

AGENDA
BOARD OF TRUSTEES
PORTLAND WATER DISTRICT

225 Douglass Street, Portland, Maine
Jeff P. Nixon Training Center

6:00 p.m. on Monday, February 26, 2024

Remote Meeting Participation Available to the Public via Zoom at:

<https://us06web.zoom.us/j/84152860365?pwd=YpV80TVu0IhrlkoL80itZ3SXGbQlwT.1>

1. Convene Meeting with Pledge of Allegiance and moment of silence President Lunt
2. Roll Call Clerk
- 3a. Acceptance of Minutes of the Regular Meeting of January 22, 2024 President Lunt
- 3b. Acceptance of Minutes of the Workshop Meeting of February 12, 2024 President Lunt
4. Invitation for Public Comment President Lunt
5. Reports:
 - Operations Committee Report Trustee McCann
 - Planning Committee Report Trustee Douglas
 - Administration & Finance Committee Report Trustee Cote
 - General Manager's Report General Manager
6. New Business:
 - A. Order 24-003 authorizing the designation of 'Green Bonds' Admin. & Finance Committee
 - B. Order 24-004 authorizing the designation of refunded bonds as 'Green Bonds' Admin. & Finance Committee
 - C. Order 24-005 authorizing the General Manager to execute professional services contracts for general engineering services Operations Committee
 - D. Order 24-006 authorizing actions for the Douglass Street HVAC Improvements Phase 2 and Office Renovations Operations Committee
 - E. Order 24-007 authorizing the General Manager to execute a Purchase and Sale Agreement with Island View Apartments II, LLC Planning Committee
 - F. Order 24-008 authorizing the General Manager to execute a Memorandum of Understanding and subsequent Lease Agreement with the Town of Windham Planning Committee
7. Other Business An item may be added to this agenda provided seven trustees vote to waive the rule regarding agendas. President Lunt
8. Second Invitation for Public Comment President Lunt

9. Trustee Comments President Lunt
10. Executive Session A motion may be made to go into Executive Session at any time during the meeting to discuss, pursuant to 1 M.R.S. §405(6)(A) personnel, 1 M.R.S. §405(6)(C) real estate, 1 M.R.S. §405(6)(D) labor negotiations, or 1 M.R.S. §405(6)(E) legal matters. President Lunt
11. Adjournment President Lunt

Donna M. Katsiaficas
Clerk

Portland Water District
Board of Trustees Regular Meeting
February 26, 2024

New Business

Agenda Item 6A – 6F



BOARD OF TRUSTEES / AGENDA ITEM SUMMARY

Agenda Item: 6A Order 24-003
Date of Meeting: February 26, 2024
Subject: Designation of Water Bonds as 'Green Bonds'
Presented By: David Kane, Executive Director of Administration

RECOMMENDATION

The following proposed language is presented for Board of Trustee approval:

ORDERED, that the \$15.71 million water bonds authorized on January 22, 2024 (Resolution 24-002) are designated as 'Green Bonds', with the proceeds to be used for 'Green' purposes.

BACKGROUND ANALYSIS

The Board previously adopted Resolution 24-002 authorizing water bonds of up to \$15.71 million to finance the installation and renewal of water mains, replacement of the Sebago Lake Water Treatment Facility's roof, upgrade of the Windham Water Pump Station, and obtaining service lines' GPS data points and related infrastructure projects. These are environmentally beneficial projects designed to ensure safe drinking water for the public in the State in accordance with State, Federal, and local standards. Therefore, the bonds can be designated as 'Green Bonds'.

Based on discussions with Moors & Cabot, PWD's Financial Advisor, and published materials staff has reviewed, a 'Green Bonds' designation results in yields that, on average, are about 6 basis points below yields on otherwise equivalent bonds that do not have that designation. To obtain these debt savings, PWD's Financial Advisor has recommended the Board pass an order indicating the bond proceeds will be used for 'Green' purposes. Other than declaring the bonds as 'Green' in the bond's Official Statement, the only other obligation of PWD would be to provide certain post-issuance reporting showing the actual use of the bond proceeds for its declared purpose.

Staff currently estimates that \$10.31 million of the authorized water bonds will be sold on or about August 1, 2024. The remaining amount will be sold in future years. The 'Green Bonds' designation applies to the full \$15.71 of bonds authorized by Resolution 24-002.

FINANCIAL REVIEW

PWD intends to issue \$10.31 million of bonds on or about August 1. The estimated annual interest savings in the first year of this 'Green' bond could be on the order of \$60,000.

LEGAL REVIEW

Corporate Counsel reviewed the proposed motion and approved it as to form.

CONCLUSION(S)

Staff recommends the Committee approve the motion. The Committee recommended the motion be forwarded to the full Board for its consideration.

ATTACHMENT(S)

A-section 1 Support for Estimated Debt Service Savings
A-section 2 Draft Language to be included in the Bond's Official Statement

1. Excerpt from 'Financing the Response to Climate Change: The Pricing and Ownership of U.S. Green Bonds' by Malcolm Baker Harvard Business School and NBER, Daniel Bergstresser Brandeis International Business School, George Serafeim Harvard Business School and Jeffrey Wurgler NYU Stern School of Business and NBER.

