

**AGENDA**  
**BOARD OF TRUSTEES**  
**PORTLAND WATER DISTRICT**  
**225 Douglass Street, Portland, Maine**  
**Jeff P. Nixon Training Center**  
**6:00 p.m., Monday, October 24, 2022**

- |     |   |                                      |
|-----|---|--------------------------------------|
| 1.  | <u>Convene Meeting</u>  | President Douglas                    |
| 2.  | <u>Roll Call</u>  | Clerk                                |
| 3a. | <u>Acceptance of Minutes</u> of the Regular Meeting of September 19, 2022.  | President Douglas                    |
| 3b. | <u>Acceptance of Minutes</u> of the Workshop Meeting of October 17, 2022.   | President Douglas                    |
| 4.  | <u>Invitation for Public Comment</u>  | President Douglas                    |
| 5.  | <u>Reports:</u>   |                                      |
|     | ▪ Operations Committee Reports  | Trustee Rich                         |
|     | ▪ Planning Committee Reports  | Trustee Shattuck-Heidorn             |
|     | ▪ Administration & Finance Committee Reports  | Trustee Siviski                      |
|     | ▪ General Manager's Report  | General Manager                      |
| 6.  | <u>New Business</u>   |                                      |
|     | A. <b><u>Order 22-041</u></b> authorizing Policy 870 - Late Payment Charges, Interest Rates to be Paid on Customer Deposits, and Charges for Returned Checks.   | Administration and Finance Committee |
|     | B. <b><u>Order 22-042</u></b> authorizing the General Manager to execute a professional services contract for the design build – Construction Manager at Risk (CMAR) North Windham Sewer Project.   | Operations Committee                 |
|     | C. <b><u>Order 22-043</u></b> authorizing the General Manager to execute a contract amendment with Casella.   | Operations Committee                 |
|     | D. <b><u>Resolution 22-014</u></b> requesting a Special Election for the Trustee representing Scarborough.  | President Douglas                    |
| 7.  | <u>Other Business.</u> An item may be added to this agenda provided seven trustees vote to waive the rule regarding agendas.  | President Douglas                    |
| 8.  | <u>Second Invitation for Public Comment.</u>  | President Douglas                    |
| 9.  | <u>Trustee Comments.</u>  | President Douglas                    |
| 10. | <u>Executive Session.</u> 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 Douglas                    |
| 11. | <u>Adjournment.</u>   | President Douglas                    |

Donna M. Katsiaficas  
Clerk

**Portland Water District**  
**Board of Trustees Regular Meeting**  
**October 24, 2022**

**New Business**

**Agenda Item 6A-6D**



## **BOARD OF TRUSTEES / AGENDA ITEM SUMMARY**

Agenda Item: 6A Order 22-041  
Date of Meeting: October 24, 2022  
Subject: Chapter 870 Policy  
Presented By: David Kane, Director of Administration  
Robin Doiron, Customer Service Manager

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### **RECOMMENDATION**

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

WHEREAS, on September 22, 2015 the Public Utilities Commission (PUC) approved exemptions from certain regulations for the Portland Water District, effective January 1, 2016; and

WHEREAS, on November 23, 2015 the Board of Trustees adopted Policy 6.40-15 Interest Rate to be Charged for Late Payments, and

WHEREAS, it is the desire to have the Board adopt a policy in a consistent format as other PUC rule adoptions;

ORDERED, that Policy 6.40-15 is rescinded, and

BE IF FUTHER ORDERED, that the Policy 870 entitled “Late Payment Charges, Interest Rates to be paid on customer deposits, and charges for returned checks,” in substantial form as that attached hereto, is hereby approved, effective January 1, 2023.

### **BACKGROUND ANALYSIS**

The Public Utilities Commission (PUC) recently amended one of its rules – Chapter 870: Late Payment charges, interest rates to be paid on customer deposits, and charges for returned checks. The two main changes were to set a maximum rate of 1% per month or 12% annually and prohibition of charging late fees to customers who have an active payment arrangement.

