

**ecomaine**  
**Memorandum**

**DATE:** November 9, 2017  
**TO:** Chairman and Members of the Board  
**FROM:** Kevin H. Roche, CEO/General Manager  
**SUBJECT:** Agenda for the Joint Executive & Finance Committee Meeting

There is an **ecomaine** Joint Meeting of the Executive & Finance Committees scheduled for **November 16, 2017 @ 3:00 PM**. The agenda for this meeting is as follows:

1. Approval of the Minutes (*Attachment A1 – Executive Committee*) & (*Attachment A2 – Finance Committee*)
2. Audit Committee Report – Erik Street, Chair
3. Outreach & Recycling Committee Report – Caleb Hemphill, Chair
4. Finance Committee Report – Mike Shaw, Chair
  - Cash Disbursements
  - Investment Update and future recommendations – Molly Reinfried & Daniel Lay, HM Payson
  - Cash Reserve & Investment Policy Review (*Attachment B1*)
  - Opinion from Jensen Baird Gardner & Henry (*Attachment B2*)
5. Approval on Agreement with LAB USA for non-ferrous metals recovery (*provided under separate cover*)
6. Approval for staff to proceed with Power Purchase Bid Requests and Agreement
7. Resolution Relating to the Authorization of the CEO, Director of Finance & Administration and Manager of Financial Reporting the Authority to transact business with TD Bank on credit and debit transactions (TD Bank Authority of Merchant Agreement and Accounts) (*Attachment C*)
8. Manager’s Report
  - Jensen Baird Gardner & Henry Opinion Letter on the Water Infiltration Improvements and Building Renovations (*Attachment D*)
  - Financial Statements **FY 18** (*Handout*)
    - Financial Summary
    - Tonnage Graph
    - Statement of Revenue & Expenses
    - Statistical Data
    - Status of Accounts Receivable
    - Summary Analysis of All Tons by Community
    - Historical Generations Summary
9. Other:

**Future Meetings:**

Executive Committee	December 21, 2017 @ 4PM	Finance/Budget Workshop	March 22, 2018 @ 4PM
Joint Audit & Finance Committee	January 18, 2018 @ 3PM	Audit Committee	April 26, 2018 @ 3PM
Full Board Meeting	January 18, 2018 @ 4PM	Full Board Meeting	April 26, 2018 @ 4PM
Recycling Committee	January 25, 2018 @ 4PM	Finance Committee	May 17, 2018 @ 3PM
Executive Committee	February 15, 2018 @ 4PM	Executive Committee	May 17, 2018 @ 4PM
Recycling Committee	March 1, 2018 @ 4PM	Recycling Committee	May 24, 2018 @ 4PM
Full Board Meeting	March 15, 2018 @ 4PM	Annual Board Meeting	June 14, 2018 @ 11:30AM

**DATE:** October 6, 2017  
**TO:** Chairman and Members of the Board  
**FROM:** Kevin H. Roche, CEO/General Manager  
**SUBJECT:** Executive Committee Minutes – September 21, 2017

There was an Executive Committee Meeting held on the date noted above. The meeting was called to order by Matthew Frank, Vice Chairman at 4:10pm.

A quorum was not present therefore, Matthew Frank, Vice Chair directed the committee to proceed with the Chair Reports.

**Item #2: - Audit Report, Erik Street, Chair**

Erik Street reported that the Audit Committee met today with RKO to review the draft FY 17 Audit Report. RKO provided a “clean Opinion” for FY 17, the Audit Committee will recommend acceptance of the FY 17 Audit to the Full Board without presentation by RKO unless requested by the Full Board.

RKO presented the Management Letter with the following comments:

- RKO provided recommendations on the fixed Asset Ledger and General Ledger were not communicating well causing inconsistencies between to two ledgers. RKO recommended working with the software provider to develop better options for integration.
- RKO also noted that reconciliations of the general ledger accounts must be performed monthly to include an analytical review of transaction to eliminate misclassifications or errors.

Management agrees with all suggestions and taking steps to address these issues.

Staff reviewed with the committee the historical Audit Firm process and provided comments on this effort. It was noted that RKO has proposed holding fees flat for FY 18 audit work at \$21, 500. After committee discussion, it was agreed that RKO be retained for the FY 18 Audit.

