

SECOND AMENDMENT TO LEASE

This Amendment to Lease is made this day of , 2019 by and between the Town of Cape Elizabeth, a municipal corporation with a mailing address of P.O. Box 6260, Cape Elizabeth, Maine 04107 ("Town"), and the Portland Water District a quasi-municipal corporations with a place of business at 225 Douglass Street, Portland, Maine (PWD).

Whereas, Town and PWD entered into a lease agreement dated May 1, 1985 ("Lease") for the lease of parcels located on Spurwink Avenue ("Premises") in the Town of Cape Elizabeth used by PWD for wastewater and sewage treatment facilities; and

Whereas, Lease was amended on May 10, 2017 to expand the area leased by PWD ("Amendment"); and

Whereas, Lease term is scheduled to expire May 1, 2025; and

Whereas, PWD is performing improvements on the Premises which require an extension to the Lease;

NOW THEREFORE, the parties agree to amend the Lease as follows:

1. The Lease term shall be extended by Thirty (30) years to May 1, 2055.
2. The District shall pay Four Thousand Dollars (\$4,000) per year as rent for the leased premises, payable in advance in annual installments beginning May 1, 2020, due on or before the first day of May of each year. The Town agrees that said rental shall be used solely and exclusively for the benefit of the poor of the Town of Cape Elizabeth in recognition of the provisions of the will of Thomas Jordan, by which the Town acquired the premises.

Rent for each year after 2025 shall be increased by two percent (2%) over the rent for the preceding year.

3. Any and all terms of the Lease and Amendment not herein amended remain in full force and effect.

In Witness whereof, the parties have caused this Amendment to Lease to be signed the day and date above written.

TOWN OF CAPE ELIZABETH

Witness

Town Manager

PORTLAND WATER DISTRICT

Witness

Carrie Lewis
General Manager



Portland Water District
From Sebago Lake To Casco Bay

PLANNING COMMITTEE / AGENDA ITEM SUMMARY

Agenda Item:
Date of Meeting: July 8, 2019
Subject: Lease Extension – Cape Elizabeth Treatment Plant
Presented By: Chris Crovo, Director of Asset Management and Planning
Donna Katsiaficas, Corporate Counsel

RECOMMENDATION

The following proposed language is presented to the Board of Trustee for approval:

ORDERED, that the General Manager is authorized to execute a lease extension in substantial form as attached hereto with the Town of Cape Elizabeth for parcels located on Spurwink Avenue in Cape Elizabeth.

BACKGROUND ANALYSIS

In May, 1985 the District entered into a lease with the Town of Cape Elizabeth for land located on Spurwink Avenue. The lease was for a period of 40 years, expiring May 1, 2025. A wastewater treatment plant is located on the land.

The District is performing improvements on the site which include the installation of a UV system and HVAC upgrades. The improvements are financed by SRF funding. PWD is required to have an interest in the property for at least as long as the financing is outstanding – 20 years. For this reason, the lease with Cape Elizabeth must be extended.

The proposed lease extension would extend the lease term to May 1, 2055. It would increase the rental to \$4,000 per year, effective May 1, 2020. The rental fee is actually charged back to Cape Elizabeth as part of its wastewater assessment. Pursuant to the terms of the Thomas Jordan will, through which the Town received the property it is leasing to PWD, proceeds from the lease payments are used to benefit the poor of the Town.

FISCAL REVIEW / FUNDING

The current lease fee is \$2500 for 40 years with no inflationary provision. The town requested that the fee increase to \$4000 per year along with an annual inflationary increase of 2% for a period of 30 years. The lease payment is assessed to the Town of Cape Elizabeth through our annual sewer assessment