We confirm that green municipal bonds are indeed priced at a premium. After-tax yields at issue for green bonds versus ordinary bonds are, on average, about 6 basis points below yields paid by otherwise equivalent bonds. The estimates control for numerous factors related to ratings maturity, tax status, the yield curve, and other time-varying and bond-specific characteristics, even issuer fixed effects. On a bond with a 10-year duration, a yield difference of 6 basis points corresponds to approximately a 0.60 percentage-point difference in value, which seems plausible and economically meaningful.

2. Bond Official Statement – Draft Statement

PWD has designated the “X” Bonds as ‘Green Bonds’ based on the intended use of the proceeds of the bonds to finance environmentally beneficial projects as described below. Such projects are designed to ensure safe drinking for the public in accordance with State and Federal standards. The purpose of labeling the bonds as ‘Green Bonds’ is to allow investors to invest directly in bonds that finance such environmentally beneficial purposes. The holders of the bonds do not assume any specific project risk or economic benefit related to any of the funded projects as a result of the ‘Green Bonds’ designation.

Use of Bond Proceeds. Below is a brief description of the projects expected to be refinanced with the proceeds of the refunding bonds.

- To finance the installation and renewal of water mains, replacement of the Sebago Lake Water Treatment Facility’s Roof, upgrade of the Windham Water Pump Station, and obtaining Service Lines’ GPS data points and related infrastructure projects.

Post-issuance Reporting. PWD will report on the expenditure of the proceeds in its Annual Report until all the proceeds of the bond have been spent. The Annual Report will be available at the following web address: www.pwd.org. Once all the bond proceeds have been spent, no further reports will be provided.



BOARD OF TRUSTEES / AGENDA ITEM SUMMARY

Agenda Item: 6B Order 24-004
Date of Meeting: February 26, 2024
Subject: Designation of Refunding Water Bonds as 'Green Bonds'
Presented By: David Kane, Executive Director of Administration

RECOMMENDATION

The following proposed language is presented for Board of Trustee approval:

ORDERED, that the water bonds to be issued to refund and refinance the current outstanding callable principal of PWD's \$4,541,000 water bonds previously issued in 2014 pursuant to Resolution 14-002 adopted February 24, 2014, are designated as 'Green Bonds', with the proceeds to be used for 'Green' purposes.

BACKGROUND ANALYSIS

The Board previously adopted Resolution 14-002 and authorized water bonds of up to \$5 million to finance the installation of water mains, fire hydrants, and related infrastructure. PWD issued its \$4.541 million bonds for these purposes on June 30, 2014. Those 2014 bonds are eligible to be refinanced this year and the PWD's Financial Advisor, Moors & Cabot, recommends including the refinancing in the PWD's regular annual water bond issue in August. The 2014 bonded projects relate to the installation of water mains and related infrastructure. These are environmentally beneficial projects designed to ensure safe drinking water for the public in the State in accordance with State, Federal, and local standards. Therefore, the refunding bonds can be designated as 'Green Bonds'.

Based on discussions with PWD's Financial Advisor, and published materials staff has reviewed, a 'Green Bonds' designation results in yields that, on average, are about 6 basis points below yields on otherwise equivalent bonds that do not have that designation. To obtain these debt savings, the District's Financial Advisor has recommended the Board pass an order indicating the bond proceeds will be used for 'Green' purposes. Other than declaring the bonds as 'Green' in the bond's Official Statement, the only other obligation of PWD would be to provide certain post-issuance reporting showing the actual use of the bond proceeds for its declared purpose.

FINANCIAL REVIEW

If debt service savings are available when the District issues its regular annual water bond issue in August, PWD may also issue \$1.25 million of refunding bonds on or about August 1. The annual interest savings will be determined on or about the bond sale date, and the refunding will only be done if it results in lower debt service costs.

LEGAL REVIEW

Corporate Counsel reviewed the proposed motion and approved it as to form.

CONCLUSION(S)

Staff recommends the Committee approve the motion. The Committee recommended the motion be forwarded to the full Board for its consideration.

ATTACHMENT(S)

A-section 1 Support for Estimated Debt Service Savings

A-section 2 Draft Language to be included in the Bond's Official Statement

1. Excerpt from 'Financing the Response to Climate Change: The Pricing and Ownership of U.S. Green Bonds' by Malcolm Baker Harvard Business School and NBER, Daniel Bergstresser Brandeis International Business School, George Serafeim Harvard Business School and Jeffrey Wurgler NYU Stern School of Business and NBER.

We confirm that green municipal bonds are indeed priced at a premium. After-tax yields at issue for green bonds versus ordinary bonds are, on average, about 6 basis points below yields paid by otherwise equivalent bonds. The estimates control for numerous factors related to ratings maturity, tax status, the yield curve, and other time-varying and bond-specific characteristics, even issuer fixed effects. On a bond with a 10-year duration, a yield difference of 6 basis points corresponds to approximately a 0.60 percentage-point difference in value, which seems plausible and economically meaningful.

2. Bond Official Statement – Draft Statement

PWD has designated the “X” Bonds as ‘Green Bonds’ based on the intended use of the proceeds of the bonds to finance environmentally beneficial projects as described below. Such projects are designed to ensure safe drinking for the public in accordance with State and Federal standards. The purpose of labeling the bonds as ‘Green Bonds’ is to allow investors to invest directly in bonds that finance such environmentally beneficial purposes. The holders of the bonds do not assume any specific project risk or economic benefit related to any of the funded projects as a result of the ‘Green Bonds’ designation.

