

AGENDA
ANNUAL MEETING OF THE BOARD OF TRUSTEES
PORTLAND WATER DISTRICT

225 Douglass Street, Portland, Maine

Jeff P. Nixon Training Center

6:00 p.m. on Monday, March 25, 2024

Remote Meeting Participation Available to the Public via Zoom at:

<https://us06web.zoom.us/j/85845036985?pwd=gS8pTMbZbbiWUWg4FeLVorl1esnPHc.1>

1. Convene Meeting with Pledge of Allegiance and moment of silence President Lunt
2. Roll Call Clerk
3. Election of Officers for 2024-2025 Clerk
 - President
 - Vice President
 - Treasurer
 - Clerk
 - Assistant Clerk

President for 2024-2025 assumes Chair
- 4a. Acceptance of Minutes of the Regular Meeting of February 26, 2024 President Lunt
- 4b. Acceptance of Minutes of the Workshop Meeting of March 11, 2024 President Lunt
5. Invitation for Public Comment President Lunt
6. Reports:
 - Operations Committee Report Trustee McCann
 - Planning Committee Report Trustee Douglas
 - Administration & Finance Committee Report Trustee Cote
 - General Manager's Report General Manager
7. New Business:
 - A. Order 24-009 authorizing an amendment to the current contract with Morgan Stanley Admin. & Finance Committee
 - B. Order 24-010 authorizing the General Manager to execute an engineering services contract with Hazen and Sawyer Operations Committee
 - C. Order 24-011 authorizing the General Manager to execute a Lease Agreement with the City of Portland Planning Committee
 - D. Order 24-012 authorizing the General Manager to enter into a legal services agreement with SL Environmental Group PC and associated firms President Lunt
8. Other Business An item may be added to this agenda provided seven trustees vote to waive the rule regarding agendas. President Lunt

9. Second Invitation for Public Comment President Lunt
10. Trustee Comments President Lunt
11. 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
12. Adjournment President Lunt

Donna M. Katsiaticas
Clerk

Portland Water District
Board of Trustees Regular Meeting
March 25, 2024

New Business

Agenda Item 7A – 7D



BOARD OF TRUSTEES / AGENDA ITEM SUMMARY

Agenda Item: 7A Order 24-009
Date of Meeting: March 25, 2024
Subject: Pension Plan Administrative Services
Presented By: David Kane, Executive Director of Administration
Mary Demers, Director of Employee Services

RECOMMENDATION

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

ORDERED, that the General Manager is authorized to amend the current contract with Morgan Stanley to provide the bargaining and non-bargaining pension plans administrative services at lower costs; and

BE IT FURTHER ORDERED, the Board hereby adopts the Portland Water District Bargaining and Non-Bargaining Plans – Statement of Investment Objectives and Guidelines dated March 11, 2024.

BACKGROUND ANALYSIS

PWD provides employees a defined benefit and deferred compensation (457) pension benefit. The administrative services are currently provided by different service providers. The defined benefit plan services are provided by Morgan Stanley (investment advice and asset custody) and Key Bank (retiree services). The deferred compensation plan services are provided by Principal.

Staff noted the defined benefit plan cost approximately \$160,000 (0.59% of assets) to administer and sought ways to reduce the costs. Principal provided a proposal to provide those services for \$95,000, \$65,000 or 40% lower. Morgan Stanley provided an updated proposal reducing their cost to \$89,539, which is \$70,000 lower than the current cost. The lower costs do not impact the level of service Morgan Stanley provides.

FINANCIAL REVIEW

The defined benefit plan costs are paid by the plan assets so the change has no impact to the 2024 operating budget. However, future contributions to the plan should be lower as less plan assets will be required to pay the plan administrative services.

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 unanimously recommended the motion authorizing to amend the current Morgan Stanley contract and amendment of the Statement of Investment Objectives and Guidelines be forwarded to the Board for its consideration.

ATTACHMENT(S)

- A. Cost Summary
- B. Portland Water District Bargaining and Non-Bargaining Plans – Statement of Investment Objectives and Guidelines

Summary of Costs:

	Morgan Stanley: Current	Principal: Proposed	Morgan Stanley (revised): Proposed
Custodian Services	\$ -	\$ 43,736	\$ -
Investment Advisory	\$ 114,808	\$ 32,802	\$ 62,871
Retiree	\$ 4,800	\$ -	\$ 4,800
Subtotal	\$ 119,608	\$ 76,538	\$ 67,671
Possible Actuary Service Saving		\$ (13,668)	
Portfolio-Investment Fees	\$ 41,003	\$ 32,200	\$ 21,868
Total	\$ 160,611	\$ 95,070	\$ 89,539

Portland Water District
Bargaining Unit Pension Plan
Non-Bargaining Unit Pension Plan

Statement of
Investment Objectives and Guidelines

Initially approved: June 1, 1997
Amended: November, 2009
Amended: September 23, 2013
Amended: August 27, 2018
Amended: [March 11 2024](#)

PURPOSE

The purpose of this Statement is to communicate a clear understanding of the investment policies and objectives of the Portland Water District (hereafter, the "District").

The Statement will outline the overall philosophy that is specific enough for Investment Managers to know the District's expectations, but sufficiently flexible to accommodate for changing economic conditions and returns of the securities' markets.

PORTFOLIOS

The two portfolios are defined-benefit pension plans that are presently well funded and have an actuarial assumed rate of 6.50% for asset return. While they benefit different groups of employees of the District, they are managed in parallel.

As no new participants are being added to the pension plans, the time horizon of the expected pension obligations is finite. Given that those obligations will likely extended for more than 50 years, the portfolios will maintain a long-term investment posture.

CASH FLOWS

At present, monthly benefits for retirees are paid from each portfolio at the rate of [\\$97,000](#) for the Bargaining Unit Pension Plan, and [\\$74,000](#) for the Non-Bargaining Unit Pension Plan. We anticipate that the monthly benefits will likely increase in the coming years.

INVESTMENT OBJECTIVES

Primary Objective

The primary objective of the portfolios is long-term appreciation with moderate current income. In pursuing this objective, the portfolios will be primarily invested in a Diversified portfolio of equity and debt securities within the guidelines stated below.

Secondary Objective

The secondary objective of the portfolios is a competitive return over a full market cycle.

ASSET ALLOCATION

<u>Asset Class</u>	<u>Minimum Weight</u>	<u>Target Weight</u>	<u>Maximum Weight</u>
US Equities	30%	45 0%	50%
International Equities	5 10%	20 5%	30%
Bonds	20%	25%	40%
Alternatives	0%	10%	15%
Cash & Equivalents	0%	0%	30%

The District and its investment consultant will be responsible for monitoring these asset allocation restrictions. Investment managers engaged by the District will not share that responsibility.

EXPECTED RATES OF RETURN

We recognize that no one can predict future events, and we are setting these expectations based upon long-term, historic patterns for different asset classes.

From those patterns, we would expect that the portfolios would achieve an annual total rate of return in the range of 7-8.5% over twenty-year time periods. Most importantly, we would expect the real rate of return (nominal return minus inflation) to average 4-5% over similar time periods. We emphasize that setting **absolute** returns is an academic exercise - the Investment Managers will primarily be judged on **relative** returns achieved.

RESPONSIBILITIES, PERMISSIBLE INVESTMENTS AND RESTRICTIONS

The Investment Managers are expected to always invest the portfolios in a prudent manner, with emphasis on investment-grade securities. The uniform prudent investor standard should be applied at all time. Diversification should be maintained at all times (excepting direct obligations of the US Government with maturities of less than one year and diversified money market funds).