The next Audit Committee meeting is April 26, 2018 to review the roles and responsibilities FY 18 Audit.

There was a brief discussion by the executive committee about merging the Audit Committee and the Finance Committee together as one. Staff will add this to a future meeting for discussion.

A quorum was formed at 4:23 pm. In an effort to conduct the business of the Executive Committee, Matthew Sturgis was appointed to the Executive Committee.

### **Item #1: Minutes**

Mike Shaw motioned to accept the minutes. The motion was seconded by Christopher Branch. All in favor.

### **Item # 3: - Recycling & Outreach Committee Report, Caleb Hemphill, Chair**

Caleb Hemphill reported that the Outreach & Recycling Committee last met on September 14, 2017 and provided the following summary:

- The Open House is scheduled for Saturday, September 30, 2017 from 8 – 11am. We have added more vendors this year and loads of fun activities for the kids.
- Food Waste and recycling Pilots have collected a total of 56,400 pounds of food waste.
- School Recycling Grants deadline is October 31, 2017.

The next Outreach & Recycling Committee meeting is November 9, 2017, at which time the committee will review all entries and is considering setting aside a specific fund to assist with bussing fees and bins for schools.

### **Item # 4: - Finance Committee Report, Mike Shaw, Chair**

Mike Shaw reported that the Finance Committee met on September 14, 2017 and discussed the following:

- Cash Disbursements – no issues reported
- Financials for year end 06-30-2017.
- Five year cash flow recommendations and projections, noting that we continue to look positive
- Recommendation that the Recycle Revenue and Cost Sharing Reserve cash balance be transferred to the Discretionary landfill Reserve (approximately \$503,268.21 as of July 31, 2016).
- Recommend no assessment or rebates at this time and owner community tipping fees be unchanged at \$70.50 and reviewed again in the fall of 2018.
- The Full Board have discussions regarding the share of Fixed Income versus Equities in the Cash Reserve and Investment Policy.

Staff reviewed the Insurance Broker RFP process. After review of proposals, staff recommends we continue with USI as our provider.

Staff reviewed the concept of “Other Post-Employment Benefits” which was requested by the committee last spring and no further action was requested.

There was a lengthy discussion regarding the Cash Reserve and Investment Policy. Bill Shane recommended obtaining another legal opinion from our attorney outlying ecomaine’s authority to make amendments with regards to the Investments Policy.

Mike Shaw motioned that the recommendations of the Finance Committee be passed to the Board. The motion was seconded by Bill Shane. All in favor.

The next meeting of the committee will be November 16, 2017 @ 3pm. The draft agenda includes Cash Disbursement Review, October Financials and an update from HM Payson to include equity investment limits currently under the Cash Reserve and Investment Policy.

All are welcome and encouraged to attend.

### **Item # 5 – Review of Municipal Contracts with Non-Owner Communities**

Kevin Roche provided a handout of our current tonnage from our non-owner communities as requested by the Full Board of Directors at our meeting last spring. He provided a summary to the board on the current status of contracts. There was a brief discussion that recognized that ecomaine contracts at different prices for both MSW tipping fees and Recyclables. This strategy keeps ecomaine competitive with other markets.

### **Item # 6 – Managers Report**

Kevin Roche reviewed the year-end financial statements. There was a brief discussion on the current market for recyclables which had recently fallen to record lows.

### **Item # 7– Other**

Kevin Roche briefed the board on the current needed building improvements that had not been projected in the Capital Budget. Kevin told the Executive Committee that \$250,000 was included in the 5 year plan for FY 19. However the repairs are much more involved than originally thought and the proper way to correct the water infiltration issues is likely to be \$2.5 - \$3 Million. He also is recommending that we remodel the second and third floors of the Admin Building at that same time. He outlined the importance of getting the project moved ahead without amending the budget. After a lengthy discussion the Executive Committee recommended that staff proceed with these projects and with the renovations and the remodeling of the top 2 floors of the Admin Building.

David Morton motioned that staff proceed with both projects and recommend that the full board to amend the Capital Budget to support the project to make the facility water tight, repair water damage and remodel the second and third floors of the Admin Building. The motion was seconded by Bill Shane. All in favor.

