AGREEMENT BETWEEN PARTICIPATING LANDOWNER

and

LONG CREEK WATERSHED MANAGEMENT DISTRICT

This Agreement Between Participating Landowner and the Long Creek Watershed Management District (this "Agreement") is made this ____ day of _____, 2010, between _____, a sole proprietorship/partnership/corporation/limited liability company/real estate trust (choose one) duly organized and existing under the laws of the State of _____ whose mailing address is _____, _____ (the "**Participating Landowner**"), and the Long Creek Watershed Management District, a quasi-municipal, special purpose district established as a separate legal entity and instrumentality and as a body corporate and politic under the laws of the State of Maine whose mailing address is Long Creek Watershed Management District c/o Cumberland County Soil & Water Conservation District, 35 Main Street, Suite 3, Windham, Maine 04062 (the "**District**"). The foregoing also are referred to herein collectively as the "Parties" or singly as "Party."

WHEREAS, the Participating Landowner is the "Operator" (as defined below) of certain real property located at _____, _____ _____, Maine, shown on Tax Map _____, Lot _____ and more particularly described in an instrument of record in the Cumberland County Registry of Deeds in Book _____, Page _____ or portion thereof as described in Schedule A appended hereto (the "**Participating Landowner's Parcel**"); and

[Complete where appropriate] WHEREAS, while the Participating Landowner is the Operator of the Participating Landowner's Parcel, the record owner of the Participating Landowner's Parcel is: _____, with a mailing address of: _____, _____ _____ (the "**Record Owner**"); and

WHEREAS, the Participating Landowner's Parcel is located within the Long Creek Watershed (as defined below); and

WHEREAS, Long Creek has been designated an "urban impaired stream" by the Maine Department of Environmental Protection ("**DEP**") because it fails to meet certain State of Maine water quality standards (38 M.R.S.A. § 465(4) as amended from time-to-time, the **"Water Quality Standards"**) due to the effects of stormwater runoff from developed land, and therefore has been listed on Maine's Section 303(d) list pursuant to Section 305(b) of the federal Clean Water Act (**"CWA"**); and

WHEREAS, the U.S. Environmental Protection Agency ("**EPA**"), under its Residual Designation Authority ("**RDA**") under the CWA, is requiring Landowners (as defined below) to address stormwater runoff into Long Creek; and

WHEREAS, EPA has delegated to DEP permitting authority under the CWA's National Pollutant Discharge Elimination System ("**NPDES**") permit program, and DEP has issued a General Permit (as defined below), and will amend Chapter 500 ("**Stormwater Management**")

and Chapter 521 ("**Application for Waste Discharge Licenses**") of the Code of Maine Rules regarding stormwater discharge in the Long Creek Watershed; and

WHEREAS, the General Permit requires Landowners (as defined below) of Parcels (as defined below) from which there is a Designated Discharge (as defined below) on or after the effective date of the General Permit to file a Notice of Intent ("**NOI**") to enter into the General Permit, or to obtain an individual permit under the Chapter 521 Requirements (as defined below) meeting the Chapter 500 Requirements (as defined below), and requires certain remediation work be done and improvements constructed, installed and/or implemented in and along Long Creek and within the Long Creek Watershed which are intended to cause Long Creek to comply with Water Quality Standards; and

WHEREAS, several Landowners have voluntarily undertaken the Long Creek Restoration Project (as defined below) and have prepared a "Long Creek Watershed Management Plan" (as defined below) to identify remediation work and improvements to be made in and along Long Creek and in the Long Creek Watershed so that Long Creek will comply with Water Quality Standards; and

WHEREAS, cooperative implementation of the Long Creek Watershed Management Plan, which 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 and in-stream and riparian restoration in and along Long Creek and within the Long Creek Watershed, is likely to reduce the cost and time for Long Creek to comply with Water Quality Standards; and

WHEREAS, the municipalities of Portland, Scarborough, South Portland and Westbrook have formed the Long Creek Watershed Management District in order to implement the Long Creek Watershed Management Plan; and

WHEREAS, the Participating Landowner wishes to join in the implementation of the Long Creek Watershed Management Plan and to be covered by the General Permit by entering into this Agreement with the District;

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and in consideration of the covenants herein, the Parties do agree as follows:

Section 1. **Purpose of Agreement.** The purpose of this Agreement is to implement the Long Creek Watershed Management Plan, which 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 Best Management Practices (as defined below), in and along Long Creek and within the Long Creek Watershed; and monitoring the effectiveness of the Plan and of the condition of the Long Creek and the Long Creek Watershed, all in order to comply with the General Permit. This Agreement does not apply to Stormwater Discharges that require an individual waste discharge license or permit or require coverage under another waste discharge general permit.

Section 2. **Definitions.**

"Best Management Practices" or "**BMPs**" shall mean structural and/or non-structural stormwater treatment units, and includes public and private stormwater management structures, facilities and improvements.

"Board of Directors" or "**Board**" shall mean the governing Board of Directors for the District.

"**Chapter 500 Requirements**" shall mean the provisions of Chapter 500 of the Code of Maine Rules, the "Stormwater Management Rules" promulgated by the Maine Department of Environmental Protection, as amended from time-to-time, as modified by the Chapter 521 Requirements (with no Section 4.B.(2) requirement to control runoff from no less than 80% of the developed area that is landscaped and with no Section 4.B.(3)(c) exception for a linear portion of a project).

"**Chapter 521 Requirements**" shall mean the provisions of Chapter 521 of the Code of Maine Rules, the "Applications for Waste Discharge Licenses" Rules promulgated by the Maine Department of Environmental Protection, as amended from time-to-time.

"**Designated Discharge**" shall mean direct Discharges of Stormwater from Parcels on which there are Impervious Surfaces or Impervious Areas equal to or greater than one acre in the Long Creek Watershed.

"**Discharge**" shall mean any spilling, leaking, pumping, pouring, emptying, dumping, disposing or other addition of pollutants to waters of the State other than groundwater. "Direct discharge" or "point source" means any discernible, confined and discrete conveyance, including, but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation or vessel or other floating craft, from which pollutants are or may be discharged. A direct Discharge of stormwater occurs when the runoff is not attenuated (infiltrated, filtered and/or detained for a long enough period to allow treatment), as evidenced either by channelized flow, or by the lack of sufficient land area (based on soils, vegetative cover, slope, flow path distance and relative size of contributing impervious area) before it becomes channelized or reaches a receiving waterway or water body.

"**Executive Director**" shall mean a contractor hired by the District to provide day-to-day management of implementation of the Plan and of this Agreement, as directed by the District.

"**General Permit**" shall mean the "General Permit - Post Construction Discharge of Stormwater in the Long Creek Watershed" issued by DEP and dated November 6, 2009 and its renewal, reissuance or replacement, as such may be modified from time-to-time.

"**Impervious Surface**" or "**Impervious Area**" shall mean the total area of a Parcel that consists of building and associated constructed facilities; areas that are covered with a low-permeability material, such as asphalt or concrete; or areas such as gravel roads and unpaved parking areas that will be compacted through design or use to reduce their permeability. Common impervious areas include, but are not limited to, roads, rooftops, walkways, patios, driveways, parking lots or storage areas, concrete or asphalt paving, packed earthen materials, and macadam or other surfaces which similarly impede the natural infiltration of stormwater. The demolition and removal of impervious area is subtracted from the total impervious area when calculating the total impervious area, provided that the area where impervious area has been demolished and removed is restored so that it no longer has reduced permeability, and is

permanently stabilized using vegetation in conformance with standards in the DEP "Removal of Impervious Surfaces Guidelines" attached as Exhibit B hereto.

"**Interlocal Agreement**" shall mean the Interlocal Agreement entered into among the municipalities of Portland, Scarborough, South Portland, and Westbrook dated August 28, 2009 to establish the Long Creek Watershed Management District.

"**Landowner**" shall mean the Operator of a Parcel or of a right–of-way on a Parcel or Parcels located in the Long Creek Watershed, the Impervious Surface or Impervious Area of which is equal to or greater than one acre at any time on or after the effective date of the General Permit.

"**Long Creek Restoration Project**" shall mean a collaborative, community-based project, composed of Landowners and other parties, that has been working to develop a locally-supported stormwater management plan to bring Long Creek back into compliance with state and federal standards.

"**Long Creek Watershed**" shall mean all areas that discharge to Long Creek or its tributaries from the headwaters down to, but not including, Clarks Pond (depicted on a map attached as Exhibit A hereto).

"**Long Creek Watershed Management District**" or "**District**" shall mean the quasi-municipal special purpose district formed as a separate legal entity and instrumentality and a body corporate and politic under this Interlocal Agreement, the entity established to provide oversight over implementation of the Long Creek Watershed Management Plan.

"**Long Creek Watershed Management Plan**" or "**Plan**" shall mean a plan dated July 2009 developed jointly by the municipalities of South Portland, Portland, Westbrook and Scarborough, along with other entities, and approved by the DEP, for the purpose of restoring the water quality of Long Creek, as amended from time-to-time.

"Municipality" or "Municipalities" shall mean the City of Portland, the City of South Portland, the City of Westbrook and/or the Town of Scarborough.

"**Operator**" shall mean the Person who has control over a Parcel, or a right-of-way or easement on a Parcel or Parcels, with a Designated Discharge of stormwater to Long Creek or its tributaries. The owner of a Parcel will be considered to be the Operator, unless there is a written agreement which provides another Person with authority to make decisions with respect to Stormwater Discharges from the Impervious Surfaces or Areas and associated areas of the Parcel needed for Stormwater management, and in such case, the record owner shall join in the execution of this Agreement.

"**Parcel**" means the block or piece of land a Person owns or has sufficient title, right or interest in regardless of size, and regardless of whether the block of land is divided into lots.

(a.) The Parcel includes:

(1.) All contiguous land in the same ownership, where "contiguous land" is defined as two areas that touch at more than one point; and

(2.) Non-contiguous areas in the same ownership if the areas are considered part of the same parcel by DEP for purposes of permitting under the Stormwater Management

Law or Site Location of Development Act ("Site Law"), and a permit under one of those laws is required.

(b.) Areas located on opposite sides of a public or private road are considered separate Parcels of land unless:

(1.) The road was established by the owner of land on both sides of the road on or after January 1, 1970; or

(2.) The areas are considered part of the same Parcel by DEP for purposes of permitting under the Stormwater Management Law or Site Law, and a permit under one of those laws is required.

"**Participating Landowners**" shall mean all Landowners (including but not limited to the Participating Landowner who is a party to this Agreement) who have entered into an agreement with the Long Creek Watershed Management District to implement the Long Creek Watershed Management Plan.

"**Person**" means an individual, firm, corporation, municipality, quasi-municipal corporation, state agency, federal agency or other legal entity. Each "person" is regarded as a separate and distinct entity, except that a combination of persons is treated as a single person if:

(a.) Together they pursue a common scheme of development, as defined in rules adopted pursuant to the Site Law, resulting in a discharge requiring authorization even though individual persons in the combination own separate Parcels that may not result in a discharge requiring approval if the Parcels were considered separately; or

(b.) One person engages in a transaction, with another person with the intent to evade the intent and purpose of the designation.

"Qualified Third Party Inspector" shall mean a person whose name is on the list of approved third-party inspectors maintained by the District's Executive Director, or is approved by the District's Executive Director prior to conducting the inspection(s). Qualified Third Party Inspectors shall meet the following criteria:

(a.) Have a college degree in an environmental science or civil engineering, or comparable expertise,

(b.) Have a practical knowledge of stormwater hydrology and stormwater management techniques, including the maintenance requirements for BMPs, and

(c.) Have the ability to determine if BMPs are performing as intended.

"**Retrofit**" shall mean a replacement of or change or addition to BMPs that are existing on a Parcel as of December 6, 2009, or an addition of a new BMP or BMPs to an existing development on a Parcel after that date, that benefits Long Creek directly or indirectly, the benefits of which are in one or more of three categories: 1.) Reductions in the impact of altered hydrology due to impervious cover on stream flow, the stream channel and aquatic habitat; 2.) Reductions in pollutants entering Long Creek; and 3.) Reductions in the thermal impact of urban runoff on the stream.

"**State Transportation Agency**" shall mean the Maine Department of Transportation ("**MaineDOT**") and/or the Maine Turnpike Authority.

"**Stormwater**" shall mean the part of precipitation including runoff from rain or melting ice and snow that flows across the surface as sheet flow, shallow concentrated flow, or in drainageways. "Stormwater" has the same meaning as "storm water."

Section 3. Participating Landowner Obligations. The Participating Landowner agrees as follows:

(a.) The Participating Landowner agrees to submit to DEP a NOI to enter into and to remain covered by the General Permit, subject to the termination provisions contained therein and herein.

(b.) The Participating Landowner agrees to pay the Initial Assessment as provided in Section 5 below.

