

**MEMORANDUM OF AGREEMENT
BETWEEN
THE ENVIRONMENTAL PROTECTION AGENCY
AND
THE NEW HAMPSHIRE DIVISION OF HISTORICAL RESOURCES,
AND
THE CITY OF PORTSMOUTH
FOR THE UPGRADE OF
THE PEIRCE ISLAND WASTEWATER TREATMENT FACILITY
PORTSMOUTH, NEW HAMPSHIRE**

WHEREAS, the City of Portsmouth, New Hampshire (hereinafter referred to as “City”) proposes to upgrade the Peirce Island Wastewater Treatment Facility (Peirce Island WWTF) in Portsmouth, New Hampshire, in order to meet the requirements of a National Pollutant Discharge Elimination System Permit issued on April 1, 2007, for the facility;

WHEREAS, the Environmental Protection Agency (EPA) is the lead federal agency;

WHEREAS, EPA, the Advisory Council on Historic Preservation (ACHP), and the National Conference of State Historic Preservation Officers, have entered into a Programmatic Agreement whereby State Agencies implementing the Clean Water Act State Revolving Fund (SRF) program are responsible for carrying out the requirements of 36 C.F.R. §§ 800.4 – 800.6 for all SRF Agency actions that receive EPA federal assistance;

WHEREAS, the New Hampshire Department of Environmental Services (DES) is an SRF Agency and an invited signatory because it has awarded the City with SRF Funding for the Peirce Island Wastewater Treatment Facility upgrade;

WHEREAS, EPA has defined the undertaking’s area of potential effects;

WHEREAS, this upgrade will require the demolition, in whole or in part, of certain existing structures of the Peirce Island WWTF;

WHEREAS, the Sludge Processing Building (c. 1963) is a contributing building to the proposed National Register Portsmouth Downtown Historic District and is proposed to be partially demolished as part of the upgrade;

WHEREAS, the upgrade also includes certain work beyond the treatment facility site to include staging areas and roadway improvements and a larger than normal volume of truck traffic during the construction period;

WHEREAS, EPA in consultation with the New Hampshire State Historic Preservation Officer (NHSHPO) has determined that the demolition of the Sludge Processing Building constitutes an “Adverse Effect” under 36 C.F.R. § 800.5(a)(1) and EPA has consulted with NHSHPO pursuant to 36 CFR Part 800, the regulations implementing Section 106 of the National Historic Preservation Act (16 USC § 470f);

WHEREAS, the City, NHSHPO and EPA have solicited public comment and held a public meeting on August 17, 2016 during which citizens had an opportunity to comment on the proposed MOA and the potential effects of the upgrade, pursuant to applicable regulations found in 36 C.F.R. Part 800, and 33 C.F.R. Part 325, Appendix C, implementing Section 106 of the National Historic Preservation Act (16 W.S.C. 470f);

WHEREAS, in accordance with 36 C.F.R. § 800.6(a)(1), EPA has notified the Advisory Council on Historic Preservation (the ACHP) of its adverse effect determination with specified documentation and the ACHP has chosen not to participate in the consultation pursuant to 36 CFR § 800.6(a)(1)(iii); and

NOW THEREFORE, the City, NHSHPO and EPA enter into this Memorandum of Agreement (MOA) and agree that the undertaking shall be implemented in accordance with the following stipulations in order to take into account the effect of the undertaking on historic properties.

Stipulations

The City shall insure that the following measures are completed:

A. New Hampshire Historic Property Documentation

Prior to any demolition of a portion of the Sludge Processing Building, the City of Portsmouth shall hire an architectural historian qualified under 36 C.F.R. Part 61 to document the Sludge Processing Building and its setting. The documentation will consist of a concise report describing the Sludge Processing Building including its physical description, its contributing elements, brief context and history within the framework of water treatment practices in Portsmouth and will follow DHR guidelines for New Hampshire Historic Property Documentation. The report shall be accompanied by large-format photography of the interior and exterior features (not to exceed 10 photographs).

The City of Portsmouth shall ensure that all large-format photography is completed prior to the partial demolition of the Sludge Processing Building. The City shall submit original large-format photographs for NHSHPO comment. NHSHPO will have ten working days to comment on the quality of the photographs. If the photographs are accepted, the City may begin demolition.

The City will submit the written and photographic documentation unbound and in an archival folder to the NHSHPO (draft review copy followed by one archival copy of the original report, with original contact prints and negatives) once all materials are complete. NHSHPO will have 45 days to review and comment. The City will provide copies of this documentation to appropriate archives such as the Portsmouth Historical Society, Portsmouth Athenaeum, and Portsmouth Public Library. The New Hampshire Historic Property Documentation will be completed by within one year of the date of this MOA. This deadline may be extended if mutually agreeable between the NHSHPO and the City.

B. Social History

The City will retain a 36 C.F.R. Part 61 qualified architectural historian or historian to research and develop a report examining the historic evolution of wastewater treatment in the City starting with the construction of the “brick box” infrastructure originally laid by and for the Frank Jones Brewery to the present. The report shall include historical context as to the societal and regulatory changes prompting upgrades in treatment. The document will be supplemented by historic maps and photographs, if available.

Once the report is complete, NHSHP0 will have 60 days to review and comment. The City will provide copies of this documentation to appropriate archives such as the Portsmouth Historical Society, Portsmouth Athenaeum, and Portsmouth Public Library. The City will also for a period of at least 180 (one hundred eighty) days after completion of the Social History make it available electronically on the City’s website. The Social History will be completed within two years of the date of this MOA. This deadline may be extended if mutually agreeable between the NHSHP0 and the City.

