

COOPERATIVE AGREEMENT
Between the
MAINE DEPARTMENT OF TRANSPORTATION
and
The MUNICIPALITY OF BELGRADE
Regarding Groundwater Chloride Impacts and the
Installation, Maintenance and Operation of a Community Water System

COPY

This Agreement (the “**Agreement**”) is entered into between the **Maine Department of Transportation** (hereafter “**MaineDOT**”), and the **Municipality of Belgrade** (the “**Municipality**”) (individually a “**Party**” or jointly the “**Parties**”) regarding a partnership initiative between the Parties to mitigate the groundwater chloride impacts affecting residential and commercial properties located near Routes 27, 11 and 135 in Belgrade, Maine.

BACKGROUND

- A. Routes 27, 11 and 135 (also known as Cemetery Road) intersect to form a generally triangular area as depicted on the map attached hereto as **Exhibit A** (the “**Impact Area**”). The Impact Area extends from the westerly side of Route 27 to the northeasterly side of Cemetery Road and the southeasterly side of Route 11 and includes specifically the highlighted parcels shown on Exhibit A, being an excerpt of Tax Map 7 of the Municipality’s records.
- B. MaineDOT and the Municipality each own and operate sand and salt storage facilities located within the Impact Area on the northeast side of Cemetery Road (the “**Maintenance Facilities**” collectively).
- C. There have been several instances of chloride-related groundwater contamination issues affecting the private water supplies of residential and commercial properties located within the Impact Area (the “**Groundwater Contamination Impacts**”).
- D. Sources of the Groundwater Contamination Impacts potentially include the Maintenance Facilities owned and controlled by both Parties. Numerous smaller private sources, such as driveways, parking lots and previously installed reverse-osmosis water treatment systems, as well as other unknown sources have likely contributed to the Groundwater Contamination Impacts, as well.
- E. The Parties each have legal responsibilities associated with private water supplies being rendered unfit for human consumption as a result of highway construction, reconstruction or maintenance. 23 M.R.S. § 652(2) establishes MaineDOT’s responsibilities; 23 M.R.S. § 3659 establishes the Municipality’s responsibilities. The two statutes include similar liabilities and obligations to resolve associated claims.
- F. Given that each Party’s exact contribution to the Groundwater Contamination Impacts is difficult to identify, MaineDOT and the Municipality have determined that it is in the public interest to jointly implement a permanent resolution to the Groundwater Contamination Impacts through a practical mitigation management plan and cost sharing arrangement between the Parties.
- G. After thorough reviews of the various impacted properties and resolutions that may be implemented, the Parties have jointly determined that currently the most practical solution is to

design, install, operate and maintain a Public Water System, as such is defined in 22 M.R.S. § 2601, to serve the impacted properties as well as those additional properties within the Impact Area that may become impacted by chloride in the future (the “**Water System**”), as further outlined in this Agreement.

- H. The Parties previously entered into a Memorandum of Agreement dated May 24, 2011 (the “**2011 Agreement**”) to establish preliminary cost-sharing and claim investigation measures. The 2011 Agreement was limited in scope and did not fully contemplate the extensive Groundwater Contamination Impacts that have since been identified, nor did it consider the potential need for a public water system and the initial and ongoing expenses associated therewith.
- I. The purpose of this Agreement is to 1) replace the 2011 Agreement; 2) set out each Party’s responsibilities in establishing, constructing, operating and maintaining the Water System; and 3) identifying the cost-sharing arrangements between the Parties in connection with both the Water System and private property damages associated with the Groundwater Contamination Impacts.

AGREEMENT

NOW THEREFORE, MaineDOT and the Municipality acknowledge and agree that the forgoing recitals are true and correct statements of fact, and further agree as follows:

1. **Status of 2011 Agreement:** Upon the execution of this Agreement, the 2011 Agreement is void and of no further effect. All payments due from the Municipality under the terms of the 2011 Agreement have been paid in full by the Municipality in accordance with the terms thereof.
2. **Points of Contact:** Each Party shall assign a Point of Contact to be the direct contact person for all purposes associated with the Water System and all aspects of this Agreement. Appropriate contact information for each Point of Contact shall be shared between the Parties as soon as practicable.
 - a. For MaineDOT, the Region Manager for MaineDOT’s Region 2 will act as the Point of Contact. As of the effective date of this Agreement, that person is Jamie Andrews;
 - b. For the Municipality, the Town Manager will act as the Point of Contact. As of the effective date of this Agreement, that person is Town Manager, Lorna Dee Nichols.
3. **Completed Actions Toward Development of the Water System:** As of the date of this Agreement, the following activities have already been completed:
 - a. The Parties have identified a number of residential and commercial properties within the Impact Area presently affected by the Groundwater Contamination Impacts (these properties, together with any future properties within the Impact Area identified as having been affected by the Groundwater Contamination Impacts, are hereafter the “**Impacted Properties**”).
 - i. Impacted Properties *presently affected* by the Groundwater Contamination Impacts as of the effective date of this Agreement and intended to be connected to the Water System upon construction completion are identified on Exhibit A as follows: lots 42, 53 (Municipal Cemetery), 55, 55-A, 55-C, 55-D, 55-E, 55-F, 55-G, 58, 59-A, 59-B, 61, and 63. Notwithstanding the