Mike Shaw moved to adjourn the meeting. The motion was second by Dennis Abbott. All in favor.

### **Present:**

Dennis Abbott, Matthew Frank, Caleb Hemphill, David Morton, William Shane, Mike Shaw, Erik Street & Matthew Sturgis

### **Staff:**

Arthur Birt, Denise Mungen, Kevin Roche & Kevin Trytek

**DATE:** November 6, 2017  
**TO:** Chairman and Members of the Board  
**FROM:** Kevin H. Roche, CEO/General Manager  
**SUBJECT:** Finance Committee Minutes – September 14, 2017

There was a **Finance Committee Meeting** held on the date noted above. The meeting was called to order by Mike Shaw, Chairman.

**Item #1: Minutes**

Bill Shane motioned to accept the minutes. The motion was seconded by Troy Moon. All in favor

**Item #2: Cash Disbursement Report – Mike Shaw, Chair**

Mike Shaw reported that he selected and reviewed a sample of cash disbursements and found no issues.

**Item # 3: Finance Statements FY 17**

Arthur Birt reviewed the FY 17 financial statements.

**Item # 4: Five Year Financial Plan Review**

There was significant discussion on Investment returns. Matthew Frank motioned that the Finance Committee review options to amend the Investment Policy by considering an increase in equities (now limited to one third) and decrease fixed income investments (two thirds). The motion was second by Bill Shane. A Discussion followed.

The Committee suggested we have an informational meeting on November 16<sup>th</sup>, with our investment advisor. Depending on actions from that initial meeting, a first reading of any amendment would be at the January full board meeting and a second reading and final vote at the March full board meeting. A letter should be sent out to all Town Managers to encourage participation in this process. All in favor

Arthur Birt presented the 5 year plan. A Discussion followed.

Troy Moon motioned to accept staff's recommendation on rates for FY 19 including no change in tipping fees (\$70.50 per ton), no rebates or assessments, move \$850,000 into the Discretionary Landfill Reserve and the Recycle Revenue and Cost Sharing Reserve cash balance be transferred to the Discretionary landfill Reserve (approximately \$503,268.21 as of July 31, 2016). The motion was second by Matthew Frank. All in favor.

**Item # 5: Insurance Broker Review/RFP Process**

Arthur Birt reviewed the RFP bids and vendor selection for ecomaines' Insurance Broker. USI was selected by the interviewing team including Arthur Birt, Kevin Roche and James W. Evans Jr. from Albert Risk Management Consultant.

**Item # 6: GASB45 – Other Post-Employment Benefits**

Arthur Birt reviewed the GSB45 – Other Post-Employment Benefits (see attachment) that the Committee requested be reviewed. A short discussion followed. No action taken.

Len Van Gaasbeek motioned to adjourn. The motion was second by Jessica Maloy.

**Present:**

Anne Bilodeau, Matthew Frank, Jessica Maloy, Troy Moon, Bill Shane, Mike Shaw & Len Van Gaasbeek

**Staff:**

Arthur Birt & Kevin Roche

DRAFT



## **CASH RESERVE & INVESTMENT POLICY**

### **RESERVES**

As part of strengthening **ecomaine's** financial position, we will establish and fund the reserves outlined below with the knowledge that general economic conditions and other **ecomaine** needs may impact on the timing of the funding of these reserves. There may also be conditions that arise requiring the **ecomaine** board to authorize the use of a reserve in a manner not originally intended for unanticipated financial issues. Therefore, with Board approval, funds from a reserve (with the exception of the Required Landfill Closure / Post Closure Reserve) could be used to cover other areas.

#### **FAVORABLE CASH FLOW**

**Objective:** To provide financial relief to owner communities when the financial position of **ecomaine** permits it.

#### **OPERATING CASH RESERVE**

**Objective:** To provide routine operating cash and financial security for extraordinary events that could cause a significant decrease in operating revenues or increase in operating expenses. These would be used to fund operations until any necessary adjustments can be made to provide sufficient cash flow to maintain operations.