#### **Late Fee**

Chapter 870 is one of the rules from which PWD has an exemption; oversight responsibilities are with the Board of Trustees. Previously the Board adopted a policy related to one of the sections of the rule – Late Payment Charge (adopted on 11/23/15 – Order 15-035). The Policy established a late fee for water account balance delinquency as the rate established by the Treasurer of the State of Maine for delinquent property tax. The late fee rate charged for water account delinquency would be the same as the amount assessed on wastewater delinquent balances. Staff recommends no change.

### Payment Arrangement

The amended PUC rule states: “No late payment charges may be imposed on a customer's past due balance while a payment arrangement is in effect, provided that the customer adheres to the terms of the payment arrangement for those arrearages.” Currently, the District has 100 accounts on a payment arrangement with a balance of \$78,000. Charging a late payment fee on payment arrangements would generate about \$3,000 per year in revenue. Staff recommends not charging the late fees if the customer maintains their payment arrangement.

### FISCAL REVIEW/ FUNDING

To forgo assessing late fees on active payment arrangement accounts would reduce revenue by approximately \$3,000 a year.

### LEGAL REVIEW

Corporate Counsel has reviewed and approved the form of motion.

### CONCLUSION(S)

Staff recommends the policy be approved as presented in attachment A. The Committee voted to forward the recommendation to the full Board for its consideration.

### ATTACHMENT(S)

- A. Proposed Policy 870
- B. Policy 6.40-15

## PORTLAND WATER DISTRICT BOARD OF TRUSTEES

### Policy 870: LATE PAYMENT CHARGES, INTEREST RATES TO BE PAID ON CUSTOMER DEPOSITS, AND CHARGES FOR RETURNED PAYMENT

#### LATE PAYMENT CHARGE

- A. Interest Rate.** For late payments made to District, the District shall utilize the interest rate established as the maximum rate of interest by the Treasurer of the State of Maine, pursuant to 36 M.R.S. §505(4) for delinquent property taxes. It shall be changed as soon as practical by PWD when changed by the State Treasurer. The District shall publish on its website either a link to the interest rate established by the State Treasurer or the actual interest rate that will be charged for late payments.
- B. Amount Overdue.** An amount is overdue when it has not been paid by the due date. The due date must be no less than 25 days after the bill is mailed or hand delivered to the customer. A bill is considered to have been mailed on the date it is postmarked. If there is no postmark, a utility must date the bill and deliver the bill on or before that date.
- C. Terms and Conditions.** Any utility which chooses to impose a late payment charge must file terms and conditions conforming to this rule. Any utility that has existing terms and conditions that conflict with this rule must file revised terms and conditions at the time of its next general rate case or when it next revises its rate schedules whichever is earlier. This rule preempts any inconsistent terms and conditions from the time of its effective date.
- D. Disputed Bill.** No late payment fee may be imposed for any time period in which a bill is in dispute pursuant to applicable Commission rules. A customer will have a minimum of 25 days from the date of the resolution of the dispute to remit payment to a utility in order to avoid a late payment charge.
- E. Exemption for Customers on Levelized Payment Plans.** No late payment charges may be imposed for an amount overdue that is the sole result of a budget payment plan (in which interest is paid on credit balances) or from levelized payments under a special payment arrangement developed according to the winter disconnection requirements of the Commission's rules (Chapter 815(9)(F)(5)).
- F. Exemption for Customers Adhering to Terms of Payment Arrangements.** No late payment charges may be imposed on a customer's past due balance while a payment arrangement is in effect, provided that the customer adheres to the terms of the payment arrangement for those arrearages.
- G. Minimum Amount.** A utility may adopt a minimum billed amount for which a late payment charge is imposed.
- H. Disclosure.** At least 30 days or one billing cycle, before a late payment charge program is begun or an existing late payment charge is increased, a utility must disclose to the affected customers the interest rate and methods which will be used to calculate late payment charges. Every bill issued after an approved late payment charge program begins must state the due date of the bill and the effective monthly interest rate that will be imposed if the bill is not paid by the due date.
- I. Applicability.** A utility may seek a late payment charge for overdue residential and non-residential customers or both.