depiction of highlighted parcels on Exhibit A, the Parties agree to also recognize lot 62A as a presently affected Impacted Property for the purpose of this Agreement and will share equally in the costs associated with resolving that owner's claim if it is determined to be impractical to physically connect lot 62A to the Water System.

- ii. Impacted Property *not presently affected* by Groundwater Contamination Impacts but still intend to be connected to the Water System upon construction completion is identified on Exhibit A as follows: lot 45 (the "**Municipal and MaineDOT Salt Facilities**").
 - iii. Impacted Properties not included in subsection i. and ii. above are eligible to be connected to the Water System in the future on a case-by-case basis if they become affected by Groundwater Contamination Impacts, subject to the Water System's sufficient capacity to handle the additional demand created by the added property.
- b. MaineDOT has hired Ransom Engineering ("**Ransom**") to drill and evaluate a test well (the "**Community Well**") to serve the Impacted Properties. The Community Well is located within MaineDOT's Maintenance Facility lot and is indicated on Exhibit A within lot 45. Ransom's total costs associated with the installation, testing and permitting of the Community Well are \$ 109,821.88 (the "**Community Well Installation, Testing and Permitting Costs**"). The Community Well currently meets all appropriate water quality standards, has sufficient capacity to serve the Impacted Properties, and the Parties anticipate that the Community Well will continue to have appropriate quality and capacity in the foreseeable future.
 - c. Ransom, at MaineDOT's direction, has also developed a cost estimate to design and install the necessary pumps, piping, treatment and distribution system to distribute water from the Community Well to the Impacted Properties (the "**Distribution System**"). The Community Well, together with the Distribution System, hereafter collectively constitute the "**Water System**" for the purpose of this Agreement. Ransom's recently updated cost estimate is approximately \$3,000,000.00 (the "**Distribution System Design and Installation Estimate**"). The Distribution System Design and Installation Estimate includes individual connections to the Impacted Properties identified in Sections 3.a.i and ii (the "**Present Connections**").
 - d. MaineDOT has applied to the Maine Drinking Water Program ("**DWP**") for authorization to rely on the Community Well to supply a Public Water System serving the Impacted Properties. DWP has issued preliminary approval to MaineDOT, pending DWP's review and approval of the Distribution System. DWP's records identify the proposed Water System as "Belgrade DOT" and DWP has assigned a Public Water System identification number of ME0092729. The Municipality will assume operation and maintenance responsibility for the Public Water System only after the Water System and source water protection plan have been approved by DWP and the Water System has been constructed pursuant to Section 6 of this Agreement.