LEGAL REVIEW

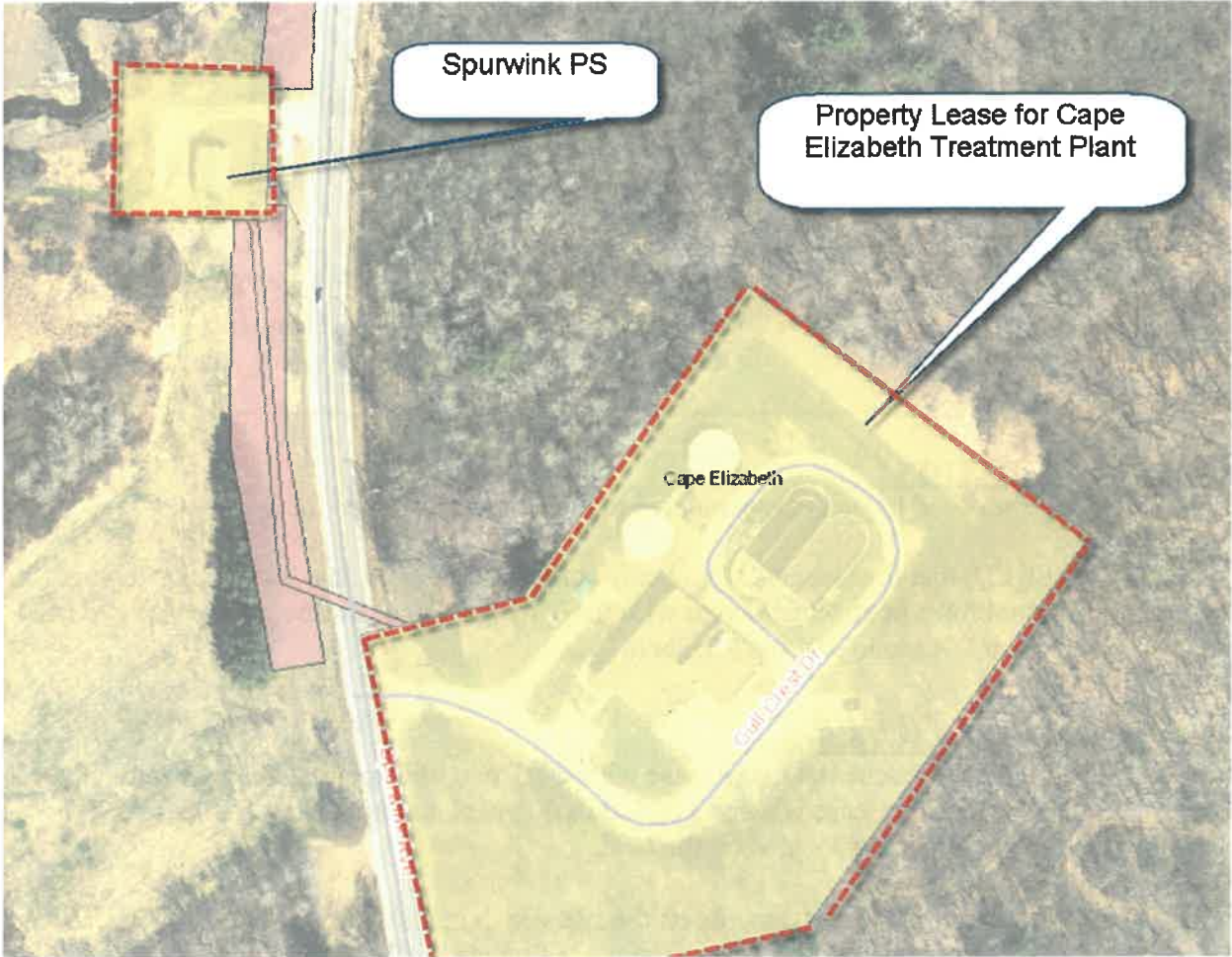
Corporate Counsel will review the proposed lease prior to execution.

CONCLUSION(S)

Staff recommends that PWD proceed with the lease extension and terms described above.

ATTACHMENTS

Plan



AGREEMENT FOR LEASE

This Agreement of Lease is made this 1st day of May, 1985, by and between the Town of Cape Elizabeth, Maine, a municipal corporation ("Town") and the Portland Water District, a quasi-municipal corporation ("District").