(c.) The Participating Landowner agrees to pay Annual Assessments subsequent to the Initial Assessment as provided in Section 5 below.

(d.) The Participating Landowner agrees to provide easements and/or other property interests or deed restrictions subject to the following terms and conditions:

(1.) BMPs/Easements Identified in the Plan on Effective Date. For BMPs identified in the Plan as of the Effective Date of this Agreement as requiring easements over the Participating Landowner's Parcel, the Participating Landowner, and the Record Owner of the Participating Landowner's Parcel if the Record Owner is not the Participating Landowner, shall provide the District, at no cost to the District, with temporary or permanent easements, as applicable, over the Participating Landowner's Parcel necessary for the District to carry out the design, engineering, construction, reconstruction, installation, operation, modification, alteration, use, maintenance, repair, replacement, inspection and monitoring of BMPs and in-stream and riparian restoration in and along Long Creek and within the Long Creek Watershed for the purpose of implementation of the Plan. Such easement shall be in a form reasonably acceptable to the District, which shall be substantially similar to the form attached as Appendix A hereto, with changes to be made to Sections A and G of said form as appropriate to the specific easement conveyed, and shall be provided by the Participating Landowner and the Record Owner within one hundred eighty (180) days of receipt of written notice from the District requesting such easement.

The Participating Landowner and the Record Owner of the Parcel, as appropriate, also shall obtain the consent to, joinder in, and/or subordination of such grants from the holders of prior interests in the Participating Landowner's Parcel (including but not limited to landlords, tenants and lenders, the last of which shall provide a "Limited Joinder of Easement" substantially similar to the form attached as Appendix C hereto) and shall certify in writing to the District at the time it delivers the easement to the District that it has obtained all necessary consents, joinders and/or subordinations of such grants from all holders of prior interests in the Participating Landowner's Parcel (including but not limited to landlords, tenants and lenders). The Participating Landowner and the Record Owner of the Parcel, as appropriate, shall submit a request, in writing, to each Person from whom the Limited Joinder of Easement is required. The request shall set forth, in reasonable detail, the reasons for granting the easement and the consequences of failing to grant

the easement, shall include an agreement by the Participating Landowner and the Record Owner of the Parcel, as appropriate, to pay to such Person a reasonable fee for the review of the documentation, and shall otherwise be in form and substance reasonably acceptable to the District.

If, despite having followed the foregoing procedure, any Person refuses to execute and deliver the Limited Joinder of Easement, and the Participating Landowner and the Record Owner of the Parcel, as appropriate, are unable to make the aforesaid required certification, then the District agrees to re-evaluate the Plan to determine the changes that can be made to compensate for the failure to install the BMPs on the Participating Landowner's Parcel; the engineering costs associated with such re-evaluation shall be paid by the Participating Landowner and the Record Owner of the Parcel, as appropriate, within thirty (30) days after the later to occur of (i) the completion of the re-evaluation process and (ii) receipt of a reasonably detailed statement setting forth such engineering costs. If at the completion of the re-evaluation process alternatives are identified that include an easement and BMPs that provide materially the same or better functionality and benefit as those replaced, as determined in their sole discretion by the District Board and DEP through the process for amendments to the Plan, the alternative easement is provided to the District along with the Limited Joinder of Easement for the property upon which the easement is to be located and the Participating Landowner pays to the District the additional cost, if any, of the replacement BMPs, then this Agreement shall continue in full force and effect. If at the completion of the re-evaluation process no alternatives are identified that include an easement and BMPs that provide materially the same or better functionality and benefit as those replaced, then this Agreement shall be deemed terminated under Section 10(b) hereto.

(2.) BMPs/Easements Added to the Plan after Effective Date. The consent of the Participating Landowner, and of the Record Owner of the Participating Landowner's Parcel if the Record Owner is not the Participating Landowner, in its or their sole discretion, is necessary before BMPs are added to the Plan after the Effective Date of this Agreement that require new or additional easements over the Participating Landowner's Parcel. If such consent is provided, upon the modification of the Plan, the Participating Landowner and the Record Owner of the Parcel, as appropriate, shall provide the District, at no cost to the District, with temporary or permanent easements, as applicable, over the Participating Landowner's Parcel necessary for the District to carry out the design, engineering, construction, reconstruction, installation, operation, modification, alteration, use, maintenance, repair, replacement, inspection and monitoring of BMPs and in-stream and riparian restoration in and along Long Creek and within the Long Creek Watershed for the purpose of implementation of the Plan. Such easement shall be in a form reasonably acceptable to the District, which shall be substantially similar to the form attached as Appendix A hereto, with changes to be made to Sections A and G of the form as appropriate to the specific easement conveyed and shall be provided by the Participating Landowner and the Record Owner within one hundred eighty (180) days of receipt of written notice from the District requesting such easement. The Participating Landowner (and the Record Owner of the Parcel, as appropriate) also shall obtain the consent to, joinder in, and/or subordination of such grants from the holders of prior interests in the Participating Landowner's Parcel (including but not limited to landlords, tenants and lenders, the last of which shall provide a "Limited Joinder of Easement" substantially similar to the form attached as Appendix C hereto), and shall certify in writing to the District at the time it delivers the easement to the District that it has obtained all necessary consents, joinders and/or subordinations of such grants

from all holders of prior interests in the Participating Landowner's Parcel (including but not limited to landlords, tenants and lenders).

(3.) Declaration of Restrictive Covenants in Place of Easements. Section 3(d.)(1.) and (2.) above notwithstanding, the Participating Landowner and the Record Owner of the Parcel, as appropriate, shall not be required to provide the District any easements under this Section 3.(d.) if the Participating Landowner, and the Record Owner of the Participating Landowner's Premises, if the Record Owner is not also the Participating Landowner, agree in writing, within one hundred eighty (180) days of the District's written request to provide such easement, to: (i) construct, reconstruct, install, operate, modify, alter, use, maintain, repair, replace, inspect and monitor the applicable BMP itself at its own expense; (ii) provide the District with reasonable rights to inspect the BMP during and after construction; (iii) correct, at the Participating Landowner's expense, any discrepancies between the standard for construction, installation and maintenance in the BMP's design documents and the BMP as actually constructed, installed and maintained; and (iv) include all such commitments as restrictive covenants, enforceable by the District, or if the Participating Landowner or Record Owner agrees in writing, within one hundred eighty (180) days of the District's written request to provide such easement, to carry out (i)-(iv) of this Paragraph, except for construction and installation, with regard to a BMP constructed or installed by the District on the Participating Landowner's or Record Owner's Parcel.

(i). Where such restrictive covenants are offered in place of easements for BMPs that are identified in the Plan as of the Effective Date of this Agreement as requiring easements over the Participating Landowner's Parcel, the Participating Landowner, and the Record Owner of the Participating Landowner's Parcel if the Record Owner is not the Participating Landowner, shall provide the District, at no cost to the District, with evidence satisfactory to the District that it has recorded in the Cumberland County Registry of Deeds such restrictive covenants in a form reasonably acceptable to the District. The Participating Landowner and the Record Owner of the Parcel, as appropriate, also shall obtain the consent to, joinder in, and/or subordination of such restrictive covenants from the holders of prior interests in the Participating Landowner's Parcel (including but not limited to landlords, tenants and lenders, the last of which shall provide a "Limited Joinder" substantially similar to the form attached as Appendix C hereto) and shall certify in writing to the District at the time it delivers the restrictive covenants to the District that it has obtained all necessary consents, joinders and/or subordinations of such restrictive covenants from all holders of prior interests in the Participating Landowner's Parcel (including but not limited to landlords, tenants and lenders). The Participating Landowner and the Record Owner of the Parcel, as appropriate, shall submit a request, in writing, to each Person from whom a Limited Joinder is required. The request shall set forth, in reasonable detail, the reasons for the restrictive covenants and the consequences of failing to provide the restrictive covenants, shall include an agreement by the Participating Landowner and the Record Owner of the Parcel, as appropriate, to pay to such Person a reasonable fee for the review of the documentation, and shall otherwise be in form and substance reasonably acceptable to the Parties. If, despite having followed the foregoing procedure, any Person refuses to execute and deliver the Limited Joinder, and the Participating Landowner and the Record Owner of the Parcel, as appropriate, are unable to make the aforesaid required certification, then the District agrees to re-evaluate the Plan to determine the changes that can be made to compensate for the failure to install the BMPs on the Participating Landowner's Parcel; the engineering costs associated with such re-evaluation shall be paid by the Participating

Landowner and the Record Owner of the Parcel, as appropriate, within thirty (30) days after the later to occur of (i) the completion of the re-evaluation process and (ii) receipt of a reasonably detailed statement setting forth such engineering costs. If at the completion of the re-evaluation process alternatives are identified that include an easement and BMPs that provide materially the same or better functionality and benefit as those replaced, as determined in their sole discretion by the District Board and DEP through the process for amendments to the Plan, the alternative easement is provided to the District along with the Limited Joinder of Easement for the property upon which the easement is to be located and the Participating Landowner pays to the District the additional cost, if any, of the replacement BMPs, then this Agreement shall continue in full force and effect. If at the completion of the re-evaluation process no alternatives are identified that include an easement and BMPs that provide materially the same or better functionality and benefit as those replaced, then this Agreement shall be deemed terminated under Section 10(b) hereto.

(ii) Where such restrictive covenants are offered in place of easements for BMPs that are added to the Plan after the Effective Date of this Agreement that require new or additional easements over the Participating Landowner's Parcel, the consent of the Participating Landowner, and of and the Record Owner of the Participating Landowner's Parcel if the Record Owner is not the Participating Landowner, in its or their sole discretion, is necessary before such BMPs are added to the Plan after the Effective Date of this Agreement that require new or additional easements over the Participating Landowner's Parcel. If such consent is provided, upon the modification of the Plan, the Participating Landowner and the Record Owner of the Parcel, as appropriate, shall provide the District, at no cost to the District, with evidence satisfactory to the District that it has recorded in the Cumberland County Registry of Deeds such restrictive covenants in a form reasonably acceptable to the District. The Participating Landowner and the Record Owner of the Parcel, as appropriate, also shall obtain the consent to, joinder in, and/or subordination of such restrictive covenants from the holders of prior interests in the Participating Landowner's Parcel (including but not limited to landlords, tenants and lenders, the last of which shall provide a "Limited Joinder" substantially similar to the form attached as Appendix C hereto), and shall certify in writing to the District at the time it delivers the restrictive covenants to the District that it has obtained all necessary consents, joinders and/or subordinations of such deed restrictions from all holders of prior interests in the Participating Landowner's Parcel (including but not limited to landlords, tenants and lenders).

(4.) Scope of Easement. The District's use and exercise of any easement granted by a Participating Landowner and the Record Owner of the Parcel, as appropriate, of the Participating Landowner's Parcel to the District will be limited to matters relating to specific District BMPs on the Participating Landowner's Parcel. If the District wishes to make a material change outside of the scope of the easement over, or the restrictive covenant on, the Participating Landowner's Parcel during the term of the General Permit, the consent of the Participating Landowner and of the Record Owner of the Participating Landowner's Premises, as appropriate, at its or their sole discretion, will be required.

(5.) Construction of BMP on Participating Landowner's Parcel. The Participating Landowner and Record Owner will not be required to allow the construction of any BMP on the Participating Landowner's Parcel that was not included in the Plan as of the Effective Date of this Agreement, unless the Participating Landowner and Record Owner, if the

Record Owner is not also the Participating Landowner, specifically agree in writing, at its or their sole discretion, to allow the construction of said BMP.

(6.) District Best Efforts. The District will make its best efforts to minimize the impact on the Participating Landowner's Parcel and on the Participating Landowner's operations thereon of the location of BMPs to be constructed or installed upon such easements/restrictive covenants provided under this Agreement, and following construction or installation of the BMP, shall promptly restore, at its sole expense, the Participating Landowner's Parcel to its original condition to the extent reasonably possible while allowing the BMP to function as designed and intended. For purposes of this Paragraph (d)(6.), "best efforts" shall include, without limitation: minimal loss of parking spaces (provided, however, in no event shall the number of parking spaces remaining after such work be less than the greatest of (i) the number required under the then applicable zoning laws, (ii) the number required under any applicable approvals and permits for the Participating Landowner's Parcel, and (iii) the number required under the leases in effect as of such work), no impairment of the functionality of access drives within the Participating Landowner's Parcel or modification of the access to a public street therefrom, no impairment of the functionality of the utilities within, under, across or through or serving the Participating Landowner's Parcel, no relocation of pylon signage, and minimization of impact on potential future development of the Parcel.

(7.) Specific Governmental Entities.

(i.) State Transportation Agencies. Section 3(d.)(1.) through (d.)(6.) above notwithstanding, for Parcels under its jurisdiction, a State Transportation Agency may provide occupancy permits in lieu of easements, and retains the right to approve, alter, direct, administer or prohibit the design, location, construction or maintenance of any proposed BMP.

