

Order 50-16/17

Passage: 9-0 on 9/7/2016

ETHAN K. STRIMLING (MAYOR)
BELINDA S. RAY (1)
SPENCER R. THIBODEAU (2)
EDWARD J. SUSLOVIC (3)
JUSTIN COSTA (4)

**CITY OF PORTLAND
IN THE CITY COUNCIL**

Effective 9/17/2016

DAVID H. BRENERMAN (5)
JILL C. DUSON (A/L)
JON HINCK (A/L)
NICHOLAS M. MAVODONES, JR (A/L)

**ORDER APPROVING THE THREE-PARTY AGREEMENT
BETWEEN PORTLAND WATER DISTRICT,
WESTBROOK AND PORTLAND
RE: BRIGHTON AVENUE SEWER SERVICE AGREEMENT**

ORDERED, that the agreement between the Portland Water District, Westbrook and Portland for Westbrook to provide sewer treatment for sewage and waste water from a section of Brighton Avenue in Portland is hereby approved in substantially in the form attached; and

BE IT FURTHER ORDERED, that the City Council hereby authorizes the City Manager or his or her designee to execute said document and any other related documents necessary or convenient to carry out the intent of said documents and this Order.

1. SEWER SERVICE AGREEMENT

THIS AGREEMENT is made this ____ day of _____ 2016, by and among the CITY OF PORTLAND, a municipal corporation existing under the laws of the State of Maine with a business address of 389 Congress Street, Portland, Maine (“PORTLAND”); the CITY OF WESTBROOK, a municipal corporation existing under the laws of the State of Maine, with a business address of 2 York Street, Westbrook, Maine (“WESTBROOK”); and the PORTLAND WATER DISTRICT, a quasi-municipal corporation existing pursuant to Chapter 84 of the Private and Special Laws of Maine of 1975, as amended, with a business address of 225 Douglas Street, Portland, Maine (“DISTRICT”).

WHEREAS, there is a significant need for public sewage collection and treatment in the Brighton Avenue vicinity of Portland, which area is described on the plan attached as Exhibit A hereto (the “SERVICE AREA”); and

WHEREAS, the development of the sewer facilities will be enhanced and made more timely if DISTRICT provides the interception and treatment of the sewage using the existing Westbrook Gorham regional treatment plant; and

WHEREAS, the parties have previously entered into an agreement for the provision of sewerage services dated in September, 2012, to operate the sewerage services in the area of Riverside/Warren and Forest Ave in Portland, as defined in Exhibit B, in accordance with its terms; and

WHEREAS, the parties deem it appropriate and in the interests of the public health, safety and welfare to enter into an additional agreement to provide the sewerage services to the SERVICE AREA described herein, pursuant to the terms hereof.

NOW, THEREFORE, in consideration of the mutual conditions and covenants contained herein, the parties agree as follows:

1. The domestic and sanitary sewage and waste water from the SERVICE AREA, as specifically defined on the plan attached as Exhibit C, will be intercepted by WESTBROOK and delivered to the existing Westbrook Gorham Regional Treatment Plant for treatment. WESTBROOK agrees that Portland sewage treated at the Westbrook Gorham Plant will be allocated to the design capacity of the Plant as originally provided to Westbrook. The parties agree that the flow pursuant to this Agreement shall not exceed 0.02 million gallons per day computed as a monthly average flow. If requested by either party, PORTLAND shall install and maintain a flow measuring device that will be used solely to measure the flow of PORTLAND sewage into the WESTBROOK system. If a flow measuring device is installed, PORTLAND will be responsible for maintenance and providing flow information to WESTBROOK and the DISTRICT.

2. Sewer users in the SERVICE AREA will comply with use standards in the Westbrook Sewer User Ordinance as found in Chapters 26 and 27 of the City of Westbrook Ordinance.
3. PORTLAND shall approve all new sewer connections in the SERVICE AREA. All parties to this Agreement shall be notified in writing of all new sewer connections in the SERVICE AREA. PORTLAND will collect all sewer connection fees for the SERVICE AREA.
4. PORTLAND shall administer the Industrial Pretreatment Program in the SERVICE AREA. PORTLAND agrees to amend its Ordinance and/or rules and regulations as required, to make the Westbrook Industrial Pretreatment Program applicable to the SERVICE AREA. The DISTRICT reserves the right to audit PORTLAND's records related to the Program and to conduct on-site inspections on customers who require pretreatment. PORTLAND will collect all industrial pretreatment program fees for the SERVICE AREA.
5. Sewer users in the SERVICE AREA shall be billed the Portland sewer user rate, provided that said rate is higher than WESTBROOK's rate. In the event that the WESTBROOK sewer user unit rate (excluding minimum unit rate) becomes higher than PORTLAND's sewer user rate at any time in the future, this Agreement shall be renegotiated. Sewer user fees shall be billed and collected by the DISTRICT in accordance with the billing agreement between PORTLAND and DISTRICT. All fees collected from users in the SERVICE AREA shall be credited to WESTBROOK's annual sewer assessment.

