of Greenland of a Certificate of Occupancy for the first business to open at the Facility. Subsequent annual payments shall be made during each of the following nine (9) years on or before the same day of each such year. (For example, if the Certificate of Occupancy for a building is issued on April 1, 2009. The first payment would be due on May 1, 2009 and the following nine payments would be due on May 1 of the following nine years.) In addition, commencing with the eleventh



(11<sup>th</sup>) year anniversary of the issuance of the Certificate of Occupancy, PDNED shall pay an additional capital improvements charge equal to ten percent (10%) of the Usage Charge. This fee shall be payable annually, quarterly or monthly as determined from time to time by Portsmouth. A late fee of 5% of the annual payment shall be assessed for any late payment.

10. Usage Fee. PDNED shall be charged sewer rates, in accordance with the normal policies, procedures, and charges of Portsmouth, as they may from time to time be amended, as if PDNED were a resident of Portsmouth (the "Usage Charge") if any payment is not made when due, it shall be subject to simple interest at the rate of 18% per annum on the unpaid balance.

11. Security.

A. As security for the performance of obligation of PDNED to complete the construction of the Private Sewer Line as described in Paragraph 2, PDNED will name Portsmouth as dual obligee on the construction bond to be filed with the New Hampshire Department of Transportation ("NHDOT") to secure construction of the Private Sewer Line. To secure the payments provided for in Paragraph 9 hereof, PDNED has delivered a Mortgage in the form of Exhibit C attached hereto.

If PDNED fails to provide such security within the time period set forth above and otherwise to the reasonable satisfaction of Portsmouth, and if such failure continues for a period of ten (10) days following Portsmouth's delivery of written notice thereof to PDNED, then Portsmouth shall have the right to terminate this Agreement by written notice given to PDNED at any time following such ten day period but prior to PDNED's satisfactory delivery of the required security. Portsmouth may call upon the security to satisfy any obligations of PDNED to Portsmouth under this Agreement after first giving PDNED thirty (30) days written notice to cure the default.

B. As security for the payment of the usage fees to be paid pursuant to paragraph 10 hereof and the repair and maintenance obligations of PDNED set forth herein, PDNED has delivered and recorded a Municipal Lien Agreement in the form of Exhibit D attached hereto. Such Municipal Lien Agreement shall constitute a first lien of record upon the Property and PDNED has caused to be delivered to Portsmouth an opinion of counsel or other evidence satisfactory to Portsmouth that the Municipal Lien Agreement constitutes a first lien of record upon the Property.

12. Term. The term of this Agreement shall be thirty (30) years from the date of the execution of the Agreement. At the end of the original and each succeeding term and provided that PDNED is not in default beyond any applicable notice and cure periods at the time hereunder, this Agreement shall be automatically renewed for additional ten (10) year terms.

13. Assignment. The parties acknowledge that PDNED intends to create a three (3) Unit condominium on the Property with each building constituting a Unit and that the Units may be sold, leased or mortgaged and accordingly this Agreement and the rights and obligations hereunder shall be assignable by PDNED to the condominium association and the other owners, lessees or mortgagees of the Facility, or portions thereof, provided that prior written notice is given to the Portsmouth City Manager; provided, however, such assignment may only occur if (a) either (i) the condominium association and/or the new owner(s) assume the obligations of PDNED set forth herein, or (ii) PDNED remains fully responsible for the payment and performance of its obligations set forth herein and (b) the security posted pursuant to Paragraph 11 remains in place or substitute security acceptable to Portsmouth is delivered to Portsmouth. In all other cases, the prior approval of the Portsmouth City Manager shall be required, such approval not to be unreasonably withheld. The granting by PDNED of rights to flow sewerage

into the Portsmouth Sewer System to lessees or tenants of portions of the Property shall not be deemed an assignment of this Agreement. Any request for an approval of an assignment shall be in writing and shall be sent pursuant to the provisions of Paragraph 19 hereof, and provided the notice from PDNED to Portsmouth specifically states that the failure to respond within sixty (60) days of receipt shall be deemed approval, then the failure of Portsmouth to respond to such a request, in writing, within sixty (60) days of receipt of such request, shall be deemed the approval of such requested assignment. The notice shall be substantially in the form found at Exhibit E. If PDNED does not receive a response within thirty (30) days, it shall issue a second letter advising that consent to assignment is being sought and enclosing a copy of the original letter. PDNED shall also attempt to make contact with the City Manager by telephone or in person.

14. Sewer Uses. This Agreement authorizes use of the Portsmouth sewer system solely by the Facility of PDNED. Any other person and/or entity that wishes to utilize the Private Sewer Line installed by PDNED must have the approval of the City and of PDNED unless and until Portsmouth assumes ownership and repair and maintenance responsibility for the entire Private Sewer Line pursuant to its rights under Paragraph 1B.

15. Termination of Service. PDNED, its successors and assigns, agree to maintain compliance at all times with all ordinances, policies, and regulations of Portsmouth regarding sewer use and disposal. In the event of non-compliance or default under this Agreement, Portsmouth may terminate sewer use if PDNED unreasonably fails to remedy the non-compliance within thirty (30) days of written notice. PDNED shall have an opportunity for a hearing before the City Manager to show cause why service should or should not be terminated.

16. Amendment. This Agreement may be amended only by written agreement signed by both parties.

17. Right to Terminate. In the event that the Private Sewer Line is constructed and fully completed and put into use and subsequently PDNED is unable or unwilling to continue to use the Private Sewer Line, then PDNED shall have the right to terminate this Agreement on thirty (30) days written notice delivered to the Portsmouth City Manager; provided, however, such termination shall not terminate PDNED's obligation to make the payments provided for in Section 9, which obligation shall continue until payment in full. Upon such termination of this Agreement, Portsmouth shall cease receiving sewage from the Facility and PDNED shall be responsible for all costs of disconnecting the Private Sewer Line and PDNED shall have no further obligations to make any payments to Portsmouth after termination of the Agreement except as provided in Paragraphs 9 and 17. However, PDNED shall not be entitled to reimbursement of any payments made to Portsmouth prior to the effective date of termination.

18. Indemnity. PDNED shall be responsible to hold harmless and indemnify Portsmouth and its officers, agents, and employees from any and all costs of construction, maintenance, or use of any sewage facility constructed pursuant to this Agreement, including but not limited to, environmental harm or damage caused to Portsmouth or others attributable in any way to the construction, existence, or use of those facilities. This indemnity shall survive termination of this Agreement.

19. Notices. All notices given in connection with this Agreement shall be given by certified mail, return receipt requested, or by delivery to a recognized overnight delivery service which maintains tracking records and a confirmation of delivery, and shall be addressed as follows:

City of Portsmouth  
Attention: City Manager  
One Junkins Avenue  
Portsmouth, NH 03801

with a copy to:

City of Portsmouth  
Attention: City Attorney  
One Junkins Avenue  
Portsmouth, NH 03801

with a copy to:

City of Portsmouth  
Attn: Director of Public Works  
680 Peverly Hill Road  
Portsmouth, NH 03801

PDNED Greenland LLC  
One Wells Avenue  
Newton, Massachusetts 02459

with a copy to:

Fellman Law Group, PC  
Attn: Ronald Fellman, Esquire  
54 Jaconnet Street - Suite 300  
Newton, MA 02461

Any party hereto shall have the right to change the address at which it is given notice by written notice to the other parties sent in accordance with the first sentence hereof.

Copies of notices to PDNED shall be sent to any mortgagee of PDNED which has notified Portsmouth in the manner set forth in this Section 18, that it is a mortgagee of all or a portion of the Property and that it is entitled to receive copies of notices under this Section 18. Any such mortgagee shall have the right to cure any default or breach hereunder (i) within ten (10) days following its receipt of such notice if the default or breach involves the payment of



money, or (ii) within thirty (30) days following its receipt of such notice for other breaches or defaults (or if the mortgagee requires possession of the Property in order to cure, such additional period of time as may reasonably be required provided such mortgagee has commenced taking action to obtain possession of the Property), and Portsmouth shall not terminate this Agreement while any such cure is being prosecuted diligently and in good faith.

20. Governing Law. This Agreement shall be governed by and interpreted in accordance with the provisions of the laws of the State of New Hampshire.

21. Recording. Notice of this Agreement shall be filed with the Rockingham County Registry of Deeds.

Baeline A. O'Neil  
Witness

[Signature]  
Witness

City of Portsmouth  
By: its City Manager

By: [Signature]  
John P. Borunko  
its duly authorized City Manager

PDNED Greenland LLC  
By: PDNED Manager LLC

By: [Signature]  
its duly authorized \_\_\_\_\_

PDNED GREENLAND LLC, CITY OF PORTSMOUTH  
SERVICE AGREEMENT

**LIST OF EXHIBITS**

- A. Pump Station Plans
- B. Annual Payment Schedule
- C. Mortgage
- D. Municipal Lien Agreement
- E. Notice of Assignment

# **EXHIBIT A**

## **Greenland Pumping Station Force Main PDNED Greenland LLC Portsmouth, NH**

Prepared by:      Camp Dresser & McKee, Inc.  
                         Cambridge, MA

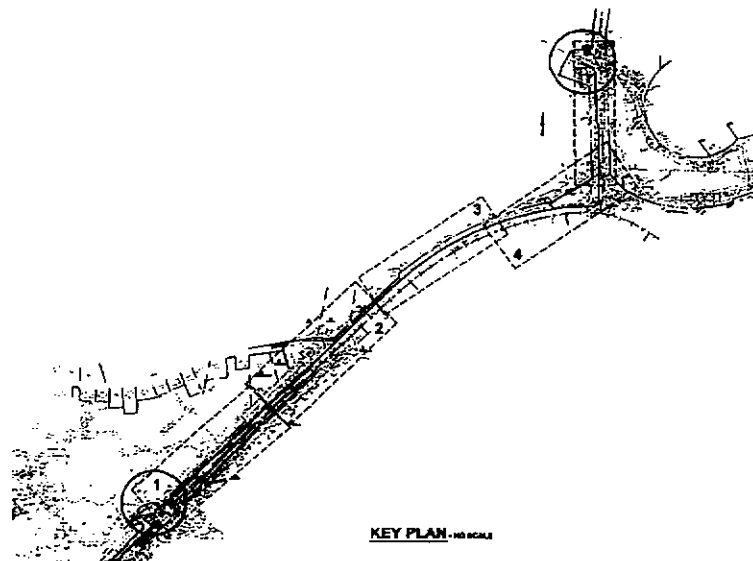
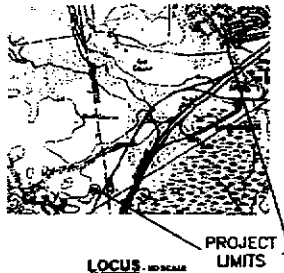
Dated:              October 2008

### **Full size copies of Exhibit A on file at:**

City of Portsmouth Public Works Department  
&  
New Hampshire Department of Environmental Services  
(DES File No. WWEB Project No. D2008-0910)

**PDNED GREENLAND LLC  
PORTSMOUTH, NEW HAMPSHIRE**

# **GREENLAND PUMPING STATION FORCE MAIN**



## **LIST OF DRAWINGS**

1. PLAN & PROFILE
2. PLAN & PROFILE
3. PLAN & PROFILE
4. PLAN & PROFILE
5. PLAN & PROFILE
6. DETAILS I
7. DETAILS II

**OCTOBER 2008**

**CDM** Camp Dresser & McKee Inc.  
**CAMBRIDGE, MASSACHUSETTS**

**NOTE:**  
CONTRACTOR TO NOTIFY JIM JALBERT (PHI PARK & RIDE) AT  
803-433-8886 OF UPCOMING WORK ONCE A USE AND  
OCCUPANCY AGREEMENT IS SIGNED.

