

MARK DION (MAYOR)
PIOUS ALI (A/L)
APRIL FOURNIER (A/L)
BENJAMIN GRANT (A/L)



SARAH MICHNIEWICZ (1)
WESLEY PELLETIER (2)
REGINA L. PHILLIPS (3)
ANNA BULLETT (4)
KATE SYKES (5)

VIRTUAL SPECIAL CITY COUNCIL MEETING - NOVEMBER 10, 2025

The Portland City Council will hold a City Council Meeting via Zoom. The Honorable Mark Dion, Mayor, will preside.

To submit written public comment on an agenda item, email publiccomment@portlandmaine.gov. Submissions must be received by 12:00 pm the day before the Council meeting to guarantee their inclusion in the agenda packet. All submissions must include the commenter's name and legal address. To help ensure your comment is submitted for the correct item, please include the order number (see below).

The City Council will conduct this meeting via Zoom pursuant to the Remote Meeting Policy adopted by the Portland City Council. If you are unable to attend live, a recording will be available in the [Agenda Center](#) following the meeting. For public comment via Zoom, you will need to use the "raise your hand" feature. To raise your hand via the telephone, please hit *9. You will be unmuted by the host when it is time for public comment.

<https://portlandmaine-gov.zoom.us/j/81325858993?pwd=oFKc2lrVbSkEpyy27Ymvf95Vl1ZQ0U.1>

PLEDGE OF ALLEGIANCE:

ROLL CALL:

5:00 P.M. PUBLIC COMMENT PERIOD ON NON-AGENDA ITEMS:

ANNOUNCEMENTS:

APPROVAL OF MINUTES OF PREVIOUS MEETING:

EXECUTIVE SESSION:

In accordance with 1 M.R.S. section 405(6)(D) and (E), the City Council is expected to hold an executive session to (1) discuss and provide guidance to City staff on negotiation of the City's collective bargaining agreement with the Local 740, International Association of Firefighters, AFL-CIO, and (2) consult with its attorneys about joining a class action suit regarding Per- and polyfluoroalkyl substances (PFAS) at the Jetport and other City properties if applicable.

RESOLUTIONS:

Resolve 5-25/26 Authorizing the City to Enter into Litigation Regarding Per- and Polyfluoroalkyl Substances (PFAS) Contamination and Approving Legal Services Agreement with SL Law Group PC - Sponsored by Michael Goldman, Corporation Counsel

This Resolve authorizes Corporation Counsel to engage the services of a consortium of firms: SL Environmental Law Group PC, Madonna & Madonna LLP, Douglas and

London, P.C., Taft Stettinius & Hollister, LLP, and Levin Papantonio Proctor Buchanan O'Brien Barr Mougey, P.A., to pursue potential claims, and possibly pursuing civil action, against responsible parties regarding contamination of soil, surface water, and/or groundwater with per- and polyfluoroalkyl substances (PFAS).

Five affirmative votes are required for passage after public comment.

ADJOURNMENT:

MEMORANDUM
City Council Agenda Item

FROM:

DATE: October 7, 2025

SUBJECT: Resolve 5-25/26 Authorizing the City to Enter into Litigation Regarding Per- and Polyfluoroalkyl Substances (PFAS) Contamination and Approving Legal Services Agreement with SL Law Group PC - Sponsored by Michael Goldman, Corporation Counsel

SPONSOR: The Mayor, City Manager, City Clerk, Corporation Counsel, the Planning Board, or up to three (3) members of the Council shall sponsor any orders or other items. If sponsored by a Council Committee, please include the date the committee met and the results of the vote.

(If sponsored by a Council committee, include the date the committee met and the results of the vote.)

COUNCIL MEETING DATE ACTION IS REQUESTED:

1st Reading

**Final
Action**

Can action be taken at a later date: No If action cannot be taken at a later date, please explain why. Do NOT write yes or no; that will be automatically generated by the checkbox.

Does this item involve a new contract with the City: Yes

PRESENTATION: Please list the presenter(s), type, and length of presentation

I. SUMMARY

II. AGENDA DESCRIPTION

This Resolve authorizes Corporation Counsel to engage the services of a consortium of firms: SL Environmental Law Group PC, Madonna & Madonna LLP, Douglas and London, P.C., Taft Stettinius & Hollister, LLP, and Levin Papantonio Proctor Buchanan O'Brien Barr Mougey, P.A., to pursue potential claims, and possibly pursuing civil action, against responsible parties regarding contamination of soil, surface water, and/or groundwater with per- and polyfluoroalkyl substances (PFAS).

Five affirmative votes are required for passage after public comment.

