

1 **WOOD ISLAND LIFE SAVING STATION REPAIR AGREEMENT**

2
3 This REPAIR AGREEMENT, hereinafter referred to as the "AGREEMENT" is made and
4 entered into this 18th day of October, 2013, between the Town of Kittery, hereinafter referred to as
5 the "TOWN", and the Wood Island Life Saving Station Association, a non-profit corporation based
6 in Kittery Point, Maine, hereinafter called the "WILSSA", collectively called "PARTIES."

7 **Witnesseth:**

8 **Whereas**, the TOWN owns certain land totaling 1.25 acres, obtained by the TOWN from the
9 United States of America (hereinafter referred to as the "USA"), as surplus property, known as
10 Wood Island Life Saving Station and appurtenances, and deeded to the TOWN February 27, 1973.
11 Said quitclaim deed is attached (Attachment A) and hereinafter referred to as Exhibit A; and

12 **Whereas**, the TOWN and WILSSA use the term structures to mean hereinafter the Wood Island
13 Life Saving station exterior, shed, marine railway, and seawalls; and

14 **Whereas**, Condition No. 3 of said Deed provides that the TOWN "will not sell, lease, assign or
15 otherwise dispose of the premises, except to another local Government agency..."; and

16 **Whereas**, WILSSA desires to repair the exterior of the structures, including any necessary interior
17 repairs to insure structural stability; and

18 **Whereas**, the TOWN proposes to allow the WILSSA to repair the exterior of the structures and
19 improve the seawalls and the marine railway under this agreement and the WILSSA has no authority
20 to improve any other part of the Island, and

21 **Whereas**, it is the intent of the PARTIES that this AGREEMENT provided herein does not apply
22 or extend to any TOWN property beyond Wood Island; and

23 **Whereas**, the TOWN acknowledges that only the Town can fund a hazardous material abatement of the
24 structures prior to commencement of work to repair the structures, and TOWN will use its best efforts to
25 secure federal Brownfields funding.

26 **NOW, THEREFORE**, for the reasons set forth above, and in consideration of the mutual covenants and
27 agreements as hereinafter set forth, the TOWN agrees to allow WILSSA to repair the exterior of the
28 structures following a hazardous materials abatement, including only interior repairs necessary to
29 insure structural stability of the exterior of the structures, subject to all the terms and conditions of
30 this AGREEMENT.

31 **1. Exclusive Authority to Repair Structures**

32 The TOWN does hereby allow the WILSSA to repair the structures. Under this AGREEMENT, the
33 TOWN does not permit any other improvements to the structures by WILSSA. The TOWN agrees not to
34 award contracts to any other individual or entity during the term of this Agreement regarding the structures.

35

36 **2. Improvements to Inure to the TOWN**

37 Improvements to the structures as undertaken and completed by WILSSA become the sole property of
38 the TOWN.

39

40 **3. Term**

41 This AGREEMENT is effective immediately and for five (5) years from the date of award of the federal
42 share of the hazardous materials abatement funding.

43

44 **4. REPAIR Payments**

45 There will be no fee paid by WILSSA to TOWN or any other party for this AGREEMENT. No funds
46 raised by WILSSA shall become the property of the TOWN except in accordance with Articles 17 or 18 of
47 this Agreement.

48

49 **5. WILSSA's Records and Documents**

50 With respect to all matters covered by this AGREEMENT, WILSSA'S records and documents are subject
51 at reasonable times to inspection review or audit by the TOWN. WILSSA must provide to the TOWN a
52 regular report of activities on an annual basis. This report shall include milestones reached, approximate
53 contract and volunteer hours expended, funds raised, funds expended, and forward looking estimates
54 of the tasks ahead. TOWN may use this report as it wishes, including using it in whole or in part to
55 satisfy any reporting requirements regarding Wood Island with the National Park Service.

56

57 **6. Licenses and Permits**

58 All necessary licenses and/or permits to undertake repairs to the structures must be obtained by the

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59 WILSSA from the appropriate TOWN, State, and Federal offices before operation may begin. All fees for TOWN
60 licenses and/or permits and inspections will be waived for this project.
61

62 **7. Irrevocable Letter of Credit**

63 Before undertaking any repairs or other improvements to the structures as permitted under the
64 terms of this AGREEMENT and to insure the satisfactory performance and completion of such
65 repairs and improvements, WILSSA must establish an Irrevocable Letter Of Credit (LOC) or other
66 comparable security with a Maine licensed bank or other financial institution in an amount of not less
67 than the projected total costs of the proposed repairs and improvements as reflected in the building
68 permit(s). The specific amount, financial institution, form and terms of the LOC or other comparable
69 security to ensure that the project will be completed must be approved by the Kittery Town Manager
70 to assure the LOC meets the intent of this requirement. The Kittery Town Manager will consider in-kind
71 contributions as a part of the financial security package.
72