(ii) Municipalities. Section 3(d.)(1.) through (d.)(6.) above notwithstanding, for Parcels under its jurisdiction, a Municipality may enter into agreements with the District in lieu of easements, and retains the right to approve, alter, direct, administer or prohibit the design, location, construction or maintenance of any proposed BMP.

(8.) Relocation of Easement/BMPs. The Participating Landowner or Record Owner, as appropriate, reserves the right to relocate the easement/restrictive covenant area and the BMPs constructed thereon by the District pursuant to the easement/restrictive covenant provided that: the Board approves the relocated easement/restrictive covenant; DEP approves the same as a modification to the Plan; the Participating Landowner or Record Owner grants to the District an easement substantially in the form of Appendix A to the relocated easement area or provides the District with evidence satisfactory to the District that it has recorded in the Cumberland County Registry of Deeds such restrictive covenants in a form reasonably acceptable to the District; the Participating Landowner or Record Owner obtains all necessary consents, joinders and/or subordinations of such easement/restrictive covenant from all holders of prior interests in the Participating Landowner's Parcel (including but not limited to landlords, tenants and lenders), as required above for the original easement/restrictive covenant; the Participating Landowner or Record Owner constructs at its sole cost the replacement BMPs in the relocated easement/restrictive covenant area; and the replacement BMPs provide materially the same or better functionality and benefit as those replaced. The Participating Landowner or Record Owner shall provide written notice to the District of its intent to exercise the reserved relocation right (subject to Board and DEP approval as stated above), which notice shall include

detailed plans and specifications for the replacement BMPs to be constructed in the relocated easement/restrictive covenant area. Upon completion of construction of the relocated BMPs and the commencement of operation thereof and the grant of the new easement or the recording of the new restrictive covenants, as provided above, the original easement or the original restrictive covenant automatically shall be deemed terminated, and the District shall execute and deliver in recordable form a release of the original easement or the original restrictive covenant, whichever the case may be, to the Participating Landowner or Record Owner to confirm the same.

(9.) Removal of Easement/BMPs. If a Participating Landowner or Record Owner wishes to remove a BMP installed by the District on its Parcel and to terminate the easement given to the District or the recorded restrictive covenant relating thereto, the Participating Landowner or Record Owner shall have such rights upon paying to the District (in addition to any other amounts required hereunder) the full amount of the District's cost of replacement of such BMP as determined by the Executive Director to provide materially the same or better functionality and benefit as that replaced, at which time the District shall execute and deliver to the Participating Landowner, in recordable form, a release of the original easement or a release/consent to the termination of the restrictive covenant. However, if the District is unable to identify an alternative location for the BMP installed on the Parcel that is materially the same or better functionally and benefit as that being removed, then such BMP shall remain on the Participating Landowner or Record Owner's Parcel and the easement/ restrictive covenant shall remain in full force and effect.

(10.) District Entry onto Parcel. The Participating Landowner and Record Owner, if applicable, agree to allow the District to enter onto the Parcel with people and machines, with reasonable notice, for the purpose of construction, reconstruction, installation, operation, modification, alteration, use, maintenance, repair, replacement, inspection and monitoring of BMPs. In connection with such entry for the purpose of construction, reconstruction, installation or replacement of BMPs, the District will, with the consent of the Participating Landowner and Record Owner, which consent shall not be unreasonably withheld: (i) select an engineering firm to design the BMPs; (ii) obtain bids for construction, reconstruction and installation of the BMPs; (iii) select the contractor to construct, reconstruct and install the BMPs; (iv) negotiate and enter into a construction contract with the selected contractor, the terms and conditions of which are reasonably satisfactory to the Participating Landowner and Record Owner; and, (v) except in the case of an emergency, provide the Participating Landowner and Record Owner with at least ten (10) business days' notice prior to entering the Participating Landowner's Parcel, which notice shall include copies of any plans, specifications and other descriptions of the work to be performed.

Section 4. District Obligations.

(a.) The District shall implement the Long Creek Watershed Management Plan in accordance with the General Permit, which implementation includes but is not limited to the design, engineering, construction, reconstruction, installation, operation, modification, alteration, use, maintenance, repair, replacement, inspection and monitoring of BMPs and in-stream and riparian restoration in and along Long Creek and within the Long Creek Watershed, and monitoring the effectiveness of the Plan and of the condition of the Long Creek and the Long Creek Watershed, and carrying out Participating Landowners' obligations under stormwater management system maintenance agreements they have entered into with a Municipality for the purpose of maintaining BMPs constructed and installed using District funds.

(b.) The District shall assess the Initial Assessment (the assessment made by the District on each Participating Landowner for the Initial Fiscal Year under this Agreement) and the subsequent Annual Assessments (the subsequent assessments made by the District on each Participating Landowner for Fiscal Years following the Initial Fiscal Year; collectively, the Initial Assessment and Annual Assessments are called the "Assessments") upon the Participating Landowner as provided herein.

(c.) The District agrees that it shall not seek, and will not accept, authority to administer permitting requirements over new construction or reconstruction conducted by the Participating Landowner, whether under delegation or waiver authority from the DEP or legislative or regulatory action. Violation of this section by the District will be considered a Default under this Agreement and will allow the Participating Landowner to immediately terminate this Agreement as provided in Section 10(b), below, but without regard to the April 1st deadline described therein; provided, however, that if the authority described in this paragraph is legislatively granted to the District without the District's having sought that authority and without the District having any discretion to refuse that authority, then such an event shall not be considered a Default by the District but will instead allow the Participating Landowner to immediately terminate this Agreement as provided in Section 10(b), below, but without regard to the April 1st deadline described therein.

(d.) The District, through its Executive Director shall, within fourteen (14) days of a written request by a Participating Landowner or Record Owner, furnish such certificates, statements, or documents (the "Certificates") as are reasonably requested by a Participating Landowner or Record Owner to evidence the following: (i.) that this Agreement remains in full force and effect and has not been modified, waived or amended, except as otherwise specified in the Certificates; (ii.) the amount and balance of a Participating Landowner's Annual Assessment and the amount and term of any credits against the Participating Landowner's Annual Assessment, if any; (iii.) that the District is in compliance with any and all covenants of any loan, bond, or finance documents to which it is a party, except as otherwise specified in the Certificates; (iv.) that, to the best of its knowledge, there are no claims pending or threatened against the District, the Participating Landowner or the Record Owner as a result of the District's actions taken hereunder or as a result of its activities, except as otherwise specified in the Certificates; (v.) that, to the best of its knowledge, there are, as of the date of such certificate, no pending or outstanding Defaults and/or no set of facts which could (if left uncured) give rise to a Default or liability of the District, the Participating Landowner or the Record Owner under this Agreement and/or any documents related thereto, except as otherwise specified in the Certificates; (vi.) the current annual budget adopted by the Board and the current balance sheet of the District; and (vii.) whether or not there are any proposed BMPs for the Participating Landowner's Parcel; provided, however, that the Participating Landowner or the Record Owner shall pay to the District at the time of its written request for such Certificate(s) an amount that the District determines is equal to its reasonable cost of preparing such Certificates. The Certificates shall, upon request, certify to and run to the Participating Landowner, the Record Owner and any tenant, landlord, purchaser, title insurer, or lender thereof or thereto and any legal counsel of any such party making such request.

(e.) From Assessments it collects under this Agreement, District agrees to pay all obligations of the Long Creek Watershed Management District, including but not limited to

reimbursement of Cumberland County Soil & Water Conservation District ("**CCSWCD**") for costs it has incurred in implementation of the Plan prior to the Effective Date of the Agreement.

(f.) Compliance with Applicable Law. In addition, the District will comply with any and all applicable laws, ordinances, and regulations in connection with the exercise of its rights under this Agreement.

Section 5. Assessments.

(a.) Calculation of Assessments. The Executive Director shall calculate the Participating Landowner's Assessments (and each other Participating Landowner's Assessments) as follows:

(1.) Estimated Annual Expenditures. As required by the Interlocal Agreement, by February 1 of each year, the Board shall prepare and send to the Participating Landowners by U.S. mail an itemized estimate of expenditures in the following categories of costs for the following Fiscal Year, which shall be from July 1 to June 30; provided, however, that the estimated annual expenditures for the Initial Fiscal Year of this Agreement, the Fiscal Year beginning July 1, 2010, shall be as stated in Appendix B ("**Participating Landowner's Initial Assessment**") to this Agreement.

(i) "Construction and Maintenance Costs," which means the estimated costs of design, engineering, construction and installation of BMPs, implementation of non-structural BMPs, and in-stream and riparian restoration in and along Long Creek and within the Long Creek Watershed for implementation of the Long Creek Watershed Management Plan, and the estimated costs of reconstruction, operation, modification, alteration, use, maintenance, repair, replacement and inspection of the same, and the estimated costs of any debt service for amounts borrowed by the District and/or by CCSWCD for design, engineering, construction and installation of the same for implementation of the Plan incurred by it prior to the Effective Date of this Agreement (the "**Construction and Maintenance Costs**").

(ii) "Pollution Prevention and Good Housekeeping Costs," which means measures that reduce or eliminate pollutants, including but not limited to pavement sweeping; materials substitution and management; landscaping management; programs for BMP inspections and maintenance; and related training (the "**Pollution Prevention and Good Housekeeping Costs**").

(iii.) "Monitoring Costs," which means the estimated costs of monitoring of BMPs and in-stream water quality monitoring in and along Long Creek and within the Long Creek Watershed, which includes, but is not limited to, the capital costs for purchase of monitoring equipment (the "**Monitoring Costs**").

(iv.) "Reserve Fund Costs," which means any reserve fund established by the District for construction, reconstruction, installation, operation, modification, alteration, use, maintenance, repair, replacement, inspection and/or monitoring costs for BMPs and in-stream and riparian restoration in and along Long Creek and within the Long Creek Watershed, or for any other purpose which represents a contingent obligation on the part of the District or any of the Participating Landowners to either perform or pay damages in the future (the "**Reserve Fund Costs**").

(v.) "Administrative Costs," which means the District's administrative costs of implementation of the Plan, including, but not limited to, the costs of coordination with

Participating Landowners and State and local governmental agencies, grant application and administration, budget development, assessment and billing, staff time, database development and management, legal fees and costs, reporting, meetings, permitting, insurance and supplies and the estimated costs of any debt service for amounts borrowed by the District and/or by CCSWCD for the same incurred prior to the Effective Date of this Agreement (the "**Administrative Costs**").

(2.) Initial Assessment. The Executive Director shall calculate the Participating Landowner's Initial Assessment by multiplying the Three Thousand Dollars ($3,000.00) per acre total estimated annual expenditure for the Initial Fiscal Year of this Agreement by the acreage of Impervious Surface or Impervious Area from which there is a Designated Discharge on the Participating Landowner's Parcel, and by reducing that product by the credits, if any, set forth in Section 5(a.)(4.), (5.) and (6.), all as shown on Appendix B to this Agreement. The Executive Director then shall reduce the Initial Assessment by the amount of the value of provision of BMPs and/or services in lieu of payment under Section 5(a.)(7.), by the amount of Compensation Fee Utilization Plan fees under Section 5(a.)(8.), and by the amounts of any prepayments made by the Participating Landowner to the District and/or to CCSWCD prior to entering into this Agreement.

(3.) Annual Assessments. The Executive Director shall calculate the Participating Landowner's Annual Assessment by multiplying the estimated expenditure for each category of costs in Section 5 (a.)(1.)(i-v) above by the Participating Landowner's Percentage (as defined below), by reducing the products by the credits, if any, set forth in Section 5(a.)(4.), (5.), and (6.), and by adding the total of all of these products as adjusted. The Executive Director then shall reduce the Annual Assessment by the amount of value of provision of BMPs and/or services in lieu of payment under Section 5(a.)(7.) and by the amount of Compensation Fee Utilization Plan fees under Section 5(a.)(8.).

(i.) Participating Landowner's Percentage. The "Participating Landowner's Percentage" shall mean a percentage calculated by dividing the Participating Landowner's square foot area of Impervious Surface or Impervious Area on the Participating Landowners' Parcel(s) located within the Long Creek Watershed and subject to the General Permit from which there is a Designated Discharge (determined by DEP, based on the definitions contained in the General Permit, as of December 6, 2009) by the total square foot area of such Impervious Surface or Impervious Area of all Participating Landowners' Parcels and by multiplying the quotient by 100 (the "Participating Landowner's Percentage"). The Participating Landowner's Percentage shall be adjusted annually as provided in Section 5(c.).

(ii.) Credits, Value of BMPs or Services in Lieu of Payment Provided, Compensation Fee Utilization Plan Fees – Calculation and Notification; Burden of Proof of Entitlement; and When Allowed.

