

Order 49-16/17

Passage: 9-0 on 9/7/2016

ETHAN K. STRIMLING (MAYOR)
BELINDA S. RAY (1)
SPENCER R. THIBODEAU (2)
EDWARD J. SUSLOVIC (3)
JUSTIN COSTA (4)

**CITY OF PORTLAND
IN THE CITY COUNCIL**

Effective 9/17/2016

DAVID H. BRENERMAN (5)
JILL C. DUSON (A/L)
JON HINCK (A/L)
NICHOLAS M. MAVODONES, JR (A/L)

**ORDER APPROVING THE INTERLOCAL STORMWATER AGREEMENT
RE: CASCO AND SACO BAY WATERSHED MUNICIPALITIES**

ORDERED, that the Interlocal Agreement between Portland and the Cumberland County Soil & Water Conservation District, Cape Elizabeth, Cumberland, Falmouth, Freeport, Gorham, Scarborough, South Portland, Westbrook, Windham and Yarmouth to implement federal requirements for stormwater minimum control measures is hereby approved in substantially the form attached hereto; and

BE IT FURTHER ORDERED, that the City Council hereby authorizes the City Manager or his or her designee to execute said document in substantially the form attached hereto and any other related documents necessary or convenient to carry out the intent of said documents and this Order.

**INTERLOCAL AGREEMENT AMONG
CUMBERLAND COUNTY SOIL & WATER CONSERVATION DISTRICT
AND
CASCO BAY AND SACO BAY WATERSHED MUNICIPALITIES**

This Interlocal Agreement (“Agreement”) is made this ____ day of _____, 20____, by and among Cumberland County Soil & Water Conservation District, 35 Main Street, Suite 3, Windham, Maine 04062 (the “District”), an agency of the State of Maine, and the Casco Bay and Saco Bay Watershed Municipalities (the municipalities of Cape Elizabeth, Cumberland, Falmouth, Freeport, Gorham, Portland, Scarborough, South Portland, Westbrook, Windham, Yarmouth together referred to as the “Casco Bay Watershed Municipalities” and the municipalities of Biddeford, Old Orchard Beach, Saco together referred to as the “Saco Bay Watershed Municipalities”), each a municipal corporation under the laws of the State of Maine. The Casco Bay Watershed Municipalities and the Saco Bay Watershed Municipalities also are referred to herein collectively as the “Municipalities.” The foregoing also are referred to herein collectively as the “Parties” or singly as “Party.”

WHEREAS, the Municipalities are subject to the United States Environmental Protection Agency (“USEPA”) National Pollutant Discharge Elimination System (“NPDES”) Program’s Phase II Municipal Separate Storm Sewer System (“MS4”) regulations, as administered by the Department of Environmental Protection (“DEP”) through the Maine Pollutant Discharge Elimination System (“MPDES”) Program.

WHEREAS, the Municipalities are and have been regulated under a MS4 General Permit (the “General Permit”) that was first issued by DEP in 2003 and is renewed every five years.

WHEREAS, the District, under 12 M.R.S.A. Chapter 1, is an agency of the State and a public body corporate and politic, exercising public powers including, without limitation, the powers to carry out preventive and control measures and works of improvement for flood prevention, or the conservation, development, utilization and disposal of water within the District, and to cooperate, or enter into agreements with, and within the limits of appropriations or other funds duly made available to it by law, to furnish financial or other aid to any agency, governmental or otherwise, or any occupier of lands within the District, in the carrying on of erosion control

and prevention operations and works of improvement for flood prevention and the conservation, development, utilization and disposal of water within the District.

WHEREAS, State law encourages the development of regional coalitions of local governments in order to establish efficient and effective delivery of municipal services, and the Municipalities wish to meet the regulatory requirements of the General Permit as efficiently and cost-effectively as possible with minimal duplication of efforts.

WHEREAS, many of the requirements of the General Permit lend themselves to a regional collaborative approach that allows efficiencies and cost-effective implementation for the stormwater minimum control measures (“MCM Requirements”) required under the MS4 regulations and the General Permit, which include:

1. Public Education & Outreach;
2. Public Involvement;
3. Illicit Discharge Detection & Elimination (IDDE);
4. Controlling Runoff from Construction;
5. Managing runoff during Post-Construction; and
6. Pollution Prevention & Good Housekeeping.