4. **Municipality's Establishment of a Water Utility:**

- a. In preparation for the Municipality's assumption of ongoing Water System operation and maintenance responsibilities as further set out in Section 6 of this Agreement, the Municipality has taken the necessary step of establishing a legislatively approved charter creating the Belgrade Water District to carry out such responsibilities on the Municipality's behalf over a geographic territory identical to the Impact Area depicted on Exhibit A. The creation of the Belgrade Water District was ratified by the Municipality's voters in March of 2022. It is the Parties' intent that, in addition to the municipal ratification of the Belgrade Water District, this Agreement shall be executed before a project to construct the Distribution System is put out to bid by MaineDOT, and that this Agreement has been drafted with the goal that the Distribution System construction will begin in early 2023, provided such Agreement execution has occurred no later than December 31, 2022. The Parties further agree to seek a legislative amendment to the defined area of the Belgrade Water District to include the presently affected Impacted Property identified as Lot 62A if it becomes apparent that the appropriate resolution to that lot's circumstance is to connect it to the Water System.
- b. The Parties agree that, if the Municipality is unable to secure the necessary municipal approval to enter into this Agreement, this Agreement shall be of not force and effect and the Parties will proceed with an alternate means of resolving the Groundwater Contamination Impacts, up to and including purchase of the Impacted Properties and relocation of affected occupants with the Parties sharing equally in all such costs.
- c. Upon execution of this Agreement and in parallel with the Distribution System being designed, the Municipality will promptly take all necessary remaining measures to ensure that the Belgrade Water District is functioning as a legally compliant water utility (the "Water Utility") under the laws and regulations of the Public Utilities Commission (the "PUC"), including without limitation appointing trustees, securing all necessary permits/approvals and ensuring that the designed Water System is approved by the PUC **before the Distribution System construction commences**. The Municipality agrees to diligently pursue the necessary permits/approvals on a schedule that will allow the construction to commence in mid- 2023 as planned to minimize additional construction cost increases. The Water Utility will be expected to actively participate in the oversight of the Distribution System construction with MaineDOT's selected contractor.
- d. The development of the Water Utility requirements shall be at the discretion of the Municipality, provided that it complies with all applicable Maine laws governing the formation of water utilities and construction of associated water system infrastructure in the State of Maine and that either the Municipality or the established Water Utility on the Municipality's behalf is authorized to assume ownership of and all responsibility for the completed Water System when construction is complete and the Water System is put into service.
- e. *Once the Water Utility is legally empowered to assume the Municipality's obligations under this Agreement, this Agreement may be amended to add the Water Utility as a Party to this Agreement, at which time the Belgrade Water District will assume the role of Water Utility for the purpose of this Agreement. Absent such amendment, all references to the Water Utility in this Agreement shall refer to the Municipality and the*

terms “Municipality” and “Water Utility” shall be interchangeable until such amendment occurs.

5. Project Design, Construction, and Implementation:

a. Scope of Work and Project Contract:

- i. Subject to municipal execution of this Agreement and PUC’s requisite approval, if needed, of the submitted plans and specifications of the designed Distribution System, MaineDOT shall procure and administer a contract to construct the Distribution System, connect the Distribution System to the Community Well, and connect the completed Water System to the Impacted Properties currently identified by the Parties (the “**Project**”) with the intention that construction will begin in mid-2023 and be completed in approximately one construction season. Implementation of this work shall be completed in accordance with the plans and specifications jointly approved by MaineDOT, the Water Utility and PUC, if deemed necessary.
 1. Prior to MaineDOT’s solicitation of bids to construct the Project, the Water Utility, and its technical advisor, if any, shall be provided adequate opportunity to review and comment on the water system design. The water system design shall include water usage meters of a design and operation acceptable to the Water Utility for each service connection, provided that the Water Utility shall pay to MaineDOT the cost difference for any requested meter upgrades that exceed those necessary to meet industry standards.
- ii. MaineDOT shall be the sole administrator of the Project contract and will pay all Project costs, subject to the Parties’ cost sharing arrangements set out in the **Cost Sharing and Invoicing** section herein.
- iii. MaineDOT shall be responsible for applying for and complying with all applicable permitting requirements associated with Project construction, except that the Water Utility shall have secured any necessary approvals from the PUC and applied for and been granted the necessary Location Permit from MaineDOT in accordance with the terms of 35-A M.R.S. ch 25 and MaineDOT’s Utility Accommodation Rules (the “**Location Permit**”).
- iv. Subject to MaineDOT’s approval of the Location Permit, the Distribution System will be installed within the limits of the highway rights of way to eliminate the Parties’ need to acquire additional property rights from abutting landowners.
- v. Changes to Project Scope. MaineDOT will consult with the Municipality and the Water Utility before implementing any substantive adjustments to the Project scope. Any such changes shall be in writing and mutually agreed upon by all Parties to this Agreement, as such may be amended.
- vi. MaineDOT shall ensure that the Project is constructed in accordance with the Project contract.