PORTLAND shall retain the right to charge a ready to serve charge for properties in the area that are not connected to the sewer and shall retain all revenue associated with that charge.

6. In the event that sewer users in the SERVICE AREA do not pay their sewer assessments and the outstanding delinquent balance is included in the credit made by the DISTRICT to PORTLAND's assessment, the DISTRICT will credit to WESTBROOK's sewer assessment such delinquent balance and add such amount to PORTLAND's annual assessment.
7. WESTBROOK represents that it has sufficient capacity in the DISTRICT's treatment plant to accommodate the sewage generated in the SERVICE AREA.

WESTBROOK shall provide PORTLAND a two (2) year written notice in the event that the treatment plant is reaching its capacity. PORTLAND shall have the option of:

- a. Disconnecting its sewerage service from the treatment plant within the two (2) year period, without penalty; or

- b. May request DISTRICT and WESTBROOK to expand the DISTRICT's treatment plant capacity at PORTLAND's cost, in an amount equal to PORTLAND's annual flow volumes into the plant, in the minimum amount of 150,000 gallons per day up to a mutually agreed-upon maximum amount ; or
 - c. Negotiate an alternative agreement agreeable to all parties to this Agreement.
8. PORTLAND and WESTBROOK shall calculate, on an annual basis, an amount which shall be considered a credit to PORTLAND to be used in the event the Treatment Plant is expanded as provided in Paragraph 7(b). DISTRICT shall provide billing records reflecting billings in the Service Area to PORTLAND and WESTBROOK for the purposes of calculating such credit. The credit shall be calculated as follows:

PORTLAND shall receive as a credit 50% of:
Annual billable flow (hundreds of cubic feet) into Treatment Plant from SERVICE AREA X PORTLAND rate.
Less Annual billable flow (hundreds of cubic feet) into Treatment Plant from SERVICE AREA X WESTBROOK rate.

WESTBROOK and PORTLAND shall notify DISTRICT of the credit amount. DISTRICT shall create a fund and deposit into such fund said credit amount, which shall be utilized by PORTLAND solely for the costs of the expansion of the Treatment Plant, as provided in paragraph 7(b), should one occur. Any interest generated on funds in such escrow account shall be paid to WESTBROOK.

In the event that this Agreement is terminated or expires and is not renewed, and the Treatment Plant expansion, as provided in paragraph 7(b), has not occurred, any amount remaining in such escrow account shall be paid to WESTBROOK.

9. The DISTRICT shall construct all interception and treatment facilities necessary for providing the sewage services to the SERVICE AREA and shall apportion all such costs to PORTLAND, including the financing and operating and maintenance costs in accordance with the terms of its Charter.
10. PORTLAND shall construct all collector facilities constructed or to be constructed within the SERVICE AREA, which collector facilities shall remain the property and the responsibility of PORTLAND. PORTLAND shall deliver such sewage to the DISTRICT at the following locations: (1) the manhole located on Brighton Avenue, Portland, Maine, at Station 4+60, as shown on Plan Number 491/6, City of Portland, Engineering Archives.
11. This Agreement shall continue for a ten (10) year period unless terminated by two (2) years written notice of any party or pursuant to the terms of Section

7(a) of this Agreement. Upon termination, the interception and treatment of the sewage from the SERVICE AREA shall be performed by the DISTRICT in accordance with the terms of its Charter. In the event of termination, PORTLAND will notify its customers of any changes in the sewer service resulting from such termination. This Agreement may be renewed for an additional ten (10) year period upon agreement of all the parties.

