

Long Creek Watershed Management District Rules and Regulations

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A. General. All capitalized terms used in these Rules and Regulations shall have the same meaning as they have in the “Agreement Between Participating Landowner and Long Creek Watershed Management District” or “Participating Landowner Agreement” (“PLA”) the Long Creek Watershed Management District (“LCWMD” or the “District”) has entered into with each Participating Landowner.

B. Late Participation. The LCWMD Board of Directors (“Board”) will allow Landowners and Operators of Parcels located in the Long Creek Watershed to enter into a PLA with LCWMD after the subscription date of May 28, 2010 provided for in Section 15 of that PLA (21 days prior to the Maine Department of Environmental Protection (“DEP”) general date for filing of a Notice of Intent under the General Permit of June 18, 2010) at its reasonable discretion, subject to the following terms and conditions:

1. A Person who wishes to become a Participating Landowner under a PLA within 180 days after receiving notice of the General Permit from DEP may do so without additional financial penalty, even though the PLA is executed by the person after May 28, 2010, but that Person shall pay to LCWMD the full amount of the Initial Assessment and of any Annual Assessment(s), without proration, that would have been assessed against the Parcel Operator and/or Record Owner’s Parcel(s) had the Person entered into the PLA by May 28, 2010; provided, however, that Persons who enter into a PLA as Operators or Record Owners of Parcels that are identified by DEP after Nov. 6, 2009 (the date of the initial General Permit) as being located within the Long Creek Watershed and as having a Designated Discharge shall pay the amount of the Initial Assessment and/or Annual Assessments that would have been assessed against the Operator and/or Record Owner’s Parcel(s) had the Person entered into the PLA by May 28, 2010, prorated to the date which is the earlier of 210 days following the issuance of notice by the DEP that the Parcel is subject to the General Permit or 180 days after the Parcel’s Operator and/or Record Owner’s receipt of such notice.

2. A Person who wishes to become a Participating Landowner more than 180 days after receiving notice from the Maine Department of Environmental Protection (DEP) may do so in the following manner:

a. Such a Person may enter into a PLA with LCWMD as Operator and/or as Record Owner, but shall pay to LCWMD the full amount of the Initial Assessment and of any Annual Assessment(s), without proration, that would have been assessed against the Parcel Operator and/or Record Owner's Parcel(s) had the Person entered into the PLA within 180 days after receiving notice from DEP and also shall pay 0.25% interest per month amount of such Initial Assessment and/or Annual Assessment(s) calculated from the due date of each such Assessment.

b. The above notwithstanding, however, if a Person acquires, expands ownership of or improves property within the Long Creek Watershed after December 6, 2009 and subsequent to that acquisition, expansion of ownership or improvement, DEP determines for the first time that there is a Designated Discharge from that property, that Person may enter into a PLA with LCWMD as Operator and/or Record Owner, and shall pay to LCWMD an amount equal to the Initial Assessment or Annual Assessment(s) assessed upon the Parcel for the LCWMD Fiscal Year in which DEP determines there is a Designated Discharge from that Parcel, prorated on the basis of the portion of the LCWMD Fiscal Year during which the Person operates and/or owns such a Parcel.

C. Long Creek Watershed Management District Procurement Policy

1. Authorization. Purchases of goods and services by the Long Creek Watershed Management District (LCWMD) are subject to this "Long Creek Watershed Management District Procurement Policy" ("Policy"). Authorization for expenditures of any funds to purchase goods or services must be given by the LCWMD Board of Directors (Board), either through budget approval; contract approval; grant agreement approval; or specific approval as provided in this Policy. The Executive Director has the authority to purchase goods and services up to the amount of \$2,500 and to award bids and to accept proposals for goods and services, respectively, up to the amount of \$10,000, except as otherwise provided in this Policy.

2. Purchases by competitive bidding. LCWMD shall purchase collectively all goods and services in a manner that best secures the greatest possible economy consistent with the required grade or quality of the goods or services.

a. Competitive bids and requests for proposals shall be required for all purchases of goods and services in excess of \$2,500.00 unless specifically exempted by this Policy or by action of the Board.

b. Informal bidding and proposal procedures shall be allowed when a purchase is required to be by competitive bidding or proposal if the total purchase price is less than \$10,000.00, unless the Executive Director recommends use of a formal bidding or proposal process.

c. Formal bidding and proposal procedures shall be followed by the Executive Director in all other cases when competitive bidding or proposals are required by this Policy.