- vii. The Water Utility may inspect the Project work upon reasonable notice to MaineDOT. Costs for such inspections shall be at the Municipality's sole expense.
 - viii. MaineDOT shall ensure that the Water System design engineer conducts regular quality control inspections of all work performed by the construction contractor and its subcontractors to ensure adherence to the Project design specifications and change orders, including but not limited to the proper installation of water mains and service connections, water main seals, pump station construction, and pump and electronic controls installation. The results of these inspections shall be documented and provided to the Municipality or Water Utility upon request. The Municipality and Water Utility reserve the right to hire at their expense a Maine professional engineer to perform supplemental quality control inspections and provide input for the Project design engineer and construction contractor's consideration, with final determinations of compliance with appropriate industry standards being at the sole discretion of the Project design engineer and contractor. MaineDOT will assure that its Water System design engineer and construction contractor will cooperate and share design and construction information with the Municipality or Water Utility inspector upon request.
- b. Individual Service Lines to Impacted Properties: *Prior to MaineDOT's solicitation of bids to construct the Project*, MaineDOT shall secure statements from the owners of each Impacted Property (the "**Impacted Property Owners**") indicating that they intend to connect to the Water System once it is operational and that they will grant the necessary temporary access rights to allow for the installation and connection. If a super-majority of Impacted Property Owners fail to state an intention to connect to the Water System, the Parties reserve the right to forego constructing the Distribution System and, in such event, shall revisit the terms of this Agreement. If the Parties jointly choose to forego construction of the Distribution System because of a lack of a super-majority of participating Impacted Property Owners, MaineDOT agrees to assume all costs incurred or obligated in connection with Ransom's design of the Distribution System as of the date of such determination.
- i. Individual service lines to each of the Present Connections (the "**Service Line(s)**") will be installed as part of the Distribution System with connection points being installed as close as possible to the edge of the highway right of way limits. All portions of Service Lines installed outside of the highway right of way and within the boundaries of the Impacted Properties shall be owned by the Impacted Property Owner being served.
 - ii. Each Impacted Property Owner will be required to grant temporary access rights for all purposes necessary to allow Project contractors to install and connect the Service Line from the installed water main connection point to the Impacted Property's existing plumbing system.
 - iii. Impacted Property Owners will be required to enter into a service contract with the Water Utility for the provision of public water serving the Impacted Property before that property's associated Service Line is made active.
 - iv. Subject to the exceptions set out below and upon connection of each Service Line, MaineDOT or its contractor will fill in and abandon the Impacted Property's

chloride-contaminated groundwater well, as required by Maine law, at no cost to the Impacted Property Owner (the “**Groundwater Well Abandonment**”). In addition to the temporary access rights conveyed for installation of the Service Lines, each Impacted Property Owner will be required to grant temporary access rights for all purposes necessary to perform Groundwater Well Abandonment activities. Costs associated with Groundwater Well Abandonment shall be paid upfront by MaineDOT, subject to the Parties’ cost sharing arrangements set out in the **Cost Sharing and Invoicing** section herein.

- v. MaineDOT shall ensure that, upon completion of all necessary installations, connections and Groundwater Well Abandonment activities performed by or on behalf of MaineDOT in connection with the Project, all disturbed property will be restored, including any necessary re-grading or re-seeding of grass, to return the Impacted Property to a condition similar to that which exists prior to the work being implemented. Such costs shall be a component of the Groundwater Well Abandonment costs;
 - vi. MaineDOT will contact each affected Impacted Property Owner prior to the onset of Project construction to complete the necessary documentation involving temporary access rights. Temporary access rights for Service Line installation and Groundwater Well Abandonment shall be incorporated into one single access document for each Impacted Property as appropriate. MaineDOT shall prepare such documentation at its sole expense.
- c. Dedicated Groundwater Monitoring Wells.
- Notwithstanding the Groundwater Well Abandonment process outlined above, the Parties shall work together to identify a reasonable number of affected groundwater wells to leave in place, disconnected from associated Impacted Properties but not formally abandoned, to use as future monitoring wells, allowing the Municipality to periodically monitor the ongoing conditions of the groundwater over time.
- d. Municipal Cooperation During Project Construction.
- i. The Municipality agrees that, to the extent that MaineDOT and its Project contractors are subject to any local ordinances, the Municipality shall promote, in good faith, cooperation on the part of any local board, committee, commission, or other administrative body with jurisdiction over any applicable local ordinance with MaineDOT regarding pursuit or execution of the Project. Notwithstanding any Municipal Ordinance to the contrary, the Municipality further agrees not to charge MaineDOT or its Project contractors for any necessary municipal inspections and/or permits related to the Project.
 - ii. The Municipality agrees to alter, move, relocate or remove, or cause to be, at no cost to the Project, any municipal property, including all fixtures, facilities or monuments, located on, under or above the ground, as necessary to permit construction of the Project, that has not otherwise been provided for during the development of the Project. Any work necessary to do so during the period of construction shall be coordinated with the Project contractor.