## 2. INTEREST ON DEPOSITS

- A. General Policy.** Interest on all customer deposits held by a utility shall equal the rate on one-year Treasury Securities in effect on November 1 of each year, as published in the Weekly Update of the Federal Reserve's H.15 Statistical Release (<http://www.federalreserve.gov/releases/h15/Current/>). If November 1 falls on a weekend, the applicable one-year Treasury rate will be the one in effect on the first business day of November. To ensure that customers earn a modest return on deposits held by utilities, in no case may the customer deposit rate be set at less than a floor of 0.20%.
- B. Annual Notice.** Each year no later than November 15, the Commission's Administrative Director shall issue a notice to all public utilities setting the rate to be paid by public utilities on customer deposits for the next calendar year beginning January 1.
- C. Effective-Date of Interest Rate.** The effective date for the annual change described in §2(A) shall be January 1.
- D. Effective Date of Deposit.** The effective date of the deposit is the date that the first payment of the deposit is made. If the effective interest rate changes while a deposit is held by the utility, the new interest rate shall be applied during its effective period. Interest shall accrue until the deposit is returned to the customer, regardless of the amount of time the deposit is held by the utility. All interest shall be credited to the customer annually and upon termination of the service or the return of the deposit by the utility. Compounding of interest is not required. The utility shall have the option of crediting accrued interest to the customer's deposit and paying the interest to the customer when the deposit is returned or crediting that accrued interest to the customer's bill. If credited to the customer's bill, the reason for the credit shall be specified on the customer's bill.
- E. Terms and Conditions.** Every utility must file terms and conditions stating that the interest rate on customer deposits shall be the rate set by the Public Utilities Commission in accordance with Chapter 870 of the Public Utilities Commission Rules.

## 3. CHARGE FOR RETURNED PAYMENT

All utilities that choose to charge customers a fee for nonpayment due to returned payment may charge the customer the greater of \$5.00 per account to which the returned payment applies or the amount that the bank charges the utility, not to exceed \$20.00. If the utility charges the customer more than \$5.00, the utility shall furnish the customer with proof of the bank charge. Any utility which chooses to impose a charge for returned payment must file terms and conditions that conform to this rule.

**POLICY NUMBER:** 6.40-15  
**SUBJECT:** Interest Rate to be Charged for Late Payments  
**EFFECTIVE DATE:** 01-01-2016  
**SUPERSEDES:** n/a  
**APPROVED BY:** Board of Trustees

**A. Purpose**

The purpose of this Policy is to establish the interest rate that will be charged by the District for late payments.

The Policy is necessary as a result of the granting of exemptions to PWD from rate making statutes, providing PWD with an exemption from Chapter 870 of the Rules of the Public Utilities Commission.

**B. Interest Rate**

1. For late payments made to the District, the District shall utilize the interest rate established as the maximum rate of interest by the Treasurer of the State of Maine, pursuant to 36 M.R.S. §505(4) for delinquent property taxes.
2. The rate shall be implemented effective January 1, 2016. Thereafter, it shall be changed as soon as practical by PWD when changed by the State Treasurer.
3. The District shall publish on its website either a link to the interest rate established by the State Treasurer or the actual interest rate that will be charged for late payments.



Portland Water District  
*From Sebago Lake To Casco Bay*

## **BOARD OF TRUSTEES / AGENDA ITEM SUMMARY**

Agenda Item: 6B Order 22-042  
Date of Meeting: October 24, 2022  
Subject: North Windham Sewer Project-  
Construction Management-At-Risk and  
Engineering Services Contract Recommendations  
Presented By: Greg Pellerin, Senior Project Engineer  
Gordon Johnson, Engineering Services Manager

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### **RECOMMENDATION**

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

ORDERED, the General Manager is authorized to execute a professional services contract for the design build – Construction Manager at Risk (CMAR) North Windham Sewer Project (“Project”) with Brown & Caldwell Engineers for engineering services related to the Project; and

BE IT FURTHER ORDERED, that the General Manager is authorized to enter into an agreement for construction management services with MWH Construction to provide Construction Manager at Risk services for the Project: and

BE IT FURTHER ORDERED, that the North Windham Sewer System (*CIP 2022-182/3324*) budget in the preliminary amount of \$2.5M is authorized to commence the Project; 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**

PWD published Request for Qualifications (RFQ) packages to procure engineering and construction management-at-risk (CMAR) services for the North Windham Wastewater Treatment Facility (WWTF) Project on July 13, 2022. The selected Engineer and CMAR will work with PWD/Town throughout the Design-Build process to enhance constructability and cost estimating and certainty, develop a procurement plan to optimize the construction schedule, streamline project execution, and maintain adequate operations during construction of the proposed WWTF and collection system.