3. Procedure for Formal Bidding/Proposals. The procedure for formal bidding and proposals shall be as follows:

a. Invitation for Bids/Requests for Proposals. The Executive Director shall prepare the invitation for bids and requests for proposals, describing the LCWMD's requirements clearly, accurately and completely, but avoiding unnecessarily restrictive specifications or requirements

that might unduly limit the number of bidders or proposers. The term “invitation for bids” means the complete assembly of related (whether attached or incorporated by reference) material furnished prospective bidders for the purpose of submitting sealed bids. The term “request for proposals” means the complete assembly of related (whether attached or incorporated by reference) material furnished prospective proposers for the purpose of submitting sealed proposals. The Executive Director shall determine that the requirements of the LCWMD are clearly and accurately and completely stated within the invitation to bid/request for proposals.

b. The Executive Director shall publicize the invitation for bids/request for proposals through distribution to prospective bidders and proposers, advertising in a newspaper with local and/or regional circulation, or such other means as the Executive Director determines is appropriate at least ten calendar days prior to the time set for public opening of sealed bids or proposals.

c. Bidders/proposers shall submit sealed bids/proposals to LCWMD prior to the date and time specified for the opening of bids/proposals. Late bids/proposals shall not be accepted and no bidder/proposer shall be permitted to withdraw a bid after the deadline for bids specified in the invitation to bidders/proposers.

d. Bids and proposals shall be publicly opened at the time and place specified in the invitation to bid or request for proposals. A contract shall be awarded by the Board to the responsible bidder/proposer whose bid/proposal conforms to the invitation to bid/request for proposals and will be the most advantageous to the LCWMD and is in the best interests of the public. Award may be delayed pending verification of a bidder’s/proposer’s credentials and references or review of the bids/proposals received.

e. LCWMD reserves the right to reject any and all bids/proposals and to reject non-responsive bids/proposals.

4. Procedure for Informal Bidding/Proposals.

a. The Executive Director shall solicit competitive bids/proposals either by written notice sent to vendors, posting on Long Creek Website, distribution to Long Creek email list or by advertisement in a newspaper(s) having at least local circulation. The notice shall contain specifications as to quantity and quality required, the availability of bid/request for proposals packages or other details, and the date and time when bids/proposals must be received.

b. All bids/proposals shall quote delivered prices, terms of payment and cash discounts if applicable. If oral quotations are accepted, the Executive Director shall obtain a written or email confirmation of the quotation from the bidder/proposer. The person from whom the quote is received, and the date and time the quote is received by the LCWMD shall be recorded.

c. The Executive Director shall attempt to solicit at least three vendors on every purchase subject to informal bidding/proposal procedures. If fewer than three bids are received, or if in the opinion of the Executive Director no bids are acceptable, rebidding may be required.

d. In all cases the bid or proposal most advantageous to the LCWMD and in the best interests of the public, price, quality, and other factors being considered, shall be awarded by the Executive Director.

e. LCWMD reserves the right to reject any and all bids/proposals and to reject non-responsive bids/proposals.

5. Competitive Bidding/Proposal Waiver. The requirement of competitive bidding/proposals for all purchases of goods and services in excess of \$2,500.00 may be waived by the Board when:

a. After reasonable investigation by the Executive Director, it appears that any required unit or item of supply, or brand of that unit or item, or any services, is procurable by the LCWMD from only one source;

b. is of such narrow scope or constraint that the need can be met satisfactorily only by a sole source;

c. is of such compelling urgency that operations would be seriously impaired by delay inherent in following competitive procedures; or

d. otherwise is the most economical, effective and appropriate means of fulfilling a demonstrated need.

Sole Source services must be documented using the following “Requisition for Contract Authorization” form. The **Substantiation of Need** and **either the Justification for Sole Source or the Evidence of Prior/Scheduled RFP or Other Competitive Process** must be completed. This form will be retained with project records.

REQUISITION FOR CONTRACT AUTHORIZATION

REQUISITION FOR CONTRACT AUTHORIZATION

Contractor:

Contract Contact

Services:

Telephone:

Contract Amount:

Contract Start Date:

Contract End Date:

NOTE: Respond to all questions below applicable to this contract. Additional pages may be attached as necessary.