**Exhibit A**

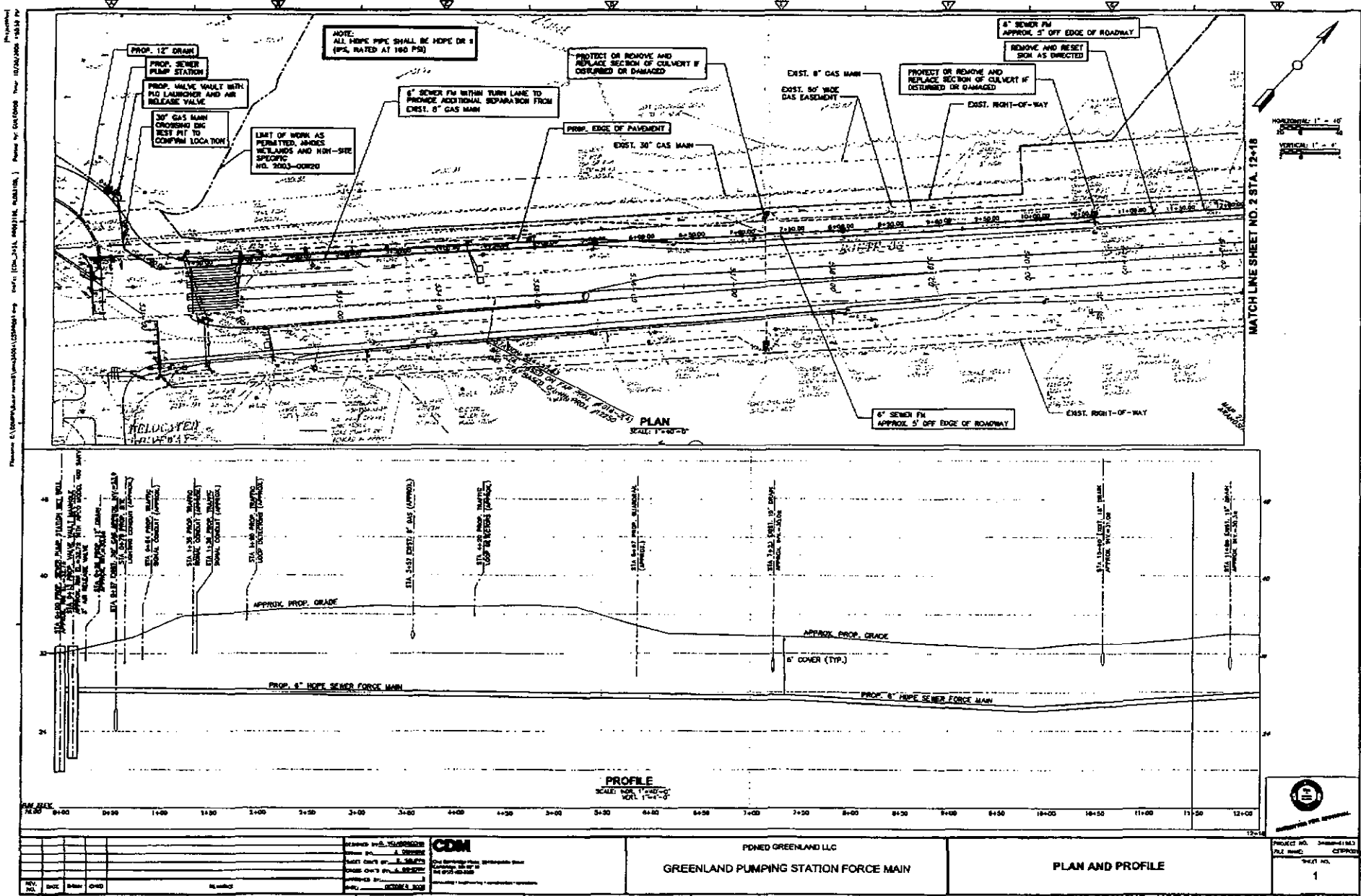


Exhibit A



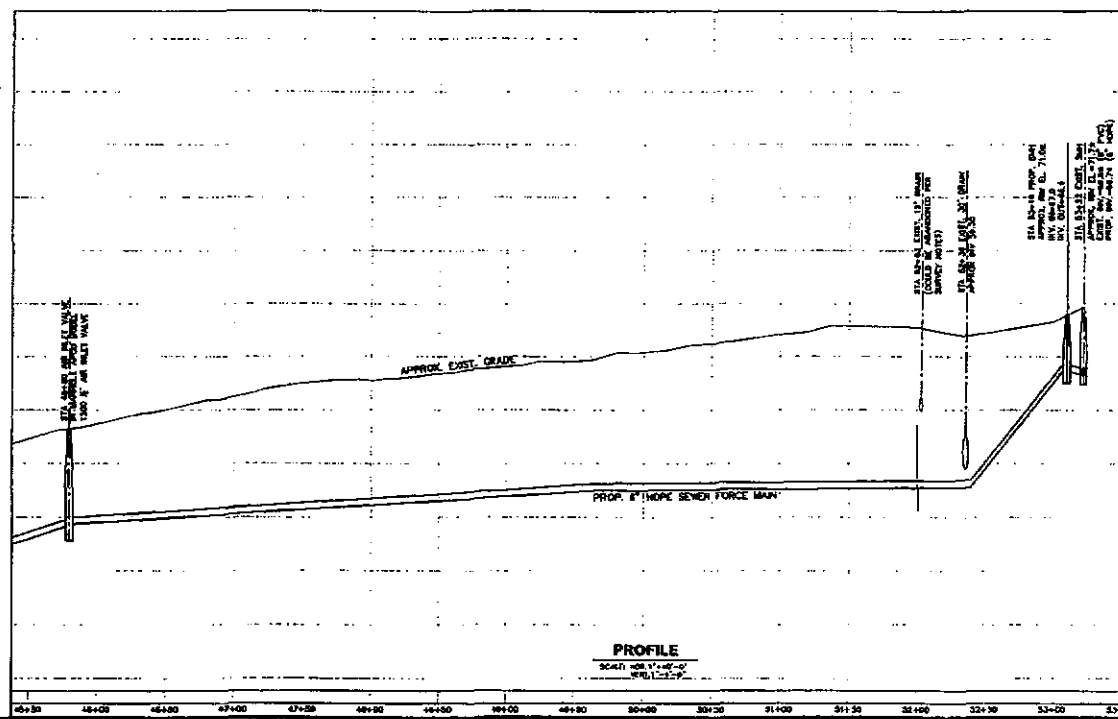
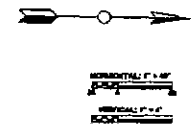
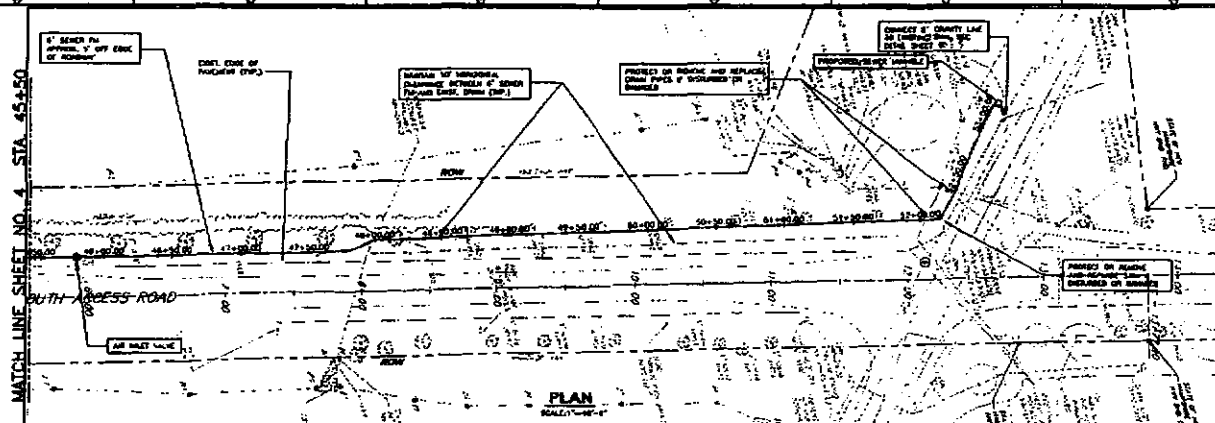






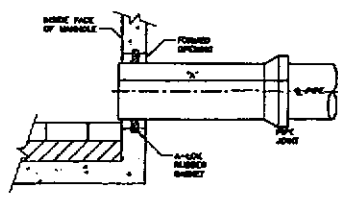
PROJECT NO. 34035-1-1983  
 SHEET NO. 5  
 DATE: 07/26/2000 10:33 AM  
 DRAWN BY: CDM  
 CHECKED BY: J. GORDON  
 APPROVED BY: J. GORDON  
 DATE: 07/26/2000

NOTE:  
 ALL HDPE PIPE SHALL BE HDPE OR II  
 (PS, RATED AT 100 PSI)

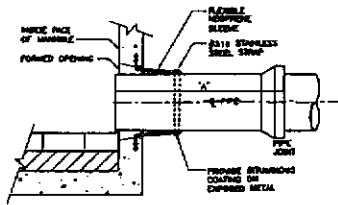


<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 10%;">REV</td> <td style="width: 10%;">DATE</td> <td style="width: 10%;">BY</td> <td style="width: 10%;">CHKD</td> <td style="width: 10%;">DESC</td> </tr> <tr> <td> </td> <td> </td> <td> </td> <td> </td> <td> </td> </tr> </table>	REV	DATE	BY	CHKD	DESC						<div style="text-align: center;">   <b>CDM</b>  <small>Consulting &amp; Design, Inc.</small>  <small>10000 Old Branch Road, Suite 200, Dallas, TX 75243</small>  <small>TEL: 214-635-1000 FAX: 214-635-1001</small> </div>	POND GREENLAND LLC <b>GREENLAND PUMPING STATION FORCE MAIN</b>	<b>PLAN AND PROFILE</b> SHEET NO. 5 PROJECT NO. 34035-1-1983
REV	DATE	BY	CHKD	DESC									

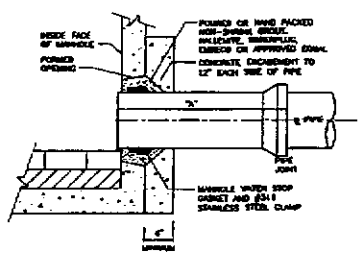
FINAL DRAWING - NOT RELEASED FOR CONSTRUCTION  
 Exhibit A



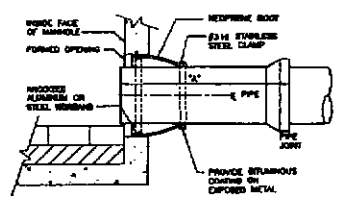
A-LOCK SYSTEM



FLEXIBLE SLIDE



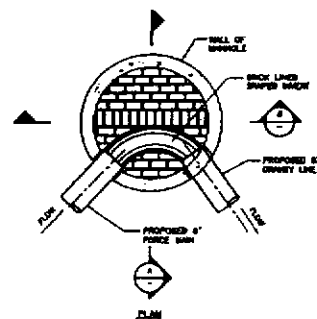
CONCRETE ENCASMENT



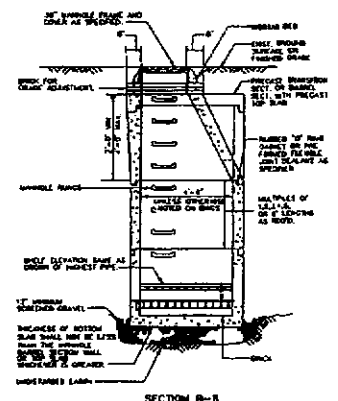
ROD-N-SEAL ROOT

PIPE CONNECTION DETAILS

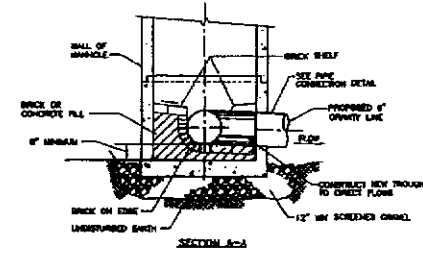
MINIMUM SPIRAL LENGTH	
PIPE MATERIAL	"A" (INCH)
PVC	3'-5'
HDPE	3'-3'