III. BACKGROUND

Background information that will not appear in the Agenda Description

IV. INTENDED RESULT AND/OR COUNCIL GOAL ADDRESSED

V. FINANCIAL IMPACT

Please indicate whether or not there is a financial impact. Please note that per Council Rule 12, this form must have "a separate fiscal impact statement memo attached if the impact of the item is \$50,000 or more in a given fiscal year. This memo shall include details and information describing the fiscal impact including, but not limited to, projected costs, revenues or savings over a three (3) year period and/or any potential impacts on the City tax levy."

VI. STAFF ANALYSIS AND BACKGROUND

Staff Analysis that will not appear in the Agenda Description.

VII. RECOMMENDATION

VIII. LIST ATTACHMENTS

1. Resolution - PFAS Litigation
2. Legal Services Agreement - clean for council 110525

Prepared by:

Date: 10/07/2025

MARK DION (MAYOR)
PIOUS ALI (A/L)
APRIL D. FOURNIER (A/L)
BENJAMIN GRANT (A/L)

**CITY OF PORTLAND
IN THE CITY COUNCIL**

SARAH MICHNIEWICZ (1)
WESLEY PELLETIER (2)
REGINA L. PHILLIPS (3)
ANNA BULLETT (4)
KATE SYKES (5)

**RESOLUTION AUTHORIZING THE CITY TO ENTER INTO LITIGATION
REGARDING PER- AND POLYFLUOROALKYL SUBSTANCES (PFAS)
CONTAMINATION AND APPROVING LEGAL SERVICES AGREEMENT WITH SL
LAW GROUP PC**

WHEREAS, As a result of the federally mandated use of aqueous film-forming foam (“AFFF”) at the Portland Jetport and the potential release of AFFF at other City-owned property, the City is concerned about the presence of per- and polyfluoroalkyl (“PFAS”) compounds in soil, surface water, and/or groundwater within the City, posing a threat to the City's natural resources and infrastructure; and

WHEREAS, the City faces, and will continue to face, significant financial costs associated with the investigation, assessment, engineering, construction, operation, and maintenance of systems required to treat, remediate, and manage this contamination; and

WHEREAS, the City is obligated to protect its municipal infrastructure, natural resources, and the public health and welfare of its residents; and

WHEREAS, the City has identified potential legal claims against the parties responsible for the PFAS contamination; and

WHEREAS, the City, through its Corporation Counsel, has negotiated a Legal Services Agreement with a consortium of firms, including SL Environmental Law Group PC, Madonna & Madonna LLP, Douglas and London, P.C., Taft Stettinius & Hollister, LLP, and Levin Papantonio Proctor Buchanan O’Brien Barr Mougey, P.A. (collectively, the "Firms"), to pursue these claims on a contingent fee basis.

NOW, THEREFORE, BE IT RESOLVED, that the Portland City Council and Mayor hereby:

1. Authorize the Corporation Counsel and the City Manager to engage the services of SL Environmental Law Group PC, Madonna & Madonna LLP, Douglas and London, P.C., Taft Stettinius & Hollister, LLP, and Levin Papantonio Proctor Buchanan O’Brien Barr Mougey, P.A., on behalf of the

City of Portland with respect to prosecution of any legal claims against the responsible parties of PFAS contamination on behalf of the City of Portland; and

2. Approve the Legal Services Agreement between the City of Portland and SL Environmental Law Group PC, Madonna & Madonna LLP, Douglas and London, P.C., Taft Stettinius & Hollister, LLP, and Levin Papantonio Proctor Buchanan O'Brien Barr Mougey, P.A., in substantially the form attached hereto; and
3. Authorize the Corporation Counsel or designee to execute the aforementioned Legal Services Agreement and any other documents necessary to effect the intent and purpose of this Resolution.

LEGAL SERVICES AGREEMENT

I. INTRODUCTION

A. RECITALS.

1. This Legal Services Agreement (“LSA” or “Agreement”) is made by and among the City of Portland, Maine (the “City”), SL Environmental Law Group PC (“SL”), Madonna & Madonna LLP (“KM”), Douglas and London, P.C. (“D&L”), Taft Stettinius & Hollister, LLP (“Taft”), and Levin Papantonio Proctor Buchanan O’Brien Barr Mougey, P.A. (“Levin Papantonio”). SL, KM, D&L, Taft, and Levin Papantonio are collectively referred to as the “Firms.” The Firms and the City are collectively referred to as the “Parties.”

2. The purpose of this LSA is (i) to enter into an attorney-client relationship between the City and the Firms for the purpose of investigating and assessing potential claims arising out of the presence of per- and polyfluoroalkyl substances (“PFAS”) contaminants in soil, surface water, or groundwater at the Portland Jetport or other City properties; and (ii) to provide for the terms and conditions for the representation of the City in any civil action that may be filed in one or more state trial courts or the United States City Court (“Legal Action”).