- iii. To the extent necessary to permit construction of the Project, the Municipality will, at no cost to the Project, assure proper adjustment, relocation, or repair of any portion of a utility service, whether above or below ground, that is located within the limits of the highway right-of-way and connected to any municipal utility. The Municipality agrees to hold MaineDOT harmless from any claims for damages occurring as a result thereof.
- iv. The Municipality agrees that during and after construction it will apply the requirements of the most recent version of MaineDOT's "Utility Accommodation Rules" as the minimum guidelines, notwithstanding any municipal rules that are more lenient.
- v. Traffic Control. The Municipality agrees to allow the Project contractor to control all traffic through Project work areas in accordance with the traffic control plan approved by MaineDOT. The development of the Traffic Control Plan will follow the process outlined below:
 - a. MaineDOT's Project Manager will discuss the Traffic Control Plan with the Municipality (scope, limits, day or night work, work window, etc.) as soon as practicable.
 - b. The Municipality will comment on any concerns/issues related to the Traffic Control Plan within two (2) weeks of receipt.
 - c. MaineDOT will address the Municipality's concerns where practical, but MaineDOT's engineering judgment will prevail where there are any disagreements.

6. **Ongoing Operation and Maintenance of Completed Water System:**

- a. Bill of Sale and Location Permit. Upon completion of the DWP-approved and constructed Water System, connection of all Service Lines, and delivery by the Municipality/Water Utility to MaineDOT of Water Supply Settlements (as further defined below) from each of the Impacted Property Owners that have entered into service contracts, MaineDOT will convey, and the Water Utility shall accept, ownership of the Water System to the Water Utility via a bill of sale for the infrastructure, a deeded easement for the Community Well location and any associated infrastructure located on MaineDOT property, and a Location Permit allowing the Water System to continue to occupy the highway rights of way in accordance with the terms of MaineDOT's Utility Accommodation Rules. The Location Permit will include language representing that the Municipality shall not be required to participate in future costs of relocating the Water System, or any portions thereof, if such relocation becomes necessary due to MaineDOT's future highway construction or reconstruction needs.
- b. Upon completion of the DWP -approved and constructed Water System and connection of all Service Lines, the Municipality or Water Utility shall assume all responsibilities for the Water System's ongoing operation and maintenance at its sole expense (the "**Water System Operation and Maintenance**") including without limitation all associated fees, costs, repairs and replacements that are not subject to the terms and conditions of this Agreement's Contingency provisions below. DWP has estimated the annual expense

associated with the Water System Operation and Maintenance to be approximately \$36,000 in present value. Water System Operation and Maintenance shall include compliance with any well head protection plan required by the DWP and all applicable state and local laws, rules and regulations governing the Water System.

- i. Contingencies. The Parties agree that, should the Community Well become contaminated with chloride at concentrations above MaineDOT's current action level of 250 mg/l for a period of three (3) consecutive sampling rounds associated with the Parties' on-going operation of the Maintenance Facilities, the Parties shall revisit the terms of this Agreement to jointly determine how best to resolve such contamination or to otherwise address the claims of Impacted Properties that cannot be served by the Community Well.
- c. The Municipality shall ensure that the Water System Operation and Maintenance is implemented in accordance with all applicable laws, rules and regulations including without limitation 22 M.R.S. Ch. 601 - Water for Human Consumption, and the State of Maine Board of Licensure of Water System Operators rules at 90-429 C.M.R. ch. 1, and that the Water System is maintained in such a manner as necessary to preserve the use and function thereof for the expected period of the Water System's normal useful life as determined by accepted engineering and/or industry standards. To the extent any warranty exists for the Water System, said warranty shall be first relied on by the Municipality to address necessary maintenance and/or repairs. The Municipality agrees to maintain the Water System with equipment technology equal to or greater than that which has been installed in connection with the Project.
- d. The Municipality shall ensure that all Impacted Properties within the limits of the Impact Area, are allowed to connect to the Water System and that there shall be no charge to the Impacted Property Owner for the cost of physically connecting such property to the Water System. At the Municipality's discretion, it may take appropriate steps to enact necessary local ordinances to limit the properties that are permitted to connect to the Water System, provided that all Impacted Properties in the Impact Area are permitted to connect thereto.
- e. The Water Utility may, subject to PUC approval if required, develop a reasonable rate schedule for water usage commensurate with other public water utilities of similar size and scope to offset future maintenance costs.
- f. Notwithstanding anything in this Agreement to the contrary, the Municipality's obligation to allow all Impacted Properties to connect to the Water System is conditioned on the Water System's capacity to adequately serve additional users. In the event the Parties become aware that the Water System can no longer serve additional Impacted Properties, the Parties shall revisit the terms of this Agreement to jointly determine how best to expand the capacity of the Water System or to otherwise address the claims of Impacted Properties that cannot be served by the Water System.

7. Investigation and Settlement of Current and Future Well Claims:

- a. MaineDOT will continue to work with currently identified Impacted Properties to inform property owners of the Parties' plan to install, operate and maintain the Water System.

b. Settlement Negotiations.