The Investment Managers will have full discretion to buy, sell, and tender securities for the exclusive benefit of the Portfolios. Prompt notification of all transactions will be provided to the District.

Under normal circumstances, voting proxies will be the responsibility of the Investment Managers.

The usage of short sales, margin, or warrants is not permitted. Usage of options and futures is specifically restricted to defensive strategies as permissible under ERISA guidelines. Securities issued by the Portland Water District are strictly prohibited.

Quantity restrictions below address the current market value of the securities relative to the total current market value of each portfolio.

Equities

Equities of a highly speculative nature or having poor liquidity are not permissible.

No one issuer should exceed 10%, and no one industry group should exceed 30%.

For US equities portion of plan assets, securities of foreign-based issuers that are transacted in US dollars on US exchanges are permitted up to a limit of 20% and will be classified as US equities.

International equities may include both developed-market and emerging-market equities.

For purposes of calculation, preferred stocks will be classified as Equities.

Bonds

The Investment Managers will emphasize bonds with a market-weighted average rating of Moody's Baa or better. In the absence of a Moody's rating, the Investment Managers are expected to use equivalent standards in judging the investment quality of the bond and its issuer.

Issues rated below Moody's Baa (high-yield bonds and senior bank notes) may be included to a maximum of 20% of total bonds. Rating restrictions will not apply to convertible bonds securities.

International bonds may be included to a maximum of 10% of total bonds.

Eurodollar obligations of US corporations are permissible for a maximum of 20%. Corporate bonds are permissible for a maximum of 40%. Any bonds issuers that are not the US Government or its Agencies will be classified as corporate bonds.

Maximum market-weighted average maturity of the bonds is not to exceed fifteen years. Zero- (or very low-) coupon bonds are permissible to a maximum of 20%.

Alternatives

Alternatives investments may be used to partially diversify away from traditional equities and bonds. It is anticipated that the returns of alternatives frequently are uncorrelated to movements in traditional equities and bonds.

Strategies may include REITs, natural resources, ~~and~~ low-volatility hedge fund-of-funds and hedged equity products.

Alternatives are limited to marketable funds where 90% of investment could be liquidated within 90-days.

PERFORMANCE BENCHMARKS

The Investment Managers' performance will be judged net of investment management fees and based upon relative performance to the appropriate Performance Benchmark, weighted to reflect the Target Weighting in the asset allocation of the portfolio:

45%	S&P 500 Stock Index
20-15%	MSCI World All Country Ex-US Index MSCI EAFE Index
10%	MSCI Emerging Markets Index
25%	Barclays Capital Intermediate Govt/Corp bonds index
10%	T Bills +2%

Judgment of investment performance will give priority to total return over a full equity-market cycle, or 5-year period, whichever is shorter.

Significant underperformance for one-year periods is unacceptable.

COMMUNICATION

The Investment Managers is expected to report to us in writing each quarter with a review of each portfolio's current posture, and the Investment Manager's outlook.

The Investment Managers should be available to meet with the Portland Water District and/or our consultant upon request.

Consultant: Graystone Consulting
~~28 State Street 125 High Street~~
Boston, MA 02109
Contact: Clifford L. White 617-478-6523

Print Name

Signature

Title

Date

[END]



BOARD OF TRUSTEES / AGENDA ITEM SUMMARY

Agenda Item: 7B Order 24-010
Date of Meeting: March 25, 2024
Subject: Engineering Contract for Testing and Engineering Support for the Fore River Pump Station Pumps
Presented By: Scott Firmin, Director of Operations - Wastewater

RECOMMENDATION

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

ORDERED, the General Manager is hereby authorized to execute an engineering services contract with Hazen and Sawyer, not to exceed \$150,000 for technical services and testing for work to correct pump issues at the Fore River Pump Station.

BACKGROUND ANALYSIS

Four large wastewater pumps were replaced as part of an upgrade to the Fore River Pump Station in 2015. The pumps satisfied technical specifications and were accepted after installation and testing. Vibration levels in the pumps later became excessive. The excess vibration impacts their physical integrity and the adjoining piping system. PWD has attempted a series of efforts to identify the cause and possible solutions. They have included pump component replacement, extended shaft replacement, piping and discharge nozzle replacements, pump rebuilds, pump modifications, operating modifications, and a full review of the system hydraulics. Despite these efforts, the pumps continue to vibrate at excessive levels, limiting their performance and dramatically decreasing their expected useful life.

Several reviews have confirmed that the pumps are appropriately sized and configured. The system seems to be experiencing hydraulic resonance issues that result in excessive vibration. The most recent review has identified two possible solutions – full pump replacement and modification of the existing pumps that may include impeller adjustments.

In September 2023, the Board authorized a contract in the amount of \$155,000 to complete onsite testing and engineering analysis to determine possible solutions to the issues. The consultant has determined that identifiable areas of looseness that exacerbate vibration could be addressed and that the existing pumps could be reliable into the future.

Hazen has proposed a scope of work not to exceed \$150,000 to implement a series of stepwise solutions. The work will involve addressing the most basic recommendations, testing, and proceeding with the next incremental recommendation if needed. Hazen will provide recommendations, sketch plans, appropriate oversight of any work, and testing of the pumps following the work. The work is expected to be completed within the next year. Any physical work to the pump is not included in this scope of work and will be funded with the 2024 CIP project. This scope of work is for implementation assistance only.

FISCAL REVIEW/FUNDING

This project will be completed using 2024 CIP Project 70/3293 funds in the amount of \$150,000. The original scope of \$155,000 has been completed with approximately \$70,000 unspent. This work must be completed to provide for reliable operation and a reduction in the ongoing maintenance and replacement efforts and costs. Any physical work to the pumps will be completed using funds from the 2024 CIP Project 70/3293.

LEGAL REVIEW

Corporate Counsel has reviewed the proposed order as to form.

CONCLUSION(S)

Staff recommends an engineering services contract with Hazen and Sawyer of no more than \$150,000. The Committee voted 3-0 to forward the item to the Board for consideration.

ATTACHMENT(S)

None



BOARD OF TRUSTEES / AGENDA ITEM SUMMARY

Agenda Item: 7C Order 24-011
Date of Meeting: March 25, 2024
Subject: City of Portland Lease - Gowen 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 Lease Agreement in substantial form as attached hereto, with the City of Portland for its use of the District's Gowen 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 and the City entered into a lease agreement in 2010 to allow for the installation and maintenance of an antenna and associated electrical control panel at the District's Gowen Road site. The City's antenna transmits radio telemetry data to its wastewater facilities. The lease agreement expired on May 25, 2020. The City wishes to continue using the antenna; therefore, a new lease agreement is required.

District staff has reviewed the City's request and concluded that there would be no adverse effects on District facilities.

FISCAL REVIEW / FUNDING

Staff recommends an annual lease payment of \$1.00. The City will continue to pay for the costs associated with its use of the site, including power.

LEGAL REVIEW

Corporate Counsel has worked with the City attorney in drafting the proposed lease.

CONCLUSION(S)

Staff recommends that the lease be approved. The Committee supported the request and voted to send it to the full Board for consideration and approval.

ATTACHMENT(S)

Proposed Lease

LEASE AGREEMENT

THIS LEASE AGREEMENT is made and entered into the ____ day of February, 2024 by and between, **PORTLAND WATER DISTRICT**, a quasi-municipal corporation with a business address of 225 Douglas Street, Portland, Maine (hereinafter referred to as "PWD") and **CITY OF PORTLAND**, a municipal corporation with a principal office at 389 Congress Street, Portland, Maine 04101, hereinafter referred to as "CITY".