3. This Agreement is required by California Business and Professions Code section 6147 and other applicable state laws, regulations or rules relating to contingent fee agreements, including in the State of Maine, and is intended to fulfill any and all applicable requirements that contingent fee agreements be in writing.

II. INVESTIGATION AND ASSESSMENT OF POTENTIAL CLAIMS

A. PRE-LITIGATION SCOPE OF SERVICES.

1. **Contaminants.** As a result of the federally mandated use of aqueous film-forming foam (“AFFF”) at the Portland Jetport (“Jetport”), and the potential release of AFFF at other City-owned property, the City is concerned about the presence of PFAS compounds in soil, surface water, and/or groundwater (the “Contaminants” or “Contamination”). The investigation of, or the engineering, construction, operation and maintenance of systems to treat this Contamination has the potential to result in significant financial costs to the City.

2. **Investigation.** The City has retained the Firms to assist it in investigating the potential presence of the Contaminants throughout the soil, surface water, and groundwater, and potential sources of the Contamination, at the Jetport and other City-owned property, evaluating the potential to recover the costs associated with the Contamination, providing legal advice associated with potential causes of action that could be asserted against responsible parties, and representing the City in any Legal Action against parties potentially responsible for the Contamination.

B. PRE-LITIGATION COSTS AND FEES.

1. **The City.** All pre-litigation costs associated with sampling, laboratory testing and engineering expenses incurred in the ordinary course of operations shall be paid directly by the City.

2. ***The Firms.*** Though no pre-litigation costs are anticipated, all costs and fees incurred by, or at the direction of, the Firms during any pre-litigation investigation shall be paid directly by the Firms.

3. ***Recovery of Pre-Litigation Costs and Fees.*** Nothing contained herein should be interpreted to preclude seeking recovery of such fees and costs incurred by any Party from defendants in any Legal Action that may be filed pursuant to this Agreement. In addition, if the Firms file any Legal Action, the Firms may use the time incurred for any investigation contemplated herein to support the reasonableness of this Agreement.

C. RETENTION OF FIRM RATHER THAN PARTICULAR ATTORNEYS.

The City is retaining the Firms, not any particular attorney, and attorney services to be provided to the City shall not necessarily be performed by any particular attorney.

D. DESIGNATION.

The Firms and the City will designate specific points of contact to coordinate various stages of investigation and litigation. These designations are intended to establish a clear line of communication and to minimize potential uncertainty, but not to preclude communication between the City and the Firms.

III. LITIGATION SERVICES

A. LITIGATION SERVICES TO BE PROVIDED.

1. ***Inclusions.*** It is the intent of the Parties that the Firms shall represent the City in a one or more civil actions for damages, to be approved by the City, in one or more state trial courts and/or the United States District Court as well as in any proceeding by writ or appeal related to that action. The legal services to be provided by the Firms consist of representation of the City with respect to:

a. The contamination of soil, surface water, and/or groundwater by the Contaminants at the Jetport, or other City properties identified during the investigation stage described in Section II of this Agreement, as approved by the City and the Firms.

b. Claims and/or actions for damages sustained by the City as a result of, among other things: actual or threatened conduct relating to contamination of soil, surface water or groundwater; indemnification for claims brought against the City for past or future contaminated discharges; and any past, present, and future costs incurred to construct and maintain systems that can remove the Contaminants from soil, surface water, or groundwater, and any related appeals in such actions.

2. ***Retention; Filing of Legal Action.*** The filing of any Legal Action pursuant to this Agreement shall be at the discretion of the Parties and subject to the approval of the City Council. Nothing in this Agreement shall be construed as obligating the City to retain the Firms in connection with any Legal Action or obligating the Firms to file a Legal Action or any

appeal on behalf of the City.

B. LEGAL SERVICES SPECIFICALLY EXCLUDED.

1. ***Exclusions.*** Legal services that are not to be provided by the Firms under this Agreement specifically include, but are not limited to, the following:

a. Proceedings before any administrative or governmental agency, department or board. However, at the City's request, the Firms (via relevant designees) shall endeavor to appear at such administrative proceedings to assist legal counsel for the City in resolving administrative matters with the potential to affect, adversely or beneficially, the City's prospects of recovery in the Legal Action. Such assistance will be provided by the Firms without the City being assessed any additional attorneys' fees in connection with such appearance. This provision shall not exclude naming an administrative or governmental agency, department, or board as a party in a Legal Action.

b. Defending any legal action(s) against the City commenced by any person, with the exception of any cross-complaints, counterclaims, or other third-party claims filed in or arising from the Legal Action initiated pursuant to this Agreement.

c. Defending any claim against the City for unreasonable use of water and/or waste of water.

d. Defending any action concerning water rights.