Use of Bond Proceeds. Below is a brief description of the projects expected to be refinanced with the proceeds of the refunding bonds.

- To finance and refinance the installation of water mains, fire hydrants, and related infrastructure.

Post-issuance Reporting. PWD will report on the expenditure of the proceeds in its Annual Report until all the proceeds of the bond have been spent. The Annual Report will be available at the following web address: www.pwd.org. Once all the bond proceeds have been spent, no further reports will be provided.

BOARD OF TRUSTEES / AGENDA ITEM SUMMARY

Agenda Item: 6C Order 24-005
Date of Meeting: February 26, 2024
Subject: General Engineering Services – Professional Services Contract Selection
Presented By: Greg Pellerin, Senior Project Engineer

RECOMMENDATION

The following proposed language is presented for Board of Trustee approval:

ORDERED, the General Manager is authorized to execute professional services contracts with the firms listed in this Order for General Engineering Services for a three-year period beginning March 1, 2024, and that the General Manager and the Treasurer, each acting singly, are authorized to take such steps as may be necessary to accomplish the intent of the vote. The firms selected are as follows:

- Kleinfelder
- Hazen
- Woodard & Curran
- Tighe & Bond
- Sebago Technics
- Brown & Caldwell
- Gorrill Palmer
- Wright-Pierce
- Stantec

BACKGROUND ANALYSIS

PWD is facing diverse capital needs in the next few years requiring a mix of small, medium, and large projects of varying types and complexities to address aging infrastructure, regulatory requirements, and an increased need for extreme weather resiliency. In aggregate, these diverse projects will increase the total Capital Improvements Plan (CIP) workload. In order to deliver projects to meet this elevated demand, staff is recommending a range of project delivery mechanisms to effectively leverage engineering consultants including General Engineering Services contracts.

As approved by Board Order 23-007 on February 27, 2023, the General Engineering Method was approved for this program. PWD issued a Request for Qualifications (RFQ) in November 2023 for General Engineering Services. PWD received 12 qualifications packages, indicating substantial interest. A selection committee consisting of staff in the Engineering Services Group reviewed the proposals and selected a group of qualified firms. In addition to the qualifications packages, each firm provided a sealed rate summary for the key staff included on the firm's project team.

Staff will select from the pre-qualified firms for certain small to medium sized CIP projects based on expertise and delivery capability, specific to each project. PWD and the selected firm(s) shall

negotiate a scope and fee, and develop a task order amendment to the original General Engineering Services agreement. PWD and the Engineering Services Group will continue to utilize a separate competitive procurement process for larger and more complex projects, as needed. Additionally, PWD will identify opportunities to work with new firms in order to ensure a consistent and competitive pool of service providers.

FISCAL REVIEW/ FUNDING

General Engineering Services for projects will be funded through their respective capital projects approved by the Board through the annual CIP program or through engineering operating accounts approved in the annual operating budgets.

LEGAL REVIEW

Corporate Counsel has reviewed and approved the form of motion.

CONCLUSION(S)

Staff recommends awarding General Engineering Services contracts to the firms listed here:

- Kleinfelder
- Hazen
- Woodard & Curran
- Tighe & Bond
- Sebago Technics
- Brown & Caldwell
- Gorrill Palmer
- Wright-Pierce
- Stantec

The Committee unanimously voted to forward the item to the full Board for their consideration.

ATTACHMENT(S)

Supporting Information

SUPPORTING INFORMATION

PWD issued an On Call General Engineering Services Request for Qualifications (RFQ) in November of 2023. Firms were asked to provide a qualifications package which was to include a summary of their technical and administrative project management and delivery capabilities pursuant to our needs.

PWD received 12 qualifications packages, indicating substantial interest in this program. The proposals were reviewed and scored by a selection committee consisting of staff in the Engineering Services Group. Firms were scored and selected using the following criteria:

Criteria Description	Weighting Factor
Proposal Approach: Demonstrates a clear process for providing high value Engineering services in adherence with PWD's project delivery process.	25%
Project Management: Shows an understanding of the Firm's role in project management and leadership.	25%
Project Team Qualifications: Demonstrates specific experience of the firm's proposed team members with related projects and technical matter.	25%
Technical Approach and Standardization: Shows an understanding of the importance of PWD Operations' input and Design Standards, and willingness integrate them into designs.	25%

These criteria were designed to reward firms who have a demonstrated understanding of the PWD's standards and project delivery process due to past collaborative experience. Ultimately, firms were scored and selected based on the selection committee's assessment of the firms' ability to provide high value service to the PWD. The selected firms are listed here:

- Kleinfelder
- Hazen
- Woodard & Curran
- Tighe & Bond
- Sebago Technics
- Brown & Caldwell
- Gorrill Palmer
- Wright-Pierce
- Stantec

In addition to the qualifications packages, each firm provided a sealed rate summary for the key staff included on the firm's project team. These rates were not reviewed at the time of scoring/selection in compliance with the SRF program's Qualification Based Selection (QBS) requirements. With the Board's approval, PWD will work toward entering an agreement with each of the selected firms, and agree to pay these firms at the rates provided. Each firm will be allowed to update their rates on an annual basis.

The Engineering Group will continue to utilize competitive procurement on a discretionary basis for larger more consequential projects. Additionally, PWD will identify opportunities to work with new firms in order to ensure a consistent and competitive pool of service providers.