**Goal:** We will build and maintain a balance of six months of cash operating expenses.

#### **SHORT TERM CAPITAL RESERVE**

**Objective:** To reserve funds for routine capital projects in the event of unanticipated circumstances.

**Goal:** We will establish a reserve equal to approximately 12 months of short term capital spending.

#### **LONG TERM CAPITAL RESERVE**

**Objective:** To reserve funds for new capital projects which have not been provided for in the annual capital plan. New capital projects are large projects in which the necessity and timing is not known at the present time. These could be projects to upgrade the current facilities or add additional capacity or functionality. It is our intent to fund these projects with internal cash flow to the extent possible but economic conditions and necessity may dictate that we issue some long term debt.

**Goal:** We will establish a reserve equal to the greater of \$3 million or the next year's long term capital spending.

## **DISCRETIONARY LANDFILL CLOSURE / POST CLOSURE RESERVE**

**Objective:** To fund from internal cash flow a discretionary amount periodically for the landfill closure and post closure care costs during the remaining useful life of the landfill. Regulation, technology and other factors will impact the cost and life but as of June 30, 2015, this liability is estimated to be \$22.4 million in today's dollars and it is expected that the landfill will need to be closed in steps with final closing in 2044 and continued maintenance for 30 years thereafter.

**Goal:** We will establish a reserve that will fully fund this liability by the time the landfill is closed.

## **REQUIRED LANDFILL CLOSURE / POST CLOSURE RESERVE**

**Objective:** To provide funding for a Landfill Closure / Post Closure Reserve account as required by section 8 of the Interlocal Solid Waste Agreement dated December 1, 2005.

**Goal:** We will immediately establish a reserve for \$300,000 to meet the terms of this agreement.

## **INCOME EARNED**

Income earned on reserve accounts shall accrue to the respective reserve account.

## **RECORD KEEPING**

These funded reserves may be maintained in separate accounts at financial institutions or may simply be reported separately in the **ecomaine** financial statements whatever is most efficient for **ecomaine**.

## **PERIODIC REVIEW**

Five year cash flow projections and reserve funding requirements will be reviewed annually with the **ecomaine** board.

## **INVESTMENTS**

### **SCOPE**

This policy shall apply to the investment management of all **ecomaine** cash accounts including demand deposits and any reserve funds that are established under this policy. At all times, investments will be managed in accordance with Title 30-A, Sections 5706 through 5719 of the Maine Revised Statutes (see attached) and any revisions to these Statutes will become part of this policy immediately upon being enacted. Board responsibilities as identified in this policy may be delegated to the appropriate committee or staff member.

### **OBJECTIVES**

The principal investment objectives for **ecomaine** are:

- **Safety** – to avoid unreasonable risk while preserving both the capital and the purchasing power of that capital. It is understood that no investment is totally free of risk, and occasional measured losses are inevitable in a diversified portfolio. Risk may include the

quality of the investment, the qualifications of the institutions and advisors we deal with, the diversification of the portfolio, the movement of interest rates, inflation and the general state of the economy.

- **Liquidity** – to maintain sufficient liquidity to meet all operating requirements as may reasonably be anticipated by structuring the portfolio with investments that mature as the need for cash occurs.
- **Returns** – to generate a long-term rate of return in the portfolios that is commensurate with the appropriate blended benchmark returns that coincide with the asset allocation for each portfolio over an economic cycle, taking into account risk and liquidity needs.

Each of these factors will be weighted depending on the objective and goal for each reserve account.

### **PRUDENCE & RESPONSIBILITIES**

The standard of prudence to be used for managing our investments shall be Title 30-A, Section 5718 of the Maine Revised Statutes which, in general, states that investments shall be made with the judgment and care that persons of prudence, discretion and intelligence, under circumstances then prevailing, exercise in the management of their own affairs, not for speculation but for investment, considering safety, income and maintenance of liquidity.

Authorized **ecomaine** employees acting in accordance with written procedures and exercising due diligence shall be relieved of personal responsibility for an individual security's credit risk or market price changes, provided that the deviations from expectations are reported in a timely fashion.

### **ETHICS AND CONFLICTS OF INTEREST**

**ecomaine** personnel involved in the investment process shall refrain from personal business activity that could conflict with proper execution of the investment program or which could impair or create the appearance of an impairment of their ability to make impartial investment decisions. These individuals shall disclose to **ecomaine** any material financial interests they have in financial institutions that conduct business with **ecomaine** and they shall subordinate their personal investment transactions to those of **ecomaine**.