WITNESSETH

WHEREAS, PWD owns and operates a communications tower (hereinafter the "Tower") located upon land owned by PWD known as the Gowen site; and

WHEREAS, PWD and the CITY entered into a Tower Antenna Lease Agreement dated May 25, 2010 for installation, maintenance and operation of an antenna and control panel to transmit SCADA system communication information related to CITY' s wastewater pumping stations, located upon the Gowen Site; and

WHEREAS, said lease has expired and CITY desires to continue to use its antenna and control panel on PWD property; and

WHEREAS; PWD is willing to continue to permit location of said antenna and control panel upon its land;

NOW THEREFORE, in consideration of the mutual covenants contained herein and intending to be legally bound hereby, the Parties hereto agree as follows:

LEASE AGREEMENT

1. **PREMISES.** PWD hereby grants, demises and leases to CITY certain area of the Tower located on PWD's Tank Site in Westbrook, Maine, which area shall include sufficient space at the necessary height for the location of an antenna, together with the right for access and the installation and maintenance of equipment and wires (collectively referred to hereinafter as the "Antenna Premises"); and further together with the non-exclusive right for ingress and egress to the Antenna Premises, seven (7) days a week, twenty-four (24) hours a day for the purpose of installation and maintenance of the antenna. The location of the antenna on the Tower shall not interfere with PWD's primary use of the Tower.

PWD hereby grants, demises and leases to CITY certain area of land located on PWD's Tank Site in Westbrook, Maine, which area shall include sufficient space at the necessary location for the placement of a control panel, together with the right for access and the installation and maintenance of equipment and wires (collectively referred to hereinafter as the "Control Panel

Premises"); and further together with the non-exclusive right for ingress and egress to the Control Panel Premises, seven (7) days a week, twenty-four (24) hours a day for the purpose of installation and maintenance of the antenna.

The locations and descriptions of the Antenna Premises and Control Panel Premises are as shown on Exhibit A attached hereto and incorporated herein.

CITY shall provide PWD with notice whenever it intends to access the Premises. Notification hereunder may be done by telephone or email to such person as may be designated by PWD or in person.

2. TERM; RENT; ELECTRICAL.

a. The initial term of this Agreement shall be for five (5) years and shall commence on the execution date of this Agreement.

b. In recognition of the public need for this antenna, the rental payments hereunder will be One Dollar (\$1.00) per year, the receipt of which PWD hereby acknowledges for the term of this Agreement.

c. CITY shall maintain an electrical meter on or near the Control Panel Premises for the measurement of electrical power used by CITY and CITY shall be solely responsible for paying the costs of such installation and all periodic charges for electrical power and any other utilities connected with CITY's use and occupancy of the Antenna Premises and Control Tower Premises.

3. EXTENSIONS; TERMINATION FOR CONVENIENCE BY CITY. City may request up to two additional five-year terms under this Agreement. No less than three (3) months prior to the end of each five-year term of this lease, the CITY shall provide PWD written notice of whether it wishes to renew this Agreement for an additional five (5) year term, which extension shall be granted subject to good faith negotiation of terms for such extension, so long as CITY is not in default hereunder.

Notwithstanding anything herein to the contrary, throughout the term of this Lease, CITY reserves the right to terminate this Lease agreement for its convenience and within its discretion upon ninety (90) days prior written notice to PWD. Upon such termination, this Agreement shall become null and void and the Parties shall have no further obligations to each other, except as provided in Section 23 herein.

5. USE. CITY shall use the Antenna Premises for the purpose of installing, maintaining and operating an antenna for the transmission and reception of SCADA system communication information related to CITY's wastewater pumping stations. CITY shall use the Control Panel Premises for the purpose of installing, maintaining and operating a control panel to provide power and support to the antenna in order for it to function properly and related

equipment, cables, accessories and improvements. All improvements shall be at CITY's expense. CITY shall have the right to replace, repair, add or otherwise modify the antenna and control panel during the term of this Agreement, so long as such replacement, repair, addition or modification does not result in an adverse impact on PWD's use of the Tower. CITY will maintain both Premises in good condition, reasonable wear and tear excepted.

PWD will maintain the Tower in good condition, reasonable wear and tear excepted. In the event that major repairs are required to the Tower, CITY will be notified, and will be assessed a cost of repair equivalent to its proportionate use of the Tower. CITY will not be responsible for such assessment if, within 30 days after receipt of notice of the assessment, the CITY exercises its right to terminate this Agreement for its convenience under section 3 above.

6. NO LIABILITY. CITY shall be solely responsible for, and hold PWD harmless, from any and all liability, claims, damages, penalties, losses, expenses, or judgments, arising from injury or death to any person, or damage to property sustained by anyone (including but not limited to PWD's employees or property) to the extent resulting from or arising out of CITY's use and occupancy of the Antenna Premises and Control Panel Premises and use of PWD's generator under this Lease Agreement, including but not limited to the negligent acts, errors or omissions of its officers, agents, servants, employees, or anyone for whom CITY may be legally liable, except to the extent attributable to the negligent or intentional act or omission of PWD its employees, agents or independent contractors.

Notwithstanding the foregoing, CITY's obligation of indemnification hereunder shall be subject to the defenses, immunities, and limitations of liability under the Maine Tort Claims Act, 14 M.R.S.A. Sec. 8101 et. seq., other applicable state or federal law, judicial precedent, common law, or any other defenses, immunities or limitations of liability available to the CITY. Nothing herein is intended, nor shall it be deemed, to modify, waive or amend any immunity or limitation of liability available to CITY and PWD under the Maine Tort Claims Act, 14 M.R.S.A. Sec. 8101 et. seq., other applicable state or federal law, judicial precedent, common law, or any other defenses, immunities or limitations of liability available to the CITY or PWD.

7. LIENS. Any mechanic's lien filed against the Premises or PWD's property by reason of any work done by or on behalf of CITY under this Lease Agreement, or any liens resulting from CITY's activities under this Lease Agreement, shall be promptly discharged by CITY, at its own expense, by bonding or otherwise. If CITY should fail to discharge any such lien, PWD may do so at CITY's expense, and CITY shall promptly reimburse PWD its reasonable costs and expenses in so doing.

8. INSURANCE. PWD and CITY each agree that at its own cost and expense, each will maintain commercial general liability or general liability insurance, or provide through self-insurance, with liability limits of not less than \$400,000 for injury to or death of one or more persons in any one occurrence and \$400,000 for damage or destruction to property in any one occurrence or such amount required by the Maine Tort Claims Act as it may be amended from

time to time. Each party shall name the other party to this Lease as additional insured on their general liability policy for purposes of this Lease Agreement.

9. INTERFERENCE. CITY agrees to have installed equipment of the type and frequency which will not cause measurable or observed interference to the equipment of PWD which equipment exists as of the date this Agreement is executed, or cause measurable or observed interference to equipment which may be installed in the future by PWD. In the event CITY's antenna causes such interference, and after PWD have notified CITY of such interference, CITY will promptly take all steps necessary to correct and eliminate the interference. CITY's operations hereunder shall be subordinate to the operation of any equipment required for PWD's operations.

In the event that the interference can not be corrected or eliminated, this lease may be terminated upon a thirty (30) day written notice provided to City by PWD.