The Executive Director shall calculate credits, the value of BMPs and/or services provided in lieu of payment and Compensation Fee Utilization Plan fees under Section 5(a.)(4.), (5.), (6.), (7.) and/or (8.) at the time of calculation of the Initial Assessment. For subsequent Annual Assessments, the Participating Landowner must apply to the Executive Director on or by February 1 of a given year for consideration of new credits or value of BMPs and/or services provided in lieu of payment and Compensation Fee Utilization Plan fees under Section 5(a.)(4.), (5.), (6.), (7.) and/or (8.), and the Executive Director shall notify the applicant by written notice

sent by U.S. certified mail, return receipt requested, on or by the following April 1 whether the application is approved. If the application is approved, the credit or value of BMPs and/or services provided in lieu of payment will be included with subsequent Annual Assessments as provided below.

The burden of proof of entitlement to credits and/or to value of BMPs and/or services in lieu of payment provided is on the Participating Landowner.

Credit and/or value of BMPs and/or services in lieu of payment provided shall only be allowed upon substantial completion of the BMP(s) or actual provision of the services.

(iii.) Dispute as to Calculation of New Credits, Value of BMPs or Services Provided in Lieu of Payment or Compensation Fee Utilization Plan Fees. In the event that a Participating Landowner disputes the Executive Director's calculation of new credits, value of BMPs and/or services provided in lieu of payment or Compensation Fee Utilization Plan Fees under Section 5(a.)(4.), (5.), (6.), (7.) and/or (8.), the Participating Landowner shall advise the Executive Director of that dispute within thirty (30) days of receipt of the Executive Director's Annual Assessment notice of action on the application for new credits or value of BMPs and/or services provided in lieu of payment; the Executive Director will obtain a third-party engineer or consultant's opinion in deciding whether and in what amount to approve applications for new credits, for value of BMPs and/or services provided in lieu of payment under Section 5 (a.)(4.), (5.), (6.) (7.) and/or (8.), if merited, and the Participating Landowner may appeal from the Executive Director's redetermination to the Board under Section 5(d.).

(iv.) Credits-Limitation. Except for credits for existing BMPs providing on-site treatment, credits for BMPs shall be limited to BMPs not constructed or installed using District funds and shall not be provided for any BMPs relocated under Section 3(d.) (8.).

(v.) No Increase for Default by another Participating Landowner. Once the Annual Assessment amount is established, it cannot be increased during the term of the General Permit effective at the time of establishment of the Annual Assessment due to another Participating Landowner defaulting on payment of its Assessments; however, the Annual Assessment amount may be adjusted during the term of the next reissued, renewal or replacement General Permit subject to the provisions of Section 5(f.).

(4.) Credits for Pollution Prevention and Good Housekeeping Costs. A Participating Landowner shall receive a credit, as determined by the Executive Director, against the Participating Landowner's share of the Pollution Prevention and Good Housekeeping Costs for that Parcel if the Participating Landowner undertakes at its own expense all good housekeeping activities that otherwise would be provided by the District at the District's cost, including, but not limited to, maintenance, pavement sweeping, repair, replacement, inspection (by a Qualified Third Party Inspector) and reporting tasks for the BMPs located on its Parcel. In connection with the portion of the Annual Assessment attributable to the Pollution Prevention and Good Housekeeping Costs, the Executive Director shall determine the percentage of such Costs that are attributable to meeting the minimum standards attached as Appendix D hereto ("Minimum Standards"); said percentage is hereinafter referred to as the "Minimum Standard Percentage." So long as the housekeeping activities undertaken by the Participating Landowner meets the Minimum Standards, then the Participating Landowner shall receive a credit against its share of the Pollution Prevention and Good Housekeeping Costs equal to the Minimum Standard Percentage of such share.

(5.) Credits for Construction and Maintenance Costs. In calculating the Participating Landowner's Assessments, the Participating Landowner's share of Construction and Maintenance Costs calculated in Section 5.(a.)(1.) above shall be reduced by credits for existing BMPs, new construction or Retrofit BMPs located on the Participating Landowner's Parcel or Parcels, as follows, provided, however, that if there is a written agreement that provides for sharing of a BMP or BMPs by two or more Participating Landowners, the Executive Director shall allocate credit for such shared BMP or BMPs between or among the Participating Landowners who are parties to such written agreement in accordance with the terms thereof.

(i.) Existing BMPs

Credits for BMPs existing on Parcels as of December 6, 2009 are based on the area the BMPs were designed to treat and the regulatory criteria the BMPs were designed to meet or are actually meeting, as determined by the Executive Director. The applicable credits for each category of BMP design are shown in Table 1 below. Credits are calculated by subcatchment. (Maine has had three different sets of regulatory criteria for stormwater treatment, (x) the "2-10-25 retention standard**,"** (y) the "Sliding Scale Standard" and (z) the "Current Chapter 500 Requirements" (the provisions of Chapter 500 of the Code of Maine Rules, the "Stormwater Management Rules" in effect as of the date of execution of this Agreement, and some BMPs have been constructed and installed that were not designed to meet Current Chapter 500 Requirements, but which nonetheless meet some or all of them ("Indeterminate" standard in Table 1 below).)

Table 1. Credits for existing BMPs providing on-site treatment.

Standard Which Existing BMPs Are Actually Meeting	Credit -- Percentage Reduction of Participating Landowner's share of Construction and Maintenance Costs for Parcel(s) on Which BMP is Located (can be cumulative)
2-10-25 Retention Standard Only (Flood Control)	0 to 10%
Sliding Scale Standard Only	0 to 10%
Current Chapter 500 Requirements	100%
Indeterminate	0-100%, depending upon the extent to which the BMP meets Current Chapter 500 Requirements, calculated in the same manner as in (iii) below

(ii.) New Construction (Development)

Where a Participating Landowner undertakes new construction (construction commenced after December 6, 2009) on a Parcel in the Long Creek Watershed that is required to meet the Chapter 500 Requirements in effect at the time that DEP accepts the application for the same as complete

for processing and meets the same, as determined by DEP, upon substantial completion of the BMP, that Participating Landowner shall receive a credit of up to 100% of the Participating Landowner's share of Construction and Maintenance Costs for that Parcel or portion thereof served by the BMP, so long as that BMP is not constructed or installed with District funds.

(iii.) Retrofits

A Participating Landowner who constructs or installs a Retrofit that is not constructed or installed using District funds and effectively provides a level of treatment similar to what would be achieved through application of the Chapter 500 Requirements in effect at the time that DEP accepts the application for the same as complete for processing shall receive a credit of up to 100% against that Participating Landowner's share of the Construction and Maintenance Costs for the Parcel(s) or portion thereof served by the BMP (or in the alternative, a Participating Landowner may ask the Board and DEP for a Plan modification to receive an offset against Annual Assessments as a BMP in lieu of payment under Section 5(a)(7)). Other Retrofits could receive a total reduction of anywhere from 0% to 100% of the Participating Landowner's share of the Construction and Maintenance Costs for the Parcel(s) or portion thereof served by the BMP, depending upon which standards each Retrofit would meet:

- Reductions in Impact of Altered Hydrology. Up to 40% reduction of the Participating Landowner's share of the Construction and Maintenance Costs for the Parcel(s) or portion thereof served by the Retrofit upon which the Retrofit is located for Retrofits that control runoff volume and timing, and thus help provide stream channel protection; there shall be a 40% reduction of the Participating Landowner's share of the Construction and Maintenance Costs for the Parcel(s) upon which the Retrofit is located for Retrofits that provide "24-48 hour extended detention of the first 1" of runoff or storage and infiltration that has the equivalent effect on the rate of discharge," and a lesser percentage reduction for Retrofits with lesser water storage or infiltration capacity in proportion to the runoff storage and infiltration -- from a minimum of ¼" to 1" -- provided by the Retrofit.
- Reduction in Pollutants Entering Long Creek. Up to 40% reduction of the Participating Landowner's share of the Construction and Maintenance Costs for the Parcel(s) or portion thereof served by the Retrofit upon which the Retrofit is located for Retrofits that meet Chapter 500 Requirements in effect at the time that DEP accepts the application for the same as complete for processing for removal of pollutants of interest, and a lesser percentage reduction for Retrofits with lesser pollutant removal in proportion to the percentage of removal of pollutants of interest provided by the Retrofit, from a minimum of 25% pollutant removal to 100%. Pollutants of interest include nutrients, toxic chemicals, road salts, and bacteria, among others.
- Reduction in Thermal Impact of Urban Runoff. Up to 20% reduction of the Participating Landowner's share of the Construction and Maintenance Costs for the Parcel(s) or portion thereof served by the Retrofit upon which the Retrofit is located for Retrofits that provide some temperature protection to Long Creek. Temperature protection will be assessed utilizing then-current Chapter 500 Requirements in effect at the time that DEP accepts the application for the Retrofit as complete for processing.

(iv.) Credits Carry Forward.

Credits for Construction and Maintenance Costs will apply against that same category of costs in all subsequent Annual Assessments 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 District's Executive Director; if the BMPs that generate the credits fail to meet the standards for which they were designed or met, then the credits for the BMPs shall be reduced in proportion to the BMP's loss of ability to meet those standards, and the reduction shall begin in the next Fiscal Year.

(6.) Urban-Rural Initiative Program. State Transportation Agencies shall receive credits against the appropriate categories of estimated costs for Urban-Rural Initiative Program (URIP) funds that are allocated to the municipalities under 23 M.R.S.A. § 1803-B for State and State-Aid highways within the Long Creek Watershed that are specifically applied to the implementation of operational and maintenance activities required in the Plan, provided, however, that such funds are used in the implementation of pollution prevention, good housekeeping or other activities required in the Plan and the municipality receiving such funds does not also receive credit for the same.

(7.) Provision of BMPs and/or of Services in Lieu of Payment to the District. Participating Landowners may satisfy their Initial Assessment and Annual Assessment obligations hereunder by provision of BMPs and/or of services in lieu of payment included in the Plan, including but not limited to non-structural management opportunities, street sweeping and other tasks necessary to implementation of the Plan (such as construction, reconstruction, installation, operation, modification, alteration, use, maintenance, repair, replacement, inspection (by a Qualified Third Party Inspector) and monitoring of BMPs and/or in-stream and riparian restoration in and along Long Creek and within the Long Creek Watershed, for the purpose of implementation of the Long Creek Watershed Management Plan under Section 3(d.)(3.) above), of value equivalent to the Annual Assessment as reasonably determined by the Executive Director. The value of services in lieu of payment determined by the Executive Director hereunder shall not exceed the amount budgeted by the District for the specific services provided so that provision of such services by the Participating Landowner shall represent an avoided cost of services to the District. Should the Executive Director determine that the value of a Participating Landowner's provision of BMPs included in the Plan and/or services exceeds the amount of that particular Participating Landowner's Annual Assessment in the year in which the BMPs or services are provided, the amount of that value which exceeds that year's Annual Assessment may be carried forward to reduce that Participating Landowner's subsequent Annual Assessments, so long as the Executive Director determines that there is a continuing benefit to the BMPs and/or service(s) provided. Anything herein to the contrary notwithstanding, MaineDOT's Initial Assessment shall be reduced by the value of work performed by it before November 6, 2009 for the improvement project on Maine Mall Road in South Portland, STP-1700(800)S which treats the area in DEP Catchment E-02; the value of this work shall be calculated at an average cost per unit area as given in the Plan for the Tier 2 and Tier 3 practices in DEP Catchment E-02.

8.) Compensation Fee Utilization Plan Fees. In calculating the Participating Landowner's Assessments, the Participating Landowner's Initial Assessment or other Annual Assessment, as appropriate, shall be reduced by amounts paid by that Participating Landowner as Compensation Fee Utilization Plan fees required by Site Location of Development Law or Stormwater Law approvals or permits issued by DEP to the City of South Portland, to the City of

Westbrook, to CCSWCD or to the District for applications for development or redevelopment located on the Participating Landowner's Parcel or Parcels where such fees are received by the District; this shall be a one-time only reduction.

(b.) Assessment and Payment of Assessments. The Board, on the basis of the District's calculation of Assessments above, shall issue the Initial Assessment as calculated by the Executive Director which is stated in Appendix B to this Agreement prior to the Effective Date, and shall issue all other Annual Assessments as calculated by the Executive Director on or by July 15 of each year. Payment of these Assessments shall be as follows:

(1.) Initial Assessment Payment. The Participating Landowner shall pay to the District the Initial Assessment amount, which is stated in Appendix B to this Agreement, in either one (1) lump sum upon signing this Agreement or in three (3) installments, with the first installment being in an amount equal to 15% (fifteen percent) of the Initial Assessment amount and payable upon signing this Agreement at least thirty (30) days prior to the close of the period for submitting the NOI with DEP under the first General Permit; the second installment being in an amount equal to 50% (fifty percent) of the balance of the Initial Assessment amount, payable on or by July 15, 2010; and the third installment being in an amount equal to the remaining outstanding balance of the Initial Assessment amount, payable on or by January 15, 2011.