2. ***Additional Legal Services.*** If the City wishes to retain the Firms to provide any legal services for additional compensation not provided under this Agreement, a separate written agreement between the Firms, the City shall be required.

C. RESPONSIBILITIES OF THE FIRMS, THE CITY.

1. ***The Firms' Responsibilities.*** The Firms shall perform the legal services called for under this Agreement, keep the City informed of progress and developments, respond promptly to the City's inquiries and communications, and attend meetings with City officials as may be necessary to keep the City informed. The Firms shall provide status reports to the City on a mutually agreeable schedule, as events reasonably warrant further reporting, and at the further request of the City.

2. ***The City's Responsibilities.*** The City shall cooperate, coordinate, support and assist with the Firms' litigation efforts and keep the Firms reasonably informed of developments in connection with any Legal Action.

3. ***Selection of Experts.*** The Firms and the City shall meet and confer regarding selection and retention of experts in the Legal Action. The City shall not unreasonably withhold approval of selection and retention of such experts.

4. ***Settlement.*** The Firms shall not settle any Legal Action without the approval of the City. The City shall have the absolute right to accept or reject any settlement. The Firms shall notify the City promptly of the terms of any settlement offer received by the Firms.

5. ***The City's Agreement Not to Use, Share, or Disclose the Firms' Materials and Work Product Outside the Context of this Legal Action.*** Except as may be required by law, the City agrees that it shall not use or disclose in any legal proceeding, case, or other context of any kind, other than this Legal Action, or share or disclose to any person not a Party to this Agreement, any documents, work product, or other information made available to or to which the City or its counsel acquire access through the Firms or any co-counsel of the Firms, including any fact or expert materials produced and/or generated in any prior discovery proceedings in any litigation involving E. I. du Pont de Nemours and Company, The Chemours Company, and/or the 3M Company, without the express written prior approval and consent of the Firms and all such other co-counsel of the Firms, except that: A) documents, work product, or other information that was obtained or created specifically as part of the Firms' work for the City shall be provided to the City upon request; and B) the City shall have the right to obtain, and the restrictions set forth in this paragraph shall not apply to, documents, work product, or other information which the City has paid or reimbursed the Firms for the cost of producing. This paragraph does not limit the City from sharing information pertaining to the litigation with the City Council, City Legal Counsel, City Departments and/or City personnel with a need to know such information.

D. ATTORNEYS' FEES.

1. ***Contingent Fee.*** The amount the Firms shall receive as fee for the legal services provided under this Agreement shall consist of a contingent fee ("Contingent Fee"), which shall be calculated as follows: for any settlement or judgment, twenty-five percent (25%) of the Gross Recovery (as defined below).

2. ***Definitions Relevant to Attorneys' Fees.***

a. "Gross Recovery" means the total value received by the City of all Cash Recoveries plus Non-Cash Recoveries, whether awarded by Settlement or Final Judgment.

b. "Net Recovery" means the total value received by the City after the payment of attorney fees and costs.

c. "Costs" include, but are not limited to, court filing fees, deposition costs, expert fees and expenses, investigation costs, reasonable travel and hotel expenses, messenger service fees, photocopying expenses, and process server fees. Items that are not to be considered Costs, and that must be paid by the City without being either advanced or contributed to by the Firms, include the City's expenses incurred in providing information to the Firms or defendants or as part of investigation(s).

d. "Final Judgment" means any final, non-appealable court order or judgment terminating any Legal Action filed pursuant to this Agreement and finally determining the rights of any parties to the Legal Action where no issue is left for future consideration or appeal.

e. “Settlement” refers to any voluntary agreement executed by the City and any third party to this Agreement, whether resulting from a settlement conference, mediation, or court stipulation, terminating any Legal Action filed pursuant to this Agreement and finally determining the rights of parties to the Legal Action where no issue is left for future consideration or appeal.

f. “Cash Recovery” means, without limitation, the total monetary amount received by the City in a Settlement or Final Judgment arising from an actual or threatened Legal Action by the Firms pursuant to this Agreement, including interest of any kind received by the City. “Cash Recovery” does not include any Sanctions (as defined below) or civil penalties that may be awarded under Maine law or similar laws in other state jurisdictions.