PLAN

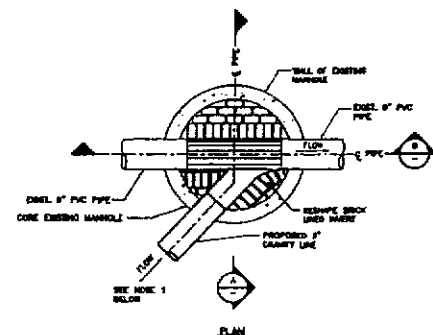


SECTION B-B

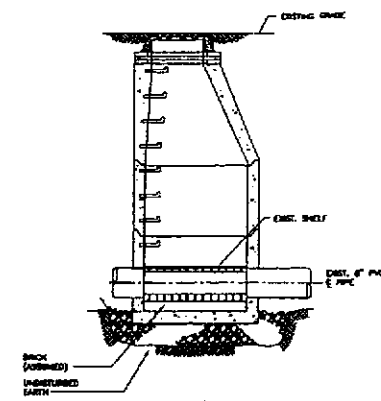


SECTION A-A

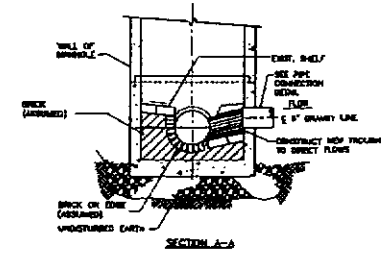
TYPICAL PRECAST SEWER MANHOLE



PLAN

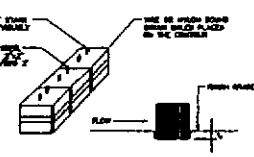


SECTION B-B



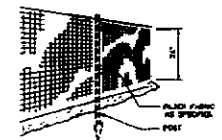
SECTION A-A

EXISTING SEWER MANHOLE

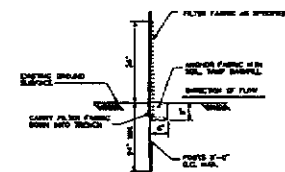


TEMPORARY STAKED HAY BALE

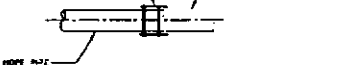
NOTE:  
 ELEVATION CONTROL IN ALL AREAS SHALL CONSIST OF SETTING TWO ROWS OF HAY BALES, TWO ROWS OF SEGMENT FENCE OR ONE ROW OF EACH.



SEDIMENT FENCE



TYPICAL CONNECTION OF HDPE PIPE WITH DUCTILE IRON PIPE AT VALVE VAULT AND AIR INLET MANHOLES



NOTE 1:  
 CONTRACTOR TO CONFORM EXISTING AROUND ELEVATIONS PRIOR TO SEWER CONNECTIONS. CONE EXISTING MANHOLE AND CONNECT PROPOSED DUCTILE IRON INTO MANHOLE. CONTRACTOR TO CONFORM WITH OWNER AND ENGINEER PRIOR TO ADJUSTING EXISTING BRICK TO CREATE A TROUGH TO CARRY FLOW FROM PROPOSED FORCE MAIN TO EXISTING CHANNEL. CONTRACTOR TO CONTROL EXISTING FLOWS DURING INSTALLATION OF THE DUCTILE LINE.



PROJECT NO.	3400-41143
FILE NAME	GREENLAND
SHEET NO.	6

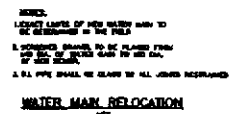
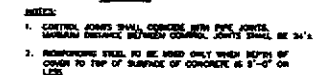
REV.	DATE	BY	CHKD.	REVISION
1	10/26/2006	jgreenland		ISSUED FOR CONSTRUCTION

DESIGNED BY: J. GREENLAND	CDM
CHECKED BY: J. GREENLAND	
DATE: 10/26/2006	
PROJECT: GREENLAND PUMPING STATION	
DATE: 10/26/2006	

PROJECT NO.	3400-41143
FILE NAME	GREENLAND
SHEET NO.	6

PROJECT NO.	3400-41143
FILE NAME	GREENLAND
SHEET NO.	6

\* MAIL  
MEMBER UNION MUST BE FORCED TO BE REWARDED  
IN EACH BOX OF BOOKS AND RECORDS ARE ON THE MARCH  
END OF THE AND FROM PLAIN.



**CDM**  
Camp Dresser & McKee  
One Cambridge Way, 3d Floor, Suite 300  
Cambridge, MA 02142  
Tel 617/452-4000

GREENLAND PUMPING STATION FORCE MAIN

### MISCELLANEOUS DETAILS

PROJECT NO.	04434-41443
FILE NAME:	CITIZENS
SHEET NO.	7



## **EXHIBIT B**

### **PAYMENT SCHEDULE**

<b>Year *</b>	<b>Amount</b>
2009	\$100,000
2010	\$123,905
2011	\$123,905
2012	\$123,905
2013	\$123,905
2014	\$123,905
2015	\$123,905
2016	\$123,905
2017	\$123,905
2018	\$123,905

- \* First payment is due thirty days after issuance of first Certificate of Occupancy by Town of Greenland and annually thereafter on or before the same day.

## **EXHIBIT C**

### **MORTGAGE**

KNOW ALL PERSONS BY THESE PRESENTS that PDNED Greenland LLC, a Delaware limited liability company having a principal place of business at and mailing address of care or Packard Development, LLC, One Wells Avenue, Newton, Massachusetts 02459 (hereinafter collectively with its successors, legal representatives and assigns referred to as the "Mortgagor") for consideration paid by the City of Portsmouth, a New Hampshire municipal corporation having a principal place of business at and mailing address of One Junkins Avenue, Portsmouth, New Hampshire 03801 (hereinafter collectively with its successors, legal representatives, and assigns, referred to as the "Mortgagee"), the receipt and sufficiency of which Mortgagor does hereby acknowledge, hereby grants to Mortgagee, with Mortgage Covenants, to secure the:

A. Payment of the principal sum of One Million Dollars (\$1,000,000.00), together with interest thereon provided for in Paragraph 9 of a certain Agreement for Sewer Service dated as of June 1, 2009, by and between Mortgagor and Mortgagee (the "Agreement"), when and in the manner required thereby;

B. Payment of all sums now or hereafter advanced by the Mortgagee in accordance herewith to protect the security of this Mortgage with interest thereon as provided for hereinafter; the premises located in Greenland and Portsmouth, as more particularly described in Schedule A attached hereto and incorporated herein by reference (the "Mortgaged Premises").

Together with all and singular of the tenements, hereditaments, easements, rights of way, licenses, profits privileges and other appurtenances belonging, relating or pertaining to the Mortgaged Premises.

AND for the consideration aforesaid, Mortgagor hereby releases, discharges and waives all rights of exemption from attachment and levy or sale on execution and all other rights of any and every nature whatsoever in and to the Mortgaged Premises and in each and every portion thereof as are or may hereafter be reserved, secured or afforded Mortgagor under, or by virtue of the laws of the State of New Hampshire or the United States of America including, without limiting the generality of the foregoing, any exemptions now or hereafter available to Mortgagor

under Section 522 of the federal Bankruptcy Code of 1978, 11 USC § 522, as such statute now exists or is amended hereafter, or any successor statute of similar import (the "Bankruptcy Code"), or any successor statute or similar import and all other rights, title and interests of any and every nature whatsoever of Mortgagor in and to the Mortgaged Premises.

## SECTION 1 Additional Security

1.01 As security for the payment and performance of the obligations and agreements secured hereby, Mortgagor hereby collaterally assigns, transfers and sets over unto Mortgagee, Mortgagor's rights to be contained in the Declaration of Greenland Meadows Condominium (the "Declaration") to create Unit 3 and convert the Convertible Land 3 into Unit 3, all as more particularly described in the Declaration which is to be recorded in the Rockingham County Registry of Deeds; provided, however, that so long as Mortgagor is not in default hereunder then Mortgagor shall have the right to exercise its rights as Declarant under the Declaration and to create Unit 3 and convert the convertible area into Unit 3.

1.02 Collaterally assigns, transfers, and sets over unto Mortgagee all leases of, and rental agreements pertaining to Convertible Land 3 and/or Unit 3, including but not limited to a Ground Lease to the Stop & Shop Supermarket Company, LLC dated December 8, 2006, together with all of Mortgagor's rights, title, and interests as lessor thereunder, and, in furtherance of this assignment, Mortgagor agrees not to cancel, accept a surrender of, reduce the rent payable under or term of, or otherwise amend any such lease in any respect which would adversely affect the Mortgagee without Mortgagee's prior, written consent. Nothing herein shall obligate Mortgagee to perform the duties and obligations of Mortgagor as lessor under any such lease; all of which duties and obligations, Mortgagor hereby covenants and agrees to punctually and completely perform.

## SECTION 2 Mortgagor's Continuing Warranties

In addition to Mortgagor's representations and warranties which are included within the term Mortgage Covenants and incorporated herein by operation of law, Mortgagor acknowledges, represents and warrants to Mortgagee that:

2.01 Mortgagor is a limited liability company duly organized and validly existing under the laws of the State of Delaware and is duly authorized to conduct its business and own its property in the State of New Hampshire.

2.02 Mortgagor has fully power and authority to enter into this Mortgage and the Agreement and to incur the obligations provided for herein and in the Agreement, all of which have been duly authorized by all proper and necessary entity action.

**SECTION 3**  
**Certain Covenants of Mortgagor**

Mortgagor further covenants and agrees with Mortgagee as follows:

3.01 Mortgagor will pay the obligations hereby secured and interest thereon and all other sums becoming due or recoverable thereunder as, when and in the manner required hereby.

3.02 Mortgagor: (i) will not suffer any strip or waste of the Mortgaged Premises; (ii) shall keep and maintain the Mortgaged Premises in such repair and condition as the same now exist or as bettered hereafter and shall keep the Mortgaged Premises in good working condition, reasonable wear and tear and damage from insured casualties excepted; and (iii) has complied and will comply at all times hereafter with any and all federal and state statutes, local laws and ordinances and administrative regulations promulgated under any of the foregoing which govern, restrict or regulate the use or occupation or the manner of use or occupation of the Mortgaged Premises including, without limitation, building, fire, planning, subdivision and zoning laws, codes and regulations.

3.03 Mortgagor will pay or cause to be paid, when due, all taxes, condominium assessments, special assessments, utility rates, water and sewerage charges, insurance premiums on policies of insurance required hereunder and all other charges of any and every nature whatsoever which at any time are assessed or levied against or upon the Mortgaged Premises (the "Charge(s)"). Mortgagee may pay all, or any, portion of any such Charges together with any interest or penalties thereon, but in no event shall be obligated to do so. In the event that Mortgagee shall pay all, or any portion of any such Charges, the amount so paid by Mortgagee shall be secured hereby, payable on demand and, until so paid by Mortgagor, shall bear interest at a variable rate of interest equal to the Prime Rate as published by the Wall Street Journal plus two percent (2%) (the "Default Rate").

3.04 In the event the Condominium Unit Owner's Association fails to do so, Mortgagor shall or shall cause its tenant to procure, pay the premiums on and maintain in full force and effect at all times a policy of Comprehensive Public Liability Insurance naming Mortgagee as an additional named insured providing coverage in amounts not less than \$1,000,000.00 per each occurrence. All insurance now or hereafter required to be procured, paid for and maintained under this Mortgage shall be effected by valid and enforceable policies of insurance issued by insurers authorized to transact business within the State of New Hampshire. Mortgagor will deliver to Mortgagee, a true and complete duplicate of each policy of insurance required hereunder or a Certificate of Insurance establishing the issuance and existence thereof. Not later than ten (10) days prior to the expiration date of any such policy of insurance, Mortgagor will deliver to Mortgagee, at Mortgagee's option, an original renewal or replacement policy thereof or a true and complete duplicate thereof or a Certificate of Insurance establishing the issuance and existence thereof.

3.05 Mortgagor will pay, when due all assessments imposed by the Unit Owner's Association.

3.06 Mortgagee, acting by and through officers, employees and agents, may come upon, and enter the Mortgaged Premises at reasonable times and upon reasonable advance notice for the purpose of inspecting the same.