SUBSTANTIATION OF NEED: (Include statutory cite, cost savings, if any, and history of the contracting relationship)

RELATIONSHIP BETWEEN PURCHASING AGENT AND CONTRACTOR:

JUSTIFICATION FOR SOLE SOURCE PROCUREMENT: (If applicable)

EVIDENCE OF PRIOR/SCHEDULED RFP, OR OTHER COMPETITIVE PROCESS:

6. Procurement of Services through Pre-Qualified Contractors. As an alternative to Formal or Informal Bidding/Proposals under this Policy, Procurement of Services through Pre-Qualified Contractors. For any procurement of services under this Policy, LCWMD may pre-certify contractors through a Request for Qualifications (RFQ) process if the Executive Director determines that this process will provide the best possible economy and quality of goods or services.

a. Prequalification shall follow the procedure for Formal Bidding/Proposals outlined in Section 3.

b. The Request for Qualifications shall include, at a minimum, the following:

i. Scope of Services;

ii. Contract requirements;

iii. Items required to be submitted as part of the RFQ (including firm qualifications, personnel and resources, fee schedule, and affirmation of the ability to sign a contract with LCWMD); and

iv. The period over which the prequalification will be valid.

c. The Board shall evaluate applicants for prequalification based upon selection criteria outlined in the RFQ. Criteria may include the following:

i. Firm's experience;

ii. Proposed fees;

iii. Qualifications;

iv. Demonstrated ability to meet schedule; and

v. References

d. The Board shall select a certain number of applicants as prequalified contractors for the specified services.

e. For specific LCWMD projects, the Executive Director may select from prequalified contractors approved by the LCWMD Board based on qualifications, rates, project requirements and availability.

f. In selecting from prequalified contractors, the Executive Director may also consider past performance on LCWMD projects.

7. Board Chair Authority. The Board Chair/President exercises the role, duties, and authority of the Executive Director under this Long Creek Watershed Management District Procurement Policy where: (1) there is no Executive Director approved by the LCWMD Board, or (2) the Board acts, in its discretion, to authorize the Board Chair/President to exercise the role, duties, and authority of the Executive Director hereunder.

8. Change Orders. The Executive Director has authority to approve change orders to agreements LCWMD has entered into up to the amount of \$5,000, and the LCWMD Board has authority to approve change orders that exceed this amount.

D. Cost-Sharing Policy. Where property development or redevelopment by Participating Landowners and/or by Record Owners of a Parcel or Parcels that are subject to a PLA between LCWMD and that Participating Landowner and/or Record Owner is not part of a Relocation, Removal or Termination under the PLA and/or does not require a Plan Modification under the PLA, but will result in increased costs to LCWMD, including but not limited to additional costs of governmental review, engineering and administration, the LCWMD Board shall ask the Participating Landowner and/or the Record Owner to contribute to the payment of those increased costs and shall work with the reviewing governmental units to minimize any such increased costs.

E. Long Creek Watershed Management District Contracts Policy. In order to avoid the placement of mechanics' liens on the property of Participating Landowners for labor, services and/or materials provided for work performed on behalf of LCWMD, contracts entered into by LCWMD for the construction, reconstruction, installation, operation, modification, alteration, maintenance, repair, and replacement of public and private stormwater management structures, facilities and improvements, including structural and non-structural Best Management Practices, on Parcels of Participating Landowners and/or Record Owners subject to a Participating Landowner Agreement between that Participating Landowner and/or Record Owner and LCWMD, shall require contractors to present LCWMD with signed lien waivers and releases from all of their subcontractors and materialmen and a notarized affidavit from the contractor reciting that so far as it has knowledge or information the lien waivers and releases include all labor and materials for which a lien might be filed, or bonds satisfactory to LCWMD and in favor of LCWMD and the Participating Landowner and/or Record Owner in appropriate amounts to indemnify them again any such lien, prior to LCWMD making payment to the contractor.

F. Conflict of Interest Policy.

1. Purpose. It is the purpose of this Conflict of Interest Policy (the "Policy") to promote full disclosure to the Corporation of all Conflicts of Interest and other matters which may affect the decisions and actions of its Board of Directors (the "Board").

2. Conflict of Interest Transactions.

a. General Statement of Policy. The Corporation shall not participate in a transaction in which a director or officer has a Conflict of Interest, unless such a transaction is approved in accordance with this Policy.

b. Definitions.

i. Conflict of Interest. A Conflict of Interest is a direct or indirect financial interest or a personal interest of an officer or director in any transaction in which the Corporation is participating and also is as stated in 30-A M.R.S.A. § 2605.

ii. Financial Interest. A director or officer has a financial interest if that individual, directly or indirectly, or through business or family has:

a) an ownership or investment interest in any entity with which the Corporation is participating in a transaction;

b) a compensation agreement with any entity or individual with which the Corporation is participating in a transaction;

c) a potential ownership or investment interest or compensation agreement with any entity or individual with which the Corporation is negotiating a transaction; or

d) any other material financial interest in the transaction or potential transaction.