W I T N E S S E T H:

Section 1. Granting of Leasehold; Descriptions. The Town leases to the District for the term hereof and subject to the terms and conditions hereinafter set forth the following: Two certain parcels of land located in Cape Elizabeth, Maine, all as more specifically set forth on Exhibit A, incorporated herein.

Section 2. Term. The term of this Lease shall commence May 1, 1985 and shall expire on April 30, 2025. Thereafter the parties may renew this lease for such periods and upon such terms and conditions as the parties may mutually agree upon.

Section 3. Rent. The District shall pay Two Thousand Five Hundred Dollars (\$2,500) per year as rent for the leased premises, payable in advance in annual installments due on or before the first day of May of each year, beginning May 1, 1985. The Town agrees that said rental shall be used solely and exclusively for the benefit of the poor of the Town of Cape Elizabeth in recognition of the provisions of the will of Thomas Jordan by which the Town acquired the premises.

Section 4. Costs of Development and Maintenance. The District shall provide at its own expense all utilities, roads, clearing, grading, construction of facilities and other development, all as deemed necessary by the District for its proposed use.

Section 5. Location of Structures or Use. All structures, site improvements, changes in the premises or its topography or any use of the premises shall be located or done in accordance with all applicable laws and regulations.

Section 6. Use; Restrictions. The District may use the premises for the construction and maintenance of wastewater and sewage treatment facilities. Said use shall conform to all Town, Federal, and Maine Department of Environmental Protection regulations. In the event the District does not use the premises for the commencement of the construction of a wastewater and sewage treatment facility within two years from the date hereof, then this Lease shall terminate and neither party shall thereafter be bound by the provisions.

Section 7. Subletting or Assignment. The District shall not sublet the premises or assign its rights hereunder without the express written approval of the Town, which approval shall not be unreasonably withheld or delayed.

Section 8. Inspection. The District shall allow the Town and its agents to inspect the premises at all reasonable times.

Section 9. Indemnification and Insurance. The District agrees to indemnify and hold the Town harmless from any claim, cause of action, or damages arising out of the District's use of the premises pursuant to this lease. The District agrees during the term of this Lease to maintain fire, property damage, and public liability insurance with respect to the premises, and such insurance will name the Town as an additional insured. The District shall provide the Town with a certificate of insurance annually.

Section 10. Leasehold Improvements. The District, at its own expense, shall have permission to make any leasehold improvements and changes thereto, on the premises in conformity with all municipal ordinances and codes.

Section 11. Default. The District promises to quit and deliver up the premises to the Town peaceably and quietly at the end of the term in as good order and condition, reasonable use and wearing thereof or inevitable accident excepted, and the District further agrees not to make or suffer any strip or waste thereof. The District agrees that the Town may enter to expel the District if it shall make or suffer any strip or waste, or shall fail to quit and surrender the premises to the Town at the end of the term, or if the District shall violate any of the covenants herein to be performed by the District, and shall have failed to cure such violation within thirty (30) days of written notification thereof by the Town.

IN WITNESS WHEREOF, the parties hereto have caused this Lease to be executed as of this 1st day of May, 1985.

Witness:

Norman V. Swaddel

THE TOWN OF CAPE ELIZABETH

By Richard K. McInnis
Its Town Manager

Norman V. Swaddel

PORTLAND WATER DISTRICT

By Joseph B. Taylor
Its General Manager

EXHIBIT A

Two parcels of land located on Spurwink Avenue in the Town of Cape Elizabeth, County of Cumberland and State of Maine, said parcels being bounded and described as follows:

