

LEASE AGREEMENT

1. **Date and Parties.** The date of this Agreement is _____, 2018. It is made by and between the PORTLAND WATER DISTRICT, a quasi-municipal corporation existing under the laws of the State of Maine and located in Portland, County of Cumberland and State of Maine, hereinafter called the ***Landlord***, and the TOWN OF STANDISH, a Maine municipality corporation, of Standish, County of Cumberland and State of Maine, hereinafter called the ***Tenant***.

2. **Premises.** Subject to the terms and conditions of this Agreement, Landlord agrees to lease to Tenant and Tenant agrees to take and lease from Landlord certain real property off Route 35/Chadbourne Road identified as a portion of Tax Map 14, Lot 42 in Standish, Maine (hereinafter the "Premises"), more particularly described in Exhibit A, attached hereto and incorporated herein by reference.

3. **Term.** The commencement date of this Agreement is the date written above (hereinafter the "Commencement Date"). The term of this Agreement shall be twenty-five (25) years from the Commencement Date, unless sooner terminated as provided herein. Within six (6) months prior to the expiration of the Agreement, Tenant shall inform Landlord, in writing, of its desire either to extend the term of the Agreement for additional 25-year term(s) or terminate the Agreement.

4. **Rent.** Tenant shall pay to Landlord rent of One Dollar (\$1.00), in advance, annually on or before the anniversary of the Commencement Date. Further, Tenant shall allow no lien, claim or other encumbrance on any of Landlord's property at this location or otherwise in connection with this Agreement, and Tenant's failure to remove the same immediately after notice by Landlord shall be cause for immediate termination of this Agreement.

5. **Use.** Tenant may use the Premises to create, operate, repair and maintain a Scenic Overlook (hereinafter "Overlook") to be used by the public. Tenant shall use the Premises for no other purpose without Landlord's prior written consent. Tenant's use of the Premises shall comply with all applicable federal, state and local laws, ordinances, and regulations, including, without limitation, any and all requirements of the Town of Standish regarding land use approvals.

6. **Signage.** Appropriate signage designating the area as a Scenic Overlook, and any other signage regulating the use of the Overlook may be erected and maintained by Tenant, with prior approval of Landlord, which approval shall not be unreasonably

delayed or withheld. Landlord shall also have the right, but not the obligation, to erect a sign indicating its participation in the creation of the Overlook.

7. **Construction of the Overlook.** Landlord and Tenant recognize that the actual construction of the improvements creating the Overlook is governed by a Three-Party Agreement among the Landlord, Tenant and the Maine Department of Transportation of even or near date.

8. **Tenant Obligations.** Tenant shall ensure that the Premises are used, operated and maintained in a safe and responsible manner. Tenant's failure to do so shall be cause for immediate termination of this Agreement, subject to the default and right to cure provisions set forth in Section 17 hereof, at which point all improvements made to the Premises to date become the property of Landlord.

9. **Land Use Approvals.** Tenant agrees to seek and obtain any and all necessary land use approvals and permits from the Town of Standish and the State of Maine, including without limitation, site plan approvals and all other permits, for the construction, repair or maintenance of the Premises.

10. **Personal Property; Fixtures.** The personal property of Tenant that is located or stored at the Premises will remain the personal property of Tenant. Fixtures installed by Tenant shall remain a part of the Premises.

11. **Alterations.** If, in addition to the work referred to in Section 7, Tenant desires to make alterations, installations, improvements, or replacements in, to or about any part of the Premises, Tenant shall only do so with the prior written consent of Landlord and the prior written approval of the plans and specifications therefor by Landlord, which consent will not be unreasonably withheld, conditioned or delayed. Tenant shall complete its leasehold alterations, improvements and any other changes and modifications (all hereinafter referred to as "Tenant's Work") in and on the Premises, at Tenant's sole cost and expense, in accordance with the plans and specifications approved in advance by Landlord. Tenant's Work and all alterations, installations, improvements or replacements to the Premises made by Tenant, including all materials used and incorporated therein, shall become the property of Landlord upon the expiration or termination of this Agreement. Tenant agrees that Tenant's Work and all such alterations, installations, improvements or replacements shall be made in a good and workmanlike manner and in full compliance with all applicable laws, ordinances and regulations.

12. **Taxes, Utilities, Repairs and Maintenance.** All costs of taxes, utilities and maintenance relating to the Premises shall be borne solely by Tenant. Additionally, any tree growth penalty assessed due to this Lease shall be paid by Tenant.