PWD received a total of five proposals and convened a selection committee of Town and PWD representatives to interview the proposing teams. The committee ranked each proposal based on the criteria advertised in the RFQ. Brown and Caldwell and MWH received the best scores and are therefore recommended to enter into contracts with PWD for the project.

The PWD project team will commence the design phase of the project with the allocated budget. Contracts will be negotiated with the Engineer and CMAR for design phase services. Future



funding will be requested when the project has reached the design-build construction milestone of guaranteed maximum price (GMP) for this phase of the project.

**Project #:** 2022 CIP – Subprogram182/ Project 3241

### **FISCAL REVIEW/FUNDING**

PWD and the Town of Windham have secured funding approval for a \$38.9 loan at 1.5% interest rate with \$2.25 in principal forgiveness from the Department of Environmental Protection (DEP) Clean Water State Revolving Loan Fund in April of 2022. The Board of Trustees and the Town Council approved acceptance of these funds in May 2022. Windham approved, by referendum vote in June of 2022, the North Windham Sewer project with a budget of \$38.9M.

Phase 1 of the project has a total estimated project budget of \$27M and the costs for the Engineering and CMAR will be funded from this budget. The estimated debt service for Phase 1 of the project is estimated at \$1,350,000. Future operating costs for the wastewater system will be funded through user fees and the debt service will be funded through the Town's tax incremental financing set up for the commercial zone of North Windham. Phase 1 of this project is expected to be on-line by January 1, 2026. Future phases will be constructed as funding becomes available.

### **LEGAL REVIEW**

Corporate Counsel has reviewed the proposed order as to form.

### **CONCLUSION(S)**

Staff recommends awarding contracts for CMAR and Engineering services for the North Windham WWTF Project to MWH and Brown & Caldwell engineers and establishing a budget of \$2.5M. The Committee recommended moving the item to the full Board for their consideration with a 2-0 vote.