12. The entire agreement among the parties relating to the subject matter hereof is contained herein, and no other terms or provisions and no representations or warranties of any of the parties not expressly set forth shall be of any force or effect. Each of the parties agrees to take whatever action and execute whatever document may be necessary to effectuate all the provisions of this Agreement. This Agreement may not be modified, altered or amended, except in writing, duly executed by all the parties.

13. In the event any inconsistency should arise between this Agreement and the DISTRICT's Charter, the Charter shall prevail.

IN WITNESS WHEREOF, the CITY OF PORTLAND, the CITY OF WESTBROOK and the PORTLAND WATER DISTRICT have caused this instrument to be signed and sealed in their respective names by their respective duly authorized officers the day and year first written above.

WITNESS

CITY OF PORTLAND

By _____
Jon Jennings
Its City Manager

WITNESS

CITY OF WESTBROOK

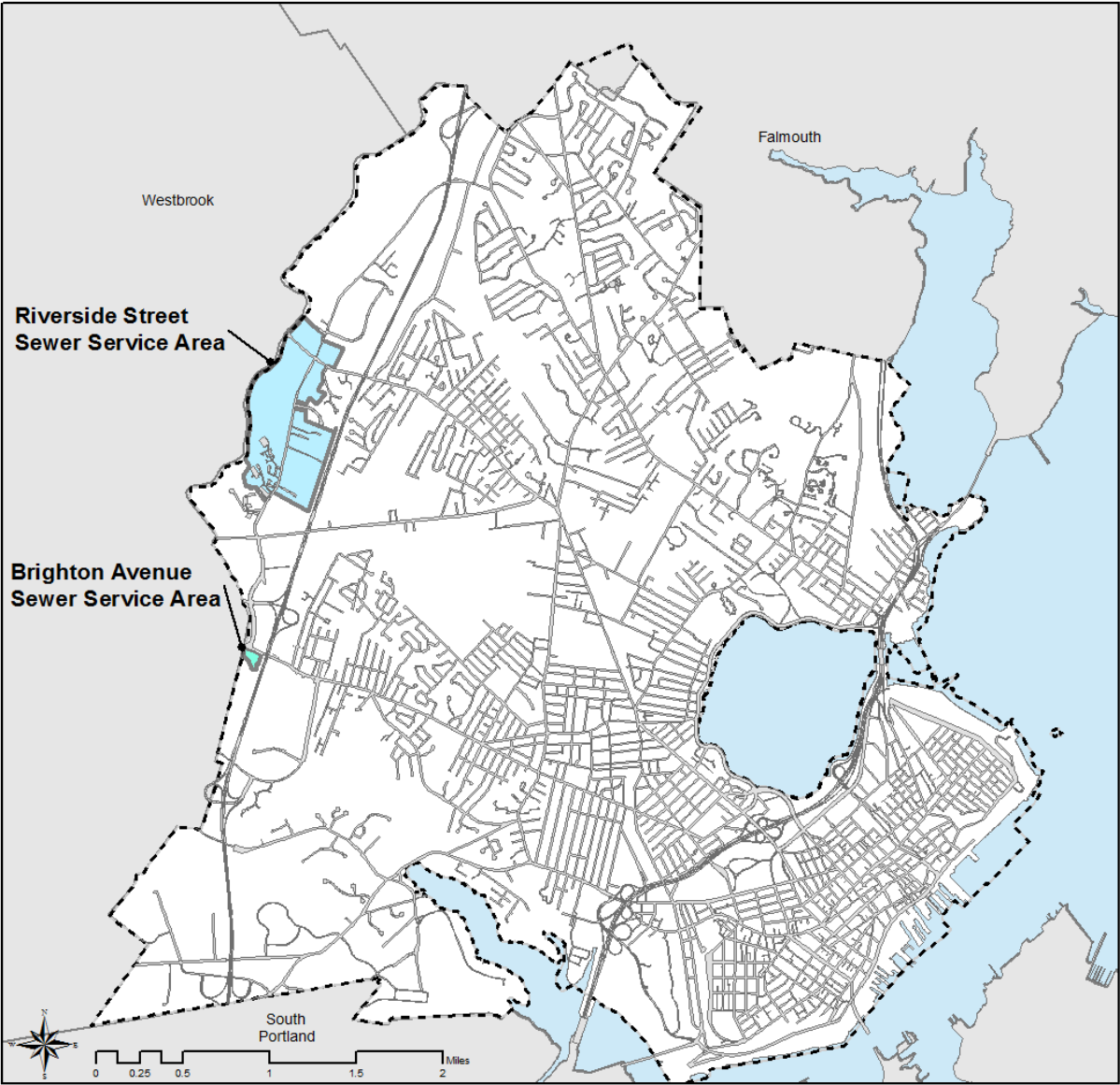
By _____
Colleen Hilton
Its Mayor

WITNESS

PORTLAND WATER DISTRICT