BOARD OF TRUSTEE / AGENDA ITEM SUMMARY

Agenda Item: 6D Order 24-006
Date of Meeting: February 26, 2024
Subject: Douglass St HVAC Improvements Phase 2
Presented By: Joshua Hudak, CFM Facilities Manager

RECOMMENDATION

The following proposed language is presented for Board of Trustee approval:

ORDERED, a construction contract with AAA Energy Service is hereby authorized, in the amount of \$872,811 for the Douglass Street HVAC Improvements Phase 2- 2023 CIP 068-3054 and Office Renovations- 2024 CIP 068-3217; and

BE IT FURTHER ORDERED, that the project budget is amended by increasing it by \$200,000 and that the total budget for the combined Projects CIP 068-3054 and CIP 068-3217 is hereby authorized not to exceed \$900,000; and that the General Manager, and the Treasurer, each acting singly, are authorized to take such steps as may be necessary to accomplish the intent of the vote.

BACKGROUND ANALYSIS

The HVAC Improvements Phase 2 was programmed and approved in the 2023 CIP at \$600,000 to address the North Wing of the Douglass Street office facility. The project was sent out as an RFP for engineering design-build services and AAA Energy Service was the lowest qualified bidder. Upon working on a design with AAA, it was determined that the original scope of work which was heat pumps for the office facility was not going to provide the comfort and control that PWD wanted to achieve in this project. Due to this decision, it was determined that PWD would need to adjust the scope of work to include a new chiller in this phase of the project to be able to support this new system. The replacement of our existing chiller was programmed to be replaced in a later phase of the Douglass Street HVAC Improvement Program (Phase 4).

FISCAL REVIEW/FUNDING

The estimated balance in the Douglass Street R&R reserve fund as of 12/31/2024 - \$338,706. The requested \$200,000 will be taken from this reserve.

LEGAL REVIEW

Corporate Counsel has reviewed the proposed order as to form.

CONCLUSION(S)

Staff recommends amending the original 2023 CIP 068-3054 HVAC budget from \$600,000 to \$800,000 to include the replacement of the outdated and no longer supported chiller. The staff further recommends we issue the design-build contract to AAA Energy Services. The Committee unanimously voted to forward the item to the full Board for their consideration.

ATTACHMENT(S)

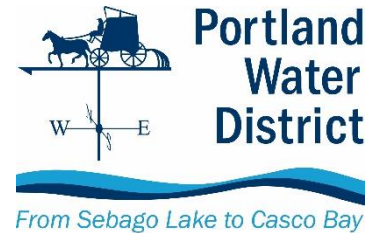
Supporting Information

Project	Budget	Add	Total
2023 068-3054 HVAC Improvements Phase 1	\$ 600,000.00	\$ 200,000.00	\$ 800,000.00
2024 068-3217 Office Renovations Post HVAC	\$ 100,000.00	\$ -	\$ 100,000.00
		Total	\$ 900,000.00
	AAA Energy	Contract	\$ 872,811.00
		Contingency	\$ 27,189.00



Scarborough, ME (207) 883-1473 | Pittsfield, ME (207) 487-3706 | Auburn, NH (603) 626-4884

Brief Project Description:	New Chiller Plant
Scope of Work:	<ul style="list-style-type: none"> • Stamped Mechanical and Electrical Plans for Permit • 70 Ton Chiller • (2) 185 GPM Base Mounted Pumps • New Expansion Tank • Asbestos Abatement on Insulation at chiller plant • Draining and Filling • Insulating new Piping/Equipment • Reusing existing glycol • Owner training • One year warranty on installation • Demolition of existing 60 ton chiller, 170 GPM pumps and expansion tank
Items NOT Included:	<ul style="list-style-type: none"> • Off-hours work • Cutting and Patching
Note(s):	<ol style="list-style-type: none"> 1. Equipment lead time is currently (35-40) weeks from date of order. 2. All work on owner-provided equipment will be done on a time-and-material basis.
Project Cost:	The cost for the above scope, including material and labor will be \$ 246,854



BOARD OF TRUSTEES / AGENDA ITEM SUMMARY

Agenda Item: 6E Order 24-007
Date of Meeting: February 26, 2024
Subject: Sale of Walnut Street Property and Underground Reservoir
Presented By: Laurel Jackson, Right of Way Agent

RECOMMENDATION

The following proposed language is presented for Board of Trustee approval:

ORDER, The General Manager is authorized to execute a Purchase and Sale Agreement in substantial form as that attached hereto, with Island View Apartments II, LLC for the sale of surplus District property on Walnut Street in Portland known as the Munjoy Hill Reservoir; and

BE IT FURTHER ORDERED, that the General Manager and the Treasurer, each acting singly, are authorized to take such other steps as may be necessary to accomplish the intent of this vote.

BACKGROUND ANALYSIS

The District owns a 1.56-acre parcel of land in Portland at the intersection of Walnut and North Streets that contains an abandoned underground water storage reservoir. The property has been declared surplus in accordance with the District's Policy for the Sale or Other Use of District Real Property. Silver Street Development Corporation, owners of the adjacent parcel, submitted a Letter of Intent to the District proposing to purchase the property with the ultimate goal of developing it into affordable housing. In its November 2023 meeting, the Board of Trustees approved accepting the Letter of Intent.