13. Hazardous Materials. Tenant represents, warrants and agrees that its use, maintenance and operation of the Premises shall at all times be in compliance with all applicable federal, state, county or local laws, regulations and ordinances of any governmental authorities relating to Hazardous Materials, as hereinafter defined, and that Tenant, its agents, officers, employees and invitees will not cause any Hazardous Materials to be deposited, discharged, placed or disposed of at the Premises and that the Premises will remain free from Hazardous Materials. Subject to the provisions of the Maine Tort Claims Act, Tenant shall indemnify Landlord, its agents, officers and employees, against and hold them harmless from any and all costs (including reasonable attorneys' fees) and claims of liability or loss which arise out of any occurrence or condition causing the presence of any such Hazardous Materials on the Premises that occurred during the term of this Agreement. As used herein, "Hazardous Materials" shall mean any flammable explosives, radioactive materials, hazardous materials, hazardous waste, hazardous or toxic substances or matter, oil or other petroleum products, underground petroleum storage tanks, asbestos, chemical pollutants or related materials, including as defined in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. §§ 9601 et seq.), the Hazardous Materials Transportation Act, as amended (49 U.S.C. §§ 1801 et seq.), the Resource Conservation and Recovery Act, as amended (42 U.S.C. §§ 6901 et seq.), applicable Maine Statutes (including 38 M.R.S.A. §§ 561 et seq.; 38 M.R.S.A. §§ 1361 et seq.; 38 M.R.S.A. §§ 1301 et seq.; and 38 M.R.S.A. §§ 1317 et seq.), or any similar federal, state or local law in effect from time to time, or in the regulations adopted and publications promulgated pursuant thereto or any other substances or materials promulgated pursuant thereto or any other substances or materials constituting a hazard, peril or threat to the health of persons, animals or plant life.

No herbicides or pesticides shall be used anywhere on the Premises.

14. Insurance and Indemnification. Tenant shall maintain and keep in full force and effect at all times during the term of this Agreement a policy of public liability insurance with an insurance company licensed to do business in the State of Maine covering Landlord and Tenant against claims for loss or injury to persons or property occurring on the Premises. Such insurance coverage will be in at least the amount of \$1 million each occurrence and \$2 million general aggregate for general liability. Tenant shall provide Landlord with a copy of the certificate evidencing such insurance and naming Landlord as an additional named insured upon execution of this Agreement and upon the annual anniversary of the commencement date of this Agreement thereafter. Tenant shall maintain Tenant's own insurance against loss or damage to Tenant's property at the Premises. Tenant shall provide Landlord with written evidence of such property damage/casualty insurance upon execution of this Agreement and upon the annual anniversary of the commencement date of this Agreement thereafter. Landlord will not be liable for any damage or loss to any person or property occurring on said Premises and, subject to the limitations of the Maine Tort Claims Act, Tenant will defend, indemnify and hold harmless Landlord, its agents, officers and employees, against any and all claims

arising from any claims of such liability, unless resulting from the negligence or intentional acts of Landlord or Landlord's agents, officers and employees. All obligations of indemnification contained in this Agreement shall survive any termination of this Agreement.

15. Care of the Premises. Tenant shall, at its own expense, maintain the Premises in a clean and orderly condition, which includes, without limitation, maintaining the grounds, keeping the Premises clean and free from rubbish, trash and garbage, and maintaining any structures and grounds clean and neat in appearance. In the event that Tenant fails to maintain the Premises in accordance with this Section, Landlord may provide written notice of default in accordance with Section 17 hereof. If Tenant fails to take action or cure the breach within fourteen (14) days, Landlord may, without waiving any claims or the right to pursue other default remedies, take steps to restore the Premises to the conditions required by this Lease in Landlord's sole judgment. Tenant shall immediately reimburse Landlord for all reasonable expenses incurred relating to such work.

16. Assignment and Sublet. Tenant shall not be permitted to sublet the Premises nor assign this Lease. Further, Landlord and its agents shall be allowed access to said Premises at all reasonable times.

17. Default. Tenant will be in default under this Agreement if Tenant fails to comply with any terms of this Agreement within fourteen (14) days after Landlord has given written notice of noncompliance or, in the case of a failure which is not by its nature capable of being cured within fourteen (14) days, if Tenant fails to take action to cure the breach within said fourteen (14) days and fails to prosecute the curing of the same diligently to completion.

