

BYLAWS
OF
THE LONG CREEK WATERSHED MANAGEMENT DISTRICT

ARTICLE I

Name and Location

Sec. 1. Name. The name of this Corporation is the **LONG CREEK WATERSHED MANAGEMENT DISTRICT** (the “Corporation”).

Sec. 2. Location. The Corporation’s principal office shall be located at the office of the Registered Agent in the City of Portland, Cumberland County, Maine or at such other location as the Board of Directors may from time to time determine.

Sec. 3. Definitions. Capitalized terms used in these Bylaws shall have the meaning set forth in the “Interlocal Agreement Among the Municipalities of Portland, South Portland, Scarborough and Westbrook to Establish the Long Creek Watershed Management District” dated August 28, 2009 (the “Interlocal Agreement”) unless otherwise stated herein.

ARTICLE II

Purposes and Powers

Sec. 1. Purposes. The Corporation has been formed pursuant to an Interlocal Agreement among the City of Portland, the City of South Portland, the City of Westbrook and the Town of Scarborough pursuant to 30-A M.R.S.A. Sec. 2201 *et seq.* for the purpose of establishing a quasi-municipal special purpose district named the Long Creek Watershed Management District as a separate legal entity and as a body corporate and politic to implement the Long Creek Watershed Management Plan (the “Plan”). The Plan is intended to improve the Long Creek Watershed which encompasses portions of all of the four municipalities who are parties to the Interlocal Agreement. The Plan includes but is not limited to design, engineering, construction, reconstruction, installation, operation, modification, alteration, use, maintenance, repair, replacement, inspection and monitoring of public and private stormwater management structures, facilities and improvements, including structural and non-structural Best Management Practices, in and along Long Creek and within the Long Creek Watershed; to monitor the effectiveness of the Plan and the condition of the Long Creek and the Long Creek Watershed; to make any changes to that Plan; to identify, apply for, accept and spend State, federal and other available funding sources from year-to-year; and to assess fees upon Participating Landowners for implementation of the Plan in order to comply with the “General Permit - Post Construction Discharge of Stormwater in the Long Creek Watershed” issued by the Maine Department of Environmental Protection (“DEP”) on November 6, 2009 and its renewal, reissuance or replacement, as such may be modified from time-to-time (the “General Permit”). The

Corporation shall be authorized to take all actions necessary to implement the Interlocal Agreement and the Plan.

The Corporation is organized exclusively for purposes described in Sections 170 and 501(c)(3) of the Internal Revenue Code and shall have no purpose and exercise no power which would disqualify the Corporation from tax exempt charitable status under Sections 170 and 501(c)(3) of the Internal Revenue Code and shall not carry on any activity which is prohibited by Sections 170 or 501(c)(3) of the Internal Revenue Code. The Articles of Organization and Bylaws shall be construed in such manner that the Corporation shall be qualified as an organization described in Sections 170(c), 501(c)(3), 2055(a) and 2522(a) of the Code which shall be exempt from taxation under Section 501(a) of the Code and all provisions required to be provided in the Articles of Incorporation and/or By-laws for such qualification shall be deemed to be a part hereof. To the extent that any provision of the Articles of Incorporation or By-laws or any rule of law would prevent such qualification, it shall not be applicable.

At any time the Corporation is classified as a private foundation under Section 509 of the Code, the Corporation shall distribute all of its income for each taxable year at such time and in such manner as not to become subject to the tax on undistributed income imposed by Section 4942 of the Code. The Corporation and its Directors and officers shall not engage in any act of self-dealing prohibited by Section 4941 of the Code. The Corporation shall not retain any excess business holdings as defined in Section 4943 of the Code nor make any investments which would cause tax liability under Section 4944 of the Code nor make any taxable expenditures as defined in Section 4945 of the Code.

The Corporation shall have such powers as are conferred upon non-profit corporations by the Maine Non-Profit Corporations Act, provided that:

a. No part of the net earnings of the Corporation shall inure to the benefit of any member, Director, or officer of the Corporation, or any private individual, and no member, Director, officer of the Corporation, or any private individual shall be entitled to share in the distribution of any of the corporate assets on dissolution of the Corporation;

b. No substantial part of the activities of the Corporation shall be carrying on propaganda, or otherwise attempting to influence legislation, and the Corporation shall not participate in, or intervene in (including the publication or distribution of statements) any political campaign on behalf of any candidate for public office; and

c. The Corporation shall not conduct or carry on any activities not permitted to be conducted or carried on by an organization exempt under Section 501(c)(3) of the Internal Revenue Code of 1986 and regulations thereunder as they now exist or as they may hereafter be amended.