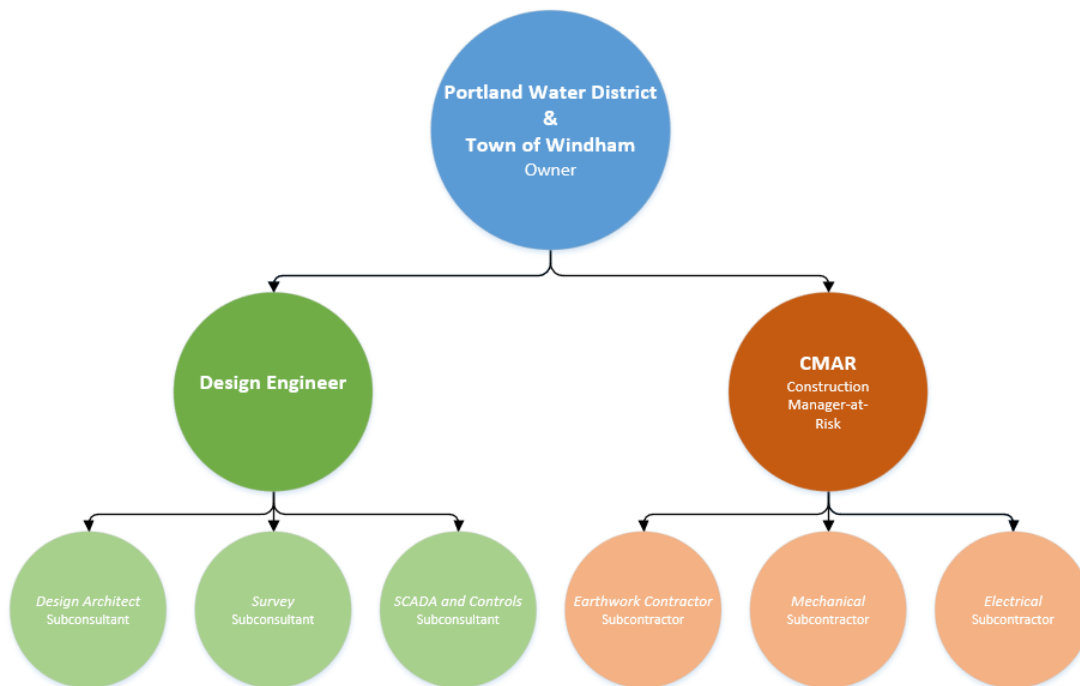
### **ATTACHMENT(S)**

SUPPORTING INFORMATION

## **SUPPORTING INFORMATION**

### **Introduction and Project Organization**

The Town of Windham and PWD are engaged in a collaborative effort to provide a new wastewater collection system, treatment plant, and effluent disposal system in the commercial area of North Windham along Rt. 302. This system is intended to meet the needs of existing and future commercial development in the area. The project team engaged Tighe & Bond, Inc. to produce a Preliminary Engineering Report and 30%-level design and a preliminary groundwater discharge permit from DEP for a greenfield wastewater collection system with pump stations, a new membrane bioreactor (MBR) wastewater treatment plant, and a subsurface effluent disposal system. During the next stage of the project, the team will engage with an Engineer and Construction Manager-at-Risk (CMAR), to advance the preliminary design to the final design and construction phases of the project. The figure below illustrates the CMAR project structure:



CMAR is a project delivery method, which falls under the umbrella of the Design-Build Method approved by the BOT on March 28, 2022 [Order 22-011]. This delivery method offers advantages to the North Windham Sewer project in the areas of project schedule, contractor input during design, and project budget containment. This CMAR project delivery method will include the following steps.

1. Procurement of Engineering and CMAR services for the Design Phase to GMP.
2. Design Phase efforts and development of GMP.
3. Final Design and Construction Phase.
4. Startup, Testing, and Documentation.

## Engineer and CMAR Selection Processes

PWD initiated a parallel RFQ process for both the Engineering and CMAR services in accordance with our purchasing policy and SRF requirements, utilizing a qualifications-based selection process. Responses were received from a total of five firms including:

- CMAR: MWH, Apex, & PC Construction
- Engineering: Kleinfelder & Brown and Caldwell

A selection committee was organized, including key Town of Windham staff as well as PWD staff from the AMAP and Wastewater Operations Departments. The committee members were given an opportunity to review the qualifications proposals for each firm, followed by an extensive interview process for each of the firms. In the end, the selection committee ranked the CMAR and Engineering firms in accordance with the scoring rubrics as laid out in the RFQs. The committee provided an integer rank by each committee participant for each of the criteria listed in the RFQ, where a ranking of “No. 1” represents the firm best meeting the criterion. The firm with the lowest overall score will be asked to enter into negotiations with District. The resulting scores are shown in the tables below:

North Windham Sewer CMAR Firm Selection			
<b>Final Score</b>			
<u>Proposers:</u>	<u>Score:</u>	<u>Rank:</u>	
MWH	109	1	
PC Construction	204	2	
Apex	286	3	
North Windham Sewer Engineering Design Firm Selection			
<b>Final Score</b>			
<u>Proposers:</u>	<u>Score:</u>	<u>Rank:</u>	
Brown and Caldwell	125	1	
Kleinfelder	175	2	

Key Factors that led to the recommendation of the Brown and Caldwell team include:

- Strong experience in each of the technical areas laid out within the RFQ.
- The team’s depth of experience managing CMAR style projects of similar scope and complexity.
- Capability of the team’s management and overall organizational structure to be able to deliver this complex, high energy project.

Key Factors that led to the recommendation of the MWH team include:

- Substantial recent and relevant experience with projects in this industry and of this scale and complexity.
- Strong approach to CMAR design integration, open book cost estimating and collaborative work style.
- Capable and qualified project team structure.

## Summary

As a result of these rankings, the District has begun the process of negotiating with Brown and Caldwell for Engineering and MWH for CMAR services for the project. The District will negotiate services with each of these firms for the next stage of the project: Design Phase efforts and development of project GMP. This stage of the project will require the District, Engineer and CMAR to work collaboratively on achieving the next design and construction milestones in order to achieve overall project goals.