3.7 If any action or proceeding be commenced, except an action to foreclose this Mortgage or to collect the indebtedness hereby secured, to which Mortgagee is made a party by reason of the execution of this Mortgage or the Agreement or in which it becomes necessary to defend or uphold the validity, enforceability or priority of this Mortgage, all costs, expenses, judgments, decrees, orders and damages incurred by, or rendered or awarded against Mortgagee including, without limitation, attorneys' fees in, or as a result of any such litigation will be paid by Mortgagor together with interest thereon from date of payment at the Default Rate, and any such sum and the interest thereon shall be payable on demand, secured hereby and have the benefit of the lien hereby created and its priority.

3.8 Within ten (10) days after being requested to do so by the other, Mortgagee and Mortgagor, as the case may be, will furnish a duly acknowledged, written statement setting forth the amount of the debt secured by this Mortgage, and stating either that no offsets, counterclaims, recoupments or defenses exist to, or against such debt or, if such offsets, counterclaims, recoupments or defenses are alleged to exist, the nature and amount thereof.

3.9 Mortgagor shall not, except after notice to Mortgagee and with Mortgagee's prior written consent, partition or subdivide the Mortgaged Premises or consent to:

(a) the abandonment or termination of the Condominium, except for abandonment or termination provided by law in the case of substantial destruction by fire or other casualty or in the case of a taking by condemnation or eminent domain;

(b) any material amendment to the Declaration of Condominium (other than an amendment to create Units 1 and 3) or the Bylaws, including, but not limited to, any amendment which would change the percentage interests of the unit owners in the Condominium.

#### SECTION 4 Events of Default

The Mortgagor further covenants and agrees that the occurrence of any one or more of the following events shall constitute a default hereunder:

4.01 Any default by Mortgagor in paying any installment due Mortgagee under the terms, conditions and covenants of Paragraph 9 of the Agreement as, when and in the manner required thereby which is not cured within such grace period as may be afforded with respect to such default under the terms of the Agreement, if any.

4.02 Any other breach of, or default under any one or more of the statutory conditions or the representations, warranties, terms, conditions or covenants of this Mortgage, which is not cured within thirty (30) days from the date of such breach or default; provided, however, in the

event any such breach or default is not capable of being cured within thirty (30) days, then Mortgagor shall have an additional period of time to effectuate a cure or remedy (but not exceeding 90 days), provided that Mortgagor is diligently and continuously pursuing a cure or remedy.

## SECTION 5

### Effect of an Event of Default

Upon the occurrence of any Event of Default hereunder and at all times thereafter until Mortgagee shall have executed a written waiver of such Event of Default, Mortgagee, at Mortgagee's option, may:

5.01 Declare the entire unpaid balance due under Paragraph 9 of the Agreement including, without limitation, principal and accrued interest immediately due and payable in full without notice or demand of any nature whatsoever.

5.02 Exercise the statutory power of sale hereinafter granted to Mortgagee or any other right, privilege or remedy available to the Mortgagee hereunder or under any statute or rule of law or equity; all of which are cumulative and may be exercised by their Mortgagee singly, concurrently or successively at the Mortgagee's option, and as often as the occasion therefor shall occur in Mortgagee's opinion.

## SECTION 6

### Statutory Conditions and Power of Sale

This Mortgage is upon the statutory conditions, as well as the terms, conditions and covenants contained herein for any breach of which Mortgagee shall, in addition to all other rights and powers granted or given hereunder, have the statutory power of sale.

## SECTION 7

### Conduct of Foreclosure Sale and Marshalling Waiver

And it is agreed that if Mortgagee elects to exercise the statutory power of sale herein granted to Mortgagee by Mortgagor, Mortgagee may (subject only to the provisions of RSA 479 or any successor statute of similar import then in effect which governs the foreclosure of New Hampshire mortgages):

7.01 Hold any foreclosure sale of the Mortgaged Premises at a public auction or auctions held on the Mortgaged Premises or the common area appurtenant thereto.

7.02 Apply the proceeds of any foreclosure sale of all, or any portion of the Mortgaged Premises to the payment of (i) all costs and expenses thereof, including, but not limited to, attorney's, appraiser's and auctioneer's fees and advertising costs, (ii) the obligation of Mortgagor to Mortgagee secured by this Mortgage including, without limitation, the indebtedness evidenced by, or arising under Paragraph 9 of the Agreement, in such order of preference and priority as

Mortgagee deems appropriate, and (iii) pay over any remaining balance of such proceeds to Mortgagor or for Mortgagor's account.

## SECTION 8 Miscellaneous

In the interpretation of this Mortgage, the following definitions and rules of construction shall apply unless the context of a provision otherwise specifies:

8.01 The terms "Mortgage Covenants", "statutory conditions" and "statutory power of sale" shall have the same meaning as attributed to such terms by RSA 477:29 (2d ed. 1968).

8.02 No delay, failure, omission or refusal on the part of Mortgagee in exercising any privilege, remedy or right against Mortgagor or any other party or which are available to Mortgagee under the terms of this Mortgage or the Agreement or any statute, equitable doctrine or rule of law shall operate as, or be deemed to be a waiver thereof. No waiver of any such privilege, remedy or right against Mortgagor or any other party shall be effective unless made in a written instrument which has been signed by Mortgagee. An effective, written waiver by Mortgagee of any privilege, remedy or right against Mortgagor or any other party on one occasion shall not bar, or be deemed to preclude the exercise of such privilege, remedy or right by Mortgagee in the future should the occasion therefor occur.

8.03 Any undefined word, term, or phrase which is used herein and defined in the New Hampshire Uniform Commercial Code, RSA Chapter 21 of the New Hampshire Revised Statutes Annotated, as amended, shall have the meaning stated therein.

8.04 All of the words, terms and phrases in this Mortgage, regardless of the number and gender in which used, shall be construed to include any other number (singular or plural) and any other gender (masculine, feminine or neuter) as the context of any provision hereof may require the same as had any such word, term or phrase been fully and properly written in number and gender.

8.05 The provisions of this Mortgage are severable, such that if any provision, condition or covenant hereof shall be declared invalid, void or unenforceable by any court of competent jurisdiction, the remainder hereof shall be unaffected thereby.

This Mortgage shall be binding upon Mortgagor and Mortgagor's successors, legal representatives and assigns and inure to the benefit of Mortgagee and its successors, legal representatives and assigns.



IN WITNESS WHEREOF, PDNED Greenland LLC has caused this Mortgage to be executed by its undersigned officer hereunto duly authorized, as of this the first day of June, 2009.

PDNED Greenland LLC

By its Manager,  
PDNED Manager LLC  
a Delaware limited liability company

By: \_\_\_\_\_  
Armen Aftandilian, a Manager

COMMONWEALTH OF MASSACHUSETTS  
COUNTY OF MIDDLESEX

The foregoing instrument was acknowledged before me this \_\_\_ day of \_\_\_\_\_, 2009, by Armen Aftandilian, a Manager of PDNED Manager LLC, as Manager of PDNED Greenland LLC, a Delaware limited liability company, on behalf of the company.

\_\_\_\_\_  
Justice of the Peace/Notary Public

## **SCHEDULE A**

Legal description

## MUNICIPAL LIEN AGREEMENT

This Agreement made as of the first day of January, 2008, by and between **PDNED Greenland LLC**, a Delaware limited liability company, having a principal place of business at and a mailing address of c/o Packard Development, One Wells Avenue, Newton, Massachusetts 02459 (hereinafter referred to as "PDNED") and the **City of Portsmouth**, a municipal corporation organized and existing under the laws of the State of New Hampshire, having a principal place of business at and a mailing address of City Hall, One Junkins Avenue, Portsmouth, New Hampshire 03801.

## RECITALS

**WHEREAS**, PDNED has acquired fee simple title to certain tracts of land located in the Town of Greenland and the City of Portsmouth, Rockingham County, State of New Hampshire, said parcels being more particularly described in Exhibit A attached hereto (the "Property") and intends to construct a three building retail development on that portion of the Property which is situated in the Town of Greenland (the "Project"); and

**WHEREAS**, there currently does not exist an Inter-Municipal Agreement between the City of Portsmouth and the Town of Greenland with respect to the provision of sewer service by Portsmouth to properties located in the Town of Greenland and consequently, PDNED and Portsmouth have simultaneously with the execution of this Agreement entered into an Agreement Between City of Portsmouth and PDNED Development for Sewer Service, Greenland, NH (the "Sewer Agreement") permitting the Project to dispose of its sanitary sewerage into the Portsmouth municipal system; and

**WHEREAS**, New Hampshire Revised Statutes Annotated Chapter 149-I:11 provides that in the collection of sewer charges, municipalities shall have the same liens and use the same collection procedures as are authorized by RSA 38:22 which provides, in part, that all charges for services furnished to patrons by a municipality owned utility shall create a lien upon the real estate where such services are furnished and further provides that upon non-payment of such municipal charges, the Tax Collector of the municipality may enforce the lien and collect the charges in the same manner as the Tax Collector may collect and enforce the lien for real estate taxes; and

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ROCKINGHAM COUNTY  
REGISTRY OF DEEDS

**WHEREAS**, New Hampshire law provides that the municipal lien for real estate taxes and municipal charges is a first priority lien which supersedes and has priority over prerecorded mortgages; and

**WHEREAS**, doubt exists as to the ability of a tax collector in one municipality to enforce a lien on property in another municipality in the absence of an Inter-Municipal Agreement; and

**WHEREAS**, Portsmouth desires to be assured that Portsmouth's lien for the provision of municipal sewer service to the Project has the same priority and Portsmouth has the same enforcement rights as would be available to Portsmouth if the Project were located in Portsmouth and not in Greenland; and

**WHEREAS**, PDNED desires to confirm to Portsmouth that Portsmouth's lien for the provision of sewer services shall be a first priority lien on the Property.

**NOW, THEREFORE**, in consideration of the execution and delivery of the Sewer Agreement and in further consideration of the provision of sewer service to the Property, PDNED hereby grants to the City of Portsmouth, with mortgage covenants, to secure any and all obligations of PDNED, its successors and assigns, pursuant to a Sewer Agreement (other than the agreement set forth in Paragraph 9 of the Sewer Agreement to pay the access fee of One Million Dollars (\$1,000,000.00) plus interest for which separate security is being provided) (the "Obligations"), a lien upon the real estate described as follows:

Those certain tracts or parcels of land, with any improvements now or hereafter situated thereon, lying and being situated in the Town of Greenland and the City of Portsmouth, County of Rockingham, State of New Hampshire, being more particularly bounded and described in Exhibit A attached hereto and made a part hereof.

The lien granted hereby is upon the condition that PDNED shall pay and perform all of the Obligations and is also upon the statutory conditions, for any breach of which Portsmouth shall have the statutory power of sale. Advertising of any foreclosure shall be in a newspaper published in Rockingham County. The proceeds of any such sale shall be charged with the expenses thereof, including reasonable attorneys' fees. PDNED shall pay to Portsmouth all costs of collections, including reasonable attorneys' fees, in the event foreclosure proceedings are commenced and completed or in the event foreclosure proceedings are commenced in good faith and discontinued.

IN WITNESS WHEREOF, PDNED Greenland LLC has caused this Municipal Lien Agreement to be executed as of this the 8<sup>th</sup> day of January, 2008, by its undersigned manager, hereunto duly authorized.

PDNED GREENLAND LLC  
A Delaware limited liability company

By: 

Armen Aftandilian, a Manager

The foregoing Municipal Lien Agreement is accepted and the provisions hereof agreed to by the City of Portsmouth as of the 11 day of January, 2008.

CITY OF PORTSMOUTH

By: 

Name: John P. Bohenko

Title: City manager

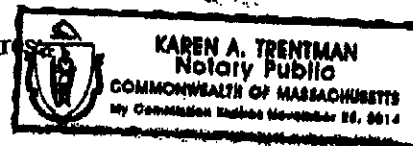
COMMONWEALTH OF MASSACHUSETTS  
COUNTY OF MIDDLESEX

On this, the 8<sup>th</sup> day of January, 2008, personally appeared Armen Aftandilian, being the Manager of PDNED Greenland LLC, a New Hampshire limited liability company, and acknowledged the foregoing on behalf of the company.