18. Termination. If Tenant is in default and such default has not been cured as provided in Section 17, Landlord may terminate this Agreement at any time by giving Tenant written notice at least fourteen (14) days in advance. Tenant may terminate this Agreement at any time by giving Landlord written notice at least thirty (30) days in advance. After the termination of this Agreement, Tenant will have a period of fourteen (14) days to remove any of Tenant's personal property (*i.e.*, forty-four (44) days from the date of Tenant's notice of termination, twenty-eight (28) days from the date of receipt of Landlord's notice of termination or fourteen (14) days from the expiration of the then-current term in the event of a non-renewal of the Agreement, as applicable); any personal property remaining thereafter shall be deemed abandoned in favor of Landlord.

19. No Waiver. Failure of Landlord or Tenant to complain of any act or omission on the part of the other no matter how long the same may continue, shall not be deemed to be a waiver by said party of any of its rights hereunder. No waiver by Landlord or Tenant at any time, express or implied, of any breach of any provision of this

Agreement shall be deemed a waiver of a breach of any other provision of this Agreement or constitute a consent to any subsequent breach of the same or any other provision. If any action by either party shall require the consent or approval of the other party, the grant of such consent or approval on any one occasion shall not be deemed a consent to or approval of that action on any subsequent occasion or of any other action on any subsequent occasion.

20. Notices. Any notice required or permitted hereunder shall be deemed sufficient if given in writing and delivered personally or sent by registered or certified mail, return receipt requested, postage prepaid, receipt obtained, to the address shown below or to such other persons or addresses as are specified by similar notice:

Landlord: Portland Water District
Attention: General Manager
225 Douglass Street
P.O. Box 3553
Portland, ME 04104-3553

Tenant: Town of Standish
Attention: Town Manager
175 Northeast Road
Standish, ME 04084

21. Memorandum of Lease. The parties will at any time, at the request of either party, promptly execute duplicate originals of an instrument, in recordable form, that will constitute a memorandum or short form of lease, setting forth a description of the Premises, the term of this Agreement and any other portions hereof as either party may request.

22. Dispute Resolution. The parties have entered into this Agreement in good faith and in the belief that it is mutually advantageous to them. With that same spirit of cooperation, the parties agree to attempt to resolve any dispute amicably without the necessity of litigation. Accordingly, except in the event of an emergency requiring immediate injunctive or other relief, the parties shall endeavor to enter into good faith negotiations and non-binding mediation through a neutral mediator within thirty (30) days (or such greater period as may be agreed to by the parties) of notice of any dispute from the other party in order to attempt to resolve their differences, prior to any litigation. Each party shall bear its own costs and attorney's fees and shall share equally in the costs of the mediator. In the event that litigation cannot be avoided, except as otherwise expressly agreed by the parties in writing, exclusive venue for any civil action shall be in Maine Superior Court (Cumberland County). This Agreement is made and shall be construed under the laws of the State of Maine except any choice of law rule that may direct the application of the laws of any other state or jurisdiction.

23. Extent of Agreement. This Agreement, along with the Three-Party Agreement referred to in Section 7, represents the entire and integrated Agreement between Landlord and Tenant with respect to the subject matter hereof and supersedes all other prior negotiations, representations, or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both Landlord and Tenant.

IN WITNESS WHEREOF, the parties hereto, duly authorized, have executed the same on the date first above written.

WITNESS:

PORTLAND WATER DISTRICT

By: _____

Carrie Lewis

Its General Manager

WITNESS:

TOWN OF STANDISH

By: _____

Kris Tucker

Its Town Manager

STATE OF MAINE

CUMBERLAND, ss.

_____, 2018

Then personally appeared the above named Carrie Lewis, General Manager of the Portland Water District, and acknowledged the foregoing instrument to be her free act and deed and the free act and deed of the Portland Water District.

Before me,

Notary Public/Attorney at Law

Print Name

STATE OF MAINE

CUMBERLAND, ss.

_____, 2018

Then personally appeared the above named Kris Tucker, Town Manager of the Town of Standish, and acknowledged the foregoing instrument to be his free act and deed and the free act and deed of the Town of Standish.

Before me,

Notary Public/Attorney at Law

Print Name

**EXHIBIT A
LAND TO BE LEASED
BY TOWN OF
STANDISH**