10. REMOVAL UPON TERMINATION. CITY, upon termination of the Agreement, shall, within ninety (90) days, remove its equipment, fixtures and all personal property and restore the Premises to their condition at the time this Agreement was executed, reasonable wear and tear excepted. PWD agrees and acknowledges that all of the equipment, fixtures and personal property of the CITY shall remain the personal property of the CITY and the CITY shall have the right to remove the same, whether or not said items are considered fixtures and attachments to real property under applicable law. If such removal is not completed with ninety (90) days of termination, PWD reserves the right to remove CITY's property and to dispose of it as PWD deems fit. CITY shall be liable to PWD for all reasonable expenses incurred by PWD by reason of CITY's failure to remove its property in a timely manner hereunder.

11. RIGHTS OF CITY UPON SALE. Should PWD, at any time during the term of this Agreement, decide to sell, assign or lease all or any part of the Tower, such sale, assignment or lease shall be under and subject to this Agreement and CITY's rights hereunder.

12. QUIET ENJOYMENT. PWD covenants that CITY, on paying the rent and performing covenants hereunder, shall peaceably and quietly have, hold and enjoy the Premises, subject, however, to the operational needs of PWD.

13. TITLE. PWD covenants that PWD has good and sufficient title and interest to the Tower and have full authority to enter into and execute this Agreement. PWD further covenants that there are no other liens, judgments or impediments of title on the Tower, or affecting PWD's title to the same and that there are no covenants, easements or restrictions which prevent the use of the Premises by the CITY as set forth above, subject to compliance with all applicable permitting requirements, and to compliance with all applicable federal, state and local laws and regulations governing CITY's installation of its equipment and use and occupancy of the Premises.

14. INTEGRATION. It is agreed and understood that this Agreement contains all agreements, promises and understandings between PWD and CITY and that no verbal or oral agreements, promises or understandings shall be binding upon either the PWD or CITY in any dispute, controversy or proceeding at law, and any addition, variation or modification to this Agreement shall be void and ineffective unless made in writing signed by the Parties. In the event any provision of the Agreement is found to be invalid or unenforceable, such finding shall not affect the validity and enforceability of the remaining provisions of this Agreement. The failure of any Party to insist upon strict performance of any of the terms or conditions of this Agreement or to exercise any of its rights under the Agreement shall not waive such rights and such Party shall have the right to enforce such rights at any time and take such action as may be lawful and authorized under this Agreement, either in law or in equity.

15. GOVERNING LAW. This Agreement and the performance thereof shall be governed, interpreted, construed and regulated by the laws of the State of Maine.

16. ASSIGNMENT. This Agreement may not be encumbered, sold, assigned or transferred without the written consent of PWD.

17. NOTICES. All notices hereunder must be in writing and shall be deemed validly given if sent by certified mail, return receipt requested or by commercial courier, provided the courier's regular business is delivery service addressed as follows (or any other address that the Party to be notified may have designated to the sender by like notice):

CITY: City Manager
City of Portland
389 Congress Street
Portland, Maine 04101

With a copy to:

Office of Corporation Counsel at the same address.

PWD: Portland Water District
225 Douglas Street
Portland, ME 04104
Attn: Corporate Counsel

Notice shall be effective upon mailing or delivering the same to a commercial courier, as permitted above.

18. SUCCESSORS. This Agreement shall extend to and bind the heirs, personal representatives, successors and assigns of the Parties hereto.

19. DEFAULT. In the event there is a default by the CITY with respect to any of the provisions of this Agreement or its obligations under it, PWD shall give CITY written notice of such default. After receipt of such written notice, the CITY shall have thirty (30) days in which to cure any default, provided the CITY shall have such extended period as may be required beyond the thirty (30) days if the nature of the cure is such that it reasonably requires more than thirty (30) days and the CITY commences the cure within the thirty (30) day period and thereafter continuously and diligently pursues the cure to completion. PWD may not maintain any action or effect any remedies for default against the CITY unless and until the CITY has failed to cure the same within the time periods provided in this paragraph, in which event PWD may, in addition to any other remedies available at law or in equity, terminate this Agreement immediately upon written notice or demand to CITY and enter onto and take possession of the leased Premises. CITY shall continue to be liable to PWD for all rent due hereunder and any loss and expenses incurred by PWD by reason of such default or termination. CITY's property shall be removed as provided in Section 10. Notwithstanding anything herein to the contrary, neither party shall be liable hereunder for any consequential or exemplary damages as a result of default and termination of this Agreement.

20. CASUALTY. In the event of damage by fire or other casualty to the Premises that cannot reasonably be expected to be repaired within forty-five (45) days following same or, if the Tower is damaged by fire or other casualty so that such damage may reasonably be expected to disrupt CITY's operations at the Antenna Premises for more than forty-five (45) days, then CITY may at any time following such fire or other casualty, provided PWD has not completed the restoration required to permit CITY to resume its operation at the Antenna Premises, terminate this Lease upon fifteen (15) days written notice to PWD. Any such notice of termination shall cause this Lease to expire with the same force and effect as though the date set forth in such notice were the date originally set as the expiration date of this Lease.

21. CONDEMNATION. In the event of any condemnation of the Property, CITY may terminate this Lease upon fifteen (15) days written notice to PWD if such condemnation may reasonably be expected to disrupt CITY's operations at the Antenna Premises for more than forty-five (45) days. CITY may on its own behalf make a claim in any condemnation proceeding involving the Premises for losses related to the equipment, its relocation costs and its damages and losses (but not for the loss of its leasehold interest). Any such notice of termination shall cause this Lease to expire with the same force and effect as though the date set forth in such notice were the date originally set as the expiration date of this Lease.

22. COMPLIANCE WITH APPLICABLE LAWS. During the Term and any Extension Term hereunder, CITY shall, at its own cost and expense, promptly observe and comply with all existing and future laws, ordinances, rules and regulations of the Federal, State, County and City Governments, as well as any other government authority having jurisdiction over the Premises or any part thereof, applicable to CITY's equipment, use and occupancy of the Premises, whether the same are in force at the commencement of the term of this Agreement or should be enacted in the future. CITY shall pay all reasonable costs and expenses which may

arise out of or be imposed on PWD because of the failure of the CITY to comply with the requirements of this Section.

CITY shall have the right, but not the obligation, to contest, without cost or expense to PWD, the validity or application of any law, ordinance, rule, regulation, or requirement of the type referred to in the preceding paragraphs. If by the terms of any such provision, compliance may be legally delayed without risk of forfeiture or lien on the Premises or penalty to the PWD pending resolution of the legal challenge, CITY may delay compliance therewith until final determination of such proceeding.

PWD agrees to execute and deliver any appropriate papers or other instruments which may be reasonably necessary or proper to permit CITY to contest the validity or application of any such provision.

CITY shall have no responsibility for PWD's compliance with laws, ordinance, rules, regulations or requirement of any types of any Federal, State, County or municipal agency, and PWD shall pay all reasonable costs and expenses which may arise out of or be imposed on CITY because of the failure of PWD to comply with the requirements of this Section.

23. SURVIVAL. The provisions of the Agreement relating to indemnification, liens and insurance shall survive any termination or expiration of this Agreement. Additionally, any provisions of this Agreement which require performance subsequent to the termination or expiration of this Agreement shall also survive such termination or expiration.

24. CAPTIONS. The captions contained in this Agreement are inserted for convenience only and are not intended to be part of the Agreement. They shall not affect or be utilized in the construction or interpretation of the Agreement.

IN WITNESS WHEREOF, the Parties hereto have set their hands and affixed their respective seals the day and year first above written.