Before me,

  
Notary Public

My Commission Expires:



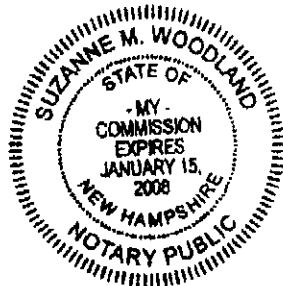
STATE OF NEW HAMPSHIRE  
COUNTY OF ROCKINGHAM

On this, the 11 day of January, 2008, personally appeared John P. Bohenko, being the City Manager of the City of Portsmouth, a municipal corporation organized and existing under the laws of the State of New Hampshire, and acknowledged the foregoing on behalf of the City.

Before me,

  
Notary Public

My Commission Expires:



**EXHIBIT A**

**LEGAL DESCRIPTION**

A PARCEL OF LAND WITH THE BUILDINGS THEREON, SITUATED IN THE TOWN OF GREENLAND AND CITY OF PORTSMOUTH, ROCKINGHAM COUNTY, STATE OF NEW HAMPSHIRE AND BOUNDED AND DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT AT THE INTERSECTION OF THE WESTERLY SIDELINE OF ROUTE 33 AND THE NORTHERLY SIDELINE OF LAND OF THE B & M RAILROAD, THENCE;

S 73° 01' 45" W, ALONG SAID RAILROAD LAND, A DISTANCE OF 960.81', MORE OR LESS, TO A POINT IN A STONE WALL AT LAND NOW OR FORMERLY OF NOEL HICKEY AND GEORGETTE GOODMAN, THENCE;

N 4° 16' 34" E, ALONG SAID STONE WALL AND HICKEY/GOODMAN LAND, A DISTANCE OF 53.48', MORE OR LESS, TO A POINT, THENCE;

N 7° 05' 27" E, ALONG SAID STONE WALL, HICKEY/GOODMAN LAND AND LAND NOW OR FORMERLY OF JOHN AND ERICA COOMBS, A DISTANCE OF 255.29', MORE OR LESS, TO A POINT, THENCE;

N 9° 34' 10" E, ALONG SAID STONE WALL AND SAID COOMBS LAND, PASSING THROUGH A DRILL HOLE IN SAID WALL, A DISTANCE OF 106.97', MORE OR LESS, TO THE CENTERLINE OF PICKERING BROOK, THENCE;

MEANDERING NORTHWESTERLY ALONG THE CENTERLINE OF SAID PICKERING BROOK, A DISTANCE OF 1,475', MORE OR LESS, TO A POINT ON THE SOUTHERLY SIDELINE OF PORTSMOUTH AVENUE AND NEAR THE END OF A STONE CULVERT, THENCE;

N 46° 11' 26" E, ALONG SAID PORTSMOUTH AVENUE, A DISTANCE OF 93.38', MORE OR LESS, TO AN IRON PIPE AT LAND NOW OR FORMERLY OF GEORGE AND JUANITA SAUNDERS, THENCE;

ALONG SAID SAUNDERS LAND BY THE FOLLOWING COURSES:

S 23° 45' 46" E, A DISTANCE OF 124.57', MORE OR LESS, TO AN IRON PIPE, THENCE;

N 62° 46' 07" E, A DISTANCE OF 100.12', MORE OR LESS, TO AN IRON PIPE AT LAND NOW OR FORMERLY OF PINE REALTY TRUST, THENCE;

ALONG SAID TRUST LAND BY THE FOLLOWING COURSES:

S 23° 36' 28" E, A DISTANCE OF 100.00', MORE OR LESS, TO A POINT, THENCE;

N 66° 15' 57" E, A DISTANCE OF 150.33', MORE OR LESS, TO AN IRON PIPE, THENCE;

N 23° 51' 48" W, A DISTANCE OF 225.00', MORE OR LESS, TO AN IRON PIPE ON THE SOUTHERLY SIDELINE OF SAID PORTSMOUTH AVENUE, THENCE;

N 62° 28' 13" E, ALONG SAID PORTSMOUTH AVENUE, A DISTANCE OF 258.90', MORE OR LESS, TO A DRILL HOLE AT LAND NOW OR FORMERLY OF JOHN AND LISA STAPLES, THENCE;

ALONG SAID STAPLES LAND BY THE FOLLOWING COURSES:

S 26° 54' 21" E, A DISTANCE OF 200.00', MORE OR LESS, TO A POINT, THENCE;

N 62° 50' 39" E, A DISTANCE OF 100.00', MORE OR LESS, TO A POINT; THENCE  
S 26° 47' 21" E, A DISTANCE OF 100.00', MORE OR LESS, TO A POINT, AT LAND NOW OR,  
FORMERLY OF DAWN AND LEO CARON, THENCE;

S 26° 47' 21" E, ALONG SAID CARON LAND, A DISTANCE OF 100.00', MORE OR LESS, TO A  
POINT, THENCE;

N 63° 05' 39" E, ALONG SAID CARON LAND AND LAND NOW OR FORMERLY OF ROBERT  
AND MARY MCDONOUGH, A DISTANCE OF 174.60', MORE OR LESS, TO A POINT, THENCE;

ALONG SAID MCDONOUGH LAND BY THE FOLLOWING COURSES:

S 26° 53' 26" E, A DISTANCE OF 99.64', MORE OR LESS, TO A CONCRETE BOUND, THENCE;  
N 73° 28' 02" E, A DISTANCE OF 175.69', MORE OR LESS, TO A POINT, THENCE;  
S 87° 42' 36" E, A DISTANCE OF 385.79', MORE OR LESS, TO AN IRON PIPE, THENCE;  
N 0° 01' 38" W, A DISTANCE OF 494.63', MORE OR LESS, PASSING THROUGH AN IRON PIPE, TO  
A POINT ON THE SOUTHERLY SIDELINE OF SAID PORTSMOUTH AVENUE, THENCE;

S 87° 57' 43" E, ALONG SAID PORTSMOUTH AVENUE, A DISTANCE OF 49.39', MORE OR LESS,  
TO AN IRON PIPE AND LAND NOW OR FORMERLY OF JANET AND BRIAN GOEDDEKE,  
THENCE;

S 0° 22' 10" E, ALONG SAID GOEDDEKE LAND, A DISTANCE OF 101.07', MORE OR LESS, TO AN  
IRON PIPE, THENCE;

S 87° 49' 26" E, ALONG SAID GOEDDEKE LAND AND LAND NOW OR FORMERLY OF THE  
JUDITH A. MELLO TRUST, A DISTANCE OF 223.48', MORE OR LESS, TO A POINT AT LAND  
NOW OR FORMERLY OF RICHARD TAYLOR, THENCE;

ALONG SAID TAYLOR LAND BY THE FOLLOWING COURSES:

S 1° 29' 43" W, A DISTANCE OF 50.11', MORE OR LESS, TO AN IRON PIPE, THENCE;  
N 86° 39' 12" E, A DISTANCE OF 111.62', MORE OR LESS, TO AN IRON PIPE AT LAND NOW OR  
FORMERLY OF MICHAEL BUNKER, THENCE;

ALONG BUNKER LAND BY THE FOLLOWING COURSES:

S 3° 31' 06" E, A DISTANCE OF 50.23', MORE OR LESS, TO AN IRON PIPE, THENCE;  
N 86° 49' 58" E, A DISTANCE OF 100.02', MORE OR LESS, TO AN IRON PIPE, THENCE;  
N 3° 09' 04" W, A DISTANCE OF 99.96', MORE OR LESS, TO AN IRON PIPE AT LAND NOW OR  
FORMERLY OF ROBERT FURINA, THENCE;

ALONG SAID FURINA LAND BY THE FOLLOWING COURSES:

N 86° 47' 39" E, A DISTANCE OF 50.50', MORE OR LESS, TO A POINT, THENCE;  
N 79° 02' 23" E, A DISTANCE OF 100.07', MORE OR LESS, TO A POINT, THENCE;

N 67° 53' 40" E, ALONG SAID FURINA LAND, PASSING THROUGH AN IRON PIN AT LAND  
NOW OR FORMERLY OF JEFFREY AND KATHLEEN GRAVES AND PASSING THROUGH A REBAR  
FOUND AT LAND NOW OR FORMERLY OF ROBERT AND THERESA KRASKO, A DISTANCE OF  
234.70', MORE OR LESS, TO AN IRON PIPE AT LAND NOW OR FORMERLY OF RANSOM, JR.  
AND RUTH CARLTON, THENCE;

ALONG SAID CARLTON LAND BY THE FOLLOWING COURSES:

S 22° 24' 08" E, A DISTANCE OF 100.34', MORE OR LESS, TO AN IRON PIPE, THENCE;  
N 67° 54' 38" E, A DISTANCE OF 100.70', MORE OR LESS, TO A WOODEN STAKE AT LAND  
NOW OR FORMERLY OF MARILYN TWOMBLY, THENCE;

ALONG SAID TWOMBLY LAND BY THE FOLLOWING COURSES:

S 21° 55' 52" E, A DISTANCE OF 16.40', MORE OR LESS, TO AN IRON PIPE, THENCE;  
N 10° 23' 46" E, A DISTANCE OF 105.16', MORE OR LESS, TO AN IRON PIPE AT LAND NOW OR  
FORMERLY OF MICHAEL AND MONIQUE SHELVIN, THENCE;

ALONG SAID SHELVIN LAND AND CROSSING INTO THE CITY OF PORTSMOUTH, BY THE  
FOLLOWING COURSES:

N 81° 32' 49" E, A DISTANCE OF 162.59', MORE OR LESS, TO AN IRON PIPE, THENCE;  
N 1° 41' 27" W, A DISTANCE OF 149.18', MORE OR LESS, TO A POINT ON THE SIDELINE OF  
SAID PORTSMOUTH AVENUE, THENCE;

ALONG SAID PORTSMOUTH AVENUE BY THE FOLLOWING COURSES:

N 80° 41' 38" E, A DISTANCE OF 2.76', MORE OR LESS, TO A POINT, THENCE;  
N 82° 15' 38" E, A DISTANCE OF 58.89', MORE OR LESS, TO AN IRON PIPE AT LAND NOW OR  
FORMERLY OF ROBERT AND RUTH KEENE, THENCE;

ALONG SAID KEENE LAND BY THE FOLLOWING COURSES:

S 1° 53' 18" E, A DISTANCE OF 100.14', MORE OR LESS, TO AN IRON PIPE, THENCE;  
N 82° 40' 00" E, A DISTANCE OF 102.80', MORE OR LESS, TO AN IRON PIPE AT LAND NOW OR  
FORMERLY OF DAVID AND ELIZABETH TONIE, THENCE;

S 1° 59' 59" E, ALONG SAID TONIE LAND, A DISTANCE OF 296.45', MORE OR LESS, TO AN IRON  
PIPE ON THE NORTHWESTERLY SIDELINE OF ROUTE 33, THENCE;

ALONG SAID ROUTE 33 BY THE FOLLOWING COURSES:

S 45° 09' 26" W, A DISTANCE OF 95.18', MORE OR LESS, TO A POINT, THENCE;  
S 44° 50' 34" E, A DISTANCE OF 50.00', MORE OR LESS, TO A POINT, THENCE;  
S 45° 09' 26" W, PASSING THROUGH A CONCRETE BOUND AND RAILROAD SPIKE, A  
DISTANCE OF 1,725.50', MORE OR LESS, TO THE POINT OF BEGINNING.