WHEREAS, the District has expertise in stormwater management and in stormwater-related public education, outreach and involvement, and the District has agreed to provide stormwater management and stormwater-related public education, outreach and involvement services to the Municipalities to assist in implementation of the MCM Requirements through the Interlocal Stormwater Working Group (“ISWG”) that was formed in 2002. Since that time, the District has provided services to wholly satisfy minimum control measures 1 and 2 for the Municipalities in ISWG¹.

¹ In 2002, municipalities participating in ISWG were limited to the Casco Bay Watershed Municipalities, who participated in a grant-funded project to address 3 issues (MS4 rule, FEMA hazard mitigation eligibility requirements, delegation of Stormwater permitting authority to municipalities). In 2005, the Saco Bay Watershed Municipalities joined ISWG, and along with the Cumberland County Municipalities, executed an Interlocal Agreement to include all 14 Municipalities, which allowed CCSWCD to provide assistance for MCM1 and 2 throughout the Casco Bay Watershed and Saco Bay Watershed Municipalities.

WHEREAS, the recent regulatory atmosphere has seen an increase in enforcement and inspections by both USEPA and DEP. Subsequently, additional MS4 minimum control measures have been identified where the Municipalities can collaborate, which will result in cost-effective regional collaborative implementation of all six minimum control measures, in whole or in part.

WHEREAS, the District has expertise in all aspects of MS4 regulation implementation and has gained valuable knowledge and insight from attending the regulatory inspections that have occurred with both USEPA and DEP.

WHEREAS, it will be to the advantage of all Parties to provide regional collaborative assistance through the District and ISWG, enabling each Municipality to cost-effectively address and implement the MCM Requirements, and to provide consistent oversight for management of stormwater that will benefit the waters of each Municipality and the State of Maine.

WHEREAS, Maine statute (30-A M.R.S.A. §§ 2203 *et. seq.*) clearly states that the Interlocal Cooperation Act is to be “liberally construed” to effectuate “the intent of Legislature to avoid proliferation of special purpose districts and inflexible laws,” and authorizes the District, as an agency of State Government, to exercise, enjoy and act jointly or cooperatively with any party capable of similar powers, privileges or authority, including the Municipalities.

WHEREAS, all Parties are willing to share in a regional implementation of the MCM Requirements on a cost-sharing basis through this Agreement, with the District being the technical and educational service provider for the Municipalities, and with these services being provided through ISWG.

NOW THEREFORE, in consideration of these covenants herein, the Parties do agree as follows:

1. This Agreement is an interlocal cooperation agreement pursuant to 30-A M.R.S.A. §§ 2203 *et. seq.* for the purpose of providing regional implementation of the MCM Requirements and assistance for each Municipality on a cost-sharing basis on the terms and conditions set forth in this Agreement. The Municipalities will work collaboratively and cooperatively with the District through ISWG.

2. The specific terms and conditions of this Agreement are as follows:

A. *Its duration*

The term of this Agreement shall commence upon execution and shall continue for the duration of each five-year General Permit, and shall renew automatically for the term of each successive General Permit unless a Party nonrenews or sooner terminates its participation under this Agreement as provided in Section 2.E below.

B. *The precise organization, composition and nature of any separate entity created by the agreement*

At the beginning of each Fiscal Year, which shall be from July 1 of one year until June 30 of the next year, that a General Permit or renewal thereof is in effect, which also shall be the “Permit Year,” each Municipality shall select an ISWG representative (the “ISWG Representative”) who shall be available to attend regular ISWG meetings and for consultation as necessary. The ISWG Representatives shall meet every other month to conduct regular meetings, and more frequently if needed, and these regular meetings may be supplemented by additional committee meetings (e.g., Budget Committee, etc.), as appropriate. The District shall facilitate the meetings and ISWG shall operate based on consensus. The responsibilities of all Parties are addressed in Section F below.

C. *Its purpose*

The purpose of this Agreement is to allow the Municipalities to meet the General Permit’s regulatory compliance requirements efficiently and cost-effectively, with minimal duplication of effort among the Municipalities. Formalizing the operation of ISWG under this Agreement allows the Municipalities to (1) collaborate regionally and cost-effectively to address all six MCM Requirements; and (2) utilize the District as a technical and education service provider to address and implement any or all of the MCM Requirements.

