



## **WORKSHOP MEETING BOARD OF TRUSTEES**

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

6:30 p.m. on Monday, March 11, 2024

Remote Meeting Participation Available to the Public via Zoom at:

<https://us06web.zoom.us/j/89007472975?pwd=MenpWCuNKbepO6R11xxvnVTkVYcbgb.1>

There will be a Workshop Meeting of the Board of Trustees of the Portland Water District on Monday, March 11, 2024. The meeting will begin at 6:30 p.m. in the Nixon Training Center at the general offices of the District located at 225 Douglass Street, Portland, Maine.

The Workshop will be preceded by meetings of the following Board Committees:

<u>Committee</u>	<u>Room / Location</u>	<u>Time</u>
Administration & Finance	Monie Room	5:30 p.m.
Operations	EOC 2 <sup>nd</sup> Floor	5:30 p.m.
Planning	Nixon Training Center	5:30 p.m.

### **AGENDA – WORKSHOP**

**1. PFAS Litigation**

Staff will discuss pending PFAS litigation that has been filed in federal court on behalf of water utilities that have PFAS in their water source. Staff will also discuss PFAS litigation related to wastewater.

**2. Biosolids Management Update**

Staff will provide an update on ongoing regional and PWD biosolids management planning efforts, including recent conversations with ecomaine and Sanford Sanitary District. Staff will propose additional steps to further develop planning options.

**3. Employee Engagement Survey Summary**

Staff will present a summary of the recent Employee Engagement Survey and planned next steps to address data in the survey.

**4. Other Business**

**5. Adjourn**



## **MEMORANDUM PORTLAND WATER DISTRICT**

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TO: Administration and Finance Committee/Board of Trustees

FROM: David Kane, Executive Director of Administration  
Mary Demers, Director of Employee Services

DATE: March 5, 2024

RE: **Administration and Finance Committee Meeting – March 11, 2024**

A meeting of the Administration and Finance Committee of the Portland Water District Board of Trustees will be held on Monday, March 11, 2024, at 5:30 p.m., in the Monie Conference Room of the District, 225 Douglass Street, Portland, Maine.

### **AGENDA**

- 1. Pension Plan Administrative Services Consolidation**  
Staff will present a motion authorizing an amended contract be signed with Morgan Stanley to provide the administrative services of the defined benefit pension plans. (See attached memo)
- 2. Employee Turnover Trends**  
Staff will present an overview of the 2023 turnover trends and the current recruiting environment.
- 3. Meter Project Update**  
Staff will present a status report on the meter replacement project.
- 4. Other Business**



## **ADMINISTRATION AND FINANCE COMMITTEE / AGENDA ITEM SUMMARY**

Agenda Item: 1  
Date of Meeting: March 11, 2024  
Subject: Pension Plan Administrative Services  
Presented By: David Kane, Executive Director of Administration  
Mary Demers, Director of Employee Services

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### **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 provided by Morgan Stanley.

### **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.

### **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](#)

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## 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%	<del>45</del> 0%	50%
	International Equities	<del>5</del> 10%	<del>20</del> 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%	<a href="#">MSCI World All Country Ex-US Index</a> <del>MSCI EAFE Index</del>
<del>10%</del>	<del>MSCI Emerging Markets Index</del>
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

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Print Name

Signature

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Title

Date

[END]





## **MEMORANDUM PORTLAND WATER DISTRICT**

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**TO:** Operations Committee/Board of Trustees

**FROM:** Scott Firmin, Director of Operations - Wastewater  
James Wallace, Director of Operations - Water

**DATE:** March 5, 2024

**RE:** **Operations Committee Meeting – March 11, 2024**

A meeting of the Operations Committee of the Portland Water District Board of Trustees will be held on Monday, March 11, 2024, at 5:30 p.m., in the Emergency Operations Center (EOC) Room of the District, 225 Douglass Street, Portland, Maine.

### **AGENDA**

- 1. Review of the 2023 Combined Sewer Overflow Program**  
Staff will provide a review of combined sewer overflows and our monitoring efforts in 2023.
- 2. Westbrook Combined Sewer Overflow Long-Term Control Plan**  
Staff will provide an overview of the 2023 Westbrook Long-Term Control Plan submitted to the Department of Environmental Protection.
- 3. Engineering Contract for Testing and Engineering Support for the Fore River Pump Station Pumps**  
Staff will provide an update of the assessment of the pumps and recommendations to engage a consultant to implement solutions to the existing issues. (See attached memo)
- 4. Other Business**



## **OPERATIONS COMMITTEE / AGENDA ITEM SUMMARY**

Agenda Item: 3  
Date of Meeting: March 11, 2024  
Subject: Engineering Contract for Testing and Engineering Support for the Fore River Pump Station Pumps  
Presented By: Scott Firmin, Director of Operations - Wastewater

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### **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.

**ATTACHMENT(S)**

None



## **MEMORANDUM PORTLAND WATER DISTRICT**

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TO: Planning Committee/Board of Trustees

FROM: Christopher Crovo, P.E., Executive Director of Asset Management and Planning

DATE: March 5, 2024

RE: **Planning Committee Meeting – March 11, 2024**

A meeting of the Planning Committee of the Portland Water District Board of Trustees will be held on Monday, March 11, 2024, at 5:30 p.m., in the Nixon Room of the District, 225 Douglass Street, Portland, Maine.

### **AGENDA**

- 1. City of Portland Lease - Gowen Road Property**  
Staff will recommend entering into a Lease agreement with the City of Portland.  
(See attached memo)
- 2. Review of the District's Real Estate Interests through the use of the District's Enterprise Asset Management System (EAM)**  
Staff will provide an overview of the EAM Property Interest Module in our EAM System.
- 3. Other Business**



## **PLANNING COMMITTEE / AGENDA ITEM SUMMARY**

Agenda Item: 1  
Date of Meeting: March 11, 2024  
Subject: City of Portland Lease - Gowen Road Property  
Presented By: Laurel Jackson, Right of Way Agent

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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 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.

### **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