The Purchase and Sale Agreement follows the terms outlined in the Letter of Intent approved by the Board in November, 2023. Island View Apartments II, LLC is an entity of Silver Street Development Corporation.

The deed will specify that it is being sold "As is, where is" and will absolve the District of all further responsibility or liability for the reservoir or the property.

FISCAL REVIEW / FUNDING

The sale price will be \$15,000.00.

LEGAL REVIEW

Corporate Counsel will review the proposed deed prior to execution.

CONCLUSION(S)

Staff recommends that the District enters into a Purchase and Sale Agreement with Island View Apartments II, LLC. The Committee supported the request and voted to send it to the full Board for consideration and approval.

ATTACHMENT(S)

Purchase and Sale Agreement

PURCHASE AND SALE AGREEMENT

THIS PURCHASE AND SALE AGREEMENT IS made this day of February , 2024 (the "Effective Date") by and between the Portland Water District, a quasi-municipal corporation created by Private and Special Law in Maine, with a business office located at 255 Douglass Street, Cumberland County, Maine, ("Seller" or "PWD"), and Island View Apartments II, LLC, a Maine corporation with a mailing address of 33 Silver Street, Suite 200, Portland, Maine 04101 ("BUYER) (Buyer and Seller are referred to in this agreement as the "parties").

RECITALS

WHEREAS, the PWD is the owner of certain real estate, including land and underground concrete reservoir and associated infrastructure thereon, located at or about 1 Walnut Street, Portland, Maine, which property is also known as Parcel ID 015 A003001 and as more fully described in the description attached to this Agreement as Exhibit 1, which is incorporated into this Agreement by reference (the "Premises"); and

WHEREAS, BUYER seeks to acquire the Premises for use either as part of an affordable housing development, or in conjunction with its ownership of Island View Apartments which is adjacent to the Premises; and

WHEREAS, PWD desires to convey the Premises to BUYER, in as is, where is condition, subject to the terms and conditions set forth herein.

NOW THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties, intending to be legally bound, hereby agree as follows:

1. SALE.

PWD agrees to sell the Premises to BUYER, and BUYER agrees to purchase the Premises in accordance with the terms and conditions set forth in this Agreement. To the extent that there is any disagreement between the provisions of this Agreement and its attachments, the provisions of this Agreement shall govern.

2. CONSIDERATION.

The purchase price for the Premises shall be Fifteen Thousand Dollars (\$15,000.00) (the "Purchase Price"), payable as follows:

- a. Upon execution of this Agreement, BUYER shall pay to PWD a Five Thousand Dollar (\$5,000.00) deposit, which the PWD shall hold in escrow without interest and apply to the Purchase Price at closing. The deposit will become non-refundable upon BUYER'S's waiver of its right to terminate the purchase and sale agreement during the Due Diligence Period as set forth below;

b. The BUYER shall pay the remainder of the Purchase Price to PWD at closing.

3. TITLE.

Title to the Premises shall be conveyed by quitclaim deed without covenant. Title to the Premises shall be subject to (i) easements described herein; (ii) easements for utilities servicing or otherwise affecting the property and (ii) City of Portland ordinances. Further, Buyer acknowledges that the deed will contain a conveyance of the concrete reservoir tank and its associated appurtenances to be conveyed with no warranties whatsoever, in as is, where is condition.

3A. BUYER'S CONTINGENCIES.

The BUYER'S obligation to move forward and purchase the Property as set forth in this Agreement is contingent upon:

1. BUYER being satisfied at the end of the due diligence period that the condition of the property will not impede BUYER's use of the Premises for its intended use;
2. Satisfactory Title Commitment; and
3. Satisfactory survey of the second chamber of the concrete reservoir. SELLER shall provide personnel with appropriate training and equipment to assist in BUYER's inspection, which shall occur within the due diligence period.

4. DUE DILIGENCE PERIOD; CONDITION OF PREMISES; PERSONAL PROPERTY.

BUYER has had and shall continue to have an opportunity to inspect the Premises and to hire professionals to do so during the period of 180 days after the Effective Date (the "Due Diligence Period"), except that if the Phase 1 environmental study conducted by BUYER determines that a Phase II study is recommended, the Due Diligence Period shall be extended for an additional thirty days. Any person entering the Premises must sign a Release, Assumption Of Risk And Indemnity Agreement form provided by PWD. BUYER shall provide the PWD with copies of any data, reports, or other documents provided to BUYER as a result of such inspections if requested by PWD. BUYER acknowledges and agrees that the Premises will be conveyed "as is, where is" and "with all faults."

If during the Due Diligence Period the BUYER determines that the title to the Premises is unsatisfactory, or the condition of the Premises is such that BUYER will not be able to utilize the Premises in the manner that is intended by BUYER, BUYER may terminate this agreement and neither party shall owe the other any further obligation hereunder, and BUYER's deposit shall become fully refundable and returned to BUYER.

PWD and its agents make no representations or warranties with respect to the accuracy

of any statement as to boundaries or acreage, or as to any other matters contained in any description of the Premises, or as to the fitness of the Premises for a particular purpose, or as to development rights, merchantability, habitability, or as to any other matter, including without limitation, land use, zoning and subdivision issues or the environmental, mechanical, or structural condition of the Premises.