Each Impacted Owner has filed a claim against MaineDOT seeking: 1) damages caused by groundwater well contamination affecting their property, and 2) a resolution resulting in the provision of a clean water supply (collectively, the “**Well Claim**”). For the purposes of this Agreement, each Well Claim is separated into two components: the “**Water Supply Component**” requiring that clean water be supplied to the Impacted property; and the “**Personal Property and Fixtures Component**” addressing physical damage to the personal property and fixtures associated with the Impacted Property.

- i. *Prior to activating a connected Service Line*, the Municipality/Water Utility shall ensure that the Impacted Property Owner has signed a settlement agreement releasing MaineDOT and the Municipality from the Water Supply Component of the owner’s Well Claim (the “**Water Supply Settlement**”). MaineDOT will provide the Municipality with the form of settlement agreement required for execution.
 - ii. Once the Impacted Properties have been connected to the Water System, MaineDOT will ask each Impacted Property Owner to provide a cost summary supporting the Personal Property and Fixtures Component of their Well Claim, including, for example, piping, tanks, pumps, heating systems or other related fixtures that have been damaged as a result of the Groundwater Contamination Impacts. MaineDOT will assess the validity of each claim and will strive to negotiate a final settlement of the Personal Property and Fixtures Component of each Impacted Property Owner’s Well Claim (the “**Personal Property and Fixtures Settlement**”). Settlement agreements will include a release of both MaineDOT and the Municipality. Negotiated settlement amounts will be paid by MaineDOT up front, subject to the Parties’ cost sharing arrangements set out in the **Cost Sharing and Invoicing** section herein.
- c. If an Impacted Property is confirmed to experience damage to or failure of the personal property and/or fixtures described above that requires repair or replacement prior to the Water System being operational, the Parties will jointly investigate such damages and will share in all costs incurred to appropriately repair or replace the damaged property or fixture (the “**Emergency Repairs**”). Impacted Property Owners affected by Emergency Repairs will not be asked to settle their Well Claim until the Water System is installed and connected, at which time such claim will be handled in accordance with the *Settlement Negotiations* subsection included above.
- d. State Claims Referrals. If an Impacted Property Owner 1) refuses to be connected to the Water System; 2) refuses to enter into a Water Supply Settlement; or 3) if a Personal Property and Fixtures Settlement cannot be reached with an Impacted Property Owner once connected to the Water System, the unsettled party will be asked to assign its claim against the Municipality to MaineDOT, and MaineDOT will refer the claim against MaineDOT to the State Claims Commission for a determination of cause and assessment of damages (the “**SCC Damage Award**”). SCC Damage Awards will be paid by MaineDOT up front, subject to the Parties’ cost sharing arrangements set out in the **Cost Sharing and Invoicing** section herein.

- e. Investigation of New Claims. New claims from Impacted Properties not already identified as of the date of this Agreement shall be investigated by MaineDOT and results reported to the Municipality. If the claim is determined by MaineDOT to be associated with the Groundwater Contamination Impacts, the Municipality shall arrange for the Impacted Property to be connected to the Water System at the Municipality's cost (the "**Future Connection Costs**") subject to the Parties' cost sharing arrangements set out in the **Project Cost Sharing and Invoicing** section herein. Final resolution of the newly identified Impacted Property will then be managed in accordance with the process set out in the **Settlement Negotiations** and **State Claims Referrals** sections outlined above.
- f. Release of Municipality from Claims. Upon the Municipality's payment to MaineDOT of its share of each Impacted Property Owner's Personal Property and Fixtures Settlement or SCC Damage Award, as applicable, and satisfaction of all Municipality and Water Utility obligations set out in this Agreement, cost sharing or otherwise, MaineDOT hereby releases the Municipality from all claims, damages and causes of action associated with the Groundwater Contamination Impacts that are covered by the Water Supply Settlement, Personal Property and Fixtures Settlement or SCC Damage Award for that particular Impacted Property.

8. Project Cost Sharing and Invoicing:

- a. Allocation of Costs. The Parties agree to allocate all costs associated with the Groundwater Contamination Impacts as follows:
 - i. MaineDOT shall pay all actual costs incurred in connection with the Distribution System Design and Installation Estimate (currently estimated at \$3,000,000.00);
 - ii. The Municipality shall pay all actual costs incurred in connection with the ongoing Water System Operation and Maintenance (currently estimated at \$36,000 per year, present value as of the date of this Agreement), subject to the Municipality's right to charge a reasonable water usage fee, as described above, to offset these costs;
 - iii. The Parties shall each pay fifty percent (50%) of all actual costs incurred in connection with the following:
 - 1. Community Well Installation, Testing and Permitting Costs, documented at a total of \$109,821.88;
 - 2. Groundwater Well Abandonment costs (generally estimated at \$6,000 - \$7,000 per well);
 - 3. Personal Property and Fixtures Settlements;
 - 4. SCC Damage Awards;
 - 5. Emergency Repairs; and
 - 6. Future Connection Costs.
 - iv. All in-house costs incurred by each Party's staff in connection with the Groundwater Contamination Impacts, including but not limited to design review, construction oversight, investigations and administrative processing, shall be the responsibility of each individual Party and not applied against either Party's allocations as set out above.

b. Invoicing and Payment Schedule.