(2.) All other Annual Assessment Payments. The Participating Landowner shall pay all other Annual Assessment Payments within thirty (30) days from the date of issuance of each Assessment(s), which shall be on or by July 15 of each year, unless the Participating Landowner appeals that Annual Assessment to the Board as provided in Section 5.(d.) below; provided, however, that at its election, the Participating Landowner may choose to pay its Annual Assessment in two equal installments, with the first installment due as above, and the second installment due by the following February 15; further provided, however, that the District Board in its discretion may permit a Participating Landowner to pay its Annual Assessments in quarterly or monthly installments, and may charge a reasonable administrative fee for such payment.

(c.) Adjustment of Participating Landowner's Percentage. On or by each April 1, the Executive Director shall adjust the Participating Landowner's Percentage to account for any changes, as determined by DEP, based on the definitions contained in the General Permit, in Impervious Surface or Impervious Area from which there is a Designated Discharge among the Parcels owned by the Participating Landowners and for any new participation and termination of participation in the District.

(d.) Appeals from Participating Landowner's Assessments, Adjustments, Credits, Value of BMPs or Services in Lieu of Payment and Adjustment of Participating Landowner's Percentage. A Participating Landowner may, within thirty (30) days from the date of Assessment(s), of Adjustments, of redetermination of Credits and Value of BMPs or Services in Lieu of Payment, or of an adjustment of the Participating Landowner's Percentage appeal the same to the Board. The Board shall hear the appeal at its next meeting following receipt of the appeal, and the Participating Landowner has the burden of demonstrating to the Board that the Executive Director's calculation of its Assessments, Adjustments, Credits, Value of Services in Lieu of Payment or adjustment of the Participating Landowner's Percentage is erroneous. Either the Participating Landowner or the Board may request the DEP to offer an opinion on any aspect of an appeal and the DEP may, in its discretion, offer such an opinion in writing and/or in

testimony before the Board. If the DEP does offer an opinion on the subject of an appeal, then in that event the Board shall weigh the DEP's opinion in making its decision and shall document its reasons for agreeing or disagreeing with that opinion, but the DEP's opinion shall not be binding upon the Board. The Board shall not give any weight to a decision by the DEP not to render an opinion in a particular appeal. The Board's determination on an appeal shall be final, and the Participating Landowner shall pay the amount of the Assessment(s) as determined by the Board within thirty (30) days of the date of the Board's decision on the appeal.

(e.) Carry Over Amounts. Amounts obtained by the District from Assessments that are unused at the end of a Fiscal Year shall be carried forward to the next Fiscal Year or placed in a reserve account.

(f.) Cap on Increase of Annual Assessments. Notwithstanding any provision of this Agreement to the contrary, except for Annual Assessments in the first Fiscal Year following renewal, reissuance or replacement of the General Permit, for the duration of coverage under that General Permit, a Participating Landowner's Annual Assessment, exclusive of any applicable credits and value of BMPs or services provided in lieu of payment, shall not exceed the previous Fiscal Year's Annual Assessment ("FYAA"; with respect to the second Fiscal Year, however, the Initial Assessment shall be deemed to be the previous FYAA), exclusive of any applicable credits, value of BMPs and/or services provided in lieu of payment and Compensation Fee Utilization Plan fees, by any amount greater than the product of (i) the prior FYAA multiplied by (ii) the increase in the Consumer Price Index ("CPI"), if any, plus two percent (2 %) (*i.e.*, the maximum increase shall be limited to the amount of the prior FYAA x (Δ ("change in") CPI +2 %). As an example, if the Participating Landowner's prior FYAA was $10,000 and the CPI increase year-over-year is 1.5%, then the maximum increase for the new FYAA would be $350, being 3.5% of $10,000, for a new maximum FYAA of $10,350.).

The increase in the CPI shall be calculated as follows: effective upon the beginning of each Fiscal Year of the term hereof after the first Fiscal Year (each an **"Adjustment Date"**), the then-effective CPI multiplier shall be determined by the percentage change in the "Consumer Price Index for All Urban Consumers ('CPI-U')," U.S. City Average, "All Items Index," as published by the United States Bureau of Labor Statistics (**"the Index"**). Such increases shall be computed by reference to the Index for the month closest to first day of the first Fiscal Year (or the last Adjustment Date, as the case may be) through the month closest to the first day of each period for which an adjustment is being made hereunder. In the event that the Index is not then in existence, the Parties shall use such equivalent price index as is published by any successor governmental agency then in existence or if none, then by such nongovernmental agency as may then be publishing an equivalent price index, in lieu of and adjusted to the Index. If the Index shall cease to use the 1982-84 average of 100 as the basis of calculation, or if a substantial change is made in the terms or number of items contained in the Index, the Index shall be adjusted to conform to such change, using such computation thereof, if available, as shall be employed by The United States Department of Labor in computing same.

(g.) Records and Books. The District agrees to keep complete and accurate books and records of all costs and expenses relating to the Plan and its implementation thereof in accordance with generally accepted accounting principles consistently applied and to make those books and records available in accordance with Maine's Freedom of Access Law (1 M.R.S.A. §§ 401 *et seq.*).

Section 6. **Small Grants Program.** Participating Landowners who implement innovative efforts to improve Long Creek Watershed water quality may receive grants or special recognition as well, at the discretion of the Board, through a Small Grants Program, depending upon the availability of outside funding sources for that Program, administered in accordance with rules to be adopted by the Board. Funds received and accepted by the District for the Small Grants Program and funds received from the Small Grants Program shall be deemed to be "District funds" for the purposes of this Agreement.

Section 7. **Modifications to the Plan.**

(a.) The Board and/or Participating Landowners may request modifications to the Plan. Such modifications may include reclassification of a project in the Plan from one tier to another, reprioritization of projects within a tier, as well as addition to or removal of a project from the Plan. In the event that a Participating Landowner requests a modification to the Plan, it shall pay the District's administrative costs and engineering peer review costs to evaluate the requested modification. Modifications to the Plan and/or any event of Default by one or more Participating Landowners may result in removal of a project from the Plan and/or the decrease of Construction and Maintenance Costs. Any modification to the Plan must be approved by a majority of the Board and by DEP and the District shall provide electronic mail notice to all Participating Landowners of proposed modifications to the Plan.

(b.) If upon the Effective Date of this Agreement or thereafter, less than 100% of all Impervious Area from which there is a Designated Discharge is covered under the General Permit, then the District may amend the Plan to construct projects that provide a commensurate percentage of water quality benefits as provided in the Plan. For example, if Participating Landowners representing 80% of the total Impervious Area covered by the Residual Designation submit NOIs, then the Participating Landowners shall, through the District, assure that projects that would produce 80% of the benefits of the entire Plan, as determined by DEP, are conducted.

Section 8. **Term of Agreement.** Unless earlier terminated by the District or by the Participating Landowner under Section 10, this Agreement has a term coterminous with the duration of coverage under the initial General Permit and will be renewed automatically for additional terms coterminous with the duration of coverage under each subsequent General Permit.

Section 9. **Default; Remedies.**

(a.) Participating Landowner Default. It shall be an event of Default by the Participating Landowner under this Agreement if the Participating Landowner (1.) fails to pay any Assessment(s) by the date specified by the District, or (2.) breaches any obligations or provisions of this Agreement.

(b.) Notice of Default by Participating Landowner, Remedy. If the Participating Landowner (1.) fails to pay any Assessment or Assessments by the date specified by the District, or (2.) otherwise is in Default under the terms of this Agreement, then the District shall send the Participating Landowner a notice of Default in writing by U.S. certified mail, return receipt requested (the "**Notice of Default**"), demanding payment or cure of the Default within thirty (30) days of receipt of said Notice of Default. If the Participating Landowner fails to pay the Assessment(s) or cure the Default within thirty (30) days of receipt of the Notice of Default, or in the case of a Default which cannot with due diligence be remedied within said thirty (30) day

period, such reasonable period of time under the prevailing circumstances, then the District may, in addition to any other remedies it may have at law or in equity, including the right to seek injunctive relief, institute legal proceedings against Participating Landowner to recover the Assessment(s), interest, costs and attorney's fees and/or may terminate this Agreement. In addition, the District shall notify DEP that the Landowner is in Default of its obligations to pay Assessments under this Agreement.

(c.) State Appropriations for MaineDOT. Anything herein to the contrary notwithstanding, the Parties understand and agree that although the execution of this Agreement by MaineDOT manifests its intent to honor the terms of this Agreement and to seek funding to fulfill any obligations arising hereunder, by law any such obligations are subject to available budgetary appropriations by the Legislature and, therefore, this Agreement does not create any obligation on behalf of MaineDOT in excess of such appropriations. In the event that the amount of funds appropriated is such that MaineDOT determines that it cannot honor the Agreement's terms or obligations, this is not an event of Default and MaineDOT may terminate its Agreement with the District upon written notice in accordance with Section 10.

(d.) Default by the District, Notice of Default, Remedy. In the event that the District is in Default of any obligation hereunder, then the Participating Landowner shall send the District a notice of Default in writing by U.S. certified mail, return receipt requested (the "**Notice of Default**"), demanding payment or cure of the Default within thirty (30) days of receipt of said Notice of Default (the "**Cure Period**"), except for failure of the District to furnish a requested Certificate under Section 4(d.) above, in which case the Cure Period shall be ten (10) days. If the District fails to cure the Default within the Cure Period, or in the case of a Default which cannot with due diligence be remedied within said thirty (30) day period, such reasonable period of time under the prevailing circumstances, then the Participating Landowner may, in addition to any other remedies it may have at law or in equity, including the right to seek injunctive relief, institute legal proceedings against the District to recover the Assessment(s), interest, costs and attorney's fees. This provision shall not act as a waiver of any requirement for a Participating Landowner to appeal to or through the Executive Director or the Board in the circumstances specified elsewhere herein, if applicable.

Section 10. Termination.

(a.) The District may terminate this Agreement at any time for Default by the Participating Landowner as provided in Section 9 above.

(b.) The Participating Landowner may terminate this Agreement at the end of the duration of coverage under each General Permit by giving written notice to the District on or before the later to occur of (i) the April 1st preceding the termination of the duration of coverage under that General Permit or (ii) the 30th day after the District provides the Participating Landowner with a good faith estimate of the Participating Landowner's Annual Assessment for the first Fiscal Year of the next General Permit, provided, however, that upon termination, the Participating Landowner: (1.) shall be liable to pay to the District all outstanding Assessments; (2.) shall not be entitled to the return of any portion of the Initial Annual Assessment or of the Annual Assessments; (3.) shall be liable to pay its share of debt service, based upon the Participating Landowner's Percentage, on District borrowing that occurs prior to the date of the Participating Landowner's termination of this Agreement; and (4.) in the event that the District has designed, engineered, constructed or installed BMPs on the Participating Landowner's

Parcel, that the BMPs and any easement/restrictive covenant relating thereto will remain in place, and that the District will continue to be obligated to reconstruct, operate, modify, alter, use, maintain, repair, replace, inspect and monitor the BMPs, then the Participating Landowner also shall pay to the District an amount determined by the Executive Director, which shall be equal to that portion of the amount of the District's cost of design, engineering, construction and installation of such BMPs necessary for the Parcel to meet Chapter 500 Requirements and Chapter 521 Requirements, as set forth in the design basis memo for such BMPs, less the total amount of all Assessments paid by the Participating Landowner for that Parcel attributable to the costs of design, engineering, construction and installation of such BMPs, and, by July 15 of each year, shall pay its equitable share of the District's costs to reconstruct, operate, modify, alter, use, maintain, repair, replace, inspect and monitor such BMPs during the prior fiscal year as determined by the Executive Director and based on the continued benefits of such BMPs to the Participating Landowner's Parcel and to the District as a whole. The District shall make a good faith effort to supply the estimated Annual Assessment for the first Fiscal Year of the Next General Permit to the Participating Landowner by March 1st of the last year of the then-current General Permit period.

(c.) The Participating Landowner may terminate this Agreement at any time by giving written notice to the District on or before April 1st of each year during the General Permit period if, in addition to compliance with the conditions of termination listed in Section 10(b.) above, the Participating Landowner agrees in writing to pay his/her/its Annual Assessment for the District's next fiscal year.

(d) The above Sections 10 (b.) and (c.) notwithstanding, if it is determined that the Participating Landowner no longer is required to maintain a General Permit or individual permit, then the Participating Landowner may terminate this Agreement without cost or penalty, except that the Participating Landowner shall be liable as provided in Section 10(b.) (1.) and (3.) above.