Parcel 1

Beginning at an iron pipe on the easterly sideline of Spurwink Avenue, said pipe being eighty-three and fifty hundredths (83.50) feet as measured South 07°-51' West along the easterly sideline of Spurwink Avenue from a granite monument marking an angle in said Spurwink Avenue opposite centerline Station 42+11.91 as shown on plan, Sheet #2, of a portion of Spurwink Avenue as redefined by the Cumberland County Commissioners dated November 4, 1966 and on file at the office of the County Commissioners; thence South 81°-57'-40" East three hundred ten and eleven hundredths (310.11) feet to an iron pipe; thence South 08°-02'-20" West two hundred twenty and zero hundredths (220.00) feet to an iron pipe; thence North 81°-57'-40" West three hundred nine and thirty-eight hundredths (309.38) feet to an iron on the easterly sideline of Spurwink Avenue; thence North 07°-51' East by Spurwink Avenue two hundred twenty and zero hundredths (220.00) feet, more or less, to said iron pipe and to the point of beginning.

Parcel 2

Beginning at an iron pipe on the westerly sideline of Spurwink Avenue, said pipe being one hundred seventy-six and fifty-eight hundredths (176.58) feet as measured North 18°-12' East along Spurwink Avenue from a granite monument marking an angle in said Spurwink Avenue opposite centerline Station 42+11.91 as shown on the plan described above; thence North 70°-01' West one hundred fifteen and zero hundredths (115.00) feet to an iron pipe; thence North 18°-12' East one hundred twelve and zero hundredths (112.00) feet to an iron pipe; thence South 70°-01' East one hundred fifteen and zero hundredths (115.00) feet to a point on the westerly sideline of said Spurwink Avenue; thence South 18°-12' West by Spurwink Avenue one hundred twelve and zero hundredths (112.00) feet, more or less, to said iron pipe and the point of beginning.

AMENDMENT TO LEASE

This Amendment to Lease is made this 10 day of May, 2017 by and between the Town of Cape Elizabeth, a municipal corporation with a mailing address of P. O. Box 6260, Cape Elizabeth, Maine 04107 ("Town"), and the Portland Water District a quasi-municipal corporations with a place of business at 225 Douglass Street, Portland, Maine (PWD).

Whereas, Town and PWD entered into a lease agreement dated May 1, 1985 ("Lease") for the lease of parcels located on Spurwink Avenue ("Premises") in the Town of Cape Elizabeth used by PWD for wastewater and sewage treatment facilities; and

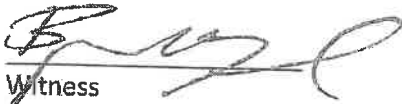
Whereas, Parcel 2 of the area leased by PWD must be expanded to accommodate the installation of an underdrain on the Premises;

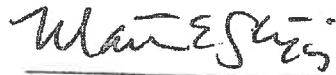
NOW THEREFORE, the parties agree to amend the Lease as follows:

1. The Town leases to PWD for the term of the Lease a certain additional parcel of land located on Spurwink Avenue, Cape Elizabeth, Maine, as more specifically set forth in Exhibit A, attached hereto and incorporated herein by reference.
2. Any and all terms of the original property description in the Lease and of the Lease itself not herein amended remain in full force and effect.

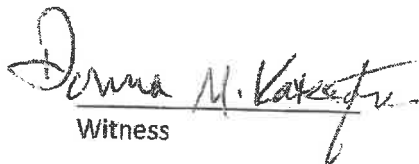
In Witness whereof, the parties have caused this Amendment to Lease to be signed the day and date above written.

TOWN OF CAPE ELIZABETH


Witness


Matthew E. Sturgis
Town Manager

PORTLAND WATER DISTRICT


Witness



Carrie M. Lewis
General Manager

EXHIBIT A

A parcel of land located westerly and adjacent to the existing Pump Station Lease area bounded and described as follows:

Beginning at the southwest corner of the existing leased parcel, thence westerly on the same course as the southerly boundary line of the existing leased parcel five (5) feet to a point;

Thence northwesterly sixty-five (65) feet to a point;

Thence northeasterly sixty-one (61) feet to a point on the westerly boundary line of the existing lease parcel;

Thence southerly along the westerly boundary line of the existing lease parcel eighty-nine (89) feet to the point of beginning.

The above described parcel is shown on the attached plan.