The Corporation shall have no members and shall be a non-membership corporation.

Sec. 2. Powers. To effect the foregoing purposes of the Corporation, the Corporation shall have such powers as are conferred upon non-profit corporations by the Maine Nonprofit Corporations Act, including but not limited to the following:

The District, through its Board of Directors (the “Board”), may exercise on behalf of the Parties and the Participating Landowners those powers as are hereinafter set forth which are necessary or convenient to the accomplishment of the purposes stated herein and which are permitted by law to be exercised by the Parties, individually or jointly; such delegated powers are as follow:

A. To purchase, acquire, accept, lease as lessor, rent, hold, own, maintain, operate, lease as lessee or convey any and all real and personal property or any easement or interest therein all as may be necessary or convenient for its purposes. Ownership of any right, title or interest therein may be held by the District.

B. To plan, design, engineer, construct, install, equip, operate, maintain, repair, replace and monitor, either directly or by contract with another party or parties, any Best Management Practices or related project deemed desirable or necessary by the Board whether the same is located in or along Long Creek or within the Long Creek Watershed.

C. To contract with any person, firm, corporation, partnership, or other entity, private, public, governmental, or otherwise, for services (including, without limitation, independent technical, engineering and water quality and stream ecology advice, review and services), management, work, material, or property, and to adopt or amend rules, regulations or procedures for the procurement thereof.

D. To adopt or amend rules to govern the conduct of its meetings and the other affairs of the Board and the District.

E. To employ or arrange for the employment of such persons as are required for the purposes stated herein.

F. To receive and accept from, or contract with, the federal, State and municipal governments, and other public or private entities, for donations, loans, grants, gifts, or other assistance for stormwater management and in such contracts agree to be bound by all applicable provisions of federal, State and municipal statutes, regulations and ordinances as the case may be.

G. To borrow such sums of money on such terms and conditions as it shall deem desirable or necessary from time-to-time from any federal, State, municipal or other governmental entity, including, but not limited to, any public or quasi-public authority, agency, or instrumentality thereof or from any public or private lending or financial institution, provided, however that the amount to be borrowed, exclusive of interest, shall not exceed \$2,200,000 (2.2 million dollars); to issue bonds and anticipate notes therefore in the name of the District on behalf of the Parties, or any of them; and to secure such borrowing by any pledge, mortgage, lien or other encumbrance of any revenues, fees or assessments or real or personal property of the District, which it shall deem desirable or necessary to provide in connection therewith. The bonds and anticipation notes issued by the District shall not constitute a debt or liability of and shall not constitute a pledge of the full faith and credit of the Parties, or any of them, and shall not directly, indirectly or contingently obligate the Parties, or any of them, to levy or pledge any form of taxation whatever or make any appropriation for the payment thereof. A Party shall only

be liable for any portion of the District's indebtedness to the extent that the Party is responsible for its share of District indebtedness as a Participating Landowner.

H. To allocate all costs of implementation of the Long Creek Watershed Management Plan among the Participating Landowners on the basis of each Participating Landowner's percentage of the total amount of Impervious Surface or Impervious Area, as of the date of issuance of the General Permit and of any annual adjustment thereto, on all Participating Landowners' properties located within the Long Creek Watershed that are subject to the General Permit, by assessments upon each of the Participating Landowners based upon the allocation of costs as stated above, adjusted as provided by agreements between the Participating Landowners and the District, which assessments shall be so established each year by the Board as, to the extent possible, will assure sufficient income to meet the costs of implementation of the Long Creek Watershed Management Plan for the ensuing year or years. Such costs of implementation of the Long Creek Watershed Management Plan shall include but not be limited to capital expenses; operation and maintenance costs; monitoring costs; administrative costs; insurance; taxes; rentals; debt service and necessary reserves for contingencies as determined by the Board. The Board may require advance payment of costs.

I. To enter into agreements with Participating Landowners to establish the terms and conditions of their participation in the implementation of the Plan, including but not limited to the assessment, payment and collection of the costs of implementation of the Plan.

J. To make expenditures for and contract with respect to capital items from funds provided pursuant to Section 7 (Reserve Account) of the Interlocal Agreement.