73 **8. Repair**

74 The WILSSA shall select, arrange, schedule and supervise any and all construction work that occurs
75 after the AGREEMENT takes effect and may participate in planning for the hazardous materials
76 abatement as well as scheduling and coordinating the abatement and repairs.
77

78 **9. Inspection of Repaired Areas**

79 WILSSA shall allow a TOWN representative and/or the Secretary of the Interior's designated
80 representative, National Park Service, at any and all reasonable times to inspect the structures
81 covered by this AGREEMENT.
82

83 **10. Other Terms and Conditions**

84 **A. Indemnity and Limitation of Liability**

85 1. WILSSA hereby agrees to indemnify, defend and hold harmless TOWN and its respective
86 officers, officials, agents, employees, members of boards and committees, with respect to the
87 equipment, work and materials that WILSSA or its subcontractors, employees, agents or
88 representatives have agreed to perform and supply under this AGREEMENT from and against
89 all expenses, losses and claims, demands, payments, suits, actions, liabilities, recoveries, and

90 judgments of any nature and description, other than as a result of the sole negligence of
91 TOWN, including reasonable attorney's fees, resulting from claims arising out of or related to
92 any act or omission of WILSSA, its agents, employees, contractors, representatives for service or
93 materials provided, in the work and materials that WILSSA has agreed to perform and supply
94 under this AGREEMENT, or by reason of any suit or claim for royalties, license fees, or
95 infringement of copyright or patent rights arising, or alleged to have arisen, from WILSSA'S
96 performance under this AGREEMENT. This obligation to indemnify, defend and hold harmless
97 does not waive any defense, Immunity or limitation of liability which may be available to the
98 TOWN, its officers, agents, or employees under the Maine Tort Claims Act pursuant to 14
99 M.R.S. §8101 et. seq.

100
101 2. In the event of the commencement of any action against TOWN, or its respective
102 officers, officials, agents, employees, or members of boards and committees which is within the
103 scope of this indemnification, TOWN will give notice thereof to WILSSA within fifteen business
104 days after the TOWN is formally noticed in any such action, and, after consultation with TOWN,
105 WILSSA will have the right to select and furnish counsel for the defense of any such action, at
106 no cost or expense to the TOWN.

107
108 3. TOWN'S failure to give timely notice to WILSSA of the commencement of any such
109 action does not relieve WILSSA of its obligations under this section unless such failure to give
110 timely notice causes actual prejudice to WILSSA'S ability to defend any such claim. Except for
111 settlements involving only the payment of money, no settlement which creates an obligation for
112 TOWN of any such action, or any claim therein, shall be made by WILSSA or by counsel
113 selected by WILSSA without the approval of TOWN, which approval may not be unreasonably
114 withheld.

115 4. The extent of WILSSA'S indemnification and hold harmless is not limited by the
116 requirements for liability insurance under this Agreement.

117 5. The provisions of this article survive the termination of this agreement.

118 B. Force Majeure

119 WILSSA is not liable for any loss or damage due to failure or delay in performance under this

120 Agreement resulting from any unusual or unavoidable cause beyond WILSSA'S reasonable control
121 including, but not limited to: acts of God; acts or omissions of civil or military authority; ; fires;
122 floods; epidemics; quarantine restrictions; unusually severe weather; strikes or other labor disputes;
123 embargoes; wars; political strife; riots; sabotage; unusual delay in transportation.

124

125 **11. Insurance**

126 **A. Coverage and Limits**

127 Once construction begins on the structures and thereafter, WILSSA shall at its sole expense maintain
128 insurance per the specifications and minimum limits set forth herein.

129 1. Commercial General Liability on an occurrence, as opposed to claims made, basis with
130 general aggregate limit applicable per project and per location.

131

132 Each occurrence limit: \$1,000,000.00

133 General aggregate limit: \$2,000,000.00

134 Products/Comp. op. aggregate limit: \$2,000,000.00

135 An additional insured provision is to apply to the Town of Kittery and its respective officers,
136 officials, agents, and employees on a primary, non---contributory basis.

137

138 2. Automobile liability for owned, hired, and non---owned autos with combined single limit each
139 accident of \$1,000,000. An additional insured, or designated insured, provision is to apply to
140 the Town of Kittery and its respective officers, officials, agents, and employees.