The PWD project team will proceed with this phase of the project with the \$2.5M budget. The team believes this amount should be sufficient to carry the overall project team through final design to the construction phase. Contracts will be negotiated and executed with both Brown and Caldwell and MWH, and some budget will be retained for PWD internal costs and discretionary spending on as needed design and construction related project elements. An approximate breakdown of the design phase spending is provided in the table below:

Engineering, CMAR, PWD Design Phase Project Budget	
Task	Budget
Engineering Services (Brown & Caldwell)	\$ 1,800,000.00
CMAR Design Phase Services (MWH preconstruction services)	\$ 400,000.00
PWD & Design Phase to GMP- contingency	\$ 300,000.00
Total:	<b>\$ 2,500,000.00</b>



## **BOARD OF TRUSTEES / AGENDA ITEM SUMMARY**

Agenda Item: 6C Order 22-043  
Date of Meeting: October 24, 2022  
Subject: Biosolids Management Contract  
Presented By: Scott Firmin, Director of Wastewater Services

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### **RECOMMENDATION**

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

ORDERED, the General Manager is authorized to execute a contract amendment with Casella consistent with the terms outlined in the Contract Amendment attached hereto as Exhibit A.

### **BACKGROUND ANALYSIS**

The treatment of wastewater at our treatment plants generates residuals, or biosolids, that must be managed on a daily basis. PWD is in the final term of a contract with Casella to accomplish this. Since 2019, all of PWD's biosolids have been landfilled. The contract with Casella was executed in 2006; it had three renewal terms of five years each, and was expected to be in place for 20 years, or through 2025.

DEP and Legislative activity have imposed sudden and substantial restrictions on biosolids management in Maine. This has resulted in the elimination of all options but landfilling for biosolids generated and managed in Maine and has placed significant cost and logistical pressures on the landfills that accept biosolids.

PWD received communication from Casella this summer, claiming contract implications related to the changes in law implemented by the legislature, which Casella believed constituted a Force Majeure event under our Contract that warranted immediate changes to the current contract. At the July 25, 2022, the Board of Trustees authorized the General Manager to finalize a contract amendment that included a price increase of no more than \$25 per wet ton as well as an indexed fuel adjustment. It was anticipated that this amendment would be in effect for the three years remaining in the current contract term.

While working to finalize these changes, it became clear that both parties were interested in maintaining stability, with PWD seeking a reliable outlet for the management of PWD's biosolids at a more stable cost in the future, and Casella seeking a stable revenue flow from our product. Recognizing this, Casella offered some additional options that would do the following: extend the term of the contract by a possible additional 3 years to 5 years; eliminate the ability for either part to end the contract (as we considered in this case by Casella given the impacts of legislative actions); and decrease the contractual future annual cost increases beyond year 1 of the amended term.

Given the market place and seemingly exponential cost increases, this term and cost structure is attractive. However, given the possible development of emerging technologies in the next 4 or 5 years, PWD requested a termination for convenience in the final 18 months of our Contract. This would require notice and a per month fee to offset costs and other commitments that Casella would be making to implement this agreement. This termination fee to PWD would be \$17,000 per month; if this were implemented, it would represent a month or two of the expected costs under this contract.

The tipping fee and fuel charge indexed adjustment will be retroactively adjusted to August 8, 2022, which is when the legislative changes went into effect. The total cost per wet ton is anticipated to increase for this year by no more than \$25 per wet ton with a current fuel adjustment of \$2.16 per wet ton. This increase will represent an immediate increase of 27% to our biosolids management costs and increase the total cost by \$282,900 in 2022. While the actual consumer price index is yet to be determined, the increase for 2023 is expected to be in-line with the budgeted tipping fee of \$140 per wet ton.

Biosolids management in Maine is extremely volatile and despite these increases, which directly address real and significant costs related to managing biosolids, Casella continues to provide a vital service in an otherwise limited market. This revised amendment to our contract will provide reliable management options at a controlled and relatively reasonable price in the coming years.

#### **FISCAL REVIEW/FUNDING**

The proposed tipping fee and current estimated fuel surcharge will result in an increased cost of \$282,900 in 2022. Future costs are expected to be consistent with budgeted costs in the draft 2023 budget and the following 4 years beyond that will be based solely on the consumer price index.