K. To receive, loan and disburse funds for any purpose contemplated by the Interlocal Agreement.

L. The District, through its Board and on behalf of the Participating Landowners, shall:

1. Plan, construct, equip, operate and maintain, and monitor the Plan for the benefit of the Participating Landowners, the Parties and the Parties' residents.
2. Serve as a mutual forum to identify, discuss, study, and bring into focus regional stormwater management problems and needs.
3. Serve as a vehicle for the collection and exchange of stormwater management information of regional concern and interest.
4. Provide continuing organizational machinery to insure effective planning, construction, installation, operation and maintenance and monitoring of stormwater management plans among Participating Landowners.
5. Provide continuing organizational machinery to insure effective stormwater management communication and coordination among Participating Landowners.
6. Foster, develop and review policies, plans and priorities for stormwater

management programs.

M. In the event the Board determines that a hazardous condition exists at any District structure or facility, the Board shall promptly take such action as may be necessary to correct the hazardous condition.

N. To sue and be sued and to take any legal action necessary to enforce agreements, contracts and other documents and instruments and to collect unpaid or delinquent assessments and fees.

O. The Board shall issue an Annual Report documenting implementation of a monitoring and assessment plan as required by the General Permit.

The powers of the Corporation are subject to the following limitations:

1. No part of the net earnings of the Corporation shall inure to the benefit of any member, director, or officer of the Corporation, or any private individual, and no member, director, officer of the Corporation, or any private individual shall be entitled to share in the distribution of any of the corporate assets on dissolution of the Corporation;

2.. No substantial part of the activities of the Corporation shall be carrying on propaganda, or otherwise attempting to influence legislation, and the Corporation shall not participate in, or intervene in (including the publication or distribution of statements) any political campaign on behalf of any candidate for public office; and

3. The Corporation shall not conduct or carry on any activities not permitted to be conducted or carried on by an organization exempt from income tax under the Internal Revenue Code of 1986 and regulations thereunder as they now exist or as they may hereafter be amended.

Sec 3. Budgeting and Financial Powers

A. Estimate of Expenditures and Anticipated Revenues. On or before February 1 of each year, the Board shall prepare and submit to the Participating Landowners an itemized estimate of the expenditures and the anticipated revenues for the following Fiscal Year, which shall be from July 1st through June 30th of each year. Such estimates shall include the following:

1. Anticipated Revenues. An itemized estimate of anticipated revenues during the ensuing fiscal year from each source.

2. Estimate of Expenditures. An itemized estimate of expenditures for each classification for such ensuing fiscal year.

3. Actual Receipts. After the first year of operation, an itemized statement of all actual receipts from all sources to and including January 31st of the previous fiscal year, with estimated receipts from such sources shown for the balance of such year.

4. Actual Expenditures. After the first year of operation, an itemized

statement of all actual expenditures to and including January 31st of the previous fiscal year, with estimated expenditures shown for the balance of such year.

B. Budget. For Fiscal Years following the first Fiscal Year, which shall begin on July 1, 2010, the Corporation shall employ the budget process stated herein. On or before July first of each year, the Board shall adopt a final budget for the ensuing Fiscal Year which shall be itemized in the same manner as the estimate of expenditures and revenues. Once adopted, such budget shall be submitted forthwith to the Participating Landowners and shall include assessments determined by the Board and allocated among Participating Landowners as provided in Section 5(H). The District shall issue the annual assessments to each Participating Landowner on or by July 15 of each year and each Participating Landowner shall pay its annual assessments not later than of the following August 15th at which time said assessments shall be due and payable, and after which time interest shall accrue on any unpaid assessments or portions thereof.

C. The Board may from time to time impose such charges as it deems appropriate, by way of surcharge or otherwise, to fund reserve accounts.

ARTICLE III

Directors

Sec. 1. Governance. The affairs of the Corporation shall be governed by the Board of Directors. The Board shall conduct an annual meeting in May of each year and shall conduct regular meetings, at least semi-annually, for the purpose of carrying out the functions of the Corporation.

Sec. 2. Board of Directors. There is hereby established a governing Board of Directors (the "Board") for the District consisting of up to sixteen (16) Directors as follows.

1) Fourteen (14) Directors shall be appointed by the municipal officers of each Party in the following manner and numbers; the Portland Regional Chamber may provide a list of nominees to the municipal officers of each Party for their consideration in the appointment process:

a) Portland - Two Directors, one of whom shall be a municipal official or employee and one of whom shall be either a private Participating Landowner or representative of a private Participating Landowner whose Parcel is located in the City of Portland or a representative of a non-profit corporation with an interest in the Long Creek Watershed.

b) Scarborough - Two Directors, one of whom shall be a municipal official or employee and one of whom shall be a public or private Participating Landowner or representative of a public or private Participating Landowner whose Parcel is located within the Town of Scarborough.

c) South Portland - Seven Directors, two of whom shall be municipal officials or employees, four of whom shall be private Participating Landowners or

representatives of private Participating Landowners whose Parcel is located within the City of South Portland, and one of whom shall be a representative of a non-profit corporation with an interest in the Long Creek Watershed.

d) Westbrook - Three Directors, one of whom shall be a municipal official or employee and two of whom shall be private Participating Landowners or representatives of private Participating Landowners whose Parcel is located within the City of Westbrook.