141

142 3. If there are any employees, workers' compensation insurance to comply with the
143 requirements of Maine statute, plus employers' liability for:

144

145 Each Accident: \$100,000.00

146 Each Employee (disease): \$100,000.00

147 Policy Limit (disease): \$500,000.00

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149 4. If required by Federal Statute, coverage to comply with the Longshore and Harbor Workers'
150 Compensation Act (33 USC Sections 901---950) and/or Merchant Marine Act, 1920 (46 USC
151 Section 688) commonly referenced as the "Jones Act".

152
153 5. All policies required by this AGREEMENT are to be provided by a company, or companies,
154 admitted to conduct business in the STATE OF MAINE.

155
156 6. WILSSA agrees to require that any written Agreements between WILSSA and any of its
157 service or material provider(s) will require the same provisions, coverages, and limits as in
158 this article 11. WILSSA shall obtain an endorsement to its Commercial General Liability
159 policy to cover WILSSA'S obligations under Article 11.

160
161 7. The TOWN will use its best effort to include WILSSA as an insured party in any agreement with the
162 Abatement Contractor.

163
164 **12. Amendment to AGREEMENT**

165 This AGREEMENT contains all the terms and conditions between the parties, and no alteration,
166 amendment, or addition is valid unless in writing and signed by the WILSSA and a majority of the
167 TOWN COUNCIL.

168
169 **13. Governing Law**

170 This AGREEMENT is governed and interpreted by Maine law.

171
172 **14. Liens**

173 WILSSA shall keep the assigned facilities free from any and all liens arising out of any work
174 performed, materials furnished, or obligations incurred by WILSSA during the term of this AGREEMENT
175 or any extension or renewal thereof.

176
177 **15. Severability**

178 No waiver by either party at any time, expressed or implied, of any breach of any provision of this
179 AGREEMENT may be deemed a waiver of breach of any other provision of this AGREEMENT or a
180 consent to any subsequent breach of the same or any other provision.

182 **16. Dispute Resolution**

183 Any dispute between the parties arising out of or relating to this AGREEMENT must be resolved in
184 accordance with this article. Any party may give written notice of a dispute arising out of or related to
185 this Agreement to the other party in person or by certified mail, return receipt requested. The parties
186 must attempt to resolve the matter through informal communication or negotiation for a period of
187 thirty (30) days from the date of receipt of notice by the last party to receive notice.

188

189 If the dispute has not been resolved within thirty (30) days, either party may serve written notice on
190 the other party of a request for mediation. The mediation must be conducted in Maine by a mediator
191 mutually agreeable to the parties, must not exceed one full day or two half days in length, and must
192 be completed within ninety (90) days from the date of receipt of notice of a request for mediation by
193 the last party to receive notice. In the event that the parties are unable to agree on a mediator within
194 thirty (30) days, or to resolve the dispute through mediation within 90 days, the dispute must be
195 submitted to arbitration in accordance with the procedures of the Maine Uniform Arbitration Act, 14
196 M.R.S. §5927 et seq. Nothing in this provision precludes either party from seeking any other available legal
197 remedy following mediation and arbitration as set forth in this agreement.

198

199 **17. Termination by TOWN/ WILSSA for Cause**

200 TOWN may terminate this AGREEMENT if WILSSA:

- 201 1) Fails to provide timely reports of activities to the TOWN as required by this AGREEMENT.
- 202 2) Disregards any law, ordinance, rule or regulation or order of a public authority having
- 203 jurisdiction; or
- 204 3) Is in substantial breach of a provision of the AGREEMENT Document.
- 205 4) This AGREEMENT may also be terminated by the TOWN in the event that WILSSA ceases to
- 206 be an active, functioning nonprofit corporation registered to do business under the laws of
- 207 the STATE of MAINE.
- 208 5) This agreement may also be terminated by the Town if it fails to be awarded Brownfields funding
- 209 for the hazardous materials abatement after three such applications have been submitted.

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210 When any of the above conditions exist, TOWN may, without prejudice to any other rights or remedies
211 of TOWN and after giving WILSSA thirty days written notice to remedy above condition and the
212 condition has not been remedied, terminate this AGREEMENT and may:

- 213 1) Take possession of all improvements made by WILSSA;
- 214 2) Maintain the work by whatever reasonable method TOWN may deem expedient using funds
215 available through an Irrevocable Letter Of Credit or other comparable security as referred
216 to in article 8; or
- 217 3) Choose to demolish the facilities, using funds available through the Letter of Credit or other
218 comparable security as referenced in article 7 and article 18.