SAID PARCEL CONTAINS APPROXIMATELY 2,437,039 SF (APPROXIMATELY 55.947 ACRES)



**EXHIBIT E**

**FORM OF NOTICE FOR APPROVAL OF ASSIGNMENT**

\_\_\_\_\_, 200\_\_\_\_

City of Portsmouth  
Attention: City Manager  
One Junkins Avenue  
Portsmouth, NH 03801

**Re: Request for Approval of Assignment Pursuant to Paragraph 19 of "Agreement Between City of Portsmouth and PDNED Greenland, LLC for Sewer Service, Greenland, NH" (the "Agreement")**

Dear City Manager:

Pursuant to Paragraph 19 of the Agreement, this requests approval of the following assignment:

Pursuant to Paragraph 19 of the Agreement, failure of the City to respond in writing within sixty (60) days of receipt of this notice shall mean that the request stated above is deemed approved.

Thank you for your attention.

Very truly yours,

**PDNED GREENLAND, LLC**

By: \_\_\_\_\_, Duly Authorized

cc: City Attorney, City of Portsmouth  
Director of Public Works, City of Portsmouth  
PDNED Greenland LLC  
Fellman Law Group, PC

S:\PA-PL\Packard Development\Granite State Gas Action\Exhibit E - Notice re assignment.doc

**INTERMUNICIPAL AGREEMENT**  
**BETWEEN THE CITY OF PORTSMOUTH, NEW HAMPSHIRE AND**  
**THE TOWN OF GREENLAND, NEW HAMPSHIRE**  
**FOR SEWER LINE EXTENSION**

This agreement made this 19 day of November, 2013 between the City of Portsmouth, New Hampshire (hereinafter "Portsmouth") and the Town of Greenland (hereinafter "Greenland") for the extension of Portsmouth's municipal sewer system as provided for under RSA 53-A:3 et seq.

**WHEREAS**, Portsmouth currently provides sewer services to approximately 6,200 customers by way of approximately 100 miles of sewer mains and 20 pumping stations;

**WHEREAS**, Portsmouth operates two wastewater treatment plants; a 1.2 mgd secondary plant at the Pease Development Authority Tradeport and a 4.8 mgd advanced primary plant at Peirce Island, which is presently scheduled to be upgraded to provide secondary treatment;

**WHEREAS**, Portsmouth's wastewater system users are regulated by local ordinance; Rates and fees being set during the annual budget process consistent with a Final Report for Water and Sewer Rate Study dated September 2006 prepared by Weston & Sampson and Woodcock & Associates;

**WHEREAS**, In addition to serving Portsmouth residents, Portsmouth receives bulk wastewater generated from the Adams Point Mobile Home Park located in Rye, pursuant to a 1977 agreement with the Town of Rye and such agreement is presently being renegotiated;

**WHEREAS**, Portsmouth also accepts wastewater from the Town of New Castle pursuant to a bulk wholesale agreement, which agreement is also being renegotiated;

**WHEREAS**, Portsmouth presently services 108 Ocean Road and 1450 Greenland Road, Greenland, NH pursuant to a Public Utility Commission Order Nisi dated June 20, 2008;

**WHEREAS**, Greenland wishes to extend sewer services to portions of Greenland as conditions permit;

**WHEREAS**, Such extension will help ensure that sewage from residential and commercial properties is disposed of in an environmentally responsible manner and that public health is maintained; and

**WHEREAS**, Portsmouth is not a "public utility" pursuant to RSA 362:4, III (a) as it serves customers outside its municipal boundaries using the same rates as those charged to customers within its boundaries.

Accordingly, in consideration of the mutual covenants and agreements set forth below, the parties agree as follows:

1. **Purpose:** Portsmouth and Greenland hereby enter into this Agreement to extend, as conditions set forth herein are met, Portsmouth's sewer system to certain portions of Greenland that are presently served by Portsmouth's municipal water system. The portions of Greenland to which the Portsmouth system may be extended during the term of this Agreement are shown on the attached map identified as Exhibit A and are described as follows:

- Route 33 from the Ocean Road intersection to the Portsmouth Avenue Intersection, including Alden Avenue.
- Portsmouth Avenue from the Route 33 Intersection North to the Portsmouth town line, including Annes Lane, Fairway Drive and Sanderson Road.
- Ocean Road from Route 151 to the Interstate 95 Bridge.
- Portsmouth Avenue from the Route 33 Intersection South to Winnicut Road including Riverside Drive
- Newington Road from Portsmouth Avenue to the Newington town line including Hillside Drive, Meadow Lane, McShane Avenue and Pickering Brook Drive. (Approximately 85 homes)
- Post Road from Portsmouth Avenue to Greenland Central School.

2. **Conditions for Extension:** Portsmouth shall extend its sewer system as Greenland or its users make funds available for such extensions. Portsmouth shall have no obligation to extend into any area described in Paragraph 1 unless extension costs are born by the Town of Greenland and/or new users.

Specifically this Agreement allows a third party (or parties) to extend the sewer line under such terms and conditions that are consistent with this Agreement and negotiated with Portsmouth and Greenland. In such cases, the party(ies) will either pay the costs for design and construct a sewer line extension to the City's specifications or reach an agreement with the City of Portsmouth relative to undertaking such construction itself. In no case shall the City be required to bond or otherwise advance or loan funds for an extension.

Before beginning construction, the design shall be approved by Portsmouth and New Hampshire Department of Environmental Service. All costs of design, engineering, permitting, rights-of-way acquisitions, construction, insurance costs and testing related to the sewer extension line will be borne solely by the third party and the costs shall be agreed upon by Portsmouth, Greenland and such third party. Additionally, filing fees necessary for PUC review and approval shall be paid for by such third party.

Once the sewer line extension is completed to the reasonable satisfaction of Portsmouth, ownership of the sewer line shall be transferred to the City of Portsmouth. Also transferred shall be any and all necessary easements and other property rights to enter property to allow the City of Portsmouth to operate and maintain such sewer line extension. Thereafter Portsmouth will own the sewer line extension, and the cost of operation, maintenance and repair shall remain with Portsmouth pursuant to Portsmouth sewer regulations and the franchise approval by the New Hampshire Public Utilities Commission. Portsmouth's ownership in any infrastructure and any easement and other property rights acquired by any accepted sewer line extension shall survive the termination of this Agreement.

Greenland will not, without express written agreement, bear any costs for construction, maintenance or repair of the sewer extension line.

The areas of Greenland to which the sewer line may be extended as described under paragraph 1 are presently served by Portsmouth's municipal water system. The City generally bills sewer usage based on metered municipal water usage and remedies for non-payment are exercised through the termination of water services. Should any sewer line extension include a property not connected and served by municipal water, such property owner must reach an agreement with the City of Portsmouth as to metering, collection and termination of services.

3. **Meetings and Administration of Agreement:** No separate legal or administrative entity is created to administer this Agreement. Once Portsmouth acquires ownership of any sewer line, pump station or other infrastructure constructed as part of this Agreement, Portsmouth will be solely responsible to operate and maintain the sewer line, pump station(s) or other infrastructure and to finance these operations. Portsmouth shall own any and all real and personal property necessary to implement this Agreement. To the extent not inconsistent with the terms of this Agreement, Greenland customers shall have the same rights and responsibilities as Portsmouth customers; this includes, for example, Portsmouth's right to require pre-treatment of wastewater through the issuance of an Industrial Discharge Permit.

Portsmouth and Greenland, through their representatives, the City Manager and the Town Administrator respectively, shall serve as administrators of this Agreement and may meet at such times and places as are mutually convenient to discuss issues of mutual concern including but not limited to connections along the sewer extension line and any possible further expansion of the sewer line into other areas. Once a sewer line extension has been accepted by Portsmouth, Portsmouth shall serve as an administrator for purposes of RSA 53-A subject to its obligations described in this Agreement, any order of the Public Utilities Commission, and such applicable federal, State and local

ordinances that govern the provision of sewer service.

4. **Cost:** The cost of construction of any sewer line extension will be as agreed upon by the parties. Any property owner within Greenland who wishes to connect to the sewer line will pay a connection fee and such other charges and fees to Portsmouth as may be required by the Portsmouth Sewer and Water Ordinances along with any applicable Capacity Use Surcharge. Billing shall be in the same manner as applied to Portsmouth residents; such billing is presently monthly based on water use as metered by Portsmouth Water Division or as arranged.
5. **Sewer Connections:** Greenland will retain authority within Greenland to grant waivers for Greenland properties connections otherwise required pursuant to RSA 147:8 and/or Greenland Sewer Regulations and to order private property owners to connect to any municipal sewer line as may be lawful and appropriate.
6. **Term:** The term of this Agreement is ten (10) years from the date of execution of this Agreement. Any approvals for the extension of sewer system to areas described herein which are connected prior to expiration of this agreement shall be completed in accord herewith. All rights, powers and obligations to provide public sewer service and for each jurisdiction to retain authority over waivers and connections to the sewer extension line shall continue to exist.
7. **Amendment:** This Agreement may be amended only by written Agreement signed by both parties.
8. **Public Utility Commission Approval:** The parties understand that any extension of Portsmouth's system within Greenland is conditioned upon the New Hampshire Public Utilities Commission having granted a final, non-appealable order so authorizing such franchise extension.
9. **Notices:**

**For Town of Greenland**

**Karen Anderson, Town Administrator**  
**575 Portsmouth Avenue**  
**Greenland, NH 03840**

**With a copy to:**  
**Peter Loughlin, Esq.**  
**144 Washington Street**  
**Portsmouth, NH 03801**

**For the City of Portsmouth**

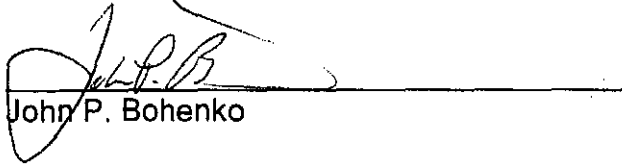
John P. Bohenko, City Manager  
1 Junkins Avenue  
Portsmouth, NH 03801

With a copy to:  
Robert Sullivan, City Attorney  
1 Junkins Avenue  
Portsmouth, NH 03801

10. **Governing Law:** This Agreement shall be governed by and interpreted in accordance with the provisions of the laws of the State of New Hampshire.
11. **Authorization:** This Agreement is authorized by the Town of Greenland, pursuant to a vote taken by the Board of Selectmen on 8/29/11. This Agreement is authorized by the City of Portsmouth, pursuant to a City Council vote of 10-17-11.

CITY OF PORTSMOUTH

By its City Manager

  
John P. Bohenko

Dated: 11-19-13

TOWN OF GREENLAND

By its Town Administrator

  
Karen Anderson

Dated: 10/29/13

TO: JOHN P. BOHENKO, CITY MANAGER

FROM: KELLI L. BARNABY, CITY CLERK

RE: ACTIONS TAKEN BY THE PORTSMOUTH CITY COUNCIL MEETING HELD ON DECEMBER 19, 2011, EILEEN DONDERO FOLEY COUNCIL CHAMBERS, MUNICIPAL COMPLEX, ONE JUNKINS AVENUE, PORTSMOUTH, NEW HAMPSHIRE

PRESENT: MAYOR FERRINI, ASSISTANT MAYOR NOVELLINE CLAYBURGH, COUNCILORS LISTER, SPEAR, DWYER, COVIELLO, KENNEDY AND SMITH

ABSENT: COUNCILOR HEJTMANEK

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1. Mayor's Award – Firefighter Russell Osgood (not on agenda) – Mayor Ferrini presented a Mayor's Award to Russell Osgood for his dedication to and support of the late Sarah Fox and her family. Russell accepted the Mayor's Award with appreciation and thanks.
2. Mayor's Award (not on agenda) – Ralph Cresta – Mayor Ferrini presented a Mayor's Award to Ralph Cresta in recognition of his support to the Portsmouth Holiday Parade. Ralph accepted the Mayor's Award with appreciation and thanks.
3. Mayor's Award – Portsmouth High School Football Team – Mayor Ferrini presented Mayor's Awards to the Portsmouth High School Football Team in recognition of winning the Division III State Championship for 2011. The players and coaches accepted the Mayor's Awards with appreciation and thanks.
4. Presentation – Portsmouth High School Holiday Ensemble – The Musical Interlude for Mayor Ferrini's Farewell Ceremony was provided by the Portsmouth High School Holiday Ensemble. Mayor Ferrini played his trumbone with the Holiday Ensemble for the City Council.
5. African Burying Ground Memorial Park, *We Stand in Honor of Those Forgotten* – Deputy City Manager Hayden provided an update on the accomplishments of the African Burying Ground Memorial Park. She also announced that the Committee will be sponsoring a visibility and awareness event on the evening of February 13, 2012 and the world famous Soweto Gospel Choir will perform at Chestnut Street.
6. Farewell Address by Mayor Ferrini – Mayor Ferrini presented his Farewell Address. Mayor Ferrini's Address will be contained in the City Council Minutes.
7. Acceptance of Minutes – December 5, 2011 – Voted to approve and accept the minutes of the December 5, 2011 City Council meeting.
8. Public Comment Session – There were two speakers: Robin Normandeau (Seawall); and Peter Somssich (Waste Water Plans).