Furthermore, PWD and its agents make no representations or warranties regarding the condition of any appurtenances or fixtures associated with the concrete reservoir. Acceptance by BUYER of the Deed and Bill of Sale at closing and payment of the purchase price shall be deemed to be full performance and discharge by PWD of every agreement and obligation contained herein.

5. ENTRY TO PROPERTY; RELEASE AND INDEMNIFICATION.

BUYER, which term includes its agents, acknowledges that there may be dangerous conditions on the Premises that may expose persons entering the Premises in the course of Due Diligence investigations to bodily injury, death, or property damage, and BUYER agrees its entry to the Premises is at its own risk. BUYER hereby releases PWD and its officers, agents and personnel (collectively, the "Releasees") from any and all claims, liabilities, damages, losses, costs, judgments, fees and expenses arising out of or resulting, directly or indirectly, from BUYER's entry of the Premises, including, without limitation, injuries, losses and damages for bodily injury (including disability or death) and property damage, regardless of cause, including any and all claims, damages and liabilities that arise out of or result from any actions or omissions, including negligence, on the part of any of the Releasees. BUYER promises not to sue any of the Releasees with respect to any such claims or liabilities. This waiver and release is intended to be as broad as the law allows and shall survive termination of this agreement.

BUYER further agrees, to the fullest extent permitted by law, that BUYER shall defend, indemnify and hold PWD's officers, agents and employees, harmless at all times from any claims, liability, losses, costs, expenses (including, without limitation, reasonable attorney's fees) fines, damages or judgments (collectively, "Claims"), just or unjust, that arise out or are related to any entry of the Premises by BUYER, its agents, officers, directors, employees, contractors, subcontractors, invitees, or anyone else entering the Premises on behalf of BUYER, which Claims include, without being limited to, Claims for personal injury, death, or property damage and including Claims based upon violation of any environmental law or regulation governing hazardous substances.

BUYER's obligations under this paragraph shall survive the termination of this Agreement.

6. REAL ESTATE TAXES, PRORATIONS AND TRANSFER TAX.

The Maine real estate transfer tax shall be paid for by BUYER in accordance with 36 M.R.S. § 4641-A. PWD is exempt from paying the transfer tax pursuant to 36 M.R.S. § 4641-C. The recording fee for the deed of conveyance and any expenses relating to BUYER's closing shall be paid for by BUYER.

7. DEFAULT AND REMEDIES.

In the event that BUYER defaults hereunder for a reason other than the default of the PWD, PWD shall retain the deposit and shall have the right to pursue all legal or equitable remedies available to the PWD. In the event PWD defaults under this Agreement, and if BUYER is not then in default hereunder, BUYER shall have the right to pursue specific performance, but at all times may elect in substitution therefor, as its sole remedy, the right to a return of its deposit.

8. ENVIRONMENTAL INDEMNIFICATION.

BUYER covenants and agrees to indemnify, defend, and hold PWD harmless from and against any and all claims, damages, losses, liabilities, obligations, settlement payments, penalties, assessments, citations, directives, claims, litigation, demands, defenses, judgments, costs, or expenses of any kind, including, without limitation, reasonable attorneys', consultants', and experts' fees incurred in investigating, defending, settling, or prosecuting any claim, litigation or proceeding, that may at any time be imposed upon, incurred by or asserted or awarded against BUYER or PWD and relating directly or indirectly to the violation of or compliance with any federal, state, or local environmental laws, rules, or regulations governing the release, handling or storage of hazardous wastes or hazardous materials and affecting all or any portion of the Premises. This duty to indemnify, defend, and hold harmless shall be included in a covenant in the deed and shall run with the land conveyed and be binding upon BUYER's successors, assigns, and transferees.

9. CLOSING.

Time is of the essence in the performance of this agreement. The closing shall be held at the offices of PWD at a time agreeable to the parties. Buyer shall have the option of closing on the later of: (i) 30 days after the expiration of the Due Diligence Period or (ii) closing on the financing necessary to commence development of the Buyer's proposed affordable housing project.

At the Closing:

- a. PWD shall execute, acknowledge and deliver to BUYER a quitclaim deed and bill of sale conveying the Premises to BUYER.
- b. BUYER shall deliver the Purchase Price to the PWD; and
- c. BUYER shall deliver evidence, reasonably satisfactory to PWD's Corporate Counsel, that the entity receiving title to the Premises is in good standing under Maine law, and that the individuals acting at Closing and executing documents on behalf of BUYER are authorized to do so.

10. ENTIRE AGREEMENT.

This Agreement represents the entire and complete Agreement and understanding between the parties and supersedes any prior agreement or understanding, written or oral, between the parties with respect to the acquisition or exchange of the Premises hereunder. This Agreement cannot be amended except by written instrument executed by PWD and BUYER.

11. NON-WAIVER.

No waiver of any breach of any one or more of the conditions of this Agreement by either party shall be deemed to imply or constitute a waiver of any succeeding or other breach hereunder.

12. HEADINGS AND CAPTIONS.

The headings and captions appearing herein are for the convenience of reference only and shall not in any way affect the substantive provisions hereof.

13. BINDING EFFECT.

This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, administrators, successors and assigns.

14. TIME.

PWD and BUYER each confirm and agree that each of the time periods set forth herein are essential provisions of the terms of this Agreement.