(e) The Participating Landowner's obligations under subsections (b) and (c) of this Section 10 shall survive the termination of this Agreement.

Section 11. Insurance and Indemnification. The District represents and warrants to the Participating Landowner that any contract with a third-party contractor, except for a governmental entity as defined by 14 M.R.S.A.§ 8102(2), with whom the District may contract to carry out the District's purposes and/or the purposes of this Agreement shall, to the fullest extent allowed by law, require that third-party contractor to defend, indemnify and hold the Participating Landowner, the District and their respective directors, officers, managers, members, agents and employees harmless from any claim(s), cause(s) of action, liability or expense, including, without limitation, costs and reasonable attorney's fees, for personal injury (including death) and/or property damage caused by, related to, arising out of or resulting from the error, act or omission of the contractor's performance of work and/or services under that contract; the contractor shall procure and maintain during the term of such contract commercial general liability and automobile liability insurance coverages, each in an amount of not less than $2,000,000.00 (Two Million Dollars), combined single limit, with deductibles in amounts typically carried by prudent contractors engaged in the performance of similar work and/or services, to insure this obligation, and the Participating Landowner, the District and their respective directors, officers, managers, members, agents and employees shall be additional named insureds under that coverage, and workers' compensation insurance coverage as required by State law. The foregoing indemnity expressly extends to claims of injury, death, or damage

to employees of the Contractor or a Subcontractor. In claims against any person or entity indemnified under this Section by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under this Section shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Contractor or a Subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts. The Contractor expressly waives immunity under workers' compensation laws for the purposes of this indemnity provision.

The liabilities and immunities of a governmental entity as defined by 14 M.R.S.A.§ 8102(2), with whom the District may contract to carry out the District's purposes and/or the purposes of this Agreement shall be subject to the monetary limits, limitations, defenses, immunities, and liabilities established by the Maine Tort Claims Act, 14 M.R.S.A.§ 8101 *et seq*., and such governmental entity contractor shall maintain or self-insure at its own cost and expense during the term of such contract insurance coverage in the minimum amount of Four Hundred Thousand Dollars ($400,000) or such other amount as may be required under that Act for those areas in which it is liable under that Act, or as may be required by the District. This insurance requirement does not apply to a State Transportation Agency that is self-insured through the Maine Department of Administration and Financial Services' Division of Risk Management.

Nothing in this Agreement is intended, or shall be construed, to constitute a waiver of any defense, immunity or limitation of liability that may be available to a governmental entity, or any of its officers, agents or employees, pursuant to the Eleventh Amendment to the Constitution of the United States of America, the Maine Constitution, the Maine Tort Claims Act (14 M.R.S.A. § 8101 *et seq.),* any state or federal statute, the common law or any privileges or immunities as may be provided by law.

Section 12. Assignment. Except as otherwise set forth herein, this Agreement may not be assigned by either Party without the prior written consent of the other Party, which consent shall not be unreasonably conditioned, delayed or withheld, provided, however, that the District shall not be required to obtain the consent of the Participating Landowner to assign this Agreement to another governmental entity for the purpose of implementing the Plan. Notwithstanding the foregoing, in the event the Participating Landowner sells, transfers or conveys all or a portion of a Parcel with Impervious Area or Impervious Surface subject to this Agreement, the consent of the District shall not be required provided such purchaser, transferee or grantee files a NOI with the DEP pursuant to the terms of the General Permit, in which case, upon the date of such sale, transfer or conveyance and without the necessity of any further action on the part of the Participating Landowner or such purchaser, transferee or grantee, the purchaser, transferee or grantee shall automatically become the successor to the Participating Landowner hereunder and be bound by and subject to this Agreement and all terms, covenants, obligations and liabilities contained herein. The assigning Participating Landowner will thereupon immediately and thereafter be released by the District from any and all further obligations and liabilities hereunder (payment or otherwise) to the extent of the transferred or conveyed Parcel of Impervious Area or Impervious Surface, including without limitation the Assessments stated in Section 5 and any costs and obligations stated in Section 10 above. The purchaser, transferee or grantee under the previous sentence agrees to promptly send notice to the District after such sale, transfer or conveyance, which notice shall contain the mailing address of the purchaser, transferee or grantee for future notices or invoices from the District. If, however, the Participating Landowner

transfers or conveys a Parcel with Impervious Area or Impervious Surface without the purchaser, transferee or grantee of the Participating Landowner entering into the General Permit, then the Participating Landowner shall be deemed to have terminated this Agreement and shall be responsible for all the costs and obligations of termination as stated in Section 10 above; provided, however, that no mortgagee who becomes a Participating Landowner pursuant to a deed in lieu of foreclosure or foreclosure action shall have any liability for the payments required by Section 10 above notwithstanding such deemed termination of this Agreement.

Section 13. Mortgagee Provisions

(a.) Subordination of this Agreement to Mortgages. It is agreed that the rights and interest of the District under this Agreement shall be (i) subject and subordinate to any present or future mortgage(s) and/or assignment(s) of leases and rents (collectively, the "Mortgage(s)") on the Participating Landowner's Parcel, or any portion thereof, and to any and all advances to be made thereunder, and to the interests of the holder thereof ("Mortgagee") in the Participating Landowner's Parcel (or any portion thereof), or (ii) prior and superior to the Mortgage(s), if such Mortgagee shall elect, by notice to the District, to give the rights and interest of the District under this Agreement priority to such Mortgage(s) and records a document evidencing such election. The Mortgage(s) on the Participating Landowner's Parcel (or any portion thereof) may contain such terms, provisions and conditions as the Mortgagee, in its sole discretion, deems necessary or appropriate.

Supplementing the foregoing, with respect to any easement deed required to be given by the Participating Landowner to the District under the terms of this Agreement, if any present or future Mortgagee elects to join in such easement deed using a form similar to the Limited Joinder of Mortgagee in Easement form attached hereto as Appendix C to this Agreement, then such easement deed shall be deemed prior and superior to the Mortgage(s) of such Mortgagee described in such Limited Joinder only insofar as they encumber the Participating Landowner's Parcel (or a portion thereof) until such time as the easement may be terminated, but the execution of such Limited Joinder shall in no way be deemed to subordinate the debt secured by such Mortgage(s) or any other amounts due thereunder (the "Mortgage Debt") to any amounts due or owing (or which may become due) under this Agreement, such Mortgage Debt to always have priority over any Assessments or other amounts due from the Participating Landowner under this Agreement. Notwithstanding anything contained in this Section to the contrary, if any future Mortgagee does not elect to join in an easement deed given by the Participating Landowner to the District under the terms of this Agreement and recorded prior to the recording of Mortgagee's Mortgage(s), such subsequently recorded Mortgage(s) shall be deemed nevertheless to be subject to such previously recorded easement deed.

(b.) Rights of Mortgage Holders. If a Mortgagee has exercised its right under clause (ii) of this Section 13(a.) to subordinate its rights and interests under its Mortgage(s) to the rights and interests of the District under this Agreement, or if a Mortgagee elects not to name the District in a foreclosure proceeding, then, until such Mortgagee shall (i) file a NOI with the DEP to join in the General Permit and (ii) enter and take possession of the Participating Landowner's Parcel under its security documents, including without limitation, its Mortgage(s), or succeed to the interests of the Participating Landowner by foreclosure or deed in lieu of foreclosure, such Mortgagee shall have no obligations or liabilities whatsoever under this Agreement. In the event

Mortgagee shall file a NOI with the DEP and either enter and take possession of the Participating Landowner's Parcel or succeed to the interests of the Participating Landowner as aforesaid, such Mortgagee shall have all rights of the Participating Landowner and be liable to perform all of the obligations of Participating Landowner first accruing after such date under this Agreement until such time as Mortgagee shall sell, assign or transfer the Participating Landowner's Parcel (or the portion thereof which was subject to its mortgage, as the case may be) to a third-party who files a NOI with the DEP to join in the General Permit and becomes the Participating Landowner as set forth in Section 12 hereunder, and thereafter such Mortgagee shall have no further obligations or liabilities hereunder.

Section 14. **Dissolution of District.** Upon dissolution of the District, all money, if any, remaining in the hands of the District Treasurer shall be paid to the Participating Landowners as of the date of such dissolution on the basis of each Participating Landowner's Percentage.

Section 15. **Form of Agreement, Binding Effect, Effective Date, Insufficient Subscription.** The District represents, and the Participating Landowner relies upon the representation, that there is only one form of agreement between the District and each Participating Landowner, and that this Agreement is in that form. This Agreement shall be binding upon and inure to the benefit of the heirs, successors and assigns of the Parties on the date that the District issues notice to all Participating Landowners that it has received signed agreements from Participating Landowners controlling at least Fifty Percent (50 %) of the total Impervious Area controlled by all Landowners (the "Effective Date"); if the District fails to receive signed agreements from Participating Landowners controlling at least Fifty Percent (50 %) of the total Impervious Area controlled by all Landowners by the 21st day prior to the close of the period for filing of the NOI with DEP under the first General Permit, then this Agreement shall not become effective and any amounts paid by the Participating Landowner to the District shall be refunded.

Section 16. **Notice**. Any notice relating in any way to this Agreement shall be in writing and shall be sent in person, by nationally recognized overnight delivery service, or by registered or certified mail, return receipt requested, addressed as follows:

To Participating Landowner:

_____

_____

_____

_____

To Record Owner:

_____

_____

_____

_____

To Long Creek Watershed Management District:

Executive Director,
Long Creek Watershed Management District

c/o Cumberland County Soil & Water Conservation District
35 Main Street, Suite 3
Windham, Maine 04062

Notice delivered in person shall be deemed delivered when so made. Notice by nationally recognized overnight delivery service shall be deemed made upon actual delivery. Notice by U.S. Mail shall be deemed delivered three (3) days after mailing. Either Party may, by such manner of notice, substitute persons or addresses for notice other than those listed above by written notice to the other Party.

Section 17. Entire Agreement. Any and all prior and contemporaneous discussions, undertakings, agreements and understandings of the Parties are merged in this Agreement, which alone fully and completely expresses their entire agreement. This Agreement may not be modified, waived or amended except in a writing signed by the Parties hereto. No waiver of any breach or term hereof shall be effective unless made in writing signed by the Party having the right to enforce such a breach, and no such waiver shall be construed as a waiver of any subsequent breach. No course of dealing or delay or omission on the part of any Party in exercising any right or remedy shall operate as a waiver thereof or otherwise be prejudicial thereto.

Section 18. Construction. This Agreement is made and shall be construed under the laws of the State of Maine except any choice of law rule that may direct the application of the laws of any other state or jurisdiction.

Section 19. Severability. If for any reason any provision of this Agreement is held to be invalid, illegal or otherwise void, the remaining provisions of this Agreement shall not be affected and shall continue in full force and effect.

Section 20. Multiple Counterparts, Memorandum of Agreement. To facilitate execution, this Agreement may be executed in as many counterparts as may be convenient or required. It shall not be necessary that the signature of, or on behalf of, each Party, or that the signature of all persons required to bind any Party, appear on each counterpart. All counterparts shall collectively constitute a single instrument. It shall not be necessary in making proof of this instrument to produce or account for more than a single counterpart containing the respective signature of or on behalf of, each of the Parties hereto. A signature page to any counterpart may be detached from such counterpart without impairing the legal effect of the signatures thereon and thereafter attached to another counterpart identical thereto except having attached to it additional signature pages. The District shall record a Memorandum of Agreement in the Cumberland County Registry of Deeds, which the Participating Landowner agrees to execute and deliver to the District. In the event of termination of this Agreement, the District agrees upon request of the Participating Landowner to promptly execute and deliver a notice of termination to the Participating Landowner.

Section 21. Acknowledgment. Participating Landowner, and Record Owner, if the Record Owner is not also the Participating Landowner, acknowledges and agrees that he/she/it has reviewed and understands this Agreement.

IN WITNESS WHEREOF, the Parties hereto have executed or caused this instrument to be executed as of the date and year first written above.

