SETTLEMENT AGREEMENT

PARTIES

This Settlement Agreement ("Agreement") is made effective as of December __, 2017 (the "Effective Date") by and between (a) Paige Craford and Millard Christner (collectively, the "Remaining Plaintiffs"); and (b) the City of Portland ("City"). The Remaining Plaintiffs and the City are collectively referred to herein as the "Parties," and each of them is referred to herein as a "Party."

RECITALS

WHEREAS, a lawsuit entitled Anderson et. al v. City of Portland, Multnomah County Circuit Court Case No. 1112-15957 (the "Lawsuit") was initially filed on or about December 6, 2011. The original plaintiffs in the Lawsuit were Lloyd Anderson, Paige Craford, Millard Christner, and Citizens for Water Accountability, Trust and Reform ("WATR"). Subsequent to the initial filing of the Lawsuit, the court dismissed WATR as a plaintiff (based on lack of standing) and Lloyd Anderson passed away. Thus, the Remaining Plaintiffs are the only plaintiffs remaining in the Lawsuit. The Lawsuit proceeded to various trial phases, but no final judgment has been entered in the Lawsuit as of the Effective Date.

WHEREAS, the City maintains various accounts and funds containing monies from the sale of water, charges relating to water works or services, and/or bonds payable from water revenues, including without limitation the Water Fund and Water Construction Fund that are referenced in Section 11-104 of the City Charter (all such accounts and funds shall collectively be referred to herein as the "Water Fund"). The City also maintains various accounts and funds containing monies from fees and charges for connection and/or use of sewers and sewage purification or disposal systems, and from bonds payable from sewer revenues, including without limitation the Sewage Disposal Fund, Sewer System Operating Fund, Sewer System Construction Fund, Sewer System Revolving Loan Fund, Sewer System Redemption Fund, Sewer System Debt Proceeds Fund, Sewer System Rate Stabilization Fund and Sewer System Safety Net Fund that are referenced in Section 11-302 of the City Charter and in Chapter 5.04 of the City Code (all such accounts and funds shall collectively be referred to herein as the "Sewer Fund"). The City maintains certain general funds and accounts that do not include and are separate from the Water Fund and Sewer Fund and uses such general funds and accounts as operating funds of the City (such funds and accounts shall collectively be referred to herein as the "General Funds and Accounts").

WHEREAS, the Parties have engaged in settlement discussions by and through their respective counsel, Davis Wright Tremaine, LLC ("Davis Wright") for the Remaining Plaintiffs and the City Attorney’s Office for the City. The Portland City Council, through formal council action, has approved this Agreement and authorized its execution on the City’s behalf.

WHEREAS, in entering into this Agreement, the City does not admit that it has violated any of the provisions of the Portland City Charter as set forth in the Lawsuit. This Agreement and its terms and provisions shall not be offered or received as evidence for any purpose.
whatevery against the City in any action or proceeding, other than a proceeding to enforce the terms of this Agreement.

NOW, THEREFORE, in consideration of the foregoing and the terms and conditions set forth herein, constituting good and valuable consideration, the Parties hereby agree as set forth in this Agreement.

AGREEMENT

I. RECITALS

The Recitals are incorporated into this Agreement by reference and are binding upon the Parties.

II. PAYMENTS FROM THE GENERAL FUNDS AND ACCOUNTS TO THE WATER FUND AND SEWER FUND

A. On or before September 30, 2019, the City shall pay the amount of $5,541,410.00 from the General Funds and Accounts to the Water Fund.

B. On or before September 30, 2019, the City shall pay the amount of $1,458,590.00 from the General Funds and Accounts to the Sewer Fund.

III. PAYMENT FROM THE GENERAL FUNDS AND ACCOUNTS TO DAVIS WRIGHT

At or before 12:00 noon on December 29, 2017, the City shall pay to Davis Wright the amount of $3,000,000.00 from the General Funds and Accounts. Such payment shall be paid by check with funds immediately payable to “Davis Wright Tremaine LLP” and delivered to Davis Wright at 1300 S.W. Fifth Avenue, Suite 2400, Portland, Oregon, in full satisfaction of any claim for attorney fees in the Lawsuit.