WITNESS

PORTLAND WATER DISTRICT

By: _____

(Print or type name)

Title: _____

WITNESS

CITY: CITY OF PORTLAND

By: _____
Danielle West, City Manager

Exhibit A

Site plan of Tank Site showing Tower,
Antenna Premises and Control Tower Premises



BOARD OF TRUSTEES / AGENDA ITEM SUMMARY

Agenda Item: 7D Order 24-012
Date of Meeting: March 25, 2024
Subject: Legal Services Agreement re: PFAS litigation related to biosolids and effluent treatment costs
Presented By: Donna Katsiaficas, Corporate Counsel

RECOMMENDATION

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

ORDERED, the General Manager is authorized to enter into a legal services agreement in substantial form as that attached hereto with SL Environmental Group PC and associated firms for the representation of the Portland Water District in civil actions in state trial courts and/or federal courts related to PFAS contamination of wastewater systems, effluent, and biosolids.

BACKGROUND ANALYSIS

The Portland Water District treats wastewater in 6 municipalities. The District effluent produces as a result of treatment, and the biosolids resulting from the treatment process contain PFAS and related substances. As a result of this PFAS contamination, the District is spending increasing sums in disposing of biosolids, and it is anticipated will continue to experience increasing costs of possibly being required to treat its effluent by regulators as well. The District seeks to recover these costs in legal actions against the manufacturers of these PFAS substances.

FISCAL REVIEW / FUNDING

The fee arrangement with SL Environmental and its associated law firms call for a 25% contingent fee of any monetary recovery the firms are able to obtain. If there is no monetary recovery, the firms will not be paid.

LEGAL REVIEW

Corporate Counsel has reviewed the proposed fee agreement, and has approved the Motion as to form.

CONCLUSION

Staff recommends the approval of the legal service agreement.

ATTACHMENT

Legal Services Agreement

LEGAL SERVICES AGREEMENT

I. INTRODUCTION

A. RECITALS.

1. This Legal Services Agreement (“LSA” or “Agreement”) is made by and among the Portland Water District (the “District”), SL Environmental Law Group PC (“SL”), the Law Office of Kevin Madonna PLLC (“KM”), Douglas and London, P.C. (“D&L”), Taft Stettinius & Hollister, LLP (“Taft”), and Levin Papantonio Rafferty Proctor Buchanan O’Brien Barr Mougey, P.A. (“Levin Papantonio”). SL, KM, D&L, Taft, and Levin Papantonio are collectively referred to as the “Firms.” The Firms and the District are collectively referred to as the “Parties.”

2. The purpose of this LSA is (i) to enter into an attorney-client relationship between the District and the Firms for the purpose of investigating and assessing potential claims arising out of the presence of per- and polyfluoroalkyl substances (“PFAS”) contaminants in biosolids or effluent produced by the District’s wastewater treatment systems, or other District property; and (ii) to provide for the terms and conditions for the representation of the District in any civil action that may be filed in one or more state trial courts or the United States District Court (“Legal Action”).

3. This Agreement is required by California Business and Professions Code section 6147 and other applicable state laws, regulations or rules relating to contingent fee agreements, including in the State of Maine, and is intended to fulfill any and all applicable requirements that contingent fee agreements be in writing.

II. INVESTIGATION AND ASSESSMENT OF POTENTIAL CLAIMS

A. PRE-LITIGATION SCOPE OF SERVICES.

1. ***Contaminants.*** The District has detected the presence of several PFAS compounds (the “Contaminants” or “Contamination”) during testing of biosolids and/or effluent produced by the District’s wastewater treatment facilities. The engineering, construction, operation and maintenance of systems to treat this Contamination, and any PFAS compounds detected in or on other District property, has and is expected to continue to result in significant financial costs to the District.

2. ***Investigation.*** The District has retained the Firms to assist it in investigating the presence of the Contaminants throughout its systems and property and potential sources of the Contamination, evaluating the potential to recover the costs associated with the Contamination, providing legal advice associated with potential causes of action that could be asserted against responsible parties, and representing the District in any Legal Action against parties potentially responsible for the Contamination.

B. PRE-LITIGATION COSTS AND FEES.

1. ***The District.*** All pre-litigation costs associated with sampling, laboratory testing and engineering expenses incurred in the ordinary course of operations shall be paid directly by the District.

2. ***The Firms.*** All costs and fees incurred by the Firms during any pre-litigation investigation shall be paid directly by the Firms.

3. ***Recovery of Pre-Litigation Costs and Fees.*** Nothing contained herein should be interpreted to preclude seeking recovery of such fees and costs incurred by any Party from defendants in any Legal Action that may be filed pursuant to this Agreement. In addition, if the Firms file any Legal Action, the Firms may use the time incurred for any investigation contemplated herein to support the reasonableness of this Agreement.

C. RETENTION OF FIRM RATHER THAN PARTICULAR ATTORNEYS.

The District is retaining the Firms, not any particular attorney, and attorney services to be provided to the District shall not necessarily be performed by any particular attorney.

D. DESIGNATION.

The Firms and the District will designate specific points of contact to coordinate various stages of investigation and litigation. These designations are intended to establish a clear line of communication and to minimize potential uncertainty, but not to preclude communication between the District and the Firms.

III. LITIGATION SERVICES

A. LITIGATION SERVICES TO BE PROVIDED.

1. ***Inclusions.*** It is the intent of the Parties that the Firms shall represent the District in a one or more civil actions for damages in one or more state trial courts and/or the United States District Court as well as in any proceeding by writ or appeal related to that action. The legal services to be provided by the Firms consist of representation of the District with respect to:

a. The contamination of wastewater treatment systems, effluent, and biosolids, and other District property, by the Contaminants or other contaminants identified during the investigation stage described in Section II of this Agreement, as approved by the District and the Firms.

b. Claims and/or actions for damages sustained by the District as a result of, among other things: actual or threatened conduct relating to contamination of wastewater treatment systems or other District property; additional costs of handling and disposing of biosolids and effluent that are contaminated with PFAS; indemnification for claims brought against the District for contaminated discharges or actual or threatened migration of the Contaminants from District property; and any past, present, and future costs incurred to construct and maintain systems that can remove the Contaminants from wastewater treatment systems; and any related appeals in such actions.

2. ***Retention; Filing of Legal Action.*** The filing of any Legal Action pursuant to this Agreement shall be at the discretion of the Parties. Nothing in this Agreement shall

be construed as obligating the District to retain the Firms in connection with any Legal Action or obligating the Firms to file a Legal Action or any appeal on behalf of the District.

B LEGAL SERVICES SPECIFICALLY EXCLUDED.

1. **Exclusions.** Legal services that are not to be provided by the Firms under this Agreement specifically include, but are not limited to, the following:

a. Proceedings before any administrative or governmental agency, department or board. However, at the District's request, the Firms (via relevant designees) shall endeavor to appear at such administrative proceedings to assist legal counsel for the District in resolving administrative matters with the potential to affect, adversely or beneficially, the District's prospects of recovery in the Legal Action. Such assistance will be provided by the Firms without the District being assessed any additional attorneys' fees in connection with such appearance. This provision shall not exclude naming an administrative or governmental agency, department, or board as a party in a Legal Action.

b. Defending any legal action(s) against the District commenced by any person, with the exception of any cross-complaints, counterclaims, or other third-party claims filed in or arising from the Legal Action initiated pursuant to this Agreement.

c. Defending any claim against the District for unreasonable use of water and/or waste of water.

d. Defending any action concerning water rights.

2. **Additional Legal Services.** If the District wishes to retain the Firms to provide any legal services for additional compensation not provided under this Agreement, a separate written agreement between the Firms, the District shall be required.