15. GOVERNING LAW.

This Agreement shall be construed in all respects in accordance with, and governed by, the laws of the State of Maine. All parties hereto hereby consent to the exclusive jurisdiction of the Superior Court for the County of Cumberland in the State of Maine, for all actions, proceedings and litigation arising from or relating directly or indirectly to this Agreement or any of the obligations hereunder, and any dispute not otherwise resolved as provided herein shall be litigated solely in said Court. If any provision of this Agreement is determined to be invalid or unenforceable, it shall not affect the validity or enforcement of the remaining provisions hereof.

16. NOTICE.

All notices, demands and other communications hereunder shall be in writing and

shall be deemed to have been duly given on the date of service if served personally on the party to whom notice is to be given, or on the first business day after mailing if mailed to the party to whom notice is to be given by first class mail, postage prepaid, certified, return receipt requested, addressed to the recipient at the addresses set forth below. Either party may change addresses for purposes of this paragraph by giving the other party notice of the new address in the manner described herein.

Portland Water District: General Manager
225 Douglass Street
Portland, Maine 04240
With a copy to the Corporate Counsel (same address)

Buyer: Island View Apartments II, LLC
Attn: Matthew Kesselhaut
33 Silver Street, Suite 200
Portland, ME 04101

17. SIGNATURES: MULTIPLE COUNTERPARTS.

This Agreement may be executed in any number of counterparts and by different parties in separate counterparts. Each counterpart when so executed shall be deemed to be an original and all of which together shall constitute one and the same agreement. A signature in a faxed, pdf or other reproduced or electronic document shall be considered the equivalent of an original signature.

18. BROKERS.

PWD and BUYER each represent and warrant that they have not dealt with a real estate broker in connection with this transaction.

19. RECITALS INCORPORATED BY REFERENCE.

The recitals set forth above are incorporated herein by reference and made a part of this Agreement.

20. ASSIGNMENT.

BUYER may not assign its rights and obligations under this Agreement without the PWD's prior written consent, except to an entity related to Buyer.

Signature page follows.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed by their duly authorized officers or representatives, as of the day and year first written above.

PORTLAND WATER DISTRICT

WITNESS

Seth Garrison
General Manager

ISLAND VIEW APARTMENTS II, LLC

WITNESS

Exhibit 1

A certain lot or parcel of land in said City of Portland, County of Cumberland and State of Maine, bounded and described as follows:

Beginning at a point on the northwesterly sideline of Walnut Street, which point is ninety-one and five-tenths (91.5) feet from the northeasterly line of North Street when measured along the northwesterly side of Walnut Street;

thence North 20° 21' 30" West, three hundred fifty-eight and seventeen hundredths (358.17) feet to a point;

thence North 73° 18' 00" East, two hundred twenty-one and ninety-three hundredths (221.93) feet to a point;

thence South 16° 43' 30" East, one hundred seventy-two and six tenths (172.6) feet to a point;

thence South 82° 27' 35" East, one hundred eighty-seven and thirteen hundredths (187.13) feet to a point;

thence North 59° 15' 00" East three hundred seventeen and thirteen hundredths (317.13) feet, more or less, to the southwesterly sideline of Eastern Promenade;

thence southeasterly by the Eastern Promenade, fifteen and eighty-seven hundredths (15.87) feet, more or less, to the northwesterly side line of Walnut Street;

thence southwesterly by the northwesterly line of said Walnut Street, three hundred thirty-five and fifty-eight hundredths (335.58) feet to a point;

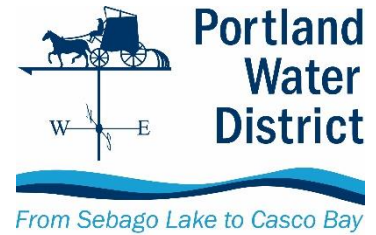
thence North 82° 27' 35" West, one hundred sixty-one and thirty-eight hundredths (161.38) feet to a point;

thence South 59° 15' 00" West, one hundred seven and eight hundredths (107.08) feet to a point;

thence South 00° 01' 45" East, one hundred sixteen and thirty-two hundredths (116.32) feet, more or less, to the northwesterly side line of said Walnut Street;

thence southwesterly by the northwesterly line of said Walnut Street, seventy-eight and five tenths (78.5) feet to the point of beginning.

Meaning and intending to convey a parcel of land originally conveyed to the District by a deed recorded in the Cumberland County Registry of Deeds Book 938, Page 139 and being further described as the parcel of land reserved to the District in a deed recorded in Cumberland County Registry of Deeds Book 3314, Page 221.



BOARD OF TRUSTEES / AGENDA ITEM SUMMARY

Agenda Item: 6F Order 24-008
Date of Meeting: February 26, 2024
Subject: Memorandum of Understanding with Town of Windham for use of Gambo Road Property
Presented By: Laurel Jackson, Right of Way Agent

RECOMMENDATION

The following proposed language is presented for Board of Trustee approval:

ORDERED, the General Manager is authorized to execute a Memorandum of Understanding and subsequent Lease Agreement with the Town of Windham for the use of a portion of the District's Gambo Road property; and

BE IT FURTHER ORDERED, that the General Manager and the Treasurer, each acting singly, are authorized to take such other steps as may be necessary to accomplish the intent of this vote.