g. “Non-Cash Recovery” means, without limitation, the fair market value of any property delivered to the City, any services rendered for the City’s benefit, and any other non- cash benefit, including but not limited to the construction, operation, and maintenance of one or more water treatment facilities; delivery of replacement water; modification, alteration, construction or operation of surface water intake(s) and/or any part of a public or private water system; or any other types of injunctive and/or equitable relief conferred on the City, in a Settlement or Final Judgment of an actual or threatened Legal Action by the Firms pursuant to this Agreement.

h. “Present Value” means the interest rate of the one-year treasury bill as reported by the United States Federal Reserve in the weekly Federal Reserve Statistical Release closest in time to the date of the recovery for which the present value is being calculated.

i. “Sanctions” means a monetary award or the settlement of a monetary award arising from the discovery abuse or other misconduct of a defendant or a defendant’s attorneys in the Litigation, such a frivolous motions, objections or defenses, or other discovery abuses.

j. “Reasonable Fees” or “Reasonable Attorney’s Fee” shall mean such fees as is reasonably determined by taking into account the amount of time spent on the Legal Action by the Firms and associate counsel retained by the Firms, the value of that time, the complexity of the Legal Action, the benefit conferred on the City, and the financial risk to the Firms and associate counsel by their agreeing to represent the City in the Legal Action and to invest time and advance Costs without compensation or reimbursement in the event that there is no Gross Recovery or a Recovery that does not fully compensate or reimburse the Firms and associate counsel for their time and advanced Costs. Subject to Section III.E.2, below, in no event shall Reasonable Fees or a Reasonable Attorney’s Fee exceed twenty-five percent (25%) of the Gross Recovery.

3. ***Calculation of Non-Cash Recovery.***

a. For any Non-Cash Recovery resulting in the receipt of property, the provision of services, or the receipt of other non-monetary benefits by the City, such property, services, or other non-monetary benefits shall be deemed for purposes of this Agreement to have been received by the City upon the execution of a Settlement or Final Judgment. The value of the services shall be discounted to Present Value.

b. If any Non-Cash Recovery is awarded in a Final Judgment, or before accepting any settlement offer that involves a Non-Cash Recovery, the City shall provide the Firms

with its estimate of the value of the Non-Cash Recovery. The Firms shall promptly respond in writing, indicating whether the Firms accept said estimate. If the Firms object to the City's estimate, the Parties shall proceed as set forth in Section III.G ("Disagreements Concerning Value of Recoveries"). Nothing herein shall impede or restrict the City's right to include a Non-Cash Recovery in any Settlement, nor the Firms' right to receive a Non-Cash Recovery.

E. DISTRIBUTION OF PROCEEDS.

1. The receipt of any Gross Recovery or portion thereof on behalf of the City shall be received into one of the Firms IOLTA accounts. Once cleared, payment(s) of the Contingent Fee owed to the Firms in accordance with Agreement shall be made no later than seven (7) days after receipt by the City of any Gross Recovery. In the event that there is a Final Judgment of all claims against all defendants and payment has been received by the City, except there remains in dispute and Final Judgment has not been obtained on a claim for court-awarded costs or attorneys' fees against the defendants, the City will make payment of the Contingent Fee to the Firms based on the Gross Recovery then paid by the defendants and received by the City. In this scenario, the Firms will continue the litigation on behalf of the City on the remaining issues of court-awarded costs or attorneys' fees, and the City shall not be obligated to make any additional payment to the Firms based on any award of costs or fees ultimately made. Any court-awarded costs or attorneys' fees, including any costs or fees arising out of any court-imposed sanctions, received by the Firms as part of the Legal Action shall not be treated as part of the Gross Recovery, but shall, in the case of costs, be credited against corresponding costs incurred by the Firms on the City's behalf, or, in the case of fees, credited against the Contingent Fee. To the extent that the City has previously made payment towards the Contingent Fee in excess of the amount owed (after any credits are made), the Firms shall return such excess to the City.

2. The Legal Action may become part of a Federal MultiDistrict Litigation ("MDL") docket, on which one or more attorneys from the Firms currently, or will in the future, serve on plaintiff management or executive committees, performing work that benefits multiple clients of the Firms, as well as clients of other attorneys involved in similar litigation. As a result, the court or courts where an MDL is pending may order that one or more of the Firms is to receive additional compensation for time and effort which has benefitted all claimants in the MDL. Compensation for this work and effort, known as "common benefit work," may be awarded to Attorneys and paid out of the MDL court's assessments against settlements, including settlements on behalf of the City and others who have filed claims that are pending in the MDL court. This common benefit compensation is separate and distinct from any Contingent Fee owed under this Agreement.

F. REASONABLE FEE IF CONTINGENT FEE UNENFORCEABLE.

1. ***Reasonable Fee.*** In the event of a Final Judgment finding that the Contingent Fee portion of this Agreement is unenforceable for any reason or that the Firms cannot represent the City on a Contingent Fee basis, and provided that the City has received the Gross Recovery, the City shall, after a good faith meet and confer process, pay the Firms a Reasonable Fee for the services rendered.