C RESPONSIBILITIES OF THE FIRMS, THE DISTRICT.

1. **The Firms' Responsibilities.** The Firms shall perform the legal services called for under this Agreement, keep the District informed of progress and developments, and respond promptly to the District's inquiries and communications. The Firms shall provide status reports to the District on a mutually agreeable schedule, as events reasonably warrant further reporting, and at the further request of the District.

2. **The District's Responsibilities.** The District shall cooperate, coordinate, support and assist with the Firms' litigation efforts and keep the Firms reasonably informed of developments in connection with any Legal Action.

3. **Selection of Experts.** The Firms and the District shall meet and confer regarding selection and retention of experts in the Legal Action. The District shall not unreasonably withhold approval of selection and retention of such experts.

4. **Settlement.** The Firms shall not settle any Legal Action without the approval of the District. The District shall have the absolute right to accept or reject any settlement. The Firms shall notify the District promptly of the terms of any settlement offer received by the Firms.

- needs to recognize FOIA

5. **The District's Agreement Not to Use, Share, or Disclose the Firms' Materials and Work Product Outside the Context of this Legal Action.** Except as may be required by law, the District agrees that it shall not use or disclose in any legal proceeding, case, or other context of any kind, other than this Legal Action, or share or disclose to any person not a Party to this Agreement, any documents, work product, or other information made available to or to which the District or its counsel acquire access through the Firms or any co-counsel of the Firms, including any fact or expert materials produced and/or generated in any prior discovery proceedings in any litigation involving E. I. du Pont de Nemours and Company, The Chemours Company, and/or the Company, without the express written prior approval and consent of the Firms and all such other co-counsel of the Firms, except that: A) documents, work product, or other information that was obtained or created specifically as part of the Firms' work for the District shall be provided to the District upon request; and B) the District shall have the right to obtain, and the restrictions set forth in this paragraph shall not apply to, documents, work product, or other information which the District has paid or reimbursed the Firms for the cost of producing. This paragraph does not limit the District from sharing information pertaining to the litigation with the District Board of Trustees, District Legal Counsel, District Departments and/or District personnel with a need to know such information.

D. ATTORNEYS' FEES.

1. **Contingent Fee.** The amount the Firms shall receive as fee for the legal services provided under this Agreement shall consist of a contingent fee ("Contingent Fee"), which shall be calculated as follows: for any settlement or judgment, twenty-five percent (25%) of the Gross Recovery (as defined below).

2. **Definitions Relevant to Attorneys' Fees.**

a. "Gross Recovery" means the total value received by the District of all Cash Recoveries plus Non-Cash Recoveries, whether awarded by Settlement or Final Judgment.

b. "Net Recovery" means the total value received by the District after the payment of attorney fees and costs.

c. "Costs" include, but are not limited to, court filing fees, deposition costs, expert fees and expenses, investigation costs, reasonable travel and hotel expenses, messenger service fees, photocopying expenses, and process server fees. Items that are not to be considered Costs, and that must be paid by the District without being either advanced or contributed to by the Firms, include the District's expenses incurred in providing information to the Firms or defendants or as part of investigation(s).

d. "Final Judgment" means any final, non-appealable court order or judgment terminating any Legal Action filed pursuant to this Agreement and finally determining the rights of any parties to the Legal Action where no issue is left for future consideration or

appeal.

e. “Settlement” refers to any voluntary agreement executed by the District and any third party to this Agreement, whether resulting from a settlement conference, mediation, or court stipulation, terminating any Legal Action filed pursuant to this Agreement and finally determining the rights of parties to the Legal Action where no issue is left for future consideration or appeal.

f. “Cash Recovery” means, without limitation, the total monetary amount received by the District in a Settlement or Final Judgment arising from an actual or threatened Legal Action by the Firms pursuant to this Agreement, including interest of any kind received by the District. “Cash Recovery” does not include any Sanctions (as defined below) or civil penalties that may be awarded under Chapter 93A of the Massachusetts General Laws or similar laws in other state jurisdictions.

g. “Non-Cash Recovery” means, without limitation, the fair market value of any property delivered to the District, any services rendered for the District’s benefit, and any other non-cash benefit, including but not limited to the construction, operation, and maintenance of one or more water treatment facilities; delivery of replacement water; modification, alteration, construction or operation of surface water intake(s) and/or any part of a public or private water system; or any other types of injunctive and/or equitable relief conferred on the District, in a Settlement or Final Judgment of an actual or threatened Legal Action by the Firms pursuant to this Agreement.

h. “Present Value” means the interest rate of the one-year treasury bill as reported by the United States Federal Reserve in the weekly Federal Reserve Statistical Release closest in time to the date of the recovery for which the present value is being calculated.

i. “Sanctions” means a monetary award or the settlement of a monetary award arising from the discovery abuse or other misconduct of a defendant or a defendant’s attorneys in the Litigation, such a frivolous motions, objections or defenses, or other discovery abuses.

j. “Reasonable Fees” or “Reasonable Attorney’s Fee” shall mean such fees as is reasonably determined by taking into account the amount of time spent on the Legal Action by the Firms and associate counsel retained by the Firms, the value of that time, the complexity of the Legal Action, the benefit conferred on the District, and the financial risk to the Firms and associate counsel by their agreeing to represent the District in the Legal Action and to invest time and advance Costs without compensation or reimbursement in the event that there is no Gross Recovery or a Recovery that does not fully compensate or reimburse the Firms and associate counsel for their time and advanced Costs. Subject to Section III.E.2, below, in no event shall Reasonable Fees or a Reasonable Attorney’s Fee exceed thirty-two and one-half percent (32.5%) of the Gross Recovery.

3. *Calculation of Non-Cash Recovery.*

a. For any Non-Cash Recovery resulting in the receipt of property, the provision of services, or the receipt of other non-monetary benefits by the District, such property, services, or other non-monetary benefits shall be deemed for purposes of this Agreement to have been received by the District upon the execution of a Settlement or Final Judgment. The value of the services shall be discounted to Present Value.

b. If any Non-Cash Recovery is awarded in a Final Judgment, or before accepting any settlement offer that involves a Non-Cash Recovery, the District shall provide the Firms with its estimate of the value of the Non-Cash Recovery. The Firms shall promptly respond in writing, indicating whether the firms accept said estimate. If the Firms object to the District's estimate, the Parties shall proceed as set forth in Section III.G ("Disagreements Concerning Value of Recoveries"). Nothing herein shall impede or restrict the District's right to include a Non-Cash Recovery in any Settlement, nor the Firms' right to receive a Non-Cash Recovery.

E. DISTRIBUTION OF PROCEEDS.

1. The receipt of any Gross Recovery or portion thereof on behalf of the District shall be received into one of the Firms IOLTA accounts. Once cleared, payment(s) of the Contingent Fee owed to the Firms in accordance with Agreement shall be made no later than seven (7) days after receipt by the District of any Gross Recovery. In the event that there is a Final Judgment of all claims against all defendants and payment has been received by the District, except there remains in dispute and Final Judgment has not been obtained on a claim for court-awarded costs or attorneys' fees against the defendants, the District will make payment of the Contingent Fee to the Firms based on the Gross Recovery then paid by the defendants and received by the District. In this scenario, the Firms will continue the litigation on behalf of the District on the remaining issues of court-awarded costs or attorneys' fees, and the District shall not be obligated to make any additional payment to the Firms based on any award of costs or fees ultimately made. Any court-awarded costs or attorneys' fees, including any costs or fees arising out of any court-imposed sanctions, received by the Firms as part of the Legal Action shall not be treated as part of the Gross Recovery, but shall, in the case of costs, be credited against corresponding costs incurred by the Firms on the District's behalf, or, in the case of fees, credited against the Contingent Fee. To the extent that the District has previously made payment towards the Contingent Fee in excess of the amount owed (after any credits are made), the Firms shall return such excess to the District.