D. *The manner of financing and establishing/maintaining a budget*

On or by May 1 of each Permit Year, the ISWG Representatives, with District assistance, shall develop and adopt: (1) an “Annual Scope of Work” outlining the services to be provided by the District in the following Permit Year, and (2) a budget which shall state the “Total Sum,” defined as the amount

required to fund the services in the Annual Scope of Work to be provided by the District in the following Permit Year, and the District shall provide each Municipality with a statement of its Annual Cost (defined below). Each Municipality shall pay the District an annual amount (the “Annual Sum”) for each Permit Year for performing the services agreed upon by the Municipalities and the District through ISWG which are described in the Annual Scope of Work². The Annual Sum will be calculated and payable as follows:

- Each Municipality shall be obligated to pay as its Annual Sum an amount equal to one divided by the number of Municipalities that have entered into this Agreement or any Amendment thereto for that next Fiscal Year/Permit Year, multiplied by the Total Sum;
- The District shall invoice each Municipality on or by May 30th for the Annual Sum due for the next Fiscal Year;
- Each Municipality shall pay the invoiced Annual Sum by August 30th of each Fiscal Year/Permit Year; and
- Payments made after August 30th are subject to a 1.5% per month late service charge.

E. The method to terminate the Agreement and dispose of property upon termination; and

As stated in Section 2.A above, any Party may nonrenew or terminate its participation under this Agreement upon no less than eighteen (18) months’ prior written notice provided to each Party (the District’s Director and to each Municipality’s ISWG Representative), with a copy to each Municipality’s Manager or Administrator. Said notice of nonrenewal termination shall be provided to each party as referenced above, no later than December 31 of any year which at least 18 months prior expiration of the then-current General Permit or the termination date, which shall be the July 1 that is at least eighteen (18) months from the date of the notice of nonrenewal or termination. Notwithstanding a Party’s nonrenewal or termination, the nonrenewing or terminating Party shall:

- Continue to be liable for its share of all costs incurred hereunder prior to the effective date of the terminating Party’s termination until such liabilities are paid in full; and

² In cooperation with the ISWG representatives, the annual scope of work will be prepared by CCSWCD and presented in coordination with the annual budget. The annual sum to be paid to CCSWCD in a permit year will be discussed with the ISWG Budget Committee starting in February. A recommendation from the ISWG Budget Committee will be made to the larger group on or before the May ISWG meeting.



- Become wholly responsible for addressing and implementing all of the MCM Requirements within the Municipality.

No property is anticipated to be acquired by ISWG, therefore, disposal of property upon termination of this Agreement by all Parties is not anticipated at this time. However, in the event that capital equipment or property is acquired, the ISWG Representatives shall agree upon the disposal of all such property upon termination of this Agreement by all Parties.

F. Any other necessary and proper matters.

(1) ADDITIONAL MUNICIPALITIES: The Parties understand and agree that additional municipalities may wish to join this Interlocal Agreement. If the legislative body of an additional municipality approves its participation as a Party to this Agreement, the entering municipality must enter into an amendment to this Agreement by which the additional municipality shall agree to be bound by the provisions of this Agreement; and any such amendment shall become effective as of the first day of the Fiscal Year/Permit Year following the execution of that amendment, provided the additional municipality has paid its Annual Sum.

(2) ADDITIONAL WORK: The Parties understand and agree that any “Additional Work,” defined as stormwater-related services provided by the District to a Municipality outside of the Annual Scope of Work, will be under separate agreements negotiated and entered into between the District and the individual Municipality requesting the Additional Work.”

3. Because this Agreement does not establish a separate legal entity to conduct the joint or cooperative undertaking, the following additional items apply:

A. Administrator or joint board responsible for administering the joint or cooperative undertaking.

All Municipalities shall identify one ISWG Representative as described in Section 2.B. The District shall facilitate and act as administrator for the meetings and coalition of Municipalities that operates through ISWG based on consensus.

B. Manner of acquiring, holding, disposing of real and personal property used in the joint or cooperative undertaking

PROPERTY: No property is anticipated to be acquired by ISWG, therefore, acquisition, holding and disposal of property is not anticipated at this time. However, in the event that capital equipment or property is acquired, disposal is governed by Section 2.E above.