2) The Maine Turnpike Authority (“MTA”) through its Executive Director shall appoint one (1) Director so long as MTA is a Participating Landowner; if MTA should terminate its agreement with the District to implement the Plan, it shall no longer be entitled to appoint a Director to serve on the Board, the term of the then-serving Director it has appointed will terminate and the Director’s seat will no longer exist.

3) The Maine Department of Transportation (“MDOT”) through the Commissioner of Transportation shall appoint one (1) Director so long as MDOT is a Participating Landowner; if MDOT should terminate its agreement with the District to implement the Plan, it shall no longer be entitled to appoint a Director to serve on the Board, the term of the then-serving Director it has appointed will terminate and the Director’s seat will no longer exist.

4) Term. Except as otherwise provided herein, Directors shall be appointed for a term of three years, and may be removed for cause by the appointing authority.

5) Officers and Rules. The Board shall, at an annual meeting to be held each year, elect from its membership a President/Chair, Vice- President/Vice-Chair, Secretary and a Treasurer and such other officers as it may desire and may adopt rules to govern the conduct of its meetings and the other affairs of the Board and the District.

6) Manner of Acting. Except as specified by law or these bylaws, the Board of Directors shall act by a two-thirds majority vote of the Directors present in person and voting at any duly called and held meeting of the Board of Directors at which a quorum is present. Each Director shall have one vote. In the case a tie vote of the Directors, the motion before the Board that is the subject of the tie vote shall be deemed to have failed.

7) Quorum. The presence, in person, of a majority of the Directors of the Corporation then in office shall constitute a quorum for the transaction of business.

8) Meetings. The Board shall meet as needed as determined by the President/Chair, but no less than semiannually.

9) Vacancy. A vacancy has the same meaning as the definition in 30-A M.R.S.A. § 2602. The appropriate Party’s municipal officers may appoint a person to fill a vacancy in the office of Director, and that person shall serve for the remainder of the term, provided, however, that if a Party’s municipal officers shall have failed to fill a vacancy within sixty (60) days of the creation of that vacancy, the remaining Directors shall appoint a person to fill that vacancy. A Director who is a private Participating Landowner or a representative of a private Participating Landowner automatically vacates that office upon the conveyance of that Participating

Landowner's Parcel to another owner, or upon that Participating Landowner's termination of its agreement with the District to implement the Plan. The MTA or MDOT's termination of its agreement with the District to implement the Plan and the termination of the term of any then-serving Director it has appointed shall not constitute or result in a vacancy.

10) Attendance. If a Director fails to attend at least one-half of the meetings of the Board of Directors subsequent to the preceding annual meeting of the Board, or if he/she fails to attend two (2) consecutive meetings of the Board without having provided at least one (1) day's prior notice of such absence to the President/Chair or Vice-President/Vice-Chair, the appointing authority of that Director shall be so notified by the President/Chair.

ARTICLE IV

Officers

Sec. 1. Officers. The officers of the Corporation shall be a President/Chair, Vice-President/Vice-Chair, Treasurer, Secretary and Registered Agent. A person may hold more than one office at any time.

Sec. 2. Election. The officers shall be elected at the Annual Meeting of the Board of Directors.

Sec. 3. President/Chair. The President/Chair shall have general oversight of all of the business and affairs of the Corporation. The President/Chair shall preside at all meetings of the Board of Directors. The President/Chair shall perform all duties incident to the office of President/Chair and such other duties as may be prescribed by the Board of Directors.

Sec. 4. Vice-President/Vice-Chair. In the absence of the President/Chair or in the event of the President/Chair's inability or refusal to act, the Vice-President/Vice-Chair shall perform the duties of the President/Chair and, when so acting, shall have all the powers of and duties of the President/Chair. The Vice-President/Vice-Chair shall perform such other duties as from time-to-time may be assigned by the President/Chair or by the Board of Directors.