9. Public Hearing - Resolution Authorizing a Supplemental Appropriation of up to \$600,000.00 from Undesignated Fund Balance for Necessary Expenditures for Municipal Complex Renovations – A public hearing was held. On a roll call 8-0 voted to adopt the proposed Resolution appropriating a sum of up to \$600,000.00 from undesignated fund balance for the renovations to the Municipal Complex for the relocation of the School Administrative Offices.
10. Acceptance of Grant from Northeast Utilities - \$1,500.00 – Voted to accept and approve the grant, as submitted.
11. Second reading of Ordinance Amending Chapter 7, Article IV - Off-Street Parking, Section 7.402 - Areas Established and Described by the addition of Middle School – Library Parking Lot Off-Street Parking Area. The Proposed Ordinance sets Hourly Limits on Parking in the Lot, Delineates certain Parking Spaces for Library Use and Prohibits Overnight Parking in the Lot (Postponed from December 5, 2011 City Council meeting) – Voted that Section 7.402 (l) (3) be amended to read as follows: No parking shall be allowed in the lot between the hours of 11:00 p.m. and 7:00 a.m. at any time, except for the 24 parking spaces directly abutting Parrott Avenue, which spaces shall be vacated no later than 7:00 a.m. Councilor Coviello voted opposed.

Voted to pass second reading as amended. Councilor Coviello voted opposed.

Voted to suspend the rules in order to take up third and final reading.

Voted to pass third and final reading. Councilor Coviello voted opposed.

12. Consent Agenda – Councilor Kennedy requested to remove two events from Greater Portsmouth Chamber of Commerce letter - Thursday, August 2<sup>nd</sup> at 6:00 p.m. – Portsmouth Rotary Club Thunder Chicken – Peirce Island - Prescott Park Course and Thursday, November 22<sup>nd</sup> at 8:30 a.m. – Seacoast Rotary Club Turkey Trot – Peirce Island – Prescott Park Course.

Voted to adopt the Consent Agenda.

***A MOTION WOULD BE IN ORDER TO ADOPT THE CONSENT AGENDA***

- A. Letter from Heidi Roy, National Multiple Sclerosis requesting permission to hold the 2012 Walk MS Portsmouth on Saturday, April 14, 2012 from 10:00 a.m. until 2:00 p.m. (***Anticipated action – move to refer to the City Manager with power***)



- B. Letter from Doug Bates, President of Greater Portsmouth Chamber of Commerce requesting permission to hold the Portsmouth Community Road Race Series 5K Races for 2012 and January of 2013:
- Sunday, January 1<sup>st</sup> – Great Bay Services – Little Harbour School Course
  - Saturday, May 19<sup>th</sup> at 9:00 a.m. – YMCA – YMCA Peverly Hill Road Course
  - Saturday, July 7<sup>th</sup> at 9:00 a.m. – Harbour Trail Road Race - Little Harbour School Course
  - Thursday, August 2<sup>nd</sup> at 6:00 p.m. – Portsmouth Rotary Club Thunder Chicken – Peirce Island - Prescott Park Course
  - Saturday, September 15<sup>th</sup> at 9:00 a.m. – BreastCancerStories.org – Little Harbour School Course
  - Saturday, October 13<sup>th</sup> at 9:00 a.m. – Community Child Care – Little Harbour School
  - Thursday, November 22<sup>nd</sup> at 8:30 a.m. – Seacoast Rotary Club Turkey Trot – Peirce Island – Prescott Park Course
  - Tuesday, January 1, 2013 – Great Bay Services – Little Harbour School Course
- (Anticipated action – move to refer to the City Manager with power)***
- C. Letter from Todd Hanson, New Heights requesting permission to hold the 3<sup>rd</sup> annual St. Paddy's Five Miler on Sunday, March 11, 2012 ***(Anticipated action – move to refer to the City Manager with power)***
- D. Letter from Kathryn M. Libby, American Lung Association requesting permission for the 3<sup>rd</sup> Annual Cycle the Seacoast Ride on Sunday, May 6, 2012 ***(Anticipated action – move to refer to the City Manager with power)***
- E. Request for a License from Mari Woods owner of Mari Woods Kitchen Bath Home for property located at 11 Ladd Street to install a projecting sign on an existing bracket ***(Anticipated action – move to approve the aforementioned Projecting Sign License as recommended by the Planning Director and, further, authorize the City Manager to execute a License Agreement for this request)***

**Planning Director Stipulations:**

- ***The license shall be approved by the Legal Department as to content and form;***
- ***Any removal or relocation of the projecting sign, for any reason, shall be done at no cost to the City; and***
- ***Any disturbance of a sidewalk, street or other public infrastructure resulting from the installation, relocation or removal of the projecting sign, for any reason, shall be restored at no cost to the City and shall be subject to review and acceptance by the Department of Public Works***

- F. Request for a License from Sorassa Soeur owner of Salonista for property located at 90 Fleet Street to install a projecting sign on an existing bracket ***(Anticipated action – move to approve the aforementioned Projecting Sign License as recommended by the Planning Director and, further, authorize the City Manager to execute a License Agreement for this request)***

**Planning Director Stipulations:**

- ***The license shall be approved by the Legal Department as to content and form;***
- ***Any removal or relocation of the projecting sign, for any reason, shall be done at no cost to the City; and***
- ***Any disturbance of a sidewalk, street or other public infrastructure resulting from the installation, relocation or removal of the projecting sign, for any reason, shall be restored at no cost to the City and shall be subject to review and acceptance by the Department of Public Works***

- G. Request for a License from Judit Vano-Tydeman owner of Portsmouth Salt Cellar for property located at 7 Commercial Alley to install a projecting sign on an existing bracket ***(Anticipated action – move to approve the aforementioned Projecting Sign License as recommended by the Planning Director and, further, authorize the City Manager to execute a License Agreement for this request)***

**Planning Director Stipulations:**

- ***The license shall be approve by the Legal Department as to content and form;***
- ***Any removal or relocation of the projecting sign, for any reason, shall be done at no cost to the City; and***

***Any disturbance of a sidewalk, street or other public infrastructure resulting from the installation, relocation or removal of the projecting sign, for any reason, shall be restored at no cost to the City and shall be subject to review and acceptance by the Department of Public Works***

13. Letter from Doug Bates, President of Greater Portsmouth Chamber of Commerce requesting permission to hold the Portsmouth Community Road Race Series 5K Races for 2012 – Voted to refer to the City Manager with power and to provide a copy of the letter to the Peirce Island Committee.
- Thursday, August 2<sup>nd</sup> at 6:00 p.m. – Portsmouth Rotary Club Thunder Chicken – Peirce Island - Prescott Park Course
  - Thursday, November 22<sup>nd</sup> at 8:30 a.m. – Seacoast Rotary Club Turkey Trot – Peirce Island – Prescott Park Course
14. Letter from Vernis Jackson, Chair, African Burying Ground Committee requesting permission to hold a Visibility and Awareness Event the evening of Monday, February 13, 2012 – Voted to refer to the City Manager with power.
15. Letter and petition from Nancy Brown and Macy Morse, For Seacoast Peace Response requesting Portsmouth joins the Mayors for Peace – Voted to accept and place the letter on file.
- Mayor-Elect Spear advised the City Council that he would have this request placed on a future City Council agenda.
16. Letter from Randy Eaton requesting permission to hold a 5K “My Walk for Faith” on Sunday, April 15, 2012, at 1:00 p.m. – Voted to refer to the City Manager with power and to provide a copy of the letter to the Prescott Park Arts Festival.
17. Approval of Superintendent of Schools Contract – Voted to approve the Employment Agreement to expire on June 30, 2016 with Edward McDonough, Superintendent of Schools.
18. Request for Approval of Inter-Municipal Sewer Agreement Re: Town of Rye to extend to Foyes Corner – Voted to approve the aforementioned Inter-Municipal Sewer Agreement, and further, authorize the City Manager to execute the document.
19. Wastewater Regulatory Impasse – On a roll call vote 1-7, motion to set up a meeting with Commissioner Thomas Burack of the New Hampshire Department of Environmental Services and the City Council and request a peer review on behalf of the City with the Commissioner and his associates **failed** to pass. Councilor Kennedy voted in favor. Assistant Mayor Novelline Clayburgh, Councilors Lister, Spear, Dwyer, Coviello, Smith and Mayor Ferrini voted opposed.

Move to authorize the City Manager to continue working with the Great Bay coalition through our legislative delegation and other means to: (1) ensure the DES is required to conduct a formal rulemaking proceeding which complies with state law to develop a sound scientific basis for permit limits; (2) agree to go to a secondary treatment plant with the ability to treat to 8 mg/L total nitrogen; and (3) pursue an adaptive management approach to Great Bay Estuary health.

Move to amend the motion to authorize the City Manager to continue working with the Great Bay coalition through our legislative delegation and other means to: (1) ensure the DES is required to conduct a formal rulemaking proceeding which complies with state law to develop a sound scientific basis for permit limits; (2) commit to pursue a design for the Portsmouth wastewater treatment plant that can achieve 8 mg/L total nitrogen; and (3) pursue an adaptive management approach to Great Bay Estuary health. On a roll call 7-1, voted to pass the amendment. Assistant Mayor Novelline Clayburgh, Councilors Lister, Spear, Dwyer, Coviello, Smith and Mayor Ferrini voted in favor. Councilor Kennedy voted opposed.

On a roll call 7-1, voted to pass the motion as amended. Assistant Mayor Novelline Clayburgh, Councilors Lister, Spear, Dwyer, Coviello, Smith and Mayor Ferrini voted in favor. Councilor Kennedy voted opposed.

Motion as adopted reads as follows: Voted to authorize the City Manager to continue working with the Great Bay coalition through our legislative delegation and other means to: (1) ensure the DES is required to conduct a formal rulemaking proceeding which complies with state law to develop a sound scientific basis for permit limits; (2) commit to pursue a design for the Portsmouth wastewater treatment plant that can achieve 8 mg/L total nitrogen; and (3) pursue an adaptive management approach to Great Bay Estuary health

20. Appointments to be Voted: Voted to appoint Rich DiPentima to the Conservation Commission until April 1, 2012. Mr. DiPentima is filling the unexpired term of Catherine Ennis; appointed Ronald Cypher, Frederick (Ted) Gray and Harold Whitehouse to the Parking and Traffic Safety Committee; appointed Thomas Watson to the Board of Trustees of the Trust Funds until January 1, 2013. Mr. Watson is filling the unexpired term of Brad Lown.
21. Appointment of Joseph Almeida (not on agenda) – Voted to suspend the rules in order to act on the appointment of Joseph Almeida to the Historic District Commission. Voted to appoint Joseph Almeida as a regular member to the Historic District Commission until June 1, 2013. Mr. Almeida is filling the unexpired term of Sandra Dika.
22. Resignation of Sandra Dika, Historic District Commission (not on agenda) – Voted to accept with regret the resignation of Sandra Dika from the Historic District Commission.  
  
Councilor Smith requested that a letter of thanks be sent to Ms. Dika for her years of service to the City of Portsmouth.
23. Traffic & Safety Committee Action Sheet and Minutes of the December 8, 2011 meeting – Voted to approve and accept the action sheet and minutes of the December 8, 2011 Traffic & Safety Committee meeting. Councilor Kennedy voted opposed.