- i. The Parties acknowledge that the Municipality has already been invoiced for and paid to MaineDOT the sum of \$54,910.94 which is applied against the Municipality's 50% share of the Community Well Installation, Testing and Permitting Costs;
- ii. Immediately upon execution of this Agreement, and intermittently as Emergency Repairs are performed prior to the Water System being completed, the Parties will invoice one another, as applicable, for any outstanding share of Emergency Repairs that either Party may have incurred.
- iii. Once the Water System is completely constructed and installed, MaineDOT shall invoice the Municipality on a quarterly basis for its share of costs incurred to date in connection with 1) Groundwater Well Abandonment; 2) Personal Property and Fixtures Settlements; and 3) SCC Damage Awards. MaineDOT's share of any Future Connection Costs covered by the Water Utility at the time of connection will be deducted from the amount invoiced to the Municipality.
 1. The initial invoice will include all costs incurred to date in these categories;
 2. Subsequent quarterly invoices will reflect costs incurred in these categories during that particular quarter.
- iv. Each invoice submitted will describe the completed work and itemize the associated costs included therein. The invoicing Party will provide supporting documentation to the other Party upon request.
- v. Each invoice shall be due and payable upon 30 days of the invoiced Party's receipt thereof.

9. Financial Obligations, Termination and Early-Termination Rights:

- a. Obligation of MaineDOT Funds. Anything herein to the contrary notwithstanding, the Municipality acknowledges and agrees that, although the execution of this Agreement by MaineDOT manifests its intent to honor its terms and to seek funding to fulfill any obligations arising hereunder, by law any such obligations are subject to available budgetary appropriations by the Maine Legislature and do not create any obligation on behalf of MaineDOT in excess of such appropriations.
- b. Obligation of Municipality Funds. Anything herein to the contrary notwithstanding, MaineDOT acknowledges and agrees that, although the execution of this Agreement by the Municipality manifests its intent to honor its terms and to seek funding to fulfill any obligations arising hereunder, by law any such obligations are subject to available budgetary appropriations by the Municipality's governing authorities and, therefore, this Agreement does not create any obligation on behalf of the Municipality in excess of such appropriations.
- c. Each Party hereby agrees to diligently pursue the necessary funding to satisfy its respective obligations arising hereunder. If either Party is unable to satisfy its respective obligations, the other Party shall have the right to terminate or renegotiate the terms of this Agreement.

- d. Either Party may postpone, suspend, abandon or otherwise terminate this Agreement upon thirty (30) days written notice to the other Party as the result of any failure by the other Party to perform any of the services required under this Agreement to the terminating Party's satisfaction. In no event shall any such action be deemed a breach of contract.
- e. This Agreement may be terminated at any time by mutual written agreement of all Parties, provided that such written agreement shall address the allocation between the Parties of any costs, expenses, penalties and/or liabilities expended, committed or imposed in connection with the Project and any Project contracts awarded as of such date of termination.
- f. Prior to MaineDOT awarding a contract to construct and install the Water System, if estimates or actual bid prices for such construction and installation exceed the Distribution System Design and Installation Cost Estimate (i.e., \$3,000,000.00) by more than thirty percent (30%), MaineDOT reserves the right to postpone, suspend, abandon or otherwise terminate or renegotiate the terms of this Agreement. In such event, each Party shall pay its share of any costs, expenses, penalties and/or liabilities expended, committed or imposed in connection with the Project and any Project contracts awarded as of such date of termination.
- g. In the event of termination, all provisions of this Agreement shall become null and void except for any outstanding financial obligations for costs or liabilities already incurred or obligated, as well as *those provisions that by their very nature are intended to survive*.
- h. Unless this Agreement is terminated early in accordance with the provisions set out above, all provisions of this Agreement *except those associated with the Municipality's ongoing Water System Operation and Maintenance obligations and those that by their very nature are intended to survive*, shall expire upon final collection and/or payment of all outstanding invoices, provided that no new Impacted Properties have been identified within the Impact Area for a period of ten (10) years.