IV. TIMING AND ENFORCEABILITY OF PAYMENTS

The Parties agree that there shall be no set-offs, or other reductions for any reason, that would reduce the amount of any payment under Sections II or III. Any failure to timely pay the full amounts owing under Section II and III shall constitute a material breach of this Agreement. Davis Wright (as third-party beneficiary under this Agreement as to the payment obligations in Section III) and the Remaining Plaintiffs (as to the payment obligations in Section II) shall have all legal rights and authority to seek enforcement of such payment obligations. Time is of the essence in this Agreement in all particulars, including without limitation the timely payment of all payments referenced in Sections II and III.
V. DISMISSAL OF THE LAWSUIT

Within five (5) business days after full payment by the City to Davis Wright as required under Section III above, the Parties shall file a stipulation of dismissal, dismissing the Lawsuit with prejudice and without costs or attorney fees to any Party. To the extent any additional pleading may be necessary, the Parties and their counsel shall reasonably cooperate to effect a dismissal of the Lawsuit with prejudice and without costs or attorney fees to any Party.

VI. ATTORNEY FEES

In any action to interpret or enforce the terms of this Agreement, the prevailing party(ies) (including any third-party beneficiary(ies)) shall be entitled to recover from the non-prevailing party(ies) any and all attorney fees, costs and other expenses reasonably incurred in such action, including any appeal therefrom.

VII. VOLUNTARY AND FULL AGREEMENT

The Parties expressly represent that they have been given the opportunity to discuss all aspects of this Agreement with their respective attorneys, and have done so; that they have carefully read and fully understand all the provisions of this Agreement; and that they are voluntarily entering into this Agreement. As the Parties have participated in and had an equal opportunity to participate in the drafting of this Agreement, questions of construction shall not be resolved by any rule of interpretation providing for interpretation against the drafting party.

It is fully understood and agreed that this Agreement constitutes the full agreement between the Parties relating to the subject matter hereof and there are no additional promises, terms, conditions, obligations or warranties other than those contained herein.

VIII. NO WAIVER

No provision of this Agreement shall be deemed waived unless such waiver is in writing signed by the waiving Party. No failure of any Party hereto to insist on the strict performance of any provision of this Agreement, or to exercise any right or remedy consequent upon a breach thereof, shall constitute a waiver of any such breach of such provision or of any other provision. No waiver of any provision of this Agreement shall be deemed a waiver of any other provision of this Agreement or a waiver of such provision with respect to any subsequent breach, unless expressly provided in writing.

IX. AUTHORIZATION TO SIGN ON BEHALF OF THE CITY

Any person signing this Agreement on behalf of the City represents and warrants that he or she has authority to do so and to bind the City, and that the City Council has expressly authorized the execution of this Agreement by the City.
X. MISCELLANEOUS

This Agreement shall be governed and interpreted according to the laws of the State of Oregon. This Agreement may be executed in one or more counterparts, all of which taken together shall constitute one and the same instrument. Faxed and/or electronically scanned signatures shall be deemed originals. The section headings included herein are for reference only, are not substantive terms of this Agreement and shall not control, alter, modify or interpret the meaning of this Agreement.

IT IS SO AGREED by the Parties as of the Effective Date.

**Remaining Plaintiffs**

Paige Craford

Millard Christner

**City of Portland**

By: ___________________________

Its: __________________________

Approved as to Form:

Davis Wright Tremaine LLP

City Attorney’s Office

John DiLorenzo, Jr.

Attorney for the Remaining Plaintiffs

Karen L. Moynahan
Senior Deputy City Attorney
Attorney for the City

Date: December ____, 2017

Date: December ____, 2017