C. Interpretive Signage

The City currently has signage on Peirce Island describing various historical aspects of Peirce Island. The City will incorporate into existing signage or create new signage which will describe Peirce Island WWTF’s historical significance.

The City will consult with NHSHP0 on the design and development of the signage. NHSHP0 will have 45 days to comment on any design submitted for its comment.

D. Reporting Protocol

Prior to construction commencing, the City will develop a protocol for residents to report any construction activities that have impacted or may potentially impact any historic structures or archaeological sites. This protocol will be communicated to the public in advance of construction and be available throughout the project. The City will document such reports from whatever medium received (email, telephone or in person contact for example) on a standard form to be developed. The City will include reports that are made anonymously. If the City receives reports of impacts to historic structures or archeological sites, those reports will be forwarded to NHSHP0 for its review. To the extent the City receives reports of potential future impacts, the City shall evaluate them in the first instance to determine what additional action should be taken. To the extent impacts on historic properties are identified through this protocol, the City will consult with NHSHP0 to avoid, minimize, or mitigate the adverse effect(s) and otherwise comply with NHPA requirements.

I. Duration

Unless otherwise stated above, this MOA will expire if its terms are not carried out within five (5) years from the date of its execution. If any party to the Agreement seeks additional time, that party shall consult with the other signatories to reconsider the terms of the agreement and amend it in accordance with Stipulation VI below.

II. Post-Review Discoveries

City commits to completing all necessary phases of archaeology. If any other resources are discovered or affected as a result of the upgrade planning or implementation, the NHSHPPO is to be consulted on the need for appropriate evaluative studies, determinations of National Register eligibility, and mitigation measures (redesign, resources protection, or data recovery) as required by federal law and regulations.

III. Monitoring and Reporting

Each year following the execution of this MOA, and continuing until it expires or is terminated, the City shall provide all parties to this agreement a summary report detailing work undertaken pursuant to its terms. Such report shall include any scheduling changes proposed, any problems encountered, and any disputes and objections received in the City's efforts to carry out the terms of this MOA pursuant to Stipulation IX below.

IV. Dispute Resolution

Should any signatory to this MOA object within thirty (30) days to any actions proposed or carried out by the City pursuant to this MOA, the City shall consult with the objecting party to resolve the objection. If the City determines that the objection cannot be resolved, the City shall request the further comments of the ACHP pursuant to 36 C.F.R. § 800.6(b). Any Council comment provided in response to such a request will be taken into account by the City in accordance with 36 C.F.R. § 800.6(c)(2) with reference only to the subject of the dispute; the City's responsibility to carry out all actions under this MOA that are not the subjects of the dispute remain unchanged.

V. Amendments and Noncompliance

If any signatory to this MOA, determines that its terms will not or cannot be carried out, or that an amendment to its terms must be made, that party shall immediately consult with the other parties to develop an amendment to this MOA pursuant to 36 C.F.R. §§ 800.6(c)(7) and 800.6(c)(8). The amendment will be effective on the date a copy signed by all of the signatories is filed with the Council. If the signatories cannot agree to appropriate terms to amend the MOA, any signatory may terminate the agreement in accordance with the Stipulation below.

VI. Termination

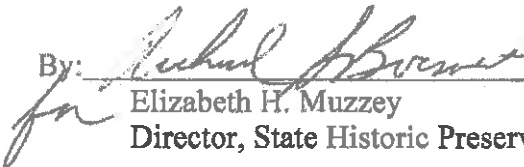
This MOA will terminate five years from the date of its execution unless amended pursuant to Stipulation V, above. If a MOA is not amended following the consultation set out in Stipulation V, above, it may be terminated by any signatory or invited signatory. Within 30 days following termination, EPA or the City shall notify the signatories if it will initiate consultation to execute an MOA with signatories under 36 C.F.R. § 800.6(c)(1) or request the comments of the Council under 36 C.F.R. §.800.7(a) and proceed accordingly.

Execution of this MOA by the City, NHSHPPO, and EPA, and filing of this MOA along with supporting documentation with the Council pursuant to 36 C.F.R. § 800.6(b)(1)(iv), prior to the City's approval of this undertaking, and implementation of this MOA's terms, evidence that

EPA and the City has taken into account the effects of this undertaking on historic properties and afforded the Council an opportunity to comment.

Signature sheet for the foregoing MOA between the City of Portsmouth, the Environmental Protection Agency, and the New Hampshire State Historic Preservation Officer covering the upgrades to the Peirce Island Wastewater Treatment Facility in Portsmouth, NH.

NEW HAMPSHIRE DIVISION OF HISTORICAL RESOURCES

By:  Date: 9-30-16
Elizabeth H. Muzzey
Director, State Historic Preservation Officer

ENVIRONMENTAL PROTECTION AGENCY

By:  Date: 9/7/16
Ken Moraff,
Director of the Office of Ecosystem Protection

CITY OF PORTSMOUTH, NEW HAMPSHIRE

By:  Date: 9-12-16
John P. Bohenko
City Manager

**INVITED SIGNATORY:
NEW HAMPSHIRE DEPARTMENT OF ENVIRONMENTAL SERVICES**

By:  Date: 9/16/2016
Thomas S. Burack
Commissioner