2. ***Fee Determination.*** Whenever applicable, the Parties shall use best efforts to negotiate a Reasonable Fee. If the Parties fail to do so, said fee shall be determined by arbitration proceedings before a mutually agreeable arbitration service, but absent such agreement, before the Judicial Arbitration and Mediation Services (JAMS), with any costs of

such proceedings borne by the City and the Firms.

G. DISAGREEMENTS CONCERNING VALUE OF RECOVERIES.

1. ***Procedure.*** In the event the Parties disagree with respect to the value of any Contingent Fee, Net Recovery, Cash or Non-Cash Recovery, Costs (collectively, “Disputed Recoveries”) or settlement offer, and the Parties cannot resolve the disagreement through good faith negotiations, the Parties shall proceed as follows:

a. Each party shall select an appraiser qualified to conduct an appraisal of the value of the Disputed Recoveries or settlement offer within five (5) days of any written notice to the other party advising of a bona fide dispute that cannot be resolved by negotiations.

b. Each party’s selected appraiser shall then confer and select a third qualified appraiser within five (5) days of said conference, and the third appraiser shall determine the value of the Disputed Recoveries or settlement offer.

c. The third party appraiser shall conduct an appraisal, and the valuation of any Disputed Recoveries or settlement offer shall be final and binding, subject to appeal by arbitration in the case of Disputed Recoveries as provided in Section VI.I (“Arbitration of Disputes”).

2. ***Expenses.*** The City and the Firms shall each bear the expense of their own selected appraiser, and the City and the Firms shall each pay one-half of the expenses of the third appraiser.

H. NEGOTIATED FEE. The City is informed that the Attorneys’ Fees provided for herein are not set by law but rather are negotiable between the Firms, the City and their respective counsel.

I. DIVISION OF ATTORNEYS’ FEES.

1. ***Division of Fees; Disclosure.*** The Firms may divide the fees and/or costs to which it is entitled under this Agreement with another attorney or law firm retained as associate counsel. The terms of such additional division, if any, shall be disclosed to the City. The City is informed that, under the Rules of Professional Conduct of the State Bar of California, such a division may be made only with the City’s written consent after a full disclosure to the City in writing that a division of fees shall be made and of the terms of such division. The division of fees among the Firms will be provided by a separate document to the City.

2. ***Retention of Associate Counsel.*** The Firms may retain associate counsel to assist with litigating a Legal Action pursuant to this Agreement. The attorney or law firm selected by the Firms shall be subject to the City’s approval.

J. COSTS.

1. ***Costs Advanced by the Firms.*** The Firms shall advance all Costs incurred in connection with the Firms' representation of the City under this Agreement. Costs shall be advanced by the Firms and then paid by the City from any Gross Recovery, subject to the limitations and allocation of cost methodology described in Section E. The Firms shall notify the City of the total amount of Costs advanced every quarter.

2. ***Apportionment of Costs.*** The City acknowledges and agrees that Costs may include expenses that benefit both the City and other clients of the Firms who are investigating or litigating claims similar to those brought on behalf of the City in the Legal Action, including but not limited to the expenses of taking discovery, conducting investigations, and hiring expert witnesses. The expenses that benefit both the City and other clients will be allocated among cases pending at the time of settlement or judgment that have not yet received final judgment such that the City is responsible for only that the portion of such expenses reasonably attributable to the expenses of conducting the Legal Action on behalf of the City, and only that portion attributable to City shall be treated as Costs in the event of a Net Recovery.

3. ***Reimbursement; Risk of Loss.*** The Firms shall be reimbursed for any Costs that are the responsibility of the City before any distribution to the City. If there is no Cash Recovery or the Gross Recovery is insufficient to reimburse the Firms in full for the Costs advanced, the Firms shall bear the loss for any Costs not reimbursed under this Agreement.

4. ***Defense of Attorneys' Fees and Costs to Third Party.*** Notwithstanding any provision of this Agreement to the contrary, the Firms shall defend the City in any motion seeking an award of Attorneys' Fees or costs against the City in any Legal Action brought under this Agreement. Any costs so awarded shall be treated as Costs for purposes of, and in the manner provided by, this Agreement, with the exception of (a) litigation costs awarded under 28 U.S.C. § 1920, Fed. R. Civ. P. 54(d), or any similar provision of state law awarding costs to the prevailing party in litigation, which shall be borne solely by the City and (b) costs awarded against the Firms for their violation of Fed. R. Civ. P. 11 (or any similar provision of state law prohibiting the making of groundless or frivolous arguments or claims) or the Rules of Professional Conduct, which shall be borne solely by the Firms.