Sec. 5. Treasurer. The Treasurer shall have charge and custody of and be responsible for all funds and securities of the Corporation; receive and give receipts for monies due and payable to the Corporation from any source whatsoever; deposit all such monies in the name of the Corporation in such banks or other depositories as shall be designated by the Board of Directors by resolution from time to time; sign checks of the Corporation; keep regular books of account and submit them together with all his/her vouchers, receipts and other records to the Board of Directors for their examination and approval as often as they may require; give bond in such sum and with such surety or sureties as the Board of Directors shall determine and perform all duties incident to the office of Treasurer and such other duties as may from time to time be assigned.

Sec. 6. Secretary. The Secretary shall keep the minutes of the meetings of the Board of Directors in one or more books provided for that purpose; see that all notices are duly given in accordance with the provisions of these by-laws or as required by law; be custodian of the corporate records; and see that the seal of the Corporation is affixed to all documents, the execution of which on behalf of the Corporation under its seal is duly authorized; keep a register of the post office address and telephone number of each director; and, in general, perform all duties incident to the office of Secretary and such other duties as from time to time may be assigned.

Sec. 7. Registered Agent. The Registered Agent shall be a resident of the State of Maine and shall perform the duties required of a Registered Agent under the Maine Non Profit Corporations Act.

Sec. 8. Removal. Any officer may be removed for any reason by a two-thirds majority vote of the Directors then in office.

Sec. 9 Vacancies. Any vacancy in any office may be filled by majority vote of the Directors then in office.

ARTICLE V

Committees

Sec. 1. Committees. The Board of Directors may establish such committees as it deems appropriate to assist in the management of the Corporation.

Sec. 2. Composition. Committees shall consist of at least two persons, one of whom shall be Chairperson. Committee members need not be Directors.

ARTICLE VI

Amendment of By-laws

Sec. 1. Amendment of By-laws. These by-laws may be amended by the Board of Directors a two-thirds majority vote of the Directors present in person and voting at any annual meeting or other meeting.

ARTICLE VII

Indemnification

Sec. 1. Indemnification. To the extent permitted under the Maine Tort Claims Act, the Corporation shall in all cases indemnify any person who was or is a party or is

threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative, by reason of the fact that he or she is or was a Director, officer, employee or agent of the Corporation or is or was serving at the request of the Corporation as a Director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against expenses, including attorneys' fees, judgments, fines, and amounts paid in settlement actually and reasonably incurred by him or her in connection with such action, suit or proceeding; except that no indemnification shall be provided for any person with respect to any matter as to which that person shall have been finally adjudicated in any action, suit or proceeding not to have acted in good faith in the reasonable belief that his or her action was in the best interests of the Corporation or, with respect to any criminal action or proceeding, who had no reasonable cause to believe that his or her conduct was lawful or in fact believed such conduct to be unlawful. The termination of any action, suit or proceeding by judgment, order or conviction adverse to such person, or by settlement or plea of nolo contendere or its equivalent, shall not of itself create a presumption that such person did not act in good faith in the reasonable belief that his or her action was in the best interests of the Corporation, or with respect to any criminal action or proceeding, that such person had no reasonable cause to believe that his or her conduct was lawful or in fact believed such action to be unlawful. The foregoing rights of indemnification shall, in the case of the death or incapacity of any Director, officer, or other person, inure to the benefit of his or her heirs, estate, executors, administrators, conservators, or other legal representatives. This Article 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. Sec. 8101 *et seq.*) or any other defenses the Parties or each Party may have under that Act or under other applicable law.

ARTICLE VIII

Dissolution

Sec. 1. Dissolution. At such time as the District shall have discharged all of its obligations, as evidenced by DEP's issuance of a written certificate of completion, and shall have paid or provided for the payment thereof, the Board may, by a three fourths (3/4) vote of the Board's Directors, dissolve the Corporation and dispose of all District property, real and personal, in such manner as said Board shall authorize and direct in accordance with the Interlocal Agreement. Upon the dissolution of the Corporation or the winding up of its affairs, after paying or making provision for the payment of all liabilities and obligations of the Corporation as required by law, the remaining assets of the Corporation shall be distributed as the Board shall direct, consistent with the Interlocal Agreement. The Board may, at its discretion, convey right, title and interest of the District in stormwater management structures, facilities and improvements, when exhausted of their capacity and of no further use in the accomplishment of the purposes set forth herein, at no charge to the Party within whose boundaries said structures, facilities or improvements are located, to a successor entity of the District or to the extent the structures, facilities and improvements were not financed through tax-exempt bonds or financing, to a Participating Landowner within whose property the structures, facilities or improvements are located. All money, if any, remaining in the hands of the Treasurer, shall be paid to the Participating Landowners as of the date of such dissolution in accordance with agreements then in effect for the cost sharing of contributions.

Approved 1-13-10; Amended 5-21-10

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