#### **LEGAL REVIEW**

Corporate Counsel has reviewed the proposed order as to form.

#### **CONCLUSION(S)**

Staff recommends that the Board authorize the General Manager to finalize the form of a contract amendment to continue with Casella in 2022 and the remaining term of the current agreement. Staff recommends this amendment. The Committee recommended moving the item to the full Board for their consideration with a 2-0 vote.

#### **ATTACHMENT(S)**

Draft Contract Amendment with Casella

**Agreement Extension and  
Third Amendment to Biosolids Disposal Agreement  
By and Between  
Portland Water District  
And  
Casella Organics**

This Third Amendment to the Agreement is made this \_\_\_\_ day of \_\_\_\_\_, 2022 by and between New England Waste Services of Maine, Inc. d/b/a Casella Organics, a corporation with a place of business at 755 Banfield Road, Suite 201, Portsmouth, NH 03801 (hereinafter “VENDOR”) and the Portland Water District (hereinafter “DISTRICT”).

WHEREAS, DISTRICT entered into an Agreement dated January 1, 2006 with New England Waste Services of ME, Inc. d/b/a New England Organics for the receipt, transport and disposal of biosolids; (hereinafter “Agreement”)

WHEREAS, the Agreement was extended for a 5-year period by letter dated August 13, 2010; and

WHEREAS, the Agreement was Amended via the First Amendment on April 8<sup>th</sup>, 2015; and

WHEREAS, the Agreement was Amended via the Second Amendment on December 23<sup>rd</sup>, 2020

WHEREAS, VENDOR changed their d/b/a name from “New England Organics” to “Casella Organics” in September 2012; and

WHEREAS, DISTRICT and VENDOR agree that the pass of Maine Law LD 1911 constitutes a Force Majeure event

NOW THEREFORE, in consideration of the mutual promises contained herein, the parties agree to amend the Agreement as follows:

1. Under Section 4.1 Service Fee, Section (f) is added as follows:

*Starting on August 8<sup>th</sup>, 2022 all Specification biosolids will be subject to an additional \$23.00 per wet ton additional fee due to LD 1911. This additional fee is explicitly not subject to adjustment via the Annual Service Fee Escalation Factor. In the event that LD 1911 is repealed this fee will no longer be assessed.*

2. *District accepted a provision for annual adjustment due to the rising cost of fuel via the proposal letter from Vendor dated February 11<sup>th</sup>, 2015 and*

*referenced in the First Amendment. District and Vendor agree to disregard the previously negotiated adjustment for fuel, and replace it with the following:*

*Vendor may assess a fee (the “Fuel Adjustor”) on a monthly basis to cover increases in Contractor’s costs caused by increases in the cost of diesel fuel over a floor price of \$4.50 per gallon (the “Floor Price”) based on the listed average price for diesel fuel for the month of service, as set forth on the EIA Retail On Highway Diesel Prices index for New England PADD 1A (the “Index”) or a successor index. Each month Contractor will assess a Fuel Adjustor whenever the average monthly Index fuel price listed for the month of service (the “Service Month Index Price”) exceeds the Floor Price. The Service Month Index Price can be located on the internet at the following web site: <http://www.eia.gov/petroleum/gasdiesel/> and is listed in the spreadsheet link titled “full history”.*

*The Fuel Adjustor will be made according to the following formula:*

*$$[(\text{Service Month Index Price}/\text{Floor Price}) \times 9\% \times (\text{Base Rate per ton})] - [9\% \times \text{Base Rate per ton}] = \text{Fuel Adjustor, per ton}$$*

*The following example is provided for clarification and reference purposes only:*

*Example:*

*Service Month Index = \$5.000*

*Floor Price = \$4.500*

*Base Rate per ton = \$100.63*

*$$[(\$5.000/4.500) \times 9\% \times \$100.63] - (9\% \times \$100.63) = \$1.01 \text{ per ton}$$*

3. The definition for Minimum Load Charge in Article 1.2 A) Definitions: is deleted in its entirety and replaced with the following:

“Minimum Load Charge” means a fee that will be charged whenever the calculated monthly average tons per load (MAT) is less than 28 tons per load. The three (3) loads with the lowest weight each month will be subject to pay the Minimum Load Charge, but for those loads will not be factored into the MAT. MAT shall be calculated using the remaining legally loaded containers, containers loaded in excess of 100,000 pounds shall not be used in calculating the monthly average.