### **DELEGATION OF AUTHORITY & INTERNAL CONTROLS**

Under the Maine Revised Statutes and the **ecomaine** bylaws, responsibility for the investment of **ecomaine** funds covered by this Policy resides with **ecomaine**. Staff will assist the Board in developing policies and procedures and will implement these policies and procedures after approval by the **ecomaine** board. No person may engage in an investment transaction except as expressly provided under the terms of this Policy.

Staff will develop written procedures designed to prevent losses of **ecomaine** funds arising from fraud, employee error, and misrepresentation by third parties, or imprudent actions by **ecomaine** employees. Proper documentation for all investment transactions shall be prepared and maintained for an appropriate amount of time.

Staff may engage the support services of outside professionals in regard to its investment program, so long as it can be demonstrated that these services are advantageous or that they provide necessary financial protection of **ecomaine's** financial resources.

## SELECTION OF ADVISORS

Management will, at least every five years, issue an RFP seeking investment services for **ecomaine** pursuant to 30-A M.R.S.A. § 5706(4). Services are to consist of advice, the safekeeping of the funds, collection of interest and dividends, and any other fiscal service that is normally covered in an advisory agreement. Other than Demand Deposit amounts (see below) all **ecomaine** investment activities as addressed in this Policy are to be provided by the selected firm. The Board will approve this selected firm.

All Advisors who desire to become qualified for **ecomaine** investment management must meet all requirements set forth in Section 5706(4) and supply the following as appropriate:

- Audited financial statements demonstrating compliance with state and federal capital adequacy guidelines
- Proof of FINRA (Financial Industry Regulatory Authority) certification (not applicable to certificate of deposit counterparties)
- Proof of registration to buy and sell securities in the State of Maine
- Certification of having read understood and agreed to comply with **ecomaine's** Cash Reserve and Investment Policy.
- Evidence of adequate insurance coverage (FDIC, SIPC, or other appropriate collateral)

When selecting Advisors, consideration will be given to local or regional firms as long as they meet the standards set forth in this policy. The selection of Advisors will be on the basis of their expertise in institutional cash management and their ability to provide services for **ecomaine** along with their fee structure.

Once selected the firm shall be required to resubmit the above on an annual basis and **ecomaine** may review the financial condition and registration annually for the selected firm.

### AUTHORIZED SECURITIES AND TRANSACTIONS FOR ALL INVESTMENTS FAVORING LOWER RISK AND HIGHER LIQUIDITY

Monies to be invested under this investment philosophy (of lower risk and higher liquidity) include any cash in excess of the reserves as defined above, 100% of the Operating Reserve, 100% of the Short Term Capital Reserve, 100% of the Required Landfill Closure / Post Closure Reserve, 100% of the Recycling Revenue & Cost Sharing Reserve, and any Fixed Income Investments associated with the remaining reserves (see below).

As noted above the investment philosophy for these funds favors lower risk and higher liquidity. The need for the funds will be "near term" and the asset allocation in the portfolio should be flexible depending upon the outlook for the economy, the securities markets, and the anticipated cash flow needs. Income received from these funds is to be re-invested in these reserves. The investment of these funds will be in the types of securities and transactions listed below and all are to be guaranteed by the Federal Government or one of its agencies backed by the Federal Government.

1. Demand Accounts & Time Certificates of Deposit: To be provided by institutions insured by the Federal Deposit Insurance Corporation (FDIC), The National Credit Union Share Insurance Fund (NCUSIF), or the successors to these federal agencies. If the amount

deposited exceeds the insurable levels the excess must be collateralized by securities authorized by the Federal Home Loan Bank (FHLB). Time Certificates of Deposit will have maturities not exceeding three years.