WITNESS:

PARTICIPATING LANDOWNER

_____ By: _____

Signature

_____

Print Name

_____

Its _____ (Title)

RECORD OWNER

_____ By: _____

Signature

_____

Print Name

_____

Its _____ (Title)

LONG CREEK WATERSHED
MANAGEMENT DISTRICT

_____ By: _____

Signature

_____

Print Name

_____

Its: _____ (Title)

Exhibit A

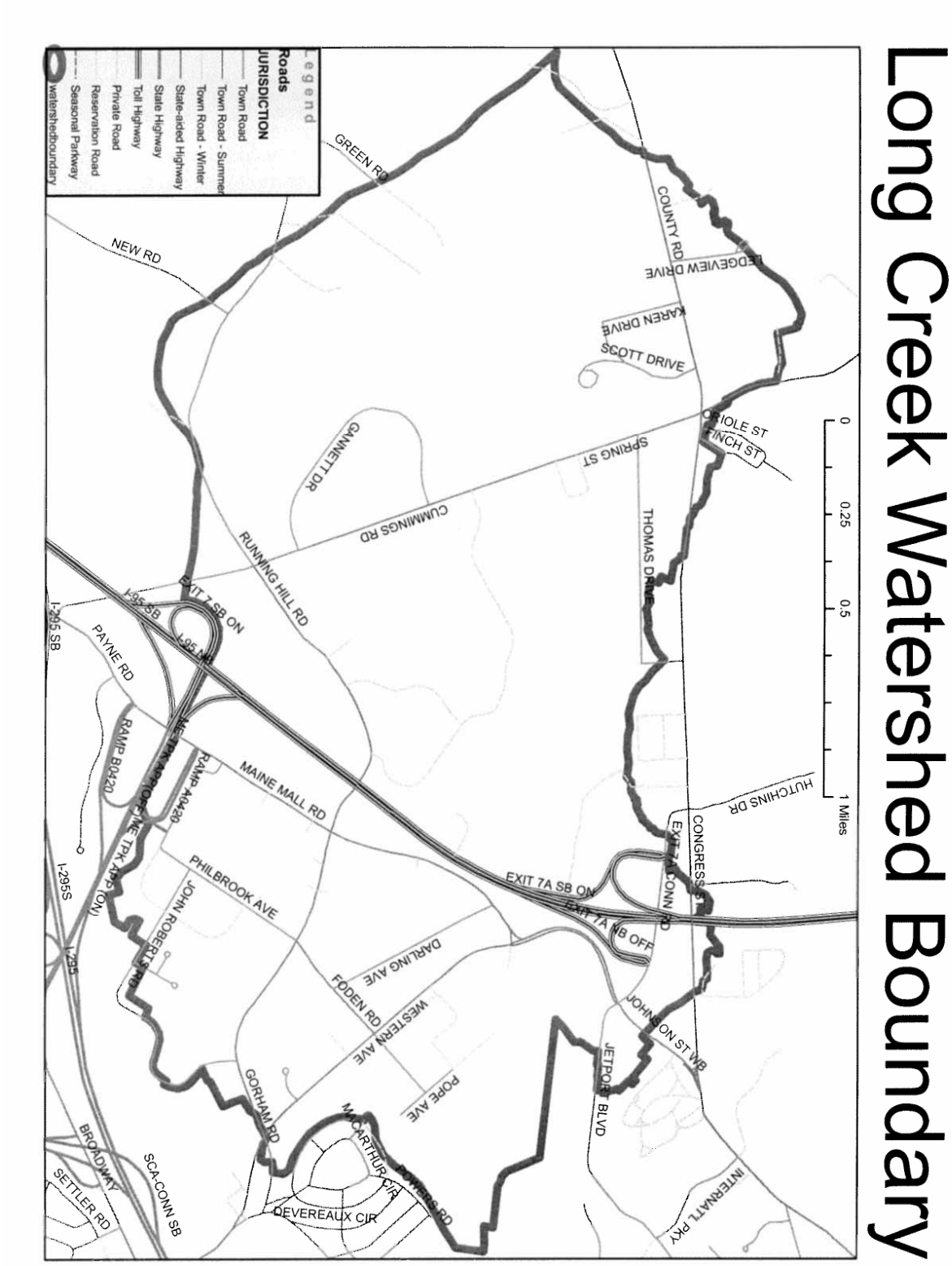
Long Creek Watershed Boundary
Legend
Roads
JURISDICTION
Town Road
Town Road - Summer
Town Road - Winter
State-aided Highway
State Highway
Toll Highway
Private Road
Reservation Road
Seasonal Parkway
watershedboundary
0
0.25
0.5
1 Miles
GREEN RD
NEW RD
COUNTY RD
LEDGEVIEW DRIVE
KAREN DRIVE
SCOTT DRIVE
ORIOLE ST
FINCH ST
SPRING ST
GANNETT DR
CUMMINGS RD
THOMAS DRIVE
RUNNING HILL RD
HUTCHINS DR
CONGRESS ST
EXIT 7A CONN RD
EXIT 7A SB ON
EXIT 7A NB OFF
I-95 SB
EXIT 7 SB ON
I-95 NB
I-295 SB
PAYNE RD
RAMP B0420
RAMP A0420
MAINE MALL RD
I-295S
I-295
PHILBROOK AVE
JOHN ROBERTS RD
DARLING AVE
FODEN RD
WESTERN AVE
POPE AVE
GORHAM RD
MACARTHUR DR
DEVEREAUX CIR
POWERS RD
JETPORT BLVD
JOHNSON ST WB
INTERNATL PKY
BROADWAY
SETTLER RD
SCA-CONN SB

Exhibit B

Removal of Impervious Surfaces Guidelines

The following document shall act as general guidelines for the removal of impervious surfaces[1] to be considered pervious. Each parcel may have unique characteristic that may require additional measures than outlined below. The landowner or operator is encouraged to contact the Cumberland County Soil & Water Conservation District (CCSWCD) prior to commencement of work.

- It shall be the landowner's responsibility to obtain any and all local, state, and federal permits or approvals prior to commencement of work.

- The landowner shall install proper erosion control and sedimentation measures (e.g. silt fence) throughout the life of project, and permanently stabilize with vegetation in conformance with standards in Appendix A within the Maine Construction General Permit.

- The impervious material shall be removed and disposed of in accordance with approved waste handling methods. The condition of the material does not affect whether or not it should be removed. Additionally, remove minimum 3-inch layer of base material. On gravel areas or roads, remove minimum 3-inch layer of surface material.

- "Packed earthen materials" or "Sub-base" is defined as any soil materials within the top 12-inches of earth as measured from the top of the earthen or gravel surface or measured directly below an asphalt or concrete cover that has experienced any passive or active loading from vehicular traffic or material storage. The remaining aggregate base and/or sub-base material shall then be worked to a depth of 9-inches to break up its form, reduce its level of compaction, and increase storage/permeability by:

    - Scarifying the material using a ripper.
    - Excavation and replacement of material in-kind, using minimal compaction efforts.
    - Excavation and replacement of the material with Granular Borrow (MaineDOT 703.19 – Material for Embankment Construction), using minimal compaction efforts.
    - Other method approved by the MDEP.

- At a minimum, all disturbed areas shall be stabilized with 6-inches of loam, seeded and mulched. The contractor must use the proper equipment and construction technique to mitigate the potential to re-compact the aggregate material. Provide routine watering until adequate catch (minimum 80-percent). Removal of all erosion & sedimentation control measures only after stabilization of re-vegetated area.

- The MDEP, or representatives of the CCSWCD, reserve the right to conduct site visits during construction to verify the use of proper erosion and sedimentation control measures, the contractor is utilizing the proper equipment and construction technique, and/or to substantiate that the aggregate material has been un-compacted. At the site inspector's discretion, additional testing measure may include, but not limited to, the use of test pits, nuclear test gauge, etc.

- Upon completion a plan or sketch detailing the actual size and location of impervious material removed, description of the method(s) used for removal and compaction, before and after photographs, and any additional supporting documentation shall be submitted to the CCSWCD and MDEP.

[1] Please refer to the *Agreement between Participating Landowner and Long Creek Watershed Management District* for the Definition of "Impervious Surface" or "Impervious Area".

Schedule A

[Description of portion of Parcel subject to Participating Landowner Agreement]

Appendix A

Sample Form of Easement

STORM WATER MANAGEMENT FACILITY EASEMENT

THIS STORMWATER MANAGEMENT FACILITY EASEMENT (the **"Easement"**), made this _____ day of _____, 20___, is by and between _____, a _____ _____, with a mailing address of _____ _____, its successors and assigns (the **"Grantor"**) and **LONG CREEK WATERSHED MANAGEMENT DISTRICT**, a quasi-municipal, special purpose district established as a separate legal entity and instrumentality and as a body corporate and politic under the laws of the State of Maine whose mailing address is Long Creek Watershed Management District c/o Cumberland County Soil & Water Conservation District, 35 Main Street, Suite 3, Windham, Maine 04062, its successors and assigns (the **"District"**). The Grantor and the District are hereinafter referred to collectively as the **"Parties."**

WHEREAS, the Grantor is the owner of certain real property located at _____ _____, _____, Cumberland County, Maine, shown on _____ Tax Map ____, Lot _____ and more particularly described in an instrument recorded in the Cumberland County Registry of Deeds in Book _____, Page _____ (the **"Premises"**); and

WHEREAS, the Premises is located within the Long Creek Watershed; and

WHEREAS, Long Creek has been designated an "urban impaired stream" by the Maine Department of Environmental Protection (**"DEP"**) because it fails to meet certain State of Maine water quality standards (38 M.R.S.A. § 465(4) as amended from time-to-time, the **"Water Quality Standards"**) due to the effects of stormwater runoff from developed land, and therefore has been listed on Maine's Section 303(d) list pursuant to Section 305(b) of the federal Clean Water Act ("**CWA**"); and

WHEREAS, the U.S. Environmental Protection Agency (**"EPA"**), under its Residual Designation Authority (**"RDA"**) under the CWA, is requiring certain owners of parcels located within the Long Creek Watershed to address stormwater runoff into Long Creek; and

WHEREAS, EPA has delegated to DEP permitting authority under the CWA's National Pollutant Discharge Elimination System (**"NPDES"**) permit system, and DEP has issued a "General Permit - Post Construction Discharge of Stormwater in the Long Creek Watershed" dated November 6, 2009, which may be renewed, reissued, replaced and/or modified from time-to-time (**"General Permit"**) regarding stormwater discharge in the Long Creek Watershed; and

WHEREAS, the General Permit requires the owners of Parcels from which there is a Designated Discharge (a post-construction stormwater direct discharge from a Parcel in the Long Creek Watershed on which there are Impervious Surfaces or Impervious Areas equal to or greater than one (1) acre) on or after the effective date of the General Permit to file a Notice of

Intent (**"NOI"**) to enter into the General Permit or to obtain individual permits, and requires that certain remediation work be done and improvements constructed, installed and/or implemented in and along Long Creek and within the Long Creek Watershed which are intended to cause Long Creek to comply with Water Quality Standards;

WHEREAS, the municipalities of South Portland, Portland, Westbrook and Scarborough, along with other entities, have jointly developed the Long Creek Watershed Management Plan dated July, 2009 and approved by the DEP (the **"Plan"**) for the purpose of complying with the General Permit and restoring the water quality of Long Creek; and

WHEREAS, Grantor and the District are parties to a Participating Landowner Agreement dated _____, 2010 (the **"Participating Landowner Agreement"**), pursuant to which the District has agreed to oversee and assist in the implementation of the state and federal remediation and improvement requirements to which the Premises is subject; and

WHEREAS, Grantor desires to grant to the District, and the District desires to accept, an easement to enable the District to perform such remediation and improvements on the Premises; and

WHEREAS, the Grantor has agreed to provide an easement in gross to the District over, through, and under the Premises to construct, reconstruct, install, operate, modify, alter, use, maintain, repair, replace, inspect and monitor Best Management Practices (**"BMPs"**) on the Premises; and

WHEREAS, the District has determined to accept the grant of the Easement subject to the provisions stated below;

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

A. Grant of Easement. Grantor hereby grants, without covenant, to the District the following non-exclusive perpetual easement **[or "temporary easement" expiring on _____, 20__, or upon expiration or termination of the Participating Landowner Agreement]** rights in gross through, under, across, over, and upon the Easement Area, as defined below, exclusively for the construction, reconstruction, installation, operation, modification, alteration, use, maintenance, repair, replacement, inspection and monitoring of the BMPs that, as of the date of execution of this Easement, are both (i) identified in the Plan or approved modification thereto and (ii) specified in the Plan or approved modification thereto as being located within the Easement Area (as defined below) (the **"Specified BMPs"**), in accordance with the terms of the General Permit, subject to the terms and conditions hereof and for the purposes stated below:

1. the right to construct, reconstruct, install, operate, modify, alter, use, maintain, repair, replace, inspect and monitor Specified BMPs on the Premises;

2. the right to collect and control the flow of storm water with the purpose of remediation of existing contamination and prevention of additional contamination of the Long Creek due to storm water runoff;

3. the right to trim, cut down, and/or remove bushes, trees, grass, crops or any other vegetation to the extent deemed necessary by the District in its reasonable discretion to effectuate the purposes of this Easement;

4. the right to change the existing surface grade of the Easement Area as is deemed necessary by the District in its reasonable discretion to effectuate the purposes of this Easement;

5. rights of ingress and egress, with people and machines, over the Premises to and from the Easement Area and over the Easement Area and the right to enter the Easement Area via any road or parking lot located within any common area owned by the Grantor to access the Easement Area for the purposes of this Easement;

6. the District's use and exercise of the above rights granted by this Easement are limited to matters relating to the Specified BMPs on the Premises; and

7. this Easement shall be subject to all existing easements, covenants, restrictions and encumbrances of record. To the extent this Easement is inconsistent with the obligations of Grantor under any current agreements as to any portions of the Premises affected hereby, this Easement shall be implemented and interpreted by the District so that Grantor's existing obligations shall be paramount and shall control its obligations hereunder and the District agrees that it shall not impair, restrict, or otherwise affect any commitments or obligations of Grantor under any existing agreement or easement, including but not limited to existing access, drainage, or parking agreements between Grantor and any third-party (whether or not such third-party is subject to regulation by the District).