REVENUES: In the event of receipt of any grants, funds or a budget surplus, credit for such revenue shall be credited to each of the Municipalities on the same basis as provided for the sharing of Total Costs, after all District services for that Fiscal Year are paid.

4. **Responsibility.** This Agreement does not relieve any Municipality of its obligations or responsibility to comply with the General Permit. It is each Municipality's responsibility to submit appropriate documentation of actions and responsibilities required under the General Permit.

The responsibilities of each Party are as follows:

A. Obligations of the District:

- The District shall be responsible for providing services as outlined in the Annual Scope of Work and for compiling documentation for an annual report to the Municipalities on or by August 1st with a summary of completed services for the prior Permit Year.
- The District shall propose an Annual Scope of Work and budget³ for the ISWG Budget Committee to review starting in February of each permit year; revisions will be made and incorporated in agreement with the results of the ISWG Budget Committee meeting.
- The District shall invoice each Municipality on or by each May 30th.
- The District agrees to comply with the Federal Office of Management and Budget accounting standards continued in 2 CFR Chapter II Part 225 "Cost Principles for State, Local and Indian Tribal Governments" and with Uniform Administrative Requirements for Grants and cooperative agreements 40 CFR Part 31.

³ An annual scope of work and budget for ISWG is provided by CCSWCD, which includes facilitation and coordination of ISWG as a collective organization, implementation of collaborative MCM requirements for all regulated communities, and additional support on stormwater and other regulatory programs and developments, as needed/requested.



B. Obligations of each regulated municipality:

- Each Municipality shall select an ISWG Representative to be available for all meetings and consultations as necessary. A first and second alternate may also be identified by each Party. The ISWG Representative, appointed by the respective Municipal Manager or Administrator at the beginning of each Fiscal Year/Permit Year, will remain the same from year-to-year, unless ISWG and the District are otherwise notified by the Municipality.
- Each ISWG Representative will represent its respective Municipality and be authorized to act on its behalf within ISWG.
- Each Municipality shall be responsible for submitting any and all permit documents, including (but not limited to) annual reports and notices of intent to comply to federal, State and local regulatory agencies.
- Each Municipality shall remit payment of its Annual Sum to the District on or by each August 30th to CCSWCD Attention: District Program Manager, 35 Main Street, Windham, Maine 04062.

5. **Liability and Indemnification.** Each Party shall defend, indemnify and hold each and every other Party hereto harmless from any claim, cause of action, liability or expense, including without limitation, costs and reasonable attorney's fees, arising out of or resulting from the error, act or omission of the indemnifying Party's officers, agents or employees. This section shall not be interpreted to waive the monetary limits or substantive areas of immunity under the Maine Tort Claims Act (14 M.R.S.A. §1801 *et. seq.*) or any other immunities or defenses under that Act or other applicable law.

6. **Entire Agreement, Governing Law of the Agreement.** This Agreement constitutes the entire agreement among the Parties. If any clause, section or provision is held to be invalid or unenforceable, that shall not affect the validity of the remainder of Agreement and the Parties agree to meet and negotiate a new clause, section or provision. Amendments to this Agreement shall be in writing and executed by all Parties. This Agreement shall be governed solely by the laws of the State of Maine.

7. Authority. By executing this Agreement, each Party warrants that the representative signing below has been duly authorized by all appropriate actions of that Party's governing body to enter into and execute this Agreement, and that this Agreement represents a legal, valid and binding obligation of each Party, enforceable upon it in accordance with its terms and by application of equitable principles if equitable remedies are sought, except as enforceability may be limited by applicable bankruptcy or similar laws.

WITNESSETH, that this Interlocal Agreement is made this 1st day of July 2016 by and among the Municipalities and the District.

Authorized Representative for Cumberland County Soil & Water Conservation District

Signature: _____
Representative: Carol Anne Jordan
Title: Chair, Board of Supervisors
Date: July 1, 2016

Authorized Representatives for Municipalities (Signature pages for each Municipality are attached)

Signature: _____
Municipality: _____ (print name of municipality)
Representative: _____ (print name of signatory)
Title: _____ (print signatory's title)
Date: _____