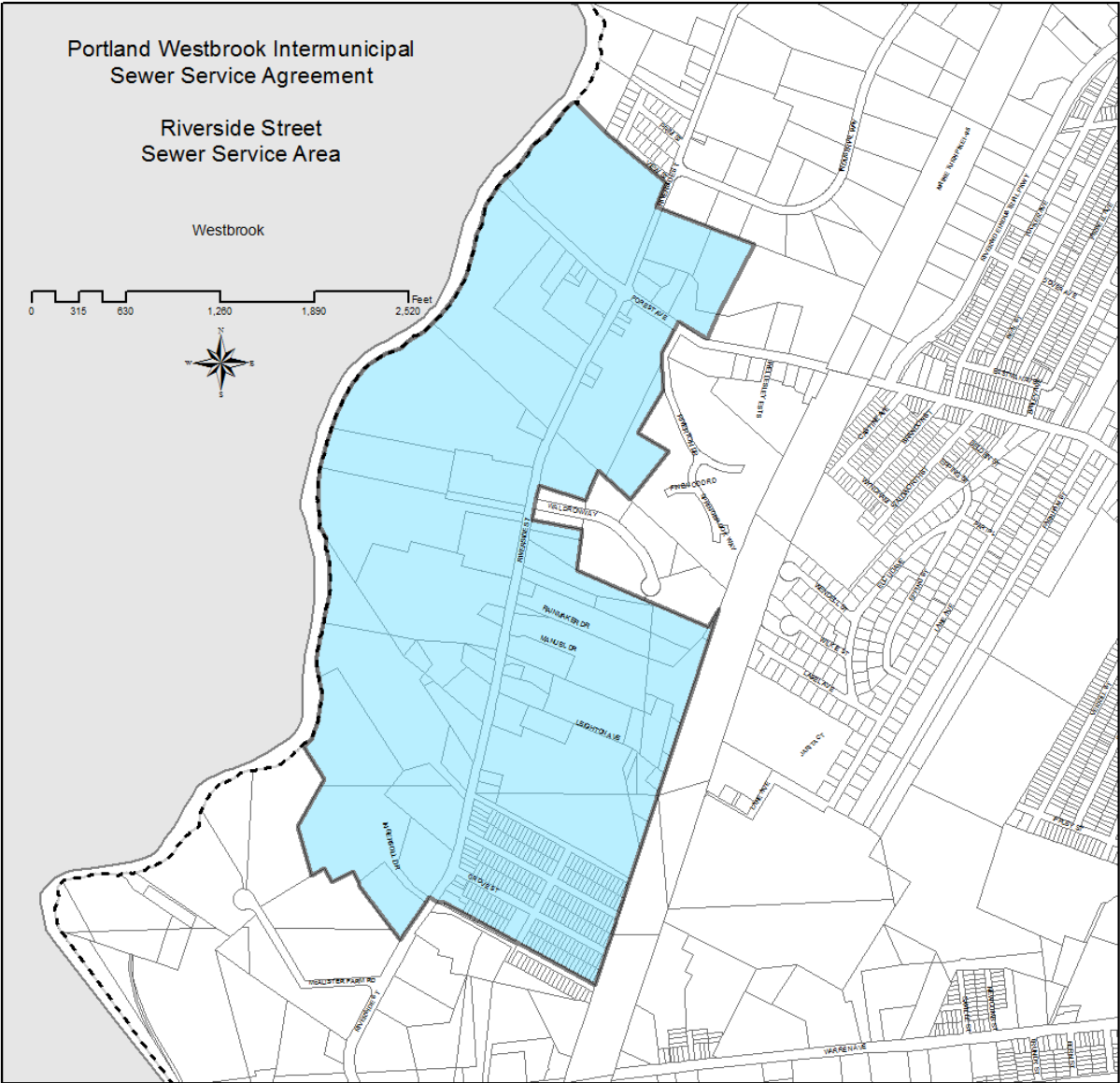
Ronald Miller
Its General Manager

Exhibit A Locus Map of Portland-Westbrook Intermunicipal Sewer Service Areas



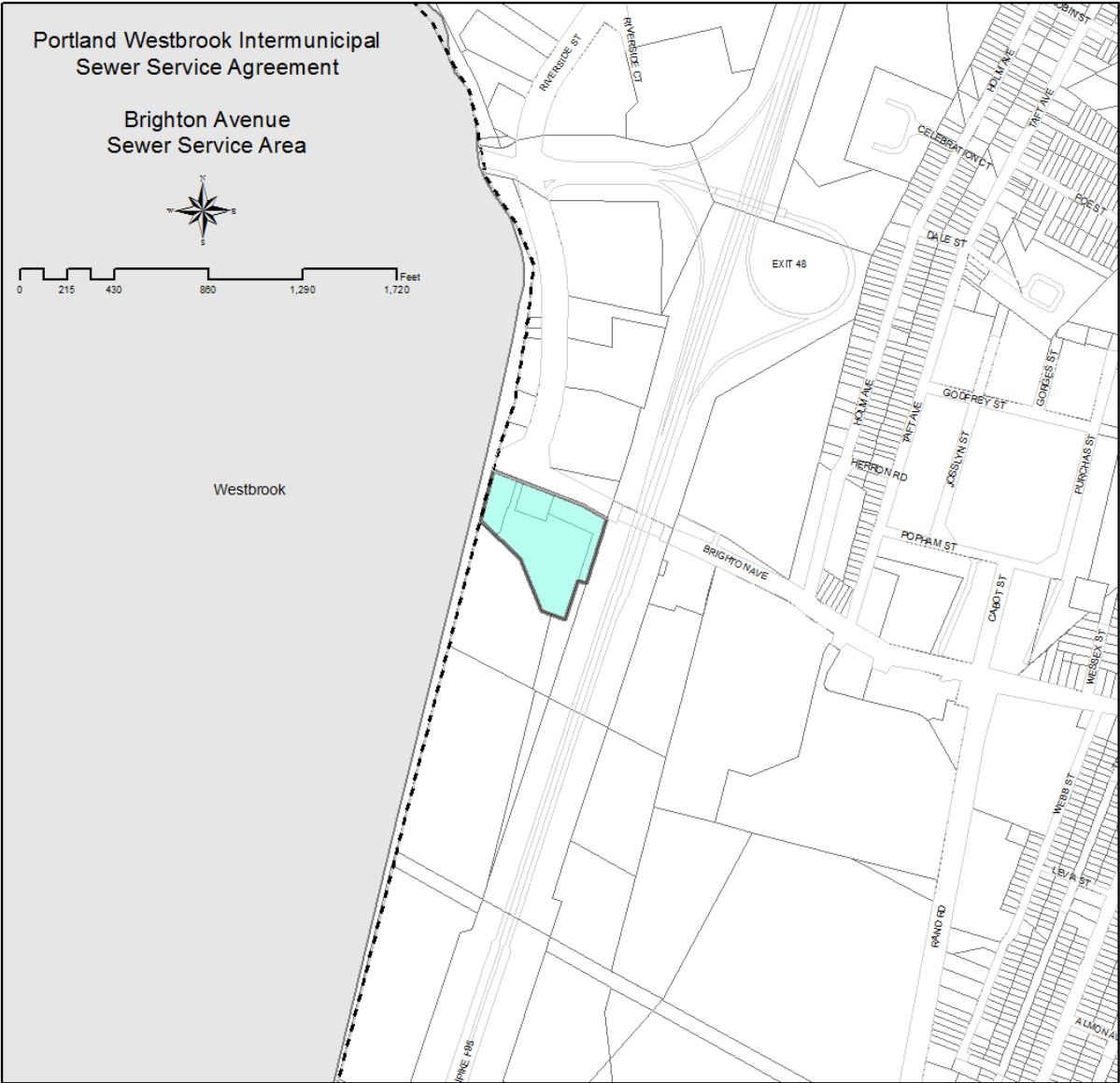
Map Prepared by the City of Portland's Department of Public Works February 2016

Exhibit B Map of Portland-Westbrook Intermunicipal Sewer Service Area



Map Prepared by the City of Portland's Department of Public Works July 2016

Exhibit C Map of Portland-Westbrook Intermunicipal Sewer Service Area



Map Prepared by the City of Portland's Department of Public Works July 2016