219
220 WILSSA may terminate this AGREEMENT if TOWN:

- 221 1) Fails to secure Brownfields funding for the hazardous materials abatement
- 222
223 2) Is in substantial breach of a provision of the AGREEMENT document.
- 224

225 When any of the above conditions exist, WILSSA may, without prejudice to any other remedies or
226 WILSSA and after giving the TOWN thirty (30) days written notice to remedy the above condition and
227 the condition has not been remedied, terminate the AGREEMENT without penalty and may revoke the
228 Letter of Credit or Other Comparable Security

229
230 **18. Voluntary Termination**

231 If there is damage to the facilities exceeding 75% of the cost of replacement from fire (including
232 arson), flood, lightning, wind, wave or any act of God beyond the WILSSA'S control during the course
233 of this AGREEMENT that WILSSA is unable or unwilling to repair at their own expense, WILSSA
234 reserves the right to terminate this contract without penalty.

235
236 If, in the event of damage to the facilities as described above, TOWN reserves the right to inquire of
237 WILSSA if WILSSA intends to exercise its right of voluntary termination. WILSSA will answer such an
238 inquiry from TOWN, when notified, within 60 days and if planning to repair the damage at its own
239 expense will provide a plan of work with timetable to complete the repairs.

240

241 If WILSSA chooses voluntarily to terminate this AGREEMENT for the reasons stated, funds available
242 in the letter of credit or other comparable security must be released to the TOWN to be used either
243 to help remedy the damage and maintain the property or demolish the building structures. Any funds
244 remaining from the Letter of Credit or other comparable security after either a remedy of the
245 damages and maintenance of the property or demolition of the structures shall be returned to
246 WILSSA.

247

248 **19. First Opportunity for Ongoing Management of Structures**

249 In accordance with this Agreement, upon successful completion of the repairs, the TOWN agrees to
250 discuss with WILSSA the TOWN's plan, if any, for ongoing management of the structures. Additionally,
251 should the TOWN consider placing the structures under non-governmental agency management,
252 WILSSA shall be given the first opportunity to submit a plan for consideration, or to match within a
253 reasonable time as set by the Town any other plan proposed to the TOWN during the term of this
254 AGREEMENT and continuing for a period of ten years following the completed repairs, consistent
255 with the restrictions and limitations in the TOWN's deed to Wood Island and with the prior
256 approval of NPS.

257

258 **20. Acknowledgement:**

259 **A. Deed Terms and Conditions**

260 This AGREEMENT and the obligations of the parties hereto are subject to the terms and conditions
261 set forth in the deed from the United States of America to the TOWN, dated February 27, 1973, and
262 recorded in the York County Registry of Deeds at Book 1985 Page # 201, and the current Program of
263 Utilization which governs the use of the property.

264

265 **21. Assignment**

266 WILSSA may not assign or otherwise transfer in any other way to any party or individual its rights,
267 duties or obligations under this AGREEMENT, either in whole or in part without the prior written
268 consent of the majority of the KITTELY TOWN COUNCIL.

269

270 **22. Notice**

271 Any notice required or permitted to be given by either party hereto to the other is deemed to have
272 been duly given when delivered personally or otherwise actually received after mailing by certified

273 mail, return receipt requested, or by reputable overnight courier or by facsimile (with confirmation of
274 receipt), addressed as follows:

275

276	To TOWN:	To WILSSA:
277	TOWN MANAGER	WOOD ISLAND LIFE SAVING STATION ASSOC.
278	200 ROGERS ROAD	P.O. BOX 11
279	KITTERY, ME 03904	KITTERY POINT, ME 03905

280 Other addresses may be established as the parties hereto may designate by written notice to the other
281 party and delivered in accordance with the provisions of this article.

282

283 IN WITNESS WHEREOF, the TOWN has authorized its [insert title] representing the TOWN to sign this
284 AGREEMENT and WILSSA has approved the AGREEMENT and signed as of the date first noted above.

285

286 WITNESS: *Shawn Estee*

287

288 TOWN, (OWNER) 10/24/13 BY: *Mayann Leese*
289 [Name] [Title] [Address] [Town, State, Zip Code] *Acting Town Manager*

290 *Samuel S. Reid, Pres.-Dist*
291 WITNESS: *Wood Island Life Saving Station Assoc.*
292 *P.O. Box 11, Kittery Pt. ME 03905*

293 WILSSA: October 18, 2013 BY: *Samuel S. Reid*
294 [Name] [Title] [Address] [Town, State, Zip Code]

295

296 Attachment A. Deed

297 10/16/13