IV. REPRESENTATION OF ADVERSE INTERESTS

A. DISCLOSURE.

1. ***Duty to Disclose; No Conflicts Identified.*** If any of the Firms have a relationship with another party with interests adverse to the City, or with someone who would be substantially affected by any action taken under this Agreement, the Rules of Professional Conduct require the Firms to disclose that to the City so the City can evaluate whether that relationship causes the City to have any concerns regarding any of the Firms' loyalty, objectivity, or ability to protect the City's confidential information.

2. ***Representation of Other Clients; Waiver of Potential Conflicts.***

a. The City understand that currently, and from time to time, the Firms represent other municipalities, governmental agencies, governmental subdivisions, or investor-owned

public drinking water and wastewater utilities in other actions or similar litigation, and that such work is the focus of the Firms' practice. Further, the City understands that the Firms represent other clients in actions similar to what would be brought under this Agreement and against the same potential defendants. The City understands that a recovery obtained on behalf of another client in a similar suit against the same defendants could, in theory, reduce the total pool of funds available from these same defendants to pay damages in a Legal Action brought under this Agreement. The City understands that the Firms would not take on this engagement if the City required the Firms to forgo representations like those described above. The City has conferred with its own separate and independent counsel about this matter, and has determined that it is in its own best interests to waive any and all potential or actual conflicts of interest that may occur as the result of the Firms' current and continuing representation of cities and other wastewater treaters, as well as drinking water suppliers, in similar litigation, because such waiver enables the City to obtain the benefits of the Firms' experience and expertise.

b. The City consents that the Firms may continue to handle such work, and may take on similar new clients and matters without disclosing each such new matter to the City or seeking the consent of the City while representing it.

c. The Firms shall not, of course, take on such other work if it requires the Firms to be directly adverse to the City while the Firms are still representing the City under this Agreement.

V. TERMINATION

A. DISCHARGE OF ATTORNEY.

1. ***Right to Discharge.*** The City may discharge the Firms at any time, with or without cause, by written notice effective when received by the Firms. The City shall have the right to terminate this Agreement with cause upon the Firms breach of this Agreement or its failure to strictly adhere to the California Rules of Professional Conduct or other applicable state Rules of Professional Conduct. Unless specifically agreed by the Firms and the City, the Firms shall provide no further services and advance no further Costs on the City's behalf after receipt of the notice of discharge. If any or all of the Firms are the City's attorney of record in any proceeding, the City shall execute and return a substitution-of-attorney form within a reasonable time after receipt from the Firms.

2. ***Reimbursement of Costs; Fees.*** In the event the Firms are discharged without cause before the conclusion of a Legal Action, the City shall (i) reimburse the Firms for any and all Costs advanced by the Firms for such Legal Action not later than thirty (30) days from receipt of a reasonably detailed final cost accounting from the Firms, and (ii) upon the conclusion of the Legal Action, pay the Firms a Reasonable Attorneys' Fee for services performed up to the point of the discharge. Nothing herein shall be construed to limit the City's rights and remedies in the event of a discharge of the Firms for cause, and the City reserves the right to withhold payment of attorney's fees to the Firms to the extent that the Firms are discharged by the City for good cause. For purposes of this Section V(A), the term "for cause" shall mean where the Firms have breached this Agreement or otherwise failed to provide legal services that meet professional standards.

B. WITHDRAWAL OF ATTORNEY.

1. ***Right to Withdraw.*** The Firms may withdraw from representation of the City (i) with the City's consent, (ii) upon court approval, or (iii) if no Legal Action is filed, for good cause upon reasonable notice to the City. Good cause includes the City's material breach of this Agreement, the City's unreasonable refusal to cooperate with the Firms or to follow the Firms' advice on a material matter after elevation of the matter to the Portland City Council, or any other fact or circumstance that would render the Firms' continuing representation unlawful or unethical. Notwithstanding the Firms' withdrawal for good cause, the City shall remain obligated to pay the Firms and any associated counsel, out of the Gross Recovery if there is a recovery at the time of withdrawal, a Reasonable Fee for all services provided and to reimburse the Firms for all reasonable Costs advanced before the withdrawal.