iii. Personal Interest. A personal interest exists in situations where there is a divergence between an officer or director's personal interests and his or her fiduciary or professional obligations to the Corporation. A director or officer has a personal interest when an independent observer would reasonably question whether the director or officer's corporate actions or decisions are determined primarily by consideration of personal gain, financial or otherwise, adverse to the interests of the Corporation.

c. Disclosure of Conflict of Interest. It is the responsibility of each director and officer to disclose on a timely basis any matters which may give rise to a Conflict of Interest, or which may otherwise prevent the director or officer from performing his or her duties in accordance with applicable law and this Policy.

d. Procedure for Approval of a Conflict of Interest Transaction. All Conflict of Interest transactions must be approved in accordance with this Policy.

i. Timing. Approval may be given before or after the Conflict of Interest transaction has occurred.

ii. Standard A Conflict of Interest transaction may be authorized, approved or ratified by the Board or a committee of the Board if:

a) the material facts of the transaction and the director's or officer's financial or personal interest are known;

b) it is fair and equitable to the Corporation as of the date the transaction is authorized, approved or ratified; and

c) if 30-A M.R.S.A. § 2605 is applicable to a Conflict of Interest, its requirements are followed.

iii. Participants in Approval. Approval of a Conflict of Interest transaction must be by affirmative vote of a two-thirds majority of the members of the Board or a committee of the Board who have no interest, financial or otherwise, in the transaction. A single director cannot approve a Conflict of Interest transaction.

iv. Compensation. This Policy does not affect the ability of the Board to award reasonable compensation to directors or officers for their services as directors or officers, or in any employment capacity.

3. Composition of the Board of Directors. No more than 49% of the individuals on the Board may be financially interested. For the purpose of this Article III only, a financially interested person is one who individually or whose immediate family received or is entitled to receive compensation for personal services rendered to the Corporation within the previous 12 months, whether as employee, independent contractor or otherwise. A financially interested Board member shall disclose the existence of his or her financial interest to the Board, as soon as such interest becomes known to such member.

4. Periodic Reviews. From time to time, the officers of the Corporation shall take reasonable steps to assure that every director and officer has read, understood, and agreed to comply with this Policy, which may include the requirement that all directors and officers sign a written statement acknowledging the above and agreeing to be bound by this Policy.

G. Quarterly and Monthly Installment Payment Schedule Policy. Pursuant to the discretion given the Board under Section 5(b)(2) of the PLA to permit a Participating Landowner to pay its Annual Assessments in quarterly or monthly installments, LCWMD will accept quarterly and monthly payments (but prefers quarterly payments), subject to the following conditions. LCWMD will not enter into a quarterly or monthly payment option with Participating Landowners that have accounts in arrears; a Participating Landowner first shall become current in its payment of its past due Initial and Annual Assessment(s) before it may be permitted to make quarterly or monthly payments under this policy. Each quarterly or monthly payment shall include interest at the rate of 0.25% per month on the outstanding balance of that Annual Assessment as well as a \$25 administrative fee per installment payment in excess of the two installments permitted under the PLA. However, if a Participating Landowner makes quarterly or monthly installment payments that result in payment of Annual Assessments before the due dates for their payment, that Participating Landowner will not be required to pay interest or an administrative fee. It is at the discretion of the Board to grant waivers for interest and/or fees charged on installment payments. Participating Landowners who wish to switch to a quarterly or monthly installment payment option must submit a request via U.S. mail to the LCWMD Executive Director. The Participating Landowner will be notified within five business days if the request has been approved.

H. Default Payment Fees. As stated in the PLA, failure of a Participating Landowner to pay any Assessment(s) or quarterly or monthly installments of Assessments permitted under G above by the date specified by the District is an event of Default. When a Participating Landowner fails to pay its Assessment(s) or cure the Default within 30 days of its receipt of a Notice of Default from LCWMD, in addition to any other remedy LCWMD may have at law or in equity to address the Participating Landowner's Default, LCWMD also will charge the Participating Landowner, for each month that a Participating Landowner's Assessment is delinquent, interest at the rate of 0.25% per month on the outstanding balance of that Assessment and will charge that Participating Landowner an administrative fee of \$25 per month, provided however, that if the outstanding balance remains unpaid after six months, LCWMD will charge that Participating Landowner, for each additional month that a Participating Landowner's Assessment remain delinquent, interest at

the rate of 1.0% per month on the outstanding balance of that Assessment and will continue to charge that Participating Landowner an administrative fee of \$25 per month. Participating Landowners may request to enter into quarterly or monthly installment payment agreements with the LCWMD under G. above by submitting a written request to the Executive Director via US Mail, explaining why the Assessment(s) are in Default and how they plan to remedy the Default. It is at the discretion of the Board to grant waivers for interest and/or fees charged on Default accounts. The Participating Landowner will be notified within five business days of the Board's decision.