2. The Legal Action may become part of a Federal MultiDistrict Litigation ("MDL") docket, on which one or more attorneys from the Firms currently, or will in the future, serve on plaintiff management or executive committees, performing work that benefits multiple clients of the Firms, as well as clients of other attorneys involved in similar litigation. As a result, the court or courts where an MDL is pending may order that one or more of the Firms is to receive additional compensation for time and effort which has benefitted all claimants in the MDL. Compensation for this work and effort, known as "common benefit work," may be awarded to Attorneys and paid out of the MDL court's assessments against settlements, including settlements on behalf of the District and others who have filed claims that are pending in the MDL court. This common benefit compensation is separate and distinct from any Contingent Fee owed under this Agreement.

F. REASONABLE FEE IF CONTINGENT FEE UNENFORCEABLE.

1. **Reasonable Fee.** In the event of a Final Judgment finding that the Contingent Fee portion of this Agreement is unenforceable for any reason or that the Firms cannot represent the District on a Contingent Fee basis, the District shall, after a good faith meet and confer process, pay the Firms a Reasonable Fee for the services rendered.

2. **Fee Determination.** Whenever applicable, the Parties shall use best efforts to negotiate a Reasonable Fee. If the Parties fail to do so, said fee shall be determined

by arbitration proceedings before a mutually agreeable arbitration service, but absent such agreement, before the Judicial Arbitration and Mediation Services (JAMS), with any costs of such proceedings borne by the District and the Firms.

G. DISAGREEMENTS CONCERNING VALUE OF RECOVERIES.

1. **Procedure.** In the event the Parties disagree with respect to the value of any Contingent Fee, Net Recovery, Cash or Non-Cash Recovery, Costs (collectively, "Disputed Recoveries") or settlement offer, and the Parties cannot resolve the disagreement through good faith negotiations, the Parties shall proceed as follows:

- a. Each party shall select an appraiser qualified to conduct an appraisal of the value of the Disputed Recoveries or settlement offer within five (5) days of any written notice to the other party advising of a bona fide dispute that cannot be resolved by negotiations.
- b. Each party's selected appraiser shall then confer and select a third qualified appraiser within five (5) days of said conference, and the third appraiser shall determine the value of the Disputed Recoveries or settlement offer.
- c. The third party appraiser shall conduct an appraisal, and the valuation of any Disputed Recoveries or settlement offer shall be final and binding, subject to appeal by arbitration in the case of Disputed Recoveries as provided in Section VI.I ("Arbitration of Disputes").

2. **Expenses.** The District and the Firms shall each bear the expense of their own selected appraiser, and the District and the Firms shall each pay one-half of the expenses of the third appraiser.

H. NEGOTIATED FEE. The District is informed that the Attorneys' Fees provided for herein are not set by law but rather are negotiable between the Firms, the District and their respective counsel.

I. DIVISION OF ATTORNEYS' FEES.

1. **Division of Fees; Disclosure.** The Firms may divide the fees and/or costs to which it is entitled under this Agreement with another attorney or law firm retained as associate counsel. The terms of such additional division, if any, shall be disclosed to the District. The District is informed that, under the Rules of Professional Conduct of the State Bar of California, such a division may be made only with the District's written consent after a full disclosure to the District in writing that a division of fees shall be made and of the terms of such division. The division of fees among the Firms will be provided by a separate document to the District.

2. **Retention of Associate Counsel.** The Firms may retain associate counsel to assist with litigating a Legal Action pursuant to this Agreement. The attorney or law firm selected by the Firms shall be subject to the District's approval.

J. COSTS.

1. ***Costs Advanced by the Firms.*** The Firms shall advance all Costs incurred in connection with the Firms' representation of the District under this Agreement. Costs shall be advanced by the Firms and then paid by the District from any Gross Recovery, subject to the limitations and allocation of cost methodology described in Section E. The Firms shall notify the District of the total amount of Costs advanced upon request.

2. ***Apportionment of Costs.*** The District acknowledges and agrees that Costs may include expenses that benefit both the District and other clients of the Firms who are investigating or litigating claims similar to those brought on behalf of the District in the Legal Action, including but not limited to the expenses of taking discovery, conducting investigations, and hiring expert witnesses. The expenses that benefit both the District and other clients will be allocated among cases pending at the time of settlement or judgment that have not yet received final judgment such that the District is responsible for only that the portion of such expenses reasonably attributable to the expenses of conducting the Legal Action on behalf of the District, and only that portion attributable to District shall be treated as Costs in the event of a Net Recovery.

3. ***Reimbursement; Risk of Loss.*** The Firms shall be reimbursed for any Costs that are the responsibility of the District before any distribution to the District. If there is no Cash Recovery or the Gross Recovery is insufficient to reimburse the firms in full for the Costs advance, the Firms shall bear the loss for any Costs not reimbursed under this Agreement.

4. ***Defense of Attorneys' Fees and Costs to Third Party.*** Notwithstanding any provision of this Agreement to the contrary, the Firms shall defend the District in any motion seeking an award of Attorneys' Fees or costs against the District in any Legal Action brought under this Agreement. Any costs so awarded shall be treated as Costs for purposes of, and in the manner provided by, this Agreement, with the exception of (a) litigation costs awarded under 28 U.S.C. § 1920, Fed. R. Civ. P. 54(d), or any similar provision of state law awarding costs to the prevailing party in litigation, which shall be borne solely by the District and (b) costs awarded against the Firms for their violation of Fed. R. Civ. P. 11 (or any similar provision of state law prohibiting the making of groundless or frivolous arguments or claims) or the Rules of Professional Conduct, which shall be borne solely by the Firms.

IV. REPRESENTATION OF ADVERSE INTERESTS

A. DISCLOSURE.

1. ***Duty to Disclose; No Conflicts Identified.*** If any of the Firms have a relationship with another party with interests adverse to the District, or with someone who would be substantially affected by any action taken under this Agreement, the Rules of Professional Conduct require the Firms to disclose that to the District so the District can evaluate whether that relationship causes the District to have any concerns regarding any of the Firms' loyalty, objectivity, or ability to protect the District's confidential information.

2. ***Representation of Other Clients; Waiver of Potential Conflicts.***

a. The District understand that currently, and from time to time, the Firms represent other municipalities, governmental agencies, governmental subdivisions, or investor-owned public water utilities in other actions or similar litigation, and that such work is the focus of the Firms' practice. Further, the District understands that the Firms represent other clients in actions similar to what would be brought under this Agreement and against the same potential defendants. The District understands that a recovery obtained on behalf of another client in a similar suit against the same defendants could, in theory, reduce the total pool of funds available from these same defendants to pay damages in a Legal Action brought under this Agreement. The District understands that the Firms would not take on this engagement if the District required the Firms to forgo representations like those described above. The District has conferred with its own separate and independent counsel about this matter, and has determined that it is in its own best interests to waive any and all potential or actual conflicts of interest that may occur as the result of the Firms' current and continuing representation of cities and other wastewater treaters, as well as drinking water suppliers, in similar litigation, because such waiver enables the District to obtain the benefits of the Firms' experience and expertise.

b. The District consents that the Firms may continue to handle such work, and may take on similar new clients and matters without disclosing each such new matter to the District or seeking the consent of the District while representing it.

c. The Firms shall not, of course, take on such other work if it requires the Firms to be directly adverse to the District while the Firms are still representing the District under this Agreement.