2. ***Withdrawal Without Cause.***

a. The Firms may terminate this Agreement at any time, without cause, by giving the City not less than sixty (60) days prior written notice of termination, said notice to specify the effective date of the termination and provide for a reasonable transition of the case, without prejudice to the City, to qualified replacement counsel. Where the Firms terminate this Agreement without cause, the Firms shall not be entitled to the recovery of any amount or Costs incurred, regardless of the status of any pending Legal Action, and regardless of whether any amounts have been or are subsequently received by the City.

b. Any withdrawal by the Firms, with or without cause, shall be subject to California Rules of Professional Conduct, Rule 3-700 which specifies that an attorney "shall not withdraw from employment until [he/she] has taken reasonable steps to avoid reasonably foreseeable prejudice to the rights of the client, including giving due notice to the client [and] allowing time for employment of new counsel..." or other applicable state Rules of Professional Conduct.

VI. MISCELLANEOUS

A. LIEN. The City hereby grants the Firms a lien, to the extent allowed under Maine law, on any and all claims or causes of action that are the subject of the Firms' Contingent Fee and/or Costs advanced under this Agreement. The Firms' lien shall be for sums owed to the Firms at the conclusion of the Firms' services. The lien shall attach to any Gross Recovery the City may obtain.

B. RELEASE OF THE CITY'S PAPERS AND PROPERTY. Upon the conclusion of services under this Agreement, the Firms shall release promptly to the City on request all of the City's papers and property. "The City's papers and property" includes correspondence, deposition transcripts, exhibits, experts' reports, legal documents, physical evidence, and other items reasonably necessary to the City's representation, regardless of whether the City has paid for said documents or property. The Firms' obligations under this section shall not be contingent upon payment of any claimed fees.

C. INDEPENDENT CONTRACTOR. The relationship to the City of the Firms, and any associate counsel or paralegal provided through the Firms, in the performance of services hereunder, is that of independent contractor and not that of employee of the City, and no other wording of this Agreement shall stand in derogation. The fees and expenses paid to the Firms hereunder shall be deemed revenues or expense reimbursements of the Firms' offices practices and

not remuneration for individual employment apart from the business of the individual Firm's law offices.

D. DISCLAIMER OF GUARANTEE. Although the Firms may offer an opinion about possible results regarding the subject matter of this Agreement, the Firms cannot guarantee any particular result. The City acknowledges that none of the Firms have made promises about the outcome and that any opinion offered by the Firms in the future shall not constitute a guarantee.

E. ENTIRE AGREEMENT. This Agreement contains the entire agreement of the parties. No other agreement, statement, or promise made on or before the effective date of this Agreement shall be binding on the parties.

F. SEVERABILITY IN EVENT OF PARTIAL INVALIDITY. If any provision of this Agreement is held in whole or in part to be unenforceable for any reason, the remainder of that provision and of the entire agreement shall be severable and remain in effect.

G. MODIFICATION BY SUBSEQUENT AGREEMENT. This Agreement may be modified by subsequent agreement of the parties only by an instrument in writing, approved and executed in the same manner as the initial Agreement.

H. RECITALS; TITLES, SUBTITLES, HEADINGS. The recitals to this Agreement are part of this Agreement, but all titles, subtitles, or headings in this Agreement have been inserted for convenience and shall not be deemed to affect the meaning or construction of any of the terms or provisions of this Agreement.

I. ARBITRATION OF DISPUTES. Notwithstanding any other provision of this Agreement, any disputes relating to the Firms' Contingent Fee and/or arising out of this Agreement may first be submitted to the Maine State Bar's program for arbitration of fee disputes. If a fee dispute arises, the Firms shall provide the City with information about the State Bar program.

J. VENUE IN ACTION ON AGREEMENT. In any dispute relating to the Contingent Fee or other dispute arising out of this Agreement, the venue shall be any court of competent jurisdiction located in the State of Maine.

K. GOVERNING LAW. The terms and provisions of this Agreement and the performance of the parties hereunder shall be interpreted in accordance with, and governed by, the laws of the State of Maine.

L. EFFECTIVE DATE OF AGREEMENT. The effective date of this Agreement shall be the date when last executed by all of the Parties. Once effective, this Agreement shall, however, apply to services provided by the Firms on this matter before its effective date.

M. AUTHORITY OF PARTIES. Each of the signatories to this Agreement warrants that he or she has the authority to enter into and execute this Agreement and to bind the entity or entities on whose behalf each sign.

N. EXECUTION. This Agreement may be executed by transmittal of electronic (.pdf) signature counterparts.

The foregoing is agreed to by:

CITY OF PORTLAND

By: _____

Date

THE FIRMS:

SL Environmental Law Group PC
Alexander Leff

Date

Taft Stettinius & Hollister LLP
Robert A. Bilott

Date

Douglas & London
Michael A. London

Date

Levin Papantonio Proctor
Buchanan O'Brien Barr Mougey, P.A.
Ned McWilliams

Date

Madonna & Madonna LLP
Kevin J. Madonna

Date