I. Continued Entitlement to Credits. Section 5 of the PLA governs the calculation and payment of assessments and provides for credits to reduce the amount of Initial; and Annual Assessments. Specific categories of credits are set out in: subsection (a)(4) (pollution prevention/good housekeeping costs); subsection (a)(5) (construction and maintenance costs); subsection (a)(6) (urban-rural initiative payments to municipalities); subsection (a)(7) (provision of BMPs or services in lieu of payment); and subsection (a)(8) (compensation fee utilization plan fees). This provision concerning continued entitlement to credits applies to: 1) continued application of on-site treatment credits to assessments when the BMPs on which the credits are based age and are reduced in function; and, 2) credits for provision of BMPs "in lieu of payment" where the BMPs upon which the credits are based must be rebuilt, maintained, or replaced.

These credits are determined by the Executive Director with a right of appeal to the Board. The Participating Landowner bears the burden of demonstrating that the Executive Director's calculation of Assessments, Adjustments, Credits, or Value of Services in Lieu of Payment is erroneous. The two main categories of credits addressed by this policy are in subsections (a)(5) and (a)(7) of the PLA:

1. Subsection 5(a)(5) Credits. These credits are for BMPs providing on-site treatment that a participating landowner constructs or installs without LCWMD funds. These include:

- a. Existing BMPs (existing as of December 6, 2009);
- b. New Construction or Development (commenced after December 6, 2009); and,
- c. Retrofits (replacement of or change or addition to BMPs existing on a Parcel as of December 6, 2009, or addition of a new BMP to existing development on a Parcel that benefits Long Creek directly or indirectly).
 - i. Credits are applied against the Construction and Maintenance Cost portions of the Annual Assessment. The amount of credit depends upon the functionality of the BMPs and the standards they are designed to meet. Credits continue into the future indefinitely "so long as the BMPs that generate the credits continue to meet the standards for which they were designed or are meeting, as determined by the Executive Director; . . ." If the BMPs fail to meet those standards, the amount of credit will be reduced in proportion to the loss of ability to meet those standards.
 - ii. If a Participating Landowner repairs or replaces a BMP without using LCWMD funds, there will be a continued credit so long as that BMP continues to meet the standards for

which it was designed or is meeting, and the credit may be increased in proportionate to the increase in functionality attributable to the repair or replacement of the BMP, all as determined by the Executive Director.

iii. As a condition of continued application of credits against their assessments under Section 5(a)(5) of the PLA, Participating Landowners shall provide LCWMD with copies of any monitoring, inspection, or repair reports they must file under DEP Chapter 500 or MS4 requirements, municipal post-construction monitoring ordinances, or the PLA. These reports will be used to determine whether the BMP is functioning and at what level.

2. Subsection 5(a)(7) Credits. The other category of BMP credit is with regard to provision of BMPs “in lieu of” payment. Subsection 5(a)(7) of the PLA generally allows Participating Landowners to satisfy their Initial and Annual Assessments by providing BMPs in lieu of payment so long as the provided BMPs are included in the Long Creek Watershed Management Plan. Subsection 5(a)(7) essentially permits a Participating Landowner to receive a credit for BMPs it provides that otherwise would be provided by LCWMD.

a. A Participating Landowner that repairs, replaces or makes improvements to a BMP provided in lieu of payment to the District that have a useful life of ten years or more or are intended to reasonably avoid non-routine maintenance for 10 years or more is entitled to credit under Subsection 5(a)(7) of the PLA for the reasonable cost of such repair, replacement, or improvements to that BMP.

b. The PLA specifically acknowledges that Maine DOT’s Initial Assessment would be reduced by the value of work performed on the repaving of Maine Mall Road with porous pavement before November 6, 2009. Further, because the PLA allows Maine DOT’s cost of repaving Maine Mall Road with porous pavement to reduce Maine DOT’s Initial Assessment, the PLA presumes this cost is in furtherance of the Long Creek Watershed Management Plan and is an avoided cost for LCWMD. Therefore, the Board will allow the incremental additional cost of porous pavement used to repave Maine Mall Road, which has an anticipated useful life of ten years or more, to reduce Maine DOT’s future Annual Assessments.