V. TERMINATION

A. DISCHARGE OF ATTORNEY.

1. ***Right to Discharge.*** The District may discharge the Firms at any time, with or without cause, by written notice effective when received by the Firms. The District shall have the right to terminate this Agreement with cause upon the Firms breach of this Agreement or its failure to strictly adhere to the California Rules of Professional Conduct or other applicable state Rules of Professional Conduct. Unless specifically agreed by the Firms and the District, the Firms shall provide no further services and advance no further Costs on the District's behalf after receipt of the notice of discharge. If any or all of the Firms are the District's attorney of record in any proceeding, the District shall execute and return a substitution-of-attorney form within a reasonable time after receipt from the Firms.

2. ***Reimbursement of Costs; Fees.*** In the event the Firms are discharged without cause before the conclusion of a Legal Action, the District shall (i) reimburse the Firms for any and all Costs advanced by the Firms for such Legal Action not later than thirty (30) days from receipt of a reasonably detailed final cost accounting from the Firms, and (ii) upon the conclusion of the Legal Action, pay the Firms a Reasonable Attorneys' Fee for services performed up to the point of the discharge. Nothing herein shall be construed to limit the District's rights and remedies in the event of a discharge of the Firms for cause, and the District reserves the right to withhold payment of attorney's fees to the Firms to the extent that the Firms are discharged by the District for good cause. For purposes of this Section V(A), the term "for cause" shall mean where the Firms have breached this Agreement or otherwise failed to provide legal services that meet professional

standards.

B WITHDRAWAL OF ATTORNEY.

1. ***Right to Withdraw.*** The Firms may withdraw from representation of the District (i) with the District's consent, (ii) upon court approval, or (iii) if no Legal Action is filed, for good cause upon reasonable notice to the District. Good cause includes the District's material breach of this Agreement, the District's unreasonable refusal to cooperate with the Firms or to follow the Firms' advice on a material matter after elevation of the matter to the District's Board of Selectmen, or any other fact or circumstance that would render the Firms' continuing representation unlawful or unethical. Notwithstanding the Firms' withdrawal for good cause, the District shall remain obligated to pay the Firms and any associated counsel, out of the Gross Recovery if there is a recovery at the time of withdrawal, a Reasonable Fee for all services provided and to reimburse the Firms for all reasonable Costs advanced before the withdrawal.

2. *Withdrawal Without Cause.*

a. The Firms may terminate this Agreement at any time, without cause, by giving the District not less than sixty (60) days prior written notice of termination, said notice to specify the effective date of the termination and provide for a reasonable transition of the case, without prejudice to the District, to qualified replacement counsel. Where the Firms terminate this Agreement without cause, the Firms shall not be entitled to the recovery of any amount, regardless of the status of any pending Legal Action, and regardless of whether any amounts have been or are subsequently received by the District.

b. Any withdrawal by the Firms, with or without cause, shall be subject to California Rules of Professional Conduct, Rule 3-700 which specifies that an attorney "shall not withdraw from employment until [he/she] has taken reasonable steps to avoid reasonably foreseeable prejudice to the rights of the client, including giving due notice to the client [and] allowing time for employment of new counsel..." or other applicable state Rules of Professional Conduct.

VI. MISCELLANEOUS

A LIEN. The District hereby grants the Firms a lien, to the extent allowed under Maine law, on any and all claims or causes of action that are the subject of the Firms' Contingent Fee and/or Costs advanced under this Agreement. The Firms' lien shall be for sums owed to the Firms at the conclusion of the Firms' services. The lien shall attach to any Gross Recovery the District may obtain.

B RELEASE OF THE DISTRICT'S PAPERS AND PROPERTY. Upon the conclusion of services under this Agreement, the Firms shall release promptly to the District on request all of the District's papers and property. "The District's papers and property" includes correspondence, deposition transcripts, exhibits, experts' reports, legal documents, physical evidence, and other items reasonably necessary to the District's representation, regardless of whether the District has paid for said documents or property. The Firms' obligations under this section shall not be contingent upon payment of any claimed fees.

C INDEPENDENT CONTRACTOR. The relationship to the District of the Firms,

and any associate counsel or paralegal provided through the Firms, in the performance of services hereunder, is that of independent contractor and not that of employee of the District, and no other wording of this Agreement shall stand in derogation. The fees and expenses paid to the Firms hereunder shall be deemed revenues or expense reimbursements of the Firms' offices practices and not remuneration for individual employment apart from the business of the individual Firm's law offices.

D. DISCLAIMER OF GUARANTEE. Although the Firms may offer an opinion about possible results regarding the subject matter of this Agreement, the Firms cannot guarantee any particular result. The District acknowledges that none of the Firms have made promises about the outcome and that any opinion offered by the Firms in the future shall not constitute a guarantee.

E. ENTIRE AGREEMENT. This Agreement contains the entire agreement of the parties. No other agreement, statement, or promise made on or before the effective date of this Agreement shall be binding on the parties.

F. SEVERABILITY IN EVENT OF PARTIAL INVALIDITY. If any provision of this Agreement is held in whole or in part to be unenforceable for any reason, the remainder of that provision and of the entire agreement shall be severable and remain in effect.

G. MODIFICATION BY SUBSEQUENT AGREEMENT. This Agreement may be modified by subsequent agreement of the parties only by an instrument in writing, approved and executed in the same manner as the initial Agreement.

H. RECITALS; TITLES, SUBTITLES, HEADINGS. The recitals to this Agreement are part of this Agreement, but all titles, subtitles, or headings in this Agreement have been inserted for convenience and shall not be deemed to affect the meaning or construction of any of the terms or provisions of this Agreement.

I. ARBITRATION OF DISPUTES. Notwithstanding any other provision of this Agreement, any disputes relating to the Firms' Contingent Fee and/or arising out of this Agreement may first be submitted to the Maine State Bar's program for arbitration of fee disputes. If a fee dispute arises, the Firms shall provide the District with information about the State Bar program.

J. VENUE IN ACTION ON AGREEMENT. In any dispute relating to the Contingent Fee or other dispute arising out of this Agreement, the venue shall be any court of competent jurisdiction located in the State of Maine.

K. GOVERNING LAW. The terms and provisions of this Agreement and the performance of the parties hereunder shall be interpreted in accordance with, and governed by, the laws of the State of Maine.

L. EFFECTIVE DATE OF AGREEMENT. The effective date of this Agreement shall be the date when last executed by all of the Parties. Once effective, this Agreement shall, however, apply to services provided by the Firms on this matter before its effective date.

M. AUTHORITY OF PARTIES. Each of the signatories to this Agreement warrants that he or she has the authority to enter into and execute this Agreement and to bind the entity or

entities on whose behalf each sign.

N EXECUTION. This Agreement may be executed by transmittal of electronic (.pdf) signature counterparts.

The foregoing is agreed to by:

PORTLAND WATER DISTRICT

By: _____

_____ Date

THE FIRMS:

SL Environmental Law Group PC
Alexander Leff

_____ Date

Taft Stettinius & Hollister LLP
Robert A. Bilott

_____ Date

Douglas & London
Michael A. London

_____ Date

Levin Papantonio Rafferty Proctor
Buchanan O'Brien Barr Mougey, P.A.
Ned McWilliams

_____ Date

Law Office of Kevin Madonna PLLC
Kevin J. Madonna

_____ Date