2. U.S. Treasury Obligations: Treasury Bills, Treasury Notes and Treasury Bonds with maturities not exceeding three years from the date of trade settlement.
3. Federal Instrumentality Securities: Debentures, discount notes and callable securities, with maturities not exceeding three years from the date of trade settlement, issued by the following only: Federal Home Loan Banks (FHLB), Federal National Mortgage Association (FNMA), Federal Farm Credit Banks (FFCB), Federal Home Loan Mortgage Corporation (FHLMC) and Student Loan Marketing Association (SLMA).
4. Money Market Mutual Funds: registered under the Investment Company Act of 1940 which (1) are “no-load” (meaning no commission or fee shall be charged on purchases or sales of shares); (2) have a constant daily net asset value per share of \$1.00; (3) limit assets of the fund to U.S. Treasury Obligations, Federal Instrumentality or Agency Securities or repurchase agreements collateralized by such securities; and (4) have a maximum stated maturity and weighted average maturity in accordance with Federal Securities Regulation 2a-7.

It is the intent of the **ecomaine** board that the foregoing list of authorized securities be strictly interpreted. Any deviation from this list must be preapproved by the Board.

**ecomaine** investment performance will be reviewed periodically by management with the Board. Fixed income investments will be compared to the appropriate bond index (e.g. Barclays Aggregate, Barclays U.S. Treasury, etc.) based upon bond maturity length. The goal of the fund will be to maintain over a normal market cycle (5 years) an annual rate of return on a comparable aforementioned index portfolio.

#### **AUTHORIZED SECURITIES AND TRANSACTIONS FOR INVESTMENTS FAVORING REDUCED LIQUIDITY, AND GREATER RETURNS.**

As detailed in this policy, **ecomaine** maintains reserves for Long Term Capital needs and for the funding of the Discretionary Landfill Closure / Post Closure Reserve. A portion of these “longer term funds”, due to their nature, are invested under a longer-term investment perspective to include a conservative and balanced portfolio of equity and fixed income investments. There is less interest in liquidity and more interest in returns with safety as the primary focus. Income received from these funds is to be re-invested in these reserves.

The Long Term Capital Reserve and the Discretionary Landfill Closure / Post Closure Reserves are to hold no less than 50% nor more than 80% of each accounts value in equities while the total value of equities held in these two accounts is not to exceed 1/3 of the total value of investments in all reserve funds managed under this policy without consent of the **ecomaine** board. To the extent the Reserve Funds listed in this paragraph are managed by a financial institution or investment advisor pursuant to Section 5706(4), “Equities” shall include, but not be limited to, individual equities, equity mutual funds, bond mutual funds, or other investments that 1) may risk loss of principal, and 2) are subject to Maine law and the Prudent Investor Rule. No single fixed income security will comprise more than 10% of the total value of each of

the reserves, unless fully backed by the federal government or its agencies and instrumentalities.

The balance of each of these reserves (non equity portion) will be in investments as described under **AUTHORIZED SECURITIES AND TRANSACTIONS FOR ALL INVESTMENTS FAVORING LOWER RISK AND HIGHER LIQUIDITY.**

All reserve funds must be invested in accordance with 30-A M.R.S.A. §§ 5706-5719 or managed by a qualified financial institution or investment advisor pursuant to Section 5706(4).

**ecomaine** investment performance will be reviewed periodically by management with the Board. Equity investments are to be measured against the asset class bench mark (e.g. S&P 500 Index, Russell Midcap Index, MSCI Emerging Markets Index, etc.). The goal of the fund will be to maintain over a normal market cycle (5 years) an annual rate of return on a comparable aforementioned index portfolio.

#### **POLICY REVISIONS**

This policy shall be reviewed periodically by the Board and may be amended as conditions warrant. Any amendment to this policy that would have the effect of changing the overall allocation of all reserve funds managed under this policy from 1/3 equities and 2/3 fixed income shall not be passed until it has been read on two separate days by the **ecomaine** Board prior to voting.