24. Parking Committee Action Sheet and Minutes of the December 8, 2011 meeting – Voted to approve and accept the action sheet and minutes of the December 8, 2011 Parking Committee meeting. Councilor Kennedy voted opposed.

25. Adjournment – At 9:45 p.m., voted to adjourn.

Respectfully submitted by:

Kelli L. Barnaby, CMC/CNHMC  
City Clerk

# SAMPLE BALLOT



**ABSENTEE  
OFFICIAL BALLOT  
ANNUAL TOWN ELECTION  
RYE, NEW HAMPSHIRE  
MARCH 9, 2010**

BALLOT 2 OF 2

*Elizabeth M. Foster*  
TOWN CLERK

**ARTICLES CONTINUED**

**ARTICLE 7.** To see if the Town of Rye will vote to raise and appropriate the sum of five thousand dollars (\$5,000) to be added to the Recreation Building Capital Reserve Fund established pursuant to RSA 35:1 by Article 12 of the 1996 Rye Town Meeting. This appropriation is in addition to the operating budget. (Majority vote required.)

THIS ARTICLE IS RECOMMENDED BY THE SELECTMEN  
THIS ARTICLE IS RECOMMENDED BY THE BUDGET COMMITTEE.

\*668  
YES ☐  
NO ☐  
287

**ARTICLE 8.** To see if the Town will vote to raise and appropriate the sum of two thousand five hundred dollars (\$2,500) to be placed in the capital reserve fund established pursuant to the provisions of RSA 35:1, by Article 17 of the 2002 Town Meeting for the purpose of upgrading, replacing or repairing the Town of Rye's computer hardware, associated equipment and computer software and related support. This appropriation is in addition to the operating budget. (Majority vote required.)

THIS ARTICLE IS RECOMMENDED BY THE SELECTMEN  
THIS ARTICLE IS RECOMMENDED BY THE BUDGET COMMITTEE

\*722  
YES ☐  
NO ☐  
296

**ARTICLE 9.** To see if the Town will vote to raise and appropriate the sum of thirty nine thousand seven hundred eighty seven dollars (\$39,787) to purchase and equip a new, 2010 police cruiser to replace an existing 2005 police cruiser and to authorize the withdrawal of thirty nine thousand seven hundred eighty seven dollars (\$39,787) from Special Revenue Fund 7, the Police Outside Detail Fund created in 2004 for this purpose. This appropriation is in addition to the operating budget. (Majority vote required.) This article has no tax impact.

THIS ARTICLE IS RECOMMENDED BY THE SELECTMEN  
THIS ARTICLE IS RECOMMENDED BY THE BUDGET COMMITTEE

\*604  
YES ☐  
NO ☐  
350

**ARTICLE 10.** To see if the Town will vote to raise and appropriate the sum of nineteen thousand eight hundred dollars (\$19,800) to purchase a vehicle to be used by Town personnel exclusively for Town business. This appropriation is in addition to the operating budget. (Majority vote required.)

THIS ARTICLE IS RECOMMENDED BY THE SELECTMEN  
THIS ARTICLE IS RECOMMENDED BY THE BUDGET COMMITTEE

348  
YES ☐  
NO ☐  
\*604

**ARTICLE 11.** Shall the Town raise and appropriate as an operating budget, not including appropriations by special warrant articles and other appropriations voted separately, the amounts set forth on the budget posted with the warrant or as amended by vote of the first session, for the purposes set forth therein totaling eight million one hundred sixty-seven thousand five hundred forty-two dollars (\$8,167,542)? Should this article be defeated, the default budget shall be eight million thirty-one thousand three hundred sixty-two dollars (\$8,031,362) which is the same as last year, with certain adjustments required by previous action of the Town or by law; or the governing body may hold one special meeting, in accordance with RSA 40:13, X and XVI, to take up the issue of a revised operating budget only. (Majority vote required.)

NOTE: This operating budget warrant article does not include appropriations in ANY other warrant articles.

THIS ARTICLE IS RECOMMENDED BY THE SELECTMEN  
THIS ARTICLE IS RECOMMENDED BY THE BUDGET COMMITTEE

\*615  
YES ☐  
NO ☐  
323

**ARTICLE 12.** To see if the Town will vote under the provisions of RSA 31:19-a to amend the purpose of the expendable general fund trust fund known as the Town Employees' Accumulated Leave Fund established by Article 14 of the March 1990 Town Meeting "for the purpose of funding Town Employees' accumulated leave accounts" to be amended to read: "for the purpose of funding Town Employees' accumulated leave accounts and for other end-of-employment retirement costs, and to appoint the Board of Selectmen as the agents to expend from the expendable trust fund as amended (2/3 vote required.)"

THIS ARTICLE IS RECOMMENDED BY THE SELECTMEN  
THIS ARTICLE IS RECOMMENDED BY THE BUDGET COMMITTEE

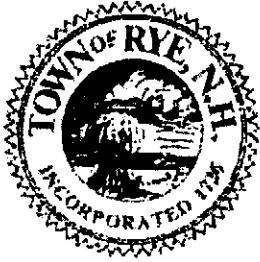
475  
YES ☐  
NO ☐  
\*433

**ARTICLE 13.** To see if the Town will vote in favor of the expansion of the City of Portsmouth Sewer System (at no cost to the Town of Rye and pursuant to an Intermunicipal Agreement to be negotiated between the Rye Sewer Commission and the City of Portsmouth) in order to provide public sewer service by the City of Portsmouth from the Rye/Portsmouth boundary on Sagamore Road ending at Pioneer Road at Foyes Corner.

THIS ARTICLE IS RECOMMENDED BY THE BOARD OF SELECTMEN  
THIS ARTICLE IS RECOMMENDED BY THE RYE SEWER COMMISSION

\*833  
YES ☐  
NO ☐  
116

**TURN BALLOT OVER AND CONTINUE VOTING**



## **TOWN OF RYE SEWER COMMISSION**

**10 Central Road**

**Rye, NH 03870**

**(603) 964-6815 • Fax (603) 964-1516**

### **SEWER COMMISSION MEETING MINUTES**

**Wednesday, August 29, 2012, 5:00 p.m.**

**Town Hall Court Room**

In attendance: David Kohlase, Chairman; Peter Kasnet, Vice Chairman and Lee Arthur, Administrator.

Guest: Michael Labrie, Bluestone Properties of Rye, LLC.

**1. Call to Order**

The Rye Sewer Commission Meeting was called to order at 5:25 p.m.

**2. O&M Report, July 2012**

Lee Arthur reported that the new pump monitoring system (Scadata-Pac) from Mission Communications was installed by Champlin Associates Inc., at all three pump stations. The stations can now be monitored remotely and various reports can be generated. On July 23, 2012, 37 Gray Court was demoed and that Peter Kasnet inspected the capping shortly thereafter. The flapper on pump one at Jenness Beach Station was replaced.

Lee Arthur attempted to locate the secondary meter at the Dunes Motel. A badger meter was found underneath the bar area; however the read received from the owner did not coincide with the meter. She also met with Nevins McCann of 10 South Road to locate a secondary meter, it was determined that a meter was never installed. She then inspected the secondary meter at 78 South Road after a reported read did not make sense. It was determined that the wrong meter was read. It was also determined that the wrong meter was read at 100 South Road.

Included in the meeting packet was the application for Demolition Permit for 33 Locke Road (not on Sewer) and 37 Gray Court (on Sewer). It was discussed that repairs need to be made to some manholes and a section of sewer line on Old Beach Road. In addition, the CCTV Inspection identified excess ground water from a lateral located at 74 Old Beach Road. It was determined that the tape needs to be reviewed again and a plan of action determined.

**3. Consideration of the Minutes of July 10, 2012**

The Sewer Commission Meeting Minutes for July 10, 2012 were reviewed.

*Motion was made by Peter Kasnet to approve the meeting minutes of July 10, 2012.*

*Seconded by David Kohlase. Motion carried.*

**4. Signing of Bills and Correspondence**

**List of Sewer Charges and Fees Effective July 1-September 30, 2012**

The List of Sewer Charges and Fees Effective July 1-September 30, 2012 were reviewed. The front footage charge is \$208.99/per foot (minimum 50 feet, maximum 170 feet), capital recovery charge .43/per foot, and the operating and maintenance charge .044 per cubic feet of H2O Consumption.

*Motion was made by Peter Kasnet to approve the List of Sewer Charges and Fees Effective July 1-September 30, 2012 as presented. Seconded by David Kohlase. Motion carried.*

**Sewer Department Financial Reports for July 2012**

Included in the meeting packet and reviewed was the July Financial Report. At the end of July \$99,673.64, 44.20% under Sewer Collection and Disposal had been expended as well as \$136,455.00, 100% under Debt Services.

**The Warrant for the Collection of Sewer Operations and Maintenance Cost**

Included in the meeting packet was the August 14, 2012 Warrant for the Collection of Sewer Operations and Maintenance Cost for Adams Mobile Home Park in the amount of \$7,922.33.

**Warrant for the Collection of Sewer Operations and Maintenance Cost and Capital Cost**

Included in the meeting packet was the August 10, 2012 Warrant for the Collection of Sewer Operations and maintenance Cost and Capital Cost in the amount of \$52,634.04.

**The Granite Group**

Included in the meeting packet was a letter from The Granite Group indicating that the Sewer Commission has been approved for a line of credit in the amount of \$3,500.00.

**60 Cable Road Aquarian Water Usage High/Broken Pipes**

Lee Arthur reported that she has not received verification of the broken pipes and has not billed for the period in question.

**Town of Hampton Authorization to Access Town of Rye Pump Data**

Included in the meeting packet and for information purposes was a letter to John Champlin of Champlin Associates Inc. notifying him that the Town of Hampton has authority to access the Town of Rye Pump Station Data.

**5. Old Business**

**Pump Monitoring Systems (Precision Systems Scadata-Pac and Champlin Associates Inc. Mission)**

Discussed as part of the O&M report.

**City of Portsmouth Foye's Corner Sewer Line Extension Agreement**

Lee Arthur reported that the Sewer Commissions Attorney advised, that the Sewer Commissioners need to vote to authorize the Chairman of the Sewer Commission to sign the Intermunicipal Agreement between the City of Portsmouth, New Hampshire and the Town of Rye, New Hampshire for Sewer Line Extension.

The Sewer Commissioners reviewed and discussed the agreement and attached Sagamore Road Municipal Sewer Expansion Map.

*Motion was made by Peter Kasnet to authorize the Chairman of the Sewer Commission, David Kohlase to sign the Intermunicipal Agreement between the City of Portsmouth, New Hampshire and the Town of Rye, New Hampshire for Sewer Line Extension. Seconded by David Kohlase. Motion carried.*



The document was signed and executed.

**799 Central Road**

Fallon Custom Homes and Renovations will be responsible for the sewer connection at 799 Central Road. It was discussed that the connection fee needed to be paid, the sewer installer must be licensed in Rye, permission to dig in the road must be obtained from DPW and permit issued.

**6. New Business**

**7 Bernard**

Included in the meeting packet for information purposes was a letter sent to Kim Reed, Planning and Zoning Administrator indicating that the NHDES has confirmed that a State issued Sewer Connection Permit is not required for 7 Bernard Drive and that a permit is issued subject to plans and the installer being approved prior to any construction.

**6 Big Rock Road**

The plans for a reconnection at 6 Big Rock Road were reviewed. It was discussed that Will Davis is the installer and has a license.

*Motion was made by Peter Kasnet to approve the plans for a reconnection at 6 Big Rock Road into the existing lateral. Seconded by David Kohlhase. Motion carried.*

**CIP**

Included in the meeting packet was a copy of the CIP Submission. The bond payment schedule on Hampton WWTP Improvements was discussed.

**2013 Budget**

Lee Arthur asked for direction preparing the 2013 budget. A brief discussion took place and it was decided to maintain the Clerk of the Works position.

**7. Next Meeting**

It was noted that the next Sewer Commission Meetings would be on Tuesday, September 11, 2012 at 8:00 a.m.

**8. Adjournment**

*Motion was made by David Kohlhase to adjourn the meeting at 6:30 p.m. Seconded by Peter Kasnet. Motion carried.*