Example:

MAT = 27.5 tons

Monthly Loads Managed = 15

Base Fee = \$100.63

$$(28 \text{ tons/load} - 27.5)(15 \text{ loads})(\$100.63/\text{ton}) = \$754.73$$



4. Section 6.8 Termination for Convenience is added to the Agreement as follows:

*The DISTRICT may terminate this Agreement for convenience upon (90) days advance written notice to the Vendor, provided that the District shall pay to the Vendor all payments due for services provided through the termination date; and reimburse the Vendor at the rate of \$17,000 dollars per month, or part thereof, remaining on the Term of this Agreement within thirty (30) days of such date of termination, provided that the District cannot provide such termination for convenience to be effective prior to July 1<sup>st</sup>, 2026.*

5. Section 7.1 Term of the Agreement is hereby deleted and replaced in its entirety to read as follows:

*This Agreement shall be effective on the latest date of execution hereof (the "Effective Date"). The initial term of this amended agreement shall expire on December 31<sup>st</sup>, 2027. Thereafter, the term shall be automatically extended for additional three (3) year terms, unless either party provides written notice of termination to the other party by personal delivery, express mail or certified or registered mail, return receipt requested, at least six (6) months prior to the expiration of the Initial Term or any subsequent renewal term.*

6. The definition for "Annual Service Fee Escalation Factor" is deleted in its entirety with the following:

*"Annual Service Fee Escalation Factor" means the adjustments to the Service Fee, which shall be made as follows:*

*The Annual Service Fee Escalation Factor in 2023 shall be computed at the anniversary of the Contract Date of this Agreement at a rate equal to Five Dollars (\$5.00) plus the annual percentage increase in the Consumer Price Index, Northeast Area All Urban Consumers for the month of December.*

*The Annual Service Fee Escalation Factor for 2024, and all subsequent years, shall be computed at the anniversary of the Contract Date of this Agreement at the rate of the annual percentage increase in the Consumer Price Index, Northeast Area All Urban Consumers for the month of December.*

7. A new Section 7.18 Change in Law is added as follows

*Section 7.18 Change in Law. Both Parties to this Agreement recognize that changes in any laws, ordinances, or regulatory requirements or guidelines or changes in interpretation or enforcement thereof may cause either party to be subject to a Force majeure event per Section 7.17. However, both Parties recognize that the impact from the passage of Maine Law LD 1911, and LD 1639 is already incorporated into this Agreement, and no Force Majeure event may be declared as a result of the impact of these laws.*

IN WITNESS WHEREOF, the parties have caused this Second Amendment to Agreement to be signed and effective the date above written.

Portland Water District

\_\_\_\_\_  
Witness

\_\_\_\_\_  
By: Carrie Lewis  
Its: General Manager

Casella Organics

\_\_\_\_\_  
Witness

\_\_\_\_\_  
By: Robert Cappadona  
Its: Vice President

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## **BOARD OF TRUSTEES / AGENDA ITEM SUMMARY**

Agenda Item:	6D Resolution 22-014
Date of Meeting:	October 24, 2022
Subject:	<u>Special Election for the Trustee Representing Scarborough</u>
Presented By:	President Louise Douglas

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A Trustee seat on the Board is vacant due to the resignation of Seth Garrison effective September 19, 2022. Pursuant to the District's Charter, the vacancy must be filled by a special election; the District is responsible for the costs of the election.

Mr. Garrison's term was set to expire in November, 2023. Unless a special election is held, the Town of Scarborough will not have representation on the Board until then.

It is recommended that the District ask the Town of Scarborough to hold a special election to fill the Scarborough seat on the Board as soon as practicable.

The following motion is proposed:

**BE IT RESOLVED**, that the Clerk of the Town of Scarborough is hereby requested to hold an election for the vacant Trustee position on the Board of the Portland Water District at the earliest possible convenience of the Town.