*Attorneys at Law*

TEN FREE STREET  
P.O. BOX 4510  
PORTLAND, MAINE 04112-4510  
(207) 775-7271 (Phone)  
(207) 775-7935 (Fax)

[www.jbgh.com](http://www.jbgh.com)

MERTON G. HENRY  
KENNETH M. COLE III  
NICHOLAS S. NADZO  
FRANK H. FRYE  
MICHAEL A. NELSON  
JOSEPH G. CARLETON, JR.  
OF COUNSEL

RAYMOND E. JENSEN  
(1908-2002)  
KENNETH BAIRD  
(1914-1987)  
M. DONALD GARDNER  
(1918-2003)

YORK COUNTY  
OFFICE  
11 MAIN STREET, SUITE 4  
KENNEBUNK, MAINE 04043  
(207) 985-4676 (Phone)  
(207) 985-4932 (Fax)

DAVID J. JONES  
RICHARD H. SPENCER, JR.  
LAWRENCE R. CLOUGH  
RONALD A. EPSTEIN  
WILLIAM H. DALE  
F. BRUCE SLEEPER  
DEBORAH M. MANN  
LESLIE E. LOWRY III  
PATRICIA M. DUNN  
MICHAEL J. QUINLAN  
R. LEE IVY

NATALIE L. BURNS  
SALLY J. DAGGETT  
ROY T. PIERCE  
BRENDAN P. RIELLY  
NICHOLAS J. MORRILL  
MARK A. BOWER  
CHARLES M. KATZ-LEAVY  
ALYSSA C. TIBBETTS  
J. CASEY MCCORMACK  
TUDOR N. GOLDSMITH

October 6, 2017

Art Birt  
Director of Finance & Administration  
**ecomaine**  
64 Blueberry Road  
Portland, ME 04102

**Re: UPDATE - Cash Reserve & Investment Policy**

Dear Art:

I understand that the Board of Directors is contemplating an amendment to the **ecomaine** Cash Reserve & Investment Policy (“Policy”) to potentially modify the limitations on the percentage of equity investments permitted under the Policy. This letter will serve as a follow-up to my memorandum to you dated January 13, 2014, which is enclosed with this letter.

As described in my prior memorandum, under 30-A M.R.S.A. § 5706(4), **ecomaine** is authorized to engage a financial institution or investment advisor to manage its reserve funds under the so-called “rule of prudence.” The rule of prudence requires the investment manager to exercise reasonable care, skill and caution in his/her investment decisions and to consider the risk and return of the investments in light of the purposes, terms, distribution requirements and other characteristics of the reserve fund. Therefore, **ecomaine’s** investment manager is and will continue to be bound by the rule of prudence for purposes of making investment choices and asset allocations, subject to any limitations imposed by **ecomaine** through the Policy. However, the investment manager would not be authorized to invest funds in a manner that would violate the rule of prudence, even if directed to do so by the Policy.

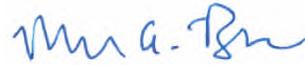
There have been no subsequent changes to the statutes that I referenced in my prior memorandum, other than the minor change to 30-A M.R.S.A. § 5706, of which I notified you by e-mail dated January 11, 2016. (A law passed in 2015 removed from Section 5706(1)(A)(2) the language requiring a depository institution to notify the State Auditor of the pledging of securities to indemnify municipalities against any loss.) As noted in my e-mail, that change in law should not affect the Policy.

Jensen Baird  
Gardner Henry

October 6, 2017  
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Please let me know if there are any further questions on this matter. Thank you.

Sincerely,



Mark A. Bower

MAB/gw  
Enclosure

**ecomaine**  
*Executive Committee*

RESOLUTION ON TD BANK MERCHANT AGREEMENT

BE IT RESOLVED: That the Secretary is hereby authorized to execute the “Certificate of Corporate Resolutions: Authority for Merchant Agreements and Accounts,” the terms of which are incorporated herein by reference, with such changes thereto as approved by the Executive Committee.

Dated: November \_\_, 2017



ATTACHMENT D

## MEMORANDUM

TO: Kevin Roche, CEO

FROM: Mark A. Bower, Esq. 

RE: Cash Withdrawal for Capital Expenditures

DATE: November 8, 2017

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You have asked for an analysis of whether the decision of the Board of Directors (Board) to make a \$3 million withdrawal from **ecomaine's** cash reserves—to pay for certain improvements to address water infiltration issues in the administration building at the waste-to-energy plant—would have any legal ramifications or would adversely impact **ecomaine's** credit rating. In my opinion, the Board's decision to authorize the cash expenditure is prudent and lawful.