B. The Easement Area. The easement area consists of the portion of the Premises more particularly described in **Schedule A** attached hereto and made a part hereof (the "Easement Area").

1. Relocation of Easement/BMPs. The Grantor reserves the right to relocate the Easement Area and the BMPs constructed thereon by the District pursuant to the Easement provided that: the Board approves the relocated easement; DEP approves the same as a modification to the Plan; the Grantor grants to the District an easement substantially in the form of this Easement to the relocated easement area; the Grantor obtains all necessary consents, joinders and/or subordinations of such easement from all holders of prior interests in the Grantor's Premises (including but not limited to landlords, tenants and lenders), as required in the Participating Landowner Agreement for the original easement; the Grantor constructs at the Grantor's sole cost the replacement BMPs in the relocated easement area; and the replacement BMPs provide materially the same or better functionality and benefit as those replaced. The Grantor shall provide written notice to the District of its intent to exercise the reserved relocation right (subject to Board and DEP approval as stated above), which notice shall include detailed plans and specifications for the replacement BMPs to be constructed in the relocated easement area. Upon completion of construction of the relocated BMPs and the commencement of operation thereof and the grant of the new easement as provided above, this Easement automatically shall be deemed terminated, and the District shall execute and deliver in recordable form a release of this Easement to the Grantor to confirm the same.

2. Removal of Easement/BMPs. If Grantor wishes to remove a BMP installed by the District on its Premises and to terminate this Easement given to the District relating thereto, Grantor shall have such rights upon paying to the District (in addition to any other amounts required) the full amount of the District's cost of replacement of such BMP as determined by the Executive Director to provide materially the same or better functionality and benefit as that replaced, at which time the District shall execute and deliver in recordable form a release of this Easement to the Grantor. However, if the District is unable to identify an alternative location for

the BMP installed on Grantor's Premises that is materially the same or better functionality and benefit as that being removed, then such BMP shall remain on Grantor's Premises and this Easement shall remain in full force and effect.

C. Grantor's Obligations. The Grantor reserves the use and enjoyment of the Easement Area for any purpose that does not materially frustrate or interfere with the use of the Easement Area by the District for the purposes of this Easement, provided that:

1. the Grantor will not obstruct or permit anyone else to obstruct the Easement Area during the term of this Easement;

2. the Grantor will not construct any building or structure of any kind in the Easement Area, nor permit the construction of any building or structure in the Easement Area; and

3. the Grantor will not perform or permit any fill or excavation activities or any change to the surface grade of the Easement Area, nor plant any plants or trees within the Easement Area, without the District's prior written consent which consent shall not be unreasonably withheld, conditioned or delayed. If the District grants permission for any such work by the Grantor, then the Grantor shall defend, indemnify and hold the District and its directors, officers, agents and employees harmless from any and all claims against the District or expenses of the District resulting from such work.

D. District's Obligations. The District covenants and agrees by acceptance of this Easement:

1. to comply with any and all applicable laws, ordinances, and regulations in connection with the exercise of its rights hereunder;

2. to, except in the event of emergency, provide Grantor with at least ten (10) business days' notice prior to entering the Premises and Easement Area, which notice shall include copies of any plans, specifications and other descriptions of the work to be performed;

3. to promptly restore, at its sole expense, any damage to the Premises and Easement Area caused by its exercise of its rights under this Easement and to restore the Easement Area to its original condition to the extent reasonably possible while allowing any BMPs constructed or installed in the Easement Area to function as designed and intended; and

4. to use its best efforts to minimize the disruption to the operation of the Premises and the businesses of the Grantor and/or tenants and occupants of the Premises; and

5. to promptly execute and record a Termination and Release of this Easement upon its expiration or termination.

E. District Liability, Indemnification. The District agrees to defend, indemnify and hold harmless the Grantor for and against any and all claims, loss, cost, damage, or expense, including reasonable attorney's fees that may arise from a breach of the District's covenants herein or from the exercise by the District of its easement rights under this Easement, provided however that the District does not herein waive the immunities, defenses and limitations on liability for itself and its officers, directors and employees provided to it and to them under Maine law, including but not limited to the Maine Tort Claims Act, 14 M.R.S.A.§ 8101 *et seq*.

Further, the District shall contractually require any third-party contractor, except for a governmental entity as defined by 14 M.R.S.A.§ 8102(2), with whom the District may contract

to carry out the purposes of this Easement to: (a) to the fullest extent allowed by law, defend, indemnify and hold Grantor and the District and their respective directors, officers, managers, members, agents and employees harmless from any claim(s), cause(s) of action, liability or expense, including, without limitation, costs and reasonable attorney's fees, for personal injury (including death) and/or property damage caused by, related to, arising out of or resulting from the error, act or omission of the contractor's performance of work and/or services under that contract and/or the contractor's and its subcontractors' and each of their agents' and employees' presence on the Premises; and (b) procure and maintain during the term of such contract commercial general liability and automobile liability insurance coverages, each in an amount of not less than $2,000,000.00 (Two Million Dollars), combined single limit, with deductibles in amounts typically carried by prudent contractors engaged in the performance of similar work and/or services, to insure this obligation, and the Grantor and the District and their respective directors, officers, managers, members, agents and employees shall be additional named insureds under that coverage, and workers' compensation insurance coverage as required by State law. The foregoing indemnity expressly extends to claims of injury, death, or damage to employees of the Contractor or a Subcontractor. In claims against any person or entity indemnified under this Section by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under this Section shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Contractor or a Subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts. The Contractor expressly waives immunity under workers' compensation laws for the purposes of this indemnity provision.

The liabilities and immunities of a governmental entity as defined by 14 M.R.S.A.§ 8102(2) with whom the District may contract to carry out the purposes of this Easement shall be subject to the monetary limits, limitations, defenses, immunities, and liabilities established by the Maine Tort Claims Act, 14 M.R.S.A.§ 8101 *et seq*., and such governmental entity contractor shall procure and maintain during the term of such contract insurance coverage in the minimum amount of Four Hundred Thousand Dollars ($400,000) or such other amount as may be required under that Act for those areas in which it is liable under that Act, or as the District may determine.

F. Permits. The District shall obtain and comply with all permits necessary in connection with the Stormwater Management Facility.

G. Run With the Land. All of the covenants, agreements, and conditions contained in this Easement shall run with the land **[in perpetuity, or until the date specified in Paragraph A above]** and shall inure to the benefit of and be binding upon the Parties and their respective successors and assigns.

H. Assignment by the District. This Easement shall be assignable by the District to another governmental entity for the purpose of implementing the Plan without any consent of the Grantor being required.

I. Miscellaneous.

1. Grantor agrees to execute, acknowledge, and deliver to or for the District such further instruments and take such further actions as may be reasonably required to carry out and effectuate the intent and purpose of this Easement, or to confirm or perfect any right created hereunder.

2. This Easement together with the Participating Landowner Agreement constitute the entire agreement between the Parties and may not be modified, amended, or terminated except by an instrument in writing signed by both Parties.

3. Capitalized terms used in this Easement shall have the meaning given them in the Participating Landowner Agreement unless otherwise defined in this Easement.

4. This Easement shall be recorded in the Cumberland County Registry of Deeds.

5. This Easement shall be governed by and construed in accordance with the laws of the State of Maine.

6. Invalidation of any one of these terms or provisions by any court shall in no way affect any other terms or provisions, which shall remain in full force and effect.

7. Execution of this Easement by the District evidences the District's acceptance of this Easement.

IN WITNESS WHEREOF, the Parties have executed this Easement on the date first set forth above.

WITNESS:

_____

GRANTOR: _____

By: _____

Printed name: _____

Its: _____

_____

LONG CREEK WATERSHED MANAGEMENT DISTRICT

By: _____

Printed name: _____

Its: _____

ACKNOWLEDGEMENT

STATE OF MAINE
CUMBERLAND, ss. _____, 2010

Personally appeared the above-named _____ in his/her capacity as _____ of _____ and acknowledged the foregoing instrument to be his/her free act and deed in his/her said capacity and the free act and deed of said _____.

Before me,

_____

Notary Public/Attorney-at-Law

STATE OF MAINE
CUMBERLAND, ss. _____, 2010

Personally appeared the above-named _____ in his/her capacity as _____ of Long Creek Watershed Management District and acknowledged the foregoing instrument to be his/her free act and deed in his/her said capacity and the free act and deed of said Long Creek Watershed Management District.

Before me,

_____

Notary Public/Attorney-at-Law

Appendix B

Participating Landowner's Initial Assessment

Appendix C

Limited Joinder of Mortgagee in Easement

The undersigned, _____, a Maine banking corporation, having a place of business at _____, _____, Maine ("Mortgagee"), as holder of and mortgagee under a certain Mortgage and Security Agreement from _____ [Insert name of Participating Landowner/Record Owner], a Maine _____ company with a place of business in _____, Maine ("Grantor") to said Mortgagee dated _____ _____, _____, and recorded in the Cumberland County Registry of Deeds in Book _____, Page _____ (the "Mortgage") encumbering certain real property located at _____ _____, _____, Maine, as more particularly described in said Mortgage (the "Premises"), hereby joins in that certain Stormwater Management Facility Easement from Grantor to Long Creek Watershed Management District, a quasi-municipal entity and Maine non-profit corporation ("Grantee") dated _____, 2010, and recorded in said Registry of Deeds in Book _____, Page _____ (the "Easement") for the sole and limited purpose of evidencing its consent as Mortgagee to the Easement and to subordinate the lien of the Mortgage (but not the debt secured thereby or any other amount due thereunder) to the Easement, PROVIDED, HOWEVER, that such joinder and consent shall not be construed to make said Mortgagee, its successors and assigns, a party to that certain Participating Landowner Agreement dated _____ _____, 2010 by and between Grantor and Grantee, or to impose on it any of the obligations or liabilities of Grantor thereunder, and the undersigned Mortgagee makes no warranties or covenants to any person or party as to title, merchantability, fitness for a particular purpose, physical condition or otherwise as to the Premises, express, implied or otherwise.

IN WITNESS WHEREOF, the said _____ has caused this instrument to be executed by _____, its _____, duly authorized, this ____ day of _____, 2010.

WITNESS: _____[Mortgagee]

_____ By: _____
Its: _____
Printed Name: _____

STATE OF MAINE
Cumberland, ss _____, 2010

Personally appeared the above named _____, _____ of _____, and acknowledged the foregoing instrument to be his/her free act and deed in his/her said capacity and the free act and deed of said _____.

Before me,

_____
Notary Public/Attorney at Law

_____
Type or Print Name
My commission expires: _____

Appendix D

"Minimum Good Housekeeping Standards"[1]

1. Sweeping - annual thorough sweep, and appropriate disposal of collected material, following snow melt, that includes both collection of large particles and use of a vacuum assisted dry sweeper to collect fines.
2. Catch basin inspection and cleaning – annual vacuum assisted removal of accumulated material and appropriate disposal. Inspection of pipe inlet Best Management Practices (BMPs), if present; maintenance, if necessary.
3. Site-specific Operation and Maintenance (O & M) plans (prepared by Long Creek Watershed Management District (LCWMD) for all participating landowners) that include inspection, record keeping and maintenance requirements (will follow Chapter 500, Appendix B requirements, as amended from time-to-time).
4. Site inspection and reporting – annual inspection of all BMPs to ensure that they are functioning as designed or at the level that provides appropriate treatment for the Long Creek Watershed. Recordkeeping will follow Chapter 500, Appendix B, as amended from time-to-time.
5. All inspections of BMPs shall be carried out by a Q**ualified Third–Party Inspector. "Qualified Third Party Inspector"** shall mean a person whose name is on the list of approved third-party inspectors maintained by the District's Executive Director, or is approved by the District's Executive Director prior to conducting the inspection(s). Qualified Third Party Inspectors shall meet the following criteria:

   A. Have a college degree in an environmental science or civil engineering, or comparable expertise,
   B. Have a practical knowledge of stormwater hydrology and stormwater management techniques, including the maintenance requirements for BMPs, and
   C. Have the ability to determine if BMPs are performing as intended.

[1] Taken from "Long Creek General Permit Participating Landowners' Best Management Practices (BMP's) Operation and Maintenance Plan."