10. **Miscellaneous Provisions:**

- a. **Municipal Authority.** The Municipality represents that it has received all necessary approvals or authorizations by its governing authorities to enter into this Agreement and fulfill the Municipality's obligations outlined herein.
- b. The Parties agree to: comply with and abide by all applicable state and federal laws, statutes, rules, regulations, standards and guidelines, including the MUTCD and OSHA standards, and all Agreement provisions; avoid hindering each other's performance; fulfill all obligations diligently; and cooperate in achievement of the intent of this Agreement.
- c. The Parties shall require any third party or other entity providing any service or work on the Water System to (a) carry liability insurance commensurate with the risk of the activity and (b) to indemnify and defend both MaineDOT and the Municipality and hold them harmless from claims. . The duty to defend, indemnify, and hold harmless shall extend to the State of Maine, its officers, agents and employees and the Municipality, its officials, employees, agents, consultants or contractors, and shall cover all claims, suits or liabilities arising from any negligent or wrongful act, error or omission by said third party or entity. Nothing herein shall waive any defense, immunity or limitation of liability that may be available to either party under the Maine Tort Claims Act (14 M.R.S. § 8101 et seq.) or any other privileges or

immunities provided by law. Any other provision of this Agreement to the contrary notwithstanding, this provision shall survive any termination or expiration of this Agreement.

- d. State of Maine's Rights of Set-Off. MaineDOT shall have all of its common law, equitable and statutory rights of set-off. These rights shall include, but not be limited to, the State of Maine's option to withhold for the purposes of set-off monies due the Municipality under a specific project contract up to any amounts due and owed to MaineDOT with regard to this Agreement, and any other agreement/contract with any State of Maine department or agency, including any agreement/contract for a term commencing prior to the term of this Agreement, plus any amounts due and owed to the State of Maine for any reason including without limitation, tax delinquencies, fee delinquencies or monetary penalties relative thereto. MaineDOT shall exercise its set-off rights in accordance with normal State practices including, in cases of set-off pursuant to an audit, the finalization of such audit by MaineDOT, its representatives, or the State Controller. When applicable, MaineDOT reserves the right to withhold or reduce future Local Road Assistance payments to the Municipality for purposes of set-off to recover the amount owed.
- e. Assignment. No assignment of this Agreement is contemplated, and in no event shall any assignment be made without both Parties' express written permission.
- f. Notice. Any communications, requests or notices required or appropriate to be given under this Agreement shall be in writing and may be sent via email which shall satisfy the delivery requirements of this section through express acknowledgement of receipt by the receiving Party. Alternatively, communications can be mailed via U.S. Mail, Certified or Registered, Return Receipt Requested or sent via a recognized commercial carrier, such as but not limited to Federal Express, that requires a return receipt delivered to the sending party. Said communications, requests or notices shall be sent to the other Party as follows:
- MaineDOT: Maine Department of Transportation
Region 2 Office
- _____

Augusta, ME04333-0016
Attn.: Jamie Andrews
Email: jamie.andrews@maine.gov
- Municipality: Town of Belgrade
990 Augusta Rd
Belgrade, ME 04917
Attn.: Town Manager
Email: townmanager@townofbelgrade.com
- g. Counterparts and Electronic Signatures. This Agreement may be implemented in one or more counterparts, each of which will be deemed to be an original copy and all of which, when taken together, will be deemed to constitute one and the same Agreement, and will be effective when counterparts have been signed by each of the Parties and delivered to the other Parties. Each Party agrees that this Agreement and any other documents to be executed in connection herewith may be electronically signed and that any electronic signatures appearing on this

Agreement or the associated documents are the same as handwritten signatures for the purposes of validity, enforceability and admissibility.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement in duplicate, effective on the day and date last signed below.

Date: 1/3/2023

MAINE DEPARTMENT OF TRANSPORTATION

DocuSigned by:
By: Kyle A. Hall
515A1171F8B9483...
Kyle Hall
Director, Bureau of Maintenance and Operations
Duly authorized

Date: 12/22/2022

**TOWN OF BELGRADE
BOARD OF SELECTPERSONS**

DocuSigned by:
By: Melanie Jewell
3ACF887F518844E...
Melanie Jewell, Chairperson

Date: 12/26/2022

DocuSigned by:
By: Barbara Allen
042EE015599B4C1...
Barbara Allen, Vice-Chair

Date: 12/29/2022

DocuSigned by:
By: Daniel Newman
B7983C91CB7545C...
Daniel Newman, Member

Date: 1/3/2023

DocuSigned by:
By: Carol Johnson
B5003B00A2B946B...
Carol Johnson, Member

EXHIBIT A