I understand the background facts to be as follows:

**ecomaine** has been dealing with water infiltration and damage in the main office building for a number of years, and it was expected that **ecomaine** would need to budget \$250,000 in FY2018-19 to try to deal with the problem. However, an outside consultant evaluated the issue and estimated that the work needed to address the problem would cost approximately \$2.5 million. In addition, **ecomaine** has been planning to resolve water damage and remodel two floors of administrative offices, but has held off on undertaking that project until the water infiltration problem is resolved. That work will cost roughly \$500,000.

At its latest meeting, the Board authorized the expenditure of \$3 million to address the two projects described above: \$2.5 million in capital improvements to address the water infiltration and \$500,000 for the water damage/remodeling project. The plan is to expend half of the \$3 million during the current fiscal year (FY2017-18) and the other half in the next fiscal year (FY2018-19). The Board considered whether to issue bonds to finance the two projects, but ultimately decided to pay those expenses using cash on hand.

Your first question is whether there are any legal ramifications associated with making these expenditures from **ecomaine's** existing operating cash account and/or from cash or cash equivalents held in reserve accounts. Based on what you have told me, the Board properly voted at a duly called meeting in order to authorize this expenditure,

which was not in the current fiscal year's budget that the Board previously adopted. No separate approval from **ecomaine's** Member Municipalities is required under the Interlocal Agreement or bylaws for adoption or amendment of the budget. Therefore, I do not see any legal issues related to the procedure followed by the Board in approving the \$3 million expenditure.

Your second question is whether there would be any impact on **ecomaine's** credit rating from such a large expenditure of cash. As you know, **ecomaine** has no currently outstanding bonds, so the question really is whether this expenditure could impact **ecomaine's** rating in any future borrowing (whether through a bond or bank loan). On this issue, I consulted with Ron Epstein, who is one of the municipal finance attorneys in our law firm. He said that, typically, ratings agencies like to see an issuer have a fund balance policy that requires cash on hand equivalent to 1-2 months of operating expenditures. Similarly, the Government Finance Officers Association (GFOA) recommends that general-purpose governments, regardless of size, maintain unrestricted budgetary fund balance in their general fund of no less than two months of regular general fund operating revenues or regular general fund operating expenditures. For the prior fiscal year, **ecomaine's** actual cash operating expenses were approximately \$16 million, averaging \$1,333,333 per month. Therefore, following this two-month rule, **ecomaine** would need to have on hand at least \$2.7 million in cash. According to the information you provided, as of 9/30/17, **ecomaine** has a checking account balance of about \$6.7 million and cash or cash equivalents of \$2.6 million in its various reserve accounts, for a total of \$9.3 million in cash holdings. If \$1.5 million is taken this fiscal year from the \$9.3 million cash balance, **ecomaine** would still have \$7.8 million remaining in cash on hand – well above the amount that ratings agencies like to see.

Furthermore, keep in mind that **ecomaine's** credit rating for purposes of a bond issuance would be largely determined by the credit ratings of its member municipalities, rather than internal financials. For example, the last time that **ecomaine/RWS** issued bonds, the credit rating of its highest-rated member municipality, which was the City of Portland at that time, was one of the most important factors in determining the rating. Therefore, we would not anticipate this cash expenditure to negatively impact **ecomaine's** credit rating for purposes of a future bond issuance. One other point of note is that **ecomaine** could not make an expenditure from cash now and then do a bond issuance later to reimburse itself for this expenditure, unless the Board adopts a reimbursement resolution to comply with IRS regulations (which it should only do if it actually intends to issue bonds to reimburse the expenditure).

Finally, as **ecomaine** has a Cash Reserve & Investment Policy, you should be sure to consult with Art Birt to confirm that any expenditure of cash or cash reserves for this

capital project would be consistent that Policy, which is set by the Board and implemented by staff (with assistance from H.M. Payson).

In conclusion, given **ecomaine's** healthy cash position, I believe that the Board's decision to pay for the \$3 million capital expense from cash or cash reserves is both lawful and prudent. The alternative—a bond issuance—would be a more complex, cumbersome and potentially expensive procedure that would seem unnecessary given your current cash position. However, if the need arises for another large expenditure in the future, and **ecomaine's** cash position is less favorable at that time, the Board could certainly pursue the option of a bond issuance. But given the current circumstances, payment from the cash holdings is appropriate.