BACKGROUND ANALYSIS

The District owns approximately 100 acres of land off Gambo Road in Windham. The undeveloped parcel contains a gravel pit and is primarily used by Water Operations for material storage and spoils disposal. The Town of Windham is in need of a laydown area for public works projects and has requested joint use of the District's property. Staff is not opposed to the Town's use of the property, and has outlined the proposed terms of a lease agreement in a Memorandum of Understanding.

The District will lease a portion of the property to the Town for the storage of materials, supplies, pipe, and equipment for town projects, as well as for the storage of snow removed from municipal property. Additionally, the Town will be permitted to mine gravel on the site within limits set by the District.

The Town will improve the access road and will be responsible for snow removal and road maintenance. The District will have reasonable use of the Town's loader, its covered storage bins, and materials.

FISCAL REVIEW / FUNDING

The Town shall pay to the District the sum of \$2,000.00 per year as a lease payment.

LEGAL REVIEW

Corporate Counsel will prepare the agreements.

CONCLUSION(S)

Staff recommends entering into a memorandum of understanding and a subsequent lease agreement with the Town of Windham based on the terms outlined in the Memorandum of Understanding. The Committee supported the request and voted to send it to the full Board for consideration and approval.

ATTACHMENT(S)

Memorandum of Understanding Between the Town of Windham, Maine, and the Portland Water District

**MEMORANDUM OF UNDERSTANDING
BETWEEN THE
TOWN OF WINDHAM, MAINE
AND THE
PORTLAND WATER DISTRICT**

This Memorandum of Understanding (the “MOU”) is made this ____ day of _____, 2024, by and BETWEEN the Portland Water District, a quasi-municipal corporation located at Portland, Maine (“District”); the Town of Windham, a municipal corporation located at Windham, Maine (the “Town”).

WHEREAS, the District is the owner of certain land located on Gambo Road in Windham; and

WHEREAS, the Town is in need of a storage and laydown area for its materials used by its Public Works Department for maintenance of its infrastructure and Town projects; and

WHEREAS, the District is amenable to allowing a portion of its Gambo Road property for use by the Town in the manner described herein;

WHEREAS, it is the intent of this MOU and any subsequent agreement that any costs incurred in developing and operating a Town materials storage and laydown facility on District land be borne entirely by the Town.

NOW THEREFORE: In consideration of the foregoing and the promises and material obligations contained herein, the Town and the District agree as follows:

- I. The District shall:
 - A. Provide a ten (10) year lease to the Town of a parcel of land identified on the town tax maps as a portion of Tax Map 5, lots 8 and 14G (the Property), as defined on the plan attached hereto as Exhibit A and incorporated herein by reference. The Lease shall allow the Town to use the Property for a lay down area for storage of materials, supplies, pipe, equipment and the placement of storage bins, as well as a snow storage area for snow removed from municipal property. Access to the Property shall be through either Soccer Drive or Plainview Rd and the proposed new access Road on Cherry Lane.
 - B. Allow the Town to renew the lease for an additional ten-year term on essentially the same terms and conditions providing that the Lease has not been otherwise terminated as described herein.
 - C. Allow the Town to construct an access road by extending Cherry Lane on the Property in accordance with a design plan approved by the District, for said activities at Town expense. The District recognizes that the Town has no direct financial obligation apart from the design, development, building, permitting, operation and maintenance of improvements necessary to facilitate its use of the Property except as specifically referenced hereunder.

- D. If the District terminates the lease for any reason during the first 20-year lease term, the District will compensate the Town for the site development costs (design and construction on the site) prorated on the remaining years in the lease. Subsequent renewals may be terminated without reimbursement.
- E. The District shall allow the Town to mine and utilize the gravel found on the Property, provided that such mining and processing will be done at Town expense and within any limitations established by the District. The District shall have use of the gravel mined by the Town as agreed to by the parties. The parties agree that for the first five years of the lease agreement, Town may process a total of 5000 yards of gravel. Any mining in excess of said amount shall be approved by the District with payment negotiated at that time. After the first five years, Town may mine and process up to 500 yards of gravel per year for the remainder of any lease term..
- F. The District shall have reasonable use of the Town's covered storage bins materials and use of its loader (when on location) for its emergency operations.

II. The Town shall:

- A. The Town shall work with the District in developing a design plan for the lay down area and the access road into the Property, and a lease that satisfies both the Town and the District while also satisfying Federal, State, and local ordinances.
- B. The Town shall obtain all permits and notify all abutters prior to constructing and improving the access road into the Property.
- C. The Town will be responsible for all costs associated with the planning, design, permitting, construction, maintenance and operation of its facilities located on the Property. The Town shall also be responsible for snow removal and road maintenance necessary for access to and within the Property.
- D. The Town shall be responsible for placing and maintaining proper signage and gates, as needed.

III. Financial: The Town shall pay to the District the sum of \$2,000.00 per year as a lease payment.

IV. Upon acceptance of this MOU by the Town Council and the District Board of Trustees, and the, the parties here shall negotiate, execute and be bound by a formal Lease implementing the terms herein. The Town shall have use of the Property at such time as shall be defined in the Lease.

IN WITNESS WHEREOF, the parties hereto have caused this MOU to be executed by their duly authorized representatives as of the day and year first written above.

For the Town:

TOWN OF WINDHAM

By: _____

Name: Barry Tibbetts

Title: Town Manager

For the District:

PORTLAND WATER DISTRICT

By: _____

Name: Seth Garrison

Title: General Manager

Appendix A

